

The Democratic Legitimacy of Public-Private Rule Making: What Can We Learn from the World Commission on Dams?



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This article attempts to provide answers to one specific and one general question: How should we evaluate the performance of the World Commission on Dams in terms of its democratic legitimacy? And what does the evaluation of the commission's performance tell us about the legitimacy of global rule making in more general terms? Based on these questions, the article comes to two main conclusions. First (measured in terms of its inclusiveness, transparency, and accountability), the democratic legitimacy of the World Commission on Dams' standard-setting process can be challenged in several ways. Second, the difficulties in determining the commission's legitimacy in relation to other mechanisms of rule making demonstrate that we still lack a theoretical understanding of what the idea of democratic governance beyond the nation-state would entail in practice. Achieving a better understanding of this normative aspect of world politics will remain a major task for contemporary political theory. **KEYWORDS:** global governance, World Commission on Dams, rule making, democracy, accountability.

“Breathless and fragmented, the world lurches into the new millennium.”¹ The opening words of the German Advisory Council on Global Change's 2000 annual report point to some of the great challenges humanity is facing at the beginning of the twenty-first century. One of these challenges lies in increasing humanity's capacity to cooperate and to act collectively and consciously to bring about a sustainability transition. Global institutions—and among them global rules—that address issues such as climate change, the loss of biodiversity, and the environmental and

social impacts of world trade will play a crucial role if such a transition is to succeed. The last decade has seen tremendous academic effort put into explaining and understanding the effectiveness of international environmental institutions. As a result, our knowledge of when and how international cooperation is likely to be effective has increased significantly. What research has largely failed to address is the question of the legitimacy of global rule making and, as a result of this failure, the role of legitimacy in determining the impact rules have on changing actors' behavior.

In this article, I argue that the World Commission on Dams (WCD) serves as a good starting point for learning about the legitimacy of global rule making. Established in 1998 as a trisectoral network that included members of governments, civil society, and business, the WCD in its two-year deliberations developed a catalog of principles and guidelines for future dam building. The commission has often been praised as a blueprint on which future decisionmaking processes may be modeled, and the claims made on behalf of its flexibility and inclusiveness render it an interesting case for analysis. Furthermore, due to its rather informal character, the commission's impact ultimately rests on the success of its own claims to legitimacy. In other words, because its recommendations are not legally binding, their implementation will depend on the acknowledgment of the WCD process as fair and, to the extent possible, democratically legitimate. Because of this latter aspect, the WCD process lends itself to an analysis of its democratic legitimacy. In turn, such a discussion of the WCD's legitimacy constitutes an adequate starting point for the more general discussion about what we should consider appropriate standards for evaluating democratic performance beyond the nation-state—a question political philosophy has yet to address in depth.

In short, I attempt to provide answers to one specific and one general question: How should we evaluate the performance of the World Commission on Dams in terms of its democratic legitimacy? And what does the evaluation of the commission's performance tell us about the legitimacy of global rule making in more general terms? I come to two main conclusions. First, evaluated according to absolute standards of democratic legitimacy, the WCD, although successful in some areas, can be criticized on several grounds. Second, the difficulties in determining the commission's legitimacy in relation to other mechanisms of rule making demonstrate that we still lack a theoretical understanding of what the idea of democratic governance beyond the nation-state would entail in practice.

The World Commission on Dams: Mandate, Design, and Decisionmaking Process

Despite its short existence, the WCD has become a reference point for scholars and practitioners alike. Proponents of public-private partnerships praise it as a model on which future transnational institutions should be built, and governments as well as nongovernmental organizations (NGOs) have started to refer to the WCD's recommendations in their day-to-day work. The mandate, institutional design, and results of the WCD are briefly summarized in the following paragraphs.

The idea to set up a WCD goes back to a stakeholder workshop convened in 1997 by the World Bank and the World Conservation Union (IUCN) in Gland, Switzerland.² The background for convening the workshop was the controversy surrounding international dam building. Although large dams had been considered as effective, clean, and largely harmless instruments of energy and development policy until the early 1970s, this perception changed in the mid-1970s. Protests by environmental and human rights activists became more powerful, and the public became increasingly aware of the problems associated with large dams. More and more often, protest movements succeeded in hindering or even stopping large dam projects. However, the deadlock between proponents and opponents of large dams involved a high cost to both sides. While governments and private businesses were often prevented from starting new projects, dam opponents invested their resources into the battle against large dams. Finally, multilateral development banks such as the World Bank became the target of the critics because they had been acting as the main lending agencies for large dam projects until the 1970s.³

