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Volume 26 | Number 2

Article 2

12-1-2003

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Jeffrey Andrew Hartwick, *Non-Governmental Organizations at United Nations-Sponsored World Conferences: A Framework for Participation Reform*, 26 Loy. L.A. Int'l & Comp. L. Rev. 217 (2003).
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Non-Governmental Organizations at United Nations-Sponsored World Conferences: A Framework for Participation Reform

JEFFREY ANDREW HARTWICK*

I. INTRODUCTION

Non-governmental organizations (NGOs) have grown increasingly powerful and influential at international conferences sponsored by the United Nations. For instance, NGO activity was particularly prominent at the 2001 UN World Conference Against Racism (WCAR) in Durban, South Africa. This conference, however, was also an example of excessive NGO participation and harmful influence. At Durban, the NGO Forum (Forum) was marked by episodes of intolerance and anti-Semitism. The Forum produced unbalanced and impractical final documents that legitimized conference delegates pursuing anti-Western or anti-Israeli agendas.

How then can excessive and detrimental NGO influence at UN-sponsored world conferences be lessened to encourage productive activity and ensure the rightful primacy of nation-states? This Article will address this fundamental question. Part II looks at NGOs generally and the rules governing their interaction within the UN conference system. Part III examines the WCAR at

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Durban, a recent example of NGO-instigated chaos. Part IV examines two opposing schools of thought regarding the role of NGOs in the international system. One view favors an enlarged role for NGOs, the other a restricted role. The two camps do not provide an adequate framework to regulate NGO behavior, however. Part V advocates an overhaul of the NGO accreditation and participation framework in the UN to reduce NGO excesses, proposing seven reforms. Part VI applies six of these proposed solutions to a future UN WCAR to determine their practicality and viability. Part VII concludes that the suggested reforms would significantly improve a currently broken UN system for regulating NGO participation at conferences. These reforms would enable NGOs to take part in conferences in a meaningful way, reduce damaging excesses, and ensure the primacy of nation-states.

II. NONGOVERNMENTAL ORGANIZATIONS

A. *Definition and History*

Non-governmental organizations are defined as "private organizations . . . not established by a government or by inter-governmental agreement, which are capable of playing a role in international affairs by virtue of their activities, and whose members enjoy independent voting rights."¹ NGOs can be further subdivided into "national" or "international." A national NGO is involved with issues within a particular state, while an international NGO contends with matters across borders.²

An example of a national NGO is the National Rifle Association, an American group concerned about Second Amendment rights and the promotion of hunting and shooting sports.

An example of an international NGO is Amnesty International, a human rights organization with chapters in many nations throughout the world. For the purposes of this study, the term "NGOs" includes not only these traditional advocacy or public interest groups, both national and international, but also business, associational, and union groups.

1. Hermann H. K. Rechenberg, *Non-Governmental Organizations*, 3 ENCYCLOPEDIA OF PUB. INT'L L. 612, 612 (1992).

2. *Id.*

NGOs are not a new phenomenon. The Roman Catholic Church is among the first NGOs.³ NGOs grew in number and stature during the nineteenth century, focusing mostly on issues of slavery, peace, and labor.⁴ NGO prominence increased after the end of the Second World War, when the UN officially recognized the status and importance of NGOs in Article 71 of the UN Charter.⁵

Since the 1970s, NGO influence and participation in international bodies have increased dramatically. International NGOs, such as Greenpeace and Amnesty International, have taken part in international conferences, influenced international agreements, and successfully promoted public awareness of the issues they lobby and support.

NGOs are important for a number of reasons. First, they provide valuable technical expertise and experience in complex fields like climate change and humanitarian relief. Second, they bring public attention to issues that states ignored. For example, international NGOs were instrumental in the enactment of the Mine Ban Treaty by publicizing the issue and getting many states to sign a comprehensive global treaty banning the use and manufacture of certain kinds of mines.⁶

Third, NGOs serve an educational function. They hold seminars and briefings, and draft policy papers. International bureaucrats and elites, who make important decisions in areas of NGO concern, are better informed because of NGO efforts. Fourth, some consider NGOs the conscience of international civil society whose views represent those of world populations.⁷

Fifth, NGOs bring claims of victims before certain international commissions and tribunals, such as the Inter-American Commission on Human Rights (IACHR) and the Inter-

3. Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 190-91 (1997).

4. *See id.* at 191-94.

5. *See* U.N. CHARTER art. 71.

6. Kenneth Anderson, *The Ottawa Convention Banning Landmines, the Role of Non-governmental Organizations and the Idea of International Civil Society*, 11 EUR. J. INT'L L. 91, 104-08 (2000) [hereinafter Anderson I].

7. *See* Press Release, United Nations Secretary-General Kofi Annan, Secretary-General Calls on NGOs to Create Worldwide Anti-Racism Movement (Aug. 30, 2001), U.N. Doc. SG/SM/7926, available at <http://www.un.org/News/Press/docs/2001/sgsm7926.doc.htm>. [hereinafter Kofi Annan Press Release].

American Court of Human Rights (Inter-American Court).⁸ Sixth, some NGOs serve on state delegations involved in negotiating and formulating international conventions.⁹ This occurred during the UN Conference on Environment and Development (Rio Conference), when some state delegations included NGO representatives.¹⁰ Representatives of one NGO negotiated on behalf of small island states.¹¹ Finally, NGOs often act as watchdogs and thus monitor compliance with international agreements.¹²

International organizations, like the World Trade Organization (WTO) or International Labor Organization (ILO), have international legal standing based on international treaties,¹³ but NGOs do not have special legal status under international law.¹⁴ "NGO's are created by private, natural, or legal persons under national law and not, as in the case of international organizations, through a legal act by States under international law."¹⁵ This has not prevented NGOs from making a difference in the world scene, however, at international conferences, organizations, and tribunals, and through linkage with like-minded groups across borders.

B. States Are the Primary Actors

In spite of the increasing influence of NGOs, states are and will continue to be the principal actors on the world stage, at least for the foreseeable future. This has been true ever since the

8. See Martin A. Olz, *Non-Governmental Organizations in Regional Human Rights Systems*, 28 COLUM. HUM. RTS. L. REV. 307, 356-57 (1997); David J. Padilla, *The Inter-American Commission on Human Rights of the Organization of American States: A Case Study*, 9 AM. U. J. INT'L L. & POL'Y 95, 95 (1993).

9. See Richard Falk & Andrew Strauss, *On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty*, 36 STAN. J. INT'L L. 191, 198 (2000).

10. See *id.*

11. See *id.* at 198-99.

12. Karsten Nowrot, Symposium, *Legal Consequences of Globalization: The Status of Non-Governmental Organizations Under International Law*, 6 IND. J. GLOBAL LEGAL STUD. 579, 580 (1999).

13. An international organization is "an association of States established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfill particular functions within the organization." Rudolf L. Bindschedler, *International Organizations, General Aspects*, 2 ENCYCLOPEDIA OF PUB. INT'L L. 1289, 1289 (1992).

14. Nowrot, *supra* note 12, at 622.

15. *Id.*

Westphalian system was created in 1648, when states became the supreme entities for domestic governance and international relations.¹⁶

In the context of international law, a state is "an entity having exclusive jurisdiction with regard to its territory and personal jurisdiction in view of its nationals."¹⁷ In the state-centric international system, states guard their power closely. They do so because international relations are marked by the struggle for power.¹⁸ This is an arena where states are constantly struggling for an advantage in military, economic, or political power. States are therefore reluctant to share power with non-state actors such as international and national NGOs, since such acts would diminish state power. Furthermore, devolution of power to legally unaccountable entities would create a sense of anarchy in an international order founded on balances of power and need for stability.

It is in this environment that NGOs have sought to have greater acceptance, influence, and access to international institutions. NGOs would like a larger role on the international stage to pursue their own interests in making policy and programs to effect social, cultural, and political change. This desire places the NGOs on a collision course with states, however, as states fear an encroachment on their power and sovereignty.¹⁹

Nations will not agree to grant NGO representatives voting rights at the UN. While NGOs may not have voting power in international bodies, they strive nonetheless to influence international institutions and conferences through lobbying, serving on national delegations, and being involved in the drafting process of international agreements, conference declarations, and programs of action.²⁰ Unfortunately for NGOs, however, states dictate the rules of participation in international organizations like the UN. NGOs believe these rules are too limiting and thus seek a more expansive role.

16. See Jessica T. Matthews, *Power Shift*, 76 FOREIGN AFF. 50, 50 (1997).

17. Karl Doehring, *State*, 4 ENCYCLOPEDIA OF PUB. INT'L L. 600, 601 (1992).

18. HANS MORGENTHAU, *POLITICS AMONG NATIONS* 25 (4th ed., 1967).

19. Peter J. Spiro, *The Democratic Accountability of Non-Governmental Organizations: Accounting for NGOs*, 3 CHI. J. INT'L L. 161, 166-67 (2002) [hereinafter Spiro III]

20. *Id.* at 166.

C. NGOs and the United Nations Economic and Social Council

Under Chapter IX of the UN Charter, the UN seeks to promote international economic and social cooperation.²¹ The General Assembly of the UN is responsible for promoting such cooperation through the Economic and Social Council (ECOSOC).²² The ECOSOC is empowered to set up commissions concerning human rights and economic and social issues.²³

ECOSOC also manages and supervises NGO participation within the UN system.²⁴ The UN has officially recognized the important status of NGOs and has codified the ECOSOC-NGO relationship in the UN Charter. Article 71 of the UN Charter states, "[t]he 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 UN concerned."²⁵

Thus the only officially authorized manner an NGO may participate in the UN is through ECOSOC. Furthermore, the arrangement is one of "consultation" only and does not include voting rights, delegation membership rights, etc.²⁶ NGO contribution rights are thus severely limited within the UN system.

1. ECOSOC Rules Regarding NGOs

ECOSOC has enacted a number of rules regarding NGOs. In 1968, the Council passed Resolution 1296 (XLIV),²⁷ which was the first set of NGO governing regulations.²⁸ In 1993, the Council approved Resolution 1993/80 of 30 July 1993,²⁹ in which it requested "a general review of arrangements for consultation with non-governmental organizations, with a view to updating, if

21. U.N. CHARTER art. 55.

22. *Id.* art. 60.

23. *Id.* art. 68.

24. Ferdinand Trauttmansdorff, *The Organs of the United Nation*), in *THE UNITED NATIONS: LAW AND PRACTICE* 40-41 (Franz Cede & Lilly Sucharipa-Behrmann, eds., 2001) (1999).

25. U.N. CHARTER art. 71.

26. *Id.*

27. E.S.C. Res. 1296, U.N. ESCOR, 44th Sess., Supp. No. 1, E/Res./1296 (1968).

28. SUSANN KEPPLER-SCHLESINGER, *THE UNITED NATIONS: LAW AND PRACTICE* 275, 277 (Franz Cede & Lilly Sucharipa-Behrmann eds., 2001).

29. E.S.C. Res. 1993/80, U.N. ESCOR, 46th Sess., U.N. Doc. E/1993/80 (1993).

necessary, Council resolution 1296 (XLIV) of 23 May 1968.³⁰ In 1996, the Council adopted Resolution 1996/31, which set forth a new set of rules that are currently in effect.³¹

Resolution 1996/31 governs the admission of NGOs in a consultative relationship with ECOSOC. ECOSOC's Committee on Non-Governmental Organizations (NGO Committee) has jurisdiction over the application process.³² An applicant seeking consultative status first sends the requisite materials to the NGO Section of ECOSOC's Department of Economic and Social Affairs (DESA) for processing.³³ The Committee meets twice a year for this purpose.³⁴

NGOs seeking consultative status must support the "aims and purposes" of the UN Charter.³⁵ Organizations that may seek consultative status include "national, subregional, regional, or international"³⁶ NGOs. NGOs from developing countries are particularly encouraged to become participants.³⁷

Resolution 1996/31 sets out specific eligibility criteria for NGOs. First, a group must be "of recognized standing within the particular field of competence."³⁸ A number of groups in the same field may form a joint committee or body to make their views known as a consultative member.³⁹ Second, a group must "have an established headquarters, with an executive officer."⁴⁰ Third, the NGO must have a "democratically adopted constitution."⁴¹ Fourth, the organization's representatives must have the authority to speak on behalf of its members.⁴² Fifth, the NGO must be

30. E.S.C. Res. 1996/31, U.N. ESCOR, 49th mtg., Supp. No. 1, at 1, U.N. Doc. E/1996/L.25 (1996) [hereinafter Resolution 1996/31].

31. *Id.*

32. See KEPLER-SCHLESINGER, *supra* note 28, at 278.

33. Guidelines, Association Between the United Nations and Non-Governmental Organizations (NGOs), at *6, <http://www.un.org/esa/coordination/ngo> (Oct. 19, 2003) [hereinafter Guidelines]. DESA not only screens NGO applications for consultative status, but also supervises conference accreditation, reviews quadrennial NGO reports, and provides NGOs with information. *Id.*

34. See KEPLER-SCHLESINGER, *supra* note 28, at 277.

35. Resolution 1996/31, *supra* note 29, ¶ 2.

36. *Id.* ¶ 4.

37. *Id.* ¶ 6.

38. *Id.* ¶ 9.

39. *Id.*

40. *Id.* ¶ 10.

41. *Id.*

42. *Id.* ¶ 11.

accountable to its members through voting rights or another method of democratic accountability.⁴³

Furthermore, an approved NGO must be private in nature and not a government creation.⁴⁴ The DESA does not independently verify actual compliance.⁴⁵ Finally, an organization must obtain most of its financial support from members or national affiliates.⁴⁶ Any government contributions must be reported to ECOSOC.⁴⁷ DESA does not independently verify the information contained in audited financial statements submitted in support of an application.⁴⁸

2. Consultative Arrangements Available to NGOs

There are three different types of consultative arrangements available to NGOs: general, special, and Roster.⁴⁹ General consultative status affords the greatest bundle of rights.⁵⁰ A group is eligible for this category if it has "substantive and sustained contributions to make"⁵¹ in pursuit of UN objectives. Furthermore, the group must be "closely involved with the economic and social life" of its constituents, and have members "broadly representative of major segments of society" in many countries and in "different regions of the world."⁵²

Examples of general consultative members are Oxfam International, Socialist International, and the World Blind Union.⁵³ General consultative groups are few in number compared to the other two categories. As of November 1, 2002, there were 131 general consultative groups accredited by the UN.⁵⁴

43. *Id.* ¶ 12.

44. *See id.*

45. Voting rights and democratic accountability are determined by an examination of an NGO's submitted constitution or by-laws. The UN does not actually verify this requirement. Interview with Meena Sur, Program Officer, UN Department of Social & Economic Affairs, NGO Section, in Washington D.C. (Apr. 11, 2003).

46. Resolution 1996/31, *supra* note 29, ¶ 13.

47. *Id.*

48. Interview with Meena Sur, *supra* note 45.

49. *See* Resolution 1996/31, *supra* note 29, ¶¶ 22-24.

50. *See id.* ¶ 22.

51. *Id.*

52. *Id.*

53. U.N. Economic and Social Council, NGOs in Consultative Status with ECOSOC (Nov. 1, 2002), at http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf [hereinafter NGO List].

