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Enhancing the accountability of International
Organizations: the role of NGOs

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INTRODUCTION

There is large acceptance¹ of the idea that international organizations suffer an accountability crisis. The more they grow in number and in the fields in which they operate, the more it seems difficult to establish adequate mechanisms for holding international organizations and, ultimately, their officials, responsible for their actions. Different studies² have tried to suggest several options for making international organizations more responsible for their actions, and many have suggested³ the idea of strengthening those external actors that already interact with them based on the simple reasoning that the presence of outsiders entrusted with some forms of controlling powers will disincentive their officials from committing wrongful acts or, on a more positive note, ensure their adherence to the commitments they have made.

The aim of this study is to try to investigate the issue of the accountability of international organizations and to suggest an increased participation – both in quality and in quantity – of non-governmental organizations (“NGOs”) in order to enhance it.

Clearly, assigning the whole responsibility of holding international organizations accountable to NGOs is not possible nor would it be desirable, because it could potentially create other mechanisms difficult to ask accountability for. Indeed, completely entrusting an external and unelected entity with the supervision of the actions of an officer that, for as much as he or she can escape regular control is still the representative of a government’s mandate, would contradict any democratic ideal and, moreover, it would mean to definitely overcome the role of the nation State which is still too rooted in international relations, in international law and in the law of international organizations, but even in our subjective perception, to be put aside so easily. Moreover, it would also mean the establishment of further mechanisms able to control the “controllers”, creating therefore the problem of “who watches the watchdog?” and probably resulting in inefficient and useless complications. This is why the task of holding international organizations accountable for their actions and decisions should be shared among the different stakeholders that, at different levels, are engaged with them. Indeed, this study does not want to suggest that NGOs are the only actors able to contribute to the enhancement of international organizations’ accountability. What this study intends to do is to bring a contribution to the broad literature that is emerging on this topic and that is trying to propose different solutions. A single work cannot be comprehensive of all possible options and take

¹ To cite among the others: NYE (2001), STIGLITZ (2003), GRANT and KEOHANE (2005), WILDE (2006), PARISH (2010), HABEGGER (2010).

² Just to provide some examples of the research on the subject: VERWEIJ and JOSLING (2003), STEFFEK et al. (2008), HABEGGER (2010), PARISH (2010), PEREIRA et al. (2017).

³ STEFFEK et al. (2008), PEREIRA et al. (2017).

account of all possible scenarios, but it will be summed to the work of the ones who have been interested in working on themes of accountability for years and who are still doing so today.

Moreover, this study does not want to suggest that this kind of accountability is the only one to whom it is possible to aspire. There need to be independent and efficient judicial mechanisms for holding international organizations and their officials legally accountable for their actions and to sanction them if they are found guilty of violations⁴. The work that the International Law Commission is carrying on with its *Draft Articles on the Responsibility of International Organizations*⁵ goes in that direction. But, this is not the role of private entities like NGOs. It is not in the powers of a private entity to try a public official for his actions and to impose sanctions.

Furthermore, “responsibility” is a legal concept that links an international organization to the commission of an internationally wrongful act. In the case of “accountability”, the question is to hold international organizations accountable and to require adequate explanation even for those actions that it had the power to take and that were legal under international law. Moreover, it also means controlling the adherence of an organization to the commitments it has made and that it is expected to comply with, though not necessarily legally binding commitments.

There are over two-hundred and fifty international organizations⁶ in the world to date. Their sphere of action varies from the most general objectives of international peace and security (see the United Nations, the Organization for Security and Cooperation in Europe or the North Atlantic Treaty Organization) to the sectorial interests of smaller constituencies (see the case of the CARU, the *Comisión Administradora del Rio Uruguay*) that, still, necessitate some forms of institutionalized international cooperation. The more these organizations tackle issues that affect our daily lives and expand their reach, the more they raise concerns among citizens and scholars for their lack of democratic accountability. As Goodhart⁷ recalls, Keohane, who introduced the concept of interdependence to describe the current international regime of global governance, sees the prospect of the absence of an accountable governance as a “deadly mix” and the widespread calls for

⁴ According to article 6 the Draft Articles on the Responsibility of International Organizations, “The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization”.

⁵ *Draft Articles on the Responsibility of International Organizations*, adopted by the International Law Commission in 2011 at its 63rd session, Yearbook of the International Law Commission.

⁶ ENCYCLOPAEDIA BRITANNICA (2016).

⁷ GOODHART (2011: 45-60).

greater democracy and accountability emanating from the civil society suggest that such fears are neither isolated nor exaggerated. This is why investigating on the possible solutions to this problem is so relevant for contemporary international studies.

This thesis will develop as follows. In the first chapter, we will introduce the different conceptualizations of accountability, adopt one and explain the reason why it is more applicable to the international scenario. Then, we will discuss the specific issue of the accountability of international organizations. After introducing the main dimensions, by which we mean the main “aspects”, that should be evaluated for the assessment of the accountability mechanisms within an international organization, we will suggest some evidence of cases that can best represent the lack of accountability that affects certain international organizations, by investigating their accountability mechanisms and highlighting their main flaws.

Chapter two will be devoted to the analysis of NGOs’ interactions with international organizations. First, we will introduce an historical background, which can give us a comprehensive idea of the development of relations between these two entities. Then, we will address an important issue in the debate on NGOs’ legitimacy in the international sphere: their legal personality. Finally, we will discuss which are the models of interaction between international organizations and NGOs. We will not present the situation of each international organization, but we will start from the assessment of the methods available within the United Nations, since they are the reference for many other international organizations. However, other significant cases will be analysed, in particular the case of the OSCE, the participatory status that NGOs enjoy within the Council of Europe and the *amicus curiae* role of NGOs in international courts and tribunals.

After the analysis of the theoretical framework, the third and final chapter will provide empirical evidence suggesting that NGOs can effectively contribute to the enhancement of international organization’s accountability. We will study two cases: the first concerns the role of NGOs in the settlement, functioning and defence of the World Bank Inspection Panel; the second, instead, concerns the role of NGOs in the enhancement of the accountability of the United Nations Security Council.

The conclusions will summarise the main findings and provide a final assessment of NGOs’ participation in international organizations as a factor that enhances their accountability.

The methodology used combines a theoretical approach and an evidence-based approach. The first two sections are more theory based, though the first chapter, in its assessment of accountability issues within international

organizations, will provide factual evidence supporting the thesis that there is indeed an accountability problem. The third chapter, however, will be the one where the evidence-based approach will be used the most. We will present case studies based on particular cases of NGOs' engagement in international organizations that are considered as being particularly relevant for the development or improvement of accountability mechanisms.

Some preliminary remarks are necessary before going any further with this discussion. We have already mentioned at least three concepts that need to be addressed more specifically in order to have a better comprehension of the issue at stake: international organizations, non-governmental organizations and democratic accountability.

According to the *Draft Articles on the Responsibility of International Organizations*⁸, an international organization is a form of cooperation among States established by a treaty or other instrument governed by international law and possessing its own legal personality. It may include as members, in addition to States, other entities.

It is a bit more difficult to define what a non-governmental organization is. Everybody has a general idea of what "NGO" means, but there is no agreed definition in the field. In 1994, a UN Secretary General's report of a task force established to undertake a general review of arrangements for consultations with NGOs tried to define them:

"an NGO is a non-profit entity whose members are citizens or associations of citizens of one or more countries and whose activities are determined by the collective will of its members in response to the needs of one or more communities with which the NGO cooperates"⁹.

However, this definition does not accurately describe the essence of what an NGO is. Therefore, the best thing we can do in this study is to adopt an operational definition able to include all the key characteristics of a non-governmental organization. What emerges from the literature on the issue is a general agreement on the following aspects¹⁰: the existence of a "*societal actor*", meaning that an NGO emerges from the private sphere as a form of association among private citizens; *independent*, both in terms of political independence from States and of their financial, donations-based independence; aimed at the *promotion of common goals* and of the *public*

⁸ *Draft Articles on the Responsibility of International Organizations*, adopted by the International Law Commission in 2011 at its 63rd session, Yearbook of the International Law Commission, art. 2.

⁹ Report of the United Nations Secretary General adopted on 26 May 1994, E/AC.70/1994/5, *General review of arrangements for consultations with non-governmental organizations*, p. 4, par. 9.

¹⁰ MARTENS (2002: 271-285).

interest; no-profit nature (but paid staff); a *minimally organized structure* (with permanent members, offices and self-governing arrangements, not *ad hoc* entities); *professionalized*, meaning that the staff is usually paid because of its specifically trained skills and competences. There is one final element that concerns international NGOs and that cannot be ignored in a discussion on these entities, but it deserves special attention and, for this reason, will be addressed better in the following chapters, since it represents a question for wider debate: the international legal personality.

Last, we have to define what is meant by “accountability”. The widely accepted idea is that democratic accountability means making those who wield power, answerable to the appropriate people¹¹. The definition provided by Grant and Keohane (2005) is:

“some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of those standards, and to impose sanctions if they determine that those responsibilities have not been met”¹².

At the nation-State level this means that the governed (the people of the State) are able to hold their governors accountable for their decisions and their actions. It is, therefore, a straightforward relationship that connects the actor who is in charge of controlling, to the agent that needs to be held responsible. However, as will be seen in the course of the present work, it is not so easy to replicate this same condition at the international level and, specifically, at the level of international organizations, simply because the relations that connect the represented and their representatives are not so direct and there are actually multiple stakeholders that represent sectorial interests but do not have the power to influence the delegation of power through the most common means, the democratic elections. That is why more recent theories¹³ tend to suggest that the question of accountability should not be investigated in terms of *whom* to be accountable, but in terms of *why* these institutions should be accountable *per se*, taking into consideration an idea of accountability, based on the necessity to be answerable because of the presence of established norms, rather than to a specific actor and that the traditional idea of accountability could be reformulated in order to take into consideration the asymmetries existing at the global level. These new ideas will be discussed later in this work because they actually fit better the international context due to its complexities that do not enable it to be reduced to a simple actor-to-actor relationship.

One more final remark before starting this dissertation needs to be added, to explain the reason why this study focuses on non-governmental organizations

¹¹ GOODHART (2011: 45-60).

¹² GRANT and KEOHANE (2005: 29-43).

¹³ See: RUBENSTEIN (2007: 616-632) and GOODHART (2011: 45-60).

rather than on civil society organizations (“CSOs”) as a whole. Some authors refer to CSOs¹⁴ in general and use the two terms interchangeably, while they then actually cite cases concerning specifically NGOs. This study, however, is centred on NGOs as a specific subcategory of CSOs. The answer for this choice can be found in the characteristics that were previously introduced to define what an NGO is. In particular, this work relies on the question of “*organizational structure*” and “*professionalism*”. While “civil society organizations” is a general set that also includes NGOs, not all kinds of CSOs have a permanent and organized structure and not all of them, most importantly, are composed by professionals. Networks of people who share common interests and goals are not structured enough to be considered relevant actors to whom an international organization should be accountable to. In order to demand the compliance with standards and norms, an entity must have professionals that know their job, that are specialized in advocacy and lobbying and, therefore, who can use the right pressure to expect answers for a taken decision. CSOs¹⁵ include social movements (which are not permanent and structured by definition), labor unions, community associations and individuals (still not organized enough), think tanks, academics and scholars. Therefore, the category of civil society organizations is too general and refers to too many actors, independently from their organizational structure.

The purpose of this thesis is to argue that NGOs can contribute better to the enhancement of international organizations’ accountability because they constitute professionalized channels with the effective means for achieving this purpose.

¹⁴ For instance: STEFFEK et al. (2008), PEREIRA et al. (2017).

¹⁵ EUROPEAN COMMISSION.

CHAPTER 1

THE ACCOUNTABILITY OF INTERNATIONAL ORGANIZATIONS

This chapter aims at analysing the current issues concerning the accountability of international organizations, analysing also some of the most pressing situations within some specific international organizations. Before doing so, however, it is necessary to define the theoretical framework in which this study operates and, therefore, to introduce the concept of accountability and the different models of accountability that have been elaborated. In doing so, the study will also explain the reasons for adopting one instead of the other for the purposes of the work and of the discussed topic. After an analysis of these theoretical elements, it will be then possible to proceed to the central issue of the accountability of international organizations: how it is defined or characterized, what are its dimensions and what is the empirical evidence of this lack of accountability in international organizations.

1.1 The concept of accountability: to whom? Through norms or actors?

The debate around the necessity of making international organizations more accountable for their actions and decisions has developed consistently since the beginning of the 2000s. The *Draft Articles on the Responsibility of International Organizations*, as already mentioned, are a proof of the interest that has emerged on this topic. Indeed, individual accountability is critical for the correct functioning of an international organization and holding organizations accountable means, in practice, holding the individuals who work in them accountable¹⁶. However, accountability does not only mean sanctioning wrongful acts but also instituting mechanisms that will discourage officials from committing them or receiving adequate response in case of non-compliance with the commitments that an organization has made to the engaged stakeholders. In fact, although an external and independent judicial authority is the desirable means through which the sanctioning of wrongful conducts and the respect of the rules can be achieved, the existence of internal mechanisms that do not need to be intended as special circumstances (as in the case of a judicial proceeding) but as regular instruments for checking compliance and commitment to the agreed duties and responsibilities of an official can serve this purpose too. Indeed, such mechanisms could actually

¹⁶ Clearly, in this case by “individual accountability” we mean those actions performed by an agent of an international organization acting in his or her official capacity and not the private conduct of an agent for whom the international organization cannot be responsible. For a better understanding of this concept see note 4 where article 6 – that specifies the definition of “conduct of organs or agents of an international organization” – is reported.

be even more efficient since, as recalled, they would not necessitate any special procedure that could even take years in order to reach a conclusion, but the simple performance of a prearranged set of checks on an official's activity.

The concept of accountability belongs to different fields from the world of economics and business, to the political theory and, most importantly, international law. As mentioned in the introduction, there is a tension between the traditional understanding of what accountability is and a more recent one that tries to take into account the diversity between the domestic realm and the international one. This is the reason why before starting a reflection on the specific topic of accountability within international organizations, it is necessary to introduce what these two models of accountability prescribe and to explain why one will be preferred to the other in this study: the standard model of accountability, also called the actors-oriented model, and the norms-oriented model¹⁷.

The first model is the one conceptualized by Keohane¹⁸ which entails a form of institutionalized accountability where the agent whose action is under scrutiny recognizes the right of the controlling actor to exercise its role. In this case, open information and capacity to sanction become the two most relevant elements. In the democratic governance of States, this mechanism is represented by the possibility for the governed to hold their governors responsible for their actions through democratic means, the primary one being the elections. Indeed, the governors receive a mandate from the people to act according to their preferences and interests and they should be responsive to the requests made by effectively considering them during the decision-making processes. However, sanctioning the non-adherence to the people's requests is not possible unless the electorate can have access to the relevant information needed for assessing the acts carried out by their governors. The standard model of accountability also identifies two means through which the governed hold their governors responsible, although – as it will be possible to notice – they often overlap: participation and delegation. Participation refers to the most important democratic means for the engagement of the people in public decisions, the elections. Delegation actually incorporates the idea of participation and adds to that the possibility to hold governors accountable through the democratic institutions whose members have been elected by the people. Thus, as observed, the standard model is quite direct in its relations. The actors entitled to hold the agents accountable are the governed, the people. There is no other answer to the question “to whom do they have to be accountable?”.

¹⁷ GOODHART (2011: 45-60).

¹⁸ KEOHANE (2005: 48-53).

However, at the international level the question is more complex because there is not such a straightforward chain that connects the actor (to whom to be accountable) and the agent, insofar as there is not a straight line connecting the representative of a member state in an international organization to the citizens that he or she represents. This is why some authors have questioned the validity of the standard model, at least for its application to issues of global governance. At the same time, however, many are sceptical about the possibility of reproducing a system of accountability at the international level due to the lack of a specific *demos*.

More recently, facing the emerging criticism around the standard model of accountability, some authors have tried to suggest new ones more able to adapt to the reality of global politics and, also, of international organizations. In particular, new proposals stem from the idea that it is impossible to replicate the actor-agent relationship that exists at the national level and represented by the standard model, at the global level. This is why Goodhart, for instance, has proposed a model of accountability centred on norms rather than agents, believing that the traditional models rely on Westphalian assumptions (a state-centric system) that are not applicable to issues of global governance. According to his model “accountability is achieved through mechanisms of accountability to general and inclusive norms that constrain power and enable agency”¹⁹. This model, moreover, requires a shift in the perspective from the question “who to be accountable to?” to the question “why being accountable?”, exactly in order to avoid the “who” problem that proves so difficult to apply at the global level. The new central idea of accountability becomes the “why” and the answer to this is an easy one: because of the agreement upon which the governors should adhere to the existing norms and standards that constrain the exercise of power and enable meaningful political agency. As Goodhart affirms, these standards can be considered as a “democratic conception of emancipatory human rights”²⁰: protection, inclusion, empowerment, fairness, education, personal liberty, physical integrity, social and economic security, and political participation are fundamental democratic rights because they are necessary for preventing the domination of the majority (though fairly elected) and allow the opposition – the minority - to exercise control over its actions. Indeed, this emphasis on human rights as standards of accountability clarifies why democratic majorities or their representatives cannot abuse their power as to jeopardize minorities’ rights, the respect of the due process and the rule of law. It is the existence itself of these recognized and sanctioned standards that enable the enhancement of the democratic accountability and allow the control of the actor responsible for its actions. If we reconnect this to the role that NGOs can play in enhancing the accountability of international organizations, it is now easier to understand how also non-elected, non-representative nor entrusted

¹⁹ *ivi*, p. 51.

²⁰ *ibidem*

bodies can still be considered legitimate subjects to enhance international organizations' accountability. Indeed, in this context, they can be considered as the minority that lacks forms of representation but, as long as they promote, even in their everyday practice, the internationally agreed standards concerning human rights, they should be seen as contributing to democratic accountability through the control that they can exercise by advocating for the respect of those human rights by the "governors", that in the case of international organizations are the delegated officials. At this point, it is clear which model will be adopted in the course of this thesis: the alternative model or norms-oriented model. It is still not a strictly codified model, but many authors are contributing to its elaboration because of the strong conviction that the standard model is not applicable to the complex reality of global politics and, therefore, of international organizations. Thus, it is necessary to continue explaining the main ideas behind this new model and to introduce some of the authors that are working on its definition.

Rubenstein²¹ introduces the concept of "surrogate accountability" when addressing the issue of the asymmetries that are present at the international level and that prevent the standard model from being applied at the international level. Her²² reasoning starts from the assumption that the traditional accountability is made up of four phases: standard setting, information gathering, imposing sanctions and re-defining standards. Standard setting means that the actor to whom accountability must be held and the agent whose actions are under scrutiny (to use the terminology she borrows from Grant and Keohane, the "accountability owner" is the former and the "power wielder" is the latter) agree on the standards that are to be used as a reference during the accountability process. Information gathering means that the power wielders have to present information supporting their decisions and explaining their actions. However, the power wielders are not the only actors engaged in gathering information. In order to perform an objective evaluation of their work, accountability owners too are supposed to gather the relevant information and even to receive help from third independent parties who can support them in this. Sanctioning means that accountability owners are able to sanction the performance of the power wielders if they are not complying with the agreed standards. Finally, the re-definition of standards can happen if both parties agree to reformulate them in the light of the completed process of accountability. What Rubenstein, however, correctly notices is that this whole process is only applicable if the accountability owners are more powerful than the power wielders. If the accountability owners are less powerful, they have no role in defining the standards, gathering independent information and, most importantly, sanctioning the wrongful acts. In her study, for example, she mainly refers to the less powerful in terms of groups of non-organized people, such as exploited workers,

²¹ RUBENSTEIN (2007: 616-632).

²² *ibidem*

peasants, rural communities, etc. However, the same conceptualization can be applied to the realm of power relations within an international organization and, specifically, to the different weights that the different stakeholders within them have. This is exactly the case of NGOs participating in the life of international organizations. They do not and cannot be compared to the power that effective members have within international organizations, which are predominantly States. Moreover, since they are not elected members and they do not represent the member states of an international organization they cannot have their same rights and, therefore, this implies too that they should not have the same voting rights. However, being them representatives of sectorial interests that are often not the same as the agenda upon which the international organization in question agrees and since, whenever participating, their powers are quite limited and their actions under severe scrutiny, they might be considered the weakest in the international organization-NGOs relationship. Therefore, the idea of the surrogate accountability, can also find its application to this specific issue.

Before entering any further in the specific discussion on the accountability of international organizations, it is necessary to define the concept of “surrogate” accountability and to conceptualize it in the light of the alternative accountability/normative-oriented model of accountability proposed by Goodhart. According to Rubenstein, “surrogate accountability occurs when a third party sanctions a power wielder on behalf of accountability holders because accountability holders cannot sanction the power wielder”²³. In this case, for instance, international tribunals or inspection panels within international organizations can be the third party needed to sanction the wrongful act of an international organization (or one of its bodies or even one of its members) since NGOs can contribute to the sanction by providing the relevant information and proofs for their misconduct but they do not have themselves the power to do so.

Therefore, if we were to find a synthesis between the two alternative models of accountability elaborated by Goodhart and Rubenstein we might say that NGOs have a right to be considered accountability owners as long as they advocate for international organizations’ officials to adhere by the norms and standards generally recognized for the protection of human rights and, at the same time, themselves adhere to them. However, being in a position of power-asymmetry with said officials and representing the less powerful agent in this relationship, the kind of accountability that they can require is referred to as “surrogate accountability” or “second best accountability” insofar as it entails the intervention of a third party entrusted with the powers necessary for accountability to be requested and effectively accomplished, in particular for what concerns the core of the accountability process, which is the possibility to sanction the responsible agent if its actions are not in conformity with the

²³ *ivi*, p. 624.

standards agreed or lack the sufficient explanation for the misconduct to be justified. As third parties, we may refer to an international court, an inspection panel or even a delegated official representing one of the member states or entrusted, for instance, with voting power, prone to support the position advocated by the NGO.

1.2 The accountability of international organizations

The decision-making processes within international organizations and their consequences appear very distant to the general public. However, reality is much different. The operations enacted by international organizations affect the lives both of the citizens whose countries participate in said organizations and of those whose countries do not (think, for instance, to the repercussions that the European Union Asylum System has on people whose home countries are not members of the European Union). The intervention of international organizations varies from enabling the reconstruction of natural catastrophes-torn countries, the disbursement of loans to countries in need for development programs or infrastructural works, to deciding which foods are considered harmful to the human health and therefore whose circulation should be limited. This is the reason why the more international organizations affect directly the functioning of everyday processes the bigger is the call for their increased accountability. Indeed, for the academic circles and the professionals concerned with international organizations' internal mechanisms, it appears clear how there is an insufficient control of the decision-making processes, from the employment of a person, to budgetary allocations, to the deciding if, when and how to intervene in a war-torn country. As Parish²⁴ argues, every public organization is susceptible to misconduct and this simply happens because an organization is made up of people, and not every person might be interested in working for the public good that it pursues. Challenges to a due process able to hold accountable the public officials responsible for the performing of certain tasks is difficult already at the domestic level. Within the bureaucracy of an international organization, these challenges multiply because there are not straightforward lines that connect the authority to be held responsible for its actions to the agent that should require it to answer. Officials of international organizations should primarily be responsible to the member states that they represent and that delegated decision-making powers to them, but at the same time, they should be responsible to the citizenry of those countries which, however, does not have a clear and transparent account of how and why that specific person has been assigned that decision-making power. It is possible to argue that the people of a country elect their representatives who, in turn, nominate their international ambassadors. However, the chain of delegation is too shadowy

²⁴ PARISH (2010).

and difficult to follow and thus, it does not enable the citizens to have clear control on it. In addition, there are many other organs in international organizations that do not represent any State. It is the case, for instance, of the Secretary General of an international organization that operates for the whole organization and does not respond directly to any member state, or of the members of judicial, quasi-judicial and inspecting bodies who, due to their need to be independent from their national governments in order to perform their functions, cannot be asked to be accountable to them, but need different mechanisms for proving their accountability. Moreover, member states and citizens are not the only actors participating (directly or not) to the life of an international organization. Corporations, civil society organizations and NGOs, think tanks and professionals' associations all contribute to the functioning of international institutions. This is why, and we already had the opportunity to see, applying the usual concepts of accountability proves much more difficult at the international level.

When entering the debate about the need to enhance the accountability of international organizations, there is one expression that is often cited: democratic deficit. In this section, the study will address what is meant by this expression, but also what are the other dimensions concerning the accountability of international organizations that should be taken into account when addressing this issue and assessing the flaws that decision-making processes present within them. There is not a unitary framework for the assessment of the accountability mechanisms within international organizations. Different authors mention different elements and they sometimes overlap, so this work will try to consider those dimensions that are most generally agreed upon by experts of the field. For this aim, it is interesting, therefore, to consider the work of the *One World Trust* – a London based think tank whose mission concerns questions of accountability both at the national and global levels. The Trust is constituted as an NGO and enjoys special consultative status within the UN Economic and Social Council. Since 2008, the think tank has been formulating an accountability framework based on some critical dimensions - that mainly coincide with those that the literature generally recognizes as the main features for evaluating accountability - and they have been assessing the performance of different international actors according to them. The considered dimensions are: transparency, participation, evaluation, complaints and response, and accountability strategy²⁵. We will later introduce them, providing larger space for the question of transparency. The other dimensions will be analysed altogether. For now, we will start from the issue of the democratic deficit.

²⁵ HAMMER and LLOYD (2011).

1.2.1. The democratic deficit within international organizations

The democratic deficit within international organizations²⁶ is often referred to as the perceived distance between the interests of the general public – the citizenry which should be represented in an international organization – and the agenda carried on by the organization in question.

The issue is basically composed of two elements: on one side, as already mentioned, the distance is represented by the fact that member states' delegates to international organizations are generally unknown to their relative constituency and, moreover, the chain of delegation is too far removed from the original source of delegated power, the people. However, on this specific matter, it would be a competence of the State to perform a stricter control over its representatives and to report to the electorate the decisions taken by international organizations' ambassadors within them or, in the first place, to make public their aims and ideas concerning their roles in the international organizations they participate in during the electoral time. The second element is the perceived – and quite actual – distance between the agenda which is implemented by international organizations and the concerns and issues that the civil society would instead bring to their attention. In this case, so, the democratic deficit is intended as an asymmetry between the interests of the general public (which happens to be the constituency of a given member state and, therefore, the primary source of delegated power) and those of their representatives within international organizations. Sometimes, this is also the result of a lack of transparency not only of the processes taking place in the organizations but also of the relative available information. This is why this leads us to the second element characterizing the accountability of international organizations, transparency.

1.2.2. Transparency

Closely connected to the idea of more direct chains of delegation is the idea of transparency. It can be defined as “the provision of accessible and timely information to stakeholders and the opening up of organizational processes to their assessment”²⁷. In order for transparency to be granted, the engaged stakeholders need to have access to relevant, timely and accurate information, otherwise they could not perform their controlling functions nor use it for political debate, lobbying and advocacy. The close link between transparency and more direct chains of delegation is due to the fact that the tendency to increase the bureaucratization of internal processes makes the aspiration of transparency much more difficult to achieve. In an era where at the centre of

²⁶ STEFFEK et al. (2008: 2-5).

²⁷ HAMMER and LLOYD (2011).

public policies' debates there is the question of the "open governments", meaning the disclosure of information concerning public administrations' documents and the easy access to that information for the general public (in which the internet would be the most valid resource), it is impossible not to consider that even international organizations should be more open about their deliberations, decisions and actions in order to be held accountable for them. This is especially important if we consider that, at times, they are those promoting the disclosure of information at the domestic level in both the public and private sectors. International organizations, however, seem to follow a different trend. Indeed, although many of them have policies for the publication of their internal documents on their websites (information disclosure policies), they have great discretion in selecting what kind of information should be made public but this goes in the opposite direction of transparency. For it to be effective, information disclosure policies cannot be selective and voluntary. Nevertheless, agreements concerning information disclosure are based on the arbitrary will of the organization to decide how far to go in releasing information. It is worth noticing that the question of transparency is not merely an issue that should concern the general public but international organizations' officials themselves insofar as secrecy may give rise to suspicions and, consequently, negatively affect the legitimacy of the international organization in question, creating a constant debate on the legitimacy of the acts of the organization. Transparency is therefore necessary for their own effectivity.

According to the *Global Transparency Initiative*²⁸, transparency principles should generally be: the right of access, automatic disclosure, access to decision-making, right to request information, limited exceptions, appeals, whistle-blower protection, promotion of freedom of information, regular review. *One World Trust*, instead, suggests four good practice principles for transparency: respond to all information requests within a certain timeframe, justify denied information requests, identify a narrowly defined set of conditions for non-disclosure of information and, finally, put in place an independent appeals process for denied information request. More or less, these two proposals coincide on the necessity of defining a limited set of conditions for non-disclosure of information in order to provide stakeholders the maximum possible access.

²⁸ GLOBAL TRANSPARENCY INITIATIVE.

1.2.3. Participation, evaluation, complaints and response, and accountability strategy

Participation means the active engagement by an organization of both internal and external stakeholders in the decisions and activities that affect them. Participation strengthens ownership and buy-in for what organizations do by those they affect²⁹. Coherently with the subject of this thesis, we will focus on external stakeholders. Before doing so, however, it is necessary to differentiate internal and external stakeholders in an international organization. According to the legalese of project management and stakeholder analysis³⁰, internal stakeholders are those people that are officially entrusted with functions within the concerned international organization. They are the member states and the officials and agents working in each of the organization's organs. On the other hand, external stakeholders are the parties or groups that are not part of the organization but that are, nevertheless, affected by its activities and, therefore, have an interest in engaging with it.

According to *One World Trust*, among the good practices identified for their engagement there is, for instance, the need to clarify the activities and level at which stakeholders can expect to be engaged; to communicate in a timely manner the purpose of any engagement and the scope for stakeholders' influence; to change policy or practice according to the outcome of the engagement and, in case it is not possible, to provide justification for it. For instance, the United Nations Economic and Social Council has a comprehensive legal framework concerning the involvement of NGOs in its activities and, therefore, NGOs' advocates know what they can expect from their participation and the boundaries of it. We will have the chance to discuss this topic more in detail later.

In order to be effective, the participation of external actors needs to be able to produce a change. A form of participation that does not envisage an active role, like presenting written statements or exposing them orally, for instance, cannot be considered an effective participation mechanism and will not provide for the increased accountability of the organization in question. Clearly, not every stakeholder can be engaged at the same level and with the same expectations, because they would be too many. This is why even forms of representation of groups' interests (as in the case of NGOs) are viable solutions. Moreover, what is fundamental is that the participatory conditions are set forth immediately so that each stakeholder knows its potential field of action.

