

CRITICAL EVALUATION OF PROMOTING
PARTICIPATION OF NGOs IN THE UN
SECURITY COUNCIL*

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ABSTRACT

Informal relationships have been developed between the UN Security Council (SC) and non-governmental organizations (NGOs). Some scholars and politicians have suggested that these informal relationships should be strengthened through the provision of more formal access mechanisms such as consultative status. On the other hand, increasing participation by NGOs on the SC is questioned by others on the grounds of accountability, fairness and objectivity, the purported threat to international legal order of such participation, and the undermining of the SC's effectiveness. The current study critically evaluates these reservations regarding the promotion of access for NGOs to the SC. It examines whether or not the provision of formal access justifies these concerns, concluding that while some reservations might be valid, they should not be considered as insuperable obstacles. This is firstly because the SC could develop a mechanism for granting formal access to NGOs that could address these concerns, and secondly that, given that the SC itself already suffers from a lack of accountability, fairness, objectivity and effectiveness, such access by NGOs

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could help enhance the SC's capacities in these areas. There is a limited amount of literature on increasing access for NGOs to the SC, but to the best of the author's knowledge no study has evaluated criticisms of such access in particular, as opposed to NGO's participation in international organizations in general. The present paper would therefore contribute to the literature in this regard.

Keywords: UN Security Council, Accountability of NGOs, Formal/ Informal Participation.

JEL Codes: F53, K33, L31

BM GÜVENLİK KONSEYİ'NDE STK KATILIMLARININ GELİŞTİRİLMESİNİN ELEŞTİREL DEĞERLENDİRMESİ

ÖZ

BM Güvenlik Konseyi ile sivil toplum kuruluşları (STK) arasında resmi olmayan münasebetler geliştirilmiştir. Bazı araştırmacılar ve politikacılar bu gayri resmi münasebetlerin daha da geliştirilip danışmanlık statüsü gibi resmi boyuta taşınmasını tavsiye etmiştir. Diğer taraftan, bazıları STK'ların hesap verebilirlik, eşitlik ve nesnellik, uluslararası yasal düzene tehdit oluşturma ve Konsey'in etkin bir şekilde hareket etmesini zayıflatma gibi olumsuz yönlerine vurgulayarak STK'ların Konsey'deki katılımlarının resmi boyuta taşınmasını sorgulamışlardır. Bu mevcut çalışma, STK'ların Konsey'e resmi statüde girişleri hakkındaki çekinceleri eleştirel bir şekilde ele almıştır. Tavsiye edilen resmi münasebetlerin sağlanmasının bu çekinceleri doğrulayıp doğrulamayacağını incelenmiş, sonuç olarak bazı çekincelerin geçerli olabileceği, ancak çözümlenemez engeller olmadıkları kanaatine varılmıştır. Bunun iki temel nedeni var, birincisi, Konsey STK'larla resmi münasebetler geliştirirken oluşturacağı bir mekanizma ile bu çekincelerin üstesinden gelebilir; ikinci olarak, Konsey hâlihazırda kendisi hesap verebilirlik, eşitlik ve etkili bir şekilde harekete geçme gibi hususlarda problemler yaşamaktadır, STK'lar resmi münasebetler aracılığı ile Konseyin zayıf olduğu bu kabiliyetlerinin iyileştirmesinde katkıda bulunabilir. Literatürde STK'ların Konseye katılımlarının geliştirilmesine yönelik sınırlı sayıda çalışma bulunmaktadır, yazarın bildiği kadarıyla özelde böyle bir katılımın eleştirilerini inceleyen bir çalışma bulunmamaktadır ki yapılan çalışmalar STK'ların genel olarak uluslararası kuruluşlara katılımını ele almıştır. Bu bağlamda, mevcut makale literatüre katkı sağlayacaktır.

Anahtar Kelimeler: BM Güvenlik Konseyi, STK'ların Hesap Verebilirliği, Resmi/Gayri Resmi Katılım.

