

4-16-2005

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Recommended Citation

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NGO Legitimacy

Reassessing Democracy, Accountability and Transparency

Non-governmental organizations (“NGO”)¹ have enjoyed an unprecedented amount of influence on national as well as international fronts for the past couple of decades. A recent survey reveals educated Americans and Europeans trust NGOs more than they trust governments, corporations, and the media.² Some scholars suggest that “[t]he rise of the nonprofit sector may well prove to be as significant a development of the latter twentieth century as the rise of the nation-state was of the latter nineteenth century.”³ As their power augments, NGOs have become increasingly skeptical and critical of the power held by the United Nations (“UN”) and by sovereign states. NGOs accuse these world powers of engaging in rule-making processes that are lacking in transparency, democracy, and accountability, thus lacking in legitimacy. Now, even as their power grows, NGOs are falling under this same criticism—NGO processes are far from transparent, democratic and accountable, and as a result, some claim they are not

¹ There is a debate about what NGOs should be called. Some believe that the “non” in NGO is negative, defining NGOs only by what they are not—not part of the government. Some are opting to include NGOs with other not-for profit organizations (such as unions) and refer to the more general grouping as civil society organizations. For discussions on this topic, see SUSTAINABILITY, *NGOS IN THE 21ST CENTURY: IN THE MARKET FOR CHANGE*, 13 (2d. ed. 2003). Available for download at <<http://www.sustainability.com/insight/research-article.asp?id=51>>; Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 8 MICH. J. INT’L L. 183, 185-86 (1997). In this paper I will use the widely-used term “NGO.”

² Eric Pfanner, *NGOs gain confidence of public*, INTERNATIONAL HERALD TRIBUNE (Jan. 24, 2004), reprinted in CIVIL SOCIETY OBSERVER, Jan./Feb. 2005 (available at: <http://www.un-ngls.org/cso/cso6/ngos.htm>).

³ LESTER M. SALAMON & HELMUT K. ANHEIER, *THE EMERGING NONPROFIT SECTOR* 115 (1996).

legitimate representatives of the masses. This NGO criticism has increased in frequency and volume. Even staunch NGO supporters, such as Kofi Annan, have begun to question NGOs lack of accountability following the NGOs' participation at the World Conference Against Racism in Durban, South Africa.

NGO authority flows from public perception that NGOs are legitimate—that they somehow do represent the muffled masses, that their motives are good, and that they sacrifice their own comfort to help others. The fallacy of these perceptions can be demonstrated. But more important are the criticisms regarding democracy, transparency, and accountability. Democracy, transparency, and accountability go to the core of legitimacy, they shed light on power structures, they can illuminate bias and self-interest. But do they fit in a NGO framework? Should NGOs be held to the same standards of democracy, transparency, and accountability as nation states? Or is there something inherently different about NGOs that would or should exempt them from the rules of the game for nation states and inter-governmental organizations? Is the lack of democratic processes, transparency, and accountability undermining the power of the NGO movement, or is the lack thereof allowing for the vitality and rapid growth of it?

I will begin the debate with an anemic history of NGOs followed by the somewhat recent vociferous criticisms of NGOs, focusing on their lack of democracy, transparency, and accountability. Following which, I will discuss the benefit of NGOs as they currently exist in an attempt to put in perspective and refute, at least in part, these criticisms. I hope to demonstrate that although most NGOs do lack strong grasps on democracy, transparency, and accountability, implementing these concepts completely would not be beneficial for the NGO movement. Democracy works well in nation states,

but the same type of democracy would not work for NGOs as they are, and should be, inherently different from nation states. Therefore, I propose that depending on the NGO activity, NGOs will need to espouse democracy, transparency, and accountability to differing degrees. I suggest that the main place where a NGO's level of democracy, transparency, and accountability matters most is when they are attempting to influence policy, whether at the international or national level. When discussing the international arena in this work, I will focus on NGO involvement at the United Nations.

PART I. THE BEGINNING OF THE NGO MOVEMENT

A. DEFINITION OF NGO

Before we delve into criticisms and compliments of NGOs, we should agree on what an NGO is, as it means different things for different people. In its broadest sense, a NGO is an organization that is not part of the government, but is part of the space between government and private life, known as civil society. Definitions of a NGO generally include the following elements: promotes a public interest and is not for profit, engages in non-violent actions, founded by private individuals, is independent of the state, and follows a minimal organizational structure.⁴ NGOs, sometimes equated with special interest groups at the national level,⁵ can promote a single issue or their interests can encompass entire ideologies, such as human rights, sustainable development, or humanitarian aid. The majority of NGOs focus on economic and human development, human rights, and environmental protection, and humanitarian aid, though NGOs that

⁴ THE CONSCIENCE OF THE WORLD: THE INFLUENCE OF NON-GOVERNMENTAL ORGANIZATIONS IN THE U.N. SYSTEM 2-5 (Peter Willetts ed., 1996); Stephen Hobb, *Global Challenges to Statehood: The Increasingly Important Role of Nongovernmental Organizations*, 5 IND. J. GLOBAL LEG. STUD. 191, 194 (1997). See also, Martin A. Olz, *Non-Governmental Organizations in Regional Human Rights System*, 28 COLUM. HUMAN RIGHTS L. REV. 307, 310, 314 n. 16 (1997) (explaining the various requirements and definitions for NGOs).

⁵ CONSCIENCE OF THE WORLD, *supra* note 4, at 2.

provide health services, legal assistance and other services are also well known.⁶ NGOs can act locally or internationally and can be as small as a single member (sometimes referred to as briefcase NGOs), or their membership can tally as many as a million members.⁷ Some NGOs are huge organizations, with budgets larger than those of small states,⁸ that wield powerful influence in international and domestic communities. Large NGOs attract huge funding, and their visibility in media, the policy-making arena, and the general public has never been higher.⁹ Other NGOs possess little power, are financially unstable, and are oppressed by their national governments. Despite the difference in size, power, funding, and mandate, a common feature among many NGOs (especially human rights and development NGOs) is their desire and attempt to influence government policy, whether at the local, national, or international level.

B. HISTORY—PRE 1945

Although it was not until after World War II that many NGOs came into existence, NGOs were formed as far back as the eighteenth century.¹⁰ Some of the first NGOs were created to influence national laws that allowed slavery.¹¹ Anti-slavery NGOs

⁶ For a typology of NGOs, see Debora Spar & James Dail, Essays: *The Democratic Accountability of Non-governmental Organizations: Of Measurement and Mission: Accounting for Performance in Non-Governmental Organizations*, 3 CHI. J. INT'L L. 171, 74-75 (2002).

⁷ In 1999, Amnesty International counted more than a million members in 160 countries. HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 947 (2000).

⁸ For a listing of NGOs and their annual budgets, see <www.NGOwatch.org>. Some of the major international NGOs have budgets of \$500 million. See also ROBERTA COHEN & FRANCIS M. DENG, MASSES IN FLIGHT: THE GLOBAL CRISIS OF INTERNAL DISPLACEMENT 188 (1998). See also Spar and Dail, *supra* note 6, at 171-72; STEINER & ALSTON, *supra* note 7, at 947.

⁹ NGOs, STATES AND DONORS: TOO CLOSE FOR COMFORT? 3 (David Hulme & Michael Edwards eds., 1997).

¹⁰ For a thorough discussion on the early history of NGOs, see Charnovitz, *supra* note 1.

¹¹ Karsten Nowrot, Symposium, *The Rule of Law in the Era of Globalization: Legal Consequences of Globalization: The Status of Non-Governmental Organizations Under International Law*, 6 IND. J. GLOBAL LEG. STUD. 579, 582 (1999); Charnovitz, *supra* note 1, at 192. The Pennsylvania Society for Promoting the Abolition of Slavery was created in 1775.

promoted and organized the International Anti-Slavery Conference in 1840,¹² which was said to be “perhaps the first transnational moral entrepreneur—religious movements aside—to play a significant role in world politics generally and in the evolution of a global prohibition regime specifically.”¹³ Close on the heels of the anti slavery NGOs, a Swiss citizen, responding to the brutality toward the wounded soldiers of the Italian wars, created the International Committee of the Red Cross in 1863.¹⁴ Just a year later, the NGO Red Cross was instrumental in obtaining the signatures of European states on the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.¹⁵ By 1900, 425 peace societies existed worldwide.¹⁶

Despite NGOs’ involvement in international affairs, the Covenant of the League of Nations of 1919 did not create official rules for the participation of NGOs in League business.¹⁷ However, the lack of formal recognition and rules for NGO involvement did not discourage international NGOs from participating in League conferences and in lobbying League delegates.¹⁸ The League permitted NGOs to present papers in some committees as well as propose language for documents and resolutions.¹⁹

¹² Nowrot, *supra* note 11, at 584.

¹³ Charnovitz, *supra* note 1, at 192 (quoting Ethan A. Nadelmann, *Global Prohibition Regimes: The Evolution of Norms in International Society*, 44 INT’L ORG. 479, 495 (1990)).

¹⁴ Nowrot, *supra* note 11, at 584; Charnovitz, *supra* note 1, at 200-01.

¹⁵ Nowrot, *supra* note 11, at 584; Charnovitz, *supra* note 1, at 200-01.

¹⁶ Charnovitz, *supra* note 1, at 193.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 585.

C. HISTORY—POST 1945

Many of the NGOs that emerged after World War I and World War II were primarily engaged in relief work in Europe.²⁰ Eventually, relief efforts extended into poverty stricken third-world countries, and relief eventually flowed into development projects.²¹ With the idea of state sovereignty changing after World War II, the drafters of the UN Charter included a provision allowing the Economic and Social Council (“ECOSOC”) to establish an official relationship with NGOs; this provision is embodied in Article 71.²² NGOs worked under the direction of the UN in addressing human rights abuses.²³ It was not until the 1970s and 1980s that NGOs began to focus on environmental issues instead of human rights. The UN acknowledged that since the 1992 Earth Summit, NGOs have played a significant role in influencing the agenda and outcome of world conferences dealing with the environment, human rights, women’s rights, children’s issues, and population.²⁴ An organization that has kept a registrar of international NGOs since its inception in 1909, the Union of International Associations in Brussels, counted a slim 176 international NGOs in 1909 and a prodigious 5,936 in 2002.²⁵ A United Nations Development Program study estimates 37,000 NGOs worldwide.²⁶ The UN has granted some 3,000 non-profit groups (some of which are local or national NGOs) consultative status with ECOSOC or association with the UN

²⁰ JOHN CLARK, *DEMOCRATIZING DEVELOPMENT: THE ROLE OF VOLUNTARY ORGANIZATIONS* 29 (1991). Some examples of these early relief organizations are Save the Children Fund, Catholic Relief Services, American Relief Everywhere. *Id.*

²¹ *Id.*

²² Olz, *supra* note 4, at 310.

²³ *Id.* at 258-61; Nowrot, *supra* note 11, at 585.

²⁴ UNITED NATIONS PRESS RELEASE, DSG/SM/38 (Dec. 3, 1998).

²⁵ Kerstin Martens, *Examining the Non-Status of NGOs in International Law*, 10 *IND. J. GLOBAL LEG. STUD.* 1, 4 (2003).

