

NGO Influence in the Implementation of the Kyoto Protocol: Compliance, Flexibility Mechanisms, and Sinks

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There has been tremendous growth in the number of nongovernmental organizations (NGOs) participating in international negotiations and conferences about environmental issues over the last two decades. Most scholars agree that NGOs do make a difference in global environmental politics,¹ but it is contestable to what extent their efforts have actually affected international negotiation outcomes and domestic implementation of commitments. Little of the literature on NGOs has addressed what actual influence they have on policy outcomes, and those studies that have attempted to address this question have often confused influence with NGO access, activities or resources in assessing policy outcomes.² For these reasons a more systematic approach to measuring and analyzing NGO influence has been called for.³

In this paper, we begin to take up this challenge by examining the role of environmental NGOs in making and implementing rules for compliance, sinks, and the flexibility mechanisms under the UN Framework Convention on Climate Change (UNFCCC 1992) and its Kyoto Protocol (1997). Disagreement over these issues resulted in the failure and suspension of the Sixth Conference of the Parties (COP6) in November 2000 at The Hague.⁴ At the resumed COP6 in July 2001 in Bonn, the Parties resolved many of the controversial issues and endorsed a political agreement. A few months later, at COP7 in Marrakesh, a le-

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1. For example, Chatterjee and Finger 1994; Princen and Finger 1994; Wapner 1996; and Raustiala 2001.

2. Betsill and Corell 2001. Exceptions to this observation include Skodvin and Andresen 2003; Corell and Betsill 2001; Newell 2000; and Arts 1998.

3. Betsill and Corell 2001.

4. Lefebvre 2002.

gal text was adopted, containing many of the key rules necessary to bring the Kyoto Protocol into operation. We focus on the influence of NGOs in negotiations on the Kyoto rules as finalized in the report of COP7, known as the Marrakesh Accords, by using the compliance system as our primary case study.

Unlike the “soft” commitments of the UNFCCC, the Kyoto Protocol establishes legally binding greenhouse gas (GHG) emission targets for developed countries (Annex I Parties) in the first commitment period of 2008–2012. One of the last and most crucial pieces of the global climate regime to be made was the compliance system of the Kyoto Protocol: a set of rules, procedures and institutions carefully designed to facilitate and enforce the implementation of the Protocols’ commitments.⁵ The compliance system makes an interesting case study of green NGO influence, not simply because it is key to the performance of the Parties to the Protocol, but because it has received scant scholarly attention.⁶ And as it is a well-defined and easily identifiable area of negotiations, it is useful as an object of study.

We also spend some time looking at the making and interpretation of rules for sinks⁷ and the UNFCCC’s flexibility mechanisms.⁸ It is interesting to compare the influence of NGOs in these areas with the compliance case, in part because NGOs have been more highly profiled on these issues than on the compliance issue, and also because there have been significant disagreements between NGOs on the appropriate rules for sinks and the market-based mechanisms.

Below, we make an informed evaluation of the NGO role in the climate negotiations. More specifically, we investigate the following closely related questions: To what extent and in what ways have environmental NGOs succeeded in influencing the Kyoto compliance system, flexibility mechanisms, and sinks, and what are their options for enhancing climate performance under the Kyoto Protocol? In addressing these issues, the study adopts a three-pronged approach. First, we briefly sketch out different kinds of green NGOs and their strategies, resources and targets. Second, we examine whether and how green NGOs succeeded in influencing the design of the compliance regime and the rules for sinks and the flexibility mechanisms as finalized in the Marrakesh Accords. Finally, we explore the range of strategies available to NGOs to promote compliance with climate change commitments and their interpretation of Kyoto Protocol rules. While the first two issues essentially can be investigated by studying developments up to the present, the latter is more forward-looking and there-

5. Werksman forthcoming.

6. Exceptions include Lefebvre 2002; Wang and Wiser 2002; and Stokke, Hovi, and Ulfstein forthcoming.

7. Since 1998, climate change negotiating teams and NGOs have argued long and hard over the rules for land use, land-use change, and forestry, and whether investment in sinks projects in developing countries should allow offsets for Parties with commitments.

8. These market-based mechanisms allow Parties with commitments to trade emission allowances internationally and to invest in GHG reduction projects in developing countries in exchange for offsets. Compliance is built into the rules for international emission trading, because a Party that is not in compliance is not eligible to sell emission allowances.

fore also more speculative.⁹ In the following, these three issues will be addressed in turn.

Different NGOs: Different Strategies, Resources and Targets

A first observation is that nonstate actors in the climate process not only include environmental groups, but also research and academic institutes, business and industry associations, labor organizations, religious bodies, consumer groups, and indigenous peoples' organizations.¹⁰ Although our focus is on green NGOs, this is no homogeneous group. On the one hand we have the traditional activist groups; on the other the more research-focused groups with legal and/or technical expertise to promote environmental goals.

On this basis we distinguish between (1) *activist* organizations that obtain funding and legitimacy through offering membership and popular support, and (2) *advisory* organizations that obtain funding and legitimacy through their ability to give policy recommendations and advise decision-makers on legal, technical and scientific matters. NGOs that are clearly activist in nature include Greenpeace and Friends of the Earth. Important advisory organizations or "think tanks" include the Center for International Environmental Law (CIEL), the Foundation for International Environmental Law and Development (FIELD), and several others. The World Wide Fund for Nature (WWF) and Environmental Defense (ED) arguably belong to both categories.¹¹

Against this backdrop we differentiate between two main strategies. First, an NGO can pursue an *insider strategy*, seeking to attain influence by working closely with negotiators and governments by providing policy solutions and expert advice. They also engage in knowledge construction and the production of research-based reports and papers on particular topics.¹² There is a particularly large contingent of US-based groups who use this type of strategy.

