

2. Domesticating civil society at the United Nations

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For a number of years, the actors and the observers of the United Nations' Human Rights Protection System have confirmed the ever-increasing presence of Non-Governmental Organizations (NGOs) with similar views to those of the States. These organizations are often referred to as GONGOs – that stands for Governmental Non Governmental Organizations or Government Orientated NGOs¹ – a term that expresses well the ambiguity of the phenomenon. The aim of this study is not to lead an inquiry or to expose anybody. Based on a factual assessment of the situation, it will define and identify a non-legal category of NGOs. This factual assessment results from a careful reading of the summary records from the sessions of the United Nations Commission on Human Rights and of the new Human Rights

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¹ See N. Ravi (2000), 'Le problème des organisations pro-gouvernementales', *Moniteur des droits de l'homme*, 49(50), 8–9. The author relates the fact that at the Committee's 56th session, he 'noticed pro-governmental organizations from the US, China, Cuba, Egypt, Algeria, Iran, Bangladesh and even from Nepal'. In this study, we will not be looking into the other categories of 'problematic' NGOs such as the 'BINGOs', Business Initiated NGOs, run by businesses and which are particularly present at the World Trade Organization (cf. FIDH (2001), *L'OMC et les droits de l'Homme. Pour la primauté des droits de l'Homme. Pour la création d'un statut consultatif des ONG*, 320, 11–14). The Commission on Human Rights and the UN are not the exclusive fields of action of this type of NGOs, but the ones that have been chosen for this study. The problem of NGOs with a pro-governmental view has been raised at several UN World Conferences and in particular at the Durban Conference against Racism; cf. D. El Yazami and A. Madelin (spring 2002), 'Durban et les ONG', *Projet*, 269, 25–32 or more recently at the World Summit on the Information Society. See for example the press release from Human Rights Watch, 'Dispatch from Tunis: The Civil Society Summit that Wasn't', 14 November 2005, and the one by the International Federation of Human Rights Leagues/Human Rights in China, 'China blocks open discussion at WSIS with procedural manoeuvring', 20 September 2005.

² Following the proposal made the Secretary General of the United Nations in its report on the reform of the Organization, the General Assembly adopted resolution

Council,² from 1996 to 2006, with the goal of identifying NGOs whose statements are exclusively or almost exclusively aimed at defending a governmental point of view.³

The non-legal category is the 'servile society'. For the purpose of this study, all NGOs which, on reading their statements, appear to be exclusively 'serving' the state, with which they generally share the same nationality, are part of this servile society.⁴

The phenomenon, albeit limited, leading to the introduction of servile NGOs in the UN must be analysed together with actions led by certain states against independent human rights NGOs. Increasing attacks are directed towards NGOs within the Commission on Human Rights and the Human Rights Council. They are successfully relayed by these same states within the Committee on NGOs of the Economic and Social Council (ECOSOC), an intergovernmental body in charge of making recommendations to the Council that can grant, suspend or withdraw the consultative status which the NGOs can claim.⁵

60/251 of 15 March 2006, creating a new Human Rights Council. The Council is replacing the Commission on Human Rights, which thus held its last session (the 62nd) in March–April 2006. As of this writing, the Council had convened three ordinary sessions and four extraordinary sessions. Unfortunately, only a few of the summary records had already been published. The situation as regards participation of NGOs is not substantially modified, as resolution 60/251 stipulates that 'participation of and consultation with observers including [...] non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities'. Thus NGOs that had access to the UN Human Rights Commission now have access to the Human Rights Council.

³ The same attentiveness was not given to all the Sub-Commission's reports but a quick read-through enables us to say the phenomenon is broadly the same.

⁴ An organization that can be considered *prima facie* servile is one that systematically adopts a laudatory view of its own government or which never criticizes it. An organization can be considered servile *prima facie* if it concentrates its interventions on a country, or on one of a government's major issues regarding foreign affairs, and/or that limits itself to repeating a view held by a government on this given country and issue. By using this approach we are looking to avoid any misunderstanding on the nature of the organizations considered. But by doing so we are probably omitting a number of organizations that, either because of their behaviour at the Commission, their origin, their way of functioning or their financing, would qualify, in the eyes of other observers, as 'GONGOs'.

⁵ The study is based on the annual reports of the Committee in charge of NGOs from 1990 to 2006.

Thus (1) the strategy tending to the creation of a servile society comes with (2) a vigorous policy of bringing civil society into line.

1 THE CREATION OF A SERVILLE SOCIETY

It is necessary to assess the situation that has prevailed in the last ten years at the Commission on Human Rights, before attempting to explain how servile NGOs gained access to this forum and are now present in the Human Rights Council. We will then ask ourselves about the validity of an initiative of the United Nations' Secretariat: the NGO Informal Regional Network (UN-IRENE). It looks as though this network's activity tends to facilitate the institutionalization of the servile society at the UN.

The Situation: a Servile Society in Action at the Commission on Human Rights

A detailed analysis of the summary records from the sessions of the Commission on Human Rights allows us to define precisely the phenomenon and distinguish two scenarios.

In two instances, the selected NGOs operate in a situation of conflict between states. Their position tends to discredit the other state by attributing to it human rights violations and, conversely, to improve the reputation of the state they serve by tirelessly emphasizing its successes in the field of human rights. This refers to the relationships between the USA and Cuba and the conflict between India and Pakistan over Kashmir.

In two other instances, the function of servile NGOs is limited to a laudatory and imitative role: they relay governmental views while attributing every virtue to their government. The reproduction of governmental views can eventually lead to attacks on 'enemy' states. This mainly concerns two countries: China and Tunisia.

Only organizations that are regularly active at the Commission on Human Rights or at the Sub-Commission on Human Rights are mentioned in this study. But it is to be remembered that there are many other servile NGOs benefiting from a consultative status which are not mentioned, simply because they have not revealed themselves until now through these UN bodies.

A: NGOs that intervene in conflicts between States

The US-Cuba conflict In recent years, numerous Cuban NGOs have been granted a consultative status. The United States of America has been, within the Committee on NGOs, the only State to oppose this type of infiltration by Cuba.

Freedom of association is very limited in Cuba as no NGO can be created without the consent of the Cuban Government and Communist Party.⁶

There is no doubt that the Cuban government is willing to have its diplomatic orientations backed up by so-called national NGOs, which are, in practice, either direct offshoots of the state and Party, or organizations with very little leeway, tightly watched and controlled, especially when on the international scene.

Thus Cuban NGOs' views combine defence and attack vis-à-vis a sole enemy: the United States of America. Each intervention includes a laudatory element aimed at demonstrating the legitimacy of the Cuban authorities: the welfare of the Cuban women and youth, the justification for such-and-such repressive legislation presented as a measure of 'self-defence', 'heroic resistance of the Cuban people' against imperialism, and so on.⁷

The interventions denounce first and foremost the blockade imposed by the US, which is presented as being the only true source of human rights violations on Cuban soil; secondly, US practices at Guantanamo military base and the denial of Puerto Rico's independence; thirdly, the use, by the US, of weapons containing depleted uranium in Iraq and Kosovo; fourthly, US support for Israel's 'terrorist' policy towards the Palestinians; fifthly, the fact that the debates at the Commission on Human Rights are politically biased, particularly regarding the Cuban case, and the appointment by the

⁶ See M. Doucin (ed.) (2000), *Guide de la liberté associative dans le monde. Les législations des sociétés civiles dans 138 pays*, Paris: La documentation française, pp. 166–7.

