

CONSULTATIVE RELATIONSHIP BETWEEN THE UNITED NATIONS  
AND NON-GOVERNMENTAL ORGANIZATIONS

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## Part I INTRODUCTION

The purpose of the present study is to present the arrangements that currently prevail between the United Nations and non-governmental organizations. Although these arrangements which have their basis in the Charter of the United Nations are limited to matters falling under the Economic and Social Council these arrangements are dealt with in detail since they form the basis for a possible extending of the participation of non-governmental organization in all areas of work of the United Nations.

The growing influence and role of non-State actors and especially non-governmental organizations for the work of the United Nations has been widely recognized and the activity of non-state actors has today become an essential dimension of public life at all levels and in all parts of the world.<sup>1</sup> Nevertheless, as certain areas of the United Nations are still closed to non-governmental organizations the present study will also deal with the ongoing discussion of reviewing the arrangements between the United Nations and non-governmental organizations. In this regard, the General Assembly has been asked to examine the question of the participation of non-governmental organizations in all areas of the work of the United Nations in the light of the experience gained through the arrangements for consultation between non-governmental organizations and the Economic and Social Council. As this process is, at the time of writing, still underway, governments as well as non-governmental organizations have an opportunity to influence the issue of the role of non-governmental organizations in all areas of the United Nations.

In addition to the arrangements between the Economic and Social Council and non-governmental organizations, there are, however, also specific arrangements for the participation of these organizations in the work of a number of United Nations bodies. In this regard, the focus will be on the specific and practical arrangements in the field of human rights and that of the environment. In addition to these arrangements, the study will present views by representatives of non-governmental organizations concerning the influence non-governmental organizations have on the work of the different United Nations bodies.

## Part II THE NORMATIVE FRAMEWORK

In the United Nations system, the arrangements for consultation with non-governmental organizations are based on Article 71 of the Charter of the United Nations which is the only article in the Charter that applies to non-governmental organizations.<sup>2</sup> Under the provisions of Article 71, 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

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<sup>1</sup> See document E/AC.70/1994/5 for a general overview of the role of non-governmental organizations in the United Nations.

<sup>2</sup> Lagoni, 1994 p.903.

organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Because Article 71 of the Charter does not indicate the criteria for admission of non-governmental organizations to consultative status nor the contents of a consultative relationship, the Economic and Social Council has made, in accordance with the provision of Article 71, such arrangements for consultation with non-governmental organizations it has deemed suitable. These arrangements, included in resolutions adopted by the Council, contain specific provisions of both the main principles and action to be applied when arranging the consultative relations between the Council and non-governmental organizations. Due to the evolving role and contribution of non-governmental organizations in the work of the United Nations, these arrangements have been renewed and updated on a regular basis by the Council.<sup>3</sup>

However, it is to note that based on Article 71 of the Charter, and despite the evolving role of non-governmental organizations in the work of the United Nations, these arrangements for consultative status of non-governmental organizations are formally restricted to the Economic and Social Council only and it was only as late as in 1996 that the General Assembly was requested to examine the question of the participation of non-governmental organizations in all areas of the work of the United Nations.<sup>4</sup>

## **1 Historical Background**

Article 71 of the Charter of the United Nations acknowledges the potential contribution non-governmental organizations could make to the work of the United Nations in economic and social matters by providing that the Economic and Social Council may make suitable arrangements for consultation with both international and national non-governmental organizations. The above provision did not so much break new ground as it formalized a relationship, even if not to the same extent, that already had emerged in the League of Nations.

Many non-governmental organizations found these new provisions formalized in the Charter as limitations to their sphere of influence as non-governmental organizations had, in the League of Nations, been informally engaged in all spheres of activity. Perceived as particularly dissatisfying was the loss of influence on issues of peace and security, questions which now were to fall under the responsibility of the Security Council, a United Nations body to which non-governmental organizations were not granted access.<sup>5</sup>

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<sup>3</sup> For Economic and Social Council resolutions containing provisions for consultative arrangements with non-governmental organizations, see resolution 2/3 of 21 June 1946, resolution 288 (X) of 27 February 1950, resolution 1296 (XLIV) of 27 May 1968, and resolution 1996/31 of 25 July 1996.

<sup>4</sup> Economic and Social Council decision 1996/297 of 25 July 1996.

<sup>5</sup> Stubb, 1999 p. 42-43 and Charnovitz, 1997 p. 250.

While the Covenant of the League of Nations did not contain any provisions for a formal relationship with non-governmental organizations, it had become normal practice to consult with such organizations in practically all areas of concern. Participation without vote was, therefore, normal practice for non-governmental organizations and little if any distinction was made between inter-governmental and non-governmental organizations, both of which, when consulted, were placed upon an equal footing with government representatives in all but voting. Representatives of non-governmental organizations to the various committees of the League, although not able to vote, were allowed to speak, present reports, initiate discussions, propose resolutions and amendments, and be assigned to subcommittees.<sup>6</sup>

It is important to note that despite the knowledge of the importance of non-governmental organizations in different areas of society the formalized relationship between the Economic and Social Council and the non-governmental organizations did not go nearly as far as had been the practice in the League of Nations as a clear distinction is drawn, in the Charter of the United Nations<sup>7</sup> and to specialized agencies,<sup>8</sup> in the deliberations of the Council, and the suitable arrangements for consultation granted to non-governmental organizations.<sup>9</sup>

In its resolution 2/3 of 21 June 1946, the Economic and Social Council specifically notes that the distinction between participation without the right to vote and the arrangements for consultation, which is deliberately made in the Charter, is of fundamental importance and that the arrangements for consultation should not be such as to accord to non-governmental organizations the same rights of participation accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nations.<sup>10</sup>

The 1946 resolution underlines the point further by noting that the arrangements should not be such as to overburden the Council, or transform it into a general forum for discussion, instead of a body for co-ordination of policy and action, as is contemplated in the Charter. The two purposes of the consultation, as articulated in Economic and Social Council resolution 2/3 of

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<sup>6</sup> Chiang, Pei-heng 1981, p. 35 referred to in Ryan and Wiseberg, 1997 p. 11.

<sup>7</sup> Charter of the United Nations, Article 69.

<sup>8</sup> Charter of the United Nations, Article 70.

<sup>9</sup> Charter of the United Nations, Article 71.

<sup>10</sup> Even if it is clear that the right of non-governmental organizations concerning consultation do not amount to the right of participation without a vote, the distinction made by Lagoni (1994, p.903), where the principal purpose of a consultative relationship of a non-governmental organization is to assist the Council or its subsidiary organs and bodies in their work, whereas the right to participate, without vote, in their deliberations serves primarily the participant's own interest, is not very clear since the "*interest*" of a non-governmental organization can also be seen as not merely to *assist* the different bodies, but also to influence them. In other words, drawing a distinction between the different roles played by governments participating without the right to vote, on one hand, and non-governmental organizations, on the other, is more a complex matter than presented by Lagoni since both governments without the right to vote and non-governmental organizations try to influence the Economic and Social Council and its bodies.

21 June 1946 was “enabling the Council or one of its bodies to secure expert information or advice” and “to enable organizations which represent important elements of public opinion to express their views.” These objectives have remained as the main principles governing the nature of the consultative arrangements between the Council and non-governmental organizations until this day.<sup>11</sup>

The negotiations on the resolution currently governing the consultative arrangements began in 1993 when the Economic and Social Council decided to conduct a general review of the arrangements for consultation with non-governmental organizations, as determined by Council resolution 1296 (XLIV) of 23 May 1968, with a view to updating them, if necessary, in particular in the light of recent experience, including that gained during the process of the United Nations Conference on Environment and Development.<sup>12</sup> The work was carried out by an open-ended working group on the review of arrangements with non-governmental organizations, established by Economic and Social Council resolution 1993/80, with the mandate to undertake the general review called for by the Council in its decision 1993/214, and, in addition to the updating of the 1968 resolution, to examine ways and means of improving practical arrangements for the work of the Committee on Non-Governmental Organizations and the Non-governmental Organization Unit of the United Nations Secretariat.

After two arduous years of negotiations, the Working Group completed its work and the Economic and Social Council adopted resolution 1996/31 which currently contains the rules regulating the consultative arrangements between the Council and non-governmental organizations.

## **2 Current Arrangements for Consultation**

The current suitable arrangements for consultative relationship between the United Nations and non-governmental organizations are regulated by the principles and provisions contained in Economic and Social Council resolution 1996/31 of 25 July 1996. This resolution not only represents the principal interpretation of the power of the Economic and Social Council under Article 71 of the Charter of the United Nations and the principles followed in the arrangements for consultative relationship, but it describes also the work of the Committee on Non-Governmental Organizations which is the body responsible for regular monitoring of the evolving relationship between non-governmental organizations and the United Nations.

As the Economic and Social Council has elaborated its rules regulating the consultative relations with non-governmental organizations, the Council has, despite certain progress made in facilitating the access of these organizations to the work of the United Nations, progressively also tightened control over these organizations. Examples of such a tightening are the obligation of non-

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<sup>11</sup> The principles currently governing the nature of the consultative arrangements between the Economic and Social Council and non-governmental organizations can be found in Economic and Social Council resolution 1996/31, paragraphs 18-20.

<sup>12</sup> Economic and Social Council decision 1993/214.

governmental organizations with general and special consultative status to submit a quadrennial report of their activities undertaken and the provisions of the possibility to suspend or withdraw the consultative status in cases where certain principles or rules have been breached. Both of these above mentioned provisions were included for the first time in resolution 1296 (XLIV) of 1968 and are still to be found in the current rules.<sup>13</sup>

It is to note that it is not so much the provision of quadrennial reporting or of the possibility of a suspension or withdrawal of consultative status which is the main concern as such, but that these provisions are implemented by a political body which has led to situations where for example human rights non-governmental organizations that have placed certain governments under scrutiny for alleged violations of internationally accepted human rights standards are being threatened with a withdrawal of their consultative status because of their activities.

The question of consultation of non-governmental organizations in all areas of the United Nations, especially the General Assembly, remains a pressing concern which has yet to be addressed under the process of reviewing of the arrangements between the United Nations and non-governmental organizations. The question will be dealt with in the chapter dealing with the reviewing of the current arrangements.

## **2.1 The different categories of consultative status**

In establishing a consultative relationship with non-governmental organizations, regard shall be had to the nature and scope of the activities and to the assistance a non-governmental organization may be expected to give to the Economic and Social Council or its subsidiary bodies in carrying out the functions set out in chapters IX and X of the Charter of the United Nations.<sup>14</sup> Non-governmental organizations are for this reason divided into three categories.

Non-governmental organizations concerned with most of the activities of the Economic and Social Council and its subsidiary bodies and which can demonstrate that they have substantive and sustained contributions to make to the work of the Council and which are closely involved with the economic and social life of the peoples and areas they represent and whose membership is broadly representative of major segments of society in a large number of countries in different regions of the world may be given general consultative status whereas non-governmental organizations that have a special competence in and are concerned specifically with only a few of the fields of activity covered by the Economic and Social Council and its subsidiary bodies may be granted special consultative status.<sup>15</sup>

Organizations that do not have general or special consultative status but that the Economic and Social Council, or the Secretary-General of the United

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<sup>13</sup> Economic and Social Council resolution 1996/31, paragraphs 61 (c) and 55-59.

<sup>14</sup> Economic and Social Council resolution 1996/31, paragraph 21.

<sup>15</sup> Economic and Social Council resolution 1996/31, paragraphs 22 and 23.

Nations in consultation with the Council or its Committee on Non-Governmental Organizations, consider can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies within their competence may be included on a list known as the Roster. These non-governmental organizations shall be available for consultation at the request of the Council or its subsidiary bodies.<sup>16</sup>

The division into the three categories is of certain importance as the extent of the formal rights granted to non-governmental organizations in consultative status depend on the category in which they have been admitted.<sup>17</sup>

In addition to that the provisional agenda of the Economic and Social Council, its commissions and other subsidiary bodies is communicated to the non-governmental organizations in all categories,<sup>18</sup> organizations in general consultative status may propose new items for the provisional agenda of the Council and its subsidiary bodies.<sup>19</sup> The possibility of proposing items for the agenda could be a significant power of initiative, but it is seldom used by non-governmental organizations as the chances of succeeding are not seen as realistic. This is, however, not to say that non-governmental organizations would not have an influence of the agenda of both the Council and its subsidiary bodies, but that this influence is used more through influencing the governments to adopt initiatives originally made by non-governmental organizations.<sup>20</sup>

With regard to the right to submit written statements, non-governmental organizations with general consultative status may submit written statements of up to 2000 words to both the Council as well as to its subsidiary bodies whereas non-governmental organizations with special consultative status may submit a written statement of only 500 words to the Council and a 1500 word submission to its subsidiary bodies.<sup>21</sup> Written statements by non-governmental organizations on the Roster are subject to invitation by the Secretary-General, the Council or the subsidiary bodies concerned and subject to the conditions for written statements submitted by organizations with special consultative status.<sup>22</sup> In practice it seems that they are not treated differently from the organizations with special consultative status.

With regard to the right to make oral statements, the Committee on Non-Governmental Organizations shall make recommendations to the Council as to which non-governmental organizations with general consultative status may

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<sup>16</sup> Economic and Social Council resolution 1996/31, paragraph 24.

