

Can NGOs Play the Peace and Security Game?

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Intergovernmental organisations (IGOs) are assuming greater significance today in light of the increasing number of global issues which transcend the capacity of the state to respond. In many such organisations, however, decisions are taken by official representatives of sovereign states with citizens knowing little about what goes on, even though those decisions affect their lives. There is much debate therefore about the legitimacy and accountability of IGOs and whether and how a more participatory form of democracy could be developed within them. While some theories predict the eventual demise of the nation-state, thinkers like Held and Archibugi¹ advocate a «cosmopolitan democracy» in which new political institutions would co-exist with states but would override them in clearly defined spheres of activity. This would involve broad civic participation at all levels, with civil society incorporated to decision-making alongside states and the private sector because it would be necessary to have the consent of the entire community affected by a particular decision².

Many other political philosophers have indeed highlighted the importance of civil society – including non-governmental organisations (NGOs), business groups, the media, academics, parliamentarians, think-tanks and others – to the democratic process. There is some confusion regarding the difference between civil society organisations and NGOs but the latter term, coined in Article 71 of the Charter of the United Nations (UN), is generally applied to any non-profit organisation that is independent from government, engaged in advocacy, value-based and largely (although not exclusively) dependent on charitable donations and voluntary service.

Although cosmopolitan democracy remains a theory, there has been progress towards a more participatory, accountable and transparent form of global governance as evidenced by the

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¹ D. Held, *Democracy and Globalisation*, in D. Archibugi, D. Held, M. Kohler (eds.), *Rethinking Political Community*, Stanford, Stanford University Press, 1998, pp. 11-27.

² D. Chandler, *The Limits of Human Rights*, in Id. (ed.), *Rethinking Human Rights*, London, Palgrave Macmillan, 2002, p. 117.

growth of NGOs and the development of their relations with IGOs, as well as by the establishment of parliamentary assemblies in organisations such as the Council of Europe (COE), and the concept of civic dialogue in the European Union (EU). The political visibility of NGOs has increased in recent years and there has been public acknowledgement of their contribution towards abolishing land mines³, preventing the creation of a Multilateral Agreement on Investments, establishing the International Criminal Court (ICC)⁴ and reducing third world debt through the Jubilee 2000 Campaign. Despite some problems, they are generally seen as alternative, accessible and objective sources of information on important issues, impartial critics of official policy and increasingly as formulators of ethical policy. The comparative advantages enjoyed by international NGOs (INGOs) in terms of flexibility, knowledge, analytical skills, connections and local involvement, mean they can also tackle «uncivil society»⁵ – the more negative transnational features such as terrorism, drug trafficking, child pornography and trafficking in humans – which traditional domestic justice systems find difficult to address, as well as other complex issues with potential for causing conflict.

INGOs are particularly relevant in relation to human rights as they – rather than governments – represent real and potential victims of violations. Furthermore, human rights are no longer only a domestic issue but, as the 1993 Vienna Conference confirmed, «a legitimate concern of the international community»⁶. Today, human rights INGOs contribute significantly to the promotion and protection of human rights by *inter alia* sensitising the general public to threats and challenges, providing expert information, lobbying political authorities, influencing the formulation and implementation of international norms and playing a role in preventive policy in the wider sense, including through education.

Whereas the European Commission has adopted minimum guidelines for consultation with NGOs and the World Bank (WB) has created an Inspection Panel to which NGOs may appeal, other IGOs – including the COE, the International Labour Organisation (ILO) and the UN Educational, Scientific and Cultural Organisation (UNESCO) – have adopted formal relations with NGOs. These enable registered

³ The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, signed in Ottawa, 3-4/12/1997, entered into force 1/03/1999.

⁴ Rome Statue of the ICC, signed 17/07/1998, entered into force 1/07/2002.

⁵ A/51/950 (1997), *Renewing the United Nations: A Programme for Reform*, para. 209.

⁶ *Vienna Declaration and Programme of Action*, 25/06/1993, para. 4.

NGOs to help set the agenda for discussions, provide expert advice, present papers, attend seminars and conferences and even, under the «tripartite» system of the ILO, participate in the decision-making process itself.