Evaluation is the process through which an organization monitors and reviews its progress against goals and objectives, reports on results and feeds learning

²⁹ HAMMER and LLOYD (2011).

³⁰ SURBHI (2015).

from this, into future planning and practice³¹. It ensures that an organization learns from and is accountable for its performance. Evaluation means also monitoring, hence not only the assessment of outcomes and/or impacts, but also the constant monitoring of progress and provision of feedback to enable adjustments before appreciating the final outcomes. Evaluation mechanisms must be established at all levels of the organization, from programmes and projects, to performance reviews, to policy-making and so on.

These mechanisms provide important factors for assessing accountability. Indeed, on the one hand, they represent the will of an organization to assess its own performance and, therefore, the actual commitment to the purposes it aspires to reach. On the other hand, evaluation is a fundamental tool for learning and increasing the organization's responsiveness. Finally, it is worth noticing that the contribution of evaluation to accountability depends on participation: effective participation is needed to produce goals, which increase accountability, and evaluation provides a means to ensure that these goals are achieved, thus making the organization accountable to its stakeholders.

Complaints and response are intended as the channels developed by an organization that enable internal and external stakeholders to file complaints on issues of non-compliance with the organization's own policy framework or against its substantive decisions and actions, and which ensure that such complaints are properly reviewed and addressed³². In the case of NGOs participating to the life of international organizations, it means that they should have access to bodies in order to complain about their wrongful acts, omissions or non-compliance with the rules.³³ The cases that we will present in this chapter, instead, will highlight the main flaws that the existing litigation mechanisms provide for accountability. One of the main issues concerning the accountability of international organizations is indeed the lack, in the majority of cases, of mechanisms for the people directly affected by their decisions to have their right to a due process or a legal review of their actions and/or decisions recognized. Clearly, there are a few exceptions. For instance, the United Nations Focal Point for De-Listing and the relative Office of the Ombudsperson, established by the United Nations Security Council in order to receive de-listing requests (either through the individuals directly concerned or through their State of residence or of citizenship) for individual sanctions which are considered to have been mistakenly issued^{34,35}. The World

³¹ HAMMER and LLOYD (2011).

³² *ibidem*

³³ As we will have the chance to see, this dimension is substantially a judicial one. In chapter 2, we will introduce the methods for NGOs' interaction with judicial bodies.

³⁴ UNITED NATIONS SECURITY COUNCIL.

³⁵ The Focal Point for De-listing, established pursuant to Resolution 1730 (2006) receives de-listing requests and performs the tasks described in the annex to that resolution, as well as the tasks described in paragraphs 76 and 77 of Resolution 2253 (2015) and paragraph 22

Bank, on the other hand, has an Inspection Panel through which communities affected by the Bank's projects can file a request for inspection if they believe that the project will adversely affect their lives. However, mechanisms through which individuals can file complaints directly against an international organization are not the norm. The absence on a larger scale of such mechanisms or bodies coupled with the great immunities that international organizations' officials enjoy makes most of them practically unaccountable³⁶. Aside from the aforementioned cases and a few other exceptions, the internal bodies that are often created within international organizations and that are charged with the duty of analysing individuals' complaints for wrongful actions, most of the time serve to settle complaints deriving from employment relationships, which means that the process is all internal and leaves no space for external actors to monitor it. Organizations that have created administrative tribunals include the United Nations, the World Bank and the International Labour Organization. However, as Stiglitz³⁷ highlights, the outcomes of these proceedings will reveal the incredibly low number of findings in favour of employees and, moreover, administrative tribunals generally refuse to hold oral hearings or to order discovery, deciding the cases entirely on the basis of the papers³⁸.

Finally, by accountability strategy is meant an organization's understanding of and commitment to its accountability relationships with its stakeholders and support of its abilities to exercise leadership on accountability and related reforms³⁹. For instance, public disclosure policies are an accountability strategy. So are all those policies directed at improving the accountability of an organization. An accountability strategy, therefore, can either be official legal instruments created through binding acts (recall the case of the Focal Point for De-Listing or the World Bank Inspection Panel), or be conceived as soft law instruments, like guidelines or frameworks, therefore without a mandatory effect because they are not the result of a legally binding document. The point is that, in order for an international organization to be appreciated under this dimension, even soft law instruments, which basically correspond to declarations of intent, are sufficient because they demonstrate that the organization is already on the right path for committing itself to being accountable.

of Resolution 2255 (2015). Petitioners, other than those whose names are inscribed on the ISIL (Da'esh) and Al-Qaida Sanctions List, can therefore submit de-listing requests either through the focal point process or through their State of residence or citizenship. Instead, petitioners whose names are inscribed on the ISIL (Da'esh) and Al-Qaida Sanctions List can submit their de-listing requests through the Office of the Ombudsperson.

³⁶ PARRISH (2010).

³⁷ STIGLITZ (2003: 111-139).

³⁸ *ibidem*

³⁹ HAMMER and LLOYD (2011).

1.3 Assessing accountability issues within international organizations

In this paragraph, we will make a first step to move from theory to practice. Indeed, we will try to assess the accountability frameworks of some of the world's most important international organizations. The choice of the assessed organizations, therefore, is based on their relevance in the international sphere. For each organization a general introduction will be provided, in order to understand its structure first and to be able to follow more easily the accountability assessment. In the evaluation of the organizations' accountability mechanisms, this study will try to rely upon the criteria of the democratic deficit and on the five dimensions of accountability elaborated by the *One World Trust*. The application will be seen case by case according to the possibility of taking into account for each organization each of these elements and even to the available information and research on them. The type of organizations assessed are: international financial organizations, international security organizations, the United Nations, and regional organizations.

1.3.1. Accountability issues in international financial organizations: the International Monetary Fund, the World Bank and the World Trade Organization

The following paragraph will be dedicated to the analysis of the major issues concerning the accountability of the international financial institutions: the International Monetary Fund ("IMF"), the World Bank ("WB") and the World Trade Organization ("WTO"). They are the ones that have received probably the greatest attention by the general public in relation to their accountability mechanisms and upon which the heaviest pressure has been put in order to convince them to adopt mechanisms enabling the general public to hold them accountable.

The International Monetary Fund

The IMF was created in 1944 and is considered – along with the World Bank – one of the Bretton Wood's institutions (being the two major outcomes of the Bretton Woods conference that took place right before the end of the Second World War). The IMF's primary purpose is to ensure the stability of the international monetary system. A 2012 reform updated its mandate to include all macroeconomic and financial sector issues that enable global economic stability⁴⁰. To date, the IMF counts 189 Member States, so it can be considered in practice a universal international organization, as far as its size and reach

⁴⁰ INTERNATIONAL MONETARY FUND.

are concerned. Its aim is performed through three main functions: surveillance, technical assistance and lending.

Stiglitz – recipient of the Nobel Prize in Economics and severe critic of the IMF's conduct - argues that its main accountability problems derive from its governance structure and that they are a result of the different direction that the Fund has taken compared to the original objectives that motivated its creation⁴¹ (the stabilization of the international monetary system).

Therefore, first of all, it is necessary to introduce the basic elements of the IMF's governance structure. The most important body is the Board of Governors, which is the highest decision-making organ. It consists of one governor and one alternate governor for each Member State. These governors are usually the Minister of Finance or the Head of the Central Banks of the Member States. While most of its functions are delegated to the Executive Board, the Board of Governors retains the right to approve quota increases, special drawing rights allocations, the admittance of new members or their compulsory withdrawal, and amendments to the Articles of Agreement and By-Laws⁴². The problem here is that while ministers of finance are themselves part of the national government of the State they represent, the situation with central bank's governors is quite different. Indeed, one of the main features of central banks is their necessary independence from the government. If we add to this the fact that one of the IMF's missions in the latest years has been to make central banks more independent, this means that the IMF's ultimate decision-making organ is composed by institutions that are always less accountable to the public or that escape the democratic process⁴³.

The Executive Board, which conducts the daily business of the IMF, indeed, is directly accountable to the Board of Directors that, due to its composition, represents a particular segment of society compared to the general interests of the wider public in terms of social security, welfare, labour and development, for instance. So, as already analysed in the general assessment of international organizations' accountability issues, the IMF presents an excessive length of the delegation chain and the weaknesses in each link of that chain correspond to an attenuation of accountability. Moreover, it adds the problem of being governed by institutions that are always more unaccountable and independent from the mandate of the electing people. So, ultimately, the IMF is not accountable to those who are significantly affected by its policies.

One positive remark concerning the governance structure and its accountability is the 2010 quotas reform that the IMF went through in order to update the voting shares to the current economic weights present in the

⁴¹ STIGLITZ (2003: 111-139).

⁴² INTERNATIONAL MONETARY FUND.

⁴³ STILGITZ (2003: 111-139).

international system that are clearly different compared to those existing in 1944, the year in which this institution was born. The reform introduced a shift in quota shares of over 6 percent from over-represented Members to under-represented Members and a further shift of another 6 percent to dynamic emerging market and developing countries.

Finally, Stiglitz also addresses the issue of transparency and openness⁴⁴. Indeed, his idea is that the constant interconnections of the IMF with the world of finance has made it considerably influenced by the culture of secrecy which is typical of the financial markets. Although one of the commitments of the Fund is to encourage the public disclosure of documents and information by its Member States, most categories of the Board's documents are under a "voluntary but presumed"⁴⁵ policy of public disclosure, which in itself does not say much and does not constitute a guarantee for transparency. Since governance reforms are difficult to carry on (the 2010 quota reform has not full effects yet at the time of writing), alternative control mechanisms are necessary, and openness and transparency should be seriously considered.

A necessary reform in this sense would be the introduction of binding norms similar to the Freedom of Information acts adopted by democratic States⁴⁶, so as to overcome the voluntary nature of the disclosure and clarify in advance the eventual exceptions in accessing certain information and to circumscribe them as much as possible. Public scrutiny guarantees the control of the most abusive practices and increases the possibility that the policies that are in the general interest of the wider public are put on the IMF's agenda.

The World Bank

The actions of the World Bank are particularly important because they heavily affect the economic (and increasingly social and political) policies and institutions of its Member States. This international organization was founded in 1944 (as previously said, along with the IMF) and its original name was International Bank for Reconstruction and Development. Indeed, its aim was to provide loans to needy countries devastated by the Second World War. During its seventy years' mandate, however, its mission shifted from reconstruction to development, with a major focus on infrastructure building. This is why it was started to be referred to as the "World Bank" and its reconstruction and development operations merged into one of its five constitutive agencies, the International Bank for Reconstruction and Development ("IBRD")⁴⁷. The other agencies of the World Bank Group are:

⁴⁴ *ibidem*

⁴⁵ INTERNATIONAL MONETARY FUND.

⁴⁶ STIGLITZ (2003: 111-139).

⁴⁷ International Bank for Reconstruction and Development Articles of Agreement (as amended effective on 18 February 1989), Bretton Woods, 27 December 1945.

the International Development Association (“IDA”)⁴⁸, the International Finance Corporation (“IFC”)⁴⁹, the Multilateral Investment Guarantee Agency (“MIGA”)⁵⁰, and the International Centre for Settlement of Investment Disputes (“ICSID”)⁵¹.

The development projects that the Bank funds mainly consist of infrastructural interventions: the building of roads, channels, dams, power plants and so on. The impact that these projects have on the concerned populations, therefore, cannot be underestimated. This is why holding this organization accountable is not only a matter of legal procedures but also of preventing the adoption of decisions that have the potential to adversely impact the lives of thousands, or even millions, of people.

One of the flaws that the Bank shows in its accountability mechanisms is linked exactly to the management of its projects and concerns two dimensions. First, there is a lack of accountability for what concerns the decisions about which projects receive the Bank’s financing and which ones do not⁵². To be more precise, the issue is the excessive approval of projects. A 1992 Executive Board-commissioned Report⁵³ referred to it as a “culture of approval” caused by a system in which promotions and upgrading to the highest ranks were frequently based on the number of loans approved. Indeed, the Report revealed that 37%⁵⁴ of Bank’s financed projects were unsatisfactory and that only 22%⁵⁵ of those ongoing in the period between 1981 and 1991 were in compliance with the World Bank standards (out of 1300 ongoing projects analysed). Following this Report, the Bank Management prepared an action plan in July 1993, which called for a greater inclusion of the civil society in the design of the projects and in their implementation as well as the need to adopt a reliable independent judgement mechanism on specific operations.

The second dimension is that the populations affected by the World Bank’s financed projects did not have the right to express their opinions about them through a direct confrontation with the Bank’s officials nor they had means through which they could complain in case a project was thought to be harmful or detrimental for their lives until the introduction (sponsored by NGOs) of

⁴⁸ International Development Association Articles of Agreement, Washington D.C., 24 September 1960.

⁴⁹ International Finance Corporation Articles of Agreement (as amended effective June 27, 2012), Washington D.C., 20 July 1956.

⁵⁰ Multilateral Investment Guarantee Agency Convention (as amended effective on 14 November 2010), Washington D.C., 12 April 1988.

⁵¹ International Centre for Settlement of Investment Disputes Convention, Regulations and Rules (as amended effective on 10 April 2006), Washington D.C., 14 October 1966.

⁵² PEREIRA et al. (2017: 1-28).

⁵³ Report of the Portfolio Management Task Force of the World Bank of 22 September 1992, Report No. 11536, *Effective Implementation: Key to Development Impact (Wapenhans Report)*.

⁵⁴ *ivi*, p. ii, par. C-IV.

⁵⁵ *ivi*, p. 9, par. 23.

the Inspection Panel⁵⁶. Indeed, we have to consider that most of the projects take place in poor or underdeveloped countries and, therefore, concern infrastructural interventions in rural areas and are extremely likely to affect the lives of the rural populations that inhabit them. The case, in particular, of the Narmada dam project (in West India to build a dam and a power plant)⁵⁷ represented a turning point in bringing to the attention of the public the lack of adequate means that rural populations had in opposing the decisions of the World Bank or, at least, in trying to have their requests heard. They had no organ to refer to in cases such as the environmental degradation, destruction of a traditional territory of residence or resettlement of populations displaced by the project. After considerable advocacy by members of the civil society and, especially, Washington-based NGOs (the site of the World Bank is in Washington), the Bank introduced an Inspection Panel to monitor the financing and implementation of its projects and to provide a means for individuals to file complaints if they think that that project is violating their rights. However, there are several criticisms concerning the inspection panel too. According to Parish, the World Bank is “an expert in creating internal mechanisms to evaluate its own activities: advisory panels, progress reports, Independent Evaluation Group, Internal Auditing Department, an Inspection Panel, and a Department of Institutional Integrity”⁵⁸. In his opinion, however, all these mechanisms reveal several structural flaws in their accountability strategy. First, there is a suspect that they might not be really independent because they are appointed by the Board of Directors. Second, none of them follows fair hearings. Third, the only institutions that admit third parties are the Inspection Panel and the Department of Institutional Integrity. However, the Inspection Panel does not hold hearings, hear witnesses or order discovery, its mandate is procedural but not substantive and it is limited to assessing whether the Bank Management followed the correct procedures for consultation and obtained the correct reports before proceeding with a project. It does not review the merit of the project and, most importantly, the results of its findings are only recommendations. On the other hand, while the Department of Institutional Integrity has the power to bar contractors from bidding on subsequent projects funded by the Bank through an administrative process called the “Sanctions Board” and to recommend dismissal of the Bank’s staff members, this institution is still secretive and shadowy, lacking the basic elements of transparency. In fact, it does not publish the outcome of its findings and hearings of the Bank’s staff are held in private. Moreover, it has unlimited discretion as to which complaints to pursue, is not overseen by any other organ and, as for the Inspection Panel, it does not hold hearings of

⁵⁶ PEREIRA et al. (2017: 1-28).

⁵⁷ We will have the chance to analyse in more detail the case of the establishment of the World Bank Inspection Panel in Chapter 3, as an example of how NGOs can contribute to the improvement of accountability mechanisms within international organizations.

⁵⁸ PARISH (2010).

witnesses and does not provide a right of appeal because even in this case the mandate is procedural and not substantive.

The World Trade Organization

The World Trade Organization was created after the Uruguay Round of negotiations of the General Agreement on Tariffs and Trade (“GATT”) in 1995. The GATT was thought to be a transitional framework for trade negotiations set to expire a few years after its creation in 1948, but it actually governed global trades until the nineties, when it was absorbed by the WTO and became one of its founding agreements. The WTO provides a forum for the negotiation of trade agreements with the scope of reducing or overcoming obstacles to international trade and ensuring an equal treatment of all Member States, independently from their economic weight and, therefore, with the secondary aim of contributing to economic growth and development.

In 2012, the One World Trust produced a report assessing the accountability mechanisms of the WTO. The area in which the WTO performs better is participation, although not as much to consider its strategy as a best practice standard⁵⁹. There are some commitments by the WTO for the engagement with other international organizations but also with NGOs and non-Member governments and there is a set of guidelines provided specifically for engaging with NGOs. However, the organization lacks any specific commitment as to the way it will consult these external stakeholders and, moreover, only internal stakeholders are consulted in the development of policy in this area.

Additionally, there is an issue that can be considered to include two dimensions, participation and transparency. The so-called “Green Rooms” are places where informal meetings among Member States are held behind closed doors, so not publicly, and to which not all members are guaranteed equal access. Still considering the dimension of transparency, although disclosure of information is accepted, and exceptions are few and well-defined, the presence of a clause that enables Members to ensure the documents they submit as restricted remain so indefinitely, constitutes a problem for this matter. It basically means that it does not take much for a document to remain secret potentially forever, because it just needs to be classified as “restricted”. Moreover, it does not meet best practices principles in terms of its accountability strategy, thus it indicates a lack of conscious self-criticism and proposal for reform, and also of evaluation mechanisms. There are not systematic stakeholder mapping processes although they are identified in various documents. External accountability commitments made by the WTO are limited to standards pertaining to international financial auditing and are not listed on the organization’s website. In the case of evaluation, there is a

⁵⁹ HAMMER and CUMMING (2012).

system for the assessment of its technical assistance activities, but it only happens in WTO's six main functions.

Finally, the WTO does not have an external complaints policy or any management systems in place. This is one of its major weaknesses in terms of accountability, especially for what concerns external stakeholders. Staff can complain (through the International Labour Organization's Administrative Tribunal, since the WTO has recognized its jurisdiction on these matters) but not contractors. However, the management systems supporting this policy is very poor. Evidence of this is the lack of available information about this possibility on the organization's website.

1.3.2. Security organizations

In this paragraph two international organizations concerned with security are assessed: the North Atlantic Treaty Organization ("NATO") and the Organization for Security and Cooperation in Europe ("OSCE"). Security organizations are possibly expected to be the least performing for what concerns issues such as transparency and participation. This is partially true, but we will see how this presumption does not apply in the same way to both organizations.

The North Atlantic Treaty Organization

The North Atlantic Treaty Organization was established in 1949 through the Washington Treaty⁶⁰. Originally, its Members States were some of those countries that, during the Cold War, belonged to the Western Bloc: the US, the UK, France, Italy, Canada, Belgium, Denmark, Iceland, Luxembourg, the Netherlands, Norway and Portugal. Through the years, it expanded to include all the Western Bloc. Its primary purpose at the time of the Cold War was to create a defence and mutual support mechanism in case one of the Member States were to be attacked by the Soviet Union. After the end of the Cold War, it was thought that NATO's *raison d'être* had vanished. However, since the nineties, the organization has transformed, acquired additional functions and created new political and military institutions. Its highest decision-making body is the intergovernmental North Atlantic Council, composed by Permanent Representatives of Member States and, in specific times of the year, by the ministers of defence, the foreign secretaries or the heads of state or government.

⁶⁰ North Atlantic Treaty, Washington D.C., 4 April 1949.

As mentioned earlier, organizations concerned with security are expected to be particularly problematic in terms of accountability and, indeed, NATO perfectly suits this expectation⁶¹. In terms of democratic deficit, although there still exists an issue of long delegation chains, it is necessary to consider that decisions on security and, in the case of NATO, of armed intervention must be met by the governments and national parliaments of the Member States in order to be effective. So, on this side, the question of the democratic deficit is not so pressing. However, what can be argued is that the weight that each Member State has on the decisions of the organization is not equal and, therefore, here its democratic feature could be questioned. The power that each representative holds on the decision-making process, in fact, reflects the share of contribution that it corresponds to the organization. It is no surprise, then, that the US has always had a major influence in the operations of the NATO, because it is also its major contributor.

One key element that is certainly problematic with NATO is transparency. A premise here, however, is necessary. It is clear that an organization primarily concerned with international public security, armed conflicts and military interventions cannot guarantee always full access to its documents for both strategic and security reasons. Asymmetries of information are regarded as a vital resource. However, two ideas are worth exploring. First, the mandate of NATO has expanded considerably over the years. Its operations are not anymore confined to armed intervention but fall within different fields of action: from military activity, the focus shifted to peace keeping and peace enforcement to expand also to disaster relief. This widening of its scope of action can no longer bear the justification of the secrecy of military documents. The more its functions expand and affect even issues that are not of strategic interest but are strictly linked to security intended as human safety and human rights, the more the policies about information disclosure should be updated. There are some efforts to make more information public and some documents that once would have been classified as secret are now available. The second point is that the question is not how much information NATO provides access to, but to determine how much is still covered by secrecy and not made available to the public. Background papers concerning possible courses of actions (even after an action has been undertaken), negotiating texts or draft resolutions are all denied access to.

As for the dimension of participation, NATO cooperates with other international organizations, including those regional ones concerned with security issues too. However, as predictable, participation of non-state actors is almost non-existent. In this regard, cooperation with relief and development NGOs, for instance, happens in military operations for humanitarian reasons but is not codified. Even less relevant is the question of mechanisms for filing complaints about the organization's actions and receiving appropriate

⁶¹ STEFFEK et al. (2008: 116-139).

responses or compensation. In this case, the most significant development will be reached if and when the *Draft Articles on the Responsibility of International Organizations* become enforceable law. Member States, however, are susceptible to forms of review through the existing international tribunals but no access is provided for external actors to take part in the judiciary process.

The Organization for Security and Cooperation in Europe

The Organization for Security and Cooperation in Europe is a regional institution concerned with security and the promotion and maintenance of peace across Europe, constituted according to article 52 of the United Nations Charter that allows for the creation of regional security organizations “dealing with such matters relating to the maintenance of international peace and security as appropriate for regional action”⁶². It is the largest security organization in the world, since it includes all European States (including Eastern Europe and the Russian Federation), the US and Canada. It was created in 1995, as an evolution of the Conference on Security and Cooperation in Europe (1975), that brought together members of the NATO and of the then Warsaw Pact. Its legal basis can be found in some key documents: the Helsinki Declaration (the final act of the 1975 Conference), the 1990 Charter of Paris for a New Europe and the 1999 Istanbul Charter for European Security. Since its beginning, OSCE’s mandate was based on a wide conception of security, ranging from the politico-military dimension to economic and environmental, as well as human aspects. It addresses issues concerning arms control, security building, human rights, minorities, democratization, policing strategies, counter-terrorism, economic and environmental activities. Its main decision-making organ is the Ministerial Council, composed of the foreign ministers of all OSCE Member States. The Permanent Council is the regular body for political dialogue and decision-making. Along with these bodies, there is also the Parliamentary Assembly, composed of parliamentarians from OSCE Member States, though formally speaking, this body is not part of OSCE but is an independent body mandated to promote greater involvement of national parliaments into OSCE decision-making processes.

The Parliamentary Assembly⁶³, therefore, plays a crucial role for what concerns the issue of the democratic deficit because, through this body, directly elected representatives enter the organization and this can be said to be an indirect form of parliamentary control able to reduce the democratic deficit. The Assembly’s functions include, among the others, the assessment of the implementation of OSCE’s objectives by Member States and the

⁶² Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 26 June 1945.

⁶³ HABEGGER (2010: 186-204).

stimulation of a public debate on issues on the OSCE agenda. The chairman-in-office of the organization participates in the Assembly's annual meeting, answers the parliamentarians' questions (written and oral) and transmits their views to the Ministerial Council. However, the outcome of this political dialogue does not create legal obligations since the resolutions adopted by the Assembly are recommendations. The Parliamentary Assembly's representatives also participate in meetings of other OSCE institutions.

Under the dimension of participation⁶⁴, unlike NATO, OSCE has arranged for the regular engagement of external, non-state actors (mainly NGOs) for their inclusion in its internal processes. However, although under this light the organization is quite open, OSCE does not provide much space for these actors, in terms of influencing the decision-making process. Clearly, they do not have voting rights, as in every other international organization. But the real issue is that external actors do not have a say when it comes to determining the agenda of these bodies, making their participation less effective because they cannot suggest the inclusion of certain issues on the agenda of the governing bodies.

For what concerns transparency, OSCE has several flaws. First of all, there is still no public disclosure policy. The decisions of the Ministerial Council are published on the OSCE website (as well as other information about the organization and its activities), but there are no fixed declassification policies and deadlines. The different bodies of the organization have great discretion over the disclosure of information to decide if and when it will be made available to the public. Moreover, the issue is even more problematic when it comes to the documents submitted by the national delegations, that are most of the time classified as restricted information.

Finally, decision-making processes take place in secrecy. Though some sessions are open to the public and in the latest years the participation of external groups has been allowed (for example, NGOs can attend the meetings of the Working Group on issues concerning the human dimension⁶⁵), other sensitive issues are discussed behind closed doors.

Hence, accountability problems with OSCE, aside from the arrangements with external actors that, however, pose serious limits to their effective participation, are just as relevant as in the case of NATO. Moreover, the problem with OSCE is that its functions include so many aspects of human life that better mechanisms for accountability and transparency should definitely be considered. If, as noted in the case of NATO, military issues require necessary levels of secrecy because they strictly relate to public security, the other issues that OSCE is entitled to decide upon and that include

⁶⁴ STEFFEK et al. (2008: 116-139).

⁶⁵ *ibidem*

also education, gender equality, migration, should be more available to public scrutiny.

For what concerns mechanisms for filing complaints, the only dispute settlement mechanisms available – conciliation and arbitration – are only reserved to States, not to employees, and, therefore reasonably, not to external actors.

Finally, no additional information has been found on mechanisms for evaluation and monitoring against objectives since there is no available information on the organization's website nor appropriate research. The only instruments for the assessment of the organization's objectives remains the Parliamentary Assembly.

1.3.3. The United Nations and its specialized agencies

The United Nations (“UN”) is the largest international organization in the world. Founded in 1945, after the end of the Second World War, it is universal both in terms of membership and of its objectives. In fact, it has 193 Member States and its general purpose of maintaining and promoting international peace, human rights, justice, social progress and freedom is realized through different fields of action: security, health, education, environment, food and nutrition, development, cultural heritage, labour regulation, economics, minority rights, and so on.

The main organs of the United Nations are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the UN Secretariat.

The General Assembly is the main deliberative, policymaking and representative organ of the UN and all Member States are represented in it⁶⁶. The Security Council is the organ entrusted with the responsibility of maintaining international peace and security⁶⁷. It has fifteen Members of which five are permanent (China, France, Russia, the US and the UK) and ten are rotating non-permanent Members⁶⁸. The Economic and Social Council (“ECOSOC”) serves as the central organ for activities of the UN system and its specialized agencies in the economic, social and environmental issues. It has fifty-four Members (rotating every three years)⁶⁹. The Trusteeship

⁶⁶ Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 26 June 1945, Chapter IV: The General Assembly, articles 10-11.

⁶⁷ *ivi*, Chapter V: The Security Council, art. 24.

⁶⁸ *ivi*, Chapter V: The Security Council, art. 23.

⁶⁹ *ivi*, Chapter X: The Economic and Social Council, art. 62.

Council was established to provide international supervision for the eleven Trust Territories under the administration of seven Member States to ensure their adequate path towards self-government and independence⁷⁰. The International Court of Justice (“ICJ”) is the principal judicial organ of the UN and its role is to settle, in accordance with international law, legal disputes submitted by States and to give advisory opinions on questions referred to it by authorized UN organs and specialized agencies⁷¹. Finally, the Secretariat (which comprises the Secretary General, who is the chief administrative officer of the organization, and the Secretariat’s staff) carries out the day-to-day work of the UN as mandated by the General Assembly and the other main organs⁷². Moreover, the United Nations has fifteen specialized agencies and other several entities, bodies, funds or related organizations. Given its complex structure, this paragraph will feature a general assessment of the UN system and some remarks concerning some of its specialized agencies’ main accountability issues.

The United Nations is perhaps the epitome organization when it comes to issues of immunities. Though immunities apply to any international organization, the all-encompassing mandate of this organization basically means that every aspect of the human life that is under the governance of the United Nations has no instrument of accountability⁷³. Though much talk has been made by the organization itself for improving its accountability records, like the UN Accountability and Transparency Initiative (2007), there are many critical areas that seem to suggest that holding UN officials accountable for their actions will never be possible unless a serious reform of its internal mechanisms and power balances finally takes place.

As Parish observes, while an increasing number of political issues that affect citizens all over the world are decided by this organization, the UN is held back by its reliance on nation-States that, therefore, are the key decision-making actors. What Parish seems to suggest is that the way in which the UN operates is in some ways anachronistic and too anchored to an old Westphalian conception of international relations. And whereas these governments are subject to parliamentary control at home, there is a deficit of democratic accountability at the international level. We will now analyse the main aspect that reveals this democratic deficit.

The democratic deficit is represented, first and foremost, by the case of the UN Security Council (“UNSC”). This is an academic issue that any student of International Relations or International Law has come to know profoundly and to interrogate him/herself on. Though in the whole UN system it is possible to

⁷⁰ *ivi*, Chapter XIII: The Trusteeship Council, art. 87.

⁷¹ *ivi*, Chapter XIV: The International Court of Justice, articles 92-96.

⁷² *ivi*, Chapter XV: The Secretariat, articles 97-101.