<sup>17</sup> Economic and Social Council resolution 1996/31, paragraphs 27-39.

<sup>18</sup> Economic and Social Council resolution 1996/31, paragraphs 27-33.

<sup>19</sup> Economic and Social Council resolution 1996/31, paragraphs 28 and 34.

<sup>20</sup> As an example in this regard can be mentioned the decision by the Commission on Human Rights to consider the issue of human rights defenders at its future sessions under a separate sub-item on its agenda which had been proposed by non-governmental organizations who considered that there was a need for a proper monitoring of the implementation of the Declaration.

<sup>21</sup> Economic and Social Council resolution 1996/31, paragraphs 30, 31, 36, and 37.

<sup>22</sup> Economic and Social Council resolution 1996/31, paragraphs 31 (f) and 37 (f). See also annex 2.

make oral presentations to the Council. In the absence of a subsidiary body of the Council with jurisdiction in a major field of interest to the Council and to organizations in special consultative status, the Committee on Non-Governmental Organizations may recommend that such organizations in special consultative status be heard by the Council on the subject in question.<sup>23</sup> With regard to oral interventions at meetings of subsidiary bodies of the Economic and Social Council, no significant distinction is made between non-governmental organizations in the different categories of consultative status.<sup>24</sup>

Thus, even though the rights granted to non-governmental organizations with general consultative status, on the one hand, and with special consultative status, on the other, do not considerably differ, except as regards the right to propose items on the agenda and the length of written statements submitted to either the Economic and Social Council or its subsidiary bodies, the current arrangements authorize the non-governmental organizations with the broadest mandates, i.e. those with general consultative status, the most extensive rights. This is so despite there being no reason to believe that these organizations would possess a specialization superior to that of non-governmental organizations with special consultative status. In other words, it is difficult to understand why for example a non-governmental organization with general consultative status is allowed to submit a written statement with 2000 words say to the Commission on Human Rights when, simultaneously, an organization with special consultative status and which is specialized entirely in human rights issues, and probably, but not necessarily, possesses a wider expertise in the field, is allowed to submit a written statement with only 1500 words.

Here one can note that during the negotiations leading to Economic and Social Council resolution 1996/31, Canada and Australia presented proposals as regards the length on written statements that would have, if having been adopted, deleted the differences in the rights granted non-governmental organizations in general and special consultative status.<sup>25</sup> However, as the above proposals were not supported did the provisions with regard to the length of written statements remain unchanged.<sup>26</sup> However, Economic and Social Council resolution 288 (X) of 1950, although distinguishing between non-governmental organizations in the then category A and B<sup>27</sup> with regard to the length of written statements submitted to the Council,<sup>28</sup> did provide these

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<sup>23</sup> Economic and Social Council resolution 1996/31, paragraph 32.

<sup>24</sup> Economic and Social Council resolution 1996/31, paragraph 38.

<sup>25</sup> E/1995/83/Add.1, paragraphs 24 and 30.

<sup>26</sup> It is worth noting that also non-governmental organizations that already enjoyed a strong presence at the United Nations opposed the granting of wide going rights to national non-governmental organizations as it was feared that a flood of purely national organizations would undermine the legitimacy of non-governmental organizations and open the way for narrowly-based and government-influenced organizations to pour into the United Nations (see e.g. Ryan and Wiseberg, 1997 p. 14 and Paul, 4 February 1999).

<sup>27</sup> Categories A and B were, in 1968, changed to categories I and II and, in 1996, to categories of general and special consultative status.

<sup>28</sup> Economic and Social Council resolution 288 (X), paragraphs 23 (d) and (e).

organizations the same rights with regard to written statements submitted to subsidiary bodies of the Council.<sup>29</sup>

## **2.2 Certain concerns**

Even if Economic and Social Council resolution 1996/31 is to be considered a major step forward in allowing especially national non-governmental organizations access to consultative status with the Council and its subsidiary bodies, certain concerns still remain. The present chapter will present some of these concerns whereas certain concerns with regard to the work carried out by the Committee on Non-Governmental Organizations are presented in the following chapter.

### **2.2.1 National non-governmental organizations**

With respect to the granting of consultative status to national non-governmental organization, Economic and Social Council resolution 1996/31 states that such organizations may be admitted provided that they can demonstrate that their programme of work is of direct relevance to the aims and purposes of the United Nations and after the Member State concerned has been consulted.<sup>30</sup> Special emphasis is to be placed in this respect in ensuring the participation of non-governmental organizations from developing countries and from countries with economies in transition.<sup>31</sup> This provision has been seen as particularly important as the knowledge brought by national non-governmental organizations, especially with those with their base in developing countries, was expected to add realism to the consultative arrangements and give channels of information and opinions to the people of these countries.<sup>32</sup>

Although governments concerned are to be consulted in the case of national non-governmental organizations applying for consultative status, the government concerned does not possess a veto whereby it could deny the processing of the application. In case the country in question is a member of the Council Committee on Non-governmental Organizations it has, nevertheless, a bigger influence on the application process as a whole. It is also to note that not only is it the government of the country from where the non-governmental organization is from that may block the application

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<sup>29</sup> Economic and Social Council resolution 288 (X), paragraph 29 (d). See also annex 2.

<sup>30</sup> Economic and Social Council resolution 1996/31, paragraph 8.

<sup>31</sup> Economic and Social Council resolution 1996/31, paragraphs 5 and 7.

<sup>32</sup> Since the General Assembly requested, in its decision 52/453 of 19 December 1997, the Secretary-General to prepare a report among other things on the question of the participation of non-governmental organizations from all regions, in particular from the developing countries, this would indicate that non-governmental organizations from the developing countries still face difficulties in being granted consultative status. It is to note that the Secretary-General's report, found in document A/53/170, proposed for consideration the establishment of a trust fund for the purpose of facilitating the participation of non-governmental organizations from these regions in activities of the United Nations (A/53/170, paragraph 79) a proposal made already 20 years earlier (E/AC.70/1994/2, paragraph 73(h)).

procedure but also other governments who may have doubts about the independence of the non-governmental organization in question.<sup>33</sup>

As with national human rights non-governmental organizations dealt with below, the provision in paragraph 8 of Economic and Social Council resolution 1996/31 describing the principles to be applied in the establishment of consultative relations ensured for the first time a proper possibility for national non-governmental organizations to be granted consultative status. This is so while Economic and Social Council resolution 1296 (XLIV) of 1968 had provided that the non-governmental organizations granted consultative status should be limited to those whose "*international activities*" in the fields falling under the activities of the Council qualified them to make a significant contribution to the work of the Council,<sup>34</sup> leaving thus outside those national non-governmental organizations whose activities were concentrated on their home country only.

It is worth noting that the arrangements for consultation with non-governmental organizations of 1946 stated that national non-governmental organizations "*should normally present their views through their respective Governments or through international non-governmental organizations to which they belong.*" National organizations could, however, be granted consultative status also under the 1946 arrangements after consultation with the Member State concerned and if they covered a field which was not covered by any international non-governmental organization.<sup>35</sup>

In Economic and Social Council resolution 288 (X) of 27 February 1950,<sup>36</sup> the provision that national non-governmental organizations should normally present their views through their respective governments was deleted, but the other provisions remained the same giving small chances for non-governmental organizations that stood critically towards their home governments to be granted consultative status.

Thus, when comparing the current wording concerning the granting of consultative status to national non-governmental organizations with previous resolutions on arrangements for consultation there is no doubt that a major step was taken in 1996 in facilitating the access of national non-governmental organizations to the work of the United Nations.

### **2.2.2 Human rights non-governmental organizations**

With regard to national human rights non-governmental organizations, a provision of particular importance is found in paragraph 25 of Economic and Social Council resolution 1996/31 which states that non-governmental

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<sup>33</sup> The United States has for example blocked frequently applications by Cuban non-governmental organizations as it has been considered that these organizations have not been independent actors in relation to the Cuban Government. In this regard, see e.g. E/1999/10, paragraph 14.

<sup>34</sup> Economic and Social Council resolution 1296 (XLIV), paragraph 14.

<sup>35</sup> Economic and Social Council resolution 2/3, paragraph 8 of 21 June 1946.

<sup>36</sup> Review of consultative arrangements with non-governmental organizations.

organizations to be accorded special consultative status because of their interest in the field of human rights should pursue the goals of promotion and protection of human rights in accordance with the spirit of the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action.<sup>37</sup>

Under the terms of resolution 1296 (XLIV) of 1968, human rights non-governmental organizations had been granted consultative status only if they could demonstrate a *“genuine international concern with this matter, not restricted to the interest of a particular group of persons, a single nationality or the situation in a single State or restricted group of States”*<sup>38</sup> restricting thus effectively national human rights non-governmental organizations from being granted consultative status. The provision in paragraph 25 of the 1996 resolution thus provided national-level human rights non-governmental organizations to be properly admitted into consultative status for the first time.

During the negotiating process leading to the 1996 resolution, many governments as well as non-governmental organizations wanted to eliminate the entire paragraph 17 of resolution 1296 (XLIV), cited above, because they saw no valid reason for human rights non-governmental organizations being treated differently from other organizations. Had the old paragraph 17 of Council resolution 1296 (XLIV) of 1968 remained, it would have undercut the granting of consultative status to many national human rights non-governmental organizations which today constitute one of the largest single groups of new applications for consultative status. If there was a desire to change the position towards national human rights non-governmental organizations, there was an equally strong desire to maintain the arrangements unchanged.

The difficulties in agreeing on the present paragraph 25 of Council resolution 1996/31 is well illustrated by the fact that the report of the Open-ended Working Group on the Review of Arrangements for Consultation with Non-Governmental Organizations, issued in May 1996, still contained the proposals for alternative wording by certain groups of countries and lacked any resemblance with the later agreed text.<sup>39</sup> Most strongly for the maintaining of the wording of paragraph 17 of Council resolution 1296 (XLIV) and thus for the restriction of granting access to national human rights non-governmental organizations spoke the G-77 countries, and the observer for Cuba stated, after the adoption of the draft resolution later becoming resolution 1996/31, among other things, that *“it was disappointing that the paragraph [paragraph 25] did not reproduce in full the text of paragraph 17 of Council resolution 1296 (XLIV).”*<sup>40</sup>

The European Union had proposed a slight modification of wording for the paragraph in question which hardly would have solved the concern of the granting of consultative status for national human rights non-governmental

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<sup>37</sup> Economic and Social Council resolution 1996/31, paragraph 25.

<sup>38</sup> Economic and Social Council resolution 1296 (XLIV), paragraph 17.

<sup>39</sup> For the report of the Open-ended Working Group, see document E/1996/58.

<sup>40</sup> E/1996/SR.49.

organizations. The European Union, however, later withdrew its proposal and joined the United States and Australia for the total deletion of paragraph 17 of resolution 1296 (XLIV) as well as all proposed alternatives to it.<sup>41</sup> The result was, however, a compromise where, although the granting of consultative status to national human rights non-governmental organizations was considerably facilitated, certain concerns remained. One of these concerns, briefly dealt with below, is the reference to the Vienna Declaration and Programme of Action.

### **2.2.2.1 Reference to national law**

Although the wording of paragraph 25 of Economic and Social Council resolution 1996/31 has to be considered a major step forward when comparing it with the wording used in paragraph 17 of Council resolution 1296 (XLIV) of 1968 with regard to the granting of consultative status to national human rights non-governmental organizations, human rights non-governmental organizations remain concerned with the reference to the Vienna Declaration and Programme of Action in that paragraph. Ryan and Wiseberg have, among other things, noted that while the Vienna Declaration and Programme of Action contains many positive points, it, nevertheless, contains a reference to the relation between human rights non-governmental organizations and national law which is highly problematic in nature.<sup>42</sup>

This problematic reference is found in part I, paragraph 38 of the Vienna Declaration and Programme of Action and states that *“non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.”* The reference to national law by the words *“within the framework of national law”* has been seen as a matter of concern since no provision in the paragraph has been included which would guarantee that the national law in question ought to be in conformity with the principles of the Charter of the United Nations and other international standards.

It would be extremely important to ensure that the national law which is the framework for national human rights non-governmental organizations is consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms. Such a provision, if a reference to national law is necessary in the first place, and which was included in Article 3 of the Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, should thus also be included in the rules regulating consultative status of national human rights non-governmental organizations.<sup>43</sup>

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<sup>41</sup> E/1995/83/Add.1 and E/1996/SR.49.

<sup>42</sup> Ryan and Wiseberg, 1997 p. 14.

<sup>43</sup> Article 3 of the Human Rights Defenders Declaration reads: *“Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all*

### **2.2.2.2 Who is to decide who is “genuinely involved”?**

A further issue that has raised concern among human rights non-governmental organizations is the wording, also found in part I, paragraph 38 of the Vienna Declaration and Programme of Action which states that “*non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law.*” Here it is, in particular, the use of the words “*genuinely involved*” that raise the question of who is to determine what constitutes a “*genuinely involved*” non-governmental organization.