²⁶ Global Policy Forum, *Credibility and Legitimacy of NGOs*, available at <<http://www.globalpolicy.org/ngos/role/credindx.htm>> (last visited May 3, 2005).

Department of Public Information.²⁷ NGOs have become business savvy and politically attuned to know how best to promote their causes, be awarded projects from donors and states, and to receive the ever-necessary funding for the survival of the NGOs. And NGOs have become big business with their global worth being estimated at one trillion dollars annually.²⁸

UN Secretary-Generals have even lauded the benefits of NGOs. Boutros Boutros-Ghali, the previous Secretary-General said he was “convinced that NGOs have an important role to play in the achievement of the ideal established by the Charter of the United Nations: the maintenance and establishment of peace.”²⁹ The current Secretary-General, Kofi Annan, envisions a greater role for NGOs at the UN: “We aspire to a United Nations that recognizes, and joins in partnership with, an ever more robust global civil society ...,”³⁰ “...peace and prosperity cannot be achieved without partnerships involving governments, international organizations, the business community, and civil society.”³¹

From the lofty heights of alabaster pedestals, NGOs have fallen from grace, or at least slipped a bit. Some scholars, internationalists, and individuals in business and trade questioned NGO’s representative role following the WTO protests in Seattle, Washington in 1999.

The increasing clout of NGOs, respectable and not so respectable, raises an important question: who elected Oxfam, or, for that matter, the League

²⁷ COMMISSION ON GLOBAL GOVERNANCE, *THE MILLENNIUM YEAR AND THE REFORM PROCESS* (1999) (on file with author).

²⁸ SUSTAINABILITY, *supra* note 1, at 2.

²⁹ *Boutros Boutros-Ghali, Foreword in NGOs, THE UN AND GLOBAL GOVERNANCE* 8 (Thomas G. Weiss & Leon Gordenker eds., 1996).

³⁰ UN Secretary-General Kofi Annan, address to the 52nd Session of the General Assembly (Sept. 22, 1997).

³¹ UN Secretary-General Kofi Annan, address to the World Economic Forum (Davos, Switzerland, Jan. 31, 1998).

for a Revolutionary Communist International? Bodies such as these are, to varying degrees, extorting admissions of fault from law-abiding companies and changes in policy from democratically elected governments. They may claim to be acting in the interests of the people – but then so do the objects of their criticism, governments and the despised international institutions. In the West, governments and their agencies are, in the end, accountable to voters. Who holds the activists accountable?³²

But it was not until the World Conference Against Racism in Durban, South Africa (“WCAR”) in September 2001—where NGOs engaged in bullying of other NGOs and employed racists hate language to de-legitimize NGOs contradicting their views—that NGOs fell from grace, even within the UN system.³³

At Durban, seven thousand NGO representatives participated in the NGO forum held August 28 through 31, 2001, the week prior to the WCAR.³⁴ In the areas of transparency, accountability, and democracy, the Racism Conference represents a low point for NGOs. This lack of transparency and democracy was most apparent in the creation of the NGO Document that the NGOs prepared during the NGO Forum to deliver to the states in an effort to influence the language in the official UN document. The UN High Commissioner for Human Rights, Mary Robinson, refused to recommend and deliver the NGO document to the states, her first and only refusal of this kind.³⁵ Millions of dollars were spent to fund the drafting of this NGO document, but what was produced was a piece of writing that even NGOs admit was not compiled in a democratic,

³² THE ECONOMIST 129 (Sept. 23, 2000).

³³ See Tom Lantos, *The Durban Debacle: An Insider's View of the UN World Conference Against Racism*, 26 FLETCHER F. WORLD AFF. 1 (2002); Gay McDougall, *The Durban Racism Conference Revisited: The World Conference Against Racism: Through a Wider Lens*, 26 FLETCHER F. WORLD AFF. 135 (2002); NGO Monitor, *Review of Congressional Investigation against Ford Foundation* (Vol. 2, No. 4, Dec. 2003) <www.ngo-monitor.org/editions/v2n04/v2no4-2.htm> (last visited Oct. 7, 2004); ICARE, *WCAR, The Morning After – October 2001* <<http://www.icare.to/wcar/>> (last visited May 3, 2005).

³⁴ International Day for the Elimination of Racial Discrimination (March 21, 2002) <<http://www.hri.ca/racism/>>. The author was one of those seven thousand NGO representatives in attendance and witnessed first hand the undemocratic NGO process at the Racism Conference.

³⁵ *High Commissioner Forced to Turn Declaration Down*, HUMAN RIGHTS FEATURES, Sept. 6, 2001, at A1; Robert E. Sullivan, *Many NGOs Came, Few Agreed*, CONFERENCE NEWS DAILY, Sept. 6, 2001, at 3.

transparent, and accountable process.³⁶ As one NGO reported, “The adoption of the NGO declaration was hardly democratic.”³⁷ As a result, Central European, Eastern European, Asian, and large international NGOs as well as the Roma and Sinti caucus, the Jewish caucus as well as many others walked out of the NGO negotiations and adoption process for the declaration.³⁸ Additionally, even though the declaration is said to represent the NGOs’ views, NGOs never voted and agreed on the declaration.³⁹ Some NGOs said that the NGO declaration was “hijacked” by special-interest groups and that the declaration was filled with hateful and anti-Semitic statements.⁴⁰ In addition, NGOs reported that the International Steering Committee⁴¹ and SANGOCO (the South African NGO Committee)⁴² helped pro-Palestinian groups introduce their hateful language included in the NGO declaration.⁴³ Thus, not only were individual NGOs undemocratic

³⁶ See *High Commissioner, supra* note 35; Sullivan, *supra* note 35 at 3; ICARE, *supra* note 33, at section entitled *The Adoption of the NGO Declaration and Program of Action*.

³⁷ ICARE, *supra* note 33, at section entitled *The Adoption of the NGO Declaration and Program of Action*.

³⁸ See *id.*; *High Commissioner, supra* note 35; Sullivan, *supra* note 35, at 3.

³⁹ See ICARE, *supra* note 33.

⁴⁰ *Id.* “People who did not agree with the hate-language in the Declaration and who wanted to say something about that were shouted down. People who tried to criticise [sic] anything were made suspect ‘You are a Jew, your body language betrays you! You are a GONGO!’ (Government Organised [sic] NGO). Lots of people left in tears or in disgust.” *Id.*

⁴¹ The International Steering Committee (“ISC”) is organized by the Committee of NGOs (“CONGO”), a part of the UN. It is to be an aid to NGOs who do not have extensive experience with UN procedures. The ISC is in charge of drafting the NGO document. CONGO, *Letter of invitation to Human Rights Internet NGO to join the ISC*, available online at <<http://www.hri.ca/racism/background/icc.htm>> (last visited October 2004). See also, *Note Concerning the Establishment of an International Coordinating Committee* (April 2001) <<http://www.hri.ca/racism/background/icc.shtml>> (giving some similar information regarding the ISC).

⁴² The South African NGO Committee was organized specifically for the World Conference Against Racism. Its purpose is to help in the organization and coordination of the thousands of NGOs present at the Racism PrepComs and Conference.

⁴³ See ICARE, *supra* note 33. “You could say that the Palestinian NGOs at the WCAR did their work, they pushed their cause as it is the mission of NGOs to do that. They were highly effective but went over the top. So much so that damage was done. Damage to their reputation, damage to the democratic process and damage to the NGO forum itself. Not to speak of the damage done to the antiracism community at large. Antisemitism [sic] against, -and intimidation of anyone who was thought to be Jewish, friendly to Jews or member of a Jewish organisation [sic] ran wild. It was a hijack and we all let ourselves be hijacked, some even fully assisted the hijackers. Some ISC and Sangoco members even did that. Lots of important issues did not get the attention they deserved or were just not heard at all. The great majority of the International Steering Committee did nothing to stop all this. Those who tried were overruled.” *Id.*

and nontransparent, but so were the international organizations that were created to teach NGOs the negotiation and document creation process. There was no organization or system that could hold NGOs accountable for their actions at WCAR.

In the aftermath of the Durban debacle, the UN has reconsidered the role NGOs should have at the international lobbying and policy-making level.⁴⁴ Secretary-General Kofi Annan, who had been a strong supporter of NGO inclusion at the UN, changed his rhetoric following Durban and has since called for a “pause” in NGO involvement to reassess their proper role.⁴⁵ The UN has since held panel discussions and authored reports to examine the appropriate role of NGOs at the UN and to determine the quantity and quality of NGO presence and participation at UN events, conferences, meetings, and general sessions.⁴⁶ The outcome of these panels reaffirm the state-membership base of the UN and that only member states can participate in decision making, but they also call for the continuation and streamlining of NGO involvement.⁴⁷

Interestingly, there has been talk at the UN about ceasing to hold the now-famous large world conferences that focus on various themes. Several reasons have been supplied: these world conferences drain the resources of the UN, the process is unfair in that only well-funded NGOs can afford to send representatives to them because they are

⁴⁴ See Fernando Henrique Cardoso, United Nations High Level Panel on UN-Civil Society: *Civil Society and Global Governance* (June 2003); UN System and Civil Society—An Inventory and Analysis of Practices, Background Paper for the Secretary General’s Panel of Eminent Persons on United Nations Relations with Civil Society (May 2003).

⁴⁵ See Annan, 52nd Session, *supra* note 30; Annan, World Economic Forum *supra* note 31; Cardoso, *Civil Society and Global Governance*, *supra* note 33.

⁴⁶ See Fernando Henrique Cardoso, High Level Panel on UN-Civil Society, paper presented at UN High Level Panel, United Nations, New York (June 2-3, 2004), available at <http://www.un.org/reform/pdfs/cardosopaper13june.htm>; Panel of Eminent Persons on United Nations-Civil Society Relations, A/58/817 (June 21, 2004); Report of the Secretary-General in response to the report of the Panel of Eminent Persons on United Nations-Civil Society Relations, A/59/354 (Sept. 13, 2004).

⁴⁷ See sources in footnote 46.

often held far from most NGO headquarters, all the important topics⁴⁸ have been discussed and there is no longer a need for the large conferences to energize civil society and governments. Although these reasons are all valid, I question whether an unstated reason might be that the NGO process was becoming unwieldy due to numbers and financial resources, and a result of this unwieldiness was the undemocratic and non-legitimate actions at the Racism Conference.

I believe another example of marginalizing NGOs was the last-minute decision to incorporate Beijing+10 (the ten-year review of the commitments undertaken at the Fourth World Conference on Women at Beijing in 1995), which was scheduled to take place the summer of 2005, into the 49th Session of the Commission on the Status of Women that was held in February and March 2005. The dissemination was poor of the information regarding this substantial date change, and because of the last-minute changes, I imagine many NGO representatives were not able to rearrange their schedules to attend.