⁷ Centro de Estudios de la Juventud, E/CN.4/2000/SR.38, E/CN.4/2001/SR.29, p. 35, E/CN.4/2003/SR.35, E/CN.4/2004/SR.25, pp. 29, 37, 41, 43. Centro de Estudios Europeos, E/CN.4/1997/SR.51, E/CN.4/1999/SR.19, p. 29, E/CN.4/2000/SR.20, E/CN.4/2001/SR.35, E/CN.4/2002/SR.32, E/CN.4/2003/SR.19, pp. 28 and 38 (joint statement), E/CN.4/2004/SR.18, pp. 19, 25 and 28 (joint statement); Felix Varela Center, E/CN.4/1998/SR.46; Federation of Cuban Women, E/CN.4/2000/SR.17, pp. 27 and 38, E/CN.4/2003/SR.22, pp. 26, 34, 38 and 42 (joint statement), E/CN.4/2004/SR.14, pp. 18, 29, 33, 38 and 41 (joint statement) and written intervention, E/CN.4/2002/NGO/119; Movimiento Cubano por la Paz y la Soberanía de los pueblos, E/CN.4/1997/SR.51, p. 39, 51 and 52, E/CN.4/1998/SR.46, E/CN.4/2001/SR.29, E/CN.4/2002/SR.19, p. 34, E/CN.4/2003/SR.17, p. 22, 26, 34, 38 and 42 (joint statement), E/CN.4/2004/SR.19, p. 28 (joint statement) and written interventions, E/CN.4/2002/NGO/113, pp. 114, 115, 117, 175, 176 and 177; Organization of Solidarity of the Peoples of Africa, Asia and Latin America (OPSAAAL), E/CN.4/1999/SR.19, p. 29, E/CN.4/2000/SR.26, p. 35, E/CN.4/2001/SR.29, E/CN.4/2002/SR.40 (joint statement), E/CN.4/2003/SR.34, pp. 38 and 42 (joint statement), E/CN.4/2004/SR.22 (joint statement), p. 29; National Union of Jurists of Cuba, E/CN.4/1998/46, E/CN.4/1999/SR.19, E/CN.4/2000/SR.26, p. 35, E/CN.4/2002/SR.40 (joint statement), E/CN.4/2003/SR.34, pp. 38 and 42 (joint statement), E/CN.4/2004/SR.25, pp. 28, 34, 38 and 41.

Commission of a Special Rapporteur on the human rights situation in Cuba, who is accused of serving American imperialism. More generally, Cuban NGOs criticize the oppression by Western countries of developing countries, which is carried out under US leadership with the complicity of the international financial institutions.

In the US, governmental-originating NGOs do not exist as such and the freedom of association is on the whole respected, even if numerous associations are de facto dependent on the government, as their financing largely depends on governmental sources. For instance, an organization such as the Freedom House – often challenged by Cuba as we will see later – draws the major part of its finances from governmental sources and, in a way, as far as human rights are concerned, behaves as an auxiliary of US foreign policy.

In addition, the US government sometimes very actively supports NGOs formed in their great majority by exiled Cubans who oppose their government. These American NGOs are not present in international bodies. On the other hand, their members are frequently seen integrated in delegations of international NGOs at the sessions of the Commission and the Sub-Commission on Human Rights.

Thus, at the session of the Commission on Human Rights in 2000, the Executive Director of the Centre for a Free Cuba, based in Washington D.C., was the only representative of the NGO called Liberal International.⁸ He was also present in 2001, working for the same NGO, but this time in a delegation of three.⁹ In 2002 and 2003, the delegation of this NGO was back to being solely made up of Cubans.¹⁰

A Franciscan priest called Miguel Loredo and Jesús Permuy, both members of the Centre for Human Rights based in Miami, were members of the Freedom House delegation at the Commission on Human Rights in 2000 (only Loredo), 2001, 2002, 2003 and 2004.¹¹

Miguel Loredo had previously presented himself before the Commission on Human Rights in 1993 and 1997, under the wing of the International

⁸ See the list of attendance for this session, E/CN.4/2000/INF.1, p. 53.

⁹ See the list of attendance for this session, E/CN.4/2001/INF.1, p. 103.

¹⁰ See the lists of attendance for these sessions: E/CN.4/2002/INF.1, p. 47 and E/CN.4/2003/INF.1, p. 50.

¹¹ See Cuba's report before the Committee of NGOs at the session of 2001, doc. E/2001/86, p. 28: '... Freedom House accredited as its representatives members of terrorist organizations, such as Jesús Permuy, Miguel Loredo and Janisset Rivero, persons of Cuban origin, who engage in a wide range of activities under the orders of the National Cuban American Foundation, a terrorist organization based in Miami'.

Association of Educators for World Peace,¹² and in 1994 with the International Association for the Defence of Religious Liberty.¹³

In 1999, the International Council of the Association for Peace in the Continents (ASOPAZCO), an organization made up of Cuban opponents exiled in Madrid, Spain, was granted special consultative status at the ECOSOC. This organization participated in the session of the Commission on Human Rights in 2000, represented by its president and 15 other members.

This all-too-obvious presence of Cubans caused the Cuban government to lodge a complaint before the Committee on NGOs, to obtain the suspension (in 2000), then finally the definitive withdrawal (in 2005) of the consultative status of ASOPAZCO.¹⁴ Even if all these people are not members of servile NGOs in the strict sense of the definition of our category, there is no doubt that a very strong bond exists between US exiled anti-Castro movements and the US government.

The Kashmir conflict For many years, India and Pakistan have turned UN bodies into a symbolic battleground over Kashmir. Each year, governmental and non-governmental delegations have to endure both the invective of states and mutual accusations under every item on the agenda. As if this were not enough, these same accusations are echoed by Pakistani and Indian NGOs. These NGOs are well known to the Commission's and Sub-Commission on Human Rights' participants: they are, because of their multiple and repetitive intervention, a source of stress and congestion. When one reads the debates, it is easy to recognize the NGOs that support the Pakistani or the Indian causes.

THE NGOS SUPPORTING THE PAKISTANI CAUSE The first organization is purely national, since it is the 'official' mass organization of the women from Pakistan: the All Pakistan Women's Association.¹⁵ As for the two other active organizations within the Commission, the World Muslim Congress¹⁶ and the

¹² See E/CN.4/1993/SR.62, para. 5, and E/CN.4/1997/SR.23, para. 18 and following (in both cases, the speaker was interrupted by a motion of order from Cuba).

¹³ E/CN.4/1994/SR.53, para. 30.

¹⁴ See *infra*.

¹⁵ See oral presentations, E/CN.4/1996/SR.26, 44; E/CN.4/2003/SR.35, p. 39.

¹⁶ See oral presentations, E/CN.4/1996/SR.5, pp. 17, 22, 27, 41, 44 and 47; E/CN.4/1997/SR.6, pp. 17, 21, 30, 39 and 52; E/CN.4/1998/SR.31; E/CN.4/1999/SR.11, pp. 19, 24, 34 and 41; E/CN.4/2000/SR.6, pp. 9 and 39; E/CN.4/2001/SR.47; E/CN.4/2002/SR.8, 14, 22, 42, E/CN.4/2003/SR.12, pp. 19, 28, 39 and 44; E/CN.4/2004/SR.14, pp. 25, 29, 35 and 38.

International Islamic Federation of Students Organisations (IIFSO),¹⁷ they are evidently Islamic organizations, probably mainly financed by private funding and whose position coincides with Pakistan's because of obvious common interests. The available information makes it impossible to ascertain that organic, legal, financial or de facto links exist between these organizations and the Pakistani government or administration.

