

# ENVIRONMENTAL ACCOUNTABILITY BEYOND THE NATION-STATE: THE IMPLICATIONS OF THE AARHUS CONVENTION

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On June 25, 1998, at the Fourth “Environment for Europe” Ministerial Conference in Aarhus, Denmark, 35 countries and the European Union signed the new United Nations Economic Commission for Europe (UNECE)<sup>1</sup> Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (generally known as the Aarhus Convention).<sup>2</sup> Since then, six more countries have acceded or become signatories and four have ratified it. (See Box 1.) The Convention aims to provide the public and nongovernmental organizations (NGOs) in UNECE countries with common tools and standards to monitor performance and engage in environmental decisions on issues ranging from nuclear power to infrastructure development.

Over the last decade, policymakers and scholars have paid increasing attention to how the changing relationship between the traditional nation-state and new nonstate actors is influencing the formation of transnational regimes for environmental governance. To date, however, most commentators have emphasized the impact of this power shift on global institutions and policymaking, while paying comparatively little attention to processes at the level of *regional*

institutions. Yet, regional institutions often provide some of the most innovative responses to the challenges currently facing international environmental governance.

Most multilateral environmental agreements (MEAs) establish specific environmental policies and aim to achieve specific outcomes. One of the most illustrative examples is the Kyoto Protocol to the UN Framework Convention on Climate Change (UNFCCC), which sets specific emission targets and a specified time frame for countries included in Annex I of the UNFCCC. By contrast, the Aarhus Convention follows a number of recent initiatives<sup>3</sup> in multilateral environmental-regime formation by focusing on the *process* by which environmental decisions are made.

The Convention has three main components or “pillars.” The first pillar sets rules and requirements for governments to disclose environmental and other relevant information to the public. The second pillar addresses issues related to how the public and public interest groups can participate in environmental decisionmaking. The third pillar deals with the right of the public and public interest groups to seek judicial remedy

for noncompliance by governments and corporations within the legal obligations established by the first two pillars.

This emphasis on process rather than outcome provides an innovative model of multilateral policymaking, which promises to create a new operating environment for public agencies and the corporate world. In addition, the Con-

**Box 1**

**Signatories and Parties (\*)  
to the Aarhus Convention**

Albania	Latvia
Armenia	Liechtenstein
Austria	Lithuania
Belarus	Luxembourg
Belgium	Macedonia*
Bulgaria	Malta
Croatia	Moldova*
Cyprus	Monaco
Czech Republic	Netherlands
Denmark	Norway
Estonia	Poland
Finland	Portugal
France	Romania
Georgia	Slovenia
Germany	Spain
Greece	Sweden
Hungary	Switzerland
Iceland	Turkmenistan*
Ireland	Ukraine*
Italy	United Kingdom
Kazakhstan	European Community



vention integrates environmental protection and governance norms. This integration is bound to benefit both the environment and democratic governance. It promotes citizen involvement as a key to combating environmental mismanagement. Its principles of transparency and accountability are integral to the meaningful practice of democratic governance.<sup>4</sup>

The Convention furthermore takes the first steps in promoting environmental transparency and accountability norms beyond the nation state. It establishes common regional disclosure and participation standards as well as what could be termed “horizontal accountability” by governments and corporations to NGOs and citizens, irrespective of their “citizenship, nationality, or domicile.”<sup>5</sup>

In this paper, we examine these innovative elements and their implications for environmental governance in an increasingly interdependent world. We also review the Environment for Europe process that led to the Aarhus Convention and the significant role NGOs played within it. The final sections of this report analyze the Convention’s wider implications for public domestic and international policy organizations, as well as for financial institutions that support activities affecting the environment.

## WHERE DID THE AARHUS CONVENTION COME FROM?

The European governments first recognized public participation in environmental matters at the Regional Ministerial Conference held in Bergen, Norway, in May 1990.<sup>6</sup> The Convention itself, however, was inspired by the Environ-

ment for Europe process, initiated in 1991 by the governments of the UNECE countries at the First Conference of the Environmental Ministers at Dobruška, the Czech Republic. Initially established to identify and develop pan-European strategies for environmental reparation and protection, the Environment for Europe has evolved into an open-ended forum for regional cooperation, information-sharing, regional and national policy development, and investment in the environment of the UNECE countries. Its recommendations are negotiated between and implemented by governments, multilateral development banks (MDBs), nongovernmental organizations, and, increasingly, the business community.<sup>7</sup>

From the inception of the Environment for Europe process, environmental ministers and other stakeholders recognized the importance of public participation and information disclosure in achieving environmental objectives. At the Second Conference of the Environmental Ministers held in Lucerne, Switzerland, in 1993, public participation in environmental management was included as one of the seven key elements in the Environmental Program for Europe adopted at this meeting. The Ministerial Declaration, also adopted at this conference, called for “the elaboration of proposals by the UNECE for legal, regulatory, and administrative mechanisms to promote public participation in environmental decision-making . . . .”<sup>8</sup>

