

Forum

Transparency Under Scrutiny: Information Disclosure in Global Environmental Governance

*Aarti Gupta**

Transparency: An Overused but Underanalyzed Concept?

Transparency is a key concept of our times. The need for transparency is routinely invoked in areas as diverse as human rights, monetary policy and security, as well as the environment. Transparency as a moral and political imperative is closely associated with goals such as accountable, inclusive, legitimate and democratic governance. Yet, while these latter concepts have been subjected to much scrutiny, it is striking how under-analyzed the notion of transparency remains, particularly in writings within global environmental politics.

The few scholars who have written explicitly about transparency in the global environmental realm have discussed the concept in relation to information flows about state behavior in complying with international environmental regimes. The central claim is that states need to be transparent about their behavior as a way to enhance regime effectiveness.¹ Yet transparency as a key political project goes beyond this. There is a compelling need to investigate the growing pervasiveness of the call for transparency in global environmental governance, one which extends beyond state-led international environmental regimes to private and market-based governance as well.² In addition, the assumed link between transparency and legitimate and democratic governance—not only effective governance—requires more critical scrutiny. It is timely, I argue, to explore the nature and implications of a transparency turn in global environmental governance.

I focus in this article on information disclosure as one concrete operation-

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1. Mitchell 1998.

2. For one of the only existing analyses in this vein, to my knowledge, see Langley 2001.

alization of transparency in the global environmental domain. In a domestic context, information disclosure has been described as a third wave in environmental governance, termed “regulation by revelation” by Florini.³ Arguably, such a third wave is becoming ever more important in the global environmental realm as well. Moreover, it extends beyond state-led regulation-by-revelation to include a range of private information disclosure initiatives.

A growing variety of such “governance-by-disclosure” initiatives can be identified in the global environmental domain. These include the Aarhus Convention on access to environmental information⁴ as well as a range of prior informed consent-based treaties governing global flows of pesticides, hazardous waste, biodiversity or genetically modified organisms. Private eco-labeling schemes in forestry, fisheries or organic food are also based upon information disclosure, as are various corporate social responsibility-related voluntary initiatives, including the Global Reporting Initiative (calling for sustainability reporting by private corporations) or the NGO-led Publish What You Pay initiative (calling for disclosure of revenue earnings by extractive industries operating in resource-rich developing countries). Information disclosure is also central to NGO-led and other efforts to enhance accountability of international organizations, such as the World Bank or the World Trade Organization.

Each of these initiatives has been much analyzed in its own right and from a variety of perspectives. Viewed through a governance-by-disclosure lens, they vary in multiple ways, including who is pushing for disclosure, about what, from whom, and to what end. As a cursory glance at these initiatives reveals, there are now multiple architects and promoters of transparency in global governance, and the normative rationales underpinning the growing call for transparency differ greatly—not least depending upon whether information disclosure is state-induced and mandatory, or privately initiated and voluntary. With diverse rationales for disclosure (for example, these could range from *improving* state-led mandatory regulation to *avoiding* state-led mandatory regulation), the implications for accountability, legitimacy and effectiveness of “governance-by-disclosure” will differ. If so, rather than taking it for granted, the claim that transparency is an essential and unproblematic handmaiden to legitimate, democratic and effective governance requires critical scrutiny.

But if governance-by-disclosure initiatives vary along multiple dimensions, what might they have in common? I argue here that, notwithstanding differences, two core assumptions link such governance-by-disclosure initiatives, but that both of these assumptions need to be subjected to critical scrutiny via comparative analysis. This can illuminate the promise and perils of relying on

3. Florini 1998. The first and second waves being command and control and market-based instruments, respectively. One of the most analyzed examples of regulation by revelation is the Toxic Release Inventory, a pollutant emission registry established by the US Emergency Planning and Community Right to Know Act of 1988.

4. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Signed Aarhus, 25 June 1998). Available at <http://www.uncece.org/env/pp/treatytext.htm>.

transparency as a tool in global environmental governance, and the nature, extent and implications of a transparency turn in this domain.

The two assumptions relate, first, to the procedural nature of governance-by-disclosure initiatives and second, to the central role of information therein. In the first instance, all governance-by-disclosure initiatives reflect a “procedural turn” in environmental governance. Underlying this is the assumption that process matters and “getting the process right” can achieve desired results. Second, all governance-by-disclosure initiatives share the assumption that information matters and information can empower. I discuss each in turn.