At this stage, the World Bank and IUCN decided to bring both sides back to the table. As a starting point, the Gland workshop's main objectives were to discuss a World Bank paper on large dams⁴ and to elaborate on guidelines for a further study to be carried out by the Bank. However, the participants went beyond this agenda and suggested setting up an independent commission, thus addressing a prominent call by dam opponents. With regard to the commission's mandate, the workshop participants agreed that it should first provide a global overview of the development effectiveness of large dams and their alternatives and subsequently develop internationally acceptable standards, guidelines, and decisionmaking criteria for the planning, evaluation, building, monitoring, operation, and decommissioning of large dams.⁵

This mandate and the background of the large dams debate guided the structure and the process of the WCD. At the center of the WCD process

was the twelve-member commission itself, which was established to guide the global inspection of the development effectiveness and to develop guidelines for future projects. Although the commissioners should not see themselves as representatives of particular interest groups, their selection by an “interim working group” consisting of World Bank and IUCN staff, plus a number of participants of the Gland workshop, was strictly guided by criteria of balanced representation.⁶

A secretariat staffed by ten professionals and based in Cape Town, South Africa, supported the commission. In addition, the WCD Forum consisting of seventy stakeholders served as a sounding board⁷ for the commission’s work. The commission made use of this sounding board on two occasions—the forum meetings in Prague (March 1999) and in Cape Town (April 2000). A number of forum members also provided further services, such as commenting on papers prepared for the WCD Knowledge Base.

The WCD commissioned the Knowledge Base to provide an appropriate information base for the commission’s final report. The work program for the Knowledge Base comprised eight case studies; three country studies; seventeen thematic reviews on social, ecological, economic, financial, and institutional aspects of large dams; four regional consultations—in Colombo, São Paulo, Cairo, and Hanoi; and a so-called cross-check survey that included quantitative data on 125 dams. The secretariat also received 947 submissions from individuals or institutions.⁸ As a result, the WCD Knowledge Base, which has been made available to the public via the World Wide Web (www.dams.org), is widely considered to be the most comprehensive analysis of the consequences of large dams so far.

In November 2000, the commission presented its final report, *Dams and Development: A New Framework for Decision-Making*, in London. In the report, the commission concludes that the majority of the 45,000 large dams built so far have either failed to fulfill the expectations associated with them or that they have had far more detrimental consequences than had been foreseen in the planning phase. According to the report, social and ecological consequences in particular were given only marginal consideration in the planning of many large dams. The report estimates the overall number of displacements due to large dam projects to be between 40 and 80 million people. In its guidelines for future dam building, the commission recommends an approach that gives particular emphasis to rights and risks of affected people. In addition, the commission defines five core values that should guide decisions with regard to future projects. These values—equity, efficiency, participatory

decisionmaking, sustainability, and accountability—are translated into seven strategic priorities, which are then further specified in the form of twenty-six sets of guidelines.⁹

The report of the WCD found a mostly positive echo in the international public.¹⁰ In particular, the commission was praised for agreeing on a common document despite the existing controversies. The substance of the commission's contribution was also welcomed by many. For instance, civil society groups approved the report's emphasis on the numerous social and ecological consequences of large dams and on the lack of consideration given to these outcomes in past projects. However, industry organizations lamented that the benefits of many large dams had not been given enough consideration in the commission's report. Finally, reactions from governments were mixed. Whereas governments from industrialized countries welcomed the guidelines, some government representatives from developing countries felt that they were too strict and that they endangered the development potential of developing countries.¹¹ Whereas a follow-up process to the WCD has been established under the umbrella of the United Nations Environment Programme (UNEP) in order to continue the dialogue,¹² dam builders and operators, whether actually or rhetorically, have already begun to use the recommendations of the commission as a point of reference. In this way, these actors contribute to creating and strengthening an international norm dynamic along the values and guidelines established by the WCD.¹³

Public-Private Rule Making: Understanding the World Commission on Dams

What are we to make of this commission? In what terms should we evaluate or analyze its efforts? According to one interpretation, the WCD constitutes no more than a largely self-selected body of twelve more or less senior persons, falling roughly into one camp with previous efforts such as the Brandt Commission, the Brundtland Commission, or the Commission on Global Governance. According to this optic, *Dams and Development* is, above all else, an issue-specific sequel to *North-South: A Program for Survival*; *Common Crisis: North-South Cooperation for World Recovery*; *Our Common Future*; or *Our Global Neighbourhood*.¹⁴

According to a second interpretation, however, the commission is not so much an eminent persons body but rather a public-private partnership that has vested itself with the authority to devise a normative framework for future dam building. The WCD process should be regarded as an

instance of transnational rule making that has functional similarities to multilateral environmental negotiations or to the establishment of international soft law. Its main distinction from the latter is that the actors involved are not governments but (mainly) nonstate individual or collective actors. Stated differently, the WCD can be seen as an instance of usurpation of rule-making authority by actors that usually do not dispose of such authority in world politics.¹⁵