Following the Lucerne Conference decision, a UNECE task force of government and NGO representatives<sup>9</sup> was charged with drafting guidelines and suggesting tools and mechanisms to pro-

mote public participation in environmental decisionmaking.<sup>10</sup> NGOs and some governments, however, called for a stronger, binding commitment to institutionalize public participation. In response, the Third Conference of the Ministers in Sofia, Bulgaria, in 1995 endorsed the guidelines and recommended that the UNECE countries draft and agree upon a regional binding instrument for public participation. The agreement was signed at the Aarhus meeting of June 1998. Thus, the process leading to the Aarhus Convention spanned eight years and four Ministerial Conferences. (See Table 1.)

The Convention seems likely to enter into force as planned by the end of 2000 or early in 2001 since 23 countries have already indicated they intend to ratify by the end of 2000. To prepare for implementation, the First Meeting of the Signatories, held in Moldova in April 1999, established task forces to address compliance mechanisms, pollutant release and transfer registers (PRTRs), and public participation in procedures relating to deliberate releases of genetically modified organisms.<sup>11</sup> A second Meeting of the Signatories will be held at Dubrovnik, Croatia, in July 2000.

NGOs have also carved out a strong role in the post-Aarhus process. The NGO coalition structure, which had been used so effectively during the Convention negotiations, was reviewed and strengthened at a pan-European NGO conference held in advance of the Meeting of Signatories. NGOs’ current priority is to accelerate ratification by national parliaments. NGOs are also actively participating in the follow-up task forces. For instance, Friends of the Earth–England



Table 1

## Environment for Europe: Fora and Outcomes

Event	Place and Year	Decisions Leading to the Convention
First Conference of the Environmental Ministers of the UNECE Countries	Dobric, 1991	Reaches agreement on the scope and tasks of the UNECE Ministerial conferences on environment. Decides to conduct an assessment of the state of the Environment for Europe. Emphasizes the importance of public participation.
Second Conference of the Environmental Ministers of the UNECE Countries	Lucerne, 1993	The Environmental Program for Europe (EPE) recognizes the role of public participation and the need to ensure transparency of information and decisions. The UNECE starts work on Guidelines on Public Participation.
Third Ministerial Conference “Environment for Europe”	Sofia, 1995	Acknowledges the Guidelines. Decides that a Convention for Public Participation should be considered.
Fourth Ministerial Conference “Environment for Europe” <sup>1</sup>	Aarhus, 1998	Adopts the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters.

**Note:** <sup>1</sup> The Third and Fourth Ministerial Conferences had many other important outcomes as well. For instance, the Third Ministerial Conference at Sofia included the adoption of the Environmental Program for Europe, a long-term program for sustainable development (Sofia 1995), adoption of the Pan-European Biological and Landscape Strategy, and the creation of a task force for the phase out of leaded petrol and the release of “Europe’s Environment: The Dobric Assessment,” a comprehensive report on the state of the European environment prepared by the European Environmental Agency (Sofia 1995). The Fourth Ministerial Conference at Aarhus, for instance, adopted the European Energy Charter and *divided* the Task Force into two—for CEE and NIS—to reflect different needs associated with preparing some countries for accession to the EU and the growing divergence of CEE and NIS. For more information, see <<http://www.unece.org/env>> *Europe’s Environment: The Dobric Assessment*. European Environmental Agency. 1995. *The Environmental Action Programme for Central and Eastern Europe*. Revised Final Draft of Document Endorsed by the Ministerial Conference. Lucerne, Switzerland, April 28–30, 1993. Environment for Europe Third Ministerial Conference, Sofia, October 23–25, 1995. *Conference Proceedings*.

and the Regional Environmental Center (REC) for Central and Eastern Europe are planning to support the PRTR task force with research on reporting and dissemination laws in signatory nations implementing PRTR protocols.<sup>12</sup> The REC and the U.S.-based Environmental Law Institute have also developed a UNECE guide to support governments in their implementation of the Convention. NGOs in many of the countries that did not sign the Aarhus Convention are actively working to align national legis-

lation so that their governments will ultimately accede.<sup>13</sup>

### HOW DOES THE AARHUS CONVENTION PROMOTE PARTICIPATION?

The Aarhus Convention transposes Principle 10 of the Rio Declaration on Environment and Development into a legally binding international agreement. (See *Box 2*.) It endorses three principles or pillars of public involvement in environ-

mental management: access to information, participation in decisionmaking, and access to judicial remedy.