54. *Id.*

NGOs with special consultative status must "have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council."⁵⁵ The American Bar Association, Nigerian Environmental Society, and the World Jewish Congress are examples of NGOs with special consultative status.⁵⁶ The UN has given special consultative status to 1,197 organizations as of November 1, 2002.⁵⁷ Special consultative organizations in the area of human rights should adhere to the principles set forth in the UN Charter, Universal Declaration of Human Rights, and the Vienna Declaration and Programme of Action.⁵⁸

The NGOs that do not qualify for the above two categories are eligible for the "Roster" category.⁵⁹ Roster groups "make occasional and useful contributions to the work of the Council or its subsidiary bodies."⁶⁰ For example, the International Political Science Association, Sierra Club, and the YWCA of Canada are Roster groups.⁶¹ There are 921 Roster NGOs.⁶²

General and special consultative NGOs are able to consult with ECOSOC's Council in a number of ways and thus have greater power than Roster groups. They receive provisional agendas from the Council and their representatives may sit as observers at Council or subsidiary body meetings. They may present written statements to the Secretary-General.⁶³ Only general consultative NGOs may propose their own agenda items, however.⁶⁴ General consultative organizations may make oral presentations to the Council, and special consultative groups are eligible in limited situations.⁶⁵

Roster NGOs, however, have more limited rights. They receive provisional agendas, and may attend meetings within their area of competence. They are also permitted to submit written statements to the "Secretary-General in consultation with

55. Resolution 1996/31, *supra* note 29, ¶ 23.

56. NGO List, *supra* note 53.

57. *See generally id.*

58. Resolution 1996/31, *supra* note 29, ¶ 25.

59. *Id.* ¶ 24.

60. *Id.*

61. NGO List, *supra* note 53.

62. *Id.*

63. Resolution 1996/31, *supra* note 30, ¶¶ 27, 29-30.

64. *Id.* ¶ 28.

65. *Id.* ¶ 32(a).

President of the Council or its Committee"⁶⁶ upon invitation by the UN secretary general.

Resolution 1996/31 also sets forth rules concerning NGOs and international conferences convened by the UN.⁶⁷ These rules are generally very liberal. NGOs of any ECOSOC status—Roster, general, or special consultative—"shall as a rule be accredited for participation"⁶⁸ if they express an interest in attending an international conference. The operative word here is "shall." Thus international conferences must accredit ECOSOC-approved NGOs if they express an interest in attending.

An NGO that does not have ECOSOC authorization may still apply to take part in a UN Conference.⁶⁹ Non-ECOSOC NGOs must apply to the secretariat of the particular conference.⁷⁰ The application process includes a review of the purpose, programs, and relevance of activities of the organization.⁷¹ Documents to be included in the application include a copy of an NGO's constitution, annual report, and financial statement.⁷² The secretariat then submits the name of a prospective NGO applicant to member states.⁷³ Member states may comment on the application, and the applicant is given the opportunity to respond.⁷⁴

Once the secretariat decides that the NGO is competent and its activities are relevant to the conference preparatory committee (PrepCom), the secretariat will recommend accrediting the NGO to the PrepCom.⁷⁵ If the secretariat decides against accreditation, it will provide the reasons why and permit the NGO applicant to respond or provide additional information.⁷⁶ The PrepCom has the final decision on whether to admit a non-ECOSOC NGO into a conference.⁷⁷

66. *Id.* ¶ 31(f).

67. *Id.* ¶ 41.

68. *Id.* ¶ 42.

69. *Id.*

70. *See id.* ¶ 43.

71. *Id.* ¶ 44 (a)-(b).

72. *Id.*

73. *Id.* ¶ 46(d), (g).

74. *Id.*

75. *Id.* ¶ 47.

76. *Id.*

77. *Id.* ¶ 48.

The admission of a non-ECOSOC approved NGO to a UN conference is not guaranteed. Accreditation flexibility will vary from conference to conference. Admission to the many different UN conferences is guaranteed, however, if the NGO has a consultative, special, or Roster status.

3. Privileges Enjoyed by the NGOs

NGOs have several privileges when they are admitted to a conference. First, once accredited for a PrepCom session, an NGO can attend all future PrepComs and the conference.⁷⁸ Second, accredited NGOs may briefly address PrepComs and the conference at the discretion of the chairperson and the body.⁷⁹ Finally, NGOs "may make written presentations during the preparatory process," which may become official documents "in accordance with UN rules of procedure."⁸⁰

The NGO Committee monitors the contributions and conduct of consulting NGOs.⁸¹ The Committee holds a regular session at least once a year, and may hold other sessions if needed.⁸² ECOSOC-approved NGOs must submit activity reports every four years to the Committee to maintain general or special consultative status.⁸³ These reports are the primary way the NGO Committee is able to ensure that NGOs comply with membership requirements and obligations. The NGO Committee is permitted to request a further report from an NGO under exceptional circumstances.⁸⁴ Roster groups do not have to file reports.⁸⁵

In practice, the reporting system is flawed. First, the oversight framework is weak. Second, the Committee relies on information

78. *Id.* ¶ 49.

79. *Id.* ¶ 51.

80. *Id.* ¶ 52.

81. *Id.* ¶¶ 51, 61(a). Current members of the nineteen-member Committee are the United States, Cameroon, Chile, China, Columbia, Cote d'Ivoire, Cuba, France, Germany, India, Iran, Pakistan, Peru, Romania, Russia, Senegal, Sudan, Turkey, and Zimbabwe. The majority of members are from the developing world. Information sheet, UN Economic and Social Council, NGO Committee, at <http://www.un.org/esa/coordination/ngo/committee.htm> (last visited Apr. 8, 2003) [hereinafter Committee Members].

82. Resolution 1996/31, *supra* note 30, ¶ 61(b).

83. *Id.* ¶ 61(c); Guidelines, *supra* note 33, at *6.

84. Resolution 1996/31, *supra* note 30, at ¶ 1.

85. *Id.*

provided by the individual NGO.⁸⁶ Third, there is no independent investigation to verify that an NGO adheres to the principles of the UN Charter, if its constitution is democratic, or if its finances are in order.⁸⁷ This lack of independent verification potentially opens up the process to abuse, particularly in closed societies where any kind of minimal follow-up is impossible and NGOs are subject to government coercion or control.

Another problem is the Committee's workload. The Committee has too many applications and reports to process and not enough resources to adequately do the job, let alone verify information.⁸⁸

Obtaining and keeping consultative status are not guaranteed. It often depends on political factors. NGOs can have their consultative status suspended or withdrawn by the Council, upon recommendation of the Committee.⁸⁹ This occurs in situations of improper activity by NGOs. NGOs can be punished for: (1) "engaging in a pattern of acts contrary to the purposes and principles of the Charter of the UN including unsubstantiated or politically motivated attacks"⁹⁰ against UN member states; (2) receiving support from criminal activity (drug trade, illicit arms trade, etc.); or (3) if the organization did not make a contribution to the UN during the last three years.⁹¹ An organization can be suspended or forced to withdraw if it does not continue to meet the consultative status prerequisites.⁹² The Committee can also recommend reclassification of an NGO based on report information.⁹³

86. See Jurij Daniel Aston, *The United Nations Committee on Non-governmental Organizations: Guarding the Entrance to a Politically Divided House*, 12 EUR. J. INT'L L. 943, 949 (2001).

87. See *id.* at 951-52, 961.

88. *Id.* at 961. During the NGO Committee's 2001 regular session, it reviewed 145 applications for consultative status, as well as 172 quadrennial reports. See *Report of the Committee on Non-Governmental Organizations on its 2001 Regular Session*, U.N. ESCOR, Comm. on Non-Governmental Organizations, Substantive Sess. of 2001, at 1, 19, U.N. Doc. E/2001/86 (2001), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/306/18/PDF/N0130618.pdf?OpenElement> [hereinafter NGO 2001 Regular Session].

89. See Resolution 1996/31, *supra* note 30, ¶ 58.

90. *Id.* ¶ 57(a).

91. *Id.* ¶ 57(a)-(c).

92. *Id.* ¶ 55.

93. *Id.* ¶ 61(c).

D. The Politics of Consultative Status

Furthermore, politics plays a factor in whether an NGO can be given or maintain consultative status. There are nineteen NGO Committee members who represent nineteen different interests. Western democracies, like the United States, France, and Germany, are current members, but so are third world dictatorships like Cuba, China, Iran, and Sudan.⁹⁴ Organizations critical of certain Committee nations can expect a difficult time achieving consultative status, or keeping it.⁹⁵

A recent example is the NGO Freedom House, a human rights organization which promotes global democracy and civil rights. It is known for its annual "Freedom in the World" survey.⁹⁶ This survey is frequently critical of the human rights records of non-democratic regimes. An accredited NGO since 1995 with special consultative status,⁹⁷ Freedom House has had a number of complaints registered against it by Committee-member states.⁹⁸

Moreover, Freedom House had to submit a special report to the NGO Committee and address many questions posed by different states on the scope and nature of its activities.⁹⁹ Cuba expressed opposition for the group's alleged ties to the Central Intelligence Agency and its general "subversive" nature.¹⁰⁰ Russia maintained that its "activities were increasingly politically motivated."¹⁰¹ China also expressed reservations.¹⁰²

The Freedom House matter was deferred to a later meeting for consideration. Every year, certain consultative-status NGOs, often those dealing with human rights issues, are subject to complaints by governments, usually non-democratic ones. Politics can therefore be an unfortunate aspect of the review process.

94. Committee Members, *supra* note 81.

95. *E.g.*, Cuba or Russia. *See* Aston, *supra* note 86, at 949-50.

96. *See* NGO 2001 Regular Session, *supra* note 88, at 32.

97. NGO List, *supra* note 53.

98. *See, e.g.*, NGO 2001 Regular Session, *supra* note 88, at 26-35.

99. *Id.* at 26. The NGO Committee may request a special report from an NGO whose consultative status is in jeopardy of suspension or withdrawal. Aston, *supra* note 86, at 949.

100. *Id.* at 26-28. The CIA links were denied by the United States. *Id.* at 32.

101. *Id.* at 29.

102. *See id.* at 33-35.

E. UN Conferences and NGO Forums

UN-sponsored international conferences are gatherings of states, international organizations, and NGOs that hold meetings and discussions on important world topics, such as global climate change, the trade in illicit small arms and light weapons, or racism and discrimination. The purpose of UN-sponsored international conferences is to: (1) promote international awareness of important issues; (2) achieve an international consensus in formulating solutions; and (3) to interface with "civil society" to achieve conference objectives.¹⁰³

A boilerplate conference occurs as follows. First, the process begins with General Assembly or ECOSOC authorization of a world conference.¹⁰⁴ A conference secretariat is formed to run the conference and PrepComs and to accredit NGOs.¹⁰⁵ Next, usually several PrepComs are held, often divided by region or specialty bases. PrepComs generate declarations and programs of action that are forwarded to the actual conference.¹⁰⁶

NGOs hold their own parallel conference or forum around the same time as the UN conference.¹⁰⁷ The NGO forum produces two documents: a declaration and a program of action.¹⁰⁸ Next, the NGO forum sends these documents to the UN conference, hoping the elements of the documents will be adopted.¹⁰⁹ The conference drafts a final declaration and program of action on a consensus

103. See Michael G. Schechter, *U.N.-Sponsored World Conferences in the 1990s*, in UNITED NATIONS-SPONSORED WORLD CONFERENCES 3, 5 (Michael G. Schechter ed., 2001).

104. See U.N. CHARTER, art. 62(4); THE CONSCIENCE OF THE WORLD app. A, at 282 (Peter Willets ed., 1996) [hereinafter CONSCIENCE OF THE WORLD]; See also *Third Decade to Combat Racism and Racial Discrimination and the Convening of a World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance*, G.A. Res. 52/111, U.N. GAOR 3d Comm., 52d Sess., 70th plen. meeting., Agenda Item 110, ¶ 28, U.N. Doc. A/Res/52/111 (1997) [hereinafter Resolution 52/111].

105. Resolution 1996/31, *supra* note 30, ¶¶ 42-43.

106. See *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration and Programme of Action*, U.N. Doc. A/Conf.189/12 (2002) [hereinafter Durban Declaration & Programme of Action].

107. CONSCIENCE OF THE WORLD, *supra* note 104, at 51.

108. World Conference Against Racism NGO Forum, Declaration and Programme of Action (Sept. 3, 2001), available at <http://www.racism.org.za/declaration.pdf> [hereinafter NGO Forum Declaration & Programme].

109. See *NGOs Get Actively Involved in the World Conference*, DURBAN 2001: UNITED AGAINST RACISM (U.N. Off. High Comm'r for Hum. Rts., Geneva, Switz.), Dec. 2000, at 2, available at <http://www.unhcr.ch/pdf/wcrnewsletter1.pdf>.

basis.¹¹⁰ Finally, the General Assembly adopts the final conference documents.¹¹¹ Implementation and follow-ups finish the process.¹¹²

A follow-up is an important facet of the conferences. ECOSOC monitors implementation progress through its various subsidiary organs to ensure that a conference program of action is given effect. NGOs also assist in marshaling public awareness and resources to fulfill implementation.¹¹³ Since the program of action is binding on states that approved it, individual nations fulfill their action obligations.¹¹⁴

III. UN WORLD CONFERENCE AGAINST RACISM 2001

A. *Creation and Purpose*

The UN held two world conferences on racism and racial discrimination in 1978 and 1983, both in Geneva. The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from August 31–September 8, 2001, was a continuation of the WCAR's predecessors.¹¹⁵

The UN General Assembly (UNGA) adopted Resolution 52/111 on February 18, 1998.¹¹⁶ This resolution authorized the convening of a World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held prior to 2001.¹¹⁷ The UNGA believed that another conference was needed because little had been done worldwide to eradicate racism and other forms of discrimination in the previous two decades.¹¹⁸

110. See *Breakthrough in Durban*, DURBAN 2001: UNITED AGAINST RACISM (U.N. Off. High Comm'r for Hum. Rts., Geneva, Switz.), Oct. 2001, at 2, available at http://www.unhcr.ch/pdf/wcrnewsletter6_en.pdf.

111. See *id.* at 3.

112. See G.A. Res. 56/266, U.N. GAOR, 56th Sess., 97th plen. mtg., Agenda Item 117, U.N. Doc. A/Res/56/266 (2002) [hereinafter Resolution 56/266].

113. Masumi Ono, *From Consensus-Building to Implementation: The Follow-up to the U.N. Global Conferences of the 1990s*, in UNITED NATIONS-SPONSORED WORLD CONFERENCES 169, 180 (Michael G. Schechter ed., 2001).

114. Ono, *supra* note 113, at 181.

115. See Memorandum on the Inter-Agency Task Force for Preparation for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Transcript; Brief Article, 37 WKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 186, 186-87 (Jan. 22, 2001).

116. Resolution 52/111, *supra* note 104.

117. *Id.* at 5-6.

118. *Id.* at 2.

The goals of the Conference were to: (1) examine and reappraise progress; (2) examine "ways and means" of implementation; (3) increase awareness; (4) recommend changes to increase UN program effectiveness; (5) discuss roots of the problem; (6) develop action-oriented national, regional, and international measures; and (7) make sure the UN has financial resources to fight the problem.¹¹⁹ The overall objective was to formulate a *practical* plan of action to address the problem of racism and other forms of discrimination.¹²⁰

B. Preparatory Committees

Several PrepComs preceded the Durban Conference. The most important were the three world PrepComs held in Geneva. These committees determined the rules, organization, attendee accreditation, and agenda of the Conference, and started the drafting process for the Durban Declaration and Programme of Action.