Second, NGOs can pursue an *outsider strategy* promoting compliance with international agreements by putting pressure on negotiators, governments, and target groups through campaigning, letters of protest, rallying, direct actions, boycotts, and even civil disobedience. The tactic here is to influence public opin-

9. The Kyoto Protocol is not yet in force and—even if it does become international law in the near future—we will not know much about the compliance record of most Parties until the end of the decade. Thus far, 122 states representing 44.2 percent of the total CO₂ emissions of the Annex I Parties in 1990 have ratified (or accepted, approved, or acceded to) the Protocol, while the trigger for entry into force is set at 55 percent. Because the United States, being the world's largest emitter of CO₂ (36.1 percent of the emissions for 1990), has rejected the treaty, its entry into force depends solely on Russian ratification (17.4 percent of the emissions for 1990). Although President Putin on several occasions has stated that Russia will ratify the Protocol, some uncertainty still remains as to whether this in fact will happen.

10. For an overview of the role of business in this context see, for example, Levy and Egan 1998; Kolk and Levy 2001; and Skjærseth and Skodvin 2001 and 2003.

11. Interviews were conducted with WWF, Greenpeace, CIEL, FIELD and ED. Therefore, most emphasis will be placed on these organizations.

12. Gough and Shackley 2001, 338.

ion in order to induce states to be more flexible in international negotiations, to push governments to comply with international commitments, and to give polluters and environmentally harmful corporations negative public exposure.

Although the insider/outsider dimension is likely to vary among NGOs, several environmental organizations, especially the major ones with large resources, are likely to pursue a *dual strategy*. Global activist groups like Greenpeace and WWF also engage in knowledge construction, using scientists and analysts to acquire further understanding on complex issues. The increasing complexities of many international environmental issues, not the least the climate issue, have necessitated this dual strategy. Advisory NGOs, however, usually rely on the insider strategy only.

The broad insider/outsider categories can be further broken down in terms of what arenas or which groups the various types of NGOs target. We assume that NGOs seek to influence one or some combination of the following four arenas or groups, depending upon the type of NGO:

1. *International negotiations and processes*: In our case this involves efforts to promote a strong compliance system during the negotiating process. All major green NGOs involved with international negotiations generally participate as observers during the various negotiating sessions. This channel is particularly important for the "think-tanks," feeding ideas into the negotiating process, while pressure and various mechanisms of "shaming" are more important for the activist NGOs.
2. *Domestic climate policy and ratification*: This arena is also important for all major NGOs, but in somewhat different ways. The insider NGOs may participate in brainstorming with political decision-makers and trying to "sell" their ideas to their country's delegation and government. In the context of climate change, activist NGOs may push for domestic ratification of the Kyoto Protocol and seek to influence the development of domestic climate policy instruments in both member and non-member states to the Protocol. NGOs such as Greenpeace, WWF and Friends of the Earth are particularly important in this regard as they have a large number of country offices and can pool resources towards key countries in the ratification process.
3. *Industry's climate policy and behavior*: There are several industry target groups for climate compliance: oil and natural gas companies, energy industries, transport, industry production involving GHG emissions, agriculture, and waste are among the most important. As long as the Kyoto Protocol has not entered into force, and as long as most states have not yet established forceful domestic climate policies, strategies aimed at influencing industry *directly* are potentially important parts of the activist NGOs' repertoire. This is likely to continue when and if the Protocol enters into force, as behavior change by target groups is ultimately the only way to reduce GHG emissions.

4. *Public opinion*: This is another important, but diffuse, target for the activist NGOs. They may try to influence public opinion and create awareness to put pressure on governments and target groups. For organizations relying on membership as a significant resource base, this is an important channel—not only to achieve actual influence, but also to attract new members.

This leads us to a final point regarding the NGOs' powers to influence climate policy in general and compliance more specifically: the kind of resources that the various types of green NGOs have. There are several sources of leverage, or capital, NGOs can rely on to transmit information and to influence decision-makers, including the following:

1. *Intellectual base*: issue-specific knowledge held by the NGO coupled with its ability to provide decision-makers with expert advice and analysis;
2. *Membership base*: the number of members the NGO has, both nationally and internationally;
3. *Political base*: the NGO's access to decision-makers and politicians in office; and
4. *Financial base*: the financial resources that the NGO can channel into campaigns, lobbying, conference attendance, commissioning of expert reports, etc.

Although more items could be added to the list, its purpose is simply to show that the types of leverage an NGO can apply will partly define its *opportunity set* with regard to exerting political influence. Further, the resources that an NGO has at its disposal are closely linked to the types of strategies it chooses and the arenas it targets. The intellectual base is the prime "weapon" of advisory NGOs, but other major NGOs are equipped with this tool as well. The more specific the expertise and know-how of NGOs concerning the system of compliance, the higher the *likelihood* of them being able to influence the design of the compliance regime. We will lump the other three categories (membership, political and financial base) together and label them collectively *political clout*. This aspect basically concerns the large activist NGOs. We would assume that the higher the score on a measure of this aggregate dimension, the higher the likelihood that green NGOs could influence climate policies and increase compliance.

It is important not to confuse resources with actual influence in promoting compliance with the Kyoto Protocol. Resources are characteristics associated with an environmental organization that may or may not translate into political influence. A number of other variables will be decisive as well for promoting compliance. To sum up to this point, then, we investigate here two kinds of environmental organizations: *activist* NGOs and *advisory* NGOs. We expect both types of NGO to differ somewhat across the three dimensions relevant to promoting climate compliance: resources, prime target groups and strategies. The

assumed relationship between NGO type and the three dimensions is set out in table 1.