*Public access to environmental information.* The Convention defines responsibilities for governments at all levels to disclose environmental information to the public (Articles 4 and 5). Its first section specifies the kinds of information that should be made public as well as the channels and regularity of disclosure. Information that should be easily avail-



**Principle 10.** Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided. ([http://www.accessexcellence.org/AB/IE/Rio\\_Declaration\\_On\\_Envirmt.html](http://www.accessexcellence.org/AB/IE/Rio_Declaration_On_Envirmt.html))

able includes data regarding the state of the environment, planned or operational policies and measures, international conventions and other relevant documentation, institutional mandates, as well as information on institutional performance. This section also stipulates that governments should institute PRTRs or other inventories and registers. It requires establishing systems to ensure information flows to the public. Such systems should include publicly accessible lists and files and electronic databases

along with points of contact at relevant agencies.

*Public participation in environmental decision-making.* The second pillar of the Aarhus Convention sets rules for public involvement in three kinds of decisions. First, decisions regarding specific development activities, described in its Annex I (see Box 3), are subject to public review and consultation (Article 6). Second, public plans, programs, and policies that relate to the environment—for example,

national environmental action programs or waste management policies—should undergo public consultation (Article 7). Third, a more limited right to public and NGO involvement is established with regard to decisions about executive regulations and generally applicable legally binding instruments, contained in actual legislation or agreements (e.g., rules governing Environmental Impact Assessments) (Article 8). In essence, this pillar establishes a framework that requires public authorities at regional, national, and subnational levels to ensure representation of competing interests in decisionmaking, with the underlying assumption that participation will render decisions fair to all parties.

*Access to judicial remedy.* The third pillar of the Aarhus Convention gives individuals and NGOs the ability to seek recourse when public authorities or corporations do not comply with the Aarhus obligations (Article 9). It defines who can seek justice in a court of law or other impartial body, and in what types of cases. NGOs are explicitly included

Annex I lists the activities requiring procedures for public participation. An example of the sectors in which such activities are subject to public participation includes the following:

- A. Energy sector (e.g., mineral oil and gas refiners, nuclear and thermal power stations);
- B. Production and processing of metals (e.g., installations for the processing of metal ore and steel);
- C. Mineral industry (e.g., cement and asbestos installations);
- D. Chemical industry (e.g., a wide variety of installations for organic and inorganic chemicals; fertilizers, and health products);
- E. Waste management (e.g., incinerators, landfills);
- F. Waste-water treatment plants with a capacity exceeding 150,000 population equivalent;
- G. Infrastructure (e.g., railways, roads, inland waterways, ports, and overhead electrical power lines);
- H. Extraction of minerals and water (e.g., groundwater extraction, water transfer, oil and natural gas extraction and transfer).



under the definitions of “the public” and “the public concerned” set out in Article 2, Sections 4 and 5 of the Convention, although their standing will ultimately depend upon “the criteria, if any, laid down in national law.”<sup>14</sup> This pillar allows the public and NGOs to seek justice for nonperformance of public authorities and noncompliance of private persons, whether individuals or corporations. It mandates the establishment of procedures that are fair, equitable, timely, and not prohibitively expensive. Although the first two pillars create an enabling environment for public participation, the third gives individuals and public interest organizations the capacity to enforce and actively seek protection of their rights to information and input to decisions.

## WHAT ARE THE IMPLICATIONS OF THE AARHUS CONVENTION?

### The Role of NGOs in Multilateral Policymaking

Traditionally, direct participation in multilateral policymaking processes has been confined exclusively to governments, despite the increasing influence of nonstate actors.<sup>15</sup> Such influence has been exerted through the use of a parallel approach, whereby NGOs hold conferences to coincide with official negotiations, maintain close contacts with government representatives, develop alternative policy positions, provide information and analysis, and cooperate with each other through the formation of transnational issue-based networks and coalitions. As a rule, however, NGOs have been excluded from the immediate negotiations or the actual drafting of the agreements.<sup>16</sup>

In the Aarhus process, by contrast, NGOs played a central role in drafting the Convention. Although voting rights remained formally confined to governmental representatives, NGOs in practice participated fully in negotiations and drafting. Environmental NGOs negotiated the Convention with the UNECE governments in two ways. They participated in the intergovernmental working group set up for the negotiations and the Committee on Environmental Policy—which approved the draft text before transmitting it to the Ministers for final adoption. They also participated in small drafting or advisory groups set up during the negotiations where many of the difficult details were resolved. NGOs were even represented in the Friends of the Secretariat group, which helped the UNECE Secretariat prepare the first informal draft that launched the negotiations. Thus, NGOs no longer operated in parallel fashion to official negotiations; for much of the process, they assumed the practical status of full and equal partners.

Although NGOs and other nonstate stakeholders have been full participants in several other international fora for environmental policymaking, including the World Commission on Dams and the Forestry Stewardship Council, the Aarhus process marks the first time they played a central role in creating a legally binding international treaty. With its provisions and standards, this treaty, in turn, opens up domestic and international public policymaking for public scrutiny and participation. Therefore, both the drafting and negotiation process and the provisions of the Aarhus Convention indicate states’ increasing recognition of NGOs’ right to participate

in international policymaking. The Aarhus process offers a new model for the *formation* of multilateral public policy, within which public interest groups are directly involved in drafting and negotiating international law.

