Reforming the United Nations Security Council: Making it more Democratic in the Post-Westphalian Legal Order

Mehmet Halil Mustafa BEKTAS

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Supervisors:

Mr Tim Hillier

Professor Gavin Dingwall

Dr Alwyn Jones

Faculty of Business and Law

De Montfort University

United Kingdom

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Declaration

I certify that the thesis submitted is my own work. I also confirm that any work of others is clearly identified and has been referenced with full acknowledgement within the thesis.

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I declare that my thesis consists of 79,790 words excluding bibliography, table of contents, abstract, acknowledgements, list of abbreviations, declaration and cover page.
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ABSTRACT

The Security Council has sometimes failed to perform its main duty, which is the maintenance of international peace and security. The Council’s responsibilities in this regard have grown as new international challenges have emerged. These challenges include global environmental issues, refugee flows and mass migration across borders, the rapid spread of infectious diseases, civil war that threatens international peace and security, global terrorism, transnational crime and illegal stocks of nuclear, biological and chemical weapons. The Security Council has thus become the subject of both severe criticism and calls for its structural reform. A variety of reform proposals have been offered by scholars and politicians, almost all of which have focused solely on state-based solutions. The current study considers that reforming the Council through such means would not alter its current state to any significant extent. International law no longer reflects the state-based system of the Westphalian World Order. The international legal order does not involve only nation-states, and state-based systems are not able autonomously to deal with problems such as these in the post-Westphalian era. It is widely acknowledged that there are many non-state actors that could contribute to enhancing the Council’s representativeness, effectiveness and accountability. It is thus concluded that a reform proposal for the Security Council must consider these factors and produce a non-state based solution. It is proposed that the Council must consider granting formal access to Non-Governmental Organizations (NGOs) that have, as non-state actors, been active in the international legal order, and that have already made significant contributions to the above-mentioned issues.
Acknowledgements

Many challenges can occur during the long process of researching and writing a PhD, challenges that are hard for a student to cope with alone. The supervisor is the first port of call in trouble, more so for an international student. I am indeed indebted to my supervisors. Foremost, I would like to express my gratitude to Tim Hillier, Associate Head (undergraduate) at De Montfort University’s Law School. He has been a most patient mentor whose has been very helpful in providing critical and insightful comments and moral support. Secondly, I would like to thank Professor Gavin Dingwall, Professor of Criminal Justice Policy and Faculty Head of Research Students at the Law School. I have benefited from his astute observations and particularly for his encouragement during my study. I also express my thanks to Dr. Alwyn Jones, Principal Lecturer at the Law School. He has given generously of his time and allowed me to ask questions whenever I needed to do so. His shrewd and useful comments have also been highly beneficial to this study.

I have felt very lucky to be under their supervision, and I will never forget their patient, indefatigable supervision. I would not have been able to complete this work without their painstaking comments and encouragement.

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## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CARE</td>
<td>Cooperative for American Relief Everywhere</td>
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<td>CCSC</td>
<td>Consultative Committee of the Security Council</td>
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<td>CD</td>
<td>Cosmopolitan Democracy</td>
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<td>CSD</td>
<td>Commission on Sustainable Development</td>
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<td>ECOSOC</td>
<td>Economic and Social Council</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>IGOs</td>
<td>Inter-Governmental Organisations</td>
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<td>INGOs</td>
<td>International Non-Governmental Organizations</td>
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<td>MSF</td>
<td>Medecins Sans Frontieres</td>
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<td>MNCs</td>
<td>Multinational Corporations</td>
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<tr>
<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>UIA</td>
<td>Union of International Associations</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNIDO</td>
<td>United Nations Industrial Development Organization</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
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<td>WWF</td>
<td>World Wildlife Fund</td>
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<td>WWO</td>
<td>Westphalian World Order</td>
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CHAPTER ONE

Introduction and Summary of Main Arguments

The reformation of the United Nations Security Council (UNSC) has become one of the main areas of concern for many academics and politicians, possibly because the Council plays a very significant role in ensuring the safety of the world community. It has thus always been at the centre of discussions in emergencies and conflicts. Critics have cited its veto powers as reasons for its failures. In fact, the history of the UNSC presents a mixed picture. The UNSC has had considerable success in maintaining international peace and security.¹ On this point, the International Commission on Intervention and State Sovereignty’s 2001 report states:

there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes...The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.²

The UN’s actions are not always adequate. There is sometimes a failure to maintain international peace and security, mainly due to the obstacle presented by the use of the veto. For example, in the ongoing case of Syria, the UNSC has repeatedly been criticised for not taking action.

¹ Examples are Cambodia, Mozambique, Haiti and Timor-Leste including long standing peacekeeping troops in Kashmir. Vijay Mehta. ‘Reforming and Strengthening the UN for the 21st Century’ (2010), p.3. Others include the establishment of the International Criminal Tribunals for Rwanda (ICTR) in 1994 and the former Yugoslavia (ICTY) in 1993
² The report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect (December, 2001), 49
The UNSC has failed several times to take action because of this use of the veto.\textsuperscript{3} Thus, many naturally believe that the Council would work better if they could remove the veto or change the Council’s size.\textsuperscript{4} The majority of previous reform proposals have mostly focused on removing or restricting the veto power, as well as on adding more permanent members or non-permanent members.\textsuperscript{5} It may be indeed important to remove Council members’ veto powers, but if the current realities of the world order make the achievement of such an end by direct amendment of the Charter impossible at present, an alternative would be to add more member states. The degree to which this would be efficacious is, however, debatable.

There are in fact two reasons why these proposals are wrong. Firstly, an analysis of the UNSC’s structure makes it clear that the veto power is not the only problem. To illustrate this point, when the Council’s permanent members apply the veto to block it from taking action, it might be thought that there is no way to overcome this deadlock. Yet this is an assumption that cannot be taken for granted. The authority emanates from the Uniting for Peace Resolution\textsuperscript{6}, which stipulates that the General Assembly to take an active role when the

\textsuperscript{3} In the case of Syria, the US, UK and France resolved to take action against the Bashar al-Assad regime to prevent violence against civilians, but this resolution was vetoed by Russia and China, which is why the UNSC could not take an active role on that occasion. For more details, see ‘Russia, China veto U.N. resolution on Syria’ <http://www.usatoday.com/news/world/story/2012-02-03/un-syria-resolution/52951158/1> (accessed 23/02/12)


\textsuperscript{5} Center for UN Reform Education, ‘Security Council Reform’ http://www.centerforunreform.org/?q=securitycouncil

\textsuperscript{6} L. H. Woolsey, ‘The Uniting for Peace Resolution of the United Nations’ (1951) 45 AJIL, 129-137. This resolution is discussed further in Chapter III
Security Council fails to solve an issue of international peace and security through inefficiency or the use of the veto. This implies two things: the permanent Council members do not bear all the responsibility for the Council’s failures, but also that those permanent members are not completely innocent in this regard – they have often played significant roles in gridlocking the Council.

The second reason is that such a state-based approach is neither adequate nor sufficient to meet the demands of the current world order. There are now new actors and new threats. The UNSC was product of a time when states were the only actors on the international stage; the main threat was an attack by one nation state on another. The purpose for which the UNSC was originally designed is no longer relevant to the current world order. Any reform proposal cannot therefore ignore these new facts by simply restricting itself to 1945-era state-based solutions.

The issue of UNSC reform should be treated according to the facts of current world conditions. There is no doubt that a more democratic UNSC is needed, but this entails proposals that go beyond state-based solutions. Neither can practical obstacles such as the veto wall and the consensus problem be ignored. In order to avoid a similar fiasco, any reform proposal should therefore certainly not be constricted in any way by these obstacles (or at least should not be totally dependent on them).

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7 Article 27 of the UN Charter

8 The consensus problem is one of the main obstacles to the UN’s implementation of reform proposals, primarily because some states find such proposals at least partly inimical to their own interests.
1.1 Aim and Scope

This study finds that one of the UNSC’s main problems is its state-based composition, a product of the 1945 Westphalian world order.\(^9\) This anti-democratic structure must be remoulded as a more egalitarian one, because as it stands it renders the UNSC unable to deal appropriately with international problems. Yet any attempt at reformation would be unsatisfactory without consideration of the current international legal order. A solution for the UNSC’s decision-making process should thus be both satisfactory and feasible. In this regard, the present study finds Cosmopolitan Democracy (CD) to be the most relevant type of democracy for its purposes.\(^{10}\) The author proposes bringing the UNSC into the post-Westphalian era\(^{11}\) in order to make it a more democratic body that would solve its problems regarding efficiency, accountability and representativeness. The author discusses new concerns such as those relating to NGOs that must be accommodated in the UNSC’s decision-making process. The main focus point of the present work is thus reforming the UNSC in order to make it more democratic.

Secondly, as the UNSC is an international body, the question of how an international entity could be made more democratic is addressed. It is found that this notion became popular just after the collapse of the Soviet Union in 1991. It is argued that developing more democratic

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\(^9\) “The Westphalian world order” refers to a system in which states are considered to be the sole actors in international law. This era began in 1648 with the Peace of Westphalia that ended the Thirty Years’ War.

\(^{10}\) This is evaluated in Chapter II.

international institutions is possible by the inclusion of non-state actors. It will also be argued in this thesis that an international institution like the UNSC would be democratically validated by including NGOs. These facts have led the author to investigate how the international legal order has been exercised in practice, particularly after 1991. It is found that this order has significantly changed since the establishment of the UNSC. The period that began after the collapse of the Soviet Union and the development of the Internet is known as the post-Westphalian order. This order is therefore scrutinised to find the realities of the current international legal order.

On the other hand, this proposal might prove be too contentious to implement at present. This is a prospective agenda that might require some other stages before it can be effected. On this point, even though it does not require any Charter amendment, its implementation would also face challenges from political realities. This proposal could thus be seen as a potential project. Yet mechanisms by which NGOs can be allowed more influence on the UNSC must be found.

This proposal is significant in that it presents alternative ways of reforming the Council. It constitutes more than just a consideration of the Council’s problems. It considers such issues as how permanent and non-permanent Council members can be made to act more responsibly, and how they can be obliged to commit to the responsibility given to them. The current study suggests that alternative ways must be developed to push the Council to work

more effectively, rather than constantly going over old and unfruitful ground. This would hopefully prompt the search for alternative ways to solve the UNSC’s problems. While it may not be a practical means of solving the gridlock resulting from the use of the veto, it would hopefully help to solve that gridlock insofar as it results from purely state-based solutions by opening the way for an alternative means of Council reform.

In fact, there is already an example of alternative approach that has aimed to push the UNSC to be more responsible for maintain international peace and security: Responsibility to Protect (R2P). This was first announced in 2001, approved in 2005, and the intention was for it be finally implemented by the UNSC in 2011 in Libya. R2P also provides an alternative way to push states to take more responsibility for maintenance of international peace and security. Rather than asking for a Charter amendment, it develops strategies to limit areas in which self-interested states can use their veto power. There might be some similarities between the proposal made in the present thesis and R2P. The latter has three main pillars: responsibility to prevent, responsibility to react and responsibility to rebuild.\(^\text{13}\) This study also pays close attention to role of NGOs in preventing conflicts, in pushing states to take action when prevention fails, and their role in the reconstruction of war-torn societies. This study is, however, specifically about role of NGOs in making the UNSC more responsive to international peace and security in the context of the current international legal order. The R2P agenda has thus not been directly addressed in this thesis.

1.2 Developing Solutions and Making a Reform Proposal

The problem with the UNSC is manifestly its anti-democratic state-based system, which makes it unable to perform its primary responsibility. The remedy is to make it more democratic. Which form of democracy and how it could be implemented are the questions to be decided.

The answer to the former is CD. The theory should answer the purposes of this thesis, which include resolutions to such problems as the reformation of an international organization, the implementation of such democratic principles as accountability, representativeness and effectiveness, a decrease in the use of military force, the inclusion of new actors in the international legal order, the abrogation of purely state-based structures and the adoption of a progressive approach (i.e. one that works toward a solution rather than implementing it all at once). CD is the most suitable method of answering these purposes. The reasons why this form of democracy is proposed is explained in detail in Chapter II.

There are several reasons why NGOs constitute the means by which the UNSC could be made more democratic. The solution they provide is more feasible. NGOs have already established informal relationships with the Council. It would thus be easier to formalise these relationships than to establish them from scratch with new non-state actors. Indeed, Article 29 of the Charter and Rule 39 of the Provisional Rules of Procedure of the Security Council make it possible to establish formal relationships with NGOs. NGOs are also very important.

agents in the performance of the UNSC’s responsibilities. Lastly, in order to achieve democracy, it is necessary to consider the participation of new actors in the international legal order. In this regard, formal participation of NGOs, which are such actors, would naturally eliminate the UNSC’s democracy deficit.

The current study also provides a definition for NGOs that could be granted formal access\textsuperscript{15} to the UNSC. The definition of an NGO used in this study is that it is international in character, independent of any state and free of governmental influence, that its aims are non-profit, non-violence, not obviously connected with criminality, not political or subversive, and conform to the spirit, purposes and principles of the UN Charter, that it has standing within its sphere of interest and is particularly active in the field of humanitarian aid such as security, peace, human rights, poverty, health and education, and that it has a democratically adopted statute, representative and transparent structure and is accountable in its actions.\textsuperscript{16}

\textsuperscript{15} Formal access refers to granting accredited NGOs Council access through a committee. Informal access means that NGOs could meet Council members as the latter deem necessary. Informal access is discussed in detail in Chapter 5 and formal access in Chapter 7.

\textsuperscript{16} This point is discussed in detail in Chapter 4.
1.3 Importance of Study

The reformation of the Security Council has been evaluated in relation to state-based solutions such as enlarging the size of the Council by adding more members and removing or limiting the veto power. Little attention has been paid to developing relationships between NGOs and the Council. There is thus a paucity of literature regarding relations between the UNSC and NGOs. The current study such literature as exists on this topic. The people mentioned below are important for two main reasons. Firstly, to the best of the author’s knowledge they are only ones who have paid attention to the relations between NGOs and the Council. Secondly, the current study briefly compares its proposal to its predecessors in order to illustrate its originality and how it contributes to the literature.

Firstly, Archibugi cursorily considers consultative status for NGOs on the Council\textsuperscript{17} as one suggestion in his discussion of CD, although he provides no background or detailed analysis for such a reform. In supplying these, the present research fills a gap in the current state of knowledge.

Secondly, James Paul outlines the relations that have developed between the Council and NGOs.\textsuperscript{18} He evaluates to some extent the inequality of informal relations and provides reasons why this should be so, and he illustrates the outcomes of interactions between the Council and NGOs. He does not, however, offer any views as to the potential directions that

\textsuperscript{17} Archibugi (2008), p.282

\textsuperscript{18} James Paul, ‘Working with Nongovernmental Organizations’ in David Malone (ed.) The UN Security Council: From the Cold War to the 21st Century (Lynne Rienner, 2004), 386
such development could take. This study has gone further: it investigates the development of informal relations and, makes theory-based predictions regarding the formal participation of NGOs. It uses the theory of CD\textsuperscript{19} to justify formal participation by NGOs on the Security Council.

Third, Martin Binder examines whether and to what extent the Security Council grants access to civil society.\textsuperscript{20} He illustrates the shift that has taken place in the Security Council’s scope and authority, as well as its politicization, as non-permanent members have used NGOs to counterbalance the “Big Five”. However, he does not speculate on any future developments or resolutions regarding relations between the Council and NGOs. The current study has taken the issue well beyond a mere focus on the counterbalancing ability of NGOs. It has identified several salient points regarding NGOs’ contribution to the Council, such as enhancing its representativeness, accountability and effectiveness.

Fourth, Jonathan Graubart examines the involvement of NGOs in the Council’s peace-building operations. He takes a critical approach to this involvement, believing that relations between humanitarian NGOs and the Security Council in this regard are primarily intended to promote the political interests of the powerful sponsors rather than the subject populations.\textsuperscript{21}

\textsuperscript{19} CD considers it essential that decision-making processes involve all individuals affected by those decisions. See n.1 above

\textsuperscript{20} Martin Binder, \textit{The Politicization of International Security Institutions: The UN Security Council and NGOs} (2008) Social Science Research Center, Berlin

\textsuperscript{21} Jonathan Graubart, ‘NGOs and the Security Council: Authority All Around but for Whose Benefit?’ in Bruce Cronin & Ian Hurd (eds.) \textit{The UN Security Council and the Politics of International Authority} (Routledge, 2008), 154-172
The present study, on the contrary, finds positive outcomes of NGOs’ activities and suggests that informal relations be transformed into formal ones.

Fifth, Pini Pavel Miretski evaluates the relations between the Security Council and non-state actors. He examines the legality of those Council Resolutions that deal with such agents. Yet he does not deal with NGOs separately, and does not so much as mention the Arria Formula. His concern is rather to examine the limits of the Council’s authority in its dealings with non-state entities. The present study, by contrast, pays particular attention to NGOs by analysing and evaluating their participation in detail.

Lastly, Martin Daniel Niemetz’s study of Council reform is the most recent to be published. He analyses NGOs’ participation in detail, but he concludes by disagreeing with the development of formal relations between NGOs and the Council, believing rather that they should be able to make the best use of current informal methods of increasing their influence on the Council rather than broadening these relations. He also offers a state-based solution, as he believes that the General Assembly should have more responsibility for security and peace issues. The current research disputes this, concluding that current informal relations are inadequate and subject to the arbitrary actions of Council members. The present research therefore finds that it is necessary for the Council to establish formal access for NGOs.

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22 Pini Pavel Miretski, ‘Delegitimizing or Evolving?: The Legality of UN Security Council Resolutions Imposing Duties on Non-State Actors’ (2009) Social Science Research Network

This thesis offers a new approach to the issue of reforming the Security Council. Firstly, its proposal does not require any Charter amendments,\(^{24}\) which makes it both more practicable and distinct from previous state-centred reform proposals. The present research takes the idea of establishing formal relations beyond a mere suggestion, providing reasons and possible outcomes in detail and using CD to justify its arguments. The author believes that this study would advance the granting of formal participation to non-state actors. It may also increase the opportunity for non-state-based discussions regarding the issue of Security Council reform. Lastly, it might contribute to the literature evaluating the importance of participation by NGOs on the Council.

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\(^{24}\) All that would be required would be to apply Article 29, which states that “[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.” This point is discussed in detail in the Chapter 6
1.4 Methodology

Certain methodologies have been described in this work in order to identify the most appropriate ones for this inquiry. Those investigated are functionalism and institutionalism, CD and the Principle of Maximum Effectiveness.

There is no single correct or perfect methodology or school of thought.25 Indeed, a study could incorporate one or more methodologies in accordance with the character and requirements of the research.26 It should initially be emphasized that the issue of Security Council reform concerns more than just law, but also involves international relations and politics.27 An exclusively legal method might thus be counterproductive in unnecessarily constraining the inquiry.28 The proposed research approach is therefore theoretical in nature and combines doctrinal international law with interdisciplinary material, particularly from international relations and politics. As an international relations theory, CD has made important theoretical contributions to the current study. It is also used to provide supporting arguments and reasons for and evaluations of the solution identified. The further relevance of those theories is explained later in this section.

26 Caroline Morris & Cian Murphy, Getting a PhD in Law (Oxford, 2011) 29
28 ibid
Hassler believes that engaging with the issue of Security Council reform from a positivist perspective would provide neither “a future outlook nor a hypothetical exploration of reform”.\(^{29}\) Functionalism can be thought of as a political theory that “contributes to an understanding of the broad range of man’s political activities”.\(^{30}\) It assumes that all people are intrinsically “good, rational, and devoted to the common weal”.\(^{31}\) The ideals and values shared by humans around the world might not be amenable to expression at the lowest level.\(^{32}\) Resolutions could be achieved by experts beyond the nation state\(^{33}\) at the supranational level.\(^{34}\) In other words, it is possible for experts rather than nation-states to resolve international problems. As a theory of international relations, functionalism implies that states have become obsolescent.\(^{35}\) It emphasizes the significance of public goods and demands their equal distribution among states and non-state actors. This implies the increased importance of NGOs, experts and scientists in light of the erosion of states’ sovereignty.\(^{36}\) It also seeks to define the problems stemming from an anarchic system of international society so as to provide a prescription for ways of constructing a better world.\(^{37}\)

Although functionalism has some merits, such as its emphasis on an incremental increase in peace, there are some drawbacks to this approach. Functionalism limits participation to

\(^{29}\) n.21


\(^{31}\) Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organisation* (1968) 8

\(^{32}\) ibid

\(^{33}\) ibid

\(^{34}\) Hans J. Morgenthau, ‘Positivism, Functionalism, and International Law’ (1940) 34 *American Society of International Law* 261

\(^{35}\) Mitrany argues that state authority in the modern era had been called into question. Oliver Daddow, *International Relations Theory: The Essentials* (SAGE, 2013)

\(^{36}\) Ben Rosamond, *Theories of European Integration* (New York 2000), 33

\(^{37}\) A. J. R. Groom & Paul Graham Taylor (eds.), *Functionalism: Theory and Practice in International Relations* (University of London Press, 1975), 1
experts, but it is not clear who those experts who could provide solutions to international problems are. This could therefore hinder the current study from clearly defining who as new actors can participate in the Security Council. Willets adds that experts could still be referred to certain groups who are not representative of individuals, thus making their use antidemocratic. This also assumes that cooperation between states would bring peace, despite the fact that functionalism regards nationalism as objectionable. Even though it seeks to eliminate nationalism, it is paradoxically quite approbatory of states. This approach could therefore prevent the current proposals from criticizing the Security Council’s state-based system. It also places too much emphasis on pragmatic cooperation, as it fails to provide for solutions when the relevant actors have no interests in common.

According to Hassler, institutionalism could help identify both the factors that inhibit Council reform and how these factors should be eliminated. Institutionalism could in this regard provide an analysis of the Council’s stability and efficiency in terms of political authority structures. However, it also considers states as principal actors in much the same way as the realists’ emphasis on the primacy of states. It might therefore be unsuitable for the present purposes, as it would prevent this research from offering a solely non-state-based solution.

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39 ibid
40 ibid
41 ibid
and it would be inadequate to provide answers to questions regarding the contribution NGOs could make by participating in the Council. Likewise, institutionalism places too much emphasis on the positive role of institutions in creating the circumstances conducive to cooperation among state actors.\textsuperscript{45} The focal point of the current study is of course the insufficiency of the Security Council and the positive role of NGOs.

The theory should sufficiently emphasize the role of NGOs’ participation in the international decision-making process. In addition, it should serve the purpose of the current study by making arguments supporting formal access to the Council for NGOs. This research therefore incorporates the methods of the Principle of Maximum Effectiveness and CD.\textsuperscript{46}

There are three main theories on the interpretation of treaties: the teleological theory, the subjective theory and the textual schools.\textsuperscript{47} According to Schweigman, the teleological approach indicates the significance of the object and purpose of a treaty. He states that the main assumption of this approach is to interpret a provision in a way that would best serve the object and purpose of the treaty even though such interpretation contradicts the original intentions of the parties. This theory allows “for gaps to be filled and texts to be interpreted liberally along the lines of the object and purpose of the treaty”.\textsuperscript{48} The teleological approach is generally incorporated with multilateral conventions of a general nature, such as the UN

\textsuperscript{45} Aceves, op.cit., n.36)


\textsuperscript{47} David Schweigman, \textit{The Authority of the Security Council under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice} (Kluwer Law International, 2001), 10

\textsuperscript{48} ibid
Charter. The current study also evaluates that Charter according to its stated purpose in charging the Security Council to maintain international peace and security. The subjective and textual approaches would prevent the current study from interpreting the Charter’s current provisions as supporting the establishment of formal relationships between NGOs and the Security Council. The current study thus takes advantage of the teleological approach’s possibilities of establishing such formal access without any Charter amendments. The current study argues that Article 29 of the Charter should be interpreted in such a way as to allow the elected members of the Council to set up a Consultative Committee for the UN Security Council. Neither the subjective nor the textual schools can provide for this interpretation.

In developing a practicable solution, the principle of maximum effectiveness encourages the author to apply the UN Charter’s current articles and rules in the best possible way so as to provide for the implementation of the solution arrived at in the present research.\textsuperscript{49} Schweigman states that

\begin{quote}
\textit{as regards international institutional law, in case of gaps or ambiguities in a constituent instrument, this school emphasizes the need for the effective functioning of an organization rather than the sovereignty of its members.}\textsuperscript{50}
\end{quote}

This implies the Principle of Maximum Effectiveness (\textit{la regie de l'effet utile}).\textsuperscript{51} Schweigman details two assumptions underlying this principle. The first is that each provision is included for a reason, so no provision should be considered as redundant. This also considers that “it is

\textsuperscript{49} ibid
\textsuperscript{47}
\textsuperscript{50} ibid, 10
\textsuperscript{51} ibid
better for a thing to have effect than to be void”. The second is that a provision should be interpreted in the light of the purpose of the instrument as a whole.

Miretski applies the maximum effectiveness principle to Article 2(6) of the UN Charter in order to grant a legal personality to non-state actors. The current study posits that this article can be used to grant NGOs formal access to the UN Security Council, arguing that Article 29 could be used to establish a permanent CCSC (Consultative Committee of the Security Council) that would have similar functions to those of Article 71, which provides for consultative status for NGOs. In fact, no such body has been established under that article 29, which could thus be interpreted by the maximum effectiveness approach as eliminating any possible negative reactions that could be based on legal provisions.

Finally, as the current research concerns the development of a more democratic Security Council, CD provides significant insights with which to justify the desirability of democracy in the Council’s system. CD emphasises that all individuals affected by decisions should have the right to participate in that system’s decision-making process. It allows the definition of a demand for the development of a more democratic Council and describes grounds for a response to the question of why this demand for NGOs’ participation is so important. CD has played a significant role in identifying possible benefits of the proposed solution. In short, the

52 ibid
53 “…why should we not interpret Article 2(6), which may already be part of a binding customary international law, as allowing the UN to ensure that all non-members (and not just states), concur on the principles of the Charter in the purpose of maintenance of the international peace and security?” Miretski (2009)
advocates of CD\textsuperscript{54} have contributed significantly to the author’s arguments regarding the Council.

The present research has also benefited from two other theories: Deliberative Democracy\textsuperscript{55} and Liberal International Theory.\textsuperscript{56} Although they do not fully fit the purposes of the current research,\textsuperscript{57} they are to some extent relevant and supporting theories for the analysis and solution it proposes. Both of these theories are relevant because they also devote considerable attention to the participation of NGOs in the decision-making process. As they also encourage such participation, they broaden the present study’s potential reference base in order to make its arguments stronger and more convincing. On the other hand, despite their eagerness to highlight the significance of NGOs’ participation, neither Deliberative Democracy nor Liberal International Theory goes as far as criticizing the state-based system. They are also deficient in not adopting a progressive approach and in their suggestion that the use of military force be minimized. Those Council resolutions adopted pursuant to the activity of NGOs are used to support the current research’s possible outcomes and the feasibility of the solution it offers.

The shape of this proposal’s methodology is flexible, which means that it could generate new strategies depending upon the exploration of new ideas and the nature of the research. In that regard, the thesis initially attempted to employ other methods such as interviews and

\textsuperscript{54} Including Daniele Archibugi and Boutros Boutros-Ghali
\textsuperscript{57} This point is evaluated in Chapter II.
questionnaires.\textsuperscript{58} It was hoped that the interviews would cover the staff of international organisations, the heads of NGOs, diplomats, foreign ministers, experts and political parties in order to understand the possibilities for granting formal access for NGOs. However, both the interview and questionnaire approaches were rejected\textsuperscript{59} because they were not necessary to the present study’s theoretical purpose and because of the significant time involved. The main research method has therefore been academic. The thesis’s approach has been to identify and use the relevant literature, ranging from books and journal articles through UN documents to Web material. The use of multiple sources and a wide variety of literature ensures that the subject is not dealt with from one view only. Identifying existing literature also means that the current study can build on and add to existing work rather than merely recapitulating extant knowledge.

To sum up, the current study has adopted the theories that support its purposes, the main one being to grant formal access for NGOs to the Security Council in order to democratize it. The theories that have been found to be helpful in this regard are the Maximum Effectiveness Principle of the Teleological School and CD. The Maximum Effectiveness Principle allows a broad interpretation of the UN Charter in order to circumvent any objection to its amendment. CD’s provision of supporting arguments, reasons and evaluation has been significant, and Deliberative Democracy and Liberal International Theory are both used further to enrich that base.

\textsuperscript{58} Questionnaires were regarded as as an alternative to interviews, which could on occasion be harder and more expensive to arrange

\textsuperscript{59} Only one interview was held with Sir Jeremy Greenstock, Chairman of the UN Association in the UK, United Nations Association-UK (London 21 November 2013)
1.5 Layout of the Study

The thesis will be organized as follows. Chapter II offers some background material regarding the theoretical framework and democracy in the international legal order. It first highlights the realities of the post-Westphalian era by discussing its origins. It provides insights into the transformation of the international legal order from the Westphalian to the post-Westphalian order. As CD indicates, this section also explains the emergence of new problems and new actors that cannot be ignored, suggesting that they should be taken into account in the decision-making process. This chapter underlines changes that have taken place in the international realm after the establishment of the UNSC and provides reasons for the participation of NGOs in the Council. It outlines the circumstances in which states are no longer the only actors in the international legal order, and how they are not able to cope with the new problems of present world conditions. It suggests that the UNSC must begin to face the realities of the post-Westphalian order by granting formal participation rights to NGOs, citing changing facts as compelling reasons for such participation. It therefore supports the proposal that a reform project would be quite insufficient without considering the new actors in the international legal order.

It also backgrounds the current situation regarding democracy in the international realm. The first section of Chapter II thus provides an opportunity to develop the argument and describes what is meant by a more democratic UNSC. This study seeks to find the way of making the UNSC, as an international entity, a more democratic body. The author must therefore delineate the general view of democracy in international law. The growth and decline of the democratic deficit in the international legal order is discussed. It is helpful to analyse the state
of democracy in the context of the UNSC in order to estimate more accurately the chance of developing a more democratic SC. Chapter II charts some of the main themes underlying the debate on whether international organisations could be democratized and what conditions must be met in order for an international organization to be democratic, before concluding that democracy cannot be limited to national boundaries. The chapter also determines where the UNSC itself stands in this debate. Finally, it argues that it is possible to democratize the UNSC and presents findings that demonstrate why and how the UNSC should be a more democratic entity. The second section of the chapter introduces the CD theory as it applies to the thesis. The choice of CD is justified on the grounds that it is the most suitable theory for the purposes of the present research. Critics and alternative theories are also discussed.

Chapter III aims to diagnose the problem of the UNSC by discussing some specific articles of the UN Charter. It reaches a different conclusion from most other commentators: namely that the permanent members of the UNSC are not the only culprits. It is followed by a description of the UNSC’s main problem: its state-centric nature and structure, a critique of which is presented. It examines the Council’s state-centric system from a CD perspective, explains why the UNSC’s state-based system is no longer suitable for the current world order, criticizes the UNSC’s state-centric system by emphasising the problem of its hypocrisy and elucidates the reasons behind the proposal for the formal participation of NGOs.

Chapter IV highlights the role of NGOs as important actors as it describes their contributions and roles in the international legal order. This section also portrays their de facto and de jure status in that environment. This chapter helps explain why it is that NGOs are singled out for this role, and it develops a definition of NGOs for the purposes of this study.
Chapter V presents an overview of the informal relations that have been developed between NGOs and the UNSC to date, as well as revealing the circumstances that lead to such relationships being founded. Chapter VI evaluates these informal relations and concludes that such informality is not sufficient, outlining the practical difficulties attendant on this lack of formal identity. Chapter VII introduces a general framework for possible formal relations between NGOs and the Council and also outlines some concerns in this regard. Chapter VIII projects the possible outcomes of formal participation of NGOs by examining the informal relations that exist. Finally, Chapter IX predicts and evaluates objections and difficulties in implementing this proposal.
CHAPTER TWO

The Transformation of the International Legal Order and Theoretical Framework

2.1 Facing the Realities of the Post-Westphalia Era

In the rapidly changing world following the end of the Cold War and the demise of the Soviet Union, it has been argued that the state-centered system no longer represents the circumstances of the current world order. There may not be a treaty of similar importance to that of Westphalia to mark the birth of a new international legal order that involves non-state actors. Yet the new era has been marked by several significant developments such as an intensification of globalization, the Third Wave of global democratization and the rise of transnational social movements. Mattias Kumm maintains that “contemporary international law has expanded its scope, loosened its link to state consent and strengthened compulsory adjudication and enforcement mechanisms”. Ferguson and Mansbach maintain that the Westphalian era has passed and that the end of the Cold War has undermined states’ roles as

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60 The concept ‘Post-Westphalian’ was first propounded by Falk (1998) Other scholars have also used this concept, while some prefer to use that of ‘Westphalia II’. See for example Kimon Valaskakis, ‘Westphalia II: The Real Millennium Challenge’ (2000) <http://www.paricenter.com/library/papers/valaskakis01.php> See: Kemal Baslar, Uluslararasi Hukukta Hukumet Disi Kuruluslar (Non-state Actors in International Law) (Ankara, 2006)


a consequence of this global trend. They aptly believe that “the current erosion of state authority and capacity signals that the interstate epoch is drawing to a close, and invites us to reexamine old ideas and construct new ones that will both provide a better fit with observable reality and a more accurate guide to changing political patterns and attendant norms”. It is thus clear that new international developments have been alerting the international legal system to necessity of adopting new realities of world order.

Globalization has propelled many new issues onto the international agenda, such as a lack of deliberative democracy, international justice, a universal constitution, a world parliament and the principles of *erga omnes, jus cogens* and subsidiarity. The development of NGO activity in the international field accordingly demonstrates the emergence of international civil society. Holly and Karen state that “such activity has accelerated in several areas, notably environment and human rights, and the integration of NGOs into the implementation of international law, particularly of multilateral treaties, indicates a socialization of international law, and more importantly, the beginnings of

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65 ibid p.4
66 Archibugi (2008), p.105-106
68 Archibugi (2008), p.172
69 “…The principle of subsidiarity ought to be an integral feature of international law…” See: Kumm (2004) p.921
pluralism in international law, where states are not the only actors which can influence the progressive development of international law”.\textsuperscript{71}

Johan Galtung pertinently cautions: “states beware: as other key actors (NGOs, TNCs, and LAs)\textsuperscript{72} catch the linkage between globalization and democracy while states fail to do so, and the state system overdoes Westphalian sovereignty (350 years are enough!), these other systems may overtake and pass the state system as carries of the popular will”.\textsuperscript{73} The world has become a much more polycentric place than it was in 1945.\textsuperscript{74} In addition, the UNSC has also been facing significant new problems in the international arena that states cannot solve on their own.\textsuperscript{75} Those new developments can consequently be considered as exerting significant pressure on the Security Council not to simply remain wedded to the state-based Westphalian system.

Jost Delbruck states that “the monopoly of the state as a political actor in the international system has been entirely broken”.\textsuperscript{76} In the post-Westphalian era the gradual diminution of nation-states’ powers has led to the emergence of supranational actors such as the EU, NAFTA and the WTO, sub-national actors including Puerto Rico, Greenland, Quebec and

\begin{thebibliography}{9}
\bibitem{71} The authority of the state in the international system has been broken. See Jost Delbruck, ’Prospects for a “World (Internal) Law”?: Legal Development in a Changing International System’ (2002) 9 Indiana Journal of Global Legal Studies, p.410 and ibid
\bibitem{72} NGOs: Non-Governmental Organizations, TNCs: Transnational Corporations, LAs: Local Authorities
\bibitem{75} Peter Wilenski, ‘The Structure of the UN in the Post-Cold War Period’ in Adam Roberts & Benedict Kingsbury (eds.) United Nations, Divided World: The UN's Roles in International Relations (OUP 2nd ed., 1993), pp.437-467, p.439; n 71, p.408
\bibitem{76} Delbruck (2002) p.410
\end{thebibliography}
Hong Kong, non-state actors such as the Tibetan government in exile and private military companies, NGOs like Greenpeace and Amnesty International\(^77\) as well as transnational actors such as Interpol, Médecins Sans Frontières,\(^78\) the Inter-Parliamentary Union (IPU), the International Organization for Standardization (ISO) and the International Olympic Committee (IOC). The horizontal structure of international law is changing with the introduction of new actors at the vertical level.\(^79\) The emergence of non-, sub- and supra-state actors has seen international relations develop vertically, which is to say in a multilayered and pluralist fashion, heedless of sovereignty and territorial factors. Various networks formed by sovereign-free actors for effective global governance should be brought together in the 21\(^{st}\) century as the monolithic model crumbles with the appearance of new actors. Thus, as Carol Gould rightly suggests that “no forward-looking democracy theory can claim to be complete without considering these important new domains”.\(^80\)

Moreover, the concept of governance according to which states and non-state actors hand-in-hand shape the process by which international law is formulated has replaced the state-centric conception of “government” which has hitherto formed the cornerstone of the old horizontal system. Another novelty of the post-Westphalian order is the introduction of the concept of democracy to the international level. The concept of “transnational democracy” is often

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\(^77\) ibid

\(^78\) Oliver James Lissitzyn, *Territorial Entities Other Than Independent States in the Law of Treaties* (Hague Academy of International Law, 1968) and ibid


referred to by academics and politicians. The large number of innovations, both inside and outside the UN, concerning the democratization of the process by which international law is formulated emanates from the participation of non-state actors in international law and politics.

The facts of globalization and global democracy have significantly increased their effects in the post-Westphalia era, so NGOs have been in the ascendancy in international law. Christine Drake argues that, even though “nationalistic feelings are becoming much stronger, and tensions among peoples, ethnic groups, tribes, and even clans are boiling over into open conflict”, yet, “national boundaries have become more permeable, and national sovereignty less sacrosanct”.81 She aptly adds that the concept of the nation-state has begun to be considered as an obstacle to the maintenance of international peace and security,82 so that, even though strives to restrain the development of new trends in the international legal order, it cannot escape debilitation.

Charnovitz is arguing that “although the State-centric view continues to pervade international law, this dogma is losing coherence”.83 He attributes this to a significant rise in the number of states, their increasing heterogeneity84 and the decrease in incompatibility between natures of

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81 Drake (1999) p.243
82 ibid
84 “After all, how much commonality really exists between China and the Marshall Islands? Are they both "powers," to use the old term for participants in international conferences?” ibid
states and NGOs. In a similar vein, Nicolas Politis postulates that “international law is in a transition period – no longer exclusively the law of States, but not yet completely the law of individuals”. While NGOs may not yet have gained formal recognition in international law, they have already brought about a practical change in the structure of traditional international law.

The horizontal structure of international law has been degraded by the entrance of new actors in the international legal order. As mentioned, the WWO is single-layered, monolithic and territorial. A state’s ability to control a geographical area automatically entails its control of the political power within that territory’s boundaries. International law is seen as rules governing states in a world where each state has a border and equal rights. Yet the existence of NGOs has engendered the development of vertical relationships, as a result of which international law has significantly evolved a vertical dimension. Schreuer maintains that “there is mounting evidence that the process of redistributing authoritative functions will continue and that the vertical element in a preponderantly horizontal order will continue to grow”. International law, in other words, could develop both horizontally and vertically.

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85 NGOs have also acquired some of the characteristics of states, such as permanent populations of dedicated members and the capacity to conduct international relations. ibid
89 ibid p.453
There has been a significant increase in transnational relationships that have led to the emergence of many actors.\textsuperscript{90} International law has thus shifted its emphasis to the vertical.

To illustrate this point, entities such as non-state, supranational and sub-national ones can act independently of states in decision-making and in practice. Examples include Belgium’s Flemish and Walloon regions, the Canadian province of Quebec, Chechnya in Russia, Scotland and Wales in the UK and Spain’s Basque and Catalan regions. Such sub-national geographical regions as Scotland, Wales, the Basque region and Catalonia could have direct and official relations with the central organs of the EU.\textsuperscript{91} Therefore, “the horizontal multiplicity of actors and their vertical interconnectedness has made classical concepts of the structure of the international system obsolete”; international relations as the exclusive domain of states is no longer a valid concept.\textsuperscript{92}

Moreover, the advisory opinion of the ICJ in the case of Reparation for Injuries Suffered in the Service of the United Nations on 11 April 1949 provides that “…the Organization is an international person. It is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims”.\textsuperscript{93} This decision amounts to an acknowledgement that an international organization can have a legal personality in international law. In that respect, it is a recognition of new actors alongside states in international law.

\textsuperscript{90} Jost Delbruck, 'Transnational Federalism: Problems and Prospects of Allocating Public Authority Beyond the State' (2004) 11 Indiana Journal of Global Legal Studies, pp.31-55, p.46
\textsuperscript{91} Spiro (1997), pp. 31-32 and ibid
\textsuperscript{92} Delbruck (2002)
\textsuperscript{93} See: Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C. J. Reports 1949, p. 179
By contrast with current conditions, the monitoring and preservation of individual rights within a state’s borders was prohibited by the Treaty of Westphalia, which guaranteed not to interfere in the domestic affairs of sovereign states. This was main thrust of the Treaty, which made states free of responsibility for their internal behavior, thus allowing them to enjoy plenary authority within their boundaries. This is not valid for the current world order, however, since the majority of states do not have unlimited authority over their citizens. In addition, the notion that state governments are no longer their citizens’ sole representatives has become increasingly popular. Global civil societies therefore endeavor to establish independent non-state entities to maintain their interests, as they increasingly no longer believe that states are the proper agents working for their benefit. Steven Schneebaum argues that “none of this is conceivable in a world governed by the Treaty of Westphalia: all of it presupposes the demise of that regime”. These trends serve as alerts to the unfitness of the WWO to the current demands of the international legal order.

The most significant feature of the post-Westphalian era is that states have been losing their control of international relations and of innovations and developments. Multinational enterprises and transnational corporations have begun to be influential in international legal decision-making processes. In fact, states’ determinations of their national economic

95 ibid
96 Baslar (2006) p.69
97 Schneebaum (2004)
98 Baslar (2006) p.70
policies have been giving way to the preferences of multinational corporations.\textsuperscript{100} For this reason, states have considered the interests and wishes of profit-oriented corporations as far outweighing their own citizens’ demands,\textsuperscript{101} so that their dependence on multinational corporations forces them to shape their policies in accordance with those wishes and interests rather than those of their own people. The international system has eventually developed a new mechanism to fight the corporations’ dominance: non-profit NGOs and civil social actors have begun to play an important role in reducing the impact of multinational corporations on national policies.\textsuperscript{102} 

For example, protests that occurred after NGOs waged an intense global campaign against the Multilateral Agreement on Investment (MAI) prevented its adoption.\textsuperscript{103} The same has occurred regarding the NGOs’ campaign against the planned EU agreements with Canada (the Comprehensive Economic and Trade Agreement (CETA)) and the US (the Transatlantic Trade and Investment Partnership (TTIP)).\textsuperscript{104} NGOs are concerned that these agreements pose a threat to democracy, as they would involve a further transfer of power from nation-states to corporations. They believe that such agreements would influence governments to take decisions that are not in the public interest. Such example demonstrates that nation-states are alone no longer the sole representatives of the public good in the post-Westphalian era, and that individuals have been motivated to collect under the umbrella of NGOs to make their wishes for their futures felt.

\textsuperscript{100} Robert W. Cox, \textit{Approaches to World Order} (CUP, 1996), pp.154-155.

\textsuperscript{101} Baslar (2006) p.70

\textsuperscript{102} ibid

\textsuperscript{103} ibid

\textsuperscript{104} https://stop-ttip.org/what-is-the-problem-ttip-ceta/ accessed on 06/06/15
In short, there are four key aspects of the new world order: the introduction of innovations such as the Internet, the increased influence of new non-state actors, the rise of new problems and the loss of states’ traditional dominance. As the Security Council is the mainly state-centric entity responsible for maintaining international peace and security, it is inconceivable that it does not take these developments into consideration.
2.2 Overview of Democracy in the Context of International Law

“Suppose you were living in a village of thirteen people. You and your neighbours elected one person to be the mayor of your village, and made virtually all public decisions by referendums allowing your mayor to put your decisions into action. You would invariably manage few resources, and exert little power on the communities around you; however, you would have a substantial degree of control in your affairs. Now suppose you moved to a village of approximately 7 billion. You now have a village council, a mayor, a local representative, a governor, a national representative, a president or prime minister, and an international representative. There are thousands of issues decided each day, some of these are legislative issues bound to become laws, some judicial decisions that will have legal bearing - all will affect you and your life. Consequently, the degree of control you can exert over your own affairs has virtually evaporated. What happened to the spread of liberal democracy? In a world where the theory of a "global village" is increasingly and increasingly convincingly being advanced, international law theoretically also becomes increasingly necessary - this global village is interdependent, and thus there must be universality to the laws.” (Gautner)\(^{105}\)

The Westphalian system of international law has never heeded the democratic legitimacy of states.\(^{106}\) That order has therefore never had a democratic purpose. States limited democracy within their borders, so democracy had been an unfamiliar concept in international law for a

\(^{105}\) Gregory H. Fox & Brad R. Roth, Democratic Governance and International Law (CUP, 2000)

\(^{106}\) “…a government in effective control of a territory is generally accepted as the representative of the population within that territory, even if it has assumed power through violent or otherwise undemocratic methods.” Anna-Karin Lindblom, Non-Governmental Organizations in International Law (CUP, 2005), p.6
long time.\textsuperscript{107} The most important subjects were states, and international law was regarded as concerning only affairs between states, not within them. The result was that a state was unlikely to be judged for any aspect of its behaviour under international law. Because international law was based on the classical concept of sovereignty, “states were given carte blanche to choose their own polity”.\textsuperscript{108} Of course, they used this opportunity to disregard democracy in order to forestall what they regarded as its pernicious effects on their behaviour for which they would not be held to account. Consequently, the ruling elites who regulated international law had enjoyed the benefits of neglecting democracy.

In fact, traditional international law did not concern itself with the democratic character of sovereign states, as democratic governance was not a principle of statehood.\textsuperscript{109} In this regard, Roland Rich points out that “the word ’democracy’ does not appear in the Charter of the United Nations, nor was it mentioned in the Covenant of the League of Nations”.\textsuperscript{110} By requiring all states to approve its obligations, the UN Charter did not require its members to adopt a model of democratic governance.\textsuperscript{111} No standard textbooks on international law...

\textsuperscript{107} “Traditionally, international law has barely paid attention to the democratic legitimacy of its most important subjects – states –, having been concerned only with relations between states and not within them.” Jan Wouters, Bart De Meester & Cedric Ryngaert, Democracy and International Law (2003) 34 Netherlands Yearbook of International Law, pp.139-197

\textsuperscript{108} N 158, p.4

\textsuperscript{109} Article 1 of the Montevideo Convention on the Rights and Duties of States sets out the criteria for statehood: a) a permanent population; b) a defined territory; c) a government; and d) the capacity to enter into relations with other states. See Varayudej, 'A Right to Democracy in International Law: Its Implications for Asia' (2010) 12 Annual Survey of International & Comparative Law, p.4


\textsuperscript{111} In contrast to the UN, the EU requires many standards for states to become members. It also monitors its members for compliance with the organisation’s obligations. Yet these obligations are quite different from those implied by the UN’s Article 4(1): “Membership in the United Nations is open to all other peace-loving states...
include chapters on democracy.\footnote{ibid} Neither has the International Court of Justice regarded the legal application of democratic principles in its decisions. There have, however, been some attempts to make democracy a norm of international law.\footnote{ibid, p.21} US President Woodrow Wilson said that “the world must be made safe for democracy” when clarifying his aims upon the USA’s entry into World War I.\footnote{‘Making the World “Safe for Democracy”: Woodrow Wilson Asks for War’ <http://historymatters.gmu.edu/d/4943/> accessed on 25/2014}

The defeat of fascism after World War II presented the international community with the opportunity to make democracy a norm of international law. With this in mind, some tentative steps were taken in describing “certain civil and political rights” and also in drafting the “consultative instruments of several international organizations”.\footnote{ibid, p.4} It might well be concluded that “this formative period of modern international law did indeed plant the idea that democracy is an essential element of human rights, but the Cold War intruded far too quickly for the notion to take root in international law”.\footnote{ibid} Democracy had thus arrived as an idea whose realisation should at least be attempted, even though the circumstances did not allow its full development.

By contrast with the UN Charter, some post-war international treaties directly espouse democracy. UNESCO was established for the purpose of contributing to peace and security which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.” N 158 p.4
by promoting collaboration among nations in the spheres of education, science and culture.\(^\text{117}\)

The preamble to its constitution refers to democracy by stating that “the great and terrible war which has now ended was a war made possible by the denial of the democratic principles”.\(^\text{118}\)

Democracy also appeared in Article 29(2) of the 1948 Universal Declaration of Human Rights. The Article refers to “…recognition and respect for meeting the just requirements of morality, public order and the general welfare in a democratic society”.\(^\text{119}\) At the same time the preamble to the constitution of the Organization of American States (OAS) also expresses itself “…convinced that representative democracy is an indispensable condition for the stability, peace and development of the region”.\(^\text{120}\) The preamble of the 1949 Statute of the Council of Europe sees its members as “reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy”.\(^\text{121}\) Roland Rich believes that “the use of the qualifier *genuine* is an early indication of the contestation over ownership of the term democracy”.\(^\text{122}\) However, there does not seem to have been a general endorsement of the democratic principle under international law outside treaties.\(^\text{123}\)

\(^{117}\) Article 1(1) of the UNESCO Constitution

\(^{118}\) Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Preamble

\(^{119}\) The Universal Declaration of Human Rights, Article 29


\(^{121}\) 1949 Statute of the Council of Europe, Preamble

\(^{122}\) ibid

\(^{123}\) James Crawford, ‘Democracy and International Law’ (1993) 64 The British Yearbook of International Law, pp.113-133, p.116
The general character of traditional international law did not take the “will of the people” into account being instead based undemocratically on “sovereignty”. James Crawford maintains that general classical international law’s features were deeply undemocratic,\textsuperscript{124} describing its six aspects as follows.\textsuperscript{125}

\textit{Firstly, the executive has comprehensive power to agree and apply rules of international law which may affect the rights of individuals without their consent and even without their knowledge.}\textsuperscript{126} For example, the heads of states and foreign secretaries or their equivalents generally have plenary powers to make international commitments on behalf of the state. Even if the government were to come to power with 75 per cent of the popular vote, one quarter of the population would be unrepresented by that government’s foreign policy. In fact, the 75 per cent might very well also disagree with foreign policy decisions.\textsuperscript{127} Once individuals express their concern that their consent is not taken into account, they might seek alternative ways of expressing their opinions. One reason for the existence of NGOs and their increasing role in international affairs is that they have been regarded as a significant alternative forum in which individuals can voice their views.