Officially, these organizations defend worldwide Muslim interests and benefit from 'relays' throughout the Muslim world. In fact, their role at the Commission is almost exclusively devoted to defending the Pakistani position over Kashmir.¹⁸

The position of these three organizations is identical. They denounce not only the Indian 'occupation' of Kashmir, but also the 'massive and blatant' violations of human rights, not to say 'genocide' of the population of Kashmir by India. The same position is recycled with a few adjustments on numerous items of the agenda of the Commission.

THE NGOS SUPPORTING THE INDIAN CAUSE These Indian organizations also intervene on numerous agenda items at the Commission on Human Rights to denounce the human rights violations by Pakistan.¹⁹ These denunciations are

¹⁷ See oral presentations, E/CN.4/1995/SR.46; E/CN.4/1996/SR.41, p. 44; E/CN.4/1997/SR.9, pp. 18, 23, 30, 46 and 54; E/CN.4/1999/SR.46; E/CN.4/2001/SR.35; E/CN.4/2002/SR.14, pp. 34, 41 and 46; E/CN.4/2003/SR.12, pp. 29, 35, 39 and 44; E/CN.4/2004/SR.13, pp. 19, 25, 29, 35 and 38.

¹⁸ Only the first of the two organizations has a web site. It indicates that the Congress 'resolved that a permanent international Islamic organization be set up to promote solidarity and cooperation among the global Islamic community (Ummah)'. In addition '[s]ince its establishment in 1926, the Motamar Al-Alam Al-Islami has championed Muslim causes such as Palestine, Kashmir, the Filipino Muslims' struggle, freedom of Muslim people from European colonial rule, and the economic emancipation of the Muslim Ummah'. The Congress's correspondent for Africa is none other than Dr Hasan Abdullah Al-Turabi, former Islamic ideologist of Sudan's President Al-Bashir's regime, and today leader of the Popular National Congress, considered as an opposition party (<http://www.motamaralalamalislami.org/>).

¹⁹ International Institute for Peace, E/CN.4/1996/SR.8, pp. 11, 18, 19, 23, 41, 44 and 56, E/CN.4/1997/SR.20, pp. 27 and 39, E/CN.4/1998/SR.29, pp. 33, 46 and 54, E/CN.4/1999/SR.11, pp. 19, 41, 46 and 48, E/CN.4/2000/SR.5, p. 26, E/CN.4/2001/SR.14, p. 42, E/CN.4/2002/SR.11, pp. 14, 32 and 46, E/CN.4/2003/SR.12, pp. 15, 38 and 44, E/CN.4/2004/SR.16, p. 29 and 38; European Union of Public Relations, E/CN.4/1999/SR.11, E/CN.4/2002/SR.14, pp. 32, 42 and 46, E/CN.4/2003/SR.12, pp. 19, 28, 39 and 42, E/CN.4/2004/SR.14, pp. 16, 25, 29 and 34; Himalayan Research and Cultural Foundation, E/CN.4/1996/SR.11, pp. 14, 19, 41, 44 and 54, E/CN.4/1997/SR.7, pp. 13, 21, 27 and 39, E/CN.4/1998/SR.29, p. 41, E/CN.4/1999/SR.41, E/CN.4/2001/SR.42, p. 47, E/CN.4/2002/SR.42, p. 46, E/CN.4/2003/SR.19, pp. 35, 39, 46 and 55, E/CN.4/2004/SR.25, pp. 29, 34 and 38; Indian Council of Education,

mainly focused on the situation in Kashmir, whether they concern the part 'occupied by Pakistan since 1947' or the Indian part where Islamic terrorists conduct incursions. But the denunciations are also about the situation in Pakistan itself, in particular owing to the discrimination against ethnic and religious minorities, and the Pakistani support given to terrorist groups throughout the world, such as the *Taliban* in Afghanistan or Abu Sayyaf in the Philippines. The discourse can sometimes become flattering, acclaiming India's wisdom which, unlike Pakistan for example, 'had wisely enshrined the fundamental principle of secularism in [its] Constitution and taken measures to ensure that all religions were treated on an equal footing [. . .]'.²⁰

B: The laudatory and imitative NGOs

These are mainly Tunisian and Chinese NGOs. These organizations are not in the middle of any conflict in particular, even if, from time to time, they do take sides. When this happens, they always support the position of the State with which they share nationality. In reality, their main role is to praise and defend their government for its actions and to relay its concerns on foreign affairs at the Commission on Human Rights.

China Four Chinese NGOs are particularly involved at the Commission on Human Rights. Even if some observers agree that, on the domestic level, these organizations are progressively gaining a sort of autonomy from their authority, their interventions at the Commission on Human Rights show they remain intrinsically tied to the state and Party. The first two are Chinese para-state 'mass' organizations.²¹

Created in 1949, the All-China Women's Federation undertakes numerous activities for the protection of women in China.²² Its special status regarding the government and the Party is specified from the outset in the general principles of its governing charter:

The All-China Women's Federation is a mass organization of society which links together women across the country of all minority nationalities and from all walks

E/CN.4/1996/SR.14, pp. 23, 19, 29, 36, 47 and 56, E/CN.4/1997/SR.12, pp. 17, 39, 51, 61 and 62, E/CN.4/1998/SR.46, E/CN.4/1999/SR.11, p. 34, E/CN.4/2002/SR.42, E/CN.4/2003/SR.35, p. 55.

²⁰ Indian Council of Education, E/CN.4/1996/SR.23.

²¹ About Chinese NGOs and their evolution, see China Development Brief (August 2001), 250 *Chinese NGOs. Civil Society in the Making*.

²² See E/CN.4/1996/SR.41; E/CN.4/1997/SR.39, pp. 54 and 60, E/CN.4/1999/SR.19; E/CN.4/2001/SR.47; E/CN.4/2002/SR.34, p. 38 (joint interventions); E/CN.4/2003/SR.2; E/CN.4/2004/SR.38, p. 41.

of life under the leadership of the Chinese Communist Party to achieve further liberation, and a bridge and a transmission belt linking the masses of women with the CCP and the government. It is one of the most important pillars of the state power.

The Federation's employees have an official status and receive their salaries from the state. A majority of them are Party members. Because of its close links with the country's governing body, the Federation benefits from opportunities to access international fora. Even though it is a national organization, it was granted consultative status to the ECOSOC in 1995, before resolution 1996/31²³ was adopted. It is true that, in the same year, Beijing hosted the World Conference on Women. Similarly, in 1998, at the Symposium on Human Rights organized in Vancouver as part of the bilateral talks between the People's Republic of China and Canada, some representatives of the Federation were part of the Chinese official delegation even though Canadian NGOs were neither invited nor authorized to participate at the meeting.

The China Disabled Persons Federation is another 'mass' organization²⁴ created by one of Deng Xiaoping's sons and set up by the government in 1998 to promote disabled people's rights. This organization makes itself much scarcer than the previous one at the Commission on Human Rights.

The very official United Nations Association of China²⁵ and the China Society for Human Rights Studies²⁶ are also present. The latter was created in 1993, on the occasion of the World Conference on Human Rights in Vienna. Although its representatives were accredited as NGOs, its status remains ambiguous and the Chinese government contributes to this confusion. Along these lines, in 1997, the year when the European Union and China re-established bilateral talks on human rights, a delegation led by the Secretary General of the China Society visited several European capitals to defend the state of human rights in China, advocating 'constructive dialogue' rather than 'confrontation'.

The oral presentations of these NGOs are essentially aimed at answering accusations directed at China concerning human rights violations. Several presentations are specifically devoted to the 'heretical sect' Falun Gong.²⁷

²³ The resolution has opened up the consultative status to national NGOs, as we will see further on, *infra*, in the section entitled 'The introduction of service NGOs into the United Nations system'.

²⁴ See E/CN.4/2002/SR.38 (joint intervention).