JEL Kodları: F33, K33, L31

INTRODUCTION

Non-governmental organizations (NGOs) are playing a growing political role in the international realm; their status in relation to international law is usually seen as important yet informal (Lindblom, 2005: 15). This is to some extent true. NGOs have been regarded as significant partners (Çakmak, 2004; Hasgüler & Uludağ, 2007; Yılmaz, 2008). States have thus benefited by establishing relations with NGOs, relations that have mostly been based on informal procedures; the establishment of formal¹ relationships have been deliberately avoided. The discrepancy between the *de facto* and *de jure* status of NGOs is thus evident.

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Kaczorowska (2010: 173) holds that the International Court of Justice (ICJ) has opened the door to non-state actors in *LaGrand (Germany v United States, Judgment, I.C.J. Reports 2001: p.494, para.77)*. The court's judgement states that either NGOs or Multinational Corporations (MNCs) can be recognized as subjects of international law (ICJ Report, 2001).² Gaja (2003: p.110, para. 17) reports that

...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.

This does not necessarily mean that all NGOs have become legal subjects under international law. It does mean that this is a possibility, and that it consequently falls to NGOs to take advantage. The ICRC³ has done so, being recognized as a subject of international law (Kaczorowska, 2010: 170). Some NGOs have been granted formal

¹ Formal access refers to granting accredited NGOs access to the SC through counselling or observer status in order to allow them to participate in decision-making processes without the right to vote.

² The Court referred to the Vienna Convention on Consular Relations and concluded "that Article 36, paragraph I creates individual rights". (I.C.J. Reports 2001)

³ The ICRC is sometimes referred to as an NGO. Yet, it is neither an NGO nor an international organization. The ICRC has a hybrid nature (Rona, 2004). It nevertheless remains valid as an example to illustrate the possibility that an actor other than a state could become a subject of international law.

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standing, such as the conferral of consultative status on the Economic and Social Council (ECOSOC) (UN Charter, Article 71). The legal status of NGOs in international law is nonetheless vague, and simply maintaining that they do or do not have legal standing is not sufficient, partly because there are no accepted rules on the position of NGOs in international law, so relationships have historically been determined pragmatically rather than by legislation. Various types of relationships between NGOs and international bodies have thus developed, including formal and informal consultations, *amicus curiae*, *locus standi*, bilateral meetings, lobbying, international campaigning and implementing agencies.

The relations between the SC and NGOs have arisen through variety of informal means. The main reason the SC has developed relationships with NGOs has been to benefit from their information and experience in dealing with growing international challenges such as refugee flows and mass migration across borders, civil wars that threaten international peace and security, and global terrorism. Since 1982 the SC has begun to interact with NGOs using an ad hoc procedure that 'permits experts to be convened to provide information to member-states' (Jean-Philippe Therien & Madeleine Belanger-Dumontier, 2009: 363). This ad hoc procedure has been advanced by the "Arria Formula"⁴ established in the second half of the 1990s (Paul, 2003). NGOs have begun meeting with Council members unofficially in order to provide information and experience about their fields of expertise (Global Policy, 2003).

Some scholars and politicians have suggested that these informal relationships should be strengthened by providing more formal access to NGOs through mechanisms such as consultative status (Archibugi, 2008; Paul, 2004; Annan, 2000; Ghali, 1996). Others have, however, expressed reservations about formal participation by NGOs in the SC. Graubart (2008) takes an unfavourable view of such involvement, believing that relations between humanitarian NGOs and the SC are primarily intended to promote the political interests of the powerful sponsors rather than the people concerned. Niemetz (2015) discusses NGOs' participation, concluding that the development of formal

⁴ This name derives from Venezuela's UN Ambassador, Diego Arria, who originated this type of meeting.

relations between NGOs and the SC are undesirable because the former should be able to use current informal methods to increase their influence on the SC rather than formalising these relations.