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\textsuperscript{124} ibid, p.117
\textsuperscript{125} ibid, pp.117-119
\textsuperscript{126} Vienna Convention on the Law Treaties, 23 May 1969: UN Treaty Series, vol.1155, p131, Article 7(2)
\textsuperscript{127} See for example American citizens’ views about America foreign policy: “As for Mr. Bush, 23 percent approve of his handling of the situation in Iraq, 72 percent disapprove; 25 percent approve of his handling of foreign policy, 65 percent disapprove; and 27 percent approve of his handling of immigration issues, while 60 percent disapprove.” Dalia Sussman, ‘Poll Shows View of Iraqi War is Most Negative Since Start’ (25 May 2007) The New York Times, \\
\end{footnotesize}
\end{flushleft}
Secondly, it does not matter how democratically a national law is established. A state cannot make its national law an excuse for refusing or failing to comply with international obligations. In the current global order, a state’s national behaviour can have a significant impact on the rest of world. For example, the Ukraine crisis has negatively affected international politics, particularly in Europe. Broadly speaking, the Russian government has apparently put its national concerns before those of international law, causing an ongoing crisis that has adversely affected other regions. The impact of the crisis has been felt by people across the globe via Internet news and other networks. The ongoing Syrian crisis could not have been resolved because of conflicts between the states with interests in the crisis. If all interested states would first consider international rules rather than their perceived national interests, an effective resolution would be eminently possible.

Thirdly, while the executive government has virtually exclusive control over the availability of international remedies, individuals have no legal standing and autonomous procedural rights in international law. This is an essential point, but it has weakness as well as strengths. First, it is necessary to provide some privileges to executive government regarding its security and official work. Otherwise, the execution of their policies might become impossible if they proved unwelcome to extremist or other antagonistic groups. Secondly, the absence of legal sanction for its work would make it very hard for it to fulfil that work efficiently. On the other hand, individuals should also be able to benefit from similar international remedies as far as possible.

128 Article 27 of the Vienna Convention on the Law of Treaties explicitly indicates that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

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Fourthly, the principle of non-intervention protects even non-democratic regimes. However, attempts to solve a mistake with another mistake are obviously flawed. Non-democratic regimes might pose a significant issue that must be dealt with. On the other hand, intervention is quite problematic: most such actions have failed to improve the situation; on the contrary, they have generally made it worse. In fact, there have been several examples of intervention in the affairs of non-democratic governments, implying that the principle of traditional international law was violated on those occasions. The well-known Iraqi invasion of 2003 concerned an anti-democratic government, but the international community has borne sad witness to how this intervention made the situation worse. Fifthly, the principle of self-determination is not able to modify established territorial boundaries uti possidetis juris.\(^{129}\)

Sixthly, a successor government is responsible for those responsibilities of its predecessor that emanate from its acts. For example, a military regime in Costa Rica seized power but was eventually overthrown and replaced by an elected government that refused to pay the debts incurred by its predecessor. After the case went to arbitration, it was held that the successor government was bound by all the acts of its predecessor, on the basis that the previous regime was firmly established, and that its legitimacy or constitutionality were irrelevant.

Nevertheless, this trend has begun to change after the Cold War: the world has begun a remarkable shift towards democracy after the collapse of Soviet Union. Consequently, now that democracy has become a significant consideration, international organizations and

\(^{129}\) For example, the principle of self-determination was ignored in Africa and Central America under the name of stability.
instruments have also been challenged on their democratic credentials.\textsuperscript{130} Gregory Fox and Brad Roth state that “prior to the events of 1989-1991, 'democracy' was a word rarely found in the writings of international lawyers” and that there were few international organisations that supported democratic governance.\textsuperscript{131} The traditional attitude was that international law said little about the way in which governments were selected. The post-Cold War democratic revolution has profoundly shaken old assumptions of international law,\textsuperscript{132} which has consequently been deployed to foster transitions to democracy and “to justify the armed expulsion of military juntas that overthrow elected regimes” in the 1990s.\textsuperscript{133}

Given this reality, it can be observed that international law has entered a new era of globalization, and that the path to a more democratic global world is an ongoing process, not a straightforward leap. Significant changes in the international realm have been followed by questioning the “democratic deficits” of international organizations and instruments. In this regard, some commentators raise questions regarding whether “global governance and the structure of international institutions [are] democratically legitimate, or [whether they] suffer from a democratic deficit”.\textsuperscript{134} This is emerging as perhaps one of the central questions in contemporary world politics.\textsuperscript{135} The legitimacy of international law has therefore become a central concern.\textsuperscript{136} Contemporary critiques of international law may have taken a variety

\textsuperscript{130} Fox & Roth (2000), p.1.
\textsuperscript{131} ibid
\textsuperscript{132} ibid
\textsuperscript{133} ibid
\textsuperscript{135} ibid
forms,\textsuperscript{137} but leading students of international law have begun to suggest that it is suffering from a crisis of legitimacy,\textsuperscript{138} the conclusion of international organizations being that ”they suffer from a severe democratic deficit”.\textsuperscript{139}

The issue of democracy has been of growing concern in international law. While Thomas Franck could say before the fall of the Berlin Wall: “yet, oddly, almost no one, nowadays, seems to ask this type of fundamental teleological question\textsuperscript{140} of the international system”,\textsuperscript{141} this observation has been nullified by questions about the democratic deficit in international law. There was a clear victory for “liberal democracy” after the end of the Cold War in the early 1990s.\textsuperscript{142} This was considered as the triumph of democracy that implied the demise of communism, fascism and other ideological anti-democratic forces.\textsuperscript{143} After the victory of liberal democracy, international scholars began to believe in a right to democracy as a new human right to be considered among international human rights law and as an influential principle in most fields of public international law.\textsuperscript{144} Thomas Franck maintains that “democracy is beginning to be seen as the \textit{sine qua non} for validating governance”.\textsuperscript{145} A

\begin{footnotesize}
\begin{enumerate}
\item Ibid pp.907-908.
\item J.H.H. Weiler, 'The Geology of International Law – Governance, Democracy and Legitimacy' \textlesshttp://www.zaoerv.de/64_2004/64_2004_3_a_547_562.pdf\textgreater{} and Ibid p.908
\item N 193
\item This type of fundamental teleological question refers the ‘legitimacy of international law’ n 195.
\item Francis Fukuyama, \textit{The End of History and the Last Man} (New York, 1992) and Varayudej (n110), p.6.
\item Varayudej p.6.
\item Ibid
\end{enumerate}
\end{footnotesize}

Globalisation's impact on international relations has resulted in democracy beginning to become a principle of international law. In this regard the recognition of new states has also increasingly depended on their commitment to the construction of a democratic polity.\footnote{Wouters & others (2003), p.19.} The provision of democracy by globalization refers to the relationship between democracy and globalization.\footnote{ibid} The main actors in this relationship are NGOs, which have come into being pursuant to the lack of representativeness of states or international organizations. Individuals consider that these political entities cannot accurately represent their interests, so NGOs have developed in order to represent and support those interests.\footnote{Baslar (2006), p.76} Globalization has paved the way for NGOs to be more effective in the international realm by enabling them to recruit and communicate with members internationally.

Held\footnote{Held (1995)} and Clark\footnote{Ian Clark, Globalization and International Relations Theory (OUP, 1999)} declare that “for the most part, it is only in the post-Cold War era that the historically estranged literatures of international relations theory and democratic theory have begun to exhibit a shared fascination with the idea of democracy beyond borders, that is
transnational (or global) democracy”. These two authors could be right in highlighting the significant impact of the end of the Cold War. However, claiming that international relations theory has become out of date would be an exaggeration. Of course, a “transnational turn” in the post-Westphalia era could be discerned, and thus a significant shift in the concept of democracy as it has crossed national boundaries. However, this process is still evolving; and international relations theory must thus be updated to some extent, while still acknowledging vestiges of the dominance of nation-states.

Delbruck aptly declares that “the allocation of public authority to entities beyond the state” has been put firmly on the agenda for discussion, and that the legitimacy of public authority has thus begun to be questioned. This is in fact an essential point in the new international legal order. Prof Baslar has divided the last few centuries into the three eras of the aristocratic, oligarchic and democratic. By his account the aristocratic period, in which states were the predominant actors, occurred during the 17th and 18th centuries. The oligarchic period lasted until middle of the 20th century and involved not more than 50 states, while international organizations were considered as legal persons in international law. During this period the legislative process was under the control of intergovernmental actors.

\[\text{footnotes}\]

152 McGrew (2002)
153 ibid
154 Delbruck divides the allocation of public authority into three categories: 1. to international governmental organizations; 2. to supranational organizations; and 3. to nongovernmental organizations”. Delbruck (2004), pp.36-47
155 Baslar (2006) p.249
While it was not possible to question the legitimacy of the process by which law was adjudicated because of the predominance of a strongly positivist approach in the *aristocratic* period, a limited and non-functional opinion on legitimacy was dominant in the *oligarchic* period. However, a *democratic* period has emerged in the last 20 (now 30) years in which non-state, sub-state and supra-state actors have increasingly been participating in the formulation of international law, making democratic legitimacy of increasing importance.\(^{156}\)

It can be concluded that the participation of non-state entities has both instigated and accelerated the democratic process in the international legal order. NGOs as significant non-state actors have made remarkable contribution to this process.

Representative democracy has consequently been supplanted by participatory democracy, since NGOs have been considered as more representative of people’s interests.\(^{157}\) This is indeed an inevitable outcome when globalization coincides with the lack of accurate representation in the international sphere. The UN has also explicitly accepted with favour the fact that ‘citizens everywhere have found new channels of political expression and activity through NGOs and transnational movements’.\(^{158}\) Representative democracy is not adequate and it has been abused;\(^{159}\) people are therefore seeking alternative means of representation in the international legal order’s agenda. Globalization has tolerated innovations and the activities of NGOs.\(^{160}\) Worldwide, people have begun to coalesce under

\(^{156}\) ibid  
\(^{159}\) ibid  
\(^{160}\) ibid
the umbrellas of NGOs, and in so doing have increased their participation in the international organizational decision-making process. NGOs have thereby striven to insinuate themselves directly or indirectly into that process.  

\[161\] ibid
2.3 Why CD: Abandoning the State-Based System

CD is not only one example of an approach to both cosmopolitanism and democracy. CD was first suggested by Daniele Archibugi and David Held at the end of the Cold War, as a new wave of democratization was building.\(^{162}\) A group of thinkers have developed the project for the purpose of providing intellectual arguments in favour of an expansion of democracy, both within states and at the global level, in the early 1990s.\(^{163}\) CD has endeavoured to provide a response to issues such as the conditions under which public opinion could become paramount, the extent to which the general public could control the actions undertaken by the various subjects, be they national governments, international organizations or multinational corporations, and the institutional instruments that are available to confer an effective political role on the planet’s inhabitants.\(^{164}\) A significant and growing body of literature on supporting the democratizing globalization\(^{165}\) has developed, whose authors include Falk, McGrew, Koehler, Habermas, Kaldor, Linklater, Dryzek, Thompson, Holden, Franceschet,\(^{166}\) Boutros-Ghali and Morrison.\(^{167}\) Naturally, these scholars disagree on some matters, but their main point in common is the development of democracy beyond state borders. They offer a

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\(^{163}\) ibid

\(^{164}\) Archibugi (2008), pp.2-3

\(^{165}\) Daniele Archibugi, ‘Cosmopolitan Democracy and its Critics: A Review’ (2004) 10 European Journal of International Relations, pp.437-473, p.438. Some authors criticize CD, finding it inadequate. However, they agree with some of its basic tenets such as applying rules of law and shared participation in the fields of the international legal order. In common with CD, they urge the democratization of globalization

\(^{166}\) Antonio Franceschet, Kant and Liberal Internationalism: Sovereignty, Justice and Global Reform (Palgrave, 2003)

\(^{167}\) Bruce Morrison (ed.), Transnational Democracy: A Critical Consideration of Sites and Sources (Ashgate, 2003)
variety of approaches to achieving this goal. Therefore, even though some of them do find fault with CD, the points on which they agree with it allow their use as supporting arguments in the present work.

Falk argues that a proper response to the emerging problems of the modern world demand a fundamental revision of the concepts of sovereignty, democracy and security in practice. These concepts are subject to reshaping in the context of a transformation from a state-centric world to global governance. He is clear that a fundamental change accompanied this transformation from state-centrism to globalism, and he thus considers the revision of basic tenets as a crucial necessity.

McGrew also underlines the transformation of Westphalian state-based system, stating that “a post-Westphalian world order in the making as sovereign statehood is transformed by the dynamics of globalization”. He thus requires a conceptual shift, arguing that the perspective of thought should change from geopolitics to global politics. He also indicates that it is necessary to take non-state actors into account. He thus demands consideration of the changing from inter-state relations to global politics, where states and non-state actors act together within a shared global social space.

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170 ibid
171 ibid
Holden likewise states that “the international pre-eminence of intrastate democracy is now beginning to flow over into the international order”.\footnote{Holden (2000), p.1} He first considers the triumph of democratic nations as the fulcrum for the development of global society,\footnote{Holden states that “…Although this triumph may not be accepted as a fact, that the idea of democratic government has never been so popular cannot be denied.”} which is why there has been an increasing interest in the idea of global democracy.\footnote{ibid} He maintains that the growing significance of democracy within states has contributed to recognition of the practical importance of democracy between them, having generated an increasing demand for democratization internationally. In addition, the “growth of globalization, interdependence and environmental pressures” has also contributed to the demand for international democratisation.\footnote{ibid}

Habermas indicates that nation-states have been undermined by the processes of globalization, noting that they are therefore no longer able to claim the right of unlimited sovereignty and control over the traditional structures of international law. He also considers that the principle of non-interference in a nation-state’s internal affairs has been contravened many times during the twenty-first century. He believes that the international community must establish supranational institutions in which individuals could also participate.\footnote{Jurgen Habermas, \textit{The Inclusion of the Other: Studies in Political Theory}, edited by C. Cronin and Pablo de Grieff (Polity Press, 1998) and Jurgen Habermas, \textit{The Postnational Constellation} (Polity Press, 2001).}

Kaldor emphasises the impact of globalization on the character of war, believing that the need for a cosmopolitan political response emplaces individual rights and the rule of law as
cornerstones of any international action.\textsuperscript{177} She also considers changes in the international legal order and demands a suitable response to the consequent new facts this new order has created. She underlines the importance of individual rights as a fundamental issue and offers a cosmopolitan political response as a suitable approach to the points raised. Linklater likewise affirms that globalization has challenged the traditional practices of nation-states, making it possible to establish new forms of political community such as the cosmopolitan that is sensitive to differences and aims to reduce inequalities.\textsuperscript{178}

Dryzek also holds that international civil society has played a significant role in the democratization of international institutions.\textsuperscript{179} Thompson similarly emphasises the importance of individual participation. Although some perceived inadequacies of CD concern him, he agrees that if an international system allowing individual participation were to be adopted, it would present the opportunity to hold political decision makers to account, allowing the challenges of global society to be dealt with more efficiently.\textsuperscript{180}

These ideas are linked to several arguments for cosmopolitanism: globalisation and its effects on the post-Westphalian world order, challenges to the control and sovereignty of traditional nation-states, and the expanding role of civil society and NGOs. In fact, these arguments are related to the present thesis, which also underlines the changed conditions in the international legal order. It criticizes the state-centric system as being an inappropriate means for the

\textsuperscript{177} Mary Kaldor, \textit{New and Old Wars} (Polity Press, 1999).
\textsuperscript{178} Andrew Linklater, \textit{The Transformation of Political Community} (Polity Press, 1998).
UNSC to deal with the challenges of the current world order, arguing instead that the way of overcoming those challenges is to provide formal access for NGOs that have significantly increased their role in the international legal order. It thus concludes that the Council cannot remain aloof from this emergent reality.

Despite previous attempts to enhance the transparency and accountability of, as well as participation in, world politics, and to increase respect for the rule of law, from Immanuel Kant to Richard Falk, the idea of applying democracy conceptually and practically beyond nation-states has hitherto been considered to be an innovative development. In this context, most international relations textbooks prior to 1989 do not even contain the word ‘democracy’, and even those that do might still not refer to world politics. According to Archibugi and Held, most of these textbooks did not evaluate the concept of democracy beyond national borders, but rather addressed purely domestic issues. These authors believe that this was because the Cold War hindered the democratization of the international system.

Nevertheless, after the fall of the Berlin Wall, scholars and policymakers have begun to reconsider democracy in the face of global changes and, as a result, to discuss the application of democracy beyond borders. As mentioned earlier, McGrew contends that a

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182 Ibid
183 Ibid, p.434
184 Ibid, p.434
185 More accurately, the rise of Arab spring in theory but the Arab winter in practice was triggered by civilians demanding more democratic rights. What is more, it is quite plausible to suggest that most countries are more democratic than they were before 1990. Even autocratic regimes have begun to be concerned about how long
transformation has occurred from inter-state relations to global politics in the post-Westphalian world order.\textsuperscript{186} Holden also points out that the collapse of communism has contributed to the development of international democracy.\textsuperscript{187} In this regard, most recent international relations textbooks devote at least one chapter to the question of democracy by evaluating the impact of globalization.\textsuperscript{188}

Archibugi and Held find that not all commentators are convinced that CD is necessary or desirable. They define the concept as an attempt to avoid a single hierarchical form of authority and to generate democratic governance at a variety of levels including the global, providing for individuals to participate in world politics by involving them in decisions that affect them.\textsuperscript{189} Their fundamental point is that CD is a way of gradually improving democracy all levels of the world. In this regard, CD deems it possible to reform international organizations.\textsuperscript{190} They offer as an illustration the supposition that, if global politics were to become more representative and accountable, it would lead to the consolidation of domestic power can endure, as their legitimacy is increasingly called into questioned. For instance, the Saudi government has had to consider measures to placate popular opinion, the Princely family has begun to come in for criticism. Eventually, as unrest was spreading across the Middle East, the Saudi government poured billions of dollars to help Saudis buy houses and start businesses in an obvious attempt to stave off protests. See more: NBC News: Saudi King Offers Billions in Gifts to Citizens (23/02/2011) <http://www.nbcnews.com/id/41733661/ns/world_news-mideast_n_africa/t/saudi-king-offers-billions-gifts-citizens/> accessed on 07/05/2015. There are still such attempts by the Saudi government: see more at Tom Decent, ‘Saudi Arabia’s King Salman Gives Citizens an Extra Two Months’ Salary’ (30 January 2015) <http://www.smh.com.au/world/saudi-arabias-king-salman-gives-citizens-an-extra-two-months-salary-20150130-1328x7.html>.

\textsuperscript{186} McGrew (2011), p.32
\textsuperscript{187} Holden (ed.), \textit{Global Democracy}, p.1
\textsuperscript{188} ibid
\textsuperscript{189} Likewise, McGrew emphasises an international system in which states and non-state actors work together. McGrew (2011). Kaldor also points out the necessity of a cosmopolitan political response: Kaldor (1999).
\textsuperscript{190} Archibugi (2008), p.3
politics. So CD has more goals that just its main one of democratizing global governance: it also addresses local, national and regional levels, aiming to sow the seeds of nonviolence, political equality and popular control at each of these levels. 191

Archibugi holds that "cosmopolitan democracy is an ambitious project whose aim is to achieve a world order based on the rule of law and democracy". 192 At the same time, he indicates that "democracy is to be conceptualized as a process, rather than as a set of norms and procedures". 193 CD is sceptical about the positive outcomes of military interventions, which have ostensibly been motivated by humanitarian intentions, yet are not an effective way of achieving peace and security. 194 CD rather prefers the active diplomacy of people and arms control. This point is an essential aspect of the current thesis, which criticises the UNSC’s military operations as interventions that could cause more crises in international affairs as well as in the regions subject to such intervention. In this regard it is suggested that participation of NGOs would increase the Council’s diplomatic power, making it possible for it to cope with international conflicts peacefully.
2.3.1 Contributions of CD to Study

The UNSC is a product of a time in which the state-based system was paradigmatic. Its structure was thus shaped in accordance with the circumstances of the 1940s. The post-Westphalian era has strongly challenged the assumptions underlying the Westphalian period. The international legal order has shifted significantly away from a state-based system, incorporating many new actors such as NGOs. Many new problems have also arisen with which states have found it difficult to deal without the cooperation of these new actors. The UN’s principal organs such as ECOSOC, the General Assembly, the Secretariat, the International Court of Justice and even the UNSC have consequently established relations with these new actors. On the other hand, organisations that have insisted on adhering to the state-based system have failed to achieve their objectives. The UNSC is one of these conservative organisations, as its interaction with those new actors has proved unsatisfactory having been only on an ad hoc or irregular basis such as informal meetings. It has been the target of constant criticism because of its failure to maintain international peace and security. In this regard, numerous reform proposals have been submitted with the purpose of enhancing the Council’s role. Yet these proposals have not received the full approbation of states, which have found them both unsatisfactory and infeasible.

195 McGrew (2011) p.32
198 Only one reform took place since the establishment of the UNSC in 1965 as the number of non-permanent members was expanded from six to ten.
This thesis thus aims to find a way to revitalize the UNSC in order to bring it into the new era. It hopes not to share the same fate as previous reform proposals.\footnote{Winkelmann (1997), pp.35-90; Cox (2009) pp.89-128; and Kelly (2011), pp.319-407; Center for UN Reform Education, ‘Security Council Reform’ \url{http://www.centerforunreform.org/?q=securitycouncil}} To this end, the real problem of the UNSC is defined and the proposed remedies are intended to be as feasible as possible. The thesis suggests that the Council’s focus should shift from a stated-based system to become an entity capable of solving current international problems and being compatible with the current international legal order. Thus, in contrast to previous state-based recommendations,\footnote{Previous reform proposals mostly aim to enlarge the size of the UNSC by adding more non-permanent or permanent member states. Some also suggest the removal or restricting of the veto power. Center for UN Reform Education, ‘Security Council Reform’ \url{http://www.centerforunreform.org/?q=securitycouncil}} it advocates reform based on the current world order. This proposal avoids amendments to the UN Charter as being infeasible. It thus aims to present a progressive proposal that will pave the way for an ideal UNSC, rather than attempting to implement such a solution immediately. Formal participation by NGOs being obviously important, CD is found to be the theory that best answers the aim of this thesis.

The proposed theory should meet the thesis’ aims. Firstly, the theory should aim to reform international organizations. Secondly, it should deal with the principles of democracy such as accountability, representativeness and effectiveness. Thirdly, it should consider the use of military force only as a last option; it should thus aim to decrease the use of military force. Fourthly, it should take account of new actors in the international legal order, and should therefore reject a solely state-based structure. Finally, in order to fulfil these aims, it must adopt a progressive approach: the implementation of its proposed actions must be long-term if it is to achieve its purposes. By contrast, the transnational democracy theory of radical democratic pluralism rejects the reformist approach and aims at direct democracy. This
radical theory believes that existing structures of global governance are inimical to the interests of humanity. The present work thus advocates a gradual or incremental change involving small steps rather than a rash leap to an ideal solution.

CD is the most suitable answer for these purposes.\textsuperscript{201} It might be considered as a deficiency in this work that it does not refer directly to CD throughout. Yet this procedure is reasonable when it is considered that CD’s main pioneers are mostly referred to. On the other hand, it would be wise to explain why CD is favoured over other democracy theories. The question of CD’s relevance to reform of the UNSC must also be addressed.

It is necessary for the UNSC to consider the developments of post-Westphalian order. A significant number of problems are seen to be emerging with which the state-based system alone cannot cope because it is hypocritical,\textsuperscript{202} and lacks both altruism\textsuperscript{203} and necessary sources.\textsuperscript{204} At this juncture, CD makes a significant contribution by its criticism of the state-centric structure. In particular, Daniele Archibugi’s argument regarding the hypocrisy of states allows a clearer criticism of the UNSC’s structure, and consequently the development of a stronger line of reasoning as to how that state-centric system should be changed.

Any suggestions of a more representative or democratic UNSC cannot ignore the participation of NGOs. States are no longer the sole actors in the international legal order in the post-Westphalian world. CD increases the opportunity to argue for the participation of NGOs in the UNSC. For example, it considers the participation of new actors in the decision-

\textsuperscript{201} See the table of CD criteria in Archibugi (2008), pp.103-106
\textsuperscript{202} The hypocrisy feature of States is argued in the Chapter III.
\textsuperscript{203} It is argued in the Chapter VIII.
\textsuperscript{204} The significant roles of NGOs are mentioned in the Chapter IV.
making process as an essential factor in raising the level of democratization, allowing that argument to be applied specifically to the UNSC.\textsuperscript{205} It also provides a way to highlight the indispensability of granting NGOs formal access to the Council.

The democratic concept must also be approached more in terms of internationality, as the UNSC is an international entity. CD presents the opportunity of finding a way of making an international entity more democratic. For example, one of its tenets not only directly contradicts the traditional position that international organizations cannot be democratized, but shows how this is possible. It thus provides insights into how to develop arguments about democratizing the UNSC.

To sum up, this thesis thus presents a reform proposal that would solve the UNSC’s general problems such as representativeness, accountability, transparency, minimizing the application of military force, and efficiency. NGOs are considered as potential actors in the achievement of these goals. As observed above, CD is one means of justifying this proposal. The reason for choosing CD is that it sets out to be more inclusive: it takes democracy further and aims to increase nonviolence, political equality and popular control and to expand democracy beyond its traditionally state-centered domain. The decision-making process must involve individuals affected by those decisions. History is witness to the failure of democratic states to establish a democratic international system. It is therefore pertinent to challenge this state of affairs by establishing a democratic international structure and then also consolidating democracy within state’s borders.

\textsuperscript{205}A more democratic SC refers to more representative, more accountable, more effective. This point is evaluated in the Chapter III.
2.3.2 Other Alternative Theories

CD is only one example of an approach to transnational democracy. There are other alternative ways of making international institutions more democratic. As explained in the methodology section, there is no single correct or perfect method. In that respect, a work could incorporate more than one methodology in accordance with the character and requirements of the research.\(^{206}\) CD might be the most suitable for the purposes of this study, but reference is also made to other theories as necessary to support the present argument. Three other distinctly transnational democratic theories also contain some of these principles: deliberative democracy, liberal-internationalism and radical pluralism. These three also aim to take democracy beyond nation-states, but their solutions implicitly contradict some elements of CD,\(^{207}\) and all of these theories are therefore compared in order to justify the author’s preference for CD.

Deliberative democracy holds that legitimacy is engendered by the participation of several actors and that the decision-making process has a democratic, transparent and accountable character in which participants can question each other’s interests and justify the public weal.\(^{208}\) It also considers the participation of other actors alongside states and it implies accountability.

\(^{206}\) Morris & Murphy (2011) p.29

\(^{207}\) “Both cosmopolitan and civil societarian theories, while directing our attention toward some promising opportunities in the international arena and in communal associations, neglect the need to adjust our conception of politics in its more familiar site, the state.” Thompson (n181), p.123

\(^{208}\) Nanz & Steffek (2004), pp. 314-335
Liberal-internationalism responds to the question of transnational democracy by developing more representative, accountable and transparent international organisations.\textsuperscript{209} The distinguishing idea of liberal-internationalism is “civil society”: it implies that states have been embedded in “domestic and international civil society”, which systemically hinders state actions.\textsuperscript{210} In this theory, civil society is considered as a political space where individuals and voluntary associations seek to shape the rules that “govern one or other aspect of social life”.\textsuperscript{211} What is more, citizens could non-coercively be brought together by civil social groups in order to form “the formal laws and informal norms that regulate social interaction”.\textsuperscript{212}

Radical democratic pluralism involves a substantive perspective on democracy.\textsuperscript{213} It is concerned with establishing “good communities” based on “normative principles of equality, active citizenship, the promotion of the public good, humane governance and harmony with the natural environment”.\textsuperscript{214} This philosophy seeks to adapt notions of direct democracy and self-governance to suit an era in which structures of transnational and global power regulate the circumstances of “daily existence of communities and households across the world”.\textsuperscript{215}

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\textsuperscript{210} Moravcsik (1992), p.1.
\textsuperscript{211} Scholte (2004), pp.213-214.
\textsuperscript{212} ibid
\textsuperscript{213} McGrew (2002)
\textsuperscript{214} Ibid, p.5
\end{flushleft}
The abovementioned alternative theories are also of significant value for developing a more democratic SC. Nevertheless, none of these three theories comprehend the purposes of this study. For example, none of them strongly recommends decreasing the use of military force.\footnote{This study points out that the outcomes of military interventions are more often negative than positive. Therefore, in order to establish durable peace settlements, it is argued that the Council should consider other means such as diplomacy and economic and political sanctions. This issue is discussed in Chapter VIII} Nor, despite their eagerness to highlight the importance of the participation of non-state actors, is any of them keen to criticize the state-based system.\footnote{Even though liberal international theory highlights the significance of transnational civil society, it stresses the accountability of international organizations to national governments. Thus, it still remains state-centric. Anthony McGrew, Models of Transnational Democracy in David Held & Anthony McGrew (eds.) The Global Transformations Reader: An Introduction to the Globalization Debate (Polity Press, 2003), p.501} None of them adopts an even vaguely progressive approach.\footnote{The radical democratic pluralist theory refuses strongly reforming existing structures of global governance. McGrew (2002)} They do have some points, such as the participation of NGOs and increasing accountability in common. Yet it is CD that comprehensively answers the purposes of this thesis, and it is therefore more practicable to employ it than to aggregate the common points of different theories.

\footnote{This study points out that the outcomes of military interventions are more often negative than positive. Therefore, in order to establish durable peace settlements, it is argued that the Council should consider other means such as diplomacy and economic and political sanctions. This issue is discussed in Chapter VIII}
2.4 Critical Analysis of CD

As stated above, CD is only one example of an approach to both cosmopolitanism and democracy. It might be the best theory for the purposes of the current study, yet it might not be the perfect one to make the world order more democratic. There are some objections to CD. Martell maintains that cosmopolitan goals cannot be achieved by cosmopolitan democracy.\(^\text{219}\) He has its doubts about cosmopolitan democracy while agreeing that it has value. For him, “…cosmopolitans are well-intended and concerned about the world’s problems and cultural harmony and are proposing routes for solving them”.\(^\text{220}\) He concedes the existence of common global problems, but questions whether global politics is the best way of tackling them. He believes that the world as it is is not ready for a cosmopolitan order because of the lack of sociological and empirical basis in society. A defence of CD would, therefore, obstruct the development of alternative analytical means of arriving at cosmopolitan ends. He suggests that such ends would more likely be achieved through the adoption of non-cosmopolitan means. This is in fact the strongest argument against CD, as the current international legal order may not be ready for such measures. That does not mean it will not be ready in the future. The current study acknowledges difficulty that the time may not yet be right for its proposal.

Martell asserts that CD requires individuals and states to abdicate their own interests. He is concerned that this is not happening. He does accept that some cosmopolitan developments could be seen as a basis for cosmopolitan politics, but he does not see these as being widely

\(^{219}\) Luke Martell, ‘Cosmopolitanism and Global Politics’ (2011) 82 The Political Quarterly, 618

\(^{220}\) ibid
accepted. A global consciousness regarding ecological problems that would produce cosmopolitan sensibilities might, for example, be dawning, but he believes that “this is speculative there is no good evidence for it”.\(^{221}\) It might be easy, he says, for some groups to come together to combat factors that cause environmental pollution, as such action would be for their own benefit. Nevertheless, that same action could be inimical to the interests of some other groups such as factory owners or oil companies. Therefore, he concludes that circumstances are far from being cosmopolitan.

In addition, realists also see the academic advocates of CD as dreamers.\(^{222}\) They believe that the world is very different than imagined by this theory, maintaining that international relations should be regulated according to principles of force and interest. They therefore think that any effort to tame the international legal order by institutions and public participation cannot be considered as anything more than purely utopian.\(^{223}\) On this view, some realists reject the feasibility and the desirability of the CD project.

David Held points out, however, that CD acknowledges the importance of force and interest, without regarding them as the sole principles by which to shape the international legal order.\(^{224}\) The realist view that the mechanisms by which the world operates are different than

\(^{221}\) ibid, p.620


\(^{223}\) Chandler, ibid; Hawthorn (2000); Zolo (1997)

\(^{224}\) Held n196(2010), p.229
those advocated by CD ignore the mutability of international circumstances. Their assumption would have been prevailed before the 1990s, but the events of the last two decades offer very little to substantiate this viewpoint. Furthermore, Archibugi also affirms that, if the realists were right, democracy itself should not have existed as a political system. Yet it does so, even despite its imperfections. CD also refutes the realist argument that its adherents simply restate their beliefs dogmatically.

In short, this objection could be referred to as the difficulty of CD’s practicality. The realist view rejects the philosophy’s feasibility, basing its argument on the fact that the international legal order is based on power and interests. They thus believe that there is conflict of interests that would not allow CD to be implemented. In this respect Martell accepts the realist view. He goes further, however, to make alternative suggestions by which cosmopolitan goals can be achieved. His criticisms are thus more constructive than the simple realist dismissal of CD as a dream. At least he does not merely disparage CD as an unrealistic or infeasible vision.

Nevertheless, CD does in fact take the realities of the international legal order into account, thus actually recognising facts ignored by realists. This does not mean the total rejection of force and interest as factors to be taken into account, but only of their monopoly as considerations. Barack Obama has recently stated that the traditional use of force is no longer

\[\text{\textsuperscript{225}} \text{ibid}, \text{\textsuperscript{226}} \text{ibid}, \text{\textsuperscript{227}} \text{Archibugi (2004), 453}, \text{\textsuperscript{228}} \text{ibid}\]
an efficient way of dealing with problems in the international legal order. Many international treaties have been adopted by states who have relinquished their interests. If the realist perspective were valid, many international humanitarian treaties and mechanisms for cooperation would not have been considered by international actors.

Martell’s assumptions might be correct as regards climate problems. Yet global terrorism is a very common threat to regions throughout the world. Action in common is thus required to deal with it. The issue of international security and peace is not one that can be postponed to appease economic interests. Besides, the global world order has made international peace and security an ever more pressing concern for the world community. It was formerly possible to confine the negative outcomes of a conflict to a single region, but no longer. None can claim that the impact of the Syrian crisis is limited to the Middle East. There could be a variety of interests regarding that conflict, but the significance of the threat could bring different interest groups together because if they were not to take action in common, it would disadvantage all of them. In fact, this is the reason supranational organizations are needed to discuss problems that arise from clash of interests. For example, the threat posed by the terrorist group ISIS has resulted in action common to the permanent five UNSC members. The problems of climate change may thus be very hard ones and take much longer to resolve, but an issue of security and peace is hard to ignore once it has become international.

What is more, Eckersley points out that the majority of like-minded cosmopolitan nation states must agree in order to achieve a cosmopolitan global order. He thus believes that CD

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should not attempt to weaken nationalism, but rather should seek ways that would rescue, reframe and harness nationalism in order to take on a more cosmopolitan character.\textsuperscript{230} Martell also sees a difficulty of reaching cosmopolitan ends by cosmopolitan means in the obstacle to CD presented by the material interests of states. While agreeing that it could occur in the public arena, he does not see cosmopolitan culture as prevailing over the behaviours of politicians. Because politicians as decision-makers are more motivated by the material interests of their own states, they are less influenced by the values of people.

Organisations such as the UN, global economic organizations like the World Bank and the IMF, international human rights regimes, international NGOs and global social movements could be basis for cosmopolitan institutions. Martell affirms that even though states have engaged in global negations over trade, debt, aid, climate change and nuclear proliferation, those attempts have often failed due to the fact that national interests have overridden cosmopolitanism.\textsuperscript{231} It is hard to develop cosmopolitan democracy if political institutions’ interests clash. In order to develop CD, there must be common material interests in addition to public awareness, but such common material interests in global issues is hard to find.\textsuperscript{232} Likewise, Brown also indicates that globalization may make it possible to develop universal closer relations, but that this does not lead to common beliefs and interests.\textsuperscript{233} In short, even if the public is culturally motivated by cosmopolitan values, it would hardly impact on decision makers, because those values would be undermined by material interests.

\textsuperscript{230} Robyn Eckersley, ‘From Cosmopolitan Nationalism to Cosmopolitan Democracy’ (2007) 33 Review of International Studies 675-692, 676
\textsuperscript{231} ibid, p.622
\textsuperscript{232} ibid
\textsuperscript{233} Robin Brown, ‘Globalization and the End of the National Project’ in John MacMillan and Andrew Linklater (eds), Boundaries in Question: New Directions in International Relations (Printer, 1995) 54
There is indeed a difficulty in overcoming politicians’ material interests, but there are some counter-examples that might illustrate that public concerns could prevail over the concerns of decision makers. For example, the Syrian refugee crisis has been a significant issue since the conflict there began in early 2011. When a picture of the dead body of a small child was broadcast through the media and on the Internet, it caused many people to take action such as petitioning parliaments around the world. Ultimately, many governments had to take the refugee issue into more serious consideration and take steps to deal with it. That the public could influence decision-maker despite material interests therefore cannot be denied with any certainty, but the difficulty of such an outcome must likewise be recognized.

Kuyper indicates that globalization makes CD a necessary project while relegating its fulfilment to the distant future. He concedes that there might well be increased interdependence and cooperation of actors at the global level that renders the CD proposal necessary. On the other hand, he points out that globalization also amplifies power imbalances and skews the interests of various actors. He also puts forward the argument that CD has failed to provide empirical evidence that could support its vision. He thus suggests that CD should focus on questions emanating from Historical Institutionalism (HI) and International Relations (IR) rather than only grounding itself in the democratic equality of individuals while advocating the abolition or establishment of international organizations. He states that “how agreement can be reached under uncertainty, how nation-states could credibly commit to such a scheme, what types of institutional design should be sought, and

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http://mediadiversified.org/2016/01/04/who-remembers-aylan-kurdi-now/ accessed on 25/12/2015


236 ibid
other questions must be analyzed in depth”. 237 In fact, CD also tries to respond to these questions, noting for example the requirement for states to approve the compulsory jurisdiction of the ICJ. 238 CD also considers the progressive approach that would be necessary when it proves hard for actors to reach a consensus. 239 The present study likewise considers how the UNSC’s efficiency could be improved rather than directly proposing a replacement cosmopolitan structure.

Another reservation about CD is that it could be misused by powerful states for their own interests. The philosophy represents a world in which all individuals have obligations to one another and have a say as though there were no inequality and no powerful actors. 240 At this juncture, powerful states could use cosmopolitanism as a tool for their own interests by paying lip service to it while advancing their own ends. Likewise, Patomaki and Hutchings argue that the CD project could be used to legitimate a new form of imperialism even as it presumes the universal validity of Western democratic values. 241 In fact, this criticism applies to any system, not just to CD. Any system runs the risk of being misused by the wielders of power. CD is more about providing a mechanism that could hold powers accountable. It requires states to approve the compulsory jurisdiction of the ICJ. 242 It is true that this may not be adequate, but no system can be guaranteed to be free of the potential for abuse by powers.

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237 Ibid, p.44
238 Held n196 (2010), p.229
239 Ibid
240 Ibid
Archibugi argues that even though there are real-world obstacles to the implementation of CD, it should still be defended because of its visionary nature.\textsuperscript{243} Martell finds that quite risky, however:

\begin{quote}
this can leave you arguing for something which does not work, for which there are not adequate bases, that can then be misused by the most powerful for their own ends, justifying such misuse in the name of cosmopolitanism, while serious problems go untackled because this approach does not have an effect.\textsuperscript{244}
\end{quote}

He suggests an alternative route: rather than being utopian, he advocates a focus on finding supportive material. It might be possible to find shared material interests for cosmopolitanism while clashing material interests undermine it. Material interests may make it difficult to use cosmopolitan means in order to achieve cosmopolitan ends under current conditions, yet alternative ways could be developed to pave the way for cosmopolitan goals. For example, the non-aligned movement, the G77 group of developing nations in the UN and South–South alliances between developing countries have cosmopolitan orientations but have used non-cosmopolitan means, “not via all-inclusive top-down politics but through alliances with those with whom they have connections, and in conflict with opposed interests”.\textsuperscript{245} Nevertheless, one of CD’s important assumptions is that it adopts a progressive approach: it does not regard the acknowledged obstacles to its implementation posed by current conflicts of interests as insuperable, but as difficulties; CD can be defended and implemented in gradual steps.

Held and Archibugi argue that it is possible to implement CD via consensus and agreement between actors.\textsuperscript{246} However, Martell suggests a perspective that “involves a conflict model of

\textsuperscript{243} Archibugi (2004), 454
\textsuperscript{244} Martell, p.624
\textsuperscript{245} ibid
\textsuperscript{246} Archibugi and Held (2011), pp.433-461
society more than an approach that is optimistic about difference as a basis for consensus”. Held and Archibugi believe that it is possible to construct an institution by involving all actors through CD, which is to say that they adopt an inclusive global-level approach. Yet they base their argument on denying “the possibility of having a political enemy and hence also rhetorically deny their political nature”. In fact, CD does not deny the possibility of having enemies. It suggests forming an international institution where different interest groups could come together and reach a consensus that would be benefit all the actors.

Held and Archibugi have adopted a ‘top-down’ inclusive approach for achieving CD by considering all individuals as possible members of a single world institution. Some argue that there is always the possibility of non-members, and that CD cannot therefore include all individuals within a universal legal order. As there is always the chance that opposing parties are present, it is suggested that CD needs to contend with at least one other political identity. Cochran argues that “the need for further democracy cannot be simply instituted from above, but should be allowed to arise from below”. Martell also maintains that such attempts will not be successful, as there would be a wide variety of interests that lead to conflict and make it difficult to achieve cosmopolitan ends. He also suggests a “bottom up” approach that

*involves alliances only with those who are likeminded lower down rather than with everyone at a global level; it is not inclusive – one only allies with those with whom*

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247 Martell p.623
249 Faustian Europe. *Cosmopolitan Democracy and Its Failure in Providing a Political Identity* 12 Feb 2009, 1
250 n.10
Indeed, the attempt to include all actors at the global level would make the implementation of CD difficult but not impossible. CD aims to include all levels, which renders it quite hard to find a common solution among numerous opposed interests. The number of actors should be very limited in order to make it easier to reach a solution. This attempt to adopt an inclusive global level by trying to involve every individual might thus constitute a weakness of CD that consigns a solution to the distant future. Yet “difficult” does not mean “impossible”.

CD goes beyond national borders and suggests a global institution that would make it possible for actors to negotiate solutions for their problems. Martell, however, holds that it is easier to make resolutions between actors at the national rather than the global level. There are too many opportunities for clashes of interest and the use of power by the most powerful states that would lead to failure. National laws, on the other hand, have provided greater opportunities for negotiation and enforcement than global ones. Martell advocates “national laws which can be made and enforced more easily, and bilateral agreements where there are less parties involved, so more chance of being achieved”. In short, Martell concludes that we should apply local and national agreements in order to achieve cosmopolitan goals at the global level. Otherwise, it is difficult obtain results via global-level agreements, as there would be many conflicts of interest. Put simply, it is easier to reach an agreement between two states than 195. It is therefore more logical to pursue means that have the chance to be

253 ibid
254 ibid
implemented rather than ones whose feasibility is very problematic. In short, he suggests “cosmopolitan justice without cosmopolitan politics; cosmopolitan ends without cosmopolitan means”. 255

Such measures may be important, but they would not provide international solution for global problems such international peace and security. Two actors might be happy with a mutually agreed resolution that the rest of the world may totally disagree with. For example, some states believe that the Assad regime in Syria must remain and that all anti-government movements should cease their opposition, while other states maintain that a solution to the Syrian conflict would be possible only when the Assad regime goes. This was an intractable divergence until the ISIS threat become a significant global problem. Now these diverse actors have managed to make an agreement to fight ISIS. A mechanism that could persuade different actors to seek a common solution is therefore needed. Bilateral agreements would hardly have a global impact unless all actors agree with them.

In addition, Some argue that the main problem with CD is its inclusiveness. CD’s failure to acknowledge that “the practice of politics is necessarily contradictory to political all-inclusiveness”256 is regarded as a flaw that renders it unable to provide citizens with a political identity through its “aspiration towards the universal political membership”. 257 Carl Schmitt also finds the establishment of a cosmopolitan world institution impossible:

255 ibid p.626
256 N.13
257 ibid
[T]he political entity presupposes the real existence of an enemy and therefore coexistence with another political entity. As long as a state exists there will thus always be in the world more than just one state. A world state which embraces the entire globe and all of humanity cannot exist.  

There would indeed be significant problems, even though cosmopolitans could legitimately found a universal legal order. First, as mentioned above, they are not able to involve everyone in it. Secondly, on Thompson’s view it is very doubtful that such a universal entity could be held to account: “[The] general problem with cosmopolitan democracy is its multiplication of decision-making authorities, which is likely to result in a decline of accountability”. It might be difficult to build a global identity, but it is not impossible. Besides, the difficulties inherent in accountability are arguable, and a satisfactory solution could be arrived at. In any case, such an end can surely not be foregone for such reasons, as if extant systems were perfectly accountable.

CD has been criticized by Marxists for ignoring what they take to be the fundamental basis of power – namely, economics – focusing instead on the institutional aspects of the international legal order to develop a superstructure. Marxists believe that “international

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258 Carl Schmitt, *The Concept of the Political* p. 53.
259 n.13, p.5
260 Thomson n180 (1997), p.115
261 Archibugi has constructed a two-fold categorisation of Marxist criticism, referring to the first group as ‘The Marxist Critique I (Karl)’ and the second as ‘The Marxist Critique II (Groucho)’.
democracy as an exclusively institutional project would therefore be impossible, while only a new economic regime could lead to the transformation of world political relations”.  

Links between economics and politics have, however, become blurred as dominant transnational corporations operate in many countries and their relations with governments are quite complex. It is thus not an easy task to clearly define relations of cause and effect between politics and economics. In addition, many economic organisations have been quite satisfied with the present mechanisms of control and they do not see their interests being served by the development of democratic management over the flows of capital or international trade.

It is right to point out that some economic interests benefit from crises. In addition, the impossibility of building a strong economic regime without democracy is at least arguable. Democracy entails an assurance of peace and security. If there is no safe environment, economic dynamics are not secure. For example, no investor would invest in a conflict region. In a politically chaotic environment, the ownership of banks and big companies does not constitute an issue that would command any attention. Investors would simply abandon such regions in favour of safer ones where their investments would be secure. In short, the absence of democracy also poses significant risks for economic regimes. It follows that the economy cannot play a dominant role.

264 Held (1995)
265 ibid
Other Marxists criticize the very concept of CD,\textsuperscript{266} considering that the term “internationalism” would be more suitable than that of “cosmopolitanism”. Timothy Brennan considers that the use of the term “cosmopolitanism” is inaccurate in this context. Archibugi contradicts this firstly by claiming that the essential point is the concepts and not the words, then insisting that it is more meaningful to conceive of democracy as cosmopolitan rather than international. He sees internationalism as referring to a specific class, such as the internationalism of workers’ movements and their various international associations in the 19\textsuperscript{th} and early 20\textsuperscript{th} centuries.

On the Marxist perspective there is a permanent conflict of interests between rival social classes that are in conflict not only within but between states. Yet Archibugi maintains that interests are now quite different from what they were. He consequently proposes a global institution that would be able to provide effective channels to resolve conflicts. In this regard CD rejects the idea of limiting institutions to specific social classes, suggesting instead institutions in which all individuals would be directly represented at the global level regardless of their social status. Decision-making on global issues would thus be based on a majority rather than on a single class.\textsuperscript{267}

Internationalism was based on the notion that

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\textit{after [the] proletariat had abolished social classes, conflicts between nations also would disappear and no community would want to subjugate any other.}
\end{quote}


\textsuperscript{267} Archibugi (2004), 457
Thus, it would no longer be necessary to envisage a form of international political organization to arbitrate and resolve disputes, simply because there would no longer be any need. Sovereignty itself would be dissolved together with its bearing structure, the bourgeois state.\\footnote{268}{Archibugi (2008), 133}

Yet this concept is no longer suitable for the contemporary era. As mentioned above, CD rejects the delegation of authority to a single class because it does not rely on any one group to interpret the interests of all individuals. In fact, CD has drawn from proletarian internationalism the idea that “common sentiments and interests exist among citizens that are not reflected in the policies of their respective governments.”\\footnote{269}{“The Marxist view maintains that the strength of common interest uniting proletarians in different states is such that conflicts between proletariat states would be solved much more effectively than conflicts between bourgeois states.” ibid, 133-134} For example, Ulrich Beck points out that the slogan “citizens of the world, unite!” indicates that “the common interests of individuals can, in many cases, prevail over the divergent and antagonistic interests of their respective governments.”\\footnote{270}{Ulrich Beck, ‘World Risk Society’ (Polity Press, 1999), 18, cited in Archibugi (2008), 134}

Yet the Marxist perspective limits these common interests to those of a single social class. Moreover, the idea of world citizenship does not have the objective of abolishing conflict among social classes; its aim is simply to provide some institutional forums where conflicts can be addressed. As mentioned, CD suggests institutional channels that would not be passive when faced with conflicts. Archibugi cites some examples of transnational campaigns that
have exerted pressure on political subjects and obtained results by influencing the choices of political decision makers.\footnote{271}{“…the decision of the UK government to follow environmentally friendly procedures for the disposal of the Brent Spar; the institution of the International Criminal Court; the decision of some multinationals to recede from their profit-making interests and allow for the free diffusion of the AIDS drug, or even military interventions to protect human rights.” See more in Mike Prokosch & Laura Raymond (eds.), The Global Activist Manual: Local Ways to Change the World (Thunder’s Mouth Press, 2002)\footnote{272}{Michael Zurn argues that international institutions may not fully meet democratic standards. Yet this does not mean that they cannot be democratic, as they increase the effectiveness of systems and the legitimacy of outputs and inputs. See his response to Groucho’s argument: Michael Zurn, ‘Democratic Governance Beyond Nation-State: The EU and Other International Institutions’ (2000) 6 European Journal of International Relations, 183-221}}

Another argument against CD is that international institutions cannot be democratic. Those critics of the EU who do not believe that the institution is a democratic one support this view. Groucho Marx’s famous quip, ‘I refuse to join any club that would have me as a member’,\footnote{273}{Archibugi (2004)458} has formed the basis for the most frequent criticism of the EU: “If the EU were to apply for membership in the EU, it would not qualify because of the inadequate democratic content of its constitution”.\footnote{274}{Kymlicka argues that even the EU could not reach transnational democracy as it is little more than an elite phenomenon. Will Kymlicka, ‘Citizenship in an Era of Globalization: Commentary on Held’ in Ian Shapiro & Casiano Hacker-Cordon (eds.), Democracy’s Edges (1999)\footnote{275}{‘EU represents a remarkable a distinctive form of democracy beyond borders’: Ngaire Woods, ‘Good Governance in International Organizations’ (1999) 5 Global Governance, 39-61}} Many observers have used this line of reasoning to argue that the EU is inherently incapable of being a democratic institution.\footnote{274}{As the EU is supposedly among the most democratic of international organizations,\footnote{275}{‘EU represents a remarkable a distinctive form of democracy beyond borders’: Ngaire Woods, ‘Good Governance in International Organizations’ (1999) 5 Global Governance, 39-61} this criticism supports the contention that extending democracy beyond the nation-state is
Robert Dahl has formed a list of minimum criteria for assessing intrastate democracy, concluding that the possibility of applying these criteria to international organizations is unrealistic. He therefore argues that global democracy is not possible, and asserts that international organizations cannot ever be as democratic as many states have become. He believes that “the idea of post-national democracy is misleading.”