1. Geneva PrepCom I

The first WCAR World PrepCom was from May 1-5, 2000. One hundred twenty-five nations and three observer states attended;¹²¹ eighty-eight NGOs participated.¹²² One of the main tasks of the PrepCom was to formulate provisional rules of procedure for the World Conference, from credential requirements and the duties of the secretariat, to the rights of non-state participants and observers.¹²³ Rules 66 and 67 dealt specifically with NGO participation.¹²⁴ Rule 66 permitted accredited NGOs to "participate . . . as observers in the Conference . . . or working group on questions within the scope of their activities."¹²⁵ Furthermore, NGO representatives were permitted to make oral statements upon invitation by the presiding

119. *Id.* at 5-6.

120. *See id.* at 6.

121. *See Report of the Preparatory Committee on Its First Session, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. GAOR Preparatory Comm., 1st Sess., at 3-4, U.N. Doc. A/CONF.189/PC.1/21 (2000), available at <http://www.unhchr.ch/html/racism/02-scndprep.html> [hereinafter *Report of Prep. Com. 1st Session*].*

122. *Id.* at 5-6.

123. *See id.* at 14, 15.

124. *Id.* at 40.

125. *Id.*

officer and body.¹²⁶ Rule 67 allowed NGOs to submit a written statement within their area of competence as long as it pertained to the work of the Conference and was on "a subject in which [the NGO] has a special competence."¹²⁷ These provisional rules were later adopted by the Conference.¹²⁸

The First PrepCom decided the themes of the Conference, which consisted of: (1) sources, causes, forms, and contemporary manifestations of racism and discrimination; (2) victims of racism and discrimination; (3) measures of prevention, education, and protection; (4) effective remedies; and (5) "strategies to achieve full and effective equality."¹²⁹ The official Conference slogan was: "United to Combat Racism: Equality, Justice, Dignity."¹³⁰

2. Geneva PrepCom II

The Second World PrepCom took place about one year after the first one. One hundred thirty-five nations and one observer attended.¹³¹ One hundred eighty-five NGOs participated. Ninety-seven of the NGOs were organizations not in consultative status.¹³²

As a result of the Second PrepCom, three working groups were established: a regional group composed of 21 countries (Group of 21), a group tasked with drafting a declaration, and another group assigned to drafting the program of action.¹³³

Moreover, the PrepCom addressed NGO issues. Six NGOs sought PrepCom accreditation, but were opposed by states pursuant to ECOSOC Res. 1996/31.¹³⁴ After a roll-call vote, five of

126. *Id.*

127. *Id.*

128. See *Adoption of the Rules of Procedure*, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. GAOR Preparatory Comm., 1st Sess., Provisional Agenda Item 4. at 1, U.N. Doc. A/CONF.189/2 (2001), available at <http://www.unhchr.ch/html/racism/01-events-ent.html> [hereinafter *Adoption of Rules of Procedure WC*].

129. *Report of Prep. Com. 1st Session*, *supra* note 121, at 18.

130. *Id.* at 17.

131. *Report of the Preparatory Committee on Its Second Session*, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. GAOR Preparatory Comm., 2d Sess., at 3, U.N. Doc. A/CONF.189/PC.2/30 (2001), available at <http://www.unhchr.ch/html/racism/02-scndprep.html> [hereinafter *Report of Prep. Com. 2nd Session*].

132. *Id.* at 4-6.

133. *Id.* at 7-8.

134. *Id.* at 9. The six NGOs were: Asian Indigenous Peoples' Pact; People's Forum for Human Rights and Development, Bhutan; Tamil Centre for Human Rights; Human

the six were accredited.¹³⁵ The PrepCom agreed to send states a list of all NGOs seeking Conference accreditation for their review in order for a final decision to be made at the last PrepCom.¹³⁶

3. Geneva PrepCom III

The third and final World Preparatory Committee was held from July 31-August 10, 2001 (shortly before the Durban Conference began). Prior to the start of the session, Secretary of State Colin Powell met with UNHCR Commissioner Mary Robinson to express his concern about singling out Israel for scrutiny and comment, and threatened to boycott the Conference if this was done. Secretary Powell stated, the United States would only accept language expressing "regret" for slavery and not a full apology. Furthermore, U.S. officials feared that a Conference boycott might be necessary as a matter of principle.

C. The NGO Forum

1. Purpose and Objectives

The NGO Forum began just before the Durban Conference. The Forum took place on August 28-September 1, 2001. Nearly 18,000 people, along with 4,000 NGO representatives, descended upon the coastal town of Durban for the Forum and Conference activities.¹³⁷

NGOs attended the Forum and Conference in order to: (1) publicize group agendas; (2) network and form links with similarly minded groups; (3) lobby and influence state participants; and (4) shape the content of the final Declaration and Programme of Action. The main themes of the NGO Forum were (1) colonization, (2) self-determination, (3) globalization, and (4) institutionalization of racism.¹³⁸

Rights in China; International Campaign for Tibet; and New Sudan Women Federation. *Id.*

135. *See id.* at 9-14. Only the NGO Human Rights in China was rejected. *Id.* at 12.

136. *Id.* at 18.

137. *Shambles and Fury in Durban*, *ECONOMIST*, Sept. 8, 2001, at 49.

138. Maria Miguel Sierra, *The World Conference Against Racism and the Role of European NGOs*, 4 *EUR. J. MIGRATION & L.* 249, 255 (2002).

2. Incidents of Anti-Semitism

Anti-Semitism was freely present at Forum events. Some attendees distributed flyers stating "What if Hitler had won?"¹³⁹ Protesters shouted "Kill the Jews" and held signs stating "Hitler should have finished the job" and "Zionism is racism."¹⁴⁰ Furthermore, Israeli and Jewish NGO representatives were harassed in registration lines by pro-Palestinian supporters.¹⁴¹ The infamous anti-Semitic Tsarist tract, *The Protocols of the Elders of Zion*, was also sold at NGO booths.¹⁴²

The Arab Lawyers Union, an accredited NGO with special consultative status since 1971,¹⁴³ passed out publications containing anti-Jewish cartoons depicting Jews with "hooked noses" and "fangs."¹⁴⁴ Protesters disrupted an anti-Semitism seminar with intimidating chants, and prevented a Jewish NGO member from speaking.¹⁴⁵ Only Jewish or Israeli accredited groups were singled out for such horrible treatment.

In spite of such a chaotic environment, Forum organizers did nothing to stop such anti-Semitic activity, even though some NGOs denounced the inappropriate behavior.¹⁴⁶ Ironically, an international conference against racism was permitting overt racism and intolerance to occur in its meeting halls.

3. Reparations and Slavery

The two other volatile topics emphasized by the NGO Forum were reparations and slavery. Activists supporting reparations issues numbered over two thousand.¹⁴⁷ Thus, such activists were

139. Michael Elliott, *The Disgrace in Durban*, TIME, Sept. 17, 2001, at 40.

140. Michael Salberg, *In Durban Morass, Who Is to Blame?*, N.Y. TIMES, Sept. 5, 2001, at A18.

141. See Anne Bayefsky, *The U.N. World Conference Against Racism: A Racist Anti-Racism Conference*, 96 AM. SOC'Y INT'L L. PROC. 65, 67 (2002).

142. See *id.*; Salberg, *supra* note 140, at 40.

143. NGO List, *supra* note 53.

144. Bayefsky, *supra* note 141; see also Tom Lantos, *The Durban Debacle: An Insider's View of the U.N. World Conference Against Racism*, 26 FLETCHER F. WORLD AFF. 31, 46 (2002); Arch Puddington, *The Wages of Durban*, COMMENTARY, Nov. 2001, at 31.

145. See Bayefsky, *supra* note 141, at 67.

146. See Gay McDougall, *The World Conference Against Racism: Through a Wider Lens*, 26 FLETCHER F. WORLD AFF. 135, 146 (2002). One U.S. delegate criticized human rights organizations for not doing enough to protest the bad behavior of many NGO participants. Lantos, *supra* note 144, at 50.

147. Jerry V. Leaphart, *The World Conference Against Racism: What Was Really Achieved*, 26 FLETCHER F. WORLD AFF. 153, 158 (2002).

influential in shaping the NGO Forum's position on the issue of reparations and demand for an apology for slavery.

D. NGO Forum Declaration and Programme of Action

After five days of speeches, press conferences, negotiations, and drafting committees, the NGO Forum Declaration and Programme of Action were produced on September 3, 2001.¹⁴⁸ They consisted of consensus documents that were forwarded to the Conference as civil society's contribution to be considered by the state conferees. These documents addressed a number of unrelated issues, ranging from the African slave trade to the Roma (Gypsy) issue.¹⁴⁹ Yet, controversy swirled around three main areas: (1) the condemnation of Israel; (2) the African slave trade and slavery; and (3) reparations for the descendants of slaves.¹⁵⁰

1. Israeli-Palestinian Issue

Israel was singled out for particularly vitriolic condemnation. Israel was declared a "racist, apartheid state,"¹⁵¹ and was accused of committing "racist crimes including war crimes, acts of genocide and ethnic cleansing."¹⁵² Israel was further condemned for the "disproportionate numbers of children and women killed and injured in military shooting and bombing attacks."¹⁵³ Further, the Declaration defined anti-Arab discrimination and "Islamophobia" as forms of anti-Semitism.¹⁵⁴

On the matter of Israel, the Programme of Action recommended a radical agenda. It called for an international force to protect Palestinians, the establishment of a "war crimes" tribunal, and a "UN Special Committee on Apartheid and Other Racist Crimes Against Humanity perpetrated by the Israeli

148. NGO Forum Declaration & Programme, *supra* note 108.

149. *See id.* Other issues included were rights for disable persons, the girl child issue (referring to young girls in developing countries who are exploited and marginalized because of their status in society), migrants, HIV/AIDS, colonialism and foreign occupation, as well as anti-Semitism. *Id.*

150. *See id.* ¶¶ 63-76, 98-99, 160-65.

151. *Id.* ¶ 162.

152. *Id.* ¶ 160.

153. *Id.* ¶ 164. The Declaration made no mention of the killing of Israeli civilians by Palestinian suicide bombers. Only Israel was subjected to condemnation on the topic of the Israeli-Palestinian conflict. *See id.* ¶¶ 98-99, 160-65, 325, 417-25.

154. *Id.* ¶ 79.

Apartheid regime."¹⁵⁵ It even called for the "reinstitution of UN resolution 3379, determining the practices of Zionism as racist practices."¹⁵⁶

2. African Slave Trade & Reparation Issues

The other controversial area was the African Slave Trade issue. Fourteen paragraphs of the 130-paragraph declaration addressed the African slave trade, slavery, and reparations.¹⁵⁷ The transatlantic slave trade of Africans was declared a "crime against humanity."¹⁵⁸ The NGO Declaration proclaimed that the slave-owning countries must "recognize their obligation to provide these victims just and equitable reparations" because "these nations . . . owe their political . . . and social domination" to the exploitation of African slaves.¹⁵⁹

The structure of the Security Council was even found to perpetuate "racism."¹⁶⁰ The UN was called to create an international court to determine the amount of damages suffered by the descendants of the African slave trade and slavery.¹⁶¹ The Forum demanded that nations benefiting from the slave trade, such as the United States, form "an international compensatory mechanism for victims,"¹⁶² which included monetary compensation.

3. Other Demands

The Programme of Action ventured into other areas of criticism. It criticized international economic institutions like the World Bank, International Monetary Fund, and WTO, which were found to "perpetuate economic and social injustices in the developing nations."¹⁶³

The United States was another target of criticism. The introductory language of the Declaration acknowledged U.S. human rights violations of "the people of Vieques, Puerto Rico."¹⁶⁴

155. *Id.* ¶¶ 417, 419, 421.

156. *Id.* ¶ 418.

157. *Id.* ¶¶ 63-76.

158. *Id.* ¶ 64.

159. *Id.* ¶ 71.

160. *Id.* ¶ 203.

161. *Id.* ¶ 231.

162. *Id.* ¶ 236.

163. *Id.* ¶ 201.

164. *Id.* ¶ 33.

The document demanded that the United States return "occupied land to the people of Puerto Rico."¹⁶⁵ The U.S. "blockade" of Cuba was also censured as violating the human rights of the Cuban people.¹⁶⁶

Some NGO representatives made efforts to defeat blatantly anti-Israeli references, but did not succeed. For example, many internationally recognized human rights organizations, such as Human Rights Watch and Amnesty International, "were asked to vote against the anti-semitic language being proposed . . . [but] [t]hey refused."¹⁶⁷

E. The Effect of the NGO Forum's Declaration and Programme of Action

After receiving the NGO Declaration and Programme of Action, High Commissioner Mary Robinson could not recommend the document to the Conference because of the inappropriate content.¹⁶⁸ The controversial language concerning Israel, reparations, and apologies for slavery was unacceptable.¹⁶⁹

The Forum thus set the tone for the Conference. The NGOs advocated one-sided international condemnation and action against Israel. The global civil society backed a controversial plan that demanded reparations and a legally binding apology from Western states for slavery. NGOs that supported the radical platform were encouraged, as some of the Forum's language found a receptive audience among some state delegations. European states and the United States grew concerned about what laid ahead.¹⁷⁰

1. The U.S.-Israeli Walkout

On September 3, 2001, the United States delegation walked out of the Durban Conference. Commenting on the reason behind this drastic event, Secretary of State Colin Powell stated that "you do not combat racism by conferences that produce declarations

165. *Id.*

166. *Id.* ¶ 34.

167. Bayefsky, *supra* note 141, at 68.

168. Sierra, *supra* note 138, at 258.

169. *See id.*

170. *See generally* Lantos, *supra* note 144, at 40-44.

containing hateful language."¹⁷¹ The official Israeli delegation also departed.

The reason for the walkouts was the anti-Israeli language in the draft of Conference documents, which was indirectly influenced by the Forum's Declaration and Programme of Action. The Western European delegations chose to stay, yet they wanted to quash any language in the final Conference Declaration or Programme of Action that would open up legal liability for slave reparations.¹⁷²

F. Durban Conference's Declaration and Programme of Action

The Conference's Declaration and Programme of Action was more tame and less controversial than the Forum's version.¹⁷³ The main substantive difference between the Forum and Conference drafts concerned the treatment of the slave trade, slavery, and reparations. Only the Durban Declaration acknowledged slavery and the slave trade as crimes against humanity.¹⁷⁴ The Programme of Action, however, was silent on this point.

The Western European delegations were successful in preventing inclusion of this language in the Programme of Action.¹⁷⁵ They wanted to prevent the possibility of liability in future reparations lawsuits from the descendants of former slaves.¹⁷⁶ The Europeans were able to do this because the Conference documents required a consensus for approval. Major European powers would not have approved the Declaration and Programme of Action otherwise. Although a formal, binding apology was not accepted, "regret" for the slave trade, colonialism, and apartheid was mentioned in the Declaration, and states that had not yet expressed apologies were urged "to find appropriate ways to do so."¹⁷⁷

171. Press Release, U.S. Sec'y of State, Colin L. Powell, World Conference Against Racism (Sept. 3, 2001), available at <http://www.state.gov/secretary/rm/2001/4789pf.htm>.

172. Puddington, *supra* note 144, at 32. A declaration that the slave trade was a crime against humanity might lead to lawsuits from slave descendants seeking compensation from former European colonial powers.

173. See Durban Declaration & Programme of Action, *supra* note 106.

174. See generally *id.* ¶ 13.

175. Elliott, *supra* note 139, at 40.

176. *Id.* Incidentally, this was also in the interests of the United States.

177. See Durban Declaration and Programme of Action, *supra* note 106, ¶¶ 99-101.

On the matter of reparations, the Programme of Action urged states to give adequate remedies, reparations, and compensation to victims of racism and related intolerance "as provided by national law."¹⁷⁸ A demand for reparations for descendants of slaves was not included.