The involvement of any actors on the SC should be examined critically in order to evaluate the possible advantages and disadvantages of such involvement. As the SC's structure is itself already problematic, it would be apt to determine whether the participation of new actors would enhance the Council's work. Formal NGO involvement in the SC should thus be examined critically. Wapner (2007: 261) considers that "NGOs should not be free from harsh scrutiny and critiques [sic] simply because they inhabit global society, of which many have an overly romantic understanding". While recent criticisms of NGOs are "insightful and extremely important" (Wapner, 2007: 261), it is therefore essential to critically analyse the formal participation of NGOs in the SC by considering counter-arguments that focus particularly on their accountability, fairness and objectivity, and whether they are corrosive or constructive actors in the international legal order.

1. APPRAISAL OF RESERVATIONS

1.1. Critics of NGOs' Accountability

NGOs are particularly trustworthy in their spheres of expertise. 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 (Edelman, 2011). There are, however, concerns that NGOs may not be sufficiently accountable, and are therefore not reliable enough actors to be granted formal access.⁵ Edwards and Zadek (2003: 209) express concerns about this, claiming that "NGOs have no clear bottom line for results and no single authority to whom they must report on their activities".

On the other hand, Wapner (2002: 199) argues that the main reason underlying the strong criticisms of this score is because critics view

⁵ This is an observation the author first encountered in presentations.

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states and NGOs as the same type of entity. He emphasises the difference between the accountability of states and NGOs, and the consequent impossibility of treating them as equivalents. He points to the greater number of standards by which states can be held accountable, among which international systems could apportion responsibility externally. This does not mean, however, that the one is inherently more accountable than the other (Wapner, 2002: 199). Even though the number of such systems is greater for states, their accountability is still imperfect (Wapner, 2002: 200).

NGOs may have problems in this area, but those do not pose obstacles to formal participation. Willets (2000: 207) 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. Gartner (2010: 13) points out that “one important dimension of accountability which is enhanced by the participation of civil society within international organizations is transparency”. Grigorescu’s (2007: 639) study testing some hypotheses across 72 international organizations by using some newly developed measures of transparency shows that NGOs are significant predictors of organizational transparency. NGOs would thus still play conspicuous roles in enhancing the accountability of international bodies.

In fact, NGOs could make significant contributions to the SC to increase accountability. The Council has become more secretive and less answerable than ever, meeting behind closed doors “in private consultations of the whole” after 1990 (Grigorescu, 2007: 639). Critics and some prominent states have argued that the Council’s insufficiently transparent practices and its lack of public accountability robs it of legitimacy (Boutros-Ghali, 1996: para.17).

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. (Burley, 1993: 207)

Scholte believes that participation by NGOs could enhance transparency and accountability in global governance by exerting

leverage on decision-makers.⁶ Peter Willetts (2000: 208) also emphasizes that “NGOs make the political process transparent”. Formal participation by NGOs would thus confer their accountability and transparency on the SC by publicising that body’s deliberations.⁷

Formal participation would allow for progress towards a more participatory Council system. It would firstly help inspire citizens to hold their governments accountable for their actions.⁸ Council members would therefore be exposed to civic pressure. Secondly, NGOs would make the SC more accountable. Charnovitz (1997: 274) states that “NGO involvement may enhance the accountability of IGOs”.¹⁹ Boutros-Ghali (1995) similarly holds that NGO participation “in international relations is, in a way, a guarantee of [the] 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 (Lindblom, 2005: 167).

Moreover, some delegates consider the improved relationships between the SC and NGOs as a significant stage in the development of a more “legitimate and effective international political and legal order” (Global Policy, 2013). It was believed that NGOs could leverage the SC and balance it to make it more legitimate. Granting formal access to NGOs would be a significant step to opening the Council and its agenda up to public examination and participation. This means that the Council would potentially be open to public scrutiny that would make it more accountable.

⁶ “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: 294).

⁷ NGOs provide transparency as a democratic function by informing the public about IGOs and treaty body activities (Woodward, 2011: 226).