It could be acknowledged that Dahl’s scepticism is understandable when his criteria are applied to the global sphere. It might be difficult to implement these standards and expect them to become integral to international organizations in the short term. However, Dahl’s criteria do not comprise the core of democracy, but only constitute some of the means of achieving non-violence, popular control and political equality. Besides, although international organisations are less democratic than many of their member states, they should not be evaluated according to the same criteria. In fact, such evaluation is more about determining the capacity of various systems to increase the level of democratic participation in response to complaints regarding the lack of control over executive decisions.

It is understandable that Dahl is not opposed to the idea of international organizations or of increasing accountability and transparency. Archibugi disagrees with Dahl’s use of the word

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276 Archibugi (2004) 458
277 See the list of these criteria: Archibugi (2008), 135
278 ibid
279 ibid
280 When Dahl’s criteria are compared with democratic values, their incompleteness becomes obvious. See democratic values: Archibugi (2008), 29-30
281 Archibugi (2004) 458
282 ibid
democracy, but it is more plausible to consider courses of action rather than semantics. The oft-cited apparent obstacles to the implementation of democracy at the international level may prevent the development of mechanisms for such implementation even when it is possible. At this juncture, Archibugi aptly emphasises that

\[\text{the situation should be avoided in which, in view of the difficulty of attaining democracy at the international level, we neglect to act to increase the legitimacy of the global decision-making process in those areas in which it would be possible.}^{283}\]

What is more, the notion that the EU is not a democratic entity arises from high expectations. While the institution’s level of democracy is very high compared to those countries with a large democratic deficit, that same level might not satisfy other states with higher standards of democracy. Of course, it cannot be argued that the EU represents the perfect democratic model, but neither can the positive influence of its activities on the developing democracy and accountability of states be ignored.

Communitarian and multiculturalist thinkers have also criticised CD for its possible threat to the identity of political communities. This fear leads them to argue that there cannot be a link between democracy and cosmopolitanism, as they regard any political system as able to represent only one or the other of these conditions.\(^{284}\) At the same time, they do not deny the challenges that have recently emerged in the international sphere. Kymlicka urges democratic states to consider such new problems as migration, financial flows, multi-ethnic communities

\(^{283}\) Archibugi (2008), p.137

and minority rights. He also encourages these states to contribute positively to the global community’s increasing humaneness by enhancing international human rights and boosting development aid. He believes that states should not be exempted from these responsibilities under the pretext of a new and undefined world order, holding that this would be hazardous as it would create a void between an existing state system that is presently insufficient but has the potential for improvement and a system that does not yet exist.

Kymlicka agrees with such demands for global responsibility. But while he does believe that institutional systems to tackle global problems should be developed, he thinks it would be more satisfactory to base such systems on existing states rather than establishing new entities on nascent mechanisms for involving individuals internationally.²⁸⁵ The state is presently an important component of the CD project. CD does not absolve states or individuals from global responsibilities. Kymlicka points to another objection to CD: the difficulty posed by the lack of a common language to global participation. He argues that “democratic politics is politics in the vernacular”;²⁸⁶ he is concerned that individuals are more comfortable discussing issues their native tongues. However, it is mostly the elite classes who are able to speak more than one language fluently. It would therefore be difficult for all individuals to participate equally in a global institution. As there would be more one language in such an organisation, the lack of effective participation would render democracy impossible.²⁸⁷

²⁸⁵ Kymlicka (1999) 112-126
²⁸⁶ ibid, 121
²⁸⁷ “genuine democracy is ‘next to impossible’ in multilingual states, because if people ‘read and speak different languages, the united public opinion necessary to the workings of representative institutions cannot exist’.” Ibid
However, Kymlicka seems to be oblivious of the fact that “far too many aspects of our daily lives escape the vernacular dimension, at the state level as much as at the global level”.\(^{288}\) He cites the very pertinent examples of the vernacular political dimensions of China, India and Switzerland, and asks rhetorically what part of the population is excluded from vernacular politics in countries such as the United States or Canada. The greater importance of global problems over those posed by language barriers could also be argued. This might be an issue that requires resolution, but it is not necessarily an obstacle that would prevent a global institution being founded.

As a summary of the responses to these criticisms, CD is now about 25 years old. One of its goals is to expand democracy both within states and in the global system. The successes that have been attained with regard to the former are indeed greater than those in the latter.\(^{289}\) Be that as it may, “one goal has been achieved: it is no longer sacrilegious to consider that democracy can be applied even outside the state”.\(^{290}\) There is no doubt that the development of democracy still has a long way to go, but CD is beginning to achieve its goals as time has made the circumstances more congenial for the implementation of the philosophy throughout the world.

\(^{288}\) Archibugi (2004), 460

\(^{289}\) Archibugi & Held (2011), 437

\(^{290}\) Archibugi (2008), p.3
CHAPTER THREE

Diagnosing the Problem: Examining the State-centric UNSC from the CD Perspective

3.1 What is wrong with the UNSC?

The current study presents criticisms of the UN Security Council. This does not mean that the Council is completely disfunctional. The present study tries to find an alternative way to help the Council respond better to international peace and security issues. The aforementioned report of the International Commission on Intervention and State Sovereignty in 2001 aptly states that

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\text{there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes...The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.}^{291}
\]

Critics are therefore enjoined to investigate ways of making the Security Council function better than it does.

The issue of Council reform provides a reminder of the demands to change the UN Charter in order to develop a more democratic, effective and accountable Council. These demands, which may be feigned to hide a deeper purpose, are ostensibly a call to the Council to be

\(^{291}\) The report of the International Commission on Intervention and State Sovereignty, ‘The Responsibility to Protect’ (December 2001) 49
more accountable for its actions, but often express regret that the UN Charter is the only obstacle to this desirable outcome, as it purportedly does not permit other members either to stop the Council from taking decisions or to take action when the Council’s power of decision has been blocked by a member exercising its power of veto. These critics have mostly blamed those two factors: the Charter and the power of veto. They have therefore generally continued to demand reform of the Council’s structure to make it more democratic, effective and accountable.

However, it is by no means certain that this question should be taken at face value. The facts might differ to some degree from the way in which the critics present them. The contention that the member states cannot control the Council is certainly questionable, so it becomes futile to scapegoat the UN Charter or veto powers the Council’s failures. The veto power is undoubtedly a problem, but not the only one. As will be shown, there are alternatives by which UN members can overcome this obstacle. Yet it will also be demonstrated that a lack of consensus or of the ability to act independently has prevented the UN’s members from employing these alternatives. It is concluded that state-based solutions such as removing the veto power or adding more states to the Council are pointless. It is necessary rather to focus on non-state based solutions that are more likely to enhance the Council’s role.

Firstly, it is reasonable to assess the sources of the power invested in the UNSC to enable it to perform its functions. In accordance with Article 23 of the UN Charter, there are five permanent members, each with the veto power, and 10 non-permanent members with no veto

power. In fact, it is evident that this veto stipulated by the UN Charter gives any one permanent member the power to prevent the Council from taking a decision. Nonetheless, it is not something that cannot be overcome under the provisions of the current UN Charter. Article 27 states explicitly that all decisions, procedural or otherwise, should be taken by a majority of no less than nine Council members. It is thus clear that the five permanent members alone cannot take any decisions, and that the seven non-permanent members are able to block the Council from taking any decision. It is, however, not surprising that there has not been a single case in which the non-permanent members have exercised this power.

The second concern often voiced is that the non-permanent members are not able to urge the Council to take action regarding any international issue. But this need not present a problem that cannot be overcome by the Uniting for Peace Resolution.

The authority emanating from the Uniting for Peace Resolution provides for General Assembly members to take an active role when the UNSC fails to resolve any particular international peace and security issue because of inefficiency or the exercise of the veto power. It means that the Council is not the UN’s sole decision-making organ with regard to such issues. The General Assembly can in fact urge its member states to take action when the Council’s permanent members cause deadlock. This resolution was adopted in 1950; its significance is that the UN had to some extent solved the veto problem just five years after its adoption.

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295 The General Assembly Resolution 377 was adopted in 1950. This resolution states that “where the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly shall seize itself of the matter”. See Woolsey (n6), pp.129-137
establishment. Nevertheless, there are only a few weak instances in which the provisions of that Resolution were implemented: Korea (1950), the Suez Crisis (1956), the Congo Crisis (1960), the conflict between India and Pakistan (1971) and the Afghanistan conflict (1980).\textsuperscript{296} It was, however, forgotten in the case of the Rwandan genocide, and has not been applied to some current crises such as those in Palestine, Syria and Myanmar.\textsuperscript{297}

It can thus be seen that non-permanent members of the Council can prevent its permanent members from taking any undesirable action\textsuperscript{298} and that the Assembly can assume final responsibility for taking action in any international dispute in which the Council has been rendered ineffective. It is also evident, however, that both of these capabilities have not properly been fulfilled by the UN’s members. Even though the Uniting for Peace Resolution was practiced on a few occasions, even these depended on the consent of the big powers. It therefore does not follow to attribute blame solely to the UN Charter or the Council’s permanent members; it must also be remembered that member states have their own power but cannot or do not choose to exercise it on their own authority.\textsuperscript{299} This is why the UNSC is


\textsuperscript{297} ibid

\textsuperscript{298} For example, “in the cases of East Timor, Sierra Leone, and Haiti, the Security Council took enforcement actions after reaching the conclusion that the situations under review were threats to peace and security—a conclusion that is required to justify such action under the Charter. It seems quite clear, however, that there was very little danger to international peace and security in these isolated conflicts, where primitive armaments dominated and no major powers were involved. Yet the Security Council confirmed the necessity of action.” Rich (n111), p.31

\textsuperscript{299} For example, Vijay Mehta states that: “Early in 2003, before the Iraq war began in 2003, an attempt was made to hold a debate. Some 59-member states were prepared to call for a meeting, although 96 members would have been required. The war came too soon for a debate. Another obstacle for many of the smaller members was a demand by the United States that they withhold their support for a vote, warning them of dire consequences in
in deadlock in significant international issues such as the current Syrian conflict and Ukraine crisis.

Be that as it may, the structure of the UNSC itself is hardly without its problems in this regard, at least to some degree. There might indeed be some possibility of enhancing the UNSC by restructuring the UN Charter. The veto power could be removed or limited. More members can be added, which could cause more problems or could alleviate them. These solutions are however subject to Articles 108 and 109 of the UN Charter that require the approval of the permanent members for any amendments to the UN Charter. Thus, such expectations would quite be hard to put into effect.

The primary question seems to concern the actors in the UNSC. Rather than focusing on state based solutions, a non-state approach should be adopted. It is more a question of the unwillingness or inability of member states to enhance the role of the UNSC: when one or more permanent Council members block the system, surprisingly the other 192 members simply feel obliged to respect this international institution. The main problem is therefore mostly the result of the members’ inability rather than rules of the Charter. To illustrate this, member states have been warned by the superpowers that the UN might fall into a state of irrelevance similar to that which preceded the demise of the League of Nations during the

course of the Second World War.\textsuperscript{301} This ominous warning was issued by the US in connection with its attempts to have UNSC resolutions passed authorizing the use of force in Iraq, or “legitimizing the occupation of Iraq”, \textit{post festum (after the fact)}.\textsuperscript{302}

The member states of the UN can be pressured by the big powers into restricting their actions to those of which the big powers approve. For example, on 19 November 2003 at Whitehall Palace in London, then-US President George W. Bush said that the UN was aware that its credibility “depends on a willingness to keep its word and to act when action is required. \textit{America and Great Britain have done and will do all in their power to prevent the United Nations from solemnly choosing its own irrelevance and inviting the fate of the League of Nations.}”\textsuperscript{303} President Bush can be seen as having acted according to the dictates of his predecessor Theodore Roosevelt: speaking softly and carrying a big stick as he warned or threatened other UN member states. President Bush has thus made it explicit that UN member states may not take action independently without big power consent. If they do not wish to jeopardize their own interests, they might also prefer to remain silent. In this context, the USA, Russia and the other big powers may not be solely responsible for refusing to adhere to the common rules of international law.\textsuperscript{304} There are significant ideological or

\textsuperscript{302}ibid, p.334
economic disagreements among UN members,\(^{305}\) so the organization has many times been wracked with dissention rather than being united in consensus.

In such an environment, the weakness of the UNSC is inevitable.\(^{306}\) Neither maintaining the current state-centric structure nor reforming it would make any sense without considering the inclusion of new agents. Hans Köchler pithily observes that “this leaves the United Nations trapped between a rock and a hard place when it comes to crucial matters of international peace and security”\(^{307}\) such as the ongoing crises in Palestine, Syria and the Ukraine. Member states are regrettably unable to enforce the rules of the UN Charter against the will of its most powerful members – nor, indeed, do they want to if they are to preserve their interests. In that respect, rather than attempting to reform the UNSC, it is essential to seek out new actors that would be able to act freely.

The balance of power may prevent the Council from fulfilling its duty properly, but at least it can play a deterrent role in international or domestic conflicts through the participation of new actors. Changing the UN Charter might be impossible in practice, and may not be a proper solution in any case, in light of the many democracy promises made by various UN pronouncements. Members have some right to challenge the Council and make the General Assembly the final decision-making organ. These rights are, however, dependent on the consent of the big powers, whose statements must be heeded by the other member states. They indeed have rights, but can only use them at the discretion of the big powers.

\(^{305}\) ibid
\(^{306}\) ibid
This implies that the main problem concerns the willingness of states to dare to take risks against their interests. In this context, it does not seem that it would make any sense if other member states were to have further places on the Council. The Charter might have some impact on states’ behaviour, but it is the positions of states that have the greater effect on their actions. The Security Council’s failure is not purely a consequence of the UN Charter; it is more about the choices of decision-makers. Given this situation, while state actors are already on the scene, it is quite useless to pursue state-centric reforms. These independent actors would not be concerned about the pressure that powerful states could exert; they would be able to act autonomously.

The Council also has significant duties such as maintaining international peace and security, but states do not seem adequately to be able to perform these obligations due to their self-interested politics. This certainly implies that leaving such important responsibilities to a state-based system would be the equivalent of setting a wolf to guard the sheep. The former Secretary-General of the UN, Boutros-Ghali, has provided a clear, coherent theoretical framework for the future enrichment of global democracy, highlighting the fact that making the Council a more democratic and effective international actor would be possible by granting it considerable autonomy from the traditional fetters that the most powerful states have imposed on it. 

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308 ibid, p.20
3.1.1 The State-centric System's Problem: Greed for Power, not Peace

It is frequently argued not only that states are the source of the world’s problems, but further that the “nation state” has begun to be considered as an obstacle in maintaining international peace and security in the post-Westphalian era. Criticisms about “the state-centric nature of the set of UN Charter principles because of its fundamental dissatisfaction with the Charter scheme as a foundation for global order” have been voiced. The UNSC system is in fact a club of nation-states; it is mostly handicapped when it comes to resolving disputes in the international realm. This might indicate that the Council’s state-centric system is inadequate to face problems in international relations. Such an inability should serve as a clear signal that Council has reached its systemic limits, and must consider changing its state-centric system in order to achieve both effectiveness and democracy.

Daniele Archibugi has proposed two hypocrisies by way of pointing out how difficult it is for a state-based system to be both democratic and compatible with the current international legal order. The first of these hypocrisies, he maintains, has arisen through the Western democracies. The US, the UK and France in fact consider the UN as a tool for propagating their own “constitutional forms” into the international arena. They have had no compunction

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313 For instance, the SC cannot afford to deal with problems of subnational groups or direct their grievances since the SC is unable to resolve ‘disputes between illegitimate governments and the armed militia that seek to overthrow them through violent means’. Murithi (2012), p.134.
about appropriating “the right to block any decision regarding security”. They have arrogated to themselves the “imperial privilege” of being the permanent members of the UNSC with the veto power. The Soviet Union seemed to be the more consistent actor by explicitly preventing the word “democracy” from appearing in the Universal Declaration of Human Rights. That absence makes it cruel but not paradoxical that the major UN powers include authoritarian countries. On the other hand, it is both cruel and contradictory when democratic countries are included.

The second hypocrisy has arisen from the governments of developing countries. Even though they have continually demanded more democracy in the UN’s structure, accusing the organisation of not being responsive to the claims of weaker states, most of these governments have been reluctant to apply democratic principles within the boundaries of their own states. Harassment – and in some cases massacre – of their own peoples have therefore often accompanied their “anticolonial and anti-imperialist rhetoric”. Their representatives do not have any credibility on this ground to demand democracy while ignoring it “in their own backyard”.

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316 In according to Archibugi, it is used in the literal sense of the term.
317 Ibid
319 Such as USA, UK, Italy, France and etc.
321 Ibid
322 Ibid
As Archibugi states these two hypocrisies, they are not likely to allow headway to be made for a more democratic UNSC. They seek to advance their own interests rather than developing a more democratic organization that can promote international peace and security more effectively. And it is not necessarily reasonable to expect member governments to comply with or practice untried and untested democratic values that do not reflect the existing dynamics of power, irrespective of whether or not they have approved them.\footnote{ibid} It is thus not to be expected that such actors will promote a more democratic UNSC. Even though they could manage to establish one, it would only be natural to expect them to continue their hypocritical positions by attempting to avoid applying these democratic values.

To further illustrate the hypocrisy of the members, there has been a debate about involving regional organisations such as the EU, the African Union (AU), Mercosur and the Arab League to the UNSC. However, even though the EU has been moving toward a common foreign policy, it is not surprising to see that some Western members of the UNSC have voted against the EU having a seat on the Council.\footnote{ibid} When it is considered that this issue concerns the EU, not the UN\footnote{ibid}, it is not difficult to see how states would not be inclined to act on behalf of common interests or of a group. A self-interested state-based system is thus not a fit instrument for benefitting the UN’s people or for complying with its purposes and principles. This question particularly concerns the UNSC, which bears the primary responsibility for the maintenance of international peace and security.
This issue of the permanent members’ hypocrisy raises another significant issue. The powerful states have used the “democracy” argument many times to legitimate their military interventions through UNSC resolutions. Their goal has always been to increase their geopolitical pressure in order to serve their interests.326 This is why they promote democracy across the globe in word but not in deed. The UK and France, two of its permanent members, also belong to the EU, which consistently underlines the importance of democracy in its member states. Another permanent member, the US, claims to desire and promote democracy - indeed, to the extent that it can even declare a war against any entity for democracy’s sake. France’s reaction to the Rwandan genocide in 1994 was frankly irresponsible. President Francois Mitterand said, “In such countries, genocide is not too important…”327 There are cases such as Palestine, Syria and the Ukraine in which the Council has failed to take effective responsibility.

The Palestinian case in particular raises many issues, but one outstanding example shows how the US, supposedly the world’s leading promoter of democracy, could challenge a democratic step under the auspices of the UN. It has withdrawn funds from UNESCO after Palestine was upgraded to non-member observer status in the General Assembly.328 It is politically understandable that the US voted against this, yet it is hardly to be comprehended that the country took such a drastic step as to cut funds from a democratically elected entity.

326 Murithi (2012), p.133
327 France’s reaction to the Rwandan genocide in 1994 was frankly irresponsible. President Francois Mitterand said, “In such countries, genocide is not too important…” Words attributed to French President Francois Mitterand, reported by Philip Gourevitch in Reversing the Reversals of War, The New Yorker, 26 April 1999. <http://africanhistory.about.com/od/rwanda/p/qts_Genocide1.htm> accessed on 10/07/14
The Syrian case involves two types of hypocrisy as outlined by Archibugi. First, the UNSC undertook military operations against Gaddafi in Libya in 2011 after expressing its concern about “protecting civilians, the escalation of violence, and the heavy civilian casualties” in that country.\footnote{UN Security Council Resolution 1973(2011), S/RES/1973(2011)} When violence escalated in Syria, with resultant heavy civilian casualties, it was widely expected that the Council would respond likewise to that situation.\footnote{In the meanwhile, I do not discuss the necessity of applying military operation, here, I just illustrate hypocrisy example.} Yet a single effective action has yet to be taken in that case. The second hypocrisy is that many Middle Eastern countries who have called on the Syrian government to establish democratic principles and negotiate with anti-government movements are hardly in a moral position to do so, responding violently as they do to any demands for democracy from their own citizens.

However, whilst the major powers maintain their desire for democracy throughout the world, their actions betray their detestation of the concept in the context of the UNSC. Murithi asserts that “this is one situation in which the UN Charter came under direct threat from the dogmatic interests of powerful permanent members of the UNSC”\footnote{ibid}.

Of course, other permanent members are hardly blameless. The case of the Ukraine could be cited as the clearest demonstration of how Russia has used military intervention in order
pretend to preserve the Crimea’s rights. And Russia and China has now been preventing the UNSC from intervening militarily in Syria to protect civilians for years.332

This problem of hypocrisy renders nation-states incapable of acting to maintain international peace and security. While a particular state can be highly sensitive to the security of its own people, the same does not even vaguely pay attention to that of other countries’ peoples. States can sometimes even apply a double standard, favouring its native-born citizens against its immigrant ones in terms of human rights. The UNSC should not be a place in which governments hypocritically proclaim one set of values while practising another.333 It should also not be a vehicle to disguise the pursuit of power politics. It is thus entirely plausible to maintain that commending international peace and security to nation-states is dangerous and hopeless.

332 It does not mean that this proposal complain about why the SC do not take military action in Syria, contrary to this, this proposal offers to apply always peaceful means as much as possible. Ergo, it is aimed to illustrate how a state could react differently and how a state’s sensibility can wary unfairly in the sense of hypocrisy.

333 Roberts & Kingsbury, p14.
3.2 Democracy in the Context of the UNSC

“In the Security Council, the five-country right to veto is a breach of all conventional democratic principles…”\(^{334}\)

“The exclusive character of the Security Council veto was anathema to any notion of democracy.”\(^{335}\)

The international legal order is a system that provides a framework that encourages international agents to maintain their affairs as stably as possible.\(^{336}\) The rules of the international legal order regulate international agents’ interactions, moderate their conflicts and provide a mechanism for resolving their disagreements.\(^{337}\) These rules also form a common basis for international peace and security.\(^{338}\) They may vary from time to time. For example, the previous formative principles were that states were the only significant actors\(^{339}\), recognition of a new actor depended on “territorial integrity” and “political independence”, the maintenance of international order was based on “collective security”, it was possible for states to control all other actors, both individuals and groups\(^{340}\), and democracy was a strictly national issue.\(^{341}\)

\(^{334}\) Archibugi (2008), p.93


\(^{336}\) ibid

\(^{337}\) ibid


\(^{339}\) Article 34(1) of the Statute of the International Court of Justice: “Only states may be parties in cases before the Court”

\(^{340}\) ibid

\(^{341}\) Therien & Belanger-Dumontier (n159), p.371
However, the international legal environment has evolved remarkably in several respects such as the introduction of new actors, new problems and new inventions. For example, the major organization, the United Nations, has increased its membership from 51 states to nearly 200, while the world’s population has risen from about 2.5 billion to approximately 7 billion. It is necessary for the international legal order to adjust to this new environment. For Fred Morrison, this order is not an immutable body of rules; it is a living system and it should respond to the changes brought about during the past century.\textsuperscript{342}

The question of whether the UNSC must be more democratic must be answered in the affirmative when the realities of the current world order are considered. The Council was established and its permanent members were empowered by veto power to control their aggressive actions for the sake of preventing a third world war.\textsuperscript{343} Yet there are significant differences between 1945 and the modern world. If the main reason for the Council’s structure was to prevent international conflicts, new threats such as global environmental degradation, refugee flows and mass cross-border migration, the spread of infectious diseases, global terrorism and transnational crime have manifested themselves in the meantime.\textsuperscript{344} These threats could be as serious as any possible conflict among the permanent five. As new global threats have emerged, the UN has also become essential for the national security of big powers.\textsuperscript{345} The UNSC must therefore restructure its system in response to these threats. The way to effect this is to make the institution more democratic.

\textsuperscript{342}Morrison (2004), p.338

\textsuperscript{343}“The veto was originally viewed as a device to insure the unity of the ”big powers” on actions taken by the United Nations in matters of great importance.” Jacobs & Poirier (1976), p.603

\textsuperscript{344}ibid

\textsuperscript{345}The U.S. Ambassador to the UN, Susan Rice, told a House subcommittee: "As we all know, America's resources and influence are not limitless. That's why the United Nations is so important to our national
Democracy in the UN, particularly in the UNSC, could be seen as a contentious issue. Barry Holden sees that ‘what global democracy is, and to what extent its existence is likely or desirable, are matters about which there is considerable controversy’. Such dissention might be due to the fact that, on the insistence of the USSR, the UN Charter does not use the word “democracy”; instead it refers to some of its principles. Democracy was apparently sacrificed on the altar of the Soviet Union’s ideological purposes. If democracy had been directly mentioned in the Charter, it would perhaps have paved the way for the quicker development of a more democratic UNSC by possibly making it easier for arguments to be based on it and for other authorities to demand more democracy in the Council. Of course, it would also thereby make the idea less controversial.

Secondly, while the enrichment of democratic culture is seen as a first step towards democratization, there are significant contradictions between the Charter and the Council’s practices, preventing the development of a democratic base and making it difficult to picture a practicable democratic structure. Principles of democracy are outlined in the UN Charter, yet these have been arbitrarily interpreted by the permanent members of the UNSC. The lack of a clear, widely acknowledged theoretical frame of reference also makes democratic reforms more difficult. Lastly, when member states call for a more democratic Council, the


349 Köchler, (1991), p.18
aim of such demands is more often than not to gain advantage under the guise of democracy rather than to actually democratize the UNSC. It can therefore be said that “the commitment to democratization is, however, stated in terms of pragmatism rather than of a comprehensive and long-term political project”.  

Under these circumstances it is hard to define a concept of democracy for the UNSC.  

The World Commission on Culture and Development’s report Our Creative Diversity states that “as we enter the twenty-first century, it is time to restore the supremacy of the people in international organizations on the same lines as it is at present being restored within nations all over the world”. A principle of democracy also enshrined in the Universal Declaration of Human Rights adopted by the General Assembly in 1948. The concept of democracy is eloquently expressed in Article 21(3) of the Declaration in the phrase “the will of the people shall be the basis of the authority of government…”.

While the UN Charter and its statements such as the Universal Declaration of Human Rights have embraced some principles of democracy in theory, they have been applied ambiguously rather than by adhering to the purposes for which they were made. In this context, as Our Creative Diversity observes, “fifty years ago, the United Nations was created in the name of “We, the Peoples”, yet, people did not have too direct a say in the operations of the United

350 ibid  
351 World Commission on Culture and Development, ‘Our Creative Diversity’ (1995)  
354 ibid  

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Nations as governmental representatives took over all its organs, including the General Assembly and the Security Council”.

In fact, four significant factors have motivated the UN to include global democracy on its agenda: the end of the Cold War, the third wave of democratization, globalization and the influx of new international actors. The UN has thus changed its attitude to the notion of democracy. However, it has only been partially successful of idea and making up a historical backdrop since no significant development regarding the practice of democracy is evident. Jacobs and Poirier aptly point out that “despite the cooperative goals espoused in the Charter, the United Nations is a political institution in which members are pursuing their national interests as they see them”.

Bertrand likewise indicates that attempts by states to democratize the UN have remained largely theoretical, without a general commitment to their implementation.

The UNSC has accordingly also struggled between stated principles and their practical application. Firstly, the Council was set up to maintain international peace and security, but the history of international conflicts shows that the Council’s permanent members in particular have been involved in many conflicts, either by inciting the parties concerned

356 Therien & Belanger-Dumontier (n159), p.358
357 ibid
358 Jacobs & Poirier (1976) p.606
(generally indirectly) or by directly intervention. Archibugi states regarding the UN’s general condition that the practices of influential members are sufficient to demonstrate that “this is a formal principle that is not upheld in practice”. It is thus essential to reconsider who implements the UN’s rules.

Article 2(1) of the UN Charter speaks eloquently of the need to act in accordance with democratic principles: “the Organization is based on the principle of the sovereign equality of all its Members”. The veto power is thus a legal abuse that has no possible democratic justification. In this regard, Hans Köchler also maintains that “the co-ordination of policies at the global level should be organized in a democratic way, something that is also required under the UN Charter’s principle of sovereign equality”.

In addition to this, the United Nations might principally be an organization of sovereign States. However, the Charter has also provided an indispensable system that offers cooperation with governmental or non-governmental actors. Chapter VIII of the UN Charter consists entirely of regional arrangements; Article 54 in particular is devoted to the UNSC’s cooperation with regional arrangements and agencies in maintaining international peace and security. Article 57 is generally devoted to the UN’s international economic and social cooperation with special agencies, while Article 71 also authorizes the ECOSOC to make directly arrangements for consultation with non-governmental organizations (NGOs) in

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360 Archibugi (2008)
361 ibid, p.134
order to increase its capabilities. Examination of the UN’s principle organs reveals more promise in the General Assembly’s, ECOSOC’s and the Secretariat’s embracing of popular entities. The UNSC and the International Court of Justice (ICJ), by contrast, have remained reluctant to formally involve NGOs.

From the UN’s inception its provisions have allowed for the establishment of interaction and cooperation with new actors. The UNSC has, however, failed to make any formal contact with new actors, as fundamentally required if the Council is to be democratized. Boutros-Ghali maintains that international democratization is possible by including all actors in international decision-making systems such as those in the developed and developing worlds, rich and poor, North and South, as well as giving voice to new actors. The Council has practical problems, while the Charter is quite suitable for establishing and maintaining relations with recently arrived entities.

The preamble of the Charter also begins with “we the peoples of the United Nations…”, stating that “when decisions will be reached by means of a truly participatory process” and referring to peoples rather than states. Thus, as a reflection of the fundamental principle of democracy, the UN should not be limited to a states-only entity; rather, it should represent all

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364 ECOSOC has granted ‘consultative status’ for NGOs. See the Article 71 of the UN Charter. Significant numbers of regional organizations participate in the sessions of the General Assembly with permanent observer status to provide consultation and diplomatic and operational support for peace and security. The Secretary General has underlined the importance of NGOs and the willingness to work with them; for instance, see A/53/170: Report of the Secretary-General
365 In fact, the Council could also establish a subsidiary organ under the Article 29 of the UN Charter
people’s associations such as regional organizations\textsuperscript{368}, developing nations, unrepresented peoples\textsuperscript{369} and NGOs. Yet, the UN has traditionally seen itself as forum for sovereign states alone.\textsuperscript{370} This might be because power rather than democratic principle seems to be the dominant dynamic in such interstate relationships, as the principles were interpreted by and on behalf of states.

Nevertheless, in the context of the UN, the term “democracy” has at times been used to refer to an inter-state project whose aim is to grant all states, large or small, the greatest chance to participate in global decision-making based on the principles of the UN Charter.\textsuperscript{371} Yet, this discourse has been affected by recent international developments, resulting in the notion of democracy beginning to take on a broader resonance that also addresses the demand to provide formal participation to non-state actors such as NGOs, the private sector, local authorities and parliamentarians.\textsuperscript{372} The UN’s policies have fostered more participation by non-state actors in the organization’s deliberations and operations,\textsuperscript{373} so there is a strong case that the UN’s policies have developed the idea of a “democracy without borders” by promoting the greater inclusion of global constituencies in world politics.\textsuperscript{374}

\textsuperscript{368} e.g. ASEAN, the AU or the EU

\textsuperscript{369} Peoples of occupied or unrecognized nations such as Turkish Republic of Northern Cyprus, Palestine, Taiwan and Western Sahara

\textsuperscript{370} Therien & Belanger-Dumontier (n159) , p.360

\textsuperscript{371} Therien & Belanger-Dumontier (n159), p.356.

\textsuperscript{372} ibid

\textsuperscript{373} Ibid, p.357.

\textsuperscript{374} Ibid, pp.357-358.
In that respect, UN leaders have often proclaimed that “the globalization of democracy is a trend consistent with recent structural changes in the world order”. The UN considers “democracy as a universal right and a source of legitimacy”. Additionally, the UN also indicates the demand for “a stronger engagement of civil society, business, and other global constituencies in world affairs”. The organization has therefore increasingly allowed non-state actors to take part in UN deliberations. The UN has, however, failed to develop a similar case for democratic UNSC reform, since the majority of Council reform proposals have focused on simple growth. The most thoroughgoing of these proposals still do not transcend state-based solutions.

However, it seems that these problems regarding the Council’s effectiveness and accountability have to do with the balance of power within the institution. In other words, reform proposals are focused mostly on balancing the veto power rather than enhancing the Council’s functions. For Archibugi, democracy is the most efficient way to enhance the Council. Yet he also points out that it should not be used only to balance and manage power, but also to develop the Council’s functions.

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375 Therien & Belanger-Dumontier (n159), p.371.
376 ibid
377 ibid
378 “…because they are involved in a growing number of UN-sponsored operational partnerships, non-state actors have also been able to strengthen the output-based legitimacy of the world body.” ibid, pp.371-372.
3.2.1 Parameters of the Democracy Concept for the Security Council

As there is no agreed definition of democracy in international law, a variety of interpretations could exist according to circumstances, such as who is defining the term and the context in which they are doing so. This might be because of the paucity of theoretical work in defining and discussing democracy in the context of relations among rather than within states. Neither the theoretical literature nor the historical experience of democracy between states has been developed and consolidated. There is thus not a sufficiency of successful democratic international organisations, and those that do exist consequently have no adequate theoretical foundation in terms of democracy.

It must first be determined what it means to “make the Security Council more democratic”. The Council is expressly not a democratic body when the UN Charter and its actions are considered. The phrase cannot therefore mean to develop the Council’s democratic profile as though it was already democratic entity. Nor does it mean directly developing a fully democratic Council. “Making the Council more democratic” refers to introducing some democratic instruments into the Council at least to increase its level of democracy in order to pave the way for the development of a pure democratic Security Council.

382 “While international law appears to have embraced the idea of democracy, it has not yet articulated a detailed normative framework or an extensive body of practical rules defining the meaning of democracy.” Varayudej (n110), pp.14-15
384 Crawford (1993), pp.113-133
385 ibid
386 ibid
387 For example, see Article 23(1), 27(3), 108
388 “The SC represents the most extreme form of intergovernmental oligarchism. The UN is an antidemocratic entity.” Archibugi (2008), p.161 and p.183
James Paul and Céline Nahory state that “critics of the Council made seven demands – that the Council be: (1) more representative, (2) more accountable, (3) more legitimate, (4) more democratic, (5) more transparent, (6) more effective and (7) more fair and even-handed (no double standards)”.

A more “democratic” body might refer to one that is more representative and fair and even-handed, while more “accountable” could mean more legitimate and transparent. These demands can thus be reduced to a Council that is more democratic, effective and accountable.

In fact there is a strong relationship between demands for democracy and those for effectiveness and accountability. Delbruck notes that some concepts are related to the concept of democracy, or indeed depend on its definition. He thus stresses that transparency and accountability are essential to democracy.

In this context, Archibugi and Held also maintain that accountability, representativeness, transparency and participation are key democratic values.

David Held also maintains that “systematizing the provision of global public goods requires not just building on existing forms of multilateral institutions, but also on extending and developing them in order to address questions of transparency, accountability and democracy”.

It is clear that democracy and accountability are complementary concepts, as

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they are usually treated together. It is therefore obvious that a more democratic Security Council ought also to be a more accountable one.

The question of democracy for the Council can be regarded as being raised when it is ineffective and not accountable. The more the Council fails to take action regarding international crises, the more insistently do the UN’s member states raise the issue of reform, goaded by the Council’s inability to act because of the veto. In this regard, the Council has often been accused of inefficiency in cases of genocide, war and conflict. These failures to fulfil its significant responsibilities have made the Council the target of severe criticisms regarding its undemocratic nature.

The Council’s failure in Syria was due to Russia’s and China’s application of the veto to block a resolution that would have allowed meaningful action against the Syrian regime. Such reactions by states to these Security Council failures signifies that the veto has made the Council’s current system undemocratic, and it therefore needs to be reformed in order to increase its capacity to maintain international peace and security. Calls for a more democratic or more representative Council have thus stemmed from the Council’s inefficiency. The underlying reason for a more democratic Council is its systemic inability to take action. Put another way, its inefficiency can be redefined as the non-democratic nature of its system.

394 “The UN has failed to stand up to dictators and perpetrators of genocide.” Its failure to halt the Rwandan genocide in 1994, its failure to stop the humanitarian crisis in Sri Lanka and failure maintain peace and security in Syria crisis ‘are a few examples of its impotency on the major issues of the day’. Mehta (2010) p.3
395 Köchler (N 311)
Another issue is that demands for reform have been based on making the Council more democratic by adding new members to increase its representativeness, effectiveness and accountability. Thus, these demands for a more democratic Council inevitably entail a more representative, effective and accountable one. So making the Council more democratic caters for these desires for its increased effectiveness and accountability.

The absence of a democratic structure has nevertheless meant that the Council’s dealings with international problems have mostly been failures because of this ineffectiveness and lack of accountability. There is most likely no way other than democratization that would enhance the Council’s function. For Boutros-Ghali “democratization at the international level has become an indispensable mechanism for global problem-solving in a way that is accountable and acceptable to all and with the participation of all concerned”.396 The immediate implementation of such a democratic mechanism in the Security Council is perhaps not to be expected; yet the foundations of a democratic Council could – and should – at least be laid in order for it to efficiently fulfil its obligations.

The Council’s main problem is its lack of proper responses to international peace and security issues. In other words, it does not efficiently fulfil its main duty: to maintain international peace and security. Issues such as inefficiency, lack of accountability and a lack of representativeness have been raised in that respect. These three concepts draw attention to the need for the Council to be more democratic so as to overcome these problems.

Moreover, it is not necessary for this to be considered as a reform proposal because it does not require any Charter amendments.\textsuperscript{397} This can be understood primarily with reference to the invention of UN peacekeeping forces in the field of security in 1956.\textsuperscript{398} This has been a fundamental UN reform effected without altering the organisation’s Charter.\textsuperscript{399}

The word “reform” in that context is different from its use in the demands for Council reform: “the word reform has never been used in this connection”.\textsuperscript{400} Bertrand gives another example, stating that comprehensively implementing the provisions of the UN Charter has also never been regarded as reform. For example, Article 43 delegates authority for special agreements on the assignment of military forces to the Security Council and Article 47 allocates major responsibilities to the Military Staff Committee. Whenever any of these articles is implemented, significant UN reform as proposed by Secretary-General Boutros-Ghali would result.\textsuperscript{401} Yet such proposals have been described as revitalization rather than reform.\textsuperscript{402} Implementing present structure effectively, in other words, does not refer to reform.

In fact, both reform and revitalization aim to enhance the Council’s role. However, revitalization concerns the more efficient use of current Charter instruments. The present

\textsuperscript{397} This is explained in more detail in Chapter VII
\textsuperscript{398} It was established on the initiative of Lester Pearson and Dag Hammarskjold. See more at <http://www.un.org/en/peacekeeping/missions/past/unef1backgr2.html> 28/01/2015
\textsuperscript{399} Bertrand (1993), p.421
\textsuperscript{400} ibid
\textsuperscript{401} ibid, pp.421-422
\textsuperscript{402} ibid, p.422
proposal likewise does not require any Charter amendments, as it can be put into practice under that Charter’s Article 29, Rule 39 of the Provisional Rules of Procedure of the Security Council and the Appendix to the Council’s Provisional Rules of Procedure.

The proposal is thus deliberately circumscribed as it opens the way for democracy. It does not aim instantly to produce a purely democratic Council, but rather to fulfil certain conditions preparatory to the development of an ideal Security Council. The effect of these limitations on the study’s purpose is to minimize the possibility of failure in its implementation by its embodiment of a progressive approach. Limiting the parameters of the concept of “making the Security Council more democratic” in this way makes it more possible to develop a more democratic Council.

According to the tenets of CD, it is essential for an international entity to open its doors to new non-state actors in order to be more democratic at the international level. The application of such tenets provides assurance that democracy is representative, accountable and effective. It is the argument of this study that the only possibility of attaining democracy is by taking into account the new actors in international legal order. The Security Council will eventually become more accountable, effective and representative. It is therefore also argued that would be a more democratic entity by granting formal access to NGOs. By doing so, it demonstrates that it would erode the Council’s conservatism and would make enable it to coexist with the

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403 This point is discussed in detail in the Chapter VII
404 The Security Council could establish subsidiary organs for the sake of its performance and functions
405 The Security Council could invite other individuals
406 The Security Council is able to receive written statements from non-governmental bodies
world’s altered realities. However, if the Council were to insist on compliance with the specific terms of its existed structural instrument, it would become irrelevant and eventually become defunct. In short, a system mired in the circumstances of its creation in 1945 would doom the Council to failure. The Council must therefore accommodate itself to changing circumstances. The author believes that a progressive approach would make this possible.

“To remain within the changed realities of the world, the original organization and its rules had to change.”

CHAPTER FOUR

Introducing NGOs: Their Legal Status, Significance and Definition

4.1 Identifying NGOs as Significant Partners in the Post-Westphalian Era

The argument of this work is that formal participation of NGOs on the Security Council is essential to increase the Council’s capabilities. To this end, the importance of NGOs as actors in the international realm must be demonstrated, which can help understand why these entities deserve a place in the mechanism of the Security Council. In this regard, Charnovitz’s theory of the “empowerment” period of NGOs, classifying seven historical periods of NGO development, is explained. In particular, this “empowerment” period since 1992 supports the growing impact of NGOs on the international legal order. Also explained is the problem of defining NGOs; such a definition is arrived at for the purpose of the study in order to eliminate uncertainties about which NGOs should be granted formal access to the Council.

In terms of the “New World Order” that began after the Cold War, international participatory democracy appears to be an irreversible process. NGOs have continued to markedly increase their role in global politics primarily through globalization processes. Some radical suggestions have been made about NGOs taking a more active part preparatory to positive law being applied to them in a world order in which civil social actors have increasingly

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408 International People’s Organizations (IPOs) usually referred to as non-governmental organizations (NGOs). Galtung (2000), pp.145-146
409 Charnovitz (1997), pp.183-286
410 Miretski (2009), p.3
participated in the formation and control of international law.\textsuperscript{411} Examples of the major influence of NGOs includes their participation in the preparation of the conventions on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines and on Their Destruction, the Rights of the Child, the Convention to Combat Desertification, on International Trade in Endangered Species and the establishment of the International Criminal Court (ICC).\textsuperscript{412}

Boutros-Ghali states that “international relations” should not be considered solely as relations between sovereign states, pointing out that international relations have been shaped not only by nations but also by an increasing array of non-states actors, “ranging all the way from individual persons to civic associations, non-governmental organizations, local authorities, private multinational business, academia, the media, parliamentarians and regional and international intergovernmental organizations”.\textsuperscript{413}

The presence of NGOs in the international sphere may date back to the 6\textsuperscript{th} century, but their increased influence has become especially obvious since the Cold War.\textsuperscript{414} Steve Charnovitz classifies the development of NGOs into seven historical periods. NGOs began to emerge

\textsuperscript{411} ibid
\textsuperscript{413} Boutros-Ghali (2000), p.108
\textsuperscript{414} “As the earliest examples of international NGOs, one can probably point to the Christian churches and their spiritual and secular orders that formed in the 6th century A.D. and represented the only private transnational networks at that time.” Karsten Nowrot ‘Legal Consequences of Globalization: The Status of Non-Governmental Organizations Under International Law’ (1999) 6 Indiana Journal of Global Legal Studies, pp.579-645 and 581-82

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between 1775 and 1918 and were able to make engagements from 1919 to 1934. A period of disengagement followed, from 1935 to 1944, but Charnovitz describes the following five years as a time of “formalization”.\textsuperscript{415} Next came two periods, of “underachievement” (1950-1971) and “intensification (1972-1991), before the current time of “empowerment” beginning in 1992.\textsuperscript{416}

Charnovitz’s current empowerment period has seen an increasingly strong impact on the international realm. Alvarez also maintains that “although the impact of NGOs on legal development ebbs and flows, no one questions today the fact that international law – both its content and its impact – has been forever changed by the empowerment of NGOs”.\textsuperscript{417} NGOs have thus started to take more active roles in the decision-making organs of international organizations.

First and foremost, even though NGOs do not have rights equal to those of states or international organisations, they have occupied significant positions in international law and international relations,\textsuperscript{418} a development that an absence of formal rights has not been able to prevent.\textsuperscript{419} NGOs have also been regarded as “non-negligible partners” of governments and

\textsuperscript{415} For example, NGOs have been granted formal licences under the Article 71 of the UN Charter
\textsuperscript{416} Charnovitz (1997), p.190
\textsuperscript{417} Jose E. Alvarez, International Organizations As Law-Makers (OUP, 2005), p.611
\textsuperscript{418} Santivasa (n198), p.378
\textsuperscript{419} For example, NGOs have initiated and been the driving force behind the conclusion of international treaties such as the 1984 Torture Convention and its 2002 Optional Protocol, as well as the UNIDROIT Convention on Mobile Equipment. They have \textit{locus standi} before some international courts and bodies such as the African Court of Human Rights and the Inter-American Human Rights Commission (IACCommHR), and can appear before the Inter-American Court of Human Rights (IACtHR) with the consent of victims. They can submit
inter-governmental organisations once they have attained both informal and formal access in
the decision-making processes of international organisations, in particular when issues are
common and of benefit to the international community.\textsuperscript{420}

The report of the Secretary-General of the UN on development and international cooperation
says that NGOs have undertaken numerous projects valued at more than $7 billion
annually.\textsuperscript{421} This report summarised the importance of NGOs to the global community. It
categorized NGOs in these terms:

- able to stay active for a long time in the search for peace

- have always been at scene of conflicts at an early stage

- have made crucial contributions to the immediate relief of stricken populations

- have laid the foundations for the reconstruction of war-torn societies

- have led the new global networks

- have flexible structures

- are able to mobilize private funds

\textit{amicus curiae} briefs before some international courts such as the European Court of Human Rights (ECtHR)
and the IACtHR. (Alina Kaczorowska, \textit{Public International Law} (Routledge, 4\textsuperscript{th} ed., 2010), p.216.

\textsuperscript{420} ibid

\textsuperscript{421} This number may now have significantly increased when it is considered that only eight NGOs (World
Frontières, CARE International, CARITAS International and Action Aid International) had combined revenues
of more than $11.7 billion in 2011. Bill Morton, ‘An Overview of International NGOs in Development
Cooperation’ (2013) \textless http://www.cn.undp.org/content/dam/china/docs/Publications/UNDP-
CH11\%20An\%20Overview%20of%20International%20NGOs%20in%20Development%20Cooperation.pdf\textgreater
accessed on 21/06/15

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- have highly motivated staff

- possess vast potential for the cause of development

- were vital components of the great international conferences of this decade. 422

The report, after highlighting significant features of NGOs, concluded that the increase of NGOs in number and influence has been prodigious, and that it is therefore time to “bring NGOs and United Nations activities into an increasingly productive relationship of consultation and cooperation”. 423 The confirmation of this report can be seen in the development of the international scene: the number of NGOs has increased at an astonishing rate, that of international non-governmental organizations alone having grown from approximately 1,300 in 1960 to nearly 40,000 today. 424 The report thus supports Charnovitz’s argument that NGOs have seen an empowerment period after 1992.

The rise of NGOs 425, along with supranational organisations, could perhaps be seen as the most significant political development in the post-war period. 426 It has arguably become impractical to ignore their existence by pretending that they cannot be actors under the

423 ibid
424 <http://www.ngo.in/> accessed on 21/06/2015
425 Examples include Amnesty International (AI), Human Rights Watch (HRW), World Wide Fund for Nature (WWF), Medecins Sans Frontieres (MSF), Friends of Earth (FoE), Greenpeace, the International Olympic Committee (IOC), Catholic Relief Services, Oxford Famine Relief (OXFAM) and the Cooperative for American Relief Everywhere (CARE)
426 Robert Blood, ‘Should NGOs be viewed as ‘Political Corporations’?’ (2005) 9 Journal of Communication Management, pp.120-133, p.120
international law \footnote{Bosire Maragia, ‘Almost There: Another Way of Conceptualizing and Explaining NGOs’ Quest for Legitimacy in Global Politics’ (2002) 2 Non-State Actors and International Law, pp.301-332, p.317} in such a time of volatile change in which global civil society significantly impacts on the basic principles of international law. \footnote{Baslar (2006)}

Moreover, many NGOs are more effective than many states in terms of resources and international activities. Major NGOs are considerably larger than many states. \footnote{Peter Willetts, ‘Transnational Actors and International Organizations in Global Politics’ in Baylis & others (2011) p. 360} The populations of approximately 40 member states of the UN are under one million, \footnote{The populations of the 95 states of the world are under one million.} while the membership of the major international NGOs, transnational networks and actions groups is numbered in the millions. \footnote{ibid} Their power and efficiency is greater than the economic and demographic capacity of marginal, micro and miniature states such as Gabon, Eritrea, Laos, Suriname and San Marino. Some major international NGOs have more foreign representatives than many states. \footnote{World Vision International (nearly 100), Caritas (160+), Transparency International (100+), the International Political Science Association (80+), the International Association of Legal Science (42+), the International Law Association (52), the Institute of International Law (108), the International Bar Association (200+), the International Association of Democratic Lawyers (83+), the International Commission of Jurists (60) and the Inter-Parliamentary Union (176). See: K. G. Saur Verlag, Legal Status of International NGOs: Overview and Options (Union of International Associations, 1988)} For instance, the General Secretariat of Amnesty International in London has more staff than the all personnel that work at the headquarters of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in
Geneva. NGOs have in effect already found a place in the international legal order by virtue of their possession of an astonishing number of resources.