²⁵ See E/CN.4/2002/SR.34, p. 38 (joint intervention), E/CN.4/2003/SR.26 (joint statement); E/CN.4/2004/SR.29, p. 35.

²⁶ See E/CN.4/2000/SR.38, E/CN.4/2002/SR.34, 42, E/CN.4/2003/SR.26 (joint statement), E/CN.4/2004/SR.29, p. 33.

²⁷ Among others, Association de la Chine pour les Nations Unies, E/CN.4/2002/SR.34.

Others are aimed at (1) defending the Chinese human rights track record and at pointing out that ‘States accusing China of violating human rights are those who have committed massive violations of the rights of Chinese people during armed conflicts’;²⁸ (2) convincing the Japanese government to solve the ‘comfort women’ issue;²⁹ (3) expressing indignation that, within the Commission, the Western States use the issue of human rights as a pretext ‘for interfering in the internal affairs of sovereign States’;³⁰ and (4) denouncing human rights violations in the USA, in particular concerning women’s rights.³¹

Tunisia Tunisia is probably the state that, on an international level, resorts most to the use of servile NGOs. The ‘servile society’ is particularly well developed in Tunisian society, controlled by President Zine el-Abidine Ben Ali’s party, whether it is small local associations, shiny façade organizations, or public service supplementary associations. These NGOs spread the presidential word even within international organizations and rail against all the ‘other’ NGOs which, with patent insincerity, blame the regime for not respecting human rights.

The talk is always mostly laudatory, in that it acclaims, in all fields, the politics adopted by the country’s regime.³² It is also imitative, in the sense that it takes up the essence of the Tunisian interventions before the Commission and brings to mind President Ben Ali’s proposals on different subjects. The Tunisian servile NGOs also defend the regime: they denounce the ‘slandorous’ comments made by the NGOs that dare accuse Tunisia of violating human rights.³³

²⁸ Société chinoise d’étude des droits de l’homme, E/CN.4/2002/SR.42.

²⁹ All China Women’s Federation, E/CN.4/1996/SR.41.

³⁰ All China Women’s Federation, E/CN.4/1997/SR.39.

³¹ All China Women’s Federation, E/CN.4/1999/SR.19.

³² Association to Defend Tunisians Abroad – ADTE, E/CN.4/Sub.2/1999/SR.10; Association Tunisienne des Mères, E/CN.4/Sub.2/1998/SR.28; Association Tunisienne des Droits de l’Enfant: E/CN.4/2001/SR.31, E/CN.4/2004/SR.25; Association Tunisienne pour l’Autodéveloppement et la Solidarité (ATLAS), E/CN.4/2000/SR.27, E/CN.4/2001/SR.35, E/CN.4/Sub.2/1999/SR.13, E/CN.4/2003/SR.35, E/CN.4/2004/SR.29; Organisation Tunisienne de l’Éducation et de la Famille, E/CN.4/2000/SR.17; Organisation Tunisienne des Jeunes Médecins sans Frontières, E/CN.4/1999/SR.29, E/CN.4/2001/SR.42, E/CN.4/2002/SR.42, E/CN.4/2003/SR.39, E/CN.4/2004/SR.35; Union Nationale de la Femme Tunisienne, E/CN.4/2000/SR.38, E/CN.4/2002/SR.42, E/CN.4/2002/SR.46, E/CN.4/2003/SR.42, E/CN.4/2004/SR.38, p. 41.

³³ Association Tunisienne des Mères, E/CN.4/Sub.2/1998/SR.28. See also Organisation Tunisienne des Jeunes Médecins sans Frontières, E/CN.4/2001/SR.42.

Even if it is limited to a few situations or to a few States, the presence of the servile society can be widely felt within the United Nations' Commission on Human Rights and now within the new Human Rights Council. We are left with the question of how these NGOs gained access to these fora.

The Introduction of Servile NGOs into the United Nations System

Resolution 1996/31, adopted by the Economic and Social Council on 25 July 1996, is entitled 'Consultative Relationship between the United Nations and Non-Governmental Organizations'. It replaces resolution 1296 (XLIV) dated 23 May 1968, which used to govern these relations.³⁴

The main innovation in resolution 1996/31 is the possibility for national NGOs to apply for consultative status to ECOSOC. But this innovation is crippled by the obligation of having to ask for the recommendation of the 'member State concerned' which, in effect, in the instance of certain states, grants access to servile NGOs and denies access to truly independent ones. Furthermore, the body in charge of recommending consultative status to the ECOSOC – the Committee on Non Governmental Organizations – remains an intergovernmental body, a set-up that makes it incapable of making objective decisions, based on the criteria established by resolution 1996/31. On the contrary, the Committee turns out to be hostage of its members' own interests.

Together, these two factors enable servile NGOs to join the United Nations' system.

A: The condition for consultation of the 'member State concerned' for national NGOs

Paragraph 4 of resolution 1996/31 of the ECOSOC stipulates: 'Except where expressly stated otherwise, the term "organization" shall refer to non-governmental organizations at the national, subregional, regional or international levels.' The major innovation of the 1996 reform is that national NGOs can now be granted consultative status to the ECOSOC in the same capacity as international NGOs.³⁵ Under resolution 1296 (XLIV), this was accepted but as a strictly defined exception to the general rule.³⁶

³⁴ See Sara Guillet (1995), *Nous peuples des Nations Unies. L'action des ONG au sein du système de protection internationale des droits de l'homme*, Paris: Montchrestien.

³⁵ About the reform, cf. S. Guillet (winter 1999), 'Les relations entre les ONG et l'ONU dans le domaine des droits de l'Homme: un partenariat en mutation', *L'Observateur des Nations Unies* (7).

³⁶ ECOSOC Resolution 1296 (XLIV) of 23 May 1968, para. 9: 'National organizations shall normally present their views through international non-governmental

Following the collapse of the Berlin Wall, this reform was necessary to take into account the massive development of NGOs in the East and the South. In a number of formerly closed states, the transition processes towards democracy have led to the creation of dynamic non-governmental sectors which are legitimately demanding direct access to the UN, instead of having to go through an 'umbrella' organization within which their distinctiveness and concerns cannot be fully expressed.

This reform was mainly created for the NGOs coming from the developing countries as well as from countries with 'economies in transition' – a euphemism to describe the transition from a communist economy to a market economy. It is therefore logical that resolution 1996/31 encourages the Committee on NGOs to give them priority of attention to ensure their participation, to 'help achieve a just, balanced, effective and genuine involvement of non-governmental organizations from all regions and areas of the world'.

But this commendable concern for balance and openness is contradicted by maintaining an institution which was already present in resolution 1296: indeed, according to resolution 1996/31, 'national organizations [. . .] may be admitted [. . .] after consultation with the Member State concerned. The views expressed by the Member State, if any, shall be communicated to the non-governmental organization concerned, which shall have the opportunity to respond to those views through the Committee on Non-Governmental Organizations'.

This advisory procedure was in coherence with resolution 1296 which set up a system whereby national NGOs could exceptionally gain consultative status. But it can no longer be justified in the widely open system established by resolution 1996/31.