Green NGOs in the Climate Negotiations

To measure influence we rely on three data sources: (1) *access* to negotiations and delegations; (2) *goal attainment*, measured as the correspondence between NGOs' positions and proposals and actual negotiation outcomes; and (3) *ego and alter perceptions*, i.e. how NGOs judge their own capacity to exert influence and how negotiators and other key actors judge those capacities from their side of the fence. As our interviews were mostly with Northern NGOs, there is a chance that we may overestimate their influence. Also, interviews were conducted with a limited number of actors. We have selected our sample carefully, however, believing it to be sufficiently telling in relation to compliance issues, sinks, and the flexibility mechanisms. In other words, we believe that quality makes up for quantity in this instance.

Important *determinants* of influence may be decision-makers' responsiveness and demand for advice, pressure from business and industry groups, and, not least, potential alliances with more powerful actors. The problem of causality looms large when trying to isolate the influence of one set of actors from that of others. Although this certainly is a challenge in the present study, we set out to make an informed evaluation of green NGO influence by investigating access, goal attainment, and *ego* and *alter* perceptions.

Access to Negotiations and Delegations

While NGOs have been formally accredited as observers to the climate change negotiations since the talks began in 1991, actual participation in the negotiations has in practice varied widely, and has usually been restricted to the following forms: access to the conference venue, presence during meetings, interventions during debate, face-to-face lobbying of delegations, and distribution of documents.¹³ Somewhat paradoxically, most of the final negotiations of the compliance procedure, where most delegates agreed on the need for transparency, were conducted behind closed doors. Although participation does not equal influence, it was certainly a drawback for the green NGOs to be shut out from important forums. NGOs therefore had to rely on traditional "corridor politics," face-to-face lobbying and distribution of documents during session breaks. There are ways, however, to circumvent these constraints. For example, there was a rather small but important network of experts on compliance that interacted frequently. Some of them were official delegates; others were academ-

13. Oberthür et al. 2002. Another important form of access that we do not deal with in detail here has been hosting and participating in "side events" (that is, presentations and panel discussions sponsored by NGOs, intergovernmental organizations or governments) at the climate negotiations.

Table 1

Relationship between NGO Type and Resources, Arenas/Groups Targeted, and Strategies

	<i>Activist NGOs</i>	<i>Advisory NGOs</i>
Critical resource	Membership base	Intellectual base
Arenas/groups targeted	International negotiations	International negotiations
	Domestic policy	Domestic policy
	Industry	(Industry)
	Public opinion	
Strategy	Dual strategy: insider and outsider	Insider only

ics or represented NGOs.¹⁴ Other ways for NGOs to get closer to the negotiating tables and other ostensibly closed forums is through participation on government delegations as representatives of civil society constituencies or as expert advisors.¹⁵ In fact, FIELD, CIEL, Greenpeace and WWF have all helped the Alliance of Small Island States (AOSIS) with policy advice and scientific backup in the climate negotiations¹⁶ and FIELD lawyers have frequently obtained accreditation as members of small islands delegations.¹⁷ Samoa was co-chair of the Joint Working Group on Compliance, along with Norway, and the Samoan delegation had a US lawyer from FIELD as legal advisor,¹⁸ who is said to have played an important role in the compliance negotiations and in G-77 discussions.¹⁹ NGO participation on government delegations blurs the NGO-government distinction as well as the North-South one.

Apart from participation and lobbying internationally, access to national governments is crucial for NGO influence in international negotiations.²⁰ Access to governments can be in the form of consultative and regular meetings with civil servants.²¹ Many US-based advisory NGOs have worked closely with the US government, to which they have enjoyed a high degree of access.²² According to Newell, World Resources Institute (WRI), Natural Resources Defense Council (NRDC), Environmental Defense (ED), the Woods Hole Research Center and the Audubon Society "all worked closely with US policy makers and UN agencies in formulating policy options on climate change."²³ In the US, there were regular pre-negotiating session meetings that started out as meetings between

14. Many of the respondents pointed to this informal network.

15. Oberthür et al. 2002, 134.

16. Newell 2000, 143.

17. Arts 1998; and Oberthür et al. 2002, 135.

18. The legal advisor was Jacob Werksman.

19. Authors' interview with Harald Dovland (co-chair of the Joint Working Group on Compliance), Norwegian Ministry of the Environment, Oslo, 25 June 2002.

20. See Skodvin and Andresen 2003.

21. Newell 2000.

22. Eikeland 1994; and Newell 2000.

23. Newell 2000, 132.

the US delegation and a number of nonstate actors, including industry and business. Over time the meetings divided into more specialized venues with green NGOs meeting the delegation without other stakeholders attending at the same time. US decision-makers have said that open brainstorming and other kinds of interaction have been very useful for them.²⁴ However, this was before the election of George W. Bush to the US Presidency; following the change of the US administration environmental NGOs no longer enjoy the same wide access to government and have had to adopt other tactics to pursue their agenda.²⁵

One strategy used to improve access to government, or compensate for lack of it, is to form alliances with other environmental NGOs and share information and co-ordinate positions. As far as climate change politics is concerned nearly all environmental NGOs co-ordinate their positions through the Climate Action Network (CAN).²⁶ Created in 1989, CAN now is a global network of almost 300 environmental NGOs working to curb human-induced climate change to ecologically sustainable levels.²⁷ To achieve this end, CAN members exchange information, work out joint position papers at climate change negotiations and co-ordinate strategies at international, national and local levels. Being the recognized umbrella NGO in the international negotiations, CAN unites activist and advisory environmental NGOs in one network. CAN is split into a number of working groups according to issue area, and there is a separate group on compliance issues. Over time CAN is said to have developed into a well functioning body, characterized by good procedures, open discussions, and loyalty by member organizations.²⁸ Although CAN is more important for the less resource-rich groups than for the major ones, the CAN network is usually an effective way of communicating NGO positions with one voice during the climate negotiations.