⁷³ PARISH (2010).

find power asymmetries, in the case of the UNSC this asymmetry is institutionalized. In fact, out of the fifteen Members of the Council, five only hold permanent seats and they are also entrusted with a veto power that prevents the adoption of resolutions in case even only one of the permanent Members is against it⁷⁴. This creates an evident democratic deficit and a clear unbalance between the Members of the UNSC, especially because if this reasoning was understandable in 1945, at the time when the UN was founded and was adherent to the back then balance of powers, it is no longer acceptable today because it does not take into consideration the weight that new powers have today or the decrease in the weight of some of the permanent Members in the international sphere. For example, the United Kingdom and France cannot be said to have the same weight that they had when the United Nations were created or, at least, there are today States that through their economic and political power can be considered to be on an equal level with them. Think of India, for example, which is considered, along with Brazil, one of the new most powerful economies. Its population is the second largest in the world⁷⁵ (after China) and yet this country has received no recognition in the decision-making process for this changes. The rules governing the power relations within the Security Council cannot be said to apply to today's power relations in global affairs. Therefore, the UNSC shows a combination of barriers to widespread participation, veto right and, finally, absence of any judicial review for its actions. Focusing on this last issue, considering that the Council has the power to impose and lift sanctions as well as to authorize the use of armed force (though the troops deployed belong to the Member States since no United Nations army has ever been created) as provided by art. 41 of the Charter, it basically means that for some of the most invasive decisions that can affect a population there is no institutionalized accountability mechanism at all⁷⁶. The UNSC is the most powerful organ of the UN due to its role, yet nobody holds it accountable for most of its decisions.

In 2010, the General Assembly adopted Resolution 64/259, which contained a definition of accountability as:

“the obligation of the Secretariat and its staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honouring their commitments, without qualification or exception. Accountability includes

⁷⁴ Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 26 June 1945, Chapter V: The Security Council, art. 27.

⁷⁵ UNITED STATES CENSUS BUREAU (2018).

⁷⁶ An outstanding case, in these regards, has been the 2011 intervention in Libya. The Security Council, following the adoption of Resolution 1973, authorized a multi-state NATO-led military intervention in the country. However, some criticism has emerged suggesting that behind the not-democratic or humanitarian concerns there were actually resources interests. A UK parliamentary investigation heavily criticized the intervention affirming that there had been a failure in identifying the threat to civilians (that could have otherwise justified the intervention) and that France, in particular, motivated the intervention because of economic and political interests.

achieving objectives and high-quality results in a timely and cost-effective manner, in fully implementing and delivering on all mandates to the Secretariat approved by the United Nations intergovernmental bodies and other subsidiary organs established by them in compliance with all resolutions, regulations, rules and ethical standards; truthful, objective, accurate and timely reporting on performance results; responsible stewardship of funds and resources; all aspects of performance, including a clearly defined system of rewards and sanctions; and with due recognition to the important role of the oversight bodies and in full compliance with accepted recommendations”⁷⁷.

A 2010 report⁷⁸ submitted by the Joint Inspection Unit (established in 1966) upon request of the UN General Assembly highlighted the main accountability frameworks existing within the UN system, its main gaps and flaws and the lack of formal accountability frameworks in some specific areas. The report mentions as pillars of accountability, transparency and a culture of accountability (what is referred to by the One World Trust as “the accountability strategy”). According to the report, seven United Nations specialized agencies possess a formal autonomous accountability framework (ILO, United Nations, United Nations Development Programme, United Nations Population Fund, UNICEF, United Nations Office for Project Services, World Health Organization)⁷⁹. Three Secretariat entities (United Nations Economic Commission for Europe, United Nations Environmental Programme and UNHCR) possess a programme level accountability framework. Other UN bodies and agencies do not possess a formal accountability framework but just made general commitments.

The Inspection Unit highlighted the importance of external mechanisms for effective accountability rather than internal ones. It suggested, in particular, the identification of the political covenant (or agreement)⁸⁰ with Member States and increased transparency towards all the actors, internal and external,

⁷⁷ Resolution of the United Nations General Assembly adopted on 5 May 2010, Resolution A/RES/64/259, *Towards an accountability system in the United Nations Secretariat*.

⁷⁸ Report of the Joint Inspection Unit (2011), JIU/REP/2011/5, *Accountability Frameworks in the United Nations System*.

⁷⁹ *ivi*, pp. iv-v: “The stand-alone accountability frameworks of the United Nations, UNDP and UNICEF include a political covenant with member States. All of these frameworks include some elements of internal control mechanisms with the most comprehensive internal control elements found in the ILO and UNOPS frameworks. Missing from the frameworks of the United Nations, UNFPA and WHO was identification of a culture of accountability as a fundamental pillar of accountability. The ILO framework included reference to a culture of accountability without a clear description of what this entailed. With the exception of the United Nations, these organizations had no reference to transparency nor identification of management leadership in accountability. United Nations, UNDP and UNICEF were good examples in the area of transparency and management responsibility for organizational accountability. The Inspector recognizes that the accountability framework of the United Nations Secretariat includes most of the key components that must be part of an accountability framework”.

⁸⁰ According to the Report of the Joint Inspection Unit, the United Nations, the UNDP, UNICEF and the World Food Programme have all put political agreement or “covenant” with Member States at the centre of their accountability architecture. (Joint Inspection Unit. *Accountability Frameworks in the UN system*, p. 12).

relevant to the organization. Particular emphasis was put on the need for the organization and its specialized agencies and other bodies to put more efforts into the complaints and response mechanisms as accountability systems for key stakeholders to address complaints and receive appropriate response. Indeed, the UN system does not offer the possibility of filing complaints against the damaging or potentially damaging actions of its officials, since they enjoy immunity from national jurisdictions. As in the case of other international organizations, the UN has established an internal Administrative Tribunal for addressing employees' complaints about the actions of the organization. However, as for other administrative tribunals, there are extremely low rates of findings in favour of employees, there is a refuse to hold oral hearings or to order discovery and, furthermore, there is a question of effective independence of the judges of the Administrative Tribunal. As in the case of any other internal judicial mechanism, the judges are appointed by the head of the organization, therefore no real impartiality can be guaranteed⁸¹.

Other systems of internal oversight have been introduced over the years by different UN organs and adopted as similar entities by other UN specialized agencies or bodies: the UN Board of Auditors, established in 1946, the aforementioned Joint Inspection Unit, the UN Office for Internal Oversight Services established in 1994, the General Assembly's Independent Audit and Advisory Committee in 2007. All these entities are intended to provide independent expert advice to UN governing on the adequacy and effectiveness of each of the various external audit and internal oversight functions as well as advising on such matters as internal controls and risk management practices⁸². Most of the reports of these entities are publicly available⁸³. The problem with them is that they are not complemented by external accountability mechanisms.

For what concerns transparency, though the initiative for Accountability and Transparency (2007) is remarkable, it simply constitutes a declaration of intentions and, as for the question of accountability frameworks, it has a severe problem of uniformity. Different UN agencies and organs have adopted information disclosure policies that vary accordingly and not all of them did so. The UNHCR is the only entity within the United Nations family to provide public access to its agenda, to draft papers and to the minutes of its governing body meetings. The same does not happen for any other organ or agency of the United Nations system. The problem of transparency is all the more

⁸¹ STIGLITZ (2003: 111-139).

⁸² GOLDING (2014).

⁸³ Reports of the UN Board of Auditors are available at: <http://www.un.org/en/auditors/board/auditors-reports.shtml>; reports of the Joint Inspection Unit are available at: <https://www.unjui.org/content/reports>; reports of the Independent Audit and Advisory Committee are available at: <https://www.un.org/ga/iaac/iaac-reports>. The UN Office for International Oversight and Services offers too the publication of its reports online, however, the website was under maintenance and it was not possible to access it.

consistent if we consider that there is a widespread culture of secrecy, typical of the diplomatic circles within the UN. The problem, however, is that the UN is not only diplomacy: it is a complex organization comprising decision-making, project management and also adjudication procedures. Coupling this, there is the problem of an excessive proliferation of bureaucratic structures which is not discouraged but promoted and that makes the mission of achieving greater transparency within the UN all the more challenging. Moreover, as any other international organization, the United Nations enjoys, among its immunities, the inviolability of its archives, which means that no third party is allowed access to any of the documents it keeps, unless the Organization so decides.

For what concerns the evaluation, the oversight mechanisms are also entrusted with the responsibility of assessing the UN performance against its objectives. The problems that exist for them have, therefore, already been presented. However, some authors⁸⁴ suggest that over the years there has been a shift of attention concerning evaluation from the inputs to the outcomes and this can be assessed as a positive change. On the other side, though, those same authors highlight the persistence of a widespread tendency to commit to unmeasurable and abstract goals. A clear example is constituted by the UN Millennium Development Goals⁸⁵. In this sense, a positive element actually enabling an efficient evaluation against the expected objectives is the structure of the 2030 UN Sustainable Development Agenda⁸⁶ that, aside the general objectives, provides specific ones more likely to be measurable.

Finally, participation is possibly the dimension in which overall the United Nations perform better. We will have the chance to see in the next chapter the way that external actors, including NGOs, are included in its decision-making processes, still keeping in mind that external actors neither enjoy voting rights nor have channels for directly filing complaints if they report a misconduct or violation.

1.3.4. Regional organizations

Before starting the assessment of regional organizations and their accountability mechanisms, a premise is necessary.

⁸⁴ STIGLITZ (2003), PARISH (2010), HAMMER and LLOYD (2011).

⁸⁵ Declaration of the United Nations General Assembly adopted on 8 September 2000, Declaration A/55/L.2, *United Nations Millennium Declaration*.

⁸⁶ Resolution of the United Nations General Assembly adopted on 21 October 2015, Resolution A/RES/70/1, *on Transforming our world: the 2030 Agenda for Sustainable Development*.

This study purposely does not take into account the European Union (“EU”). This is due to a simple reason. The EU is an international organization whose structure is too developed and whose direct effects upon the lives of the citizens of its Member States are too advanced to be comparable to other “traditional” international organizations. Indeed, the European Union represents a special case. Many insist that rather than considering it an international or regional organization, it would be better to consider it as a federation of States. We do not go this far in this thesis, but the accountability mechanisms in the European Union, due to its uniqueness, are definitely more advanced than any other kind of mechanism existing at the international level⁸⁷.

The Council of Europe

The Council of Europe (“CoE”) was founded in 1949 through the Treaty of London in order to promote and protect human rights, democracy and the rule of law across Europe. As of today, it includes 47 Member States. Its main institutions are: the Committee of Ministers, which is the decision-making body of the Council and is composed of the Ministers of Foreign Affairs of Member States; the Secretary General, that has the overall responsibility for the strategic management of the organization; the Parliamentary Assembly, which is composed by representatives of the national legislatures of each

⁸⁷ There are clearly some flaws in it and many speak of a democratic deficit in the EU (though it appears to be more based on perception than on the available legal instruments) but to compare them with the flaws that we have assessed so far is not possible. The EU has a transparency policy, clearly regulating what information can be accessed and which one cannot. It is true that EU officials enjoy immunities but this, as in any international organization or national public administration, is restricted to the acts made and opinions expressed in the exercise of their mandate. Moreover, there are many mechanisms for holding them accountable even if they enjoy such immunities. First, each institution of the EU can be judged by the European Court of Justice, the judicial organ of the EU. Second, if we consider the European Parliament, the European Council and the Council of the European Union, they are all institutions composed by representatives directly elected by the citizens of each Member State, therefore they are responsible for their actions before their people and, if their actions are judged negatively, they will be removed from office during election days. The European Parliament, in fact, is composed of parliamentarians directly elected by the citizens and entrusted with the mandate of operating at the European level. The European Council is composed by the Heads of State or Government of each Member State. The Council of the European Union is composed of the national government ministers from each EU country, according to the policy area to be discussed. For what concerns the Commission, though it is not represented by directly elected officials, its President is elected by the European Parliament upon suggestion of the European Council, while the other members of the Commission are listed by the President, approved by the European Council and then voted by the European Parliament. The EU Parliament, moreover, has the power to oblige the Commission to resign. So even the Commission is under the direct control of elected representatives. Finally, it is also important to remember that any EU citizen (or even a company, thus a legal person) can file a complaint to the European Court of Justice if he/she believes that a violation of EU law is happening. All of this constitutes something completely different from anything else assessed so far or yet to be assessed in any other international organization and, for this reason, cannot be comparable but would need a specific and dedicated study.

Member State; the European Court of Human Rights, the international court mandated to verify the respect of the European Convention on Human Rights among its Member States; the Congress of Local and Regional Authorities, that represents over 200,000 local and regional authorities from across Europe; the Commissioner for Human Rights, an independent institution mandated with the promotion of the awareness and respect of human rights across Europe; and, finally, the Conference of INGOs (*international* NGOs), which represents all the NGOs enjoying participatory status within the Council of Europe.

For what concerns the democratic deficit, as with the case of the OSCE, the Council of Europe is provided with an organ composed of representatives from the national parliaments of all Member States, the Parliamentary Assembly⁸⁸. It was the first international organization to create this kind of institution. The Parliamentary Assembly is a consultative body that interacts with the Committee of Ministers and, over the years, it has managed to expand its competences significantly from those of a purely consultative body to those of a decision-making organ. The Assembly meets for plenary sessions four times a year. Heads of States or Governments frequently address the Assembly; therefore, the parliamentarians have the possibility to address questions to them. During the year, they also have the possibility to submit written questions. Moreover, the President of the Committee of Ministers has the responsibility to present a report on the progress of intergovernmental cooperation at each part-session of the Assembly and, even then, representatives can ask questions about the Committee's work. Finally, since the Committee's meetings are not public, the Assembly's president has been invited to attend them since 2003. All of this proves the fundamental role that the Parliamentary Assembly plays in securing the democratic process within the Council of Europe.

As to the issue of transparency, the Committee of Ministers adopted in 2001 a Resolution⁸⁹ concerning the access to Council of Europe documents, that regulates the access to information and disclosure procedures of classified documents. Although the access to documents is broadly allowed, the Resolution does not mention what categories of documents can be subject to classification, it only provides the amount of time necessary for their disclosure (arriving at a maximum case of thirty years for documents classified as "secret"⁹⁰), and, moreover, there is the possibility for Member States to oppose the declassification. One last concern about transparency it raised by the fact that the Committee's meetings take place behind closed doors, though it is true that they admit the participation of the Parliamentary

⁸⁸ HABEGGER (2010: 186-204).

⁸⁹ Resolution of the Committee of Ministers adopted on 12 June 2001, CM/Res(2001)6, *on access to Council of Europe documents*.

⁹⁰ *ivi*, p. 2 (iv).

Assembly's President.

In 2016 the Parliamentary Assembly issued a Recommendation (Recommendation 2094/2016) to the Committee of Ministers urging the importance of adopting formal instruments for ensuring the transparency and openness of the European institution but, aside from circulating the document among the other bodies of the Council, it did not produce any significant advancement⁹¹.

For what concerns complaints mechanisms and adequate responses, there is an Administrative Tribunal for employees' relations. Moreover, the European Court of Human Rights, admits external participation in its judicial proceedings in the form of *amicus curiae* (of which we will talk about in more detail in the following chapter), and also allows both juridical and natural persons to initiate a case or address complaints about human rights violations and, thus, to be qualified as victims⁹².

As for the case of the United Nations, participation is possibly the dimension in which the Council of Europe performs better. Aside from the Parliamentary Assembly, there is the Congress of Local and Regional Authorities that provides representatives at the sub-national level the possibility to participate in the dialogue at the European level. A further signal of the will of the Council of Europe to engage different stakeholders in its activities is the creation of the Conference of INGOs, composed by all those NGOs that enjoy participatory status. We will see, in the next chapter, how this form of participation is indeed an effective one, if we take into account the fact that, as in any other international organization, non-state actors are not allowed voting rights.

The African Union and the Organization of American States

Not much information is available about these two organizations' accountability mechanisms. As for the other international organizations previously considered, there could be issues concerning their democratic deficit due to the absence of direct chains of delegation. Indeed, neither organization has, as in the case of OSCE or the Council of Europe, a direct representation of the national parliamentarians of its Member States. Participation of external actors, however, is present and effective, and we will have the chance to see this better especially in the section concerning the *amicus curiae* role that NGOs play in these two organizations' courts, which

⁹¹ Reply of the Committee of Ministers adopted on 9 November 2016, *Reply to Recommendation 2094(2016) of the Parliamentary Assembly on Transparency and openness in European institutions*.

⁹² An example is the case of Application no. 65542/12, *STICHTING MOTHERS OF SREBRENICA AND OTHERS v the Netherlands*.

is very extensive. As for the legal means for accountability of the officials, they both have administrative tribunals (in the case of the Organization of American States it is not a proper tribunal, but an Ombudsperson) but, as mentioned for other cases they too are subject to the issue of not being considered completely independent and impartial due to the appointment of the judges by the heads of the organizations. However, for what concerns the Organization of American States there is a mechanism for the external audit, the Board of External Auditors, that each year presents a report on the funds of the organization and on their correct usage. Instead, for what concerns the dimension of evaluation, since 2009 the Department of Planning and Evaluation has promoted a policy for the evaluation of the effectiveness of the programs and projects executed by the organization. It is, however, an internal body of the organization.

For what concerns transparency, while the Organization of American States has adopted in 2012, through its General Secretariat, an executive order concerning the Access to Information Policy⁹³, the African Union has not done so yet, but the African Commission on Human and People's Rights has drafted a Model Law on Access to Information for Africa⁹⁴ that still needs to be adopted.

Conclusion

This chapter has introduced the topic of accountability and has tried to explain why a new model of accountability is the desirable one for what concerns the international context. In fact, at the supra-national level, it is much more difficult to reconstruct the traditional actor-agent dynamic. The relations which take place in the international sphere involve too many actors to fit this mechanism. Then, we have discussed the specific issue of accountability within international organizations, highlighting its importance and the dimensions that compose it. There are, indeed, the important questions linked to the democratic deficit and to transparency, but other dimensions like participation, evaluation, complaints and response mechanisms and accountability strategy are fundamental instruments too in the assessment of an organization's accountability mechanisms. Finally, we adopted an evidence-based approach by analysing some of the main international organizations and assessing their accountability mechanisms. This assessment proved what was explained in the theoretical part. Most international organizations suffer a democratic deficit. The only ones that perform better

⁹³ Executive Order of the General Secretariat of the Organization of American States adopted on 3 May 2012, Executive Order No. 12-02, *on Access to Information Policy*.

⁹⁴ *Model Law on Access to Information for Africa* adopted by the African Commission on Human and People's Rights on 12 April 2013.

under this point of view are those that allow national representatives to participate in their processes, like the OSCE or the Council of Europe. Transparency too was confirmed to be a very pressing issue, as well as the absence of adequate mechanisms for addressing complaints and, eventually, receiving response and compensation. Even the dimensions of participation, evaluation and accountability strategy were assessed and proved to be just as important for a complete understanding of an organization's accountability mechanisms. In the next chapter, we will analyse the role that NGOs have in international organizations in order to support the thesis that they can effectively contribute to the accountability of international organizations.

CHAPTER 2

THE ROLE OF NGOs IN INTERNATIONAL ORGANIZATIONS

According to D'Amato⁹⁵:

“the more that international institutions prosper and grow, the closer we may be getting to a coalition of those institutions that proclaims itself the government of the world (hence, being necessary) to keep a vigilant eye upon the practice of “lawful” international institutions (because) if they turn out to stifle individual freedoms and abolish human rights, there will be no counterforce to overturn the government and reclaim those rights and freedoms”.

This section addresses the main theme of this thesis: the participation of NGOs to the life of international organizations in order to enhance their accountability. First, it analyses the historical participation of NGOs to international organizations' activities, starting from the case of the United Nations and then exploring how they were admitted by other international organizations. Then, it will continue by discussing one of the key issues concerning the participation of these non-state actors to international politics and, thus, to international organizations: their legal personality. It will then proceed to analyse the main instruments that NGOs have for participating in the life of international organizations and will explain the reason why this participation is so fundamental. The analysis will cover their consultative status within the United Nations, their participation in the OSCE, their participatory status within the Council of Europe and, finally, their *amicus curiae* role within international courts and tribunals.

2.1 Background of NGOs' participation in international organizations

The participation of NGOs to the life of international organizations is not something new. NGOs appeared for the first time as relevant actors in the international scene at the beginning of last century, after the creation in 1919 – sanctioned through the end of the First World War and the Treaty of Versailles – of the League of Nations⁹⁶, the first attempt at creating an international organization concerned with the cooperation among States in order to prevent a new world war. However, back then the term NGOs was not used, and the League of Nations referred to them as “voluntary agencies” or “*volas*”. Moreover, the League did not provide any formal framework for their participation. Indeed, it only referred indirectly to them when

⁹⁵ SZAZI (2012: 19).

⁹⁶ MARTENS (2003: 1-24).

considering the work of the International Committee of the Red Cross and encouraging the cooperation with its national societies. Through the development of what can today be defined a custom⁹⁷, other NGOs were allowed to suggest and advance their opinions on a wide range of issues, though they did not enjoy any formally recognized status. It is estimated that around 450 NGOs took part in the League's works regularly⁹⁸. Even if this kind of cooperation was not formalized, their contribution and participation to the day-to-day activities of the organization were yet very significant: they could present oral reports to the League's committees, submit written statements and participate in discussions, advise officials and propose resolutions and amendments during international negotiations. NGOs enjoyed all rights and privileges of official representatives, excluding, clearly, voting rights. Their participatory rights were exclusively exercised within the League's committees, though in particular occasions they could also report to the Assembly, but they had no role in its ordinary discussions, nor in the Council's. This phase of intense cooperation lasted until the first half of the twenties, when the changing international political and economic scenario forced a regression in their relations and resulted in the League's shift of attitude towards NGOs, reducing the contacts with them to the minimum.

It is during the thirties that some authors started to use the expression "international pressure groups"⁹⁹ to refer to NGOs, starting to highlight their advocacy role.

Another international organization that, even before the creation of the United Nations, constantly admitted NGOs' cooperation for the pursuit of its objectives was the International Labour Organization ("ILO"). Born in 1919, through the Treaty of Versailles, the ILO will then become one of the specialized agencies of the UN family. Being its scope that of achieving social justice through the regulation of labour and the promotion of workers' rights, it is probably the organization that could make better use of the cooperation with societal actors. And indeed, it is exactly what it did from its very first activities. Its constitution provides an unusual set of representatives for each Member State and this is already a sign of the unique openness that the ILO has always shown towards civil society's engagement. Each State, in fact, is represented by two governmental officials, one representative of workers' associations (trade unions) and one representative from employers' associations and each of them enjoys the same status, with the same rights and duties, even in terms of voting rights¹⁰⁰. It is no surprise then that the ILO has constantly maintained an open and interactive relationship with NGOs

⁹⁷ *ibidem*

⁹⁸ *ibidem*

⁹⁹ MARTENS (2002: 271-285).

¹⁰⁰ International Labour Organization Constitution, Versailles, 29 October 1919.

considering its unique governance structure, engaging especially with those NGOs whose mission was centred on labour and social rights.

Finally, one last international organization that deserves attention for its *ante litteram* inclusion of NGOs was the Permanent Court of International Justice (“PCIJ”), the precursor of the International Court of Justice.

The PCIJ, unlike its successor, allowed NGOs to participate in the Court’s proceedings by providing documents, information and advice (what is called the *amicus curiae* role) and supported the opinion that NGOs qualified as “international organizations” too¹⁰¹. The kind of non-governmental organizations that were mainly admitted to the Court’s activities were workers’ associations.

It is only with the creation of the United Nations, however, that the term NGO started to be used. Indeed, it is the UN Charter that introduced this term for the first time. In the introduction to this thesis we mentioned the absence of a recognized definition of NGO. Even within the same United Nations system, indeed, different documents provide different definitions of what is meant by “NGO” (the Charter of the United Nations, General Assembly Resolutions A/RES/479(V) and A/RES/926(X), ECOSOC Resolution 1996/31) and this is the reason why at the beginning of this study what was adopted was not really a standardized definition but more a set of characteristics that are quite generally agreed upon and that could be operationally valid for understanding the subject of interest of this work. It is only in the last few decades, considering their growing role in the international realm, that significant attempts have been made by scholars and academics to precisely codify what it is meant by “NGO”. Therefore, it is no surprise that their first formal recognition as actors in international law and, in particular, in the United Nations system makes no reference to what is meant by NGO and just presumes the comprehension of the concept. Article 71 of the UN Charter is the first norm to regulate the relation existing between the United Nations (in particular, the Economic and Social Council) and NGOs. It affirms that:

“The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned”¹⁰².

This article lays the basis of a new standardized form of cooperation between governmental and non-governmental actors in the international sphere that will influence even other international organizations and will be the most

¹⁰¹ MARTENS (2002: 271-285).

¹⁰² Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 26 June 1945, Chapter X, article 71.

distinctive feature of their participation. Some important remarks are worth making. The first one is the fact that the ECOSOC was then the only UN body providing non-governmental entities the opportunity to present their positions and to advocate for them, provided that they were of specific interest, given the competences and purposes of the United Nations. Second, the only characterization that is required for NGOs is their international standing, as article 71 affirms that national organizations can only be considered under special circumstances. Even the subsequent documents originated by this article, though describing more specifically the modes of interaction between NGOs and the UN system, did not provide a definition. Third, it is important to underline that this recognition did not mean that international organizations and NGOs enjoyed the same status in the international society. Indeed, the decision to use the negative form “non-governmental” indicates a precise will of limiting the effects of this norm as far as their recognition is concerned and not to provide them with a comparable legal status.

One of the ECOSOC’s first actions in promoting the participation of NGOs was to establish a Committee on Non-Governmental Organizations through Resolution 1946/3(II)¹⁰³, provided with the following tasks: consideration of applications for consultative status and requests for reclassification, consideration of quadrennial reports submitted by NGOs and any other related issues. The Committee’s mandate was expanded in 1996 through Resolution 1996/31¹⁰⁴.

The initial consultative status conferred by General Assembly Resolution 4(I)/1946¹⁰⁵, enacting the provision contained in article 71 of the UN Charter, only provided NGOs the right to submit written statements and sit as observers to all public meetings of the ECOSOC. After an intense lobbying activity by NGOs, the status was expanded to include the possibility to submit questions to the ECOSOC for the insertion of specific topics to be discussed in the provisional agenda.

It is in the first years since the birth of the United Nations that the most significant advancements in the consultative status were made. In 1949 the Secretary General – upon request of the General Assembly and after consultation with the ECOSOC, presented some draft rules on the participation of NGOs to UN conferences. They established that NGOs would

¹⁰³ Resolution of the United Nations Economic and Social Council adopted on 21 June 1946, Resolution 1946/3(II), *on the establishment of the Committee on Non-Governmental Organizations*.

¹⁰⁴ Resolution of the United Nations Economic and Social Council adopted on 25 July 1996, Resolution 1996/31, *on the Consultative relationship between the United Nations and non-governmental organizations*.

¹⁰⁵ Resolution of the United Nations General Assembly adopted on 14 February 1946, Resolution A/RES/4(I), *on the Representation of non-governmental bodies on the Economic and Social Council*.

be granted the same rights and privileges they enjoyed within the ECOSOC when participating to UN conferences. These rules were never adopted because of the opposition of some Member States but this did not stop NGOs from claiming the right to participate in UN conferences which, indeed, became consolidated practice until the formal recognition and regulation introduced by Resolution 1996/31.

Resolution 479/1950¹⁰⁶ introduced the first structured model of collective consultation with NGOs, setting down the rules for the calling of NGOs conferences by the ECOSOC on any matters of its competence, allowing the participation of NGOs with consultative status but also national NGOs without it, provided that the invitation of the latter should be preceded by a consultation of the Member State concerned. In 1951, NGOs obtained the authorization from the General Assembly for the Secretary General to make, upon request of the ECOSOC, the due arrangements to enable NGOs' representatives to attend public meetings of the General Assembly whenever economic and social matters within the Council's competence and that of the concerned organization's were discussed. The last significant advancement in the consultative status and, in particular, in the recognition of the technical contribution that NGOs could make to the works of the United Nations was obtained through Resolution 926/1955¹⁰⁷ which called NGOs to supplement the UN advisory services to Member States in the field of human rights with similar programmes designed for further research and studies, exchange of information and assistance.

The following years did not provide any significant improvement in the NGO-UN relationship. It is only in the nineties that further significant achievements were obtained. The first one was Resolution 45/6/1990¹⁰⁸ that allowed the admission of the International Committee of the Red Cross as Observer in the General Assembly. This admission was later expanded also to the International Union for the Conservation of Nature. The formal admissions took place respectively in 1994 and 1999.

The second one was the adoption of the aforementioned Resolution 1996/31, which is also the most recent and relevant document concerning the regulation of the consultative status, adopted in order to implement a general review of the arrangements for consultation with NGOs and to introduce coherence in

¹⁰⁶ Resolution of the United Nations General Assembly adopted on 12 December 1950, Resolution A/RES/479(V), *on Rules for the calling of non-governmental conference by the Economic and Social Council*.

¹⁰⁷ Resolution of the United Nations General Assembly adopted on 14 December 1955, Resolution A/RES/926(X), *on Advisory services in the field of human rights*.

¹⁰⁸ Resolution of the United Nations General Assembly adopted on 16 October 1990, Resolution A/RES/45/6, *on Observer status for the International Committee of the Red Cross, in consideration of the special role and mandates conferred upon it by the Geneva Conventions of 12 August 1949*.

the rules governing their participation in international conferences convened by the United Nations. The document also had the purpose of examining the ways and means for the improvement of the practical arrangements for the work of the Committee on Non-Governmental Organizations.

This Resolution is important also for what concerns the definition of NGO. Indeed, it requires some general qualities for an entity to be considered an NGO: the localization of its headquarters, an executive organ and officer, a democratically adopted constitution, an authority to speak for the NGOs' members, a representative structure and appropriate accountability mechanisms, and financial independence from governments¹⁰⁹. Moreover, Resolution 1996/31 recognizes on an equal level NGOs operating at the international and domestic levels, affirming that "Except where expressly stated otherwise, the term "organization" shall refer to non-governmental organizations at the national, sub-regional, regional or international levels"¹¹⁰.

Moreover, it also adds some general criteria that NGOs are required to fulfil in order to be considered so, such as "international standing" or

¹⁰⁹ Resolution of the United Nations Economic and Social Council adopted on 25 July 1996, Resolution 1996/31, *on the Consultative relationship between the United Nations and non-governmental organizations*:

“§10. The organization shall have an established headquarters, with an executive officer. It shall have a democratically adopted constitution, a copy of which shall be deposited with the Secretary-General of the United Nations, and which shall provide for the determination of policy by a conference, congress or other representative body, and for an executive organ responsible to the policy-making body.

§11. The organization shall have authority to speak for its members through its authorized representatives. Evidence of this authority shall be presented, if requested.

§12. The organization shall have a representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes. Any such organization that is not established by a governmental entity or intergovernmental agreement shall be considered a non-governmental organization for the purpose of these arrangements, including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization.

