Can NGOs Play the Peace and Security Game?

An analysis of NGO interaction with the UN Security Council in the area of human rights.

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ABSTRACT

In light of the proliferation of issues of global concern and the growing significance of intergovernmental organisations, this paper examines progress towards participatory democracy in the United Nations Security Council in the area of human rights. It examines the development and objectives of non-governmental organisations and provides a comparative analysis of their existing methods of interaction with a range of intergovernmental organisations, including the Security Council. It examines the Council's structure and working methods and its responsibility for the maintenance of international peace and security: acknowledging that the Council pays increasing attention to human rights issues in preventive diplomacy, conflict resolution, peacekeeping, post-conflict peacebuilding and other work, it questions whether and how its legitimacy in this area might be strengthened, and human rights might be more effectively addressed, by formalising its interaction with expert non-governmental organisations. The paper concludes that human rights, democracy and international peace and security would be best served by strengthening relations between relevant non-governmental organisations and the Security Council in a subtle, strategic and informal way, by reinforcing and broadening existing methods of interaction, establishing some basic administrative structures and focusing on specific issues of substance.

CONTENTS

(i)   ***Acknowledgements***

(ii) ABBREVIATIONS

AI	Amnesty International
AU	African Union
CHR	Commission on Human Rights
CICC	Coalition for an International Criminal Court
CRC	Convention on the Rights of the Child
COE	Council of Europe
CONECCS	Consultation, the European Commission and Civil Society
CONGO	Conference of NGOs
CSCE	Conference on Security and Cooperation in Europe
CSD	Commission on Sustainable Development
CSO	Civil Society Organisation
CTC	Counter-Terrorism Committee
DESA	Department of Economic and Social Affairs
DPI	Department of Public Information
E10	Ten elected members of the Security Council
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
EP	European Parliament
EU	European Union
FRY	Federal Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
G77	Group of 77 Developing Countries
GA	General Assembly
GC	Global Compact
GONGO	Governmental Non-Governmental Organisation
GPF	Global Policy Forum
GRI	Global Reporting Initiative
HAP-I	Humanitarian Accountability Partnership - International
HCHR	High Commissioner for Human Rights
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IGO	Inter-Governmental Organisation
ILO	International Labour Organisation
INGO	International Non-Governmental Organisation
IPA	International Peace Academy
MDGs	Millennium Development Goals

MICIVIH	International Civilian Mission in Haiti
MINUGUA	United Nations Mission in Guatemala
MINURSO	United Nations Mission for the Referendum in Western Sahara
MSF	Médecins Sans Frontières
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
NGLS	Non-Governmental Liaison Service
NGO	Non-Governmental Organisation
OAS	Organisation of American States
ONUSAL	United Nations Observer Mission in El Salvador
OSCE	Organisation for Security and Cooperation in Europe
P3	Three Permanent members of the SC (UK, US, France)
P5	Five Permanent Members of the SC (China, France, RF, UK, US)
PHR	Physicians for Human Rights
PM	Permanent Mission
PR	Permanent Representative
PRST	Presidential Statement
PSC	President of the Security Council
QUANGO	Quasi-Autonomous Non-Governmental Organisation
RF	Russian Federation
SC	Security Council
SG	Secretary General
TCC	Troop-Contributing Country
TNC	Trans-National Corporation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNESCO	United National Educational, Scientific and Cultural Organisation
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNITA	National Union for Total Independence of Angola
UNMIK	United Nations Mission in Kosovo
UNMOP	United Nations Mission in Prevlaka
UNOGBIS	United Nations Peacebuilding Support Office in Guinea-Bissau
UNOMIG	United Nations Observer Mission in Georgia
UNPREDEP	United Nations Preventive Deployment Force (Macedonia)
UNPROFOR	United Nations Protection Force (former Yugoslavia)
UNTAC	United Nations Transitional Authority in Cambodia
UNTAET	United Nations Transitional Administration in East Timor
WB	World Bank
WTO	World Trade Organisation

1.   INTRODUCTION

The concept of democracy – meaning rule by the people - has changed substantially since ancient Greek times, and has been manifested in various, conflicting forms. The current understanding emerged during the 19th century to describe a system in which representatives were chosen by free elections[1]; and it became the basis for legitimacy in the emerging world of nation-States.[2] Evolving over the years to include universal suffrage, it is now perhaps a more popular concept than ever before. In reality, however, it is a rather minimal form of democracy as it restricts citizen participation to voting, and leaves the work of governance to an elite political class. Unlike participatory democracy, in which a vibrant civil society is encouraged and in which the interests of all people are channelled into a decentralised decision-making process, representative democracy is a highly centralised form of government, in which the dominant group rules, minorities are under-represented and civil society has little real power.

These factors are exacerbated and further complicated in intergovernmental organisations (IGOs) which are assuming greater significance in light of the increasing number of global issues - such as financial instability, the rights of minorities and global warming - which transcend the capacity of the individual State to respond.[3] Many such organisations operate in a largely self-referential manner: decisions are taken by official representatives of sovereign States, with most citizens knowing little about what goes on, even though the decisions affect their lives. Furthermore, realism has been the dominant international relations theory with States continuing to act in their national interests rather than for the good of the world community.[4] There is much academic debate surrounding the legitimacy and accountability of IGOs and whether and how a more participatory democracy could be developed. While some theories predict the eventual demise of the nation-State,

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[1] Anthony Birch, *The Concepts and Theories of Modern Democracy* London, Routledge, 1993, p. 45.
[2] David Held, *Models of Democracy,* 2nd Edition, Cambridge, Polity Press, 1996, p. 119.
[3] *Ibidem*, p. 338.
[4] N. J. Rengger, *International Relations, Political Theory and the Problem of Order. Beyond International Relations Theory?,* London and New York, Routledge, 2000, p. 100.

thinkers like Held and Archibugi[5] advocate a "cosmopolitan democracy" which recognises their continuing significance but advocates a layer of governance to constitute a limitation on national sovereignty. In a cosmopolitan democracy, new political institutions would coexist with States but would override them in clearly defined spheres of activity which have transnational and international consequences, or which require regional or global initiatives in order to be effective and legitimate. There would be broad civil participation at all levels, and international non-governmental organizations (INGOs) would be incorporated to decision-making, alongside States and the private sector.

Although Held cites the European Union (EU), the body of enforceable international human rights norms, the European Court of Human Rights and the International Criminal Court (ICC) as positive steps, cosmopolitan democracy remains a theory. However, the centralised State and the marketplace alone do not appear to offer sufficiently democratic or effective solutions to society in an era of globalisation, and the growth of non-governmental organisations (NGOs), the development of their formal relations with IGOs, the concept of civic dialogue in the EU and the establishment of Parliamentary Assemblies in organisations such as the Council of Europe and the North Atlantic Treaty Organisation (NATO) show that progress is being achieved towards a more participatory form of global governance. The United Nations (UN) has come some distance but has much further to go in terms of accountability: advocates argue for enhanced relations with NGOs, possibly a directly-elected Assembly in addition to the existing General Assembly (GA) of State representatives, and reform of the Security Council (SC) to make it more representative. Paradoxically, the SC which has primary responsibility for the maintenance of international peace and security has remained largely defined by traditional politics and relatively unaffected by the actions of civil society.

This paper critically examines the relationship between NGOs and the SC in the area of human rights. Acknowledging that the SC has gradually adopted a more human-rights approach to its work, the paper questions whether and how its legitimacy in this area might be enhanced, and human rights might be more effectively addressed, by

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[5] David Held, *Democracy and Globalisation,* in Daniele Archibugi, David Held, Martin Kohler (eds.), *Re-imagining Political Community,* Stanford, Stanford University Press, 1998, pp. 11-27.

strengthening its relations with expert NGOs. It examines existing methods of interaction with NGOs, possibilities for enhancing them and new methods which might improve the availability of information and advice and make human rights more central to SC deliberations. This matter is of particular interest because of the nature of global governance, the centrality of human rights to the maintenance of international peace and security and the SC's broad enforcement powers under Chapter VII of the UN Charter.

The paper begins by looking at the development, functioning and objectives of NGOs concerned with human rights and their role in the democratic process, as well as some problems they face, such as a perceived lack of legitimacy and accountability. It then analyses NGO relations with UN organs and bodies, focusing particularly on the consultative status accorded by the Economic and Social Council (ECOSOC), before looking briefly at relations with other IGOs. This facilitates an understanding of how NGOs work and suggests alternative modes for their interaction with the SC.

The second part of the paper examines the position of the SC within the UN system, its perceived legitimacy in the 21st century and possibilities for its reform. It analyses its traditional and evolving role vis-à-vis human rights and looks at the way in which it functions on a day-to-day basis, casting a critical eye on relations between the five permanent members (P5), the 10 elected members (E10) and the wider UN membership, and how different reform proposals might affect these. The focus then shifts to SC interaction with NGOs and the paper provides a qualitative assessment of 13 methods currently used, illustrated by practical examples to better assess the effectiveness of each method.

The final sections of the thesis conclude that, if the legitimacy and effectiveness of the SC is to be strengthened in relation to its work on human rights, there is a real need to improve its interaction with NGOs. Instead of unduly formalising relations, the focus should be placed on improving the existing informal methods of interaction, establishing new channels of communication and creating some basic administrative structures. It is important that NGOs analyse the linear progression towards decision-making within each SC member State with a view to intervening at the most effective point, that they focus on issues where they can really add value and that they monitor

and try to impact discussions regarding the transparency of SC proceedings, as they could benefit from many proposed reforms.

The SC should acknowledge the enormous potential of NGOs for strengthening its own legitimacy and for enhancing the way in which it addresses human rights, and should improve opportunities for NGO cooperation. These include making its working methods more transparent and treating seriously the existing methods of interaction, as well as training delegates to be receptive to NGO information and advice, and to be creative regarding new methods of cooperation. The relationship between NGOs and SC members is symbiotic: it needs to be developed so that both parties can fully benefit from their positions and make human rights a central part of deliberations regarding international peace and security.

2.   METHODOLOGY

There is a wealth of information about the UN, and a growing body of literature about civil society and NGOs. Most literature about the UN SC is in relation to the legal aspects of its enforcement powers under Chapter VII and, although there is ongoing discussion within the UN about reforming the SC and improving the transparency of its proceedings, there is little academic writing about its democratic deficit and its limited interaction with NGOs. This paper attempts to fill that gap by critically examining the existing methods of cooperation between the SC and NGOs, looking at ways to enhance them, and suggesting new methods of cooperation.

This paper is policy-oriented rather than theory-oriented. There is some legal and philosophical analysis, but the main perspective used is that of political science. The first part is mainly descriptive and comparative while the last few chapters, including the conclusions, are largely prescriptive. Much of the paper is based on qualitative primary research including interviews with representatives of human rights and humanitarian INGOs (Amnesty International (AI), Human Rights Watch (HRW), Physicians for Human Rights (PHR), Global Policy Forum (GPF), Medicins San Frontieres (MSF)), as well as former and current SC delegates and UN officials. Some sources are quoted: however, general references are made in the majority of cases as this was the preference of most individuals, particularly delegates and UN officials.

In researching this paper, use was made of academic literature, newspapers, reviews and the internet. Of particular use were UN documents, including Resolutions, Reports and Statements and the various reform proposals presented by the Secretary Generals (SGs), Expert Panels and working groups. Extensive use was also made of the many excellent articles written by NGOs about their interaction with IGOs including the SC: the GPF website was particularly valuable in this regard.

In addition, as a former delegate to the SC, I have drawn on personal experience regarding the effectiveness of various forms of interaction. From time to time, reference is made to issues that arose during Ireland's term on the SC from January 2001 to December 2002. It must be stressed that any views expressed are my own and not those of the Government of Ireland and that I have maintained full confidentiality in both research and writing.

3.   NON-GOVERNMENTAL ORGANISATIONS AND HUMAN RIGHTS

Many political philosophers, including Habermas,[6] have highlighted the importance of civil society to the democratic process. As the "third sector" - the two other sectors being the State and the market - civil society, which is generally considered to include NGOs, business groups, the media, academics, parliamentarians, think-tanks and others, is an essential element of democracy. Galtung equates these sectors on the international level to IGOs, transnational corporations (TNCs) and INGOs.[7] There is great confusion regarding the difference between civil society and NGOs. According to the UN SG in 1997, civil society is "the sphere in which social movements organise themselves around objectives, constituencies and thematic interests" and NGOs are its "clearest manifestation."[8] However, the UN website says it has "informal and formal arrangements with civil society organisations, collectively known as NGOs."[9] Recent UN documents concerning wider participation often refer to "civil society organisations"(CSOs) but the Organisation's formal relations are defined with NGOs. The term NGO was coined in Article 71 of the UN Charter outlining the basis for consultative relations with ECOSOC, and is generally applied to any non-profit organisation that is independent from Government, engaged in advocacy, value-based and largely (although not exclusively) dependent on charitable donations and voluntary service. NGOs are active in a range of areas including human rights, humanitarian relief, development, education, social and economic matters, legal and judicial reform, women's rights and the environment.

NGOs began in the 19th century most notably with the establishment of the International Committee of the Red Cross (ICRC). They have grown in size and influence ever since, experiencing particular spurts post-World War Two and during the global conference era of the 1990s. Increased democratisation, an increase in issues of universal concern and the rapid onset of globalisation have contributed to

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[6] Juergen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge, MIT Press, 1996.
[7] Johan Galtung, *Human Rights in Another Key*, Cambridge, Polity Press, 1994, p. 147.
[8] A/51/950(1997), para. 207.
[9] http://www.un.org/issues/civilsociety/

NGOs playing a more significant role in international politics. With individuals around the world increasingly believing they have a right to participate in decision-making that affects their lives, NGOs can be seen as part of a movement towards a more participative, accountable and transparent system which is constantly re-defining the role of the State. Covey writes that "democratisation…. tugs NGOs towards a more active policy-influencing role as more political space opens for people's voices in public affairs. The promise of democracy becomes a reality … when groups participate effectively in the market place of competing interests."[10] Improved methods of communication, especially the internet, have greatly facilitated the discourse principle and this tendency towards participatory democracy. NGOS speak with the moral authority of their engagements and are generally seen as alternative, accessible and objective sources of information on important issues, impartial critics of official policy and increasingly as formulators of ethical policy. Carothers writes that western Governments are generally well-disposed towards NGOs because they "stimulate public participation yet channel it around discrete issues … that are not necessarily linked to any one partisan ideology." He goes on to say that they "highlight technocratic knowledge rather than bombastic propaganda" and "seek dialogue rather than confrontation." [11]

NGO activity in the area of human rights is particularly pertinent as they represent individuals and groups who, rather than governments, are victims of violations and, therefore, most interested in implementing rights.[12] As early as 1968, Rene Cassin outlined three important functions of NGOs in relation to human rights: providing a link between humans and official bodies; informing them of "numerous facts, abuses, gaps and violations of human rights already known or, more commonly, hidden"; and playing an important part in education for citizenship and stirring official bodies to action. "It is impossible to say" he stated "how many problems involving human rights would never have got on the agendas of these bodies but for the initiative or indirect action of NGOs."[13] Furthermore, human rights exist outside of the purely

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[10] Jane G. Covey, *Accountability and Effectiveness in NGO Policy Alliance,* in M. Edwards and D. Hulme (eds.), *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World,* West Hartford, Kumarian Press, 1996, p. 198.
[11] Thomas Carothers, *Aiding Democracy Abroad: the learning curve*, Washington DC, Carnegie Endowment for International Peace, 1999, pp. 211-212.
[12] Johan Galtung, *Human Rights in Another Key*, Cambridge, Polity Press, 1994, p. 149.

domestic arena: proving that State sovereignty was yielding to human rights pressure, the 1993 Vienna Conference proclaimed that the "promotion and protection of all human rights is a legitimate concern of the international community."[14] From early letter-writing campaigns, the human rights NGO movement has evolved to include campaigners, lobbyists and media experts. "The leading international NGOs now have researchers on the ground connected by email with advocacy offices at the UN and in major capitals," putting them in a "strong position to affect international decisions as they are being made."[15] Today, NGOs contribute significantly to the promotion and protection of human rights including by fact-finding and supervising the implementation of international norms. They sensitise civil society and the general public to threats and challenges to human rights, bring tragedies and conflicts to light, educate public opinion, act as a pressure group towards the political authorities and play a role in preventive policy in the wider sense, including training people in democracy.[16]

The UN has, at least in public, testified to the central role of human rights NGOs, particularly at the local and grassroots level, and their participation has been encouraged in some organs and bodies. While operational, mainly local NGOs – those monitoring human rights violations, interviewing witnesses and victims, analysing legal texts and trying to halt violations[17] - can be overwhelmed by State actions,[18] advocacy NGOs – those engaged in lobbying, mainly by networking at international fora, participating in conferences and lodging protests - are particularly challenging to State sovereignty, and their inherently critical nature can anger powerful States. For example, criticism of US prisons in Abu Ghraib and elsewhere and of the alleged secret US-controlled detention centres across the world has intensified the antagonism of the current administration towards some human rights NGOs. Such antagonism can cause Governments to purposely thwart NGO efforts, including lobbying to restrict

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[13] Rene Cassin, Statement to the International NGO Conference, Paris, 1968.
[14] Vienna Declaration and Programme of Action, 25/06/1993, para. 4.
[15] Human Rights Watch Report 2004, *HR and Armed Conflict,* HRW, 2004, p. 379.
[16] Janusz Symonides and Vladimir Volodin (eds*.), A guide to Human Rights: Institutions, Standards and Procedures,* Paris, UNESCO, 2001, p. 304.
[17] Mona Rishmawi, *Protecting Human Rights Defenders* in *Human Defenders: International Partnership*, Lund , Workshop on the Complementary Role of International Human Rights NGOs, Institutes, and Human Rights Defenders in the South, FIDH and Raoul Wallenberg Institute of human rights and humanitarian law, 1997, p. 12.
[18] International Council on Human Rights Policy, *Ends and Means: Human rights approaches to armed groups,* Switzerland, 2000, p. 28.

their participation in meetings and trying to cast doubt on the legitimacy of their findings.

De Senarclens complains that human rights NGOs, which are "generally from the western world" have committed themselves to the "realisation of specific individual rights… but … have often failed to address the root causes of the violation of these rights and abstained from actively participating in the realisation of economic, social and cultural rights."[19] Most of the NGOs interviewed for this paper do focus on the protection of civil and political rights. AI, for example, which was founded in 1961, focuses on obtaining the release of political prisoners, ensuring fair and prompt trials, abolishing the death penalty, torture and cruel treatment of prisoners, and fighting for freedom of speech, religion and belief. However, in recognition of the indivisibility and interdependency of human rights, AI works to promote all human rights enshrined in the Universal Declaration on Human Rights (UDHR) and other international standards, including economic, social and cultural rights. HRW, which was established in 1987, had its origins in the 1978 Helsinki Watch: it supported the various eastern bloc citizens' groups that monitored governmental compliance with the mainly civil and political rights outlined in the 1975 Helsinki Accords. Increasingly, however, it also monitors economic, social and cultural rights. Nevertheless, humanitarian NGOs such as Oxfam and CARE International are probably the most successful in highlighting violations of economic, social and cultural rights because of their long-standing interest in the issues and their presence in countries where they are often violated.