Design of the Compliance Regime

Compliance has been described as an *atypical* issue in the international climate negotiations, characterized by the involvement of few actors and a lack of strong opinions.²⁹ The UNFCCC and Kyoto Protocol compliance system was developed primarily by the Joint Working Group on Compliance.³⁰ Co-chaired by the Marshall Islands (replaced by Samoa after COP5 in 1999), and Norway, the

24. Andresen's interview with Dan Bodansky, US State Department, Washington D.C., December 2000.

25. Authors' interview with Jason Anderson, Climate Action Network (CAN) Europe, Brussels, 4 July 2002.

26. Smaller partnerships between environmental NGOs is also commonplace, be it joint actions, policy proposals, or initiatives.

27. See <http://www.climatenetwork.org/>.

28. Authors' interviews with Truls Gulowsen, Greenpeace Norway, Oslo, 15 May 2002; and with Stephan Singer, WWF European Policy Office, Brussels, 4 July 2002.

29. Authors' interviews with Harald Dovland, Norwegian Ministry of the Environment, Oslo, 25 June 2002; and Andresen's interview with Glenn Wiser, CIEL, Washington D.C., 19 March 2002.

30. Wang and Wiser 2002, 188.

Joint Working Group was established in 1998 at COP4. Until the failed and resumed COP6 (The Hague and Bonn), however, the compliance issue was low on the agenda during the negotiations. The questions of sinks and the flexibility mechanisms attracted most attention with little time spent on compliance until the final stages of the negotiations—not only by the negotiators but also by most of the NGO community. This, however, provided a “window of opportunity” for green NGOs with particular expertise and competence.³¹

The first important workshop on compliance was arranged in Vienna, in October 1999. At this Vienna meeting CIEL and WWF presented a joint paper where they set out the main elements of a compliance system for the climate regime—based on lessons learned from other relevant international regimes. CIEL, a small advisory NGO based in Washington DC, associated itself with WWF not only because they agreed on compliance policy, but because WWF had much more political clout.³² These and a few other NGOs with expertise in compliance were allowed to present their views during a series of informal workshops arranged to address the compliance issue. According to one participant, the discussions maintained an analytical and almost academic atmosphere, even though the topic had the potential to become politically charged.³³ CIEL and WWF jointly introduced the idea of a dual approach to compliance, comprising a facilitative body to assist Parties to comply with their commitments and a judicial-like enforcement body.³⁴ This basic approach was similar to the stated US approach to the compliance issue, as tabled at the Vienna workshop. In fact, the US called for a separation of the facilitative and enforcement functions in a submission *before* the Vienna meeting.³⁵ Still, CIEL/WWF and the US had not worked together on this prior to Vienna.³⁶ The dual approach was followed and endorsed by all Parties in the Marrakesh Accords.

CAN left most of the responsibility for the work with the compliance system to a small group of experts and most of the green NGOs were neither very interested nor knowledgeable on the issue. The working group on compliance is CAN's smallest policy group. It usually comprises some 20 members and is mostly chaired by CIEL, illustrating the rather technical and complex nature of the issue. Among the large traditional activist groups, WWF was most active on the compliance issue while organizations like Greenpeace and Friends of the Earth were less involved. To some extent this reflects a *strategic division of labor* between the NGOs.³⁷ Some NGOs work mainly on the flexibility mechanisms, some on compliance, and some mainly on carbon sequestration, land use and land-use change. After Marrakesh, the CAN compliance group became inactive, because there were no longer any negotiations going on about compliance.

31. Andresen's interview with Glenn Wiser, CIEL, Washington D.C., 19 March 2002.

32. Andresen's interview with Glenn Wiser, CIEL, Washington D.C., 19 March 2002.

33. Werksman forthcoming.

34. Morgan and Porter 1999.

35. The US submission is dated July 30, 1999. See UNFCCC 1999.

36. Andresen's interview with Glenn Wiser, CIEL, Washington D.C., 19 March 2002.

37. Authors' interview with Michel Raquet, Greenpeace European Unit, Brussels, 4 July 2002.

The legal character of the consequences of non-compliance caused much controversy in the negotiations. All major green NGOs favored legally binding consequences, but the decision was deferred to the first COP/MOP after the Kyoto Protocol's entry into force—seemingly a major setback for the green movement and other “progressive” forces. Although not much flagged in the media, the US was previously one of the strongest proponents of the legally binding approach. This could be seen in the pressure it put on reluctant “colleagues” in the Umbrella Group—Russia, Japan, Canada and Australia. The new administration, however, changed strategy, which promptly punctured the pressure on the “gang of four.” It appears that the new US negotiation team wanted to uphold its position on this issue, as it was an important principle of US policy, but they were apparently given direct orders from the White House to change position.³⁸ Despite the eagerness of the EU and others to conclude the agreement, the reluctant Parties were successful in achieving a postponement to the COP/MOP. While green NGOs regretted the outcome, some of them remained pragmatic about it and downplayed its significance, acknowledging that it is difficult to force a country into compliance under real world circumstances.

The US proposed “borrowing” as a way of avoiding a finding of non-compliance—that is, if a Party's emissions were too high at the end of the commitment period, it could borrow against its future allocations and thus be considered in compliance with its treaty obligations. All major green organizations—as well as the EU—were opposed to borrowing, as it in effect would mean that real emission reduction would be delayed to the next commitment period, and the proposal was rejected. Concerning the notion of a subtraction penalty that would accrue if countries are found to be in non-compliance, Environmental Defense (ED), a US-based NGO, was one of the few green NGOs to take a position contrary to that adopted by the majority of the environmental organizations. The penalty will be ordered by the compliance committee after a Party has officially been determined to be in non-compliance and will be subtracted from a Party's emissions allocation in the next commitment period. ED was against the stricter penalty suggested by the EU (1.5) and sided with the US (1.3), as this would secure the necessary flexibility. In the end, it never provoked a major controversy and the Parties agreed on the 1.3 penalty.

