

Preliminary Draft

**The WTO After Seattle:
Something's happening here, what it is ain't exactly clear.**

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New Orleans
Jan. 2001**

I Introduction

In Seattle last November the WTO, a virtually unknown institution to most people, was the star attraction in televised street theatre for several days. There have been repeat performances at the World Bank/ Fund meetings in Washington in April 2000 and in Prague in September as well as at other international meetings in Bangkok (UNCTAD X) and Montreal (Biosafety Protocol) and plans are now well underway for the Summit of the Americas get-together in Quebec City in April 2001. The mobilization of protest demonstrations against international institutions didn't start in Seattle. There were demonstrations at the WTO meeting in Geneva in 1998 and at Bank/Fund meetings throughout the 1990's. But the scale and the complexity of the choreography and drama at Seattle was unprecedented and perhaps a new trend has been established. Even if that were so (a question I'll return to below) it would be incorrect to assess the implications of the anti-globalization movement solely by its visible manifestation on television. The invisible impact of the NGO's on the international policy processes and institutions may turn out to be more important over the longer-run and this paper will attempt to deal with both.

Before doing so, however, it is essential to provide some context for the discussion which will largely deal with the role of non-governmental organizations or NGO's. I do not intent to enter into the definitional morass (1) in discussing NGO's except to distinguish between advocacy NGO's and NGO's whose main function is to provide services in development programes. The advocacy NGO's have created international networks which can be broadly categorized as "mobilization networks"

whose chief objective is to rally support for dissent at a specific event, and “technical / legal networks” designed to provide information with respect to a specific policy issue or policy-making process. A third group of NGO’s I have termed a “virtual secretariat” for developing countries. (2) Given the context of this paper and the limits of time and space I shall not be dealing with this group which is dedicated to providing information, ranging from technical research and policy papers to activist policy advocacy for Southern countries in the WTO and the Bretton Woods institution. Suffice to say, however, that this “virtual secretariat” is playing an increasingly important role in promoting a proactive Southern agenda, especially in the WTO and some of the transnationals in the secretariat are also active in mobilization.

In the remainder of this discussion I will first review the significance of the mobilization networks – the visible impact – and then turn to the technical / legal networks to consider the invisible impact. As the title of the paper suggests the impact of both is difficult to assess at this point in time not only because we are reviewing a rather new phenomenon but also because, as is not surprising, the anti-globalization movement has provoked a counter movement which I will briefly highlight. The paper will conclude with an assessment of the main implications of these new developments for the WTO.

II Mobilization Networks: Visible Impact

The main objectives of the mobilization networks are to heighten public awareness of the target international institution’s role in globalization and, by doing so, to

change its agenda and mode of operation – or, in the case of the more extreme members of the coalition, to shut it down. While these networks are loosely knit coalitions of very disparate groups an analysis of the networks at Seattle, Washington, Bangkok and Prague show that a significant proportion are environmental, human and gender rights NGO's. However one must be wary of the view (often stressed by the NGO's themselves) that these loose and diverse coalitions represent a new form of globalized participatory democracy on the internet. That may be partly the case, but the most significant development facilitated by the internet – and vividly demonstrated in Seattle – has been the emergence of a new service industry – the business of dissent. And there is a business centre – call it dissent.com –very effectively operated by a core group of NGO's headed by a new breed of policy entrepreneurs. (3) It's important to stress that the dissent industry is largely a product of the internet revolution. Inexpensive, borderless, real time networking provides advocacy NGO's – if headed by policy entrepreneurs – with economies of scale and also of scope by linking widely disparate groups with one common theme. As is the case for all innovations there are also important positive feedback loops. An NGO Network established at the Rio Summit in 1992 was used by American, Canadian and Mexican anti-NAFTA advocacy groups and this experience was vital to mobilizing the fight against the Multilateral Agreement on Investment (MAI). The lessons from the MAI were put to use in preparing for Seattle and the Seattle experience was helpful in planning to Washington and so on – and on.

The key assets of dissent.com are the ability to use the media to get out the message. Even when the message and the media are combined with money (from mass

mailings and foundations – mainly American) the viability of the new business will depend on the saleability of its product – anti-globalization. I'll return to this later.

In tracking on the internet the NGO's at Seattle, Washington and Prague there appears to be a core group central to managing the protests and crafting the message and organizing the circulation of "sign on" lists. (4) This core – or headquarters of dissent.com – included Ralph Nader's Public Citizen and Global Trade Watch in the U.S.; Corporate Watch and ATTAC (France), Corporate Europe Observatory (Amsterdam) Oxfam (U. K. and Belgium); and the Third World Network of Malaysia, the most prominent transnational Southern NGO. A number of other NGO's were involved in facilitating the demonstrations in Seattle, Washington and Prague. Thus the Direct Action Network (DAN) with offices in California and New York began as a coalition of activist groups dedicated to shutting down the WTO Ministerial. DAN was inspired by Peoples Global Action (PGA) which was formed in Geneva for the first WTO Ministerial in 1998. (5) Global Exchange, based in San Francisco, coordinates activities with DAN and Global Trade Watch. INPEG (Prague) was formed to plan and carry out a week of protest in Prague from Sept. 18-28th. The Europeans were anxious to replicate Seattle, regarded as an impressive "model." These coordinating and organizing NGO's provide training sessions for non-violent direct action as well as other matters such as legal rights and medical first aid.