Governance-by-Disclosure: The Power of Process?

Governance-by-disclosure is concerned with establishing procedures (for information generation, dissemination, accessibility or usability) instead of mandating specific outcomes. The assumption is that agreeing upon procedures will contribute to attaining desired (and also largely procedural) goals. An example is the concept of prior informed consent that underpins global regimes governing trade in risky substances. The goal of information disclosure—about potential risks posed by these substances—is to permit recipient countries to make informed decisions, without specifying whether those decisions should be to ban, restrict or permit trade in the regulated substances. The Aarhus Convention is another example of a procedural turn in environmental governance. It is one of the first conventions to focus on establishing procedures for access to information, participation and justice, rather than on specifying outcomes in a given environmental area. Similarly, eco-labeling schemes are premised on the belief that disclosing information about processes and practices of sustainable resource use will empower consumers to take decisions, without specifying what these decisions should be.

There is much promise in such a procedural turn. In its non-patronizing approach (it does not presume to mandate outcomes or tell the governed what to do), it is progressive and potentially emancipatory. Process is receiving ever more attention in the context of global debates over accountable, legitimate and democratic multi-actor and multi-level governance, including in the environmental domain. It has long been central to participation debates, for example, with much attention devoted to devising innovative procedures to enhance citizen involvement in environmental decision-making. Analyses of legitimacy, likewise, include distinctions such as input, output and throughput legitimacy, with both input and throughput legitimacy being essentially procedural.⁵ Process is also at the center of long-standing debates about direct and deliberative democracy. Largely within legal writings, a “proceduralisation of environmental regulation” is becoming a staple of debate,⁶ with notions such as procedural environmental rights,⁷ including the right to information, gaining ground as “con-

5. Dingwerth 2007.

6. Lee and Abbot 2003, 80.

7. Rose-Ackerman and Halpaap 2002.

stitutive principles” of environmental governance.⁸ Is transparency becoming a constitutive principle of global environmental governance as well? My contention here is that governance-by-disclosure initiatives provide another rich set of examples through which to examine the implications of a procedural turn in global environmental governance.

And if so, while the promise of process is clear, the perils require analysis as well. A variety of potential perils can be analyzed through comparative study of governance-by-disclosure initiatives. One peril might be that “getting the process right” becomes a distraction, diverting time and resources from substantive outcomes that could be the focus of governance instead. Another is that procedures are left vague and open to interpretation, with little recourse left for intended beneficiaries who might disagree with dominant interpretations.

A third is that processes, once agreed, are subverted by those with the power to deny their original intent. One way to do so is to provide too much—rather than too little—of a good thing. In the realm of transparency, this could take the form of drowning in disclosure, if recipients bombarded with large volumes of disclosed information do not know how to find the “needle in the haystack” or even what to look for. This can be seen, for example, in governance of genetically modified organisms (GMOs) in South Africa, where civil society groups concerned about environmental impacts and relying on national right-to-know laws receive carton-loads of risk assessment and related information, but lack sufficient capacity or expertise to use it in holding state and private actors accountable.⁹ Globally, mandatory disclosure of GMO-related information (by exporting countries and the private sector), as required by the Cartagena Protocol on Biosafety, is susceptible to similar hazards. In such cases, the perils of a procedural turn can also undermine the emancipatory potential of information, the second key assumption underpinning governance-by-disclosure.

Governance-by-Disclosure: Empowerment through Information?

Transparency is premised on the notion that information matters and that information can empower. Empowerment necessarily implies a change in the nature of existing power relationships between actors. But under what conditions and in what ways can information empower? This question is of increasing relevance to a variety of policy domains, national and international. While writings within global environmental politics have devoted much attention to the power of knowledge and ideas in governance, and to the relationship between science and politics, information as a more general category remains relatively under-analyzed.

In considering the emancipatory potential of information, the insights of

8. Picciotto 2000, cited in Roberts 2004. It should be noted that Sol Picciotto uses the term “constitutive principle” in discussing the role of transparency in democratizing a global public sphere.

9. Gupta and Falkner 2006.

science and technology studies are very pertinent. As scholars in this tradition have long argued, information (including scientific information) is neither value-neutral nor universally valid, and thus information alone is not likely to resolve normative and political conflicts.¹⁰ In governance of controversial global environmental challenges such as the spread of genetically modified organisms or climate change, agreeing on what is “more and better” information, i.e. on the scope and content of transparency, is itself a main site of conflict.