In part as an alternative to borrowing, CIEL and CAN had long fronted the idea of a *compliance fund*, provided that it was designed in such a way that real emissions reductions would be achieved. The idea, however, was captured and given a new meaning after the US, Canada, and France tried, at COP6 in The Hague, to use it as a way to introduce a “price cap” on costs into the Protocol—“a mechanism that could allow countries to comply with their Kyoto targets by paying a discounted fee instead of accomplishing actual emissions reductions.”³⁹ This turned out to be a critical issue at the session in The Hague. Dur-

38. Personal communication from US observer to authors.

39. Wiser 2001.

ing the negotiations running up to The Hague, CAN had been able to convince several states to endorse the compliance fund idea; now they suddenly found themselves in a situation where they had to fight the idea due to the new meaning given to the issue. The problem was that most EU ministers “were at best vaguely familiar with it [the compliance fund], recognizing it only as something the green groups wanted.”⁴⁰ At a press briefing, CAN declared “war” on the “new” compliance fund and CIEL and other key expert NGOs mobilized their people on compliance to convince EU ministers to reject the idea. In the end, CAN’s “war on the price cap and voluntary fund” and the expert NGOs efforts to fight the idea gave results. EU and those “Umbrella Group” countries that had never been enthusiastic about the fund—including New Zealand, Australia and Japan—went against the proposal and the idea never went anywhere.

Obviously a key point for all green NGOs was to secure maximum openness and public participation in the compliance regime. Up until Marrakesh, it seemed that an open access compliance regime with strong public participation would emerge. Although the EU also supported this approach, the US had been the strongest proponent of an open access compliance regime of the major actors. Once more, the new US administration undid what was believed to be an important national principle with the result that compliance lost much of its importance at the negotiations. The strongest opponent to an open compliance regime, Russia, seized this opportunity. Russia did not want information to be open to the public and did not want NGOs to submit information.

The compliance system became less transparent and open than the NGOs had advocated, but they were successful in ensuring that NGO observers could attend enforcement branch deliberations and hearings, unless the branch decides otherwise. NGOs may also submit technical or factual information to the facilitative and the enforcement branch.⁴¹ Although the enforcement branch is only required to use information from “official” sources, it will be difficult for it to ignore reliable information submitted by competent NGOs.⁴² The two branches of the compliance committee may seek expert advice,⁴³ which may give NGOs a window of opportunity to influence thinking. Subject to limited exceptions, the information considered by the relevant branch will be made available to the public⁴⁴ and compliance hearings held by the enforcement branch will be open to the public.⁴⁵ Final decisions made in compliance proceedings will be made publicly available by the UNFCCC secretariat in Bonn.⁴⁶ In sum, then, NGOs achieved some of their goals for the design of the compliance regime, but their access to and participation in compliance proceedings turned out to be more restricted than they advocated.

40. Wiser 2001.

41. UNFCCC 2001, Decision 24/CP.7, Section VIII (4).

42. Ulfstein and Werksman forthcoming.

43. UNFCCC 2001, Decision 24/CP.7, Section VIII (5).

44. UNFCCC 2001, Decision 24/CP.7, Section VIII (6).

45. UNFCCC 2001, Decision 24/CP.7, Section IX (2).

46. UNFCCC 2001, Decision 24/CP.7, Section IX (10).

Sinks, Flexibility Mechanisms and Compliance

In November 2000, COP6 in The Hague failed and was suspended, largely owing to disagreement over the contribution of sinks and the use of the flexibility mechanisms as a supplement to domestic action.⁴⁷ This was followed by tremendous disappointment in the green NGO community, and many declared that they were ready to abandon efforts because of lack of funds and results. Then, in March 2001, US President George W. Bush rejected the Kyoto Protocol⁴⁸ and three months later he stated that the Protocol is “fatally flawed in fundamental ways” and that the US would not become a party to it,⁴⁹ prompting widespread protest in a number of European nations and the green NGO community. Paradoxically, the Bush statement injected new energy into the process and it may have contributed to the political agreement reached at the resumed COP6 in Bonn and the legal agreement in Marrakesh. It is thus claimed that “the Bush no to Kyoto is the only good thing President Bush has ever done for climate protection.”⁵⁰

Although there has been little disagreement among NGOs regarding the compliance regime, they have not been equally unified on sinks and the flexibility mechanisms. This is due not the least to differences in philosophies regarding the *role of the market* as a means to reduce GHG emissions and comply with Kyoto Protocol emission targets. In general, “the more market and the more sinks,” the easier it will be for most Parties to comply with their commitments. The traditional NGO view has been opposed to such a market-based approach, as it would reduce the need for tough domestic actions to reduce emissions. This, however, does not apply to all green NGOs.

Environmental Defense (ED) is a steadfast proponent of a market-based approach to environmental governance. According to Newell, it “boasts the largest assemblage of scientists, economists and lawyers of any national NGO working on climate change.”⁵¹ In contrast to most expert organizations, ED has quite a large member base. It was also among the main architects of the US system of tradable SO₂ permits, designed and put into operation more than a decade ago.⁵² ED has worked relentlessly to get the negotiators to adopt a similar approach for the international climate regime. Considering its expertise, close connections with the US administration and its political clout, there is reason to believe that it has had an effect on the design of the Kyoto mechanisms—mainly a US brainchild.⁵³ In general, ED has sided with the US—against the other environmental NGOs and the EU—in its interpretation of the Kyoto mechanisms. The EU has more recently made a “U-turn” on this issue and be-

47. Lefebvre 2002.

48. White House 2001a.

49. White House 2001b.

50. Authors interview with Michel Raquet, Greenpeace European Unit, Brussels, 4 July 2002.

51. Newell 2000, 28.

52. Andresen's interview with Annie Petsonk, ED, Washington D.C., 21 March 2002.

53. Grubb, Vrolijk, and Brack 1999.

come a frontrunner on the development of a system for emission trading.⁵⁴ Similarly, it appears that most environmental NGOs now accept that the flexibility mechanisms are vital to the implementation of the Kyoto Protocol.⁵⁵ However, they disagree over the use of the mechanisms as a supplement to domestic action. In the climate negotiations, ED argued for no cap on the flexibility mechanisms to ensure cost-efficiency, whereas the major NGOs strongly favored capping. The major NGOs failed also here to persuade the delegates to adopt the NGO position.