Of particular concern in this respect would be a case where it is the government who determines who is “*genuinely involved*” and who is not and where a human rights non-governmental organization would not be granted protection of the national law on the ground that the organization is considered by the government not to be “*genuinely involved*” in the field of human rights due to its possible activities in placing the government concerned under scrutiny, while, simultaneously, the government is supporting the activities of those organizations the activities of which do not place the government under such scrutiny.

However, it is to bear in mind that it is the Economic and Social Council, on the recommendation of the Committee on Non-Governmental Organizations, that grant consultative status to non-governmental organizations and the question whether or not an organization is “*genuinely involved*” is not directly relevant to the issue on whether an organization is granted consultative status or not.

## **2.3 The Committee on Non-Governmental Organizations**

The Committee on Non-Governmental Organizations is the body responsible for regular monitoring of the evolving relationship between non-governmental organizations and the United Nations. The nineteen governments members of the Committee are elected by the Economic and Social Council on the basis of equitable geographical representation to serve a term of four years.<sup>44</sup>

As noted above, the Economic and Social Council has, while facilitated access of non-governmental organizations to consultative relationship with the Council, simultaneously also tightened its control over these organizations. While this tightened control, conducted by the Committee on Non-Governmental Organizations is completely understandable and legitimate in evaluating whether an organization complies with the principles governing consultative status and whether it contributes to the work of the United Nations, there are concerns over a politicization of this process.

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*activities referred to in this Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.”*

<sup>44</sup> Economic and Social Council resolution 1996/31, paragraphs 60-61.

The concern over a politicization of the work of the Committee on Non-Governmental Organizations in particular by using political rather than objective criteria when assessing the worthiness of a non-governmental organization is of particular concern. This is a challenge facing in particular human rights non-governmental organizations in being granted and in maintaining their consultative relationship with the Economic and Social Council since for such organizations to be effective their work toward promoting and protecting human rights and holding governments accountable to internationally accepted human rights standards must not be circumscribed by the fear that governments will block their access to the United Nations unless they follow a certain line of action.

### **2.3.1 Processing of applications**

A dramatic increase in the number of non-governmental organizations in consultative status with the Economic and Social Council has taken place in the 1990s.<sup>45</sup> The reason for this increase is that over the past decade international development work has come increasingly to involve and incorporate non-governmental organizations and the emergence of these organizations as a definite force in the socio-economic arena presents a challenge to the long-standing view of States as the exclusive actors in the international system. As non-governmental organizations increasingly participate in the development work of intergovernmental bodies and address arenas of primary concern to them, it is inevitable that growing numbers of them will seek an institutionalized channel through which to influence policies and programmes at the international level. It seems reasonable, therefore, to expect that the number of applications for consultative status will continue to increase exponentially in the years ahead.<sup>46</sup>

Simultaneously, and in addition to the rapid increase in the number of non-governmental organizations in consultative status with the Economic and Social Council, the Council has adopted a series of ad hoc measures to facilitate the participation of those non-governmental organizations who took part in the United Nations World Conferences in the 1990s in conference follow-up processes, while actively encouraging such organizations to apply for consultative status.<sup>47</sup>

Nevertheless, the Committee on Non-Governmental Organizations has adopted an informal rule of consensus in its work processing applications for consultative status and for requests for reclassification. As a result, a single government member of the Committee has often blocked the granting of consultative status for a non-governmental organization. Further consideration of applications are, therefore, frequently postponed to future session prolonging the application process in many cases to several years. At its session in March 1993, the rule of consensus was for the first time broken by

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<sup>45</sup> See annex 1.

<sup>46</sup> E/1998/43, paragraphs 4-10.

<sup>47</sup> E/1998/43, paragraph 6.

the Committee as votes were recorded in two cases. The Committee has, however, returned to its previous practice of consensus decision making.<sup>48</sup>

Even if the criteria to be fulfilled by a non-governmental organization aspiring to consultative status with the Economic and Social Council is very similar to the criteria any non-governmental organization should impose on itself in order to be credible, the working methods of the Committee has shown to be of a concern in particular with regard to human rights non-governmental organizations where it is the task of the non-governmental organizations to challenge and question the actions of governments.

### **2.3.2 The quadrennial reporting**

An example on how the control over non-governmental organizations in consultative status has been tightened is the provision of a quadrennial reporting procedure. Non-governmental organizations in general consultative status and special consultative status shall submit to the Committee on Non-Governmental Organizations every fourth year a brief report of their activities specifically as regards the support they have given to the work of the United Nations.<sup>49</sup> These reports, the number of pages of which has been limited to two, are, in addition that they detail the activities carried out by the non-governmental organizations in support of the work of the United Nations, also a means of monitoring the continuing consultative relationship with the Economic and Social Council, and are, therefore, subject to careful consideration by the Committee.<sup>50</sup> Non-governmental organizations listed on the Roster are not required to submit quadrennial reports under the terms of Economic and Social Council resolution 1996/31.

Based on findings of the Committee's examination of the report and other relevant information available, the Committee may recommend to the Economic and Social Council any reclassification in status of the organization concerned as it deems appropriate. That the examination of the periodic reports is not only a procedural matter is shown by the fact that a decision to recommend a reclassification in status may also mean the suspension or withdrawal of the consultative status altogether.

### **2.3.3 Suspension and withdrawal of consultative status**

A further example on how the Economic and Social Council progressively has tightened its control over non-governmental organizations is the possibility for the Council to suspend or withdraw the consultative status of a non-governmental organization<sup>51</sup> as no such provision existed prior to the provisions included in resolution 1296 (XLIV) of 1968, even though Economic and Social Council resolution 288 (X) of 1950 provided for the Committee on

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<sup>48</sup> Stubb, 1999 p. 46.

<sup>49</sup> Economic and Social Council resolution 1996/31, paragraph 61(c).

<sup>50</sup> E/1998/43, paragraph 9.

<sup>51</sup> The current rules governing the suspension and withdrawal of consultative status of non-governmental organizations are found in paragraphs 55 to 59 of Economic and Social Council resolution 1996/31.

Non-Governmental Organizations the authority to “review from time to time the list of non-governmental organizations included in categories A and B.”<sup>52</sup>

The consultative status of a non-governmental organization may be suspended for a maximum of three years or withdrawn if a non-governmental organization has failed to meet the requirements for consultative status as set forth in relevant parts of the above resolution. Such grounds could be the non-compliance with the principles governing the consultative arrangements by engaging in “a pattern of acts contrary to the purposes and principles of the Charter of the United Nations,” in cases where an organization is involved in internationally recognized criminal activities, or where an organization has failed to make any positive or effective contribution to the work of the United Nations and, in particular, of the Economic and Social Council or its commissions or other subsidiary organs.<sup>53</sup> All decisions concerning the suspension or withdrawal of consultative status of a non-governmental organization are to be made by the Economic and Social Council on the recommendation of its Committee on Non-Governmental Organizations.<sup>54</sup>

Before any decision on suspension or withdrawal of consultative status, the Committee on Non-Governmental Organizations may decide that the non-governmental organization in question submit a special report to the Committee for consideration clarifying the issue of concern.<sup>55</sup> This is a new provision with regard to a suspension or withdrawal of consultative status that was included in Economic and Social Council resolution 1996/31 which spells out that in cases where the Committee has decided to recommend that the general or specific consultative status of a non-governmental organization or its listing on the Roster be suspended or withdrawn, the organization concerned shall be given written reasons for that decision and shall have an opportunity to present its response for appropriate consideration by the Committee as expeditiously as possible.<sup>56</sup> This provision goes a considerable distance towards the transparency for which both certain non-governmental organizations and governments had for long been calling.

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<sup>52</sup> Economic and Social Council resolution 288 (X), paragraph 35 (b). Despite the lack of clear provisions for a suspension or withdrawal of consultative status, two non-governmental organizations (the International Association of Democratic Lawyers and the International Organization of Journalists), in the then category B, were expelled and one (the World Federation of Democratic Youth) was demoted from category B to the Roster, in 1950. In 1954, category B status was withdrawn from one organization (Women’s International Democratic Federation). All four organizations had strong ties to the Soviet Union and the Eastern bloc, and all had been vocal in criticizing the US-led intervention in Korea. The sanctioning clearly was orchestrated by the United States, which at the time controlled the votes in both the Economic and Social Council and its Committee on Non-Governmental Organizations (Chiang, Pei-heng, 1981 p. 104-106, referred to in Ryan and Wiseberg, 1997 p.11 and especially footnote 14).

<sup>53</sup> Economic and Social Council resolution 1996/31, paragraph 57 a-c.

<sup>54</sup> Economic and Social Council resolution 1996/31, paragraph 58.

<sup>55</sup> Economic and Social Council resolution 1996/31, paragraph 61 (c). Such a request by the Committee on Non-Governmental Organizations was made e.g. at its 676<sup>th</sup> meeting on 26 June 1998 with regard to four non-governmental organizations (E/1999/10, paragraph 33).

<sup>56</sup> Economic and Social Council resolution 1996/31, paragraph 56.

However, it is not the provision of a suspension or withdrawal in certain situations of the consultative status as such that is seen as the concern, since it is clear that periodic reviewing of the activities of non-governmental organizations is necessary, but the provisions regulating in which circumstances such a suspension or withdrawal is possible that is the concern.

In this regard, a matter of particular concern with regard to the periodical reviewing of the activities of non-governmental organizations is the provision of acts that could be considered as “*politically motivated*”<sup>57</sup> since governments frequently charge that non-governmental organizations are politically motivated when they expose human rights abuses. The paragraph has never been invoked to withdraw or suspend the consultative status of a non-governmental organization on grounds of “*unsubstantiated or politically motivated acts*” even though threats of withdrawals on these basis have been made.<sup>58</sup>

Decisions of withdrawal of consultative status has, however, been taken based on other grounds. For example, in its decision 1996/217 adopted on 2 May 1996, the Economic and Social Council decided, on the recommendation of the Committee on Non-Governmental Organizations,<sup>59</sup> that, pursuant to the provisions of paragraph 40 (b) of Council resolution 1296 (XLIV) of 23 May 1968, the consultative status of 12 non-governmental organizations which had failed to submit a detailed report on their activities for the period 1988-1991, as requested by the Committee in 1993, be withdrawn.

A further case where a non-governmental organization has been suspended from consultative status is from 1994 when the International Lesbian and Gay Association, an organization that had been granted consultative status one year earlier,<sup>60</sup> was suspended from consultative status as it was suspected that member organizations or subsidiaries of the organization in question were promoting or overlooking paedophilia contrary to international human rights standards and therefore contrary to the spirit, purposes, and principles

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<sup>57</sup> Economic and Social Council resolution 1996/31, paragraph 57 (a).

<sup>58</sup> Stubb, 1999 p. 54. As an example in this regard could be mentioned the examination of the activities of Human Rights Advocates. During the review of the organization’s report, China raised objections deriving from statements by the organizations during sessions of the Commission on Human Rights concerning the situation of human rights in Tibet causing the report to be deferred to a future meeting. In an attempt to resolve the issue, the President of Human Rights Advocates placated the Chinese delegate by orally stating that the organization’s work in Tibet did not mean that it had the competence to address political questions such as Tibetan independence or Chinese sovereignty. With this, China could approve the organization’s report. Although the matter was settled allowing the organization to retain its consultative status, it exposed the extent to which a government can determine which terms and activities are acceptable and which are not. (E/1996/17, paragraph 12 and Ryan and Wiseberg, 1997 p. 18-19.)

<sup>59</sup> See draft decision II (Review of quadrennial reports submitted by non-governmental organizations in consultative status with the Economic and Social Council, categories I and II) in the report of the resumed organizational session of the Committee on Non-Governmental Organizations (E/1996/17).

<sup>60</sup> The organization was placed on the Roster by Economic and Social Council decision 1993/329 of 30 July 1993.

of the United Nations.<sup>61</sup> It is, however, to note that these acts, in order to be against the governing provisions, must also be incompatible with the purposes and principles of the Charter of the United Nations.

## 2.4 Conclusion

Though far from ideal and nowhere as innovative as some of the suggestions proposed during the negotiations leading to Economic and Social Council resolution 1996/31, the resolution nonetheless signifies considerable progress in the arrangements for consultative status between non-governmental organizations and the United Nations. This progress is particularly significant with regard to national non-governmental organizations as the current arrangements ensure these organizations the granting of consultative status far better than the previous arrangements and in this manner places governmental acts under scrutiny more efficiently than would be through international non-governmental organizations only.

As the present chapter has revealed, there are certain differences in the level of rights granted non-governmental organizations depending on which category of consultative status they are granted. That organizations in general consultative status are allowed to submit longer written statements both to the Economic and Social Council and its subsidiary bodies than organizations in special consultative status has been, and could also be in future negotiations, a matter worth addressing particularly since organizations in special consultative status may possess a higher level of expertise than an organization granted general consultative status.

Nevertheless, since the negotiations on reviewing the arrangements for consultation of non-governmental organizations with the United Nations do not have their focus on reviewing resolution 1996/31, but more on a possible extending of consultative status to all areas of the United Nations and on establishing a more orderly participation of non-governmental organizations in the work of the United Nations, this is a matter which could and should be taken up if and when resolution 1996/31 is being reviewed.