⁸ For instance, Eveline Herfkens (2005), 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 mobilize citizens to hold their Governments accountable for their achievement.”

⁹ IGOs: Intergovernmental Organizations.

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Nevertheless, consideration must be given to how fairly NGOs elect their executives and directors, and to the fact that some NGOs are established merely to make a profit, while others do not allocate the funds they raise to the purposes for which they raised them, and others serve specific state interests. The effect this accountability problem has on the issue of granting NGOs formal access cannot therefore be ignored. The *Economist* (2000) points out that these organizations could develop bad habits if they are not accountable to anyone. Likewise, the *New York Times* notes that NGOs

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. (The New York Times, 2003)

But, while this issue is certainly a subject for debate, it should not be considered as an obstacle to formal NGO participation. Objections could be overcome by providing some suitable mechanism. In this regard, the question of NGOs' role and accountability has received significant attention from both their critics and their defenders (Charnovitz, 2005: 1).

Some criticise NGOs for their executives' voting processes. Charnovitz (2005: 34) while dismissing the notion that representativeness has any bearing on their accountability, believing rather that it is more important to determine the usefulness of the organization's ideas than "whether [those] ideas faithfully represent the views of the NGO's membership". Spiro (2002: 164) 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...". One means of holding a government accountable is its citizens, through the electoral process. The equivalent for NGOs is its members. The latter is in fact more efficient, because that membership could any time call the leadership or management to account, while citizens would usually have to wait until the next election. Having said that, NGOs' accountability should not be evaluated on the same

ground as that of states. While who governs a state is the substantive issue for its citizens, NGOs are judged by their values.

There are various means of holding NGOs accountable. The first is self-accounting. Anderson (2011: 843) 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?

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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 stances in order to remain useful experts and advocates of their causes as members of 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 not depend solely on agreements between them and international organizations. Otherwise, NGOs could eventually be seduced into satisfying one particular 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 SC, 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. (Anderson, 2011: 843)

This is indeed a useful way for NGOs to apply self-accounting systems: it would improve their credibility against both members of the SC and their own members.

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Secondly, NGOs could be held accountable through members. Keohane (2003: 153) 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 for its stated purposes the funds it raises. It could also be charged for unlawful action. If an individual member of an NGO disagrees with its policy, they would at least be able to withdraw their membership or support. Woodward (2011: 229) states that “NGOs are accountable to their members who can withdraw their support at any time”, and Wapner (2002: 201) observes that “members vote with their 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 (Wapner, 2002: 201). For example, Greenpeace International was heavily criticised by its members and lost a considerable amount of support when it was revealed that the organisation had unintentionally used a faulty assessment in its campaign to prevent Shell Company from dumping an obsolete oil rig at sea (Schoon, 1995). In short, NGOs cannot force their members to maintain their membership: if an NGO lose credibility, it would also lose its support. This is very unlikely for states. Holding NGOs to account is thus easy compared to states. By contrast with the latter, there would be at least the possibility that any problems regarding an NGO’s accountability could be addressed.

Thirdly, external mechanisms for holding NGOs responsible for their actions are an option, if internal measures and member oversight prove inadequate for this purpose. In such cases, states should also take responsibility for monitoring NGOs and asking for statements of their funding purposes and sources, as well as scrutinizing their spending. For example, the *Economist* (2003) 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 (2002: 201-203) 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. Spiro (2002: 164) suggests that “the formal inclusion of non-state actors in international decision-making might act more as a restraint on NGO[s] and hold them accountable”. For Maragia (2002: 332),

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.

54 Granting NGOs formal access to the Council would thus increase their accountability, as it would involve the imposition of a code of conduct (Barbara, 2011: 229). Likewise, NGOs could be held accountable by a SC 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. Formal access would certainly also increase the possibility of holding NGOs to account. The granting of such access would place certain obligations and responsibilities on NGOs as well as conferring rights. Otherwise, it could be difficult to monitor an NGO that acts informally, and is thus not subject to any clearly defined rules.