In the following section, I will consider some NGO imperfections and the reasons for which many members of the international community are suggesting a reassessment of NGOs—their structure, their activities, their influence, and their purpose in the international community. These recent critiques often come from individuals who are part of the NGO movement, who have made their careers in NGOs, who believe in the good of NGOs and are not trying to destroy them. When presenting a variation of this paper at a conference in Malaysia, an audience member from a NGO asked why I was picking on NGOs when the real evildoers are the transnational corporations. I repeat my

⁴⁸ The UN world conferences treated the following themes: children's rights (1990, New York City); environmental concerns (1992, Rio de Janeiro); human rights (1993, Vienna); population and development (1994, Cairo); women's rights (1995, Beijing, this was the fourth world conference on women's rights); social development (1995, Copenhagen); adequate food supply and agriculture (1996, Rome); sustainable development (1997, New York City); racism and intolerance (2001, Durban).

response to emphasize an important point of this paper: the critiques I supply from others and those I make on my own behalf are made with the purpose to ultimately strengthen NGOs. An entity cannot improve without first knowing its strengths and its weaknesses. Once NGOs recognize their weaknesses, they can address them and improve their legitimacy.

Following a discussion of the current criticisms of NGOs, I will explore their benefits, for surely the world is a better place with them. With the good and the bad of NGOs spread before me, I will conduct my own reassessment of NGOs, and I will attempt to determine to what extent NGOs need to be democratic, transparent, and accountable and where they need to apply indicators of legitimacy. These indicators of legitimacy will directly affect the quantity and quality of NGOs' involvement in the international realm.

PART II. A CURRENT EVALUATION OF NGOS

A. THE CRITICISMS ROLL IN

The media portrays positive stories about the great work that NGOs accomplish, while muffling the criticism offered by government officials in developing countries that the “continued propagation of the [benefits of] NGO[s] [is a] ‘myth.’”⁴⁹

Some scholars and politicians greatest critique of NGOs is their lack of transparency, accountability, and democracy, thus their lack of legitimacy. “The operations of NGOs are at times decidedly opaque. NGOs, acting individually and in networks, often wield influence on decision-making ‘behind closed doors’ and without

⁴⁹ TOO CLOSE FOR COMFORT?, *supra* note 9, at 4.

pluralistic participation.”⁵⁰ Other scholars believe the power and influence of at least some powerful NGOs need to be limited “by an international legal framework in order to provide for some form of accountability in cases of possible NGO irresponsibility.”⁵¹

1. Democracy

While NGOs developed a reputation for the advocacy of the disenfranchised, some find it ironic that NGO leaders exert tremendous, almost arbitrary, power over their members. Many observers have wondered whether NGOs—most of which are Western-oriented—act as true representatives of larger constituencies, or whether they serve as political platforms for a few executives.⁵²

NGOs are continuously criticized, by opponents and supporters alike, for their lack of democracy. Democracy can mean two things. Initially, it examines whether the NGO follows internal democratic processes, such as a membership base, elections for board members, and consensus on projects and issues. Next, an accusation of non-democracy questions the representative nature of the NGO, whether it properly acts as a legitimate voice for individuals in societies, whether these individuals agree with the statements and mandates of the organization, and whether the NGO has any way of knowing whether citizens of countries the NGO tries to influence agree with the NGO’s position on issues. These two parts of democracy often go hand in hand, but it is important to distinguish what is being criticized when accusations fly. As such, I will discuss these two points separately.

⁵⁰ Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 AM. U. INT’L L. REV. 1335, 1372-73 (1999).

⁵¹ Nowrot, *supra* note 11, at 598.

⁵² Saladin Al-Jurf, Symposium, Part Two: Citizens, National Governments, and International Financial Institutions: *Changing Conceptions of Development in the 1990s*, 9 TRANSNAT’L L. & CONTEMP. PROBS. 175, 175 (1999).

a) Internal Democratic Processes

Many NGOs do not adhere to an internal democratic process.⁵³ And many, if not most NGOs, do not vote on their leaders, the policies and platforms often do not represent the interests of the members, and few members know what NGO leaders are doing. Few NGOs follow a democratically created constitution, few are accountable to their members, and few allow members to vote on initiatives and leaders.⁵⁴ “Most NGO leaders, who are not elected by the members, enjoy broad discretion concerning the policies to be pursued and with what level of vigor.”⁵⁵ Conversely, some NGOs and leaders are more representative and responsive to their members, such as Amnesty International and the Sierra Club.⁵⁶ Often, however, it is the larger, well-established NGOs who are just as undemocratic in their internal and external processes as the smaller, newer NGOs. NGOs who have enjoyed consultative status with the UN for the past ten to twenty years tend to be the least likely to be democratic in the sense that their policies and platforms are based on the opinions and concerns of a “well-defined constituency.”⁵⁷

b) Representative Nature

Not only do most NGOs lack an internal democratic process, but many NGOs purport to speak for the masses, thus claiming some sort of representative nature beyond

⁵³ See generally, Robert Archer, *Deserving Trust: Issues of Accountability for Human Rights NGOs*, Draft Consultation, for International Council on Human Rights Policy (April 2003) (available at <www.ichrp.org>).

⁵⁴ See Wendy Schoener, Note, *Non-Governmental Organizations and the Global Activism: Legal and Informal Approaches*, 4 IND. J. GLOBAL LEG. STUD. 537, 550 (1997); Mertus, *Legal Transplants*, *supra* note 50, at 1372.

⁵⁵ Nowrot, *supra* note 11, at 601.

⁵⁶ See Schoener, *supra* note 54, at 538; Nowrot, *supra* note 11, at 601; Peter J. Spiro, *New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions*, THE WASHINGTON QUARTERLY 45, 51 (Winter 1995).

⁵⁷ Mertus, *Legal Transplants*, *supra* note 50, at 1373-74.

their NGO employees or members. Professor Peter Uvin states, “[m]ost of these supposed [civil society organizations] are small professional organizations, typically almost entirely funded by donors.”⁵⁸ He then asks, “[i]n whose names do they speak? How do we know they represent the public interest? How do we know that they are not explicitly positioning themselves in highly political ways?”⁵⁹

As one author described the problem, “[m]any NGOs, lacking any base in the local population and with their money coming from outside, simply try to impose their ideas without debate. For example, they often work to promote women’s or children’s interests as defined by western societies, winning funds easily but causing social disruption on the ground.”⁶⁰ In the name of women, though not having been elected by them, NGOs speak out against religion, patriarchy, and traditional forms of sex discrimination. In the name of children, who are not consulted, and even if they were, one might question their ability to make informed choices for their present and future, they lobby for rights to education, safety, and for rights against their parents. In the name of the poor, they devise plans for economic development and create projects to improve the lives of the impoverished. It is unquestionable that many of the rights pushed by NGOs are beneficial, but there are always some “rights” that are hotly contested and not representative of the desires of the majority of members in some affected societies. Although I again reiterate that that NGOs should not function in a completely democratic manner when promoting rights, it is important to question whether their definition of rights is too far off from the societal definition of rights upon which the NGO definitions would be imposed. Some countries and individuals who are experiencing the imposition

⁵⁸ PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT 100-01 (2004).

⁵⁹ *Id.*

⁶⁰ *Sins of Secular Missionary*, THE ECONOMIST (Jan. 29, 2000).

of rights and policy on them are not pleased. Many of the so-called beneficiaries of these NGO projects and lobbying efforts ask, “To the degree that NGOs seem like conveyors of the global civic-mindedness, on what basis do they purport to understand, let alone embody, the global public interest?”⁶¹ These so-called beneficiaries, almost always from the global South, and Southern scholars levy claims of cultural imperialism, paternalism, and insensitivity toward historical, cultural, and religious differences.

The North-South split is an important, subtle, and yet pervasive manner in which NGOs are not representatively democratic.⁶² Although NGOs claim to represent the oppressed, “many powerful NGOs come from a small minority of advanced industrial states, and NGO views are often far from reflective of the public at large.”⁶³ World constituencies do not vote for NGO representatives, nor do they vote on the agendas they want their NGOs to advance. Thus, NGOs seem to contradict “the most basic rule of democracy, namely, to govern with the consent of the governed.”⁶⁴

Not only are almost all of the well-funded and powerful NGOs from the global North, but they also fund projects in the global South. But it is the Northern NGOs who almost always create the project, and it is the Southern NGOs who conform their NGOs to fit the project criteria. One reason Northern NGOs generally garner greater international influence is their larger budgets, greater access to resources, ease of accessing the media, and affordable technology.⁶⁵ Larger Northern NGOs attract the

⁶¹ Paul Wapner, Essay: *Paradise Lost? NGOs and Global Accountability*, 3 CHI. J. INT’L L. 155, 155 (2002).

⁶² See Riva Krut, *Globalization and Civil Society: NGO Influence in International Decision-Making* (April 1, 1997), available at <<http://www.unrisd.org/>>.

⁶³ Kal Raustiala, Note, *The “Participatory Revolution” in International Environmental Law*, 21 HARV. ENVTL. L. REV. 537, 567 (1997).

⁶⁴ Mertus, *Legal Transplants*, *supra* note 50, at 1373-74.

⁶⁵ David Steele, *United Nations Reform, Civil and Sometimes Uncivil Society*, TRANSNATIONAL ASSOCIATIONS 282-290 (June 2000).

greatest donor funding.⁶⁶ About fifty of the roughly 2,000 Northern NGOs control as much as eighty percent of NGO resources.⁶⁷

This dominion of ideas occurs not just in developing countries but also at the UN. “A complication within the NGO community is that Northern NGOs continue to dominate agenda setting at the United Nations with Southern NGOs underrepresented. This highlights the need to bridge the North-South divisions that continue to hinder intergovernmental operations.”⁶⁸ One example of this agenda setting at the UN is the influence in determining when the Beijing+10 Conference would be held and what kind of format would be used to discuss relevant issues. Just a few weeks after Beijing+10, held in February and March 2005, an NGO activist stated it was a last minute decision to hold the Beijing+10 Conference in conjunction with the 49th Session of the Commission on the Status of Women instead of in the summer of 2005, when it had been scheduled, and that the decision to not re-opening the text of the Beijing Document, which was done at the Beijing+5 Conference, for further elaboration and discussion was made because “we” did not think it was the right time to reopen the document because of the present conservative administration in the United States.⁶⁹ A smart tactical move, but who is this “we”? Is it all NGOs who wanted to attend Beijing+10? All earth’s citizens, who arguably the document can eventually affect? All women’s rights NGOs? Or just a pre-

⁶⁶ Krut, *supra* note 62.

⁶⁷ UVIN, *supra* note 58, at 161.

⁶⁸ *Id.*

⁶⁹ Susana Fried, program director, International Gay & Lesbian Human Rights Commission, discussion, Gender and Development, Columbia Law School, (March 24, 2005). This single example of undemocratic actions from this NGO is not meant to imply that this NGO is more undemocratic than others or that more liberal NGOs are more undemocratic than conservative NGOs. All NGOs, whether conservative or liberal, try to promote their agendas, including using undemocratic methods such as this example. Currently in the US, conservative NGOs who oppose same-sex marriage and abortion have greater access to the US administration, which is also conservative and opposes these same issues. Liberal NGOs do not currently have this avenue of assistance, and so must seek other methods of promoting their agenda.

selected group of like-minded NGOs who agree with the positions supported by this single NGO? From where did this single NGO get the power and authority to represent “we” and change dates and decide what should or should not be open to discussion at an UN conference? Was a vote taken from all interested NGOs? Such undemocratic agenda-setting is what prompts human rights activists, government officials, normal citizens, and other NGOs to question the legitimacy (the democracy, the transparency, the accountability) of such NGOs.