A degree of interdependence has also been established between the UN and its NGOs by means of consultative status with the Economic and Social Council (ECOSOC) and its subsidiary bodies, accreditation to the Department of Public Information (DPI), working relations with particular departments, programmes or specialised agencies and accreditation to conferences and other one-time events. However, progress towards greater co-operation has slowed down in recent years and the UN now lags behind other IGOs. Despite the best efforts of the NGO sector, relations with the General Assembly – the main deliberative body – have not been formalised. Human rights INGOs – because of their focus, relative independence and critical nature – appear to have experienced particular antagonism from hard-line states and have faced more barriers to participation than other NGOs throughout the UN system. The role, structure, responsibilities and working methods of the Security Council (SC) have exacerbated these difficulties for human rights INGOs trying to participate in deliberations there.

As the body with primary responsibility for maintaining international peace and security, the SC has wide-ranging powers to act on behalf of the entire organisation, and its decisions under Chapter VII (and arguably under Chapter VI⁷) of the Charter are legally binding upon all member states. The fact that the SC comprises only 15 members – out of a total UN membership of 192 members – and is dominated by its five permanent members (P5) whose national interests supersede any legitimate international political concerns, raises questions about its legitimacy – as does the use of the veto or «hidden veto»⁸ whereby any P5 state can block or threaten to block agreement on a non-procedural issue, even if it is supported by the vast majority of UN member states.

Although successive Secretary Generals (SGs) have worked to make human rights a central theme that unifies the UN's work in peace and security, development, humanitarian assistance and economic and social affairs, the SC was relatively slow to adopt such a comprehensive approach. However, peace and

⁷ For example, see the International Court of Justice Advisory Opinion of 21 June 1971 regarding the legal consequences for states of the continuing presence of South Africa in Namibia, notwithstanding S/RES/276 (1970).

⁸ S. Bailey, S. Daws, *The Procedure of the UN Security Council*, Oxford, Clarendon Press, 1998 (3rd ed.), p. 249.

security has come to be perceived as part of a complex web which includes human rights, and the relationship between the two is now being addressed from both a causal and a prescriptive perspective. The establishment by the SC of the International Criminal Tribunal for the former Yugoslavia in 1993⁹, the impartial Commission of Experts to investigate human rights violations in Rwanda¹⁰, the International Criminal Tribunal for Rwanda in 1994¹¹ and the ICC in 1998 reflect a growing appreciation of the need to address human rights violations in order to bring about peace and security; while several Chapter VII Resolutions – such as those regarding East Timor – have not addressed threats to international peace and security *per se*, but situations seen as problematic in themselves. Indeed, experts consider that the protection of human rights is now an obligation of the international community¹².

However, the progression towards taking human rights into consideration in conflict prevention, peacekeeping, post-conflict resolution and peacebuilding has not been complemented by a commensurate increase in NGO interaction with the SC. This paradox is due to several factors including the structure and working methods of the SC, as well as the attachment to state sovereignty by the P5 – several of which have been criticised by human rights NGOs for domestic issues such as Tibet, Chechnya and Guantanamo Bay; and it highlights doubts about the legitimacy of the SC in relation to human rights.

Nevertheless, interaction between the SC and INGOs has increased since the 1990s, and some INGOs have developed a relationship with SC members. However, the methods of interaction – based largely on the Provisional Rules of Procedure¹³ – are informal, *ad hoc* and rather basic. The most structured methods are SC Public Meetings, Arria Formula Meetings and NGO Working Group on the SC Meetings. NGOs are allowed to observe some of the rather formal public meetings and in 2004, were even invited to address two open meetings on thematic issues. Although many of the efforts associated with improving the transparency of SC proceedings have centred on holding more meetings in this format, research shows that most delegates and NGOs do not find them useful: some NGOs describe the proceedings as «Kabuki-like» with

⁹ Statute of the ICTY, adopted by S/RES/827 (1993).

¹⁰ S/RES/935 (1994).

¹¹ Statute for the ICTR, adopted by S/RES/955 (1994).

¹² M. Nowak, *Introduction to the International Human Rights Regime*, Leiden, Martinus Nijhoff, 2003, p. 308.

¹³ S/96/Rev.7, *Provisional Rules of the Procedure of the Security Council*, amended 1982, Rule 39 and the Appendix.

everything «pre-cooked» and «stage-managed».

Arria Formula Meetings are informal meetings of SC members organised by a SC member other than the President of the Council (PSC) to receive briefings from external experts. They are held in UN premises with full interpretation but are not announced in the UN journal and are not recorded. Originally availed of to meet with representatives of states, governments or important regional alliances, they have been used increasingly since 2000 to meet with NGOs: approximately six are now held each year. Their *ad hoc* nature means they can take place whenever they are deemed useful by any SC delegation which undertakes to organise them: in reality, broad agreement among SC members is necessary for the meeting to occur. Delegates find these meetings particularly useful for hearing realistic and reliable accounts of events on the ground, for discussion and for considering possible lines of action. NGOs are less positive saying that states participate at an increasingly junior level, that the meetings are becoming «ritualised» and overly-focused on thematic (rather than regional) issues. As with other informal formats, it is difficult for the organising state to know which NGOs should be invited: there is no database of NGOs and no liaison function within the Secretariat which could provide assistance.