ED advocated building compliance into the rules for emission trading, claiming that this would make a separate compliance system redundant.⁵⁶ Although it did not succeed on the last account, compliance was actually built into the rules for emission trading because a Party that is not in compliance is not eligible to *sell* allowances. The enforcement branch will have the authority to suspend and reinstate that eligibility. This position of ED and some other US-based “think-tanks,” versus that of Greenpeace and other more traditional green NGOs, mirrored the differences in philosophy between the US and the EU in their regulatory approaches during most of the negotiation process. The fact that ED sided with the US on key points has made it somewhat “suspicious” in many green quarters, and Greenpeace and ED have been opposing poles. Most of the other major NGOs have been closer to the Greenpeace end on issues like the use of the flexibility mechanisms and capping.

ED was also among the few environmental NGOs supporting the previous US administration on the interpretation of sinks—the possibility to claim emission credits for carbon stored in forests and soils.⁵⁷ Parties with emission commitments in the Kyoto Protocol may use *afforestation* (planting of new forests) and *reforestation* (planting of forests on lands that historically contained forests) since 1990, measured as verifiable changes to carbon stocks, to meet their emission targets.⁵⁸ At The Hague and Bonn most green NGOs argued that sinks should not be included as Clean Development Mechanism (CDM) projects, that is GHG reduction projects in developing countries, and that “additional activity sinks,” which can include land management, agricultural practices and forest management, would put the integrity of the Kyoto Protocol at stake.⁵⁹ ED’s liberal position on sinks placed a considerable strain on CAN (as well as negotiators), who suspended ED’s membership at The Hague meeting, though it was allowed to attend most CAN meetings and its membership was reinstated later. The agreements in Bonn and Marrakesh include sinks in the CDM, allowing Parties with commitments emission credits for afforestation and reforestation projects in developing countries, and the liberal interpretation of the “additional activity sinks” prevailed during the negotiations, against the mainstream

54. See Christiansen and Wettstad 2003.

55. Authors’ interviews with environmental NGOs.

56. Andresen’s interview with Annie Petsonk, ED, Washington D.C., 21 March 2002.

57. The Nature Conservancy as well as NRDC also supported the use of sinks.

58. United Nations 1997, article 3 (3).

59. The “additional activity sinks” have also been called the “do nothing” sinks. Begg 2002, 334.

NGO position. We can thereby safely conclude that mainstream NGOs have had little influence on this turn of events. However, we cannot conclude that the outcome is a result of ED's influence because other, very powerful, actors—notably the US—promoted the same outcome.

Influence of Green NGOs

Where does this leave us in terms of NGO influence? We are in no position to answer this conclusively, but some observations are warranted. In the initial phase it may be that some of the advisory NGOs qualified as *intellectual leaders* in the compliance system negotiations as a result of their ability to frame the compliance issue in a novel and constructive way.⁶⁰ Their specific impact, however, is uncertain—as the US came up with essentially the same approach when the issue surfaced in 1999. Be that as it may, considering both the lack of knowledge surrounding this complex but important issue and the lack of priority given to it by most delegations, there is no doubt that the persistence and expertise of a few advisory NGOs were important for the making of the compliance regime. In one observer's formulation, "their [NGO experts'] consistent support for a strong enforcement mechanism, and their ability to articulate how such a system could work in practice helped to maintain the focus of the negotiations on the need for an effective Enforcement Branch."⁶¹ Although this does not apply to all green NGOs and only to a few advisory organizations, CAN and the major groups supported the advisory NGOs' work.

NGOs have had some success in attaining their goals for the design of the compliance regime. Goal attainment was quite high in terms of acceptance of the dual approach to compliance, which includes both a facilitative and an enforcement branch, a strong enforcement mechanism, and potentially significant scope for NGO participation in enforcement branch deliberations and hearings. However, NGOs would have liked to see legally binding consequences of non-compliance and a less closed compliance regime than it became. A relatively rough guide to NGO goal attainment within different aspects of the compliance regime is set out in Table 2.

There is some discrepancy between *ego* and *alter* perceptions of NGO influence. According to the Norwegian co-chair of the Joint Working Group on Compliance, NGOs had relatively modest influence on the design of the compliance regime, whereas US legal experts played a key role.⁶² Nonetheless, the close interaction between some NGOs and delegates "makes it difficult to pinpoint who influences who."⁶³ Apart from bringing their expertise to the negotiating table, maybe their most important channel of influence was through *alli-*

60. See Young 1991.

61. Werksman forthcoming.

62. Authors' interview with Harald Dovland, Norwegian Ministry of the Environment, Oslo, 25 June 2002.

63. Authors' interview with Harald Dovland, Norwegian Ministry of the Environment, Oslo, 25 June 2002.

Table 2

NGO Goal Attainment on Salient Aspects of the Climate Compliance System

<i>Feature of compliance regime</i>	<i>NGO goal attainment</i>
Separation of enforcement and facilitative functions	High
Strong enforcement mechanism	High/medium
Legally binding consequences of non-compliance	Low/uncertain
NGO access to compliance proceedings	Medium
Transparent compliance proceedings	Medium

ances struck up with key actors. The most important ally on questions like the dual approach to compliance proceedings, public participation, and legally binding consequences was the previous US administration. When NGOs lost their allies in the administration after the election of George W. Bush to the US Presidency, their influence was dramatically reduced, which may indicate that, in the absence of such allies, the *inherent* capacity of NGOs to influence policy outcomes is modest. Moreover, their capacity to influence the way the issue was framed appears to have been quite substantial when compliance was coined in more technical and politically neutral terms in the early phase. As positions polarized towards the end of the negotiations, their influence was substantially reduced.