Analytically, this reading comprises two arguments that need further specification. First, it considers the WCD process an instance of transnational or global rule making; and, second, it specifies the form in which this rule-making process is organized as a process in which both public and private actors are engaged. As to the first of these two arguments, the core assumption is that the WCD's main function was to establish transnational rules for future dam building. If we conceptualize rules as consciously devised and relatively specific commands for behavior whose normative authority is such that a certain level of compliance can reasonably be expected, then the guidelines developed by the WCD can be regarded as a set of such rules. First, their establishment is based on a conscious effort insofar as the commission's explicit mandate was to devise internationally acceptable standards. Second, the guidelines formulated by the commission are fairly specific—see, for instance, the recommendation that project-level impact assessments “should include an Environmental Impact Assessment, a Social Impact Assessment, a Health Impact Assessment . . . and Cultural Heritage Impact Assessment” and that the “assessments should be sufficiently detailed to provide a pre-project baseline against which post-project monitoring results can be compared.”¹⁶ Third, the evidence that is available suggests that the guidelines do make a difference inasmuch as they constitute a normative and discursive frame of reference for current and future large dam projects. In other words, deviations from the WCD guidelines now demand justification.

The second argument further specifies the process by which these rules were put into place as a *public-private* rule-making process. This specification distinguishes the WCD process from other global rule-making processes that are usually *public*, that is, involving—at least at the final decisionmaking stage—mainly or exclusively governments. Hence, governments have concluded common normative or regulatory frameworks for many issue areas, including multilateral agreements on the protection of the ozone layer, the conservation of biological diversity, and the dumping of waste into the world's seas, to name only a few.

If international agreements are the common way to devise global rules on the environment, then why did rule making in the case of large dams take on a different form? The precondition for any agreement is that

a “zone of agreement” exists. In other words, a certain convergence of interests among those who are expected to agree is required. Given the fact that two prominent examples of (public-)private rule making—the Forest Stewardship Council (FSC) and the WCD—have emerged in issue areas where the lack of such a zone of agreement has largely ruled out multilateral agreements, it seems a plausible assumption that (public-)private rule-making processes have entered the stage as a result of the failure of public rule making. Thus, whereas in the area of forestry governments of countries on whose territory most of the world’s forests are located are unwilling to see their authority to decide about the appropriate use of their natural resources restricted, governments of countries with a high potential for hydropower equally consider dam building a domestic issue and are reluctant to see their sovereignty constrained by international regulation. Consequently, while efforts to conclude a multilateral treaty on forest management have been going on without significant progress since at least the early 1990s, negotiations on an international agreement on large dams have not even been on the international agenda.

In both areas, this alternative reading of the WCD process would argue, those social forces that acknowledged the lack of a zone of agreement for concluding a multilateral treaty, but that nonetheless continued to see a global regulatory framework as serving either their own interests or the “common good,” have established other channels for pursuing their goals. In one case—the WCD—interests converged among the World Bank, the World Conservation Union, and a number of business and civil society organizations, thus allowing for a network of like-minded—at least in the sense that agreement would be better than disagreement—public and private actors; in the other case—the FSC—a network of business corporations and civil society organizations had to do without the support of the public sector.¹⁷

Democratic Legitimacy: Evaluating the WCD Process

How we evaluate the commission’s work will eventually depend on how we interpret it. I have argued above that one reasonable interpretation is to conceive of the WCD process as an instance of transnational rule making that is functionally similar to intergovernmental rule making although differing from the latter in its composition: the main decisionmakers are not governments but a variety of (inter)governmental as well as nongovernmental actors.¹⁸ If the WCD is interpreted as such a rule-making body, then questions of efficiency, effectiveness, and

legitimacy arise almost automatically. In the discussion that follows, I focus on the latter category—that is, on the commission’s legitimacy—because I believe that it is here that the emergence of public-private transnational rule making poses the most serious challenges to our thinking about world politics.

As David Held once observed, “Democracy seems to have scored a historic victory over alternative forms of governance. . . . [It] bestows an aura of legitimacy on modern political life: laws, rules and policies appear justified when they are ‘democratic.’”¹⁹ What is true for domestic politics has, however, not yet been accepted as a constitutive element of governance beyond the nation-state. Can or should international politics be organized democratically? And if so, what would this mean in practice? These questions, though crucial to many activists, have not yet been fully appreciated by scholars of International Relations. In contrast, the discipline has for a variety of reasons long refrained from normative theorizing; where it has not refrained, it has largely focused on the big questions of just war, human rights, and distributive justice.²⁰

Only recently has transnational democracy become a more popular subject of scholarly debate. Triggered and supported by the “third wave of democratization,” by the debate surrounding the European Union’s “democratic deficit,” by the report of the Commission on Global Governance, and by other events, a number of articles and books on the subject have been published. Without paying too much attention in this article to the details of the various approaches to democratic governance beyond the nation-state, I discuss in the remainder of this section the efforts, achievements, and shortcomings of the WCD in terms of three core concepts of democratic governance: inclusiveness, transparency, and accountability. These concepts play an important role in almost every account of democratic governance, although their relative weights may vary among different theoretical approaches.²¹ The discussion reveals that the WCD—representative of public-private rule making in general—has two major shortcomings and one advantage compared to the more traditional way of intergovernmental rule making.