Questions remain regarding who such organizations should be accountable to in the SC and how they should be held accountable under a formal access regime. Some potential solutions can be proposed.

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 (UN DESA, 2014). ECOSOC has also established principles that require NGOs to fulfil the requirements of representativeness and accountability (ECOSOC Resolution 1996/31). The Council could likewise establish a committee and outline principles 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.

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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 SC to be objective (Charnovitz, 2005: 38). 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 take steps to be more transparent in their funding, personnel and operations. They could monitor each other's activities when they cooperate.¹⁰ Ultimately, the question of NGO accountability is thus an issue for debate; it should certainly not be regarded as an obstacle.

1.2. Fairness and Objectivity

Some regimes often consider the efforts of NGOs as inimical to their interests, believing that their work benefits 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 Greenstock (interview, 21/11/2013) 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.

They are therefore likely to be the most significant opponents to the granting of 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 (2001: 14) observes that

¹⁰ This mechanism is given as a peer model by Grant and Keohane (2005: 36).

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.

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 (Osieke, 1985: 199). Be that as it may, this problem is not an insoluble one as regards formal participation of NGOs on the Council. Firstly, Charnovitz (1997: 276) aptly points out that “the growing number of NGOs in developing countries may help redress geographic imbalance”. 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 discourage them from behaving 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. Gramsci (1975) draws

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.

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 civil agents should not be equated with states, which are members of political society.

Willems 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 (Willems, 2000: 208). Even though NGOs may have certain rights and might perform significant roles in international law and international relations, they cannot be treated as equal to states or

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intergovernmental organisations (Santivasa, 2012: 378). They should thus not be considered as representatives of regions or countries.¹¹

An NGO founded in Germany might be very effective in Africa. Global Witness, for example, is an NGO 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.¹² 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).

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 interests. This implies that a western-based NGO could indeed be more supportive of the rights of southern people than southern governments could.

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” (Sorensen, 2002: 355). It is thus logical to expect that the participation of NGOs, even Western- or American-based ones, would be much

¹¹ 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 SC. This can be considered as a reflex state-based understanding, because this approach gives NGOs the character of states. However, the NGOs in question here should not be seen as a representative of regional, state or small group interests, but should rather be accepted as representatives of attempts to deal with specific global problems.

¹² Global Witness has also lobbied the SC to stop the trade in minerals fuelling the war in the 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.” (Global Witness, 2009).

more active on behalf of people in developing countries than developed countries would. 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 according to which

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. (UN ECOSOC, Doc. E/1995/83: 4-5)

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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.

There are other counters to considering NGOs as advocates of states' interests, and supports for emphasising the differences between NGOs and states. The philosopher John Dewey (1948: 118) holds that "the voluntary associations just spoken of do not coincide with political boundaries", citing "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 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. To illustrate, CARE International has a variety of interests ranging from food and nutrition security to climate change, and has been working in many Asian, Africa, Latin American and Middle Eastern countries. International Rescue Committee has been acting as advocates in the refugee problem that has been such a significant global issue.

Furthermore, some criteria could be applied when granting formal status to NGOs in the SC. 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..." (Willets, 2000: 192). The SC can likewise apply its own criteria consistent with its purposes, employing a process that would ensure the selection of suitable NGOs. In this regard, national NGOs that are active only in a

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single country and do not accommodate any international character may not be as independent as international NGOs. State-run NGOs may not therefore be free from governmental control or state interests, but international ones could hardly be controlled by a single state. Charnovitz (1997: 276) says that it would be illogical to compel an NGO like the International Chamber of Commerce (ICC) or the International Confederation of Free Trade Unions¹³ “to channel its concerns through its own government”. By his account, the majority of international NGOs are more likely to foster socially beneficial policies such as peace and the protection of the global commons. It is therefore difficult to imagine how international NGOs would be curbed by the national interests of states. While national NGOs may well advocate militarism or protectionism, such aims are unlikely to inspire true international coalitions. As a failsafe mechanism, national NGOs could be excluded from the Council.