§13. The basic resources of the organization shall be derived in the main part from contributions of the national affiliates or other components or from individual members. Where voluntary contributions have been received, their amounts and donors shall be faithfully revealed to the Council Committee on Non-Governmental Organizations. Where, however, the above criterion is not fulfilled and an organization is financed from other sources, it must explain to the satisfaction of the Committee its reasons for not meeting the requirements laid down in this paragraph. Any financial contribution or other support, direct or indirect, from a Government to the organization shall be openly declared to the Committee through the Secretary-General and fully recorded in the financial and other records of the organization and shall be devoted to purposes in accordance with the aims of the United Nations.” (ECOSOC Resolution 1996/31, Part I: 10, 11, 12, 13).

¹¹⁰ Resolution of the United Nations Economic and Social Council adopted on 25 July 1996, Resolution 1996/31, *on the Consultative relationship between the United Nations and non-governmental organizations*, Part I: 4.

“representative character” within its field of competence and “geographical affiliation”¹¹¹, in terms of the representation of larger sections of the population.

Many international organizations outside the UN context followed its example of incorporating NGOs in their legal frameworks and establishing specific norms and mechanisms for cooperation.

The Council of Europe two years after its foundation had already adopted resolutions authorizing the Committee of Ministers to make suitable arrangements for consultation with international NGOs for those activities that fell within its purposes and competences. In 1952, international NGOs were provided consultative status. All NGOs admitted to the Council of Europe form the Conference of INGOs. Their status has positively developed over time, to the point that, in 2003, it was upgraded to participatory status. Advancement in their participation included, also, the extension of their admission to national NGOs in 1993. Clearly, even in the case of the Council of Europe, NGOs do not enjoy voting rights, but they do participate in debates, have several occasions to present their positions (even without limits as to the length of their written reports) and provide regular technical assistance according to their specific competences in the relevant fields of action. Moreover, considering that the Council of Europe’s main function is to promote democracy and human rights in Member States, NGOs have an extremely relevant role even in the judicial proceedings of the European Court of Human Rights, providing relevant information that becomes part of the documents admitted to the proceeding and upon which judges can construct an informed and independent opinion in cases of human rights violations, when documents submitted by Member States could be considered more biased. The participation of NGOs in the day-to-day activities of the European Court of Human Rights is probably the most advanced form of participation of non-governmental organizations to international courts. As of today, 307 NGOs enjoy participatory status within the Council of Europe¹¹².

For what concerns the European Union, the institution that has encouraged the most the participation of non-governmental actors in the internal processes, since the first steps of the European integration, is the Commission. This is due to two reasons. The first one is functional, because the Commission immediately recognized the potential that NGOs had in providing information that would have been otherwise impossible for it to collect due to its overloaded work. The second served an instrumental purpose to gain public support and legitimacy among the European civil society and public opinion.

¹¹¹ Resolution of the United Nations Economic and Social Council adopted on 25 July 1996, Resolution 1996/31, *on the Consultative relationship between the United Nations and non-governmental organizations*, par. 9.

¹¹² CONFERENCE OF INGOs.

In 1957, the Rome Treaty founding the European Community established the European Social and Economic Committee, an advisory body, to involve economic and social interest groups also for the purpose of providing the European Commission and the Council of Ministers with an institutional structure for receiving technical support and advice by those competent on specific matters relevant to the work of the European Community. The aim of the Committee, moreover, was also to promote a balance between the economic interests of the European Community and the social interests of the citizens.

Moving outside Europe, the Organization of American States, founded in 1948, recognized in its own Charter the importance¹¹³ that non-state actors such as labour unions, cooperatives or community associations have in the advancement of society and, therefore, assigned to the Permanent Council the possibility of entering into special agreements or arrangements with NGOs, through a practice that has evolved from article 91(d) of the Charter, which provided a more general reference to “other American agencies of recognized international standing”. In 1971, the General Assembly established the regulation governing such cooperation, while in 1998 the Permanent Council created the Committee on Civil Society Participation in the OAS and adopted the Guidelines for participation of NGOs in OAS activities. The role of NGOs in the Organization of American States is mainly a consultative one: they can present their opinions (orally or through written statements), provide information and expert advice. However, they also have a more participatory status recognized. Indeed, NGOs also participate in the designing, financing and execution of cooperation programmes. Their participation is not limited to the Permanent Council, but they also interact with the American Council for Integral Development and other subsidiary bodies.

Finally, the African Union included in its Constitutive Act (2001) the participation of civil society to its activities as one of its founding principles. It is clear that the impact that the worldwide development of interactions between international organizations and NGOs could best be received by one of the most recently born organizations. Moreover, the Constitutive Act also established the creation of the Economic, Social and Cultural Council, an advisory organ composed of African social and professional groups, and its objective is the promotion of the cooperation between representatives of civil society (including NGOs) and other organs of the African Union.

This excursus was made in order to give the reader an idea of the historical development that has interested the participation of NGOs to the life of international organizations all around the world. We did not mention all the organizations previously referred to (like NATO, OSCE, IMF, etc.) first, because many of them exist as part of the United Nations family (that was,

¹¹³ Charter of the Organization of American States, Bogotá, 30 April 1948, art. 91(d).

instead, addressed). Second, because the idea was also to give a geographical dimension of this phenomenon that has clearly not interested only “northern” States (and organizations) but also other regions of the world.

As far as Asia is concerned, it is impossible to present such an historical development because the only three relevant organizations are problematic for different reasons. The Asian Cooperation for Dialogue cannot really be considered an international organization, it can better be described as a substantial cooperation but without formal regulation. The second, the Asian Infrastructure and Investment Bank – what is called the Asian answer to the World Bank – is too young to be assessed and for now is not showing signs of interest in actively involving NGOs in its activities, aside from the invite made to some NGOs to take part in some of its first conferences. The third, the ASEAN, the Association of South-East Asian Nations does not provide an official instrument for the engagement of NGOs in its activities. However, it should be noted that according to some authors the current development in the relations between NGOs and this organization could lead to the adoption of specific instruments in the near future¹¹⁴.

Numbers on the participation of NGOs to the Union of International Associations confirm that there has been a steady increase in the engagement of NGOs, rising from 832 entities of all types in 1951, to 952 in 1978, 20,635 in 1985 and 51,509 in 2003¹¹⁵.

The same phenomenon can be observed in the United Nations Economic and Social Council database of INGOs with consultative status in the Council, where the number of accredited organizations has risen from 40 in 1948 to 180 in 1968, 724 in 1992 and 5,083 as of today (2018)¹¹⁶. Moreover, according to a 1998 UN Secretary General report¹¹⁷, NGOs collectively constitute the second largest source of development assistance in terms of net transfer. The World Food Programme, indeed, reported that NGOs deliver more official development assistance than the entire UN system if we exclude the World Bank and the International Monetary Fund. Therefore, their net transfers account as the second largest source right behind the UN system¹¹⁸.

During the recent decades and through the advent of globalization, the evolving role of States in the international context and increasing importance of non-state entities has brought to the attention of the academic community

¹¹⁴ For further discussion on this topic see: AVIEL (1999), *The Growing role of NGOs in ASEAN*, in *Asia-Pacific Review*, Vol. 6, No.2, pp. 78-92.

¹¹⁵ MARTENS (2003: 1-24).

¹¹⁶ COMMITTEE ON NGOS.

¹¹⁷ Report of the United Nations Secretary General adopted on 10 July 1998, A/53/170, *on Arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system*.

¹¹⁸ LINDBLOM (2005: 21).

concerned with global governance, issues such as the growing role that NGOs play at the international level, specifically in international organizations and covering roles that are much more relevant and engaging for them than the traditional consultative status.

Two core moments for the development and advancement of the role of NGOs were 1966 and 1991 respectively, which coincided on a side with the adoption of the UN Covenant on Civil and Political Rights (and also the Covenant on Social, Economic and Cultural Rights) and, on the other, with Resolution 1991/36¹¹⁹. The symbolism behind these two acts represented the momentous changings that were occurring at the international level in those two years: 1966, in the apex of what is considered the third wave of the de-colonization processes and the resulting sudden multiplication of the States (and, therefore, civil societies' representatives) taking part in the UN system, and 1991, the year that officially sanctioned the end of the Cold War through the dismemberment of the USSR and the origination of several independent States, including the Russian Federation, and a shift in international relations from deterrence to cooperation.

Although the first wave of research on this issue dates to the seventies, new perspectives are emerging today that require deeper analysis. In particular, there is much debate about the legal status that international NGOs have or should have, whether they should have international legal standing at all, and which powers and duties they are entitled to. Along with this debate there is a more recent one concerning the impact of NGOs on the life of international organizations, and specifically on the democratization and increased transparency of their internal processes. Many in the field have suggested that this democratic deficit could be overcome thanks to the participation of external agents to the life of international organizations and, specifically, NGOs¹²⁰, due to their status of representatives of the will of the civil society which is often perceived to be distant from that of States and not adequately represented in international fora. This study will try to demonstrate that this argument could be a valid one in addressing the issues concerning the accountability of international organizations.

Before going further, however, it is necessary to introduce two more topics: the question of the legal personality of NGOs and the different models of interaction that exist today between international organizations and NGOs. We will start from the first.

¹¹⁹ Resolution of the United Nations Economic and Social Council adopted on 25 July 1996, Resolution 1996/31, *on the Consultative relationship between the United Nations and non-governmental organizations*.

¹²⁰ Among the others: HILL (2002), HUNTER (2003), PAUL (2003), ZIAI (2015), BECKERLE et al. (2017), PEREIRA et al. (2017).

2.2 The question of the international legal personality of NGOs

In international law, the international legal personality is a qualification reserved only to two actors: States and, more recently, international organizations. The international legal personality of an international organization reflects the autonomy of the organization, its capacity to act internationally according to international law and independently from its Member States. It means that it has rights and duties under international law.

According to some authors, the absence of a widely accepted definition of NGO and of their international legal personality represents an effective harm to their participation to international organizations because of the disagreements between different organizations on what kind of participatory rights should be recognized, especially if we consider non-democratic or quasi-democratic States that tend to be less conciliatory towards NGOs since governments and States themselves often constitute the target of their criticism.

NGOs are private law entities whose rights and duties vary according to the state they found themselves operating in. This means that their legal personality is based on domestic private law and that their legal position can be subject to changes according to the different country they operate in even if we are still referring to the same organization. In the case we are considering, NGOs participating to the life of international organizations, the vast majority of them fall in this category because they usually operate in more than one country. Consider, for instance, development NGOs that are involved in projects in developing countries but are headquartered in a European country. To be clearer, an NGO with multiple branches in different countries (say, Belgium, France, Italy and China) will find itself having to adapt each time to the law of the country in which its headquarters are. So, the Belgian branch will operate according to the Belgian law and to the rights and duties that it entrusts it with; the Italian branch will operate according to Italian law and to the right and duties that the Italian law and only the Italian law recognizes it. The same happens with the other locations of the NGO considered.

The problem comes when that same NGO has a branch in a country less open to civil society participation in the social sector: in that case serious issues will arise. See the case of Amnesty International and its Turkish branch whose president and director have been arrested and incarcerated with charges of belonging to a terrorist organization as a result of the purges enacted by the national government following the attempted coup in July 2016¹²¹. Something

¹²¹ The President of the NGO has been recently released (on 15 August 2018): <https://www.rferl.org/a/turkish-court-orders-release-jailed-amnesty-chief-kilic/29436026.html>

like that would have never happened to the president and director, for instance, of its British branch.

This is the reason why questions concerning the international legal personality of an NGO mainly concern those NGOs engaged in many countries. The difficulty, indeed, is to adapt each time to the possibilities and limits presented by each domestic law.

Although the debate about the international legal personality of NGOs has a long history, as of today NGOs do not enjoy it¹²². However, it is interesting to understand which are the main ideas suggested in this regard, in order to have a complete picture of NGOs' international standing. The discussion has been centred on whether they should be considered and, thus, qualified as international legal subjects or whether they should be treated as actors not entrusted with international legal personality and, in such case, how to resolve the issues deriving from contrasting national legislations and how to release them from the control of the State to which they are legally subordinated.

The debate on the legal personality of NGOs and the eventuality of its international regulation dates back to 1910, when the Institut de Droit International presented a draft convention on NGOs and proposed a study on the juridical conditions of international associations¹²³. International lawyers and social scientists had already started to discuss the issue, making efforts to elaborate an international theory applicable to NGOs, but that was the first time that the question was presented in an international forum. Soon after, other attempts were made by scholars or research institutes to propose basic frameworks for the integration of NGOs into the international legal system and, in 1912, a first draft treaty on the international legal personality of NGOs was developed but did not succeed in the continuation of its reading process¹²⁴. In 1923, the Institut prepared another Draft Convention Relating to the Legal Position of International Associations, introducing basic requirements for "non-profit private organizations"¹²⁵ (as already mentioned, in fact, the term NGO was not used until the establishment of the United Nations) such as their international purpose and membership from different countries and also envisaged the establishment of an international registration office for associations (which later became the Union of International Associations) and the right of appeal to the Permanent Court of International Justice in case one of the States parties to the Convention denied legal status to a registered association. However, this proposal did not receive support from any State and therefore, even this attempt was abandoned¹²⁶. The same

¹²² LINDBLOM (2005).

¹²³ MARTENS (2003: 1-24).

¹²⁴ *ibidem*

¹²⁵ Unidroit (1923), *Draft Convention Relating to the Legal Position of International Associations*.

¹²⁶ *ibidem*

happened to the following attempts made in the subsequent years, including one draft convention proposed by Suzanne Bastid and approved by the Institut de Droit International in 1950¹²⁷, which required States to recognize an association on the basis of the standards set forth in the Convention without the need to register it in one State party.

In those same years, though at the international level no agreement could be found, a single State introduced a law that is still considered the most important reference concerning the law of NGOs. That State is Belgium¹²⁸. In 1919, the Belgian law introduced a special recognition, a *preferential status* for internationally-operating NGOs, even if not based in Belgium. Article 8 of the Law of 25th October 1919 on International Associations with Scientific Objectives¹²⁹ affirms that those international associations whose headquarters are registered in a foreign State and, thus, are governed by foreign law, have the right to exercise their functions in Belgium. Therefore, they derived that right from the fact that they were recognized legal persons in a foreign jurisdiction. Moreover, the law also affirms that it is not necessary for one of its members to be Belgian. The only requirement is for a permanent institution or committee of said association to be located in Belgium. Ultimately, this Law recognizes the fact that an international association responds to the law of the country where its headquarters are based, due to the fact that its legal personality derives from that jurisdiction. Though advanced for the times, especially if compared to the fruitless attempts made at the international level, the Belgian law only resolves part of the problem on the legal personality of NGOs. As Marcel Merle argued:

“in the most developed version national legislation can go so far as to recognize, within the national territory, the validity of activities whose origin is outside their frontiers but it cannot and will never be able, without the consent of foreign states, to control those same activities beyond the limits of national territory”¹³⁰.

At the international level, the most important achievement on the codification of the legal personality of NGOs has been made at the regional level. In 1986, the Council of Europe adopted the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, that came into force in 1991. It only considered the case of international NGOs, due to their aim of international utility, and defined them as:

“associations, foundations and other private institutions (hereinafter referred to as "NGOs") which satisfy the following conditions: a) have a non-profit-making aim of international utility; b) have been established by an instrument governed by the internal law of a Party; c) carry on their activities with effect

¹²⁷ CHARNOVITZ (2006: 348-372).

¹²⁸ *ibidem*

¹²⁹ UNION OF INTERNATIONAL ASSOCIATIONS.

¹³⁰ MERLE (1986).

in at least two States; and d) have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party”¹³¹.

The Convention, thus, provides for the general recognition of the legal personality of an NGO in any State that is party to the convention, without the necessity of asking for the recognition in each of the Member States where it operates. NGOs must simply have been established under the internal law of one of the Member States and have its headquarters based in the territory of one of the Member States too. It basically follows the ideas included in the 1919 Belgian Law, without introducing the institution of the international legal personality for NGOs. As of today, only twelve of the 47 Member States of the Council of Europe have ratified the Convention: Austria, Belgium, Cyprus, France, Greece, Liechtenstein, Netherlands, Portugal, Slovenia, Switzerland, The former Yugoslav Republic of Macedonia, the United Kingdom¹³².

As a result of the failure of reaching an international agreement on what NGOs are and recognizing an international legal status, if not properly international legal personality, to them, NGOs are obliged to accept the national legislation of each of the States where they operate. As mentioned before, national laws differ, however, from one State to the other and, therefore, NGOs’ status, rights and duties vary accordingly. In particular, national legal systems differ in terms of tax regulations for societal associations and the criteria for official recognition. This means that the same NGO will have more possibilities to perform its functions in the State that is eager to accord it rights, compared to those States in which their operations are severely limited.

In 1972, Wilfred Jenks, former ILO Director-General, observed that: “while the number, importance, and influence of international associations have continued to increase, the problem of their legal status has not become of such acuteness and urgency as to make a comprehensive solution of it imperative”¹³³.

Nowadays, the lack of an international legal status for NGOs is still debated and considered a problem, but not an insuperable one. International NGOs have learned how to make their participation as effective as possible without any recognition of a formal international legal personality. In some instances, the crucial role that an NGO plays has led governments to accord rights to it that are typically granted only to international organizations. For example, the International Committee of the Red Cross (“ICRC”) and the International Federation of Red Cross and Red Crescent Societies (“IFRC”) have signed

¹³¹ European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, Strasbourg, 24 April 1986, art. 1.

¹³² COUNCIL OF EUROPE (2018).

¹³³ CHARNOVITZ (2006: 348-372).

headquarter agreements with numerous States that provide for certain privileges and immunities. In the following section, we will have the chance to better explore the models of participation of NGOs to the life of international organizations and, therefore, to concretely assess their legal status.

2.3 Methods of interaction with international organizations

The most common form of participation of NGOs to the life of international organizations is the consultative status. Generally speaking, the consultative status grants NGOs the participation to the meetings and conferences of the organization (or specialized agency or organ) to which it is accredited, the possibility to present oral or written statements (usually not exceeding a certain length), of proposing issues for discussion in the agenda of the organization and the possibility of providing technical assistance and advice for those NGOs which have a particular knowledge of an issue. Moreover, they can be granted the status of observers within the assembly organ of an organization and participate in international conferences.

Since this status does not vary much from one organization to another, in this chapter we will address first and foremost the consultative status as regulated by the United Nations, which is the general reference for the development of this status and that is the model of participation for NGOs even for other international or regional organizations. However, some relevant outstanding cases of further engagement or specific advancement in the participation of NGOs are present too and, therefore, those will be analysed. Finally, special attention will be accorded to the role of *amicus curiae* that NGOs have within those international tribunals or courts that allow their participation in their judicial proceedings. This particular role is indeed of great importance.

2.3.1. The consultative status within the United Nations

The most common form of NGO participation to the life of an international organization is the consultative status. As already mentioned, within the UN system, the first norm to regulate the consultative status was article 71 of the UN Charter, that affirmed for the first time that the Economic and Social Council could make arrangements with those NGOs concerned with matters of the Council's competence. The subsequent practice of the United Nations expanded this possibility also to other UN subsidiary organs and agencies. Indeed, NGOs can also participate in the works of the General Assembly in the capacity of observers, ask accreditation for special UN conferences or

other UN special bodies, still considering that they clearly do not enjoy voting rights.

There are several bodies, within the UN system, entrusted with the management of the relationships between the UN and NGOs. First, there is the UN Department of Economic and Social Affairs - NGO Branch, responsible for the screening of the applications, processing reports and the facilitation of consultative arrangements between the ECOSOC and NGOs. Moreover, it also serves the function of advisory body for everything that entails the participation of NGOs in UN initiatives involving their presence. Then, there is the NGO Liaison Office based in Geneva that, after the granting of the consultative status to NGOs, is in charge of facilitating the cooperation between them and the ECOSOC. Furthermore, in charge of managing UN-NGOs relationships there is also the NGO Section of the UN Department of Public Information, a liaison office between the UN, NGOs and civil society organizations (whether enjoying consultative status or not). Its main scope is the development and promotion of effective information programmes for NGOs to disseminate information about issues on the UN agenda and its work. The fourth body is the UN Non-Governmental Liaison Service, mandated to develop constructive and dynamic relations between UN and NGOs, by providing information, advice, expertise and consulting to improve the dialogue between these two entities.

There are other structures that are destined to the promotion of the cooperation between the UN and NGOs and the effective exercise of the consultative status. For instance, the UN - NGO Informal Regional Networks (that promotes partnerships, shares information and contributes to the work of the ECOSOC), the International Association of Economic and Social Councils and Similar Institutions (which enjoys Observer status within the ECOSOC and is composed of consultative assemblies appointed by public authorities to promote dialogue with civil society in key social and economic issues) and the Conference of NGOs in Consultative Relationship with the UN (“CONGO”, a network of national, regional and international NGOs possessing consultative status within the UN that aims to assist its members to facilitate and enhance their participation in UN decision-making, strengthening their voices and promoting consensus-building approach among the associated members).

Resolution 1996/31

This Resolution governs the contemporary consultative status of NGOs within the United Nations. While Part I of the Resolution designs a sort of framework in order to clarify the requirements that NGOs must have for their recognition and participation in the UN system, Part II goes on to remark the crucial difference existing between the participation of States – and the rights deriving

from it – and that of NGOs. It is recalled, in fact, that in no way can the rights accorded to NGOs be the same as those accorded to States not participating in the Council or to other specialized agencies that are part of the UN system¹³⁴. Article 20 defines the scope of such arrangements as, on one side:

“enabling the Council or one of its bodies to secure expert information or advice from organizations having special competence in the subjects for which consultative arrangements are made, and, on the other, to enable international, regional, sub-regional and national organizations that represent important elements of public opinion to express their views”¹³⁵.

Part III defines the different possible consultative statuses that NGOs can enjoy. First of all, organizations with broader scopes or areas of interest normally enjoy a *general consultative status*. On the other hand, those organizations that have a specific competence in a field area (or a few areas) of interest of the Council and that are widely recognized for such competence, are eligible for a *special consultative status*. If they are accorded this status because of their specific interest in the field of human rights, they are also requested to protect and promote human rights according to the principles and beliefs expressed in the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action. Finally, there is one more status that can characterize the participation of NGOs in the ECOSOC, and that is being on the Roster. This means that, for those NGOs that do not enjoy neither the general consultative status nor the special consultative status, there is still the opportunity to support the activity of the Council by making “occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies”¹³⁶. NGOs inscribed in the Roster can also be those that enjoy consultative status or other equivalent statuses within other UN bodies or specialized agencies.

Part IV presents the ways that NGOs have in order to provide information and express their positions during consultations with the ECOSOC. They are the following:

- *Provisional agenda*: the ECOSOC informs the NGOs which enjoy general or special status and those on the Roster of its agenda. The NGOs enjoying general consultative status can ask the Council Committee on Non-Governmental Organizations to request the

¹³⁴ Resolution of the United Nations Economic and Social Council adopted on 25 July 1996, Resolution 1996/31, *on the Consultative relationship between the United Nations and non-governmental organizations*, par.18.

¹³⁵ *ivi*, par. 20.

¹³⁶ *ivi*, par. 24.

Secretary-General to place items of special interest to the organizations in the provisional agenda of the Council.

- *Attendance at meetings*: those NGOs enjoying general or consultative status can have their authorized representatives sit as observers at public meetings of the Council and its subsidiary bodies. For those on the Roster, they can do so, if the issue to be discussed is related to their field of interest.
- *Written statements*: this opportunity is reserved to NGOs enjoying consultative status only (general or special). They may provide written statements on those issues the organizations have a special competence on. The written statements are circulated by the Secretary General of the United Nations to the members of the Council.
- *Oral presentations during meetings*: the organizations that enjoy general consultative status may present their positions orally if so requested by the Council Committee on Non-Governmental Organizations and approved by the Council itself. Organizations enjoying special consultative status can present their positions only in the absence of a body or committee of the Council specifically concerned with their area of interest.

The arrangements for consultation with subsidiary bodies or commissions of the Council are the same but include also the possibility of providing special studies. Special studies, indeed, are a particular request that can be advanced by a commission or subsidiary organ to an NGO that has competence in a particular field of action in order to undertake specific studies or investigations or to prepare specific papers for the commission.

NGOs, whether enjoying general consultative, special consultative status or that are included on the Roster, can attend the international conferences convened by the UN and their preparatory processes prior to the authorization of the secretariat of the conference. Accreditation of NGOs is the prerogative of Member States. NGOs' applications must be accompanied by information on the competence of the organization and the relevance of its activities to the work of the conference and its preparatory committee.

The ECOSOC and the Council Committee on Non-Governmental Organizations

The General Assembly's Economic and Social Council is composed of 54 States, elected for a three-year term by the General Assembly. According to article 62 of the UN Charter, they:

“may make or initiate studies or reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to

the Members of the United Nations, and to the specialized agencies concerned”.¹³⁷

In 1946, the Committee on Non-Governmental Organizations was established, reporting directly to the Council and composed by 19 Members who are elected on the basis of equitable geographical representation: 5 Members from African States, 4 from Asian States, 2 from Eastern European States, 4 from Latin American and Caribbean States and 4 from Western European and other States. The term of office for each Member is of four years.

The main tasks of the Committee – that have been amended and expanded through Resolution 1996/31 - are the following: the consideration of applications for consultative status and requests for reclassification submitted by NGOs; the consideration of quadrennial reports submitted by NGOs in General and Special categories; the implementation of the provisions of Council Resolution 1996/31 and the monitoring of the consultative relationship; any other issues which the ECOSOC may request the Committee to consider. The decisions of the Council are considered recommendations (hence, not binding) and are expressed through the form of draft decisions calling for action by the Council.

There is a question of gatekeeping power of the Members of the Committee. In fact, since the NGOs holding consultative status can attend the meetings of the Council and directly address its Members through oral interventions or by submitting written statements, States have an interest in controlling the admission of NGOs, especially those States with significant records of human rights violations. There is no way of escaping such control because of the equitable geographical representation which is not negative *per se*, but its possible outcome is the unbalanced representation of areas of the world in which democratic rules and human rights are less valued – if not openly opposed – and, thus, this creates a substantive obstacle for the participation of NGOs, especially for national NGOs. Indeed, according to Resolution 1996/31 (Part I, 8) national NGOs are only admitted upon consultation with the Member State concerned, though the possibility of the non-existence of an expressed view by the State in question is also admitted. In the 2009 session, the Egyptian representative started a debate as to whether it was possible or not to evaluate the application of national organizations whose host State had not offered its opinion on the candidate. The question was supported by States with low democratic records (such as Cuba, China, India and Pakistan) but was challenged by open liberal democracies (the US, the UK, Switzerland, Chile, and Mexico). It seems evident that those States were exercising their powers in order to avoid criticism to their own governmental practices, especially if we consider that the concerned NGOs were active in sensitive

¹³⁷ Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 26 June 1945, Chapter X, Art. 62.

human rights issues. Furthermore, if the new interpretation was to become effective, then, any country could impose an insurmountable obstacle for the accession of NGOs to consultative status just through its silence.

Brief overview of the consultative status in other UN specialized agencies or bodies

All UN funds, specialized agencies and bodies, as well as programmes have adopted the ECOSOC's model for the granting and management of NGOs' consultative status. This is the reason why in this paragraph we will highlight only the most particular and advanced cases.

We have already had the chance of assessing the particular governance structure of the ILO and its *ante litteram* opening to non-state actors. In a further development of such openness, the ILO also invites qualified NGOs to attend as observers some of its meetings. The United Nations Educational, Scientific and Cultural Organization ("UNESCO"), provides NGOs consultative status as well as the possibility of summoning international non-governmental conferences on education, sciences and humanities or the dissemination of knowledge. As for the World Bank, aside from the consultative status, NGOs control the implementation of its projects and have an active role in the Inspection Panel. However, due to the relevance of this role, a special section will be dedicated to it in the third chapter, when we will introduce case studies for the argument supported by this thesis.

2.3.2. The Council of Europe and the participatory status

As we have already seen, the Council of Europe has always had, since its very first actions, an intense relationship with NGOs, recognizing them consultative status already in 1952, three years after its foundation. In 2003, however, after the acknowledgement of the increasingly active role played by international NGOs, the Council of Europe changed the consultative status into a *participatory status*. This status has since then been governed by simple guidelines. This is why, in 2015, the Secretary General¹³⁸ recommended to revise the document (the guidelines), in consultation with the Conference of INGOs (a body composed of representatives of each international NGO enjoying participatory status), in order to better define the criteria for granting or refusing participatory status and to increase the relevance and quality of international NGOs enjoying participatory status. In 2016 the Committee of

¹³⁸ CONFERENCE OF INGOs.

Ministers adopted Resolution (2016)3¹³⁹, setting the rules for granting the participatory status, providing a better definition of it and explicating the improvement that it entails for NGOs' participation in the Council of Europe and the conditions that international NGOs must meet in order to apply for it and to be granted it.

Resolution 2016(3) sets some criteria that NGOs must fulfil in order to be eligible for the participatory status. Aside from general remarks like the respect of the values and principles promoted by the Council or the possibility to effectively contribute to its work, it then presents more specific requirements like its creation on the basis of a constitutive act adopted according to democratic principles, a democratic structure and governance, its particular representativity in the field of its competence, the need to have members in at least five Member States of the Council, previous established working relations with the Council of Europe, and its ability to make known the work of the Council of Europe to society.

The modalities of participation¹⁴⁰ are then defined, explaining the substance of the participatory status. The Resolution affirms that international NGOs enjoying participatory status can address memoranda to the Secretary General, have access to the agenda and public documents of the Parliamentary Assembly, are invited to the public sittings of the Congress of Local and Regional Authorities and contribute to its work according to its rules, are invited to attend seminars, conferences, colloquies of interest to their work according to the applicable Council of Europe's rules, may be invited to contribute individually or through the Conference of INGOs to the work of intergovernmental committees (in accordance with the existing regulations), may be invited to provide expert advice on Council of Europe policies, programmes and actions according to their technical expertise, may request to be registered on the list of INGOs entitled to lodge collective complaints in the framework of the Additional Protocol to the European Social Charter (which foresees a system of collective complaints), are invited to cooperate closely with the Commissioner for Human Rights (providing information), and, finally, may be consulted by the Secretary General, in writing or by means of hearing, on questions of mutual interest.