Inclusiveness

The WCD’s efforts to achieve a high degree of inclusiveness were based on two main pillars. First, starting with the workshop organized by IUCN and the World Bank, the principle of balanced representation of governments or (inter)governmental agencies, industry, and civil society

characterizes most WCD organs. In addition to the Gland workshop, where invitations were sent out to the organizations, which then named their representatives, balanced representation was thus crucial with regard to the choice of the commissioners and to the composition of the WCD Forum.²²

As a second pillar, the work program to create an extensive knowledge base constituted the most encompassing opportunity to engage stakeholders, in particular at the local level, in the commission's work. Within the framework of this work program, the case and country studies, the thematic reviews, and the regional consultations provided opportunities for stakeholder participation. Thus, in each of the eight case studies, participation was guaranteed through two on-site meetings. A first meeting was designed to give local stakeholders a chance to discuss the case study design and to point to potential shortcomings. The second meeting intended to deliver the same service with regard to the preliminary results of the study.²³ Although some studies show that the opportunity to incorporate the experiences of a broad base of local stakeholders was indeed made use of,²⁴ other case studies appear to have been less participatory.²⁵

For the thematic reviews, participatory elements were largely restricted to the review authors' interviews with stakeholders,²⁶ the occasional incorporation of public submissions,²⁷ and—as with all products of the WCD's Knowledge Base—the review process in which forum members and external consultants could comment on the draft versions of the respective texts.²⁸ In addition, two of the thematic reviews made use of Internet conferences.²⁹ Finally, the four regional consultations constituted a further opportunity for participation by a broader stakeholder base. The consultations allowed the commissioners to learn about different regional perspectives. The WCD secretariat selected the contributions to these regional consultations, which again meant that the WCD was in charge of securing a balanced representation of the various sectors.³⁰

In sum, by making use of a variety of instruments, the WCD managed to mobilize a fairly broad range of stakeholders and to give voice to interests often marginalized in other settings, such as intergovernmental forums. However, a strong principle of democratic self-determination would require that, besides the mere existence of a forum for participation, seriously affected people have (roughly) equal access to the decisionmaking process. Here, three shortcomings of the WCD process are worth mentioning.

First, the definition of public actors, business, and civil society as the core stakeholder categories obscures important differences within these sectors. Thus, as the examples of women and of project-affected people

show, these categories are by no means the only ones that come to mind. Women, for instance, were underrepresented in nearly all parts of the WCD process. This holds true for the Gland workshop, of whose thirty-seven participants no more than two were female,³¹ as well as for the WCD Forum, in which, according to one participant, a “technocratic bias in the overall discourse” marginalized gender issues.³² Although a third of the commissioners were women, it has been argued that all of them—except for the Chinese governmental representative, Shen Guoyi, who withdrew from the commission after one year in office—represented civil society organizations and were thus in a relatively weaker position than their male counterparts.³³ This nonconsideration of women as a stakeholder category in its own right is particularly striking in light of the issues discussed. For instance, women are commonly identified as one of the most important stakeholder groups in the field of water use and water management, and their role is acknowledged in Principle 3 of the Dublin Statement on Water and Sustainable Development adopted in the run-up to the United Nations Conference on Environment and Development (UNCED) in 1992.³⁴

In addition, the total number of people affected by the project is usually much larger than the number of people threatened with displacement. In particular, the consequences, positive as well as negative, downstream of the dam are often distributed over large and diverse groups of people. Since these groups are difficult to organize, their interests are in danger of being given only little attention.³⁵ While the WCD has covered this aspect in the composition of its Knowledge Base and in its four regional consultations, its failure to include these groups more directly in the WCD process points to the normative problems inherent in the definition and selection of stakeholder groups.³⁶