Coordinating and organizing the demonstrations is only one function of dissent.com. Another, of equal or great importance, is creating the libretto for the street

operas and the sound bites on television. Since the networks are so diverse both in mission and location the message must carry a simple, common theme: anti-globalization: pro-democracy. The charge is that the WTO (or the Fund or the World Bank) are dominated by the interests of transnational corporations while harming the environment and increasing inequality and that their rules and procedures are undemocratic. Examples of sound bite versions at Seattle were “fix it or nix it”; and after Seattle, “shrink it or sink it” and at Washington “De-fund the Fund! Break the Bank! Dump the Debt!” (6)

Since the main objective of mobilization networks is to influence public opinion and through that route initiate change in the policy processes of the international institutions, has the dissent industry been successful? In the case of the WTO, I would argue that it’s too early to tell. But if one reviews the impact of NGO’s on the World bank the answer would certainly be “yes, indeed.”

A major change in the World Bank’s operations is documented in a case study of the Narmada dam project in India which was financed by the Bank until 1993 when the loan agreement was cancelled. (7) The cancellation followed a long and carefully orchestrated international campaign by NGO’s in the U.S., Brazil, Europe and India, which was waged for a decade. Launched by American environmental NGO’s in 1982, the campaign involved lobbying Congress, mobilizing Brazilian NGO’s and member governments of the InterAmerican Development Bank to halt funding of infrastructure projects in Latin America. By the end of the 1980’s the coalition of

environmentalist and human rights activists began to focus on Asia and particularly on the Narmada dam, a priority for the Indian government from the time of Nehru. Oxfam (U.K.) played a major role in lobbying the World Bank and linking with the newly emerging NGO's in India as well as American, European, Japanese and Australian networks of environmental and human rights groups who lobbied not only the World Bank but also demanded that their own governments stop funding such projects. The campaign was concluded in 1993 – at least so far as the Narmada dam was concerned. But the consequences of this particular campaign and continuing lobbying and demonstrations had a far wider effect on the Bank's program. Thus, for example, in 1993 the Bank established the position of Vice President of Environment and Sustainable Development and expanded its concept of development to cover three "goals": economic (growth, equity and efficiency); social (covering objectives such as empowerment, social cohesion, institutional development, etc.); and ecological (ecosystems, biodiversity, carrying capacity, etc.). This remarkable change which has been repeatedly and severely criticized by the neo-liberal press was not internally driven but is a consequence of the NGO's networks, not simply by demonstrations but by a complex and coordinated transnational multi-track strategy. And, as a further consequence, the World Bank today engages NGO's in operational collaboration, research collaboration and broad policy dialogue. (8) This extensive engagement is not supported by many developing country governments, exacerbating a growing North-South divide on other issues.

Will the World Bank experience presage similar developments in the WTO? There are many reasons to suggest not including the sheer size of the Bank (7000

plus staff compared with the WTO's 500) making it more "porous" to engagement with outsiders (and more susceptible to political pressure especially by the U.S. Congress) as well as the much more coherent policy template of the trade system. None the less, the WTO was not immune to the NGO networks and the demonstrations in Geneva in 1998 led to more rapid derestriction of documents and the March 1999 WTO Symposia on Trade and the Environment and Trade and Development which included such a large number of NGO's that one European official rejected the term global civil society and proposed instead the new globeratti! And whereas NGO's had to attend the Marrakesh Ministerial meeting in 1994 disguised as reporters (9) nearly 700 NGO's from 54 countries were accredited at Seattle.

However, despite the orchestrated (and sometimes violent) protests in Seattle the claims of the NGO's – joined by large numbers of the AFL-CIO for largely domestic political reasons – to have shut down the meeting don't stand up to closer analysis. The wide North-South divide among the WTO members in the aftermath of the Uruguay Round plus the transatlantic division between the U.S. and the EU on a number of issues ensured that any agreement, however fudged, would be difficult to achieve. The absence of high profile business lobbies in Seattle meant that key players in the trade game were not present. And the final coup de grace came from the President's statement about labour standards enforced by sanctions (again, for domestic political reasons). Nonetheless one should not discount the after-effects of the Turtle-Teamster alliance which so angered many Southern countries and left the unfortunate and false impression that these two "trade and" issues were inextricably linked. (10)

In sum, the demonstrations in Seattle – the “visible” manifestation of the NGO networks – obviously cannot be dismissed as inconsequential but neither can the triumphalist claims of some mobilization groups (Seattle was the “big bang” of a new global social movement) be substantiated. However, as noted above, the “invisible” impact of these new actors which is already underway is certainly worthy of examination. These NGO’s involved are what I have termed “technical / legal” and are predominantly environmental and human rights advocates. Some may join the demonstrators outside but for the most part they prefer to operate inside.

III Technical / Legal: Invisible Impact

The lead role of environmentalists in the policy process is manifest in both the domestic and international arenas. In the industrialized countries the “regulatory inflation”, as it is termed by the OECD (11) begins in the 1970’s with the rise of the consumer and environmental NGO’s in the U.S. and Canada and the movement spreads to Europe. In the international arena two conferences are landmarks in the emergence of the environment as a major global issue: the Conference on the Human Environment in Stockholm in 1972 and the Conference on Environment and Development in Rio in 1992 (UNCED). But Rio was a landmark since earlier multilateral treaties did not provide official access to NGO participation. Rio changed that in a most dramatic fashion (there were 9000 NGO’s accredited (12) and today NGO’s are actively involved in the most significant of the 200 plus Multilateral Environmental Agreements (MEA’s). At policy conferences they have access to working drafts of documents, sometimes circulate their

own drafts, are allowed to address meetings and are prominent in delegations of many (mainly OECD) countries. Further, after Rio, UNCED requested the UN to formalize the rules for NGO participation and since that time the U.N. has increasingly expanded the formal involvement of NGO's in all its activities. Thus between 1948 and 1998 NGO's given consultative status increased from 41 to 1350 (13). The NGO's helped create a constituency for UN activities so the interaction was, for the most part, considered mutually beneficial. Most of the accredited NGO's are Northern, mainly environmental, human rights and women's groups.