A second major difference was that the Conference's Declaration and Programme of Action made no reference to Israel as "a racist, apartheid state." This was a major improvement over the Forum document. But the influence of Arab groups and pro-Palestinian delegations was still apparent. For example, the Israeli-Palestinian crisis was singled out for special mention—the only international dispute referred to in the document.¹⁷⁹ The Declaration contained the language "[w]e are concerned about the plight of the Palestinian people under foreign occupation."¹⁸⁰ This phrase would have been unacceptable to the American delegation had it stayed.¹⁸¹

Finally, the Programme of Action urged states to do more to fight discrimination and racism through the enforcement of new national laws, e.g., instituting affirmative action programs for numerous victim groups, ratifying international instruments regarding discrimination and intolerance, collecting data, and increasing health, education, and other resources to victim groups.¹⁸²

The Programme of Action was a "wish list" of what should be, rather than a realistic list of what could be accomplished. It was short on substance, long on rhetoric.

G. *Post-Mortem*

The Durban Conference was a lost opportunity and a disappointing and unproductive spectacle. Durban is an example of disruptive NGOs pursuing unrealistic agendas antithetical to the interests of important countries. The actions of many activist NGOs did little to promote harmony and understanding in relations between nations or to help tackle difficult problems.

178. *Id.* ¶¶ 165-66.

179. *Id.* ¶ 151. In addition, states were called upon "to counter anti-Semitism, anti-Arabism and Islamophobia." *Id.* ¶ 150.

180. *Id.* at ¶ 63.

181. Lantos, *supra* note 144, at 48.

182. See Durban Declaration and Programme of Action, *supra* note 106, ¶ 13.

Instead, they planted seeds of discord and displayed moral hypocrisy.

Examples of impractical or unhelpful NGO activity at Durban are many and can be summarized as follows. First, the actions of some NGO delegates were improper. The distribution of anti-Semitic literature, intimidation of Jewish delegates, and vocal disruptions at some meetings by many Arab delegates and their supporters were insensitive and inappropriate for an international gathering under UN auspices. The UN authorities and South African hosts should have done more to prevent the atmosphere from descending into a moral and public relations fiasco. Security personnel should have ejected disruptive attendees from meetings and other forums. NGO adherence to basic principles of civility should have been made a requirement for attendance.

Second, the NGO Forum documents were impractical and unworkable. The narrow and various interests of activist NGOs won out over realism. Furthermore, democratic Israel was declared a racist and apartheid state. The result was flawed documents that were meant to be civil society's contribution to the Conference. All of these major elements of the NGO Declaration and Programme of Action were rejected by the Conference. The NGO contribution was thus more detrimental than helpful to the state participants.

Third, the antics of the NGOs in the meeting rooms and the unbalanced NGO document contributed to the walkout of the world's most powerful country, the United States, from the Conference. Israel was also forced to leave. The final Conference Declaration and Programme of Action did not receive the approval or valuable input of the United States, which could have been quite beneficial for the Conference.

Fourth, it appears from accounts of the Durban Conference that some accredited NGOs and delegate members did not adhere to ECOSOC's "aims and purposes" clause under Resolution 1996/31, which states that NGO consultative groups must support the principles of the UN Charter.¹⁸³ The UN needs to do a better job of ensuring that NGOs with ECOSOC status, such as the Arab Lawyer's Union, which engaged in blatant anti-Semitic activity,¹⁸⁴

183. Resolution 1996/31, *supra* note 29, ¶¶ 1-2, 57.

184. See Bayefsky, *supra* note 141, at 67; Lantos, *supra* note 141, at 46; Puddington, *supra* note 141, at 31.

are punished for not adhering to UN principles. These principles certainly do not include intolerance for other races and religions. In addition, the Council has the power to suspend or withdraw consultative status from organizations which deviate from UN principles.¹⁸⁵

But the NGOs were not the only ones to blame for an unproductive Conference; others were complicit as well. In particular, Arab states like Egypt and Syria, and Muslim countries like Pakistan and Iran, supported the PrepCom's harsh treatment of Israel through the shaping of the Conference documents. These states were complicit in doing little to shed light on the major role of Arabs and Africans in the transatlantic slave trade.

The UN also aided and abetted the atmosphere of hate. While Secretary Robinson did speak out and condemn the unfair treatment of Israel, she did not exert her moral leadership to prevent the focus on the Palestinian conflict at the exclusion of many other conflicts where racism and discrimination are rampant, such as the Sudan crisis. This lack of fundamental balance in treatment of states and conflicts detracted from the legitimacy of the Conference.

Those states seeking condemnation of Israel, or a radical agenda to force Western countries to pay reparations, however, could point to "international civil society's" Declaration and Programme of Action to support their position. In this way, the NGO Forum helped to give extremists the cover of acceptance and legitimacy. Sympathetic states could only be emboldened to attack the United States and Israel given the radical positions of the NGO Forum.

In practical terms, the Conference and its resulting documents were high on lofty rhetoric, low in realistic proposals. This was contrary to the Conference's objective of agreement "on a strong practical programme of action . . . that will carry the fight against racism forward."¹⁸⁶ The Conference proceedings did not live up to its slogan of "United to Combat Racism: Equality, Justice,

185. Resolution 1996/31, *supra* note 29, ¶¶ 55-57. NGOs can be suspended or suffer withdrawal if they engage "in a pattern of acts contrary to the purposes and principles of the Charter." *Id.* The distribution of anti-Semitic literature might qualify under this provision.

186. Press Release, United Nations (Aug. 27, 2001), available at [http://www.unhchr.ch/hurricane/hurricane.nsf/\(Symbol\)/RD.918En?OpenDocument](http://www.unhchr.ch/hurricane/hurricane.nsf/(Symbol)/RD.918En?OpenDocument).

Dignity."¹⁸⁷ Secretary-General Annan's desire that the Conference and Declaration "shine a spotlight into the dark corners where racism lurks, in every society" never surfaced.¹⁸⁸

The UNGA ultimately adopted Resolution 56/266 on May 15, 2002.¹⁸⁹ The General Assembly endorsed the Durban Declaration and Programme of Action. It was satisfied with the outcome of the Conference, "which constitutes a solid foundation for further action and initiatives."¹⁹⁰ No follow up conference was approved, nor were deadlines given for implementing the Programme of Action's recommendations.

In sum, the Durban debacle seriously harmed the UN's reputation.¹⁹¹ It lessened the likelihood of the United States and the EU supporting a fourth WCAR in the future.

IV. TWO CONFLICTING SCHOOLS OF THOUGHT GOVERNING NGOS ACTIONS?

A. Acknowledging the Problem

Before a remedy to the problem of NGO excesses can be fashioned, the literature on NGO participation in the international arena must be examined. The main viewpoints on NGO involvement can be distilled and divided into two competing schools of thought, the "Accommodationist" and the "Restrictionist" schools.

1. The Accommodationist School: Increase NGO Participation

As the name suggests, the adherents of the Accommodationist school of thought want greater NGO participation in the international system. They believe an increased role would be beneficial. This school can be divided into two main camps: (1) NGOs should have *parity* with states and international institutions,¹⁹² and (2) NGOs should have *some* sort of an increased international role short of parity.

187. NGO Forum Declaration & Programme, *supra* note 108, ¶ 61.

188. Kofi Annan Press Release, *supra* note 7.

189. Resolutino 56/266, *supra* note 112.

190. *Id.* at 2.

191. Michael Banton, *Lessons from the 2001 World Conference Against Racism*, 28 J. ETHNIC & MIGRATION STUD. 355, 360 (2002).

192. A related view is the creation of a Global Peoples Assembly (GPA), where people throughout the world elect representatives to a world parliament without the

a. The "Parity" Camp

Accommodationists holding the parity view believe that NGOs deserve to be on an equal ground with states and inter-governmental organizations and institutions because they are important independent organizations representing civil society.¹⁹³ Such Accommodationists believe that NGOs should be "co-participants" in UN processes,¹⁹⁴ and should have a seat at the table at the UN General Assembly and other international institutions.

Accommodationists believe NGOs should also have voting rights on par with states. Therefore, NGOs, particularly those of an international nature, can lay claim to this new stature because they reflect and represent the global will of the people—a will often ignored by national governments.

Parity advocates can point to parity in practice at the International Labor Organization (ILO), where the triumvirate of business, employee, and state representatives comprise national delegations. At the ILO, business, employee, and state representatives each have an equal vote. If parity works at the ILO, then why not at the General Assembly?

The parity view is radical and politically impracticable. Nations of the UN General Assembly, with only a single vote, are unlikely to further dilute their power by sharing the Assembly with NGOs or inter-governmental organizations. How could any work get accomplished with potentially thousands of NGOs and states voting and participating in the Assembly and its sub-divisions? What criteria should be used to admit some NGOs and exclude others? Who would decide? Solutions to these intractable questions would be difficult. As mentioned before, states are unlikely to permit such a dramatic increase in NGO power anytime soon.

sanction of states or international organizations. It would co-exist with states and international organizations. Arguably, because a GPA directly represents civil society, it would have legitimacy and eventual international acceptance. See Falk & Strauss, *supra* note 9, at 191-95.

193. See CHIANG PEI-HENG, NON-GOVERNMENTAL ORGANIZATIONS AT THE UNITED NATIONS 231 (1981).

194. *Id.*

b. The "Short-of-Parity" Camp

The "short-of-parity" camp offers a more realistic position. For instance, Peter Spiro argues, NGO excesses can be lessened through their inclusion in international institutions. This is justifiable because the power of the state is in decline while the power of NGOs has grown and continues to grow.¹⁹⁵

Yet with power comes certain responsibilities, including accountability.¹⁹⁶ In democracies, the electorate holds state officials accountable, and poor performance on the part of elected office-holders can result in the office-holders' removal from office in the next election. NGOs, on the other hand, do not have a comparable mechanism of accountability. NGO members often do not elect leaders, and few organization members follow on-going activities with keen interest.¹⁹⁷ As a result, NGO officialdom has a great deal of flexibility in doing as it sees fit. NGO officials can renege on bargains as if there are no consequences.¹⁹⁸

Furthermore, if NGOs are kept out of the process of shaping international agreements, NGOs and their members may consider them illegitimate and repudiate them.¹⁹⁹ A lack of confidence by a sizeable portion of the world community would cause difficulties in agreement implementation, since NGOs are often an integral part of this process. NGOs are not legally obligated to comply with international accords; they are not constrained by the boundaries of international law, unlike states.

To solve this dilemma and better utilize increasingly powerful non-state actors which influence the international order, Spiro proposes for NGOs to be more fully integrated into the system of international decision-making. This can be accomplished by

195. See Peter J. Spiro, *New Players on the International Stage*, 2 HOFSTRA L. & POL'Y SYMP. 19, 19, 28 (1997) [hereinafter Spiro II]; Stephan Hobe, *Global Challenges to Statehood: The Increasingly Important Role of Nongovernmental Organization*, 5 IND. J. GLOBAL LEGAL STUD. 191, 208 (1997).

196. Spiro III, *supra* note 19, at 167.

197. Peter J. Spiro, *New Global Potentates: Nongovernmental Organizations and the "Unregulated" Marketplace*, 18 CARDOZO L. REV. 957, 963 (1996) [hereinafter Spiro I]; Nowrot, *supra* note 12, at 601.

198. Spiro III, *supra* note 19, at 162.

199. Spiro II, *supra* note 195, at 33. For example, though permissible under international law, Royal Dutch Shell chose not to sink the Brent Spar oil rig because of opposition from Greenpeace and resulting consumer backlash. Shell now seeks advice from Greenpeace on future rig disposal to avoid another backlash. *Id.* at 27, 33-34.

granting NGOs some form of legal personality.²⁰⁰ Conferred rights would include participation in international bodies and standing to sue and file *amici* in international tribunals.²⁰¹ Obligations would also be part of the deal, including adhering to bargains made.²⁰² Furthermore, NGO excesses might be further alleviated by competition in the NGO marketplace for members and influence, or even by states and corporations "buying off" NGOs.²⁰³ Thus, Spiro's co-optation plan would help accomplish greater NGO inclusion, accountability, and transparency in NGO interactions with the international system.

Another commentator, Karsten Nowrot, also argues in favor of a new international framework of inclusion where NGOs would be granted international legal status with commensurate rights and duties.²⁰⁴ Only NGOs with "a positive attitude toward the values of the international legal community"²⁰⁵ would be eligible for legal status. Organizations that are violent or corrupt would be excluded from consideration.²⁰⁶ Integration would permit better use of NGO expertise, increase accountability, and further NGO legitimacy in the world order.²⁰⁷

As an alternative to an NGO-inclusive framework, Nowrot proposes a code of conduct.²⁰⁸ While Nowrot does not sketch what a proposed code of conduct would look like, she argues that such a proposal would further the integration of NGOs as "derivative subjects of international law."²⁰⁹ One concern is that states may use a code to restrict participation of NGOs.²¹⁰

Spiro's co-optation and Nowrot's inclusion regimes are interesting and provocative, especially the suggestion to grant NGOs greater rights and legal personality. Even assuming that state power is in decline, it is unlikely states would seek a further reduction in their power by conferring more to NGOs. Even Spiro concedes that the selection process by which NGOs would be

200. Spiro III, *supra* note 19, at 167.

201. *Id.*

202. *Id.* at 167-68.

203. Spiro I, *supra* note 197, at 965.

204. Nowrot, *supra* note 12, at 614.

205. *Id.* at 596.

206. *Id.*

207. *Id.* at 596, 600-01, 614.

208. *Id.* at 614.

209. *Id.* at 35.

210. *Id.* at 635-36.

anointed with a bundle of significant rights would be problematic.²¹¹

In addition, the NGO selection process is likely to be controversial and political. Any "positive values" standard would be subjective and meet fierce opposition from the many authoritarian and totalitarian states participating in international organizations. "Horse-trading" might even occur, where states "A" and "B" would support the admission of each other's NGOs on a reciprocal basis, regardless of the "positive values" or merit of these NGOs. Developing countries would likely oppose the imposition of "Western values" on them. Thus, any "positive value" requirement would be watered down in light of opposition from many states and result in the admission of some unsavory groups.

Moreover, what will happen when NGOs break the law, as did Greenpeace? Nowrot argues Greenpeace would still be eligible because its objectives are "legitimate" and are "generally oriented toward the rule of law."²¹² But how is a "legitimate" objective defined? What is meant by "generally oriented"? These phrases are extremely subjective. Such unclear wording does little to create a bright-line standard, which is necessary for the legal integration of NGOs into an international order.

Further, if NGOs breached certain commitments, such as those regarding the implementation of international agreements, how would the breach be enforced? What penalty would result? Would traditional contract law apply? What remedy could an injured party be able to seek? Would such matters fall under the jurisdiction of a national or international tribunal, or an administrative body? Answers to these important questions are difficult, and they would have to be sorted out for Spiro's regime to work. These questions also point to the impracticality of Spiro's co-optation and Nowrot's inclusion proposals.

Transparency and accountability might be accomplished without co-optation. Misdeeds of NGOs, such as breaches of good faith dealing, could be publicized via the Internet. Misbehaving NGOs could also have their accreditation to international institutions suspended or revoked, thereby crippling their ability to advance their agendas in international forums. Although NGOs

211. See generally Spiro III, *supra* note 19, at 167.

212. Nowrot, *supra* note 12, at 618.

may not be accountable to their membership, they could be held accountable by states through restricted access to international bodies.