In this new context, maintaining this condition has the effect of conferring on the 'concerned State' a quasi-right of veto to prevent the admission of NGOs of which it disapproves. The principle of openness for national NGOs, combined with the condition of consultation of the concerned state, results in the admission of servile NGOs and the exclusion of independent ones. In dictatorial countries or in countries with prolonged 'democratic transitions' only servile NGOs are likely to receive a favourable recommendation from the

organizations to which they belong. It would not, save in exceptional cases, be appropriate to admit national organizations which are affiliated to an international non-governmental organization covering the same subjects on an international basis. National organizations, however, may be admitted after consultation with the Member State concerned in order to help achieve a balanced and effective representation of non-governmental organizations reflecting major interests of all regions and areas of the world or where they have special experience upon which the Council may wish to draw.'

concerned state, whereas independent NGOs – often made illegal or even criminalized when they exile their headquarters to a foreign country – will inevitably be vetoed. In fact, most of the national NGOs confronted by this type of reaction simply avoid applying to the Committee on NGOs, knowing full well that the game is not worth the candle.

But some NGOs have agreed to take the test. This is the case of Human Rights in China (HRIC), which is based in New York, comes from the Tian An Men Square student movement and is probably the most important exiled Chinese NGO defending human rights. Noticing that an increasing number of China-based NGOs were being granted consultative status, they decided to try their luck.

The committee reviewed HRIC's application at its substantive session on 4 June 1999, the day of the tenth anniversary of the Tian An Men Square massacre.³⁷ First, a discussion began to determine whether the NGO was Chinese, as its headquarters was in New York. For Algeria, there was no doubt that HRIC was a Chinese NGO, which made the consultation of the Chinese delegation 'necessary' and even 'compulsory'. Cuba, Ethiopia and Pakistan agreed: to them, the NGO was undoubtedly Chinese, even though it was based in the US.

The session's chairperson organized a debate based on a half-hour presentation by the Chinese representative, who explained that HRIC was in reality a group of criminals wanted in China who, spurred on by their personal resentment against the country, were trying to overthrow its government. The Committee's report only reflects the Chinese declarations, but makes no mention of the answers given by HRIC.³⁸

China, while giving itself a decisive role in the decision the Committee on NGOs was to take – implicitly designating itself as the only 'concerned State' with the exception of the United States, where HRIC has its headquarters – referred continuously to the fact that the members of HRIC were all living outside China and had no regular contact with the country.

The French delegate offered to defer the review of the case. But China asked for the question of the attribution of status to be voted on immediately. The Chinese request not to recommend the status of HRIC to the ECOSOC was adopted by 13 votes to three, with two abstentions.³⁹

³⁷ See B. Laroche (Fall 1999), 'Maligned & Excluded in a Politicized Process. HRIC Denied Consultative Status', *China Rights Forum (publication de HRIC)*, pp. 24–9.

³⁸ See the report of the Committee on NGOs, doc. E/1999/109.

³⁹ France, Ireland, US voted in favour; Algeria, Bolivia, China, Colombia, Cuba, Ethiopia, India, Lebanon, Pakistan, Russia, Sudan, Tunisia, Turkey voted against; Chile and Romania abstained.

This case is particularly revealing because of the reputation of HRIC and the quality of its work, but in 1996–97⁴⁰ and 2004⁴¹ there were other examples of status refusals based on the ‘consultation’ of the ‘concerned State’ for organizations of lesser importance.

B: The Committee on NGOs: an inappropriate body

The procedures relating to the consultative status of the ECOSOC involve a subsidiary organ of the Economic and Social Council: the Committee on NGOs. This Committee is made up of 19 States: five African, four Asian, two Eastern European, four Latin American and Caribbean and four from Western Europe and others.⁴² It convenes annually in May–June, before the Economic and Social Council’s substantive session in July. Even if the final decision belongs to the latter, the Committee on NGOs plays a fundamental role in the sense that, in nearly all cases, the Council ratifies its recommendations.

The Committee rules on status applications and on requests for reclassification from one category to another.⁴³ It reviews the quadrennial reports

⁴⁰ The case of the South Korean organization Centre for the Advancement of North Korean Human Rights because of the opposition of North Korea. See doc. E/1996/102, para. 6; E/1996/SR.55, pp. 4–5; E/1997/90, para. 38.

⁴¹ For two organizations coming from Nigeria, African Hebrew Organization and the Fédération des communautés Ijaw; an organization working on Viet Nam, Alliance Vietnam Liberté which, according to the delegate of Viet Nam, ‘had committed acts of sabotage in her country and was featured in a 1992 United States Federal Bureau of Investigation (FBI) list of criminal organizations’; an organization from Ghana, Thirty-First December Women’s Movement which had, according to the observer delegate of Ghana, ‘been involved in activities against her Government’ and of functioning as ‘the women’s wing and an integral part of the National Democratic Congress, one of the political parties in Ghana’; an organization allegedly from Cameroon, African Network of Grassroots Democracy which had, according to the representative of Cameroon, ‘never been registered in Cameroon’ and ‘had criticized her Government in its application’; finally the International Association Promoting Human Rights, accused by Cuba of ‘being created in Mexico by the Miami-based anti-Cuban terrorist organization Cuban Democratic Directory and of having links with the Cuban American National Foundation. Cf. doc. E/2004/32, pp. 11–14.

⁴² In 2006, the members of the Committee were Cameroon, Chile, China, Colombia, Côte d’Ivoire, Cuba, France, Germany, India, Iran, Pakistan, Peru, Romania, Russian Federation, Senegal, Sudan, Turkey, United States of America, Zimbabwe.

⁴³ Resolution 1996/31 creates two categories of status: 1) ‘general’ for the organizations ‘that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in fields set out in paragraph 1 above, and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries in different regions of the world’

NGOs are required to hand in. Then, depending on the review given to the report, the Committee can advise on the NGOs' reclassification, status suspension or withdrawal.

The role of the Committee on NGOs is therefore fundamental to the system set up by resolution 1996/31, and yet the governmental structure of the Committee makes it impossible for it to fulfil its missions.⁴⁴ A detailed analysis of this body's day-to-day functioning makes this clear and highlights three phenomena. First, a majority of the members of the Committee pronounce themselves in favour of granting consultative status to servile NGOs; conversely, the minority that might dissent is often very passive: when the question is not raised by a state, generally the US, this minority lets things run their course or just dissociates itself from the consensus without necessarily calling for a vote; finally, the only active state to prevent servile NGOs from being granted the status, the US, is selective in its indignation, insofar as its own objections mainly concern Cuban NGOs.

A majority of the members of the committee support the applications presented by servile NGOs All the votes that have taken place at the Committee on NGOs regarding servile NGOs were called for by the US. Each time, the US was defeated by an overwhelming majority and the Committee adopted a decision to recommend the NGO in question for consultative status in the ECOSOC. In 1996,⁴⁵ the following NGOs were granted consultative status after the US called for a vote: the Centro de Estudios sobre Asia y Oceanía,⁴⁶

(para. 22) (corresponding to category I under resolution 1296 (XLIV)); 2) and 'special' for the organizations 'that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status' (para. 23) (corresponding to category II under resolution 1296). Furthermore, an organization which has no general or special status can be included on a *roster* when it can 'make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies within their competence' (para. 24) (this possibility already existed in resolution 1296).

⁴⁴ J. Aston (2001), 'The United Nations Committee on Non-governmental Organizations: guarding the entrance to a politically divided house', *European Journal of International Law*, 12(5), 943–62.

⁴⁵ Report of the Committee on Non-Governmental Organizations for the session of 1996, doc. E/1996/102.