The NGO Working Group on the SC was initiated by Global Policy Forum in 1995 to monitor SC reform, but quickly evolved into a group of 30 INGOs which now holds about 50 meetings each year with SC delegations – including the rotating PSC – and UN officials. Interestingly, it is considered that only about 30 INGOs are interested in, and capable of, following SC work in detail. Although much depends on the quality of the Permanent Representative (PR) providing the briefing, NGOs value these meetings as they can hear first-hand about the broad range of issues being addressed by the SC. The meetings help to make SC proceedings less opaque, introduce NGOs to delegations, and enable them to see which other NGOs are interested in a specific issue, with a view to forming like-minded policy groups or coalitions.

Informal bilateral meetings between an NGO and a SC delegation allow both sides to express their real views and are seen as the most effective method of interaction, particularly for advocacy purposes. NGOs say that access has generally

improved in recent years and that it has become easier to arrange such meetings. Many NGOs also send written material to SC members and say that short memos are particularly useful for highlighting issues. Such papers can provide excellent background information for delegates preparing briefs or even induce policy positions: for example, HRW and the International Crisis Group (ICG) sent a joint letter to SC members in early 2006 urging them to take action to protect citizens in Darfur by establishing a UN mission under Chapter VII with a strong mandate, which would include providing assistance to ICC investigations¹⁴.

In addition, NGOs interact with SC members at seminars organised by groups such as the ICG and the International Peace Academy; informal meetings of SC members inside the UN such as that held in 2000 with then-Chairman of the US Senate on Foreign Relations, Jesse Helms; informal meetings of SC members outside the UN such as that organised by Brazil in 1999 with Global Witness, which was considered influential in the SC tightening its sanctions against UNITA¹⁵ shortly afterwards; and through SC field missions which now take place about 2 or 3 times each year to areas of particular concern, to show PRs the situation on the ground, and enable them to meet with relevant parties, including NGOs. Earlier field missions, such as the 2001 mission to Kosovo included meetings with NGOs but they were random and badly organised. Regular NGO input has developed since then and more recent missions, such as the mission to Central Africa in November 2005 included better-planned and more relevant meetings with NGOs. The «Cardoso Panel»¹⁶ recommended that the missions should be organised to enable structured NGO involvement. If properly planned, they would meet with a range of local NGOs when in-country, having received briefing about these NGOs prior to departure. This highlights the need for a small NGO liaison function in the SC Affairs Division which would *inter alia* handle such briefing. An adaptation of the Arria Formula could also be used for a «lessons learned» exercise at the close of each UN-mandated operation, as suggested by the SG in 2004¹⁷. NGOs could contribute effectively to such meetings, which would analyse the successes and failures of each operation or mission, and help to establish criteria for future use.

¹⁴ Joint letter from HRW and ICG, 31/01/2006, at www.hrw.org.

¹⁵ National Union for Total Independence of Angola.

¹⁶ A/58/817 (2004), *We the Peoples: Civil Society, the UN and Global Governance*, Report of the Panel of Eminent Persons on UN-Civil Society Relations (Cardoso Panel Report).

¹⁷ A/59/354 (2004), Report of the SG in Response to the Cardoso Panel Report, para. 14.

NGOs can also influence SC discussions by assessing the linear progression towards decision-making in each SC member state and deciding to intervene in the capital, where local branches of INGOs have often developed relations with officials, or through the Permanent Representation in Geneva, where human rights are addressed on an ongoing basis and where specialised INGOs have established relations with officials. The relative effectiveness depends on the working methods and flexibility within each Foreign Ministry: the P5 and larger elected member (E10) states generally have more centralised structures so NGO lobbying in capitals can be effective. NGOs could also approach the UN structure itself more strategically. Human rights NGOs are developing strong links with the human rights components of UN missions, especially in building up national institutions and developing civil society, but they also need to counteract the pressure exerted by the P5 in relation to the periodic Secretariat reports, which are essential to many SC members for information and for suggesting possible policy positions. NGOs can do this in New York or in the field, as UN missions – including their human rights officers – provide most of the material for these reports. It is clear that NGO interaction with the UN SC needs to be intensified in order for human rights to be properly addressed, and for the SC to have greater legitimacy in the area. However, it is also clear that the SC is unique in terms of its role, composition and working methods. Although the Provisional Rules of Procedure provide only for public meetings and private meetings, sensitive issues are always discussed in the self-created «Consultations of the Whole» or «Informal Consultations» in which only SC members and relevant Secretariat officials participate and regarding which no official records are kept. Subsequent briefings are provided only randomly to non-SC members: NGOs do not even have access to the relevant areas of the UN. Transparency is an issue within the SC itself: much of the business is conducted in private by the P5, with minimal consultation with the E10. Furthermore, many texts are drafted by «Groups of Friends» or «Core Groups» which meet informally at expert level and do not always readily share drafts with other SC members prior to official discussion. Although serious structural reform of the SC is considered unlikely in the near future, reform of its