Two aspects of the Spiro and Nowrot proposals which merit further examination are the right of NGOs to file *amici* and the development of a code of conduct governing NGO behavior. NGO *amici* submissions would be fairly simple to implement. There are many examples of national and international use of *amici* in judicial proceedings and commissions. It would benefit decision-makers of international bodies or conferences to have valuable technical information in NGO *amici*. A code of conduct of sorts already exists under ECOSOC rules, which is technically enforceable.²¹³

All in all, the Accommodationist school offers drastic proposals based either on parity or greater inclusion in international structures. Such proposals would probably worsen rather than alleviate the myriad of problems that occurred at Durban. Greater NGO influence may have convinced states to pass even more radical Conference documents that more closely mirrored the Forum documents. The Restrictionist school might offer a more suitable approach to resolve the problem of NGO excesses.

2. The Restrictionist School: Decrease NGO Participation

Contrary to adherents of the Accommodationist school, the Restrictionist school maintains that NGOs are a problem for a state-centric international system. NGOs should not be co-opted into the international system and given greater responsibilities and influence. Rather, NGOs should be constrained.

NGOs should be restricted for a number of reasons. First, many NGOs pursue radical agendas. They want to advance extreme agendas at the international level because their attempt to lobby or enact their agendas failed at the national level.²¹⁴ Liberal environmental NGOs could never get domestic legislation passed in the U.S. Congress like provisions of the international Kyoto

213. Resolution 1996/31, *supra* note 29, ¶¶ 55-59.

214. Kenneth Anderson, *The Limits of Pragmatism in American Foreign Policy: Unsolicited Advice to the Bush Administration on Relations with International Nongovernmental Organizations*, 2 CHI. J. INT'L L. 371, 373 (2001) [hereinafter Anderson II]. Conservatives holding this view include Jeremy Rabkin, Jack Goldsmith, John Yoo, and John Bolton.

Protocol. Defeated at the national level, environmental NGOs took their cause to the international arena, hoping for a more favorable reception. The result was the Kyoto Protocol, which was heavily shaped by environmental NGOs. The U.S. Senate never ratified the international agreement, however, nor has it been ratified by major European powers.²¹⁵ The NGOs' effort thus failed on practical terms at the national and international levels.

Second, NGOs are undemocratic. As stated previously, most NGO leaders are not elected by their memberships. NGOs are more like oligarchies than democracies. And because NGO leaders are not elected, they are unaccountable to their members.²¹⁶ To leading NGO critic Kenneth Anderson, NGOs reflect not the wishes of civil society, but those of governing NGO elites.²¹⁷

Anderson has also written about NGOs' quest for legitimacy.²¹⁸ NGOs crave legitimacy from states and international organizations. Democratic states derive their legitimacy from the electorate, but un-elected NGOs lack an equivalent source of legitimacy. The source of legitimacy often invoked by NGOs is "international civil society."²¹⁹ Therefore, NGOs should be heard and have a right to participate in international forums because their "constituents" are global and not limited by borders. International organizations, like the UN, propagate this view because they too seek legitimacy via global civil society.²²⁰ The UN also wants NGO support to "placate a group of well organized and vocal critics."²²¹ Without the imprimatur of international legitimacy, NGOs have limited authority and respect, and their actions and motives may be subject to suspicion.

Third, NGOs are a threat to national sovereignty. There is a fear among some scholars that if states cede power to extra-national entities, including NGOs, it would diminish the sovereign power of states to regulate their own affairs under their own laws

215. *Id.* at 387.

216. David B. Rivkin, Jr. & Lee A. Casey, *The Rocky Shoals of International Law*, THE NAT'L INTEREST, Winter 2000/01, at 37. This can be contrasted with business corporations. While most business elite are appointed, there exists a mechanism of accountability in the form of shareholders and government regulations.

217. Anderson I, *supra* note 6, at 117-18.

218. See Anderson II, *supra* note 214, at 379, 380-81.

219. Anderson I, *supra* note 217, at 117-18.

220. See generally Anderson II, *supra* note 214, at 379-81.

221. *Id.* at 380.

and constitutions.²²² The danger is that unelected, and therefore unaccountable institutions and tribunals, would make decisions that are not necessarily in the best interests of a nation-state. Such interference violates a state's sovereignty, the right of a state to govern those within its own territory.

While much has been written about the disease, few commentators offer an adequate remedy. Anderson suggests that the United States should reject NGOs as peers in treaty negotiations, and cut off funding for NGO world conferences.²²³ Commentator Frank Vibert recommends that international NGO conferences "should be discouraged," that resources should be directed to reasonable and effective NGOs, and that NGOs should adhere to stricter standards of governance.²²⁴ But these suggestions would not fundamentally alter a broken system.

3. Need for a New Framework

The Accommodationist and Restrictionist approaches have pointed out some of the inherent problems with the NGO-international system relationship. There has not been an effective and comprehensive *framework*, however, to reform the NGO-participation process in UN conferences. Such a reform framework is desperately needed, particularly in light of debacles and unproductive outcomes like the Durban Conference.

V. SOLVING THE PROBLEM BY LIMITING NGO PARTICIPATION: A CRITIQUE OF SEVERAL REFORM PROPOSALS

There are a number of potential approaches to solving, or at least alleviating, the problem of NGO excesses. A new NGO-participation framework for UN-sponsored international conferences might consist of the following reforms, each of which will be examined and critiqued in turn: (1) institute an NGO complaint system; (2) limit accreditation of groups; (3) have equal viewpoint representation at conference meetings; (4) further limit NGO access to conference proceedings; (5) prohibit NGO representation on state delegations; (6) reduce government

222. Rivkin, *supra* note 207, at 38.

223. See Kenneth Anderson II, *supra* note 214, at 386.

224. Frank Vibert, *A Framework for Non-Governmental Organisations in International Diplomacy*, 2 CHI. J. INT'L L. 397, 398 (2001).

support of NGO forums and conferences; and (7) create an *amicus* brief system.

A. Institute an NGO Complaint System

Under ECOSOC Resolution 1996/31, NGOs with consultative status can get into trouble for not adhering to requirements for consultative status or for "engaging in a pattern of acts contrary to the purposes and principles" of the UN Charter, including "unsubstantiated or politically motivated acts against Member States."²²⁵ But the process of dealing with problem NGOs is fundamentally flawed. These NGOs are only brought to the attention of ECOSOC on the basis of reports and other information submitted to the Committee on NGOs.²²⁶

States then can challenge the re-accreditation of errant NGOs. The time frame for report submissions is four years for general and special consultative status NGOs. It could take up to four years for an offending NGO to come to the attention of ECOSOC. In addition, Roster NGOs are not required to submit such reports or information, and ECOSOC could remain uninformed about such NGOs engaging in prohibited activity. Thus, NGOs engaging in inappropriate behavior could continue to participate in UN conferences for many years without being subject to possible suspension or withdrawal of status.

Under current ECOSOC rules, there is no complaint mechanism—other than the quadrennial committee review—that would permit a member state, NGO, or other interested person to complain about improper activities on the part of an ECOSOC-approved NGO. Improper activities include disruptive behavior of NGO representatives/attendees at conferences, engaging in acts contrary to the UN Charter, and generally not adhering to UN aims, purposes, and principles. Such activity would include "unsubstantiated or politically motivated attacks against Member States,"²²⁷ as when many NGOs accused Israel of unfounded crimes.

In light of this major omission in ECOSOC's oversight of UN-participating NGOs, an independent complaint procedure should be constructed. State and consultive-status NGO representatives

225. Resolution 1996/31, *supra* note 29, ¶¶ 55-57.

226. *Id.* ¶ 55.

227. *Id.* ¶ 57.

should be permitted to submit complaints on improper NGO acts. Limiting the submission of complaints to states and other NGOs would prevent the submission of frivolous complaints from gadflies or unrecognized groups, and reduce the workload of an overworked ECOSOC. Complaints could be limited to a form, two or three pages in length, containing basic information such as the identity of the offending group, when the action(s) took place, and a description of the alleged acts. A short form would help conserve resources and promote efficiency.

The NGO section of DESA would receive the complaint as it already screens NGO accreditation applications. An Investigations Office (IO) should be set up²²⁸ to process complaints, investigate them, and make recommendations to the NGO Committee on what action, if any, to take. An investigation would probably consist of interviews of complainants and witnesses and evidence review. The IO should utilize some sort of "reasonableness standard" to vet unfounded or blatantly politically motivated complaints. During a regular or special session, the NGO Committee should then review the IO's investigation report and determine if the offending NGO should be punished. The NGO Committee would then refer its recommendation to the Council for an ultimate determination. Punishment should be that available under ECOSOC Resolution 1996/31—suspension or withdrawal of status. This would cut down on the number of NGO offenders at world conferences. Though the IO would screen unsubstantiated charges, an accused NGO would still have the opportunity to respond to charges as currently available under ECOSOC rules.²²⁹

A revision of ECOSOC Resolution 1996/31 might be necessary to codify the complaint procedure and the creation of an IO, as well as to place complaint matters before the NGO Committee's annual agenda. Though politics might intrude in the NGO Committee's examination of a complaint, it is unlikely that states would support egregious acts so as to prevent punishment. Further, all states could make complaints against NGOs, but only

228. It would cost the U.N. more money to do this, but states of the European Union and the United States would probably allocate additional funds for this purpose in order to prevent future Durban. See generally Maggie Farley, *Durban Meeting Gets a Bitter Review*, LOS ANGELES TIMES, Sept. 9, 2001, at A13.

229. Resolution 1996/31, *supra* note 29, ¶ 56.

if complaints were founded in order to avoid state embarrassment on an international level.

A complaint system would be a substantial improvement over the current system that does little to stop NGO abuses. The complaint system would accomplish the following: (1) end ECOSOC's impractical reliance on NGO self-reporting to find abuses; (2) permit more timely notification of abuses; (3) punish offenders on an annual basis instead of up to four years; (4) help deter irresponsible behavior at future UN conferences once examples were made by ECOSOC; (5) shine the light of publicity on bad NGOs, thereby increasing transparency and self-regulation; (6) allow responsible NGOs to flag bad actors that states might be reluctant to flag for political reasons; (7) bring a mechanism of accountability to NGOs that is essentially absent; and (8) bring greater legitimacy to a much-criticized ECOSOC at a low cost.

B. Better Scrutinize NGOs Seeking Accreditation

ECOSOC needs to do a better job of screening NGOs seeking accreditation and those wanting to maintain their consultative status. ECOSOC should also take a closer look at NGOs only seeking credentials for a specific world conference, like WCAR. The primary reason is that activity by some accredited NGOs does not comply with the "spirit, purposes and principles" of the UN Charter.²³⁰ The UN purposes include "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."²³¹

As mentioned earlier, the Arab Lawyers Union was one of many NGOs that did not embrace UN purposes and principles at the WCAR. Distribution of anti-Semitic publications²³² at the Conference by an ostensibly professional attorney organization does not advance the UN purpose of promoting respect for human rights based on race and religion. The Arab Lawyers Union should therefore be investigated for this incident at its next ECOSOC review period to determine if a suspension or revocation of its special consultative status is warranted.

230. *See id.* ¶ 2.

231. U.N. CHARTER art. 1(3).

232. *See Bayefsky, supra* note 141, at 67.

But situations like this can be prevented if a better NGO vetting process was instituted. The current process is an honor-based system, where an NGO provides information to ECOSOC that it is in compliance with democratic voting procedures, has a democratically adopted constitution, is not affiliated with a government, and meets headquarters and officer requirements.²³³

The DESA currently does not independently verify actual compliance with democratic accountability and financial statement requirements, however.²³⁴ This data would be difficult for DESA to verify, particularly since NGOs seeking accreditation are located in every part of the globe. At last count, there were 1,328 international NGOs with general and special consultative status.²³⁵ It would be impossible for ECOSOC's organs to conduct a thorough screening of NGOs' actual compliance with the threshold admission requirements. Investigation of NGOs would also be difficult to do in closed societies like Iran, Libya, or Cuba.

The problem of verification also applies to NGOs seeking only conference credentials. At the WCAR, 1,284 NGOs without consultative status were accredited for the Conference and all PrepComs.²³⁶ They received approval from the Conference secretariat pursuant to ECOSOC rules.²³⁷ The secretariat only needed to examine an NGO's constitution, annual report, and financial statement for approval.²³⁸ Unless the paperwork was not in order, or there was opposition from a state(s), an NGO received conference credentials. NGOs approved under this process included the Association of Human Rights in Iraq (Iraq), the Association of Islamic Women Jurists (Iran), the Black Radical Congress (United States), and the Libyan Arab Committee for Human Rights (Libya).²³⁹ Thus, the over 1,200 accredited NGOs underwent merely a cursory examination that delved little into whether they adhered to fundamental UN norms.

233. Resolution 1996/31, *supra* note 29, ¶¶ 9-12.

234. Interview with Meena Sur, *supra* note 45.

235. See NGOs Not in Consultative Status with the Economic and Social Council That Have Been Accredited to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (as of July 30, 2001), at <http://193.194.138.190/html/racism/05-ngolist.html> (last visited Feb. 21, 2002) [hereinafter Accredited NGO List].

236. See *id.*

237. *Id.*

238. *Id.* ¶ 44.

239. Accredited NGO List, *supra* note 235.

The question arises: How can a better system of scrutiny be constructed, especially focusing on verification of data submitted? A thorough investigation by DESA, particularly an actual field investigation, would be prohibitively expensive. It would make little sense for an application reviewer to travel from New York to Mali or Mongolia to ascertain whether a constitution was democratically constituted.

A way out of this dilemma is to make applications by NGOs seeking consultative status or conference accreditation subject to public review or inspection and comment or both. In essence, the international public would have a "right-to-know" option. Right-to-know laws would promote transparency by providing citizens with access to certain government information. The United States has adopted a number of such laws at the local, state, and national levels. An example is the Emergency Planning and Community Right to Know Act (EPCRA), which gives the public access to material safety data and toxic release inventories concerning the environment.²⁴⁰

Another example is an Internal Revenue Service (IRS) financial reporting regulation, applicable to non-profit organizations. Non-profits that seek federal tax-exempt status, including those created for charitable or educational purposes, must make applications and supporting documents available for public inspection.²⁴¹ These documents are made available for public review at the IRS national office.²⁴² Tax-exempt non-profits must file annual financial returns with the IRS.²⁴³ Returns must also be made available for public scrutiny at a non-profit's principal office and the national IRS office.²⁴⁴ The IRS posts some basic tax-exempt organization data on the Internet, such as an organization's address, contact person, and custodian of records.²⁴⁵

There is even a right-to-know law with international dimensions. An environmental side agreement to the North

240. See Emergency Planning and Community Right to Know Act, 43 U.S.C.A. §§ 11,001-23 (2002); Sidney M. Wolf, *Fear and Loathing About the Public Right to Know: The Surprising Success of the Emergency Planning and Community Right-to-Know Act*, 11 J. LAND USE & ENVTL. L. 217, 218-20 (1996).

241. 26 U.S.C.A. § 501(c) (2002).

242. 26 U.S.C.A. § 6104(a)(1)(A) (2002).

243. 26 U.S.C.A. § 6033(b) (2002).

244. 26 U.S.C.A. § 6104(a)(3)(A) (2002).

245. 26 U.S.C. § 6104(a)(3)-(d)(1)(A)(iii) (2002).

American Free Trade Agreement (NAFTA)—the North American Agreement on Environmental Cooperation (NAAEC)—gives citizens of Canada, Mexico, and the United States public access to certain environmental information, including "hazardous materials and activities in its communities."²⁴⁶ Interested individuals or groups may also provide submissions charging insufficient environmental enforcement of state-parties to the secretariat of the North American Commission on Environmental Cooperation (NACEC).²⁴⁷ This transnational system of public access and comment is truly unique.