The most serious concern of the current arrangements for consultative status of non-governmental organizations with the United Nations is, and as the present chapter has indicated, the politicization of the monitoring of the evolving relationship between the United Nations and non-governmental organizations. As an examination of the work of the Committee on Non-Governmental Organizations reveals, the Committee's use of political rather than objective criteria when monitoring the compliance by non-governmental

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<sup>61</sup> The Committee on Non-Governmental Organizations is reconsidering the case of the International Lesbian and Gay Association on basis of additional information it has provided the Committee (Stubb, 1999 p. 54). At its 685<sup>th</sup> meeting on 17 December 1998, the Committee decided to recommend to the Economic and Social Council that it withdraw the consultative status of the International Agency for Rural Industrialization in accordance with the provisions of paragraph 57 of Council resolution 1996/31 as the organization in question had not submitted a special report as requested by the Committee at its 638<sup>th</sup> meeting on 13 January 1998 and as repeated attempts to contact the organization had been unsuccessful (E/1999/10, paragraphs 35-36).

organizations of the rules and principles governing the consultative arrangements between the Economic and Social Council and non-governmental organizations places non-governmental organizations in the hands of the governments in a manner which may, at worst, be harmful for the whole process of consultative arrangements. Propositions have, therefore, been put forth where the Committee on Non-Governmental Organizations were to be composed either of experts acting in their individual capacity or of representatives of both governments and non-governmental organizations instead of only of governments as is currently the case.<sup>62</sup>

### **3 Reviewing the Arrangements for Consultation**

By the adoption of Economic and Social Council resolution 1996/31, governments agreed on the rules and principles currently governing the consultative arrangements between the United Nations and non-governmental organizations. The simultaneous adoption of Economic and Social Council decision 1996/297 guaranteed that the work would continue, especially with regard to a possible extending of the consultative arrangements to include all areas of the United Nations.

A long and lively debate among interested parties took place on whether the discussion on extending the consultative relationship between the United Nations and non-governmental organizations would be restricted to the General Assembly only or whether the United Nations as a whole, including thus also the Security Council, would be included in the discussion. In this regard, those governments who have spoken for opening the Security Council to more scrutiny, and those who have strongly opposed any role of non-governmental organizations, even that of observer status, in the Security Council,<sup>63</sup> came to an agreement, in late 1998, whereby the Security Council was put aside of the negotiations on extending consultative status to all areas of the United Nations.<sup>64</sup> This agreement may significantly facilitate the negotiations and the finding of an agreement on how to grant non-governmental organizations formal access to the General Assembly.

In addition to current negotiations on extending the consultative status of non-governmental organizations to all areas of the United Nations, proposals have been put forth, in a parallel process of consultations, with regard to reviewing the current rules governing the arrangements between the United Nations and non-governmental organizations with the aim of establishing a more orderly participation of non-governmental organizations in the work of the United Nations. However, such proposals have mainly been seen by non-governmental organizations as restrictive in character and, therefore, of certain concern.

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<sup>62</sup> See paragraph 161 of the informal working paper prepared by the Secretariat, dated 28 July 1998, as well as preliminary recommendations for the systematic strengthening of the United Nations human rights mechanisms by Human Rights Watch, dated 20 July 1998.

<sup>63</sup> Particularly the United States has opposed the opening of the Security Council for non-governmental organizations.

<sup>64</sup> Telephone conversation with Karin Ryan, Vice-Chair, Human Rights Committee of the Carter Center, 27 April 1999.

### 3.1 Extending consultative status to all areas of the United Nations

As has been noted earlier, based on Article 71 of the Charter of the United Nations, the arrangements for consultation between non-governmental organizations and the United Nations have formally been restricted to the Economic and Social Council only. Although Economic and Social Council resolution 1996/31, paragraph 67 (f) provides for “*appropriate seating arrangements and facilities for obtaining documents during public meetings of the General Assembly dealing with matters in the economic, social and related fields*” no rules exist with regard to an active participation of non-governmental organizations in the work of the General Assembly and its Main Committees.<sup>65</sup> Even if there have been occasions on which non-governmental organizations have been invited to speak at informal meetings of the Main Committees<sup>66</sup> these arrangements have been ad hoc in character and easily subject to change, giving no guarantees for non-governmental organizations of a possible participation.<sup>67</sup>

It was with this in mind that the Economic and Social Council, in its decision 1996/297 of 25 July 1996, decided, simultaneously with the adoption of its resolution 1996/31, to recommend that the General Assembly examine the question of the participation of non-governmental organizations in all areas of the work of the United Nations, in the light of the experience gained through the arrangements for consultation between non-governmental organizations and the Council.<sup>68</sup> The interpretative statement by the President clarified that it was the understanding of the Economic and Social Council that the above recommendation falls within the competence of the General Assembly, as set forth in Article 10 of the Charter of the United Nations which provides that the General Assembly may discuss any question or any matter within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter, and, except as provided in Article 12, may make

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<sup>65</sup> Currently, NGO representatives can only sit in the public balcony for which they cannot access document distribution counters and where acoustics and technical problems sometimes impede them from following important debates on matters of direct relevance to their work with the United Nations (A/53/170, paragraph 77). It is worth asking whether this amounts to the “*appropriate seating arrangements*” as provided for in Economic and Social Council resolution 1996/31, paragraph 67 (f).

<sup>66</sup> Wiseberg, January 1999.

<sup>67</sup> It is also worth noting that the for the non-governmental organizations unfortunate measures justified by security undertaken during the general debate of the 53<sup>rd</sup> session of the General Assembly limiting, among other things, the possibility to meet with government delegations could have been avoided if formal arrangements existed for the participation of non-governmental organizations in the work of the General Assembly (see e.g. Paul, 4 February 1999 and Pace, 17 September 1998).

<sup>68</sup> With regard to the consultative relationship between the Economic and Social Council and non-governmental organizations, resolution 1996/31, paragraph 17, recognizing the evolving relationship between the United Nations and non-governmental organizations, contains a provision that the Council will consider reviewing the consultative arrangements as and when necessary to facilitate, in the most effective manner possible, the contributions of non-governmental organizations to the work of the United Nations.

recommendations to the Members of the United Nations or the Security Council or to both on any such question or matter.<sup>69</sup>

Thus, in late 1996, attempts began, in the contents of the United Nations reform, to extend the rules concerning the arrangements between the Economic and Social Council and non-governmental organizations also to cover all areas of the United Nations. Non-governmental organizations expected a rapid agreement especially on the extending of consultative arrangements to cover the work of the General Assembly, but the Sub-Group on the Question of Non-Governmental Organizations of the High-Level Open-Ended Working Group on Strengthening the United Nations System entrusted with the issue was not in a position to proceed with the objectives set forth in Economic and Social Council decision 1996/297.<sup>70</sup>

Following the above decision by the Economic and Social Council, and after the failure of the Sub-Group to deal with the issue, proposals on granting non-governmental organizations access to the General Assembly have been issued by a number of governments. After a series of meetings in December 1997, the General Assembly, by its decision 52/453 of 19 December 1997, requested, in this regard, the Secretary-General to prepare and circulate for consideration and action a report on:

- a) Existing arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system;
- b) The legal and financial implications of modifications in the current arrangements for participation of non-governmental organizations with a view to enhancing their participation in all areas of the United Nations system;
- c) The question of the participation of non-governmental organizations from all regions, in particular from the developing countries.

The prepared report, found in document A/53/170, was issued in July 1998 and preliminary discussion on the question, on the basis of the report, took place during the 53<sup>rd</sup> session of the General Assembly.

### **3.1.1 Invitation to attend General Assembly meetings is rejected**

The General Assembly decision 52/453 requesting for the preparation of the above mentioned report was by many non-governmental organizations considered a disappointment as governments rejected most of the elements

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<sup>69</sup> For the interpretative statement, see E/1996/SR.49. With regard to the extending of consultative arrangements between the United Nations and non-governmental organizations, it is worth noting that the G-77 countries proposed during the negotiating process leading to Economic and Social Council resolution 1996/31 the opening of the whole United Nations system to non-governmental organization in a submission stating that "*The whole United Nations system...should be open to participation by non-governmental organizations*" (E/1995/83/Add.1, paragraph 1.1).

<sup>70</sup> The Sub-Group failed to agree on its mandate and was subsequently dismantled in June 1997 (Onaga, 8 December 1997, Paul, 4 February 1999 and Pace and Onaga, 27 October 1997).

contained in a draft resolution which had, among other things, proposed as an interim measure to invite non-governmental organizations in consultative status with the Economic and Social Council to attend open meetings of the General Assembly plenary, all its Main Committees and Special Sessions.

Such interim arrangements were for the first time proposed in a draft resolution prepared by the United States and circulated at the session of the Economic and Social Council, in July 1997,<sup>71</sup> and subsequently in an informal draft resolution presented by the Netherlands and discussed in informal meetings in December that same year.<sup>72</sup> The presented proposals were considered by certain representatives of non-governmental organizations to present, after slight modifications, as a basis for a historic extension of the consultative status of non-governmental organization in the United Nations.<sup>73</sup>

In the December 1997 informal meetings, the text providing for interim measures for participation of non-governmental organizations in the work of the General Assembly was the area where governments had the greatest problems and were therefore the subject of lengthy discussions, even though it was noted that the provision took only note of what already constituted the informal practice of participation of non-governmental organizations in the work of the General Assembly. The sensitivity of the subject matter was, however, evident and further shown by the fact that several of the December meetings were filled with statements based on principles and requests for a postponement of the discussion of the matter. The outcome of these meetings, General Assembly decision 52/453, which only requests for the preparation of a report, is also a sign of this sensitivity, but more or less normal procedure at the United Nations.<sup>74</sup>

### **3.1.2 Request for the views of States and other interested parties**

The Secretary-General's report requested for in General Assembly decision 52/453 of 19 December 1997 has generally been met with disappointment by non-governmental organizations, despite its affirming the importance of non-governmental organizations to the United Nations system and its containing of a useful compendium of practices in the field of relations between the United

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<sup>71</sup> E/1997/L.51.

<sup>72</sup> It is to note that the meetings held on 8, 9, 11, 15, 17 December 1997 were all, except for the first one, closed for non-governmental organizations (Onaga, 8 to 17 December 1997).

<sup>73</sup> See e.g. the joint letter prepared by a group of non-governmental organizations, dated 10 December 1997, to governments on the question of NGO access to the work of the United Nations (Onaga, 11 December 1997). Several non-governmental organizations advocated for a three stage approach the basic elements which were a) an invitation of NGOs to participate in the work of the General Assembly, b) the preparation of a Secretary-General's report on arrangements for the participation of NGOs in all other areas of the United Nations, and c) consideration by the General Assembly, on the basis of the above report, of extending consultative arrangements to all areas of the United Nations.

<sup>74</sup> See Onaga, 8, 9, 11, and 15 December 1997 and Pace and Onaga, 17 December 1997. In addition, the Non-Aligned Movement issued a communique in the eve of the 53<sup>rd</sup> session of the General Assembly opposing expanded access of non-governmental organization to the General Assembly, affirming the opinion that the Economic and Social Council was the appropriate framework for such organizations with the United Nations (Paul, 4 February 1999).

Nations and non-governmental organizations.<sup>75</sup> The disappointment on the report was, however, partly expressed due to the fact that the report says virtually nothing about the legal and financial implications of modifications in the current arrangements for participation of non-governmental organizations with a view to enhancing their participation in all areas of the United Nations, and partly due to the fact that the report opted for caution and did not take a more vigorous initiative, in line with the Secretary-General's own rhetoric. The report deals also in only three paragraphs with the established, although informal, arrangements for access of non-governmental organizations to the General Assembly,<sup>76</sup> and does not mention in one single paragraph the varying, both formal and informal, arrangements between the six principal human rights treaty bodies and non-governmental organizations.

In addition, the fact that the report was prepared completely without consultation with governments and non-governmental organizations has further been considered as weakening the contents of the report. The importance of such consultations was noted, among other things, by the representatives of the Philippines and of the United States as the General Assembly considered the Secretary-General's report in the context of its discussion on strengthening the United Nations system.<sup>77</sup>

Thus, due to both the weakness of the Secretary-General's report and the need for further consideration of the matter, the General Assembly adopted, on 17 December 1998, a draft decision (A/53/L.68) whereby it requested the Secretary-General to seek the views of governments and other interested parties, including non-governmental organizations, on the report contained in document A/53/170, and to submit a further report at the fifty-fourth session of the General Assembly, taking into account the submissions received.<sup>78</sup> Thus, the adoption of the above decision has opened the consideration of the matter for all interested parties and gives, therefore, governments as well as non-governmental organizations an opportunity to influence this process by giving the report serious consideration and by submitting comments with regard to the question of arrangements for consultation with non-governmental organizations with a view to equip the General Assembly to consider concrete measures to enhance the cooperation between the United Nations and non-governmental organizations.

Several non-governmental organizations have expressed the view that the most sensible and necessary first step to take in the expansion and enhancing the participation of non-governmental organization in all areas of the United Nations system would be to simply extending the provisions of Economic and Social Council resolution 1996/31, which is the product of literally 50 years of experience, to cover also the General Assembly, its Main Committees and its Special Sessions giving thus the same rights to non-

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<sup>75</sup> Wiseberg, January 1999.

<sup>76</sup> A/53/170, paragraphs 9-10 and 77.

<sup>77</sup> A/53/PV.70.