Furthermore, some major NGOs have more economic power than states with GNPs of several hundred million dollars, having witnessed a tremendous increase in their resource bases over the years. To illustrate this, the nearly 500 NGOs in the Interaction network group have a combined annual revenue of over $2.3 billion, and Cooperative for American Relief Everywhere (CARE) has an annual budget of over $446 million to provide assistance to 97 million people in the fields of “hunger, gender, social justice, education, emergencies (conflicts areas such as Syria) and health”. Medecins Sans Frontieres (MSF) has a budget of over $423 million, the United States provided about $1.3 billion to the West Bank and Gaza through USAID (United States Agency for International Development), The Ford Foundation had assets valued at $13 billion and about $500 million per year as of the date of January 2000, and the International Committee of the Red Cross (ICRC) has 12,000 personnel in more than 80 countries and about 100 million members and volunteers; it spends about €650 million on humanitarian assistance. From another perspective, the institutions

433 Amnesty has more than 3 million supporters, members and activists in more than 150 countries and territories in the world, as well as some 410 personnel and 120 volunteers, and receives financial support from about 120 countries. See http://www.amnesty.org/en/who-we-are> access on 03/03/2015
434 Willetts (2011)
436 ibid
437 <http://ar.care.org/#donate> accessed on 04/01/2015
438 <http://www.ngo-monitor.org/article/usa_usaid> accessed on 26/02/2013
439 <http://www.rkatz.com/webdesign/ngomonitor/archives/infofile.htm#ford> accessed on 26/02/2013
of ICRC, Greenpeace\textsuperscript{441} and the World Wildlife Fund (WWF)\textsuperscript{442} are larger than the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organisation (WTO) and the United Nations Industrial Development Organization (UNIDO).\textsuperscript{443} The WWF has a budget that is approximately two hundred times larger than that of the Commission on Sustainable Development (CSD).\textsuperscript{444} It is clear that NGOs have significant resources that are larger than those of many states.

What is more, Wiessner points out that the value of the activity generated by today’s NGOs has grown by more than $1 trillion dollar a year. In this respect, the sector of civil society has become the world’s eighth largest economic power.\textsuperscript{445} It is estimated that the combined resources of all NGOs could total between $9 and $10 billion, which is the amount they spend annually on humanitarian assistance.\textsuperscript{446} These funds benefit nearly 250 million

\textsuperscript{441} As of January, 2009, Greenpeace has about 2.9 million financial supporters and a presence in 41 countries. See: <http://www.greenpeace.org/international/en/about/faq/#General> accessed on 26/02/2013

\textsuperscript{442} WWF has been active in over 100 countries on five continents and while there was 570,000 supporters in 1985, it has currently about 5 million supporters. <http://wwf.panda.org/who_we_are/history/50_years_of_achievements/> accessed on 26/02/2013

\textsuperscript{443} Alexander Titus, ‘In the Name of the People: Strengthening Global Accountability’ A One World Trust Discussion Paper, p.6


people. Taylor states that “international relief and development NGOs are now responsible for delivering more aid than is the UN system”. NGOs are not only better at acquiring significant resources, they are also good at delivering them to places where they are required. They have thus made the best of distributing sources on the ground.

NGOs have also developed great economic weight within national borders. For example, they provided more than 12 per cent of the Netherlands’ employment, 8 per cent of that in the United States and 6 per cent in the UK in 1995. They employed 19 million people in 1998. There are some 154 NGOs whose role is the protection of national resources in the US and who have income or assets in excess of $5 million. There is no doubt that NGOs have been increasing in both number and membership.

The Secretary-General of the UN, speaking at the annual UN/NGO Conference in New York in 1994, highlighted the emergence of many new NGOs on every continent:

In France, for example, 54,000 new associations had been established since 1987. In Italy, 40% of the associations had been set up within the previous 15 years. This phenomenon was also occurring in developing countries. Within a short space of time,

447 ibid
449 Lindblom, Non-Governmental Organizations , p.16
451 ibid
452 See more: ‘Wealthy NGOs’ <http://www.sovereignty.net/p/ngo/wealthy.htm> accessed on 27/02/2013, Baslar (2006), and Lindblom (2005), p.21
10,000 NGOs had been established in Bangladesh, 21,000 in the Philippines, and 27,000 in Chile. In Eastern Europe since the fall of communism, NGOs had been playing an increasingly important role in people’s lives.\textsuperscript{454}

There are about one million in India, upwards of half a million in the UK\textsuperscript{455} and more than 200,000 in Brazil. 40 per cent of NGOs in Italy were set up in last two decades, and the 10,000 in Bangladesh, 21,000 in the Philippines and 27,000 in Chile were all established within a short time.\textsuperscript{456} US NGOs employ more people than the federal government and have a larger combined budget than all world’s countries with the exception of the top eight.\textsuperscript{457} NGOs “do things that governments will not, or cannot, do”.\textsuperscript{458} Their rapid growth could be considered as pointing to their future impact on the international legal order.\textsuperscript{459}

Lastly, while NGOs’ voices have been increasing significantly, the United Nations Development Agenda\textsuperscript{460} cannot help but reveal the striking growth in their global impact.\textsuperscript{461}

\textsuperscript{454} ibid
\textsuperscript{456} ibid
\textsuperscript{457} Suter states that “the United States has 1,243,000 NGOs spread across categories of religion, private education and research, health care, arts and culture, social sciences, advocacy and legal services, international assistance, foundations and corporate funders, and mutual benefit organizations”. 80 million American adults and young people also volunteered to work in the $150 billion worth of projects carried out under the umbrella of NGOs. Suter, pp.92-93
\textsuperscript{459} For more on the increase in the number of NGOs, see Lindblom (2005), pp.19-22
\textsuperscript{460} The Department of Economic and Social Affairs of the UN Secretariat ‘The United Nations Development Agenda: Development for All’ (New York, 2007)
The report highlights how NGOs participation helped increase the legitimacy of the Fourth World Conference on Women held in Beijing in September 1995. In accordance with the Development Agenda, “it was the largest: an estimated 35,000 NGO representatives participated in the Conference, making it the most highly-attended United Nations Conference on record to date”. More importantly, the report stated that such participation highlights how the UN is the seat not of governments only, nor does it solely sustain states. In this regard, the report emphasised that “the first phrase of the Charter, ‘We the peoples’, is not empty”.

461 “[T]he important drafting and lobbying roles that have been played by NGOs in various treaty-drafting contexts; these include the UN Convention against torture, the Framework Convention on Climate Change, the Landmines Convention, and the Statute of the International Criminal Court.” Alston, ‘The ‘Not-a-Cat’ Syndrome’, p.28
462 ibid
4.2 NGOs in International Law

NGOs have been playing a growing political role in the international realm, and their status with regard to international law has usually been seen as important yet informal.\textsuperscript{463} This approach is to some extent true. NGOs have been regarded as significant partners. States have thus benefited by establishing relations with NGOs, relations that have mostly been based on informal procedures; the establishment of formal relationships have deliberately been avoided. Significant gaps between the \textit{de facto} and \textit{de jure} status of NGOs are thus evident.

Kaczorowska states that the International Court of Justice (ICJ) has opened the door to non-state actors in \textit{LaGrand (Germany v United States)}.\textsuperscript{464} The court’s judgement states that either NGOs or Multinational Corporations (MNCs) can be recognized as subjects of international law.\textsuperscript{465} Gaja states in his report that

\textit{...the Court stated in the LaGrand case that individuals are also subjects of international law. This approach may lead the Court to assert the legal personality even of NGOs.}\textsuperscript{466}

This does not necessarily mean that all NGOs have legally become subjects of international law. It means that the possibility is open, and that it depends on NGOs to

\footnotesize{\textsuperscript{463} Lindblom (2005)  
\textsuperscript{464} Kaczorowska (2010), pp.184-185  
\textsuperscript{466} ibid para.17}
take advantage. The ICRC has done so, being recognized as a subject of international law.\textsuperscript{467}

Moreover, there are also some examples of NGOs having been granted formal places, such as the conferral of consultative status on ECOSOC.\textsuperscript{468} NGOs have sometimes also acquired equal rights with states on particular occasions.\textsuperscript{469} The legal status of NGOs in international law is thus vague, and maintaining that they either do or do not have legal standing is not adequate. This might be because there are no accepted rules on the position of NGOs in international law, so relationships have been determined pragmatically rather than by legislation.

\textbf{4.2.1 Uncertainty in the Definition of NGOs}

As the nature of NGOs does not conform to a set template, which results in a lack of clarity in this respect. There is no generally approved definition of the term “Non-governmental Organization” in international law.\textsuperscript{470} While some definitions exclude political parties, others do not; yet other narrower ones exclude trade unions and churches.

\textsuperscript{467} Kaczorwska, p.216
\textsuperscript{468} Article 71 of the UN Charter
\textsuperscript{469} There is a headquarters agreement which demonstrates the equality between an NGO and a state. The agreement was signed on 19 March 1993 between the ICRC and the Swiss Federal Council to determine the legal status of the Committee in Switzerland. For further details, see International Review of the Red Cross, 30-04-1993 Article, No. 293 https://www.icrc.org/eng/resources/documents/misc/57jnx7.htm accessed on 20/11/14
\textsuperscript{470} Lindblom (2005) p.36
According to Lindblom, the reason for this variety of definitions is “a reflection of ad hoc approach to NGOs of IGOs and the international legal system in general”.\textsuperscript{471} This is true because every international organization exhibits a different approach to NGOs. Intergovernmental organisations (IGOs) have limited the definition of NGOs in terms of what they expect from them. While participation by NGOs is the norm for some organisations, it can be quite radical for others.

The term “NGO” may say little about what one actually is or provide a general understanding of the concept.\textsuperscript{472} The granting of legal status may need further elaboration: a terrorist group could also be an NGO. It might to some extent increase uncertainty about the legal status of NGOs in international law. In fact, each field of law that links to NGOs determines its own definition, as a reflection of the fact that the status and legal framework for NGOs could vary from one area of international law to another.\textsuperscript{473} Understanding of NGOs is therefore mostly determined by the deliberations of states.

Article 71 of the UN Charter also provides no definition.\textsuperscript{474} A subsequent revision in 1950 does include the following:

\begin{quote}
Any international organization which is not established by intergovernmental agreement shall be considered as a non-governmental organization for the
\end{quote}

\begin{footnotes}
\item[471] Ibid, p.45
\item[472] Ibid
\item[473] Ibid p.36
\item[474] “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.” Article 71 of UN Charter
\end{footnotes}
purpose of these arrangements, including organizations which accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization.\(^{475}\)

This article applies the standards of being “international” and “not established by an international organisation”\(^{476}\).

Current provisions on the ECOSOC consultative agreements comprise a broader description:

Any such organization that is not established by a governmental entity or intergovernmental agreement shall be considered a non-governmental organization for the purpose of these arrangements, including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization.\(^{477}\)

In this provision, the word “such” refers to the criteria for launching consultative interactions with an NGO that are mentioned in this and previous paragraphs of the Resolution.\(^{478}\)

According to the provision, these criteria are as follows:

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\(^{475}\) E/RES/1968/1296, ‘1296 (XIV). Arrangements for Consultation with Non-Governmental Organizations’ para.7. http://www.un-documents.net/1296.htm. This resolution approved the 288 B (X) Resolution that was taken in February 1950

\(^{476}\) ibid


\(^{478}\) Lindblom (2005) p.38
1. the aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the UN Charter.\textsuperscript{479}

2. the organization shall be of recognized standing within the particular field of its competence or of a representative character,\textsuperscript{480} (i.e. accountability)

3. the organization shall have established headquarters with an executive officer.\textsuperscript{481}

4. the organization shall have a democratically adopted constitution, and that\textsuperscript{482}

5. the organization shall have a representative structure with appropriate mechanisms of accountability to the members\textsuperscript{483}

The criteria emanating from this resolution are valuable in that they delineate the scope of NGOs. While stipulating that an NGO should be representative and accountable, it also excludes some actors considered as NGOs according to some definitions. These conditions are required for an NGO to acquire consultative status on ECOSOC. It does not, however, follow that an organization not conforming to these standards is not an NGO. In other words, these are not universal rules for what constitutes an NGO. These principles are requirements for NGOs to gain consultative status on ECOSOC. Indeed, this also demonstrates how the definition of an NGO can vary according to circumstances.

\textsuperscript{479} Resolution 1996/31 para.2
\textsuperscript{480} Ibid para.9
\textsuperscript{481} Ibid para.10
\textsuperscript{482} ibid
\textsuperscript{483} Ibid para.12
There are also measures that can be activated when an NGO breaches these criteria. This provision allows for suspending or withdrawing an NGO’s consultative status in order to prevent abuse. In this regard, the provision explicitly warns NGOs of suspension and withdrawal in the following cases:

(a) If an organization, either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against Member States of the United Nations incompatible with those purposes and principles;

(b) If there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities such as the illicit drugs trade, money-laundering or the illegal arms trade;

(c) If, within the preceding three years, an organization did not make any positive or effective contribution to the work of the United Nations and, in particular, of the Council or its commissions or other subsidiary organs.\textsuperscript{484}

According to subparagraph (a), political parties and liberation movements are not to be granted consultative status.\textsuperscript{485} Excluding such entities may not explicitly be stated in the NGO definition of Paragraph 12. However, the provisions on suspension and withdrawal in conjunction with the definition and the first principle for consultative status (i.e. that the “aims and purposes of the organisation shall be in conformity with the spirit, purposes and principles of the UN Charter”), make it clear that political parties and liberation movements are in fact outside the scope of the definition (“at least that is how the resolution is interpreted”).\textsuperscript{486} By the same token, violent and criminal groups can also be excluded\textsuperscript{487} as the

\textsuperscript{484} ibid para.57
\textsuperscript{485} Lindblom (2005) p.39
\textsuperscript{486} See the extent of the term “organization” as described in Paragraph 4 of Resolution 1996/31, which reads as follows: “Except where expressly stated otherwise, the term ‘organization’ shall refer to non-governmental organizations at the national, subregional, regional or international levels.”, ibid
provision explicitly states that “the aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the UN Charter”.\footnote{Resolution 1996/31 para.2}

Nevertheless, as is observed above, the definition of NGOs can be extended according to circumstances. Just as with political parties, international organizations of national political parties or groupings such as the Liberal International and the Socialist International are also able to obtain consultative status.\footnote{Lindblom (2005) p.39} Both Socialist International and Liberal International were in fact granted general consultative status with ECOSOC in 1995.\footnote{http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf} A few liberation movements have achieved observer status with the UN,\footnote{ibid} among them the Palestine Liberation Organization (PLO) in the General Assembly on 22 November 1974\footnote{A/RES/3237 (XXIX) Observer status for the Palestinian Liberation Organization http://palestineun.org/wp-content/uploads/2013/08/3237-XXIX-Observer-Status-for-the-Palestine-Liberation-Organization.pdf} and the South-West Africa People’s Organization (SWAPO) on 20 December 1976.\footnote{A/RES/31/152, http://www.un.org/documents/ga/res/43/a43r160.htm} Another concrete example of the conferral of observer status on national liberation movements is the resolution that deals directly with this issue in principle.\footnote{A/RES/43/160 76th plenary meeting was adopted on 9 December 1988, http://www.un.org/documents/ga/res/43/a43r160.htm.} These examples demonstrate how general rules can be interpreted according to circumstances.

\footnotesize
\begin{itemize}
\item \footnote{ibid} ibid
\item \footnote{Resolution 1996/31 para.2} Resolution 1996/31 para.2
\item \footnote{Lindblom (2005) p.39} Lindblom (2005) p.39
\item \footnote{ibid} ibid
\item \footnote{http://www.un.org/documents/ga/res/43/a43r160.htm} accessed on 26/11/14
\end{itemize}
In addition, there are no explicit criteria for non-profitmaking organisations,\textsuperscript{495} while there are clear and explicit principles for the exclusion of political parties. It is surprising that the UN does not refer directly to this significant point. This might be because member states of the UN are more concerned by political organisations than profit-making ones. On the other hand, it could implicitly be concluded from Paragraph 2 that there is a principle involved in non-profit status,\textsuperscript{496} as that paragraph seeks conformity with the purposes and principles of the UN Charter.\textsuperscript{497} Paragraph 13 also considers the articulation of non-profit aims as a principle\textsuperscript{498} and a condition of an organisation’s obtaining of consultative status pursuant to Paragraph 13.\textsuperscript{499}

Consequently, while there is no limitation in the Resolution’s definition of NGO as provided in Paragraph 12, the succeeding or preceding provisions could impose limits. Therefore, ECOSOC’s definition can properly be understood by interpreting different provisions in the light of the Resolution.\textsuperscript{500} In this regard, each international organization may construct its own definition of an NGO, while different circumstances may require distinct approaches. Lindblom also emphasizes that “it is apparent that definitions of the term ‘non-governmental organisations’ vary according to the circumstances. Each institution has its own definition elaborated for its own purposes”.\textsuperscript{501}

\textsuperscript{495} Lindblom (2005) p.39
\textsuperscript{496} ibid
\textsuperscript{497} Paragraph 2 of the Resolution 1996/31
\textsuperscript{498} Lindblom (2005), p.39
\textsuperscript{499} ibid. See also Paragraph 13 of the Resolution 1996/31: “The basic resources of the organization shall be derived in the main part from contributions of the national affiliates or other components or from individual members…”
\textsuperscript{500} ibid p.40
\textsuperscript{501} ibid p.44
4.2.2 Constructing a Definition of “NGO” for the Security Council

Providing a universal definition of an NGO may be hard because it is vague. It is relatively easy for an entity to determine a definition of NGO for its own purposes. This definition may not work for another body whose purposes are different. And if such a definition under present conditions is nearly impossible, the task is rendered all the more difficult by future NGOs that will come into existence to meet new demands. In any case, a particular definition may not have a significant impact on relations between NGOs and IGOs, meaning that status would be granted to NGOs according to demand. It is not therefore necessary to attach too much importance to the problem of definition. It is their legal status that is the more pressing concern for NGOs. As far as legal personality is concerned, a comprehensive definition of an NGO is possible. By analogy, reference to a “state” does not necessarily mean a democratic one.

There are nevertheless four main sources that can be used to construct a definition of an NGO. These are the General Assembly’s Resolution 1996/31, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (24 April 1986), the Fundamental Principles on the Status of Non-governmental Organisations in Europe (2003) and the criteria of the Union of International Associations (UIA). Many such institutions have been inspired by these four documents to construct definitions according to their own needs. The present study will likewise define NGOs with regard to the Security Council. The General Assembly is one of the principal organs of the UN, as is the Security Council, and the two have identical concerns about international

502 Baslar (2006), p.25
peace and security issues. It is thus more suitable for this purpose to take the General Assembly’s definition as a basis, while not ignoring the other approaches.

NGOs that have already established informal relations with the Council are also considered. These fall into two groups: those that have established such relationships under the umbrella of the NGO Working Group on the Security Council\textsuperscript{503} and those that have developed interactions individually.\textsuperscript{504} The NGO Working Group on the Security Council comprises approximately 35 NGOs\textsuperscript{505} and some NGOs such as the ICRC\textsuperscript{506}, Global Witness\textsuperscript{507} and the NGO Working Group on Women, Peace and Security have done remarkable work by individually influencing the Council.\textsuperscript{508} The reason these NGOs are considered is that it enables a determination as to which type of NGO is more suitable for the Council’s purposes. A definition of an NGO that meet the criteria of working with Council can thus be constructed.

\textsuperscript{503} Since 1997, the NGO Working Group has provided this unique platform for NGOs to access the UN Security Council.” http://www.ngowgsc.org/ accessed on 09/01/2015
\textsuperscript{504} Informal relations between NGOs and SC are evaluated in Chapters V and VI
\textsuperscript{505} http://www.ngowgsc.org/content/members-ngo-working-group-security-council accessed 09/01/2015
\textsuperscript{506} Of these, the ICRC has been the most active in interacting with the Security Council and other principle organs of the UN. For example, the ICRC has made several statements to the Council regarding protection of civilians. See https://www.icrc.org/eng/resources/documents/statement/2014/02-12-civilians-un-security-council.htm accessed on 11/01/2015
\textsuperscript{507} Global Witness has lobbied the Council to stop the trade in minerals that is fuelling the war in the eastern Congo. http://new.globalwitness.org/issues.php#countries. Apart from that the Global Witness has broad number of activities in all around the world. Its sharpest case is ‘A Rough Trade’. See more at http://new.globalwitness.org/issues.php accessed on 09/01/2015
\textsuperscript{508} This applies to Amnesty International, the Consortium on Gender, Security and Human Rights Femmes Africa Solidarité, Global Justice Center, Human Rights Watch, International Rescue Committee, Open Society Foundations, Refugees International, The Institute for Inclusive Security, Women’s Action for New Directions, Women’s International, the League for Peace and Freedom and the Women’s Refugee Commission. As can be seen, some of them are in the NGO Working Group on the Security Council’s NGOs
The common features of these organizations are that they are non-profit, non-violence, have no obvious connections with criminality, are independent of any state, have no political or subversive aims, have democratically adopted statutes and representative structures. These requirements are shared by most definitions contained in international legal instruments, including the aforementioned four major instruments. ECOSOC has also added the requirement of conformity with the principles of the UN Charter.

In short, the definition of an NGO used in this study is that:

- it is international in character, independent of any state and free of governmental influence

- its aims are non-profit, non-violence, not obviously connected with criminality, not political or subversive, and conform to the sprit, purposes and principles of the UN Charter

- it has standing within its sphere of interest, and that it is particularly active in the field of humanitarian aid such as security, peace, human rights, poverty, health and education

- it has a democratically adopted statute, representative structure that is transparent and accountable in its actions

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509 This does not mean that an NGO cannot make profit, but rather that it may use any profit solely for the aims of the NGO, not to distribute to its members. In other words, its main aim should not be to make a profit.

510 It is very essential point for NGOs to comply with this requirement in order to be able to take active roles on the Council, as one of its main problems is the lack of resolute and independent actors.

511 As the Council’s primary responsibility is to maintain international peace and security, it would be wise to first consider NGOs that have related field works to maintain major contributions.
These criteria in the definition must be met by NGOs applying for formal participation in the Security Council. Various entities that are international in character such as associations, charities, foundations, churches and religious congregations, non-profit corporations and trade unions can be encompassed by this definition. For example Global Witness would suit it perfectly as it does not contravene any requirements of the definition when its aims and activities are considered. International Progress Organization (IPO) likewise has members from over 70 countries, enjoys consultative status with ECOSOC and is associated with the United Nations Department of Public Information. It is strictly non-partisan and is not aligned with any government. It notably aims to promote peaceful co-existence between nations and dialogue between civilizations. It has been calling on the UN, particularly the Security Council, for reform in order to make it more democratic. We can see from its articles that it has expertise in the fields of conflict resolution, civilizational dialogue, international law and United Nations reform. All of these features are well suited to the current definition. Al-Qaida, however, would not be, as its aims are violent, as are those of Colombia’s National Liberation Army, and the Yakuza. Of course, further criteria could be applied when considering NGOs for formal status on the Council. Some of these, together with a prospective framework for formal access, are mentioned in Chapter VII.
4.2.3 The Question of Legal Status

The reason the legal status of NGOs in international law has been examined is neither to make a proposal on this topic nor to scrutinize it in detail. In fact, the present thesis advocates formal access for NGOs to the Security Council, since this also means granting legal status. Therefore, understanding the general situation regarding the legal status of NGOs in international law would give an idea as to what extent it is possible and feasible to establish formal relations between the two parties. The main reason for states to approve formal relations with NGOs has been explored. International law provides NGOs with no internationally approved universal legal status. Eventually, this exercise helps to determine the possibility of granting formal access to the Council to NGOs more accurately.

4.2.3.1 The Theoretical Position of the Legal Status of NGOs

As mentioned, there is no clear definition of NGOs; instead, there is a diverse array of definitions. There is likewise a variety of approaches to the legal status of NGOs. In this regard, Lindblom argues that “the theories on international law look very differently on the legal role and position of non-state actors”.\(^{512}\) Ian Brownlie sees a legal personality in the following terms: “a subject of international law is an entity possessing international rights and obligations and having the capacity (a) to maintain its rights by bringing international claims; and (b) to be responsible for its breaches of obligation by being subjected to such claims”.\(^{513}\) In Brownlie’s view, in order to be regarded as a full legal personality, these

\(^{512}\) Lindblom (2005), p.513.

principles must be achieved simultaneously or the legal personality will be constricted.\textsuperscript{514} In that case, such an entity’s legal personality would depend on agreement, and would be liable to any counter-action.\textsuperscript{515}

The gap between the de facto and de jure status of NGOs may lead to arbitrary agreement on their legal personality. The substantial involvement by NGOs in international activities demands their acquisition of such a personality, an issue that their significant number of activities would otherwise complicate. As long as the legal status of NGOs has no defined basis, their legal personality is likely to remain restricted.

Two conditions have determined the assessment of NGOs’ legal personality:\textsuperscript{516} the demands of states might play a leading role in recognising that legal status, and NGOs’ performance is important in granting it. It is therefore essential for NGOs to be very diligent in order to achieve legal status. It is within their capacity to influence states to grant them legal rights.

Anne-Marie Slaughter’s normative approach\textsuperscript{517} to this question entails the observation that if states are not considered as primary actors in the international legal system then the system of

\textsuperscript{514} ibid
\textsuperscript{515} ibid
\textsuperscript{516} “A theory of NGO involvement can be based on two factors. First, one can look at the needs of governments, or more descriptively, of particular government agencies or officials. Second, one can look at the capability of NGOs.” Charnovitz (1997), p.269
\textsuperscript{517} Lindblom (2005), p.104
international law founded on that very condition would be irrelevant.\textsuperscript{518} She does not clarify exactly who the current actors in the international legal order are,\textsuperscript{519} but she does assert that “the challenge of non-state actors is both an empirical and a conceptual one, and that we need to redraw our conceptual maps in ways that help us to solve a number of practical problems”.\textsuperscript{520} The liberalist strand of international law and international relations theory therefore considers non-state actors to be relevant to law, and suggests a new transnational legal system that would be able to regulate this complex web of relations among private and governmental actors.\textsuperscript{521}

However, this liberalist strand does not seem to claim legal status for NGOs under the current international legal order. They focus only on NGOs’ influence while still regarding states as the priory actors.\textsuperscript{522} Other scholars in the liberal strand of international law such as Richard Falk and Thomas Franck point to the significance role of NGOs and the waning of state dominance. Yet they also fail to make clear proposals as to the status of NGOs under the present international legal system.\textsuperscript{523} This might be because their primary aim is to underline the importance of NGOs in the international legal order, as this could constitute a basis upon

\textsuperscript{519} ibid
\textsuperscript{521} ibid
\textsuperscript{522} “Even as IR has moved to acknowledge the role of non-state actors in international affairs, the discipline still sees states in an elevated position above other actors, as the repository of ultimate power...” Peter J. Spiro, ‘Globalization, International Law, and the Academy’ (2000) 32 New York University Journal of International Law and Politics, pp.582-584, ibid
\textsuperscript{523} Lindblom (2005), p.104
which their legal status can be established. There is a tendency to deal with NGOs in a normative way, and not to make room for them in the present international legal system.

On the other hand, some international lawyers have developed interdisciplinary theories that could also deal with the current status of non-state actors and the fact of personality.\footnote{524} Michael Byers, for example, considers international legal personality as a qualification that permits an individual or entity to participate directly in customary processes. He argues for the possibility of various levels of legal personality,\footnote{525} distinguishing the full from the partial level.

For Wessel, however,

[l]egal personality is nothing more (or less) than independent existence within the international legal order. There would not be any use of speaking of an international legal entity when it would not exist under international law. One consequence of this line of reasoning is that there is not much sense in speaking of a ‘partial legal personality’ of international organizations; neither can we say that a particular international entity possesses legal personality ‘to some extent’.\footnote{526}

\footnote{524}ibid
\footnote{525}“When used in a legal sense, the term personality usually refers to the capacity of an individual or entity to hold rights and be subject to obligations within a particular legal system.” Michael Byers, Custom, Power and the Power of Rules: International Law and Customary International Relations (CUP, 1999), p.75
\footnote{526}Ramses A. Wessel, ‘Revisiting the International Legal Status of the EU’ (2000) 5 European Foreign Affairs Review, pp.507–537, p.510
Yet the difference between full and partial legal personalities has been endorsed by the ICJ in its Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, in which its states that “subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights”.\textsuperscript{527} According to this distinction, states can only have a full legal personality insofar as, in principle, they can possess all international legal rights and are subject to all international legal duties.\textsuperscript{528} Other subjects of international law are considered as partial subjects with limited rights and duties.\textsuperscript{529} This category of partial legal personality directly covers international organizations by their constitutional treaties and individuals by the relevant treaties and customary international law.\textsuperscript{530} Thus, it does not apply directly to NGOs.

Byers asserts that the only actors possessed of full legal personality in the international legal system are states:

\[ \text{[n]on-governmental organisations do not have international legal personality and are therefore incapable of participating directly in the customary process... States [have] allowed non-governmental organisations to participate, to a limited degree, in certain bodies of some international organisations...} \textsuperscript{531} \]

It might be true that NGOs do not have legal personality, or that they might to whatever extent have limited legal personality, in the international system.

\textsuperscript{527} Kaczorowska (2010), p.183
\textsuperscript{528} ibid
\textsuperscript{529} ibid
\textsuperscript{530} ibid
\textsuperscript{531} Byers (1996) p.86
However, it would be inadequate to limit the reasons for NGOs not having international legal personality. A comprehensive assessment cannot be made from a narrow perspective on this question. The case for indirect or limited influence on the customary process does not apply only to NGOs. Some states are politically weak, so more powerful ones render them unable to participate in the customary process. The Security Council itself provides an illustration: only five permanent members are able to rule it, because they allow other member states to participate equally in the General Assembly’s decision-making process but not the Council’s own. As for unrecognized or largely unrecognized states, Byers also argues that influence can vary between states depending on their levels of power. Yet he rejects the legal personality of NGOs while acknowledging their influence. He believes that NGOs can exert pressure on states to grant them indirect access to the customary process, but he thinks this does not mean that those NGOs have a direct role as if they had international legal personality.

Byers considers that participation of NGOs is possible only when States allow them. In fact, some NGOs possess more rights and obligations than most states, and in cases they have been granted access in spite of states’ resistance because circumstances have compelled the latter to accept their participation. For example, “when the UN Charter was drafted in 1945, nongovernmental organizations (NGOs) attended the San Francisco conference and lobbied successfully to obtain Article 71, providing for ‘consultative arrangements’ with the Economic and Social Council (ECOSOC)”.

The participation of NGOs therefore rather depends on their ability to affect circumstances.

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532 Willets (2000) p.191
Clark Arend\textsuperscript{533} applies international relations theory in a manner similar to Byers,\textsuperscript{534} but proposes a more acceptable approach to this question of the legal personality of NGOs. He accepts the dominance of states in the current world order and believes that NGOs are able to participate in decision-making processes at states’ discretions, maintaining that

\begin{quote}
under the present condition of the international system, I believe that non-state actors generally do not participate directly in the law-creating process. Non-state actors, with some exceptions..., do not interact with states in an unmediated manner. Non-state actors may be the origins of a proposed legal rule, but in order for the proposal to become law, it must be accepted by states.\textsuperscript{535}
\end{quote}

He thus agrees that it is possible for non-state actors to propose legal rules, but also that this is subject to the acquiescence of states. However, he also argues that for some exceptions by which NGOs could directly participate. Rather than disregarding NGOs’ role, he opines that

\begin{quote}
with the growing prominence of non-state actors, it is possible that the international system may be moving toward one in which states would interact with non-state actors directly in the law-creating process.\textsuperscript{536}
\end{quote}

He therefore does not deny the roles of non-state actors, believing that their increasingly important role will lead them to participate directly in the legislative process. He foresees that the international system will eventually consist of both states and non-state actors.

\textsuperscript{533}Anthony Clark Arend, \textit{Legal Rules and International Society} (OUP, 1999)

\textsuperscript{534}Lindblom (2005), p.107.

\textsuperscript{535}Arend (1999) p.43

\textsuperscript{536}ibid, p.44
In addition, even though treaties, case-law and resolutions regarding inter-governmental organizations have dealt with the international legal status of NGOs, different international procedures for NGOs have been implemented: some international organisations have explicitly recognised NGOs, some partially so according to need, and others have even closed their doors to them.

To summarize, just as there are various levels of agreement on the legal personality of NGOs, scholars also adopt a variety of approaches to this question. Of course, the NGOs themselves have been affected by such inconsistent stances. It is difficult for them to manage their activities under conditions of restricted legal personality. Malcolm Shaw considers this issue of legal personality to be a crucial factor, underlining its significance: “without it, institutions and groups cannot operate, for they need to be able to maintain and enforce claims”.

4.2.3.2 Efforts and Background of Legal Personality of NGOs

This question of the legal personality of NGOs has been debated for decades. Frits Hondius explains that “the quest of NGOs for recognition of their status under international law is almost a century old”. The first attempts were made mostly by NGOs themselves rather than by states or international organizations. The matter can be traced back as far as 1910,

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537 Lindblom (2005), p.513
540 “The most important efforts have taken place at the Union of International Associations and the Institut de Droit International, where scholars have been working on the issue for many decades.” Kerstin Martens, ‘Examining the (Non) Status of NGOs in International Law’ (2003) 10 Indiana Journal of Global Legal
when the Institut de Droit International (Institute of International Law) drew up a draft
convention on NGOs and, at the suggestion of Nicolas Politis, offered a study on “the
juridical conditions of international associations” at its session in Paris.541 A resolution542 was
adopted by the Danish Government and put forward in discussion during the Diplomatic
Conference on Assistance to Foreigners in 1912 in Paris, which voted unanimously in favour
of a draft convention in order to determine the establishment of an international legal status
for associations.543 As a final vote on the draft was planned for the next conference, the text
of a draft international convention was unanimously accepted by the 23 governments544 and
169 international associations.545

These deliberations were suspended for the duration of the First World War, but the text
couraged the Belgian government to approve a law on international associations on 25th

541 “The discussion continued at the Madrid session in 1911 (4). These early suggestions were then taken up by
L von Bar, a member of the Institute, and developed into a short draft convention which was presented to the
Institute's session in Christiania in 1912.” http://www.uia.org/archive/legal-status-4-1

542 This resolution was voted at the fourth Congress organized by the non-governmental Comité International
des Congrès d’Assistance Publique et Privée (Copenhagen, 1910) http://www.uia.org/archive/legal-status-4-3
accessed on 23/12/14

543 ibid

544 The governments represented were those of Argentina, Belgium, Bolivia, Chile, China, Colombia,
Dominican Republic, Ecuador, France, Guatemala, Haiti, Honduras, Hungary, Italy, Luxembourg, Mexico,
Norway, Persia, Portugal, Spain, Sweden, Turkey, UK. <http://www.uia.org/archive/legal-status-4-4> accessed
on 23/12/14. It is indeed encouraging to see the UK, France and China among the signatories, even if they were
not permanent members at that time

545 ibid
October 1919.\textsuperscript{546} This Belgian law was enacted to provide legal status to international non-governmental organizations with scientific objectives such as “philanthropic, religious, scientific, artistic or educational” ones.\textsuperscript{547} According to Article 9,

\textit{the Belgian government shall be authorized to conclude treaties with foreign States for the establishment of an international Statute for international scientific associations on the basis of the present law.}\textsuperscript{548}

It can thus be said that “the Belgian model of 1919 is still the most important text in the law of NGOs”.\textsuperscript{549}

Nicolas Politis, a member of the Institute of International Law, improved von Bar’s earlier proposals of 1912\textsuperscript{550} and presented them in a report to the Institute. His resulting draft Convention on the Legal Position of International Associations was unanimously approved during the course of the 50\textsuperscript{th} anniversary session of the Institute in Brussels in 1923.\textsuperscript{551} The draft laid down the conditions for non-profit international associations, according to which they should have international purposes and memberships and not be motivated by profit.\textsuperscript{552} The treaty also offered an international registrations office\textsuperscript{553} and, most importantly, the right

\textsuperscript{546} http://www.uia.org/archive/legal-status-4-4
\textsuperscript{547} http://www.uia.org/archive/legal-status-6-1
\textsuperscript{548} http://www.uia.org/archive/legal-status-4-4
\textsuperscript{549} Martens, (2003), p.22
\textsuperscript{550} http://www.uia.org/legal/app41.php
\textsuperscript{551} http://www.uia.org/archive/legal-status-4-5 accessed on 24/12/14
\textsuperscript{552} Article 1 states: “…on the basis of its laws to those non profit-making international associations which meet the following conditions”; Article 2: “Are deemed to be international within the context of the present Convention those associations of a private character which are accessible under the conditions laid down by their Articles of Association to subjects and joint bodies of several countries and which pursue, without any profit motive, an objective of international interest”. http://www.uia.org/archive/legal-status-4-5
\textsuperscript{553} This later became the Union of International Associations
to appear before the Permanent Court of International Justice.\footnote{554} Article 7 of the Treaty states that an “…association…may contest the same on the grounds of action ultra vires before the permanent International Court of Justice.”\footnote{555} Even though the Treaty could not be brought into force because no government took advantage of the opportunity to adhere to this convention, it was the first serious and comprehensive attempt to recognise the possession by NGOs of a universal legal personality.\footnote{556}

Several attempts also failed during the planning period, mostly for the same reason.\footnote{557} After the end of World War II, some NGOs were granted consultative status in the UN and have attempted to examine the legal status of NGOs. In 1949 they constructed a draft that cut through the red tape involved.\footnote{558} This report made noteworthy points about the legal personality of NGOs, highlighting that the lack of a suitable legal status was affected their work negatively. The additional draft consequently suggested that the legal personality of NGOs should be granted by an international entity independently of national systems.\footnote{559} These efforts have, however, remained paper exercises.\footnote{560}

\footnote{554}The current International Court of Justice established in 1945 by the United Nations Charter. The Court started work in 1946 as the successor to the Permanent Court of International Justice

\footnote{555}Article 7; see at http://www.uia.org/archive/legal-status-4-5 accessed on 24/12/14


\footnote{557}Martens, (2003) p.20

\footnote{558}See more at: http://www.uia.org/archive/legal-status-3-3 accessed on 24/12/14

\footnote{559}“Preliminary draft agreement designed to facilitate the work of non-governmental organizations having consultative or equivalent status with the organs of the United Nations…and Whereas the lack of a firm and assured regime is at present making it difficult for such organizations to operate satisfactorily…”

\footnote{560}Conference of Consultative Non-Governmental Organizations: Granting of International Juridical Personality to Consultative NGOs, http://www.uia.org/archive/legal-status-4-6 accessed on 24/12/14
Another convention was also proposed by Suzan Bastid in the 44th meeting of the Institute of International Law in 1950 in Bath. However, this proposal attracted no advocates. Another convention on the law of NGOs at the Hague was advanced in 1956, one that applied to foreign companies, associations and foundations. In fact, this convention was approved by the founder members of the European Economic Community (EEC) in 1968. Yet, it never entered into force because of the “complex problems surrounding the recognition of commercial companies”.  

As Charnovitz concludes, when the general status of NGOs’ legal personality is considered apart from other examples, “leaving aside the Red Cross, NGOs do not have international legal personality”. They have therefore been governed by the laws of the state in which they are incorporated. This, of course, causes contradictions and creates many difficulties: when an NGO conducts affairs in a different country, it must consider that country’s laws. Significant problems might also emerge. An NGO’s mobility might be reduced because of the plethora of regulatory and jurisdictional systems among the world’s 200 states.

Some progress has, however, been made on a regional level based on reciprocal recognition between countries within the context of international law. The European Convention on

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561 Martens, (2003), p.20
562 This states that the Red Cross is an organism sui generis in international law. Charnovitz (1997), p.188
563 ibid
564 “Under present public international law only states are able to occupy and administer the inhabitable parts of the earth’s surface…” ‘NGOs and the States, http://www.uia.org/archive/legal-status-3-5 accessed on 26/12/14
565 ibid
566 Charnovitz (1997), p.188
the Recognition of the Legal Personality of International Non-Governmental Organizations is the only concrete international agreement on NGOs. It was adopted in 1986 and entered into force in 1990. The convention enables the general recognition of the legal personality of an NGO, allowing its recognition by any state that is party to the convention.\textsuperscript{568}

However, the convention has widely been considered a disappointment. The Treaty has only been ratified by 11 countries, and as with the Belgian law, it also recognizes the national law of the states in which respective NGOs have their headquarters. In this respect, the convention does not provide NGOs with an international personality. The essential difference, however, is that “like the snail that carries its shell, every International Non-Governmental Organization (INGO) carries with it its identity and its status\textsuperscript{569} without having to request new recognition from the various countries where it carries on its activities”.\textsuperscript{570} Nevertheless, it does not deal with all problems: it sets “the geographical limits of the Council of Europe and, within them, to the countries who have ratified”.\textsuperscript{571} It simply “takes up the conditions and the constraints of Belgian national law on NGOs”.\textsuperscript{572} The Convention could thus even be seen as a backward step on the international personality of NGOs.\textsuperscript{573}

\textsuperscript{568} European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, Article 2(1), 24 April 1986

\textsuperscript{569} Article 2(1) of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, which states that “the legal personality and capacity, as acquired by an NGO in the Party in which it has its statutory office, shall be recognised as of right in the other Parties”.


\textsuperscript{571} ibid

\textsuperscript{572} ibid

\textsuperscript{573} Martens, (2003), p.23

\textsuperscript{574} ibid
In addition, states could also make international commitments concerning NGOs.\textsuperscript{575} For example, the United States has obligation regarding headquarters of the United Nations. The US cannot impede the transit of NGOs’ representatives, as the agreement between it and the UN states that

\textit{the federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of representatives of nongovernmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter.}\textsuperscript{576}

Another possible scenario is that states sometimes intercede with other states on behalf of NGOs.\textsuperscript{577} A state could, for example, establish diplomatic attempts to another government on behalf of an NGO.

Lastly, because INGOs have not been granted an international legal personality, they have in practice been faced with eight choices when they have been established.\textsuperscript{578} These are: informal (i.e. unwritten) rules, unregistered contracts, registration in accordance with national laws, operation via national members, separation of legal registrations and operational bases, negotiated ad hoc agreements with governments, establishment as trusts or foundations and legal status within canon law.\textsuperscript{579} These different types of establishment can result from the

\textsuperscript{575} Charnovitz (1997), p.188
\textsuperscript{576} Section 11 of the Agreement between the United Nations and the United States Regarding the Headquarters of the United Nations, Signed June 26, 1947, and Approved by the General Assembly October 31, 1947(1)
\textsuperscript{577} Byers (1996) p.189
\textsuperscript{578} See more at: ‘Legal Status of International NGOs: Overview and Options’ (1996)
http://www.laetusinpraesens.org/docs/statapp1.php accessed on 29/12/14
\textsuperscript{579} See more at http://www.laetusinpraesens.org/docs/statapp1.php accessed on 29/12/2014
absence of a legal personality. INGOs have thus striven to overcome this gap by establishing different solutions according to their circumstances.

Nonetheless, even though NGOs are regarded as international “outlaws” (referring to their lack of recognition in international law), it is to some extend ironic that a remarkable number of INGOs have an “international tribunal and a legislative function”.\textsuperscript{580} Many also have regulatory function in sports such as football, rugby and the Olympic Games themselves, or other games of significance to national reputations such as chess.\textsuperscript{581} Some members might be government-sponsored national representatives, yet clashes of interests are settled in the appropriate organs of the INGO concerned. Likewise, the Court of Arbitration of the International Chamber of Commerce is used as a tool to settle international commercial disputes.\textsuperscript{582} It can therefore be concluded that NGOs’ de facto status has significantly exceeded the limits of their de jure status. As mentioned earlier, the absence of rights is not an insuperable obstacle to NGOs’ participation in and influence on the decision-making processes of international organisations.

In conclusion, firstly, there is no doubt that NGOs are very important actors in the international legal order in terms of their activities and their sources. Their significant capabilities in this respect can be seen as evidence of their significance and their entitlement to formal access to the Security Council: they are truly potent actors on the international scene. NGOs are still in what Charnovitz calls their “empowerment” period that began in 1992. The present period is thus one in which NGOs are able to take responsibility in the

\textsuperscript{580} ibid
\textsuperscript{581} ibid
\textsuperscript{582} ibid
international legal order for affecting any international decision-making body, including the Security Council itself.

Secondly, NGOs are able to obtain legal personalities according to circumstances. The level of relationships, whether formal or informal, is determined by the demands of states and the performance of NGOs. Since the latter can play a significant role in granting formal access, it cannot be asserted with any confidence that the Council’s member states would definitely reject formal participation of NGOs in the Council. Likewise, as Higgins maintains, social entities should not erect intellectual prisons that prevent circumstances being altered.583

Thirdly, it is difficult for NGOs to operate properly without legal personality. This also shows how important it is to formalize relations between the Security Council and NGOs. Lastly, constructing an appropriate definition of NGOs for the purpose of this study would at least apprise the reader that terrorist groups are excluded.

CHAPTER FIVE

Background of Interactions between the Security Council and NGOs

Most major, effective international organisations have been in dialogue with NGOs, signing memoranda of agreement or entering into official partnerships relating to the implementation of development projects, relief works, environmental protection or the maintenance of peace. It might also be a common practice for international organisations to provide counselling or observer status in order to allow them to participate in decision-making processes without the right to vote. The UN has also developed interactions with NGOs.

584 Lindblom (2005), p.366
585 One of NGOs’ cornerstone activities is the Universal Declaration of Human Rights. In this regard, “some authors even wonder whether the Universal Declaration of Human Rights (1948) would have been adopted if it was not for the pressure and support of NGOs.” Nicolas Hachez, ‘The Relations Between the United Nations and Civil Society: Past, Present, and Future’ (2008) 5 International Organizations Law Review, pp.49-84, p.53.
586 Lindblom (2005)
5.1 The Size of the Relationships with the Security Council

Although Article 71 is the only official provision to authorize or encourage relationships between NGOs and the Security Council,\textsuperscript{587} the Security Council has joined the other principle UN organs in establishing and maintaining such relationships.\textsuperscript{588} The Council might have interacted with non-state actors since 1982 via an ad hoc procedure,\textsuperscript{589} but in contrast to other UN organs has mostly refused NGO’s demands for access. This might stem from the Council’s state-centred focus. NGOs have consequently been prevented from speaking at Council meetings, and from making “consultations to official delegations, government officials of Council members and UN officials” by long-standing practice.\textsuperscript{590} Nevertheless, NGOs have noted that the Security Council has expanded the scope of its functions to deal increasingly with cases beyond traditional inter-state security threats.\textsuperscript{591} As mentioned, the protection of human rights and humanitarian assistance can be seen as essential issues for NGOs. Therefore, as Paul states, “as the Council took unprecedented action in the area of sanctions, peacekeeping, election monitoring, policing and post-conflict peace building, NGOs with international policy mandates decided that they must follow the Council’s work more closely”.\textsuperscript{592}

\textsuperscript{587} Paul (2004) p.373
\textsuperscript{588} Sorensen, p.355
\textsuperscript{589} Therien & Dumontier (n159), p.363
\textsuperscript{590} Alan Boyle & Christine Chinkin, \textit{The Making of International Law} (OUP 2007) p.78
\textsuperscript{592} Paul (2004)
Some conditions have nevertheless paved the way for the establishment of relations between
the Security Council and NGOs. Firstly, the Council serves as an implementing body that
attempts to execute specific political and social goals. The new challenges posed by the
changes in international relations have compelled the Council to exercise this function
through NGOs. Hume has observed that these changes have influenced the Security
Council’s functioning. Council members, particularly the elected members (E-10), have
therefore striven to develop relationships with NGOs so as to receive consultative advice
when dealing with new difficulties. The Security Council’s decisions have also affected
many aspects of life, in which regard it has embarked upon an active and unprecedented
program of activities in the fields of “sanctions, peacekeeping, election-monitoring, policing,
and post-conflict peace-building” in the 1990s. NGOs thus pay close attention to Council’s
work.