A second criticism can be raised against the WCD’s stakeholder approach, which essentially rests on the assumption that all identified stakeholder interests ought to be treated as equally important and legitimate. Thus, within the process, no distinction is made between the interests of the private sector—which, at least in the case of publicly funded dam-building projects, has only a secondary role, as a contractor—and (groups of) people who are directly and seriously affected in their individual or group rights. Whereas the legitimacy of participating governments, at least where they are democratically legitimated, raises the least concerns, civil society participants can, in some cases, invoke specific rights—for instance, when a dam project threatens the cultural foundations of a community. In contrast, it is much harder to make the case for the democratic legitimacy of private sector

participation in the WCD process. The fact that such legitimacy is not readily recognizable points to a general shortcoming in the literature on global public policy networks.³⁷ In contrast to Wolfgang Reinicke, I would argue that it is by no means “immediately obvious that the involvement of nonstate actors itself contributes to a reduction in the democratic deficit.”³⁸ Instead, the definition of legitimate participants is itself a central as well as problematic element of democratic theory and practice. Here, the stakeholder rhetoric, by conceptually leveling the interests of individuals or groups with different qualities of affectedness, conceals that not all interests are necessarily equally legitimate.³⁹

Finally, it has been argued that in the early phase of the WCD process, the necessary publicity was missing in order to widen the discussion about the work program to a larger number of stakeholders. Although the secretariat made different drafts available on the WCD’s Internet pages and invited comments, this Internet forum was at that time little known so that the comments that were received reportedly originated mostly from a network of people closely associated with the WCD staff. The participation of stakeholders increased in the later stages of the WCD process—that is, after the framework for creating the Knowledge Base had been defined. However, the resources for incorporating the public submissions into the commission’s work were generally scarce throughout the commission’s lifetime.⁴⁰

Transparency

“We pride ourselves on our transparency.”⁴¹ As these words by WCD chair Kader Asmal indicate, the WCD set itself high standards in terms of the transparency and openness of its decisionmaking process. It attempted to meet these standards by informing via electronic mail, regular mail, and the World Wide Web as large a group of stakeholders as possible about the options for participation in the WCD process. In addition, parts of the work program, such as the terms of reference for external studies, or drafts and final versions of the thematic reviews and case studies, were circulated widely. Most documents were made available on the Internet, and regional consultations as well as local meetings provided direct contact between the WCD and its stakeholders.⁴²

As in the previous case, the successes are also accompanied by a number of deficits. As mentioned above, information was initially made available relatively late, which meant that potential stakeholder reactions could not be incorporated in the early days of the WCD process.⁴³ Second, it was not always clear how the commission intended to deal with the input it received from the various groups. On the part of

the stakeholders, this lack of strategy and/or communication led to rather high expectations that the commission was unable to meet. A prominent example is the forum's dissatisfaction over the fact that the commission was not ready to share and discuss a draft version of its final report with forum members. However, the limited resources of the WCD secretariat and of the authors of the various studies and reviews certainly did not allow for the stakeholder input—in particular, the more than 900 public submissions—to be systematically evaluated and incorporated into the commission's work.⁴⁴ Third, although the procedures to become a member of the forum were transparent insofar as they were based on an invitation by the secretariat, the criteria for being invited were less transparent. Fourth, the WCD's Internet-based information policy certainly helped reach a large number of potentially interested people at relatively low cost. At the same time, it systematically favored stakeholders with access to this communication technology. In the case of the dams debate, it is reasonable to assume that this group constitutes only a small minority of seriously affected people.⁴⁵ Language barriers present a similar problem—the contributions to the Knowledge Base were usually made available only in English, which again systematically disadvantages certain stakeholder groups.⁴⁶ Finally, the deliberations of the commissioners were not open to the public, and the protocols of their meetings were not publicly accessible.

Accountability

In terms of its political accountability, the WCD process did not include any substantive formal control mechanisms. However, the existence of informal control mechanisms partly compensated for the absence of formal accountability. Most importantly, given the lasting conflict that constituted the background of the WCD, the commission depended on its process and products eventually being acceptable to the most relevant conflict parties. In this regard, the WCD Forum was intended to play a major role.

The WCD Forum served the commissioners as an institutionalized instrument “to receive feedback on their ongoing work.”⁴⁷ Comprising some seventy organizations, this broadened reference group constituted a control mechanism through which the commission could test its arguments and results. For this purpose, the WCD process envisaged two forum meetings. The first meeting, in March 1999 in Prague, served to establish and formalize the interaction between various actors and to discuss the WCD's work program. At a second meeting, in Cape Town in April 2000, the discussions focused on the core elements and on those results of the work

program that were already available at the time of the meeting. Although the forum met its function as a control mechanism, the same reservations that were expressed with regard to the participation in other parts of the WCD process could also apply to the WCD Forum. Thus, women were again underrepresented, and forum members only covered stakeholders from certain regions while stakeholders from other regions with extensive dam-building activities, such as Turkey, were not represented.⁴⁸

Despite these shortcomings, there are good reasons not to regard the WCD's record in the field of accountability as a complete failure. These reasons stem from the acknowledgment that public-private rule making is in one important respect—namely the degree of formality attached to its results—different from intergovernmental rule making. Thus, rather than being legally binding on individuals, states, or other collective actors as such, the WCD's guidelines rely on an aura of legitimacy to have an effect on actual decisionmaking. I have argued above that the normative framework established by the commission seems to have acquired the status of a discursive frame of reference against the background of which current or future plans to build large dams will have to be justified. However, this status is contingent rather than permanent, and it ultimately rests on the success of the WCD's own claim to legitimacy. This claim may be criticized and, where the criticism is successful, “de-legitimated” so that the status of the commission's guidelines can eventually be understood as a function of its relative success in the discursive struggle for legitimacy.