Another problem that the North-South split creates is the North’s tendency to set the agenda for the South, without understanding the society, culture, politics and other issues that affect human rights and development. This Northern control “simply perpetuates structural Southern underdevelopment and dependency.”⁷⁰ Instead of looking to their people and resources to create sustainable development, Southern NGOs become dependent on outside funding from the North that is tied to Northern ideology.⁷¹ Because Northern NGOs and donors mandate projects and methods in exchange for funding, Southern NGOs tend to adhere to this agenda to acquire needed monies.⁷² For example, one Southern NGO manager explained how she was engaged in a project on girl child labor, but when she heard a Northern NGO was giving funding to a program focused on HIV/AIDS, she dropped her labor program to create an HIV/AIDS program to obtain the funding.⁷³ This Southern NGO leader expressed a desire to have an equal relationship

⁷⁰ Krut, *supra* note 62.

⁷¹ TOO CLOSE FOR COMFORT, *supra* note 9, at 278.

⁷² See Margaret Simi and Graham Thom, “Implementation by Proxy”: *The Next Step in Power Relationships between Northern and Southern NGOs?*, in NEW ROLES AND RELEVANCE: DEVELOPMENT NGOS AND THE CHALLENGE OF CHANGE 213, 219 (Davis Lewis & Tina Wallace, eds., 2000).

⁷³ *Id.*

with Northern NGOs so Southern NGOs could discuss the real needs of their people instead of just following the mandates of Westerners.⁷⁴

A 1995 survey of NGOs showed that 76 percent felt that large NGOs dominated issues; 75 percent believed that English-language run NGOs dominated; and 71 percent felt that Northern NGOs dominated.⁷⁵ It is interesting to note that these percentages are very similar, perhaps because Northern NGOs tend to be the larger, English speaking NGOs. Due to the power and wealth of Northern NGOs, some Southern NGOs perceive Northern NGOs as perpetuating their culture and beliefs, which Southern NGOs do not necessarily agree with or want in their society.⁷⁶ Some consider Northern NGOs as being prejudiced, racist, sexist, and agents of colonialism.⁷⁷ Until groups are represented equally and fairly, democracy in civil society cannot move forward.⁷⁸ Southern NGOs complain that international NGOs, almost exclusively funded by donors in the North, are active “in parts of the world that are little consulted about their own priorities and toward which INGOs have no accountability.”⁷⁹

But the North-South split is not the only area of concern for representation. NGOs, especially women’s NGOs, are often criticized of promoting an agenda set by educated, middle and upper class. A smaller grassroots Bolivian NGO that works with rural, poor, indigenous women complained about larger, well-funded women’s NGOs that are filled with middle and upper class women. The grassroots NGO declared that the larger women’s organizations only represented the interests of the middle and upper class

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Stanley Foundation, *The United Nations and Civil Society: The Role of NGOs—Report of the Thirtieth UN Issues Conference* (Feb. 19-21, 1999) <<http://www.globalpolicy.org/ngos/ngo-un/gen/2000/1128.htm>>.

⁷⁷ Krut, *supra* note 62.

⁷⁸ *See id.*

⁷⁹ HENRY J. STEINER, *DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT* 61 (1991).

women, despite their claims to represent the poor, rural, indigenous Bolivian women.⁸⁰ She asserted that these middle and upper class women did not know the concerns of the indigenous woman as they were far removed from the situation, physically, culturally, and educationally.⁸¹ Not only are they separated culturally and economically, but she claimed she had never seen an indigenous woman in their NGOs, meaning they did not even make serious efforts to understand the indigenous woman.⁸² NGO and government-NGO actors from Bolivia's middle and upper class supported her critique of a lack of real representation of the woman and other minorities.⁸³

2. Elitism and Professionalism – Who Do They Represent?

A criticism that incorporates both democracy and accountability issues is the growing elitism and professionalism in the NGO movement.⁸⁴ Critics argue NGO professionals have lost touch with the uneducated poor they claim to represent.⁸⁵ In other words, they do not represent the powerless and voiceless because they themselves are not voiceless and powerless, and many never were. Professionalism is not in itself bad, in fact, education and training help NGO members better understand the contentious issues

⁸⁰ Interview with Lucy Poma and Alberto Solano of Federacion Nacional de Mujeres Campesinas de Bolivia "Bertolina Sisa," La Paz, Bolivia (April 28, 2005). The interviewee can be contacted at the organization's email, <fnmcb_bs@yahoo.es> or by telephone at (591-2) 231-1037.

⁸¹ Id.

⁸² Id.

⁸³ Interview with Sylvia Escobar de Pabon of Centro de Estudios Para el Desarrollo Laboral y Agrario (CEDLA), La Paz, Bolivia (April 26, 2005); Elizabeth Salguero of Ministerio de Asuntos Campesinos Y Agropecuarios Apoyo Programatico Sectorial a la Agricultura (APSA) and Unidad de Coordinacion Nacional (UCN), La Paz, Bolivia (April 27, 2005).

⁸⁴ See generally, Larry Cox, *Reflections on Human Rights at Century's End*, HUMAN RIGHTS DIALOGUE 5 (Winter 2000); Gary Johns, *The NGO Challenge: Whose Democracy is it Anyway?*, presented paper at American Enterprise Institute Conference, WE'RE NOT FROM THE GOVERNMENT, BUT WE'RE HERE TO HELP YOU, 6 (June 11, 2003); Alex de Waal, *Human Rights Organizations and the Political Imagination: How the West and Africa Have Diverged*, JUSTICE AFRICA OCCASIONAL PAPERS SERIES 6 (Oct. 2002); Kenneth Anderson, *Keynote Speech*, American Enterprise Institute Conference, WE'RE NOT FROM THE GOVERNMENT, BUT WE'RE HERE TO HELP YOU (June 11, 2003); UVIN, *supra* note 58.

⁸⁵ Interviews conducted with Coco Pinelo, ENLACE, La Paz, Bolivia (April 27, 2005); Salgueiro, *supra* note 83; Poma and Solano, *supra* note 80.

before them, the workings of international law and systems, effective lobbying, best practices of aid and services distribution, and how to effect change. And with positions at large, well-known NGOs being competitive, NGOs can choose la crème de la crème. But professionalism also means that their personal interests will often reflect the societal class to which they belong, the middle or upper class. It also means that they often will not understand the intended beneficiaries, especially if they are poor, uneducated, and from the global South. It must also be acknowledged that each paid professional at an NGO has a vested interest in the continuation, even aggrandizement of the NGO movement and the continuation of their projects. This critique can be made of politicians, of civil servants, international civil servants active in government agencies, international governmental organizations, international tribunals, and other areas of practice.

From the viewpoint of a scholar from the global South, the aspects of professionalism present in NGOs is problematic because these professionals represent their own interests, rather than the interests of those the policies will affect and rather than being servants to the poor and oppressed, as the media packages them,⁸⁶ these professionals become the privileged in society.⁸⁷ “Many human rights professionals come from elite backgrounds. More often than not, the leading human rights activists in any country belong to a privileged class or social group. This is particularly true in

⁸⁶ See CLARK, *supra* note 20, at 45. “The media project Northern NGOs as virtuous Davids fighting the Goliaths of famine, hostile climate, government inequity, slavery and oppression.” *Id.*

⁸⁷ Chidi Anselm Odinkalu, Why More Africans Don’t Use Human Rights Language, HUM. RTS. DIALOGUE 3, 4 (Winter 2000)). “In the absence of a membership base, there is no constituency-driven obligation or framework for popularizing the language or objectives of the group beyond the community of inward-looking professionals or careerists who run it. Instead of being the currency of a social justice or conscience-driven movement, ‘the human rights’ has increasingly become the specialized language of a select professional cadre with its own rites of passage and methods of certification. Far from being a badge of honor human rights activism is, in some of the places I have observed it, increasingly a certificate of privilege.” *Id.*

resource-poor environments, where the human rights field has become something of a last-chance business--and may represent one of the few sectors where paid, professional jobs are still available.”⁸⁸ This describes the situation in Bolivia where the human rights and development NGO activists, supported by international funding, form a part of the Bolivian elite.⁸⁹ These NGO employees can be found in the best restaurants on any day of the week.

With increased funding comes better wages and job security for NGO employees. With better wages comes increased competition for positions in NGOs, and increased competition generally means better-qualified candidates with significant education and/or experience. This all leads to increased professionalism, which is generally positive, however, as NGO employees become increasingly professional, they will need to devise ways that keep them in dialogue and understanding of the people they represent or the people who will be affected by the policies they promulgate, their “clients.” Significant time should be spent among these clients to understand their concerns, their desires, and consider their proposals for improvements. Of course not every employee of an NGO would have to dedicate significant time to connecting with these clients, but NGOs should determine the necessary number of client servicers depending on numbers and types of projects.

Elitism is more difficult to address. It exists in the global North and the global South. In the North it is not necessarily the wealthy or best educated or most

⁸⁸ Gay J. McDougall, *A Decade in Human Rights Law: Decade of NGO Struggle*, 11 HUM. RT. BR. 12, 15 (2004).

⁸⁹ During a week of interviewing members of NGOs and quasi-government employees involved in human rights or development that is funded by international donors, we learned these people are part of Bolivia’s elite—they drive the nicest cars, live in exclusive neighborhoods, and dine in the best restaurants. Author’s Field study, La Paz, Bolivia (April 24-29, 2005).

internationally connected who fill NGOs, but NGO employees tend to come from the same group of people who shuffle back and forth from NGO to NGO, sometimes with stints in government or intergovernment agencies. In the global South, employees of top NGOs tend to be the wealthier, better educated, and internationally connected. “With media-driven visibility and a lifestyle to match, the leaders of these initiatives enjoy privilege and comfort, and progressively grow distant from a life of struggle.”⁹⁰ In other words, the leaders of Southern NGOs become increasingly like their Northern counterparts and no longer “represent” or understand the people whose life they are trying to improve.

It is difficult to address elitism in the North because as employees gain experience at NGOs, they become better qualified for additional projects at the same or other NGOs. This same issue exists in the South. Donors and Northern NGO funders could purposely seek out newer or smaller Southern NGOs, but a concern might be the amount of experience and skill they have compared to the seasoned NGOs. As with professionalism, elitism is not totally bad—experience and connections are beneficial. To combat the negative aspects of elitism (such as lack of ingenuity or insincerity of activists concern for the issue), NGOs should gradually begin to incorporate new employees, new projects, or new NGO partners. This will benefit the global NGO movement because new employees and projects will introduce new ideas and perspectives into sometimes-stagnant approaches to issues. And partnering with new or less experienced NGOs will act as a training ground with a view to strengthening smaller, often grassroots NGOs.

3. Is Democracy Necessary for NGO Legitimacy?

⁹⁰ Odinkalu, *supra* note 87, at 4.