In the “big” polarized issues such as flexibility mechanisms and sinks, the large activist NGOs were more highly profiled, but their impact was very modest. The major NGOs lost the major battles over sinks as well as over the interpretations on the mechanisms. Among the NGOs we focus on here, ED seems to have had most success on all these counts, but its alliance with the US was, of course, crucial.

Opportunities for NGOs to Reinforce Climate Performance

It has been maintained that “where civil society (. . .) has specific expertise, its monitoring capabilities can enhance transparency, increase certainty, and promote compliance.”⁶⁴ Let us consider some options for NGOs to buttress climate compliance by using or enhancing instruments in the climate regime. A first option concerns participation in compliance proceedings. As we have seen, there may be significant opportunities for NGOs to participate in such proceedings, though states are not required to consider information submitted or investigate claims made by NGOs.

64. Wiser 1999, 4.

Second, NGOs may monitor sinks projects and CDM project activities and attend Executive Board CDM meetings.⁶⁵ This is essential to prevent misuse of the Kyoto Protocol in general and the flexibility mechanisms in particular. For example, NGOs work to prevent the CDM—which helps developing states to cut back GHG emissions, while assisting developed states to meet their commitments—from being used to finance “clean” coal power plants.⁶⁶ NGOs will also try to monitor the quality of CDM sinks projects. Moreover, one of the NGO community’s greatest fears is that the CDM could be used to finance nuclear energy, or that the Kyoto Protocol in general might be portrayed as an argument for the building of nuclear power plants. What can NGOs do to avoid such a development? Executive Board CDM meetings are broadcasted on the UNFCCC website, which may give good overview and transparency.⁶⁷ Similarly, “CDM Watch” and “Sink Watch” are two Internet sites under development by private sponsors to monitor and keep track of the quality of new projects. Initiatives like CDM and Sink Watch may become important, but they are still in a very early phase.⁶⁸

Networks like CAN may be effective in exposing “bad projects,” and big NGOs such as WWF, Greenpeace and Friends of the Earth may develop their own instruments to monitor CDM projects through their international and national networks. NGOs themselves believe that monitoring big CDM projects will become an important instrument to ensure the quality of such projects.⁶⁹ Even if NGOs are not able to influence the CDM Executive Board, project investors may very well be sensitive to NGO shaming. Merely the threat of NGO shaming may actually prevent investors from engaging in bad projects. However, even though it is possible to monitor some projects, it will probably be difficult to keep track of all CDM projects. NGOs will, to some extent, have to rely on the CDM rules and focus on them.⁷⁰

Third, another “loophole” in the Kyoto Protocol, as most NGOs see it, is “hot air” emission trading. It refers to the opportunity available to Russia and other Central and Eastern European (CEE) countries to sell some of their surplus GHG emission allowances as part of an international trading regime. Due to industrial and economic changes in Russia and the CEE countries since 1990, these countries have received a GHG emission budget far in excess of what they need. Hot air emission trading may thus lead to significantly higher emissions than would have been the case in the absence of such trading. The enforcement branch is entrusted with the function of policing the operation of the flexibility

65. In practice, it seems that NGO attendance at Executive Board CDM meetings is limited to observing a live web-cast on the UNFCCC website.

66. “Green” or “clean” coal plants, a contradiction in terms according to the NGOs, refers to plants with lower CO₂ emissions than existing plants, or merely lower emissions than the average CO₂ emissions of existing plants.

67. Authors’ interview with Jason Anderson, CAN Europe, Brussels, 4 July 2002.

68. Authors’ interview with Jason Anderson, CAN Europe, Brussels, 4 July 2002.

69. Authors’ interview with Truls Gulowsen, Greenpeace Norway, Oslo, 15 May 2002.

70. Authors’ interview with Jason Anderson, CAN Europe, Brussels, 4 July 2002.

mechanisms, but there are no rules in the compliance system limiting the trade of hot air allowances. Quotas must be traceable to the country of origin, and NGOs are likely to try to prevent Parties or investors from trading hot air quotas. NGOs are already busy trying to convince Parties to refrain from using the “hot air loophole” and they will probably attempt to shame Parties that buy hot air quotas from Russia and CEE countries. However, as Newell points out, private inter-firm trading removes an element of public oversight, thus reducing the scope for NGO influence.⁷¹

NGOs fear that, combined, these loopholes *could* mean there would be no actual reduction in the global GHG emissions, putting the integrity of the Kyoto Protocol at stake. To persuade Parties to refrain from using the loopholes, Greenpeace has developed computer “loophole analysis” models, showing country-specific data on the potential consequences of exploiting the loopholes, and actively used the program during the climate negotiations to show delegates the consequences of different proposals on the table.⁷²

Fourth, although Annex I Parties are the main targets of NGO attention, NGOs may also be able to influence the performance of non-Annex I parties. The transfer of technology from Annex I Parties to non-Annex I Parties under the Climate Convention will be administered through the Global Environment Facility (GEF). The World Bank’s policy with respect to GEF is largely to include NGOs in the development and implementation of the facility.⁷³ The Bank meets regularly with large Washington, DC-based environmental NGOs.⁷⁴ One specific point of entrance for NGOs in the climate case is the Ad Hoc Working Group on Global Warming and Energy, under the Scientific and Technical Advisory Panel of the GEF.⁷⁵ NGOs can try to ensure the quality of technology transferred from Annex I to non-Annex I parties, as well as its appropriateness to local circumstances, but it is likely that governments themselves will secure firm control with capital-intensive projects.⁷⁶

Finally, the questions of verification and monitoring⁷⁷ are extremely complex and boring for the media and the public—a general problem with the issue area.⁷⁸ The complex and technical nature of verification and monitoring may be a considerable problem with regard to transparency and openness. Most NGOs realize that making the issue area interesting to the public will be a tremendous challenge but is a necessary step to improve future climate performance.