NGOs can be international, regional, national, local or grassroots in character. The international character of some means that they can also address what the UN SG has referred to as "uncivil society"[20] – the more negative transnational features such as terrorism, drug trafficking, child pornography and trafficking in humans. As governments struggle to adapt their justice systems to address these increasingly prevalent features, NGOs are seen by many as capable of doing so more effectively and practically. However, there is the danger that the advantages of NGOs are seen

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[19] Pierre de Senarclens, *The Politics of Human Rights,* in Jean-Marc Coicaud, Michael Doyle and Anne-Marie Gardner (eds.), *The Globalisation of Human Rights*, Tokyo, UN University, 2003, pp. 142-157.
[20] A/51/950(1997), para. 209, *A Programme for Reform.*

only in "invidious comparison to the vices of the State"[21] or that they are highlighted for ideological reasons, for example by those favouring a liberal, minimalist State role.

Despite their apparent efficiency, effectiveness, flexibility, participatory approach and proximity to vulnerable people, therefore, NGOs do face a range of real and perceived problems. While national administrations are often flawed, they are (at least in democratic States) elected and can claim to represent the interests of their constituents: furthermore, their performance is subject to a series of checks and balances. NGOs are not elected, the source of their authority can be unclear and they can suffer from a perceived lack of legitimacy. Brus adopts a critical approach saying that NGOs are "not democratically authorised to realise the common good, and often neglect the common good in the pursuance of their specific interests." [22] In reality, an NGO should be considered legitimate so long as its aims, objectives and methods comply with international law and human rights norms and there exists the right to freedom of association. The size of the organisation and its modus operandi – whether it depends on mass membership or elite advocates – should not affect its legitimacy. Writers like Galtung[23] and Kaldor[24] go further and assert that the role of NGOs is to raise awareness and appeal to moral conscience, rather than to be representative.

If accountability is considered as the means by which individuals and organisations report to a recognised authority and are held responsible for their actions, NGOs would ideally have a statement of goals, transparent decision-making, honest reporting, an oversight and appraisal process and concrete mechanisms for holding accountable those responsible for performance.[25] While research into NGO accountability has been rather limited, it is clear that many have "multiple

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[21] Fritz Wils, *Scaling up, mainstreaming and accountability,* in Michael Edwards and David Hulme (eds.), *Beyond the Magic Bullet: Performance and Accountability in the Post-Cold War World*, West Hartford, Kumarian Press, 1996, pp. 67-79.
[22] Marcel M. T. A. Brus, *Third Party Dispute Settlement in an Interdependent World: Developing an International Framework,* Dordrecht, Martinus Nijhoff, 1995, pg. 202.
[23] Johan Galtung, *Alternative Models for Global Democracy,* in B. Holden (ed.), *Global Democracy: Key Debates*, London, Routledge, 2000, p. 155.
[24] Mary Kaldor, *Analysis*, BBC Radio 4, March 2001, quoted in David Chandler, *New Rights for Old? Cosmopolitan Citizenship and the Critique of State Sovereignty*, in <<Political Studies>>, 2003, vol. 51, pp. 332-349.
[25] M. Edwards and D. Hulme, *NGOs and development: performance and accountability in the new world order*, Background Paper for the SCF/IDPM workshop on NGOs and Development, Manchester, June, 1994.

accountabilities."[26] They are morally most accountable to their beneficiaries and supporters but also, in terms of their wider claims to legitimacy, to their partners, staff, trustees, donors and host governments.[27] Although NGOs should respond to the needs of their beneficiaries, the question of how much say these have is important when examining NGO participation in the work of IGOs, particularly the SC.

Questions in relation to NGO behaviour in Afghanistan and the post-Tsunami situation have highlighted these problems. McGann and Johnstone speak of "a crisis of transparency and accountability, an issue that looms on the horizon for the entire NGO sector…..NGOs as an international community lack the transparency and accountability in terms of finances, agenda, and governance necessary to effectively perform their crucial role in democratic civil society."[28] The question of funding is indeed problematic: the fact that many NGOs, particularly those in the development sector, receive a significant portion of their funding from government sources inevitably raises questions about their objectivity and impartiality. Some find that, as they accept government money, their legitimacy as non-governmental actors is eroded and their relationships with clients at the field level are compromised. NGOs known as GONGOs (governmental NGOs), which simply act as a cover for Government-funded operations and others known as QUANGOs (quasi-autonomous NGOs), which receive most of their support from public funds, are prevalent because of the increasing tendency of 'privatising' western Governments to contract out work, especially in the development sector. This tendency is reflected in the flexible exchange of personnel between civil services and NGOs (in itself, a rather positive feature).

Human rights NGOs are less entangled in this mesh: most do not accept funding from government sources, relying instead on membership donations or other sponsorship. This enables them to maintain their impartiality and objectivity and to be able to criticise governments without fear of having to shut down. AI, for example, realised early on that its objectivity and independence "must be strenuously cultivated to avoid

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[26] M. Edwards and D. Hulme, *Introduction,* in M. Edwards and D. Hulme (eds.) *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World*, West Hartford, Kumarian Press, 1995, p. 1-20.
[27] *Ibidem.*
[28] James McGann and Mary Johnstone, *The Power Shift and the NGO Credibility Crisis*, Brown Journal of World Affairs, Winter-Spring 2005.

charges of political bias. Its independence put AI in a position to be a legitimate critic of any and all governments participating in human rights violations."[29] Nevertheless, the huge budgets of human rights INGOS such as AI and HRW[30] require them to be financially responsible and to develop sound and transparent management practices.

NGOs have started to address these problems by producing more detailed reports and by participating in new stakeholder engagement standards such as the Global Reporting Initiative (GRI) and other self-regulation, especially in the area of humanitarian response: for example, the Humanitarian Accountability Partnership – International (HAP-I) is a network of CSOs dedicated to ensuring that humanitarian action is accountable to its beneficiaries through a set of agreed principles. A voluntary Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, based on ten points of principle, was prepared in 1994 and now has 375 signatories. However, it has been criticised for lacking any kind of enforcement mechanism.[31] Although the ambivalent legal status of INGOs[32] - partly due to their uncertain origin and the lack of international legal standards governing their establishment and status on a global level - makes it difficult to formulate rules of behaviour, some have adopted forms of self-regulation. For example, 11 leading INGOs agreed to a voluntary "accountability charter" in June 2006.[33] The Global Compact (GC), launched in 2000 to engage the private sector to work with the UN in partnership with international labour and NGOs, to identify, disseminate and promote good corporate practices based on nine universal principles,[34] also provides some food-for-thought. Although it has been widely criticised, its concept and structure could be useful in developing better NGO self-regulation: of interest is the fact that it adopted a learning model rather than a

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[29] Anne-Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms*, Princeton, Princeton University Press, 2001, p.124.
[30] Human Rights Watch, for example, spent US$ 25.8 million in 2004-2005 financial years, mainly on its regional and thematic programmes.
[31] Leni Wild, *Strengthening Global Civil Society,* Institute of Public Policy Research, UK, April 2006.
[32] INGOs are generally not recognised as legal entities. However, the COE Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, which entered into force in 1991, does recognise the legal personality and attached rights and duties as acquired by an INGO by its establishment in any one of the States parties.
[33] Hugh Williamson, *Greenpeace, Amnesty International and Oxfam agree Code of Conduct*, in <<Financial Times>>, 2 June, 2006.
[34] John Gerard Ruggie, *Global_governance.net: the Global Compact as Learning Network* in <<Global Governance>>, vol. 7, no. 4, Oct.-Dec. 2001, pp. 371-378.

regulatory framework, and that it was established as a network organisation rather than a hierarchy or bureaucracy.

A more relevant problem for large, human rights INGOs is the potential gap between what happens at headquarters - normally located in large northern cities- and what is happening on the ground. This is linked to the general disparity between northern and southern NGOs where the former are large, bureaucratic organizations and the latter are small, local organisations which have direct contact with their constituents. Northern NGOs are better known, receive better funding and can afford to keep a representative at UN headquarters. Only 251 of the 1,550 INGOs accredited to the UN Department of Public Information (DPI), for example, come from the South.[35] To avoid charges of neo-colonialism or imposing European Enlightenment values, it is essential that NGOs stay in touch with their local branches and understand the essence of each issue and that they avoid getting caught up in officialdom, adopting the cynicism so prevalent amongst officials and delegates in IGOs. It is also preferable that NGOs from developing countries participate directly in UN activities, at least from time to time: in recognition of this, the Cardoso Panel[36] and the UN SG[37] proposed the establishment of a Trust Fund to cover travel and accommodation costs for NGOs from developing countries.

There are varying estimates of the number of NGOs operating today. At the height of the UN global conference era, 3,500 NGOs were accredited to the 1993 World Conference on Human Rights and its parallel NGO Forum, and over 4,000 were accredited to the 1995 Fourth World Conference on Women in Beijing. Despite the move towards smaller-scale conferences, the 2005 World Social Forum was attended by representatives of over 1,000 NGOs. Today, 2,719 NGOs have consultative status with ECOSOC,[38] 1,533 are accredited to the DPI,[39] 337 have formal relations with the UN Educational, Scientific and Cultural Organisation (UNESCO)[40] and 382 have participatory status with the Council of Europe.[41]

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[35] http://www.un.org
[36] A/58/817(2004), proposal 27.
[37] A/59/354(2004), para. 22.
[38] http://www.un.org
[39] *Ibidem.*
[40] http://www.unesco.org
[41] http://www.coe.org

The NGO sector has had mixed experience over the years. Since their political visibility increased in the early 1990s, they have played a positive role in achieving the abolition of land mines,[42] preventing the creation of a Multilateral Agreement on Investments, establishing the International Criminal Court (ICC)[43] and reducing third world debt through the Jubilee 2000 Campaign. However, they have been negatively affected by concerns about their legitimacy, accountability and transparency and by negative publicity associated with violence at the World Trade Organisation (WTO) and other intergovernmental meetings, as well as by practical factors such as the decline in UN global conferences, increased security restrictions and budget cuts. For NGOs to develop their role in global governance, they need to prove their legitimacy and improve their systems of accountability and transparency. They need to demonstrate professionalism, by further developing methods of work, structures and mechanisms to objectively assess their actions. This is difficult because, unlike businesses which must make a profit, and governments which must face elections, NGOs have no bottom line. Furthermore, human rights NGOs are unable to control all the factors that affect the outcome of their work or to quantitatively or qualitatively measure performance. Nevertheless, AI claims to have a record of real achievement. "We know this because the people we have been trying to help tell us that our pressure has had an effect. Sometimes governments are persuaded to change their laws and practices. Sometimes our solidarity keeps hope alive."[44]

As this paper addresses interaction with the SC, it focuses on INGOs with the resources to maintain an office in New York, although it also looks at possibilities elsewhere. In addition to human rights NGOs, humanitarian NGOs - which are often the first on the ground and which have the capacity to provide valuable information - and peace and security NGOs – also valuable information providers which, increasingly, engage in important advocacy work – are included. In examining the list of INGOs which have participated in existing interactive formats and in speaking to UN officials and SC delegates, it is clear those such as AI, HRW, International Center for Transitional Justice (ICTJ), PHR, GPF, CARE International, Oxfam International,

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[42] The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Ottawa, 3-4/12/1997, entered into force 1/03/1999.
[43] Rome Statue of the ICC, signed 17/07/19998, entered into force 1/07/2002.
[44] http://www.amnesty.org

MSF, International Crisis Group (ICG) and Save the Children have already established a strong relationship with the SC. Although they have different structures and modus operandi – AI, for example, mobilizes its over one million- strong membership base for specific campaigns, whereas HRW and the ICTJ focus more on lobbying governments and shaming them in the media – they are perceived as informative and reliable and are generally trusted by SC members.

Later chapters will examine the specific objectives of such NGOs and what they might hope to achieve through closer cooperation with the SC. Their general aims would certainly include warning about serious human rights violations and possible emerging crises; proposing items for consideration on the SC agenda; helping to review ongoing situations by providing reliable information; helping to engage in the peaceful settlement of disputes under Chapter VI of the UN Charter; helping to ensure a strong human rights component in all missions, including peacekeeping operations; and advising and assisting in the establishment of human rights institutions in post-conflict situations.

As will be shown later, NGOs need to organise themselves more effectively not only to address perceived problems of legitimacy but to enhance cooperation with relevant IGOs. However, the manner in which NGOs can interact with the SC is largely dependent on its composition and functioning. De Senarclens comments that NGOs should devote more energy to "pushing through reform of international institutions by again raising the issues of sovereignty and legitimacy namely who is entitled to give the orders, according to which mode, submitting to which control body and within the framework of which political participation structure."[45] These issues are directly relevant to the SC and its reform is therefore a cross-cutting theme in this paper.

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[45] Pierre de Senarclens, *The Politics of Human Rights* in Jean-Marc Coicaud, Michael W. Doyle and Anne-Marie Gardner (eds.), *The Globalisation of Human Rights*, Tokyo, UN University, 2003,Pg. 157.

4.   THE UN AND HUMAN RIGHTS

From its inception in 1945, human rights have been at the core of the UN. Written after the horrors of World War Two, the UN Charter refers to human rights in its Preamble and in Articles 2, 13, 55, 62, 68 and 76. All member States therefore pledge to promote and encourage "respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."[46] Furthermore, the International Bill of Rights (Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)) and subsequent Treaties created a comprehensive body of human rights law, and mechanisms have been established to promote and protect these rights and to assist governments in carrying out their responsibilities.

The UN should ideally be seen as a holistic organisation that addresses human rights as a cross-cutting issue and incorporates a human rights approach in the work of all its bodies, organs and agencies. Jan Martenson wrote as early as 1989 that "Human rights issues are at the heart of the entire United Nations system. Every United Nations body, regardless of its specific assignment, functions with the ultimate goals of the Organization in mind: the protection and promotion of world peace and of human rights."[47]

According to the UN Charter, the main bodies with responsibility for human rights are the GA, which can discuss all matters within the scope of the Charter, and the ECOSOC. Under Article 13 (b), the GA should study and make recommendations concerning the promotion of international cooperation in the "economic, social, cultural, educational and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Under Article 62, the ECOSOC should inter alia "make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all." Under Article 68, the ECOSOC established the

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[46] UN Charter, Article 1.3.
[47] .Jan Martenson, former Under-SG for Human Rights, UN Bulletin, 1989.

Commission for Human Rights (CHR)[48] which did some good work in developing an international legal basis for human rights protection, setting standards to govern the conduct of States and responding to human rights problems throughout the world. The CHR also created Special Procedures - such as Special Rapporteurs, Working Groups and Independent Experts - which have been effective in investigating and reporting on human rights, particularly in relation to cross-cutting issues and increasingly, economic, social and cultural rights. In more recent years, the High Commissioner for Human Rights (HCHR) has played an important role in strengthening and coordinating the protection and promotion of human rights.

Successive SGs have worked to make human rights a central theme that unifies the UN's work in peace and security, development, humanitarian assistance and economic and social affairs. As we shall see, however, the SC has been relatively slow to address human rights in such a holistic manner. However, particular efforts - as reflected in the Millennium Declaration -[49] have been made in recent years to 'mainstream' human rights at the UN and the SC has started to adopt a more comprehensive approach.

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[48] The 2005 World Summit approved the creation of a new Human Rights Council, which met for the first time on 19/06/2006.
[49] A/RES/55/2(2000).

5.1   THE UN: A HOME FOR NGOS ?

"When questions pertaining to human rights norms are considered at the UN, Amnesty can be found in the workroom if NGOs are permitted, and outside in the hall if they are not." [50]

Although the UN is an IGO, drawing its legitimacy from the rules and mandates decided by its member States, its Charter points out that it belongs to the people. In theory, therefore, governments should simply be instruments acting on behalf of, and being accountable to, their citizens. In reality, the UN was long-dominated by authoritarian governments which took little account of the views of their peoples: indeed, for the first few decades of its existence, many were ruled by insensitive, if not exploitative, colonial powers. With decolonisation, the end of the Cold War, increased democratisation and the growth of the media, governments have generally become more responsive to public sentiment and more receptive to civil society involvement. Although there remains some governmental opposition to NGO participation in UN activities, a certain degree of interdependence has been established. Some States still fear their status will be undermined but realise that many issues require global attention and that they need to take account of the views of key sectors of global civil society in order to arrive at solutions which meet with their expectations and take their concerns and priorities into account.[51]

Former UN SG Boutros-Ghali told NGO representatives in 1994: "I want you to consider this your home."[52] Others have said that the participation of NGOs in UN activities, particularly in Global Conferences, makes it "inconceivable for the UN to plan any global event without the active involvement of the non-governmental sector."[53] SG Annan's 1997 reform paper[54] said that NGOs were now perceived "not only as disseminators of information or providers of services but also as shapers of

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[50] Clark, Anne-Marie, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms,* Princeton, Princeton University Press, 2001 pg. 124.
[51] A/54/329 (1999), Meeting with Non-Governmental Liaison Service (NGLS).
[52] UN SG Boutros-Ghali addressing NGO representatives in UN, 09/1994.
[53] A. Rice and C. Ritchie*, Relationships between International Non-Governmental Organisations and the United Nations* in <<Transnational Associations>>, 47, 5, 1995, p. 256.
[54] A/51/950(1997), *A Programme for Reform*, para. 213.

policy" including in relation to peace and security and, in 2000, he referred to the "NGO revolution."[55] The positive contribution of NGOs towards finalising the Rome Statute and establishing the ICC improved their standing at the UN; most seminal conferences in recent years have recognised the contribution of NGOs and the importance of their continuing dialogue and cooperation with governments.

Nevertheless, it has been pointed out that NGOs and the UN have very different structures and natures and that the "different organisational histories, cultures, approaches to development, staff members and resource bases" have led to "varying degrees of conflict and tensions."[56] The practical methods of interaction therefore should be examined, especially with human rights NGOs which - because of the cross-cutting nature of the subject and its increasing importance in the UN - should be particularly important. Although it has been stated that such NGOs are the "engine for virtually every advance made by the UN in the field of human rights since its founding,"[57] the relationship between the two does not, in reality, seem that sophisticated.

Relations with the 54-member ECOSOC – although not necessarily the most effective - are considered the yardstick against which other organisational relations are measured. Article 71 of the Charter authorises it to make suitable arrangements for consultation with NGOs concerned with matters within its competence: a series of ECOSOC Resolutions – 288 (1950), 1296 (1968) and 31 (1996) - lays out these arrangements. Resolution 1296 outlined certain principles necessary for the establishment of consultative relations including that the NGO should be "concerned with matters falling within the competence of the ECOSOC," have aims and purposes "in conformity with the spirit, purposes and principles of the UN Charter," "support the work of the UN and promote knowledge of its principles and activities," be "representative," "international in structure" and derive its basic resources from "contributions of its national affiliates or other components or from individual members…"[58]

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[55] SG/SM/7411; GA/9710,*UN Press Release.*
[56] Ann Hudock, *NGOs and Civil Society: Democracy by Proxy?,* Cambridge, Polity Press, 1999, pp. 46-58.
[57] F. Gaer, *Reality Check: Human Rights Non-Governmental Organisations Confront Governments at the United Nations,* in <<Third World Quarterly>>, 16, 1995, p. 393.
[58] E/RES/1296 (XLIV) (1968).