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The SC would moreover actually benefit, as NGOs would share all their potential facilities. The aim of involving NGOs in the Council is to develop its capabilities and to challenge its anti-democratic structure. They would thus not gain any advantage from the SC. Thus, because NGOs would deliver rather than receive benefit from such a relationship, the question of equitable 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.

1.3. Are NGOs Corrosive or Constructive of the International Legal Order?

Some scholars disagree that working with NGOs could deliver positive outcomes, even considering that working with NGOs could pose a threat to the international legal order. Chandler (2004: 208) has

¹³ This merged with the World Confederation of Labour (WCL) to form the International Trade Union Confederation (ITUC) in 2006.

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.

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" (Chandler, 2004: 209). Anderson (2011: 103-104) 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 reflect the interests of global transnational elites in the international legal order.

Falk (1995) and Allott (2002), by contrast, believe that the development of international civil society is a positive phenomenon. Falk's (1995: 100) contention is that

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

Falk (1995: 100) thus refutes Anderson's approach to NGOs' activities, arguing that they are inconsistent with his view of them as "international legal imperialists". It would be unfair to ignore the contributions NGOs have made thus far, as Wapner (2002: 204) points out. Charnovitz (1997: 277) also observes that it would be unfair to accuse NGOs of undermining positive international law while many of them have in fact helped develop it. NGOs' aims would at least be no worse than those of states or terrorist groups. They would in any case under any circumstances contribute more than states. The UN has also been convinced that, in spite of all the problems they present, NGOs can enhance the Council's skills (Therien & Belanger-Dumontier, 2009: 362).

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Considering the development of NGOs as a threat is a narrow, not to say faulty, characterisation. Their contributions have been acknowledged by many scholars and several international authorities. The Secretary-General's report highlights the importance of NGOs' participation, emphasising 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 Council's deficiencies are considered, these features are likely to be important to its work in maintaining international peace and security. NGOs are thus likely to play a positive role by participating in the Council.

Moreover, their activities have proved crucial in increasing representation. As Falk (1995: 100) 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 (1959: 97) points out that it is necessary to "focus on the fact that the real subjects of international law are individuals". 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 (Cardoso, 2004). This does not, however, present an obstacle to the participation of NGOs. Such concerns can be dealt with through ECOSOC's mechanism of imposing criteria on NGO membership. The SC could do the same in order to exclude undesirable NGOs.

The increase in the numbers of NGOs derives from popular demand, 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 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, but to the self-centred and hypocritical interests of states.

In addition to all these factors, some believe that granting formal access to NGOs would render the SC 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 ECOSOC's system¹⁴. NGOs also have the potential to increase the Council's efficiency. Annan (2001: 44) 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.

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62 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 (Therien & Belanger-Dumontier, 2009: 361) by supplying "field experience and expertise across a vast array of human concerns, as well as a valuable capacity for information-gathering and dissemination" (Boutros-Ghali, 1996: 34-35). There are also examples of NGOs' potential to increase the Council's efficiency, including the Ottawa Treaty and Security Council Resolutions 1295 and 1325, all of which were achieved after lengthy efforts by NGOs. In fact, the Council already suffers from an inefficiency problem. The most recent cases of Syria and the Ukraine demonstrate that it has much to gain in terms of effectiveness. In truth, it is an organ that does not work well. Of course, any potentially negative side-effects of NGO participation must be taken into consideration, but they should not be regarded as impediments to such participation.

CONCLUSION

It is not certain that unofficial interactions between the Council and NGOs will be formalised, as calls for this might prove be too contentious to implement at present. Yet while the possibility does exist, it is important to consider the possible perils and pitfalls of such

¹⁴ "In 1950, the arrangements were reviewed and a new resolution (Resolution 288) was adopted by ECOSOC" (Lindblom, 2005: 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.