⁴⁶ The vote was requested by Cuba on the USA's proposal to defer the examination of the request at the second part of the session. The American proposal was rejected by 11 votes to five with one abstention. Subsequently, a vote (not recorded) was requested by the USA on the recommendation made to the ECOSOC to put this NGO on the Roster. The recommendation was adopted by 12 votes to one with four abstentions.

the Centro de Estudios Europeos,⁴⁷ the Movimiento Cubano por la Paz y la Soberanía de los Pueblos.⁴⁸ The United States expressed reservations about these NGOs before the Economic and Social Council. Cuba replied that it 'did not accept statements from other countries on its legal system and domestic political activities, or on its civil society'.⁴⁹

In 1997, five new organizations were granted status.⁵⁰

At the ECOSOC, the delegation of the United States publicly dissented from 'the Council's approval of consultative status for five Cuba-based organizations [. . .] since his Government believed that those groups did not meet the definition of an independent NGO. Moreover, it had doubts regarding the contribution they could make to furthering the goals and principles of the United Nations. It had opposed granting them consultative status in the Committee on Non-Governmental Organizations and it opposed the decision just taken by the Council'.

To which Cuba replied that the five NGOs in question, whose headquarters are in Cuba, are NGOs that 'were all legitimate and independent organizations having their own statutes and financial arrangements. They all enjoyed the status of national NGOs under Cuban law, apart from OCLAE, which was an international organization whose activities were not contrary to the principles and purposes of Cuban social policy [. . .] the organizations cited represented the interests of the Cuban people and giving them special consultative status would enable them to work effectively with the Council and within the United Nations system'.⁵¹

In 1998, the penetration of the system by Cuban organizations continued with the entry of three new NGOs.⁵² Finally, in 1999, the status was granted

⁴⁷ The vote (not recorded) was requested by the United States on the proposal to recommend to the ECOSOC to grant the Status category II. Proposal approved by 11 votes in favour, one against with five abstentions.

⁴⁸ The vote was requested by Cuba on the proposal by the USA to defer the application's review. The proposal was rejected by nine votes to two with seven abstentions. Subsequently, a vote was requested by the USA on the proposal to recommend to the ECOSOC the attribution of a status category II. The proposal was approved with seven votes in favour, two against and nine abstentions.

⁴⁹ E/1996/SR.55.

⁵⁰ The National Association of Cuban Economists; the Félix Varela Center, the National Union of Jurists of Cuba, the Federation of Cuban Women and the Latin American and Caribbean Continental Organization of Students (OCLAE). See the report of the Committee on NGOs, doc. E/1997/90.

⁵¹ E/1997/SR.40, 23 July 1997, pp. 16–17.

⁵² Organization for the Solidarity of the Peoples of Asia, Africa and Latin America (OSPAAAL), Unión de Escritores y Artistas de Cuba, et le Centro de Estudios sobre la Juventud. Cf. doc. E/1998/72 and Add.1. For the debate before the ECOSOC, see E/1998/SR.45, 29 July 1998, p. 2.

to the Asociación Cubana de las Naciones Unidas, once again by a majority vote.⁵³ The United States have always been the only State to vote against granting the status to Cuban NGOs, except in the instance of the Movimiento Cubano por la Paz y la Soberanía de los Pueblos, when the United Kingdom joined it.

The passivity of a minority of the members of the committee and the selective indignation of the USA A strong minority of member states of the Committee appear to vote passively by taking refuge in abstentions or even, sometimes, by agreeing to vote in favour of the servile NGOs. This remains true, even if in recent years we have noticed that, in certain cases, certain European states, particularly France and Germany, show a greater resolve in their interventions.

This passivity becomes obvious when a state requests a vote, but it is more often invisible: among all the servile NGOs whom the Committee recommended for observer status, only Cuban NGOs were subjected to a vote. States in the Committee have never raised problems that the admission of mass Chinese NGOs might cause. At no time has the Committee questioned the independence of Tunisian NGOs that have appeared before it.

In 1995, following the Srebrenica massacre and the seizure of Zepa in Bosnia-Herzegovina, Croatia and Albania asked the ECOSOC to send back before the Committee an organization (the International Committee of Peace and Human Rights) they suspected was covering up for the World Serbian Union. They received the support of Austria, Egypt, the United States, Libya and the United Kingdom on the grounds that new facts had emerged between the Committee's decision to grant consultative status to the International Committee and the session of the ECOSOC.⁵⁴ In 1999, after many deferrals, the Committee ended the application's review without reaching a verdict on whether to grant consultative status.⁵⁵ The Council ratified this 'conclusion' in resolution 2000/214.⁵⁶

But at the same session of the ECOSOC in 1995, the same states refused to treat in the same way an Indian NGO denounced by Pakistan, the Himalayan Research and Cultural Foundation, on the pretext that Pakistan had not introduced 'any new facts' since the review of the application by the Committee.

⁵³ Proposal adopted by 15 votes to one, with three abstentions. Report of the Committee on Non-Governmental Organizations for the session of 1999, E/1999/109, para. 32.

⁵⁴ See E/1995/SR.54, 26 July 1995, pp. 8ff.

⁵⁵ See E/1999/109/Add.2 (Part I), p. 4 & Corr.1.

⁵⁶ Decision 2000/214 in E/2000/INF/2/Add.1, p. 29.

On a purely procedural basis, the members were probably right to want to avoid a challenge by the ECOSOC to a recommendation made by one of its subsidiary bodies. The fact remains that they were fundamentally wrong to override the serious allegations expressed by Pakistan when it declared in a session that the organization in question 'is undoubtedly an offshoot of the Indian intelligence services whose aim is to undertake subversive activities in Pakistan'.⁵⁷

The attitude of the Europeans remains ambivalent. For nearly ten years, they expressed no reservations about granting status to NGOs for which it was fairly easy to demonstrate close links with their government. In recent years, they made two interventions of unequal value, which illustrates the absence of a clear position with regard to the question.⁵⁸

As for the United States, their indignation is selective: in addition to the Cuban NGOs it was also directed at an Iraqi,⁵⁹ a Sudanese⁶⁰ and several Islamic NGOs.⁶¹ In other words, servile NGOs bother the US because the state they are associated with is in the crosshairs of American foreign policy rather than because they are servile and their admission would violate resolution 1996/31.

Servile NGOs enter the United Nations system because of the politicized selection process within a body dominated by states that have an interest in

⁵⁷ E/1995/SR.54, p. 12. Only in French, translation from the author.

⁵⁸ In 1998, Ireland dissociated itself from the decision taken by the Committee to recommend to the ECOSOC the Iranian NGO called the 'Organization for defending victims of violence'. In 2004, France, supported by Germany, 'while joining in the consensus on the granting of consultative status to the organization' China Care and Compassion Society, 'questioned the organization to ensure that it was truly a nongovernmental organization, that it was transparent and democratic, and that it operated in conformity with the principles stipulated in Economic and Social Council resolution 1996/31. (. . .) He also said that his delegation [France] will follow attentively the organization's activities in the future and its contribution to the work of the Council.' Doc. E/2004/32, pp. 10–11.

⁵⁹ The General Federation of Iraqi Women. See the report of the Committee on its resumed 1998 session, doc. E/1999/10, para. 12.

⁶⁰ See the decision of the United States to dissociate itself from the decision taken by the Committee regarding the International Women's Muslim Union. Doc. E/1999/109, para. 35.

⁶¹ As to 1997, see the comments by the US and the UK on the Islamic World Studies Centre and the Qatar Charitable Society. On the latter, the United States stated they wished to dissociate themselves as this organization 'might be involved in activities inconsistent with the Charter of the United Nations'. Doc. E/1997/90, respectively paras 62 and 66. In 1998, see the decision by the United States and the United Kingdom to dissociate themselves from the decision regarding the Africa Muslims Agency. Doc. E/1998/8, para. 34.

seeing these NGOs participate in the sessions of the Commission and Sub-Commission on Human Rights. But most worrying is the fact that, once inside the system, these NGOs act as representatives of their country's civil society and become the United Nations' prime contacts. One wonders to what extent the UN Secretariat encourages this tendency to institutionalize these servile NGOs.