The UN system started to increase its cooperation with NGOs at the 1972 Conference on the Human Environment in Stockholm. The increasing importance of NGOs, particularly during the large, global conferences of the 1990s such as the 1992 UN Conference on Environment and Development in Rio de Janeiro and its follow-up action plan, Agenda 21, led many to believe that arrangements for NGO consultation should be enhanced. This attitude was reflected by the SG himself at an NGO meeting held in 1995 to mark the fiftieth anniversary of the UN, when he reminded those present of the need to be "faithful to the urgent exhortation with which the preamble to the Charter begins: 'We the Peoples of the UN'."[59] However, the three-year long negotiations towards improving arrangements were difficult, not least because of problems within the NGO movement itself where large, established INGOs were nervous about the implications of opening the floodgates to thousands of small, unknown, local NGOs.[60]

The resulting ECOSOC Resolution 31[61] broadened the criteria for NGOs seeking consultative status but, in reality, did little to enhance their position. It re-classified the original Categories I, II and III into (i) general - those with a basic interest in most ECOSOC activities that have made marked and sustained contributions towards UN objectives; (ii) special - those with specific competence in a limited number of ECOSOC activities in which they have genuine international concern, such as apartheid, racial intolerance and other gross violations of human rights; (iii) roster - those with a significant contribution to make which are placed on a roster for ad hoc consultations; and added a fourth category – (iv) those accredited to the Commission on Sustainable Development (CSD). NGOs with consultative status may send observers to public meetings of the ECOSOC, its Commissions (including the former CHR and the CSD), sub-commissions (including the former Sub-Commission on the Promotion and Protection of Human Rights) and other subsidiary bodies, propose items for consideration on the ECOSOC provisional agenda, submit written statements for circulation, and make oral presentations. They may also participate in periodic meetings facilitated by the Department of Economic and Social Affairs

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[59] Yearbook of the UN, 1995, *We the People: Civil Society and the UN*, New York, Martinus Nijhoff, 1997.
[60] James Paul, *NGO Access at the UN*, July 1999, at http://www.globalpolicy.org
[61] E/RES/96/31(1996).

(DESA), such as the ECOSOC NGO Forum held in April 2006 in advance of the High Level meeting on employment and sustainable development. Those with special status may also send observers to public meetings, submit written statements and, in certain circumstances, make oral presentations while those with roster status may send representatives to meetings related to matters within their field of competence.

The Conference of NGOs (CONGO), which was established in 1948, acts as a coordinating body for these NGOs and provides a framework for NGO cooperation in fields of common interest. At the time of writing, some 2,719 NGOs are accredited to the ECOSOC,[62] many of which believe they participate effectively in its work. Nevertheless, the principle that consultation should not overburden the ECOSOC or transform it from a body for coordination of policy and action into a general forum for discussion remains central today.[63] So too does the fact that decisions regarding consultative status remain in the hands of member States, in the form of the Standing Committee on NGOs. Many NGOs and delegates - and even the Cardoso Panel (see more below) - have criticised this 19-strong inter-governmental Committee, which includes some hard-line States and which is highly politicised. They believe that human rights NGOs are subject to disproportionate scrutiny and have a more difficult time gaining consultative status than others.

NGO participation in the new Human Rights Council is currently the subject of intense concern to NGOs, particularly because the Council was established as a subsidiary organ of the GA rather than of the ECOSOC, and because NGO participation is potentially circumscribed by the need to ensure "the most effective contribution of these entities."[64] GA Resolution 251 acknowledges that NGOs "play an important role at the national, regional and international levels, in the promotion and protection of human rights"[65] and decides that NGO participation should be based on arrangements, "including ECOSOC Resolution 31, and practices observed by the Commission on Human Rights."[66] According to NGOs,[67] the transfer from the CHR

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[62] http://www.un.org
[63] Anna-Karin Lindlom, *Non-Governmental Organisations in International Law*, Cambridge, Cambridge University Press, 2005, pp. 374-386.
[64] A/RES/60/251(2005), para. 11.
[65] *Ibidem,* preambular para. 11.
[66] *Ibidem*, para. 11.

to the Council should not weaken or eliminate any existing NGO rights and privileges. Of particular interest are the fates of the Sub-Commission on the Protection and Promotion of Human Rights, which was seen as a relatively accessible forum for new ideas, and the extra-conventional mechanisms, which received valuable information from NGOs. Unfortunately, the engagement of NGOs in the adoption of new rules and procedures for the Council has overshadowed discussions about interaction with human rights NGOs elsewhere, including in the SC.

An early means for NGO involvement with the UN was through the DPI, which was established in 1946. Association with DPI requires having effective information programmes in place and the ability and means to disseminate information about the principles and work of the UN. DPI accreditation allows NGOs special access to information about UN activities, including access to the computers in the DPI/NGO Section Resource Centre, and "in turn a better capacity to promote and discuss UN policies."[68] The DPI/NGO Section oversees partnerships with associated NGOs and provides information services, including weekly NGO briefings, communication workshops, an annual NGO conference and an annual orientation programme for newly associated NGOs. The number of NGOs accredited by DPI has grown from 200 in 1968 to 1,533 at the time of writing.

Of particular interest to human rights NGOs is their interaction with the seven UN Treaty bodies or Committees which were established to monitor respect for the international standard-setting instruments such as the ICCPR and the ICESCR. Although with some exceptions, NGOs cannot petition the Treaty bodies as such, they can and do provide 'shadow' reports which are considered by the Committees in conjunction with the official reports when they are monitoring cases or deciding upon complaints. NGOs can also attend the open meetings held to consider State party reports, although they may not intervene. Similarly, article 15(2) of the Rome Statute allows NGOs to provide information relevant to cases under consideration by the ICC, while the statutes of the International Criminal Tribunals for the Former

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[67] *Paper on NGO Participation at the United Nations,* Submission to the President of the GA by Eurostep, Friedrich Ebert Stiftung, GPF, North-South Institute, Social Watch, Third World Institute, WEDO, World Federalist Movement, and Institute for Global Policy, March 28, 2006, at http://www.globalpolicy.org
[68] UN Association of the USA (UN-USA) and the Business Council for the UN, 02/2003, at http://www.un-usa.org.

Yugoslavia (ICTY)[69] and Rwanda (ICTR)[70] identify NGOs as important sources of information for the purposes of investigations.

5.2   CHANGES WITHIN THE UN

NGO relations with the GA, the main deliberative body of the UN, are probably those most in need of reform. Although informal arrangements – including NGO representatives addressing Special Sessions or being part of a national delegation - have existed for years, NGOs have never achieved formal status.[71] Following the adoption of ECOSOC Decision 297,[72] NGOs worked under the leadership of the World Federalist Movement[73] and the CONGO to formalise consultative arrangements with the GA. After the heady days of 1996, however, member States were reluctant to further enhance NGO interaction: a number of diplomatic incidents at the CHR and the GA in 1998 further hardened the attitude of some States and gave partial cause to new security restrictions being placed on NGOs, limiting their access to parts of the UN building. A special sub-group under the chairmanship of Ambassador Ahmad Kamal[74] was established by the GA Working Group on Reform of the UN System to address the issue: however, although it worked intensively for six months, there was remarkably little progress between member States.

Despite these setbacks, UN SG Annan has appeared mindful of the need to develop systems for effective interaction between the UN and its NGOs. In a 1998 Report specifically devoted to the issue, he noted that the "new participatory international system" coincided with the need for UN reform.[75] NGOs said there were some useful elements in this report but found it generally limited, and criticised the fact that it had been prepared without any NGO consultation. In his 2002 "Agenda for Further Change"[76] SG Annan asserted that NGOs played an increasingly important role and

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[69] Statute for the ICTY, adopted by S/RES/827(1993), article 18.
[70] Statute for the ICTR, adopted by S/RES/ 95 (1994), article 17.
[71] Apart from ICRC, ICRC and the Order of Malta.
[72] E/1996/297(1996).
[73] The group chaired by the World Federalist Movement is called the International Task Group on Legal and Institutional Matters (INTGLIM).
[74] Known as the 'Kamal Sub-Group,' it worked from January to July 1997.
[75] A/53/170(1998), *The Arrangements and Practices for the Interaction of NGOs in All Activities of the United Nations System.*
[76] A/57/387(2002).

that they should be better facilitated. The following year, he appointed a High-Level Panel of Eminent Persons on UN-Civil Society Relations, chaired by former Brazilian President Cardoso, to produce a set of practical recommendations for improving UN interaction with civil society.

Although the Cardoso Panel consulted widely and addressed many important issues, its 2004 Report[77] was poorly received. NGOs considered that "multi-constituency dialogue" and "multi-stake holders" would accord unduly significant authority to the business sector: Martens points out that adoption of the Report would have caused a shift in power relations, in some cases leading to an actual weakening of NGO participation at the UN.[78] Many NGOs also criticised specific recommendations, including one they believed would undermine the Non-Governmental Liaison Service (NGLS) which, with support from a variety of UN programmes and specialised agencies, promotes NGO participation in UN development discussions in an effective manner. Looking through the statements delivered at the General Debate held in October 2004 to discuss the Report, it is clear that many delegations were critical of specific aspects of the Report but also, that many were unenthusiastic about its very premise – either because they considered NGOs were not accountable, or that improving interaction with them would undermine the intergovernmental nature or the legislative function of the UN.

The Cardoso Panel Report was largely dismissed therefore, although the SG salvaged a few of its more acceptable proposals in a September 2004 paper[79] in which he recommended establishing a single accreditation procedure for the GA, ECOSOC and all UN Conferences - but not the SC; a Code of Conduct committing NGOs to act in accordance with the aims of the UN Charter and in a manner reflecting its intergovernmental character; a new partnership office within the UN Secretariat; and interactive hearings between member States and NGO representatives prior to major events and the opening of the GA each year. However, his further recommendation

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[77] A/58/817(2004).
[78] Jens Martens, *The Future of NGO Participation at the UN after the 2005 World Summit,* 01/2006, at http://www.globalpolicy.org
[79] A/59/354(2004).

that the GA should be made formally open to NGO participation was the only one that made it into his 2005 "In Larger Freedoms"[80] paper.

NGOs may also establish working relations with particular Departments, Programmes or Specialised Agencies of the UN system, based on shared fields of interest and potential for joint activities complementing the work of the UN in a particular area. They may also be accredited to conferences and other one-time events, which provide them with an important opportunity for participating and lobbying in informal sessions. The recommendation by the SG in 1997 to limit the use of large, global conferences was a particular disappointment to NGOs as the conferences and their preparatory meetings were seen as particularly useful and democratic fora. The 1992 Conference in Rio de Janeiro and the 1995 Conference in Beijing, for example, had provided an important means of access for NGOs. In 1997, nevertheless, the GA invited NGOs to take part in a Special Session to Review and Appraise the Implementation of Agenda 21.[81] NGOs have participated in several special sessions since then, and in important conferences such as the 2002 World Summit on Sustainable Development, to which over 3,500 NGOs were accredited.

However, recent developments display a more negative trend, as evidenced by restrictions placed on NGOs in advance of the 2005 World Summit and the low level of NGO participation at the Summit itself. Most NGOs believe that their relations with the GA should be formalised and given a more permanent basis, particularly for the Standing Committees, possibly on the basis of existing ECOSOC and DPI procedures.[82] However, delegates say the current atmosphere in the UN is so poisoned that agreement on this issue is difficult. Furthermore, some States have adopted hard-line positions towards NGOs, particularly those dealing with gay and lesbian issues and other human rights, and are reluctant to grant them increased access. Instead of enhancing and even formalising relations between the GA and NGOs, it is possible relations might further deteriorate, and that NGOs might be increasingly excluded from official participation.

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[80] A/59/2005(2005).
[81] This is commonly known as the 'Earth Summit + 5'.
[82] http://www.globalpolicy.org

5.3   NGO INTERACTION WITH OTHER INTERGOVERNMENTAL ORGANISATIONS

For comparison purposes, it is useful to look at arrangements for NGO relations within other IGOs. The system of 'tripartism' in the International Labour Organisation (ILO) – which brings Governments, employers and employees together to draft texts and monitor implementation of standards - is probably the most sophisticated. The non-governmental employer and employee delegates are nominated by member States in agreement with the most representative trades unions or industrial organisations in the State. NGOs therefore have official voting status in the decision-making process itself. In addition, the ILO maintains general and regional consultative relations with NGOs which have an important interest in a range of its activities. It also maintains a Special List of INGOs other than employer or employee organisations which share the principles and objectives of the ILO; and it extends invitations to certain INGOs to attend ILO meetings in which they have demonstrated a particular interest.

Of relevance among the UN specialised agencies is UNESCO, which established formal relations with NGOs in 1961 and strengthened their access by means of further Directives in 1995 and 2001.[83] NGOs which are non-governmental and non-profit in their functions, operations and objectives; are engaged in activities related to the work of UNESCO; have a largely international and active membership and a democratic structure and have existed for at least four years, can apply for formal relations to the Committee on NGOs. This Committee, which is part of the UNESCO Executive Board, recommends the granting of consultative, associate or ad hoc operational relations. As of June 2006, 337 NGOs enjoy formal relations with UNESCO. The UNESCO-NGO Liaison Committee is elected by these and itself has formal relations with the organisation. All NGOs with formal relations may submit written statements to the General Conference or the Executive Board, exchange information and documents, address Plenary Meetings of the General Conference on particular issues,

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[83] Directives concerning UNESCO's relations with NGOs, 1961/1995 / 2001.

send observers to UNESCO meetings elsewhere and be consulted on UNESCO's proposed programme.

Ad hoc operational relations enable NGOs with specific expertise or involvement in a UNESCO issue to take part in the debate. These NGOs are often smaller organisations with direct experience in the field, and their applications are processed as quickly as possible. To obtain consultative relations, an NGO must show that it can provide advice relevant to UNESCO issues and contribute effectively to UNESCO goals. To obtain associate relations, an NGO must be part of an umbrella organisation which is broadly international in character, has specialist international professional associations, proven relevant expertise, and a record of major contribution to UNESCO's work. These umbrella groups - few in number - are encouraged by UNESCO and enjoy a privileged status, which includes advising the Director General on the UNESCO programme and participating in a range of UNESCO activities. This use of umbrella organisations to develop strong relations is worth evaluating in relation to the SC.

Of the regional organisations concerned with human rights, the Council of Europe (COE) probably has the most sophisticated relations with NGOs. They have developed over the years and in 2003, INGOs fulfilling certain criteria - including "having a non-profit making aim," being represented at the European level, publicising the work of the COE among European citizens, and contributing to and participating actively in COE deliberations and activities - were accorded participatory status,[84]while national NGOs fulfilling certain criteria were accorded partnership status.[85] INGOs can provide expert advice, present papers, and attend seminars and conferences. Perhaps most importantly, they can be invited to participate, on an ad hoc basis, in the Steering Committees in which Treaties are drafted: some Steering Committees have granted observer status to a number of relevant INGOs. For example, the Steering Committee for Human Rights has granted observer status to AI, the International Commission of Jurists (ICJ), the International Federation of Human Rights (IFHR) and the European Coordinating Group of

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[84] (2003)8, *Participatory Status for INGOs with the COE* (2003).
[85] (2003)9, *Status of Partnership between the COE and National NGOs* (2003).

National Institutions for the Promotion and Protection of Human Rights.[86] INGOs with participative status and with particular competence receive State reports, may directly communicate with the SG and government Committees and may provide information for periodic reports to the Human Rights Committee. The thirty-six member Liaison Committee is elected to represent all INGOs with participatory status, which also divide themselves into ten thematic groupings. Although the Liaison Committee recommends to the intergovernmental bodies which NGOs should receive participatory status, it is - as in ECOSOC - ultimately the member States which decide.

Civil society participation was formalised in the Organisation of American States (OAS) in 1999 and includes the right to participate in OAS conferences and to attend (and sometimes to address) meetings of the Permanent Council and the Inter-American Council for Integral Development and their subsidiary bodies. However, participation is both recommended and approved by inter-governmental bodies. The Inter-American Commission takes NGO views into account both formally - through its Guidelines for the Participation of Civil Society in OAS Activities - and informally - through a series of consultations during its on-site investigations.

The African Commission on Human and Peoples' Rights grants observer status to human rights NGOs, which enables them to attend the opening and closing meetings of all sessions, access certain documentation, address certain meetings, and suggest items for consideration in the agenda. Although the Constitutive Act of the new African Union (AU) contains no provisions for relations with civil society, it establishes an advisory body - the Economic, Social and Cultural Council (ECOSOCC)[87] - which will include NGO representatives, and serve as an interface between AU structures and civil society with a view to making the AU more democratic than its predecessor. It remains to be seen how this will work out in reality.

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[86] Anna-Karin Lindblom, *Non-Governmental Organisations in International Law*, Cambridge, Cambridge University Press, 2005, p. 422.
[87] Constitutive Act of the AU, Article 5.h.

The EU includes the Commission, the Council of Ministers and the European Parliament (EP) and is really a 'supra-national' organisation. Representatives to the EP are directly elected by member State populations, so there is automatically greater democratic participation than in other organisations. The Committee of the Regions which represents regional and local authorities, and the Economic and Social Committee which represents organised civil society, act as institutionalised advisory bodies to the Council, Commission and EP. Nevertheless, there is no system of formal relations for NGOs and their history, particularly with the Commission, has not always been positive. However, interaction with NGOs has improved since the concept of public consultations was enshrined in the 1997 Amsterdam Treaty[88] as a mandatory part of EU policy definition. The establishment of "Consultation, the European Commission and Civil Society" (CONECCS), a database with information about civil society frameworks, was a step forward and in January 2003, minimum standards for consultation came into effect. The Commission selects NGOs on an ad hoc basis, according to whether they have relevant expertise or whether they are affected by a proposed policy initiative. Despite these improvements, NGOs are seen as "facilitators of dialogue"[89] necessary for an open, accountable, effective and coherent system of governance. They are not seen as participants in the decision-making process, which remains under the control of member States, and the EU itself.

NGOs have extensive involvement with the Organisation for Security and Cooperation in Europe (OSCE) at the operational level, having built on the cooperative relationship developed with its precursor, the Conference on Security and Cooperation in Europe (CSCE). NGOs are consulted widely in the field and in fact-finding missions and they participate in the numerous NGO Forums and Seminars, particularly in the Economic and Environmental Dimension. Indeed, the OSCE Missions devote substantial time to encouraging and training civil society in their host States. However, the Organisation as a whole does not maintain official relations with NGOs and they have little real involvement at the decision-making level.

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[88] *The Treaty of Amsterdam amending the Treaty of the EU, the Treaties establishing the European Communities and certain related acts*, signed on 2/10/1997.
[89] Anna-Karin Lindblom, *Non-Governmental Organisations in International Law*, Cambridge, Cambridge University Press, 2005, p. 428.

The World Bank (WB) has often been the subject of attack by civil society organisations, particularly by anti-globalisation activists and perhaps because of this, it has tried to improve its interaction with NGOs. The WB Inspection Panel, created in 1993 and improved in 1996 and 1999, enables NGOs to appeal if they consider that a project might harm their interests or those of individuals they represent. Although criticism has been levelled at the Panel, its establishment reflects a change in WB thinking towards taking account of NGO views. Furthermore, over half of WB projects are now executed in partnership with NGOs, leading some experts to say that "NGOs are at the centre of World Bank policy, and moreover often determine it."[90] Others argue, however, that the increased interaction has not necessarily translated into NGOs having increased influence over the activities or policies of the WB.[91]

In addition, of course, NGOs have standing before many international judicial and quasi-judicial bodies. For example, they can petition the European Court on Human Rights and the European Court of Justice (ECJ) and should be able to petition the African Court of Justice, when established. They may also submit *amicus curiae* briefs to the European Court on Human Rights, the Inter-American Court on Human Rights, the ICTY, the ICTR and the ICC while the African Commission allows for NGO 'submissions.' Other bodies such as the International Court of Justice (ICJ) and the WTO Dispute Settlement Panel, however, are more restrictive.