NGOs are likely to have a similarly prominent role in implementation and follow-up. This role will come into play if the Second Meeting of the Signatories scheduled for Dubrovnik, Croatia, in July 2000 agrees to proposals on compliance mechanisms presented at the London Task Force in November 1999. The proposals foresee representation of NGOs at the Convention’s independent compliance review mechanism.

NGO direct involvement in the Convention’s preparation and future implementation raise two broader questions. First, what particular conditions or factors permitted this more direct role of NGOs in international policymaking? Second, were the public interest groups involved in the Aarhus Convention accountable to a constituency?

The expanded level of NGO involvement in the Convention, and the overall Environment for Europe process, derived in large part from the wider political currents underway in Central and Eastern Europe (CEE) and—to some extent—in the Newly Independent States (NIS) in the late eighties and early nineties. (*See Box 4.*)

The democratization of Central and Eastern Europe both made an all-European dialogue and decisions on environment possible and ensured a prominent role for NGOs within it. Given the existence of comparable trends toward de-



mocratization elsewhere, the increased level of NGO participation found at Aarhus is likely to be paralleled in multilateral policymaking in other parts of the world.

Turning to the question of NGO accountability: it is clear that the NGOs directly involved in the Convention's drafting and negotiations represented a special interest and were not formally accountable to the public through traditional political mechanisms. They did, however, create a broad horizontal coalition that brought together a wide range of international, national, and local NGOs and their networks. This coalition established national and cross-border consultation processes, exchanged information, provided input to the Convention's drafts, and coordinated strategy. While some of the coalition members took the lead in drafting and negotiating, others were active in providing technical input, raising public aware-

ness, and implementing advocacy strategies targeting their governments. In addition, in-country roundtables and other country-based initiatives kept the general public and more distant NGOs informed of the process.

In its nonhierarchical, network-based organizational structure and lack of formal representative mechanisms, the NGO coalition that mobilized around Aarhus bore little institutional resemblance to a state. Rather, the coalition's mode of operation resembled that of a global corporate network. It was private, worked across borders, was driven by a common goal, and was composed of cooperating rather than competing units. Its components had different functional responsibilities; transferred information, expertise, and knowledge; and mobilized organizational resources in pursuit of a specific shared task, all of which are characteristic of the global corporate network.<sup>17</sup> Naturally, the NGO coalition

differed from a global corporate network in its mission and objectives: it was motivated by public interest rather than private profit. Its global corporate network-like mode of operation, nevertheless, allowed it to form a broad, transnational constituency without following traditional political processes to ensure accountability. Given that traditional processes of democratic representation function indirectly, if at all, in the context of multilateral policymaking, NGO participation permitted a greater degree of public involvement and accountability of the principal actors in the Aarhus process than would have been possible had negotiations been confined to state officials alone.

### **National Systems for Disclosure, Participation, and Justice in Environmental Matters**

The Aarhus Convention's primary objective is to strengthen national systems for

#### **Box 4**

#### **Political Democratization in Central and Eastern Europe and the New Independent States**

In the late eighties, NGOs formed part of the opposition in CEE and NIS, serving as channels for political dissent and catalysts for democratic change. In three countries, Bulgaria, Czechoslovakia, and Hungary, environmental issues and the NGOs organized around them played a crucial role in driving the general process of democratization.

In the early 1990s, many leading environmental NGO leaders entered the executive and legislative branches of government. This gave environmental NGOs and their leaders an unprecedented degree of influence on formal political structures. Many officials in newly elected governments, when the Environment for Europe process started in the early 1990s, either came from, or had close links with, the environmental movement.

The influence of environmental NGOs within their domestic political arenas in CEE was further enhanced by the support they received from Western Europe and the United States and their ties with their Western European and US counterparts, who already had a track record of influence on public authorities. Thus, the strong position of environmental NGOs in their domestic political arenas and their close links with the CEE governments of the early 1990s legitimized their participation in the Environment for Europe process, its Ministerial Conferences, task forces, senior officials' meetings, working groups, and other bodies.

This situation is a striking example of the dynamics by which the formation of domestic and international norms are becoming increasingly intertwined.



public participation in environmental decisionmaking. Signatory nations are required to realign their legal and regulatory frameworks to conform to Convention requirements. Its provisions affect public agencies, national frameworks, practices for disclosure of information, participation in decisions on development, and access to legal recourse by the public and environmental NGOs. As a signatory to the Convention, the European Union has also committed itself to ensuring that its member countries adhere to the Convention requirements.<sup>18</sup>

The standards of disclosure, participation, and legal recourse set by the Convention are far from perfect. Indeed, a number of signatory countries have existing standards that in certain areas are stronger than the Convention's provisions. An assessment of current trends and practices in the European and NIS countries of the UNECE region suggests, however, that even the most "progressive" UNECE member states will have to revise their environmental regimes in order to comply with the comprehensive standards set by all three pillars of the Aarhus Convention.<sup>19</sup> The Convention will not prevent individual parties from maintaining or introducing disclosure, participation or justice norms higher or more stringent than its requirements. In short, the Convention will significantly raise the minimum acceptable standards for environmental accountability, participation, and access to judicial remedy across the region.