The NGO networks established at Rio have expanded and intensified over the 1990's. U.N. Conferences proved to be very important in building networks not only in the environmental but human rights field. For many in the UN institutions the number of NGO's at a Conference is considered a badge of success. Indeed one could say, only half in jest, that the transnational environmental movement is largely the result of conference-building measures!

Why have the environmental NGO's (ENGO's) been so successful in playing such a significant role? A number of reasons can be proffered. (14) First, the ENGO's got a head start in the domestic arena and thus were ready to go global. International environmental policy was (and is) in many respects uncharted territory, fraught with uncertainty and subject to continuing change as new scientific information is produced. There is no clear, widely accepted theoretical model as is the case in the economics of trade. There's no politically comforting reciprocity to enhance the

negotiation process. A “model of ecology” does not rest on accepted doctrine and the policy issues are cross-cutting and must be analyzed within a multi-disciplinary framework. For all these reasons technical knowledge, which many ENGO’s possess in greater depth than many governments or corporations, is a key strategic asset the ENGO’s are hedgehogs (in Isiah Berlin’s terminology) who know one big thing and governments are foxes who know many things. The ENGO’s are more flexible in adapting to ongoing and diffuse change in ideas and knowledge while governments are prone to inertial decision-making. Thus, for governments and intergovernmental institutions, technical advice and access to global networks can be extremely valuable if you’re dealing with global environmental issues.

This last point needs stressing. The largest and most active ENGO’s have affiliates around the world although their “home base” or place of origin is primarily American. A few examples will make the point. Greenpeace in Amsterdam has organizations in 20 countries; Friends of the Earth in 50; the World Wildlife Fund in 28. The Sierra Club has a department dedicated to international issues and networking. Another feature of these ENGO’s is their wealth. The assets of EDF are over \$18 million: Greenpeace U.S. \$15M; WWF, \$90 million. (15) Of course, it is important to put this in context: these numbers are dwarfed by the resources of multinational enterprises.

The most powerful transnational ENGO’s are North American but there are also many European, and some developing country ENGO’s which were formed in the late 1980’s and 1990’s. These are part of the global networks but the networks are by

no means homogeneous. Indeed there is a considerable north-south divide on many environmental policy issues (see below) and also some significant transatlantic differences.

The environmental movement of the 1970's, which was very different from the earlier conservation movement of the early twentieth century, grew out of the anti-nuclear protests. Thus Greenpeace was formed at a meeting in Vancouver in 1970 to demonstrate against nuclear testing in the north and by 1972 Greenpeace was in France protesting French nuclear testing. (The diffusion of protest had begun and, of course, has accelerated with the use of the internet). In Europe, this advocacy route to influencing the process of policy-making was not so widespread and, probably because of differences in the political systems, a political party route was chosen. By the early 1980's the Green party was in the Bundestag and today there are social democratic and green coalitions in four European countries (Germany, France, Italy and Finland) as well as an increasing number in the European parliament. Green NGO's did develop but mainly in the U.K. and the Northern countries. But there is one very significant difference between North American and European NGO's – the former place far more emphasis on a legalistic approach while the latter are more social-democratic in approach, as are the green parties. One could say that a North American ENGO's rallying cry was “let's litigate” while the European would say “let's regulate” – either at home or in Brussels. This transatlantic difference is worth a brief digression because of its potential for impeding negotiations concerning global environmental issues.

The breakdown of the negotiations in the Hague on the Kyoto Protocol was blamed on the Americans by the Europeans and on the Europeans by the Americans. As the former administrator of the U.S. Environmental Protection Agency observed in an article shortly after the Conference one explanation proffered by American critics is that European policy on environmental issues is designed as a means of reducing the competitiveness of U.S. industry and favouring less competitive European firms. (16) A much more comprehensive version of this “conspiracy” theory attributes the European pro-environmental policies not only to a desire to protect North European industries but also the interventionist bent of the social democratic and green parties and the European NGO’s who are provided considerable funding by Germany and the Scandinavian countries and the EU. (17) This conservative critique of environmentalism also includes the charge that what is really at issue is a plan (mainly by Europeans) for global governance, a collectivist approach that must be rejected not only because of its rejection of market mechanisms but also, and equally if not more important, because it would profoundly undermine American sovereignty. (18) So, one might say, the legislative route does not appear too promising over the foreseeable future if the U.S. and the EU are not able to forge some kind of compromise at least in the WTO.

Just as the environmental stance of European governments is reflective of broader political and cultural concerns, the litigious bent of the American ENGO’s is deeply rooted in the American legal system, most specifically in the postwar Administrative Procedures Act (APA). The basic principles of the APA were transferred to the GATT in Article X and then vastly expanded in the Uruguay Round. (19)

Essentially the APA principles concern transparency (publication of all relevant laws and regulations) and basic procedural rules which stress the right of private actors to participate in rule-making, monitoring and enforcing of regulatory law. The APA was, in effect, based on the view that bureaucratic power must be curtailed, a reaction to the expansion of government under the New Deal and the War. While all European countries also adopted administrative procedures laws, as did Japan under the Occupation, these laws provided much more room for administrative discretion and much less room for participation by private actors in the rule-making process.

Just as the APA was embedded in the trading system it has also been incorporated into many of the MEA's through procedural rules that opened the door to ENGO participation. (20) And if participation is in the "spirit" of the MEA's, why not the WTO, is the question now posed with increasing insistence by the ENGO's and since the legislative route is at present blocked then why not take the legalistic route? In fact that track is already evident in the WTO with the demand by North American NGO's for the right to present amicus curiae briefs under the Dispute Settlement mechanism.