5.4   OVERVIEW OF NGO RELATIONS WITH INTERGOVERNMENTAL ORGANISATIONS

It appears that relationships between IGOs and NGOs have been marked by a general increase in cooperation, especially since the 1990s. Although remaining essentially intergovernmental, IGOs appreciate the expert information and advice, and wish to enable bodies representing important elements of public opinion to express their views. The concept of participatory democracy has taken particular root in some organisations, where there has been a move towards real participation.

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[90] McGann, James, Johnstone, Mary, *The Power Shift and the NGO Credibility Crisis*, in <<Brown Journal of World Affairs>>, Winter-Spring, 2005.
[91] P. J. Nelson, *The World Bank and NGOs: The Limits of Apolitical Development*, Houndmills, Macmillan, 1995.

One of the difficulties associated with involving civil society in traditional inter-State business lies in the sheer proliferation of NGOs. Considering that the number of INGOs jumped from 13,000 in 1981 to 47,000 in 2001,[92] it is easy to appreciate the challenges faced even by well-intentioned Governments and organisations. To address these, they have had to develop criteria for assessing the activities and objectives of NGOs, and new accreditation procedures to accommodate larger numbers.

As we have seen, the general criteria include ensuring that NGOs share and support the aims, objectives, goals and activities of the organisation, that they have particular competence or experience in the subject and that their financial management is transparent and correct. Most organisations require NGOs with official status to report periodically; some require them to have been in existence for a certain length of time, to have an established headquarters, and a democratically adopted constitution. Additional, normally implied, criteria include not being openly involved in violence or advocating it as a political tactic (as opposed to 'national liberation movements') and not aiming to overthrow a member State government - both of which have been exploited by governments wishing to obstruct particular NGOs. Despite the establishment of clear criteria, IGOs can still be overwhelmed by the volume of NGO applications, particularly to large conferences.

In most IGOs, NGOs with official status organise themselves and are represented by a liaison group. There is also often an official function such as the DPI/NGO Section, the DESA/NGO Section or the UNESCO-NGO Liaison Committee, which liaises between the NGOs and the IGO in question. The establishment of such a liaison function certainly seems to facilitate better interaction.

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[92] Leni Wild, *Strengthening Global Civil Society*, Institute of Public Policy Research, UK, 2006.

6.1   THE SECURITY COUNCIL WITHIN THE UN SYSTEM AND ITS RELATIONSHIP TO HUMAN RIGHTS

Having looked at NGO relations with a range of UN bodies and organs and other IGOs, the second part of this paper examines NGO interaction with the SC. In order to do this, it is necessary to first examine the role of the SC within the UN system, its relationship to human rights and its structure, work and functioning.

The composition, function, powers, procedures and responsibilities of the SC are outlined in Chapters V to VIII of the UN Charter, with Article 24 asserting that it has "primary responsibility for the maintenance of international peace and security" on behalf of all UN member States. In exercising these gargantuan responsibilities in relation to collective security, the Charter grants the SC wide-ranging powers to act on behalf of the entire organisation and calls on member States to comply with SC decisions. Under Article 39, the SC determines the existence of any threat to the peace, breach of the peace or act of aggression and makes recommendations or decides what measures should be taken. Even though the Charter was drafted when most sources of conflict were between States, some people were visionary enough to see the connection between internal stability and harmony - based on respect for human rights - and peace and security. As early as 1947, the GA recalled that member States had pledged to take action to promote universal respect for fundamental freedoms and had condemned "all forms of propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression."[93]

However, the SC was concerned with human rights only "from time to time."[94] De Senarclens writes that the "sectoralisation of the UN system along functionalist lines hindered reflection on the broader aspects of human rights implementation."[95]

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[93] GA Resolution 110(II)(1947), para. 1.
[94] *The UN and Human Rights*, UN DPI, New York, 1984, p.13.
[95] Pierre de Senarclens, *The Politics of Human Rights*, in Jean-Marc Coicaud, Michael W. Doyle and Anne-Marie Gardner (eds.), *The Globalisation of Human Rights*, Tokyo, UN University, 2003, p. 142.

SC members considered that the various bodies of the UN had separate and distinct duties and responsibilities: human rights were the domain of ECOSOC and the GA and their subsidiary organs and did not need to be considered in the 'hard' political and military discussions of the SC, where State sovereignty remained the predominant consideration. In fact, measures for the protection of human rights were considered an inadmissible interference with domestic affairs in the sense of article 2.7 of the Charter, the only exception being voluntary ratification of human rights treaties.[96] The SC focused on inter-State conflict and considered that States would act only in their own interests. Although Resolutions as early as 1956 dealing with the crisis in Hungary referred to "the efforts of Hungarian people to assert their rights"[97] they were not seen as central to the issue.

With the end of the Cold War, however, peace came to be seen as more than just the absence of war: it included not only harmony between nations, but harmony within nations. The causal link between peace and security and human rights was developed, with experts such as Jan Martenson writing that "one of the significant threats to the stability of nation-States and thus, to international security, lies in lack of respect of human rights."[98] Humphrey[99] points out that the SC had already been careful to mention threats to peace and security when it imposed embargoes on South Africa in 1963, 1970 and 1977[100] (and subsequently in 1984 and 1986).[101] Although objections were noted that the SC was not the appropriate body in which to discuss human rights issues when the Special Rapporteur on the human rights situation in Iraq briefed the SC in August 1992, subsequent similar meetings were permitted on the understanding that the SC could be concerned about human rights violations - only if they constituted a "threat to the peace, a breach of the peace or an act of aggression" as

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[96] Manfred Nowak, *Introduction to the Human Rights Regime*, Leiden, Martinus Nijhoff, 2003, p. 307.
[97] S/RES/120 (1956) [S/3733], para. 1.
[98] Jan Martenson, *The United Nations and human rights today and tomorrow,* in Kathleen E. Mahoney and Paul Mahoney (eds.), *Human Rights in the Twenty-First Century: a Global Challenge*, Dordrecht, Martinus Nijhoff, 1993, pp. 925-936.
[99] John Humphrey, *No Distant Millennium: The International Law of Human Rights*, Paris, UNESCO, 1989, p. 72.
[100] S/RES/181(1963); S/RES/182(1963); SEC/RES/191(1964); S/RES/282(1970); S/RES/418(1977); S/RES/421(1977).
[101] S/RES/558(1984); S/RES/591(1986).

outlined in Chapter VII of the Charter. By 1995, it was asserted that such a situation could lead, if necessary, to enforcement measures on the part of the UN.[102]

A more comprehensive concept of security has now developed in the UN,[103] one that is rooted in the 'larger freedoms' and works towards achieving the well-being of peoples within their own societies. Closer attention is paid to Article 55 of the Charter, which re-affirms the interdependence of peace and human rights, and Article 24.2 which says that the SC "shall act in accordance with the Purposes and Principles of the United Nations" (which include "to achieve international cooperation …in promoting and encouraging respect for human rights and fundamental freedoms for all …" as outlined in Article 1.3). Peace and security are increasingly seen as part of a complex web which includes human rights, and the relationship between them is addressed from both a causal and a prescriptive perspective. Serious human rights violations have become an acceptable reason for the SC to examine a situation, and a more acceptable basis on which to override State sovereignty. Indeed, experts consider that the international protection of human rights is now considered an obligation of the international community.[104]

These developments have had a positive impact on the ability of the SC to carry out its responsibilities and, with the parallel increase in internal conflicts - many of which are rooted in human rights violations - its approach has altered. Manasuma notes the development from 1991 when the SC was reluctant to intervene in Iraq - even though it had a history of human rights abuse and had just violated the most basic norms of international relations – to its acquiescence in the 1998 ECOMOG[105] intervention in Sierra Leone and its majority support for the 1999 NATO intervention in the Federal Republic of Yugoslavia (FRY) [106] (even though the latter was carried out 'illegally' in the face of certain opposition from the Russian Federation (RF) and China). Several Chapter VII Resolutions recently adopted by the SC – such as those regarding East Timor - did not address threats to international peace and security per se, but

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[102] *The UN and Human Rights 1945-1995*, Blue Book Series, vol. VII, UN, New York, 1995.
[103] The OSCE developed a comprehensive concept of security even during the Cold War, dividing it into politico-military, human and economic 'baskets.'
[104] Manfred Nowak, *Introduction to the International Human Rights Regime*, Leiden, Martinus Nijhoff, 2003, p. 308.
[105] Monitoring Group of the Economic Community of West African States (ECOWAS).
[106] Kenneth Manasuma, *The UN SC in the Post-Cold War Era: Applying the Principle of Legality*, Leiden, Martinus Nijhoff, 2006, p. 299.

situations seen as problematic in themselves. There is "an emerging norm of a collective international responsibility to protect, exercisable by the Security Council, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign governments have proved powerless or unwilling to prevent."[107]

The establishment by the SC of the ICTY in 1993, the impartial Commission of Experts to investigate human rights violations in Rwanda committed after 6 April 1994,[108] the ICTR in 1994 and the ICC in 1998 reflect the growing appreciation of the need to not only address but to redress, human rights violations in order to bring about peace and security. The greater importance attached to human rights in general and their 'mainstreaming' at the UN is moving the SC to take human rights into consideration in all aspects of its work. Oddly, however, this movement has not been matched by a commensurate increase in the participation of human rights NGOs.

Despite these developments, the authority of the SC has been seriously undermined by failures such as those in Somalia where an ill-prepared, ill-equipped force with an insufficient mandate was sent in too late, in Bosnia where the UN was accorded a relatively minor role in the post-conflict situation[109] and most notably in Rwanda where the SC failed to take necessary action even after the genocide had started.[110] The SC's poor handling of the 1999 referendum situation in East Timor was partly overcome by the successful UN Transitional Administration (UNTAET).[111] However, even this modest success has been undermined by recent violence, caused partly by the UN's premature withdrawal. Other criticisms levelled against the SC include its ignorance of violations of economic, social and cultural rights in contravention of Articles 55 and 56 of the UN Charter even though they are a potential source of conflict, and it being generally reactionary rather than pro-active. The latter is difficult to avoid, given the range of complex conflicts and potential crises existing in the

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[107] A/59/565(2004), para. 202.
[108] S/RES/935(1994).
[109] The UN had responsibility for the International Police Task Force (IPTF), which was under the control of UNMIBH until 2002.
[110] Max Hilaire, *United Nations Law and the Security Council,* Aldershot, Ashgate, 2005, pp. 302-304; Manfred Nowak, I*ntroduction to the International Human Rights Regime,* Leiden, Martinus Nijhoff, 2003, pp. 321-331.
[111] S/RES/1272(1999).

world today: early-warning is certainly an area in which NGOs could make a positive contribution.

Ironically, the most serious threat to the authority of the SC is posed by the so-called 'doctrine of humanitarian intervention.' The fact that there are no procedural or substantive criteria relating to the invocation of SC powers makes the decision to take action very subjective and open to political exploitation. In general, RF and China oppose UN intervention in humanitarian situations while US, France and UK are more supportive especially, as Hilaire points out, when the crisis has implications for their own geopolitical interests or when international public opinion and media coverage is overwhelmingly in favour of intervention.[112] This is part of a larger argument about the clash between traditional international law restrictions on interference in the internal affairs of sovereign nation-States (as outlined in article 2.7 of the UN Charter) and Held's "cosmopolitan democratic law" which is no longer formally restricted by traditional domestic or international frameworks of accountability and uses legitimacy instead as its basis. [113]

The attitude of the US and especially the current administration poses a particular threat to SC authority. Although there was great sympathy with the US following the terrorist attacks of 11 September 2001, the immediate SC approval of the use of "all necessary means"[114] was underlined by a belief that the US would anyway take action. The NATO decision to bomb FRY, taken in 1999 without even seeking SC authorisation, and the 2003 invasion of Iraq – for which SC authorisation was initially sought on the basis of the threat posed by weapons of mass destruction but retrospectively explained on the basis of humanitarian intervention - reflect a worrying tendency for regional and other bodies to take unauthorised military action. Although Chapter VIII of the UN Charter allows for action to be delegated to regional organisations, this should only be when the SC has authorised such action and is certain that the use of force will be in conformity with *ius cogens*, international humanitarian law and other human rights norms. The need to develop criteria for

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[112] Max Hilaire, *United Nations Law and the Security Council,* Aldershot, Ashgate, 2005, p. 154.
[113] David Held *Democracy and the Global Order: from the Modern State to Cosmopolitan Governance,* Cambridge, Polity Press, 1995.
[114] S/RES/1368(2001), para. 5.

humanitarian intervention is another area in which NGOs, with their practical knowledge and objective perspectives, could make a positive contribution

The SC needs to further assert its authority, particularly as the sole arbiter of what constitutes a threat to international peace and security and whether action is necessary. This is a difficult proposition, especially in the current uni-polar world with one rather antagonistic superpower. Hilaire says that the SC has acted as a "rubber stamp for issues agreed upon outside the Council chamber" and that debates on draft resolutions have been "procedural instead of substantive."[115] However, a degree of independence was demonstrated in 2003 when three permanent members and the majority of elected members did not support the draft Resolution on Iraq proposed by US, UK and Spain. This independence was strongly supported by hybrid civil society organisations such as the United for Peace and Justice (UFPJ) which mobilised to oppose the war. It saved the SC from being labelled a "tool of American foreign policy"[116] and an irrelevant body[117] - even though it 'ratified' the invasion shortly afterwards by adopting Resolutions 1483 and 1511.[118] The adoption of the most recent Resolution on Sudan[119]- by consensus and under Chapter VII - hints at the possibility of a growing SC resolve in this respect.

6.2   THE WORK OF THE SECURITY COUNCIL

The SC workload has increased enormously since 1990. In 1993 alone, it passed more Chapter VII Resolutions than in the first 44 years of its existence. In 2005, it passed 71 Resolutions and agreed 67 Presidential Statements (PRSTs) compared to 20 Resolutions and 8 Presidential Statements in 1988. It has gone from holding only periodic meetings to meeting in almost continuous session. In order to appreciate where NGOs might be most effective, it is useful to examine the areas of work covered by the SC.

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[115] Max Hilaire, *United Nations Law and the Security Council,* Aldershot, Ashgate, 2005, p. 238.
[116] Catherine Toups, *Interview with Madeleine Albright*, Washington Times, 13/12/1995.
[117] Phyllis Bennis, *Challenging Empire: How People, Governments and the UN defy US Power,* London, Arris Books, 2006, p.230.
[118] S/RES/1483(2003); S/RES/1511(2003).
[119] S/RES/1679(2006).

Under Chapter VI of the Charter, the SC can engage in the peaceful settlement of disputes. It was recognised at the 2005 Summit that the SC has not made best use of these powers and that a greater focus should be placed upon early warning systems and preventive diplomacy. A positive example of the SC taking preventive action was its establishment of UNPREDEP[120] in 1995 in the former Yugoslav Republic of Macedonia (FYROM), where ethnic tensions between Slavs and Albanians were high. UNPREDEP was successful in containing the conflict in FRY from reaching FYROM and helping to defuse tensions in the region, and its mandate was extended every six months for almost four years. However, in a stunning example of placing unrelated national interests above those of international peace and security, China - a permanent member of the SC - refused to extend UNPREDEP's mandate in February 1999 because FYROM had recognised the independence of Taiwan. Other examples of preventive action include the UN Mission in the Prevlaka Peninsula (UNMOP),[121] the UN Mission in Abkhazia, Georgia (UNOMIG),[122] the UN Mission in Western Sahara (MINURSO)[123] and the UN Mission in Guinea-Bissau (UNOGBIS)[124] as well as the extensive use of Special Representatives, Special Envoys and Good Offices Missions such as those dispatched in relation to the Middle East and Cyprus. In practice, the latter have become instruments of the SG and the Secretariat rather than of the SC.

The SC could certainly develop its activities in relation to preventive diplomacy. Theo Van Boven referred to the excellent work of the OSCE High Commissioner for National Minorities (HCNM) and suggested that the SC should more systematically identify points where preventive or anticipatory diplomacy might be needed.[125] UN SG Annan said in his 1997 reform paper[126] that improving the UN's capacity to detect potential threats to international peace and security required stronger cooperation with NGOs, among others. NGOs, through their local branches, could make an invaluable contribution to providing early-warning information and to systematising its processing for use by the SC.

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[120] S/RES/983(1995).
[121] S/RES/1038(1996).
[122] S/RES/8546(1993).
[123] S/RES/690(1991).
[124] S/RES/1216(1998).
[125] Theo Van Boven, *Prevention of Human Rights Violations,* in Asbjorn Eide and Jan Helgesen (eds.), *The future of human rights protection in a changing world: 50 years since the Four Freedoms* A*ddress,* Oslo, Universitetsforlaget, 1991.
[126] A/51/950(1997), *Renewing the United Nations: A Programme for Reform*, para. 111.

The SC has a broad range of powers relating to collective security under Chapter VII of the Charter. Under Article 25, all UN member States are legally bound to carry out Chapter VII decisions,[127] and under Article 103, such decisions take precedence over all legal obligations. In the Yusuf[128] case, for example, the ECJ found that the UN Charter has primacy over all other international treaties and domestic law (except for *ius cogens* which did not apply in this case). Chapter VII was not used much during the Cold War but has been invoked increasingly over the past 15 years.

Article 41 provides authorisation to take non-military enforcement measures. These have normally consisted of economic sanctions or embargoes such as those imposed against the apartheid regime in South Africa, UNITA in Angola, the Taliban in Afghanistan, and against Rwanda, Haiti, Somalia, Libya, Sudan, Sierra Leone, Liberia and FRY. Earlier sanctions – most notoriously those imposed against the Hussein regime in Iraq under the Oil-for-Food Programme - were seen as inflicting undue hardship on civilians while those imposed against the Taliban were seen by some as violating human rights such as the right to property, to due process and to a fair hearing.[129]Arms embargoes are not considered effective because they are difficult to monitor and easily broken by States and international arms marketers. Discussion in recent years has focused on 'smart' sanctions, such as those recently imposed against Sudan,[130] which aim to target those associated with the wrongdoing, minimise the humanitarian suffering of civilians and include a specific end-point. Resolution 300[131] called for NGOs to be consulted in assessing the potential humanitarian consequences of sanctions: policy formulation in this area, including interaction with the sanctions monitoring mechanism, provides another important point of entry for NGOs.

In theory, Article 42 provides authorisation to use military enforcement measures: in reality, however, non-implementation of Article 43 means the SC has been limited to legitimising the use of force by regional organisations or 'Coalitions of the Willing'

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[127] Some consider that decisions under Chapter VI are also legally binding. See for example the ICJ Advisory Opinion of 21/06/1971, regarding the legal consequences for States of the continuing presence of South Africa in Namibia, notwithstanding SC Resolution 276 (1970).
[128] T-306/01 and T-315/01, ECJ, Ahmed Ali Yusuf and Al Barakaat International Foundation versus European Council and European Commission. 21/09/2005.
[129] Kenneth Manasuma, *The United Nations Security Council in the Post-Cold War Era: applying the principle of legality*, Dordrecht, Martinus Nijhoff Publishers, 2006, p. 182.
[130] S/RES/1672(2006).
[131] S/1995/300(1995), Annex.

as in Korea in 1950,[132] Iraq in 1991[133] and Bosnia and Hercegovina in 1993.[134] As outlined earlier, there are concerns about such 'delegated enforcement action.' Consultations are ongoing within the UN about the creation of a standing police force and a rapidly deployable peacekeeping capacity which would enable the UN itself to respond to emergency situations. On 12 September 2001, following the terrorist attacks in the US, the term "all measures necessary"[135] became "all necessary steps"[136] and was subsequently interpreted by the US as having authorised military action against the Taliban in Afghanistan on the basis of the right to (pre-emptive) self-defence, as outlined in Article 51.