### Matching the Geographies of Governance and Economy

Economic globalization is changing the way that societies and economies work

and relate to each other. An integrated, cross-border economic geography is emerging, as firms realign their trans-border operations in what is essentially a microeconomic process. The transfer of tangible and intangible goods by corporate networks is no longer contained within political borders. As a result, economic globalization challenges the ability of governments to regulate and monitor corporate activities and implement public policy within their borders.<sup>20</sup> The test therefore is to resolve the tension between this transnational, largely microeconomic, process and the political or border-contained geography of public policy and government. Failure to address this challenge will further undermine the ability to enforce rules to protect the public good and limit the access of weaker social groups to common-pool resources.

The Convention suggests a new governance paradigm to bridge cross-border economic activities and their local impacts on resources and the environment. This model provides a framework for local responses that use existing political geographies and yet are not contained by it. In addition, the model establishes what may be termed *horizontal accountability* across borders by setting common transparency and participation norms and standards "without discrimination as to citizenship, nationality, or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective center of its activities."<sup>21</sup>

As a result of the Convention, citizens and organizations in Country A can access information and monitor perfor-

mance of public and private entities in Country B. These common standards ignore the national identity of individuals and entities. They are designed to work at a micro-level and thus effectively match the pattern of economic globalization. The common participation and disclosure standards established by the Convention allow NGOs and individual citizens to track the performance of transnational economic actors irrespective of where they operate or their country of incorporation. This feature should strengthen the enforcement capacity of Parties to the Convention and motivate corporations to achieve early compliance with environmental standards in the countries of operation. With the mobilization of local actors across borders, the Convention promises a regional governance response to the increasingly transnational, yet microeconomic, processes of economic globalization at work within the UNECE region.

### Changing the Operating Environment for Investment with Environmental Impacts

The Aarhus Convention also creates a framework for agreement on the public good between the financiers of development and the local populations or public interest groups. By establishing the principle and specifying the process of participation in investment decisions<sup>22</sup>, the Convention allows local populations and public interest groups to incorporate their perception of public good in development and investment choices. Thus, it changes the operating environment for private investors and public credit agencies. In particular, the Convention should lead to tighter disclosure rules governing the activities of



multilateral development banks (MDBs) and export credit agencies (ECAs) as national public bodies, as well as other multigovernmental organizations and processes.

#### *a. Public Credit Agencies*

The provisions of the Aarhus Convention are to be carried out by public authorities. The latter include the following: governments at regional, national, or other levels; natural or legal persons performing public administrative functions; and regional economic integration organizations.<sup>23</sup> Obviously, the Convention's rules apply to the ministries of environment and other government agencies dealing with environmental issues, information, permits, and other functions directly related to the environment. However, other government agencies are also obliged to implement the Convention's provisions.

In this context, the Aarhus Convention applies to export credit agencies (ECAs) and ministries of finance or other agencies in UNECE countries in so far as they finance, insure, or guarantee projects involving activities listed in Annex I to the Aarhus Convention.<sup>24</sup> The signatory countries include home countries (i.e., countries where ECAs guarantee private credit) as well as credit recipient countries, where export credits and investment insurance guarantees issued by ECAs are, almost without exception, underwritten by sovereign guarantees issued by the importing country.<sup>25</sup> Thus, within the UNECE region, the Aarhus Convention's provisions should apply to projects with an environmental impact underwritten by the ECAs and other public agencies of any signatory country.

#### *b. Multilateral Development Banks*

All Central and Eastern European countries, along with the NIS, receive loans from three MDBs: the World Bank, the European Bank for Reconstruction and Development (EBRD), and the European Investment Bank (EIB). The combined portfolios of these organizations in the region totaled US\$24.9 billion in 1996.<sup>26</sup> (See Chart 1.)

Since 1996, the portfolios of the three MDBs have increased significantly. In 1997 alone, the World Bank's investment in these countries totaled more than US\$5 billion.<sup>27</sup> As of December 1998, EBRD had committed more than US\$15 billion (12 billion ECU), most of which was in private sector equity financing.<sup>28</sup> These commitments are either public debt or underwritten by sovereign guarantees by the CEE and NIS recipient governments when they apply for private financing. A significant portion of these capital flows is for environmental infrastructure or in sectors listed in Annex I of the Aarhus Convention. World Bank lending is also allocated for programs and plans for the environment. Once the Convention is ratified and enters into force, these transactions should fall under its rules, requiring public authorities in CEE and NIS signatory countries to disclose information and implement public review procedures.