In addition, one observer has argued that the commission's guidelines to be effective need to be incorporated into national practice. Since this national practice will be, at least as far as democratic political systems are concerned, open to public scrutiny and to challenges from citizens, the WCD process could ultimately be regarded as only a temporary “de-centering” of decisionmaking that is later “re-centered,” thereby not posing too big a challenge to our ideas about political accountability.⁴⁹

Conclusion: What Can We Learn from the World Commission on Dams?

As with virtually every rule-making process, the WCD process has a mixed record if evaluated according to absolute or ideal standards of democratic legitimacy. Although the process achieved a relatively broad participation of affected actors, established an informal control mechanism in that the implementation of its recommendations rests on the support of the major stakeholder groups, and made most information

about the WCD process available on the Internet, a number of shortcomings should be mentioned.

Most importantly, the definition of the relevant stakeholder categories by the WCD's initiators stands out as problematic. Despite the fact that the basis for inclusion was relatively comprehensive, the division of stakeholders into the three categories of (inter)governmental, business, and civil society actors does not adequately reflect the actual patterns of affectedness. The examples of women and "other project-affected people" as possible additional stakeholder categories illustrates the implications of these shortcomings. The fact that a small and select group of insiders effectively decided what constituted stakeholder groups—and based on this definition, the decision about participants in the WCD—can, from the perspective of democratic theory, hardly be legitimated. In addition, the WCD process granted all interests equal treatment, whereas a rights-based approach such as the one eventually suggested for future decisionmaking by the commission itself would have required a much more differentiated consideration of whom to include and in what ways.

Although these results largely confirm the findings of previous research on public-private rule making—most notably Jennifer Clapp's analysis of the ISO 14000 process⁵⁰—it may appear harsh to criticize the WCD against the background of such ideal standards.⁵¹ Rather, it could be argued, the evaluation should be relative; that is, it should involve a comparison between the WCD as an instance of public-private rule making and an intergovernmental negotiation process as an instance of public rule making. Clearly, such a comparison has its difficulties because the same standards may not be applicable to both processes. The result of any such comparison is thus likely to be that both processes suffer from *different kinds of democratic deficits*. For instance, whereas public-private rule making may be more inclusive than intergovernmental processes, it suffers from the lack of formal accountability. It may also, unlike intergovernmental processes of negotiation, suffer from a different kind of democratic deficit in that those who speak for NGOs or businesses are not elected and can therefore be expected to be less responsive to the constituencies they claim to represent.⁵² Finally, since the degree to which the rules of the two types of rule making are binding on states or other individual or collective actors varies, it would be far from trivial to determine how much procedural legitimacy both types of rule making require in order to be acceptable to an enlightened public.

These difficulties in determining the commission's legitimacy *in relation to other mechanisms of rule making* demonstrate, above all else, that we are still far from theoretically understanding what the idea of democratic governance beyond the nation entails in more practical and

concrete terms. Thus, the normative evaluation of world politics faces similar challenges as its empirical analysis. For the latter, James Rosenau has observed that the conceptual toolkits with which we approach the subject matter, since they stem from an era in which world politics and international politics were more or less equivalent, preclude a better understanding of the main driving forces, dynamics, and contradictions of governance beyond the nation-state. To overcome the obstacles, Rosenau suggests that we reconsider our conceptual frameworks and readjust them to a changing world. Speaking no more of international politics, but rather of global governance, Rosenau has contributed much to generating a research agenda that aims at adjusting our conceptions about world politics to the transformations of the contemporary social world.⁵³

Given these parallel challenges of empirical and normative political research and the common sources that generate them, it seems imperative to widen the agenda of global governance research to include normative considerations such as the ones presented in this article. Unless we gain a better understanding of the idea of democratic governance beyond the nation-state, we will remain unable to face some of the challenges outlined in the introductory section. Achieving a better understanding of the normative foundations of world politics will therefore remain an important challenge for political theory. 🌐

Notes

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13. Development Today, “Sweco Wins Environmental Management Contract for Song Hinh Dam,” *Development Today* 11, no. 4: 8; Himanshu Thakkar, “Large Dams Under the Microscope,” *Himal Southasian* (April 2001), available online at www.dams.org/media/mediaitem.php?item=269 (accessed 8 April 2002). A similar impact was also confirmed by a senior staff member of the German Federal Ministry for Economic Cooperation and Development in a personal communication on 5 April 2002.