This new regime, though informally in place for several years, provided a significant upgrade to NGOs, that abandoned the status of consultants, who merely intervene when requested to, to become true participants in the debates, with more opportunities to share their positions, submitting memoranda without length limitations and providing expert advice on a more

¹³⁹ Resolution of the Committee of Ministers adopted on 6 July 2016, CM/Res(2016)3, *on the Participatory status for international non-governmental organizations with the Council of Europe*.

¹⁴⁰ *ivi*, par. 3.

regular basis, still maintaining, however, their impossibility to vote in the decision-making process. As Szazi¹⁴¹ recalls, the enhanced status was welcomed in a Council of Europe's Parliamentary Assembly even before its formal adoption in 2016.

2.3.3. The case of OSCE

The case of OSCE stands out because, as aforementioned, security organizations tend to be more restrictive with respect to the possibility for non-state actors, hence also NGOs, to enter their system. OSCE, however, as opposed to NATO, has a formalized framework for the participation of NGOs¹⁴². This formalization had a significant development between 1989 and 1992, the years right before the conversion into the contemporary asset that this organization has. Indeed, the Conference for Security and Cooperation in Europe had provided legitimacy to NGOs but not structured any form of specific engagement. Some civil society organizations had been admitted, such as Charter 77, the organization born in Czechoslovakia that pressured the Eastern bloc to comply with the rules concerning the respect of human rights and freedoms adopted by the Conference through the Helsinki Final Act.

However, it was the Charter of Paris that gave greater legitimacy and formally welcomed the participation of both national and international NGOs in the OSCE system. However, only through the adoption of the final document of the 1992 Helsinki Summit were the rules concerning NGOs' engagement officially set forth. Following documents have been adopted over the years to supplement it. Nevertheless, no accreditation procedure has been formalized for NGOs' participation, but this is usually regarded as a more flexible and open way of allowing them to engage with the organization rather than a potential threat to their effective participation.

Though clearly not enjoying voting rights nor having a say in decision-making or in determining the agenda of OSCE's bodies, NGOs have a wide space for participation in OSCE. They are especially engaged in affairs concerning the human dimension of security, therefore the promotion of human rights and the prevention of violations. NGOs are allowed to participate and, therefore, to speak and submit written statements, in all plenary meetings of review conferences and in the OSCE Office for Democratic Institutions and Human Rights ("ODIHR") seminars, workshops and human rights implementation meetings. Specific arrangements can then be made for their participation in other contexts not cited by the Helsinki document and, indeed, this has often been the case. Though each OSCE institution has the duty to appoint an NGO

¹⁴¹ SZAZI (2012).

¹⁴² STEFFEK et al. (2008: 116-139).

liaison person among its staff, the ODIHR has become the most important reference point for NGOs, since it is their main platform for interacting with the organization.

Moreover, the role of NGOs is also promoted for what concerns their interactions with governments' delegations. In the Helsinki document the Member States pledged to appoint one member of their Foreign Ministries and a member of their delegations to the organization's meetings to be responsible for NGO liaison.

Still in relation to their interactions with national governments, human rights NGOs are especially engaged in collecting information about potential human rights abuses by Member States and providing them with technical expertise as to how to prevent such violations from happening. The same is done for what concerns OSCE activities.

Finally, NGOs have an important practical role in the design and implementation of OSCE programmes and projects concerned with democratization and conflict prevention.

2.3.4. The *amicus curiae* role in international tribunals

The role of *amicus curiae* that NGOs enjoy in many international courts or tribunals is among the most important and, for this reason, it deserves special attention.

The expression *amicus curiae* is normally translated as “a friend of the court”. The term is applied “to a bystander, who without having an interest in the cause, of his own knowledge makes suggestion on a point of law or of fact for the information of the presiding judge”¹⁴³. The practice of the *amicus curiae* participation is an ancient one, already present in Roman Law. This role was then granted to third parties intervening in a judicial proceeding, mainly through briefings with the court, to provide relevant information that could have been useful to deliberate on the case. Although common law systems have always been detractors of the interference of third parties in a litigation, this practice was later incorporated into them. Cases of the seventeenth-century cite as *amici curiae* both government and private representatives. It is possible that the incorporation of this practice was due exactly to the extreme difficulty for third parties to intervene in litigations. The position of civil law countries, on the other hand, is that of a missing well-established practice of allowing external intervention, though France and some other civil law States

¹⁴³ ABBOT (1963: 694-721).

constitute exceptions because they have developed similar institutions in their case law.

The institution of the *amicus curiae* has developed significantly over the years, to include also the possibility for third parties to intervene if they believe that their position can potentially be affected by the litigation, evolving from a neutral participation to performing a legitimate advocacy function. Hence, an *amicus curiae* is usually identified as a third party operating for the public interest, for the democratization of the dialogue happening before courts, especially when it involves human rights issues that have the potential to affect all the subsequent decisions of a court, resulting as a precedent. It is in the 1990s that, as observed many times in the course of this thesis, there has been a first recognition of the increased participation of non-state actors in global affairs, and, thus, that the role of *amicus curiae* has particularly developed before international courts and tribunals, especially those interested in human rights issues, though with great discretionary role of the courts to allow for this form of participation in different degrees. Different courts decide differently on whether *amici curiae* are permitted, who can be an “*amicus*” and what is the scope and extension of its participation.

For what concerns NGOs, we already had the opportunity to cite the role for their participation granted by the Permanent Court of International Justice, precursor of the International Court of Justice and, in this matter, more advanced than its successor. Over the years, the practice of allowing the participation of non-governmental organizations in proceedings before international tribunals or dispute settlement mechanisms expanded to different regional judicial bodies, including the European Court of Human Rights, the Court of Justice of the European Union, the Inter-American Court of Human Rights and the African Court of Human and Peoples’ Rights. It is easy to understand why all these courts decided to admit NGOs as *amici curiae*: their particular interest in human rights issues. Here, human rights NGOs can intervene as experts according to their field of competence, providing the courts with useful information. According to UNIDROIT, the International Institute for the Unification of Private Law, the role of *amicus curiae* means that:

“written submissions concerning important legal issues in the proceeding and matters of background information may be received from third persons with the consent of the court, upon consultation with the parties. The court may invite such submission. The parties may have the opportunity to submit written comment addressed to the matters contained in such a submission before it is considered by the court”¹⁴⁴.

This role is not only important for the courts, that may receive helpful information to elaborate a judgement, but also for the intervening third party

¹⁴⁴ UNIDROIT (2006).

(in this case, NGOs) because they can have an important role in influencing the final outcome of a proceeding through the information, data, remarks and legal analysis that they present. The role of *amicus curiae* is very important for what concerns the accountability of national governments and, when it will be possible for international organizations to be judged by an international court, it will be significant for their accountability too since “at last, especially in the area of human rights, *amicus curiae* briefs by NGOs remind different parties that they are acting as a watchdog, sending a signal to States that they remain vigilant on particular issues”¹⁴⁵. Indeed, the principal objectives pursued by NGOs intervening as *amici curiae* are usually to challenge national laws, practices and interpretations, to establish precedents, and eventually to extend the interpretation given to those international conventions recognizing human rights and freedoms¹⁴⁶.

According to Shelton¹⁴⁷, there are both advantages and disadvantages in the role of *amicus curiae*. Among the advantages, she mentions the fact that participating as *amicus curiae* is less costly and time-consuming than mounting a full case, the fact that *amici curiae* are not bound by the decisions nor prevented from presenting again the same case to the international court concerned in the event that they are not satisfied with the outcome because they are not official parties to the litigations (they are neither the prosecutor nor the defence). Moreover, unlike experts or witnesses, they have greater discretion during the proceedings. Indeed, they can raise any issue relevant to the litigation and are not limited to questions presented to them or matters pleaded by the parties. They definitely have a more active role in their interventions because they are not simple spectators only awaiting to be requested to speak. Finally, she cites the fact that accessing a proceeding as an *amicus curiae* is easier than intervening in it as a party to the litigation because in order to do so the concerned legal person must have a direct personal interest in the object of the legal proceeding.

For what concerns the disadvantages, Shelton mentions the impossibility to control the direction or management of the action, the impossibility to acquire papers or other documents in the case, the impossibility to offer evidence or examine witnesses and that of being heard unless with special leave of the court. Finally, they are not entitled to receive compensation in case the outcome of the proceeding is in line with their opinions because they are not parties to the litigation. Though for some the disadvantages may dominate over the advantages, we need to keep in mind that NGOs do not enjoy international legal personality, so this form of participation is the only one currently available and, due to the scope especially of human rights NGOs, even just the possibilities conferred by this status can be of great importance

¹⁴⁵ VAN DEN EYNDE (2013: 275).

¹⁴⁶ LINDBLOM (2005).

¹⁴⁷ SHELTON (1994: 611-642).

in advocating for their mission.

It is now necessary to analyse more in detail the substance of this role, how it is interpreted by each court and, in general, what contribution NGOs are allowed to make in international legal proceedings.

For the sake of rigour, we should start from the analysis of the international Court with the most universal membership existing today, the International Court of Justice (“ICJ”). However, the rules and the practice of this court do not constitute any contribution to this topic because no form of intervention of third parties is allowed unless in extremely rare circumstances. Its predecessor, the Permanent Court of International Justice, allowed the participation of non-governmental actors for informative purposes, by admitting to consider NGOs as “international organizations”¹⁴⁸ and also because of the tripartite structure of the ILO (already existing at the times of the PCIJ) that provides non-governmental representatives with voting rights, recognizing them full powers just as governmental officials. In contrast to the PCIJ, the International Court of Justice provides limited access to non-governmental organizations. Several demands have been made by different NGOs requesting the ICJ to receive written statements during some specific cases, but the Register entrusted with the responsibility of examining them rejected their applications claiming that they do not classify as international organizations. Article 34 of its Statute affirms that only States may be parties in cases before the Court and that “the Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative”¹⁴⁹. Though this definition could be susceptible to interpretation, according to the ICJ’s practice it does not include NGOs.

At the regional level, the European Court of Human Rights has a remarkable record on the participation of non-governmental organizations to its judicial proceedings as *amicus curiae*. Indeed, as aforementioned, due to the specific scope of the Court, the promotion of the human rights and freedoms recognized by the European Convention of Human Rights (“ECHR”), the participation of those NGOs concerned with the protection of human rights is undoubtedly an important resource for the achievement of a fair and informed judgement. Just to make an example, considering the elevated amount of cases concerning possible violations of article 3 of the European Convention of Human Rights (prohibiting torture and inhuman or degrading treatments or punishments), the cooperation with expert NGOs in this subjects, such as

¹⁴⁸ MARTENS (2002: 271-285).

¹⁴⁹ Statute of the International Court of Justice, San Francisco, 26 June 1945, Part II, art. 34.

Amnesty International¹⁵⁰, is the norm for the Court and it is particularly important because torture requires the perpetrator to be an agent acting in official capacity, hence being a governmental official or a public authority. Here, the necessity to receive independent information about the facts is all the more fundamental for the achievement of a balanced judgement.

Article 34 of the ECHR affirms that “The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto”¹⁵¹. This norm, however, has been interpreted as not permitting NGOs to participate as victims of a violation. Therefore, the development of the role of *amicus curiae* became the only viable opportunity for NGOs to participate in some way to proceedings before the Court.

Ludovic Hennebel – member of the Human Rights Council of the United Nations – examined the trends of the European Court of Human Rights concerning incorporation in its jurisprudence of the *amicus curiae* role. First, the Court assessed the existence of a European or international consensus over this role. Second, it looked at other legal systems and at the solutions adopted by them (either at the national or international level). Third, it developed a practice according to which it examines each case in order to understand and highlight the different interests at stake and decide over the admission of *amici curiae*.

However, this openness and heavy reliance on NGOs or, in general, third parties, has not always been such. 1978 was the year of the first case in which a third party asked permission to the Court to file a written memorandum and make oral submissions. It was the National Council for Civil Liberties in the *Tyrer v. the United Kingdom* case¹⁵². Eventually, this possibility was denied. A small opening happened in 1979 when the Court admitted the UK

¹⁵⁰ As Amnesty International reported in its “Amicus curiae brief before the Inter-American Court of Human Rights in the matter of Ernesto Raxcacò Reyes”, the NGO has intervened as amicus curiae in the following cases before the European Court of Human Rights: *Acar v. Turkey* (Application No. 26307/95), 6 May 2003 (preliminary issue) 8 April 2004; *Aydin v. Turkey* (Application No. 28293/95; 29494/95; 30219/96) 10 July 2001; *Assenov and Others v. Bulgaria* (Application No. 24760/94), 18 October 1998; *Kurt v. Turkey* (Application No. 24276/94) 25 May 1998; *Chahal v. United Kingdom* (Application No. 22414/93), 15 November 1996; *Akdivar and Others v. Turkey* (Application No. 21893/93), 19 June 1996; *McCann and Others v. United Kingdom* (Application No. 18984/91), 29 September 1995; *Murray v. United Kingdom* (Application No. 18731/91), 28 October 1994; *Brannigan and McBride v. United Kingdom* (Application No. 14553/89 and 14554/89), 26 May 1993; *Soering v. United Kingdom* (Application No. 14038/88), 7 July 1989; *Cestaro v. Italy* (Application No. 6884/11), 28 January 2011.

¹⁵¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, art. 34.

¹⁵² Judgement of the European Court of Human Rights of 15 March 1978, Application No. 5856/72, *Tyrer v. the United Kingdom*.

government's written observations on the construction of article 5(4) of the Convention if the information was presented by delegates of the Commission. Though small, this recognition allowed non-governmental actors to make their first steps in assuming what will then be a more structured *amicus curiae* role. In 1981, indeed, the Court admitted information submitted by the Trades Union Congress in the case *Young, James and Webster v. the United Kingdom*¹⁵³. The employed mechanism, however, did not permit third parties to take part in the proceeding. They could only submit written information that, upon the Commission's control of suitability, could be transmitted to the Court. It is only in 1998 that this system was changed, annulling the intermediary role of the Commission and allowing the right of individual application to the Court¹⁵⁴.

Today the *amicus curiae* role is regulated by article 36 of the ECHR and by rule 44 of the Rules of the Court. The first affirms that:

“(1) In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings. (2) The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings (3) In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings”¹⁵⁵.

Therefore, two options are available. The first one assigns to the Court the right to invite a third party to participate in a proceeding as *amicus curiae*; the second, assigns the right to third parties to seek such invitation but it is in the powers of the Court to decide whether or not to accept the application. According to rule 44¹⁵⁶, moreover, the procedure implies that the concerned State in the proceeding be first informed of the presence of an application as *amicus curiae*. Then, the Court may invite or grant leave to any person concerned who is not the applicant to submit written comments or, in exceptional cases, to take part in the hearings.

For what concerns other international courts, the Inter-American Court of Human Rights has one the most extensive *amicus* practice. Although there is no specific reference to this practice either in the Inter-American Convention of Human Rights or in the Court's Rules of Procedure, the Inter-American

¹⁵³ Judgement of the European Court of Human Rights of 18 October 1982, Application No. 7601/76; 7806/77, *Young, James and Webster v. the United Kingdom*.

¹⁵⁴ Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, Strasbourg, 13 May 2004.

¹⁵⁵ *ivi*, art. 36.

¹⁵⁶ Rules of Court of the European Court of Human Rights, Strasbourg, as amended on 19 September 2016, rule 44.

Court has accepted *amicus* briefs in all proceedings from its very first case. This is probably due to the fact that in the US there has always been an extensive and established tradition of admitting *amici curiae* and, therefore, the influence exercised by this country has been relevant in shaping this development. However, it should be noted that the United States are not party to the Convention because they did not ratify the Statute of the Court.

As Shelton recalls¹⁵⁷, former Court President Thomas Buergenthal cites rule 34(1) of the Court's Rules of Procedure as containing the relevant basis concerning this issue. Indeed, the article affirms that “the Court may, at the request of a party or the delegates of the Commission, or *proprio motu*, decide to hear as a witness, expert, or in any other capacity, any person whose testimony or statements seem likely to assist it in carrying out its function”. This provision applies to contentious cases, although it can be invoked in advisory proceedings, pursuant to rule 53 of the Rules of Procedure. However, it is important to highlight that the Court has never explicitly relied upon rule 34(1) as the basis for accepting *amicus* briefs. Moreover, in contrast to the European Court of Human Rights, the Inter-American Court appears never to have rejected an *amicus* filing.

NGOs that intervened as *amici curiae* submitting briefs to the Court in its first advisory opinion were the Inter-American Institute of Human Rights, the International Human Rights Law Group, the International League for Human Rights, the Lawyers Committee for International Human Rights, and the Urban Morgan Institute for Human Rights of the University of Cincinnati College of Law. Furthermore, several human rights groups have consistently submitted information to the Court: the International Human Rights Law Group, the International League, the Lawyers Committee for International Human Rights, Americas Watch, Amnesty International, and the International Commission of Jurists also have participated repeatedly. Other briefs have come from university-based groups, the press (the International Herald Tribune and the Wall Street Journal) and, in one case, a single individual. Over the years, the practice of the Inter-American Court has continuously evolved, to the point that NGOs have begun to participate in oral proceedings.

As for the African Court of Human and Peoples' Rights, established by the Organization for African Unity (“OAU”) in 1998 and then incorporated into the African Union after the dismissal of the OAU in 2002, there is an extensive evidence of the role recognized to NGOs, not only by practice but also by law. A fundamental distinction, however, must be made before proceeding any further. Before the establishment of the Court, the only judicial body of the OAU was the Commission, a quasi-judicial body. Here NGOs did not act as simple *amici curiae* but as parties to the monitoring function of the Commission. Indeed, this organ was entrusted with the supervision of the

¹⁵⁷ SHELTON (1994: 611-642).

implementation of the African Charter but, being a quasi-judicial body, it could not initiate a legal proceeding. It could only promote the Charter through the collection of documents, the realization of studies and researches, the calling of conferences and seminars. Its views and observations were only recommendations to the Member States. Within its framework, NGOs could submit communications concerning human rights violations just as OAU Member States. Moreover, they could also represent victims during the Commission's inquiries.

The role of the Commission was supplemented and reinforced by the establishment of an international Court in 1998 through the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (though it entered into force in 2004, after ratification by 15 Member States). As mentioned, before the establishment of the Court, the Commission accepted the submission of communications concerning human rights violations both by Member States and other entities. Indeed, rule 55 of the Rules of Procedure affirmed that the Commission could receive submissions "other than those of State Parties". According to the old Rules of Procedure of the Commission (adopted in 1988) "other than those of State Parties" meant: an alleged victim of a violation or, in his name (if unable to do so), an individual or an organization alleging serious or massive cases of violations of human and peoples' rights. As Lindblom recalls:

"there is no victim requirement for the author of a communication, and the Commission routinely registers communications submitted by NGOs on behalf of the victim [...]. Naturally, NGOs can also act in the capacity of the victim's counsel, but in that case the victim is the petitioner, not the NGO"¹⁵⁸.

Moreover, the Commission's guidelines for the communication of submissions even included the possibility of accepting international NGOs based outside Africa and recognised *actio popularis*, meaning collectively defined victims in cases of widespread human rights violations.

The Commission's Activity Reports from 1997 to 2003 contain forty-eight case reports¹⁵⁹. Twenty eight of those communications had been filed by one or several NGOs. Hence, it is clear that NGOs played and still today have a central role in the individual communications procedure within the Commission. Cases reported by NGOs usually referred to serious human rights violations and the Commission's findings generally agreed with NGOs' allegations. This high number of cases presented by NGOs and proved true could explain the heavy reliance that this organ has always made on their

¹⁵⁸ LINDBLOM (2005).

¹⁵⁹ *ibidem*

work.

The practice within the African Court has been quite different from that of the Commission. First of all, article 5¹⁶⁰ of the Protocol establishing the Court affirms that the right to access the Court is only accorded to the Commission, to Member States and to African intergovernmental organizations and explicitly provides relevant NGOs with observer status before the Commission and individuals to institute cases directly before it. However, this provision is conditional because it only applies to those Member States that have accepted such competence from the Court¹⁶¹. Therefore, in this case NGOs act in a more traditional *amicus curiae* role, providing the relevant information, analysis, technical and legal expertise, fact finding but not representing the victims nor initiating cases themselves. Basically, the introduction of the Court has meant a substantial maintaining of the role that NGOs already enjoyed with the Commission. However, since the Commission became an intermediary organ between NGOs and the Court – being able to refer cases to the latter (which could also be cases previously presented by an NGO), their role has substantially shifted to a more traditional one of *amicus curiae*.

Finally, one last subject of attention for what concerns the role of *amicus curiae* is the International Criminal Court (“ICC”). The ICC’s Rules of Procedure allow, through rule 103, the presence of “*Amicus curiae* and other forms of submission” affirming that “At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate”¹⁶². This means that the ICC can request this form of intervention. However, there are also cases in which third parties ask the Court the permission to intervene, although without much success. Part of the literature¹⁶³ analysed the amount of applications for *amicus curiae* that the ICC has received over the years, how many of them have been accepted or rejected, which kind of actor was applying and for which reason (providing legal finding, fact finding, historical background, etc.). What was found is that up to early 2016, approximately 85 applications for *amicus* status have been received by ICC Chambers. The applications came from different actors, including States, intergovernmental organisations, defence representatives from other cases, academics and other individuals, and civil society organisations, mainly in the form of NGOs, either international or small national ones. The success rate of these applications was approximately

¹⁶⁰ Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court of Human and People’s Rights, Addis Abeba, 9 June 1998, art. 5.

¹⁶¹ *ivi*, art. 34(6).

¹⁶² Rules of Procedure and Evidence of the International Criminal Court (as amended effective in 2013), The Hague, 10 September 2002, Rule 103.

¹⁶³ Woolaver (2016).

35%¹⁶⁴. To add to that, the finding that, especially if compared with the previous *ad hoc* international criminal tribunals, the ICC has made far less invitations to third parties to intervene as *amici curiae*.

Moreover, the study highlighted how the practice of *amicus curiae* in the ICC is less permissive than its predecessors (the International Criminal Tribunal for the former Yugoslavia, “ICTY”, the International Criminal Tribunal for Rwanda, “ICTR”, the Special Court for Sierra Leone, “SCSL”, and the Extraordinary Chambers in the Courts of Cambodia, “ECCC”). Their practice, indeed, showed a more welcoming stance to applications for the admission as *amicus curiae*, both from other States and from the civil society, including NGOs. Approximately 60% of applications at the ICTR were successful, approximately 70% at the ICTY, 80% at the SCSL and 55% at the ECCC. Even in the case of requests made by the Courts themselves to third parties to intervene those were in a much higher number when compared to the ones of the ICC. Finally, the impact of this role was significant to the point that many key decisions heavily relied on *amicus curiae* submissions. There is no clear reason as to why the ICC has been more restrictive in allowing this role. Research mentions only potential factors like the right for participation of the victims that the ICC grants or the increased experience of the judges that compose the Court, reasons that could both lessen the need to ask for external participation, but no precise justification has been found¹⁶⁵.

To conclude, it is evident that NGOs have been seeking the participation as *amici curiae* in international proceedings due to the fact that the exercise of this role can have a significant impact on the outcome of international judgements, especially if a particular court has a generally welcoming stance to this form of participation and its reliance on this kind of submissions is heavily appreciated. As mentioned before, this role is particularly important in the field of accountability and even if as of today, international organizations’ officials enjoy immunities preventing them from being parties in an international or nation litigation when their wrongful acts were committed in the exercise of their functions, NGOs still have this instrument to contribute to the development of a just proceeding in international court or tribunal.

Conclusion

In this chapter we have analysed the historical background of NGOs’ participation in international organizations and the most relevant forms of participation that they are allowed to exercise within international

¹⁶⁴ LINDBLÖM (2005).

¹⁶⁵ *ibidem*

organizations and tribunals, giving wide space to their role as *amici curiae*. Moreover, we have also discussed the question of their legal personality and their legitimation to act in international organizations. Researchers¹⁶⁶ mention the reciprocal gains for NGOs and international organizations deriving from their interaction. For what concerns NGOs, the most important are: external recognition and legitimacy, entrance into diplomatic circles, ability to influence decision-making process, funding, new knowledge, external political support, service delivery contracts and consultancy work, achievement of the mission of the organization. For what concerns international organizations, on the other hand, they highlight¹⁶⁷: additional external legitimacy through generalized ownership (especially valuable when public institutions are being generally discredited), external allies for political projects, material and financial support, professional know-how based on specific technical/local/social/political expertise, enhanced effectiveness based on the assumption that NGOs are considered better equipped than other actors to reach outlying communities, to promote participation, to innovate and to operate at low cost, additional strength to overcome internal bureaucratic barriers and to innovate policies, and the possibility of outsourcing tasks at low cost without losing control of the deliverables.

If we consider, in particular, the question of additional external legitimacy, the capacity of NGOs to reach outlying communities, and the possibility of overcoming bureaucratic barriers, we will see that these three elements are crucial points for addressing the accountability issues of international organizations. We will have the opportunity to appreciate these elements better in the next chapter through the analysis of two particular case-studies. So far, we have provided theoretical explanations to support the argument that NGOs can effectively contribute to enhancing the accountability of international organizations. In the next and final chapter, we will analyse empirical cases to support the theoretical dimension.

¹⁶⁶ MARCHETTI (2016).

¹⁶⁷ *ibidem*

CHAPTER 3

NGOs CONTRIBUTION TO THE ADVANCEMENT OF ACCOUNTABILITY MECHANISMS IN SELECTED CASES: THE WORLD BANK INSPECTION PANEL AND THE UNITED NATIONS SECURITY COUNCIL

In this final chapter, we will introduce two case studies that will give us the possibility of effectively assessing the impact that NGOs have on the accountability of international organizations. The first case concerns NGOs' role in the creation, functioning and defence of the World Bank Inspection Panel, while the second concerns the relations that NGOs managed to create with the United Nations Security Council and how they improved the Council's transparency, possibility of public scrutiny and, eventually concrete actions.

In order to develop a more comprehensive analysis on this topic more cases would be necessary, but this stream of research can be considered quite recent, therefore the available information on similar cases is limited. This is why this study only presents two cases. In this way, at least, it will be possible to analyse them thoroughly and to highlight the relevant aspects that demonstrate the impact of NGOs in the enhancement of international organizations' accountability. Further studies broadening the literature on this theme would be necessary in the future.

The two cases considered have different developments and outcomes but they both concern organizations whose activities have a great impact on the lives of thousands of people. Indeed, on one side we have the World Bank and, in particular, its two agencies, the International Bank for Reconstruction and Development and the International Development Association, which are tasked with the design and implementation of infrastructural projects mainly in developing countries, emerging market countries or post-conflict countries; on the other, the United Nations Security Council that, according to the United Nations Charter, is in charge of maintaining international peace and security.

The analysis of these two cases will lead us to three important conclusions. The first is that even those organizations, that for their own settlement tend to keep the public at distance from their activities, eventually had to address the pressures coming from civil society and canalized by NGOs to be more open and accountable for their actions. The second is that the participation of NGOs to their processes is indeed a means through which more accountability is achieved and, the more the level of NGOs' engagement is high, the more they can contribute to such accountability, bridging the gap between international organizations and civil society and, eventually, avoiding the actions of international organizations to remain uncontrolled. The third is that a certain

degree of collaboration from members of an international organization is necessary to allow the participation of NGOs and overcome the obstacles posed by other members and this confirms the idea of the surrogate accountability that we studied in Chapter 1, which affirmed that since NGOs do not hold the same powers as official members of an organization, they can perform their functions thanks to the support of those members (being them representatives of States or non-representing organs) that decide to cooperate with them and can, instead, use their powers to influence the accountability process.

3.1 NGOs and the World Bank Inspection Panel

The first case study that we are now introducing is the one of the contribution that NGOs made in the settlement, functioning and defence of the World Bank Inspection Panel. In this section, we are analysing a case in which NGOs contributed particularly to the creation of a body capable of holding the Bank (in particular, two of its agencies, the International Bank for Reconstruction and Development and the International Development Association) accountable for its decisions and its projects, allowing those people affected by its actions to have a say in them and to contest them in case their potential adverse effect is proven well-founded. This is probably one of the most powerful instruments that citizens have in the sphere of international financial institutions to have their voices heard and actively participate in the decisions that affect them, and – with all its flaws - one of the most important accountability mechanisms existing to date in the realm of international organizations¹⁶⁸. Therefore, it is all the more interesting to study how NGOs contributed to its creation and functioning.

We already had the chance to address the flaws that concern the Inspection Panel¹⁶⁹. However, albeit having its problems, this body deserves its recognition as one of the most advanced mechanisms that can hold an international organization accountable for its actions, preventing adverse effects especially on the most vulnerable populations. Moreover, after careful analysis, we will also be able to appreciate the role that this mechanism has in providing the people living in authoritarian or semi-authoritarian States the possibility to oppose projects that could potentially be harmful for them and that would be impossible to oppose openly in front of their national governments due to fear of retaliation. In most of the cases concerning projects in non-democratic States, indeed, we will find that the role of NGOs has been crucial in advancing requests for inspection in the name of local

¹⁶⁸ HUNTER (2003: 202).

¹⁶⁹ See Chapter 1.3.1.: The World Bank.

communities.¹⁷⁰

The Inspection Panel was established in 1993 and is currently used by two of the five World Bank institutions: the International Bank for Reconstruction and Development and the International Development Association. In this analysis, we will study the role that NGOs played in its setting, operation and in its performance results, trying to contribute to its effectiveness as an accountability mechanism. Moreover, we will also have the chance to understand the importance that NGOs have played in subsequent years when different revisions of the Panel's mandate had been envisaged and how they managed to defend the functions it was entrusted with, avoiding a severe limitation of its mandate.

Before introducing in more detail the role that NGOs played in its creation and still carry on in its functioning, it is important to describe more precisely the Inspection Panel itself. As Pereira recalls "in its original proposal, the Panel became one of the most advanced accountability mechanisms developed by an international institution"¹⁷¹. Indeed, its aim is that of inspecting – upon request - the projects of the IBRD and the IDA that could represent a potential threat to the populations affected due to procedural failures and to the application of the policies of these two financial institutions. Requests of inspection can be filed by a civil society actor, a representative of the affected people and even by one of the Bank's Executive Officers (in special circumstances)¹⁷².

The Panel is made up of three Members of different nationalities appointed for a five-years term by the President of the Bank after consultation with the Board of Executive Directors¹⁷³. This may shed some doubts over the complete independence of the inspectors. However, as we will have the chance to see, the Inspection Panel managed to develop a good level of independence from the Bank Management.