The West has taught the world well that democracy is of fundamental importance. And critics of NGOs who attack their undemocratic methods seem to be equating NGOs with government—that it is vital that both work in the same manner. These critics forget that many institutions that they likely submit themselves to are not democratic, nor do we expect them to be democratic—religious institutions, private educational institutions, public and private companies, and some international quasi-governmental organizations. Although each of these organizations might have some amount of internal democratic processes, in none are they purely democratic in that they necessarily represent the desires of the masses.

It is worth examining the purpose of democracy and whether the objective of NGOs would be better served by conforming to that process. Democracy is designed to enable members of society to elect government representatives who are to act according to the will of their constituents. Democracy functions by majority rule, which means that there is little protection within the structure for minority voices. NGOs—human rights more than humanitarian and development NGOs—exist in large part to give voice to the voiceless minority. If NGOs begin to strictly follow democratic processes of formal representation among the world’s masses, which is what the criticism that they are too liberal implies, they would likely become significantly more conservative and cease to demand what some societies would see as progressive changes in the treatment of women, children, racial minorities, homosexuals, and the oppressed generally. In fact, had early NGOs in the United States simply acted according to the desires of the masses, they would not have lobbied to ban slavery, pushed for women’s emancipation, or race equality in the form of civil rights. In these cases, the minority voice did not represent

the average person or the majority of persons, but we now all agree that what they did was good and necessary. Indeed, it seems that if NGOs simply reflect the voice of the democratic majority, their *raison d'être* is void, at least if they already exist in a democratic society. Where the majority individuals are already represented, in theory, by a democratic government, there would be little benefit from a civil society that also represents the majority views.

Additionally, the cost of generating a membership base and securing formal representation of the masses is expensive, and therefore unattainable for many smaller NGOs.⁹¹ Many present-day NGOs continue the practice of working to obtain rights for the voiceless and powerless, despite no formal election from the masses to do so. But the undemocratic criticism is not without merit. Elitism in the NGO movement and wealthy Northern donors “buying” opinions and constituents through their selective funding, whether consciously or unconsciously, has led Southern NGOs and scholars to denounce the NGO movement as a means of cultural imperialism. Thus, although internal democratic procedures and formal representation of the world masses might not be possible—or even desirable—for NGOs, they should be held accountable for their claims of representation. These claims are usually made when attempting to affect law or policy or when seeking funding; they are made to bolster the legitimacy of the NGO and tend to be self-serving. These claims should be examined by the person receiving the claim, whether that be a policy-maker or a donor. One need not use a complicated equation to determine representation. A simple investigation into the nature of the NGO, the breadth of the claim, whether there is a membership base or some other connection with members

⁹¹ UVIN, 90-120. *See generally*, International Council on Human Rights Policy, *DESERVING TRUST: ISSUES OF ACCOUNTABILITY FOR HUMAN RIGHTS NGOS* (Draft Report for Consultation, April 2003) (focusing on credibility, accountability, and legitimacy, but arguing democracy is not as important for NGO legitimacy).

of society, whether the NGO has goodwill in the sectors of society it claims to represent, the breadth of its funding, and so on.

4. Transparency and Accountability

In addition to requiring a minimum of accountability to claimed representation, to bolster NGO legitimacy and improve NGO functioning, NGO funding and mandates should be transparent. I will review arguments addressing and methods of enforcing accountability and transparency.

Some of the basic problems of NGOs, such as their sources of funding, their allegiances of loyalty, and the discriminatory North-South split enhance NGOs' lack of transparency and accountability. "[W]ell-financed western NGOs are likely to have more power than their poorer and non-western counterparts, and the lack of transparency and accountability in transnational civil society is likely to keep this power unchecked."⁹² Scholars have insisted that NGOs become transparent, showing who has the power and how they use that power.⁹³ Sources of funding should also be divulged. Scholars counsel that for a healthy global power structure, more than pluralism and representation are needed; transparency is necessary to assure that all actors—governmental and non-governmental—behave responsibly and ethically.⁹⁴

a) Tunnel Vision

One aspect of accountability is the responsible representation of issues and problems in the global community. Because NGOs are special interest groups, they can willingly ignore the "big picture" as they are more interested in their narrow objectives

⁹² Mertus, *supra* note 50, at 1385.

⁹³ *Id.*

⁹⁴ *Id.*

that are tied to donor funding.⁹⁵ This tunnel vision causes NGOs to focus on pet topics and ignore the broader social, political, and economic contexts.⁹⁶ Such a narrow approach can harm the society as a whole and can inhibit long-term success because it ignores policy and political trade-offs and the wider context in which decisions must be made.⁹⁷

NGOs have ignored requests for specific help and given the perspective beneficiaries what the NGO think they need instead. One NGO in Africa recognized that women were a critical part of cultivating, selling, and processing crops, yet the Northern NGO created a development project teaching women how to make pottery instead of helping them become better farmers.⁹⁸ An Asian NGO ignored input from women that their traditional role included agriculture and taught them instead sewing.⁹⁹ But tunnel vision has been even more destructive—some NGOs worsen situations by ignoring the implications of their do-gooder actions. For example, well known accounts abound about NGOs buying slaves their freedom, which of course encourages those who profit from slave sales to continue or even increase their participation in this practice. Humanitarian NGOs are sometimes criticized for providing aid and medical services to both sides of a conflict, which can actually extend the conflict as the warring factions have no need to care for their own soldiers or for the citizens. Former UN Secretary-General Boutros Boutros-Ghali encouraged NGOs to take the time to consider “the political complexity of any peacekeeping operation” before taking sides and trying to solve the problems.¹⁰⁰

⁹⁵ Al-Jurf, *supra* note 52, at 175.

⁹⁶ *See id.*; Stanley Foundation, *supra* note 76.

⁹⁷ Secular Missionary, *supra* note 60.

⁹⁸ CLARK, *supra* note 20, at 54-55.

⁹⁹ *Id.* at 55.

¹⁰⁰ Boutros-Ghali, *supra* note 29, at 9.

Additionally, perhaps due to a philosophy that little lies are justified when they are used to promote what NGOs view as a worthy cause. NGOs have allegedly engaged in unethical practices, including incidents of irresponsibility and academic dishonesty in NGO position papers and background papers.¹⁰¹ Instead of simply pushing their agenda, NGOs need to focus on the greater good and on constructive outcomes rather than self-promotion.¹⁰²

b) To Whom Does Accountability Flow?

Accountability is a difficult issue to promote and develop among NGOs because it is unclear to whom NGOs should be accountable and how that accountability should occur.¹⁰³ In fact, not everyone agrees that NGOs should be required to be accountable to donors or members or intended beneficiaries.¹⁰⁴ Without determining the order of accountability, NGOs need to be accountable to three separate groups: employees/volunteers/members, donors, and intended beneficiaries.

To begin, perhaps where accountability should be easiest, I will begin with accountability to those who support the NGO—the employees, volunteers, and members. NGOs need to follow through on projects that they undertake, they need to secure resources so employees and volunteers can perform their research, lobbying, and fieldwork effectively. They need to inform employees, volunteers, and members of changes in institutional focus and purpose. And they need to ensure that their projects

¹⁰¹ See UN Press Releases, NGO/296, PI/1029 (September 10, 1997); NGO/373, PI/1272 (August 28, 2000); Steele, *supra* note 65, at 282-290; Stanley Foundation, *supra* note 76.

¹⁰² See Stanley Foundation, *supra* note 44.

¹⁰³ For a discussion on accountability and suggestions for how to improve accountability, *see generally*, DESERVING TRUST, *supra* note 91; Hugo Slim, *By What Authority: The Legitimacy and Accountability of Non-governmental Organizations*, paper presented by International Council on Human Rights Policy at the INTERNATIONAL MEETING OF GLOBAL TRENDS AND HUMAN RIGHTS—BEFORE AND AFTER SEPTEMBER 11 (Geneva, Jan. 10-12, 2002).

¹⁰⁴ Jon Christensen, *Asking Do-Gooders to Prove They Do Good*, THE NEW YORK TIMES (Jan. 3, 2004), available at <<http://www.globalpolicy.org/ngos/credib/2004/0103good.htm>>.

actually accomplish what they intend for them to accomplish. This last task also goes toward accountability to donors and intended beneficiaries. Although many donors require some accountability, as discussed below, NGOs should create their own customized internal accountability mechanisms. Humanitarian aid agencies did this of their own volition following their failure in the Rwanda genocide and their unknown aid to the actors of the genocide by providing them, as well as well as the victims, with food, shelter, and rest, and a recruiting ground.¹⁰⁵ These internal accountability mechanisms would have to be constructed in such a way that they did not take scarce resources away from projects. Instead of creating elaborate requirements to count every benefit or flaw, it might be more useful to determine prior to each project the elements that make a difference for that specific project and monitor them.¹⁰⁶

Next, NGOs need to be accountable to their donors. Donors often give funding based on specific projects and intended results. Donors should establish and implement effective reporting and monitoring systems that respect NGOs' autonomy while simultaneously ensuring that funding is being used for the intended project and that projects are actually being developed and implemented and that results are visible. Most donors already require various levels of accountability. This measuring of NGO project success can be difficult and could push NGOs to create shorter-term projects with easily verifiable results.¹⁰⁷ Care and sensitivity should be exercised when donors create accountability requirements. But despite the sensitive nature of measuring success, real forms of accountability must be required. This is especially necessary in developing countries where thousands of NGOs are created because it is seen as a lucrative career.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

Financial accountability is necessary in countries where the local population lacks trust in NGOs because NGOs are perceived, whether true or not, as pocketing part of the money intended for local projects.¹⁰⁸ NGO founders and employees are often the wealthier members of their societies, adding to the distrust and perception of misuse of NGO funding.¹⁰⁹

Finally, and perhaps most importantly, NGOs need to be accountable to the intended beneficiaries of their efforts. This entails creating projects that will produce long-term benefits, not just immediate and short-term responses to durational problems. This is a common challenge among development NGOs. “Projects tend to be small, last for ridiculously short periods of time, are devoid of any serious long-term vision, are not transparent in their criteria for support, and are strongly influenced by remote headquarters in the West. They are administratively heavy and costly, with large delays between identification and actual implementation, offer little flexibility, and contain weak monitoring and evaluation systems.”¹¹⁰ In order to understand the needs of their intended beneficiaries and to improve their projects, ActionAid, a nonprofit organization that spends millions of dollars annually to combat hunger and poverty, completely reorganized its accountability mechanisms to focus on the opinions of its intended

¹⁰⁸ While working together on a project to address domestic violence, Diana Miladinovic of the NGO called Autonomous Women’s House in Belgrade, Serbia, explained to me on several occasions that Serbians do not generally have high respect for NGO members because they are among the best paid and most elite of the society. Public Interest Law Initiative Projects, Human Rights, Law, and Development Workshop, Columbia Law School, New York City (September – December 2004).