Towards the Institutionalization of a Servile Society?

In November 1999, a report from the Secretary-General at the General Assembly announced that, in the future, 'The Section [in charge of NGOs within the Economic and Social Department of the UN] will work to improve the exchange of information through informal networks of country or regionally based NGOs in consultative status with the Council, which will serve as links between the NGO Section and NGOs in each region.'⁶²

This is the basis on which the Informal Regional NGO network (UN-IRENE) was launched at a meeting in Arcaju, Brazil in April 2001. Six 'representative organizations' from North Africa, West Africa, Asia and the Pacific, Eastern Europe and Latin America were invited. The criteria for selection and 'representativeness' of these organizations are unknown, but one thing is certain: there were no independent human rights NGOs among them. In the final session of the meeting, five organizations were designated as the network's 'regional coordinators'.⁶³

UN-IRENE's first official meeting for Africa took place on 8–11 January 2002 in Hammamet, Tunisia, under the patronage of Tunisian President M. Zine el-Abidine Ben Ali. The meeting was jointly organized by the United Nations' Section of NGOs and the Association féminine Tunisie 21, the network's 'regional coordinator'.

Fifteen 'representative' NGOs of the five African Sub-regions as well as several senior civil servants from the United Nations, the President of the Economic and Social Council, some informal partners such as the Conference of NGOs in consultative relationship with the United Nations (CONGO), the

⁶² UN Secretary-General, Analysis of the organizational structure and technical resources of the non-governmental section of the UN Secretariat, A/54/520, 11 November 1999.

⁶³ North Africa, Association Féminine Tunisie 21 (Tunisia); West Africa, Conseil Économique et Social de l'Afrique de l'Ouest (Senegal); Asia and Pacific, Organization for Industrial, Spiritual, and Cultural Advancement (OISCA) (Japan); Eastern Europe, International Scientific and Educational 'ZNANIE' Association (Russia); Latin America and Caribbean, World Family Organization (Brazil).

World Federation of United Nations Associations and others, were present.⁶⁴ The talks led to the designation of five sub-regional coordinators.⁶⁵

The Network's activities need to find financing. The Committee on NGOs appears to be the appropriate body to handle this issue. The head of the NGO Section introduced the informal regional network at the session of the Committee in 2002.⁶⁶ Following this intervention, and 'as evidence of the support of the Section for its outreach programme', the Sudanese delegate introduced a request to the Committee for 'the establishment of a voluntary trust fund to support the informal regional network IRENE in assisting NGOs worldwide with equally distributed financial support'.⁶⁷ The Committee on NGOs adopted this decision by consensus;⁶⁸ the ECOSOC then endorsed it.

In decision 2002/225 concerning the 'Establishment of the general voluntary trust fund in support of the United Nations NGO Informal Regional Network',⁶⁹ the ECOSOC reaffirms 'the important role of the United Nations NGO Informal Regional Network in achieving NGO capacity-building to take part in United Nations work, support the coalition of NGOs and disseminate the work of the Council'. From then on it considers 'recognizing the need for human and financial resources and technical assistance in order to ensure increased participation of NGOs from developing countries and countries with economies in transition in the work of the Council and its subsidiary bodies, and to work to ensure parity and an equitable and representative NGO

⁶⁴ See press release, AFR/374, DEV/2366, NGO/356, January 2002.

⁶⁵ North Africa: Association Féminine Tunisie 21 (Tunisia); West Africa, Coalition des Familles pour la Lutte contre le SIDA et la Pauvreté (Burkina Faso); Central Africa, Ligue pour l'Education de la Femme et de l'Enfant (Cameroon); East Africa, Association des Nations Unies Ethiopie (Ethiopia); Afrique méridionale: Angola Network for Poverty Reduction (Angola).

⁶⁶ See E/2002/71 (Part II), para. 6. A few months before the publication of the report by the Secretary General announcing the creation of the Network (see *supra* note 62), at the substantive session of 1999 of the ECOSOC, the Algerian Ambassador, Mr Dembri mentioned 'the sensitive issue of financing of NGOs', judging 'it was inappropriate for certain NGOs to be heavily subsidized by Governments with no observance of the precautionary rule set forth in paragraph 13' of resolution 1996/31, on the financing of NGOs. To face up to this situation, Mr Dembri felt 'it was urgent to ensure that Government financing did not go directly to NGOs but to a United Nations fund, to be managed by a governing body made up of figures of high moral probity, such as winners of the Nobel Peace Prize and independent experts. The governing body would apportion the contents of the entire fund on the basis of well-defined criteria, including geographical distribution. The experts should be remunerated to protect them from any suspicion of partiality'. E/1999/SR.44, 28 July 1999, p. 5.

⁶⁷ *Ibid.*, para. 10.

⁶⁸ See E/2002/71 (Part I), Draft decision IV 'Establishment of the general voluntary trust fund in support of the United Nations NGO Informal Regional Network'.

⁶⁹ Cf. E/2002/INF/2/Add.2, p. 133.

presence and contributions to United Nations goals, including development goals as set out in the United Nations Millennium Declaration [. . .].

In order to achieve this, the ECOSOC requests ‘the Secretary-General to establish a general voluntary trust fund [. . .] in order to achieve those aims and ensure an equal development of activities for NGOs in consultative status with the Council in all regions through the equitable division of available resources’.

The Global Informal Regional Network’s mandate is then described in the appendix, in 12 points that do little to clarify the mission with which the ECOSOC is planning to entrust the new institution. It is about enabling ‘interactive exchange among NGOs regionally and interregionally, and between NGOs worldwide and the United Nations, through the Non-Governmental Organizations Section of the Department of Economic and Social Affairs of the Secretariat’, by implementing ‘an ongoing, regularly updated technology-based system’ and ‘capacity-building workshops, seminars and training programmes’ in order to ‘strengthen NGO capabilities for effective contribution, at both operational and policy levels’, and to facilitate and enable ‘an environment conducive to the development of an active and effective NGO sector’, or to create ‘opportunities for NGOs to interact by, for example, convening meetings, organizing exchange visits or study tours in order to promote cooperation, sharing of resources and collaborative action among network participants’.

It is thus a good opportunity for a few NGOs selected on the basis of unknown criteria and whose ranks include no ‘embarrassing’ NGOs, such as independent human rights NGOs. After five years, the Network’s results are significant.⁷⁰ Admittedly, the voluntary fund is not a success – the only contribution being 10 000 dollars from Turkey.⁷¹ Nevertheless, UN-IRENE is progressively managing to assert its existence in several regions and countries of the world.⁷²

⁷⁰ See the Network’s website, <http://www.unpan.org/NGO-Africa.asp> and the regular ‘updates’ on the Network’s activity in particular.

⁷¹ See the ‘update’ n° 7, April 2004, p. 1.