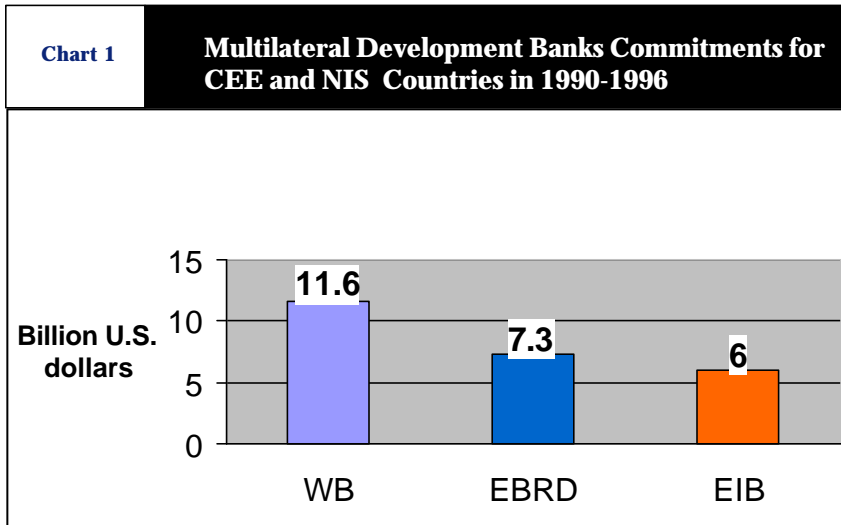
The World Bank and EBRD are already actively involved in the Environment for Europe process. In addition to financing environmental priorities identified under the Environment for Europe umbrella, these institutions host the Project Preparation Committee—a framework that the Second Environ-

ment for Europe Ministerial Conference established to help identify, prepare, and implement investment projects in Central and Eastern Europe and the former Soviet Union.<sup>29</sup> These two banks should encourage recipient governments to implement the Aarhus Convention's requirements related to their loans, especially where they involve policies, programs, or investments that affect the environment, environmental infrastructure, or sectors listed in Annex I. Implementation of the Aarhus Convention's rules and provisions will actually support and operationalize the World Bank's stated objective to strengthen recipient countries' "ownership" of development assistance by involving NGOs and the public in borrower countries in project and portfolio decisions.<sup>30</sup>

The European Investment Bank is a different kind of a multilateral development bank. It is the European Union's (EU) financial institution, whose task is to contribute to integration and the objectives of the EU.<sup>31</sup> EIB's disclosure policies and environmental performance are currently under attack by NGOs, especially NGOs in Central and Eastern Europe, where the bank is increasingly involved. EIB management's position, on the other hand, is that it is fully responsible to the governments that own it.<sup>32</sup>

The EU and its bodies are no doubt evolving regional public institutions. The future ratification of the Convention by the EU and its member states should have profound implications for the EIB disclosure and participation policies that will have to integrate the standards of the Convention. First, as a public body of parties (i.e., the EU and the governments who own it and constitute its man-





agement bodies<sup>33</sup>), EIB should implement the Convention’s provision. Second, the EIB increasingly operates in accession countries who are also signatories and are planning to ratify the Convention. Thus, its investment in environmental infrastructure, projects listed in Annex I, or environmental programs and plans should be subject to public oversight and participation both in the EU and in CEE recipient countries.

### Influencing Disclosure Policies of International Organizations

Not only the portfolios of MDBs are likely to be affected by the implementation of the Aarhus Convention in the UNECE region. Their institutional disclosure policies may also be influenced. The signatories to the Aarhus Convention have committed to “promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.”<sup>34</sup> Signatories to the Aarhus Convention play a key role in the World

Bank and EBRD, and they own the EIB. For instance, Western European countries are major shareholders of the World Bank. The EBRD was established with financing from countries in Western Europe, all of which are signatories to the Convention. As previously mentioned, EIB is a body of the European Union. Although disclosure policies and standards of these institutions differ, most of them clearly fail to meet the Convention requirements.<sup>35</sup> With their commitment to promote the Aarhus principles in international organizations in matters relating to the environment, the signatories should be expected to influence MDB disclosure standards, policies, and practices, and in the case of EIB – reform them.

UNECE member states frequently play a leading role in decisionmaking fora and organizations that either directly address environmental issues (e.g., the Conferences of the Parties under the UN Framework Convention on Climate Change) or profoundly affect the environment, such as the World Trade Organization. The Aarhus Convention will provide governments and civil society in

these states with a tool for promoting disclosure and participation policies by international organizations. Moreover, international institutions with better disclosure policies can be used as models to refute claims that the principles of transparency and accountability are appropriate only for domestic decisionmaking.<sup>36</sup>

### NEXT STEPS

The Aarhus Convention has the potential to become a powerful instrument for promoting public participation in decisionmaking in the UNECE area. Three major challenges remain if the Convention is to fulfill this promise. First, NGOs based in UNECE countries whose governments refused to sign the Convention, most prominently Russia and the United States, must promote its concepts domestically in order to build political momentum for their countries’ accession. Second, signatory governments must align their national frameworks and, most importantly, their institutional infrastructure to ensure that the Convention’s provisions become effective. Third, such regional institutions as the EIB, the European Commission, and other bodies of the European Union should revise and adjust their disclosure policies and participation mechanisms in order to comply with the Convention’s requirements.