working methods is considered more attainable. Discussions about improving the transparency of SC proceedings are ongoing in several fora¹⁸: while such reform aims to benefit the wider UN membership, it would also assist NGOs and it is therefore important that they monitor and try to influence these discussions, particularly those taking place within the SC informal working group, as the P5 states are more likely to accept its recommendations.

Research for this paper indicates that most SC delegations value the input of expert, reliable INGOs in the area of human rights. While it is difficult to assess the impact of their work, their information and advice are appreciated, particularly by the smaller E10 states which lack intelligence sources and which can be overwhelmed by the sheer volume of work on the SC. From the perspective of SC work, however, it is important to strengthen the link between INGOs in New York and local NGOs in conflict areas, as it improves the quality and relevance of NGO briefing and makes their views more legitimate. INGOs would also benefit from greater self-regulation, which would help to address some perceived problems of accountability, transparency and legitimacy.

Research also indicates that NGOs following SC activities acknowledge the sovereign nature of the intergovernmental process. They appreciate that participatory democracy goes hand in hand with representative democracy and believe they need to operate in a subtle, strategic and largely informal manner. Although establishing arrangements akin to the consultative status enjoyed in ECOSOC would have the benefit of signalling the importance of NGOs to the work of the SC, NGOs do not believe they would be useful: in fact, many consider they could be counter-productive, driving discussions into more secret formats and introducing administrative obligations which would inevitably reduce the ability of NGOs to operate freely. However, some elements of these arrangements could facilitate co-operation. For example, NGOs could consider the formation of a co-ordinating body, such as the CONGO¹⁹ or the UNESCO-NGO Liaison Committee which could be elected from amongst NGOs following the work of the SC and interested in its NGO-related activities. As in the COE Liaison Committee, it could be arranged into thematic groupings which would facilitate the

¹⁸ The Security Council Informal Working Group on Documentation and other Procedural Questions, and the General Assembly-appointed Open Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council have both been discussing the issue for over ten years.

¹⁹ CONGO is the Conference of NGOs, the coordinating body for NGOs with consultative status at the ECOSOC.

formation of *ad hoc* like-minded policy groups or coalitions, which have been very effective regarding issues such as the ICC.

A liaison body or officer could then be established in the SC Affairs Division of the Department of Political Affairs, which could liaise with the NGO co-ordinating body providing, for example, a weekly orientation briefing, informing it about upcoming debates and field missions and requesting «parallel» reports in advance. This liaison function could also develop and maintain a database – similar to the CONECCS database developed by the EU Commission – with information about NGOs, their areas of expertise, local and regional branches and contact points. This would facilitate the organisation of informal meetings and ensure that the most relevant NGOs participate. In creating such a database, attention could be paid to the criteria established elsewhere for according official status to NGOs ensuring for example that all registered NGOs share the aims and objectives of the UN, can contribute effectively to the maintenance of international peace and security, have expertise in at least one issue addressed by the SC (including human rights), and are sufficiently established to effectively follow the work of the SC. The 30 NGOs that participate in the NGO Working Group on the SC could be a useful point of departure.

NGOs need to adopt a comprehensive approach and assess where they can intervene with SC delegations most effectively. Bilateral meetings are clearly the most valuable and both NGOs and delegations should train their representatives to make full use of them. As increased use of Public Meetings carries the risk of driving real discussion into informal and unstructured meetings where NGOs have little chance of knowing what is going on, the SC should move only less controversial issues to the open format, and only if members are willing to make a serious effort to discuss them rather than deliver prepared statements. An alternative to more public meetings suggested by the SG was that the SC should hold «hearings» with all relevant experts in advance of major debates or actions. Suggestions have been made that such hearings could be modelled on the «Board seminars» instituted at the WB which include executive directors, specialist staff and external experts, and which are intended to enable executive

directors to learn and inform their capitals about likely concerns and positions on an issue. No decisions are taken and the media is given only a very general briefing afterwards. Relevant NGOs could be included in such «hearings» at the UN, which could provide a wonderful opportunity for open exchange between them, delegations and other experts.