14. Marina Ottaway, “Corporatism Goes Global: International Organizations, Nongovernmental Organization Networks, and Transnational Business,” *Global Governance* 7, no. 3 (2001): 265–292.

15. I admit that this is a somewhat sketchy characterization of the differences between public-private and public rule making. Thus, a further distinctive feature of public-private rule making is that it cannot establish *legally binding* rules. However, the observation that nonbinding guidelines and norms set by public-private bodies are being observed by states, and the experience that norms of soft law may serve as the foundation for later efforts to establish internationally binding rules—as, for instance, in the case of the OECD guidelines on the trade in hazardous waste and the Basel convention—provide strong reasons for examining the democratic legitimacy of the processes by which they are generated. I am grateful to an anonymous reviewer for *Global Governance* for this observation. See also more generally A. Claire Cutler, Virginia Haufler, and Tony Porter, eds., *Private Authority and International Affairs* (Albany: SUNY Press, 1999).

16. World Commission on Dams, *Dams and Development*, p. 283.

17. In addition, the existence of transnationalized alliances on both sides of the dispute and the traditionally domestic nature of dam projects also account for the public-private character of the WCD. I am grateful to an anonymous reviewer for *Global Governance* for this observation. See also Ken Conca, “The World Commission on Dams and Trends in Global Environmental Governance,” *Politics and the Life Sciences* 21, no. 1: 67–70.

18. This does not, of course, rule out the possibility of further interpretations

that may differ from the one I have given in the previous section. Other interpretations might, for instance, put more emphasis on the advisory nature or on the mediating role of the WCD. In accordance with these interpretations, the normative evaluation of the WCD process would then have to follow different sets of criteria.

19. David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995), p. 3.

20. See generally Andrew Hurrell, "Norms and Ethics in International Relations," in Walter Carlsnaes, Thomas Risse, and Beth A. Simmons, eds., *Handbook of International Relations* (London: Sage, 2001).

21. For a theoretical discussion, see Klaus Dingwerth, "When Is Transnational Rule-Making Legitimate?" paper prepared for the 45th Annual Convention of the International Studies Association, Montreal, 17–20 March 2004.

22. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* pp. 44–46, 68–69.

23. World Commission on Dams, WCD Work Programme, Annex #1: Focal Dams/Basin Case Studies 1999, available online at www.dams.org/about/wp_ov_anx1.htm (accessed 5 April 2002).

24. Soils Incorporated (Pty) and Chalo Environmental and Sustainable Development Consultants, *Kariba Dam Case Study: Prepared as an Input to the World Commission on Dams* (Cape Town: WCD, 2000), available online at www.dams.org; World Commission on Dams, Kariba Dam Scoping Meeting, minutes (5–6 August 1999, Kariba Town, Zimbabwe), available online at www.dams.org/studies/zz/finalscope_meeting.htm (accessed 5 April 2002).

25. See, for example, Norwegian Institute for Nature Research and Eastern Norway Research Institute, *The Glomma and Laagen Basin, Norway: Case Study Prepared as an Input to the World Commission on Dams* (Cape Town: WCD, 2000), available online at www.dams.org.

26. Resolve Inc. et al., *Participation, Negotiation and Conflict Management in Large Dams Projects: Thematic Review V.5 Prepared as an Input to the World Commission on Dams* (Cape Town: WCD, 2000), available online at www.dams.org.

27. Angela Cropper, Daniel Bradlow, and Mark Halle, *Regulation, Compliance and Implementation: Thematic Review V.4 Prepared as an Input to the World Commission on Dams* (Cape Town: WCD, 2000), available online at www.dams.org; Barry Sadler, Iara Verocai, and Frank Vanclay, *Environmental and Social Impact Assessment for Large Dams: Thematic Review V.2 Prepared as an Input to the World Commission on Dams* (Cape Town: WCD, 2000), available online at www.dams.org.

28. See World Commission on Dams, WCD Work Programme, Annex #3: Thematic Reviews, available online at www.dams.org/about/wp_ov_anx3.htm (accessed 5 April 2002).

29. See Bruce Aylward et al., *Financial, Economic and Distributional Analysis: Thematic Review III.1 Prepared as an Input to the World Commission on Dams* (Cape Town: WCD, 2001), available online at www.dams.org; Sadler, Verocai, and Vanclay, *Environmental and Social Impact Assessment for Large Dams*.