The Council aims to take an active role in preventing internal conflicts and global disputes,
an aim that could be seen as a basis for relationships between it and NGOs. Such
relationships with civil communities increased significantly in the Cold War era in which
these types of issues existed. In this period, 90 per cent of those who suffered from internal
conflicts were civilians, so the Council took action to maintain peace and security. The

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596 ibid
Council has also tackled other global threats while dealing with armed conflict. When the members of the Security Council form opinions or make decisions about national disputes or global challenges, they base their intelligence on information provided by NGOs.\textsuperscript{598}

The Security Council has found a way of developing relations with NGOs to deal with such issues. Even though “there has been an \textit{ad hoc} procedure since 1982 that permits experts to be convened to provide information to member-states”\textsuperscript{599}, a remarkable negotiation process referred to as “the Arria Formula”\textsuperscript{600} was initiated in the second half of the 1990s.\textsuperscript{601} An NGO Working Group on the Security Council was established in 1997 after two years of attempts.\textsuperscript{602} It was expected at first that the veto powers would block the process, but it did not function as intended.\textsuperscript{603} The Council first met with an NGO in accordance with this formula in 1997.\textsuperscript{604} NGOs subsequently began to provide information pursuant to Article 39\textsuperscript{605} about their fields of expertise such as the use of children in armed conflict.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{598} ibid
\item \textsuperscript{599} Therien & Belanger-Dumontier, (n159) p.363
\item \textsuperscript{600} This name derives from Venezuela’s UN Ambassador, Diego Arria, who originated this type of meeting.
\item \textsuperscript{601} James Paul, ‘The Arria Formula’ (2003) http://www.globalpolicy.org/component/content/article/185/40088.html accessed 04/03/2013
\item \textsuperscript{602} NGO Working Group on the Security Council http://www.globalpolicy.org/ngo-working-group-on-the-security-council.html
\item \textsuperscript{604} In accordance with Arria Formula that was devised in 1993, a member of the Security Council could unofficially invite non-member states to a room other than the Council’s meeting room. The person who attends these meetings should be an executive manager and not have any relations with governments. ‘UN-Civil Society Relations Panel Established’ (2003) http://www.globalpolicy.org/component/content/article/177/31845.html, ‘Arria Formula and Other UN Proceedings’ http://www.globalpolicy.org/security-council/ngos-and-the-council/arria-formula-and-other-un-proceedings.html accessed on 05/03/2013
\item \textsuperscript{605} UN Charter
\end{itemize}
\end{footnotesize}
Amnesty International, Human Rights Watch and OXFAM are also active lobbyists. A grouping of approximately 100 major NGOs with different fields of interest meets regularly with delegates. There were about 50 meetings with the UN officials, mostly ambassadors, in 2002. The NGO Global Policy Forum has held about 40 meetings annually that provide a forum in which NGOs convene with UN ambassadors and senior officials. These weekly meetings, unrecorded by ambassadors to the Security Council, have involved high levels of NGO participation.

No member of the United Nations Secretariat attends these meetings, which are not minuted; NGOs can only explain their outcomes. The NGOs aiming to join the group must demonstrate their seriousness of purpose and their interest in the Council. The Working Group arranges meeting once a year with full delegations. Some 20 NGOs participate in the other meetings held during the year.

The Security Council has also used the services of NGOs that operate in related fields in order to obtain information for use in internal conflict meetings to resolve domestic conflicts in individual countries. The Council needs accurate and timely information, and hence prizes

607 For a complete list of NGOs that are members of the Working Group, see ‘NGO Working Group on the Security Council, List of Associated Organizations’ http://www.globalpolicy.org/component/content/article/185-general/40398.html accessed on 05/06/2013
608 The increasing level of cooperation is clear from the fact that there were 28 meetings in 1998 and 36 in 2002. Sorensen (n444).
610 Sorensen (n444)
611 Paul, ‘The Arria Formula’
such input from NGOs. The Department of Public Information collects information from NGOs and prepares reports for the Council. NGOs are seen as partners, service contractors and policy developers, and play a significant role in facilitating dialogue with the public.\textsuperscript{612}

As mentioned earlier, a significant increase in Security Council activities and the extent of its authority following the Cold War is evident. The Council has begun to use “supranational coercion” to deal with issues occurring within borders, such as civil conflicts, humanitarian crises and terrorism.\textsuperscript{613} It is also clear that this development has arisen from a transformation in security threats and from alterations in international norms and in the opportunities presented by the global political system after the Cold War. It is therefore plausible to observe that the members of the Security Council have progressively increased the level of their relationships with NGOs as “partners and service contractors, in emergency and post-emergency” circumstances under the authority of the Council since the Cold War ended.\textsuperscript{614} The Council’s intention has always been to increase its capacity to tackle international challenges in the light of new conditions.

http://www.globalpolicy.org/component/content/article/185-general/40448-ngo-working-group-on-the-security-council.html accessed on 05/03/2013

\textsuperscript{613} Binder (2008) p.6

5.1.1 The extent to which the Security Council grants access to NGOs

There are two ways of establishing interactions with NGOs: on a legal basis or ad hoc, as circumstances arise. The relations that have developed between the Security Council and NGOs can be said to derive from the latter. By way of illustration, the Council’s meetings and consultations increased fourfold just between 1988 and 1993. As the Council has assumed unprecedented responsibilities in the field of sanctions, peacekeeping, election monitoring, policing, and post-conflict building, so have NGOs decided to focus increasingly on the Council’s activities. A change in the scope of the Security Council’s activities has thus drawn NGOs to seek a way to establish relations with it.

There are reasons other than this expanded scope of activity for enhancing interactions between the Council and NGOs. Firstly, the Council’s delegates, particularly the Elected States (E-10), have found it difficult to fulfil these increased responsibilities. This inability has impelled them to seek information, expertise and policy ideas, purposes for which NGOs can be seen as ideal.

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615 According to Article 71 of the UN Charter, ECOSOC could arrange official and formal consultations with NGOs.

616 “During this period, the number of Council meetings increased from 55 to 171 and consultations from 62 to 253. The number of resolutions increased from 20 to 93 and presidential statements from 8 to 88”


618 Antonio Donini ‘The Bureaucracy and the Free Spirits: Stagnation and Innovation in the Relationship Between the UN and NGOs’ in Thomas G. Weiss & Leon Gordenker ed. NGOs, The UN and Global Governance (Lynne Rienner Publisher 1996) p.83-84, ibid
What is more, NGOs play a significant role in moulding public opinion regarding international political behaviours. Their public advocacy and media campaigns have always shaped public understanding of crises. This has furthermore enabled NGOs to use public opinion to leverage governments to take action. The Council has therefore begun to regard the support of such actors as essential to success in its initiatives.\textsuperscript{619}

The Council’s activities have largely moved from international\textsuperscript{620} to internal conflicts, dealing more with civil wars, the collapse of government authority and internal strife.\textsuperscript{621} This work renders NGOs’ expertise and actions essential. For example, when the Council strives to establish peace that is dependent on such factors as economic and social development, respect for human rights and disarmament, these are all fields of NGO expertise.\textsuperscript{622} That is to say, it has not only been NGOs who have aspired to establish relations with the Council. The Council has also tried to do the same after it has become aware of the demands resulting from its actions.

Apart from the expansion of the Council’s functions, criticism of its democratic deficit has also prompted the establishment of relations between the two. These criticisms are stimulated by the Council’s anti-democratic structure and its ineffectiveness, both of which result from its permanent members and their veto power. In fact, the Security Council has become more secretive and unaccountable than ever as its meetings have taken place behind closed doors.

\textsuperscript{619} ibid

\textsuperscript{620} Most of these cases were between states. ibid

\textsuperscript{621} Donini (1996)

\textsuperscript{622} Chadwick Alger, ‘The Emerging Roles of NGOs in the UN System: From Article 71 to a People’s Millennium Assembly’ (2002) 8 Global Governance p.117, ibid
“in private consultations of the whole” after 1990. Critics and some prominent states have argued that there is a lack of legitimacy in the Council’s work because its practices are not sufficiently transparent or publicly accountable. At the same time, some considered the increased relationships between the Council and NGOs as a significant stage for more legitimacy and effectiveness in the international political and legal order. It was believed that NGOs could leverage the Security Council and balance it to increase its legitimacy and make it more fit for a legal environment. Eventually, this constitutes another circumstance that paves the way for participation of NGOs in the Council.

In short, the increase in the Council’s activities has made the incapacity of the state-based system more obvious. The Council thus feels it necessary to cooperate with NGOs in order to increase its capabilities. Besides, the need to balance the illegitimate behaviour of the permanent members has led the elected members to cooperate with NGOs. In addition to these internal reasons, the Council’s inefficiency combined with the relevance of its activities has led NGOs to aspire to interact with it. There are thus significant reasons driving the development of interactions between the Security Council and NGOs. These reasons could also be instrumental in establishing formal relations between the two.

Nevertheless, even though these circumstances have drawn attention to the importance of NGOs’ involvement, the Council has mostly forestalled the granting of formal access to

623 ibid
624 ibid
625 ibid
626 See: ‘Reforming the Security Council’ was a conference and organised on May 1994. Some of these views can be found in the speeches. See at: http://www.globalpolicy.org/security-council/security-council-reform/32789-reforming-the-security-council.html accessed on 15 May 2013, ibid
NGOs. This reaction may at first have come from the permanent Council members, who have strongly resisted NGOs scrutiny of their “special terrain”. Some Council members have also been unfavourable to the work of NGOs because of the negative feedback they have received from human rights organisations and other NGOs. These factors may therefore have resulted in the restriction of interactions between the two to informal consultations. Especially recently, the results of such meetings have also lost their relevance, perhaps because the Council aims to apply to NGOs only when only circumstances render it necessary. The reactions of the Security Council’s members have thus made it impossible to date to take the process beyond informal relations.

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627 ibid

628 For instance, there were tensions between governments and human rights NGOs in the Vienna World Conference in 1993. Some states had apprehensions regarding the influence of NGOs in terms of reporting “damaging information” to the world’s media. See Thomas G. Weiss & others, *The United Nations and Changing World Politics* (5th ed., Westview Press 2007) p.227

629 While NGOs try to attend such meetings with high level personnel, states do not pay the same amount of heed as do NGOs.
5.2 Precursors of Access

Various types of interactions have developed between NGOs and the Security Council. In this regard, Paul states that four organisations have offered different models for interactions with the Council. 630

Firstly, the Quaker United Nations Office (QUNO) represents the worldwide religious organisation of the Society of Friends. This organization might have had the longest relations with the Security Council as an NGO. 631 The QUNO has arranged informal meetings with delegates and experts to develop peaceful means for conflict and dispute resolution in an informal atmosphere at nearby Quaker House. 632 The highly essential work in developing peaceful means that this NGO does for the Council could provide an alternative to military operations. This constitutes proof that formal participation by NGOs could help minimize the use of military intervention, as this is one of the goals of the study.

Another major actor is the ICRC, which aims to promote international humanitarian law and to encourage its implementation in internal law; this venerable organization also provides protection and assistance for the victims of war. 633 The ICRC launched an office in New

630 Paul (2004), p.376
631 Its parent body, the Friends World Committee for Consultation (FWCC), has had consultative status on the Economic and Social Council since 1948. See: Quaker United Nations Office http://www.quno.org/aboutUs/howWeWork.htm accessed on 20/05/13
632 It has five areas of work which are Peacebuilding, Disarmament & Peace, Human Rights & Refugees, Global Economic Issues and Prevention of Violent Conflict. http://www.quno.org/areas-of-work.htm accessed 20/05/13
633 See: International Committee of Red Cross http://www.icrc.org/eng/who-we-are/mandate/index.jsp accessed on 21/05/13
York at the beginning of the 1980s. Importantly, meetings with Security Council delegates are regularly held. This access has been reinforced after it obtained UN observer status in October 1990.634

The ICRC has also met regularly with the Presidents of the Security Council, whose members have tended to be favourable towards the ICRC because of its significant reputation, neutrality, quiet diplomacy and valid sources of information regarding crises.635 However, as Paul states, “though not an NGO, the ICRC was also not a state, so it bridged the two worlds and helped to erode ‘states only’ thinking of Council members”.636 In this regard, the ICRC may be considered as neither an NGO nor a state.

Yet the ICRC has impressed Council delegates thanks to its noteworthy reputation.637 It also has access to the Council through regular meetings that can be quite essential for the granting of access as a major actor from outside the Council. More importantly, the ICRC is not a state and not a member of the Council, yet it is still able to access and influence the Council’s policies. It is also the only NGO that enjoy partial legal personality in international law.638 This is a hopeful sign of the possibly of breaking the veto power’s obstacle to granting NGOs formal access to the Security Council.

634 ‘Observer status for the International Committee of the Red Cross’ UN General Assembly Resolution A/RES/45/6 http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/45/6&Lang=E&Area=RESOLUTION accessed on 21/05/13

635 The ICRC delegates are sent to areas of crisis, and they could gather and use information from the local Red Cross and Red Crescent communities. The ICRC delegates could easily gain access to prisoners, prisoners of war, concentration camps, and hospitals, as well as access to high-level government officials. David P. Forsythe, *Humanitarian Politics: The International Committee of the Red Cross* (Johns Hopkins University Press 1977) and Paul (2004) p. 376


637 ibid

638 Kaczorowska (2010), p.170
Other models have been proposed by the Stanley Foundation and the International Peace Institute (IPI), both of whom have been involved in policy research, and both of whom have arranged conferences on the facts concerning major policies. The Stanley Foundation has complementary relations with the UN: for example, several times a year it has arranged effective private conferences on peace and security in which Security Council ambassadors and high-level UN delegates have participated. The IPI’s has gained a solid reputation following its significant experience on peacekeeping activities, and has initiated a number of roundtable meetings on various issues of concern to the Security Council, having assembled high-ranking diplomats, executives, lawyers, academics, and others since 1990.

It is evident that these NGOs have been active in the fields of peace and security. The QUNO tries to develop peaceful means for the Security Council through informal gatherings of delegates and experts at nearby Quaker House; the ICRC has been active in the implementation of humanitarian laws, and holds regular meetings with the Council; the Stanley Foundation tries to put peace and security issues onto the Council’s agenda in conferences; and the IPI has been holding roundtable meetings to influence the Council. In short, informal meetings, private conferences, regular meetings and roundtable meetings are used as a tool to access and influence the Council. These interactions are in fact proof that NGOs can manage to access the Council, on a variety of levels. This is not easy for them, but nor is it impossible.

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640 See the Stanley Foundation http://www.stanleyfoundation.org/programs.cfm?id=3> and the International Peace Institute http://www.ipinst.org/about.html accessed on 23/05/2013
641 http://www.stanleyfoundation.org/programs.cfm?id=3, ibid
Consequently, the relationships that have been established between the Security Council and these actors can be seen as a significant – and unprecedented – development. These relations have also influenced the development of interactions between other NGOs and the Council, paving their way to access. Some NGOs such as Amnesty International, OXFAM International and MSF initiated relations with the Security Council at the beginning of the 1990s. They faced the resistance of Council members at first, but still provided a significant number of information networks, a field presence and penetration in conflict regions, and broad public support. These interactions have potentially planted the seeds of formal relations between the Council and NGOs. At least they have forced reconsideration of any scepticism regarding the possibly of such a development.

\[643\] ibid


\[645\] ibid
5.3 Types of Access

As noted above, the limited interactions between the Security Council and NGOs can be described as “informal consultations”. They fall into three categories: the Regular Meeting Process, the Arria Formula and Somavia Meetings, and informal channels (referred to as Bilateral Meetings). In addition to these relations, there are indirect types of interaction: lobbying, international campaigning and implementing agencies.\textsuperscript{646}

5.3.1 The Regular Meeting Process

The meetings of the Working Group on the Security Council have taken place regularly outside the Council’s chambers. They consist of informal briefings of individual members of the Council and NGOs. The initial aim of the Funci meeting was to involve all the Security Council members as soon as possible. This step had support from Ambassador Antonio V. M. Monteiro\textsuperscript{647} of Portugal.\textsuperscript{648} The five permanent members of the Council deprecated formal contact with NGOs through these informal consultations, yet they agreed to join this informal process.

\textsuperscript{647} He served as president of the Council in April 1997 and June 1998.
\textsuperscript{648} It might be significant to point that the works aim to increase interactions between the Council and NGOs have had considerable support from Council delegates, particularly from presidents of the Council.
The permanent members also asked to present their national perspectives during meetings.\textsuperscript{649} The more important point is that they were expected to obtain support from NGOs for the admissibility and applicability of their own national policies and initiatives. This might indicate that NGOs have increased their reputations and earned sufficient respect of Council members to gain access to the Council. Furthermore, Council delegates have considered these meetings largely as a change of pace from the Council’s endless diplomatic discussions.\textsuperscript{650} More importantly, it proves that the permanent five does not pose an insuperable obstacle to granting access to NGOs.

On the other hand, the elected Council members are more natural partners for NGOs. This might be because they do not hold positions of major power or have veto authority, so they strive to achieve most of their aims by working with NGOs.\textsuperscript{651} Meetings of the Working Group have eventually occurred almost four times a month. Paul notes that they provide a central and ongoing aspect of the interaction between the main NGOs and the Security Council. NGOs have thereby engaged in a range of other initiatives that extend this process.\textsuperscript{652}

\textsuperscript{650} ibid
\textsuperscript{651} Paul (2004)
\textsuperscript{652} There has been a remarkable expansion in the range of the meetings. For example, the number of meetings with ambassadors increased to 40 by 2002 from just 17 in 1997. See: http://www.globalpolicy.org/ngo-working-group-on-the-security-council.html accessed 31/05/2015
5.3.2 The Arria Formula and Somavia Meetings

The Arria formula can be regarded as the most essential step in establishing more interactions between the Security Council and NGOs. There are several reasons for this important status. Firstly, after its momentous inception it has been used as the basis for relations between civil society and the Council. Secondly, it is an informal arrangement which provides the Security Council with a broad flexibility to be briefed on issues of international peace and security. The Arria Formula also allows any Council member to invite other members to informal meetings held outside the Council chambers and chaired by the inviting state. The meeting’s purpose is for one or more people who are considered as experts on the issue of concern to the Council, and on which its members consider themselves in need of information.

The permanent members of the Security Council have their own sources of information regarding significant global issues, while its elected members remain insufficiently informed. This encouraged the Council President, Venezuelan ambassador Diego Arria, to contact a Croat priest who had just been in the Balkan area of conflict. It was not possible to arrange a formal Council meeting, so Arria just invited his fellow ambassadors to meet the priest in the delegates’ lounge. Some 11 ambassadors attended the meeting, and they were surprised about what they heard from the priest about the conflict. When this meeting raised awareness

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653 Weschler also states that, after the first meeting under the Arria Formula, that format was used to brief the Council. NGOs have sometimes informed the Council through this formula

654 http://www.globalpolicy.org/component/content/article/185/40088.html accessed on 11/06/2013

655 This meeting provided Arria with first-hand accounts because the priest was an eyewitness
of the importance of first-hand information, its successors began to be called “Arria Formula” briefings.656

There have been further instances of meetings held for the same purpose at that time. Arria understood that the Secretariat was not informing them properly about the case of Somalia. He therefore invited the head of Africa Watch to inform him in the office of the Presidency. Some Security Council members also attempted independently to obtain human rights information as the Rwandan genocide began. Czech ambassador Karel Kovanda sought an expert on Rwanda from Human Rights Watch because he suspected that the Council was not receiving the necessary information about the conflict. He arranged an informal meeting with the NGO expert in his residence in which all the non-permanent members of the Security Council participated in April 1994.657 Even though meetings with NGOs are an essential means of obtaining concrete information, Arria pointed out that it is not possible to meet in the Security Council’s rooms. This obstacle was removed by meetings being held informally outside the Council chambers.

After these earliest contacts with the Security Council, representatives of NGOs aspired to meet with the whole Council rather than speaking individually with Council members. Some elected members were of the same mind. One of them, Chilean Ambassador Juan Somavia, assumed that humanitarian NGOs could have a significant influence on the Council’s agenda. To that end he offered to provide a process by which leading NGOs could make presentations

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657 ibid
in the “Arria Formula Briefing”. The Council was opposed to the expansion of any involvement by NGOs with its permanent members, but they approved of meetings limited to heads of state and other top officials.

Somavia thus slightly modified the “Arria Formula” by adding delegates who were not from the Council. Eventually, the “Somavia Meeting” took place on 12 February 1997 to discuss the conflicts in the Great Lakes Region of Africa. Representatives from the ICRC and three humanitarian NGOs (Oxfam, MSF and CARE) attended. During and after that meeting, NGOs heavily criticized the Council’s failure to take action or to find a solution for the crisis. The Council’s permanent members were, needless to say, not pleased with this statement, so they blocked any further Somavia meetings. Consequently, such meetings might best be seen as a source of inspiration for potential future ones, even though it could not have been repeated at that juncture.

This example demonstrates that heavy criticism provokes negative responses, and that it should not be aimed directly at the Permanent Five or indeed at any Council power; instead, it should be general and constructive. It thereby avoids becoming a target and risking the NGOs’ position. This does not necessarily entail deceit or hypocrisy, but it does demand the

658 http://www.globalpolicy.org/component/content/article/185/40099.html accessed on 11/06/2013
660 The US and France in particular objected to the action. The US denied to the Council that its intelligence satellite photos showed any sign of a refugee emergency, but NGOs reported otherwise in the briefing. ibid, Paul (2004) and Binder (2008)
661 See also Paulo, who states that “…Even if the "Somavia Formula” is dead, the "Somavia Initiative” for NGO-Council dialogue is very much alive.” ibid
exercise of care when dealing with issues, and of patience when anticipating developments. This might take some time, so diplomatic language is necessary. The Security Council’s mind cannot be changed in a single meeting. NGOs should be careful to use these meetings wisely.

The collapse of the Somavia meeting saw some efforts to return to the Arria formula. Firstly, Antonio V. M. Monteiro of Portugal, President of the Security Council in April 1997, indicated that human rights voices should also be considered. This step was supported by Chile and Sweden among others. Council members eventually surmounted the obstacle posed by the Permanent Five and approved a meeting with Pierre Sane, the Secretary General of Amnesty International. Monterio made more attempts, striving to take the Arria model further with NGOs, but the permanent members again blocked the process until 2000. The Arria Formula nevertheless re-emerged after interactions with NGOs began to be considered as normal, and indeed advantageous, by Council delegates in early 2000.  

These developments prove that the permanent members do not pose an insuperable obstacle to granting NGOs access to the Council. Their intransigence may make progress difficult for a while, but even though they explicitly oppose access for NGOs, their resistance cannot last indefinitely.

Finally, the Arria meetings can boast a success: the protection of civilians during a time of war. In that respect, Ambassador Peter van Walsum of the Netherlands arranged an Arria

\[662\] Paul (2004)

\[663\] He was Council President in November 2000.
briefing, “Protection of Civilians in Armed Conflict” through the participation of CARE, Oxfam and MSF. Canadian ambassador Peter Fowler, Council President, aided developments by engineering the meeting and obtaining support from the permanent Council members. Resolution 1296 was consequently adopted after debate in the Council. The outcome of this success showed that the policy interests of like-minded governments are essential to progress NGOs, who would otherwise struggle to progress relation without Council support.

The Arria Briefings have prompted positive and negative responses from both states and NGOs. Firstly, while no further significant opposition has been expressed to NGOs briefings in principle, several ones proposed by NGOs, such as the cases of Kashmir and the Sudan, were aborted by political opposition. Secondly, NGOs often regard these meetings as highly important. For example, Amnesty International attaches particular significance to its work with the Security Council. They thus expend much effort in time and expense to provide the best representation to the Security Council, including presentations by their top level leaders, chief policy experts and the grassroots voices from conflict regions. The same cannot be said for states. In fact, the briefings’ durations have become shorter, and are attended by few ambassadors and top diplomats. It can be said the Arria process has lost some of its appeal, which has discouraged NGOs and lowered their expectations.

665 ibid
667 ibid
5.3.3 Informal Channels (Bilateral Meetings)

Bilateral meetings take place between individual NGOs and single delegates from the Security Council. The bilateral meetings have significantly developed informal contacts with Security Council representatives, in contrast to the adverse results of the Arria meetings. These can therefore be seen as the foremost aspect of the interactions between NGOs and the Security Council. As mentioned earlier, the Council’s delegates need information from alternative channels as the Council has expanded the scope of its activities. Its non-permanent members in particular have demanded adequate information from outside the Council, as they were not kept sufficiently informed by the Permanent Five, with their advantageous sources of necessary information. They could not rely on the permanent members and they considered media sources to be mostly superficial and unreliable. They found NGOs, on the other hand, very useful and reliable as they came to realize the timeliness and rich detail of their information.

The most important instance of these meetings is the Rwandan genocide in April 1994. The Council’s delegates were taken aback by the secrecy of the permanent members and the Secretariat’s silence. The callousness of the permanent members could be seen from their speeches. For instance, French President Francois Mitterrand stated that “in such countries, genocide is not too important”. Such responses encouraged the elected members in

669 ibid
671 Chris McGreal ‘France’s Shame?’ The Guardian (London, 11 January 2007) parag.18
672 ibid
particular to find different means of obtaining information, calling some major NGOs to brief them on the Rwandan situation. For example, New Zealand ambassador Colin Keating called MSF and the ICRC to inform him.

The bilateral meetings reflect the impediments posed by the permanent members. It shows that elected Council members in particular are constantly investigating alternative ways to interact with civil society. Their insistence on establishing relations with NGOs reflects their view of NGOs as important actors that can help them overcome the Council’s inefficiency. On the other hand, the resistance of the permanent five shows that they regard NGOs as a threat to their authority. One way or another, the reflections of the Council’s members, when taken together, prove the significance of NGOs.

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673 Council President in April 1994.
5.3.4 Other Means of Interaction

5.3.4.1 Lobbying

The Security Council has been the target of lobbying activities since its establishment. The Quakers and the ICRC, for example, have located their offices near the UN’s headquarters and have initiated relationships with the Council from the outset in the field of conflict resolution. Other organisations have also realised that this is the most influential way to establish relationships with the Council. Paul states that “as NGOs gained experience in Council advocacy, many concluded that the most effective strategy combined diplomacy in New York with world-wide public advocacy campaigns”. Some other organisations such as Amnesty International, Oxfam, Save the Children, Global Witness and Human Rights Watch have used this same method of developing relations with the Council about 45 years after the UN’s establishment. NGOs also establish parallel ad hoc coalitions with other NGOs or states with similar concerns.

5.3.4.2 International Campaigns

International campaigns can be considered as one of the most practicable ways of attracting popular attention and support for particular causes. Civil society can leverage states and international organisations to encourage them to implement various policies. Social actors

676 ibid
“name and shame” to exert pressure. The cases of blood diamonds and UN resolutions land mines, for example, demonstrate how successful NGOs are in exerting influence on the Council’s policymaking. London-based Global Witness produced “A Rough Trade”, a report on diamonds in Angola which provided evidence showing how rebel group UNITA sold diamonds to giant company DeBeers and other Western diamond interest groups. After this report appeared, Global Witness representatives were invited to meet with the Angola Sanctions Committee of the Security Council. As a result of this report, the Committee used innovative methods to tighten its sanctions. UNITA finally collapsed some three years later and the terrible civil war in Angola ended.

5.3.4.3 Implementing Agencies

Another way for NGOs to leverage the Security Council is through implementing agencies. These are also likely to be an essential means for the Security Council to use NGOs to enact its policies, particularly in the field of humanitarian assistance. The significant expansion of the Council’s activities in areas such as peacekeeping operations and post-conflict peace-building has seen it increase its interactions with humanitarian NGOs. While these share significant resources, they are also quite successful in providing technical expertise and

678 “This document was written to stimulate debate and action on a well-known and much reported issue…” See more at http://www.globalwitness.org/sites/default/files/pdfs/A_Rough_Trade.pdf accessed on 19/06/13
679 União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola), founded in 1966. After losing its army power, it now acts as a political party in Angola
680 ibid
681 Margaret E. Keck & Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (Cornell Uni. Press 1998) p.79
information.\textsuperscript{682} In addition to providing humanitarian assistance, NGOs were asked to support the Council in the field of collective enforcement.\textsuperscript{683}

On two occasions the Security Council has explicitly called on NGOs to provide information and resources.\textsuperscript{684} Its Resolution 771 of 13th August 1992 concerning the former Yugoslavia “[c]alls upon States and, as appropriate, international humanitarian organizations to collate substantiated information in their possession or submitted to them relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia and to make this information available to the Council”.\textsuperscript{685} In this resolution, the statements “as appropriate, international humanitarian organizations to collate substantiated information” and “to make this information available to the Council” explicitly cover NGOs.\textsuperscript{686} No previous resolution regarding the former Yugoslavia calls for NGOs.\textsuperscript{687}

The second example is that of Sierra Leone. In its resolution of 2003, the Council called on states, international organizations and non-governmental organisations to continue supporting the National Recovery Strategy of the Government of Sierra Leone.\textsuperscript{688} The Council made

\textsuperscript{682} Sorensen (n444), p.355
\textsuperscript{684} ibid
\textsuperscript{686} ibid
\textsuperscript{687} ibid
overt reference to the concept of “non-governmental organisations” rather than implying their existence.\textsuperscript{689} This can be seen as demonstrating that it is possible for the Security Council to alter its approach in 10 years. The fact that the Council has chosen make such an open reference to the concept of NGOs could be a token of a significant increase in NGOs influence and in their legitimacy in international law.

These two examples make it clear the UN’s antipathetic attitude to NGOs has undergone significant changes. At first, the Security Council became aware that relying solely on states was not adequate. Circumstances impelled the Council, including its permanent members, to establish relations with NGOs. Their awareness of their incapacity drove them to call for support and help from NGOs. Even though the Council, and in particular its permanent members, strives to keep its relations with the NGOs informal, the inadequacy of the state-based system may force the Council to consider formal relationships with NGOs. Secondly, the significant increase of NGOs’ reputations in the international legal order encourages the Council to refer to them explicitly. It seems that the formal involvement of NGOs on the Council is not too distant.

\textsuperscript{689} ibid
5.4 Concluding Remarks

It can be concluded that it is important for NGOs to establish relations with an institution that had hitherto closed its doors to them. Several methods have been used to grant access to the Security Council, but such relations as have developed have been confined to informal meetings and have depended on the agreement of Council members, particularly its permanent members. While NGOs have been eager to develop such relationships, the Council has mostly preferred to use a demand-based approach, restricting it to informal consultations. Indeed, relations have sometimes become unilateral rather than remaining bilateral, when the Council’s reluctant reactions are taken into consideration. This accords with Willett’s prediction that “the last bastions to resist formal relationships with NGOs will be the International Monetary Fund and the Security Council”.

Nevertheless, the Council’s resistance could not withstand the challenging presented by current circumstances, since NGOs have found a place in Council resolutions as supporting actors. The practices of Council members, including its permanent ones, demonstrate that they are aware of their inability to deal with issues of international peace and security solely from a state-based system, but it is still the elected members who aim to develop relations further with NGOs. They persist in attempting to find alternative ways of interacting with NGOs, who have likewise taken an avid interest in obtaining access to the Council. Taken together, the indispensability of the assistance provided by NGOs paves the way for the establishment of concrete formal relations between NGOs and the Security Council.

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690 Wapner (2007)

691 Peter Willetts, Non-Governmental Organizations in World Politics: The Construction of Global Governance (Routledge 2011) p.62
CHAPTER SIX

Is Informal Access Enough?

Some may argue that informal relations are good enough – indeed, that they are more suitable for the purposes of NGOs. They believe that formal access may compromise the nature of such organizations, claiming that formal access would in fact limit their capabilities, allowing states to control them. On the other hand, some also argues that even the consultative status is not an adequate position for NGOs to perform efficiently. The outcomes NGOs have achieved by informal relations will first be examined, while determining any problems in this regard. The conclusion will be that formal access has become essential, as NGOs have faced difficulties in demonstrating the efficiency of their performance by informal processes. With some exceptions, states have tended to use NGOs for their own convenience, calling on them as and when they see fit. This state of affairs has already discouraged some NGOs. The present chapter highlights the practical need.

6.1 Outcomes of informal interactions between the Security Council and NGOs

A person’s employability depends to a large degree on their previous experience and achievements, which are key indicators of reliability because past deeds strongly suggest future ones. The same applies to NGOs in the present context: it is necessary to address their experiences and achievements under conditions of informal relations in order to support a case for formal access.

NGOs have to some extent been successful in empowering themselves to influence decisions taken by decision-making organs. There are many examples of NGOs’ achievements in this area. Kofi Annan aptly states that their involvement has increased over the last few years and has “moved ‘upstream’ as NGOs participate more and more commonly in the design of projects”.

As mentioned earlier, the Security Council has maintained informal relationships with NGOs since 1982, relationships that were reinforced by the Arria formula in 1992. An NGO Working Group also advocates off-the-record relationships with the Council by arranging briefings for delegates. It brings together 30 high-profile NGOs including OXFAM, MSF,

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694 Ad hoc procedural relations
695 “The members of the Security Council are encouraged to plan "Arria-formula” meetings, in accordance with paragraph 54 of the Note by the President of the Security Council (S/2006/507), and to take part in such meetings.” <http://www.un.org/en/sc/about/methods/arriafomula.shtml> accessed on 09/09/14
Amnesty International, and CARE under the leadership of the Global Policy Forum. 696 Under these informal interactions, NGOs have strived to increase Council member states’ awareness of issues related to human rights, humanitarian aid, disarmament, and the environment. 697 In addition to informal relations, some interactions have also been established under a subsidiary organ for specific cases at formal meetings under Article 29. 698 These interactions have produced specific outcomes. To this extent, NGOs have been able to introduce issues onto the Security Council’s agenda and to orient the decision-making process. 699

There is no doubting NGOs’ capacity for advocacy and influence. James Paul maintains that “this was NGO advocacy at its best and most effective”. 700 Global Witness is a major NGO. It describes itself thus: “we find the facts, we uncover the story and we change the system”. 701 One of its most noteworthy ventures provides a very powerful illustration of this definition. Global Witness has succeeded in drawing the international community’s attention to the problem of conflict diamonds (known also as ”blood diamonds”) by releasing their report “A Rough Trade” in 1998. 702 This report demonstrates how diamonds helped fund the civil war in Angola. 703 The Security Council has consequently adopted Resolution 1295 in April 2000. 704 In fact, some resolutions such as 864 (1993), 1127 (1997), 1173 (1998) and 1237

697 ibid
698 Article 29 of the UN Charter
699 ibid
703 ibid
704 Global Policy Forum <https://www.globalpolicy.org/component/content/article/202/41592.html> accessed on 08/09/14
(1999) had already been taken on Angola. Yet Global Witness had discovered violations of these resolutions.

The Council might not have known the facts, or it might have pretended not to know. Nevertheless, an NGO was able to uncover the facts and change the situation. This incident therefore actually constitutes evidence for NGOs’ power and the inability or outright failure of the Security Council. In this respect, James Paul states that “Global Witness showed how a compelling and original analysis could mobilize public support, affect government positions and change thinking and action in the Council”. 705

However, the first Security Council resolution on Angola was in 1993. The Global Witness report was published in 1998, while the Council resolution relating to that report was taken in 2000. This seven year gap strongly suggests that the Council was too late in the light of the resolutions themselves, all of which – from 785 in 1992 to 1173 in 1998 – focused on UNITA. 706 The Council resolution on Angola consisted mainly of reaffirmations of condemnations and sanctions against UNITA. Yet the UNSC barely recognised that UNITA was not the only problem in Angola. It took an NGO to prove that that other actors were also at play in the Angolan conflict, their report revealing the countries that were violating sanctions against UNITA for their own interests.

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706 The National Union for the Total Independence of Angola (UNITA) is a political party in Angola
If formal access had been granted, Global Witness or another NGO would have discovered the facts more efficiently and exerted pressure on the Security Council to act in time, thereby forestalling further violations of human rights. This is not to ignore the fact that Global Witness had succeeded through informal channels. Yet neither can the unconscionable lateness of the report as the result of the lengthy procedures entailed in those informal interactions be gainsaid. It cannot be denied that, had the report been issued at least a year earlier, it would have been able to prevent many of those violations of human rights and to save the lives of many people over that period.

Moreover, NGOs have played a significant role in the strengthening the Angolan sanctions regime. After civil actors had increased the awareness of Council members, some resolutions were also adopted to prevent the illicit flow of arms into Africa and to protect civilians, particularly women.\textsuperscript{707} NGOs have made contributions to the establishment of \textit{ad hoc} international criminal tribunals for Yugoslavia and Rwanda.\textsuperscript{708} Council members were apparently not aware of the exact situation in Yugoslavia until a Bosnian priest came to New York and asked to see various Council members,\textsuperscript{709} but only Ambassador Arria agreed to meet him.\textsuperscript{710} If no one including the Ambassador had done so, the priest would have been forced to return to Bosnia having made no impact. It cannot be right to leave issues of


\textsuperscript{708} Binder (2008), p.16. NGOs have also had significant contribution in establishment of the International Criminal Court in a variety of ways such as ‘International agenda setting, facilitating the ratification process and bringing organisational expertise, on-going development and support of the Court.’ See more: Kristie Barrow, ‘The Role of NGOs in the Establishment of the International Criminal Court’ (2004) 2 Dialogue, pp.11-22, p.16.

\textsuperscript{709} Paul, ‘The Arria Formula’

\textsuperscript{710} ibid
international peace and security to such informal arrangements with their uncertain access and equally uncertain impact.

Another prominent example is Security Council Resolution 1325, adopted on October 2000. This was the first formal acknowledgement from the Council that respect for women’s rights and support for women’s participation in peace negotiations and in post-conflict reconstruction was required.\(^{711}\) This resolution was adopted after lobbying by dozens of women’s organizations.\(^{712}\) Its date illustrates how hard it is to adjust to the realities of the world order without NGOs. The pressing issue of women’s rights is hardly a new one, but the Council has remained silent on it until the dawn of the new millennium. If NGOs had not influenced the Council, then it would not have adopted any resolution on such a significant issue even until the present time. This proves that the Security Council alone is not able to consider all issues.\(^{713}\) The state-based Council system has deficiency to keep pace with global evolution.

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\(^{711}\) The United Nations Security Council Resolution 1325  

\(^{712}\) United States Institute of Peace, ‘What is U.N. Security Council Resolution 1325 and Why is it so Critical Today?’  
[http://www.usip.org/gender_peacebuilding/about_UNSCR_1325#Why_is_Resolution_1325_important_]

\(^{713}\) As the Syrian conflict continues, the issue of protecting Syrian antiquities appears not to be considered. There is, however, an NGO that does. In this regard, the report of the American Association for the Advancement of Science (AAAS) has spurred the Council to action. The Council adopted Resolution 2199 on 12 February 2015, according to which “all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific…” See more at [https://www.globalpolicy.org/component/content/article/144-bibliographies/52741-un-security-council-banning-all-trade-with-syrian-antiquities.html](https://www.globalpolicy.org/component/content/article/144-bibliographies/52741-un-security-council-banning-all-trade-with-syrian-antiquities.html) accessed on 04/04/15
Apart from the efforts of NGOs on their own initiative, the Security Council has also explicitly asked them for support. For example, Resolution 771 in 1992 regarding Yugoslavia “...demands that relevant international humanitarian organizations, and in particular the International Committee of the Red Cross, be granted immediate, unimpeded and continued access to camps...within territory of the former Yugoslavia and calls upon all parties to do all in their power to facilitate such access” while the following paragraph calls “upon states and, as appropriate, international humanitarian organizations to collate substantiated information...” regarding breaches of human rights.\(^\text{714}\) The Council refers more explicitly to NGOs in Resolution 1470 of 2003: it “[c]alls on States, international organizations and non-governmental organizations to continue to support the National Recovery Strategy of the Government of Sierra Leone”.\(^\text{715}\)

Not the least significant example is the Ottawa Treaty (also known as Anti-Personnel Mine Ban Convention, often referred to as the Mine Ban Treaty but officially named the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction) was signed after lengthy efforts by NGOs in December 1997.\(^\text{716}\) Although this treaty does not refer directly to interactions between the Security Council and NGOs, yet it provide indirect acknowledgement of their influence. The Convention was signed by 162 states but not by 35, including the US, Russia and China. The

\(^{714}\) UN Security Council Resolution 771 (13 August 1992), para.4-5

\(^{715}\) UN Security Council Resolution 1470 (28 March 2003), para.8

\(^{716}\) “In the efforts to ban anti-personnel mines, two NGOs are of primary significance: the International Committee of the Red Cross (ICRC) and the International Campaign to Ban Landmines (ICBL).” Nicola Short, ‘The Role of NGOs in the Ottawa Process to Ban Landmines’ (1999) 4 Kluwer International Law, pp.481-500, p.483
Treaty thus demonstrates how NGOs could persuade two thirds of UN member states to adopt a measure against the opposition of three permanent members of the Security Council.

In addition, given the fact that the Ottawa Treaty was formulated as it were “from below”, many international legal scholars, activists, diplomats and organizations believe that the Convention represents both a democratization and a new source of legitimacy for international law.717 The Ottawa Treaty can therefore be seen as a hallmark achievement of NGOs.

Nevertheless, the above examples are still not enough to allow informal relations to be considered adequate. For example, the Ottawa Treaty has only been ratified by 40 states. Three permanent members of the Security Council do not adhere to it. As mentioned, the resolution on women’s rights could have been taken much earlier if NGOs had had formal access to the Council. The ICC could also have been established earlier, and could even have prevented many war crimes. A stronger ICC striving to implement rules of international law might have been in evidence.718 Such a Court would be able to restrain the Council’s questionable actions. Informal access to the Council can thus result in only limited or late success, while formal access would make NGOs’ performance more efficient.

718 Although the recognition of a Palestinian state is controversial because of US resistance, the ICC still does not hesitate to approve Palestine as a party to the Rome Statute. In this regard, “the International Criminal Court (ICC) held a ceremony on 1 April 2015 at the seat of the Court in The Hague (the Netherlands) to welcome the State of Palestine as the 123rd State Party to the Rome Statute, the ICC’s founding treaty”. See http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1103.aspx accessed on 01/04/2015
Their achievements certainly cannot be denied. James Paul\textsuperscript{719} classifies their contribution to the Security Council. First, they have improved its accountability and transparency. He states that “after more than a decade of NGO action, the public knows much more about the Council than before, and citizens are in a stronger position to demand accountability for Council action”.\textsuperscript{720} Secondly, NGOs have provided better information and analysis to Council members. In fact, its non-permanent members have increasingly benefited from this, because NGOs have broken the permanent members’ intelligence monopoly. The Council has been much “better informed, on a wider range of issues, than at the start of the 1990s and before”.\textsuperscript{721}

It is true that NGOs have a significant capacity to provide information. It may be wondered if the state, with its intelligent service, is not better placed in this regard. Jaeger considers that “if they (UN officials) were unable to obtain the relevant information from independent sources (and UN backup facilities are often unable to produce an in-depth analysis), committee members would have to take government reports at their face value and would be hard pressed to challenge them”.\textsuperscript{722} NGOs allow comparison to be made between information that various sources because they can provide independent and comprehensive sources of

\textsuperscript{719} Paul (2004) p.384-386

\textsuperscript{720} “The Council thus moved steadily away from the secrecy of the early and mid 1990s, when it did not even allow the Secretariat to tape record the Council President’s press statements. NGO information culture, magnified by the web, had seeped into the Council, changing its outlook and working methods.” ibid, p.383

\textsuperscript{721} ibid

information. It is therefore easier more accurately to analyse causes without obscuring facts\textsuperscript{723} rather than relying on possibly biased inferences.

Thirdly, NGOs have taken the lead regarding some procedural reforms, launching their own regular consultation processes with Council members and expanding the Arria Formula. They have adopted the aim that there should be more informative mission web sites and have significantly broadened the nature and amount of UN information on the Council and its work.\textsuperscript{724} They have also pushed the Council to adopt new approaches in its field missions, and have promoted expert panels to reinforce sanctions.\textsuperscript{725}

One of the main reasons for the maintenance of informal interactions is that NGOs cannot legally participate in the Council, thus concentrating its legislative activity in the informal arena.\textsuperscript{726} In this regard, NGOs find informal relations to be an alternative way of establishing relations with international law-making. It can be concluded that NGOs would actually prefer to establish formal relations, regarding informal ones as their least preferred option. For example, if they favoured the latter, they would not strive consultative status in ECOSOC, nor would they complain about the deficiencies inherent in informal relations. A second reason is that informal relationships are demanded by the Council, which regards informal relations as an option for receiving information from NGOs. Yet informal relations are not

\textsuperscript{723} For instance, as regards the aforementioned Syrian conflict, NGOs successfully provided footage on the use of chemical weapons. In fact, this issue was not even on the agenda of states until NGOs revealed the footage

\textsuperscript{724} ibid

\textsuperscript{725} ibid

\textsuperscript{726} Pauwelyn & others (2014), p.742
enough, either for the Council’s needs or for international legal circumstances. It would thus be advisable for the Council to allow formal access to NGOs.

In conclusion, NGOs have achieved a remarkable amount, both in the Council and outside it. It is clear that they have influenced the Council’s decision-making process and have accomplished much in the legal and political policy arenas. It is thus helpful to note their capacity to influence states, and consequently to push the latter to take action. At the same time, it also demonstrates how limited access has mostly resulted in limited successes that have been gained only through the limited access and sources entailed in informal relations. In fact, it is not easy to exert pressure on the Security Council, “the ultimate bastion of power politics”, by participating NGOs. Nonetheless, as Therien and Dumontier state, NGOs have contrived to loosen “the grip that states have on the institution” despite these impediments. In adverse circumstances they have managed to increase their strength in world politics and have achieved many outcomes through informal interactions. It can thus plausibly be maintained that such achievements would be rendered even more satisfactory by the establishment of formal relationships.

The cases just discussed relate to issues of security and peace. They demonstrate that NGOs have already helped maintain international peace and security, nominally not their legal responsibility but that of the Security Council. This provides grounds for asserting that if

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727 James Paul has summarized previous legal and political achievements. See in Paul (2004)
728 Therien & Belanger-Dumontier, (n159) p.366
729 ibid
730 ibid
formal access (which implies legal personality) were granted, they would greatly increase their success in that role.
6.2 Why Formal Access is Necessary, Rather than Maintaining Informal Access

“...The time has arrived to bring NGO and United Nations activities into an increasingly productive relationship of consultation and cooperation.”\textsuperscript{731}

“Security Council members should further strengthen their dialogue with civil society...”\textsuperscript{732}

Different approaches to the manner in which NGOs participate in the Council’s activities are evident, be these formal or informal. Some of those social actors most involved agree with member states that they are content with the present informal relationships with the Council, believing that such interactions have assisted that body and therefore disagreeing with calls for formal consultative status.\textsuperscript{733} Their contemporaries are unhappy with this state of affairs, considering that informal consultations are skewed excessively in favour of northern and mostly New York-based NGOs while tending to exclude southern ones.\textsuperscript{734} Some also argue that there are many reasons to strengthen the legitimacy of NGOs in the Council, as informal interactions are insufficient and unproductive.\textsuperscript{735}


\textsuperscript{733} ibid, p.45

\textsuperscript{734} ibid. This point is argued in Chapter VI

\textsuperscript{735} In that respect, Maragia declares that “[r]ecognition of NGOs in international instruments, their participation in global agenda setting, promulgation and enforcement of global norms, and co-optation by states into areas such as international development are all evidence of NGOs growing acceptance and emerging legitimacy in global politics consistent with customary international law. Given this growing salience and near indispensability of NGOs in world governance, it would be counterintuitive to deny them international legal personality or legitimacy in the system”. Maragia (2002), p.332
Some may argue that decisions that cannot be taken in formal meetings can be achieved in informal ways. It is held impossible to overstep formal boundaries in formal meetings, yet it is possible to ignore formal procedures – or, for that matter, to introduce rules into informal ones.\footnote{The distribution of formal power determines the organization’s policy outputs in ordinary times. Informal power consists of the ability to obtain desirable outcomes within an organization, at some cost, by going outside of normal channels.” Randall W. Stone, ‘Informal Governance in International Organizations: Introduction to the Special Issue’ (2013) 8 Review of International Organizations, pp.121-136, p.125} Paul Wapner asserts that NGOs can influence delegates and personnel of UN member states from the outside by informal contacts in the halls of convention centres, hotel rooms and on the street. Firstly, he suggests that NGOs play an especially useful role in educating UN personnel, state representatives and the general public about emerging crises or other concerns of wide transnational import.\footnote{For example, “the scientists, representing 230 environmental groups, want the U.N. General Assembly to use authority under the Law of the Sea Treaty to adopt a resolution halting long-line fishing for up to 10 years, allowing sea turtles to recover from the brink of extinction”. The activists concerned wrote letters and organized meetings with UN personnel and state representatives, aimed at inducing the General Assembly to apply its authority. ibid and ‘Findings’, The Washington Post (7 June 2005)} In this context, they could press states and the UN to address such dilemmas by media campaigns, lobbying, social mobilization or protest.\footnote{Such events provided opportunities for civic groups to “network, share information, celebrate their participation in global governance, and coordinate political strategies”. Wapner (2007) p.259} NGOs can also hold meetings at large UN conferences in an attempt to influence UN deliberations and policies.\footnote{ibid} Wapner advocates another way to influence member states: organising side events at UN conferences.\footnote{ibid} In this way NGOs can work with particular governments and international organisations to present information about salient facts regarding ongoing negotiations. Such meetings have mostly been held in nearby hotels and other venues, and they have often
received support from the UN Secretariat in the form of managing organisations and providing logistical assistance.\textsuperscript{741} All of these methods could to some extent influence member states, and even result in success on occasion.

Although it might very well be possible for NGOs at least partly to obtain their goals through these outside activities, there are two reasons why it would be quite a risky process for security and peace: the length of the process, and low probability of positive outcomes. Regarding the first, it requires a convoluted process for NGOs informally to press states to take decisions regarding their concerns. They would first have to expend significant efforts to gain informal access, then be able to provide resources. If formal access were already in place, then providing resources would be the only step involved. Urgent of security and peace issues will not wait for lengthy procedures. The Panel Report advises interested parties “to strengthen the capacities of civil society and communities to carry out early warning and response”\textsuperscript{742}. Otherwise, the current problem of inertia in the Security Council would not be solved.

Activities intended to influence states are likely to be less effective through informal than formal channels. Wapner believes that NGOs could be intimately involved through formal mechanisms in persuading member states. He points out the inefficiency of their informal counterparts, which reduces the number of direct encounters between NGOs on the one hand and state delegates and UN personnel on the other.\textsuperscript{743} Likewise, Woodward rightly indicates that when NGOs can formally participate in decision-making processes, their influence on the

\textsuperscript{741} ibid
\textsuperscript{742} United Nations A/70/95-S/2015/446, para.77
\textsuperscript{743} ibid
formation of international law is more effective.\textsuperscript{744} When there is no formal pressure, such outcomes depend totally on the wishes and the consent of states.