The NGO Working Group on the SC and the Arria Formula meetings should be continued and reinforced. For the former, SC delegations should be encouraged to include their regional and thematic experts in the briefings and to speak as candidly as possible, while NGOs should prepare pertinent and practical questions in advance. An interesting suggestion from an NGO was that a range of SC delegations could be invited together to argue through their positions on relevant issues at the meeting. The Arria meetings should be kept informal, relatively unstructured, *ad hoc* and flexible: delegations should attend at the highest possible level and be prepared for an open and frank discussion. The panels could be broadened to include NGO representatives from the region as well as other experts including special rapporteurs, journalists and academics.

One long-term way of developing relations between NGOs and SC members would be to institute an ongoing exchange programme, similar to the «Community Observer Program» suggested by CARE International in 2004²⁰. While not always feasible, this would certainly provide delegates with an insight to how NGOs operate and an understanding of the wider issues involved in conflict prevention and conflict resolution.

In terms of substance, NGOs should focus on issues in which they have real added value. These include criminal justice – particularly providing information relevant to the ICC – and gender issues across the board. Human rights need to be properly addressed in devising strategies for early warning systems, preventive diplomacy and conflict prevention under Chapter VI of the Charter. The High Level Panel on Threats, Challenges and Change²¹ recommended that the Secretariat should interact more effectively with NGOs to gain advance information and local knowledge of conflicts, and to establish a set of early-warning indicators. NGOs, particularly those with extensive regional and local branches, could make an invaluable contribution by providing information about

²⁰ Caillaux, Denis, SG of CARE International, Statement to Open Meeting of the UN Security Council on the Contribution of Civil Society to Post-Conflict Peacebuilding, 22/06/2004.

²¹ A/59/565 (2004), *A More Secure World: Our Shared Responsibility*, Report of the High Level Panel on Threats, Challenges and Change.

emerging crises, helping to systematise its processing for use by the SC and advising about preventive measures: an early warning network could be established linking NGO branches to the SC, perhaps to the new Mediation Unit of the DPA.

Assessing the potential humanitarian consequences of sanctions imposed under Article 41 and policy formulation in this area – including interaction with the sanctions monitoring mechanism – provides another important point of entry. The opacity of the Sanctions Committees and the other SC subsidiary bodies including the Counter-Terrorism Committee (CTC) which has been lobbied by NGOs to take account of human rights when implementing Resolution 1373²² complicates NGO efforts in these areas and highlights the need for NGO involvement in discussions on transparency. Still under Chapter VII, the lack of procedural or substantive criteria relating to the invocation of SC powers to address the burgeoning range of challenges including civil wars, terrorism and gross violations of human rights, makes any decision to take action very subjective and open to political exploitation. Ironically, the concept of «humanitarian intervention» threatens to undermine the role of the SC, as evidenced by the «illegal» 1999 NATO decision to bomb FRY and the 2003 invasion of Iraq by coalition forces. NGOs could help to establish guidelines about what constitutes a threat, what determines the need for humanitarian intervention and how to respond appropriately.

Finally, peacekeeping operations and UN missions have evolved considerably to include stronger human rights components; and human rights are now supposed to cut through all areas of work in the Brahimi-style integrated missions. Human rights NGOs have played an important role, particularly with missions such as UNMIK²³ and UNTAET²⁴ where the UN fulfilled the executive functions of government, and they should continue their work in this vital area. With the UN playing an increasingly important role in strategic and effective peacebuilding, NGOs should focus on the new Peacebuilding Commission²⁵ which will advise the SC on the planning and commencement of relevant activities. They should ensure that they are properly consulted on the work of the Commission, as they have significant expertise in this area and it has the potential to be a very influential body. Such

²² S/RES/1373 (2001).

²³ UN Mission in Kosovo, established under S/RES/1244 (1999).

²⁴ UN Transitional Administration in East Timor, established under S/RES/1272 (2000).

²⁵ Established under S/RES/1645 (2005).

interaction would help to develop a symbiotic relationship between the SC and NGOs and, in the long term, enable expert NGOs to ensure that human rights are properly addressed in intergovernmental discussions.

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