In order for an inspection request to be registered, it must meet the following criteria¹⁷⁴: the people filing the request need to live in the project area (or represent people who do) and have been or are likely to be affected adversely by project activities; they believe that they may suffer actual or are likely to suffer harm resulting from a failure by the Bank to follow its policies and procedures; their concerns have been brought to the attention of Bank staff and Management and they are not satisfied with the outcome. Moreover, requests cannot be filed for a loan that is no longer active or for whom more

¹⁷⁰ PEREIRA et al. (2017: 1-28).

¹⁷¹ *ivi*, p.9.

¹⁷² WORLD BANK INSPECTION PANEL.

¹⁷³ WORLD BANK.

¹⁷⁴ *ibidem*

than 95% of the funds has already been disbursed¹⁷⁵. Upon receipt of an inspection request, the Panel forwards it to the World Bank Management requesting a response to the requesters. The Management has 21 days to submit a response, and then the Panel carries out a review, also within 21 days, in which determines the eligibility of both the requesters and the inspection request. The Board of Executive Directors is in charge of approving the investigation, upon recommendation of the Inspection Panel. If the Board of Executive Directors approves the investigation, the request is admitted, and the Panel initiates a full investigation with no time limit. After a final report is submitted by the Panel, the Management has six weeks to present to the Board its recommendations on the subject matter of investigation. It is the responsibility of the Board of Executive Directors to make the final decision on what should be done based on the results of the full investigation and on the Bank Management's recommendations¹⁷⁶.

After this brief introduction, we will analyse the events that led to the creation of this body and how NGOs played a central role in it.

3.1.1 The Narmada Valley Development Project and the role of NGOs in the creation of the Inspection Panel

There is widespread acceptance¹⁷⁷ of the fact that the mid-eighties' Narmada Valley Development Project¹⁷⁸ (officially the *Sardar Sarovar Dam and Irrigation Projects*) was the catalyst for the creation of the Inspection Panel. The World Bank approved a loan for an Indian government-sponsored multi-encompassing project which envisaged the construction of 3.200 infrastructures between dams and canals in the Narmada Valley and along the Narmada River, in West India¹⁷⁹. Though the Indian government was clearly a strong supporter of the Project, it did not provide an environmental impact analysis before advancing it (as requested by Indian law) and widespread opposition started to surge¹⁸⁰. However, massive criticism arose as a consequence of the necessary displacement and resettlement of more than 300.000 people¹⁸¹ from their homes for the construction of the dams and canals, without providing them with an adequate compensation or adequate resettlement elsewhere.

¹⁷⁵ *ibidem*

¹⁷⁶ *ibidem*

¹⁷⁷ Among the others: HUNTER (2003), ZIAI (2015), BECKERLE et al. (2017), PEREIRA et al. (2017).

¹⁷⁸ Specifically, between 1985 and 1993 (BECKERLE et al., 2017).

¹⁷⁹ ZIAI (2015).

¹⁸⁰ *ibidem*

¹⁸¹ BECKERLE et al. (2017).

The grassroots movement *Narmada Bachao Andolan* opposed the Project and strongly criticized its adverse social impact as well as the lack of an environmental assessment, making the issue gain worldwide media attention and bringing it at the forefront of the international agenda¹⁸².

Due to the increasing momentum that the Narmada Valley Development Project was gaining, in March 1991, the World Bank President Barber Conable, at the request of some Executive Directors, asked Bradford Morse, former U.S. Congressman and United Nations Development Program official, to chair an independent commission to investigate the Project¹⁸³. This Commission came to be known as the Morse Commission. Its objective was to conduct an assessment of the resettlement and environmental impacts of the Project, checking the compliance of the whole process against the Bank's operational directives and guidelines, in order to understand whether the Bank itself had complied with its own policies and procedures. This was the first time in the World Bank history that such an action was undertaken¹⁸⁴.

In 1992, the Morse Commission issued a final report that, to the surprise of most observers, opposed the Bank's Project and sided with its opponents. Indeed, the report¹⁸⁵ highlighted the Bank's failure to comply with its own rules on involuntary resettlement, environmental assessment, and indigenous peoples, as well as its conscious tolerance of India's violation of loan agreements. Moreover, the report also revealed the incapacity of the Bank in involving the local communities in the process of economic development. What was even more surprising was that the conclusions of the report did not provide a recommendation of measures to adopt in order to improve the development of the project, but it advised the Executive Board to immediately cease the Project's funding. As stated in the report:

“We have decided that it would be irresponsible for us to try to patch together a series of recommendations on implementation when the flaws in the Projects are as obvious as they appear to us. As a result, we think that the wisest course would be for the Bank to step back from the Projects and consider them afresh. The failure of the Bank's incremental strategy should be acknowledged.”¹⁸⁶

As Commission member Thomas Berger noted¹⁸⁷, “little can be achieved while construction continues”.

Disregarding the report's conclusions, the Bank Management actually

¹⁸² HUNTER (2003: 201-211).

¹⁸³ *ibidem*

¹⁸⁴ *ibidem*

¹⁸⁵ Report of the Independent Review presented by Bradford Morse (Chairman) and Thomas R. Berger (Deputy Chairman) on 19 June 1992, *Sardar Sarovar: Report of the Independent Review*.

¹⁸⁶ *ivi*, p. 8.

¹⁸⁷ ZIAI (2015).

proposed a six-months Action Plan whose purpose was to move forward with the Project while the Indian government would address the problems highlighted by the Morse Commission. However, reaching this result was not a peaceful process. Indeed, the Board of Directors was split between Members calling for the suspension of the loan and those advocating its continuation, who eventually resulted as the majority of the Board¹⁸⁸.

This decision catalysed the intervention of several Washington-based NGOs (the city in which the World Bank is set), including, among the others, the Environmental Defense Fund and the Center for International Environmental Law, which will later be engaged in the proposal of a permanent panel to address such controversies¹⁸⁹. In 1992, ahead of the World Bank's annual meeting, several NGOs took full-page ads in the New York Times, Washington Post and Financial Times asking the Bank to revise its position over the Project and warning that a continuation of the funding of the Project would have resulted in a significant effort on their side to pressure the US Congress to halt United States contributions to the Bank's budget (recall that the United States is the Bank's major contributor)¹⁹⁰. Eventually, NGOs' efforts proved worthy and the conditions for their success proved positive too, both due to the position of the United States, that was in favour of the Bank's institutional reforms, and to the favourable one of several US congressmen with respect to the NGOs advocacy campaign. As a result, NGOs managed to convince the US Congress to suspend its contributions to the tenth replenishment of the IDA¹⁹¹. The pressure from NGOs was effective due to IDA's reliance on replenishment¹⁹². Indeed, this agency has three sources of funding: voluntary donations from wealthier Member States, repayment of credits provided to borrowers, and transfers from the IBRD and the International Finance Corporation. Voluntary donations from countries such as the United States are IDA's main source of funds and the US is the main donor¹⁹³. Therefore, the US Congress was used as an important space for pressure from Washington-based NGOs.

Alongside the campaign demanding the US Congress to halt its financing to the Bank, NGOs started to demand greater accountability from the Bank itself and many started to propose models for a permanent mechanism entrusted with the management of similar cases¹⁹⁴.

In 1993, the World Bank realized that the conditions set forth in the Action Plan had not been met. Therefore, the Indian government cancelled the

¹⁸⁸ HUNTER (2003: 201-211).

¹⁸⁹ *ibidem*

¹⁹⁰ *Ibid.*

¹⁹¹ *ibidem*

¹⁹² PEREIRA et al. (2017: 1-28).

¹⁹³ *ibidem*

¹⁹⁴ *ibidem*

remaining balance on the loan and announced that it would continue the Project without further World Bank financing¹⁹⁵.

At the same time, the advocacy campaign carried on by NGOs was giving its most important result. Members of the Board, in fact, started to seriously consider an internal but independent accountability mechanism able to address similar cases¹⁹⁶. Executive Directors from The Netherlands, Germany, Malaysia and Chile, with support from the Swiss one, proposed a new accountability mechanism¹⁹⁷, also citing problematic aspects of the Bank's internal culture mentioned in another document, the Wapenhans¹⁹⁸ report, which cited the widespread culture of approval resulting in a continuous financing of projects without any actual supervision and assessment, and that too recommended the adoption of an independent permanent mechanism of accountability to use under specific circumstances.

The World Bank, addressing both external and internal pressures, decided to adopt a strategy of co-optation of the external dissent and underwent a reform able to incorporate civil society – and specifically, NGOs – into its system, in order to limit the losses generated by the criticism that the organization was receiving both from NGOs and from the US Congress¹⁹⁹. On September 22, 1993, the Board of Directors adopted a resolution providing the creation of an Inspection Panel. It is interesting to note that the Inspection Panel was created at the same time that the US Congress approved the replenishment of IDA, under the condition that the Bank would continue to undergo a series of reforms²⁰⁰.

Although not entirely corresponding to the idea that many NGOs' advocates had of an Inspection Panel since it had no binding power over the Bank to halt a project, it was a better result than some Bank Management's initial proposals of *ad hoc* bodies to be set up according to the differing circumstances and, moreover, was indeed created to be an impartial fact-finding body, independent from the Bank Management and staff²⁰¹. The independence that the Panel had not only on papers but also effectively (as we will have the chance to see more in detail later) represents one of the greatest achievements that an NGO-led campaign has ever reached. As Hunter affirms:

“The Panel was thus created to bridge the gap between international institutions

¹⁹⁵ HUNTER (2003: 201-211).

¹⁹⁶ Indeed, this was not the first time that a Bank's project was contested, it just happened to be the one creating the most widespread outrage and, consequently, it became the most famous.

¹⁹⁷ BECKERLE et al. (2017).

¹⁹⁸ Report of the Portfolio Management Task Force of the World Bank of 22 September 1992, Report No. 11536, *Effective Implementation: Key to Development Impact (Wapenhans Report)*.

¹⁹⁹ BECKERLE et al. (2017).

²⁰⁰ *ibidem*

²⁰¹ *ibidem*

and the poor people they serve. It was the first international institution that allowed citizens to bypass their national governments in lodging formal complaints that addressed how an international institution affected their lives[...]. The Panel, then, reflects a citizen advocacy model that has no precedent in international law, outside a few human rights tribunals²⁰².

3.1.2. The revision of the Inspection Panel's mandate

The World Bank Inspection Panel underwent two revisions a few years after its establishment. Respectively, the first one took place in 1996, while the second in 1999²⁰³.

The first revision was already envisaged by the Panel's Rules of Procedure and the role of NGOs was not so influential. NGOs and academics tried to suggest the introduction of an amendment to the Panel's procedure that would have allowed international and local NGOs to submit requests for inspection, even if they were not representing the people affected by a World Bank's project, in the name of the general interest. This would have been a significant achievement for the civil society, but the Bank Management did not approve it²⁰⁴. The main outcome of this first revision was to enable the Panel to conduct a preliminary assessment of the alleged harm in the inspection request to assess whether there had been a violation of the Bank's policies and procedure before the full investigation took place²⁰⁵.

It was actually this increased flexibility of the Panel in making a first assessment of the conditions of the alleged harm that bolstered the second revision, which took place in 1999. Indeed, since the very first operations of the Panel, there had been rising tensions within the Board of Directors on matters related to it. Specifically, there was a split between Executive Directors from borrowing countries and Executive Directors from lending countries, on the role of the Panel, where the first tried to limit it, claiming its unnecessary intervention in sovereign States' issues, and the second more in favour of its intercession²⁰⁶. The main tensions, however, precisely regarded this usual practice of the Inspection Panel to start some forms of investigation about the alleged harms caused by a Bank's project already in the preliminary phase, which should have been devoted, instead, to a simple assessment of the eligibility criteria of an inspection request²⁰⁷. This practice was clearly beneficial to the requesters because it provided their appeals a greater

²⁰² HUNTER (2003: 202).

²⁰³ PEREIRA et al. (2017: 1-28).

²⁰⁴ *ibidem*

²⁰⁵ *ibidem*

²⁰⁶ *ibidem*

²⁰⁷ BECKERLE et al. (2017).

possibility of being accepted since the Panel had already collected a significant amount of information on the cases, but, as mentioned, it was not really pleasing for the whole Bank Management.

In order to overcome these tensions, in 1997, the Board of Directors established a Working Group of six Executive Directors in order to develop a proposal for the revision of the Panel's mandate and procedures²⁰⁸. By late 1998 the proposal was ready. As Bradlow recalls, had this revision been approved, the Panel's situation would have been "untenable"²⁰⁹ and would have resulted in its significant weakening. The proposals made by the Working Group were essentially the following²¹⁰. First, in the initial phase of the Panel process, the Panel would limit itself only to assessing the eligibility criteria in any field visit it might have made and its recommendation for or against an inspection should have only been based on information contained in the filed request, in the Bank Management's response and in the results obtained through the limited field trip allowed, without any further collection of information concerning the alleged harm. Second, the Bank Management would have been allowed to submit a compliance plan containing the measures that it would adopt to bring its project into compliance in response to a request for inspection even before the Panel's recommendation on whether an inspection was necessary or not was issued. This was basically formalizing what was an already established practice of the Management that was seriously detrimental to the full independence and impartiality of the Panel. Third, the Board would have accepted without further discussion a Panel's recommendation of inspection except with respect to the "technical eligibility criteria". However, these "technical eligibility criteria" were not defined, so this expression would have left great space for arbitrary interpretation and could have represented a serious limitation to the Panel's possibility to operate. Finally, this proposal wanted to impose a standard for determining the alleged harm. In particular, this standard would have been a comparison between the situation of an affected population after the development of the project and its situation had the project not been realized. This was clearly an impossible and unrealistic comparison to make.

The Working Group was supposed to present the proposal without the participation of outsiders. However, the report was leaked and, consequently, having had access to it, NGOs' advocates and academics requested its publication and open consultations to discuss it. Since the document was already circulating, the Board of Directors decided to publish it and to allow for comments and suggestions about it from the public²¹¹. Moreover, it invited a group of NGOs representatives and one academic to informally meet for a

²⁰⁸ PEREIRA et al. (2017: 1-28).

²⁰⁹ BRADLOW (2001: 251).

²¹⁰ *ibidem*

²¹¹ *ibidem*

discussion of the report. It was the first time that a report not yet presented to the whole Board was being discussed with external actors. The report received several comments from public commentators and even the attention of the United States Congress which sent a letter opposing the revision²¹².

A further step was the invitation made to NGOs and other representatives of the civil society (including a number of groups that had submitted requests of inspection to the Panel) to attend a meeting with the whole Board of Directors, in order to address their concerns about the proposal for the revision of the Panel's mandate and operations²¹³. This meeting was extremely successful for the NGOs. Many of their concerns, indeed, were addressed in the final proposal submitted to the Board and modifications were eventually adopted. While in the final version of the report there was indeed a limitation of the preliminary phase of the Panel's process to a simple assessment of the eligibility criteria, NGOs managed to incorporate in it a number of significant amendments able to strengthen the role of the Panel²¹⁴. First, in cases where the Panel made a recommendation for an inspection, the Board should have adopted the recommendation without further discussion, unless there were technical issues. Second, and related to this last clause, the Working Group defined the "technical criteria", identifying them as those verifiable situations listed in the Panel's Rules of Procedure about the eligibility criteria (people directly affected by the project, serious violations by the Bank, questions already brought to the attention of the Bank Management but without response, etc.²¹⁵). A third achievement was the elimination of the reference to the compliance plan to be submitted by the Bank Management to the Board. The Management, therefore, could then only produce a response once the report of the Panel had been finalized. One final accomplishment was the commitment of the Bank to engage more effectively in educating the public about the Panel and the fact that the information concerning the Panel's proceedings would have been released in the language of the requesters.

The revision was eventually adopted on April 20, 1999 and, in the end, it resulted in a significant improvement in the functioning of this important accountability mechanism, increasing the likelihood of it performing its tasks in a truly independent manner. As noted by some scholars²¹⁶, the experience of the 1999 revision demonstrated that involving external actors can effectively contribute to the improvement of the Bank's policies and rules and, moreover, its accountability towards its own rules but also towards the most vulnerable populations that could undergo serious damages without effective instruments for checking compliance with the Bank's rules in the development

²¹² *ibidem*

²¹³ HUNTER (2003: 201-211).

²¹⁴ BECKERLE et al. (2017).

²¹⁵ See paragraph one of this chapter for the complete list of eligibility criteria.

²¹⁶ HUNTER (2003), PEREIRA et al. (2017).

of infrastructural projects.

3.1.3. The impact of NGOs in the functioning of the Inspection Panel

After analysing the role that NGOs played in the creation and defence of the Inspection Panel, it is now time to study the impact that they had in its functioning, allowing it to effectively represent a solid accountability mechanism.

The first part of this paragraph will heavily rely on the experience of David Hunter, Senior Attorney of the Center for International Environmental Law, one of the NGOs that proposed the model for an inspection panel ahead of its creation. His work will help not only in appreciating the effective independence of the Panel but also in understanding how NGOs have always been committed to securing such independence, alongside the transparency and effective functioning of the Inspection Panel.

For the second part, that analyses more specifically the cases reported to the Panel in order to highlight how the contribution of NGOs has been fundamental for its functioning, the work of a group of researchers from the Federal University of Paraná published on the Journal of Brazilian Political Theory will be the baseline. Their research, indeed, is the most comprehensive work done to date about the cases submitted to the Inspection Panel until the most recent times (from 1993, year of its creation to 2015). However, since their research dates to 2016 and thus only considers cases until 2015, we will update it with the most recent cases up until August 2018 (the time of writing). Eventually, we will notice that the outcome of their research is left unchanged if we consider even the most recent cases.

Crucial to this analysis is the recognition that NGOs are stimulating the work of accountability mechanisms like the Inspection Panel, requesting it to initiate investigations and monitoring the behaviour of public officials²¹⁷. This is exactly what has been discussed in the beginning of this thesis, concerning the impossibility for NGOs to perform a sanctioning power but also their capacity to support those internal institutions able to do so. This case enters exactly in this category of contributions to the accountability of international organizations.

The initial work that NGOs had to make in order to secure the effective functioning of the Panel was on two levels: the first, securing the effective independence of the three members of the Panel and of its staff; the second,

²¹⁷ PEREIRA et al. (2017: 1-28).

working at the level of the communities potentially affected by the World Bank's projects in order to educate them about the role of the Panel, its functioning and, moreover, to advise and help them in case they decided to file an inspection request to it²¹⁸. Indeed, as we have already mentioned, not much outside reaching and educating work was done by the World Bank until the 1999 revision to inform the worldwide public on the Inspection Panel.

For what concerns the first level, NGOs advocates immediately had the opportunity to appreciate how the first nominated members of the Panel (Ernst Gunther Broder, Richard Bissell and Alvaro Umafia-Quesada) had soon realized the importance of maintaining this instrument as independent as possible from the Bank's hierarchy and, therefore, worked hard from the very beginning in order to secure it. Indeed, "[they] quickly asserted their independence from the Bank Management, their interest in creating a lasting and credible investigatory mechanism, and their integrity in dealing with all claims openly, fairly and effectively"²¹⁹.

However, the situation was different in regard to other organs of the World Bank and, specifically, for what concerned the Office of the General Counsel²²⁰. The General Counsel is a body that provides legal assistance and services to the whole World Bank Group²²¹. The Bank's General Counsel argued that only its office had the authority to interpret Board resolutions, including the resolution creating the Panel and, indeed, it issued a memorandum providing a narrow interpretation of standing for claimants²²². This raised serious issues of conflicts of interest given the multiple potential roles of the General Counsel. The interference of this body in the work of the Panel, including its procedures and rules, was an effective threat to its independence and to the credibility of its process. Several NGOs addressed their concerns in a collective letter sent to all the Executive Directors²²³. As a result, the General Counsel requested a meeting with NGOs representatives in order to discuss the issue. The concerns raised by NGOs did not go unnoticed by the donor governments of the World Bank that indeed understood the clear threat that the General Counsel was posing to the existence and functioning of this organ. This is why, eventually, its role was limited and kept distant from the Panel's activities²²⁴.

The second level of action for NGOs was that of outreaching the potentially affected communities to inform them of the existence and role of the Inspection Panel and to advise and support them in case they decided to file

²¹⁸ HUNTER (2003: 201-211).

²¹⁹ *ivi*, p. 207.

²²⁰ *ibidem*

²²¹ WORLD BANK.

²²² HUNTER (2003: 201-211).

²²³ *ibidem*

²²⁴ *ibidem*

an inspection request. The first task, therefore, was that of making these communities understand that the Panel was indeed a viable option through which they could claim a violation of their rights. It was not easy in the beginning, since this body was seen as too aligned to the Bank and not sufficiently independent²²⁵. However, the attitude of the Panel since its very first case²²⁶ helped in constructing its credibility and in making affected communities believe in it as a worthy accountability mechanism²²⁷.

Their second objective was that of ensuring that the claims presented by the affected communities were taken in serious consideration by the Panel and this went through helping the communities in elaborating their requests, translating them into the language of specific policy violations. Although the process of the Panel is intended to be approachable without the help of lawyers, it is clear that a legally and technically strong request for inspection would certainly generate more support and consideration from the Panel, the Bank Management and donor governments²²⁸. Therefore, the assistance of experts such as NGOs' advocates proved fundamental in the effective functioning of the Panel. It is worth noticing that (as we will also have the chance to see through the data collected by the Federal University of Paraná research group) this confirms the original assumption made in the present research. That in order for the civil society to have a say and actually perform an accountability function, there needs to be some form of organization and, especially, of expertise already able to understand the technical terms that international organizations have and able to operate confidently in them, having a full knowledge of their rules and practices and of the people who work in them. This confirms why NGOs, among the wide spectrum of civil society organizations, are the most suitable for this role, due to their professionalism.

Therefore, the function of support and advice that NGOs advocates performed since the very beginning of the Panel's operations made it more accessible to the affected people, enabling them to acknowledge its existence, helping them in elaborating their requests and liaising with Panel members, for instance, during their inspections. Moreover, much of their work has also concerned pressing the Panel to be transparent in its actions and to disclose the information resulting from its investigations²²⁹.

Evidence of the role played by NGOs in making the whole mechanism of the Inspection Panel work and effectively being an instrument for the civil society to oppose potentially harmful projects is provided by the data elaborated by

²²⁵ *ibidem*

²²⁶ The first case that the Inspection Panel received was that of the Arun dam in Nepal, in 1994, a year after its creation.

²²⁷ HUNTER (2003: 201-211).

²²⁸ *ibidem*

²²⁹ PEREIRA et al. (2017: 1-28).

the Brazilian research group that was already mentioned. As stated in the beginning of this section, the data provided in that research dates to 2015 so, in order to be more precise with the information reported here, we updated it to include the current year 2018 up to the last presented case at the time of writing, which is August 2018.

The available data on participation and direct involvement of civil society in the Inspection Panel confirm the importance that NGOs play in its functioning. Indeed, from 1994 (year of the first request for inspection) to August 2018²³⁰, the Panel received 127 requests for inspection and the majority of them was submitted by civil society actors, NGOs being the first actors, followed by civil and community associations and, last, by individuals²³¹.

Most requests come from developing countries, located in Asia, Africa and Latin America. The political regimes of these countries are varied. The research group used the Democracy Index of The Economist Intelligence Unit²³² in order to classify the different regimes. This classification divides countries according to four possible regimes: full democracy, flawed democracy, hybrid regime and authoritarian regime. In order to simplify their work, the researchers reduced the four categories to a two-category classification: democratic regime (including full democracies and flawed democracies) and non-democratic regime (including hybrid regimes and authoritarian regimes)²³³. Adding the new cases (a total of 24 new cases in comparison to the period considered in their research) the results are not very dissimilar. What emerges is that the majority of requests made by NGOs representatives were made in countries that can be categorized as non-democratic and, in the cases where the requests were made by local communities or individuals, the requestors asked for confidentiality²³⁴. As anticipated in the beginning of this section, this reflects all the more the important work that NGOs play, that of asking for accountability for World Bank's financed projects in authoritarian States that could potentially threaten retaliation against an individual or an unorganized group of people. Therefore, in these circumstances their presence is even more active exactly because the local populations are afraid to advance inspection requests individually and, consequently, to expose themselves to a potential threat.

The information and data presented above show how civil society actions contributed not only to the formal setting of this accountability mechanism,

²³⁰ Data on the Inspection Panel cases is available at this link http://ewebapps.worldbank.org/apps/ip/Pages/Panel_Cases.aspx. The cases analysed here refer to the total amount of cases presented to the Panel at the time of writing (September 2018).

²³¹ PEREIRA et al. (2017: 1-28).

²³² THE ECONOMIST INTELLIGENCE UNIT (2018).

²³³ PEREIRA et al. (2017: 1-28).

²³⁴ *ibidem*

but also to its effective operation (formulation of requests) and achievements of results (initiation of investigation, adoption of action plans and/or corrective measures).

3.1.4. Evaluations on the World Bank Inspection Panel

From our analysis of the contribution that NGOs have made to the settlement, functioning and defence (against threats of limiting the role) of the World Bank Inspection Panel, several conclusions can be drawn.

First, the acknowledgement of the Inspection Panel by most observers (especially within the world of NGOs) as being effectively independent from the Bank Management and of its reliability as a solid instrument of accountability for the World Bank's projects, going further than the original pessimistic expectations of it being merely "a public relations arm of the Bank"²³⁵. Moreover, this analysis has also dissipated some of the doubts that were raised at the beginning of this work, in Chapter One, when we questioned whether the Inspection Panel could effectively be appreciated as a functioning and really independent accountability mechanism in the World Bank system. Indeed, even though its inspectors are selected by the same Bank Management this study has proven that this body has managed to evolve into a quite impartial entity, thanks to the commitment of the Panel's inspectors themselves who understood the importance of its neutrality face the Bank's hierarchies.

Second, as Hunter maintains too, NGOs advocacy works better when a member state of an organization is favourable to NGOs' position and therefore can help them from the inside in advancing their opinions. The case of the United States in the settlement of the Inspection Panel and in the 1999 revision represents a clear example. Therefore, this confirms the theory of the surrogate accountability that we tried to apply to NGOs' role in Chapter One, when affirming that since NGOs do not have an effective sanctioning power (voting, halting funding, imposing economic sanctions, etc.) they need to rely on organs or officials or Member States that are willing to commit themselves to their cause. Therefore, their role is that of triggering an accountability mechanism, triggering a discussion and bringing claims and suggestions, but in order to have effective power they need to be supported by those who have the authority to sanction and who can really oblige the international organization to commit itself to some accountability measures.

Third, this case has also shown how NGOs indeed represent sections of the

²³⁵ HUNTER (2003: 201-211).

civil society, and specifically of the world community that is often underrepresented, unheard or that does not have the adequate means to interact with international organizations' officials alone. The role of NGOs is therefore important in bridging this gap between the international organization and the communities affected by its actions, a gap that is the primary responsible of the accountability deficit. NGOs manage – especially when they are allowed greater possibility of action – to mediate between the citizens, the international organization (in the examined case, the World Bank), the member states of said organization and the agents responsible for the decision-making process. In the case that we have just analysed, in particular, this action of mediators can be observed specifically in the following actions: the activities of international NGOs based in Washington pressuring not only the creation but also the independent and transparent functioning of the Panel and in the support provided to the affected communities in the elaboration of requests to be submitted to the Inspection Panel.

To generalize the functions played by NGOs to improve the accountability mechanisms in international organizations, we can elaborate them as follows: they exert pressure on the decision-making process of international organizations to create and maintain accountability mechanisms; they pressure national states, especially the most powerful, to validate and support such mechanisms; finally, they pressure national governments of countries where there are Bank-financed projects and whose undesirable social and environmental impact, when occur, need to be reported.

In conclusion, to provide a final assessment of the impact that NGOs advocacy had in making the World Bank more accountable for its actions through the establishment of an Inspection Panel and through a constant monitoring of its operations and support in its functioning, we can use the dimensions of accountability introduced in Chapter One. In that case we used them to analyse the accountability flaws of many international organizations. Now, instead, we can use them to assess more specifically how the impact of NGOs advocacy has benefited each of these dimensions.

First, for what concerns the democratic deficit, the impact of NGOs resulted in making the World Bank more answerable for its decisions directly to the people which are affected by its projects and, therefore, in partially bridging the gap between the organization and the civil society. As recalled several times, the Inspection Panel constitutes one of the most advanced mechanisms in international organizations for addressing the adverse effects that the World Bank operations might have on the population. Until 2018, a total of 127 cases was presented to the Inspection Panel. However, there are still too many cases where the population is not informed about the existence of this mechanism and of the possibilities that it provides, therefore more could be done both by the World Bank and by NGOs to make this mechanism more effectively accessible to the public.

For what concerns transparency, it is important to notice that increased participation of external stakeholders makes the availability of information grow as well. The Bank's operations are now more under public scrutiny and, thus, this dimension has benefited too from NGOs' advocacy. Moreover, much of the advocacy work carried on by NGOs has always been also in pressing the Panel to be transparent in its actions and to disclose the information resulting from its investigations.

Under the dimension of participation clearly important advancements have been made thanks to the advocacy of NGOs. Indeed, the World Bank opened itself to the participation not only of NGOs but also of individuals to its processes. Though the requests filed by NGOs are in a greater number than those filed by individuals, NGOs, thanks to the support received by some Member States, were able to make the World Bank take direct account of its actions to the people affected by it and, therefore, made individuals become active participants to the life of an international organization.

For what concerns evaluation, the role played for the introduction of an Inspection Panel entrusted with the task of assessing the project's compliance with the Bank's rules and procedures is a major achievement for the evaluation of the Bank's performance. The mechanism of evaluation is internal, but we had the possibility to appreciate, from the work of outside stakeholders (representatives of NGOs) the good level of independence that it managed to gain.

In this case, however, it is the dimension of compliance and response that can be considered the greatest achievement for NGOs. It is thanks to their advocacy work that they pressured some of the most important Member States to put on the Bank Management's agenda the establishment of an accountability mechanism and to even be involved in the discussions for it, being able to present their models. Moreover, we already stressed the importance that NGOs have in making the Inspection Panel effectively work, through its constant monitoring and through the support that they provide to the affected communities for filing a request of inspection.

Finally, therefore, the overall accountability strategy of the World Bank has benefited from NGOs advocacy. Aside from the establishment of the Inspection Panel – which constitutes an accountability strategy *per se* – the commitment of the Bank to outreach to the general public to increase the knowledge of this mechanism, after the 1999 revision, is a significant advancement.