Moreover, discussion of security and peace issues concerns the seriousness of those problems, given that the maintenance of international peace and security is both highly important and urgent – a resolution should not wait indefinitely. Security and peace issues must be dealt at once in order to forestall further crises. Attempts to influence UN member states from outside involve open-ended, long procedures with no guarantee of success. This does not mean that such attempts should not be made, but they are neither satisfactory nor efficient. Willetts makes three points about the benefits of formal access:

\begin{quote}
First, NGOs have access to all UN documents, once these have been officially circulated...Along with being able to attend the meetings and observe the proceedings, this means that the NGOs can gain high levels of information, about the political process. ...Secondly, NGOs have security passes giving them access to all the buildings... They therefore have access to the delegates. ...Thirdly, being awarded consultative status gives the NGOs a legitimate place within the political system. This means that the NGO activist is seen as having a right to be involved in the process.\textsuperscript{745}
\end{quote}

\textsuperscript{744} Woodward (n595), p.214

In short, NGOs would be very happy to gain immediate access to officials and documents and to talk without impediment to delegates.\(^{746}\) Such access would significantly contribute to the maintenance of peace and security. On the other hand, these conferences take place at the behest of NGOs and states regarding issues that are not urgent. Yet holding meetings to discuss the maintenance of peace and security must be their obligation rather than just their wish. The ways that Wapner propounds could prove efficacious for circumstances that are not serious or urgent, but not for issues that threaten regional or international stability.

Of course, it cannot be denied that it would be very hard to establish relations between NGOs and the Security Council by hoping for a positive formal reaction from the permanent members. However, the fact that the only chance to influence events is informal cannot logically lead to the claim that such interactions are a more efficient way of swaying the decision-making powers. If there were a formal place for NGOs on the Council, NGOs would be able to influence it both informally and formally. As this it is not the case, informal interactions cannot automatically be considered as the best way of persuading Council members.

As has been pointed out earlier, NGOs have already interacted with the Security Council, thereby developing a practical foundation for the establishment of formal relationships. These are, however, mostly subject to the consent of Council member states, and been both vague and capricious, delaying outcomes and rendering them potentially unsatisfactory. Byers and Lindblom hold that the lack of a legal personality in the international sphere renders an individual or an entity largely incapable of participating in an independent capacity in the

\(^{746}\) ibid
formation of customary law.\textsuperscript{747} For example, formal identity could increase NGOs’ influence on the public and on member states, since those that have the reputation endowed by formal identity will quite likely be taken more seriously.

A fundamental constituent of all meetings of the type under discussion is their political authority,\textsuperscript{748} which might depend heavily on the official positions of the participants. They should be attended by heads of state and governments or relevant ministers in order to enable concrete and influential outcomes. If they are attended only by junior officials, their resolutions would not be strong enough to bind authorities. The demand for formal access for NGOs may thus stem firstly from the inability of informal meetings that low-level representatives of Security Council members have mostly preferred to attend.

NGOs have striven to influence the Security Council through numerous proposals, but their efforts, including shared information and suggestions, have been largely disregarded or blocked, as can be seen from previous cases. Interested NGOs have been dismayed by this state of affairs. By way of illustration, governments have tended to send only low-level officials to meetings with NGOs; in fact, some have even chosen not to participate.\textsuperscript{749} Formal access to the Council might be essential to encourage its members to consider seriously the work of NGOs in the decision-making process. For example, when the ICRC was granted UN observer status in 1991, it strengthened its access, including regular meetings with Council

\textsuperscript{747} Byers (1999), p.86; Lindblom (2005), p.106

\textsuperscript{748} The Department of Economic and Social Affairs of the UN Secretariat ‘The United Nations Development Agenda: Development for All’ (New York, 2007) p.8

\textsuperscript{749} Paul (2004)
Presidents. Of course, formal access to the Security Council would provide more efficient opportunities for access. The further development of current informal mechanisms would therefore bring NGOs into close contact with high-ranking governmental representatives such as members of the Council and other leading UN officials.

It would also encourage more NGOs to share their sources with Council and work with it. Formal participation would draw more attention to NGOs and encourage them to cooperate more with the Council. In short, taking NGOs seriously would encourage them to work more actively.

The formal participation of NGOs would provide the Security Council with the opportunity to regularly receive consultative opinions that are absolutely essential for its operations. Archibugi indicates that the Council should seek consultative opinions more often. However, informal meetings depend on the will of Council members, particularly permanent ones. NGOs are often not able to provide their resources to the Council because of their limited access. For example, many proposed briefings by NGOs were stalled because of political objections to the subject matter. Kashmir and the Sudan are two noteworthy cases. Paul also indicates that:

> [w]hen the P-5 have strong positions, as they often do, NGOs encounter immoveable opposition. On sanctions reform, Chechnya, the Middle East, Iraq, and many other important issues, even the most vigorous NGO advocacy runs

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750 ibid, p.376
751 Martens, ‘NGOs in the UN System’, p.20
752 Archibugi (2008), p.165
Thus, informal access cannot overcome arbitrary treatment by Council members, even in urgent cases. Informal channels are under the control of the Council’s member states, and particularly of the permanent members. If NGOs were to be granted formal access, they would be able to vitiate such arbitrary treatment.

Some may object that formal access would undermine NGOs’ nature. This implies that NGOs would become less mindful of their fundamental goals, and that they could become self-interested actors, as states are.

Nonetheless, the present proposal is for formal participation rather than membership of the Security Council, so that NGOs would not have same status as the Council’s member states. In fact, NGOs have already been granted formal participation in ECOSOC. If participation on this basis were contrary to their natures, significant numbers of NGOs would not have applied for consultative status at that body. Of course, no actor can be guaranteed not to become self-interested or to deviate from its fundamental principles. This is something that can only be dealt with when it occurs. In any case, predictions can be made from previous practice. It is thus held that NGOs are not likely to be worse than states.

The involvement of new actors in the international arena has been regarded as an acknowledged fact, and enabling them by allowing them access to channels of participation

754 ibid p.385
in the formal system is the concern of many.\textsuperscript{755} The Panel Report emphasises that “direct NGOs relationship with UN organs will remain important and that it should be kept formal”\textsuperscript{756}. The Panel thus indicates that the existing interactions between the Security Council and NGOs should be formalized.\textsuperscript{757} As the Council is an international organ, it should not remain reluctant to grant formal access to NGOs in a changing international environment in which international organizations have been urged to consider the participation of new actors. Otherwise, the Council will continue to lack democracy, accountability and effectiveness. In similar vein, Thomas Frank states that “fairness of discourse requires fairness in the selection of participants”.\textsuperscript{758}

At present, the term “global discourse” assumes a conversation between nations. The author’s contention is that that limited view is wrong. Not only is it inaccurate, overlooking the many actors – multinational corporations, churches, service organizations, gender- and ethnoculturally specific groups, scientific networks, and a myriad of others – who are already part of this discourse.\textsuperscript{759} Crucially, the model’s defect lies in its unfairness.\textsuperscript{760} This approach might imply that not representing other voices would produce inequality. Accordingly, fairness and openness are the most significant requirements for developing more democratic institutions.\textsuperscript{761} When the deficits in the Security Council are considered, NGOs would be significant partners with the Council in increasing its democracy, effectiveness and

\textsuperscript{755} Boutros-Ghali (2000), p.105
\textsuperscript{757} A/58/817, proposal 12
\textsuperscript{758} Franck (1998) p.484
\textsuperscript{759} ibid
\textsuperscript{760} ibid
\textsuperscript{761} Santivasa (n198), p.402
accountability.\textsuperscript{762} Hence, formal access would enable NGOs to make concrete contributions that are not likely to be made via informal meetings. NGOs’ formal access to the SC is required by the insufficiency of informal interactions and the undeniable facts of the current world order.

\textsuperscript{762} Santivasa argues that “…more representation by NSAs would serve to reduce the deficit in international law-making and implementation.” ibid
6.3 Concluding Remarks

In conclusion, as is observed above, the outcomes that informal access has produced cannot be denied. It is also undeniable that the very fact of having access to the Council is a major achievement because gaining admission to an institution that has deliberately tended towards exclusiveness is not easy. Paul emphasizes that the presence of NGOs in this state-based “club reflects tectonic shifts in the international order”.\(^{763}\) It is therefore a remarkable success even to have gained informal access to the Council. Yet the international legal order has been evolving rapidly, a reality with which the Council has failed to keep pace.

Notwithstanding the outcomes of informal relations, it is necessary to transform these to a formal mode. This is mainly because informal relations provide only limited access to NGOs and thus does not permit them to operate efficiently. Limited access can only bring limited success. Given the fact that the issues with which the Council deals are related to international peace and security, it is essential to take appropriate measures in a timely manner. Informal access is far from meeting this requirement, since it depends on the good will of member states and takes a long time to reach a decision. As discussed in Chapter IV, NGOs should therefore be granted at least a partial legal personality that would allow them to perform more efficiently. When NGOs’ access is strengthened, their achievements would commensurably improve. Formal participation on the Council is thus important in the current conditions.

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\(^{763}\) Paul (2004), p.386
Lastly, Bardo Fassbender highlights how the obstacles that face NGOs every time they try to access the Council have “given way to a certain ennui or resignation of the interested governments and nongovernmental organizations”. Paul likewise observes that “NGOs are often dismayed by the realpolitik that they observe and by the needless human suffering that so often results”.

In the light of these facts, it cannot be argued that informal relations between NGOs and the Security Council have been satisfactory. Translating relationships into a formal mode would enhance the Council’s capabilities, as NGOs would be able to provide more resources more efficiently, and also because the Council would be able to address the realities of the current international legal order.

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765 Paul (2004), pp.385-386
Proposed Framework for Formal Access and Criticisms

7.1 Establishing a Subsidiary Body: the Consultative Committee of the Security Council (CCSC)

There is a multitude of processes for granting NGOs access to UN organs, many of which resemble ECOSOC’s procedure. That procedure is the starting point for NGOs to obtain access to the UN. Granting formal Security Council access to NGOs could likewise reflect ECOSOC’s procedure. The first way to establish formal relations between NGOs and the Security Council is to add a paragraph to one of the appropriate Articles of Chapter V of the UN Charter. For example, a paragraph could be added to the Procedure section of this Chapter, and a second paragraph could be added to Article 29 as follows:

The Security Council may make suitable arrangements for consultation with non-governmental organizations that are concerned with matters within its competence.

Of course, such a step would require a Charter amendment, which would require the votes of the permanent Council members.

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767 “A subsidiary body of the Economic and Social Council, the United Nations Committee on Non-governmental Organisations, comprises nineteen member states that recommend NGOs for consultative status.” ibid
768 Article 108 of the UN Charter
It is therefore more logical to consider an alternative way of establishing formal relations between NGOs and the Council, one that would not (at least legally) require the affirmative votes of the permanent members. The word “legally” is used here as it refers to the UN Charter’s explicit requirement for affirmative Council votes in articles such as 27, 108 and 109. On the other hand, the veto-holding powers can challenge other members’ requests by means other than reference to an article of the Charter. They could sometimes do so by arbitrary practices such as the “double veto”, which could occur in cases where the Charter does not authorize the permanent members to block the process; at this point, those members could attempt to make broad interpretations on their own behalf. This amounts to a practical rather than a legal obstacle. The issue of the double veto is discussed later in this chapter.

Another way of granting formal access to NGOs could be to grant them consultative status in the Council under a subsidiary organ.\(^{769}\) This proposal suggests that such NGOs constitute subsidiary organs that begin very modestly with largely consultative functions, and that, following the model of NGO status in ECOSOC\(^{770}\), they would gain powers slowly over time. The introduction of formal access to the Security Council for NGOs should thus happen through a subsidiary organ with a consultative function, and this access should evolve gradually.

At first sight it might appear quite outlandish to speak of the granting of formal participation rights to NGOs. However, closer examination reveals that this has already occurred at the

\(^{769}\) Wapner (2007), p.258

\(^{770}\) Resolution 1996/31 established three types of consultative status: general, special and roster. These three consultation types have different rights.” For more, see http://csonet.org/content/documents/199631.pdf and http://csonet.org/?menu=83 accessed on 11/08/14.
international level.\textsuperscript{771} The concept of NGOs’ participation in global governance is as old as the United Nations\textsuperscript{772}, and this idea has been realized to some extent in the UN system. In this context, a proposal for formal access could be partly based on the sample structure of previous instances of participation such as that of ECOSOC.

Some scholars suggest granting permanent participation, such as consultative status, to NGOs on the Security Council.\textsuperscript{773} However, these suggestions have been cursory in the extreme. Specifically, they provide no background information regarding such issues as why and how such formal participation should take place and what reasons there are for requesting such participation. This dearth of research on the subject means that the present argument has nothing to be compared to.

While it is true that no article of the Charter has provided for formal NGO access to the Security Council, there is no conceptual reason to preclude it.\textsuperscript{774} The report of the General Assembly and Economical and Social Council proposes consultative status for NGOs in the

\textsuperscript{771} Delbruck (2004), p.43. Many formal relationships have been established between NGOs and other international entities. One of the chief examples of participation of NGOs is Article 15 of International Tropical Timber Organization (ITTO) Agreement of 2006, which provides for access by NGOs. Article 15(1) authorizes the Organization to make arrangements as appropriate for consultations and cooperation with NGOs. http://www.itto.int/itta/ accessed on 03/06/2014

\textsuperscript{772} Julius Huxley, “who founded the United Nations Educational, Scientific, and Cultural Organization (UNESCO), in 1946, also founded the IUCN in 1948. It was the IUCN that effectively lobbied the UN General Assembly in 1968 to adopt Resolution 1296, which establishes a policy for ‘accrediting’ certain NGOs. The IUCN is accredited to at least six different UN organizations.” See: Henry Lamb, ‘Report of the Commission on Global Governance: Our Global Neighborhood’ (1995)

\textsuperscript{773} Archibugi & others (2012) and Murithi (2012), pp.132-149

\textsuperscript{774} Charnovitz (1997), p.278
The report notes that many member delegates have urged that consultative arrangements with NGOs should be extended beyond the Economic and Social Council and its bodies in order to encompass the Security Council and other organs dealing with peace, security and disarmament. Furthermore, a Panel Report in 2004 makes a four-part proposal. The first recommendation is to improve Arria Formula meetings by “lengthening lead times and covering travel costs to increase the participation of actors from the field”. Secondly, it offers Council field missions to arrange regular meetings with “appropriate local civil society leaders, international humanitarian NGOs and perhaps others, such as business leaders and United Nations Headquarters and field staff should facilitate the meetings”. Thirdly, the report suggests the establishment of an experimental series of Council seminars where emerging issues would be discussed with civil society and “other constituencies as well as United Nations specialists, such as special rapporteurs”. The Report aims to develop more formal

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775 This report was published as long ago as 1994. There are two possible reasons why its recommendation has not been implemented since. The first is that, as mentioned earlier, approaches to the issue of Security Council reform use state-based solutions. The formal participation of NGOs has not been discussed in detail, so it could not be progressed beyond suggestions. The second possible reason is that the issues that have been raised in the reports mostly remain within rhetorical discourses; opportunities to implement them are rare. General Assembly Economic and Social Council, Report of the Open-Ended Working Group on the Review of Arrangements for Consultations with Non-Governmental Organizations A/49/215, E/1994/99, (5 July 1994) http://www.un.org/en/ga/search/view_doc.asp?symbol=A/49/215 para.84

776 ibid


778 ibid

779 ibid

780 ibid p.19
relationships between the Council and NGOs. \textsuperscript{781} Lastly, it proposes commissions of inquiry that would be independent and would convene after Council-mandated operations. \textsuperscript{782}

In addition, some further proposals await realization in positive law. \textsuperscript{783} These proposals may not be made directly to the Security Council, yet they might be worth a short mention. First, the Commission on Global Governance recommends “an institutional reform that would provide new global machinery through which warnings could be articulated: the creation of a Council for Petitions in which a new 'right of petition' could be exercised by non-state actors”. \textsuperscript{784} They propose a high-level panel of five to seven people who are independent of any states and are selected purely on the grounds of their personal competence. They would be appointed by the Secretary-General with approval of the General Assembly, and would be able make recommendations for “the security of people” to the Secretary-General, the Security Council and the General Assembly. The report believes that this mechanism would provide a direct route from the lowest to the highest levels of global governance. \textsuperscript{785}

\textsuperscript{781} “The United Nations could also introduce a new instrument that is a bit more formal. Many issues the Security Council now addresses involve a complex array of social and contextual factors and require a clearer deliberative phase, which includes gathering evidence from civil society and other constituencies, before a Council position is negotiated.” ibid, pp.45 and 73

\textsuperscript{782} “The Security Council could institute a regular practice of convening commissions to provide independent assessments of United Nations operations under Security Council mandates, such as the one held after the Kosovo crisis. The commissions would include the participation of specialists and would assess operations from the perspective of the citizens concerned and take evidence from civil society.” ibid


\textsuperscript{784} Lamb, ‘Report of Commission’ (n772)

\textsuperscript{785} ibid
Secondly, the proposals of the report of the Our Creative Diversity would pave the way for a World People’s Assembly.\textsuperscript{786} This report recommends the establishment of a two-chamber General Assembly, one chamber consisting of government representatives as at present, the other of representatives from actors from the national civil social sphere. The Commission holds that “not only development strategies should become people-centred: so should all institutions of global governance”.\textsuperscript{787} In this regard, the Commission suggests that after the representatives of NGOs are accredited to the General Assembly, they should be grouped together as civil society organizations into a World Forum; they would finally be invited to regular meetings to share their views on key global issues such as the environment, population, ethnic conflict, disarmament, poverty and gender.\textsuperscript{788}

The CAMDUN (Campaign for a More Democratic United Nations) was established in 1989 as a project of INFUSA (International Network for a UN Second Assembly), which was formed in 1983.\textsuperscript{789} This movement also worked towards the foundation of an organ of the UN to represent the world’s citizens as members of civil society (a UN assembly of peoples), attached to the UN General Assembly.\textsuperscript{790} This idea has also been at several times in different contexts.\textsuperscript{791} The main objective of such as proposals was to establish a second assembly

\textsuperscript{787} ibid
\textsuperscript{788} ibid
\textsuperscript{790} ibid
\textsuperscript{791} Empower the UN, ‘The United Nations Assembly Movement: How It Began’ http://empowertheun.com/UNAssemblyMovementTimeline.html accessed on 29/06/2014
under the General Assembly. This new assembly would involve many representatives including NGOs, mostly by granting them consultative status.

Another eminent commission, the Independent Working Group on the Future of the United Nations, suggests the establishment of a UN Social Council that would “look to non-state representatives to assist in every stage of its work, from early consultations to implementation”. 792

As can be observed, these proposals have focused on the foundation of an organ attached to the General Assembly. They aim to influence the Security Council indirectly rather than directly. The important point is that they all intend to increase the role of NGOs by giving them more space. It can therefore be concluded that enabling NGOs to participate in decision-making processes is regarded as important to the international legal order.

On the other hand, these proposals do not specifically refer to the Security Council; rather, they consider NGO participation in the UN system in general terms. There is occasional mention of such participation on the Council in terms of desirability. For example, Brazil’s former foreign minister Antonio de Aguiar Patriota addresses the involvement of civil society in the Council, 793 but does not make a clear argument as to whether this should be by formal or informal means. Such proposals do not detail the mechanisms of such participation, nor do

793 ibid
they offer a rationale for it. On the other hand, they do extensively background the informal participation of NGOs.

The first priority has been to offer as realistic and feasible a proposal as possible. Hans Köchler points out that when “statutory predicament” is considered, a realistic approach must be adopted. Impractical amendments to the Charter have thus not been suggested in the present work.

Archibugi recommends that NGOs recognized by the General Assembly could choose their own representatives on the Security Council. However; as mentioned earlier, the process must be shortened; NGOs could then share responsibility directly and efficiently. The formal place could thus first be arranged under a subsidiary organ. This proposal therefore suggests a permanent subsidiary organ that would provide for consultation with NGOs during or before conflicts. This means that NGOs would have a permanent position on the Council, and they would thus be able to take effective steps.

NGOs who have been filtered using some criteria could have access to this subsidiary body. The NGOs recognized by the Council might constitute a “Consultative Committee”, which would most likely be the Consultative Committee of the Security Council (CCSC).

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795 Archibugi (2008), p.165
796 There should be some criteria according to which NGOs must comply with certain requirements. There would be a process of electing NGOs that would allow access to the Security Council. The structure of ECOSOC’s relationships with NGOs could be regarded as a template for establishing formal interactions between the Council and NGOs.
This should be an exclusively consultative body of the Security Council. NGOs would be participants rather than Council members.\textsuperscript{797} As mentioned in Chapter 4, NGOs would have partial legal personality by obtaining formal participation rights in the Council. Theirs would be a limited subsidiary body, as it is to be expected that they would progressively increase their influence. The main feature of these subsidiary bodies would be to perform distinct functions that the Security Council itself does not exercise.\textsuperscript{798} The proposed CCSC would gather and analyse information in order to prepare recommendations on possible action and to support such action as the Council may mandate.\textsuperscript{799} The CCSC’s general activities would encompass advocacy and policy design and implementation.\textsuperscript{800} In this regard, the CCSC would be able to conduct the following activities:

**Providing first-hand information and documentation:** there could be three types of occasion for which the Security Council would need information. It may not be able to discover the truth, it may wish to delay discovering the truth, and it may not wish to discover the truth at all. For example, the present author is unsure which of these categories contains the example is that the Russian government denied any involvement in the Ukraine crisis; the NGO Vice News uncovered the truth.\textsuperscript{801}

**Moulding public opinion:** the CCSC could sensitively but more actively mould public opinion to increase pressure on the Council.

\textsuperscript{797} Willets, (2000), pp.206-207. An ECOSOC Resolution also refers to this difference which concerns the participation of NGOs in International UN Conferences. ECOSOC Resolution 1996/31, para.50


\textsuperscript{799} Herein, Wilenski mentions about necessity of receiving such support for the SC. Wilenski (n75), p.455

\textsuperscript{800} See more in Chapter III

\textsuperscript{801} VICE NEWS, Selfie Soldiers: Russia Checks in to Ukraine, https://news.vice.com/video/selfie-soldiers-russia-checks-in-to-ukraine accessed on 22/06/15
Identifying and analysing problems to be discussed by the Council: this would go together with moulding public opinion when the Council does not take cognizance of a problem or is unwilling to take action. The aforementioned Stanley Foundation and the International Peace Institute (IPI) have been actively discussing peace and security issues by private conferences and roundtable meetings in order to put them onto the Council’s agenda.

Developing alternative solutions and suggesting the best: the CCSC could support peaceful means or other alternatives to avoid military operations. For example, the Quaker United Nations Office (QUNO) has arranged informal meetings with delegates and experts to develop peaceful means for dealing with conflicts and disputes. Likewise, the ICRC has offered its services to maintain agreement between warring parties.\(^{802}\)

Actively monitoring the decision-making process: by this means the CCSC could detect obstacles that prevent the Council from taking action, and also from seeing its own position more clearly. It could allow the emergence of proper solutions to overcome gridlocks in the Council’s decision-making mechanism.

Verifying the implementation of decisions: the CCSC would closely monitor this in order to reduce the number and impact of wrongful actions that could worsen situations in conflict areas. For example the ICRC has assumed a significant role in protecting human rights both during and after international conflicts.\(^{803}\) It has been more efficient in this regard than any other NGOs in that field, as it has been granted special status under the Geneva Conventions and Protocol.\(^{804}\) This illustrates that how an NGO could contribute more to the Security Council by granting formal access.

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802 Kaczorowska (2010), p.810
803 ibid
804 ibid
In this case such access could be set up without having to modify the UN Charter. All that would be required would be to apply Article 29, which states that “[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.” That article therefore provides that such a new organ could be established directly by the Council’s non-permanent members. This article is also reflected in Rule 28 of the Provisional Rules of Procedure: “The Security Council may appoint a commission or committee or a rapporteur for a specified question”.

Authority for establishing a subsidiary body is bestowed not only by Article 29, and not only for the Security Council. Article 7(2) also provides for a general authority: “Such subsidiary organs as may be found necessary may be established in accordance with the present Charter”. Likewise, Article 22 empowers the General Assembly, which “may establish such subsidiary organs as it deems necessary for the performance of its functions”. Lastly, Article 68 confers identical power on ECOSOC: “The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions”. The Coordination Committee of the San Francisco Conference pondered whether the general

806 As discussed earlier, Article 29 is a procedural matter and Article 27(2) states that “decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members”. There is thus no requirement for the affirmative votes of permanent members, as nine votes of the non-permanent members would be enough
provision of Article 7(2) is adequate for all subsidiary organs, eventually concluding that modified versions of Articles 22, 29 and 68 should be retained.\footnote{Andreas Paulus, ‘Article 29’ in Bruno Simma, Daniel-Erasmus Khan George Nolte & Andreas Paulus (eds.), \textit{The Charter of the United Nations} (3\textsuperscript{rd} ed., OUP, 2012), p.987} The main purpose of subsidiary organs is to provide assistance to the Security Council on those occasions when it is unable to perform its primary responsibilities efficiently. Such subsidiary organs could provide support for the Council’s duties of investigation, negotiation, administration and service provision.\footnote{ibid, p.986} For example, after the terrorist attacks on the United States on 11 September 2001, the Council found it necessary to establish a committee concerning counter-terrorism.\footnote{The Repertory of Practice of the United Nations Organs, Supplements Nos. 10 (2000-2009), http://legal.un.org/repertory/art29/english/rep_supp10_vol3-art29_e_advance.pdf} Interestingly, the first resolution regarding this issue does not make any reference to civil society, neither in Resolution 1373 (2001) nor in Resolution 1624 (2005); the resolution adopted in 2010, on the contrary, made reference to the importance of civil society.\footnote{Resolution 1963 (2010) encourages interaction and says: “[r]ecognizing the importance of the support of local communities, private sector, civil society and media for increasing awareness about the threats of terrorism and more effectively tackling them”} Demand might have played a fundamental role in this sea change in the Council’s attitude.

According to Sarooshi the literature on UN subsidiary organs is not extensive because scholars have paid little attention to the subject.\footnote{Sarooshi (n798) p.413} There are two main requirements for establishing a subsidiary organ. The first is for it to be in fact subsidiary, and the second is that its establishment must be deemed necessary for the performance of the Security
Council’s functions. In the case of the CCSC, these two requirements already exist: it aims to be an organ under the control of the Council, and it is acknowledged that the Council has significant problems with its efficiency. The number of subsidiary organs has indeed increased after the Cold War.

In fact, the Repertory of United Nations Practice states that there is no categorical definition of “subsidiary organ”. Article 29 has been used to establish three types of subsidiary organ: standing committees or commissions that deal with recurring issues, commissions or committees that deal with specific subjects in the field, and ad hoc committees that treat single issues and peacekeeping and territorial administration.

A permanent CCSC could have similar functions to those provided in Article 71, which establishes consultative status for NGOs. However, such a body has not been established under Article 29. It is therefore suggested that the maximum effectiveness approach should be applied in order to eliminate possible inhibitive reactions that could be based on legal provisions. Schweigman states that

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813 Paulus (n808), p.986
814 This point is argued in Chapter III
815 Paulus (n808), p.995
817 Ibid, p.236
the open-texture of Article 29 and the innovative use made of it by the Council recently, have led to the question of the exact scope of the Council's powers under the Article.\textsuperscript{818}

As there is a lack of clarity regarding what it prescribes, prohibits and delineates by way of conceptual boundaries, it permits interpretation according to circumstances.

Sarooshi also maintains that the UN Charter must be interpreted in accordance with the interpretative principle that a treaty provision should be read in the context of the treaty as a whole.\textsuperscript{819} Other provisions could likewise be used to support the establishment of the CCSC. Rule 39 of the Provisional Rules of Procedure of the Security Council states that

\begin{quote}
\textit{The Security Council 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.}\textsuperscript{820}
\end{quote}

\textsuperscript{818} Schweigman (n48) p.48

\textsuperscript{819} Sarooshi refers to Article 31(1) of the Vienna Convention on Law of Treaties 1969, stating that “…the interpretation of the Charter, as the constituent instrument of an international organization, requires more emphasis to be placed on the teleological or objects and purposes approach to treaty interpretation rather than upon the literal approach” (n798, p. 423) Other scholars apply the teleological approach: Craig Barker sees Anne Peters’ proposed teleological interpretation of Article 27(3) in this light. J. Craig Barker, ‘The Responsibility to Protect: Lessons from Libya and Syria’ in Robert P. Barnidge (ed.) \textit{The Liberal Way of War: Legal Perspectives} (Ashgate, 2013), p.81. Peters also refers to Article 31 of the Vienna Convention, stating that “the procedural rule of Article 27(3) of the UN Charter which provides for unanimity of the five permanent members could be interpreted systemically, and take into account the responsibility to protect as a ‘relevant rule of international law’ in the sense of Article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT).” Anne Peters, ‘Humanity as the A and Ω of Sovereignty’ (2009) 20 EJIL, pp.513-544, p.540. As mentioned in the methodology section, Miretski also suggests a teleological interpretation of Article 2(6) by applying the maximum effectiveness principle. Miretski (2009)

In accordance with the Appendix of the Council’s Provisional Rules of Procedure, the Council can receive written statements from “private individuals and non-governmental bodies”. Each of these provisions could be applied to exert leverage against restrictive reactions based on legal assumptions.

As usual, however, there is a risk that the arbitrary practices of permanent members can obstruct the establishment of such a subsidiary body. The veto-holding powers have managed to controversialize the decision of whether an issue is procedural or substantive. In fact, the UN Charter does not authorize permanent Council members to determine the questions they will veto. This has not prevented those powers from expanding their privilege as much as possible.

Nevertheless, there are three scenarios that can be expected. The first is that the permanent members would regard the issue as a substantive one and reject it using the double veto power. In this case, NGOs would need to continue to exert pressure on the permanent members until they finally obtain formal status. The second scenario takes place when it becomes evident that the reaction of the permanent members is restrictive, in which case the

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821 Lindblom (2005), p.374
822 Article 31(2) of the Vienna Convention on the Law of Treaties states that “[t]he context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes…”
823 “For neither the words nor spirit of the Charter require that the judgement of one permanent member should make a procedural question substantive when seven of the other members in good faith conclude that it is clearly a question of procedure.” Köchler (1991), p20
824 “One of the most controversial issues has been the voting requirement for establishment such organs.” Goodrich, Hambro & Simons (1969), p.236
826 “Although the Charter regulations tend to restrict the exercise of the veto, the permanent members constantly expand its realm of application as dictated by their considerations of power politics.” Köchler (1991), p.5
principle of maximum effectiveness would be applied on behalf of the world community to eliminate the double veto obstacle. It would eventually be possible to establish the CCSC in which NGOs would enjoy formal status. They would progressively increase their influence in the Council to further access the decision-making process. In the last scenario, all Council members including the permanent ones would approve formal access for NGOs. The plausibility of this scenario is proved by the case of the obstructive role played by Russia in particular to the establishment of subsidiary bodies: while Russia insisted on treating the issue as substantive, other Council members were perfectly willing to view it as procedural. It might mean that the Council’s members are generally intent to consider the fact as procedural. For example, increase in the number of subsidiary bodies has occurred after the Cold War period when the Russia obstacle was not insuperable.

In fact, the Security Council has established many subsidiary organs. In some cases the veto powers consider the matter as substantive, while others are regarded as procedural by consensus or because the elected members or the Council President has persuaded the veto powers to do so. The author therefore believes that the veto poses no insuperable obstacle. The case would indeed be determined according to circumstances, which depend on the agent factor. Likeminded Council members, including the permanent ones, a decisive Secretary-General and Council President and of course continuous pressure from NGOs would play a

827 Miretski (2009), pp.10-11
828 See Sarooshi (n798), pp.443-446. Russia is the only dissenter in the Security Council regarding this issue; the US, the UK and France are favourable to a procedural treatment.
829 This is because the veto powers render the establishment of subsidiary organs difficult but not impossible. Paulus (n808), p.994
830 The UK and France are quite amendable to working with NGOs
831 For example, Diego Arria, Francesco Paolo Fulci and Boutros Boutros-Ghali have made significant contributions to the development of relationships between the Council and NGOs
key role in the granting of formal access. Köchler gives an example that illustrates how the permanent members’ arbitrary behaviour can be challenged. He states that

the permanent members’ overbearingness and self-provided increase in power status through the “double veto” have been undermined to a certain extent since the treatment of the Formosa Case in the Security Council.832

This refers to the complaint regarding the armed invasion of Taiwan on 29 September 1950.833 The President of the Security Council, Gladwyn Jebb, referred to the Rule 39 of the Provisional Rules of the Security Council. The President’s ruling was upheld by a majority of nine votes, and confirmed the procedural character of the question of inviting a representative for the aim of providing information, even though China had exercised its veto.834 The Council President justified his decision with following statement:

I think that if such a situation as this is allowed to stand, a very grave precedent will have been created which may well impede the whole functioning of the United Nations in the future. I do not believe, therefore, that in the general interests of all of us it should be allowed to stand, and I consequently rule as President that, notwithstanding the objection of our Chinese colleague, the vote which the Council took this morning on the Ecuadorean resolution is procedural.835

According to Köchler,

832 Köchler (1991) p.19
834 On several occasions China insisted on characterizing the ruling as “ultra vires”
this was the first time that the President employed the presidential ruling according to Rule 30 of the Provisional Rules of Procedure to prevent the arbitrary use of the “double veto” by a permanent member who was involved in a dispute.\textsuperscript{836}

The Formosa case demonstrates the possibility of overcoming the arbitrary behaviour of the permanent members. The “double veto” power cannot be considered as provided in Article 27(3). It is more likely that the veto powers could be persuaded to obey the rules of the Charter than that an amendment could be introduced to that Charter that constrains the permanent members in particular. The double veto is a debatable issue; it should certainly not be considered as an obstacle as much as veto power that raises directly from Article 27(3). This is to say that establishing a subsidiary organ using the Charter’s current provisions has more chance of success. The controversial nature of this issue also applies to the veto, which therefore cannot be regarded as an obstacle pure and simple. Cohen maintains that existing precedents demonstrate the possibility of limiting any abuse “in the exercise of any so-called double veto”.\textsuperscript{837}

Furthermore, Article 29 has not been used to establish a subsidiary organ whose function is identical to the proposed CCSC. There are, however, some examples of subsidiary organs that refer to the participation of NGOs. One of these is the Security Council Working Group on Peacekeeping Operations, established in 2001 to strengthen cooperation with troop-contributing countries in order to enhance the effectiveness of the United Nations in

\textsuperscript{836} Köchler, (1991), p.19

addressing conflict at all stages, from prevention through settlement to post-conflict peace building.\textsuperscript{838} Yet by 2013 cooperation had begun to include NGOs, as a Security Council Resolution stated:

\begin{quote}
Support peace consolidation and inclusive political processes and through their good offices, advice and support, as well as by their ability to deter threats to the ongoing peace process, and facilitate consultation process among local population and civil society to help them contribute to national processes and discussions, and upon request, provide security, technical, logistic and administrative support to representative electoral processes, within the limitation of its capacities and resources…\textsuperscript{839}
\end{quote}

In addition, the Security Council Working Group on Children and Armed Conflict was established by Council Resolution in 2005.\textsuperscript{840} The resolution of this subsidiary organ makes direct reference to the participation of civil society:

\begin{quote}
Underlines further that this mechanism must operate with the participation of and in cooperation with national Governments and relevant United Nations and civil society actors…\textsuperscript{841}
\end{quote}

Lastly, there is Peace-building Commission (PBC) that was established by the UNSC Resolution and General Assembly Resolution in 2005.\textsuperscript{842} This subsidiary body was formed to develop strategies for post-conflict regions in order to conclude sustainable development.

\textsuperscript{838} \url{http://www.un.org/sc/committees/wgpko/}
\textsuperscript{839} UN Security Council Resolution 2086, S/RES/2086 (2013)
\textsuperscript{840} \url{http://www.un.org/sc/committees/WGCAAC/}
\textsuperscript{841} S/RES/1612 (2005)
\textsuperscript{842} S/RES/1645 and A/RES/60/180
The Resolution for this subsidiary body explicitly indicates importance of participation of NGOs as it read:

Recognizing the important contribution of civil society and non-governmental organizations... and Encourages the Commission to consult with civil society, nongovernmental organizations…

These examples show that the Security Council is used to establishing subsidiary bodies that allow NGO participation. Examination of their resolutions makes it clear that they have mostly agreed to recognise and encourage cooperating with civil society. The CCSC would embody two main factors; the provision of effective and direct participation for NGOs and a comprehensive set of purposes. What the Council would need to do, therefore, is to establish a comprehensive subsidiary organ that would provide direct and effective participation for NGOs, rather than making suggestions or making tangential and fleeting references to them.

As can be seen from these examples, subsidiary organs had previously dealt with specific circumstances such as the aftermath of conflicts, or with particular issues such as children and armed conflicts. The Repertory of Practice of the UN Organs mentions some of these special-purpose subsidiary organs. The Council has established “special political missions and peace-building offices” to support peace processes, conflict prevention and peace-building efforts, “working groups” to discuss a range of issues related to the work of the Council such as developing general recommendations on how to improve its effectiveness, and “commissions and investigative bodies” to investigate violations of international humanitarian and human rights law and to investigate all aspects of assassinations of political
figures. The Council has in effect established subsidiary organs to assist it in maintaining international peace and security as well as with its own working methods and procedures. The proposed CCSC would be able to cover these issues comprehensively.

As mentioned, the absence of a definitive legal veto to this proposal means that the veto poses no obstacle. The lack of a clear definition of subsidiary organs also gives hope for this proposal to be put into practice: if there was such a definition, it could result in limitations.

845 ibid
7.2 Critical Evaluation of NGOs in their Formal Participation in the Security Council

The formal involvement of NGOs in the Council should be examined critically. Paul Wapner considers that “NGOs should not be free from harsh scrutiny and critiques simply because they inhabit global society, of which many have an overly romantic understanding”.\textsuperscript{846} Thus, whilst recent criticisms of NGOs are “insightful and extremely important”,\textsuperscript{847} it is essential to critically analyse the formal participation of NGOs in the Security Council by considering counter-arguments.

\textsuperscript{846} Wapner (2007) p.261
\textsuperscript{847} ibid
7.2.1 Critics of NGOs’ Accountability

The credibility of NGOs is largely great in the areas in which they operate. Surveys conducted between 2001 and 2011 show that NGOs performed better than businesses, governments and media in providing credible information on human rights, the environment and health.\textsuperscript{848} However, there are concerns that NGOs may not be sufficiently accountable.

Some argue that NGOs have an accountability problem, implying that they are not reliable enough actors to be granted formal access.\textsuperscript{849} Edwards and Zadek are concerned about this issue, claiming that “NGOs have no clear bottom line for results and no single authority to whom they must report on their activities”.\textsuperscript{850} Willets maintains that NGOs may be running a democratic deficit, as some are small unrepresentative personal fiefdoms and others represent a wide body of opinion but have no procedures preventing their supporters from influencing their policies.\textsuperscript{851} Gartner points out that “one important dimension of accountability which is enhanced by the participation of civil society within international organizations is transparency”.\textsuperscript{852} Grigorescu’s study testing some hypotheses across 72 international organizations by using some newly developed measures of transparency shows that NGOs

\textsuperscript{849} This is an observation the author first encountered in presentations
\textsuperscript{851} Willets (2000) p.207
\textsuperscript{852} David Gartner, ‘Beyond Consultation: Civil Society and the Governance of International Institutions’ Global Economy and Development at Brookings, 2010, 13
are significant predictors of organizational transparency.\textsuperscript{853} Thus, NGOs still would have conspicuous role in enhancing democracy.\textsuperscript{854} In fact, as is mentioned in Chapter 8, NGOs could make significant contributions to the Council even in terms of accountability. It is true that they may have accountability issues, but this is no obstacle to their formal participation.

Nevertheless, when consideration is given to how fairly NGOs elect their executives and directors, together with the fact that some establish NGOs merely to make a profit, some to raise funds and not distribute for raised purposes and some to serve specific state interests. The impact this accountability problem has on the issue of granting NGOs formal access cannot therefore be ignored. The \textit{Economist} points out that these organizations could develop bad habits if they are not accountable to anyone.\textsuperscript{855} Likewise, the \textit{New York Times} notes that NGOs

\begin{quote}
are now part of the power structure, too. They receive donations from the public and advocate policies that each group claims are in the public interest. As they become part of the established political landscape worldwide, these groups owe it to the public to be accountable and transparent themselves.\textsuperscript{856}
\end{quote}

Yet, as mentioned above, while this issue is certainly the subject of debate, it should not be considered as an obstacle to their formal participation. Objections could be overcome by providing some suitable mechanism. In this regard, the question of the role and accountability of NGOs has been received significant attention from both their critics of NGOs and their


\textsuperscript{854} ibid

\textsuperscript{855} \textit{The Economist}, \textit{Sins of the Secular Missionaries} (27\textsuperscript{th} January 2000)

\textsuperscript{856} \textit{The New York Times}, ‘Holding Civic Groups Accountable’ (21 July 2003)
defenders. Some commentator’s views on the problem will be mentioned, and their proposed solutions addressed. Finally, the current study’s proposed ways of accounting NGOs for formal access in the UNSC are presented.

Anderson questions the accountability of NGOs:

If, as has often been claimed during the last twenty or so years, NGOs act as "stand in" representatives of the "peoples" of the world before international organizations, in what sense and to whom are they accountable, if they now stand alongside or supplant states in this role? And in what sense are these international organizations to account to NGOs, why, on what basis, and what principle of justification, if at all? 

In Anderson’s view, it is harder to hold NGOs accountable at the international level than the domestic one. He suggests that NGOs should find ways to discipline themselves and their ideological pretensions in order to remain useful experts and advocates of their causes as a civil society. They should also forgo their excessive fondness for public international organizations. This does mean that they should not establish relations with them. He maintains, however, that these constitute mere faux-legitimacy, as there is no reliable system that could hold NGOs to account in such relationships. This is to say that NGOs’ accountability should depend solely on agreements between them and international organizations. Otherwise, NGOs could eventually be seduced into satisfying one particular

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859 ibid
international organization’s demands while ignoring its own members. The current study therefore also suggests that accountability of NGOs should not only depend on the mechanism of the UNSC, but should also balance their relations with the 

*funders of these movements, the philanthropists and foundations that set the priorities, establish the incentives and disincentives, and which represent a whole other set of social and economic pressures upon NGOs and social movements.*

This is indeed a useful way for NGOs to apply self-accounting system as it would improve their credibility against both members of the UN Security Council and its members.

Keohane indicates that NGOs are highly vulnerable to reputational threat: they are very weak actors whose credibility depends on their accountability. For example, an NGO might lose membership and funding if the public becomes aware that it does not use the funds it raises for its stated purposes. In addition, it could be charged for its unlawful action. Wapner outlines the difference between NGOs’ and states’ accountability. This does not mean, however, that one is more accountable than other. If an individual member of an NGO disagrees with its policy, they would at least be able to withdraw their membership or support. Woodward likewise states that “NGOs are accountable to their members who can withdraw their support at any time”. Wapner also maintains that “members vote with their

860 ibid
863 ibid
864 Woodward (n595) p.229
feet. When the NGO no longer expresses their sentiment, they exit”. In addition, members take their money with them when they withdraw their membership from an NGO. If any problem regarding an NGOs’ accountability were to occur in the Security Council, it would at least be possible to hold them to account – by contrast with states.

However, this might not be an efficient way to hold NGOs accountable, nor might it be possible for members to monitor their activities. In such cases, states should take responsibility for monitoring NGOs and requesting that they state their funding purposes and sources, as well as scrutinizing their spending. For example, the Economist provides a report on auditing NGOs:

Competition for funds and publicity among the larger NGOs results in a divided movement that is not making the best use of its assets. It also results in the diversion of funds from conservation to institutional survival, self-interest and a lack of transparency.

Wapner highlights other ways of making NGOs accountable, including boards of directors or advisory councils, collaboration with other NGOs and accountability to states when they wish to obtain accreditation to international institutions. Likewise, NGOs could likewise be held accountable by a UNSC mechanism that would be established to accredit NGOs to the Council. This mechanism could require that NGOs report their activities and monitor their operations. It would thus be useful for the Council to institute a mechanism that would hold NGOs accountable both before and after formal access was granted.

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865 Wapner 2002, p.201
866 ibid
867 The Economist, ‘Who Guards the Guardians’ (18th September 2003)
868 ibid, 201-203
Some criticise NGOs for their executives’ voting processes. Charnovitz, however, dismisses the notion that representativeness has any bearing on NGOs’ accountability, believing rather that it is more important to determine the usefulness of the organization’s ideas than “whether the ideas faithfully represent the views of the NGO’s membership”. Spiro likewise maintains that NGOs cannot be monitored as ‘the democratic state is idealized on the accountability metric, especially by virtue of periodic elections’.

He believes that voting is “a crude tool for keeping governmental authorities in line” as governments could “get away with an awful lot before having to answer to their membership…” He suggests that “the formal inclusion of non-state actors in international decision-making might act more as a restraint on NGO and hold them accountable.” Formal access would certainly also increase the possibility of holding NGOs to account. On the other hand, it could be difficult to monitor an NGO that acts informally, and is thus not subject to any clearly defined rules. The granting of formal access would place certain obligations and responsibilities on NGOs as well as conferring rights. Maragia states that

*recognizing NGOs as legal persons not only enables them to become better actors but also enables the international community to hold them accountable for what they do.*

Granting NGOs formal access to the Council would thus increase their accountability, as it would involve the imposition of a code of conduct.

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869 Charnovitz (2005), 34
871 ibid
872 ibid
873 Maragia (2002), p.332
874 Barbara (n.143) 229
The questions of who such organizations should be accountable to in the UNSC and how they should be held accountable under a formal access regime remain. Some potential answers present themselves.

The present study suggests that the Council could also establish a committee on NGOs similar to the one in ECOSOC, whose standing Committee on NGOs was established by the Council in 1946. One of the main tasks of that Committee is the consideration of applications for consultative status and requests for reclassification submitted by NGOs.\textsuperscript{875} ECOSOC has also established principles that require NGOs to fulfil requirements of representativeness and accountability.\textsuperscript{876} The Council could likewise establish a committee and outline principles on NGOs in order to evaluate the operations of NGOs seeking to be considered for formal access. This committee could also require NGOs to be more transparent about their personnel, funding and activities.

This argument is strengthened by the consideration that it might be risky to leave the question of NGOs’ accountability solely in hands of states, whose activities they are likely to criticize. It would thus be unreasonable to expect a state-based mechanism such as the UNSC to be objective.\textsuperscript{877} State-based gatekeeping could also cause NGOs to satisfy the Council at the expense of their members. The present study therefore adds the suggestion that it would be necessary to develop alternative means in addition to the Council mechanism that would hold NGOs fairly to account. NGOs themselves should therefore take steps to be more transparent in their funding, personnel and operations. They could monitor each other’s activities when

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{875} \url{https://www.un.org/development/desa/en/news/ecosoc/ngo-committee.html} accessed on 20/12/2015
\item \textsuperscript{876} ECOSOC Resolution 1996/31
\item \textsuperscript{877} Charnovitz, (2005) p.38
\end{itemize}
\end{footnotesize}
they cooperate. Ultimately, the question of NGO accountability is thus an issue for debate; it should certainly not be regarded as an obstacle.

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7.2.2 Fairness and Objectivity

Some regimes often consider the efforts of NGOs as inimical to their interests, believing that their work is in the interests of some other countries. These governments would therefore resist the involvement of NGOs on a formal basis. For example, permanent members such as Russia and China are very reluctant to recognise the work of NGOs and to cooperate with them. Jeremy states that

the USA, UK and France are more open to Non-Governmental Organizations (NGOs). On the other hand, Russia and China, also permanent members of the Security Council are suspicious of NGOs. Thus, Russia and China make life for NGOs in their territories much harder.\(^{879}\)

They are therefore likely to be the most significant opponents of granting formal status to NGOs. The fact that the leading NGOs are mostly European or American may increase the Council’s inequality if they were to be granted formal access. This presents a possible objection to this proposal. Roger Porter observes that

it is clear that many developing countries view NGOs, which are largely based in and driven by individuals and groups in developed countries, as often hostile to their interests.\(^{880}\)

\(^{879}\) Interview with Sir Jeremy Greenstock, Chairman of the UN Association in the UK, United Nations Association-UK (London 21 November 2013)

There would, however, be some criteria that could be applied when granting formal status to NGOs in the Security Council. ECOSOC uses this procedure: “a[n] NGO cannot be profit-making; it cannot advocate the use of violence; it cannot be a school, a university, or a political party…” The Council can likewise apply its own criteria that accord with its purposes, using a process that would ensure the selection of suitable NGOs to the CCSC.

For example, national NGOs could be excluded from formal participation on the grounds that it is easier for national governments to influence them. Indeed, a government could theoretically shut down a national NGO, “confiscate its assets, and prevent its officers from travelling abroad”, even though the significant political costs involved may make this difficult in practice. (It may also not be entirely effective in preventing the NGO from communicating with the outside world.) A national NGO would therefore be susceptible to governmental pressure, and may indeed be significantly dependent on its government’s policies.

By contrast to such national NGOs, it is certain that “each international NGO is a distinct entity”. International NGOs could locate their headquarters in different countries, meaning that if a state were to prevent an NGO from performing its activities, that NGO would close down its headquarters in that country and reopen them in another. International NGOs are thus difficult to coerce, and are not likely to be dependent on a single state’s policies. It would therefore be possible to prevent NGOs with state or group interests from accessing the Security Council, when they are already subject to pressure from the permanent members.

881 Willets (2000), p.192
883 ibid
The imbalance objection might be valid to some degree, as it first occurred in 1921 in the dispute concerning the Dutch worker delegate to the ILO.\textsuperscript{884} Be that as it may, this problem is not an insoluble one as regards formal participation of NGOs on the Council. Firstly, Charnovitz points out that “the growing number of NGOs in developing countries may help redress geographic imbalance”.\textsuperscript{885} Secondly, NGOs should not be considered as states. Their membership is mostly international. Besides, even if an NGO betrays its purposes and uses the opportunities presented to it to serve the interests of a particular country, such a state of affairs would be obvious because the actions of NGOs under a formal status regime would be open to public scrutiny. NGOs would ultimately be held accountable for their actions, which would present a disincentive to them to behave in such a way.