This push for amicus rights was sparked by a number of disputes concerning environmental issues in the WTO. The Southern countries are uniformly opposed to the demand for amicus submission arguing that it would erode the rights of governments and – since they are hardly rich in legal resources – tilt the system against them. There is the view that, moreover, opening the door to ENGO's would just be the first step and lawyers acting on behalf of corporations and other interest groups or simply

in their own interest would be next in line. This would transform the dispute system into a largely litigious policy-making process. Because WTO law is often deliberately vague or ambiguous, the panels and the Appellate Body will be making law not just interpreting it and the rules of the WTO will evolve not as a result of negotiation, but of litigation. In the recent case concerning asbestos the Appellate Body decision concerning amicus briefs has created a furore of dispute among member governments – and was, indeed, supported only by the U.S. (21) Nonetheless, given the current state of affairs in the WTO, there seems little prospect of launching a genuine debate on the dispute arrangements (since it seems clear that the questions concerning amicus presentations are essentially political and not procedural) let alone a negotiation on trade and the environment. The legalistic route will remain the only game in town. A number of legal scholars (American) have presented carefully reasoned arguments for this track and one has even coined the term “participatory legalism” (22) which may seem a trifle odd for countries where law suits don’t make policy (or determine elections). Or for countries without the requisite legal resources. After all, the U.S. with 4% of the world’s population has 50% of the world’s lawyers!

Another interesting “invisible” legal track has nothing directly to do with the environment but perhaps eventually will impact WTO rules concerning both economic and social regulatory policies in a significant fashion. This concerns the proposals, by human rights NGO’s and a growing number of lawyers, that “customary international law” on human rights should prevail over international trade law, i.e. override those WTO rules which are alleged to violate basic human rights as defined by

the U.N. Charter. This proposal has generated a storm of controversy about the role and indeed the meaning or even existence of customary international law (CIL) and a spate of articles by American legal experts warning of the implications of what they see as a move to global governance. (23) But it has also created a confrontation between the WTO and the High Commission for Human Rights.

In June 2000 the UN Committee on Economic, Social and Cultural Rights released a draft report prepared on its request which charged, *inter alia*, that the WTO excludes developing countries from its decision-making processes (described in the Report as a “nightmare”) and that in particular the TRIPS agreement (trade-related intellectual property) violated basic rights including the right to enjoy the benefits of scientific progress; the right to health and the right to food. (24) The secretariat of the WTO firmly rejected the Report as inaccurate and biased. But it was hailed as a major breakthrough by human rights and anti-globalization NGO’s.

The Report echoes the main thrust of the U.N. Committee’s statement to the Seattle Ministerial which argues that it is essential “to ensure that human rights principles are fully integrated in future negotiations in the WTO” and that human rights impact studies should be undertaken before any further negotiations are launched. Just as the ENGO’s argue that the overall objective of the WTO should be sustainable development, the UN Committee asserted that trade liberalization is a means not an end and that the objective of the WTO “human well-being to which the international human

rights instruments give legal expression” (emphasis added) and cites as “proof” the 1993 Vienna Convention.

A key player in the human rights movement – also at Seattle – was Malini Mehra, head of PDHRE (People’s Decade of Human Rights Education) an NGO founded in 1988 which has consultative status at the U.N. PDHRE based in New York also established a London office in 1999. Originally dedicated to community level education on economic, social and cultural rights, like many other service NGO’s PDHRE began to shift to international economic issues in the second half of the 1990’s and co-founded INCHRITI (International NGO Committee on Human Rights on Trade and Investment) a transnational NGO network linking NGO’s from Asia, Africa, North America and South America. Both PDHRE and INCHRITI played important roles in promoting the Sub Commission ‘s Report and plan a continuing campaign to establish the primacy of human rights over trade law. One intriguing aspect of this new development is to substitute the human rights approach for the trade and labour standards proposals of the unions – described as “piecemeal (and) self-serving” (25) Since the inclusion of labour standards in the WTO has been fiercely criticized by all the Southern countries perhaps these NGO’s believe this broader approach can garner more international support. But they are pragmatic enough to understand that their argument for turning the WTO into a human rights organization by adopting a change in its preambular “mission statement” is disingenuous, to say the least. A better route would be a “serious re-consideration of the WTO’s Dispute Settlement Understanding” to mitigate the enforcement gap. (26) And perhaps hyperlexia is migrating to the Continent: the rapidly growing and high profile

French NGO, ATTAC, has also announced that a major priority is to ensure that the WTO dispute mechanism recognizes the primacy of international law! (27)

This concludes our brief review of role of the technical / legal NGO networks and their efforts to effect change in the mandate and operations of the WTO. Because these developments are largely invisible to the general public and because they are alien to the trade policy community there may be a tendency to dismiss them: after all, lawyers will be lawyers so why bother to parse all the fine print in Appellate Board fundings or legal journals or UN conventions and declarations? This would be unwise. It would be far better to launch a discussion in the WTO about the broader implications of amicus briefs, customary international law and the relationship of the WTO with U.N. bodies. Alas, there is at present no forum for doing so. I shall discuss this matter in my concluding suggestions for WTO reform. But before doing so I want to deal with one more development pertinent to the subject of my talk – i.e. the countercurrents already visible in the anti-globalization tidal wave.