It is important to stress that although many flaws still exist in the functioning of the Inspection Panel, its creation and existence set an important precedent for the establishment of further accountability mechanisms within

international organizations upon request of the civil society, rightly canalized through NGOs. For instance, the Asian Development and Infrastructure Bank and the Inter-American Development Bank created accountability mechanisms that resemble the structure and operation of the World Bank's Inspection Panel²³⁶. Moreover, as we know that the Inspection Panel only applies to the IBRD and the IDA, however, its creation pressured the establishment of corresponding mechanisms even within the other two institutions of the Bank, the International Finance Corporation and the Multilateral Investment Guarantee Agency. Indeed, they created an Office of the Compliance Advisor and Ombudsman to try to address the complaints received from affected communities²³⁷.

Aside from asserting the importance of this organ, this section has helped us understand the effective role that NGOs can play in asking and pressuring international organizations to be more accountable for their decisions and actions. Indeed, this case has shown that – though under most favourable conditions – the advocacy work carried on by professionals working in NGOs cannot come unnoticed to an international organization's management because NGOs have the power to indirectly sanction an hostile behaviour towards such requests of accountability and transparency thanks to the external support that they may receive and to their role of watchdogs able to bring such controversies to the attention of the worldwide public, something that today, in the era of the internet and of the instant communications, is even easier for them to do.

3.2 NGOs and the United Nations Security Council

The United Nations Security Council is one of the organs that mostly suffers from the accountability deficit, not only within the United Nations system, but among the worldwide spectrum of international organizations. Yet, it is possibly the most important manifestation of power from an international organization, being it directly concerned with issues of global and regional security, the deployment of peace-keeping and peace-building operations, the power to impose economic sanctions, to proclaim ceasefires and so on. Therefore, its lack of accountability to the world citizenry is one of the greatest flaws in the United Nations system. We already had the chance to discuss one of the main problems of this organ, its privileged membership, that consists of fifteen Members of the United Nations, ten elected and rotating while five are permanent and entrusted with veto power. This asymmetry not only sanctions

²³⁶ PEREIRA et al. (2017: 1-28).

²³⁷ WORD BANK.

the effective different weights that United Nations Members have, but also creates a difficult mechanism to control and to ask accountability to.

This section is far from affirming that NGOs have an effective controlling power on the decision-making process of the United Nations Security Council. Their role in it is still too limited and reduced to informal accession. Indeed, no official document provides for their participation in the work of this organ and this clearly jeopardizes their possibility of demanding accountability. However, in the last years, many have observed²³⁸ a slow opening of the Security Council to NGOs and this represents a great victory not only for the NGO movement but for the whole world civil society. This is why we decided to consider this case for our evaluation of the impact that NGOs have on the accountability of international organizations, because this proves that even the most impenetrable organizations cannot escape the influence of NGOs and the fact that they are today entities with a worldwide recognized high standing and, therefore, whose answers cannot remain unaddressed.

The forms of interaction allowed to NGOs in their relationship with the Security Council would have not been worthy of such consideration had the Security Council not been such an important organ. Indeed, the fact that most of the liaisons between NGOs and the Council take place outside a formal framework and, also for this reason, are extremely precarious, would not constitute a sufficient accountability mechanism in other circumstances. However, it is important to recall that the Council is known for its secretiveness and impenetrability due to the functions that it carries on and, thus, this completely changes the point of view that we need to look at this case. Indeed, we need to consider the shift in its behaviour towards non-state actors as a real accomplishment both on the part of NGOs and of those Council's Member States that understood the importance of making this institution more transparent. In this case, indeed, increased accountability mainly means increased transparency (that is one of the already discussed dimensions of accountability), and it is not something to take for granted from an institution concerned with security issues (see also the cases of NATO or OSCE, though the latter was slightly different due to the gradual shift in its mandate). Increased transparency made the Security Council more subject to public scrutiny and, thus, to informed criticism for its actions or, at times, even its inaction²³⁹. This, although to a limited extent, allowed NGOs to influence its policies and to bridge the gap between the instances of the general public and the processes of the Council's *realpolitik*.

Clearly much more could be done and a complete framework defining the reciprocal roles in the interaction with non-state actors would be the best

²³⁸ Among the others: HILL (2002), PAUL (2004), Binder (2008).

²³⁹ PAUL (2004).

possible outcome of further NGO pressure for the Security Council accountability. However, after an attentive study of NGOs relations with this organ, it will be possible to notice that the informal mechanisms have become consolidated practice and, therefore, they are much more important and reliable instruments for holding the Council to account than it was expectable when they were first introduced.

In this section, we will analyse the first steps of NGOs' interaction with the Security Council and the resulting creation of the NGO Working Group on the Security Council. Then, we will consider the existing mechanisms of interaction for NGOs and how they contributed to making the Security Council more transparent in its decision-making process as well as more accountable. In this case, however, we are not speaking of proper legal accountability mechanisms as in the case of the Inspection Panel of the World Bank but rather of informal mechanisms adopted by NGOs and unofficially recognized by the Council in order to demand compliance with its commitments and responsibility for its decisions. Finally, we will discuss some of the main results of NGOs advocacy on the Security Council and assess the overall impact on its accountability.

3.2.1. The first interactions with the Security Council

The pressure from NGOs on the Security Council in order for it to be answerable for its decisions and actions started around 1990²⁴⁰. This was a period of big changes in the world balance of power and, therefore, it clearly had an impact on the Security Council's internal balance. Indeed, the dissolution of the Soviet Union and the end of the Cold War signified for many the possibility of increased cooperation within the Council between the two blocs (the USA-UK-France versus the Soviet Union/Russian Federation and China) that had been until then strong antagonist and that had nullified any possibility for this organ to adopt meaningful resolutions²⁴¹. Moreover, these years were among the most challenging for the whole United Nations system and for its mission of maintaining international peace and security due to the eruption of the conflicts in the Former Yugoslavia, the tragic genocide in Rwanda and the following establishment of the two respective *ad hoc* tribunals as well as, also thanks to the pressure from an NGO international coalition, of the International Criminal Court²⁴². Moreover, the conflict in Chechnya, the deepening of the Palestine crisis, the first Gulf War in 1991 and

²⁴⁰ *ibidem*

²⁴¹ BINDER (2008: 1-21).

²⁴² PAUL (2004).

the Somalia crisis in 1993 all contributed to the increased workload of the Council²⁴³.

Furthermore, a tragic event in the context of the conflict in the Former Yugoslavia underlined the importance of making the Security Council accountable for its decisions. It was the case of the massacre of Srebrenica, the slaughter of the whole male Bosnian (Muslim) population of the Srebrenica enclave, at the hands of the Serbian army. The Srebrenica enclave was under the protection of the United Nations and was a disarmed and non-combating zone. The lack of accountability of the United Nations blue helmets (deployed through the authorization of the Security Council) and of its officials for their failure in defending the enclave and the lack of any kind of intervention that could have avoided the tragedy paved the way for a stronger and worldwide debate on the responsibility of international organizations in the exercise of their functions²⁴⁴. The international public, in fact, began to recognize the democratic deficit in the global decision-making process and the lack of accountability for some of the most important actions undertaken²⁴⁵. All of this was particularly evident in the Security Council also because of the asymmetries of power among its Members. Criticism of the Council also emerged from the delegations participating to it and, particularly, from those countries which were providing troops and other personnel for the peacekeeping operations since they were forced to put their nationals at risk with barely any explanation²⁴⁶.

Therefore, the intensification of the work of the Security Council and its smoother functioning due to the partial abandonment of the Cold War logics, made NGOs understand the importance of following the Council's work more closely. Indeed, in the period from 1988 to 1993 the Council's meetings and consultations grew fourfold compared to the precedent years, while presidential statements increased more than six-fold²⁴⁷.

In these new circumstances, and in particular in respect to the aforementioned civil conflicts where the United Nations Security Council did not manage to control the development of the events, the organized civil society and, in particular, the most prominent NGOs concerned with human rights and humanitarian aid (especially those already affiliated to the United Nations, thanks to their consultative status) understood the importance of making this organ accountable for the decisions that would have affected the lives of thousands of people and started exercising pressure on it both directly on some

²⁴³ *ibidem*

²⁴⁴ *ibidem*

²⁴⁵ *ibidem*

²⁴⁶ BINDER (2008: 1-21).

²⁴⁷ PAUL (2004).

of the delegations and, indirectly, through their well-established influence on the world public opinion that could no longer be ignored²⁴⁸.

This overloaded work of the Security Council also created another reason for which NGOs were more welcomed to its work: the expertise that they provided to the non-permanent Members of the Council. Indeed, a great part in the opening of the Security Council to NGOs was made by such delegations that were usually smaller and less equipped than the five permanent Members in collecting information and in keeping up with the increased amount of work required in those years²⁴⁹. These delegations, therefore, started to seek information and policy ideas from NGOs, relying on their acknowledged expertise, in order to receive support in the execution of their mandated work. Not only smaller and less-equipped States, but also larger ones began to see NGOs as significant resources for the accomplishment of their mission.

However, though all these new circumstances were definitely favourable to a greater opening of the Security Council to NGOs, such process was not that simple, especially due to the resistance of the five permanent Members. Thus, the work of NGOs was slow and gradual, and started from the most discrete ones who could progressively open the way to those more vehemently criticizing the work of the Security Council.

The Quaker United Nations Office, representing the worldwide religious Society of Friends, was the first to make an attempt²⁵⁰. It was the NGO which probably had the longest-standing relations with Council Members due to its mission of providing a less-formal site (the Quaker House in New York) for the peaceful settlement of disputes among delegates of the Council and through the support of other experts. Another non-state actor attempting to encourage the Council's liaisons with NGOs was the International Committee of the Red Cross, itself not properly an NGO, but with a long and recognized international standing due to its tireless work in the provision of humanitarian aid in conflict-torn States²⁵¹. The Security Council saw it as a viable partner in its operations due to its high reputation, neutrality, quiet diplomacy and unique sources of information on field conditions because of its certain presence in crisis areas. Finally, the Stanley Foundation and the International Peace Academy, both engaged in policy research and in the organization of conferences and roundtables, too played their part in paving the way for other NGOs to establish permanent relations with the Security Council. It is indeed their role as promoters of policy research on key security issues that allowed them to liaise with Council Members²⁵², since they were often invited to attend

²⁴⁸ *ibidem*

²⁴⁹ *ibidem*

²⁵⁰ *ibidem*

²⁵¹ *ibidem*

²⁵² *ibidem*

their events alongside other diplomats, executives, lawyers and experts from the relevant fields.

It is thanks to the original attempts of these organizations that larger NGOs, more active in international advocacy and more capable to move wider sectors of the international public opinion (Amnesty International, Médecins sans Frontières/Doctors without Borders, Oxfam International) managed to reach the attention of some members of the Security Council. They presented themselves, indeed, as information-collectors and holders, with direct knowledge of what was happening on the field in many conflict-torn areas and supported by (collectively) millions of people worldwide. In particular, Amnesty International was the first one to try this type of active advocacy towards the Council for what concerned the Gulf War, presenting its own statements and asking for the monitoring of the post-conflict situation²⁵³. Through its actions, the NGO managed to be made a regular observer of the Council's meetings on this issue.

In 1995 a group of NGOs under the leadership of the *Global Policy Forum* created the NGO Working Group on the Security Council in order to discuss ideas concerning the necessary reforms within this institution²⁵⁴. This happened in the same period in which the Council itself was undergoing the same process of evaluating possible reforms, in 1994. However, the process eventually failed and, for this reason, the Working Group shifted its attention from reforming the Security Council to engaging in a continuous and open dialogue with it, also thanks to the cooperation that it received from those national delegations within the Council that were more eager to allow the participation of non-state actors in its processes and that saw NGOs as important resources for its operation.

As of today, the NGO Working Group on the Security Council is composed of 37 NGOs²⁵⁵ among the most important in the international sphere and that have the most to accomplish on matters of specific interest of the Council, including, among the others, Amnesty International, Human Rights Watch, Médecins sans Frontières, Save the Children, Oxfam International, CARITAS Internationalis and the Coalition for the International Criminal Court. It is headed by elected officers and governed by a Steering Group of seven members. It holds approximately 40-45 meetings on an annual basis²⁵⁶ with the Security Council delegations and other UN officials.

The gradual opening of the Security Council, though not on a formal basis and still quite limited in comparison to other mechanisms for the inclusion of

²⁵³ BINDER (2008: 1-21).

²⁵⁴ PAUL (2004).

²⁵⁵ NGO WORKING GROUP ON THE SECURITY COUNCIL.

²⁵⁶ *ibidem*

NGOs in the work of an international organization, was due eventually to legitimacy issues. As aforementioned, criticism of its secretiveness and lack of transparency was mounting and the Council could not ignore it any longer. As the Founding Secretary of the Working Group, James A. Paul, affirms “a number of delegations came to see increased Council interaction with NGOs as an essential step toward a more legitimate and effective international political and legal order”²⁵⁷. This confirms exactly why taking into consideration this case was so relevant in supporting the thesis that NGOs can contribute to making international organizations more accountable. In fact, even the most impermeable ones at some point have to face the influence that NGOs exercise and the demands for greater accountability and transparency that come from the international public and that are canalised by NGOs. In the next section we will analyse the main instruments that NGOs achieved for performing this task.

3.2.2. The Arria Formula, the Regular Meetings Process and the informal meetings

The instruments that NGOs have for exercising pressure on the Security Council and for making it more accountable and transparent can be summarised as the following: the Arria Formula, the Regular Meetings Process and the informal channels²⁵⁸. These are the instruments that the Security Council has unofficially approved for its interactions with NGOs. The most important and the one which paved the way for the other two is the Arria Formula.

The Arria Formula meetings, for all their not being official mechanisms, are actually openly recognized by the UN system and, in particular, by the Security Council. Indeed, information on them can be found on the website of the Council itself and is contained also in its Working Methods Handbook²⁵⁹. This kind of meetings are relatively recent in the practice of the Members of the Security Council, dating to the mid-nineties and due to their status of informal consultations they are not envisaged in the Charter of the United Nations nor in the Security Council’s provisional Rules of Procedure. However, the Council had the power to agree to this kind of consultations due to its possibility of determining its own practices.

This process is named after Ambassador Diego Arria of Venezuela who was the representative of Venezuela during its mandate on the Council from 1992

²⁵⁷ PAUL (2004).

²⁵⁸ *ibidem*

²⁵⁹ UNITED NATIONS SECURITY COUNCIL.

to 1993. In 1992, he also served as President of the Security Council²⁶⁰. During the conflict in the Former Yugoslavia, Arria met with a priest from Croatia who wanted to inform him about the situation of civilians on the field. Due to the impossibility of hearing the testimony of the priest during an official session of the Security Council, the ambassador from Venezuela invited other Members of the Council to meet outside the Council chambers for an informal discussion²⁶¹. As the Ambassador recalled, he decided to try this innovative and more informal option because “in the bilaterals²⁶², each country could tell him [the President of Bosnia] whatever was pleasant for his ears while in an informal consultation in front of all the countries, they have to be honest”²⁶³.

This precedent, that came to be known as the “Arria Formula”, gave NGOs the opportunity to lobby for the continuation of these informal meetings, in order to be able to meet the Council as a whole and inform all the Members about their concerns, asking – and possibly receiving answers – about its decisions. The permanent Members, however, refused to transform what was an incidental occasion into a consolidated practice of dialogue with NGOs and for a long time steadily opposed to it, even though other members were in favour of this mechanism²⁶⁴. Part of this opposition was also due to the case concerning three NGOs (Médecins sans Frontières, Oxfam and CARE) and the International Committee of the Red Cross. Indeed, after an invitation for consultations on the crisis in the Great Lakes Region of Africa made by Chile’s UN Ambassador, Juan Somavía, these non-state actors issued a joint statement, during a press conference, heavily criticizing the Security Council for its failure in addressing the situation²⁶⁵. This unprecedented action provoked a definitive closure on the part of the permanent Members to any further participation of NGOs in its processes²⁶⁶. Indeed, while today open individual or joint statements to the Security Council criticizing its actions or inactions are the norm in NGO’s advocacy, back then it was probably too soon to make such an attempt.

In 1997, under the US presidency of the Council, the American representative decided to unilaterally summon a briefing with a group of NGOs²⁶⁷. This was a further advancement in making the informal consultations a consolidated practice, at the point that since then each presidency of the Council has held briefings with NGOs²⁶⁸. The success of this practice and its come-back after

²⁶⁰ *ibidem*

²⁶¹ PAUL (2003).

²⁶² Bilateral meetings are officially recognized in the Security Council’s Rules of Procedure as one of the methods through which the Council operates. For more information: <https://outreach.un.org/mun/content/security-council>

²⁶³ KUNG (2012).

²⁶⁴ PAUL (2003).

²⁶⁵ RELIEF WEB (1997).

²⁶⁶ PAUL (2003).

²⁶⁷ *ibidem*

²⁶⁸ MASCIA (2010).

a period of abandonment was probably due to the fact that it was one of the permanent Members to initiate it, which symbolized a sort of official sanctioning of the instrument.

From the 2000s this mechanism has progressively become part of the practice of the Security Council. The Arrria Formula represents “an interesting mixture of informality and formality”²⁶⁹, as it is possible to notice from the fact that this mechanism is not present in any UN document nor in the Council’s Rules of Procedure but is, instead, acknowledged by the Council’s website and Working Methods Handbook. Indeed, this kind of meetings are held almost every month and sometimes even more than once a month, there is rarely any absence of a Member of the Security Council and when they are held no Council meetings or consultations are scheduled at the same moment²⁷⁰. This in particular shows how they have indeed become a consolidated practice whose eventual non-compliance could even be subject of both internal and external criticism. Today, statements made by Member States representatives during the Arrria Formula Meetings are even published on the official websites²⁷¹ of the Member States’ governments and, therefore, are subject to public scrutiny, resulting in a major achievement for what concerns this organ’s transparency.

Moreover, there was also some debate and pressure from some Member States about the publication of the summaries of the Arrria Formula Meetings as official acts of the Security Council. In several occasions, representatives of Member States issued a request for them to be published as such²⁷². The most recent case being the request made by the Angola and Spain representatives on the subject of food security, nutrition and peace. However, this event is not really frequent. It happened for the first time in 2007 (twice) and, again, only in 2014 and 2015²⁷³. Indeed, some Members continue to oppose this idea

²⁶⁹ PAUL (2003).

²⁷⁰ *ibidem*

²⁷¹ An example: The Netherlands, <https://www.permanentrepresentations.nl/permanent-representations/pr-un-new-york>,

Italy, [https://italyun.esteri.it/rappresentanza_onu/en/comunicazione/archivio-](https://italyun.esteri.it/rappresentanza_onu/en/comunicazione/archivio-news/2018/04/consiglio-di-sicurezza-meeting_39.html)

news/2018/04/consiglio-di-sicurezza-meeting_39.html, UK,

<https://www.gov.uk/government/speeches/we-must-look-at-actions-to-promote-climate-security-in-a-holistic-way-we-must-recognise-that-causes-and-responses-are-interlinked>

²⁷² SIEVERS and DAWS (2016).

²⁷³ The publication of the summary of an Arrria Formula in 2007 as a Security Council document occurred thanks to the initiative of the representative of the United Kingdom (since it was the State hosting the meeting) and the topic was “Security sector reform” (S/2007/107). In that same year, the representative of Slovakia requested and accomplished the publication of a summary of the Arrria Formula meeting he hosted on “Enhancing and widening interaction and dialogue between the Security Council and other United Nations Member States, as part of the implementation of the 2005 World Summit Outcome Document” (S/2007/784).

In 2014, Australia, France and the United States requested the publication of a “non-paper summarizing the informative discussion” that took place during the Arrria Formula meeting they co-hosted in April to discuss the report of the Human Rights Council Commission of Inquiry

claiming that the Arria Formula meetings are not envisaged by any official document and, therefore, their summaries should not result as official acts of the Council. The solution that some States have adopted when facing the opposition of the others is to publish them under their names, since in that case the Council's consensus is not necessary.

The introduction of the Arria Formula also paved the way for the admission of bilateral meetings between individual NGOs and individual representatives of Security Council Member States, always in the form of informal consultations and outside the Council's chambers, outside a few exceptions^{274, 275}.

In addition, it also resulted in the Regular Meeting Process²⁷⁶ that mainly involves members of the NGO Working Group on the Security Council and that offers the possibility to NGOs to hold regular meetings with Council Members. Even in this case, the opening of non-permanent Members was keener than that of the permanent five. Indeed, in 1996, under the Presidency of the Chilean Ambassador Juan Somavía, NGOs were encouraged by some Council's delegates to request a monthly briefing from the Council president, as a first step towards more regular consultations²⁷⁷. During the discussions about the eventual introduction of this regular brief, the five permanent Members blocked the proposal and, instead, agreed that Members could give national briefings to NGOs individually. The Ambassador from Italy, Paolo Fulci, was the first to do so, though eventually even the permanent Members unofficially agreed to this informal instrument in order to be able to provide themselves information to NGOs and gain their support in the constant quest for legitimacy for the actions undertaken²⁷⁸. Since the regular meetings are mainly dedicated to the NGOs participating in the Working Group, sometimes members of the Working Group invite smaller NGOs, which are not members, to take part in the discussions and this, therefore, creates greater spaces for outside participation and pressure on the Council.

on the Democratic People's Republic of Korea (S/2014/501). Finally, in 2015 the summary of an Arria Formula meeting was published as a Security Council document thanks to the efforts of the Angolan and Lithuanian representatives. This document was issued as a joint one of both the Security Council and the General Assembly (A/70/614-S/2015/953). For more information on the publication of Arria Formula meetings as Security Council documents see <https://www.scprocedure.org/chapter-2-section-11b>

²⁷⁴ PAUL (2003).

²⁷⁵ Like the 2004 case in which representatives from the NGO CARE International and from the Center for Transitional Justice briefed the Security Council on the role of the civil society in peacebuilding during a Council's official session (CHARNOVITZ 2006:368).

²⁷⁶ PAUL (2004).

²⁷⁷ *ibidem*

²⁷⁸ *ibidem*

For what concerns the informal channels, it is the 1994 Rwandan genocide's unfolding to be at the origin of their development²⁷⁹. Many delegations were indeed shocked at the permanent five's secrecy over the issue and the overall UN Secretariat silence. New Zealand ambassador, then President of the Council, Colin Keating, invited Médecins sans Frontières and the International Committee of the Red Cross to brief him on the situation, while the Czech ambassador invited Human Rights Watch to inform the ten elected Members. The big NGOs operating on the field were considered fundamental sources of timely information²⁸⁰. Alongside them, many smaller ones progressively gained the attention of Council Members due to their expertise in specific subject-areas. Through a consolidated practice, individual NGOs have been called to provide their expertise on their field of interest.

Moreover, other informal channels are formed by those advocacy tools that NGOs use to address the Council. Open letters, both individual or joint, conferences and meetings on Council-related policy topics, publication of reports are all informal methods that are able to provoke the Council's attention towards the problems NGOs are concerned about²⁸¹.

3.2.3. Impact on the operation of the Security Council

After this analysis of the methods of interaction that NGOs, with the help of some Council Members representatives, managed to achieve, enhancing its possibility of becoming a more transparent and, consequently, accountable institution, it is time to assess the overall impact that NGOs' advocacy had on it. Many observers²⁸² argue that the transparency of the Council has grown compared to the Cold War era, claiming that now citizens, after decades of NGOs pressures, are "in a stronger position to demand accountability for Council Action"²⁸³.

Consequently, in this section we will introduce two examples of some of the most important accomplishment that NGOs made thanks to the methods of interaction that they managed to create with the Security Council. NGOs, indeed, were able to bring to the attention of the Security Council issues and situations that would have otherwise been ignored, not only because of the strategic decisions at stake within the Council but also because of the direct

²⁷⁹ *ibidem*

²⁸⁰ *ibidem*

²⁸¹ *ibidem*

²⁸² HILL (2002), PAUL (2004).

²⁸³ PAUL (2004).

expertise on the field that NGOs enjoy and that puts them in a strong position of acquiring information, relevant to the Council's work.

The first case concerns the advocacy work that NGOs did first, in informing the Security Council on the existence of a severe case of human rights violations and, then, in asking for a tougher sanctions' regime. This case is the first achievement of this kind and is considered one of the most outstanding examples of NGO advocacy. We are referring to the 1998 affair concerning the sale of diamonds by the rebel UNITA forces in Angola to Western companies during the Angolan civil war. The NGO Global Witness issued a report called "A Rough Trade"²⁸⁴ unveiling this situation and the consistent human rights violations and breaching of international law²⁸⁵. Advocates of the NGO were invited to meet with the Security Council's Angola sanctions committee and their work resulted in a strengthening of the sanctions enforcement. Global Witness' advocacy campaign threatened the industry and the governments that defended this illicit trade²⁸⁶. In 2001, UNITA collapsed due to the lack of cash flows deriving from its illegal market and the Angolan civil war ended. This successful advocacy work also proved that the Security Council could not ignore anymore the information collected by human rights and humanitarian NGOs. A hostile behaviour would result in a "naming and shaming" strategy at the expenses of the Security Council. This instrument, indeed, is often used by NGOs towards national governments responsible for human rights violations. What happened with the greater influence that these organizations managed to have on the Council is that, had the Council failed to respond in some way to the information provided by the NGO, Global Witness would have used this strategy on the Council's representatives too in order to provoke a reaction of their part²⁸⁷.

A second case concerns the adoption of the Landmark Security Council Resolution UNSCR 1325²⁸⁸, concerning Women, Peace and Security on October 31, 2000. This case represents the first time in which the Security Council addressed the disproportionate and unique impact of armed conflict on women²⁸⁹. Indeed, the Resolution, acknowledging the increasing resort to the deliberate targeting of civilians in contemporary warfare, stressed the fact that women were among the most affected sectors of the population in these circumstances because of the diffused usage of gender-based violence, including rape and sexual abuse and, nevertheless, they continued to be excluded from participation in peace processes and, therefore, their instances

²⁸⁴ GLOBAL WITNESS (1998).

²⁸⁵ PAUL (2004).

²⁸⁶ *ibidem*

²⁸⁷ *ibidem*

²⁸⁸ Resolution of the United Nations Security Council adopted on 31 October 2000, Resolution 1325(2000), *on Women, Peace and Security*.

²⁸⁹ HILL (2002: 27-30).

continued to remain unattended²⁹⁰. Consequent to this acknowledgment, the point of the Resolution was to promote their role in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction. The four pillars of the Resolution were participation, protection, prevention and relief and recovery²⁹¹. Resolution 1325 stressed “the importance of their [women’s] equal participation and full involvement in all efforts for the maintenance and promotion of peace and security”²⁹² and urged all actors to increase the participation of women and to incorporate gender perspectives in all United Nations peace and security efforts.

The importance of this Resolution is undebated and, thus, it is even more interesting to study it, if we consider that its adoption was the result of the collective efforts of NGOs and of those United Nations Member States which understood the relevance of their arguments and decided to support their cause. On International Women’s Day in 2000, indeed, the President of the Security Council, Ambassador Chowdhury of Bangladesh, issued a presidential statement acknowledging for the first time the role of women in peace processes²⁹³. Several NGOs had been working in the precedent years for pressing this topic into the Security Council’s agenda and, therefore, also thanks to the encouragement received by the Bangladeshi Ambassador some created the NGO Working Group on Women and International Peace and Security²⁹⁴. On October 23, 2000, the Security Council agreed to an Arria Formula meeting in which representatives of women’s NGOs from Sierra Leone, Guatemala, Somalia and Tanzania had the opportunity to speak of the Members of the Council, informing them on their work, demonstrating their competence on the issue and providing their recommendations, thirty-two in total, including the need for increased women personnel at senior levels in all UN departments and missions and the presence of information on women on the reports submitted by the Secretary General²⁹⁵.

A few days later, the Security Council adopted the resolution which committed governments to include women’s voices in peace negotiations and to protect them from the abuses of war. The involvement of the Working Group, however, continued even after the adoption of the Resolution and today consists of the monitoring²⁹⁶ of the commitments made by the Security Council and the correct implementation of Resolution 1325. For instance, the NGO Working Group ensures that during field visits Members of the Council

²⁹⁰ Resolution of the United Nations Security Council adopted on 31 October 2000, Resolution 1325(2000), *on Women, Peace and Security*.

²⁹¹ *ibidem*

²⁹² *ivi*, p.1.

²⁹³ HILL (2002: 27-30).

²⁹⁴ *ibidem*

²⁹⁵ *ibidem*

²⁹⁶ NGO WORKING GROUP ON WOMEN, PEACE AND SECURITY.

meet representatives from women groups in the interested areas and discuss with them the issues at stake, consult with them and collect their grievances²⁹⁷.

There are other cases in which NGOs managed to press the Security Council to undertake concrete action and to not turn a blind eye on their concerns, however, these two were particularly interesting even because they date back to the first years of more intense relations between the Council and NGOs and, thus, prove that the claims made by NGOs to be heard were not vain. They could indeed contribute to the work of the Council, providing information to it upon which it could make better-informed decisions and be asked to be accountable for them. Moreover, it also shows the responsiveness that the Council had to the requests for greater gender considerations in its operations which was something completely new to the Council's procedures. NGOs effectively proved to be the holders of civil society's preoccupations that too often were neglected by the Security Council and, therefore, managed to do the first steps in overcoming the accountability gap of this institution.

3.2.4. Evaluations on the United Nations Security Council

If we consider, as we did for the previous case analysed, the dimensions that were used in Chapter One in order to understand the accountability of an international organization, we can assess the impact that NGOs had in each of them.

For what concerns the dimension referred to as democratic deficit, although NGOs worked in order to press for a reform of the Security Council in this respect through the creation of the NGO Working Group of the Security Council, they eventually had to abandon this purpose because of the simultaneous decrease in the discussions within the same United Nations system about reforming the Council. Changes in the membership of the Council still seem to difficult to occur in the near future. However, it is also true that NGOs have contributed to this dimension by empowering those Council's elected Members that due to limited resources and intelligence capacities had less opportunities to effectively perform their functions. Their search for NGOs' expertise and the immediate cooperation that they received allowed them to become more relevant voices in the Council, having a wider spectrum of reliable information and analysis to use in their work. The result, as Paul recalls, is that the intelligence monopoly of the five permanent Members was broken, contributing, though in a limited extent, to decrease the democratic deficit.

²⁹⁷ HILL (2002: 27-30).

It is probably under the dimension of transparency that NGOs' advocacy had its greatest achievements. NGOs managed to make this institution more open and to make it more subject to international public scrutiny. Not only have their liaisons with them led NGOs to have greater information on the Council's activity but they even pressured for it to be more transparent without the need for NGOs to be intermediaries in the process and, therefore, to be more open in the publication of its documents in order to make them more available for direct consultation from the public, for instance, through its provision on the Council's website.