In general, directing efforts at the public has been used less than the insider strategy in the climate change issue. As a direct result of the Bush no-to-

71. Newell 2000, 151.

72. Authors’ interview with Michel Raquet, Greenpeace European Unit, Brussels, 4 July 2002.

73. Princen and Finger 1994, 19.

74. Princen and Finger 1994, 6.

75. Newell 2000, 150.

76. Newell 2000, 150.

77. United Nations 1997, articles 5, 7 and 8.

78. Authors’ interview with Truls Gulowsen, Greenpeace Norway, Oslo, 15 May 2002.

Kyoto, however, Greenpeace launched the “Ratify Kyoto Now” campaign. It appears that the momentum created was rather short-lived,⁷⁹ and not all observers share the opinion that it was successful.⁸⁰ WWF, in February 2002, launched a similar ratification campaign for the Kyoto Protocol, originally running until the World Summit on Sustainable Development (WSSD) in August/September 2002.⁸¹ Although they invested some resources in campaigns aimed at the general public, Greenpeace and other activists largely tried to influence intergovernmental negotiations by traditional lobbying, such as submitting information and talking to delegates. The explanation might be that the *character* of the climate problem and the *framing of the issue* in society are more important for the choice of strategy than the characteristic *role* of the organization.⁸² In comparison to several other environmental problems, the climate problem is far more difficult and complex: its causes can be found in nearly all aspects of society; there are no obvious alternatives to the combustion of fossil fuels; there is no one single target group that can be aimed at; and there are no solutions that will alleviate the problem in the short term.⁸³

These observations are by and large confirmed by the environmental organizations we interviewed. National offices, whether those of Greenpeace or WWF, told us how hard it is to generate interest in climate change among people because it is so complex and diffuse. It has been maintained that Greenpeace has almost given up on promoting the Kyoto Protocol in the US due to a lack of interest and results.⁸⁴ More specific and understandable problems are much simpler to work with, and “sell.” It has also been claimed that national NGO activism has not been sufficiently linked to the international negotiation process.⁸⁵ Enthusiasm on the part of NGOs to campaign for the Kyoto Protocol may also have waned as it is considered a very weak emission-reducing instrument. Still, they support the Kyoto Protocol because “it’s the only game in town” and they believe that the climate negotiations are a “learning experience” and a process that will continue to move forward.⁸⁶

Conclusions

In evaluating NGO *goal attainment*, it was necessary to differentiate between the compliance regime on the one hand and the flexibility mechanisms and sinks on the other, as well as between activist and advisory NGOs. Although the com-

79. Authors’ interview with Truls Gulowsen, Greenpeace Norway, Oslo, 15 May 2002.

80. Authors’ interview with Harald Dovland, Norwegian Ministry of the Environment, Oslo, 25 June 2002.

81. WWF 2002.

82. Pleune 1996 and 1997.

83. Gough and Shackley 2001, 330–331.

84. Skjærseth and Skodvin 2001.

85. Authors’ interview with Truls Gulowsen, Greenpeace Norway, Oslo, 15 May 2002.

86. Authors’ interview with Michel Raquet, Greenpeace European Unit, Brussels, 4 July 2002.

pliance regime, from the NGO perspective, could be better in terms of public participation as well as in relation to legally binding consequences, NGOs are allowed to attend and contribute to compliance proceedings. Further, states agreed on the dual approach to compliance—an approach advocated by some expert NGOs. With regard to *ego and alter perceptions*, NGOs believe, not surprisingly, that they had more influence than other respondents estimate. The insider strategy seems to have had some success in shaping the compliance regime, especially in the early phase before it became more highly politicized, but the close interaction between some NGOs and delegates makes it very difficult to trace actual patterns of influence. Apart from providing knowledge and expertise, green NGOs have relied heavily on forming strategic alliances with key actors. When such alliances have broken down, the NGOs not surprisingly lost what influence they might have enjoyed.

In contrast to the agreement on compliance issues, NGOs have differed sharply in their views on the flexibility mechanisms and sinks, though most NGOs now appear to accept the mechanisms. Here, some US advisory NGOs have had high goal attainment, whereas the big, activist NGOs have had low goal attainment. This is not to say that the advisory NGOs necessarily have had more influence than the activists. There can obviously be a measurement problem in assessing the effectiveness of the insider and the outsider strategies. Advisory NGOs typically have policy solutions that are more acceptable to governments or closer to governments' own positions. Activist NGOs, on the other hand, typically pursue more radical and far-reaching solutions. It is important to note, however, that the activist groups expended most effort on the high level political issues, while some expert groups retained a narrower focus on the compliance issue. In that sense, the latter group got more mileage from its investments than the major NGOs, whose political clout has so far been of limited significance. On this complex issue it may seem that intellectual capital is more important.

There are a number of ways for NGOs to enhance future climate compliance. High on the NGO agenda is the closure of the "loopholes" related to sinks and the flexibility mechanisms. The extent to which action and shaming will make a difference is likely to depend on *inter alia* the size and traditions of the country in question, how the facilitative and enforcement branch will operate in practice, and the extent to which the environment (climate change) is an important public concern. The complexity of the climate issue has made the traditional activist role of the NGOs very difficult. It is reportedly difficult to "sell" and for people to relate to. NGOs have engaged in a wide variety of actions with and against states, target groups, and the public to rally support for more proactive climate policies and more speedy ratification processes. They have probably scored some direct and some indirect successes, but there can hardly be said to have been any major breakthroughs. This is a slow and cumbersome process with vital political and economic interests at stake. Our analysis points to the crucial need for further "insider" capacity—that is, NGOs are likely to

have the most far-reaching influence on future climate negotiations if they foster ways to work closely and collaboratively with key negotiators and governments.

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