V Countercurrents

One aim of the dissent industry is to heighten public awareness of the anti-globalization issues and the role of international organizations in fostering globalization. In that regard they have been successful. But they no doubt did not anticipate one of the consequences of success, a consequence the main mobilization NGO's deplore – the attraction of often violent extremists to the demonstrations. As the Southern Poverty Law

Center, an American NGO, documents, neofascist groups in Britain, Europe and the U.S. have embraced the anti-globalization credo with enthusiasm, as have anarchists and other extreme left groups. The Centre underlines, of course, that “left and right did not exactly march arm in arm” in Seattle (28) nor did the neo-nazi skinheads join hands with the development NGO’s in Prague. Yet the probably inevitable tendency for all demonstrations to attract extremists – a free ride is hard to decline – is certainly generating concern within the NGO community. And, indeed, in Prague, some prominent NGO’s, such as Friends of the Earth and Jubilee 2000, not only publicly condemned the street violence but refused to join the demonstrations. (29)

But the violence of some demonstrators is not the only issue of concern to mainstream NGO’s. One of the most insistent criticisms of the NGO’s by both member countries of intergovernmental organizations and policy analysts is that they misuse and distort information either because of ignorance – “global village idiots” – or deliberately to manipulate public opinion, usually with the aid of a media searching for a vivid sound bite. The most notorious example, frequently cited, is the Greenpeace-Brent Spar episode but certainly there are many others. It is frequently pointed out that the NGO demand for more transparency in the WTO sits uneasily with their own lack thereof. But there has been an interesting new development in the NGO community which underlines the concern of many that their main asset is public trust which is being eroded not only by the violence at demonstrations, but more importantly because they lack accountability. Of course, other actors distort and manipulate information or are economical with the truth. But if corporations engage in serious distortion and are exposed (which is increasingly

feasible in the new information environment) they are accountable to shareholders. Governments (at least in democracies) are accountable to citizens and unions to members. But NGO's are, in the words of one acute analyst, the "new global potentates". (30) In response to these criticisms some NGO's have launched new self-regulatory initiatives to develop codes of conduct. These would cover ethical practice, transparency, funding accountability, accuracy of information and other factors. (31) Some governments are also taking the initiative in this effort. The Foreign Policy Centre (a British government think-tank) has proposed a code of conduct that would include regulatory certification. (32)

The NGO community is hardly united in endorsing codes of conduct and many deny vehemently that accountability is an issue. Other divisions are also apparent as some NGO's are actively engaged in cooperation with MNE's in creating environmental and labour standards codes. (33) NGO critics of this activity (as well as the cooperation with governments and donors in development projects) regard it as sleeping with the enemy. (34)

Whether these divisions within the NGO movement will fragment the mobilization networks over time is difficult to predict. Demonstration fatigue (on the street or for TV viewers) should also be factored into the equation. Also, since Seattle, police and security forces are much better prepared and some have set up special units to monitor the internet. (35)

But, in any case, as this paper has argued, the invisible impact of these new actors is probably more important than the service products of dissent.com. Thus a more significant division which could undermine the environmental movement is the wide differences between the Northern and Southern NGO's. This divide increased after Seattle as developing country NGO's and governments watched the Turtle-Teamster coalition marching on the streets.

As noted earlier the most powerful transnational ENGO's are Northern and for many in the South they reflect the political and economic power of the West – termed by some as green-imperialism. (36) This aside, however, the Southern NGO's are more concerned with development and regard the priorities of Northern NGO's as a reflection of their own high standard of living and lack of understanding of the poverty of the developing countries. Muttering in the corridors of the WTO and environmental conferences one often hears complains that “they” (the Northern ENGO's) prefer support for elephants over people and dolphins over children.

Southern governments, endorsed by their NGO's, strongly opposed the formation of the Committee on Trade and the Environment at the conclusion of the Uruguay Round. (37) And thus far, the discourse in that Committee has been described as a dialogue of the deaf. They regard any effort to deal with environmental issues in the WTO – despite the fact that they are already in the WTO rules – as a stalking horse for “green protectionism.” Southern NGO's, despite efforts by Northern ENGO's to establish N-S networks, tend to support their own governments not only in the WTO but also at

MEA conferences. (38) Once again, it should be stressed, that we don't know who funds these Southern NGO's and for whom they speak so its difficult to assess the implications of their pro-government stance on the international front. Some experts in the study of NGO's and global governance have suggested that it is simplistic to apply an industrialized country model of civil society to developing countries. Southern NGO's may have a much more ambivalent attitude to governments given their concern about financial resources and their support for local organizations often against the wishes of their governments. For these and, of course, other substantive reasons they are happy to support their governments against Northern interests and power. (39) The Southern NGO's have also supported their governments' opposition to amicus briefs and, more generally, to greater participation of NGO's in WTO proceedings. (40)

Strangely, however, Southern NGO's are at one with their Northern colleagues in their attack on GMO's, even though the new biotechnology revolution could hold great promise for poorer countries faced with rising population and diminishing land and water resources. (41) This unification on a key issue for the WTO, cuts across the environment, agriculture and TRIPS, should be explored in depth if the institution is not to be severely crippled by a hardening of the North / South conflict left from the Uruguay Round. (42) But, once again, the WTO has no venue for this task.

Finally, as was clear in the Seattle slogan "Fix it or Nix it", the coherence of a movement bound by agreement on what they are against – corporate globalization – has revealed the stark differences between the "reformers" (fixers) and the "abolitionists"

(nixers). (43) In the view of the latter the focus must be not to reform the multilateral agencies but to “deepen the crisis of legitimacy of the whole system.” (44) But what is to replace it? The new paradigm seems to be localization. The mantra of localization and participatory democracy now appears with increasing frequency in the internet dialogue among the NGO’s and in discussions with students since Seattle. A book by Colin Hines of the International Forum on Globalization a San Francisco-based NGO, entitled Localization: A Global Manifesto published on July 20th is being widely circulated and many deep ecologists, who have been proponents of similar ideas are strong supporters of the thesis that international trade should be cut back to supply only what cannot be produced within the local or regional economy, The book spells out the details and dimensions of the new paradigm in considerable detail and defends it with a beguiling slogan: beggar-your-neighbour globalization must give way to better-your-neighbour localization! (45) It will be interesting to see what impact this new approach might have on both domestic and international policies, although we may have to wait a longish time. But one is reminded, when reading this and similar material, of the Owenite movement in mid-nineteenth century England.