For what concerns participation, we analysed the progressive relations that NGOs managed to create with the Security Council. The initial occasional meetings that were held by some representatives of the Members of the Council gradually became consolidated practice. In Chapter One we introduced the concept of participation of external stakeholders. According to this, in order for participation to be effective the international organization concerned should clarify the activities and levels at which stakeholders can expect to be engaged, to be informed about the scope of their engagement and change policies or practice according to the outcome of the engagement. As mentioned, no specific provisions about the participation of NGOs to the processes of the Security Council are present. However, they are present in the Working Methods Handbook of the Council and they are effectively more institutionalized than it would be expectable. If, to this, we add the already stated fact that the Security Council represents a particular case in the sphere of international organizations and of their organs, it will be possible to appreciate even more the performance of NGOs in this dimension. In less than three decades they managed to effectively open the most important organ in the world concerned with security and peace to the regular participation of non-state actors.

For what concerns evaluation, there is no specific evidence of NGOs contributing to this element if we strictly consider it as the establishment of mechanisms through which an organization monitors and reviews its progress against goals and objectives. However, we had the opportunity to see how evaluation is closely linked to participation. Participation of external actors, indeed, is needed to produce goals which increase accountability and evaluation, therefore, is intended also as external evaluation performed by the external stakeholders. Hence, since the Security Council is now more open in its commitments due to the pressure that it has received from NGOs and its actions are more available for public scrutiny, it can be somehow considered as having accepted to undergo an evaluation process. For this reason, under this perspective, NGOs proved to greatly contribute to the dimension of evaluation through the continuous monitoring of the Council's activities and decisions, their public call for answers to its actions or inactions, and subjecting it to the strategy usually referred to as "naming and shaming", a strategy that is crucial to NGOs' advocacy since it enables them to publicly

accuse governments or, in this case, organizations' officials for their actions, exercising pressure on them to be more accountable.

Under the dimension of complaints and response, NGOs can only be accredited for the advocacy they made for the establishment of the *ad hoc* tribunals for the Former Yugoslavia, Rwanda and Sierra Leone along with their campaign for the establishment of the International Criminal Court. However, in this case, we are referring to mechanisms that do not provide means for the accountability of international organizations' officials but for governments' officials. A further step would be to provide the means through which it would be possible to overcome international organizations' agents' immunities from jurisdiction and subject them to criminal procedures in the cases foreseen by the Statute of the International Criminal Court.

Finally, for what concerns the accountability strategy it is possible to notice the impact that NGOs had on this dimension too. We know that for an organization to have an accountability strategy it is not necessary for it to have adopted legally binding instruments but also soft law instruments. In this case, the recognition of the Arria Formula meetings in the Working Methods Handbook and their occasional publication as Security Council documents provide sufficient elements to assess the results that NGOs have accomplished in these terms. Clearly, much more could be done, and the analysis of this case study did not aim to suggest that the existing accountability paths are sufficient.

The Security Council necessitates reforms in order to be more answerable for its actions. NGOs, indeed, can put pressure on it to be more open and responsive and to address civil society's concerns, but the power to really address its accountability gap and democratic deficit is in the hands of the United Nations Member States. Moreover, in the eventuality of the adoption of accountability mechanisms, NGOs' contribution to ensuring compliance could still be based on the existing non-formal instruments. However, the introduction of a comprehensive framework for this participation in the Council's processes would be the most desirable outcome, because it would allow for an even more important contribution from the world of NGOs to securing the accountability of this organ and in bridging the gap with the civil society affected by its decisions.

CONCLUSIONS

In a growing number of domains, international organizations affect the daily life of citizens worldwide. However, citizens encounter great difficulties in making sure that the decisions of these institutions are made in their interests. The aim of this study was to try to investigate the issue of the accountability of international organizations and to suggest the increased participation – both in quality and in quantity – of non-governmental organizations as a possible and partial solution to this problem. Indeed, NGOs have been suggested by different academics as possible intermediaries between the civil society and international organizations for the enhancement of the accountability of the latter.

The necessary initial assumption of this work was that international organizations do suffer an accountability crisis and this claim was supported throughout the work with the relevant doctrine existing in the field of international public law and global affairs. This study aimed at contributing to the research that is being done on this topic and, specifically, to the stream that advocates for increased participation of civil society organizations to address the accountability flaws of international organizations.

In Chapter One we introduced the concept of accountability and the relevant theoretical framework necessary to support this study. We stated that the classical accountability paradigm that is applied to States cannot be used when analysing the mechanisms of international organizations and, therefore, a different paradigm of accountability was applied, based on the most recent theoretical advancements in the field. A synthesis of two alternative models was therefore adopted. This synthesis, that summarised the concepts of accountability through norms and that of surrogate accountability, resulted in the conclusion that NGOs have a right to be considered as accountability owners as long as they advocate for international organizations' officials to adhere by the norms and standards generally recognized for the protection of human rights and, at the same time, themselves adhere to them. However, since they are in a position of power-asymmetry with said officials and representing the less powerful agent in this relationship, the kind of accountability that they can require is referred to as “surrogate accountability” or “second best accountability” insofar as it entails the intervention of a third party entrusted with the powers necessary for accountability to be requested and effectively accomplished. After the introduction of the relevant theoretical framework, we introduced a methodology for assessing the accountability flaws of international organizations. This methodology is based on the consideration of six dimensions: the democratic deficit, transparency, participation, evaluation, complaints and response, and accountability strategy. We then analysed different international organizations according to these criteria in order to provide the reader with the most possible

comprehensive framework about international organizations' accountability deficits.

In Chapter Two we addressed the theme of the participation of NGOs to the life of international organizations. First, we introduced the historical background to NGOs' participation, starting from the case of the United Nations that served as an example for other international organizations. Then, the important issue of the legal personality of international organizations was addressed. The finding was that NGOs do not enjoy international legal personality and, although the reason for this is comprehensible, this creates a problem for their activities because they need to adapt each time and can be expanded or limited according to the jurisdiction in which NGOs operate. Finally, the methods of interaction that NGOs enjoy within international organizations have been introduced. We did not go into the detail of each international organization but highlighted the most important ones: the consultative status within the United Nations, the participatory status within the Council of Europe, the case of OSCE and the *amicus curiae* role within international courts and tribunals. This role is particularly important and, if and when, the responsibility of international organizations' agents for their wrongful acts will be introduced²⁹⁸, it will be interesting to see if NGOs will be allowed to perform this role in these circumstances too and what their contribution will be.

In the final chapter, Chapter Three, we analysed two case studies: the role that NGOs played in the creation, functioning and defence of the World Bank Inspection Panel and their role in making the United Nations Security Council more open, transparent and responsive to the concerns of the civil society. The same criteria used for the assessment of international organizations' accountability mechanisms were used to analyse the impact that NGOs had on the accountability of the two concerned institutions.

It is from the synthesis of these two cases with the theoretical framework introduced in the first two chapters that we will elaborate our final conclusions.

The first conclusion concerns the necessity of a different approach to the concept of accountability when addressing it in the area of international organizations. In the first chapter we adopted a synthesis of two innovative paradigms in order to assess the mechanisms existing within international organizations: the idea of accountability through norms and the idea of

²⁹⁸ It is important to recall, indeed, that the International Law Commission has adopted the already-mentioned *Draft Articles on the Responsibility of International Organizations* in 2011 and has submitted them to the General Assembly, but they have not been adopted by the United Nations yet. The Draft Articles provide both for the attribution of a conduct to an agent of an international organization and to an organ of an international organization.

surrogate accountability. The study of the two cases confirmed our theory. The world of international organizations does not correspond to the classical accountability logic of nation States, where the governors are directly accountable to the governed. The relations are not so straightforward and, moreover, there is an asymmetry of powers among the different actors involved in their processes. Both the case of the World Bank Inspection Panel and that of the United Nations Security Council proved that NGOs need third parties entrusted with sanctioning power in order for their functions to be effective. Indeed, whenever they encounter opposition from members of an organization their capacity to affect its processes is severely reduced. Substantially, then, NGOs need agents, representatives or organs of an international organization to support their causes and to help them in advancing their status in order to better perform their function of enhancing the accountability of the concerned organization. This corresponds exactly to the idea advanced at the beginning of the thesis of the necessity to adopt the alternative conception of surrogate accountability.

A second significant conclusion reached through the analysis of the two cases, confirms the adopted definition of NGO (association of private citizens, independent, concerned with the promotion of common goals and of the public interest, with a non-profit nature, a minimally organized structure and professionalized) and why we decided to claim that NGOs – among the wide spectrum of civil society organizations – are those that can effectively contribute to the enhancement of international organizations' accountability. Indeed, what has emerged from the case studies is the necessity for members of the civil society to have a recognized high standing and to be familiar with the rules and practices, as well as the technical terms, of an international organization in order to be effective in their role. NGOs are composed by professionals and experts in the fields of human rights, humanitarian law, environmental law, international public policies and advocacy and, for this reason they can be recognized as partners on an equal plan (not in terms of power, but of expertise) by agents of international organizations and their advocacy has the potential to be more effective. This idea was confirmed by both cases. In the case of the World Bank Inspection Panel, NGOs intervened most of the times in helping the local communities to file complaints against the Bank because their expertise was necessary to translate the concerns of the affected communities into precise breaches of World Bank's rules and procedures. In the case of the United Nations Security Council, instead, it is the recognized expertise of prominent NGOs that attracted the attention of some of its Members – especially the non-permanent ones – and that, therefore, enabled NGOs to gain their trust as valid resources and to champion the cause of their involvement in the Security Council's processes.

The third conclusion is that the less an international organization (or one of its organs) is subject to public scrutiny, the more the accountability exerted by NGOs is important. Both the cases that we have studied, indeed, concerned

organizations whose actions have a crucial impact on the lives of thousands of people but that, prior to the engagement of NGOs, were almost non-responding to the instances coming from the civil society and demanding them to be answerable for their actions. When the gap between the citizens and the international organizations is particularly consistent, the role of NGOs is crucial for its reduction because there are hardly any other means through which accountability can be exerted. NGOs in this case bridge the gap between the perceived distant organizations and the affected people through their persistent presence (either institutionalized or not) and proximity to the agents of international organizations, that enables them to provide input to the governance of international organizations, pass information from citizens to decision-makers bringing their interests on the agendas of international organizations and, on the other hand, provide citizens with information about the organizations and their activities. The idea underlying the impact of NGOs on international organizations' accountability is that they make them aware that someone well-informed and with a recognized international standing is watching, someone who might provoke the reaction of the public or of other actors, which in turn might have a formal control and the power for sanctioning the international organization (and this goes back to the idea of surrogate accountability).

Finally, we proved that there is a connection between the level of engagement of NGOs in an international organization and the enhancement of its accountability. When an organization provides a complete legal basis for the involvement of NGOs it is easier for them to act and to perform this task. In the case of the World Bank Inspection Panel, the guidelines for filing a complaint explicitly refer to the possibility for NGOs to represent the affected communities. In the case of the Security Council the situation is different, but we saw that certain consolidated systems managed to become practice of the Council. Therefore, even in that context, NGOs have an idea of the boundaries in which they can operate. Clearly, the level of engagement provided to NGOs also depends on the nature of each organization and, thus, it is necessary to consider this aspect in order to better appreciate the impact that NGOs advocacy has on their accountability.

Further studies would be necessary to understand the overall impact that NGOs have on the accountability mechanisms of international organizations. At the moment, the case of the World Bank Inspection Panel is the most studied one. We attempted to propose an evaluation of the case of the Security Council relying on the limited available information and research. It would have been interesting to address more cases, but it cannot be the work of a single study to provide a complete framework, especially if we consider the limited available resources. Academics and scholars can probably have access to wider sources, both direct and indirect, and therefore, further studies on their part would be welcomed.

This study stems from the great admiration of the work of international organizations that is rooted in the deep conviction that they represent the best possible effort and way for the international community to tackle global issues, like international peace and security, the protection of human rights, global finance and economic development, sustainable development. Moreover, the role of international courts is even more deserving of recognition because had it not been for them, many severe human rights violations would escape accountability. It is exactly from this admiration that comes the request for greater accountability for these organizations, because their mandate is sometimes under attack, exactly due to this issue. International organizations need to become more accountable and to assume responsibility for their actions, because they need and deserve to regain part of the credibility that they have lost due to the abuses of some. In this period, where various political forces from all over the world discredit the work of international organizations and would like to see States going back to the isolationism of the beginning of the previous century, it is all the more important to protect and enhance the credibility of international organizations.

NGOs can help in this way thanks to their capacity of bridging the gap between the civil society and international organizations. They bring the perspective of the common people, that sometimes seems neglected, into the agendas of the most important international institutions and, in doing so, they awake their consciences and demand them proper action.

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Summary

There is large acceptance of the idea that international organizations suffer an accountability crisis. The more they grow in number and in the fields in which they operate, the more it seems difficult to establish adequate mechanisms for holding international organizations and, ultimately, their officials, responsible for their actions. Different studies have tried to suggest several options for making international organizations more responsible for their actions, and many have suggested the idea of strengthening those external actors that already interact with them based on the simple reasoning that the presence of outsiders entrusted with some forms of controlling powers will disincentive their officials from committing wrongful acts or, on a more positive note, ensure their adherence to the commitments they have made.

The aim of this study is to try to investigate the issue of the accountability of international organizations and to suggest an increased participation – both in quality and in quantity – of non-governmental organizations (“NGOs”) in order to enhance it.

Clearly, assigning the whole responsibility of holding international organizations accountable to NGOs is not possible nor would it be desirable. The task of holding international organizations accountable for their actions and decisions should, indeed, be shared among the different stakeholders that, at different levels, are engaged with them. However, this study does not want to suggest that this kind of accountability should replace independent and efficient judicial mechanisms for assessing international organizations’ agents responsibilities for the commission of wrongful acts but that it could complement them whenever they will be introduced.

Furthermore, there is a distinction between “responsibility”, which is a legal concept, and “accountability”, which means holding international organizations accountable and to require adequate explanation even for those actions that they had the power to take and that were legal under international law. Moreover, it also means controlling the adherence of an organization to the commitments it has made and that it is expected to comply with, though not necessarily legally binding commitments.

The methodology used in this study combines a theoretical approach and an evidence-based approach. The first two sections are more theory based, though the first chapter, in its assessment of accountability issues within international organizations, provides factual evidence supporting the thesis that there is indeed an accountability problem. The third chapter, however, is the one where the evidence-based approach will be used the most since we present particular cases of NGOs’ engagement in international organizations

that are considered as being particularly relevant for the development or improvement of accountability mechanisms.

Some preliminary remarks are necessary before going any further with this discussion. We have already mentioned at least three concepts that need to be addressed more specifically in order to have a better comprehension of the issue at stake: international organizations, non-governmental organizations and democratic accountability.

According to the *Draft Articles on the Responsibility of International Organizations*, an international organization is a form of cooperation among States established by a treaty or other instrument governed by international law and possessing its own legal personality. It may include as members, in addition to States, other entities.

For what concerns the definition of “NGO”, there is no agreed definition in the field. This is why in this thesis we adopt an operational definition able to include all the key characteristics of a non-governmental organization that emerge from the literature: *the existence of a “societal actor”*, meaning that an NGO emerges from the private sphere as a form of association among private citizens; *independent*, both in terms of political independence from States and of their financial, donations-based independence; aimed at the promotion of *common goals* and of the *public interest*; *no-profit nature* (but paid staff); a *minimally organized structure* (with permanent members, offices and self-governing arrangements, not *ad hoc* entities); *professionalized*, meaning that the staff is usually paid because of its specifically trained skills and competences.

Last, we have to define what is meant by “accountability”. The widely accepted idea is that democratic accountability means making those who wield power, answerable to the appropriate people. At the nation State level this means that the governed (the people of the State) are able to hold their governors accountable for their decisions and their actions. However, such straightforward relationship does not exist at the international level and, specifically, at the level of international organizations, therefore we will later introduce a new conceptualization of accountability.

One more final remark before starting this dissertation needs to be added. Some authors refer to civil society organizations in general and use the two terms interchangeably, while they then actually cite cases concerning specifically NGOs. This study, however, is centred on NGOs as a specific subcategory of CSOs. The answer for this choice can be found in the characteristics that were previously introduced to define what an NGO is. In particular, this work relies on the question of “organizational structure” and “professionalism”. While “civil society organizations” is a general set that

also includes NGOs, not all kinds of CSOs have a permanent and organized structure and not all of them, most importantly, are composed by professionals. However, in order to demand the compliance with standards and norms, an entity must have professionals that know their job, that are specialized in advocacy and lobbying and, therefore, who can use the right pressure to expect answers for a taken decision. The purpose of this thesis is to argue that NGOs can contribute better to the enhancement of international organizations' accountability because they constitute professionalized channels with the effective means for achieving this purpose.

Chapter One introduces the concept of accountability and the relevant theoretical framework necessary to support this study. The classical accountability paradigm that is applied to States cannot be used when analysing the mechanisms of international organizations due to the absence of straightforward delegation chains and the more complex nature of the international realm. Therefore, a different paradigm of accountability is necessary, based on the most recent theoretical advancements in the field. We will introduce two models and, then, we will try to arrive to a synthesis of the two.

The first one is the norms-oriented model of Goodhart, centred on norms rather than agents. His model requires a shift in the perspective from the question "who to be accountable to?" to the question "why being accountable?". The new central idea of accountability becomes the "why" and the answer to this is an easy one: because of the agreement upon which the governors should adhere to the existing norms and standards that constrain the exercise of power and enable meaningful political agency. As Goodhart affirms, these standards can be considered as a "democratic conception of emancipatory human rights": protection, inclusion, empowerment, fairness, education, personal liberty, physical integrity, social and economic security, and political participation are fundamental democratic rights because they are necessary for preventing the domination of the majority and allow the opposition – the minority - to exercise control over their actions. Indeed, this emphasis on human rights as standards of accountability clarifies why democratic majorities or their representatives cannot abuse their power as to jeopardize minorities' rights, the respect of the due process and the rule of law. It is the existence itself of these recognized and sanctioned standards that enable the enhancement of the democratic accountability and allow the control of the actor responsible for its actions. If we reconnect this to the role that NGOs can play in enhancing the accountability of international organizations, it is now easier to understand how also non-elected, non-representative nor entrusted bodies (the minority) can still be considered legitimate subjects to enhance international organizations' accountability as long as they promote, even in their everyday practice, the internationally agreed standards concerning human rights.

The second model is that of Rubenstein who introduces the concept of “surrogate accountability”. Her reasoning starts from the assumption that the traditional accountability is made up of four phases: standard setting, information gathering, imposing sanctions and re-defining standards. What Rubenstein, however, correctly notices is that this whole process is only applicable if the accountability owners are more powerful than the power wielders. In her study, for example, she mainly refers to the less powerful in terms of groups of un-organized people, such as exploited workers, peasants, rural communities, etc. However, the same conceptualization can be applied to the realm of power relations within an international organization and, specifically, to the different weights that the different stakeholders within them have. This is exactly the case of NGOs participating in the life of international organizations. They do not and cannot be compared to the power that effective members have within international organizations, which are predominantly States. Moreover, since they are not elected members and they do not represent the member states of an international organization they cannot have their same rights and, therefore, this implies too that they should not have the same voting rights. However, being them representatives of sectorial interests that are not often the same as the agenda upon which the international organization in question agrees and since, whenever participating, their powers are quite limited and their actions under severe scrutiny, they might be considered the weakest in the international organization-NGOs relationship. Therefore, the idea of the surrogate accountability, can also find its application to this specific issue. According to Rubenstein, “surrogate accountability occurs when a third party sanctions a power wielder on behalf of accountability holders because accountability holders cannot sanction the power wielder”.

If we were to find a synthesis between the two alternative models of accountability elaborated by Goodhart and Rubenstein we might say that NGOs have a right to be considered as accountability owners as long as they advocate for international organizations’ officials to adhere by the norms and standards generally recognized for the protection of human rights and, at the same time, themselves adhere to them. However, being in a position of power-asymmetry with said officials and representing the less powerful agent in this relationship, the kind of accountability that they can require is referred to as “surrogate accountability” or “second best accountability” insofar as it entails the intervention of a third party entrusted with the powers necessary for accountability to be requested and effectively accomplished, in particular the possibility to sanction.

We can now introduce the methodology for assessing the accountability flaws of international organizations. This methodology is based on the consideration of six dimensions: the democratic deficit, transparency, participation, evaluation, complaints and response, and accountability strategy. We will now analyse some of the main international organizations according to these

criteria. Our analysis considers international financial institutions (the IMF, the WB and the WTO), security organizations (NATO and OSCE), the United Nations and regional organizations (the Council of Europe, the African Union and the Union of American States).

What emerges from this analysis is an overall problem of democratic deficit due to the long delegation chains and the difficulty for the general public to have its interests corresponded by the actions and decisions of international organizations. Moreover, the analysis highlights a general commitment to transparency but not the proper adoption of compensatory mechanisms. For what concerns participation, this varies according to the different organizations, with a gradual improvement in international financial organizations, severe flaws in the field of security organizations and more positive outcomes for what concerns the United Nations and regional organizations. Evaluation is not always attained and, moreover, there lacks information on this area, while complaints and response is probably the more problematic area since only limited access is provided to individuals or external stakeholders to complaints mechanisms and, moreover, they are more present as internal mechanisms (like for employment relationships). Finally, the accountability strategy is not generally well defined. Here again, some of the United Nations specialized agencies and the regional organizations considered perform better than the international financial institutions or the security organizations.

Chapter Two addresses the theme of the participation of NGOs to the life of international organizations. NGOs appeared for the first time as relevant actors in the international scene at the beginning of last century, after the creation in 1919 of the League of Nations, however this organization did not provide any formal framework for their participation but allowed in on the basis of the gradual development of a costume. Another international organization that, even before the creation of the United Nations, constantly admitted NGOs' cooperation for the pursuit of its objectives was the ILO, the International Labour Organization. Due to its particular governance structure, the ILO has constantly maintained an open and interactive relationship with NGOs, engaging especially with those whose mission was centred on labour and social rights.

It is only with the creation of the United Nations, however, that the participation of NGO was institutionalized through the adoption of several resolutions at different levels in the organization. The case of the United Nations served as an example for other international organizations in the inclusion of NGOs in their processes.

Though participating in the life of many international organizations, NGOs do not enjoy international legal personality. The reason for this is comprehensible

being them private entities, however this creates a problem for their activities because they need to adapt each time and can be expanded or limited according to the jurisdiction in which NGOs operate.

There are several methods of interaction that NGOs enjoy within international organizations have been introduced. In this work we decided not to go into the detail of each international organization but highlighted the most important ones: the consultative status within the United Nations, the participatory status within the Council of Europe, the case of OSCE and the *amicus curiae* role within international courts and tribunals. This role is particularly important and, if and when, the responsibility of international organizations' agents for their wrongful acts will be introduced, it will be interesting to see if NGOs will be allowed to perform this role in these circumstances too and what their contribution will be.

The final chapter, Chapter Three, presents two case studies: the role that NGOs played in the creation, functioning and defence of the World Bank Inspection Panel and their role in making the United Nations Security Council more open, transparent and responsive to the concerns of the civil society. The same criteria used for the assessment of international organizations' accountability mechanisms were used to analyse the impact that NGOs had on the accountability of the two concerned institutions.

The findings resulting from the analysis of the first case highlight the following considerations. First, for what concerns the democratic deficit, the impact of NGOs resulted in making the World Bank more answerable for its decisions directly to the people which are affected by its projects and, therefore, in partially bridging the gap between the organization and the civil society. Second, for what concerns transparency, it is important to notice that increased participation of external stakeholders makes the availability of information grow as well, therefore, the Bank's operations are now more under public scrutiny also because much of the advocacy work carried on by NGOs has always been in pressing the Panel to be transparent in its actions and to disclose the information resulting from its investigations. Third, under the dimension of participation, clearly important advancements have been made thanks to the advocacy of NGOs since the World Bank opened itself to the participation not only of NGOs but also of individuals to its processes. Fourth, for what concerns evaluation, the role played for the introduction of an Inspection Panel entrusted with the task of assessing the project's compliance with the Bank's rules and procedures is a major achievement for the evaluation of the Bank's performance. Fifth, in the analysed case it is the dimension of compliance and response that can be considered the greatest achievement for NGOs due to their accomplishments in pressuring some of the most important Member States to put on the Bank Management's agenda the establishment of an accountability mechanism, to be involved in the discussions for it and also, after its creation, in contributing to its functioning

through the support they provide to the affected communities in filing complaints. Finally, therefore, the overall accountability strategy of the World Bank has benefited from NGOs' advocacy. Aside from the establishment of the Inspection Panel, the commitment of the Bank to outreach to the general public to increase the knowledge of this mechanism, after the 1999 revision, is a significant advancement.

For what concerns the second case, the findings are the following. First, as to the democratic deficit, although NGOs failed in pressing for a reform of the Security Council (though this is also due to the simultaneous decrease in the discussions within the same United Nations system about reforming the Council), NGOs have contributed to this dimension by empowering those Council's elected Members that due to limited resources and intelligence capacities had less opportunities to effectively perform their functions. Second, it is transparency the dimension in which NGOs' advocacy had its greatest achievements since they managed to make this institution more open and to make it more subject to international public scrutiny. Third, for what concerns participation, we analysed the progressive relations that NGOs managed to create with the Security Council, from the initial occasional meetings that were held by some representatives of the Members of the Council to gradually establishing a consolidated practice. Fourth, for what concerns evaluation, there is not specific evidence of NGOs contributing to this element, however, we had the opportunity to see how evaluation is closely linked to participation and since the Security Council is now more open in its commitments due to the pressure that it has received from NGOs and its actions are more available for public scrutiny, it can be somehow considered as having accepted to undergo an evaluation process. Fifth, under the dimension of complaints and response, NGOs can only be accredited for the advocacy they made for the establishment of the *ad hoc* tribunals along with their campaign for the establishment of the International Criminal Court, even though in this case we are referring to mechanisms that do not provide means for the accountability of international organizations' officials but for governments' officials. Finally, for what concerns the accountability strategy, it is possible to notice the impact that NGOs had on this dimension too in particular if we consider the recognition of the Arria Formula meetings in the Working Methods Handbook and their occasional publication as Security Council documents provide sufficient elements to assess the results that NGOs have accomplished in these terms.

The overall conclusions of this work are several. First, the confirmation of the necessity of a different approach to the concept of accountability when addressing it in the area of international organizations. Recall that in the first chapter we adopted a synthesis of two innovative paradigms: the idea of accountability through norms and the idea of the surrogate accountability. The study of the two cases confirmed our theory. Accountability relations in international organizations are not so straightforward and, moreover, there is

an asymmetry of powers among the different actors involved in their processes. Both cases proved that NGOs need third parties entrusted with sanctioning power in order for their functions to be effective. Indeed, NGOs need agents, representatives or organs of an international organization to support their causes and to help them in advancing their status in order to better perform their function of enhancing the accountability of the concerned organization. This corresponds exactly to the idea advanced at the beginning of the thesis of the necessity to adopt the alternative conception of surrogate accountability.

A second significant conclusion reached through the analysis of the two cases, confirms the adopted definition of NGO and why we decided to claim that NGOs – among the wide spectrum of civil society organizations – are those that can effectively contribute to the enhancement of international organizations' accountability. Indeed, what has emerged from the case studies is the necessity for members of the civil society to have a recognized high standing and to be familiar with the rules and practices, as well as the technical terms, of an international organization in order to be effective in their role. NGOs are composed by professionals and experts and, for this reason, they can be recognized as partners on an equal plan (not in terms of power, but of expertise) by agents of international organizations and their advocacy has the potential to be more effective. This idea was confirmed by both cases. In the first one, NGOs intervened most of the times in helping the local communities to file complaints against the Bank because their expertise was necessary to translate the concerns of the affected communities into precise breaches of World Bank's rules and procedures. In the second case, instead, it is the recognized expertise of prominent NGOs that attracted the attention of some of its Members – especially the non-permanent ones – and that, therefore, enabled NGOs to gain their trust as valid resources and to champion the cause of their involvement in the Security Council's processes.

The third conclusion is that the less an international organization (or one of its organs) is subject to public scrutiny, the more the accountability exerted by NGOs is important. Both the cases that we have studied, indeed, concerned organizations whose actions have a crucial impact on the lives of thousands of people but that, prior to the engagement of NGOs, were almost non-responding to the instances coming from the civil society and demanding them to be answerable for their actions. When the gap between the citizens and the international organizations is particularly consistent, the role of NGOs is crucial for its reduction because there are hardly any other means through which accountability can be exerted. The idea underlying the impact of NGOs on international organizations' accountability is that they make them aware that someone well-informed and with a recognized international standing is watching, someone who might provoke the reaction of the public or of other actors, which in turn might have a formal control and the power for

sanctioning the international organization (and this goes back to the idea of surrogate accountability).

Finally, we proved that there is a connection between the level of engagement of NGOs in an international organization and the enhancement of its accountability. When an organization provides a complete legal basis for the involvement of NGOs it is easier for them to act and to perform this task. In the case of the World Bank Inspection Panel, the guidelines for filing a complaint explicitly refer to the possibility for NGOs to represent the affected communities. In the case of the Security Council the situation is different, but we saw that certain consolidated systems managed to become practice of the Council. Therefore, even in that context, NGOs have an idea of the boundaries in which they can operate. Clearly, the level of engagement provided to NGOs also depends on the nature of each organization and, thus, it is necessary to consider this aspect in order to better appreciate the impact that NGOs advocacy has on their accountability.

This study stems from the great admiration of the work of international organizations that is rooted in the deep conviction that they represent the best possible effort and way for the international community to tackle global issues. Moreover, the role of international courts is even more deserving of recognition because had it not been for them, many severe human rights violations would escape accountability. It is exactly from this admiration that comes the request for greater accountability for these organizations, because their mandate is sometimes under attack, exactly due to this issue. International organizations need to become more accountable and to assume responsibility for their actions, because they need and deserve to regain part of the credibility that they have lost due to the abuses of some. In this period, where various political forces from all over the world discredit the work of international organizations and would like to see States going back to the isolationism of the beginning of the previous century, it is all the more important to protect and enhance the credibility of international organizations.

NGOs can help in this way thanks to their capacity of bridging the gap between the civil society and international organizations. They bring the perspective of the common people, that sometimes seems neglected, into the agendas of the most important international institutions and, in doing so, they awake their consciences and demand them proper action.