

Who's Going to Copenhagen?: The Rise of Civil Society in International Treaty-Making

By [Anna Spain](#)

The Climate in Copenhagen



This December, representatives from 193 nations are expected to gather in Copenhagen at the Conference of the Parties (COP) 15 round of climate talks.^[1] With the Kyoto Protocol expiring in 2012, countries are convening to negotiate a replacement instrument.^[2] But just like Denmark in December, the political forecast is expected to be chilly. As government delegations prepare for this round of climate talks, they now do so with reduced expectations of reaching a binding international agreement on emission reductions.^[3] The key to a substantive and binding deal, not just political affirmations, remains in the hands of the

world's two largest emitters, the U.S. and China. Reports from the November discussion, between President Barack Obama and President Hu Jintao, on possibility of a new treaty on emission reductions this December range from optimistic^[4] to "unrealistic."^[5] To many, such posturing is demonstrative of the limitations of international law—a system based on State consent that protects the interests of a powerful few while failing to promote the public good.

Indeed, for much of its modern history, international law has been the law of nations. States have been the primary actors, and their interests have dominated the form and substance of international legal rules and norms. Yet much of what international law seeks to promote and protect—peaceful international cooperation, human rights, and shared natural resources—requires the participation and ultimately the voluntary compliance of civil society. The global nature and scope of climate change is a powerful reminder of this reality. Thus, it is not surprising that government delegates are not the only ones preparing to travel to Copenhagen this week. What is surprising is that they will be far outnumbered by another kind of delegate—civil society groups.

The Rise of Civil Society Participation

In addition to inter-governmental organizations (IGOs), an unprecedented

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number of representatives from non-governmental organizations (NGOs) are making the trip to COP 15 to observe the sessions, advocate for solutions, and represent public interests. The United Nations Framework Convention on Climate Change calls for state cooperation with NGOs in achieving the treaty objectives^[6] and allows NGOs to be represented at COP sessions as observers.^[7]

These provisions, along with global concerns about climate change, have from the beginning encouraged civil society participation. The first COP took place in Berlin in the spring of 1995.^[8] By the second COP, approximately 533 NGO and 155 IGO representatives joined the activities.^[9] Interested participants seek observer status through an accreditation process facilitated by the Secretariat. This year, up to 15,000 individuals and 2000 journalists are expected to participate. Although the total number of people representing NGOs at COP 15 remains to be seen, the United Nations Framework Convention on Climate Change (UNFCCC) has admitted over 1300 NGOs.^[10] This number includes universities, public-interest groups and private businesses from global locations as distinct as Kairouan, Tunisia and Dhaka, Bangladesh.^[11]

NGO as Participant

Upon arriving at the Bella Center in Copenhagen, admitted NGO delegates will register and receive a badge allowing them access to observe official Convention sessions. In addition, delegates will raise awareness about and advocate for particular causes. NGOs with aligned interests often form constituency groups to strengthen their impact. They also host side-events and receptions targeted at gaining the attention of government delegates and journalists. However, without a supporting government delegation, NGO representatives are generally not permitted to make statements in-session or attend side-negotiations.^[12]

The interests of the over 1300 admitted NGOs are diverse, but the general aim is the same—to bring the general population's concerns and ideas to the attention of world leaders. For example, the International Indigenous People's Forum on Climate Change has proposed an amendment to the negotiating text on an adaptation implementation framework that calls for the recognition of indigenous cultural knowledge and the use of a bottom-up approach that seeks the advance consent of the affected communities.^[13] Recognizing the potential disputes that may arise in implementing mitigation obligations, and ultimately in adapting to climate change impacts, Mediators Beyond Borders is advocating for the inclusion of mediation in the list of dispute settlement mechanisms covered in the treaty.^[14] Youth Partnership for Peace and Development based in Sierra Leone and numerous other NGOs seek to remind world leaders of their obligation to future generations. The NGO delegation list also includes well-known advocacy groups like World Wildlife Fund and Amnesty International; student delegations from the Universities of Calgary, Edinburgh, Harvard, and Berkeley; industry groups, including the Australian Coal Association and the Association of International Automobile Manufacturers from Canada; and the American Society of International Law.^[15] Notably limited or entirely absent are organizations from the poorest and most vulnerable nations.

[Day-By-Day Coverage COP 15](#)

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Linking Increased Participation to Climate Solutions

The show of NGO interest in this round of climate talks clarifies the emerging expectation of civil society that governments must involve the public in creating the solutions to global problems that affect them. Indeed, in his recent outline of benchmarks for a successful international agreement on climate change, UN Secretary General Ban Ki-moon advised that mitigation and adaptation efforts must reflect “an equitable global governance structure.”^[16] It remains less clear *how* increased NGO presence at COP 15 will lead to a new treaty capable of achieving tangible environmental results.