In Karl Polanyi’s classic book about the nineteenth century industrial revolution, The Great Transformation (46), he describes the Owenite movement as a response to the destruction of the crafts and the political and social conditions which sustained local communities. Robert Owen was no Luddite but insisted that the new machines could be most productively utilized in carefully constructed communities based on consumer and worker cooperatives which established funds for unemployment and

pensions as well as futuristic education schemes and other innovative projects. He denied that it was possible to separate the economy from the society. New Lanark – the first model Village of Cooperation – attracted thousands of visitors from Europe and America (and Jevons invested in some of the projects!) New Lanark and the Owenite movement disappeared, however, as capitalism began to deliver growth by the end of the century. One could say that Owen – and the new localization advocates – fit the old description of a romantic as one who prefers to travel hopefully rather than reach a destination. Yet it's important to remember that long after New Lanark was forgotten some of the Owenite ideas survived in new institutions such as unions, consumer cooperatives and the beginnings of the welfare state.

Conclusions

The title of this paper would suggest that the word “conclusions” in an oxymoron. Yet I hope one conclusion is evident, i.e. that the WTO is ill-equipped to deal with the challenges presented by the new global actors enervated by the internet. The WTO is a minimalist legalist institution – a Mercedes Benz without gas as I've called it. There was much talk of architecture, plumbing, interior design, etc. after the Asian financial crisis – but it was all about the Bretton Woods institutions. At Seattle governance issues did arise but only in terms of negotiating modalities and the role of the NGO's (in WTO-ese, internal and external transparency). Since Seattle nothing much has happened on either of these issues nor is likely to for the foreseeable future. As one

insider said on the first anniversary after Seattle “the institution is still staggering around in a doze like a boxer getting up off the canvas after a knockout.” (47)

This is hardly the occasion for a full exploration of the need for reform of the WTO which I have dealt with at length elsewhere. (48) But the present context, the lack of a policy forum for debating key issues is the most serious institutional defect.

Strangely the GATT did have a policy forum called the Consultative Group of Eighteen (CG18) established in 1975 as a result of a recommendation of the Committee of Twenty Finance Ministers after the breakdown of Bretton Woods. Originally termed the GATT Management Group, the name was changed because its purpose was to provide a forum for senior officials to discuss policy issues and not to, in any way, challenge the authority of the GATT Council. The composition of the membership was based on a combination of economic weight and regional representation but there was provision for other countries to attend as alternates and observers or by invitation. Each meeting was followed by a comprehensive report to the GATT Council. In 1979 the GATT Council agreed to make CG18 permanent but it was suspended in 1990 by the Director General (for reasons that have never been made public) and has never met since.

Because it was a forum for senior officials from national capitals it provided an opportunity to improve coordination of policies at the home base. Papers were prepared by the secretariat on important global economic issues such as, in its early years, balance

of payments and related financial matters and the nature and scope of cooperation with the Fund. After the Tokyo Round the CG18 was the only forum in the GATT where agriculture was discussed and, in the long lead-up to the Uruguay Round, trade in services. Indeed the CG18 was the only forum for a full, wide-ranging, often contentious debate on the basic issues of the Round. There was an opportunity to analyze and explain issues without a commitment to specific negotiating positions. Negotiating committees inhibit discussion because rules are at stake. The absence of rules is essential to the diffusion of knowledge which rests on a degree of informality, flexibility and adaptability. Thus a policy forum can promote discussion of norms, principles, and concepts which may or may not underlie longer-term strategies for new rules – such as trade and the environment, the relationship between the WTO and U.N. Institutions, the role of NGO's, etc.

The most difficult problem to be faced is creating a policy forum is, of course, the membership. The biggest blockers will be the Southern countries. But if a formula cannot be agreed it may be necessary to make the establishment of the policy forum part of a new North-South package which would include the so-called “confidence-building” measures of zero tariffs for the products of the poorest countries; extension of implementation periods of some measures such as TRIM's, TRIPS and customs valuation; and, most important, enhanced technical assistance and training.

While the establishment of the policy forum would be a great step forward, it is unlikely to function effectively without an increase in the WTO's research capability. If

member governments are unwilling – as they have been up to now – to provide funding other avenues should be explored such as private donors – after all Ted Turner donated one billion dollars to the U.N.! And in order to keep up to date and reasonably small in size, the WTO could not possibly generate all its policy analysis in-house. Like most research bodies today, the WTO secretariat would have to establish a research network linked to other institutions such as the OECD, the Bretton Woods institutions, the ILO, UNEP, private think tanks, universities and NGO's such as environmental groups; business groups; human rights groups, international labour associations. The establishment of a research or knowledge network – “soft power” – is also important to enhance the ability of the WTO Director-General to play a more effective role leading and guiding the policy debate.

But in the end, of course, the establishment of a new CGn (or whatever) will require leadership on the part of member countries. So perhaps the best conclusion to this paper should be based on the Heisenberg uncertainty principle: we can know where we are but not where we're going or where we're going but not where we are. How about Heisenberg squared?