Chapter VII has also been interpreted to authorise 'robust' UN Peacekeeping Operations - although many operations have also been mandated under Chapter VI (or even under 'Chapter VI and a half'). Although the Charter provides no specific reference to peacekeeping, it has become one of the most important and best-known UN activities. Only 18 peacekeeping operations were mandated during the first 44 years of the UN's existence. The end of the Cold War, however, saw an explosion in internal conflicts and 42 peacekeeping operations were mandated between 1990 and 2006. Such operations focus increasingly on human rights. They have moved through several 'generations' from traditional ceasefire monitoring such as UNFICYP,[137] to missions with a strong human rights component such as ONUSAL,[138] UNTAC,[139] MICIVIH[140] and MINUGUA[141] to integrated peace-building missions such as UNAMA.[142] At the time of writing, there are 72,876 troops, military observers and police active in 19 UN peace-keeping operations.[143]

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[132] S/RES/84(1950).
[133] S/RES/670(1990).
[134] S/RES/816(1993).
[135] S/RES/678(1990).
[136] S/RES/1368(2001).
[137] UN Mission in Cyprus (UNFICYP), 1964.
[138] UN Mission in El Salvador (ONUSAL), 1991.
[139] UN Mission in Cambodia (UNTAC), 1991.
[140] UN Mission in Haiti (MICIVIH), 1993.
[141] UN Mission in Guatemala (MINUGUA), 1994.
[142] UN Mission in Afghanistan (UNAMA), 2001.
[143] http://www.un.org

These changes have been of great interest to NGOs, which have remarked that human rights seem to be "at the heart of a new era of UN operations."[144]O'Neill has described the "explosion of human rights field operations" as providing an opportunity to "work with the all-important local NGO community."[145] In the new Brahimi-style integrated missions, human rights are supposed to cut across all activities. The ICTJ said in 2004 that "the voices of civil society must be heard when peace settlements are being negotiated and when missions to implement them are being planned and post-conflict needs assessed."[146] Recent peacebuilding operations have involved creating or strengthening national institutions, organising and monitoring elections, monitoring and promoting human rights, providing reintegration and rehabilitation programmes, training police and creating conditions for resumed development, distributing humanitarian relief supplies, protecting relief workers and UN personnel, re-settling refugees, supervising ceasefire agreements, negotiating political settlements, and rebuilding economic and social structures of the States in crisis.[147] Human rights NGOs have played an important role in this work and have contributed particularly effectively to missions such as UNMIK and UNTAET, where the UN fulfilled the executive functions of government.

The ICTY and the ICTR - both created by the SC with the positive involvement the NGO sector - may enlist the authority of the SC to secure the arrest of an accused, and to require the release of material evidence from any State. Furthermore, with the entry into force of the Rome Statute, the SC can refer cases to the Chief Prosecutor of the ICC - as in the recent case of Sudan[148] - and can also ask the Chief Prosecutor to defer cases which are under consideration by the SC itself. However, as pointed out by Carter, the ICC only has powers set out in the Statute which are based upon cooperation, not mandate.[149]

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[144] Helena Cook, *Amnesty International at the United Nations*, in Peter Willetts (ed.), *The Conscience of the World: The Influence of NGOs in the UN System*, London, Hurst and Company, 1996, p. 207.
[145] William G. O'Neill *Gaining Compliance without Force: Human Rights Field Operations,* in S. Chesterman (ed.), *Civilians in War,* Boulder, Lynne Rienner, 2001, p.164.
[146] Ian Martin, *The Role of Civil Society in Post-Conflict Peacebuilding,* Statement by International Centre for Transitional Justice (ICTJ) to Open Debate of the SC, 22/06/2004.
[147] Max Hilaire, *United Nations Law and the Security Council,* Aldershot, Ashgate, 2005, p. 47.
[148] S/RES/1593(2005).
[149] Peter Carter, *International Criminal Law and Human Rights,* in Frances Butler (Ed.) *Human Rights Protection: Methods and Effectiveness*, British Institute of Human Rights Library, Kluwer Law International, 2002, p. 148.

Other SC work includes monitoring the situation in regions already on its agenda, where UN Missions are often already deployed. This is done on the basis of regular briefings from the Secretariat, which are prepared with input from the UN mission on the ground. NGOs sometimes circulate their own reports to delegations: it would be useful to make such 'parallel' reports a more regular part of business. The SC sometimes issues a PRST or a less important Press Statement after these meetings, drawing attention to a particular issue or warning the parties involved to behave in a certain way. In addition, SC members make a number of annual visits to crisis regions to assess the situation for themselves, meet with relevant people, and often deliver a strong message. Again, NGOs could play a more active role in helping the SC to prepare for these visits and in coordinating meetings with relevant representatives in the field.

The SC also holds thematic debates about important cross-cutting issues such as children in armed conflict, women, peace and security or the role of civil society in post-conflict situations. These meetings are less sensitive than those on regional issues as they intrude less on State sovereignty; States are, therefore, more open to NGO participation. In 2004, NGOs were even invited to address two Open Meetings on thematic issues (see more below). The SC also makes recommendations to the GA regarding such issues as the admission, suspension or expulsion of members, or the appointment of the SG.

In addition, there are currently 18 subsidiary bodies of the SC including the Counter-Terrorism Committee (CTC) and the various sanctions committees, which are particularly opaque. AI and other NGOs have lobbied the CTC to take account of human rights by inter alia appointing a human rights expert to advise States when implementing Resolution 1373. Such important efforts, however, are complicated by the secrecy of the CTC which holds closed meetings and reports only periodically to the SC proper.

6.3   THE FUNCTIONING OF THE SECURITY COUNCIL

In order to examine the interaction between NGOs and the SC, it is important to first look at the working methods of the SC in an objective and realistic manner, to question its legitimacy - particularly in light of its universal authority and the fact that it takes legally-binding decisions on behalf of UN member States - and to look at the possibilities for its reform.

The SC is not a democratic body. Although claiming to be liberal – working together for the overall benefit of the international community – it acts according to the realist theory of international relations. Comprising 15 members - out of a total UN membership of 192 members - it is dominated by the P5 whose national interests supersede any legitimate international political concerns. The P5 generally act in a Machiavellian manner, overriding their general moral duties because of *raison d'etat;* and the structure of the SC perpetuates this tendency. The US, for example, defines its international policy essentially with reference to its 'vital interests.' This has implications for conflicts, particularly those in oil-rich areas such as Iraq and Georgia. Similarly, RF and China often work to prevent issues being addressed by the SC largely because of sensitivities about domestic issues such as Chechnya and Tibet which, needless to say, have not featured on the SC agenda. Paul writes that "NGOs became painfully aware how the P5 had refused to act on the 1994 Rwanda genocide, how Council resolutions were disregarded and undermined by leading members, how powerful members sometimes issued economic threats to win important Council votes, how strategic resources like oil and diamonds could secretly drive Council deliberations and how ambassadors could be chastised or even recalled if they angered mighty opponents."[150]

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[150] James Paul, *NGOs and the Security Council*, 2004, at http://www.globalpolicy.org.

The use of the veto whereby any P5 State can block agreement on a non-procedural issue, or increasingly the "hidden veto"[151] whereby it can threaten in private to block consensus, even if it is supported by the vast majority of UN member States, is particularly egregious and should be curtailed, if not abolished. The US has vetoed many decisions, particularly in relation to Israel and the Occupied Territories. RF threatened to use the veto in relation to possible Resolutions on the FRY because of its support for fellow-Orthodox Serbs. General Chinese and Russian lack of enthusiasm for UN reinforcement and their limited contributions to UN operations mean that the US, UK and France - the 'P3'- bear a disproportionate responsibility for peacekeeping and other operations and that they therefore have a disproportionate influence on relevant decisions.

The E10 have insufficient information about the inner workings of the SC and its 18 complex subsidiary bodies, and this prevents them from participating fully and constructively in the SC's work. Furthermore, the P5 and the P3 hold regular meetings in private, at which they take important decisions without any pretence of consulting with elected members. In a way, the P5 view the E10 and NGOs in a similar light: they are annoying but must be tolerated in order to provide a veneer of legitimacy to SC decisions. E10 delegations are often very small: for example, Mali had only 5 accredited delegates in 2000 and Mauritius only 6 in 2001, compared to the US, which had 129 accredited delegates in 2005. E10 delegates therefore generally deal with a wide range of issues and find it difficult to attend all the relevant meetings, let alone prepare for them in any depth. The increased workload of the SC, combined with the proliferation of caucus meetings and briefings, exacerbate these difficulties. At the same time, technological developments and the increasing use of cell phones mean that decisions are expected to be taken rapidly. There is little time for reflection on general, cross-cutting issues or to meet with external experts.

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[151] Sydney D. Bailey and Sam Daws, *The Procedure of the UN Security Council*, 3rd Edition, Oxford, Clarendon Press, 1998, p. 249

According to its Provisional Rules of Procedure,[152] barely changed since 1946, the SC can hold Public or Private Meetings. Rule 48 of the Provisional Rules of Procedure says that the SC shall meet in public "unless it decides otherwise." As "master of its own procedures"[153] however the SC has developed a variety of means to address issues of concern and in recent years, has met in Formal Meetings, Open Debates, Open Briefings, Open Meetings, Private Closed Meetings and Private Open Meetings. There is no document setting out the use of these meetings and the difference between them is unclear, even to many SC members. Non-SC members who are affected by, or involved in, a crisis may address relevant meetings when invited to do so under Rule 37 of the Rules of Procedure but only SC members have the right to vote. For example, the FRY (now Serbia) delegation participates routinely in the monthly Open Meetings on Kosovo under Resolution 1244. NGOs are allowed to observe Open Debates and Open Meetings and were invited to address Open Meetings twice in 2004. However, these meetings – held in the famous SC chamber - are rather formulaic with speeches prepared in advance and little real discussion.

The real debate occurs in Consultations of the Whole or 'Informal Consultations' as they are commonly known. These are not envisaged in the Rules of Procedure but take place almost every working day, in a purpose-built room beside the SC Chamber. Although they are not meetings of the SC as such, they have become more formalised over the years: full interpretation is provided and, where possible, they are listed in the UN Journal. Only SC members and relevant Secretariat officials attend and the room is purposely small, with only 3 seats per delegation - as opposed to 5 in the SC Chamber in addition to generous overflow space. Most importantly, no official records are kept so nobody outside the SC and the UN officials concerned knows who said what. Delegates speak relatively freely in Informal Consultations and there are often tense, and sometimes humorous, exchanges. Some argue that the SC functions better, and that decisions can be hammered out more effectively, in such closed sessions. They argue that moves towards increasing the transparency of Informal Consultations would only hamper its smooth functioning. Fowler and Turk describe

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[152] Provisional Rules of Procedure S/96/Rev.7(1982).
[153] UN Charter, Article 30.

the "intimacy and collegiality" created there which can be "conducive to compromise and innovative solutions"[154] while Reed writes that those who support Informal Consultations believe "its privacy ensures that the manoeuvring and negotiation required by diplomacy" may be achieved away from "the glare of public attention."[155] However, others argue that Informal Consultations create secrecy, that the SC has a responsibility to keep others fully informed, and that it should discuss more issues in Open Meetings. Reed goes on to write that, for opponents of Informal Consultations, "the fact that all the nuts-and-bolts work of the Council is accomplished without the possibility of input by anyone who is not a member of the 'club,' nor the maintenance of a public record, smacks of the secret diplomacy of centuries past."

The Secretariat does provide franker, more detailed briefings than in Public Meetings where its Reports are generally rather bland. However, much of what is said is not particularly sensitive and could be stated in more open meetings. Irrespective of whether important exchanges occur in Informal Consultations, those on the outside feel excluded and there is the perception of a severe lack of transparency. In discussions regarding the possible access to Informal Consultations of non-SC members affected by particular discussions, an alternative proposal - to combine more Public Meetings with genuine informal consultation with concerned non-SC members prior to Informal Consultations – has been popular. This is interesting because it parallels the apparent preference amongst NGOs for informal consultation with SC delegations rather than creating more formalised structures.

The SC sometimes issues a Press Statement following Informal Consultations: however, these are often superficial texts stating simply that the SC discussed a certain matter and decided to keep it under review. In some cases, SC members agree a series of points that the President of the SC (PSC) can use as a basis for briefing the press: the practice of the PSC giving a short briefing after Informal Consultations was initiated in 1994, although this is not always strictly followed. Certain SC members hold regular informal briefings for non-SC members at which they provide information: for example, Ireland hosted a series of lunches for non-SC members in

[154] Robert Fowler, Danilo Turk, *Opening up Security Council Consultation,* in <<UN Chronicle, News and Society>>, Winter, 1999.
[155] Natalie Reed, *Informal Consultations: a Summary,* at http://www.globalpolicy.org.

2001 and 2002. Apart from that, a chaotic and informal briefing system operates whereby delegates emerging from the Consultations Room are confronted by a mass of non-SC delegates, hungry for information. Usually less senior delegates end up providing on-the-spot briefings: these are naturally hindered by lack of time and preparation and the perceived need to maintain confidentiality. When issues of particular interest have been discussed, more formal briefings are often provided to groups. For example, a SC delegate from an EU member State will brief EU colleagues, and a SC delegate from a State participating in the non-aligned movement (NAM) will brief NAM colleagues. Again, the reliability and worth of such briefings is dependent on the quality and openness of the briefer. Such arrangements, although helpful, do little to change the perception, or the reality, that the SC lacks transparency. NGOs cannot enter the area outside the Consultations Room and have no access to the caucus briefings. Therefore, they have to rely on personal relationships or group briefings (further discussed below).

Each SC member has a complex set of internal relations between its Permanent Mission (PM), HQ and other missions abroad, and within the PM itself. The delegate assigned responsibility for a particular issue normally engages in 'expert' level informal negotiations, often with a view to producing the text of a draft decision. Such texts are normally agreed among experts, with communication as necessary between HQ and other Missions, and are presented to Permanent Representatives (PRs) at Informal Consultations simply for formal approval, before receiving official approval in a Public Meeting. Only if there is a particular sticking-point do PRs need to engage first-hand. Even within the SC, such negotiations are marked by a lack of transparency. Many of the expert-level drafting groups, or so-called 'Groups of Friends' or 'Core Groups,' which invariably have a disproportionate number of P5 representatives, do not share information readily with their SC colleagues. Furthermore, many of the groups contain States which have a vested interest in the issue not being properly addressed or being addressed in a particular way. For example, discussion on Balkan issues is monopolized by the 7-strong Coordination and Drafting Group (CDG), with experts from other SC delegations sometimes having to pester before gaining sight of texts. These groups meet very informally, normally in the Delegates' Lounge or the small meeting rooms dotted around the UN building. Generally, E10 members which happen to be part of a drafting group are more

generous in sharing such texts. Often, however, a draft is being finalised by experts even as a meeting starts which means there is little time for circulation to delegations not involved in negotiations, let alone to non-SC members.

Another important aspect of SC functioning is the disproportionate influence exerted over the UN Secretariat by the P5. Over the years, they have created a precedent for their nationals to be appointed to the most important positions. P5 delegations also have extensive access to all Secretariat staff and can influence the substance and timing of Reports so that they reflect their national positions even before presentation to the SC as a whole. It is important, therefore, that NGOs develop their contacts with Secretariat staff and in UN field missions where most of the Reports originate.

SC transparency is such an issue that many States campaign for a non-permanent seat on the basis of improving the SC's working methods and making its deliberations less opaque to non-SC members. Some progress has been achieved over the years: for example, meetings with troop contributing countries (TCCs) were introduced in 1994 and it is now routine for them to be held in advance of SC meetings in which a peacekeeping operation is addressed.[156] Paul writes that "In the past fifteen years, the Council has slowly been reforming itself, largely under pressure from the ten elected members. The Council today holds more effective public meetings, consults better with non-Council actors such as Troop Contributing Countries, goes on missions to crisis areas, publishes its program of work and targets its sanctions better, to name just a few significant improvements."[157]

However, much remains to be done and there is no doubt that the SC is in dire need of reform. Many individuals and groups have worked on this issue and many proposals have been presented. A SC Informal Working Group on Documentation and other Procedural Questions has been in existence since 1993 and has been responsible for several changes to the SC's working methods, including in relation to the preparation and distribution of its annual report to the GA, circulation of its programme of work, ordering of its documents and the participation of organisations in Sanctions Committee meetings.

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[156] S/PRST/1994/62(1994) and S/PRST/1996/13(1996).
[157] James Paul, *Security Council Reform. Transparency including working methods and decision-making process,* 1995, at http://www.globalpolicy.org.

A GA-appointed Open-Ended Working Group[158] has also worked on the issue for over ten years: its very first report in 1994 noted broad agreement that SC membership should be enlarged.[159] A group of small countries known collectively as the S5[160] tabled a draft resolution in March 2006, which highlighted some proposals that have emerged over the years in the so-called 'Cluster II' part of the Open-Ended Working Group, aiming to improve the transparency, inclusiveness and accountability of SC work. These include broader consultation between the SC and the wider UN membership including through briefings by the PSC about the monthly forecast, more interactive discussions of the SC's Annual Report to the GA, more attention to monitoring the implementation of SC decisions, greater transparency of Sanctions Committees and other subsidiary bodies, wider consultation in determining sanctions, and limiting the use of the veto, especially in cases of large-scale human rights abuse. However, the US insists that it is not within the mandate of the GA to shape SC working methods: other unenthusiastic P5 States therefore publicly support SC reform, while safe in the knowledge that this hard-line position protects them from change.

The SG presented two substantial papers in 1997[161] and in 2002,[162] both of which included suggestions for SC reform, as did the Report of the Cardoso Panel.[163]The High Level Panel on Threats, Challenges and Change[164] said that the SC needed to improve its credibility, legitimacy and representation: several of its proposals formed the basis for SG Annan's 2005 paper 'In Larger Freedom.'[165] In the 2000 Millennium Declaration,[166] member States resolved to intensify efforts to comprehensively reform the SC, and the 2005 World Summit Outcome Document urged the SC to "increase the transparency of its work." [167] Since 2005, several draft proposals on SC reform have been tabled.

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[158] Its full title is the 'Open Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the SC'.
[159] A/48/47(1994).
[160] The S5 Group comprises Switzerland, Liechtenstein, Singapore, Jordan and Costa Rica.
[161] A/51/950(1997).
[162] A/57/387(2002).
[163] A/58/817(2004).
[164] A/59/565(2004).
[165] A/59/2005(2005).
[166] A/55/2(2000),*UN Millennium Declaration*, para. 30.
[167] A/RES/60/1(2005), para. 154.

Any reform should aim to increase SC legitimacy by making it more representative of the international community and of geo-political realities, and should enable the SC to take action when necessary. Prior to the 2005 World Summit, SG Annan advocated both plans outlined in the Report of the High Level Panel[168] for changing the composition of the SC, and the G4 States[169] had received some support for gaining permanent seats. However, these proposals were effectively shelved during the run-up to the 2005 World Summit and there are now several other proposals on the table, including one that is clearly unacceptable and one insisting that any reform must be by consensus.[170] Delegates say the degree of antagonism between the G77 and western countries, particularly the US, is higher than ever and that structural reform of the SC is unlikely in the near future. Furthermore, under Article 108 of the Charter, any change to the Charter – including to the structure of the SC – would have to be agreed by 2/3 of the GA - including all P5 States, which are reluctant to surrender their privileged positions. In any case, although there was broad support prior to the 2005 World Summit for SC expansion, many delegations have privately expressed the view that it would make the SC less efficient. Some believe that it might make discussions even less transparent, as small, informal and therefore completely opaque committees would inevitably be formed to address specific issues.