Moreover, because the nature of NGOs is different from that of states, they should not be judged on the basis of equal regional division. Antonio Gramsci draws

\begin{quote}
the distinction between political society (the police, the army, legal system, etc.) which dominates directly and coercively, and civil society where leadership is constituted through ideology or by means of consent\textsuperscript{886}
\end{quote}

In other words, the activities of civil society are mostly based on individual consent, in contrast to the coercive methods employed by states. NGOs as a civil agent should not be equated with states, which are members of political society.

\begin{footnotes}
\textsuperscript{885} Charnovitz (1997) p.276
\textsuperscript{886} Antonio Gramsci, \textit{Prison Notebooks} (Colombia University Press 1975)  
\url{http://libarts.wsu.edu/ccgrs/undergraduate/syllabi/113/405slides3.pdf} accessed on 19/09/2013
\end{footnotes}
Willetts agrees that NGOs and states are different. He considers the latter as negotiators and NGOs as participants. Their functions are distinct, so their contributions to global governance differ.\textsuperscript{887} Even though NGOs may have certain rights and might perform significant roles in international law and international relations, yet they cannot be treated as equal to states or intergovernmental organisations.\textsuperscript{888} They should thus not be considered as representatives of regions or countries.\textsuperscript{889}

An NGO founded in Germany might be very effective in Africa. Global Witness, for example, is an IGO with offices in the UK and America, yet its effective discovery of “natural resource exploitation, conflict, poverty, corruption, and human rights abuses worldwide” is well known. One of its reports, “A Rough Trade”, uncovered the blood diamond trade in Angola.\textsuperscript{890} Angola is a southern African country, but it would be incorrect to consider Global Witness as an NGO from a single region (in this case, Europe).

\begin{flushright}
\textsuperscript{887} Willets (2000) , p.208  \\
\textsuperscript{888} Santivasa (n198), p.378  \\
\textsuperscript{889} Further, some may argue that there should be an equal regional division in order to have same number of NGOs from each region in the Security Council. This can be considered as a reflex of state based understanding; because this approach puts the NGOs into character of the states. However, the NGOs in question here should not be seen as a representative of interests of a region, a state or a small group, instead, they should be accepted as representative of some specific problems of all world community.  \\
\textsuperscript{890} Global Witness has also lobbied the SC to stop the trade in minerals fuelling war in Eastern Congo. Consequently, “On 22 December the UN Security Council (UNSC) passed Resolution 1856 extending and broadening the mandate of the UN peacekeeping force in Congo, MONUC. For the first time in its nine year history, MONUC is now mandated to 'Use its monitoring and inspection capacities to curtail the provision of support to illegal armed groups derived from illicit trade in natural resources'. This should pave the way for MONUC to begin cutting the illicit outflow of high-value minerals which keeps the armed groups operational.”  
\end{flushright}
What is more, NGOs’ memberships can span the globe, as indeed can their branch offices. The latter are quite different from states embassies founded to maintain their national affairs. This implies that a western-based NGO could indeed be more supportive of the rights of southern people than southern governments.

NGOs play significant roles such as “adding more diversity to the policymaking process and monitoring the gap between governmental rhetoric and governmental practice in policy making implementation”.\(^{891}\) It is thus logical to expect that the participation of NGOs, even Western- or American-based ones, would be much more active than developed nations on behalf of developing countries. If this were not so, then most developing countries would not oppose NGOs’ activities.

The Indian representative of the G-77 made a proposal to a substantive session in Geneva in 1995\(^{892}\) according to which

\begin{quote}
the whole United Nations system, including United Nations bodies and conferences dealing not only with economic, social and sustained economic growth and sustainable development issues, but also with disarmament, finance, trade, law and humanitarian affairs, should be open to the participation of non-governmental organizations.\(^{893}\)
\end{quote}

\(^{891}\) Sorensen (n444), p.355


\(^{893}\) ibid
In fact, it is by far the developed countries who oppose the participation of NGOs, perhaps because it has mostly been NGOs who have challenged their ultra vires acts.

Some scholars disagree that NGOs can be considered as advocates of states’ interests. Philosopher John Dewey stated that “the voluntary associations just spoken of do not coincide with political boundaries”. He cited “associations of mathematicians, chemists, astronomers; business corporations, labour organizations, churches, [who] are transnational because the interests they represent are worldwide”. It would indeed be hard therefore for a single state to encompass global concepts or aspirations. A matter concerning the world community should not be confined within borders of a state. Samsung Galaxy smartphones obviously do not suit only South Koreans. When a scientist discovers a remedy for an illness, everyone around the world who suffers from that illness would benefit.

Charnovitz agrees that NGOs should not be curbed by the national interests of states. He says that it would be illogical to compel an NGO like the International Chamber of Commerce (ICC) or the International Confederation of Free Trade Unions “to channel its concerns through its own government”. By his account, the majority of NGOs are more likely to foster socially beneficial policies. He also believes that NGOs have not organized internationally and promote collective goals such as peace and the protection of the global

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895 ibid
896 Charnovitz (1997) p.276
897 This merged with the World Confederation of Labour (WCL) to form the International Trade Union Confederation (ITUC) in 2006
898 Charnovitz (1997)
commons by mere chance. While national NGOs may well advocate militarism or protectionism, such aims are unlikely to inspire true international coalitions. National NGOs could thus be excluded from the Council, as mentioned earlier (see also the definition of NGO in Chapter IV).

The Security Council would moreover actually benefit, as NGOs would share all their potential facilities. The aim of involving NGOs in the Security Council is to develop its capabilities and to challenge its anti-democratic structure. They would thus not gain any advantage from the Council. Thus, because NGOs would deliver rather than receive benefit from such a relationship, the question of equal distribution of benefit does not arise. The participation of NGOs to the Council cannot be considered pragmatically. A country that obtains permanent or non-permanent Council membership could well use such an opportunity to further its own national interests, but the activities of NGOs to a large extent benefit most of humanity. The granting of formal status on the Security Council for either western or southern NGOs should be satisfactory to people from all the world’s regions.

899 ibid
900 ibid
7.2.3 Whether NGOs are a Threat to International Legal Order

Chandler has criticized the role of civil society in the international realm, emphasizing the negative role of NGOs in international relations:

[T]he attraction of the global sphere has little to do with changes at the international level; the focus on morality and values in international relations is not the product of an actually existing global civil society, of the campaigns and work of NGOs, ‘moral entrepreneurs’, or any other providers of information or ethical ideas.901

He thereby denies the contribution of NGOs to democracy or other values in international relations, instead considering them as self-interested agents. He thinks NGOs should not be expected to deal with pressing international issues, concluding that “we should perhaps ask less of global society and more of ourselves”.902

That limited description of NGOs, however, is wrong. It would be unfair to ignore the contributions of NGOs have made thus far, as Wapner points out.109 Their activities have proved crucial in increasing representation. The Secretary-General’s report highlights the importance of NGO’s participation. The report emphasizes significant aspects of NGOs such as their patience in seeking out peaceful measures, their first-hand, speedy collection of information about conflicts and their ability to rebuild war-torn countries. When the

901 David Chandler, Constructing Global Civil Society : Morality and Power in International Relations (Palgrave Macmillan 2004) p.208
902 Ibid p.209
Council’s deficiencies are considered, these features are likely to be essential to the Council’s work in maintaining international peace and security.

Charnovitz also observes that it would be unfair to accuse NGOs of undermining positive international law while significant numbers of them have helped develop it. NGOs’ aims would at least be no worse than those of states or terrorist groups. They would in any circumstances contribute more than states. The UN has also been convinced that, in spite of all their problems, NGOs can enhance the Council’s skills.

Anderson also considers NGOs as a threat to the supremacy of international law. He goes further, characterizing the influence of NGOs as “international legal imperialism” and maintaining that international NGOs do not represent local individual voices, but rather reflecting the interests of global transnational elites in the international legal order. Falk and Allott, by contrast, believe that the development of international civil society is a positive phenomenon. Falk’s concept is that

\[
\text{international movements founded on common interests that cross state borders} \\
\text{are active in the international system, but that they are partial, representing} \\
\text{particular issues and interests.}
\]

Falk thus refutes Anderson’s approach to NGOs’ activities, arguing that they are inconsistent with his view of them as “international legal imperialists”.

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903 Charnovitz (1997) p.277
904 Therien & Belanger-Dumontier (n159), p.362
905 Anderson, ‘The Ottawa Convention’, pp. 103-104
906 Cullen & Morrow (2001), p.9
907 ibid
The author also maintains that the development of NGOs should not be considered as a threat. As Falk rightly indicates, NGOs are the products of individual demands. They might certainly be inimical to self-interested groups who have no compunction about violating individual rights. NGOs cannot be regarded as representing the interests only of small numbers of people. On the contrary, their constituency is large. Kelsen’s quote must be pointed in this context: he states that it is necessary to “focus on the fact that the real subjects of international law are individuals.”909 The activities of NGOs should not therefore be regarded as a menace, or as international legal imperialism: in fact, they represent individual interests.

It must be admitted that some NGOs do advocate causes that are deeply controversial and, in some cases, are incompatible with universally accepted norms and principles.910 This may well be true, but it does not present an obstacle to the participation of NGOs. This concern can be dealt with through ECOSOC’s mechanism of applying criteria for NGO membership. The Security Council could do the same in order to exclude undesirable NGOs.

The increase in the numbers of NGOs derives from popular demands, of which they are the agents and executors. They should therefore not be considered as threats to international law. If they were, so could any actor in the international arena. If Chandler’s and Anderson’s views were carried to their logical conclusion, all states could be considered as threats to

908 Richard A. Falk, *On Humane Governance*, p.100 and ibid
international law and as deleterious to the international legal order. In fact, the present author does indeed consider NGOs as threats – not, however, to the international legal order by to the self-centred and hypocritical interests of states.
7.2.4 NGOs Potential Undermining of the Security Council’s Effectiveness

In addition to all these factors, some believe that granting formal access to NGOs would make the Security Council less effective because of the potential participation of large numbers of NGOs, which might prove impractical. This problem could, however, be addressed in the same way as in ECOSOC’s system.911

In fact, the Council has already been suffering from an inefficiency problem. Just the most recent cases of Syria and the Ukraine demonstrate that the Council has much to gain in terms of effectiveness. In truth, it is an organ that does not work well; any negative side-effects of a reform proposal should certainly be taken into consideration, but they should not be regarded as impediments to reform.

911 “In 1950, the arrangements were reviewed and a new resolution (Resolution 288) was adopted by ECOSOC” Lindblom (2005), p.376. The main reason for this resolution was to review relations with NGOs, as there were large numbers of them and it was taking a long time for them to finish their presentations. See Baslar (2006), p.139
CHAPTER EIGHT

Estimating Outcomes of Formal Access for NGOs to the Security Council

8.1 Balancing Veto Power

First and foremost, formal participation by NGOs in the Council’s state-based system could provide the necessary checks and balances against the excesses of state collusion in decision-making.\textsuperscript{912} Daniele Archibugi similarly maintains that pressure is more influential when exerted by nongovernmental actors,\textsuperscript{913} while Hans Köchler emphasizes that an international organization can properly function only in an order that provides a balance to the holders of power.\textsuperscript{914} It is therefore only to be expected that formal access by NGOs might be a counterweight to the intrinsically undemocratic, unaccountable and ineffective institution of the Security Council.

The question of providing such a balance is not an easy one. Other members have thus far failed to exert adequate pressure on the holders of the veto power, mainly because other members’ policies have depended largely on those states, and in particular the US and Russia. It would be naïve to think that the elected Council members will in the near future adopt measures to balance the Permanent Five. On the other hand, NGOs are only actors that have managed to influence the permanent members, thanks to the latter’s limited sources of

\textsuperscript{912} Murithi (2012), p.138
\textsuperscript{913} Archibugi (2008), p.158
\textsuperscript{914} Köchler (2006), pp.336-337
informal access. Formal access would give NGOs more latitude to exert their power of influence more efficiently. Several possible answers to the opening question do therefore suggest themselves.
8.2 Sources of Information

As mentioned in Chapter IV, NGOs could provide technical expertise on special topics required by governments.\textsuperscript{915} As many sources of information and data are independent, NGOs could supply personnel and resources that governments have been reluctant to provide to international organizations in the interests of compliance.\textsuperscript{916} In fact, it is essential for the Council to have adequate sources of technical support in order to increase its capabilities on the ground. The Panel Report of 2015 states that

\textit{In the field, mission leadership should proactively seek objective feedback on progress and trends from independent experts and civil society and track perceptions of the mission.}\textsuperscript{917}

Likewise, the eminent report of the UN’s Independent Working Group sees the Council as potentially “benefiting from early warning and analysis that will permit the more effective exercise of preventive diplomacy”.\textsuperscript{918} This would deprive the Council of the excuse of not

\begin{flushleft}
\textsuperscript{915} “NGOs often have more accurate and up-to-date information in specific situations, as they tend to have better and independent sources of information from field situations, in particular during crisis periods. UN delegates also often use the working group’s websites, as these sites in some cases provide the most comprehensive source of information on current affairs.” Kerstin Martens, ‘NGOs in the UN System: Examining Formal and Informal Mechanisms of Interaction’ (2004) 2 International Journal of Civil Society Law, pp.11-21, p.19; Charnovitz (1997) pp.274-275
\textsuperscript{917} United Nations A/70/95-S/2015/446, para.179
\end{flushleft}
having adequate resources to be effective.\textsuperscript{919} It might also prevent it from spuriously justifying its wrongful actions.\textsuperscript{920}

It is the author’s view that the Security Council, and in particular its permanent members, cannot be unaware of events in conflict areas. Their easy access to significant sources of intelligence must mean that they are fully informed. If this is accepted, it is not possible to maintain that they do not take action, or that they take the wrong actions, because they do not have the necessary information. Such inaction or wrongful action must therefore be deliberate.\textsuperscript{921} NGOs can change this mindset by publicly presenting the Council with the facts regarding a particular situation, making it impossible for the Council to withstand pressure from the international community.\textsuperscript{922}

\textsuperscript{919} In the case of use of chemical weapons in the ongoing Syrian crisis, it would have taken an unconscionably long time to discover the facts if NGOs had not provided the necessary documentation by social media

\textsuperscript{920} As in the Iraqi invasion of 2003 and the Libyan intervention of 2011


\textsuperscript{922} The Bush administration asserted that there were weapons of mass destruction (WMD) regarding the invasion of Iraq in 2003, but it was later revealed that the administration presented misleading information in order to justify its military operation. See the latest news about this issue at https://news.vice.com/article/the-cia-just-declassified-the-document-that-supposedly-justified-the-iraq-invasion accessed on 30/03/15.
8.3 Enhancing Efficiency

Kofi Annan states that “the United Nations relies on to be as effective and responsive as it can be, in the service of the people it exists to represent”. As argued in Chapter III, the lack of effectiveness is one of the main prompters of calls for reform. NGOs’ formal participation in the Council’s decision-making processes would make it highly possible for them to press the Council to take more effective action. Annan holds that

*the overriding purpose of cooperation between the United Nations and non-state actors should be to enable the Organization to serve Member States and their peoples more effectively.*

He maintains that “cooperation should be viewed as a means of achieving United Nations goals and enhancing performance”. It has been acknowledged that NGOs could enhance the efficiency of the Council’s activities by supplying “field experience and expertise across a vast array of human concerns, as well as a valuable capacity for information-gathering and dissemination”.

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925 ibid

926 Therien & Belanger-Dumontier (n159), p.361

927 Boutros-Ghali (1996), pp.34-35
NGOs have influenced international law by persuading states to take action without consent. Jessica Mathews observes that NGOs are increasingly able to sway even the largest governments, and that they have therefore become significant actors in maintaining the supremacy of law.

Moreover, NGOs could establish close, regular relations with top officials of member states, which would allow them to achieve their goals more quickly. In this regard, they could help state officials to examine controversial proposals by providing rapid feedback. The Panel Report of 2015 states that

[in the field, mission leadership should proactively seek objective feedback on progress and trends from independent experts and civil society and track perceptions of the mission.]

Formal participation by NGOs could also provide a mechanism for determining reaction to the Council’s measures. Testing the value of such decisions in advance would ameliorate the negative responses that might be provoked while increasing the Council’s credibility. NGOs could also press reluctant states to compromise over issues that provoke dispute.

929 She gives the following example: “when the United States and Mexico set out to reach a trade agreement, the two governments planned on the usual narrowly defined negotiations behind closed doors…Coalitions of NGOs formed in each country and across both borders…After months of resistance, the Bush administration capitulated, opening the agreement to environmental and labour concerns. Although progress in other trade venues will be slow, the tightly closed world of trade negotiations has been changed forever.” Jessica T. Mathews, ‘Power Shifts’ (1997) 76 Foreign Affairs, pp.50-66, pp.53-54  
930 Charnovitz (1997) p.274  
931 United Nations A/70/95-S/2015/446, para.179  
932 ibid
Under the WWO, states did not bear much responsibility in international law for their actions. This meant that there was no authority by which states could be held to account for their behaviour, and no possible leverage that could be exerted on them to prevent them from taking any particular action.\textsuperscript{933} NGOs’ increasing activities in the post-Westphalian era have, on the other hand, led to states becoming accountable for their actions.\textsuperscript{934} Duncan Hollis notes that “there is no doubt that international law recognizes fewer topics today as within the reserved domain of states’ respective domestic jurisdictions”.\textsuperscript{935} NGOs could thus cause the Security Council to take action even when its member states were not willing to do so.

\textsuperscript{933} For example, there were only 40 states that have declared to recognize the jurisdiction of the International Court of Justice as compulsory. This number equals to a quarter of the Members of the UN (as it was 166 in 1990). This number is currently 72 states. It equals to nearly half of the members of the UN (as it is 193 now). Plus, some major powers have approved compulsory jurisdiction during post-Westphalia period such as UK (2014), Germany (2008), Japan (2007), and Italy (2008). \textless http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3\textgreater accessed on 15/07/15


\textsuperscript{935} ibid
8.4 Eliminate Lack of Representativeness

Another consideration that renders the participation of NGOs necessary is the lack of representativeness in the Security Council. Tallberg and Uhlin also point out that

*the opening up of international institutions to CSOs expands participation, establishes a complementary channel of representation of citizen concerns and ultimately improves the prospects of those being affected by global decisions to also have a stake in their formulation and implementation.*

NGOs by nature tend to allow for more direct participation by citizens. Scholte likewise maintains that increasing NGOs’ participation could enhance public participation in global governance and put the interests of vulnerable and often excluded groups onto decision-makers’ agendas. National minorities, ethnic groups and those governed by monarchies cannot properly be represented in the international arena. Only some one-third of the world’s states are democratic, and even their governments do not represent their entire populations. Individuals elect their governments, but these pay little heed to their electors’ concerns in their foreign policies. Nothing can be said concerning those who did not vote for their current governments.

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936 The representativeness capacity of NGOs is mentioned in the Chapter IV.


940 Anderson, ‘The Ottawa Convention’ p.116
In fact, a lack of representation in the sphere of foreign policy did not pose a problem for individuals decades ago because globalization was not an issue, so a problem in one region had little impact on other regions. The current world order, however, compels individuals to concern themselves with conflicts in remote areas. For example, the Ukrainian and Syrian crises may have been causes of apprehension to many, not just because of the potential effect of such far-off events on their lives, but also because the proliferation of news and its easy availability through a variety of media including smartphones means that affecting images of conflicts can have a significant – and significantly negative – emotional impact.

States thus no longer find it easy to hide their foreign policy faults. NGOs have enormous resources with which to mould public opinion. There has been a significant increase in access

941 “It has been too often confirmed that practices of indignity and strife which begin as internal in physical manifestation in a single community quickly and easily spread to other communities and become international.” Myres S. McDougal & W. Michael Reisman, 'Rhodesia and the United Nations: The Lawfulness of International Concern' (1968) 1 Yale Law School Legal Scholarship Repository, p.13.

942 A tragic news item that supports this argument has commanded popular attention around the world. The picture of the lifeless body of Aylan Kurdi, a three-year-old Syrian boy from Kobane, was published by a Turkish news agency. The picture has sparked a massive wave of comment internationally on social media, to the extent that it has apparently been responsible for a shift in attitudes to migration. As a political result, the picture has caused some countries such as Germany to relax their restrictions. Governments whose migration policies are very restrictive have also been put under pressure by petitions with hundreds of thousands of signatures. http://www.bbc.co.uk/news/blogs-trending-34142804 and http://www.msn.com/en-gb/news/uknews/2000-britons-offer-to-house-refugees-in-their-homes/ar-AAe0G3g?ocid=mailsignoutmd accessed 08/09/15

943 When the Iraq war took place, there were significant protests took place around the world, particularly in USA and UK. The Iraq invasion caused severe criticism for Bush and Blair administrations. Consequently, it had impact on politicians’ promises too. For example, Obama made promises about withdrawing US army from Iraq and Afghanistan; and he made more peaceful speeches. See: Barack Obama speech about the ‘Responsibly Ending the War in Iraq’: http://www.whitehouse.gov/the_press_office/Remarks-of-President-Barack-Obama-Responsibly-Ending-the-War-in-Iraq accessed on 02/12/2013.
to communications media, particularly radio, television and film. These media have served to raise awareness of both problems and opportunities. Boutros-Ghali states that it is possible to persuade people everywhere to request more accountability, more representation and “more participation in governance, [and] eventually, more control over their future and more say in the decisions that affect their lives”. NGOs have therefore been of prime importance for international organisations since the latter are not able to represent popular demands, let alone to meet them. NGOs communicate superbly with people at both national and international levels, so they would be perfect vehicles to give voice to those who are not represented in the international realm.

While states can be seen as a source of the world’s problems, it is often asserted that NGOs are the “voice of the people”. The Report of Panel maintains that

Looking to the future, the rise of civil society and the growing voice of the people are creating [a] strong momentum for the spread of democracy and human rights across the globe.

A concrete example of this is that of the Royal Dutch Shell Company, [which,] after obtaining approval from the relevant national and international authorities, decided to sink the Brent Spar

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944 For example, Hutu and Tutsi were set against each other by misleading radio news in the Rwanda genocide.
946 Boutros-Ghali (2000), p.107, ibid
947 Anderson, ‘The Ottawa Convention’
948 Because popular representation is a democratic function, the participation of NGOs increases democracy.
949 Woodward (n595), pp.225-226
950 Willets (2000), p.208
950 United Nations A/70/95-S/2015/446
rig to the ocean floor. Greenpeace launched a campaign to boycott Shell gasoline. Within weeks, Shell’s sales in Germany were down by 30 percent, at which point Shell chose a course which avoided the sinking of the rig. Since the incident, shell consults Greenpeace regarding the decommissioning of its rigs.\textsuperscript{951}

Formal participation of NGOs may ensure that the Security Council is responsive to citizens across the world. An NGO-enriched Council would gain legitimacy by considering a diverse range of viewpoints and reaching decisions in a democratic fashion.\textsuperscript{952} Charnovitz supports this by stating that “NGOs helped to make international law more responsive to the needs of the international community”.\textsuperscript{953}

As discussed earlier, the current world has seen many innovations such as the communications revolution that have engendered an evolution in international affairs. Internet-based tools have hugely facilitated communication, making it easy for people to keep in touch with each other around the world. People have consequently discovered that it has increasingly become possible to share ideas, beliefs and aims with others from different countries or regions.\textsuperscript{954} As a consequence of these developments, the importance of national

\textsuperscript{952} As regards the Council’s actions, legitimacy refers to the qualities of legality, credibility and acceptability. Some of those actions can represent a problem in terms of legality, for example the use military force without a valid resolution (or a controversial one, as in the case of the invasion of Iraq in 2003). Furthermore, an action could have legal authorization but may not be deemed satisfactory or even desirable by world opinion. Similarly, a refusal to take action could be legally justified, as in the use of the veto, but this could also be popularly viewed as unsatisfactory and undesirable. Consequently, in these three cases the Security Council could lose credibility.
\textsuperscript{953} Charnovitz, (2006), p.360
\textsuperscript{954} David Held, Cosmopolitanism: Ideals and Realities (Polity Press, 2010), p.27
governmental policies has dwindled.\textsuperscript{955} It has been observed that individual or group global interests have supplanted national interests and policies. People have begun to become members of NGOs in order to have their views represented. Put simply, the participation of NGOs on the Security Council would make the Council more representative. Lack of such representation, on the contrary, would constitute a significant drawback for a main body of the UN whose decisions have such direct and serious impacts on people’s lives, and may cause it to totally lose its relevance and legitimacy.

To illustrate this point further, one might consider the consequences for a complete lack of individual influence over their governments’ foreign policies. NGOs could in this instance act as an alternative, perhaps even a preferable one on specific issues. NGOs constitute a fundamental form of popular representation in the current world order,\textsuperscript{956} Boutros-Ghali points to the inevitable consequence: “it is not surprising that in a short space of time we have witnessed the emergence of many new non-governmental organizations”.\textsuperscript{957} It is also highly possible for people to adopt multiple identities that transcend the conditions of the geographical political jurisdictions in which they live.\textsuperscript{958} An NGO could therefore represent a

\textsuperscript{955} ibid

\textsuperscript{956} Boutros-Ghali (2000)

\textsuperscript{957} ibid

\textsuperscript{958} That has link with Internet as it allows people to make communication beyond their borders. Jurgen Kurtz, ‘NGOs, the Internet and International Economic Policy Making: The Failure of the OECD Multilateral Agreement on Investment’ (2002) 3 Melbourne Journal of International Law, pp.213-246, 217 and Schachter (n100), pp.7-24.
more accurate reflection of an individual’s personal opinions than the organs of authority in their states – authority for which they may never have voted.959

For example, an American citizen who cares deeply about not using force in territorial disputes may determine that their views are better represented by a specific international NGO than by their own government. This case is brought more sharply into focus in non-democratic countries governed by non-elected administrations. Willet observes that the presence of military dictatorships, autocratic feudal regimes or corrupt oligarchies makes it hard to hear these region’s voices. He sees NGOs as potential “surrogate representatives of people from undemocratic countries”.960

Boutros-Ghali also defines roles of NGOs as follows:

...non-governmental organizations have become increasingly involved with the establishment of democratic institutions, carrying the voices and the needs of the smallest communities to international attention...961

He also underlines that

959 Kurtz also believes that “an Australian citizen who cares deeply about debt relief for heavily indebted countries may see their interests better represented by a specific interest international NGO than by the Australian Government”. ibid
960 Willets (2000), pp.207-208
non-governmental organizations fulfil an essential representational role in the
contemporary world, thus, their participation in international organizations is,
in a way, a guarantee of the political legitimacy of those organizations.\textsuperscript{962}

That is to say that NGOs would also be the voice of those who are not represented, or do not
feel represented, by their governments. NGOs’ remarkable capacity to access knowledge and
resources might help bridge the gap between the Security Council and those who are affected
by its decision.\textsuperscript{963} Of course, it is clear that NGOs’ formal participation would increase the
Council’s representativeness and legitimacy.

\textsuperscript{962} Boutros Boutros-Ghali, ‘Secretary-General Tells European Parliament Globalization of Economy Must Go

\textsuperscript{963} Therien & Belanger-Dumontier (n159) p.361. See also the Report of the Secretary-General, which states that
NGOs are seen “as shapers of policy and indispensable bridges between the general public and the
intergovernmental processes”. The Report of the Secretary General, A/53/170 (10 July 1998), para.57
8.5 Improving Peaceful Settlement

Granting formal participation rights to NGOs in the Security Council would promote democracy, thereby increasing the Council’s ability to solve international conflicts peacefully. This is why NGOs have often become targets of terrorist groups.\textsuperscript{964} NGOs still take many risks to provide humanitarian aids whenever and wherever possible; formal identification with the Council would increase their security in this regard. It is also one of the main purposes of this study to employ the tenets of CD.\textsuperscript{965} These both present the opportunity to overcome conflicts by dialogue rather than by force of arms.\textsuperscript{966} In fact, this point was clarified a decade ago by the World Summit as a “culture of prevention” under the Responsibility to Protect (R2P).\textsuperscript{967} Yet member states could not successfully meet this demand. NGOs are the best means of improving the Council’s preventive diplomacy and minimizing the use of military operations.

Barack Obama responds to criticisms of his policy regarding the threat of Iran’s nuclear programme by saying that “the absolute best option is a diplomatic resolution”.\textsuperscript{968} There is no

\textsuperscript{964} Attacks on March 26 and 27 on NGO and UN offices by a Rakhine mob angered by rumors that a foreign staffer for another group, Malteser International, had desecrated a Buddhist flag led to the withdrawal of aid groups providing healthcare and other essential help to another 140,000 Rohingya living in camps after being displaced by violence since 2012. Reuters, ‘Rohingya health crisis in west Myanmar after aid groups forced out’ 28 April 2014 http://www.reuters.com/article/2014/04/28/us-myanmar-rohingya-idUSBREA3R0I820140428 accessed on 21/06/2014

\textsuperscript{965} “Military force is used solely as a last resort when all the other political and diplomatic measures have failed.” Archibugi (2008), pp.111-112

\textsuperscript{966} Boutros-Ghali (2000), p.106.

\textsuperscript{967} United Nations A/70/95-S/2015/446

doubt that “traditional methods of action are not necessarily effective” in the area of UN peace-keeping. These traditional methods were stipulated in Articles 41 and 42 of the UN Charter. The Charter’s draughters were, however, motivated by the clear-cut aggression typical of the 1930s. Many current conflicts, however, are not of the types to which the authority of those articles applies. Today’s conflicts must be resolved by an expanded capacity for preventive diplomacy.

In this regard, as discussed earlier, preventive diplomacy would be made possible through the participation of NGOs. For example, a Tunisian National Dialogue Quartet was awarded the Nobel Peace Prize in 2015 because of its success in helping prevent the Jasmine revolution from descending into chaos. Another example illustrating how NGOs can play important roles in peace-building missions is Geneva Call, a neutral and impartial NGO that aims to encourage armed non-state actors (ANSAs) to respect international humanitarian norms in armed conflict and other situations of violence. Its unique approach, based on the issue-specific Deeds of Commitment, has also been recognized as a successful model by the UN’s Secretary-General.

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970 Wilenski (n75), p.439.
971 ibid
972 ibid
973 The Tunisian national dialogue quartet is a coalition of groups from civil society
975 ‘Geneva Call’ http://www.genevacall.org/who-we-are/ accessed on 02/12/15
976 ibid
Barack Obama responded to a question about the problem posed by ISIL by saying that

we cannot keep on thinking about counter-terrorism and security as entirely separate from diplomacy, development, education. All these things that are considered soft, but in fact, are vital to our national security.\textsuperscript{977}

He believes that traditional methods are not adequate to bring about solutions, and emphasizes the importance of other instruments in bringing about permanent solutions for international peace and security. He also expects that increased investment in these instruments would make it possible to prevent conflicts in advance,\textsuperscript{978} and thereby to build durable solutions.

Obama accepts that such alternative methods are not adequately funded:\textsuperscript{979} enough resources are not devoted to diplomacy, development and education. In this context, the importance of NGOs cannot be denied, as they are indeed rich in such resources. Barker also rightly indicates that diplomats must work alongside humanitarian agencies in the maintenance of peace in conflict regions.\textsuperscript{980} The world’s biggest military power, the US, itself considers the use of alternative ways of dealing with international peace and security, admitting its inadequacy in these respects. The inconsistency in entrusting international peace and security


\textsuperscript{978} He has said that he is confident that ISIL will be defeated. However, he added that even if this transpires, educational and development problems in the region are of concern. He gives an example in which “a young man who is growing up, has no education and has no prospects for the future, is looking around, and the one that he can get validation, power, respect as if he is a fighter. And this looks like the toughest gang around, so let me affiliate with them.” In this regard, NGOs are suitable actors to work with the Security Council, sharing their resources to prevent such outcomes.

\textsuperscript{979} ibid

to the state-based Security Council ought to be obvious. This is a conundrum to which realists have no answer.\textsuperscript{981} If a superpower admits its inadequacy to dealing with international peace and security issues, then realists must be forced to reconsider the idea that states are only actors in the international legal order.

A recent Report of the Panel in 2015 stresses, with regard to conflict prevention and mediation, that

\begin{quote}
[a]t the global level, the United Nations must mobilize a new international commitment to preventing conflict and mobilizing partnerships to support political solutions. It must find ways to draw upon the knowledge and resources of others beyond the United Nations system through civil society…\textsuperscript{982}
\end{quote}

The report explicitly underlines the necessity of alternative civil resources that could be used to prevent conflicts more efficiently and to mediation.

Once the Security Council embarks on democratic reform, it would enhance its ability to maintain international peace and security. Indeed, a measure of any well-ordered society is its ability to resolve conflicts through peaceful dialogue.\textsuperscript{983} Boutros-Ghali asserts that “without true democracy in international relations, peace will not endure, and a satisfactory pace of development cannot be assured”.\textsuperscript{984} There is thus a strong relationship between democracy and peace. The process of democratization in the Security Council, which involves granting

\textsuperscript{981} According to the realist view, states are only actors that can address global problems. This view of transnational democracy has been discussed in Chapter II

\textsuperscript{982} United Nations A/70/95-S/2015/446


formal access to NGOs, can therefore help promote more peaceful settlements in conflict cases. As a first step towards democracy, formal participation by NGOs might transform the Council’s customary reflex as regards the maintenance of international peace and security, enabling it to develop new skills such as the more efficient use of diplomatic power.

What is more, it has become clear enough that responding to international threats by military intervention is mostly not the best solution. The Security Council has indeed had a bad reputation regarding its military interventions. An example is the Libyan operation of 2011, where there was the possibility of managing an agreement through diplomatic means rather than using force.985 A Libyan expert at the International Crisis Group, Hugh Roberts, said

One hopes it will encourage NATO and Western governments to reconsider the case for a cease-fire, which they appear to have ignored until now; the great danger is that out of laziness, politicians will continue to succumb to the false argument that there is no alternative to military intervention.986

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985 “Hugo Chavez say Qaddafi has agreed to his conflict resolution plan proposed, involving negotiations through an international committee.” Read more at: <http://www.businessinsider.com/chavez-qaddafi-2011-3?IR=T>, However, response to this diplomatic call was not taken seriously as many underestimated and did not put trust on it. See more at: Reuters, ‘Analyst View: How serious is the Chavez Libya peace plan?’ <http://www.reuters.com/article/2011/03/03/us-libya-venezuela-analyst-view-idUSTRE7222Q720110303>, for example, ‘African Union: Gadhafi will not be part of peace negotiations’ <http://edition.cnn.com/2011/WORLD/africa/06/26/libya.war/>.

In some cases such as in Somalia and Rwanda the Security Council simply abandoned the field when significant casualties were incurred.\textsuperscript{987}

In fact, military intervention is mostly the default response to threats to international peace and security, as this form of reaction is believed to be the most appropriate. Nevertheless, the cosmopolitan perspective urges the international community to take other actions.\textsuperscript{988} Failure to do so renders a faulty application of force unlikely to resolve a conflict – in fact, it risks making the situation worse. Camilleri asserts that “reliance on force by states has become increasingly problematic, and its consequences, intended and unintended, increasingly damaging”.\textsuperscript{989} He also emphasises that the issues of peace and security have moved beyond a state-centric view of world.\textsuperscript{990} The traditional approaches adopted by the state-centric Security Council have thus been doomed to failure.

Moreover, disagreements among the veto powers and the real costs involved always render military intervention an expensive option. Maintaining international peace and security should not only mean bombing targets and destroying threats (with the attendant threat of “collateral damage”, including many innocent people and the most important resources of the country). There is a variety of tools with which to maintain peace and security that avoid causing new and serious problems. For example, diplomatic means could be essential for this


\textsuperscript{988} Archibugi (2004), p.455


purpose, as could arms embargos. Diplomacy would be much easier to implement than military intervention because a consensus is easier to reach and safer, and its real cost is much less. NGOs are the best actors to manage conflicts through these diplomatic instruments, and to bring about the conditions for sustainable peace in the countries within their spheres of influence.

Inter-state relations are widely seen as being based on interests rather than human values. For Helena Cook

...the political negotiations proceed in the strictest secrecy...peace-keeping operations involve interlinked components—military and civilian—operating in a highly volatile political context. Human rights are too often subordinated to political or military imperatives.

Whilst NGOs are keen to sort out problems on a voluntary basis, states are equally intent on deal with them in their own interests. NGOs and states mostly operate according to

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991 Archibugi (2008)
992 By way of illustration, after the invasion of Libya, the $170 billion Libyan reserve has been held in French, German, Italian and UK banks, who have rejected the new transitional government’s request for the release of these funds. Libya’s oil refineries employ US passport holders. It was also clear that Qaddafi was keen for a diplomatic solution, but this was ignored. Indeed, the military intervention was begun just before the Security Council made its decision. These findings might imply the factors taken into consideration by the states who took action.
993 Helena Cook is a former head of the legal and intergovernmental organizations office, Amnesty International, 1990-1994
995 As discussed above, most NGO actions have demonstrated that they have been striving to solve problems caused by states worldwide.
different values: NGOs are concerned about values such as human dignity and morality, while states cannot help framing their own policies in the Machiavellian manner.

States have mostly failed – or have preferred not – to solve problems peacefully, since their self-interest leads them to abuse their position and involve themselves in conspiracies. To make such entities responsible for maintaining international peace and security would be a contradiction in terms. For example, preventing the sale of weapons to dangerous countries would be an alternative, yet no state intends to take this measure. Peaceful methods are thus more likely to be activated by NGOs than by the state-based system.

Other factors reinforce how military intervention can sometimes be the wrong strategy. For example, defining targets as terrorists and then attempting to eliminate them could be risky, because today’s terrorist may become tomorrow’s hero. Murithi observes that

\begin{quote}
history is replete with erstwhile so-called ‘terrorists’ who are now feted by the international community as statesman, including Nelson Mandela of South Africa, Gerry Adams of Northern Ireland and the late Yasser Arafat of Palestine.\end{quote}

The same argument could also be made another way: steps taken by the Security Council should be as peaceful as possible in order not to provoke significant long-term negative outcomes. The Libyan military intervention in 2011 resulted in an ongoing civil war between several groups when central authority collapsed, which in turn led to the exodus of

\begin{footnotes}
996 This employs cunning and duplicity in statecraft to achieve the leadership’s self-interested goals.
997 Murithi (2012), p.134
\end{footnotes}
thousands of Libyans\textsuperscript{998} and the country being used as a base by many terrorist groups.\textsuperscript{999}

Iraq was also subject to a traditional state-based action in 2003 that was widely considered to be unlawful. This invasion has led to several ongoing problems in the country and the wider region. According to former UN Secretary-General Kofi Annan,

\begin{quote}
The folly of that fateful decision [to invade Iraq] was compounded by post-invasion decisions. The wholesale disbandment of the security forces, among other measures, poured hundreds of thousands of trained and disgruntled soldiers and policemen on to the streets. The ensuing chaos has proved an ideal breeding ground for the Sunni radical groups that have now coalesced around the Islamic State (IS) label.\textsuperscript{1000}
\end{quote}

For reactions to international peace and security issues to be appropriate it is essential to grant NGOs a formal place on the Security Council, as they are best means of promoting peaceful action.


The UN must work with NGOs in order to increase its legitimacy and efficiency. NGOs activities could be very profitable in this respect. An NGO-enriched Security Council would contribute more to international peace and security through its significantly different impact on individual views. It would generate increasingly positive feedback because NGOs mostly do not use intermediaries. They go to conflict regions with their equipment and their own voluntary personnel, who could be from different countries. The Panel Report in 2015 states that

Several local community actors and civil society representatives expressed the view to the Panel that they found it difficult to interact with United Nations personnel, who appeared remote and aloof. They noted that peacekeepers often lacked training on how to deal with traumatized people and that communication challenges were often compounded by language barriers. Some expressed concern that peace operations did not spend enough time understanding existing capacities for peace and protection or conflict mitigation mechanisms and simply replaced local structures with exogenous ones.

The report further underlines that the UN needs to establish strong communications with people in conflict regions; involving civil organisations would make this possible.

NGOs could make a significant contribution to the Council in maintaining world peace and security. Paul rightly maintains that it is only to be expected that the cooperation between

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1002 United Nations, A/70/95-S/2015/446, para.254
1003 ibid, para.255
NGOs and the Security Council may eventually contribute to a stronger system of international law and “a global order that will eventually ensure the values of peace, democracy and human dignity”. 1004

This proposal does not totally do away with military operations. Rather, this study proposes that the Council should ensure that the military option is the last one. The use of military force can sometimes be necessary, but reasons of necessity cited by the Council’s state-centric system cannot be relied upon. Under its current structure the Council does not have the actors appropriate to ensure that military force is the last option. NGOs could improve the Council’s preventive diplomacy to solve problems without using that option. In fact, military operations as a necessary deterrent, when their authoritative use could play a convincing role, are the main distinctive feature of the Council. This work thus argues that the Security Council should minimize the use of military force by the more active employment of peaceful measures, rather than doing away with the military option outright. This might be made possible by the formal participation of NGOs.

1004 Paul, (2004), pp.385-386
8.6 Preventing Radical Reactions

One of CD’s main purposes is to provide a decision-making process in which individuals affected by decision can take part. This would help decrease the number of marginal groups that have damaged peace and security through their terrorist activities. According to Boutros-Ghali,

*democratic institutions and processes channel competing interests into arenas of discourse and provide means of compromise which can be respected by all participants in debates, thereby minimizing the risk that differences or disputes will erupt into armed conflict or confrontation.*

Such eruption happens mostly because individuals may become involved in violent activities when they cannot see any alternative ways of representing themselves.

CD also believes that world democracy could first be achieved by maintaining international democracy. Boutros-Ghali and Alger observe that it is not possible to develop local democracy without maintaining international democracy. The former states that

*sustaining democracy and development within States is closely linked to expanding democracy in relations among States and at all levels of the*  

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1006 See ‘Local democracy is not feasible without global democracy’ Chadwick F. Alger, ‘Searching for Democratic Potential in Emerging Global Governance’ in Bruce Morrison (ed.) *Transnational Democracy in Critical and Comparative Perspective: Democracy’s Range Reconsidered* (Ashgate, 2003) p.103. Also see ‘Democratization within States may fail to take root unless democratization extends to the international arena’ Boutros-Ghali (1996), p.27
international system, therefore, democracy in international relations provides the only basis for building mutual support and respect among nations.  

As the Security Council has tried to promote democracy around the world, it must first be a more democratic entity in order to contribute to peace and security.

What is more, the principal causes of war have changed since the collapse of the fascist and communist regimes: they are now unfairness and anomie.  

Thomas Franck states that how the means of a good life are distributed among peoples and persons and whether people and persons are adequately consulted in the decisions that determine their life-prospects: these are the principal determinants of war and peace.  

That is to say that terrorism is not the main problem: the key issue is the absence of a democratic international system that could effectively enable individuals to articulate their grievances in non-violent ways.

In this regard, the Security Council must be more democratic in order to represent the interests of individuals if it would prevent the emergence of marginal terrorist groups and contribute to peace and security. There is also a common belief that “democracy bolsters

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1008 Thomas M. Franck, ‘Legitimacy and the Democratic Entitlement’ in Fox & Roth (2000) p.25
1009 ibid
1010 Murithi (n300), p.134
peace and prosperity, and even quells terrorism”.\textsuperscript{1011} Democracy in the international community is the way to foster the involvement of all actors. To do this, the Council must employ NGOs by granting them formal participation. Boutros-Ghali emphasises that “non-governmental organizations are a basic form of popular representation in the present day world”.\textsuperscript{1012} Charnovitz also maintains that “NGOs can vocalize the interests of persons not well represented in policymaking”.\textsuperscript{1013} By the same token, Philip Caryl Jessup affirms that

\begin{quote}
facilities offered for direct action by private international organizations serve to give vent to private interests not sufficiently protected by the national governments concerned.\textsuperscript{1014}
\end{quote}

Finally, the Panel Report of 2015 also emphasizes that “the need to counter violent extremism necessitates that the United Nations reinforce its collaboration with many international civil society organizations”.\textsuperscript{1015} NGOs undoubtedly constitute an excellent channel for citizens to participate in global affairs, thus increasing the impact of people affected by the Council’s decisions.\textsuperscript{1016} Thus, formal participation by NGOs assumes particular importance, as they are a key element of a more democratic Council.

Nonetheless, democracy may not provide absolute protection from civil war or international conflict. Its main benefit is to provide a process by which a genuine social discourse could

\begin{flushleft}
\textsuperscript{1012} Boutros-Ghali (2000)
\textsuperscript{1013} “Noting that facilities offered for direct action by private international organizations serve to give vent to private interests not sufficiently protected by the national governments concerned” Charnovitz (1997) p.274
\textsuperscript{1014} Philip Caryl Jessup, International Regulation of Economic and Social Questions (1955) p.33 cited in Charnovitz op.cit.
\textsuperscript{1015} United Nations A/70/95-S/2015/446, para.80
\textsuperscript{1016} Archibugi, Balduni & Donati (2000), p.135
\end{flushleft}
take place among individuals legitimately representing the spectrum of opinions and interests in a community.\textsuperscript{1017} It is essential for the Council to be able to facilitate a discourse regarding international problems before taking a decision that might affect millions of people. Of course, decisions can be taken undemocratically, and even then negotiation and discourse could occur. Yet “there can never be a genuine social convergence”.\textsuperscript{1018} As argued in Chapter II, according to CD international decision-making entities must consider the participation of non-state actors in order to reduce the level of social divergence. It is thus truly necessary for the prevention of international conflicts to provide for formal participation of NGOs in the Security Council.

Since the escalation of international terrorism has posed a challenge to the Council, the formal participation of NGOs is a major opportunity to strengthen the interaction between that body and the world’s people. According to Boutros-Ghali, when the Council becomes a democratic institution it would be more likely to

\begin{quote}
\textit{promote and respect the rule of law, respect individual and minority rights, cope effectively with social conflict, absorb migrant populations and respond to the needs of marginalized groups.}\textsuperscript{1019}
\end{quote}

Whilst it is possible for democracy to foster the evolution of the social contract upon which lasting peace can be built, it is plain that “a culture of democracy is fundamentally a culture

\textsuperscript{1017}ibid
\textsuperscript{1018}ibid
\textsuperscript{1019}Boutros-Ghali (1996), para.17
of peace”. A more democratic Council that would make a greater contribution to world security and peace is possible through the participation of NGOs.

1020 ibid
8.7 Decreasing Lack of Accountability

The Security Council has become more secretive and unaccountable than ever, meeting behind closed doors “in private consultations of the whole” after 1990. Critics and some prominent states have argued that there is a lack of legitimacy in the Council’s work because of practices that are not sufficiently transparent or publicly accountable.

Liberals believe that

the “black box” of sovereignty becomes transparent, allowing examination of how and to what extent national governments represent individuals and groups operating in domestic and transnational society.

Scholte believes that participation by NGOs could enhance transparency and accountability in global governance by exerting leverage on decision-makers. Peter Willet also emphasizes that “NGOs make the political process transparent”. Formal participation by NGOs would thus confer their accountability and transparency on the Council, as they would inform public about what transpires in that body.

\[\text{\textsuperscript{1021}} \text{ibid} \]
\[\text{\textsuperscript{1022}} \text{ibid} \]
\[\text{\textsuperscript{1023}} \text{Anne-Marie Slaughter Burley, ‘International Law and International Relations Theory: A Dual Agenda’ (1993) 87 AJIL, p.207} \]
\[\text{\textsuperscript{1024}} \text{‘Pressure from civil society can help bring regulatory frameworks and operations into the open, where they become susceptible to public scrutiny…civil society associations can push authorities in global governance to take greater public responsibility for their actions and policies.’ Scholte (2002), p.294} \]
\[\text{\textsuperscript{1025}} \text{Willetts (2000), p.208} \]
\[\text{\textsuperscript{1026}} \text{NGOs provide transparency as a democratic function by informing the public about IGOs and treaty body activities. Woodward (n595), p.226} \]
Formal participation would allow for progress towards a more participatory Council system. It would firstly help inspire and mobilize citizens to hold their governments accountable for their actions. Council members would therefore be exposed to civic pressure. Secondly, NGOs would directly make the Council more accountable. Charnovitz states that “NGO involvement may enhance the accountability of IGOs”. Boutros-Ghali similarly holds that NGO participation “in international relations is, in a way, a guarantee of political legitimacy of those international organizations”. For example, some international organisations such as the EU and the ILO have already become more open to public scrutiny.

Moreover, some delegates consider the improved relationships between the Council and NGOs as a significant stage in the development of a more “legitimate and effective international political and legal order”. It was believed that NGOs could leverage the Security Council and balance it to make it more legitimate. When the difficulties with informal access are considered, granting formal access to NGOs would be a significant step to opening the Security Council and its agenda to public examination and participation. This means that the Council would potentially be open to public scrutiny that would make it more accountable.