FOOTNOTES

- (1) See, for example, Riva Krut et. al, Globalization and Civil Society: NGO Influence in International Decision-Making, Discussion Paper No. 83, United Nations Research Institute for Social Development, Geneva, April 1997. In a listing of NGO acronyms (Chapter 2, p. 3) one can choose among (inter alia) PINGO's, BINGO's, GONGO's, GRINGO's, DONGO's and so on.
- (2) Sylvia Ostry, "Uruguay Round North-South Grand Bargain: Implications for Future Negotiations", The Political Economy of International Trade Law, University of Minnesota, Sept. 2000 (publication forthcoming)
- (3) For similar approach see Grant Jordan and William A. Maloney, The Protest Business? Mobilizing Campaign Groups, Manchester University Press, Manchester and New York, 1997 and Margaret E. Keck and Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics, Cornell University Press, Ithaca and London, 1998, especially Chapter 1, pp. 1-38).
- (4) In tracking on the web the "sign-on" lists of networks for the WTO, UNCTAD X, Washington and Prague one can identify NGO's which ostensibly had an organizational role in demonstrations through circulation of "manifestos" or sponsoring a specific event, etc. It is very difficult to evaluate all this material – for example 1448 NGO's endorsed a statement issued by International Civil Society opposing a Millennium Round but circulated by FOE in London. Ongoing research includes an effort to find out which NGO's were accredited and were actually present at the meetings.
- (5) The PGA organized a "carnival against capitalism" in the city of London on June 18, 1999 known as J18 which, as reported in The Daily Telegraph (June 19, 1999 pp. 1,4,5) deteriorated into violence, rioting and vandalism in the financial district.
- (6) These slogans circulate on the internet and one can hear echoes in newspaper and television interviews, at student meetings, and so on. As soon as a book or pamphlet is published summaries are circulated and the message is spread. The internet is having an unprecedent impact on the diffusion of information and the process has just begun.
- (7) J. Sen, "A World to win – But whose world is it anyway?", in J. W. Foster and A Anand (eds) Whose World is it Anyway?, United Nation Association of Canada, Ottawa, 1999. See also Robert O'Brien, Anne Marie Goetz, Jan Aart Scholte and Marc Williams, Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements, Cambridge University Press, Cambridge and New York, 2000 Chapter 4, pp. 109-158.

- (8) O'Brien *et al*, *op. cit.*, pp. 125-6. A number of NGO's were also responsible in establishing, in cooperation with the World Bank, a Commission on Dams in February 1998, which issued a Report in 2000. See <http://www.worldbank.org/html/extdr/pb/dams/>
- (9) O'Brien *et al*, *op. cit.*, p. 140
- (10) Sylvia Ostry, "Making Sense of it All: A Post-Mortem on the Meaning of Seattle", in Roger B. Porter and Pierre Sauvé, (Eds), Seattle, WTO, and the Future of the Multilateral Trading System, John F. Kennedy School of Governance, Harvard University, 2000, pp. 81-94.
- (11) Organization for Economic Co-operation and Development, Report on Regulatory Reform, Vol. II: Thematic Studies, Paris, 1997, Chapter 2, pp. 191-248.
- (12) O'Brien *et al*, *op. cit.*, p. 114
- (13) United Nations General Assembly, Arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations System, Report of the Secretary-General, July 10, 1998, p. 2.
- (14) See, for example, Kal Raustiala, "The Participatory Revolution" in International Environmental Law", Harvard Environmental Law Review, Vol. 21, 1997, pp. 537-586 and Konrad von Moltke, "Institutional Interactions: The Structure of Regimes for Trade and the Environment", in Oran R. Young (ed.) Global Governance: Drawing Insights from the Environmental Experience, The MIT Press, Cambridge and London, 1997, pp. 247-272.
- (15) James M. Sheehan, Global Greens: Inside the International Environmental Establishment, Capital Research Center, Washington, D.C., 1999, pp. 165-199.
- (16) William Reilly, "Europe's air of self-righteousness", Financial Times, Dec. 19/00, p. 14.
- (17) See Jeremy Rabkin and James Sheehan, "Global Greens, Global Governance", and James M. Sheehan, Global Greens: Inside the International Environmental Establishment, Institute of Economic Affairs, Environment Working Paper No. 4, London, 1999. These papers document the evolution of the ENGO's from conference to conference and argue that another objective of the environmental movement is north-south redistribution to overcome developing countries opposition (Sheehan, pp. 53-58). Rabkin and Sheehan link the process of European integration with the drive for global integration because of European experience with the concept of "pooled sovereignty (p8) and that by advocating international environmental standards the higher European standards demanded by the environmental movement in Northern Europe can be exported abroad without undermining European competitiveness (pp. 8-11)