As one example, the Cartagena Protocol on Biosafety calls for the “advance informed agreement” of an importing country prior to trade in certain genetically modified organisms. In this disclosure-based governance arrangement, the framing of the problem is contested, the scope of information to be shared by exporting countries and the private sector is contested, and the capacity to access, interpret and use disclosed information is unequally distributed or absent.¹¹ This example suggests that analyzing the emancipatory potential of information requires analyzing conflicts over the source and nature of disclosed information, differing perceptions of its accessibility, usability, affordability and comprehensibility, and the political and cultural context within which disclosure occurs. It also highlights that mandatory disclosure (in this case about GMO risks) might face procedural and other perils similar to voluntary disclosure, where one might more readily expect disclosed information to be less-than-empowering. Thus the example also suggests that claims about differences between mandatory versus voluntary disclosure require careful case-by-case analysis.

Recent scholarship within global environmental politics on “information as influence” highlights that not only the credibility (perceived soundness) but also the salience (perceived relevance) and legitimacy (perceived fairness) of scientific information is key to its influence.¹² Such research is promising, especially if extended to other categories of information as well, and if supplemented by insights from writings within, for example, environmental sociology, which emphasize conditions under which informational governance may stimulate environmental reform.¹³

More generally, the emancipatory potential of information has received attention from scholars writing about transparency in other issue-areas, disciplines and in a national context, from which fruitful lessons can be drawn and the phenomenon placed in a broader context. Engaging with some of this literature will certainly be necessary in assessing the role of transparency in global environmental governance. For example, recent writings of Archon Fung, Mary Graham and David Weil have addressed conditions under which “targeted transparency” (their term for information disclosure in specified issue-areas, as opposed to general right-to-know disclosure) is effective as a policy tool. They

10. Jasanoff 1990.

11. Gupta 2006.

12. Mitchell et al. 2006; and Biermann 2002.

13. Mol forthcoming.

argue that for information to be effective, it has to become “doubly embedded” in the decision choices of information users *and* disclosers, which, in their view, is no easy task. For our purposes, it would be useful to see how such findings bear upon the question not only of effectiveness but also of empowerment as related to information disclosure.¹⁴ Finally, disclosure and empowerment have to be considered in light of the growing role played by new powerful intermediaries, such as verifiers and certifiers of disclosed information.

Scrutinizing a Transparency Turn in Global Environmental Governance

In sum, I argue here for subjecting the concept of transparency in global environmental politics to greater scrutiny. One way to do so is through comparative analysis of governance-by-disclosure initiatives, in order to examine the workings in practice of the two idealized assumptions pertaining to process and information that link them.

How might this be done? Future comparative research can distinguish between the multitude of global environmental governance-by-disclosure initiatives along a number of dimensions. Various typologies of such initiatives can be constructed, which differentiate among them according to, first, *who* discloses information. Those most often called upon to disclose information in the global context are states, the private sector or international organizations. A second dimension is to *whom* information is disclosed. Here the possibilities include: state to state disclosure, state to citizen disclosure, private sector to state disclosure, or private sector to consumer/citizen disclosure. A third dimension is disclosure about *what*. This can include disclosure about toxic emissions or other aspects of environmental quality, decision-making processes and outcomes, or revenue payments. A fourth dimension is disclosure to *meet what ends*. These include enhanced accountability of those disclosing information, or enhanced participation or enhanced choice by recipients of disclosure. Additional dimensions include: whether disclosure is voluntary or mandatory and whether disclosed information is standardized or non-standardized.

Given such variations, comparative analysis of governance-by-disclosure initiatives can shed more light on the power of a procedural turn and the emancipatory potential of information in global environmental governance. Both are likely to vary across different initiatives, given that the normative rationale to embrace transparency as a tool of governance will vary, depending upon who is required (or chooses) to disclose what information to whom and why. Although such normative differences will be embedded in existing power relationships, the important question is whether and how a promotion of transparency, and its workings in practice, reconstitute (or not) such power relationships. Comparative analysis addressing this can illuminate, I believe, the nature and implications of a transparency turn in global environmental governance

14. Weil et al. 2006, 158.

and its link to accountable, legitimate and effective governance. In doing so, it can also illuminate whether and how transparency as a constitutive principle is transforming the institutions and practices of global environmental governance.

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