NGOs agree that there should be greater geographical representation on the SC and that the use of the veto should be curbed. However, there are differing views as to how exactly the SC should be re-structured. Some consider that Brazil, Japan and Nigeria should gain additional permanent seats; some consider that the existing permanent seats should be re-allocated to regional groupings while others consider that increasing the number of seats not only risks making the SC less efficient and transparent but also increases inter-governmental cooperation rather than encouraging participatory democracy. In any case, all NGOs interviewed for this paper expressed the view that serious structural reform is unlikely in the near future. Therefore, it is more realistic to focus on transparency issues, and particularly proposals which will emerge from the SC Informal Working Group as they should be more acceptable to the US and other P5 States. The current Chairman of the Working Group recently said

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[168] A/59/565(2004).
[169] G4 States are Germany, Japan, Brazil and India.
[170] 'Uniting for Consensus' Group.

that it would examine ways to involve the wider membership, civil society and other organs in the work of the SC, to make the best use of different meetings for those purposes and to look for more effective ways of disseminating information to the wider membership and the public.[171]

An interesting development is the recent establishment of Security Council Report, an NGO in its own right, which publicises and monitors Council work. Working in consultation with other NGOs and governments, it does not take positions on specific issues but examines the information underpinning SC decisions and provides a useful forecast of likely developments. This work should be of interest to NGOs, as well as to the E10 and the wider UN membership, which includes many delegations that are too small to follow all the SC's activities, yet may be seriously affected by its actions.

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[171] Kenzo Oshima, Chair of the SC Open Ended Working Group on SC Reform, 05/2006.

7.   NGO INTERACTION WITH THE SECURITY COUNCIL:
THE MISSING ELEMENT IN THE DEBATE ON UN REFORM ?

Interaction between the SC and NGOs is a paradigm of conflict between sovereignty and cosmopolitan democracy, cosmopolitans arguing that, for democracy to exist in a globalised world, it is necessary to have the consent of the entire community which will be affected by a particular decision.[172] Although Article 41 of the UN Charter talks about NGO relations with ECOSOC, there is no mention in Chapters V – VIII of anything similar with the SC and traditionally, there was little interaction. However, Rule 39 of the Provisional Rules of Procedure- which says that the SC "may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence" [173]- and the Appendix to the Rules of Procedure - which says that "a list of communications from private individuals and non-governmental bodies relating to matters of which the Security Council is seized shall be circulated to all representatives on the Security Council" and that "a copy of any communication on the list shall be given by the Secretariat to any representative on the Security Council at his request"[174] have been used as a basis for developing some interaction.

Contact between NGOs and SC members started with seminars and briefings organised by the Quaker UN Office, the International Peace Academy (IPA) and the Stanley Foundation. The ICRC also established good relations with SC members during the 1980s and in 1991 it initiated regular meetings with the PSC, a practice which continues to this day. Using the Rules of Procedure, NGOs also started to send written communications to the SC on matters of particular concern. Otherwise, there was virtually no formal interaction. Even when the NGO Working Group on the SC was initiated in 1995, NGOs say the prevailing view was that peace and security was a purely governmental issue. It remained unthinkable that NGOs would play any real role in the work of the SC. However, SC members soon realised that the changing nature of conflict necessitated new analytical skills, working methods, knowledge and

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[172] David Chandler, *The Limits of Human Rights,* in David Chandler (ed.), *Rethinking Human Rights*, London, Palgrave Macmillan, 2002. p. 117.
[173] S/ 96/ Rev.7 *Provisional Rules of the Procedure of the Security Council,* amended 1982, Rule 39.
[174] *Ibidem*, Appendix.

local involvement, and that NGOs possessed comparative advantages in these areas. NGOs also realised that, at a fundamental level, the SC's work affected their core programmes. Combined with increasing questions about the legitimacy of the SC as a decision-making body, the relationship between the two began to change and a range of interactive methods was developed. Even P5 members acknowledged that the legitimacy of their decisions would be reinforced by consulting with NGOs – although, as we shall see, it often amounted to lip-service. Sometimes, if a SC member faced domestic difficulties in raising an issue or adopting a position, it appreciated the active and public lobbying of NGOs. HRW claims US officials told them in 1994 in relation to Rwanda: "Make more noise, we're not feeling the heat."[175]

As we have seen, the SC operates in a different manner to other bodies and organs of the UN. It has no major conferences or seminars with opportunities for broad NGO involvement. Discussions in the vast majority of cases are limited to the 15 members, and often to the P5 or even the P3 members. Sometimes, important discussions are held outside the confines of the SC involving the P5 and other important regional players. For example, the UK hosted a meeting on Afghanistan in the summer of 2001 with the participation of the P5, the '6 + 2',[176] major humanitarian contributors and UN officials. Although the discussions were intended to feed into the SC debate on Afghanistan, very few of the elected SC members were invited to participate.

In order to see how and where NGOs might intervene, therefore, it is important to look at the chain of command within each delegation, and its linear progression towards decision-making. For some SC members, policy decisions are taken in the capital, rendering fairly fruitless the lobbying efforts of New York-based NGOs. For other SC members, particularly from smaller States, policy decisions are taken by delegates on an ad hoc basis, without much oversight or direction from their capital. This provides wonderful opportunities for NGOs to exert their influence in NY. The chain generally begins in the capital, sometimes passes through delegations in Geneva, to delegations in New York, where there are possibilities for intervention through individual experts or PRs, through informal meetings of SC members, and

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[175] Emily MacFarquar, Robert Rotberg, and Martha Chen, *Introduction*, in Robert Rotberg (ed.), *Vigilance and Vengenance: NGOS preventing ethnic conflict in divided societies*, p. 10.
[176] 6 + 2 comprises the 6 States neighbouring Afghanistan (Iran, China, Pakistan, Turkmenistan, Tajikistan, Uzbekistan) plus the US and RF.

through formal meetings of the SC. In parallel with this chain, NGOs follow the SC agenda carefully, send information or position papers to capitals, New York or Geneva, try to arrange meetings with sympathetic delegations in New York, try to participate in any SC-wide informal meetings such as the NGO Working Group or Arria Formula Meetings to provide information and engage in advocacy, and attend Open Meetings of the SC to hear what is being said. The larger NGOs also raise awareness through the media on specific issues.

SC reform, particularly of its working methods, is clearly central to its interaction with NGOs. As discussed earlier, reform has been under consideration for many years and is long overdue: however, the difficulties are enormous and it seems unlikely that substantial change will be approved in the near future. The Cardoso Panel made four specific proposals for enhancing cooperation between NGOs and the SC: improving the planning and effectiveness of Arria Formula Meetings by lengthening the lead times and covering travel costs to increase the participation of actors from the field; ensuring that SC field missions meet regularly with well-informed and representative civil society leaders and humanitarian NGOs; installing an experimental set of SC seminars to discuss issues of emerging importance, which would include civil society representatives and other specialists; and convening independent commissions of inquiry, possibly comprising national Foreign Affairs Committees, after SC-mandated operations. [177] As mentioned earlier, the Panel Report was poorly received in general; criticism was also levelled against several aspects of the proposals regarding the SC, on the basis that they were cumbersome, unproductive and gave too much power to the Secretariat. However, some of the proposals contain elements that could usefully be followed up (see more below).

The Annual Reports of the major human right INGOs demonstrate the range of issues they address. Between 2002 and 2004, for example, AI states that it briefed the SC about the human rights situation in several countries including Afghanistan, Cote d'Ivoire, DRC, Iraq, Great Lakes Region, Liberia, Sierra Leone and Timor-Leste; lobbied on several related issues; pressed successfully for an open debate on the renewal of Resolution 1422 (which restricts the powers of the ICC over peacekeepers

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[177] A/58/817(2004).

in UN authorised operations); expressed concerns about the implementation of Resolution 1325 on Women, Peace and Security; called for the deployment of a team of independent experts to investigate alleged human rights abuses in Jenin; worked towards the adoption of stronger measures to control small arms and light weapons; launched a campaign for universal ratification of the Rome Statute; and continued its efforts through the Counter-Terrorism Committee (CTC) to ensure that States observe human rights when implementing Resolution 1373 and taking measures to combat terrorism. [178]

As elsewhere in the UN, human rights NGOs are often seen as critical and obstructive and are generally less well tolerated than humanitarian and other NGOs. Most of the P5 members - and particularly China, RF and the US - have been subject to criticism by such NGOs about their domestic policies, and can be antagonistic towards them. The difficulties experienced by individual NGOs in influencing SC deliberations have been overcome in the past by the formation of umbrella groups or coalitions. Such group pressure was successful in discussions leading to the establishment of the ICTY,[179] the ICTR,[180] the hybrid court in Sierra Leone and particularly the ICC. The over 2,000 NGOs which formed the Coalition for the International Criminal Court (CICC) in 1995 achieved unprecedented access and influence. Comprising a mixture of well-known INGOs and smaller, local NGOs, it worked through a series of regional and national networks. The CICC collaborated with the UN Secretariat in identifying NGOs suitable for accreditation to the Rome Conference and, with the benefit of relatively generous accreditation procedures, succeeded in getting over 230 NGOs accredited. Robertson writes that "the Rome Conference was remarkable for the intensity and detail of the lobbying campaigns mounted by NGOs…."[181] The NGOs were able to attend meetings, receive documents, circulate written statements and, if approved, deliver oral statements. The 2002 UN Yearbook states that NGOs "contributed to every phase of the process"[182] and many observers hailed them as key to the eventual success of the negotiation process in July 1998 and the establishment

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[178] *Amnesty International Report 2004*, London, 2004 p. 327; *Amnesty International Report 2003*, London, 2003 p. 299; *Amnesty International Report 2002*, London, 2002 p. 291.
[179] S/RES/827(1993)
[180] S/RES/995(1994),
[181] Robertson, Geoffrey, *Crimes against Humanity: The Struggle for Global Justice,* London, Penguin Books, 2002, p. 347.
[182] *UN Yearbook 2002*, New York, 2002.

of a fair, effective and relatively independent ICC. The CICC continues to monitor
and engage in advocacy on all issues relating to the ICC. NGOs have also formed ad
hoc like-minded policy groups on issues such as Iraq, Israel/Palestinian Territories,
children and armed conflict, and the control of small arms.

NGO influence has been most effective in "soft" or thematic policy areas such as
illegal arms flows in Africa,[183] the protection of civilians in armed conflict,[184]and
women, peace and security.[185] However, they have also influenced 'hard' policy
areas: in 1998, for example, information received by the Angola Sanctions Committee
from Global Witness was used to tighten the sanctions against UNITA, helping to
eventually end the civil war in Angola. Similarly, in late 2000, NGOs helped persuade
the SC to continue its arms embargo in the Eritrea-Ethiopia conflict; and the Abolition
2000 Network worked successfully – again in coalition, and this time with like-
minded mainly elected SC members - for the adoption of Resolution 1540[186]
regarding the non-proliferation of weapons of mass destruction. Human rights NGOs
have also successfully persuaded the SC to include references to humanitarian and
human rights mandates in many peacekeeping and other resolutions. A range of
NGOs were particularly active in formulating provisions of the 2001 Bonn Agreement
for Afghanistan, ensuring that it included an independent human rights commission,
and that women played their part in the political process.

The Peacebuilding Commission,[187]established in December 2005 further to a decision
of the World Summit, has an important role in advising the SC on the planning and
commencement of peacebuilding activities and could provide a new opportunity for
NGOs to influence SC work. Seven Council members - including the P5 - are
members of the Commission, which is currently discussing its Rules of Procedure.
Article 21 encourages the Commission to consult with civil society, including
women's groups, NGOs and the private sector, particularly in its country-specific
meetings. For the moment, however, NGOs appear to be focused on ensuring that
good working relations are established with the new Human Rights Council, which

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[183] S/RES/1209(1998).
[184] S/RES/1296(2000).
[185] S/RES/1325(2000).
[186] S/RES/1540(2004).
[187] GA Resolution 60/180 and S/RES/1645, adopted concurrently on 20/12/2005.

met for the first time in June 2006. While interaction with the Council is indeed important, it would be a mistake to overlook the opportunity of inputting to the Peacebuilding Commission, which is already seen as a potential source of expert advice in post-conflict situations.

This paper will now examine the existing methods of interaction between NGOs and the SC.

7.2   PUBLIC MEETINGS: KABUKI THEATRE ?

Open Meetings and Open Debates are variations of the Public Meetings provided for in the Provisional Rules of Procedure, and NGOs are allowed to observe both from the third floor gallery of the SC Chamber. This normally works well although problems have occasionally been experienced with access to the gallery.[188] Although many of the efforts associated with improving the transparency of SC proceedings have centred on holding more meetings in this format, most delegates and NGOs interviewed for this paper said that they were not particularly useful. They described the proceedings as being "Kabuki-like" with everything "pre-cooked" and "stage-managed". This tendency is exacerbated by the fact that such meetings often focus on thematic issues, and delegations simply deliver prepared scripts with no intention of engaging in debate. The fact that simultaneous interpreters urge delegations to hand over their scripts in advance does not encourage PRs to speak more freely. An interesting Aide-Memoire prepared by France in 1994 said that the consequence of scripts being prepared in advance is "inevitably, the declaratory, rigid style of such meetings at which delegations not members of the Council may be heard reading out their prepared statement before a decision is taken, with members presenting before and after the vote explanations which, of course, do not take into account the arguments put forth during the debate leading up to the vote." [189]

There have been recommendations to hold more public meetings which would be genuine fora for discussion, including meetings where only SC members could speak and orientation debates where non-SC members concerned by a specific issue could express their views. Under pressure from the E10, the SC started to hold more public meetings in the mid-1990s[190] and in recent years, there has been a genuine effort to do so. Nevertheless, several NGOs said that public meetings pay lip service to transparency but do little to broaden the debate. Lindblom reports NGOs comparing them to the opening and closing sessions of the Rome Conference where, although

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[188] James Paul, *NGO Access to Security Council Meetings – letter from James Paul to UN Security Chief McCann,* 07/1999 at http://ww.globalpolicy.org
[189] A/49/667 and S/1994/1279(1994).
[190] S/PRST/1994/81(1994).

they could intervene, they were unable to influence negotiations.[191] However, NGOs do find public meetings useful for hearing national views and for passing information to their regional representatives.

Although NGOs do not normally speak at such meetings, the Philippines broke the mould on 22 June 2004, when it was PSC, by inviting CARE International and the ICTJ to speak in an Open Debate about the role of civil society in post-conflict peace-building. NGOs intervened again later that year in an Open Debate about the role of business in conflict-prevention. However, NGOs have not intervened in an Open Meeting since then and there remains resistance to their participation in meetings on regional issues as these are seen to pose a greater threat to State sovereignty.

7.3   ARRIA FORMULA MEETINGS

This format allows a SC member other than the PSC to invite members to an informal meeting in a room in the UN building other than SC chambers, to be briefed by experts who are neither UN officials nor associated with member Governments. The Arria Formula Meeting was initiated in March 1992, when the FRY was under consideration in the Council and there was a dearth of reliable information about what was happening on the ground. Then-Venezuelan Ambassador Diego Arria invited SC members to meet in the Delegates' Lounge and hear the views of a Bosnian Priest, who had just arrived from the region.

Between 1993 and 2000, E10 members made various attempts to facilitate NGO participation in Arria formula meetings but there was strong opposition among P5 members, which preferred to restrict their use to government representatives and other senior officials. Between 1993 and 1997, indeed, over 65% of the approximately 50 Arria formula meetings held were used to listen to State or Government representatives or senior representatives of important regional alliances such as NATO – even though Articles 31 and 32 of the UN Charter and rules 37 and 38 of the Provisional Rules of Procedure would have enabled such representatives to address a Public Meeting of the SC. This pattern was partly caused by the increasing use of

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[191] Anna-Karin Lindblom, *Non-Governmental Organisations in International Law,* Cambridge University Press, 2005, p.473.

Informal Consultations which, unlike Public Meetings, do not allow for representatives of non-SC member States to participate. The development annoyed many delegations which believed that certain States were exploiting the opportunity to make un-recorded statements, thereby further decreasing the transparency of SC proceedings.

The opposition to NGO participation in Arria Meetings caused Chilean Ambassador Juan Somavia to institute an alternative format in 1997 so that SC members could hear the views of humanitarian NGOs about the crisis in the Great Lakes region. A 'Somavia Formula Meeting,' was therefore held on 12 February 1997 with the participation of representatives from CARE International, Oxfam and MSF, who came directly from the field and provided up-to-date and relevant information. It was chaired by the head of the UN Department of Humanitarian Affairs, and attended by representatives of the ICRC, officers from the Bureaus of ECOSOC and the GA Second and Third Committees, UN Secretariat officials and some non-SC members. It is difficult to ascertain why the meeting was not considered a success, but it probably had something to do with critical comments made to the media by some NGO representatives following the meeting. Further movement towards NGO participation in Arria Formula Meetings was achieved by Portugal which managed to organise a 'modified' or 'ad hoc' Arria meeting in September 1997 to hear the views of the SG of AI. This meeting was held in UN premises but without interpretation. Paul says that the 1997 meetings succeeded in setting in motion "a series of innovations that opened up communication between NGOs and this high-level states-only conclave."[192] The first 'full' Arria Formula Meeting with NGOs was held on 12 April 2000, when Canada and the Netherlands successfully overcame residual reluctance and arranged for Oxfam, CARE International and MSF to give a briefing on the protection of civilians in armed conflict.

Many Arria Formula Meetings with NGOs - particularly human rights, humanitarian and peace and security NGOs - have been arranged since then. The ad hoc nature of the meetings means they can take place whenever they are deemed useful by any SC

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[192] James Paul, *Security Council Consultations with Humanitarian NGOs*, 12/02/1997, at http://www.globalpolicy.org

member who undertakes to organise them. They have taken place as a genuine initiative by a SC member, or following a request by other UN members. Some individuals considered it was unnecessary for all SC members to agree to an Arria Formula Meeting: however, during discussions in 1997 about their proper use, Ambassador Arria himself expressed the view that there should be SC-wide agreement. In reality, at least tacit acquiescence from all SC members is needed, as well as the cooperation of the PSC to schedule the meeting so that it does not clash with other events. This reality has been demonstrated by the number of proposed Arria Formula Meetings which have not gone ahead because of opposition from certain delegations. For example, it was reported that India successfully applied pressure to RF and other delegations to prevent a meeting on Kashmir being held in 2002, even after it had been proposed by Mexico and arrangements had already been made.[193]

Ambassador Arria said in the 1997 discussions that Arria Formula Meetings should be used to hear outside voices - including NGOs - only when other methods of interaction were not possible, that those participating should be able to provide relevant and reliable information, that there should be no discrimination in terms of the room and facilities used and that they should be kept informal. In reality, Arria Meetings are probably the most formal method of interaction between the Council and NGOs. They are announced by the PSC, they are held in the UN building (normally in one of the basement conference rooms) and interpretation is provided. However, they are not announced in the UN Journal and most importantly, they are not recorded. Unlike SC meetings, members are simply invited to attend, but are not obliged to do so. In reality, all SC-members are almost always represented although country plaques are not used, as in formal SC meetings. In fact, anger was expressed on at least one occasion when the Secretariat inadvertently placed country plaques on the tables. The meeting is chaired by a SC member other than the PSC, normally - but not always – a State with a particular interest in the issue. The Chair facilitates discussions but does not draw formal conclusions. Since 2000, non-SC members which are interested in, or affected by, a specific issue have also been permitted to attend Arria Formula Meetings. Although they have to request permission in advance

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[193] Barbara Crossette, *Keeping the Security Council Door Ajar*, UN Wire, 3 February 2003.

and may not speak at the meeting, the decision to allow them to attend marked a significant shift in thinking, particularly on the part of the P5.