¹⁰⁹ One country example of this is Bolivia. After just a few days of interviewing employees of human rights and development NGOs (and government employees working with women and indigenous rights because those areas are funded by international organizations), my interviewing partner and I began running into them at the trendy and exclusive restaurants in La Paz. We realized some of the best jobs to have in Bolivia were with NGOs or an organization, private or government, funded by international human rights or development money. The interviews occurred during April 24-29, 2005.

¹¹⁰ UVIN, *supra* note 58, at 103.

beneficiaries.¹¹¹ Rather than organizing accountability from the perspective of those implementing the projects, they interview those benefiting from the project to know what they are doing well and what needs to be modified.¹¹² Others criticize a model of accountability based solely on the perception of the beneficiaries.¹¹³ As usual, a middle-road approach seems best—something that collects and considers the beneficiaries’ opinions and incorporates some of the tried and proven indicators of project success and accountability.

5. Transparency in Funding

There is an increasing tendency of NGOs to rely on governments for funding, which can ultimately compromise the very attributes that make NGOs desirable—“independence and freedom of action.”¹¹⁴ Development NGOs receive the majority of their funding from the government—from sixty-six percent for American NGOs to between eighty and ninety-five percent for Bangladeshi, Sri Lankan, Kenyan, and Nepalese development NGOs.¹¹⁵ Although development NGOs have historically received the vast majority of funding from governments, more human rights NGOs are being funded by states and intergovernmental organizations. Even the UN subsidizes some human rights NGOs to facilitate their participation.¹¹⁶ Specifically, it funded many

¹¹¹ Christensen, *supra* note 104.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ COHEN & DENG, *supra* note 8, at 188.

¹¹⁵ See TOO CLOSE FOR COMFORT?, *supra* note 9, at 7; NGOs, THE UN, AND GLOBAL GOVERNANCE, 69 (Thomas G. Weiss ed., 1996).

¹¹⁶ The United Nations has proposed creating a trust to fund Southern NGO participation. *Report of the Panel of Eminent Persons on United Nations–Civil Society Relations, We the peoples: civil society, the United Nations and global governance*, A/58/817 (June 11, 2004).

NGOs so they could attend the Racism Conference.¹¹⁷ One possible reason for this subsidization was to enable the attendance of under-funded Southern NGOs so they could share their experiences and wisdom. However, by choosing which NGOs to subsidize, the UN can influence the ideology presented at the conferences.¹¹⁸ As NGOs compete for UN sponsorship, NGOs will likely tailor their programs to reflect UN ideology, whether they believe it or not. Although UN sponsorship is not necessarily negative, steps should be taken to ensure sponsorship includes a wide range of NGOs with disparate views, especially if the views represent a large section of a population, even if that view is contrary to one taken by the UN. One possible method would be for Southern NGOs whose annual budgets is less than a certain level and who are interested in attending UN conferences and meetings to enter a lottery. Once an NGO is chosen, it will be taken out of the lottery for the remainder of the year. This would ensure participation for Southern NGOs who would not be able to attend without the UN assistance, but ensures that no politics or ideology will influence the selection process.

Private funding is also problematic. One scholar and long-time actor in development projects described donors as “carving up the territory into their own fiefdoms.”¹¹⁹ The likelihood of NGOs engaging in independent thought and action is drastically reduced as governments and private donors choose to distribute funds to those NGOs that reflect the donor’s ideology.¹²⁰ “The pressure on local NGOs is thus

¹¹⁷ Mirek Prokes, WCAR NGO Forum – Analysis from the Organizational Point of View (Dec. 3, 2001) <<http://www.igc.org/igc/gateway/arn/worldconf/arch120301.html>>; *NGO Participation in the World Conference Funding Process* (last visited Oct. 16, 2001) <<http://www.igc.org/igc/gateway/arn/worldconf/>>.

¹¹⁸ In order to qualify for UN funding to attend the Racism Conference, NGOs needed to explain their programs, area of interest, what sector of society the NGO represents, and other information about the NGO. See *NGO Participation*, *supra* note 117. Although nothing is inappropriate about requiring this information, it could be used to weed out ideas and areas of interest that the UN deems unimportant.

¹¹⁹ UVIN, *supra* note 58, at 107.

¹²⁰ TOO CLOSE FOR COMFORT?, *supra* note 9, at 8.

enormous to mimic donor behavior and rhetoric.”¹²¹ Simply put, “as NGOs get closer to donors they become more like donors.”¹²² Hundreds of thousands of Southern NGOs chase after pieces of the \$50 billion development aid that is available on an annual basis that is controlled and channeled through the large Northern NGOs and international organizations that are part of the UN.¹²³ Not only does this result in conformity of projects, it also creates contention and rivalry among NGOs that leads to an unwillingness to work with each other by pooling resources and ideas.¹²⁴ “Despite their best attempts at operating in a fair manner, local NGOs may be funded beyond their capacity for good management. Common problems include NGOs censuring their own members, attacking other NGOs viewed as competitors, and blocking all but a few privileged elites from participating in their operations.”¹²⁵

Another problem with funding is the power that is associated with large, well-funded NGOs. Though there is a drastic difference in the power and resources of a large NGO and a small NGO, this is rarely discussed as important when considering NGO participation at the UN. “There is little incentive for powerful NGOs to recognize this misbalance, and less powerful groups can be so marginalized that their protests are not heard.”¹²⁶ Thus, large NGOs—which are often Northern, Western, and liberal—dominate international discussions and set the agenda at UN conferences and meetings.

The incentive structure of NGOs is such that choosing topics and spinning events into a story that catches big headlines is beneficial to NGOs. “Name recognition, just as

¹²¹ UVIN, *supra* note 58, at 103.

¹²² *Id.*

¹²³ UVIN, *supra* note 58, at 161.

¹²⁴ CLARK, *supra* note 20, at 56.

¹²⁵ Mertus, *supra* note 50, at 1374-75.

¹²⁶ *Id.* at 1385.

in the business world, has real financial value. Foundation grants, private individual donations, and government subsidies come with notoriety.”¹²⁷ And of course, with limited donors and funding comes increased competition between NGOs to grab the biggest headlines and receive the most funding.¹²⁸ This can lead to exaggerated claims of wrongdoing or simply an unfair amount of press on a single issue at the expense of other more pressing issues.

Partnerships, which might or might not directly include funding, also need to be transparent. Environmental NGOs who seek to limit the hazards of contaminating factories in developing countries partner with labor organizations who lobby against these same factories, but for a different reason, because they are worried about wage competition from these developing countries.¹²⁹ And NGOs against genetically modified organisms in agricultural crops are known to partner with organic farmers and organic food grocery store chains and foreign companies who do not want to compete against US agriculture imports.¹³⁰ Although NGOs might partner up with other organizations and corporations that might seem in harmony with their mandates, one might wonder at what point the partners in the partnership begin to influence or manipulate the other. Although I do not believe we should inhibit these partnerships, they should be public knowledge in order for outsiders to better understand the organization and its many interests and possible influences.

¹²⁷ Dale A. Oesterle, *A Clear-Headed Look at NGOs*, COLO. J. INT’L ENVTL. L. & POLY 129, 130 (Winter 2002).

¹²⁸ *Id.* at 131.

¹²⁹ *Id.*

¹³⁰ *Id.* at 131-32.

6. The Old and New—Systems of Accountability and Transparency

Systems of accountability and transparency need to be conceived of, created, and implemented to combat the abuse of authority that is assumed will eventually occur where power accumulates. The power itself needs to become accountable and transparent.¹³¹

a) At the United Nations

At the international level, it makes sense for the UN to institute some sort of monitoring or accountability mechanism for NGOs seeking to enjoy access to the UN, its conferences and meetings, and the member state delegates. Presently, NGOs who want to enjoy these privileges simply need to be accredited by the Economic and Social Council (“ECOSOC”). The accreditation process can be lengthy, but it is not complicated. NGO accreditation is based on Article 71¹³² of the UN Charter and ECOSOC Resolution 1996/31. ECOSOC requires that all accredited NGOs shall “be of recognized standing within the particular field of its competence or of a representative character,”¹³³ write a democratically elected constitution and have a representative body to make policy,¹³⁴ 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,”¹³⁵ and any government funding shall be reported

¹³¹ DESERVING TRUST, *supra* note 91, at 2.

¹³² “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.” UN CHARTER, art. 71 (June 26, 1945).

¹³³ ECOSOC Resolution 1996/31, Part I.9 (July 25, 1996)

¹³⁴ *See id.* at Part I.10.

¹³⁵ *Id.* at Part I.12.

to ECOSOC.¹³⁶ International NGOs are not considered for ECOSOC accreditation unless they are “of a representative character and of recognized international standing; it shall represent a substantial proportion and express the views of major sections of the population or of the organized persons within the particular field of competence, covering, where possible, a substantial number of countries in different regions of the world.”¹³⁷

The requirements for ECOSOC accreditation include some elements designed to ensure a certain level of democracy and representation, but they are only weakly, if ever, applied. Once an NGO is accredited, the review process is more like an automatic renewal process than an actual examination of the original requirements for accreditation. This is not surprising considering the lack of resources to monitor the thousands of NGOs who currently hold ECOSOC accreditation. The UN is not able to monitor NGOs’ democracy, accountability, and transparency, so the systems for ensuring them will have to come elsewhere or the UN will have to secure funding to undertake serious review processes.

One available option that would keep monitoring of UN-active NGOs in ECOSOC would be to require ECOSOC accredited NGOs to pay an annual fee that would offset the cost of investigation for the new ECOSOC applications and reviews of existing accredited NGOs. And instead of trying to review every NGO, a set number of NGOs should be randomly selected for a review, and this number should not exceed a number that would allow for a serious review of the NGOs’ democratic processes, representative nature or expertise in a field, transparency of funding and partnerships, and

¹³⁶ *See id.* at Part I.13.

¹³⁷ E.S.C. Res. 1296 (XLIV) on Consultative Agreements, U.N. ESCOR, 44th Sess., 1520th meeting., U.N. Doc. E/4548/Supp. 1 (1968).

internal and external accountability mechanisms. These additional areas of transparency and accountability would need to be incorporated into the application requirements for NGOs. The reviews should be conducted by small panels, say of three persons from varying countries, to limit the possible political nature of the accreditation process.

A disadvantage to such a system is that it would burden the Southern and smaller NGOs who already have less of a voice at the UN. This problem could be easily addressed, however, by granting exemptions to NGOs with annual budgets less than a chosen amount. Another concern could be that requiring even the medium and larger NGOs to pay an annual membership fee could chill NGO involvement at the UN. Although this is possible, it could have a secondary beneficial effect of encouraging at least many of the smaller and medium NGOs to combine permanent caucuses to act on their behalf at the UN. This way, only the caucus would have to pay the membership fee and the review would be of the caucus and not the individual NGOs. This could, in the long run, improve smaller NGOs access to the UN and could strengthen their voices collectively. A danger is that some of the minority voices will be quieted in the process. However, if an NGO is passionate about a topic and its views are being quieted, it could seek special short-term or conference specific membership. In such cases, the NGO could pay the application fee that would include a free one-year membership.

b) Ideas Within Sectors

Additional systems of accountability can exist at the international and domestic arenas. These secondary mechanisms would be especially important for NGOs who do not directly participate in the UN. Various NGO actors and scholars have suggested ameliorative changes for systems of accountability and transparency, especially regarding

funding. Professor Peter Uvin suggests the entire donor funding system needs to be modified—the disparity of funding between the well-connected and the grassroots needs to be eliminated, funding from foreign donors needs to be pooled so NGOs do not feel pressure to conform to donor ideology, and the funding needs to be predictable so NGOs can create long-term projects instead of changing projects every six months to chase funding supporting the latest concern as chosen by the West.¹³⁸ Although in theory his pooling idea is interesting and could produce significant changes, in practice, few donors will agree to surrender their influence that is tied to their funding.