<sup>78</sup> A/53/PV.92. See also annex 3 for the agreed text (General Assembly decision 53/452).

governmental organizations in their participation with the General Assembly as they have with regard to the Economic and Social Council.<sup>79</sup>

### **3.2 Establishing a more orderly participation**

In addition to the negotiations on extending the consultative arrangements of non-governmental organizations to all areas of the United Nations, described above, proposals have been put forth with regard to reviewing the current rules governing the arrangements between the United Nations and non-governmental organizations with a view to establishing a more orderly participation of non-governmental organizations in the work of the United Nations.

As main reasons behind these proposals, which mainly have been understood by non-governmental organizations as restrictive in nature, can be found a few regrettable incidents between government delegations and representatives of non-governmental organizations as well as a desire to augment the responsibilities of non-governmental organizations simultaneously as negotiations on augmenting the rights of these organizations are conducted.

#### **3.2.1 Limiting the number of persons accredited**

Following, among other things, the incidents during the 54<sup>th</sup> session of the Commission on Human Rights,<sup>80</sup> the Cuban delegation presented, in 1998, a non-paper on general guidelines to be respected in the accreditation of non-governmental organizations to all relevant meetings of the Economic and Social Council and its subsidiary bodies.<sup>81</sup> These general guidelines contained, among other things, the proposition of limiting the number of persons allowed accreditation to United Nations meetings.

A number of non-governmental organizations have expressed their concern on the imposing of any limitations on the number of persons allowed accreditation as the imposed limits as presented would be considerably lower than currently the size of some delegations to major intergovernmental meetings.

Bearing in mind the length of a number of meetings at the United Nations, it has also been noted that a large number of accreditations does not necessarily mean that all those accredited would actually be in the meeting room, or even in New York or Geneva, at the same time. Therefore, a rotation of representatives in one organization, as is also the case with government

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<sup>79</sup> Joint NGO letter to governments on NGO access, dated 10 December 1997 (Onaga 11 December 1997) and telephone conversation with Karin Ryan, Vice-Chair, the Human Rights Committee of the Carter Center, 27 April 1999.

<sup>80</sup> A number of unaffiliated persons accredited by the Transnational Radical Party to the 54<sup>th</sup> session of the Commission on Human Rights belonged to Cuban emmigré groups that sharply criticized the Cuban Government.

<sup>81</sup> The first draft resolution, dated 21 January 1998, was replaced with one dated 22 May 1998 which again was replaced by the Cuban non-paper dated 17 September 1998 (see Cuban Draft Resolution, and Cuban Non Paper...).

delegations, would be more viable than having a designated few from each organization.<sup>82</sup> A further reason for the need of flexibility and for opposing any strict limitations with regard to the number of accredited representatives is that affiliate national organizations of perhaps poorer and underrepresented regions of the world might seek accreditation through their international parent organization. A strict rule with regard to the number of persons allowed accreditation might, therefore, affect to a disproportionate degree national non-governmental organization from the above mentioned regions.

Given the wish of a number of non-governmental organizations to draw on a wide range of expertise and to include participants from a variety of regions of the world, numerical limitations would be a severe handicap and would tend to reduce, rather than enhance, the capacity of international non-governmental organizations to represent all regions of the world.

### **3.2.2 Advance notification of names of persons accredited**

In addition to the presenting of a limitation on the number of persons allowed accreditation per a non-governmental organization, the proposed guidelines request also non-governmental organizations to notify in advance the names of the persons that are being designated to represent the organization in question at the United Nations.

The above request for an advance notification of the names of persons to be designated to represent a non-governmental organization at the United Nations has been considered a measure that would place undue logistical and clerical burdens on the United Nations Secretariat and on the non-governmental organizations in question. In addition, it would be unrealistic to expect non-governmental organizations to determine months in advance the composition of their delegation to specific United Nations meetings.

With regard to the notification of the names of persons attending United Nations meetings, it is to note that no clarity has been given whether this notification would have to be submitted at the beginning of each year.

### **3.2.3 Charging a fee for consultative status**

In a non-paper on accreditation of non-governmental organizations to the General Assembly prepared by the United States and circulated at the 1997 Economic and Social Council session, a proposition was put forth whereby a scale of fees could be established in connection with the granting of consultative status to non-governmental organizations. It is to note that the paragraph in question also provided for a possible waiver of such a fee where appropriate, ensuring, for example, that such a fee would not hinder non-governmental organizations from poor regions from being granted consultative status. Furthermore, it is to note that the United States was not

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<sup>82</sup> It is worth noting that, as an average, the number of representatives accredited by governments and by non-governmental organizations is about the same. (With regard to the number of persons accredited by governments and by non-governmental organizations to the 54<sup>th</sup> session of the Commission on Human Rights, see document E/CN.4/1998/INF.1.)

pushing very strongly the above proposal as it was strongly opposed not only by non-governmental organizations but also by some United States officials to the United Nations.<sup>83</sup> It was thus no surprise that the revised version of the above non-paper, eventually introduced as a draft resolution,<sup>84</sup> did not contain the paragraph in question.<sup>85</sup>

A reason behind the above proposal was that, due to the financial crisis, the United Nations has, among other things, reduced its printing of documents and instead offers them on the web site or in the Optical Disc System.<sup>86</sup> In this regard, it is to note that efforts are being made to provide wider access to the Optical Disc System,<sup>87</sup> but due to the expensive development of this system non-governmental organization wishing access to the system are charged with a considerable annual fee that has been feared might affect harmfully non-governmental organizations from poorer regions of the world.<sup>88</sup> Member States may, therefore, wish to review funding for the Optical Disc System in order to allow for wider dissemination of its products<sup>89</sup> since if non-governmental organizations are to continue making a meaningful contribution to the work of the United Nations, it is crucial that their access to information and documentation be secured in a timely and appropriate manner.

The imposing of a fee for non-governmental organizations is a complex issue in every respect and non-governmental organizations have in general opposed the proposal strongly. It has, however, been thought that a situation where the participation of non-governmental organizations would be extended to all areas of the United Nations could require some form of extended obligations as well, for example in the form of a fee. The imposing of a fee for non-governmental organization would thus be connected to an extension of the formal rights of these organizations. Nevertheless, it has further been considered that a possible fee ought to be quite modest, perhaps even of a voluntary nature since it should not form an obstacle for small local non-governmental organizations from the poorest regions of the world from participating in meetings of their interest forgetting, however, that lack of adequate resources has already for long been a problem for non-governmental organizations, no matter from which region they are, restricting their possibility to attend United Nations meetings.<sup>90</sup>

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<sup>83</sup> DeGroot, 8 December 1998 and Pace, 15 July 1997.

<sup>84</sup> E/1997/L.51.

<sup>85</sup> Pace and Onaga, 27 October 1997.

<sup>86</sup> While a great number of United Nations documents are today available on the United Nations web site, offers the Optical Disc System a much wider access to United Nations documents in all official languages, including complete United Nations parliamentary documentation since 1993, resolutions and decisions of the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council since 1946, certain official records of these four bodies since 1946 and administrative issuances of the Secretariat.

<sup>87</sup> See especially General Assembly resolution 53/208 C, paragraphs 1-10.

<sup>88</sup> Paul, 4 February 1999.

<sup>89</sup> A/53/170, paragraphs 76 and 78.

<sup>90</sup> In a recently issued report, the United Nations had estimated that 3.2 % of the Conference Services budget, or some \$400.000 per year, result from the participation of non-governmental organizations which is a marginal amount when comparing to the current unpaid dues of member States (Paul, 4 February 1999).

Although the consultative status of a non-governmental organization is not the same as participation without the right to vote,<sup>91</sup> the imposing of a scale of fees for non-governmental organizations, in a situation where extended access to all areas of the United Nations was guaranteed for non-governmental organizations and where their observer status would more resemble that of participation without the right to vote, might, nevertheless, be an idea that must be developed further keeping, however, in mind that no unreasonable restrictions on the participation of non-governmental organizations in United Nations meetings should be implemented.

### **3.2.4 Code of ethics / code of conduct**

The regrettable incidents that have occurred, among other things during the sessions of the Commission on Human Rights, have lead many governments to harden their position towards non-governmental organizations and to fear that greater access by such organizations might lead to more unfortunate encounters, embarrassment and even physical danger to delegates.

Although non-governmental organizations have called for not to be punished as a group for the alleged misdeeds of a handful, a growing number of governments have suggested the appropriateness of a code of conduct for non-governmental organizations, stressing, however, that a code of conduct should not be seen as a punitive measure, but rather as a means of fostering understanding between government delegates and non-governmental organizations as well as ensuring orderly participation in United Nations activities at all United Nations sites benefiting both governments and non-governmental organizations.<sup>92</sup>

A number of non-governmental organizations agree on the need of a code of conduct in order to better regulate the behaviour of representatives of these organizations especially in a situation of growing privileges. It is, nevertheless, the understanding among non-governmental organizations that such a code of conduct ought to be prepared by the non-governmental organizations themselves and implemented on a voluntary basis.<sup>93</sup>

Here it is necessary to note that different opinions have been put forth among non-governmental organizations with regard to the appropriateness of a code of conduct. Experienced organizations who know their way around the United Nations have in particular been reluctant to the presented proposals.

## **3.3 Conclusion**

Due to the recognized role non-governmental organizations today play in every sector of society, these organizations are no longer seen merely as disseminators of information but as shapers of policy and as indispensable

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<sup>91</sup> See chapter 1 (Historical Background) on the provisions of the Charter of the United Nations (Articles 69-71).

<sup>92</sup> Paul, 4 February 1999. See also E/AC.70/1994/5/Add.1, paragraph 6.

<sup>93</sup> CONGO Task Force..., 12 May 1998.

bridges between the general public and the intergovernmental processes. It is, therefore, of particular concern that no formal arrangements for consultative status exist for non-governmental organizations outside the economic and social questions, despite the role these organizations play in a variety of other areas.

In light of the vital contributions already being made by non-governmental organizations to the work of the United Nations, as well as the knowledge and resources non-governmental organizations can bring to deliberations on a significant number of issues, it is recommendable that Member States who support the work of non-governmental organizations actively participate in the ongoing process of reviewing the consultative arrangements to be extended to all areas of the United Nations. Even if no agreement exists with regard to how far reaching extensions of access of non-governmental organization ought to take place, it is important to ensure that no steps backwards are taken.

As during the negotiating process leading to the adoption of Economic and Social Council resolution 1996/31, no single position representing all non-governmental organizations exist with regard to the ongoing review of the extending arrangements of consultative relationship between non-governmental organizations and the United Nations to all areas of the United Nations. Governments wishing to support the views of non-governmental organizations of how a wider access of non-governmental organizations in the work of the United Nations ought to be organized is thus difficult as different organizations present different views with regard to the matter.

The underlying principle when reviewing the arrangements for consultation ought to be that there shall be no retreat from already existing arrangements or practices. In other words, the current arrangements between the Economic and Social Council and non-governmental organization that have been developed and refined over the last 50 years should be the basis when or if extending the consultative arrangements beyond the Economic and Social Council.

### PART III      SPECIFIC AND PRACTICAL ARRANGEMENTS FOR PARTICIPATION

The purpose of the present chapter is, on the one hand, to illustrate how any formal arrangements between the Economic and Social Council and non-governmental organizations only to a limited degree steer the arrangements taking place in practice. As the formal arrangements, as presented in the preceding chapters, mainly govern the issues of how consultative status is granted or withdrawn and certain rules and principles with regard to written and oral statements at certain meetings, the formal arrangements say nothing about the most efficient and important interaction actually taking place between non-governmental organizations and government delegations at the United Nations.

That the impact of the role granted under formal arrangements, i.e. for example oral interventions, is questioned, stresses further the importance of the interaction between non-governmental organizations and government delegations that is not governed by any formal arrangements. In presenting the distinction between the formal and informal arrangements between the United Nations and non-governmental organizations, the present chapter also present views on how non-governmental organizations themselves experience their influence on the work of different United Nations bodies.

In addition to the arrangements between the Economic and Social Council and non-governmental organizations, the present chapter will, on the other hand, show that specific formal arrangements exist for the participation of non-governmental organizations in the work of a number of United Nations bodies. In this respect, the chapter has its focus on existing specific arrangements in the fields of human rights and environment.<sup>94</sup>

#### **4 The Influence of Non-governmental Organizations in the Fields of Human Rights and Environment**

The present chapter aims at presenting arrangements for the participation of non-governmental organizations in the work of somewhat corresponding bodies in the field of human rights, on the one hand, and in the field of the environment, on the other. Examined are, therefore, arrangements with respect to the two Functional Commissions of the Economic and Social Council working in these two fields, a number of treaty bodies, and the five-year review of the World Conference on Environment and Development, on the one hand, and the World Conference on Human Rights, on the other.

From the very outset, it is clear that due to the different nature of the two fields covered in the present chapter, two very different arrangements for consultation have been developed.

##### **4.1 Human Rights Bodies<sup>95</sup>**

Governments have in general been somewhat reluctant in establishing far reaching formal arrangements for non-governmental organizations to participate in the work of different human rights bodies of the United Nations. Formal arrangements recognising the importance of non-governmental organizations are, thus, more of an exception in the field of human rights.