On the one hand, forging an international agreement between 193 countries is difficult enough without considering the myriad interests raised by NGO lobbyists and advocates. With numerous groups advocating for equity, human rights, energy, new technologies, and so forth, governments engaged in brokering international treaty terms that approximate their interests cannot realistically be expected to coordinate the overwhelming interests of others. NGOs will need to synchronize their respective interests with those of governments in a way that maintains focus on the overarching goals of mitigation and adaptation.

On the other hand, increased NGO participation is essential. NGOs offer a platform for the diverse voices of those most vulnerable to the inevitable impacts of climate change. They are often the organizations closest to the people coping with impacts. While governments generally recognize that NGOs play an important and even fundamental role in implementation efforts, governments may not realize the need to include NGOs in the process of creating the solutions to be implemented. Inclusion lends legitimacy to the obligations created by an international agreement, which governments cannot implement alone. Recognizing the long-term value of civil society involvement, governments must also try to include NGO perspectives at every stage of the process.

Conclusion

Given the demographics of the delegations in Copenhagen, one might surmise that the nature of international treaty-making is changing. The NGO presence at COP 15 is a nod to the increase of non-state actor participation in international lawmaking. Moreover, more than symbolizing a readiness to participate, it represents an emerging expectation to do so. No longer will civil society wait for governments to solve global problems. In this new century our global society expects to participate in problem-solving. For some, this signals an erosion of the state-centric international legal system. Others remain skeptical that increased participation of civil society equates increased importance or power. At least for climate change, increased NGO involvement is neither competition with state dominance nor necessarily signals the erosion of such. NGOs still need governments to provide leadership and create and enforce laws. At the same time, governments need NGOs to help convince the public to change our behavior in order to change the climate. Amidst all the excitement over what governments will agree to in Copenhagen, NGOs are making it clear that deal or no deal their involvement is here to stay.

About the Author

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Endnotes

- [1] See United Nations Climate Change Conference (COP 15) (Dec. 7-18, 2009) website for more information, available at <http://en.cop15.dk/frontpage/faq>.
- [2] Overview of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, available at http://unfccc.int/kyoto_protocol/items/2830.php.
- [3] See Michael von Bülow, *World Leaders: Legally Binding Treaty Out of Reach in Copenhagen*, Nov. 16, 2009, available at <http://en.cop15.dk/news/view+news?newsid=2599>.
- [4] See Marianne Bom, *Obama Wants Immediate Effect*, Nov. 17, 2009, available at <http://en.cop15.dk/news/view+news?newsid=2614>. See also Charles Hutzler, *Obama, Hu Vow Cooperation but Produce Few Deals*, ASSOCIATED PRESS, Nov. 17, 2009, available at <http://abcnews.go.com/Business/wireStory?id=9102651>.
- [5] See Ed Henry and Dan Lothian, *No Climate-Change Deal Likely by Year's End, Officials Say*, CNN, Nov. 15, 2009, available at <http://www.cnn.com/2009/WORLD/asiapcf/11/15/apec.climate.change/index.html>.
- [6] United Nations Framework Convention on Climate Change art. 4.1(i), Mar. 21, 1994, available at http://unfccc.int/essential_background/convention/background/items/1362.php.
- [7] *Id.* art. 7.6, available at http://unfccc.int/resource/ngo/art7_6.pdf (provides for the admission of non-governmental organizations to sessions of the Convention bodies as observers).
- [8] A historical overview of COP 1 through COP 14 prepared by the Denmark Ministry of Climate and Energy is available at <http://en.cop15.dk/climate+facts/process/cop1+--+cop14>.
- [9] Neil E. Harrison, *Unexpected Events in Geneva: Progress Toward a Protocol on Climate Change* 6 J. ENV'T & DEV. 85 (1997).
- [10] UNFCCC Civil Society Observer List, available at <http://maindb.unfccc.int/public/ngo.pl>.
- [11] *Id.* (provides a list of admitted NGO observers including the Association pour la protection de la nature et de l'environnement of Kairouan, Tunisia and the Sustainable Development Resource Center of Dhaka, Bangladesh).
- [12] Traditionally, each of the official civil society groups has given closing

statements in the plenary session. In addition, there are some official sessions where civil society representatives are able to speak.

[13] The text proposed by the International Indigenous People's Forum on Climate Change is *available at* <http://unfccc.int/resource/docs/2009/smsn/ngo/167.pdf>.

[14] Additional information about the proposed addition by Mediators Beyond Borders is *available at* <http://www.mediatorsbeyondborders.org/what/mbbcopenhagen.shtml>.

[15] See *supra* note 10.

[16] Press Release, Secretary General Reviews Challenge of Climate Change in Copenhagen University, U.N. Doc. SG/SM/12515 ENV/DEV/1082 (Oct. 5, 2009) *available at* <http://www.un.org/News/Press/docs/2009/sgsm12515.doc.htm>.