A new public-scrutiny system could be built by borrowing from some of these national and international public transparency regimes. An NGO application could be subject to public inspection, just like the application of U.S. tax-exempt, non-profit organizations. This could easily be taken a step further by having DESA post an NGO application package on the Internet. This would be more practical than requiring interested persons to travel to Geneva or New York; after all, the thousands of small NGOs from industrialized nations and the developing world simply could not afford to do so. If the completed applications were also available on the Internet, DESA bureaucrats would not be bothered by constant requests for in-person inspections or copying of documents for the public. Internet postings would thus be economically efficient for both DESA and the public.

Once an NGO application is made available to "global civil society" on the Internet, an NGO or citizen could initiate an investigation of an NGO that may not be complying with application requirements. If a concerned citizen or group discovered evidence of an applicant's untruthfulness or past wrongdoing, the individual or group could notify DESA through a formal public-comment procedure. The public should have a right to comment on applications for a nominal period of time, perhaps thirty days after posting application materials on the Internet. Comments provided to DESA would help to better determine the eligibility of NGOs seeking consultative status or conference accreditation.

246. See North American Agreement on Environmental Cooperation, Sept. 14, 1993, art. 10, 32 I.L.M. 1480 [hereinafter NAAEC].

247. *Id.* art. 14; see also Mark J. Spaulding, *Transparency or Environmental Regulation and Public Participation in the Resolution of International Environmental Disputes*, 35 SANTA CLARA L. REV. 1127, 1138 (1995).

This new regime would have several advantages. First, it would enable the UN to perform better screening without spending more funds. Activist groups or states could notify DESA of NGOs that are run or funded behind the scenes by states, do not have members with voting rights, do not have a democratically crafted constitution, or stray from fundamental UN norms. DESA would still have to check into such allegations, but it would be much cheaper than hiring additional UN workers to do the initial investigation.

Second, by screening out potentially troublesome or irresponsible NGOs, the UN would at least lessen the occurrence of overt acts of racism, intolerance, and other morally outrageous acts at PrepComs and conferences. The image and reputation of the UN would not be tarnished if unruly groups were screened out before participating in conferences like Durban.

Third, a public-scrutiny regime would shine the much-needed light of transparency on NGOs that are often not accountable to their members. The posting of constitutions, officer information, and financial statements on the Internet would encourage people to learn more about NGOs.

Fourth, screening out potentially problematic NGOs at the application stage would reduce workload of NGO Committees. Fewer NGOs would achieve consultative status given the stricter review requirements. Fewer NGOs would thus be up for a quadrennial review.

Fifth, better screening at the DESA level would lessen the likelihood of politics intruding on latter reviews at the NGO Committee level. A problem NGO might still avoid punishment if a majority of the NGO Committee supported it. If such an NGO were screened out at the beginning, this scenario would not occur as often.

Finally, the new regime would lead to self-regulation among NGOs. Groups that are undemocratic, that do not respect human rights or fundamental freedoms, are controlled by authoritarian regimes, or who receive financial backing from states, would be less inclined to seek accreditation if their deviation from UN rules and norms were exposed publicly. The new public-scrutiny regime would complement the complaint system as a comprehensive check on potential NGO excesses.

C. Balance Viewpoint Representation

A diversity of viewpoints among NGO groups would be a substantial improvement over the current system, where one ideological perspective typically dominates. For instance, at the Small Arms and Light Weapons Conference (SALW), the majority of groups sought greater domestic regulation of illicit firearms. Only a tiny number of NGOs offered an opposing viewpoint.²⁴⁸

The NGOs present at the Durban Conference, were mostly liberal or leftist. This was expected, as most victim-lobby groups that seek more laws and benefits for their aggrieved members are on the left. Liberal civil-rights activist Jesse Jackson was present, as were representatives of major American left-leaning civil rights organizations.²⁴⁹ Any balancing of viewpoints was only evident by Western delegates, who countered civil society's demands for an apology for slavery, slave trade, and reparations. The scale tipped greatly toward the Palestinian side on the issue of the Israeli-Palestinian crisis. The voices of Jewish NGOs were drowned out by the more numerous Arab NGOs and their many NGO sympathizers.

To remedy this imbalance in viewpoints, ECOSOC should institute new reforms to equalize NGO policy positions. One suggestion is to divide the conference agenda into specific issue areas. Plenary meetings and drafting committees should only address particular issue areas. Issue areas should be broken down into pro and con positions. For example, there would be a pro-reparations view and an anti-reparations side.

To adequately present opposing sides of an issue, conference organizers should encourage the formation of umbrella organizations. An umbrella organization, encompassing many different groups but advocating similar interests and goals, should represent each conflicting side of a major issue. Rather than having lopsided presentations on an issue, umbrella representation would present both sides equally. Instead of twenty groups making

248. List of Non-Governmental Organizations Requesting Accreditation in Accordance With Draft Rule 64, U.N. Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, at <http://disarmament.un.org/cab/smallarms/ngolist.htm> (last visited Jan. 8, 2003). Only 10 of 177 NGOs seeking accreditation could be categorized as pro-firearm. *Id.*

249. Puddington, *supra* note 141, at 32.

statements to a conference meeting in favor of, say, reparations, and only one speaking in opposition to reparations, an umbrella group would represent the twenty pro-reparations NGOs. The presentation on reparations would in essence come from just two groups, each representing a different perspective.

Though most groups would object to proxy representation, the revised system would be more fair to NGOs that lack the clout of more organized or influential ones. ECOSOC has recognized this by authorizing the pooling together of groups "with similar objectives, interests and basic views in a given field."²⁵⁰ Further, small NGOs with limited resources could get their message out by joining with an umbrella organization. Therefore, more mainstream and less radical perspectives would result. This is because an informal consensus would be needed to speak out on major issues on the agenda, as NGOs would have a limited amount of time to present their positions to a committee or other body. Extraneous matters of little import would waste precious time and resources at an international conference that simply cannot cover all matters of concern sufficiently. The majority view would predominate within an umbrella group.

Umbrella groups have successfully presented their viewpoints at past conferences. For instance, the International Action Network on Small Arms (IANSA) represented 320 pro-control NGOs from seventy countries at the UN SALW Conference.²⁵¹ At the UN Framework Convention on Climate Change (UNFCCC), environmental NGOs banded together in a group called the Climate Action Network to more effectively lobby and coordinate the positions of its member NGOs.²⁵² Just as a nation-state government represents the interests of their citizenry, so too would an umbrella structure represent the interest of its citizenry—individual, but like-minded NGOs.

In sum, viewpoints could be balanced on very controversial and important issues by an umbrella system of representation. An umbrella group would multiply forces and permit many small

250. See Resolution 1996/31, *supra* note 29, ¶ 9.

251. See Press Briefing, United Nations, Press Conference by International Action Network on Small Arms (July 20, 2001), available at <http://www.un.org/News/briefings/docs/2001/Iansaconf.doc.htm>.

252. See Chiara Giorgetti, *From Rio to Kyoto: A Study of the Involvement of Non-Governmental Organizations in the Negotiations on Climate Change*, 7 N.Y.U. ENVTL. L.J. 201, 214, 238 (1999).

groups with limited resources and budgets to participate. The voice of an NGO that promotes an unpopular or minority position on an issue, such as the NRA, could not be drowned out if matched by one umbrella organization on the opposite side of the issue, like IANSA.

D. Better Regulation of Access to Proceedings

The NGO presence at conference proceedings should continue to be regulated to ensure that states have the upper hand during conference negotiations, committee meetings, and other forums. Accredited NGOs are only guaranteed that they can make written statements to the Secretary-General and attend PrepComs and conferences.²⁵³ They can listen to the state delegates speak and watch them conduct business, and perhaps submit a report; they are guaranteed nothing more. NGOs *may* address PrepComs and plenary conference meetings, but only at the discretion of the chair.²⁵⁴ NGOs are specifically admonished that participation at PrepComs and conferences does not "entail a negotiating role."²⁵⁵

Arguably, tougher restrictions governing NGO access to conference proceedings could be adopted. The reason for this would be to prevent a Rio or Kyoto-like scenario where environmental NGOs wield significant power in the hallways and on the floor of plenary conference sessions.²⁵⁶ These environmental NGOs also contributed in a major way to the drafting of international environmental conventions by submitting their own draft proposals to state delegations.²⁵⁷ But NGO involvement at UN-sponsored environmental conferences on climate change is a special case. NGOs are conferred a broader official role by an international multilateral treaty, the UN Framework Convention on Climate Change.²⁵⁸ Successive COP conferences have tended to expand the participation of NGOs.²⁵⁹

253. See Resolution 1996/31, *supra* note 29, ¶¶ 49-52.

254. *Id.*

255. *Id.* ¶ 50.

256. See Jo Elizabeth Butler & Aniket Ghai, *The United Nations Framework Convention on Climate Change: Implementation and Compliance*, in UNITED NATIONS-SPONSORED WORLD CONFERENCES 123, 148 (Michael G. Schechter, ed., 2001).

257. Giorgetti, *supra* note 252, at 238.

258. See United Nations Conference on Environment and Development: Framework Convention on Climate Change, May 9, 1992, art. 7.6, 31 I.L.M. 848, 862 [hereinafter U.N.FCCC].

259. See Butler & Ghai, *supra* note 256, at 148-49.

Despite these concerns, the ECOSOC-participation provisions are probably adequate to protect the primacy of state actors at world conferences. NGOs should be able to observe proceedings and provide written statements to plenary conferences. A thoughtful chair should be able to limit NGO addresses to plenary meetings in order to adhere to time constraints and topic relevance. And, though not specifically provided for under ECOSOC rules, a chair should be able to limit the number of NGO representatives at conference meetings if the numbers involved are too large and unmanageable. In such situations, NGOs should be selected for participation through a lottery to ensure fairness. Alternatively, NGOs left out could still be "present" vicariously through the submission of *amicus* briefs (this will be discussed *infra*). In sum, no reforms need be implemented to limit NGO access in actual conference proceedings.

E. Prohibit Representation on State Delegations

NGOs should be prohibited from serving on state delegations at world conferences. The main reason is the risk of "capture" by NGOs. Capture occurs when NGO representatives dominate a state delegation so that its agenda essentially becomes that of the NGO. For example, during climate change negotiations, the Centre for International Environmental Law (CIEL) not only performed an advisory role for many small island countries but also negotiated on behalf of some of them,²⁶⁰ doubtless because of its expertise in environmental law. Capture also was a problem during the Ottawa Convention negotiations, where "some countries essentially handed their policy and negotiating apparatus to activists."²⁶¹

Capture is problematic because NGOs have very different agendas than states. NGOs are single issue-oriented, while states have to take many diverse viewpoints and the national interest into consideration. States, particularly democratic ones, need to

260. Falk & Strauss, *supra* note 9, at 198-99; see also Jessica T. Matthews, *Power Shift*, FOREIGN AFF., Jan./Feb. 1997, at 50, 55. Delegate capture might be all right if the interests of a nation are closely aligned with those of NGOs, like the case of the small-island nation of Vanuatu on the issue of global warming, but delegate capture would be impractical for a superpower like the United States with diverse interests and constituencies.

261. See Anderson I, *supra* note 6, at 112.

look closely at public opinion from many sectors of society. NGOs, however, need only worry about pleasing their narrow constituencies who are at least implicitly unified behind their leaders. If, for instance, environmental NGOs capture a delegation, the views of business NGOs or other citizens with differing interests would receive short shrift. This would be unfair. Further, a state might need to incrementally implement a course of action because of political or other reasons. An NGO might consider incremental change too slow or insufficiently comprehensive, and instead advocate radical and immediate change.²⁶²

Carried to its extreme, a number of significant NGO-dominated delegations could craft a program of action or agreement that is too radical for major states like the United States to accept. It would waste UN conference resources if quixotic agreements lacking universality were the norm. Opponents of the UN would be justified in denouncing the international organization and in seeking more cuts in the UN budget or a reallocation of resources.

A ban on delegations would require an amendment to Part VII of ECOSOC Resolution 1996/31. Paragraph 50 reads "[i]n recognition of the intergovernmental nature of the conference and its preparatory process, active participation of non-governmental organizations therein, while welcome, does not entail a negotiating role."²⁶³ The paragraph should be revised to state "active participation of non-governmental organizations on Member State delegations is prohibited, and non-governmental organizations may not participate in a negotiating role." This would install a barrier between states and NGOs, but it would be necessary to prevent the likelihood of capture and its adverse effects, it would also ensure the primacy of states in a state-centric world. NGOs would still be able to lobby states and provide them with information. They would only be proscribed from participating in direct delegation and states' closed door meetings.

262. This was the position of the umbrella NGO coalition, the International Campaign to Ban Landmines (ICBL), during the Ottawa Convention discussions. The ICBL had a take it or leave it approach—ban all mines now, with no exceptions. This agenda was too far-reaching for the United States, which rejected the convention. *See id.* at 106.

263. Resolution 1996/31, *supra* note 29, ¶ 50.

F. Limit Financial Contributions

The power of the purse should not be underestimated as an element of influence in the NGO-participation process. UN international conferences are expensive affairs. It takes a lot of money to fund travel, meal, and meeting hall expenses of UN technical staff, interpreters, translators, and other personnel associated with the several regional PrepComs and the actual conference. NGOs also have to provide the bill for travel, food, and room costs to attend the Forum and the final Conference events. The host country usually provides most of the funds for the physical facilities for the conference, as well as security. But the UN still has many expenses to pay. The UN's budgeted cost for the WCAR in Durban was \$11 million.²⁶⁴ The United States even donated an additional \$250,000 to the Conference.²⁶⁵

This generous subsidy of world conferences by the United States and other nations should end. If fewer funds were available to world conferences and NGO forums, the participation of massive numbers of NGOs would correspondingly be reduced. This is because less money will buy fewer hotel-meeting rooms, conference halls, etc. Less funding would prevent world conferences from becoming huge, uncontrollable events where boisterous masses dominate forum agenda and intimidate those with contrary opinions. Budget constraints would also force fiscal discipline on conference organizers. UN organizers would be inclined to utilize more economical methods of NGO participation through the use of umbrella groups or *amicus* briefs. A conference host country might still continue to subsidize a world conference because the many attendees would give a boost to the local economy, but pressure from the United States and/or the EU might convince a host state to cut back on extravagant support.

264. Banton, *supra* note 191, at 360.

265. *A Discussion on the U.N. World Conference Against Racism: Hearing Before the Subcommittee on International Operations and Human Rights of the House Committee on Int'l Relations*, 107th Cong. 28 (2001) (prepared statement of William B. Wood, Acting Asst. Sec'y of State for Int'l Org. Aff.).

G. Create An Amicus System

1. Definition and Benefits

An *amicus curiae*, Latin for "friend of the court,"²⁶⁶ is defined as a "person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter."²⁶⁷ A legal feature developed during Roman times,²⁶⁸ *amicus* briefs have become a prominent and useful aspect of American jurisprudence in both the federal and state-court systems. Benefits of *amici* include: (1) providing tribunals with expert information that may not have been provided by parties to a case; (2) promoting judicial economy because research and analysis on specific issues have already been done for fact finders; and (3) reducing the need for expensive and time-consuming in-court testimony by experts.