Nonetheless, the development of informal arrangements has been possible allowing these organizations to contribute to the work of the United Nations

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<sup>94</sup> The present part of the study will not distinguish between "*participation without the right to vote*" and "*arrangements for consultation*" as contained in Articles 69-71 of the Charter of the United Nations.

<sup>95</sup> The present chapter is partly based on interviews and discussions between representatives of non-governmental organization and the author as well as observations by the author during the 55<sup>th</sup> session of the Commission on Human Rights. No reference to specific interviews or discussions is made.

human rights bodies. However, informal arrangements are vulnerable to change and constantly dependent on the good will of the governments.

#### 4.1.1 The Commission on Human Rights

The formal arrangements for the participation of non-governmental organizations in the work of the Commission on Human Rights are described in Economic and Social Council resolution 1996/31 and in the rules of procedure of the functional commissions of the Economic and Social Council.<sup>96</sup> No supplementary procedural arrangements exist as is the case for example with the Commission on Sustainable Development. Nevertheless, there has always been a major disparity between the formal role permitted to these organizations and the role that they actually have played.<sup>97</sup>

In a historical perspective, non-governmental organizations have had a decisive role in both the establishment and development of the different mechanisms of the Commission on Human Rights, in the abandoning of the doctrine of inaction in responding to human rights violations,<sup>98</sup> and in being able to name specific governments as responsible for violations of international human rights standards.<sup>99</sup>

With regard to the formal role non-governmental organizations possess at the sessions of the Commission on Human Rights, i.e. oral interventions and written submissions, it is to note that despite the high number of oral interventions by these organizations it is generally considered, also among these organizations, that these interventions, at the very most, influence governments only to a modest degree.<sup>100</sup>

Despite the importance of non-governmental organizations in establishing and developing for example the special procedures of the Commission, it is generally considered among non-governmental organizations that the most important contribution to the work of the Commission is done during the inter-sessional period, i.e. with conducting the everyday work of these organizations. In this regard, one can note that the work of the special procedures, the main fact finding mechanism established by the Commission, is highly dependent on information submitted to the special procedures by non-governmental organizations. A recent survey has confirmed this by noting

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<sup>96</sup> Rules 75 and 76 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council describe only in very broad terms the issues of representation of and consultation with non-governmental organizations. The Rules of Procedure are found in document E/5975/Rev.1.

<sup>97</sup> See e.g. Alston, 1992 p. 202.

<sup>98</sup> The doctrine of inaction, as found in Economic and Social Council resolution 75 (V) of 5 August 1947, was, according to the general understanding, not changed before 1967 by the adoption of Council resolution 1235 (XLII) of 6 June 1967.

<sup>99</sup> See e.g. Alston, 1992 p. 174-175 and 202.

<sup>100</sup> That the drafting of resolutions begins much before the general discussion on the agenda item concerned underlines further the work done before the session or at the previous session.

that non-governmental organizations constituted the primary, sometimes even the sole, source of information for the special procedures.<sup>101</sup>

With regard to the standard setting activities of the Commission on Human Rights, one can note that occasions are found where non-governmental organizations have been treated as full participants for most purposes other than voting. In this regard, one can mention the drafting of the Convention on the Rights of the Child where these organizations were able to influence to a great extent the contents of the draft that subsequently was submitted to the General Assembly for adoption.<sup>102</sup> Another example of the important role non-governmental organizations have played in standard setting activities in recent years is the drafting of the declaration on human rights defenders where these organizations participated on a par with governments until the approval by the Commission's working group drafting the declaration.<sup>103</sup>

Although it is generally considered that the most important contribution to the Commission on Human Rights by non-governmental organizations is the one carried out outside the sessions of the Commission and despite the marginal role of oral interventions, it is not to say that there would not be any purpose in attending the sessions. The main purpose in attending the annual sessions of the Commission is, however, not so much the submission of information, as this can and is being done constantly around the year, but the building of personal contacts, both with government delegations as well as with other non-governmental organizations necessary for carrying out and developing the work of non-governmental organizations.<sup>104</sup>

When examining the work of non-governmental organizations during the sessions of the Commission, it is possible to distinguish between the group of organizations with little or no experience of working in the United Nations and which concentrate on establishing relations with other organizations, on the one hand, and between those organizations that know their way around and who also have an influence on government delegations, on the other. Only a very small number of organizations fall under this latter group and there is no desire among these experienced organizations to formalize any of the in-session interaction between non-governmental organizations and government delegations, since any formal arrangements would most likely only restrict the channels already developed by them.

In conclusion, one can note that it has been considered that despite the fact that non-governmental organizations are indispensable to the effective functioning of the Commission, their position will most likely never be accepted more than grudgingly by governments since if it were otherwise it

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<sup>101</sup> Nygren Krug, 1997 p. 118-119.

<sup>102</sup> See e.g. Alston, 1992 p. 203 and Hammarberg, 1997 p. 102. See Price Cohen (1990) on how it is also possible to see non-governmental organizations as starting the whole process of a convention on the rights of the child.

<sup>103</sup> The text subsequently adopted by the General Assembly was negotiated and agreed *ad referendum* in an informal drafting group, established by the Commission's working group, where non-governmental organizations participated in par with government delegations.

<sup>104</sup> For the number of non-governmental organizations attending the sessions of the Commission on Human Rights between 1980 and 1999, see annex 4.

would mean that these organizations were not behaving as they are expected to, i.e. in an informed, independent, critical, and uncompromising manner.<sup>105</sup>

#### 4.1.2 Treaty monitoring bodies

It is widely recognized that non-governmental organizations play an important role in the effective implementation of all human rights instruments. This was also recognized in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, in 1993.<sup>106</sup> Furthermore, the importance of information provided to the treaty bodies by non-governmental organizations has repeatedly been stressed for example by the meeting of persons chairing the human rights treaty bodies. It has, among other things, been recommended that each treaty body examine the possibility of changing its working methods or amending its rules of procedure to allow these organizations to participate more fully in its activities.<sup>107</sup> Many treaty monitoring bodies have, however, had their holdouts and the result has been the evolution of an informal rather than a formal set of arrangements to facilitate inputs by non-governmental organizations.

Today, only three of the treaty bodies monitoring the compliance of States parties to the six principal human rights treaties have some form of formal arrangement with regard to the role of non-governmental organizations. Those treaty bodies lacking any formal arrangements have, however, established functioning informal arrangements for meeting with, and using information provided by, these organizations. These informal arrangements do not differ very much in practice from the formal arrangements.<sup>108</sup>

As non-governmental organizations are not allowed to address the public meetings of the treaty bodies<sup>109</sup> information is mainly submitted in advance and in writing to the treaty bodies or the individual members of these bodies. Meetings between members of the treaty bodies and non-governmental organizations are, however, held, on an informal basis, before the examination of the reports of States parties allowing the treaty body members to receive updated information by non-governmental organizations on the countries the reports of which are to be examined.

Here it is worth noting that a number of experienced non-governmental organizations which also are involved in the work of the treaty bodies, consider it completely satisfactory to meet with the members of the treaty

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<sup>105</sup> Alston, 1992 p. 203-204.

<sup>106</sup> Vienna Declaration and Programme of Action, chapter II, paragraph 52.

<sup>107</sup> See e.g. A/49/537, paragraph 41.

<sup>108</sup> Here one may note that a draft has been presented to amend the rules of procedure of the Committee on the Elimination of Discrimination against Women. Rule 52 of this draft states that "*Non-governmental organizations are encouraged to provide information to the members of the Committee in conjunction with the consideration of the reports of States parties*" (CEDAW/C/1995/6, annex 1).

<sup>109</sup> Addressing a public meeting of treaty bodies is only possible during the days of general discussion on a specific thematic issue which is regularly organized by some of the treaty bodies. See also the arrangements between the Committee on Economic, Social and Cultural Rights and non-governmental organizations.

bodies in informal sessions only, and see no real need in allowing non-governmental organizations, or any other bodies, address the public meetings of the treaty bodies.

The specific formal arrangements for the participation of non-governmental organization in the work of the treaty bodies are briefly presented below.

In order to foster the effective implementation of the Convention on the Rights of the Child and to encourage international co-operation in the field covered by the Convention, the Committee on the Rights of the Child may invite, in addition to the specialized agencies, the United Nations Children's Fund, and other United Nations organs, also "*other competent bodies*" as it may consider appropriate to provide expert advice on the implementation of the Convention.<sup>110</sup> Although non-governmental organizations are not specifically mentioned, the phrase "*other competent bodies*" clearly was intended to include these organizations. The Committee has also repeatedly confirmed this and the Committee's interpretation has not been questioned.<sup>111</sup>

Non-governmental organizations are not only encouraged to submit appropriate documentation for consideration of the pre-sessional working group which meets at the end of each session of the Committee on the Rights of the Child, but the Committee has taken an open approach also with regard to the participation of these organizations in these meetings.<sup>112</sup>

The rules of procedure of the Committee against Torture provide the Committee with the possibility to invite non-governmental organizations in consultative status with the Economic and Social Council to submit information, documentation and written statements to the Committee.<sup>113</sup> Non-governmental organizations have also played an important part in providing the Committee with "*reliable information*" that the Committee is empowered to receive under Article 20 of the Convention. Of the two cases so far made public, in accordance with Article 20, paragraph 5, it is possible to note that it was a non-governmental organization that submitted the main information on the basis of which the Committee decided to begin the confidential procedure provided for in Article 20.<sup>114</sup>

The only treaty body for whom the Economic and Social Council resolution 1996/31 is applicable is the Committee on Economic, Social and Cultural Rights which, in contrast to other treaty bodies, is a subsidiary organ of the

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<sup>110</sup> Article 45 (a) of the Convention on the Rights of the Child and rule 70 (2) of the provisional rules of procedure of the Committee on the Rights of the Child (CRC/C/4).

<sup>111</sup> Hammarberg, 1997 p. 102.

<sup>112</sup> Hammarberg, 1997 p. 102-103 and CEDAW/C/1997/5, paragraphs 39-42. It is also noteworthy that Article 45 (b) states that the Committee shall transmit to other competent bodies, including thus non-governmental organizations, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance.

<sup>113</sup> Rule 62 of the rules of procedure (CAT/C/3/Rev.3).

<sup>114</sup> The two cases so far made public concern Turkey (A/48/44/Add.1) and Egypt (A/51/44, paragraphs 180-222). See also Byrnes, 1992 p. 531-532 and rule 69 of the Rules of Procedure of the Committee against Torture, on sources of information initiating the procedure.

Economic and Social Council. With the support of this formal element, the Committee on Economic, Social and Cultural Rights has developed far reaching arrangements for the participation of non-governmental organizations in its work.

The rules of procedure of the Committee notes that non-governmental organizations not only are invited to provide the Committee and its individual members with written statements, but also to orally present additional information of interest with regard to the examination of country reports that has not been submitted in writing. Although this is done in the closed pre-sessional working group, the Committee has also set aside part of the first afternoon at each of its sessions to enable it to receive further oral information provided by non-governmental organizations. This meeting is open and is provided with interpretation services, but it is not covered by summary records.<sup>115</sup>

The influence non-governmental organizations have on the work of all human rights treaty bodies is generally recognized and the information provided by these organizations tend to make the examination of country reports less abstract and more precise and factual<sup>116</sup> contributing to the enhancing of the credibility of the work and to improving the quality of the dialogue between the members of the treaty bodies and the States parties. Nevertheless, there are opinions among human rights non-governmental organizations that there is not an urgent need in attending the actual meetings of the treaty bodies since the same information can be and is submitted to the Committee members prior to each session and the number of non-governmental organizations meeting with the different treaty bodies in the informal pre-sessional meetings or during the sessions is actually fairly low.

Non-governmental organizations have repeatedly been encouraged to take an active role in critically examining the work of the six principal human rights treaty bodies so that more effective performance by the treaty bodies as a whole, as well as by individual experts, could be achieved.<sup>117</sup> Therefore, and although a close working relationship has been built between all treaty bodies and non-governmental organizations, the non-governmental organizations ought to avoid coming too close to the treaty bodies so as not to blur the distinct roles.

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<sup>115</sup> Rule 69 (1-3) of the Rules of Procedure of the Committee on Economic, Social and Cultural Rights. It is also worth noting that when the Committee examines the situation of human rights in a country in the absence of a country report, it is a non-governmental organization that carry out fact finding missions to the country concerned and present a report to the Committee.

<sup>116</sup> Stubb, 1999 p. 37.

<sup>117</sup> A former member of the Human Rights Committee has remarked that non-governmental organizations are the eyes and ears of the Committee (see address by United Nations High Commissioner for Human Rights, Mary Robinson, 28 January 1998, Tokyo).

### 4.1.3 Five-year review of the Vienna Declaration and Programme of Action

The five-year review of the Vienna Declaration and Programme of Action proved particularly problematic for non-governmental organizations as the Vienna Declaration did not call for a special session of the General Assembly where normal rules of procedures with regard to the role of non-governmental organizations could have been modified. As the five-year review took place during the regular session of the General Assembly<sup>118</sup> it meant that non-governmental organizations would face difficulties in taking part in that review.