Given the short time since the Convention’s signature, it is too early to assess progress toward implementation and enforcement. Because the Convention has not yet entered into force, it has not fully established a permanent secretariat nor agreed upon compliance mechanisms.<sup>37</sup>



In both the established democracies and the post-socialist nations, the environmental NGOs, which were instrumental in formulating the Convention, will be central to the task of implementation. In Western Europe, these NGOs must keep building momentum for reform in a climate where many governments tend to view the Environment for Europe process as no more than a “learning exercise for Central and Eastern European countries”<sup>38</sup> with little relevance for their own environmental regimes. In the post-socialist countries, despite the far-reaching political and legal reforms of the past decade, neither state officials nor citizen groups have adequate experience in ensuring that decisions made by state and private actors are subject to public oversight.<sup>39</sup> Here, through continuing advocacy, litigation, and education, local NGOs must play a vital role in ensuring not only that the Aarhus Convention is implemented within formal legal and administrative structures, but also that citizens can take advantage of its provisions.

At the same time, the Convention’s relevance should not be seen as restricted only to the European and Eurasian region. Despite its potential to match economic and political geographies and provide a tool for local populations and NGOs to influence an increasingly globally driven economic development, the Convention can only have limited impact as long as its scope remains confined to the UNECE region. Only if its principles are adopted and implemented at a global scale can they overcome the limitations of the political geography in monitoring the environmental impacts of corporate activity across borders.

A number of developments in other regions of the world indicate that governments and policymakers are aware of the need to implement the Aarhus principles of public participation and accountability. For instance, the Organization of American States endorsed an Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making at its meeting in Mexico City in September 1999.<sup>40</sup> Similarly, at a meeting in Botswana in December 1998, policymakers, legal experts, and environmental information specialists from six Southern African countries stressed the importance of access to information in the African context.<sup>41</sup>

The European experience suggests, however, that NGOs must be actively committed if such declarations are to produce more than statements of goodwill and general intent. Similar efforts by NGOs, in cooperation with supportive governments, to operationalize these concepts and create common standards of participation, accountability, and disclosure are necessary in other parts of the world. Such efforts promise the creation of a common operational environment for national and international public and private actors, a broadening of the disclosure policies of national and international public institutions, and the integration of investment decisions with public environmental concerns.

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## NOTES

1. UNECE is a regional organization of the United Nations founded in 1947 to promote “economic dialogue and cooperation” among the countries of Western Europe, Central and Eastern Europe, the United States and Canada, Turkey, Israel, and the former Soviet Union (including the Central Asian Republics). It works in partnership with the European Union, which is also a signatory to the Aarhus Convention. (See <<http://www.unece.org/oes/history.htm>>.)
2. Convention on Access to Information, Public Participation, and Access to Justice in Environmental Matters. (See <<http://www.unece.org/env/europe/ppconven.htm>>.)
3. Examples of recent process-oriented environmental regimes include the International Organization for Standardization’s ISO 14000 Series promulgated in 1996, which establishes voluntary standards for sound environmental management practices within private industry (See <<http://www.iso.ch/9000e/9k14ke.htm>>); or the Helsinki Convention on the Transboundary Effects of Industrial Accidents signed by 26 UNECE countries and the European Community in 1992, which establishes rules for international cooperation and information sharing. (See <<http://www.unece.org/env/teia/english/text.htm>>.)