2. *Amici* in the United States Federal Court System

The United States Supreme Court has long-standing *amicus* rules. It welcomes *amicus* filings on matters that have not already been brought to the attention of the Court.²⁶⁹ Submissions are "not favored" if the subject matter is not new.²⁷⁰ Third parties seeking to file *amici* in a case for oral argument must receive written consent from all interested parties, or seek leave of the Court through a noticed motion.²⁷¹ No motion for leave to file an *amicus* brief is required of counsel for government entities, such as the federal government, states, cities, counties, etc.²⁷² The Court limits briefs to thirty pages.²⁷³

United States Federal Rules of Appellate Procedure (FRAP) Rule 29 provides requirements for filing *amicus* briefs in federal appeals court cases. Like the U.S. Supreme Court, government entities may file *amici* "without the consent of the parties or leave

266. BLACK'S LAW DICTIONARY 83 (7th ed. 1999).

267. *Id.*

268. Michael J. Harris, Note, *Amicus Curiae: Friend or Foe? The Limits of Friendship in American Jurisprudence*, 5 SUFFOLK J. TRIAL & APP. ADVOC. 1, 3 (2000).

269. SUP. CT. R. 37(1).

270. *Id.*

271. *Id.* 37(1)-37(3).

272. *Id.* 37(4).

273. *Id.* 33(1)(g)(xii).

of the court."²⁷⁴ Nonparties may file *amici* only by leave of the court or consent of the parties.²⁷⁵ Leave of the court requires a motion including: (1) the movant's interest, and (2) rationale as to why the *amicus* brief is "desirable" and relevant.²⁷⁶ Finally, the submitted brief must comply with document filing standards.²⁷⁷

Thus, the rules for *amicus* brief filings in the federal court system can be boiled down to two main requirements: (1) consent of all parties or leave of court is required, and (2) the brief must not only be relevant but address matters not previously addressed to the court.

3. *Amicus* Briefs in Other Systems

Three international institutions permitting *amicus* filings are the WTO, European Court of Human Rights (ECHR), and the Inter-American Court. Each system will be examined for possible adaptation to UN conferences.

The WTO was created in 1994 at the Uruguay Round talks as an institution to promote free trade, tear down trade barriers, and assist in settling trade disputes between nations.²⁷⁸ A panel can review a trade dispute between nations for resolution.²⁷⁹ The appellate body can hear an appeal after a panel decision, and its ruling is final.²⁸⁰

NGOs have been unable to participate in WTO proceedings, unlike their considerable participation in UN bodies.²⁸¹ But in 1998, the appellate body held that a panel may consider at its discretion unsolicited *amicus* submissions.²⁸² A flood of un-

274. FED. R. APP. P. 29 (a).

275. *Id.* 29(a)-(b).

276. *Id.* 29(b).

277. *Id.* 29(c).

278. GRAHAM DUNKLEY, *THE FREE TRADE ADVENTURE: THE WTO, THE URUGUAY ROUND AND GLOBALISM - A CRITIQUE* 3 (2d ed., Melbourne University Press 2000) (1997).

279. *Id.*

280. *Id.*

281. Steve Charnovitz, *Opening the WTO to Nongovernmental Interests*, 24 *FORDHAM INT'L L.J.* 173, 173-74 (2000).

282. WTO Appellate Body Report on United States - Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, 28-29 (Oct. 12, 1998), available at http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members3_e.htm. The appellate body's ruling was based on Article 13.1 of the Dispute Settlement Understanding (DSU), which states that a panel "shall have the right to seek information and technical advice from any individual or body which it deems appropriate." *Id.*

requested *amicus* briefs need not occur, as a dispute panel does not have to accept all submissions.²⁸³

The Appellate Body has not yet reached a comprehensive rule governing *amicus* briefs, as this issue has been very controversial with nations other than the United States.²⁸⁴ In the *E.C.-Asbestos* case,²⁸⁵ the Appellate Body created some minor requirements for unsolicited *amicus* submissions by non-parties.²⁸⁶ The requirements included: (1) non-parties must apply for leave to file, and (2) non-parties must answer questions relating to relevance of the brief and background information about the non-parties.²⁸⁷ These requirements were only applicable to the *E.C.-Asbestos* matter and were not meant to be a conclusive Appellate Body opinion on *amicus* briefs generally.²⁸⁸ The WTO-*amicus* submission framework is thus in the development stages. This ad hoc system would be a poor model for UN Conferences because the conferences need a definitive structure.

In 1994, Protocol No. 11 of the European Convention merged the European Human Rights Commission with the European Court of Human Rights.²⁸⁹ ECHR's jurisdiction covers individual and inter-state human rights complaints.²⁹⁰ NGOs may bring cases before the court.²⁹¹ NGOs may also submit *amici*.²⁹²

The Inter-American Court was formed in 1979. Its purpose is to adjudicate matters involving the "application and interpretation" of the American Convention on Human Rights.²⁹³ This court has one of the most developed *amicus* brief systems of international courts.²⁹⁴ Unlike the tribunals previously discussed, this court is unique in its broad acceptance of *amici* in both

283. Padideh Ala'i, *Judicial Lobbying at the WTO: The Debate Over the Use of Amicus Curiae Briefs and the U.S. Experience*, 24 *FORDHAM INT'L L.J.* 62, 62, 73, 83-84 (2000).

284. Charnovitz, *supra* note 281, at 188.

285. *Id.*

286. *Id.*

287. *Id.*

288. Ala'i, *supra* note 283, at 80.

289. Olz, *supra* note 8, at 348-49.

290. *Id.*

291. *Id.*

292. *Id.*

293. Thomas Buergenthal, *Inter-American Court of Human Rights*, in 2 *ENCYCLOPEDIA OF PUB. INT'L L.* 1008, 1008 (Rudolf Bernhardt ed., 1992).

294. Olz, *supra* note 8, at 359.

advisory and contentious cases before the court.²⁹⁵ The Inter-American Commission on Human Rights of the Organization of American States screens human rights cases brought before the court.²⁹⁶ Though private parties may not litigate contentious cases before the court, private party attorneys—including NGO attorneys—can do so acting as legal advisers to the Commission.²⁹⁷ Human rights NGOs may also offer *amici* for the court's review.²⁹⁸ NGOs and other actors are encouraged to submit briefs, and they have "provided invaluable contributions to the court's deliberations and judgments."²⁹⁹

4. New *Amicus* System

A fledgling *amicus* system already exists within ECOSOC and the conference system. ECOSOC rules already allow NGOs to make written statements to the Council and to conference PrepComs.³⁰⁰ A Durban NGO may even submit a written statement to the Conference as long as it was Conference related and within an NGO's area of competence.³⁰¹ Many NGOs took advantage of this provision. But while the foundation exists for *amicus*-brief submissions, it is too amorphous to be effective and efficient.

Adopting a new *amicus* system might help alleviate the more radical excesses of NGO conference participation. This model should consist of elements borrowed from the U.S. federal court and WTO panel *amicus* brief systems.

295. Dinah Shelton, *The Participation of Nongovernmental Organizations in International Judicial Proceedings*, 88 AM. J. INT'L L. 611, 638 (1994). The Court can "hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant." Rules of Procedure of the Inter-American Court of Human Rights in Affect as of January 1, 1997, art. 44(1) (1997), available at <http://www1.umn.edu/humanrts/iachr/rule1-97.htm> [hereinafter Rules of Procedure of Inter-American Court].

296. Padilla, *supra* note 8, at 108.

297. *Id.*

298. Shelton, *supra* note 295, at 638.

299. Padilla, *supra* note 8, 111; Shelton, *supra* note 295, at 638. The Court can "hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant." Rules of Procedure of Inter-American Court, *supra* note 295, art. 44(1).

300. Resolution 1996/31, *supra* note 29, ¶¶ 30, 52.

301. Report of the Preparatory Committee on Its First Session, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. GAOR Preparatory Comm., 1st Sess., at 40, U.N. Doc. A/CONF.189/PC.1/21 (2000), available at <http://www.unhchr.ch/html/racism/02-scndprep.html>.

An NGO that believes it has significant information to be communicated to Conference officials could do so in the form of an *amicus* brief. The brief would be submitted to a new Conference organ, the *amicus*-brief selection subcommittee (Selection Subcommittee). Two or three submission periods would take place before the PrepComs and Conference. Briefs submitted for review would consist of three basic elements: (1) the NGO's *interest* in proposing the brief, (2) a statement of the NGO's *competence* in its asserted area of expertise, and (3) the *relevance* of the NGO's submission to the subject matter before the Subcommittee. The Selection Subcommittee would take all three elements into account.

Regarding the first element, an NGO would have to set forth why it is interested in making an *amicus* contribution. Is it because it has something meaningful to offer because of a long-term involvement with an issue under consideration by the PrepCom or conference? Or is it for other reasons?

The second factor, competence, is very important. Competence means that only NGOs with specific expertise on a subject matter should be able to submit a brief. ECOSOC already recognizes this notion in the criteria it uses to establish various levels of NGO consultative status.³⁰² An NGO devoted to environmental issues would have little competence and expertise to offer on a topic like slavery in Mauritania and Sudan. If an NGO is not competent to provide advice on a topic of concern to a conference, it would waste a PrepCom or conference's precious time to read and study an *amicus* submission that is not the product of thoughtful factual research and analysis reflective of expertise.

The last factor, relevance of a brief, is whether the brief relates to or has "pertinence to the issue at hand."³⁰³ For instance, a brief on the topic of fluid mechanics would simply not relate to racism, discrimination, or other forms of intolerance. A brief on the persecution of the Dalits in South Asia would be relevant.

Amicus briefs would be subject to specific format requirements. Page limitations would be necessary; perhaps a limit of ten pages. If no page restriction existed, lengthy NGO submissions would overwhelm the Selection Subcommittee that

302. Resolution 1996/31, *supra* note 29, ¶¶ 22-24.

303. BLACK'S LAW DICTIONARY 1293 (7th ed. 1999).

has limited time to review many submissions. NGOs would have to focus on major aspects of an issue in light of the page limitation. This would not be a problem overall, as hundreds of submissions would cover major conference issues adequately.

The question arises: How would members of the Selection Sub-committee be chosen? Would they consist of the committee as a whole, the secretary, or a just a few members of the committee? This is a very important question because views of NGOs may be unjustly excluded because of political considerations. For instance, an Iranian committee delegate would not vote for consideration of an *amicus* brief from a human rights NGO exposing Iranian intolerance and persecution of national minorities within its borders. To remedy this situation, a national delegate should not have veto power over an NGO submission. Perhaps the Selection Subcommittee should be composed of three members, the Conference secretary and two state delegates, one from the North and the other from the South, as a practical and acceptable compromise.³⁰⁴ The secretary, who should be unbiased by virtue of his or her prominent position, would have an appropriate tie-breaking vote should it go down along North-South lines. The Selection Subcommittee's non-acceptance of a brief would be final and not be subject to appeal. Otherwise, it would be too time-consuming and costly in light of potentially hundreds of NGO submissions.

In addition, NGOs should have to *choose* between giving actual oral presentations and written *amicus* submissions in Conference proceedings. This would prevent wasting a committee's time with duplicative information, and prevent NGOs from having "two bites at the apple."

There are many advantages of an *amicus* system of input. Just as in other tribunals or commissions, *amici* would provide decision-makers with condensed, expert information at a low cost—without a need for actual testimony by conference attendees—thereby promoting economy of resources. The system

304. This is probably the least controversial classification. A "democratic" and "non-democratic" government division would unleash a great deal of controversy over what is meant by democratic, with non-democratic countries not wishing to support such a "subjective" classification. A North-South or developing-developed country division would be least subject to controversy and would likely be an acceptable compromise to most states. In addition, at least one democracy will be present among the two voting states.

would also permit small NGOs, particularly those for which conference participation abroad would be prohibitively expensive, to participate in a conference in a meaningful way without incurring large expenses in the process. Another advantage is that it would reduce the rowdy atmosphere that often pervades large international conferences. The presence of boisterous NGO representatives and their supporters would be unnecessary if NGO input was done through *amici*.

The ECOSOC rules need only be slightly amended to incorporate a new *amicus* system of NGO participation. Accredited NGOs already may make written contributions to PrepComs,³⁰⁵ and conferences can adopt their own rules in this regard. A rule outlining the composition and responsibilities of the Selection Subcommittee would have to be approved by ECOSOC. The change, however, would be relatively minor.

H. Summary

The reforms sketched out above would be major improvements over the current flawed system regulating NGO involvement at UN global conferences. NGOs would make useful contributions while maintaining the primacy of state actors. NGO transparency and accountability would also be promoted through the creation of tougher accreditation standards and a complaint system. Viewpoint balance and the use of *amicus* briefs would ensure that all voices in a discussion are adequately represented. Finally, the new reforms would cost very little, and much of the vetting would be done through self-regulation and citizen watchdog groups.

VI. CASE STUDY APPLYING THE SOLUTION: WCAR 20XX

How would the suggested reforms work at an actual conference? The reform approaches developed above will be examined in the context of a future World Conference Against Racism. This will require the acceptance of a few assumptions for purposes of illustration. Some measured speculation will also be unavoidable.

In this section, the reforms will be applied to the five major segments of a hypothetical WCAR 20XX: NGO accreditation,

305. Resolution 1996/31, *supra* note 29, ¶ 52.

PrepComs, the Forum, Conference, and follow-up. Some hypothetical, but likely, situations involving NGOs under the new reform regime will be analyzed and conclusions drawn.

A. Applying a Better Screening Program

Consider the case of NGO "X." It is a long-standing Arab human rights group with headquarters in Cairo, Egypt. Its organizational mission is to advance human rights and the just treatment of Arab peoples throughout the world. It is highly supportive of the Palestinian people in their struggle against Israel.

NGO X wants to participate in WCAR 20XX in a substantial way, and seeks general or special consultative status with ECOSOC. In the alternative, it will accept only accreditation for the upcoming conference. NGO X submits an application to DESA for consideration. NGO X's constitution, officer information, and financial data are posted on the Internet for public review. Public comments are accepted for a period of thirty days from interested citizens, states, and groups.

A number of individuals examine NGO X's materials on the website. After interviewing some disgruntled former members, a watchdog group discovers that NGO X does not permit its members to vote democratically on the election of board members. Further, NGO X receives funding from Arab governments, including Syria, Egypt, and the Palestinian Authority—funds that were not reported on its ECOSOC application. The Israeli government also confirms these discrepancies and provides the watchdog group with documentation to this effect.

The watchdog group's Internet research also reveals statements by NGO X's chairman, official editorial articles, and publications of NGO X that advocate the destruction of the Jewish people and terrorist attacks against Israel and the United States. The watchdog group, the state of Israel, and individual activists separately file comments with DESA opposing NGO X's acceptance on the basis of its undemocratic nature, state sponsorship, and views that are contrary to the purposes and principles of the UN.

DESA has done an investigation based primarily on information submitted as part of the public-comment process, and it verifies the discrepancies pointed out by the watchdog group and others. DESA is now handed a political "hot potato." If it rejects

NGO X's application, a number of Arab states would be offended, charging discrimination. But DESA and ECOSOC's credibility would suffer if NGO X did not follow the eligibility rules but was still accepted. The likely end result of NGO X's application: rejection.

Under the old system, DESA would have accepted NGO X's word that it has democratic voting rights and receives financial backing from only private sources. DESA would probably not have delved into NGO X's statements and positions showing a lack of respect for human rights and fundamental freedoms for all. NGO X would have achieved special consultative status, with the only check-and-balance being a politically driven NGO Committee quadrennial review process. The NGO Committee would likely renew NGO X's consultative status because the developing states, and perhaps Chinese and Russian committee members, would support an Arab NGO out of political considerations.