Nevertheless, until a week prior to the dialogue that was to take place in the General Assembly with regard to the five-year review of the Vienna Declaration and Programme of Action, non-governmental organizations had been led to believe that they would have a chance to address an informal session of the Third Committee of the General Assembly with respect to the implementation of the Vienna Declaration.<sup>119</sup> Those who hoped to participate in this review were all well aware of the fact that non-governmental organizations have no formal rights to take the floor at the General Assembly or its Main Committees. Nonetheless, since non-governmental organizations, even those without consultative status, had played an important role in the World Conference on Human Rights, in 1993, and in all of the regional and preparatory meetings preceding the World Conference,<sup>120</sup> it was considered among non-governmental organizations that these organizations had to be granted a chance to address the General Assembly if a serious substantive review of the Vienna Declaration was to take place.<sup>121</sup>

In the week prior to the scheduled discussion of the five-year review, non-governmental organizations were informed that the Chair of the Bureau of the Third Committee categorically rejected the idea of non-governmental organizations addressing the Committee, even in informal session. Thus, non-governmental organizations were excluded from the five-year review, irrespective of their role at the World Conference and of the central role these organizations play to implement many of the provisions found in the Vienna Declaration.<sup>122</sup>

Having become clear that non-governmental organizations were excluded from the scheduled debate, the High Commissioner for Human Rights

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<sup>118</sup> See General Assembly resolution 52/148, paragraph 16.

<sup>119</sup> Wiseberg, "NGO input into..."

<sup>120</sup> It is to note that in marked contrast to UNCED, certain restrictions on the work of non-governmental organizations were established during the World Conference on Human Rights (see e.g. Otto, 1996 p. 119).

<sup>121</sup> Here it is to note that approximately 250 non-governmental organizations met in a Global Forum on the Vienna Declaration and Programme of Action (Ottawa, 22-24 June 1998) where the outcome was the NGO Declaration and Programme of Action, Vienna Plus Five Review.

<sup>122</sup> Wiseberg, "NGO input into..."

convened, on the initiative of a number of non-governmental organizations,<sup>123</sup> a meeting for a dialogue on the follow-up to the Vienna Declaration and Programme of Action between non-governmental organizations and interested government delegations.<sup>124</sup> This dialogue which lasted a full three hours took place on 3 November 1998 with all conference services. Of the considerable number of government delegations that were present, thirteen made brief interventions. The non-governmental organizations had divided topics among themselves so that there was a fairly comprehensive review of the Vienna Declaration and Programme of Action from a non-governmental organization perspective.

Although the Commission on Human Rights undertook, at its fifty-fourth session, an initial review of the implementation of the Vienna Declaration and Programme of Action, based on a report of the High Commissioner for Human Rights,<sup>125</sup> and adopted a resolution encouraging non-governmental organizations, among others, to present on the occasion of the process of the five-year review their views on the progress made in the implementation of the Vienna Declaration,<sup>126</sup> and although the Economic and Social Council devoted the coordination segment of its substantive session of 1998 to the question of the coordinated follow-up to and implementation of the Vienna Declaration, as part of the five-year review process,<sup>127</sup> one must conclude that non-governmental organizations were not given an appropriate part in the five-year review of the Vienna Declaration and Programme of Action.

## **4.2 Environment Bodies**<sup>128</sup>

If governments have been careful in developing far reaching formal arrangements for non-governmental organizations to participate in the work of United Nations bodies working in the field of human rights, a somewhat different approach has been chosen with regard to bodies working in the field of environment.

### **4.2.1 The Commission on Sustainable Development**

In its decision 1993/207, the Economic and Social Council established the Commission on Sustainable Development to ensure an effective follow-up of the United Nations Conference on Environment and Development (UNCED).

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<sup>123</sup> See letter dated 29 October 1998 to the High Commissioner for Human Rights signed by Laurie Wiseberg on behalf of 25 non-governmental organizations (Wiseberg, "NGO input into...").

<sup>124</sup> Here it is to note that the Chair of the Third Committee was not prepared to formally ask the High Commissioner to convene such a meeting, as even that could be construed as consenting to participation of non-governmental organizations in the Third Committee matters.

<sup>125</sup> See document E/CN.4/1998/104. Non-governmental organizations, among others, had been requested to provide their views on the progress made in the implementation of the Vienna Declaration and Programme of Action for the preparation of this report (see e.g. General Assembly resolution 52/148, paragraph 15).

<sup>126</sup> Commission on Human Rights resolution 1998/78, paragraph 10.

<sup>127</sup> Economic and Social Council decision 1998/208, paragraph 4.

<sup>128</sup> The present chapter is partly based on work and interviews carried out by Nina Stubb in May 1999. No reference to specific interviews or discussions is made.

The Commission on Sustainable Development, the functions of which are described in General Assembly resolution 47/191, has a relationship with non-governmental organizations that completely differs from the one the Commission on Human Rights has, although both are functional commissions of the Economic and Social Council.<sup>129</sup>

With respect to the arrangements for the participation of non-governmental organizations in the work of the Commission on Sustainable Development, the Economic and Social Council agreed that those organizations which were accredited to the UNCED could apply for and should be granted roster status for the purpose of the Commission, subject to the approval by the Council.<sup>130</sup> Today, a non-governmental organization on the Commission roster that wishes to expand its participation in other fields of the Council may, through a simple request, be granted roster status for the Council. It is to note that this procedure does not require the same formalities as required when an organization normally applies for consultative status.<sup>131</sup> However, when an organization wishes to receive special or general consultative status with the Council it has to proceed through the regular procedures.<sup>132</sup>

In addition to the difference in the granting the right for non-governmental organizations to participate in the work of the Commission on Sustainable Development, there is a striking difference in the role these organizations have at the sessions of the Commission, especially if comparing it with that at the sessions of the Commission on Human Rights. If the role of a non-governmental organization at the sessions of the Commission on Human Rights is strictly that of an observer in distinction to a participant without the right to vote, it is to note that during the sessions of the Commission on Sustainable Development non-governmental organizations have in the last years participated on an equal basis with government delegations in the two day dialogue at the beginning of each session in all purposes other than voting<sup>133</sup> even though the procedural arrangements for the Commission clearly state that those organizations shall not have any negotiating role in the work of the Commission.<sup>134</sup>

This difference could be seen as a result of a provision adopted by the UNCED which recommended that the Commission on Sustainable Development should “*encourage the participation of non-governmental*

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<sup>129</sup> Whereas the Commission on Human Rights applies only the Rules of Procedure of the Functional Commissions of the Economic and Social Council, as found in document E/5975/Rev.1, the Economic and Social Council has adopted supplementary procedural arrangements for the Commission on Sustainable Development to enable an enhanced participation of non-governmental organizations in the work of the Commission. For the procedural arrangements for the Commission on Sustainable Development, see Economic and Social Council decision 1993/215.

<sup>130</sup> See E/1993/65, paragraph 2 and Economic and Social Council decision 1993/220.

<sup>131</sup> Stubb, May 1999. See also Economic and Social Council decision 1996/302.

<sup>132</sup> As of the time of writing, 82 non-governmental organizations that originally were on the roster for the Commission on Sustainable Development have been granted roster status for the Economic and Social Council, 19 have been granted special consultative status, and 5 have been granted general consultative status (Stubb, May 1999).

<sup>133</sup> Stubb, May 1999.

<sup>134</sup> Economic and Social Council decision 1993/215, paragraph 2 (iv).

*organizations.*<sup>135</sup> Furthermore, it is to note that the General Assembly, in its resolution 47/191, recommended that the Commission on Sustainable Development should not only “*receive and analyse relevant input from competent non-governmental organizations*”<sup>136</sup> or to “*enhance the dialogue, within the framework of the United Nations, with non-governmental organizations*”<sup>137</sup> but also to provide these organizations the opportunity to “*participate effectively*”<sup>138</sup> in the work of the Commission. With regard to the rules of procedure of the Commission, the General Assembly considered that these procedures, “*while ensuring the intergovernmental nature of the Commission, should allow its members to benefit from the expertise and competence of relevant...non-governmental organizations.*”<sup>139</sup> Nonetheless, the arrangements for the participation of non-governmental organizations in the work of the Commission on Sustainable Development are such that much is left for the Chair of the Commission to decide.

Although the supplementary procedural arrangements for the Commission on Sustainable Development adopted by the Economic and Social Council supplementing rules 75 and 76 of the rules of procedure of the functional commissions of the Economic and Social Council do not provide non-governmental organizations with any significant role that would have differed from the one found in Council resolution 1296 (XLIV) regulating at the time the relationship between the Council and its subsidiary bodies, on one hand, and non-governmental organizations, on the other, the practice nevertheless illustrates well how the principle of a close working relationship between the Commission and non-governmental organizations has been adopted.

It is to note that a well structured and organized CSD NGO Steering Committee has been established to facilitate the involvement of non-governmental organizations and other Major Groups in the work of the Commission on Sustainable Development. It is hard to determine whether this strong cooperation between non-governmental organizations in the field of environment has had an impact on the need of a particular organization to attend the sessions of the Commission as quite contradictory information is given with regard to the numbers of non-governmental organizations attending the sessions.<sup>140</sup>

With regard to the circulation of written statements prepared by non-governmental organizations, it is to note that these are not issued as official United Nations documents as is the case at the Commission on Human Rights. Furthermore, due to the relatively short sessions, all non-

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<sup>135</sup> A/CONF.151/26 (Vol.III), paragraph 38.11.

<sup>136</sup> General Assembly resolution 47/191, paragraph 3 (f).

<sup>137</sup> General Assembly resolution 47/191, paragraph 3 (g).

<sup>138</sup> General Assembly resolution 47/191, paragraph 7 (b).

<sup>139</sup> General Assembly resolution 47/191, paragraph 8 (a).

<sup>140</sup> See annexes 5 a) and b) on the number of non-governmental organizations attending the sessions of the Commission on Sustainable Development. It is to note that according to the focal point for CSD NGO relationships and contrary to the reports of the Commission on Sustainable Development, several hundred non-governmental organizations have attended the sessions of the Commission between 1995 and 1998 (Stubb, May 1999).

governmental organizations may not be able to make oral statements,<sup>141</sup> but due to the NGO Steering Committee it is possible to ensure a wide representation with less statements. At the Commission's seventh session, in 1999, governments and non-governmental organizations alike were allowed 7 minutes statements during the dialogue at the beginning of the session. Four speakers had been appointed by the NGO Steering Committee to present statements that had been prepared and approved jointly by non-governmental organizations.<sup>142</sup>

Mainly due to the nature of questions dealt with in the field of environment, non-governmental organizations have been allowed, not only to observe, but to participate in the work of the Commission on Sustainable Development. For this reason, non-governmental organizations, which also cooperate in an organized manner, feel that they can influence the work of the Commission, not only during the inter-sessional period, as is the case with regard to human rights organizations, but also during the sessions of the Commission.<sup>143</sup>

#### 4.2.2 Treaty bodies

The formal way for non-governmental organizations working in the field of environment to influence the implementation of treaty provisions is to attend, as observers, the meetings of the Conference of the Parties. This is provided for in most environmental treaties provided that the organization is qualified in the matter and has a genuine interest in working for the full implementation of the agreed provisions.<sup>144</sup> The present chapter will be limited to the United Nations Framework Convention on Climate Change.

As the supreme body of the Framework Convention on Climate Change the Conference of the Parties shall keep under regular review the implementation on the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall, among other things, "*seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; ...*"<sup>145</sup> recognizing, thus, non-governmental organizations as important providers of information and expertise.

With regard to the role of non-governmental organizations in the sessions of the Conference of the Parties, the Framework Convention on Climate Change notes that a non-governmental organization which is qualified in matters covered by the Convention and which has informed the Secretariat of its wish

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<sup>141</sup> The 1998 (6<sup>th</sup>) session had 16 meetings, the 1997 (5<sup>th</sup>) session 12, and the 1996 (4<sup>th</sup>) session 20 meetings.

<sup>142</sup> Stubb, May 1999.

<sup>143</sup> Stubb, May 1999.

<sup>144</sup> In this regard, see e.g. Article 7 (6) of the United Nations Framework Convention on Climate Change and Article 15 (6) of the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.

<sup>145</sup> United Nations Framework Convention on Climate Change, Article 7, paragraph 2 (I).

to be represented at a session of the Conference of the Parties as an observer, without the right to vote, may be so admitted unless at least one-third of the Parties present object.<sup>146</sup> The Conference of the Parties has also decided that the presiding officers of the Convention bodies may invite non-governmental organizations to attend as observers any open-ended contact group established under the Convention process, unless at least one third of the Parties present at the session of the Convention body setting up that contact group object.<sup>147</sup>

Concerning the two subsidiary bodies established by Articles 9 and 10 of the Framework Convention<sup>148</sup> to provide the Conference of the Parties with information, advice, and assistance with regard to matters falling under their mandate, it has been the practice of the Chairmen of those subsidiary bodies to meet with different non-governmental organization constituencies.