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a potential development. Some reservations might be at least partly valid. Nevertheless, they should not be considered as obstacles to more formal participation. Firstly, it should be possible to develop mechanisms that could deal with these objections, at least to some extent. Secondly, NGOs are not likely to have a detrimental effect on the Council if it were to be stipulated that formal access would be limited by a consultative status that would not confer any authority. Lastly, the Council's own severe deficits in accountability, fairness, objectivity and effectiveness, could be ameliorated by formal participation by NGOs, which could bestow advantages such as increasing the Council's efficiency by providing knowledge and experience, within the constraints of the processes by which access is granted. On the other hand, dealing with these reservations also requires effort on the part of NGOs. For example, accountability is an issue NGOs must manage by developing mechanisms for self-accounting. In sum, reservations about formal participation in the Council by NGOs are not insuperable obstacles. They can be handled by both sides.

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ÖZET

BM Güvenlik Konseyi ile sivil toplu kuruluşları (STK) arasında resmi olmayan münasebetler geliştirildi. Bu resmi olmayan ilişkilerin BM Güvenlik Konseyi açısından olumlu neticeleri olduğunu gözlemleyen bazı araştırmacılar ve politikacılar, bu ilişkilerin daha da geliştirilmesini tavsiye etmişlerdir. Bunun anlamı, Güvenlik Konseyi ile STK'lar arasında resmi olan ilişkilerin oluşturulmasıydı ve bunu yapmanın yollarından biri de STK'lara Ekonomik ve Sosyal Konseyi'ndekine (ECOSOC) benzer şekilde bir danışmanlık statüsü verilmesiydi. Bu danışmanlık statüsü ile STK'lar Konsey'de herhangi bir oy verme hakkına sahip olmayacaklardı, ancak bu statü ile Konsey'e sahip oldukları bilgileri ve tecrübeleri daha etkin bir şekilde paylaşma şansı verecekti. Diğer taraftan, STK'ların Konsey ile ilişkilerin resmi boyut kazanacak şekilde geliştirilmesine bazı araştırmacılar ve politikacılar sıcak bakmamıştır. Onlara göre, STK'lar ile münasebetlerin daha da geliştirilmesini STK'ların hesap verebilirlik, eşitlik ve nesnellik, uluslararası yasal düzene tehdit oluşturma ve Konsey'in etkin bir şekilde hareket etmesini zayıflatma gibi problemlerinden dolayı sakıncalı bulmuşlardır. Mevcut çalışmada, bu çekincelerin ne ölçüde haklı olup olmadığı incelenmiştir. Bu çalışma, STK'ların hesap verebilirlik ile eşitlik ve nesnellik hususlarında problemleri olduklarını kabul etmekle beraber, bu problemlerin resmi münasebetlerin önünde aşılması güç engel olarak görmemektedir. Konsey STK'lar ile resmi münasebetler geliştirirken belli önlemler alarak bunlarla başa çıkabilir. Bu bağlamda, Ekonomik ve Sosyal Konseyi'ndekine benzer şekilde bir sistem geliştirilebilir. Bununla beraber, STK'lar da ayrıca kendilerini kontrol etme mekanizmalarını geliştirebilir ve Konsey ile ilişkilerin geliştirilmesine dair çekincelerin azalmasına katkıda bulunabilirler. Bunların yanında, Konsey halihazırda hesap verebilirlik, eşitlik ve etkin bir şekilde hareket etme hususlarında problemler yaşamaktadır. Bu bağlamda, resmi münasebetlerin geliştirilmesi ile STK'lar bu hususlarda Konsey'e katkıda bulunabilir. Sonuç olarak, BMGK ile STK'lar arasında resmi olmayan münasebetlerin resmi formata taşınması tartışmalı ve gerçekleşip gerçekleşmeyeceği belirsizliğini korumaktadır. Bu mevcut çalışmada, böyle bir gelişmenin mevcut şartlarda düşük bir ihtimalle de olsa meydana gelmesi durumunda, dile getirilen çekincelerin ne ölçüde haklı olup olmadığına ışık tutulmaya çalışılmıştır.

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