- (18) See Clint W. Murchison Sr., Chair of Free Enterprise, College of Engineering, University of Texas, Austin, Global Governance, Why? How? When?, <http://www.wtwatch.org/library/ad>. See reference to role of Rockefeller Family Fund to increase funding for environmental NGO's (p. 19)
- (19) Sylvia Ostry, "China and the WTO: The Transparency Issues", UCLA Journal of International Law and Foreign Affairs, Spring/Summer, 1998, especially pp. 1-11.
- (20) Raustalia, op. cit., pp. 580 ff.
- (21) WTO Reporter, BNA, Inc., Nov. 7 and 27, 2000 and Inside U. S. Trade, Dec. 1, 2000.
- (22) Richard Shell, "The Trade Stakeholders Model and Participation by Nonstate Parties in the World Trade Organization", University of Pennsylvania Journal of International Economic Law, Vol. 17, No. 1, Spring 1996, p. 370. See also Daniel C. Esty, "Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition or Exclusion", Journal of International Economic Law, Vol. 1, No. 1, 1998, pp. 123-147 and Gabrielle Marceau and Matthew Stilwell, "Practical Suggestions for Amicus Curiae Briefs Before WTO Adjudicating Bodies", Journal of International Economic Law, Vol. 4, No. 1, Feb. 2001 (forthcoming).
- (23) For a comprehensive review of the CIL issue see Claude Barfield, Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization, The AEI Press, 2001 (forthcoming). See also Rabkin, op. cit., who describes customary international law, largely the creation of academics and NGO's as "a free-floating vapour, infiltrating American law through untold cracks and leaks, shaping our own policy to the preferences of people who like people who clink glasses at international gatherings----" (p. 64).
See also John R. Bolton, "Should we Take Global Governance Seriously?", Presented at the AEI Conference on Trends in Global Governance: Do They Threaten American Sovereignty, Washington, D.C., April 4-5, 2000. For a response to these attacks on CIL see Peter J. Spiro, "The New Sovereignists: American Exceptionalism and its False Prophets", Foreign Affairs, New York, November/December 2000, (pp. 9-15). For an examination of the main issues involved in the integration of trade law and human rights law see Robert Howse and Makau Mutuo, "Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization", Occasional Paper, International Centre for Human Rights and Democratic Development, Montreal, 2000.
- (24) J. Oloka-Onyango and D. Udagama, "Globalization and its impact on the full enjoyment of human rights", Preliminary Report submitted in accordance with Subcommission resolution 1999/8, E/CN. 4 (Sub. 21) 2000/13 Geneva, 15 June 2000.

- (25) Malini Mehra, “Human Rights and the WTO: Time to Take on the Challenge; in Heinrich Boell Stiftung, Asia-Europe Dialogue, July 2000, malinimehra@aol.com
- (26) Ibid. Malini Mehra is a member of the Advisory Panel for UNDP’s Human Development Report 2000 which strongly endorses the view that human rights need to be reflected in trade rules.
- (27) See attac Geneva 2000, Paving the Way to a New World: Let us Globalize the Struggle!, <http://www.attac.org/geneva2000/indexen.html>.
- (28) Southern Poverty Law Center, “Neither Left Nor Right”, <http://www.splcenter.org/intellegenceproject/ip-4m3.html>, Sept. 28, 2000, p. 4.
- (29) See “Sitting Out: An Environmentalist Group decides not to Take Protest to the Streets”, Wall Street Journal, Sept. 22/00, p. A.2; “A Casualty of Prague: Protesters Unity”, ibid, Sept. 28/00, p A.18
- (30) Peter J. Spiro, “New Global Potentates: Nongovernmental Organizations and the “Unregulated” Marketplace”, Cardogo Law Review, Vol. 18, No. 3, Dec. 1996, pp. 957-970. See also P. J. Simmons, “learning to live with NGO’s”, Foreign Policy, Fall, 1998, pp. 82-89
- (31) Sylvia Ostry, op. cit., Kennedy School, pp. 30-31 and publications cited therein (f.n. 29). See also Michael Edwards and David Hulme, (eds), Non-governmental Organizations-Performance and Accountability, Earthscan Publications Ltd., London, 1995.
- (32) “Anti-Capitalist Protests”, Economist, Sept. 23, 2000, p. 87.
- (33) Sylvia Ostry, “Business, Trade and the Environment”, Second Environment Summit Confederation of Indian Industry, New Delhi, Oct. 2000. (mimeo.), pp. 19-22.
- (34) See, for example, David Hulme and Michael Edwards, NGO’s, States and Donors: Too Close for Comfort?, Macmillan Press Ltd., London, 1997.
- (35) One of the first to set up a special unit was the City of London after the J-18 riots. It’s strange the Seattle police didn’t follow suit before November.
- (36) See Thomas Carothers, “Civil Society”, Foreign Policy, Winter, 1999-2000, (<http://www.foreignpolicy.com/articles/winter1999-2000/Thinkagain/carothers.html/>
- (37) Gregory Shaffer, “The World Trade Organization under Challenge: Democracy and the Law and Politics of the WTO’s Treatment of Trade and Environment Matters”, University of Wisconsin Law School, (mimeo.) p. 24.

- (38) Ibid, p. 94. See also Gareth Porter and Janet Walsh (eds.), Global Environmental Politics, Westview Press, Boulder, 1999.
- (39) O'Brien, et al, op. cit., p. 14
- (40) Shaffer, op. cit., p. 78
- (41) Several reasons have been suggested to explain why Southern NGO's and some, but by no means all, Southern governments are opposing the application of biotechnology in agriculture. There is real fear of competition from big agribusiness bioengineered crops which could wipe out indigenous agriculture because most farmers in these countries are too poor to buy GM plant stocks. But another element in the continuing attack by prominent Southern NGO activists like Vandana Shiva seems largely ideological, part of the continuing battle against Northern corporate oligopolies and eco-imperialism. Thus a group of Southern NGO's organized a People's Caravan 2000 against TNC's and Imperialist Globalization which traveled across India, Bangladesh and the Philippines. The effort to pressure their governments was a first in such a large mobilization. The effort was supported by Food First, an American NGO. See wimdc@skynet.net, Nov. 29/00.
- (42) Ostry, op. cit., University of Michigan.
- (43) For a clear expression of the nixers view see Walden Bello and Phillipe Legrain, "The WTO: Boon or Bane for the Developing World?", Focus on the Global South, Focus on Trade #57, Dec. 8, 2000, pp. 46.
- (44) Walden Bello, Focus on Trade #53, pp. 2.
- (45) The book is published by Earthscan Publications, Contact sbearman@earthscan.co.uk or styluspub@aol.com.
- (46) Karl Polanyi, The Great Transformation, New York, 1944, especially Part Three (pp. 130-222).
- (47) World Trade Agenda, November 2000, No. 00/21, Geneva, p. 1.
- (48) Ostry, Kennedy School, op. cit.