Even though it was rejected for consultative status, NGO X could still seek conference accreditation. NGO X would have to file similar documentation with the Conference Secretariat, which would be posted on the Internet. Public commentary would reveal problems with the NGO's commitment to UN norms and the relevance of its activities to fighting discrimination and intolerance. States, such as Israel and the United States, would also be able to comment on the application. NGO X would have the opportunity to respond, as it would in the consultative status application. Faced with overwhelming evidence of non-compliance with ECOSOC standards, and to ensure the credibility of the UN, it is likely that an initial conference PrepCom would also reject NGO X's application. Confronted with this prospect and rejection of ECOSOC accreditation, NGO X might conclude that its Conference application would also be rejected, and not bother to apply at all.

The rejection of NGO X would be good for two main reasons: (1) it would enhance the UN's stature as a body dedicated to the principles and purposes enumerated in the UN Charter, and (2) it would prevent an NGO with questionable credentials from engaging in inappropriate behavior (e.g., spreading hate propaganda and lobbying for the insertion of volatile, anti-U.S. or anti-Israeli language in Conference/NGO Forum documents). Moreover, the reformed system would have the effect of eventually reducing the number of entrants into the ECOSOC-

approved NGO universe. This in turn would reduce the NGO Committee's workload and increase its ability to closely scrutinize quadrennial NGO reviews.

B. Applying the NGO Complaint System

With a complaint system in place, there would be more opportunities to place problematic NGOs on notice. NGO X can be used as a hypothetical example under the new regime, assuming that it had achieved special consultative status in the issue area of human rights before the new accreditation reforms existed.

NGO X was a participant at the Durban conference. It actively lobbied for language in the Forum documents stating that Israel was an "apartheid and racist state." It urged that any "Zionist" NGOs did not have a right to attend the Conference. NGO X also passed out blatantly anti-Semitic pamphlets, banners, and t-shirts at the Forum and Conference. Some of its members disrupted a presentation by a Jewish NGO.

Jewish NGOs and Israel did not take these activities lightly. A Jewish human rights organization with consultative status files a complaint against NGO X, citing it for engaging in actions not respectful of human rights or fundamental freedoms on the basis of race and religion. The state of Israel also initiates a complaint, mentioning NGO X's deviation from UN norms and for making "unsubstantiated or politically motivated attacks" against Israel. Both the Jewish NGO and Israel would have the right to file complaints with DESA because they are respectively a consultative-status NGO and a member state.

Next, the IO investigates the allegations after five more complaints are filed within the requisite time frame. An IO official interviews several Conference and Forum participants by phone, who verify that NGO X's members disrupted a meeting and passed out anti-Semitic items. Several NGOs send the IO copies of the literature. The IO concludes that there is a reasonable basis for NGO X's contravention of UN/ECOSOC norms, and makes a recommendation of suspension to the NGO Committee.

Meanwhile, NGO X is notified of DESA's investigation and recommendation. NGO X is given an opportunity to be heard. It submits a general denial of the allegations. It argues that its attack on Israel is not unsubstantiated, that apartheid exists in places like Gaza and the West Bank, and that Israel treats Palestinians in a racist manner.

The stage is now set for a political controversy in the nineteen-member NGO Committee. For many states, political considerations take precedence over others. The four Muslim states (Iran, Pakistan, Sudan, and Turkey) would likely side with a fellow-Muslim NGO in any controversy involving Israel; Cuba would also. The United States, France, and Germany would likely vote for the suspension of NGO X.³⁰⁶ Other Committee members' votes would be less predictable. China, India, and Russia might choose abstention.³⁰⁷ The West's position would prevail if at least three of the remaining East European, Latin American, and African nations voted against NGO X, with the rest abstaining like China, India, and Russia. Thus, suspension would not be guaranteed for NGO X, even in light of overwhelming facts against NGO X.

All in all, the complaint system only *might* result in the suspension or withdrawal of consultative status for an offender NGO. The problem is politics. Many nations, especially those of the developing world that hold views sympathetic to those of NGO X, would choose politics over morality and reject accusations of wrongdoing against NGO X. Because of this uncertainty in the NGO Committee, complaints that would normally be strong against NGOs like NGO X, would be unpredictable in the final outcome. The complaint system would be helpful, but it would not work with complete certainty. A great deal would depend on the composition of the nineteen-member NGO Committee and the NGO under review.

Stopping a problem NGO from initial accreditation would be easier to do than suspending an NGO already in the ECOSOC system. This is because state politics is less of a factor at DESA than at the NGO Committee. Nonetheless, some NGOs—even NGO X—could be still eliminated from time to time. A final bonus of the complaint system is that it would eventually diminish the overall number of consultative-status NGOs. This would in

306. This is based on the NGO Committee's 2000 decision (9-4-3) granting consultative status to Hadassah, a Jewish service organization. The United States, France, Germany, Romania, Bolivia, Chile, Colombia, Ethiopia, and Turkey supported approval. Algeria, Cuba, Lebanon, Pakistan, and Sudan voted against. China, India, and the Russian Federation abstained. See *Report of the Committee on Non-Governmental Organizations on Its Resumed 2000 Session (New York, 15-26 January 2001)*, U.N. ESCOR, Resumed 2000 Sess., Agenda Item 2, at 7-8, U.N. Doc. E/2001/8 (2001).

307. See *id.*

turn allow the NGO Committee to conduct more NGO reviews and do a more thorough job.

C. *Balancing Viewpoints*

The hypothetical Conference would be divided into specific issue areas, such as the Israeli-Palestinian conflict, reparations for descendants of slaves, and expanding anti-discrimination laws. These issue areas would be further divided into pro and con positions.

For example, on the topic of the Israeli-Palestinian conflict, the Secretariat would invite oral comment from the two opposing camps, one pro-Palestinian, the other pro-Israeli. As at the Durban Conference, NGOs supporting the Palestinian cause would likely outnumber those of the Israeli camp. Rather than have hundreds of NGOs speak out on just one side of an issue, the Conference would invite two or three principal NGOs to present comments to the Conference on opposing sides of an issue. Perhaps a new umbrella group, NGO "P," would be formed to pool resources and voices to represent hundreds of pro-Palestinian NGOs that could not adequately present their views otherwise. The umbrella group would be a "voice multiplier."

Similarly, NGO "I" would represent several Jewish or pro-Israeli organizations. A maximum of six groups would thus address the Conference, including NGOs P and I. The non-umbrella groups would be established major organizations with international visibility and stature.

The balancing of viewpoints would make for a better Conference. Issue positions would be better developed, as the six NGOs would have more time to present their arguments. This would be unlike the Durban Conference, where sound bites were the rule and statements were brief due to the volume of participants. Equal time would be given to both views, guaranteeing fairness to opposing views. It would not give the impression that all of global civil society supported the Palestinian cause, as was the case at Durban. Some NGOs might be disgruntled because they were prevented from speaking to the Conference. They would have the opportunity to submit *amicus* briefs, however, and to speak out during the Forum proceedings.

In addition, a more limited pool of testifying NGOs would give state delegates an in-depth understanding of the conflict. Thus, it would help state delegates better formulate a well-

rounded final declaration and program of action. The intolerant policies of the Palestinian Authority and the human rights violations of suicide bombers would be given public treatment on an equal basis with Israeli rights violations.

D. No NGOs on State Delegations

NGO representatives would not be permitted on state delegations at the future WCAR. This reform is necessary in light of instances of NGO-delegation dominance at recent world conferences. This would prevent, for example, accredited NGO "Y," a U.S. civil-rights NGO advocating the national and international expansion of affirmative-action laws, from placing members on a U.S. (or other) delegation. Similarly, accredited U.S. NGO "Z," favoring a contraction of affirmative-action laws, would be proscribed from having representatives on a U.S. conference delegation. The result: (1) no single outside-induced ideological perspective would dominate delegation discussions; (2) states would be more inclined to accept different points of view, rather than just an NGO "Y" or NGO "Z" view; and (3) the risk of capture would be reduced significantly.

Both NGO Y and NGO Z would be free to participate like other NGOs at the PrepComs, the Forum, and Conference. They could be part of umbrella groups, submit *amicus* briefs, observe proceedings, etc. They just would not be part of national delegations. Conversely, states would still be able to seek the counsel and input of NGOs, just not as an integral part of the delegation. State primacy would be ensured.

E. Limiting Financial Contributions

Assume a major reduction in financial support at WCAR 20XX in the amount of twenty-five percent. This would affect the Conference in many ways. First, the length and scope of the Conference would be reduced. Instead of a nine-day conference like Durban, WCAR 20XX would be a six or seven-day event. Regional PrepComs would probably have to be cut from four to three. Second, the PrepCom and Conference agendas would be trimmed down and less ambitious. Core issues would be emphasized over more peripheral matters.

Third, with a slimmed-down agenda and smaller meeting halls, NGOs would participate in fewer numbers than at Durban. Larger, more mainstream NGOs would be in attendance, while

smaller groups would be less inclined to show up. Arguably, thousands of NGOs might still attend the parallel Forum, as the UN would not have direct control over the parallel proceedings. An NGO would have to do a cost-benefit analysis and determine whether it would be worthwhile to devote limited resources to a conference of reduced scope and stature, especially when compared to the massive Durban Conference. *Amicus* briefs might be a better alternative for some NGOs instead of actual attendance.

Fourth, a smaller gathering would be more manageable from a security perspective. Mobs and demonstrators would be easier to handle, and fewer disruptions would occur. Finally, the smaller the conference, the lesser the media attention. Media reports of protests and hateful sloganeering would be bad for the Conference. Reports of thoughtful deliberations and progress being made on important social issues would be good, but reports of this nature tend to be buried in the back pages of national and international newspapers.

Therefore, financial cutbacks would merely result in a scaled-back Conference agenda and fewer NGOs present. Significant work could still be achieved, and the Conference would be more manageable and effective.

F. Adding *Amicus* Briefs

If WCAR 20XX would employ the new *amicus* system, NGOs would now have a choice, to make oral presentations to PrepComs or the Conference, or submit *amici*. For example, NGO Y, the civil-rights organization, may decide to exercise a combination of both. It submits *amici* to the several PrepComs and provides oral testimony at the actual Conference.

NGO Y would submit three different *amicus* briefs on time prior to each of the three PrepComs. Each brief will meet the ten-page limit required by new ECOSOC standards. Then the briefs are forwarded to the respective Selection Subcommittees.

The Selection Subcommittees, three for the PrepComs and one for the Conference, are each composed of two state members and the Conference secretary. The state members are composed of one delegate from the North and one from the South.

The respective Subcommittees examine each of NGO Y's briefs. The briefs are evaluated for compliance with the three submission criteria: the NGO's interest, its competence, and

document relevance. NGO Y was formed to achieve social justice and promote civil rights for underrepresented minority groups. It fulfills the interest prong. NGO Y also meets the competence factor, as it is active in lobbying, education, and promoting civil rights for several decades. It satisfies the last prong, as its *amici* concern the topic of strategies to achieve full and effective equality of all people—an issue addressed by the Conference. NGO Y is considered by most, including those on the Selection Subcommittee, to be a mainstream group. All the briefs are accepted by the PrepComs.

NGO Y can submit the briefs in lieu of making oral statements at the three PrepComs. This is beneficial to NGO Y because it has chosen to only attend one PrepCom, and its views will still be communicated to the other two PrepComs via its *amicus*.

For the WCAR, NGO Y can send several representatives to testify orally on the topic of achieving equal opportunity for all. Oral testimony is a good way to make a more memorable impression on the state delegates at the Conference in a public setting.

There could be instances where an NGO's brief would be rejected, particularly if all of the prongs of the submission test are not met. But this would likely happen in only rare cases. Regarding the competence factor, all accredited NGOs already meet this criterion. NGOs need to be competent in a particular area in order to receive consultative status or Conference accreditation. The interest factor is easily fulfilled because a group merely needs to have some sort of legitimate concern for the subject at issue. The relevance factor also has a low threshold for acceptance. The brief simply has to relate to a matter being addressed by a conference.

The risk of veto by countries on a political basis would be minimal. For example, a Subcommittee member from a developing-world dictatorship could not veto a brief from a civil rights group like NGO Y or Human Rights Watch. This is because the votes of the other two delegates, one by the North, such as an EU member, and the other by the Conference secretary, would override the South's vote.

All in all, the *amicus* system would appear to work. NGOs would be able to make useful contributions to PrepComs and the conference whether they are present or not. NGOs need not send

representatives to every PrepCom because they can submit briefs instead. This would reduce costs for NGOs. The acceptance criteria are very lenient, so the vast majority of submissions would be accepted by the Selection Subcommittee. Finally, the system has a check-and-balance, in the form of the tripartite membership of the Selection Subcommittee, to ensure fundamental fairness and limit the intrusion of politics in the selection process.

G. From Declaration Through Follow-Up

The NGO Declaration and Program of Action would likely be much more toned down than that produced at the Durban Conference. Many NGOs that do not adhere to UN norms would have been screened out before achieving consultative status or Conference accreditation. Some NGOs would have been suspended after IO investigations revealed patterns of improper activity. All of these screening efforts would reduce instances of boisterous demonstrations and acts of intimidation or insensitivity by some NGOs and their supporters. A more responsible NGO gathering would result. This would translate into a more thoughtful and less vitriolic Forum and final documents.

For a number of reasons, the final Declaration and Program of Action at WCAR 20XX would be less one-sided and impractical than that of the Durban Conference. Lack of NGO participation on state delegations would reduce the risk of capture. The scaled-back scope of the Conference would enable states and the Secretariat to manage and control NGO testimony before committees more effectively. Finally, through viewpoint balancing, racial discrimination and intolerance in closed societies would be exposed.

For example, the discriminatory policies of Arab nations would be covered by the Conference along with allegations of Israeli abuses in the West Bank. Israel would not be singled out. Therefore, the agenda of the Conference and the final Conference documents would be more balanced and fair. Important players like the United States and West European nations would be disinclined to walk out or reject the Declaration and Program of Action. Finally, a more pragmatic Program of Action would result in the actual implementation of proposed actions through follow-up by states, something that did not take place after Durban.

VII. CONCLUSION

The six-factor reform approach would be a substantial improvement over the current UN system governing NGOs, as seen by the hypothetical application of the new approach. NGO excesses would be reduced without restraining the ability of NGOs to participate in a meaningful way at UN conferences. The likelihood of radical programs of action would be lessened. The primacy of states would be assured. The reputation of the UN, as a sponsor of international conferences, would be enhanced. All of this would be accomplished through fairness in tackling issues of world concern, and in formulating solutions with the cooperation of global civil society.

The new approach rectifies many flaws that exist in ECOSOC's management of NGO participation, while at the same time addressing many of the concerns broached by the Accommodationist and Restrictionist schools. Both schools' worries about lack of NGO accountability are partly solved by the NGO accreditation screening and complaint reforms. Troublesome NGOs would be prevented from becoming part of the UN conference system. The posting of NGO data on the Internet would especially promote transparency. Restrictionists would be pleased by the stifling of radical NGO agendas and the reassertion of state primacy. Radical programs of action would be constrained through viewpoint balancing at committee and conference meetings and the vetting of problematic NGOs. Lastly, state primacy would be helped by ending the practice of NGO participation in state delegations.

Keeping in mind that the relationship between the UN and NGOs is a consultative one under Article 71, the new approach would preserve the ability of NGOs to consult with UN conferences through actual attendance or the submission of *amicus* briefs. Although Accommodationists would be disheartened by not granting NGOs legal personality or inclusion on state delegations, this is not the role envisioned by the founding UN Charter. This new approach would ultimately improve the UN's image and the productive output of world conferences.