Although a non-governmental organization have the right to attend the sessions of the Conference of the Parties only as observers, a large number of non-governmental organizations come to the sessions where they also have been allowed to make oral statements.<sup>149</sup> Nevertheless, and as in many other United Nations meetings, it is considered that despite the access to the meetings, the most efficient way of influence is the direct contact with the States Parties.<sup>150</sup> In addition, one has to bear in mind that due to the expensive scientific research needed in the work following the implementation of the treaty provisions, only a handful of non-governmental organizations are in a position to contribute more substantially to this process.<sup>151</sup>

#### **4.2.3 Five-year review of Agenda 21**

In contrast to the five-year review of the Vienna Declaration and Programme of Action, a Special Session of the General Assembly was held for the five-year review of Agenda 21 adopted by the United Nations Conference on Environment and Development.<sup>152</sup> The holding of a Special Session also meant the holding of preparatory meetings where non-governmental organizations could participate. That the Commission on Sustainable Development, a forum where non-governmental organizations have enjoyed quite far-reaching rights, was to function as forum of the preparatory process

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<sup>146</sup> United Nations Framework Convention on Climate Change, Article 7, paragraph 6 and Rule 7 of the provisional Rules of Procedure (FCCC/CP/1996/2). A similar provision is found, among other things, also in Article 15, paragraph 6 of the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.

<sup>147</sup> Conference of the Parties decision 18/CP.4.

<sup>148</sup> Subsidiary body for scientific and technological advice and subsidiary body for implementation.

<sup>149</sup> For the number of non-governmental organizations attending the sessions of the Conference of the Parties, see annex 6.

<sup>150</sup> Martin, 1 April 1999.

<sup>151</sup> Martin, 1 April 1999.

<sup>152</sup> Paragraph 38.9 of Agenda 21 states that the General Assembly “*could consider holding a special session not later than 1997 for the overall review and appraisal of Agenda 21, with adequate preparations at a high level.*” The nineteenth Special Session of the General Assembly was held from 23 to 28 June 1997.

was guaranteeing that non-governmental organizations were given an appropriate role also during the preparatory process.<sup>153</sup>

That sustainable development cannot be delivered by governments alone is clearly stated in Agenda 21 by stressing the importance of also the private sector and other groups, including non-governmental organizations, in civil society. Although non-governmental organizations have worked very actively in developing and implementing actions for sustainable development, as noted in a report by the Secretary-General prepared for the fifth session of the Commission on Sustainable Development, it is considered that the role of non-governmental organizations needs to be further enhanced if their full potential in helping to achieve sustainability is to be realized.<sup>154</sup>

The important role played by non-governmental organizations at the UNCED and in the implementation of its recommendations was also stressed by the General Assembly which recognized the need for an active involvement of non-governmental organizations in the preparations for the special session, as well as the need to ensure appropriate arrangements, taking into account the practice and experience gained at the Conference, for their contribution during the special session.<sup>155</sup> Subsequently, in its decision 51/467, the General Assembly decided that major groups, as identified in Agenda 21 and represented by non-governmental organizations with consultative status with the Economic and Social Council and on the roster, will be invited to participate in the plenary meeting of the nineteenth special session of the General Assembly.<sup>156</sup>

Generally, non-governmental organizations have been able to participate more actively in the Special Sessions of the General Assembly than in its ordinary sessions.<sup>157</sup> The arrangements for the participation of non-governmental organizations in the nineteenth Special Session, the Special Session for the purpose of an overall review and appraisal of the implementation of Agenda 21, was, however, the first time that these organizations were granted as wide a role as at the World Conferences where non-governmental organizations in general have enjoyed the widest rights of participation as for the first time in United Nations history the plenary was addressed by the Major Groups as identified in Agenda 21 and represented by non-governmental organizations.<sup>158</sup>

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<sup>153</sup> As the first of these preparatory meetings functioned the meeting of the Ad hoc Open-ended Inter-sessional Working Group (from 24 February to 7 March 1997) and the 5<sup>th</sup> session of the Commission on Sustainable Development (7-25 April 1997) was devoted to function as the second preparatory and negotiating meeting (General Assembly resolution 51/181, paragraph 2). Here it is to note that at the Commission's 5<sup>th</sup> session certain restrictions for the access of non-governmental organizations was set up as a ticketing system was introduced allowing thirty-five NGO representatives on a first come first served basis to have access to the floor of the conference rooms during formal and informal sessions (UNED-UK Background Paper...). In addition, several regional preparatory meetings were held.

<sup>154</sup> E/CN.17/1997/2, paragraphs 82 and 95.

<sup>155</sup> General Assembly resolution 50/113, paragraph 11 and resolution 51/181, paragraph 3. See also decision 4/9 adopted by the Commission on Sustainable Development.

<sup>156</sup> For the discussion on draft decision A/51/L.70, see A/51/PV.96.

<sup>157</sup> A/53/170, paragraph 10.

<sup>158</sup> United Nations Press Release GA/9276.

Numerous speakers spoke for the promoting a constructive participation of non-governmental organizations in the efforts to achieve sustainable development, and speaking on the effective engagement of civil society, the Executive Director of the United Nations Environment Programme stated, among other things, that non-governmental organizations must be given their place in the decision-making process.<sup>159</sup>

Comparing the treatment of non-governmental organizations in the five-year review of Agenda 21, on the one hand, and the five-year review of the Vienna Declaration and Programme of Action, on the other, reveals an alarming difference. The brief examination above has illustrated how non-governmental organizations were granted an equally important role in the reviewing process of Agenda 21 as they had had in the UNCED itself, whereas the non-governmental organizations were more or less completely excluded from the five-year review of the Vienna Declaration and Programme of Action.

### 4.3 Conclusion

It is necessary to bear in mind that although the main purpose behind arrangements for consultations is to enable governments to take advantage of the vast array of expertise provided by non-governmental organizations and although non-governmental organizations have actively sought additional paths through which to influence ongoing negotiations, measuring the influence non-governmental organizations have had on the work of United Nations bodies working in the fields of human rights and environment, as in any field, can, at best, only represent a rough estimation. In few exceptional cases, it is, nevertheless, possible to conclude that non-governmental organizations have played a decisive role in not only during a negotiating process but also in starting the whole process in question.<sup>160</sup>

When evaluating the influence non-governmental organizations have on the work of United Nations bodies, it is, furthermore, possible and necessary to distinguish between the role a non-governmental organization has during the sessions of a particular body, on the one hand, and between the role a non-governmental organization has during the inter-sessional period, on the other. Both roles, although they can be quite different from each other, are important for a non-governmental organization to carry out a meaningful work.

The two fields examined in the current chapter, that of human rights and that of environment, represent two distinct patterns of arrangements for non-governmental organizations to influence the work of United Nations bodies working in the two respective fields. Having examined the patterns of arrangements for the participation of non-governmental organizations in the

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<sup>159</sup> See documents A/S-19/PV.1 to 9, and for the statement by the Executive Director of UNEP, Elizabeth Dowdeswell, see document A/S-19/PV.4, in particular.

<sup>160</sup> As examples in this regard could be mentioned the process leading to the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, or the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

work of United Nations bodies, it is possible to conclude that governments have, in general, preferred informal arrangements, arrangements that may more easily be subject to restrictions if and when necessary, in the field of human rights, whereas more formalized and more far reaching arrangements for participation of non-governmental organizations are found when examining the work of United Nations bodies working in the field of environment, although some of the most far reaching of these arrangements are of an informal nature. This difference which is quite clear illustrates how human rights questions, i.e. questions on how a government treats its own citizens, are more sensitive for governments than are global environmental concerns.

Irrespective of these differences, non-governmental organizations have been actively involved in the work of United Nations bodies working in both fields and managed to make their voice heard. This has been especially true with regard to the main governmental bodies in the two fields examined, the Commission on Human Rights, and the Commission on Sustainable Development.

## Part IV CONCLUDING OBSERVATIONS

### **5 Working together to achieve a common goal**

The discussion at the United Nations on expanding the existing arrangements for interaction with non-governmental organizations is a complex undertaking. The consultative arrangements that non-governmental organizations have with the United Nations and in the international arena has seen promising changes over the last several years, and United Nations officials and Member States have increasingly come to recognise that international debate and policy-making is more and more difficult and incomplete without the full participation of non-governmental organizations.

However, there is no one route to making the United Nations more responsive. Progress in making all areas of the United Nations more responsive will depend to a large degree on increased transparency and accountability of United Nations bodies, and whether or not non-governmental organizations are allowed to monitor and be more involved in international decision-making.

Until measures are undertaken with regard to making the United Nations more responsive, many important negotiations at the United Nations will continue taking place without the involvement of non-governmental organizations. As one example in this regard can be mentioned the work of the General Assembly working groups studying various topics of United Nations reform. The exclusion of non-governmental organizations from certain activities of the United Nations, as the work of the above working groups, is difficult to justify given that many creative and thoughtful proposals have their origin with non-governmental organizations.

It is to hope that the statements by a large number of governments about how they are in favour of a closer cooperation with non-governmental organizations and how they would like to ensure the possibility of non-governmental organizations having a greater input in the work of governments are matched with similar action when negotiating the possible extending of the consultative arrangements between the United Nations and non-governmental organizations to all areas of the United Nations.

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Vienna Plus Five Global NGO Forum on Human Rights (22-24 June 1998, Ottawa, Canada) Final Document, Declaration and Programme of Action - Vienna Plus Five Review (<http://www.hri.ca/vienna+5/final-report.shtml>).

Laurie Wiseberg, January 1999 "NGO Access to the UN" in Human Rights Tribune, vol. 6, No. 1 (January 1999).

Laurie Wiseberg, "NGO input into the General Assembly (Third Committee) Review of the VDPA, 3 November 1998 (<http://www.hri.ca/uninfo/ngoaccess/nov3.shtml>).

Number of non-governmental organizations in consultative status with the Economic and Social Council between 1948 and 1997 by category

year	general	special	roster	total
1948	7	32	2	41
1968	12	143	222	377
1991	41	354	533	928
1993	42	376	560	978
1995	69	436	563	1068
1996	81	499	646	1126
1997	88	602	666	1356
1999	106	651	681	1438

Source: E/1998/43 (Work of the Non-Governmental Organizations Section of the Secretariat, Report of the Secretary-General) and Stubb, 1999 p. 27-28.

Length of written statements submitted to the Economic and Social Council and its subsidiary bodies by category

	General	Special	Roster
1996* ECOSOC subsidiary body	2000 2000	500 1500	500 1500
1968** ECOSOC subsidiary body	2000 2000	500 1500	500 1500
1950*** ECOSOC subsidiary body	2000 2000	500 2000	500 2000
1946****	no word limits included	no word limits included	no word limits included

\* Economic and Social Council resolution 1996/31 of 25 July 1996.

\*\* Economic and Social Council resolution 1296 (XLIV) of 27 May 1968.

\*\*\* Economic and Social Council resolution 288 (X) of 27 February 1950.

\*\*\*\* Economic and Social Council resolution 2/3 of 21 June 1946.

A/53/L.68 (draft decision on non-governmental organizations adopted by the General Assembly on 17 December 1998)

December 17, 1998  
Fifty-third session  
Agenda item 58  
Strengthening of the United Nations System

Canada: Draft Decision

Non-governmental organizations

The General Assembly, having considered the report of the Secretary-General on arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system (A/53/170), and recalling the relevant provisions of the Charter of the United Nations, in particular its Article 71, General Assembly decision 52/453 of 18 December 1997 and Economic and Social Council resolution 1996/31 and decision 1996/297, both of 25 July 1996, as well as the interpretative statement read by the President of the Council upon the adoption of the latter decision, decides to request the Secretary-General:

(a) To seek the views of Member States, members of the specialized agencies, observers and intergovernmental organizations, as well as the views of non-governmental organizations from all regions, on his report (A/53/170);

(b) To submit a further report to the General Assembly, at its fifty-fourth session, in accordance with Assembly decision 52/453, taking into account the submissions received;

and also decides to continue its consideration of this question at its fifty-fourth session under the item entitled "Strengthening of the United Nations System".

Number of non-governmental organizations attending the sessions of the Commission on Human Rights between 1980 and 1999 by category

	General	Special	Roster	total
1999	29	139	39	207
1998	27	135	47	209
1997	28	127	47	202
1996	29	126	43	198
1995	16	103	42	161
1990	15	75	27	117
1980	12	42	8	62

Sources: E/CN.4/1999/MISC.3; E/1998/23; E/1997/23; E/1996/23; E/CN.4/1995/INF.1; E/1990/22/Add.1; E/1980/13.

Number of non-governmental organizations attending the sessions of the Commission on Sustainable Development between 1995 and 1998 by category

a) According to reports of the Commission on Sustainable Development

	General	Special	ECOSOC Roster	CSD Roster	total
1998	1	13	6	40	60
1997	-	-	-	-	"a large number"
1996	1	4	3	5	13
1995	3	4	-	2	9

Sources: E/1995/32; E/1996/28; E/1997/29; E/1998/29.

b) According to the focal point for CSD NGO relationships

	total
1998	> 700
1997	> 700
1996	> 400
1995	> 300

Source: Stubb, May 1999.

Number of non-governmental organizations attending the sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change between 1995 and 1998.

year	Number of NGOs
4 <sup>th</sup> session (1998)	201
3 <sup>rd</sup> session (1997)	243
2 <sup>nd</sup> session (1996)	107
1 <sup>st</sup> session (1995)	177

Sources: FCCC/CP/1998/16; FCCC/CP/1997/7; FCCC/CP/1996/15; FCCC/CP/1995/7.