Ideologically similar NGOs—such as development, educational, human rights. . .—could create their own codes of conduct that include control mechanisms regarding democracy, transparency, and accountability. Various NGO sectors have already engaged in such practices and have seen some benefit. Humanitarian NGOs have created a Code of Conduct, a Humanitarian Charter, and other tools to aid their efforts of accountability.¹³⁹ And The International Council on Human Rights Policy prepared a 160-page report examining the manners in which human rights NGOs can effectuate changes to encourage increased accountability, which included action from donors, governments, and the NGOs themselves.¹⁴⁰

c) Caution in Accountability Mechanisms

In our zeal to improve accountability and transparency, we should ensure that new systems of accountability and transparency do not simultaneously create barriers to the functioning of unpopular NGOs. While discussing NGOs, democracy, accountability, and transparency at a conference in Malaysia, Malay NGO members were pleased to

¹³⁸ UVIN, *supra* note 58, at 106-08.

¹³⁹ Slim, *supra* note 103, at 4.

¹⁴⁰ DESERVING TRUST, *supra* note 91.

report that Malay NGOs are required by law to hold elections for officers, report on funding and spending, and open their financial records for review.¹⁴¹ Without knowing more, this law seems beneficial as it requires NGOs to be democratic, accountable, and transparent. However, this same law acts to deny NGOs the state does not approve of from obtaining a legal status, which is necessary for NGOs to organize and function in Malaysia. If governmental bodies create and implement law, whether at the international or national level, as a means of ensuring accountability and transparency of NGOs, protective measures should also be included in the law to ensure evenhanded treatment of NGOs.

B. THE ASSESSMENT OF GOOD

It is easy to criticize NGOs, or any community that grows in power and prominence. It is especially easy to criticize when NGOs place themselves on the moral high ground. To be sure, NGOs are imbued with self-interest, their structure and actions are often undemocratic, and some NGOs are insensitive to culture, religion, and history in their pursuit of certain “rights” that some societies do not believe are human rights and therefore should not be protected. But NGOs have also done great good regarding human rights, focusing on the environment, distributing aid and services, and forcing countries—rich and poor, North and South—to rethink their policies and actions. The question, then, is do the benefits of NGOs outweigh their costs? Would the world be a better place without NGOs? To answer this, we must consider what NGOs do, every day around the world.

¹⁴¹ Question and Answers during presentation, Rana Lehr-Lehnardt, *The Role of NGOs: Influencing International Law and Policy*, paper presented at Asia Pacific Family Dialogue Toward the Doha Conference on the Family , Kuala Lumpur, Malaysia (October 11-13, 2004).

NGOs influenced world powers at the founding conference for the UN, in 1945, to include respect for human rights as one of the four purposes of the UN Charter.¹⁴² They have since successfully advanced human rights, environment, and population issues.¹⁴³ “NGOs have emerged as prime movers on a broad range of global issues, framing agendas, mobilizing constituencies toward targeted results, and monitoring compliance as a sort of new world police force.”¹⁴⁴ NGO involvement at the Earth Summit in Rio raised world awareness about the importance of protecting the environment. The NGO forum at the Women’s Conference in Beijing received more publicity than the UN Conference. And it was an NGO that held meetings between warring factions in Mozambique that eventually resulted in a peaceful settlement.¹⁴⁵

Besides the above examples of general good NGOs do, NGOs excel in specific tasks.

1. Distribution

NGOs that focus on providing humanitarian relief and engaging in development projects often are the main conduits for delivering aid to those in need. And NGOs that take part in distributing aid comprise a substantial portion of the NGO community.

“At a time of accelerating change, NGOs are quicker than governments to respond to new demands and opportunities. Internationally, in both the poorest and richest countries, NGOs, when adequately funded, can outperform government in the delivery of many public services.”¹⁴⁶ NGOs are known for being more flexible,

¹⁴² Felice D. Gaer, *Reality Check: Human Rights NGOs Confront Governments at the UN*, in *NGOS, THE UN, AND GLOBAL GOVERNANCE* 51-52 (Thomas G. Weiss & Leon Gordenker eds., 1996).

¹⁴³ P.J. Simmons, *Learning to Live with NGOs*, *FOREIGN POLICY* 82, 84 (Fall, 1998).

¹⁴⁴ Spiro, *supra* note 56, at 45.

¹⁴⁵ Simmons, *supra* note 143, at 86.

¹⁴⁶ Jessica T. Mathews, *Power Shift*, 76 *FOREIGN AFFAIRS* 50, 63 (1997).

possessing community trust, and knowing how best to work with the poorest individuals who are often in remote locations far from government aid.¹⁴⁷ In fact, research has shown that projects managed and funded by international organizations do not tend to be sustainable because local communities are not involved.¹⁴⁸ The UN has recognized this NGO advantage and relies heavily on NGOs to distribute aid, especially to the poor in remote locations. In 1997, NGOs administered eighty percent of the UN High Commissioner for Refugees' budget.¹⁴⁹ Of the \$3.5 billion of humanitarian aid funding, more than seventy-five percent was delivered by NGOs.¹⁵⁰ The UN is able to recognize the problem and quantify the need, but it is NGOs that are familiar with superior channels of distribution.

2. Expertise

NGOs often focus their attention on a few issues, gather information addressing these issues, and then disseminate information promoting awareness of them.¹⁵¹ In the process, NGOs often become experts on these areas. “[L]arger NGOs have evolved to rival state representatives in their effectiveness on certain issues. ... [T]hey can provide services that supplement intergovernmental resources as well as counterbalance the reluctance of intergovernmental bodies to monitor politically sensitive domestic state practices.”¹⁵² The UN and country delegates have often looked to NGOs for information

¹⁴⁷ Peter Uvin, *Scaling Up the Grassroots and Scaling Down the Summit: The Relations Between Third World NGOs and the UN*, in *NGOS, THE UN, AND GLOBAL GOVERNANCE* 163 (Thomas G. Weiss ed., 1996).

¹⁴⁸ *Id.*

¹⁴⁹ UN Press Release, NGO/296, PI/1029 (Sept. 10, 1997).

¹⁵⁰ *Id.*

¹⁵¹ See Stanley Foundation, *supra* note 76.

¹⁵² Marie Clark, *Non-Governmental Organizations and their Influence on International Society*, 48 *JOURNAL INT'L AFF.* 507, 516 (Winter 1995).

and advice on specific topics.¹⁵³ NGOs often contribute their legal and technical expertise at UN working groups as informal contributors. This “freely offer[ed] assistance . . . has made them virtually indispensable to the U.N.”¹⁵⁴ In one example, NGOs provided states with information on women’s rights and violence against women at preparatory meetings for the 1993 UN World Conference on Human Rights.¹⁵⁵ As a result, the outcome documents of the conference included several pages on women’s human rights, whereas before the NGO involvement, women were not specifically mentioned.¹⁵⁶

3. Well-funded Groups

Many of the larger NGOs are so well funded that even some governments and the United Nations envy their well-stocked coffers.¹⁵⁷ Some major international NGOs can boast a budget of \$500 million, though this is rare, as even Amnesty International’s Secretariat’s budget is at \$26 million and Human Rights Watch’s budget is \$14 million.¹⁵⁸ Governments and intergovernmental organizations have a tendency to push human rights, human development, and aid relief to the rear. NGOs, with their strong funding, push these items back to the front, where they belong. NGO funding means resources, and resources mean the ability to do more, from monitoring states’ actions, to collecting testimonies and information from victims, to creating an infrastructure for the delivery of aid services to remote locations, to research and policy writing. In short, NGOs can spend money on those things that governments tend to ignore, or hide.

¹⁵³ Spiro, *supra* note 56, at 49.

¹⁵⁴ Schoener, *supra* note 54, at 550.

¹⁵⁵ *Id.* at 559.

¹⁵⁶ *Id.*

¹⁵⁷ Mathews, *supra* note 146, at 53.

¹⁵⁸ See COHEN & DENG, *supra* note 8, at 188; STEINER & ALSTON, *supra* note 7, at 947. For a list of NGOs and their annual budgets, see <www.ngowatch.org>.

Additionally, NGO funding, unlike state funds, are dedicated to a few specific issues, whereas state funds must be spread over a plethora of issues. Thus, some of these large NGOs are spending more on human rights, aid delivery, development, or the environment than certain governments and even the United Nations are spending on them.

The United Nations relies on the annual \$8 billion in development and relief assistance that international NGOs provide, thus “helping to fill the growing gap between needs for such assistance and the capabilities of the United Nations and other international and national sources.”¹⁵⁹ With limited funding, the UN seems to be looking more toward NGOs to augment humanitarian assistance, implementation of treaty obligations, and monitoring of treaty adherence. And large, well-funded NGOs are ready to use their resources in ways that benefit the UN.¹⁶⁰ The UN is not the only party of this alliance to benefit; partnering with the most known international organization lends credibility to NGOs and their programs. And increased credibility often means increased funding.

4. Monitoring

Because NGOs focus on select issues, they are able to monitor governments’ compliance with international accords, compile and disseminate their findings, and ultimately pressure governments to improve their compliance.¹⁶¹ NGOs have found success in pressuring governments by waging media campaigns. Amnesty International, Human Rights Watch, and GreenPeace are well known for their media statements aimed at governments and private companies demanding changes in present law or implementation. In a specific example, NGO country monitoring is vital to the

¹⁵⁹ COHEN & DENG, *supra* note 8, at 188.

¹⁶⁰ *Id.*; STEINER & ALSTON, *supra* note 7, at 947.

¹⁶¹ See UVIN, *supra* note 58, at 168.

effectiveness of the Human Rights Commission, the monitoring arm of the International Convention on Civil and Political Rights.¹⁶² Without NGO monitoring, the Commission would not be able to question and refute claims of compliance with human rights.¹⁶³ Due to a relatively few number of Commission members compared to the number of countries and the frequency of human rights violations, the Commission would be greatly hindered without the aid of NGO surveillance.

5. Implementation

Monitoring leads to implementation of the international agreements by the state signatories. As the secretary-general said after a world conference, “when we all go home, it will be the NGOs that will continue the pressure on governments.”¹⁶⁴ NGOs push the agendas that governments refrain from pushing due to a lack of political will. NGOs hold governments accountable to their citizens and to the treaties and conventions they sign.¹⁶⁵ They hold large transnational corporations accountable for their employment practices, working conditions, and environmental impact. As mentioned, the UN often lacks resources to confront powerful corporations, and states are sometimes more interested in obtaining work, even under poor conditions, for their citizens than in questioning corporate practice and losing the anticipated revenue from the corporate presence.