In recent years, approximately 6 Arria Formula Meetings with NGOs have been held annually on subjects as diverse as reinforcing international law (organised by Argentina on 20 June 2006 with the former Chairman of the UN Rule of Law Taskforce, the ICTJ, AI and HRW as the main speakers and the United Methodist Office for the UN, Refugees International, Lawyers' Committee for Nuclear Policy, World Federalist Movement, PHR, CARE International, GPF, CICC, Women's Environment and Development Organisation (WEDO) and Security Council Report as participants); the protection of civilians in armed conflict (organised by UK on 22 November 2005 with the participation of CARE International, Oxfam International, the International Rescue Committee and Save the Children); children and armed conflict (organised by France on 15 February 2005 with the participation of CARE International, Watchlist for Children and Armed Conflict, Coalition to Stop the Use of Child Soldiers, and Backward Society Education (BASE) a Nepali grassroots NGO); and the situation in Darfur (organised by Germany in May 2004 with the participation of MSF, CARE International, Oxfam International, ICG, HRW and World Vision). Arria Meetings to mark the adoption of Resolution 1325 on Women, Peace and Security have become an almost-annual event: and several Arria Meetings have been held prior to SC field missions, including one organised by Argentina on 8 April 2005 in advance of the mission to Haiti, in which AI, MSF, World Vision USA and Fondasyon Mapou participated and seven other NGOs attended as observers; and one organised by UK on 16 June 2004 in advance of the SC mission to West Africa in which AI, Oxfam International, Greenpeace, Refugees International and the Women's Commission for Refugees, Women and Children participated.

Operational NGOs, with a permanent field presence in the relevant area, tend to be invited to participate more than those engaging in pure advocacy work or even carrying out fact-finding missions. The fact that there is no database of NGOs creates problems for members organising Arria Meetings. GPF is often contacted by the organising State for recommendations about which NGOs to invite: however, it has resisted becoming the contact point as it prefers to focus on the NGO Working Group Meetings and reform issues. Therefore, the creation of a database with information

about NGOs including their contact points, areas of interests, local branches and field offices would be extremely helpful.

Most delegates interviewed find the Arria Formula Meetings useful, particularly to hear realistic and reliable accounts of events on the ground, and to consider possible lines of action. They find them particularly valuable when the NGO representatives have come directly from the region in question and have an inside perspective on the situation. They generally prefer a range of speakers – a selection of NGO representatives, as well as a UN Rapporteur or other experts – and appreciate them being as candid and frank as possible. However, NGOs are less positive. They commented that, although States want to prove to their internal constituents that they are active on particular issues, their participation in the meetings is at an increasingly junior level. Normally, the PR of the organising State facilitates discussions but many other States are represented by junior diplomats, not even necessarily those who are experts in the issue. One NGO noted that Arria Formula Meetings are becoming exclusively concerned with thematic issues and said that they would be more useful in relation to country-specific issues. Another interesting criticism - levelled by an NGO - is that the meetings are used increasingly to hear NGO views, to the exclusion of other experts. This is a matter for concern because some delegations equate Arria Meetings with NGO interaction: they therefore "tick off their NGO box," and are less likely to interact with NGOs in other ways.

Some NGOs also said that the meetings are losing their flexibility and are becoming "ritualised", that there is little discussion or real interaction and that they are not particularly useful for advocacy purposes. Nevertheless, many observers see a positive link between such meetings and SC action. O'Flaherty, for example, asserts that SC action in relation to Sierra Leone was heavily influenced by briefings provided in Arria Formula Meetings by the OHCHR, the Special Rapporteur on Violence against Women and the ICTJ. [194] Furthermore, several of the recommendations made by NGOs in an Arria Formula Meeting on children and armed conflict held in July 2000 were reflected in Resolution 1314, which was adopted the following month. Another positive point is that NGOs do consider the meetings

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[194] Michael O'Flaherty, *Future Protection of human rights in post-conflict societies: the role of the UN*, in a reader for EMA programme, academic year 2005-2006, p. 16.

important for operational groups, and useful before and after a SC mission visits a region (as envisaged in the Cardoso Panel Report).

Clearly, Arria Formula Meetings can serve a useful purpose but they need to be repositioned and reinvigorated. NGOs could contribute to this by making available more experts from the field and encouraging them to be as informative and candid as possible. Delegations could contribute by ensuring high-level representation and treating the meetings as opportunities for real interaction. The Cardoso Panel Report recommended improving the planning and effectiveness of Arria Formula Meetings by lengthening lead times and covering travel costs to increase participation of actors from the field. There is no doubt that advance planning could make participation more relevant, particularly if it enabled experts from the region to attend.

7.4   NGO WORKING GROUP ON THE SECURITY COUNCIL

Shortly after the Open Ended Working Group on UN Reform was established, [195]an NGO Conference on SC reform was held in New York in May 1994 and, the following year, GPF organized an umbrella group of NGOs with the objective of monitoring and influencing Council reform. By 1997, the focus of the group had evolved towards dialogue with SC members and it developed into the NGO Working Group. The Group has become more structured over the years. It is now guided by a Steering Group and comprises 30 NGOs, including human rights, humanitarian, disarmament, environmental and women's and children's groups, reflecting the broad mandate of SC discussions. GPF considers that 30 participants provides a good basis for meaningful dialogue and that, anyway, only about 30 NGOs have sufficient expertise, manpower and funding to follow SC matters closely. The Working Group does not adopt common positions on issues; however, umbrella groups have been formed amongst its members on specific issues.

Since 1997, the Working Group has met each month with the rotating PSC - a development which came about almost by accident and against the wishes of some SC members – and regularly with other delegations. In recent years, it has held approximately 50 meetings, mostly with PRs and their delegations but also with UN

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[195] A/RES/48/26(1993).

officials. Ministers of Foreign Affairs of interested delegations also try to meet with the Working Group: for example, the Foreign Minister of Argentina met with the group in January 2005 when Argentina was PSC, and the Foreign Minister of Ireland held two very interactive meetings in 2001 and 2002. James Paul, Executive Director of GPF, writes that the Working Group "opened up an effective channel for regular dialogue between NGOs and the Council - a step that had seemed impossible only a short time before. Even in the inner-sanctum of the intergovernmental process, NGOs were proving the importance of their presence - and were being treated by delegations as necessary and even welcome partners."[196]

The meetings normally last about 90 minutes. The PR first provides a short briefing about discussions in the SC and NGOs then ask questions according to a pre-arranged schedule, raise points and express opinions. PRs are often accompanied by experts from their delegations and there is a valuable exchange of views. Discussions are sometimes factual, sometimes analytical. The usefulness of the meetings depends largely upon the personality of the PRs and their knowledge of the issues and the UN system as a whole. Although NGOs claim that the E10 are generally more willing to participate in these meetings, the statistics show that France and UK have been active.[197] However, the E10 are considered to be more open, frank and receptive in the discussions – although there are differences between regional groupings, with the Arab States, for example, being traditionally less open. NGOs acknowledge that the P5 are generally more involved in sensitive SC issues in terms of funding, personnel and diplomacy and that it is harder for them to be open and critical, whereas the E10 are normally less involved and find it easier to simply criticise. This has been particularly the case in relation to Iraq.

In discussing specific issues, delegations often will not admit that they are blocking consensus or raising objections in the SC, although they are more open about the position of other delegations. NGOs said they sometimes have to piece together the puzzle over a series of meetings. Some delegations say these meetings enable them to "direct" NGOs in terms of where to focus their lobbying efforts to make their work

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[196] James Paul, *A short history of the NGO Working Group on the SC*, April 2001, at http://www.globalpolicy.org
[197] http://www.globalpolicy.org/security/ngowkgrp

more effective. NGOs, on the other hand, said they are sometimes subject to lobbying, especially by P5 members, with a view to encouraging them to share their national positions. There is, of course, an element of public relations in this exercise as States know that having NGOs reflect their views benefits their perceived legitimacy

These meetings are widely considered to be positive, although more for NGOs than for delegations. All NGOs interviewed for this paper said they find the meetings interactive and helpful in making the work of the SC less opaque. They value them for information, more than for advocacy purposes. As NGOs generally focus on a few specific issues, the meetings provide an opportunity to hear first-hand about the broad range of issues being addressed by the SC. The corollary is that they are less useful for developing expertise in specific areas of interest. The meetings are also considered helpful in introducing NGOs to PRs and delegates, thereby facilitating a relationship which can be further developed and used for arranging bilateral meetings, when necessary. And with 30 powerful NGOs coming together, they are also useful for seeing which NGOs are interested in a specific issue, with a view to forming like-minded policy groups.

However, some SC delegates said they find the meetings rather staged, without much real discussion. They consider this partly the fault of the NGOs who are "uni-dimensional" and don't use the opportunity to present opinions - particularly shared opinions - and partly the fault of delegations, which tend to present their positions and not really take other views on board. Some delegates suggested that it might be valuable for NGOs to consider coordinating and expressing common views on issues. One NGO suggested that the meetings would be even more helpful if a group of PRs participated and "confronted their differences in public."

7.5   MEETINGS OF COUNCIL MEMBERS INSIDE THE UN

These are meetings of SC members rather than of the SC itself which aim to hear the views of significant players from outside the SC. For example, a meeting of SC members was held in January 2000 with the participation of Senator Jesse Helms, then-Chairman of the US Senate Committee on Foreign Relations. Such meetings are chaired by the PSC in the SC Chamber, but name plaques are not used. Non-SC

members may attend but may not intervene. There is no posting in the UN Journal, but the SC member proposing the meeting does inform the public. UN officials do not attend and no official record is kept, which means that delegations can speak relatively freely.

7.6   INFORMAL MEETINGS OUTSIDE THE UN

Again, these are meetings of SC members rather than of the SC itself. They normally take place in the PM of the SC member organising the meeting. Sweden organised an informal meeting for SC members on 26 October 1998 in its PM to hear the views of CARE International, MSF, OXFAM and Save the Children about the civil war in Sudan. On 14 January 1999, Brazil - then PSC - organised an informal meeting in its PM of members of the Angola Sanctions Committee to hear the views of Global Witness, which had just released a special report on the diamond trade, arms and civil war in Angola. The report and meeting were considered at least partly responsible for the SC tightening its sanctions against UNITA shortly afterwards. Prior to the departure of the SC mission to Sierra Leone in 2000, UK hosted an informal meeting in its PM with key individuals, NGOs and experts from UN agencies. One NGO said that this format, which enables delegates to meet a range of interested and qualified experts outside of formal structures, provides a very good opportunity of accessing practical and relevant information. The meetings are very informal: as they are not posted in the UN Journal and do not take place in UN premises, many are not even aware of their occurrence. Although NGOs are generally positive about these meetings, they have warned about the danger of relying on the same old experts and organisations. This is a challenge for all informal meetings with NGOs, particularly as there is no NGO database and no liaison body with the SC.

7.7   NGO SEMINARS

The Quaker UN Office, the IPA and the Stanley Foundation provided one of the earliest routes for NGOs to interact with SC members, through seminars and briefing sessions. This format continues to be used for briefing, discussion and brainstorming purposes. The IPA organises regular briefings for SC members, as well as Conferences which bring together SC members and experts in a specific field. These

are usually well-attended and stimulate useful discussion on complex issues. For instance, following meetings on sanctions held in the Missions of Canada and Austria, respectively, the IPA held a conference on sanctions policy in April 2000 with UN SG Annan and Canadian Foreign Minister Axworthy as the main speakers. Most Council PRs attended as did a number of NGOs, academic experts and journalists. More recently, the IPA has increased the range and frequency of its briefings.

In 2001, the Brussels-based ICG opened an office in New York and began to provide its own original information briefings to delegations. With a large network of researchers deployed in crisis areas, the ICG offered delegations valuable strategic information. In May 2002, an ICG representative was even invited to join the SC field mission to the Great Lakes region. Other think-tanks and institutions including the Fourth Freedom Forum, and the UN Association–USA have organised similar meetings which bring together SC representatives with high-level experts and academics. Although such seminars are very useful for delegations, many human rights NGOs find them too "think-tanky." Furthermore, they tend to focus on general security issues rather than human rights issues per se.

7.8   BILATERAL MEETINGS

Bilateral meetings are held when an NGO contacts a delegation or delegate individually, normally to discuss a specific issue. This can be an extremely effective way of presenting information or advocating a cause, particularly in advance of an important meeting. All NGOs interviewed for this paper said that bilateral meetings are the most effective for advocacy purposes. AI finds them particularly useful when it brings a country or region expert or someone from the field that can provide real-time information. Hill finds it essential to conduct one-on-one meetings that provide a range of experts and information from the field and writes that, although these are time-consuming for both NGOs and SC delegations, the potential flow of assistance and information for both parties is worth the effort. [198] NGOs say that, although it can

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[198] Felicity Hill, *NGO Perspectives: NGOs and the Security Council,* at http://www.unidir.org

be difficult to meet with PRs, access has generally improved in recent years and it has become easier to arrange meetings. Some NGOs also request meetings with experts on their own, which can be valuable for discussion purposes.

NGOs engaged in a series of bilateral meetings in 2001 to highlight suspected mass graves in northern Afghanistan which, it was thought, contained the bodies of over 1,000 Taliban prisoners who had suffocated to death inside transport trucks under the control of Uzbek General Dostum. Delegations subsequently raised the issue in the SC and, partly as a result, UNAMA undertook to support a forensic examination of the mass graves. Another example of the successful use of bilateral meetings is when NGOs lobbied against the light sentencing handed down to those convicted of murdering UNHCR personnel in Attambua in 2000 as well as the limited scope of the ad hoc human rights tribunal. These issues were subsequently addressed by SC members at a Public Meeting on East Timor.

Most delegates interviewed for this paper find bilateral meetings very effective for receiving valuable and reliable information, and for having a real discussion about the issues. Smaller delegations, which do not have their own sources in the region and might not trust the information provided by larger States, particularly value the information they receive which can then be raised in SC meetings. NGOs - like delegations – are political creatures and often refrain from stating their real views in more formal formats. In these bilateral meetings, they are more likely to explain their views and what they really think should be done. The privacy and informality means that delegates feel free to ask questions. Furthermore, they like to display intelligence and knowledge and are more likely to raise issues in the SC of which they think others might not be aware, rather than issues which have been raised in a more general format such as an Arria Formula Meeting. NGOs should exploit this by paying attention to which delegations and delegates they furnish with information.

7.9   WRITTEN MATERIAL

Most large INGOs send periodic reports to PMs, as well as papers on issues coming up for consideration on the SC. They say that such papers – particularly short memos

– can be effective for lobbying purposes. For example, HRW sent a report to SC members in March 2001 regarding massacres allegedly carried out by the Taliban against Shia Hazaras in Hazarajat. In subsequent SC discussions, several delegations repeated the call in the HRW paper for an expert team to be deployed to the region. HRW also sent a memo to SC delegations in 2005 urging them to extend the mandate of MINUSTAH in Haiti, to give it the necessary military and political capability to address problems of violence and abuse, and to authorise the CIVPOL to be more proactive in investigating human rights abuses.[199] And more recently, HRW and the ICG sent a joint letter to all SC members urging them to take action to protect citizens in Darfur by establishing a UN Mission under Chapter VII with a strong mandate, which would include providing assistance to ICC investigations.[200]

Such papers can also provide excellent background information for delegates preparing national briefs, particularly for smaller elected members. The internet has, of course, revolutionised the availability of such information. Most INGOs now have extensive websites which are regularly updated by their field officers and used by delegations to obtain information. The reverse is also true and SC members and the SC itself now post documents on their own websites: this is due in no small part to the efforts of NGOs in New York.

7.10   COORDINATION WITH GENEVA

Human rights NGOs normally maintain strong contacts with national delegations in Geneva, where human rights issues are discussed on an ongoing basis. NGOs can and do use these contacts to lobby on issues under discussion in New York. The success of such efforts depends largely on the coordination within the Foreign Ministry in question, and also within the NGO in question.

A positive example involves an NGO which was monitoring the situation in refugee camps in West Timor in 2001 and which provided information to a delegation in Geneva about an East Timorese girl there who had been abducted during the conflict

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[199] Memo from HRW, 16/05/2005, at http://www/hrw.org
[200] Joint Letter from HRW and ICG, 31/01/2006, at http://www.hrw.org

and allegedly held in conditions of sexual slavery. The plight of such girls had not been properly addressed in SC discussions on East Timor, mainly because most human rights monitoring groups had difficulty accessing refugee camps in West Timor. In this case, the information was transferred from Geneva to New York in time for it to be raised at an Open Meeting. Again, the effectiveness of such a strategy depends on internal circulation systems within Foreign Ministries, whether reports are routinely copied between Geneva and New York, and whether individual officials have the capacity to make spontaneous contact with colleagues about specific issues.

Other Geneva avenues include the HCHR and the High Commissioner for Refugees, which maintain more developed relations with NGOs and which have the clout to influence SC members. Some States are reluctant to hear the High Commissioners speak about human rights in general but have accepted their participation in discussions about thematic or regional issues. The current High Commissioners have been able to address human rights issues more easily in SC discussions.

7.11   NGO MEETINGS IN CAPITALS

NGOs in capitals generally maintain close contact with the relevant Foreign Ministry. If the State in question is, or is about to become, a SC member, contacts are intensified. Meetings may be arranged for general information-sharing and for advocacy purposes and may involve both small, national NGOs and large INGOs. The usefulness of these meetings depends on the structure of both the Foreign Ministry and the NGO in question. Larger States, including the P5, have wide-ranging and complex vested interests in most issues discussed by the SC as well as private sources of information. Their Foreign Ministries, therefore, are generally highly centralised. Policies are developed in headquarters and instructions are issued to delegations in New York. In these cases, it is clearly valuable for NGOs to focus their efforts on the Foreign Ministry in the capital. Smaller States are generally less centralised, have fewer vested interests and less bureaucracy and provide other opportunities for NGO intervention.

At the same time, most INGOs have few representatives in New York: they are not specialists in all issues and find it difficult to meet with the entire range of delegates covering all issues on the SC. Representatives in their local offices, having developed relationships with Foreign Ministry officials, find it easier to meet and discuss a specific issue. The effectiveness of such meetings depends largely on the ability of the Foreign Ministry to absorb NGO views, incorporate them into policy and transfer the result to their delegations in New York. Positive examples of such meetings include the efforts of one man in Dublin[201] which were significant in bringing about the Irish Government's positive engagement in East Timor and ensuring that it consistently highlighted the issue on the SC and supported peacekeeping efforts there.