1027 For instance, Eveline Herfkens, Executive Coordinator of Millennium Campaign, says that “[i]t was the first time that the United Nations initiated an effort to build awareness of internationally agreed objectives and to inspire and mobilise citizens to hold their Governments accountable for their achievement.” Eveline Herfkens, ‘Looking Back, Looking Forward: The Successes and Challenges of the Millennium Campaign’ http://vorige.nrc.nl/redactie/binnenland/HerfkensUNChronicle.pdf
1028 Charnovitz (1997) p.274
1030 Lindblom (2005)
1031 See: ‘Reforming the Security Council’ was a conference and organised on May 1994. Some of these views can be found in the speeches. http://www.globalpolicy.org/security-council/security-council-reform/32789-reforming-the-security-council.html accessed on 15 May 2013, ibid
1032 ibid
8.8 Increase Capability

Since the UNSC’s establishment in 1945 it has always been the ideal forum for discussing international conflicts and finding proper solutions. Yet, it is obvious that many threats to international peace and security have emerged simultaneously. Ban Ki-moon, UN Secretary General, states that “[t]here is widespread feeling and opinion among member states that considering such dramatic changes in political and security field in the world, the Security Council should change also, in a more democratic way, transparent and accountable way”. 1033 Likewise, the former foreign minister of Brazil, Antonio de Aguiar Patriota, has said that “in addition to interstate conflict and the proliferation of weapons – particularly weapons of mass destruction – new challenges have emerged, such as terrorism and the involvement of non-state actors in internal conflicts”. 1034 In that respect, the international legal order has been beset by a bewildering multitude of problems, many of which have derived from features of international politics that subsequent developments have rendered obsolete. 1035 Boutros-Ghali highlightins the influence that “globalisation has had on the ability of the states to manage global problems and dynamics”. 1036 Nevertheless the Council does not have the capacity to address global challenges, since it has proved “unable or unwilling to act”. 1037

1035 Roberts & Kingsbury (1993), p.3
1037 Patriota (n352)
The Security Council’s exclusively state-based system renders it inadequate to deal with all these problems in a timely manner. In order to keep pace with the sweeping changes of the 1990s, the Council must consider the formal participation of these new actors. New, non-state actors have increased their influence in world affairs, and it has become indispensable to integrate these into existing international structures and mechanisms.\textsuperscript{1038} Granting formal access to NGOs would increase its capacity to address international peace and security issues. Adam Smith’s classic theory of the division of labour provides a useful model in this respect.\textsuperscript{1039} Of all the functions necessary for the Security Council’s operations, it can fulfil some only very inefficiently. NGOs are far better placed to play these roles, thereby improving the Council’s overall ability to provide more services for the maintenance of peace and security. The operational role of NGOs is acknowledged – Wapner among others notes that the UN already regards NGOs as significant actors in its operational activities.\textsuperscript{1040} They are indeed suitable agents to help the UN implement its mandates and support its humanitarian assistance and human rights protection.\textsuperscript{1041}

Greater NGO participation would strengthen the Council as a whole, since globalization has produced new challenges to international peace and security. The report of Panel of Eminent Persons in 2004 states that “today’s conflicts appear to be more complex than ever”.\textsuperscript{1042} This

\textsuperscript{1038} Archibugi (2008) p.109
\textsuperscript{1039} Adam Smith, \textit{An Inquiry Into the Nature and Causes of the Wealth of Nations} (1976)
\textsuperscript{1040} Wapner (2007) p.259
\textsuperscript{1041} NGOs provide humanitarian assistance directly by using their resources. With regard to human rights protection, they attempt to influence the decision-making process in order to protect human rights. Martens, ‘NGOs in the UN System’, p.12
being the case, states have been unable to cope with these new challenges by themselves.\textsuperscript{1043} These challenges include, but are not limited to, “global environmental issues, refugee flows and mass migration across borders, the rapid spread of infectious diseases, unsustainable development models, civil war that threatens international peace and security, drug trafficking, global terrorism, transnational crime and illegal stocks of nuclear, biological and chemical weapons”\textsuperscript{1044}

These new challenges have forced States to cooperate with other actors.\textsuperscript{1045} Baehr maintains that “the treaty-based monitoring committees and the Charter-based special procedures could hardly have functioned, if not fed by the information that is supplied by NGOs”.\textsuperscript{1046} The Security Council, as a Charter-based organ, is thus intimately bound up with NGOs’ participation. Some authors rightly consider that

\begin{quote}
problem solving in an increasingly diverse and complex network/knowledge society requires action beyond what states can shoulder, [so] it needs pragmatic deliberation involving multiple sources of knowledge, experience, and control.\textsuperscript{1047}
\end{quote}

The Security Council capacity to deal with these new emerging problems is not, however adequate because of its exclusive composition of state actors. The Council acts very slowly

\textsuperscript{1043} Nikola Lakic, ‘Is Globalization a Challenge or a Threat to Nation-States as a Dominant Form of Polity?’ (2011) 21, Western Balkans Security Observer, p.6
\textsuperscript{1044} Baylis & others (2011)
\textsuperscript{1045} ibid
\textsuperscript{1046} Peter R. Baehr, \textit{Non-Governmental Human Rights Organizations in International Relations} (Palgrave Macmillan, 2009), p.127
\textsuperscript{1047} Pauwelyn & others (2014), p.763
and sometimes causes deadlock because of its state-centric system and decision-making processes. NGOs, on the other hand, have distinct advantages over states and international organizations.\textsuperscript{1048} They are generally independent of any sovereign state, enabling them to execute international policy more quickly and directly.\textsuperscript{1049} They have a marked ability to cope with the new challenges of the international legal order because their possession of considerable “on-the-ground knowledge, new tools, new skills in social and cultural analysis, the active involvement of communities and their leaders, links to vulnerable groups and bridges to mainstream development processes” gives them the tools to adequately address these new demands.\textsuperscript{1050}

NGOs are bolder than states. There is no limit to the situations in which they can involve themselves; likewise, they can exceed any limits imposed by powerful authorities in calling them to account for their wrongful policies.\textsuperscript{1051} Their independence and non-profit nature allows NGOs to raise objections to veto powers that the non-permanent Council members dare not raise. States’ reasoning is based on their interests, NGOs on their values. Besides, NGOs are intrinsically much more altruistic.\textsuperscript{1052} Given the Council’s state-centric structure, it would be naïve to hope that it would in the interests of international peace and security.\textsuperscript{1053}


\textsuperscript{1049} ibid

\textsuperscript{1050} Report of the Panel of Eminent Persons 2004 (59)

\textsuperscript{1051} There is a fear that detrimental governmental policies would be exposed to challenges by NGOs. See Daniel C. Esty, ‘Why the World Trade Organization Needs Environmental NGOs’ International Centre for Trade and Sustainable Development, p.7

\textsuperscript{1052} This point is argued in Chapter IV.

\textsuperscript{1053} Even when the Council provides peacekeepers for a conflict area, significant problems could be raised by the delivery of assistance through a state-centric system. For example, a report obtained by the Associated Press (AP) states that UN peacekeepers have been involved in sexual exploitation in Haiti. The report also finds that this was badly underreported. There are also similar allegations regarding peacekeepers in the Congo, Liberia
NGOs could be a remedy for this lack of altruism in the Council, which they could strengthen by monitoring governmental compliance. Otherwise, as the report indicates, “without well-organized, well equipped social organizations, legislators would find it impossible to apply protective laws which are being asked for”. 1054

Their unique capabilities in all of these fields increase NGOs’ indispensability as partners for the Security Council. 1055 Kofi Annan declares it to be an absolute necessity to provide “full opportunities to non-governmental organizations and other non-state actors to make their indispensable contribution to the Organization’s work”. 1056 The Cardoso Panel 1057 issued “a strong plea for a greater role of civil society organizations in the United Nations system”. 1058 The Panel believes that “constructively engaging with civil society is a necessity for the United Nations, not an option”. 1059 It considers such engagement as essential to enable the UN to better identify and understand global priorities and to mobilize all resources to deal

1055 ibid
1057 A/58/817 (n110), p.1. The panel also includes peoples from different countries such as South Africa, the United States, Mali, Mozambique, Philippines, Hungary, Spain, Colombia, Sweden, India and Iran. The Cardoso report should therefore be considered as more than mere commentary, as it was based on concrete searches and analyses
1058 Baehr (2009) p.54
1059 A/58/817, p.3
more effectively with the task at hand.\textsuperscript{1060} In short, it can be concluded that formal participation by NGOs is important if the Security Council is to increase its capability to deal with problems emerging from the new world order.

\textsuperscript{1060} ibid
CHAPTER NINE

Feasibility of the Proposal: Possible but Difficult

*When ideas fail, words come in very handy.*

Johann Wolfgang von Goethe

9.1 Viability of an NGO-Enriched Security Council

Of course, there would be some procedural or political battles around granting formal access for NGOs to the Security Council. Significant obstacles must be considered in order to assess the real prospects for this proposal. It would be as well to begin with the fact that

*when the UN Charter was drafted in 1945, nongovernmental organizations (NGOs) attended the San Francisco conference and lobbied successfully to obtain Article 71, providing for "consultative arrangements" with the Economic and Social Council (ECOSOC).*\(^{1061}\)

This quote constitutes a reminder not to underestimate NGOs’ lobbying capabilities; it should also serve to eliminate doubts about the possibility of them obtaining formal status on the Security Council.

\(^{1061}\) Willetts (2000), p.191
9.1.1 The Balance of Power Obstacle

An argument that would apply to any reform proposal including the present one is that the current balance of power renders the implementation of any such proposition impossible. Therien and Belanger-Dumontier state that

*UN discourse and policies related to the promotion of global democracy are circumscribed by the limitations of the UN Charter, which is founded on very traditional power structures.*

Any moves toward a more democratic Security Council would thus founder on the purported rock of the UN Charter.

However, Chapter VII of the present work demonstrates that there is no conceptual reason to preclude the formal participation of NGOs: Article 29 and Rule 39 of the Provisional Rules of Procedure of the Security Council are enough for this purpose. Yet Chapters III and VII argue that the lack of efficient actors rather than the Charter presents the real obstacle to reform. The UN Charter is in fact quite flexible in this regard, but states as the so-called main actors have been unable to apply efficiently these provisions.

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1062 Therien & Belanger-Dumontier (n159), p.360
1063 According to Article 27, the permanent members are not able to take action by themselves. The “Uniting for Peace” Resolution authorizes the General Assembly to act when disagreement among the veto powers paralyzes the Council.
The taboo against amending the Charter has also been weakening, and demands for UN reform, particularly of the Security Council, have correspondingly become significantly more insistent. If this were not so, studies, reform projects and restructuring of the Council would not have become permanent items on the UN’s agenda.

Claims of the impossibility of Security Council reform serves the interests of those permanent members who do not want any new actors to appear in their domain, and who may exert pressure on other Council members to comply with this wish. Of course, this does not mean that any other party must voice such obstacles, which would only reinforce a sense of the hopelessness of reform and encourages concession to the Council’s current structure by default. Such a reaction simply serves to perpetuate the current situation, as Maragia observes: “such attitudes serve to perpetuate the status quo while ignoring important events that may illuminate the extent to which we need to readjust to cope with new challenges”.

CD also disputes this deferral to the status quo: it prefers to find an alternative way by which to effectively oppose the hegemonic bloc rather than meekly accepting the impossibility of doing so. Archibugi states that

"the strengthening of international institutions, especially if inspired by the values of democracy, would most probably produce the desired effect of obliging..."

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1064 Bertrand (1993), p.432
1065 ibid, p.422
1066 Maragia (2002), p.317
1067 Archibugi (2004), p.455
the United States and its allies to engage in a foreign policy much more in line with their own constitutions.\textsuperscript{1068}

A first step in the discussion might therefore be simply to refuse automatically to defer to this pessimistic view of Council reform.

This research offers a way to open the Security Council to NGOs, but that would entail public scrutiny; in the long term it would mean that the power of the permanent members would be balanced. Such an obvious potential outcome would probably stiffen the Council’s disapproval of such measures, the veto powers in particular.

Such resistance is of course not surprising, nor should it cause the proponents of reform to despair. Any status quo or privileged power, not only those of the P5, is by nature conservative, and would resist any attempt at reform. Murithi observes that members of a body will always use their positions to exert a gatekeeper role regarding the degree and extend of change to be allowed.\textsuperscript{1069} Archibugi and Held likewise assert that “of course, each actor is likely to persuade its own agenda and may be interested only [in] a few of the components”\textsuperscript{1070} of the development of a more democratic Security Council.

In this context, “while each agent may act on narrow terms”\textsuperscript{1071}, receiving resistance from the permanent members or other states is possible – a struggle, perhaps, but not an impossible

\textsuperscript{1068} ibid
\textsuperscript{1069} Murithi (2012), p.137
\textsuperscript{1070} Archibugi and Held (2011), p.437
\textsuperscript{1071} ibid
one. The resistance of member states, rather than constituting an insuperable objection, is thus an obstacle that must be confronted. In this regard, NGOs have mostly been granted access over the objections of states. Peter Willets rightly points out that the rights of NGOs have become established in customary law in the way which NGOs are often able to access intergovernmental proceedings even when the political climate turns against them and when there is remarkable opposition or hostility to their presence.\textsuperscript{1072} Such obstacles are thus hardly new to NGOs; indeed, their very experience in this respect would help them overcome any opposition.

\textit{9.1.2 The Difficulty of Establishing Democracy at the International Level}

Achieving democracy in the international realm is thus more difficult than it is within national boundaries. Accordingly, democratic values and norms have remained very weak in many of the world’s regions,\textsuperscript{1073} and it would consequently be hard to expect such states to approve the participation of NGOs, a development that would pave the way for democracy. A significant number of the UN’s member states are not democratic countries, and many of the others are only partly so. Under these circumstances, it is argued that such actors are unlikely to support any democratic project.

Therien and Belanger-Dumontier maintain that “it is doubtful that governments unreceptive to public debate and participation at home would adopt such values at the global level”.\textsuperscript{1074}

\textsuperscript{1072} Willetts (2000), p.205
\textsuperscript{1073} Therien & Belanger-Dumontier (n159) p.371.
\textsuperscript{1074} ibid
The anti-democratic constitution of the Security Council is a natural result of its member states’ behaviour. They maintain their own anti-democratic structures while complaining of the Council’s. When anti-democratic behaviour is unfavourable to them, they become defenders of democracy. This is of course typical of the hypocrisy discussed in Chapter III. It could therefore be seen as ironic that they be served by the Security Council.

Nonetheless, the match between the two types of system could be overwhelmed by such states’ desire for democracy: the fact the world has suffered under the Council’s regime for decades could be productive of a significant longing among nations for an improved Council. Many attempts have indeed been made to change its structure. The efficient maintenance of international peace and security is essential also for their benefit. These are significant reasons for them to support a more democratic Council.

The approval of other member states, Archibugi argues, is possible because of two significant virtues of democratic states. Of course, Realist theorists would not predict a democratic stamp of regime to necessarily implement a more virtuous foreign policy.1075 Cosmopolitan democracy also acknowledges this lesson from the Realists regarding the lack of necessary coherency between domestic and foreign policies.1076 Yet, cosmopolitan democracy underlines two covered virtues of democratic regimes that might make it possible for states to ‘bridge the ‘real’ and the ‘ideal’ elements of their foreign policies’.

Archibugi argues that the approval of other member states is possible because of two significant virtues of democratic states:

\begin{itemize}
  \item ARCHIBUGI (2004), p.442.
  \item ibid
  \item ibid
\end{itemize}
The first of these two virtues is the interest of states in generating and participating in international organizations (Russett and Oneal, 2001) and in favouring trans-national associations. The second virtue is the tendency of states to nourish a greater respect for rules when these are shared among communities that recognize each other as analogous (Kratochwil, 1989; Hurd, 1999).

In that respect, developing a more democratic Security Council would be for benefit of most members of the UN, such a Council would encompass these two virtues. It is thus not inevitable that states will oppose this proposal. Archibugi states that

*even from a Realist perspective it would be wrong to think that the interests of all actors involved in international politics are opposed to democratic management of the decision-making process.*

Of course, it is not to be expected that undemocratic states such as China and Russia would approve such a democratic project. This opposition is likely to last as long as their undemocratic systems – which is to say, it is likely to be long term. Their permanent status on the Security Council also disposes them to a conservative bias. However, were other member states to agree on such a project, they would exert significant pressure on the Permanent Five.

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1078 ibid
1079 Ibid p.453.
1080 “Russian President Vladimir Putin enacted a new law over the weekend that allows the country to crack down on "destructive organizations" that operate with foreign backing and threaten "the security of the state."

But rather than targeting terrorist groups, as the language in the legislation seems to suggest, the measure is aimed at NGOs, non-profit organizations that advocate for human rights, the environment, and a wide variety of other causes.” Matthieu Jublin, ‘New Law Allows Russia to Ban 'Undesirable' Human Rights Groups and Other NGOs’ (25 May 2015) Vice News.
9.1.3 The Demands of Appropriate Circumstances

Since the Council system is controlled by states, it is difficult to envision them formally agreeing to end their monopoly and “accept sources of international law that are completely outside their sphere of influence”.\(^{1081}\) Hans Köchler points out the practical difficulty of this task.\(^{1082}\) In a similar vein, this proposal is unlikely to be considered by politicians or diplomats who are wedded to the principles of realpolitik, their own national or political benefit and the influence of lobby groups.

Nevertheless, this should not mean that such a project will never be implemented. As has been mentioned throughout this thesis, the circumstances necessary to enable this proposal to be implemented must be established. James Paul and Céline Nahory emphasise that “the Council reform is a process for the long haul, not a quick fix”.\(^{1083}\) Consequently, it is plausible to say that NGOs can have formal status on the Security Council when states or NGOs ensure that the appropriate conditions exist. For example, even regular informal meetings were regarded as an unexpected development. James Paul indicates that

*The NGO Working Group on the Security Council is an influential forum at the United Nations. When it was founded in 1995, no one imagined that an NGO body could have regular interaction with Council members at the highest level.*


\(^{1082}\) Köchler (2007), p.13

But the Working Group proved that the unexpected can happen, even in the high-stakes world of international policy.1084

On the other hand, it would indeed be unfair to disregard the necessity for a progressive process.1085 “A few years ago, no one spoke of the democratization of the United Nations system, [while] today, it can be seriously contemplated.”1086 This question has in fact been placed on many relevant agenda today.1087 The UN was therefore reflecting the nascent debate on the democratic deficit in the early 1990s. It has become imbued with the idea1088 that “the model of human political organization means that everywhere the exercise of power requires the consent of those that are governed”.1089 The formal consultative relations between ECOSOC and NGOs have likewise been refined at least three times in regard to the developments of world affairs since then, respectively by ECOSOC resolutions 1296 (XLIV) in 1968, 1996/31 in 1996 and the 2004 Cardoso Resolution entitled “We the Peoples: Civil Society, the United Nations and Global Governance”.1090 It is acknowledged that these enhancements in NGOs’ roles originate in the realities of the world order, and can be considered as a lengthy process of expansion of NGOs’ roles in ECOSOC.

1085 Likewise, Haches thinks that “the change will probably take place surreptitiously”. Hachez (2008), p.83
1087 Therien & Belanger-Dumontier (n159) p.360
1088 ibid
1089 Dervis & Ozer (2005), p.5
The previous chapter has referred to the fact that Article 71 of the UN Charter only mentions ECOSOC, empowering that organization alone to make arrangements for NGOs to act as consultants on facts regarding which these groups have competence.\textsuperscript{1091} However, these relationships have evolved, and so the Secretary-General has accrued the power to invite NGOs to General Assembly meetings. Even the Security Council has shared in this development as it has been in informal relationships with NGOs since 1982.\textsuperscript{1092} Given these facts, it is plain that the development of relationships between the UN and NGOs has been a long-term process. The Charter might be important, but circumstances could override any objections. For example, even though NGOs have the right to participate in ECOSOC only in a consultative capacity, in fact, “NGOs have obtained some participation rights that go beyond consultation”.\textsuperscript{1093}

All reform proposals agree that building an effective Council is both an important and a lengthy process. A mechanism must therefore be devised that would result in a more democratic Council. Such reform must be slow in order to overcome resistance to change on the part of the permanent members.

Any direct attempt to restructure the Security Council would be faced by the implacable opposition of the veto powers. Previous reform proposals that have required Charter

\textsuperscript{1091} ibid  
\textsuperscript{1092} ibid  
\textsuperscript{1093} Willetts (2000) p.191
amendments have fared similarly poorly. It would therefore be judicious to ensure that any reform proposal was a slow, progressive process in order to overcome the veto obstacle.

Boutros-Ghali maintains that

\[ dominance \text{ by one country or group of countries must over time evolve into a democratic international system in which all countries can participate, along with new non-States actors involved in international affairs.} \]

Establishing a democratic Security Council would be possible in the long term, because even though there is no direct veto obstacle, one or all of the veto powers might resist the granting of formal access to NGOs. Chuchai Kasemsarn, Thailand’s representative, holds that the veto power should first be curtailed and then gradually abolished. NGOs could be the agents of the Council’s evolution into a democratic system, using conditions in the international sphere as leverage. After the proper circumstances have been established, the realities of the new world order will demand that the holders of power reach an accommodation with NGOs. For example, Chapter VIII mentions the case of Yugoslavia in 1993, in which the UNSC Resolution mentioned NGOs only by implication. Yet ten years later in the case of Sierra Leone the UNSC Resolution referred explicitly to them. They could bring pressure to bear

\[1094\] The present author disagrees with state-centric reform proposals. There appear to be two reasons for their failure to be implemented: lack of consensus and lack of a progressive approach


\[1097\] As has been mentioned, these changes have been continuing on behalf of NGOs in the international arena


on states regarding their behaviour, and could gradually transform attitudes and practices in order to permit the formal participation of NGOs in the Council.

9.1.4 No Need to Amend the Charter

There might be no direct, comprehensive solution to designing a perfect Security Council when the current balance of international relations is taken into consideration. It is easier to persuade states to take single steps towards a democratic Council than to commit them to endorsing a general programme promoting such an institution.\textsuperscript{1100} Granting formal access to NGOs would be a first step towards a more democratic Council. Conferring formal access rights is not a general proposition, since it is possible to establish such a relationship by the affirmative vote of nine members.\textsuperscript{1101} It is thus perfectly feasible, because it involves no amendment to the Council’s structure. This can be seen as an advantage.

What is more, the outcomes of a more democratic Security Council are likely to evoke major support from UN members. Boutros-Ghali believes that democracy will ensure that the weaker voices in the international system are heard. This would make the present proposal highly attractive to most members of the UN, who have been kept isolated from the outset by the organization’s mechanism. Such an outcome would of course also provoke the opposition of the powerful states that have mostly dominated the Council. The majority support of the weaker actors would, however, overwhelm this obstruction, in part because the weak states

\textsuperscript{1100} Archibugi, Balduni & Donati (2000), p.140

\textsuperscript{1101} This can be achieved by the non-permanent members voting alone if the permanent ones do not exercise their double veto option
form more than two-thirds of the UN, a majority that would make a more democratic Council quite likely.

9.1.5 Requirements of a Progressive Approach

One might think that the achievement of democracy within the Security Council requires a radical and direct transformation.\textsuperscript{1102} The Council’s state-centric structure would not, however, realistically embrace any such immediately thoroughgoing change, since that would depend on extraordinary events. Even when it is possible for a system to adopt changes, it would require a long period of time to do so. This does not surprise Archibugi and Held,\textsuperscript{1103} according to whom the number of UN actors that must be consulted in the decision-making process has already increased significantly, implying that pluralism in international relations has steadily expanded. It is therefore highly possible for some long-term trends toward a more democratic global governance to come into play.\textsuperscript{1104}

The application of direct, radical changes may have negative effects such as the withdrawal of member states. The demise of the League of Nations\textsuperscript{1105} was due partly to the unreadiness of the international system and its constituent states to come together under the aegis of an organization to discuss their problems. The aftermath of World War II, and especially the spectre of nuclear holocaust, made states graphically aware that they should find ways to avoid war. Informal meetings between the Security Council and NGOs were at first rejected,

\textsuperscript{1102} Murithi (n300), p.143
\textsuperscript{1103} Archibugi and Held (2011) p.435
\textsuperscript{1104} ibid
\textsuperscript{1105} For example, it has been acknowledged that the US’s absence was a reason for the League’s expiry.
but when states realized that they had to accept the existence of NGOs, they agreed to meet with them, at least informally. Some process is therefore imperative to prepare the ground for the establishment of a new system.

### 9.1.6 The Status Quo Obstacle

It is also possible to believe that

> the status quo is intact and the likely scenario is that the appearance of [the] process towards SC reform will continue to plod along for another few decades until some member states come to realization about abject futility of the exercise.\(^{1106}\)

Yet this would be to ignore developments in the UN system. James Paul believes that NGOs could take encouragement from their evident efficiency, speed of reaction, success and “the breadth of their support by international public opinion”.\(^{1107}\) They have thus achieved a remarkable standing in the Security Council in just a decade.\(^{1108}\)

The UN has been much more attentive than before to the “claims of transnational movements that promote a more inclusive and democratic vision of global governance”.\(^{1109}\) Therien and Belanger-Dumontier point out that “the UN has indisputably helped the idea of global

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\(^{1106}\) Murithi (n300), p.133

\(^{1107}\) Paul (2004), p.386

\(^{1108}\) ibid

\(^{1109}\) Therien & Belanger-Dumontier (n159), p.360
democracy to more firmly take root in modern political life”. Member states are indeed already aware that the current structure is out of date, but they might endeavour to maintain their positions as long as they can. Thus, it would be more accurate to say that Council reform may take a long time, until member states are no longer able to sustain the status quo. When the situation does finally arise, the five permanent members will have to fix the Council’s system by allowing formal access to NGOs.

NGOs could occupy a more exalted place than states allocate to them. One example that illustrates how NGOs could progressively have access to the decision-making process of an international treaty is Article 8(3) of the Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972, which reads

...at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the UNESCO, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

Another is that, after NGOs were afforded a place, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) also provided access to NGOs.

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1110 ibid p.372
1111 “Things did not, however, quite happen the way governments had initially planned, and NGOs quickly started to occupy more space than had been made for them.” Hachez (2008), p.68
1112 The General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) meeting in Paris from 17 October to 21 November 1972
1113 These NGOs are specified in the same articles as in the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN)
According to Article 11(7) of the CITES convention, NGOs could be “represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object”.1114 In these cases, NGOs accomplishments eventually persuaded members states to grant them places.1115

The veto power might seem to render the participation of NGOs on the Security Council difficult. This is true in that some permanent, and even non-permanent, members would demonstrate hostility to granting NGOs formal participation rights. In fact, this would only result in challenges and delays: it would indeed make such access more difficult, but not impossible. Peter Willets disagrees that NGOs are rejected for political reasons. He believes that “hostility from particular governments often leads to challenges and perhaps delay, but not rejection”.1116 He also asserts that rejection or underrepresentation of NGOs arises from their own negligence of the UN.1117 Besides, as mentioned in Chapter VIII, formal participation of NGOs in the Council is important for the sake of the elected members and those states that have complained about the permanent members. Apart from the Permanent Five, such a proposal could therefore receive considerable support from UN members. While not underestimating the role that states’ approval would play, the greater part by far is actually played by the performance of NGOs themselves.

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1114 CITES Convention Article 11(7) http://www.cites.org/eng/disc/text.php#XI  
1115 NGOs first targets were friendly governments, from which a synergism emerged that allowed NGOs to influence decision-makers. NGOs’ lobbying power enabled them to frame the issues under discussion and resulted in the appearance of their ideas in governmental negotiating texts. Louis Emmerij, Richard Jolly and Thomas G. Weiss, Ahead of Curve?: UN Ideas and Global Challenges (Indiana University Press, 2001), p.117  
1116 Willetts (2000), pp.192-193  
1117 ibid
As discussed in Chapter IV, there is no definitive legislation providing for participation by NGOs. Circumstances therefore play the determining role in this regard. It follows that one cannot predict the inevitability of the rejection by Russia, China or any other permanent members of participation by NGOs on the Council, because circumstances might confound such an expectation. Besides, the informal access already enjoyed by NGOs under suitable conditions makes it highly likely that formal participation also will be granted.

9.1.7 Supporting Developments

Another consideration supports the feasibility of this reform proposal: the power of the Council’s permanent members has already been eroded by significant changes in the international legal order. NGOs have persuaded the Council to adopt certain resolutions even though they are not non-permanent members, meaning that their unofficial status on the Council does not preclude their successfulness. The new demands posed by the international legal order have also encouraged the Security Council to accept that the UN Charter is not immutable.

The UN Charter clearly requires the vote of all permanent Council members in order take action under Chapter VI and Article 52(3). Yet the Council can still claim authority even

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1118 Article 27 of the UN charter states that “Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”
when one of its permanent members does not cast a vote by abstaining or by absence.\textsuperscript{1119} This is one example that shows how the Charter could be reinterpreted by considering circumstances.

When the international legal order before the 1990s is compared to the subsequent period, it can be observed that the Security Council has already decreased its authority and shared its responsibilities. The founders of the Charter aimed to confine its system largely to the maintenance of international peace and security by the five permanent members of the Security Council.\textsuperscript{1120} Article 39 explicitly confirms this authority, Article 12 precludes the General Assembly\textsuperscript{1121} from debating security issues on its own authority, and Articles 52-53 limit regional organizations to acting only with Security Council approval; even the Secretary-General’s\textsuperscript{1122} powers are ineffective and weak in this respect.\textsuperscript{1123} The major powers, the five permanent members of the Security Council, have enjoyed their Charter-mandated position as the only rulers with the authority to discuss security subjects and address solutions pursuant to the UN Charter.

\footnotesize{\textsuperscript{1119} “Article 27, properly construed, requires an affirmative vote of the five permanent members. The phrase “concurring votes” appears only in the Russian and English texts of the Charter. The Chinese text requires the “agreement” of all the permanent members, while the French text requires “the votes” of all the permanent members. The Spanish text requires the “affirmative votes” of all the permanent members. Ambiguous terms in a treaty must be read to comport with all the texts. The only reading that comports with all five texts is one that calls for an affirmative vote by the five permanent members. However, the Security Council practice is firmly in the direction of considering a resolution adopted if permanent members abstain.” John Quigley, ‘The United Nations Security Council: Promethean Protector or Helpless Hostage?’ (2000) 35 Texas International Law Journal, pp.129-172, p.164

\textsuperscript{1120} Shaw (n538), p.1206

\textsuperscript{1121} “…the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests…”

\textsuperscript{1122} Articles 98-99

\textsuperscript{1123} Morrison (2004) p.337}
Nevertheless an evolution of customary international law has resulted from new demands; the limitations described above have already been exceeded. The UN Charter has therefore been reinterpreted in order to make it conform to the facts of the international legal order. For example, the clear statement of the Charter, the “Uniting For Peace” resolution, was taken by the General Assembly to claim authority in the field of security and peace because of the Council’s ineffectiveness. Secretary-General Dag Hammarskjold also “expanded his own authority and presence into the vacuum left by the stalemate of the Cold War”.

More interpretations and developments followed after the collapse of the Cold War. Since 1968, the provisions of ECOSOC Resolution 1296 (XLIV) has governed the rules and procedures concerning NGO consultative status with ECOSOC and its subsidiary bodies. Changes in the relationship between the UN and NGOs, and in the level of participation by NGOs in the work of the UN, have been manifested in the series of UN conferences held during the 1990s, in ECOSOC subsidiary bodies such as the Commissions on Sustainable Development, Human Rights, and the Status of Women, and elsewhere across the UN system. “NGOs have become more present, active and influential at the international level, and more directly engaged in intergovernmental policy setting processes”. Some amendments have therefore been made by ECOSOC Resolution in 1996 in light of these and other developments.

1124 ibid
1126 ibid
The Security Council even has started to arrange regular informal meetings with NGOs under the Arria Formula in order to benefit from the latters’ experience – a marked improvement on their formerly rare ad hoc interactions with NGOs. It was clear that when circumstances do change, it impels the relevant parties to take action in order to deal with the new situation. In fact, this began to occur even in the Charter’s first decade.

These examples provide evidence that the UN Charter is not immutable, and that its interpretation can be adapted to changing circumstances. The formal participation of NGOs does not even contravene the Charter, obviating the need for reinterpretation. Although the resistance of traditional states may make approval of such measures difficult, the Security Council’s previous granting of some concessions certainly imply that it is amenable to change when necessary or when circumstances make such developments indispensable. It is, in short, becoming increasingly possible for NGOs eventually to obtain formal access to the Security Council.

9.1.8 Implications for the Veto Power

Apart from all these considerations, some think that removing the Permanent Five’s veto power is essential. They may therefore criticize any proposal that does not advocate this on the grounds that it would not address the Council’s problem. As mentioned in Chapter III, a significant problem regarding the Council is the lack of effective actors. Tools such as the
“Uniting for Peace” resolution and Article 27 are available.\textsuperscript{1127} In any case, this does not mean that the veto power is not an obstacle, so it might in fact be true that that power poses a significant problem regarding the Council, and consequently that it should be removed.

However, if the system does not permit such a step, it is more plausible to consider alternative ways. Any proposed solution would otherwise be stymied. The main aim of this proposal is to offer a solution that would be both curative and feasible. The Security Council is as it were diagnosed by the present work as suffering from a severe problem that by its nature requires a long course of treatment. Such treatment necessitates patience because an immediate solution is simply not applicable. “Overdosing” may cause crises for no positive return, and may actually lead to termination. Practical limitations must be considered. Demanding the removal of the veto would have the same “overdosing” effect on the permanent members while still not addressing the problem of the Council’s state-centrism and its inefficiency in dealing with international problems.

History has witnessed momentous changes in social organization worldwide.\textsuperscript{1128} Contemporaries considered such changes as impossible, even unimaginable. The “elitist

\textsuperscript{1127} As mentioned in Chapter III, the “Uniting for Peace” resolution could be used to take action when the Council fails to do so; Article 27 states that nine Council votes are required to authorize elected members to prevent the Council from taking undesirable steps.

\textsuperscript{1128} For example, women did not even have the right to vote until the late 19th century. The US constitution has been amended 27 times since its establishment.
approach” emphasized that the highest social strata such as kings should be in authority because they considered them to be an inevitable and unalterable fact of social life.\textsuperscript{1129}

However, there are only a few examples of such systems in the current world order. Their existence could simply have been as products of their times, in which the idea of an administration without kings or an elite class was seen as being as unrealistic as Security Council reform appear to some today. Whenever a proposal mentions measures to reform the Council such as removing the veto from permanent members, it is immediately regarded as unrealistic. It might indeed be unrealistic at present to change the Council’s structure, but this situation should certainly not be regarded as permanent.

In that respect, there are in fact some examples of the UN’s actions not strictly conforming to the letter of its Charter. NGOs have been granted rights, even though these are not mentioned in any provision of the Charter. They have taken part in some specialist UN conferences from the UN’s very inception.\textsuperscript{1130} While their rights at such conferences have been notably fewer than in ECOSOC, their political status and chances of participation have been significantly higher since the mid-1980s.\textsuperscript{1131} In addition, the rule in Article 27 states that “affirmative votes” of Security Council members are required, but the Council’s practice has been that a resolution can be adopted by the Council even if a permanent member abstains. In short, it is possible for NGOs to exert further leverage on Council members to persuade them not to use their veto power, although there is no provision for this in the Charter.


\textsuperscript{1130} Willetts (2000), p.193

\textsuperscript{1131} The UN’s practice has established global norms for diplomatic behaviour, even enabling NGOs to influence most multilateral arms control measures. ibid
9.2 Conclusion

There are significant problems with the Security Council, both in the UN Charter and in practice. The Charter provides the permanent Council members with a veto power. In practice, the first difficulty arises from the use of that power. More problems have been raised by the Council’s members themselves. Its non-permanent members have not yet blocked any decision taken by the five permanent members, and the Uniting for Peace Resolution authorises the General Assembly to be final decision-making body on peace and security issues. Yet this authority has mostly been ignored; most UN members have instead criticised the permanent Council members for the Council’s failures. Any attempts at reform that rely on the UN’s members are therefore unlikely to change the situation.

Secondly, the international legal order has entered the post-Westphalian era. It is thus also important to consider the new facts of the international legal order in order to develop a Security Council that is more representative, accountable and efficient. These facts are the emergence of non-state actors in the international legal order and new problems that states find it hard to deal with but whose resolution is possible by non-state agents. This study proposes that the Security Council should grant formal access to NGOs as new actors capable of dealing with new problems. In that respect, the arguments of CD theory have proved to support the purposes of this study.

As has been discussed, it is preferable for the Security Council to shift its position from “an anchor set in granite” to “an anchor set in sand”. For Thomas Franck the UN Charter should
be considered as a “living tree”.\textsuperscript{1132} Realists may reject such a proposal as idealistic and impracticable. Yet the international legal order has changed significantly, and is still evolving. It is thus the claim that the Security Council’s structure should retain its current for that is in fact neither practicable nor realistic, flying as it does in the face of remarkable international developments.\textsuperscript{1133} The present author would certainly reject such an approach to the problem as quite unrealistic. Past attempts at reinforcing international democracy have often met with stiff resistance from a minority of powerful states.\textsuperscript{1134} However, such opposition to democracy has proved to undermine the efficiency of the Security Council; the inglorious demise of the League of Nations has proved a sobering precursor in this regard.\textsuperscript{1135}

Of course, this proposal might at first be considered as too contentious.\textsuperscript{1136} States have so far unfortunately not approved the Cardoso Commitment’s\textsuperscript{1137} suggestions.\textsuperscript{1138} New UN Secretary-General Ban Ki-moon could if he wanted to revive the panel’s suggestions, but he has not apparently been keen to do so.\textsuperscript{1139}

Nonetheless, the preceding discussion makes it clear that this is not a new situation: not many reform proposals have received support from states. It would not therefore be a

\begin{itemize}
\item \textsuperscript{1132} Malone (2003), p.487.
\item \textsuperscript{1133} In the similar way, Woodward indicates that ‘it is no longer realistic to claim that the realm of international law is limited to State interactions’. Woodward (n595), p.230.
\item \textsuperscript{1134} Wouters & others (2003), p.37.
\item \textsuperscript{1135} Ibid
\item \textsuperscript{1136} Menno T. Kamminga, ‘What Makes an NGO Legitimate in the Eyes of States?’ in Anton Vedder (ed.) NGO Involvement in International Governance and Policy: Sources of Legitimacy (Brill, 2007), pp.175-195, p.188.
\item \textsuperscript{1137} Cardoso report, as aforementioned, recommends to improve and formalize relations with NGOs. See: A/59/817.
\item \textsuperscript{1138} Baehr (2009) p.127.
\item \textsuperscript{1139} ibid
\end{itemize}
straightforward step or an easy one for the Security Council to grant formal access to NGOs. However, this obstacle would be progressively overcome with the patient influence of NGOs. These would need to cooperate closely in order to overcome those obstacles.1140 Wiessner and Willard state that “an actor with actual or potential influence is a candidate for participation in the decision process”.1141 NGOs would also be granted further access commensurate with their increasing influence.

Wapner argues that while innumerable problems plague interactions with civil society, “we can look at those relations as a dynamic interplay in which efforts toward good governance are slowly but significantly being worked out”.1142 Gillian observes that “it is absolutely clear that, one way or another, relationships with NGOs are going to continue and grow”,1143 and foresees that their relationships with the UN will deepen and strengthen. As the world increasingly becomes smaller, the role and influence of NGOs will continue to increase in significance.1144

The time has come for the Security Council to conform to present conditions and prepare for the future rather than preserve the past.1145 If the Council continues to attempt to confine NGOs to a purely informal position, thereby ignoring the important developments that have been taking place outside the UN, it runs the risk of losing its central position, and even its

1140 ibid
1142 Wapner (2007) p.262
1143 Sorensen (n444), p.357
1144 ibid, p.355
1145 Hachez (2008), p.82
relevance, in facing the challenges of global governance.\textsuperscript{1146} On the other hand, it is highly likely that NGOs will progressively, even without consent of states, obtain formal places in the Security Council.\textsuperscript{1147} Donini states that

\begin{quote}
new issues and actors are knocking at the UN's door. It is no longer possible to keep them out; if the door is locked they will come in through the window or the cracks in the floor.\textsuperscript{1148}
\end{quote}

Archibugi asserts that

\begin{quote}
it is no vain hope, therefore, to believe that in time the citizens of the world will take upon themselves the responsibility of managing this small planet of theirs democratically.\textsuperscript{1149}
\end{quote}

When such measures have been enacted de jure, its effect will depend on the practice of states in the short term and civil society in the long term. Thus, “only time will tell if this vision is politically sustainable”.\textsuperscript{1150}

\textsuperscript{1146} ibid
\textsuperscript{1147} Teubner asserts that the dynamics of current world order make it possible for civil society to free itself from the restrictions that nation-state politics had imposed on them. Gunther Teubner, 'Global Private Regimes: Neo-Spontaneous Law and Dual Constitution of Autonomous Sector in World Society?' http://www.jura.uni-frankfurt.de/42852650/global_private_regimes.pdf
\textsuperscript{1148} Donini (1996) p.83
\textsuperscript{1149} Archibugi (1998), p.224
\textsuperscript{1150} Therien & Belanger-Dumontier (n159) p.362
9.3 Limitations of the Study

Providing for formal participation for NGOs is obviously not a comprehensive solution. Be that as it may, such a measure would be a step towards a more democratic Security Council. CD considers the participation of individuals who are affected by the decision-making process. Although many non-state actors could be considered as representatives of individuals, this study limits itself to participation by NGOs. Even in this regard, general evaluation and sources regarding NGOs have been avoided, as the emphasis has remained on relations between the Security Council and NGOs.

9.4 Future Research

This paper has mostly addressed the outcomes of formal NGO participation. There might of course be other outcomes not mentioned, each of which could each be analysed in depth. This thesis also addressees the participation of NGOs as non-state actors, without dealing with other types of non-state actor such as businesses, individual experts and Secretariat personnel. Involvement by these non-state actors could also be discussed.
BIBLIOGRAPHY

Treaties


Charter of the Organization of American States, 1948

Charter of the United Nations, 1945

Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 1945

European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, 1986

Provisional Rules of Procedure of the Security Council, 1946

Statute of the Council of Europe, 1949

Statute of the International Court of Justice, 1945

The Universal Declaration of Human Rights, 1948

Vienna Convention on the Law Treaties, 1969
UN Documents

The United Nations Economic and Social Council, “1296 (XIV) Arrangements for Consultation with Non-Governmental Organizations” (23 May 1968), UN Doc E/RES/1968/1296


The United Nations General Assembly, “Observer status for the International Committee of the Red Cross” (16 October 1990) UN Doc A/RES/45/6


The United Nations General Assembly, “Uniting for Peace” (3 November 1950) UN Doc A/RES/377A (V)


The United Nations Security Council, “Resolution on Sierra Leone” (28 March 2003) UN Doc S/RES/1470


Secondary Sources

Aall PR, ‘NGOs and Conflict Management: Responses to International Conflict Highlights from the Managing Chaos Conference’ (1996) United States Institute of Peace


Alger C, ‘The Emerging Roles of NGOs in the UN System: From Article 71 to a People’s Millennium Assembly’ (2002) 8 Global Governance 117


Alvarez JE, International Organizations As Law-Makers (OUP, 2005)


Annan KA, ‘Cooperation Between the United Nations and All Relevant Partners, in Particular the Private Sector’ (9 October 2001) The Report of Secretary General to the General Assembly A/56/323


Arend AC, Legal Rules and International Society (OUP, 1999)

Baehr PR, Non-Governmental Human Rights Organizations in International Relations (Palgrave Macmillan, 2009)


Baslar K, Ulaslarasi Hukukta Hukumet Disi Kuruslar (Non-state Actors in International Law) (Ankara, 2006)


Brown R, ‘Globalization and the End of the National Project’ in John MacMillan and


Byers M, Custom, Power and the Power of Rules: International Law and Customary International Relations (CUP, 1999)


Cardoso FH, ‘Civil Society and Global Governance’ High Level Panel on Civil Society


Charnovitz S, ‘Nongovernmental Organisations and International Law’ (2006) 100 American Journal of International Law


Clark I, Globalization and International Relations Theory (OUP, 1999)


Crawford J, ‘Democracy and International Law’ (1993) 64 *The British Yearbook of International Law*, 113


Crawford J, *Democracy in International Law: Inaugural Lecture* (CUP, 1994),


Dewey J, Reconstruction in Philosophy (Beacon Press, 1948)

Donini A, ‘The Bureaucracy and the Free Spirits: Stagnation and Innovation in the Relationship Between the UN and NGOs’ in Thomas G. Weiss & Leon Gordenker (ed.) NGOs, The UN and Global Governance (Lynne Rienner Publisher 1996)


Esty DC, ‘Why the World Trade Organization Needs Environmental NGOs’ International Centre for Trade and Sustainable Development


Fox GH & Roth BR, *Democratic Governance and International Law* (Cambridge University Press, 2000)


Franck TM, *Fairness in International Law and Institutions* (OUP, 1998),

Fukuyama F, *The End of History and the Last Man* (New York, 1992)


Haas EB, *Beyond the Nation-State: Functionalism and International Organisation* (1968)


Higgins R, Problems and Process: International Law and How We Use It (OUP, 1994)


Hondius F, ‘Recognition and Protection of NGOs in International Law’ (1999) 2 The International Journal of Not for Profit Law


Jessup PC, *International Regulation of Economic and Social Questions* (1955)


Kymlicka W, Multicultural Citizenship (Oxford University Press, 1995)

Lakic N, 'Is Globalization a Challenge or a Threat to Nation-States as a Dominant Form of Polity?’ (2011) 21, Western Balkans Security Observer, 6


Lindblom A-K, Non-Governmental Organizations in International Law (Cambridge University Press, 2005)

Linklater A (eds), Boundaries in Question: New Directions in International Relations (Printer, 1995)


Lissitzyn OJ, Territorial Entities Other Than Independent States in the Law of Treaties (Hague Academy of International Law, 1968)


Martell L, ‘Cosmopolitanism and Global Politics’ (2011) 82 *The Political Quarterly*, 618


Mathews JT, ‘Power Shifts’ (1997) 76 Foreign Affairs, 50


McDougal MS & Reisman WM, 'Rhodesia and the United Nations: The Lawfulness of International Concern' (1968) 1 Yale Law School Legal Scholarship Repository


Mehta V, ‘Reforming and Strengthening the UN for the 21st Century’ (2010)


Mingst KA, Essentials of International Relations (W.W. Norton & Company, 5th ed., 2011)


Moravcsik A, Liberalism and International Relations Theory (Harvard Uni. 1992)

Morgenthau HJ, ‘Positivism, Functionalism, and International Law’ (1940) 34 American Society of International Law 261

Morris C & Murphy C, Getting a PhD in Law (Oxford, 2011)


Peters A, ‘Humanity as the A and Ω of Sovereignty’ (2009) 20 European Journal of International Law, 513


Rebasti E and Vierucci L, 'A Legal Status for NGOs in Contemporary International Law?’ (2002)


Rosamond B, *Theories of European Integration* (New York 2000)


Segall JJ, ‘Building World Democracy Through the UN’ (1990) 6 Medicine and War, 275

Shaw MN, International Law (7th ed., CUP, 2008)


Stone RW, ‘Informal Governance in International Organizations: Introduction to the Special Issue’ (2013) 8 Review of International Organizations, 121


Titus A, ‘In the Name of the People: Strengthening Global Accountability’ A One World Trust Discussion Paper


Walker RBJ, ‘International Relations and the Concept of the Political’ in Ken Booth & Steve Smith (eds.) International Relations Theory Today (Polity Press, 1995)


Wessel RA, ‘Revisiting the International Legal Status of the EU’ (2000) 5 *European Foreign Affairs Review*, 507


Wouters J, Meester BD & Ryngaert C, Democracy and International Law (2003) 34 *Netherlands Yearbook of International Law* 139


Zurn M, ‘Democratic Governance Beyond Nation-State: The EU and Other International Institutions’ (2000) 6 *European Journal of International Relations*, 183
Interview

Interview with Sir Jeremy Greenstock, Chairman of the UN Association in the UK, United Nations Association-UK (London 21 November 2013)
Other Sources


‘Geneva Call’ http://www.genevacall.org/who-we-are/


‘Reforming the Security Council’ Conference


‘UN-Civil Society Relations Panel Established’ (2003) <http://www.globalpolicy.org/component/content/article/177/31845.html>,

‘Wealthy NGOs’ <http://www.sovereignty.net/p/ngo/wealthy.htm>


<http://www.uia.org/archive/legal-status-4-1>
<http://www.uia.org/archive/legal-status-4-3>
<http://www.uia.org/archive/legal-status-4-4>
<http://www.uia.org/archive/legal-status-4-5>
<http://www.uia.org/archive/legal-status-4-6>
<http://www.uia.org/archive/legal-status-6-1>
<http://www.uia.org/legal/app41.php>


<http://hosted.ap.org/dynamic/stories/U/UN_UNITED_NATIONS_PEACEKEEPERS_Sexual_Exploitation?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT>

Barack Obama speech about the ‘Responsibly Ending the War in Iraq’:

Center for UN Reform Education, ‘Security Council Reform’
http://www.centerforunreform.org/?q=securitycouncil

CITES Convention Article 11(7) <http://www.cites.org/eng/disc/text.php#XI>

Democracy and United Nations: 

<http://www.globalpolicy.org/component/content/article/200/32831.html>

ECOSOC Concludes NGO Review (November 1996) 
<http://www.globalpolicy.org/home/177-un/31786-ecosoc-concludes-ngo-review.html>


Empower the UN, ‘The United Nations Assembly Movement: How It Began’
<http://empowertheun.com/UNAssemblyMovementTimeline.html>

Faustian Europe, Cosmopolitan Democracy and Its Failure in Providing a Political Identity (12 Feb 2009)


NBC News: Saudi King Offers Billions in Gifts to Citizens (23/02/2011)  

NGO Working Group [http://www.ngowgsc.org/]


Patriota ADA, ‘Globalizing the Security Council’ Project Syndicate, 3 June 2013,  
[https://www.project-syndicate.org/commentary/the-urgent-need-to-reform-the-un-security-council-by-antonio-de-aguiar-patriota]


[https://www.globalpolicywatch.org/is-the-un-fully-equipped/]

President Obama Speaks with VICE News,  

Press Release GA/9944, Fifty-sixth General Assembly Plenary 35th Meeting (PM)  

Quaker United Nations Office [http://www.quno.org/aboutUs/howWeWork.htm]

Report of AAAS at:  
[http://www.aaas.org/news/aaas-satellite-image-analysis-five-six-syrian-world-heritage-sites-exhibit-significant-damage] and  


Reuters, ‘Analyst View: How serious is the Chavez Libya peace plan?’
<http://www.reuters.com/article/2011/03/03/us-libya-venezuela-analyst-view-
idUSTRE7222Q720110303>,

Reuters, ‘Rohingya health crisis in west Myanmar after aid groups forced out’ (28 April 2014) <http://www.reuters.com/article/2014/04/28/us-myanmar-rohingya-
idUSBREA3R0I820140428>


libya-1436991367>


The Department of Economic and Social Affairs of the UN Secretariat ‘The United Nations Development Agenda: Development for All’ (New York, 2007)

The Economist, ‘Who Guards the Guardians’ (18th September 2003)


The European Environment Agency <http://www.eea.europa.eu/themes/air/links/NGOs>


The International Peace Institute <http://www.ipinst.org/about.html>

The Montevideo Convention on the Rights and Duties of States


The Stanley Foundation <http://www.stanleyfoundation.org/programs.cfm?id=3>


UN NGO Branch Department of Economic and Social Affairs <http://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search&sessionId=false>


World Health Organisation <http://www.who.int/civilsociety/relations/en/>