¹⁶² Torkel Opsahl, *The Human Rights Committee*, The United Nations and Human Rights: A Critical Appraisal, extract printed in LOUIS HENKIN, *et al.*, HUMAN RIGHTS 493 (1999).

¹⁶³ Secretary General Kofi Annan has proposed significant changes to the Human Rights Commission. Although the reforms are supported by many NGOs (including Human Rights Watch and Amnesty International), the role NGOs will be allowed to play after the reforms are implemented is unclear. See Susi Snyder, *NGO Joint Statement on the Secretary General's Proposed Human Rights Council* (April 18, 2005); Global Policy Forum, *Without Reform of Human Rights Body, UN Credibility at Stake, Annan Says* (April 7, 2004), available at <<http://www.globalpolicy.org/reform/hrc/without.htm>>. See generally, Kofi Annan, IN LARGER FREEDOM, ¶ 183 (UN # A/59/2005) (March 21, 2005); *Time is Right to Take United Nations-Civil Society Partnership One Step Further*, Press Release, NGO/550 (April 10, 2004).

¹⁶⁴ UVIN, *supra* note 58 (quoting *NGOs seen as key to achieving nutrition conference goals*, MONDAY DEVELOPMENTS 21 (April 19, 1993)).

¹⁶⁵ See generally, HENKIN, *supra* note 162, at 737-769.

6. Apolitical

NGOs are independent of governments and apolitical, at least most claim to be. As such, they can perform tasks in which governments are unable to engage, such as monitoring, due to political alliances and diplomatic reasons. Because NGOs are viewed as politically neutral, they can monitor elections, participate in democracy building, and political party development¹⁶⁶ for a functioning multi-party democratic system to operate. Their apolitical nature also makes it possible for them to play their trump card—naming and shaming. If NGOs were political, like governments, states and citizens could ignore the naming and shaming tactics, but because of their neutral political position, NGOs stand on human rights or development or aid/services distribution principles when they expose government inaction or miss-action.

7. Giving Voice to the Voiceless

As already stated several times in this paper, NGOs, especially human rights NGOs, give voice to the voiceless. This is more than just a trope. Amnesty International, Human Rights Watch, and the American Civil Liberties Union have recently spent considerable time and resources on the issue of juveniles tried as adults and sentenced to life in prison without possibility of parole. International and domestic Indian NGOs condemned the treatment of untouchables and lobbied at international conferences for an abolition of laws that tolerated such discrimination. NGOs worked with the US and other states to pressure for change in countries that either legitimize so-called honor killings and honor crimes with their penal laws or countries who fail to investigate and prosecute these crimes. NGOs have succeeded in educating the world about the sexism and health risks inherent in female genital mutilation, and these NGOs have also affected a change

¹⁶⁶ UVIN, *supra* note 58, at 83.

in this practice in many countries. NGOs fight against slavery and trafficking in women and children. And NGOs, in partnership with states and international organizations worked to end apartheid in South Africa. It is often NGOs that give a face to the suffering and the injustice. It is often the NGOs that mould public opinion and mobilize the masses.

PART III. REASSESSMENT

A. NOT TOTALLY LACKING IN DEMOCRACY, TRANSPARENCY, AND ACCOUNTABILITY

We come to the question again of whether the world would be a better place without NGOs, I believe the resounding answer to this is “no”, the world would not be a better place. The benefits of NGOs, even the imperfect NGOs we now have, far outweigh the costs. And as discussed above, many of NGOs’ weaknesses can be addressed; they are not beyond modifications and change. We should also remember that most NGOs are young, existing only since the 1970s, only a couple decades old, if that. According to a UN study, nearly one fifth of the world’s NGOs were formed in the 1990s.¹⁶⁷ With youth comes inexperience, so it should not be surprising that NGOs have made mistakes and have not thought through all ramifications of all of their actions. But with youth should also come forgiveness for transgressions and second and third chances.

NGOs, their vision and their work, should continue, locally, nationally, and internationally. But NGO members, governments, and members of the international organizations should rethink the role of NGOs, the relationship we want NGOs to have with locals, governments, and international organizations. We must evaluate what each partner in this sprawling partnership hopes to get out of it. It is easy to criticize NGOs

¹⁶⁷ Global Policy Forum, *Credibility and Legitimacy*, *supra* note 26.

because they have made mistakes, innocently and purposefully. But intentions are generally good; desire to improve lives is sincere.

Again, it is easy to criticize, and some of these criticisms regarding legitimacy—specifically democracy, transparency, and accountability—matter; others do not.

Legitimacy can exist for NGOs even without complete democratic internal processes.¹⁶⁸

In fact, for some human rights NGOs, their legitimacy is not based on representation and democracy, but “on the trust that others have in them and on the quality and honesty of their work.”¹⁶⁹ The legitimacy of humanitarian NGOs is based in part on their perceived neutrality and their ability to distribute aid effectively.¹⁷⁰ Before believing all criticism of NGOs, it is necessary to question what makes NGOs effective and whether the suggestions to improve them would actually harm their effectiveness.

Peter Spiro champions NGOs and refutes the criticism that NGOs are not representative of large percentages of the population.¹⁷¹ He points out that the voting system in the United Nations General Assembly does not produce equal representation between all citizens of the world. States with small populations have an equal vote to that of China or India, both of whose single vote represents their billion citizens. Spiro argues that NGOs who have similar very broad goals, like human rights promotion, collectively speak for the same amount of people as mid-sized states.¹⁷²

Additionally, legitimacy does not just come from democracy, transparency and accountability. The goodwill of the public is what gives, in part, legitimacy to NGOs, so

¹⁶⁸ Slim, *supra* note 103.

¹⁶⁹ DESERVING TRUST, *supra* note 91, at 8.

¹⁷⁰ Iain Levine, *Promoting Humanitarian Principles: The Southern Sudan Experience*, Relief and Rehabilitation Network Paper 13 (May 1997).

¹⁷¹ Spiro, *supra* note 56, at 52.

¹⁷² *Id.*

if public believes NGOs should implement accountability and transparency mechanisms, they can show that to NGOs by their lack of goodwill and lack of tangible support in the form of donations, volunteer time and such. Media can criticize NGOs when they perceive a lack of accountability, which will push NGOs to implement changes.

Although these checks on NGO action are weak and would not effectuate rapid change, they are available and could be used more effectively. There should, however, be a goal of a more organized and more effective monitoring system that simultaneously does not impede NGOs freedom of association or promulgation of ideas. NGOs should be weary of a government created monitoring system, such as Malaysia's that acts as a monitor of ideas under a guise of ensuring democracy, accountability, and transparency.

Also, democracy doesn't always matter, especially when NGOs do not purport to speak for the masses, but rather speak or act based on theories of rights, whether they be economic and social rights that drive development NGOs, or civil and political rights that almost exclusively drive human rights NGOs.¹⁷³

B. WHERE DEMOCRACY, TRANSPARENCY AND ACCOUNTABILITY MATTER: THE INTERNATIONAL ARENA

Are most NGOs more transparent, democratic, and accountable than most governments . . . ? Do those civil society groups based at the UN represent and reflect the whole spectrum of political views within the member states? If these groups are so representative, why are they not more successful in influencing the positions of member state governments? At times it appears . . . that some NGOs seek to achieve at the international level that which they have failed to attain at the member state level.¹⁷⁴

The attack on NGOs' legitimacy due to their lack of democracy, transparency and accountability has some solid foundation. But it is also the case that legitimacy is not only found in these three characteristics. Additionally, due to NGOs' unique structure

¹⁷³ DESERVING TRUST, *supra* note 91, at 8.

¹⁷⁴ Elaine French, *Civil Society, the United Nations, and Global Governance*, *Carnegie Endowment for International Peace* (March 26, 1999) <<http://www.ceip.org/files/events/CivSocietyUNGlobGov.asp?p=7>> (last visited May 4, 2005).

and methods of advocacy and assistance, democracy might not be beneficial for all NGOs. But where democracy (both internal democratic processes and representation of those on whose behalf NGOs purport to speak or who will be affected by the proposed policies) does matter is at the policy-making levels—both domestically and internationally. I will focus only on the international level as individual states will need to customize responses to NGOs acting in their territory.

At the international level, where policy creation is concerned, when NGOs lobby country delegates and purport to speak for a certain section of the population, NGOs should be accountable for such statements and there should be a way for state and intergovernmental actors to easily verify NGO claims of representation. State and intergovernmental actors should also be able to know sources of NGO funding to understand possible motives and biases. This openness is not supposed to be designed to put NGOs at a disadvantage while lobbying, but voting states should be informed about who is lobbying them, their connections, and their motives.

As discussed above, ECOSOC could improve its monitoring of accredited NGOs. In addition to the listed requirements for accreditation and the additional suggestions I made earlier, the following information could be made available regarding all ECOSOC accredited NGOs, it should be updated periodically, and the list should be easily accessible on the Internet: NGO statements of representation, opposition or criticism of the statement of representation, annual budgets, sources of funding, number of employees and volunteers, and countries in which they engage (not a required category as some NGOs engaged in projects or partnerships in states with oppressive governments might be put in danger by divulging such information).

PART IV. CONCLUSION

We need NGOs. And we need NGOs that are professional, composed of highly educated and motivated individuals, just as we need the smaller NGOs that are run almost exclusively by volunteers who have not made a career of NGO work. But NGOs do need to change, largely because of their ever-increasing power, influence, and involvement in creating international (and national) policy and law. When NGOs are engaged in policy and norm creation, they should be held to a higher standard of democracy (representation), transparency, and accountability. Former UN Secretary General Boutros Boutros-Ghali expressed his faith in NGOs:

I am convinced that NGOs have an important role to play in the achievement of the ideal established by the Charter of the United Nations: the maintenance and establishment of peace. . . . I believe NGOs can pursue their activities on three fronts. In the search for peace, they must obtain the means—and we must help them to do so—to engage in assistance, mobilization, and democratization activities, all at the same time.¹⁷⁵

NGOs do have an important role to play in implementing the UN Charter by monitoring and exposing countries' actions. They are also significant actors in the development and humanitarian aid arena. But for NGOs to be trusted with their newly endowed power and resources, NGOs must effectively address their weaknesses regarding transparency, accountability, and to a lesser extent democracy. As they voluntarily tackle these difficult issues, their power and prestige, and perhaps even resources, will likely increase. They will become able to participate in greater roles at the international law and policy-making level.¹⁷⁶

¹⁷⁵Boutros-Ghali, *supra* note 29, at 8.

¹⁷⁶Some NGO activists have already called on the UN to grant NGOs a greater role by granting NGOs five to ten percent of General Assembly seats. See Spiro, *supra* note 56; Hobb, *supra* note 4, at 208-09.

Secretary General Kofi Annan has recently reaffirmed that the UN is an intergovernmental body composed of member states and that aspect of the UN was not going to change. *See Report of the Secretary-General in response to the report of the Panel of Eminent Persons on United Nations-Civil Society Relations, A/59/354, ¶ 3 (Sept. 13, 2004).*