4. Jeremy Wates. European Environmental Bureau. "The Public Participation Convention—An NGO Perspective." Posted on the NGO coalition electronic network.
5. Convention on Access to Information . . . Op. cit.
6. Article 5, "Awareness Raising and Public Participation." *Joint Agenda for Action*. Bergen Regional Ministerial Conference, May 11, 1990.
7. "Environment for Europe" Process. (See <<http://www.unece.org/env/europe/europe.htm>>; <[http://www.unece.org/env/env\\_ep.htm](http://www.unece.org/env/env_ep.htm)>.)
8. Declaration of the Second Ministerial Conference, Lucerne, Switzerland, 1993.
9. Environmental NGOs were represented in the task force by the European Environmental Bureau (represented by Jeremy Wates), which in turn acted as the lead group on public participation issues within the NGO Working Group on the Pan-European Environment. The latter is a loose coalition of environmental citizens' organizations (ECOs) designed to track the Environment for Europe process. Two quasi-NGOs were also represented: the Regional Environmental Center for Central and Eastern Europe (Magda Toth Nagy) and IUCN (Wolfgang Burhenne). Source: Jeremy Wates.
10. Jeremy Wates, "Towards an ECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-Making." *Environmental Law Network International*, (January 1996), pp. 15–21.
11. See <<http://www.unece.org/env/europe/ppconven.htm>>.
12. "Aarhus Convention Project." Friends of the Earth, London and the Regional Environmental Center for Central and Eastern Europe, Budapest. Research Objectives. Internal document.
13. Since the change of government in Slovakia, for example, environmental law and democracy groups have proposed changes in national legislation that will make it possible for Slovakia to become a party to the Convention. Interview with ETP-Slovakia Staff, June 11, 1999.
14. Convention on Access to Information. . . Op. cit.
15. Jessica Mathews, "Power Shift," *Foreign Affairs*, 76. (Winter 1997): pp. 50–66.
16. Ann Marie Clark. 1995. "Non-Governmental Organizations and Their Influence on International Society." *Journal of International Affairs*. 48 (2) Winter; Leon Gordenker & Thomas G. Weiss. 1995. "NGO Participation in International Policy Process." *Third World Quarterly* 16 (3); Thomas Princen & Mathias Finger, *Environmental NGOs in World Politics*. (Routledge, 1994).
17. Wolfgang H. Reinicke, *Global Public Policy: Governing without Government?* (Washington, DC: Brookings Institution Press, 1998).
18. The European Union has already promulgated directives requiring its member countries to conform to certain of the principles that were subsequently embodied in the Aarhus Convention: in particular, Council Directive 85/337/EEC of June 27, 1985, on environmental impact assessments and Council Directive 90/313/EEC of June 7, 1990, on freedom of access to environmental information.
19. *Doors to Democracy. Currents Trends and Practices in Public Participation in Environmental Decision-Making in Western Europe*. Preface by John Hontelez. (Budapest, Hungary: The Regional Environmental Center for Central and Eastern Europe, 1998).
20. Reinicke, *op. cit.*, 57
21. Convention on Access to Information. . . Op. cit.
22. Convention on Access to Information. . . Article 6. Public Participation in Decisions on Specific Activities.
23. Convention on Access to Information. . . Article 2. Definitions. Article 17. Signature
24. Claudia Saladin, *The Public Participation Convention and Export Credit Agencies*. (Washington, DC: Center for International Environmental Law (CIEL), undated).
25. The Corner House. *Snouts in the Trough. Export Credit Agencies, Corporate Welfare, and Policy Incoherence*. (London: The Corner House, 1999).
26. Tamar Gunter, *Banking on the Environment: Multilateral Development Banks and the Environmental Policy-Making in Central and Eastern Europe*. (Doctoral Dissertation submitted to the Department of Political Science at MIT, February 1999).
27. *The World Bank Annual Report 1997*. (Washington, DC: The World Bank, 1998).
28. See <<http://www.ebrd.com>>.
29. Project Preparation Committee Report to the Fourth Ministerial Conference "Environment for Europe" in Aarhus. June 23–25, 1998.
30. See <<http://www.worldbank.org/html/extdr/prt-strat.htm>>.
31. See <<http://www.eib.org>>.
32. "The European Investment Bank: Accountable to Whom?" (See <http://www.bankwatch.org> January 31, 2000)
33. EIB's governing bodies are the Board of Governors, which is composed of ministers of the member states and a Board of Directors, whose 24 directors are nominated by member states. (See <<http://www.eib.org>>).
34. Convention on Access to Information. . . Op. cit. Article 3 General Provisions
35. Claudia Saladin and Brennan Van Dyke, *Implementing the Principles of the Public Participation Convention in International Organizations*. (Washington, DC: CIEL, June 1998).
36. For more information about how the parties can promote the principles of the Aarhus Convention in the World Trade Organization, the United Nations Economic and Social Council, the European Union, and the European Bank for Reconstruction and Development, see Claudia Saladin and Brennan Van Dyke. *Implementing the Principles of the Public Participation Convention in International Organizations*, 1998.
37. The Second Meeting of the Signatories scheduled for Dubrovnik, July 3–5, 2000, will decide on compliance mechanisms.
38. John Hontelez. "Preface," in *Doors to Democracy: Current Trends and Practices in Public Participation in Environmental Decision-Making in Western Europe*. (Budapest, Hungary: The Regional Environmental Center for Central and Eastern Europe (REC), 1998).
39. Svetlana Kravchenko. "Preface," in *Doors to Democracy: Current Trends and Practices in Public Participation in Environmental Decision-Making in the Newly Independent States*. (Budapest, Hungary: The Regional Environmental Center for Central and Eastern Europe (REC), 1998).
40. See <<http://www.esquel.org/isp>>.
41. "Southern African Countries discuss Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters." INFOTERRA press release, Wednesday, December 16, 1998.



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