30. Cf. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* pp. 81–84; World Commission on Dams, *Summary of South Asia Consultation*, Colombo, 10–11 December 1998 (Cape Town: WCD, 1998), available online at www.dams.org; World Commission on Dams, *Large Dams*

and Their Alternatives in Africa and the Middle East: Experiences and Lessons Learned, Summary Report of the Regional Consultation of the World Commission on Dams, Cairo, 8–9 December 1999 (Cape Town: WCD, 1999), available online at www.dams.org; World Commission on Dams, *Large Dams and Their Alternatives in Latin America: Experiences and Lessons Learned, Summary Report of the Regional Consultation of the World Commission on Dams*, São Paulo, 11–12 August 1999 (Cape Town: WCD, 1999), available online at www.dams.org; World Commission on Dams, Summary of East/South East Asia Consultation, available online at www.dams.org/consultations/esea/summary.htm (accessed 24 March 2002).

31. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* p. 33.

32. Shalmali Guttal, WCD Assessment: Reviewer Comment, available online at www.wcdassessment.org/comments/guttal.html (accessed 19 March 2002).

33. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* pp. 41–42. However, the author's interviews with several commission members suggest that the commissioners themselves did not experience a strong gender bias in the deliberations of the commission.

34. See, for example, *ibid.*, p. 47.

35. Cf. Thayer Scudder, "Social Impacts of Large Dams," in IUCN and World Bank, *Large Dams*, pp. 41–68.

36. On the general problems related to the selection of participants in multistakeholder processes, see also Minu Hemmati, "The World Commission on Dams as a Multi-Stakeholder Process: Some Future Challenges," *Politics and the Life Sciences* 21, no. 1: 64. Hemmati conceives of the WCD process as having been rather successful in meeting the normative challenges of participant selection.

37. See Francis C. Deng and Wolfgang H. Reinicke, *Critical Choices: The United Nations, Networks, and the Future of Global Governance* (Ottawa: IDRC, 2000).

38. Wolfgang H. Reinicke, *Global Public Policy: Governing Without Government?* (Washington, D.C.: Brookings Institution Press, 1998), p. 101.

39. Ramaswamy R. Iyer, "World Commission on Dams and India: Analysis of a Relationship," *Economic and Political Weekly* 36, no. 25: 2275–2281.

40. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* pp. 56, 66.

41. Kader Asmal, "To Dam or Not to Dam?" *International Water Power and Dam Construction* (July 2000): 44–45.

42. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* See also www.dams.org.

43. World Commission on Dams, *Interim Report*, p. 27.

44. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* p. 123.

45. According to one source, the share of people with access to the Internet is 59 percent in the United States and 36 percent in Germany, but only 3 percent in China, 0.67 percent in India, and 0.02 percent in Congo. Bernd Graff, "Das Hirn-Meer: Netz-Visionäre träumten von einem globalen Paralleluniversum: Wie sieht die Realität aus?" (Net visions are dreaming of a global parallel universe: What does reality look like?) *Süddeutsche Zeitung*, 31 August–1 September 2002, p. 11.

46. Cf. Dubash, Dupar, Kathasi, and Lissi, *A Watershed in Global Governance?* p. 69.

47. *Ibid.*, p. 46.

48. On the WCD Forum, see World Commission on Dams, *The WCD Forum*, World Commission on Dams, *Annotated Agenda: Second WCD Forum Meeting: Sharing the Knowledge—Charting the Future*, 6–8 April 2000, available online at www.dams.org/events/forum_ct_open.htm (accessed 24 March 2002); World Commission on Dams, *Project and Financial Report: May 1998–April 2001* (Cape Town: WCD, 2001), p. 5. The third forum meeting (February 2001), in Spier Village near Cape Town, served to discuss the final report and possible follow-up measures; see World Commission on Dams, *Final WCD Forum—Report, Responses, Discussions and Outcomes: Third WCD Forum Meeting, The Spier Village, Cape Town, 25–27 February 2001* (Cape Town: WCD, 2001), available online at www.dams.org.

49. Ken Conca, “Old States in New Bottles? The Hybridization of Authority in Global Environmental Governance,” in Robyn Eckersley and John Barry, eds., *The State and the Global Ecological Crisis* (Cambridge: MIT Press, forthcoming 2005).

50. Jennifer Clapp, “The Privatization of Global Environmental Governance: ISO 14000 and the Developing World,” *Global Governance* 4, no. 3: 295–316.

51. Thus, it could be argued that the WCD had to balance a variety of priorities and that, in addition to legitimacy concerns, it had to deal with the challenge of effectiveness, with a limited budget, and with satisfying the interests of its funders and of various stakeholder groups. Given all that, the need for some trade-offs should be apparent, and a criticism according to absolute standards may seem to miss the point. Acknowledging the need for trade-offs, however, does not render the identification of potential democratic deficits obsolete. In contrast, some trade-offs can only be detected on the basis of such an identification.

52. I am grateful to Joshua Busby for this observation.

53. James N. Rosenau, “Toward an Ontology for Global Governance,” in Martin Hewson and Timothy J. Sinclair, eds., *Approaches to Global Governance Theory* (Albany: SUNY Press, 1999).

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