7.12   NGO INTERACTION WITH UN SECRETARIAT

The periodic reports prepared by the UN Secretariat are essential to many SC members which, in the absence of strong national interests or even extensive information, often use them as reference points. The Secretariat is generally perceived as well-intentioned, and their Reports as relatively objective and trustworthy. However, the Reports are the subject of intense pressure by the P5, while the E10 are lucky to even see them before distribution at the relevant meeting. NGOs lobby the Secretariat to influence and improve the Reports: as in any organisation, the attitude of officials varies with some being willing to listen to NGOs, and others seeing them as troublesome and lacking a real mandate. NGOs need to exert greater pressure on the Secretariat to take their views and human rights considerations into account when preparing these Reports. They can do this in New York or in the field, as UN Missions normally provide most of the material for the Secretariat Reports.

NGOs say that the Office for the Coordination of Humanitarian Affairs (OCHA) is particularly open to interaction with NGOs: OCHA also works effectively with SC delegations. The High Level Panel on Threats, Challenges and Change recommended that the Secretariat - particularly the Departments of Political Affairs, Peacekeeping Operations, and Humanitarian Affairs - should interact more effectively with NGOs to gain advance information and local knowledge of conflicts, and to establish a set of

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[201] Tom Hyland, who founded the East Timor Ireland Solidarity Campaign in 1992.

early-warning indicators.[202] This extremely important area provides another opportunity for NGOs to use their specific expertise and exert their influence on SC activities.

7.13   SECURITY COUNCIL FIELD MISSIONS

SC field missions were started as a way of collecting information without waiting for it to filter through the Secretariat. Initially, they comprised elected members but gradually evolved to include both permanent and elected members. The SC now makes 2 or 3 missions each year to areas of particular interest, mainly sub-Saharan Africa. A mission is sometimes dispatched when the SC needs to deliver a strong message to the parties concerned. They are generally considered very useful as they show members the real situation on the ground, and enable them to meet with those involved in the conflict, as well as representatives of civil society, including NGOs. For example, the Mission to Kosovo in June 2001 included meetings with a support group for Kosovar Albanian missing persons and with a women's group. However, the lack of planning was reflected in the fact that the former took place only because the Kosovar Albanians were blocking access to the UNMIK offices in Pristina, while the latter took place at 22.30 in a small hotel room in Pristina. More recent SC missions such as the mission to Central Africa in November 2005 included better-planned and more relevant meetings with NGOs.

Regular NGO input to SC field missions began when the UK invited NGOs to brief members in September 2000 prior to the departure of the Mission to Sierra Leone. The Cardoso Panel Report contained an "Arria in the field" recommendation that these missions should be organised to enable structured NGO involvement. If properly planned, the missions would meet with a wide range of local NGOs when in-country and ideally would receive advance briefing about the NGOs before leaving New York. As most local NGOs concerned do not have representation in New York, the UN Secretariat is probably best placed to provide such information. This highlights the need for a small NGO liaison function in the SC Affairs Division which would inter alia handle briefing for such missions.

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[202] A/59/565(2004), para. 99.

7.14   UN FIELD OPERATIONS

Humanitarian and development NGOs have a long history of collaboration with UN field operations and human rights NGOs are now developing strong links with the human rights components of missions, especially in relation to building up national institutions and developing civil society. O'Flaherty mentions coordination arrangements in the field such as the 'Human Rights Thematic Group' which was established in Afghanistan and which, in 2001, had 26 members, of which 9 were NGOs. [203]

From the perspective of SC work, it is important to strengthen the link between INGOs in New York and local NGOs in the conflict area, as it improves the quality and relevance of NGO briefing and makes their views more legitimate. It is also important for NGOs to cooperate with UN missions on the ground, partly because the UN Secretariat draws on information supplied by its mission personnel, including human rights officers, when preparing its periodic reports to the SC. As we have seen, these reports often shape the policy of smaller delegations: NGOs should therefore try to influence them in a positive manner.

NGOs on the ground, however, face many problems not only in practical terms and in their relations with UN missions, but also in coordinating with military authorities. A former UNPROFOR[204] Commander in Sarajevo, General Briquemont, expressed the view that too many NGOs on the ground created confusion, they should be better coordinated, and better liaison should be established with the military and the UN.[205] He considered that large NGOs were more successful because they had better contacts locally and internationally. Although the situation in Bosnia and Hercegovina was probably unique, this criticism shows that NGOs in the field need to coordinate effectively with international organisations and the military, and to have efficient internal systems of management and reporting.

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[203] Michael O'Flaherty, *Future Protection of HR in Post-Conflict Societies: the role of the UN*, in a reader for EMA programme, academic year 2005-2006, p. 8.
[204] UN Protection Force, S/RES/743 (1992).
[205] *Conflict, Development and Military Intervention: the Role, Position and Experience of NGOs,* Liaison Committee of Development NGOs to the EU, Report of the European Conference, Brussels,, 1994.

8.   TOWARDS FORMAL RELATIONS?

We have looked at arrangements for NGOs in other IGOs and UN bodies and have seen some good examples of NGO participation in their work at various levels. In the COE, interaction has moved to a higher level and human rights-oriented NGOs participate in the decision-making activities. It is clear that NGO interaction with the UN SC needs to be intensified in order for human rights to be properly addressed there and for the SC to have greater legitimacy in the area. However, it is also clear that the SC is unique in terms of its role, composition and working methods. It is controlled by a small 'nuclear club' which wields extraordinary power, including the right to veto decisions; the majority of its work is carried out in highly opaque circumstances and it holds no large conferences where a range of views can be heard; yet many of its decisions are legally binding on all UN member States. It takes human rights increasingly into account but retains a preference for a direct link to international peace and security. Importantly, the principle of State sovereignty is still highly cherished by certain members.

Taking these factors into account and in the absence of serious UN reform, it appears that NGOs need to operate in a subtle and strategic manner. All NGOs interviewed for this paper without exception said that trying to formalise relations with the SC would be ineffective and possibly counter-productive. Formal relations would necessitate creating structures which would then be circumvented; they would introduce administrative and bureaucratic obligations and would inevitably involve others taking decisions about which NGOs to accept, thereby reducing the freedom of NGOs to operate informally. The preference of NGOs is instead to enhance current methods of interaction and to develop informal channels of communication, as outlined in preceding sections. It is the view of this writer that the establishment of certain basic administrative structures would also greatly facilitate interaction between NGOs and the SC.

9.   CONCLUSIONS

Faced with an increasing number of issues of global concern which are beyond the reach of nation-States alone, IGOs such as the UN are becoming more significant. Although these IGOs are created by States, they have tended to operate in a quasi-autonomous manner, lacking in legitimacy and accountability. However, with people around the world increasingly believing they have a right to participate in decisions that affect their lives, there has been some progression towards a more participatory form of global governance. This has been evidenced by the growth of INGOs, the establishment of formal relations with some IGOs and, in some cases, the establishment of Parliamentary Assemblies. This progression can also be seen in relation to human rights, where legally binding instruments have been adopted and are monitored with extensive civil society participation.

The UN SC, which has primary responsibility for the maintenance of international peace and security and which has the power to take legally-binding decisions on issues that seriously affect people's lives, has been gradually widening its focus and now regularly addresses human rights issues as part of its work in relation to conflict prevention, peacekeeping, post-conflict resolution and peacebuilding. However, its structure, voting system and working procedures contribute to a perceived lack of legitimacy. Even in relation to human rights, SC efforts are dominated by the vested interests of the P5, and the SC has traditionally had little external information or advice. Since the mid-1990s, however, there has been an increased level of engagement with NGOs. Cooperation between the two needs to be further deepened and broadened if human rights are to be properly addressed in the SC and if the SC is to strengthen its legitimacy. Human rights NGOs face an exciting challenge in calculating how best to influence this development.

Research for this paper has included interviewing a range of NGO representatives, UN officials and SC delegates. It became clear that NGOs which follow the SC are expert, well-trained, highly intelligent and very pragmatic. They know the delegates and understand the system, and appreciate that pushing for formal relations would not

necessarily be effective. They recognise the sovereign nature of governments and acknowledge that participatory democracy goes hand in hand with representative democracy. They are more interested in substance than in status, aiming to ensure that decisions are well-informed and properly implemented. Although they can adopt extreme positions on specific issues, they are well aware that other issues are at stake and that compromise is necessary.

As NGOs work with a variety of actors, it is difficult to assess the impact of their work, particularly in relation to the SC. For example, although NGOs lobbied intensively in relation to Darfur, the positive engagement of France and some E10 members makes it impossible to decide who was ultimately responsible for the decision to refer the situation there to the ICC. Notwithstanding this, it is clear that delegates greatly value the input of NGOs. Elected SC members, facing an enormous array of issues and often lacking their own intelligence sources, attach particular value to information and advice from expert NGOs in the area of human rights. They value the different perspective of NGOs and their advice about where attention should be focused or what issues should be raised in SC discussions. Some delegates said they use the opportunity to develop good relations, in the knowledge that the NGOs will remain valuable sources of information when they are no longer SC members. The element of trust is essential: States must be able to rely on information and to believe that there is a shared sense of mutuality with the NGOs.

This paper has critically examined the existing methods of interaction between NGOs and the SC as well as relations between NGOs and other IGOs with a view to seeing whether they might be transposed to the SC. Although establishing arrangements akin to the consultative status enjoyed in ECOSOC or the formal relations with UNESCO would have the benefit of signalling the importance of NGOs to the work of the SC, NGOs do not believe they would be useful. In fact, the unique position, role, procedures and powers of the SC mean that formalising relations might be counter-productive.

However, some elements of these arrangements could facilitate cooperation. In this respect, NGOs could consider the formation of a coordinating body, such as the CONGO, the UNESCO-NGO Liaison Committee or the Liaison Committee in the

COE. As in these examples, the coordinating body could be elected from amongst NGOs which follow the work of the SC and which are interested in participating in its NGO-related activities. This coordinating body could be arranged into thematic groupings, as in the COE Liaison Committee, so that NGOs are sub-divided into human rights, humanitarian, peace and security organisations, and so on. This would facilitate the formation of ad hoc like-minded policy groups, which have been effective in relation to issues such as the ICC. Although some NGOs have warned against forming UNESCO-type permanent umbrella groups, as they tend to be dominated by NGOs reluctant to criticise member States, it should be possible to select NGOs carefully on an ad hoc basis for specific issues. The use of such groups could be particularly useful for advocacy in New York, as representatives of several NGOs could lobby all relevant SC members on the same issue.

A liaison body or officer could then be established in the SC Affairs Division of the Department of Political Affairs, perhaps within the small Public Information and External Relations section. It could liaise with the NGO coordinating body, for example by providing a weekly orientation briefing for NGOs, informing it about all upcoming debates and field missions, requesting parallel reports in advance, and arranging for these to be circulated to delegations. This would improve the general level of knowledge amongst SC members in advance of meetings. This liaison function could also develop and maintain a database - similar to the CONECCS database developed by the EU Commission – with information about NGOs, their areas of expertise, their deployment regions and contact points. Such a database would greatly facilitate the holding of informal meetings and would ensure that the most relevant NGOs participate, rather than "the same old ones." In creating it, attention should be paid to the criteria established elsewhere for according official status to NGOs. This would ensure that NGOs in the database, for example, share the aims and objectives of the UN, can contribute effectively to the maintenance of international peace and security, have expertise in at least one issue addressed by the SC (including human rights), and are sufficiently established to effectively follow the work of the SC. The 30 NGOs that participate in the NGO Working Group on the SC could be a useful point of departure.

NGOs need to adopt a comprehensive approach and ensure that they have the capacity to intervene at every stage in the linear progression towards decision-making – in the media, on the ground, in capitals, with individual delegates, with SC members and with the SC as a whole. Bilateral meetings are clearly the most effective from the perspective of both NGOs and SC members. NGOs could train their representatives to establish relations with delegates as quickly as possible. Delegations and especially PRs could be encouraged to meet regularly with NGO representatives and both sides could strive to make these meetings short and fruitful. In the absence of Cluster I reform and the reality of disproportionate P5 power, NGOs need to get at least one P5 member on board for major issues. However, E10 members – particularly the smaller, less well-resourced delegations – should not be excluded. In fact, Willetts recommends that NGOs should find a delegation which is "already committed to the same policy objectives as the NGO, particularly if the delegation is under-resourced and prepared to receive assistance."[206]

NGOs consider the NGO Working Group on the SC to be extremely useful and it could, therefore, be continued and reinforced. SC members could be encouraged to speak as candidly as possible and to clearly explain where obstacles to agreement lie within the SC. They could include experts in these briefings who can discuss the issues in a knowledgeable manner. NGOs could prepare pertinent and practical questions in advance. The Working Group could also consider inviting a few delegations to share the briefing and to explain their differences in this format.

Although NGOs criticised some aspects of Arria Formula Meetings, they remain a valuable tool for interaction. Delegations could be encouraged to attend these meetings at the highest possible level and to be prepared for an open and frank discussion, not just a listening exercise. The organising member could try to include not only NGOs but also other experts, such as Special Rapporteurs, journalists and academics. NGOs could send representatives from the region, to provide relevant and timely information. The meetings should not be formalised as their advantage lies in their potential flexibility. Ambassador Arria himself said in 1997: "If you overly structure the thing, you will fall back on the typical regulations of the United Nations,

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[206] Willetts, Peter, *Consultative Status for NGOs at the UN,* in Peter Willetts (ed.), *The Conscience of the World: The Influence of NGOs in the UN System*, London, Hurst and Co., 1996, p. 48.

which made it impossible for the previous 45 years to hold this kind of meeting."[207]
The meetings therefore should be kept informal, relatively unstructured, flexible and
ad hoc so as to be able to respond to the changing needs of the situation.

The Arria format could be developed so that informal meetings with specialised
NGOs are systematically held in New York prior to the departure of each SC field
mission, and with local NGOs when the mission is in the field, with the NGOs in New
York providing information about the local NGOs, and the local NGOs taking the
time to appreciate what would be useful for SC members to know. These would help
to maximise the effectiveness of the missions and their impact on subsequent
deliberations in the SC. An adaptation of the Arria format could also be used for a
'lessons learned' exercise at the close of each UN-mandated operation, as suggested
by the SG in 2004.[208] NGOs could contribute effectively to such meetings, which
would analyse the successes and failures of each operation or mission, and help to
establish criteria for future use.

Many proposals for SC reform have centred on holding more Public Meetings.
Although these have the advantage of being recorded and enabling non-members and
NGOs to attend, research shows that they are not considered useful. Increased use of
Public Meetings and decreased use of Informal Consultations carries the risk of
driving discussion into informal bilateral or group meetings, where NGOs have little
chance of knowing what is going on. Therefore, the SC should move only less
controversial issues to the open format, and only if members are willing to make a
serious effort to discuss the issues rather than deliver prepared speeches.

A variation of one of the SG's proposals in reaction to the Cardoso Panel Report
could be a useful alternative to more Public Meetings. He recommended that the SC
should hold "hearings" with all relevant NGOs and experts in advance of major
debates or actions. Suggestions have been made that such hearings could be modelled
on the 'Board Seminars' instituted by the Board of Executive Directors at the WB
which include Executive Directors, specialist staff and external experts. No decisions
are taken at these and the media is given only a very general briefing afterwards. The
idea is to enable Executive Directors to learn and to inform their capitals about likely

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[207] Ambassador Diego Arria, 1997, at http://www.globalpolicy.org
[208] A/59/354(/2004), para. 14.

concerns and positions that might arise on the issue. Relevant NGOs could be included in such 'hearings' at the UN, which would fall somewhere between a Public Meeting and an Arria Formula Meeting in terms of formality and would provide a wonderful opportunity for open exchange between delegations, NGOs and other experts

In terms of substance, NGOs should focus on areas in which they have real added value such as in relation to criminal justice issues - particularly providing information relevant to the ICC -, the formulation of smart sanctions, and gender issues. As seen earlier, the SC is faced with a range of problems including mass starvation, civil wars, the internal displacement of large numbers of civilians, rebel activities, terrorism, drug trafficking and gross violations of human rights, yet there are no guidelines to decide what constitutes a threat to international peace and security. NGOs could also participate in establishing guidelines about what constitutes such a threat and how to respond appropriately. Another important task - already underway with the formation of an ad hoc umbrella group – is to monitor and advocate candidates for the position of UN SG, as it is essential to choose a strong candidate with an appreciation of the centrality of human rights.

The UN as a whole needs to be less sectoralised. It is no longer realistic to think that the SC can be responsible for the maintenance of international peace and security without taking account of cross-cutting issues such as human rights, the environment and humanitarian concerns. Human rights, in particular, need to be properly addressed in devising strategies for early warning systems, preventive diplomacy and conflict prevention as well as in post-conflict resolution. NGOs, particularly those with extensive regional and local branches, could provide valuable information and training in relation to preventive measures under Chapter VI of the Charter. An early warning network could be established linking their local and regional branches to the SC to inform it of emerging crises and to advise about preventive measures. They could also make maximum use of Article 21 of Resolution 1645[209] to ensure that they

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[209] S/RES/1645(2005).

are consulted on the work of the Peacebuilding Commission, as this has the potential to be a very influential body.

Other UN bodies should have more information about what happens in the SC: in this respect, it would be useful if NGOs were able to ask questions during the annual GA Debate on the Report of the SC. Efforts have already been made to link up the various bodies but in order to integrate the SC more effectively, it needs to be reformed. This paper has addressed the various proposals and concludes that there is little possibility of imminent change in the SC's structure and voting arrangements. However, NGOs could influence the ongoing discussions about transparency, particularly by lobbying the members of the SC Informal Working Group, and the delegations active in the GA. Any improvement in the SC's working methods benefits not only the wider UN membership but also NGOs and their ability to function properly. It also improves the standing of the SC itself at a time when its legitimacy is being questioned. Codifying and defining its Provisional Rules of Procedure would also help to overcome the democratic deficit within the Council and make it function in a more predictable and transparent way as, indeed, would institutionalising the role of the PSC.

NGOs could develop their relations with the UN Secretariat, including with the new Mediation Support Unit of the Department of Political Affairs. Furthermore, the periodic Reports presented to the SC are very influential and NGOs could encourage the Secretariat to focus more on human rights issues. They could counteract the disproportionate P5 pressure exerted on the Secretariat by representing more global concerns. On a very practical level, NGO ability to access information needs to be improved. The Secretariat could help by ensuring that documents are distributed effectively and that draft Resolutions are circulated in advance whenever possible. NGOs could also have wider physical access to the UN building, including the Delegate's Lounge where a lot of important discussion takes place. The Secretariat could ensure that security rules are clear and are posted on the internet.

In order to counteract criticism and to interact more effectively with the SC, NGOs themselves need to become more organised, accountable and transparent. As part of this, they could consider formulating a general Code of Conduct, which would include mechanisms for knowing whether signatories are complying and for reporting breaches.

A final and very practical suggestion would be to establish an ongoing exchange programme between NGOs and delegations in New York. In 2004, CARE International proposed instituting a "Community Observer Program" whereby experts from SC delegations could spend time with an operational NGO in each country that they follow.[210] While not feasible for all delegations, this would certainly improve understanding within the SC of the cultural, political and social context in which each crisis occurs. It would also provide delegates with insight to how NGOs operate and, by removing them from national and professional constraints, would provide them with an understanding of the wider issues involved in conflict prevention and conflict resolution. Such interaction would help NGOs to develop a strong relationship with the SC and enable them, in the long term, to play a greater role in ensuring that human rights are properly addressed in intergovernmental discussions

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[210] Caillaux, Denis, CARE International statement to Open Meeting of the SC on the Contribution of Civil Society to Post-Conflict Peacebuilding, 22/06/2004.

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