⁷² Africa, Regional Coordinator, Association des Mères Tunisiennes (Tunisia). Mauritania, Association Mauritanienne pour le Bien-Etre et le Secours de l’Enfant et de la Mère. Arab States (in fact limited to the United Arab Emirates), Zayed International Prize for the Environment (United Arab Emirates). Latin America, Reg. Coord., World Family Organization (Brazil). ‘North America’ (in fact limited to Canada), Hope for the Nations (Canada). Eastern Europe, Reg. Coord.: Fondation Université de la Mer Noire (Roumanie). Sub-Reg. Coord. I (South-Eastern Europe), Association for Democratic Initiatives (Macedonia). Sub-Reg. Coord. II (Central Europe), Federation for Women and Family Planning (Pologne). Caucasus-Central Asia, Reg. Coord., Fund of Aid for Youth (Azerbaïdjan). Azerbaïdjan: National

Even though the Network is supposed to be informal, the designation of regional or national coordinators amounts to an institutionalization of the relationship between the Secretariat of the ECOSOC and NGOs that define themselves as 'representatives' of civil society, with the blessing of the concerned states. Such a selection process is problematic, especially in countries where freedom of association is not respected, such as Tunisia, Mauritania and China. In any case, UN-IRENE is undoubtedly in a position to support the control of civil society in these countries by choosing non-governmental focal points for the UN, who will be its main reference during the preparation of key events such as the World Summit on Information Society in Tunisia.⁷³

Servile NGOs who do not yet have consultative status with the ECOSOC are strongly encouraged to apply during regional or national seminars, as was the case when the Network was launched in China.⁷⁴ Is this one more of the United Nations' 'energy wasters' or is it a UN-GONGOS Network? Whatever the intentions of its founders, UN-IRENE has worked in favour of institutionalizing servile society at the UN. While the servile NGOs are establishing themselves within the world organization, other NGOs that are more critical of the states, particularly with regard to human rights, see their freedom of action and expression becoming increasingly limited.

2. PUTTING CIVIL SOCIETY IN LINE

The progressive introduction of servile NGOs into the United Nations bodies is accompanied by attacks on NGOs considered too critical of the concerned

Assembly of Youth Organizations of Republic of Azerbaijan. Japan: Organization for Industrial, Spiritual, and Cultural Advancement. China, The Chinese People's Association for Peace and Disarmament. India, All India Women's Education Fund Association. Pakistan, All Pakistan Women's Association. Inside the Pakistani Coordination, as well as All Pakistan, there is the World Muslim Congress. Also indicated is an organization representative for Western Europe, World for World Organization (Italy), but we have not been able to find any reference for a launch meeting of the Network in this region.

⁷³ The Secretariat of the UN-IRENE initiated, in January 2005, a mission of assistance to the 'two leading NGOs' (L'Association des Mères Tunisiennes et l'Association Tunisienne des Droits de l'Enfant) in charge of organizing the Forum for Civil Society which was held in April, notably to prepare the 'contribution of the NGOs' at the Tunis Summit.

⁷⁴ V. Mission Report, Capacity Building for NGOs in China (Beijing, Shanghai 10–18 October 2002), para. 26: 'All of the NGOs which the UN delegation met have expressed their interest to participate in the UN NGOs-IRENE/UNPAN Network, and have shown their willingness to apply for the ECOSOC/NGO Consultative Status. They have taken note of the fact that, although China is the biggest developing country, there are so far only 14 NGOs in China with the ECOSOC consultative status.'

states. Some states within the Committee on NGOs use every excuse to try and intimidate what they believe are hostile NGOs. In some cases they even try to have their status suspended or withdrawn. It starts with simple warnings, graduates to requests for 'special reports', and culminates in the adoption of strong disciplinary sanctions.

The Warnings

These oral attacks are not followed by requests for special reports, status suspension or withdrawal. They are carried out by way of warning or intimidation. The intervening state very often declares that it reserves to itself the right to request status suspension or withdrawal if necessary. This sort of attack generally happens during the review of the organization's quadrennial report by the Committee on NGOs.

Paragraph 55 of Resolution 1996/31 states that in 'periodically reviewing the activities of non-governmental organizations on the basis of the reports submitted under paragraph 61 (c) below⁷⁵ and other relevant information, the Council Committee on Non-Governmental Organizations shall determine the extent to which the organizations have complied with the principles governing consultative status and have contributed to the work of the Council'. On this basis, NGOs have to submit to a session of 'question time'. In their absence, the questions are addressed to them by the Secretariat and the examination of the report is deferred to the subsequent session. The review of the quadrennial report can therefore be put off for several years if a state deems the answers 'unsatisfactory' and it requests clarifications.⁷⁶

In 1991, Cuba reproached the Confédération internationale des syndicats libres for having the AFL-CIO as an affiliate. Cuba accused the latter of being 'implicated in activities directed against its government and of having a

⁷⁵ Quote in note 87, *infra*.

⁷⁶ During the 2006 session of the Committee, the delegate from Germany 'voiced strong concern over the protracted treatment of the report [of an NGO called Centrist Democrat International], which had been before the Committee since 2002. He explained that, by not taking note of the report, the Committee was not doing its job. The examination of quadrennial reports should be a routine exercise, not a form of harassment. The inability by the Committee to take note of the report owing to the objections of one delegation [Cuba], despite numerous questions posed and answers given over the years, was detrimental to the Committee's reputation' E/2006/32 (Part I), para. 74. So, funny as it may seem, Cuba explained that it was pointing out its concerns regarding the activities of the organization because 'it had never really been clarified how an organization which was made up of political parties, [...] preserves its independence from government when these parties become the ruling parties in power'.

[political] agenda', of having 'launched an international campaign to discredit' the government of Cuba, of having 'encouraged subversive and terrorist activities on Cuban soil' and of having 'used vulgar and insulting language with respect to Cuba's head of state'. Costa Rica defended the Confederation, noting with satisfaction its ongoing collaboration with United Nations bodies.⁷⁷

Cuba then took aim at the International League of Human Rights whose observers, at the eighth United Nations Congress on crime prevention and the treatment of offenders in Havana, appeared to have pursued 'a political agenda' and acted as 'provocateurs'. Cuba reserved the right to raise the issue of the League's consultative status when it so chooses. Chile, Greece, Costa Rica and Ireland supported the League, declaring, 'during the 45th session of the General Assembly, several delegations voiced their concern at the restrictions imposed on observers from certain nongovernmental organizations at the Havana Congress'.⁷⁸

In 1995, China and India set their sights on the International League for the Rights and Liberation of Peoples (LIDLIP).⁷⁹ China sought clarifications on statements made to the Commission on Human Rights on Tibet's right to self-determination. India sought clarifications on the idea that only 'peoples' can be members of the association. Ireland and Russia supported the organization. After a session break, China declared it had received assurances from the organization that its activities were in no way intended to call into question China's territorial integrity.

At the same session, China and Cuba attacked the International Federation of Free Trade Unions (IFTU).⁸⁰ Cuba declared that the organization was 'politically biased' and noted the lack of information on the organization's contribution to the ILO. China regarded this absence as a violation of resolution 1296. These two delegations expressed strong reservations about the IFTU's quadrennial report and said that, in the future, it should be more detailed. In the end, the Committee took note of the report.

In 1999, the requests filed by certain members of the committee were tantamount to outright attacks. Thus, at the examination of the quadrennial report of the Robert F. Kennedy Memorial, China asked the memorial to clarify the accreditation of a member of the Human Rights in China organization, while Sudan sought to know the names of the recipients of the RFK Human Rights Award in Sudan.⁸¹

⁷⁷ E/1991/20, paras 26–7.

⁷⁸ *Ibid.*, paras 28–33.

⁷⁹ E/1995/108, paras 43–53.

⁸⁰ *Ibid.*, paras 57–65.

⁸¹ E/1999/109, para. 47.

The Society for Threatened Peoples was criticized for accrediting 20 to 30 people at the last Commission on Human Rights. Russia requested clarification on the way the organization reached its conclusions on Chechnya and sought to know who their contacts were and the sources of information they had used.⁸²

A request, addressed to the International Federation of Human Rights Leagues (FIDH) regarding 'its policy and modalities of accreditation of its representatives to the Commission on Human Rights, particularly at the fifty-fourth session of the Commission' announced Algeria's complaint, which was to be lodged later on in the session and which led the Committee to request a 'special report' from the FIDH.⁸³

The Special Reports

In 1993, Iraq, China and Cuba attacked the organization Pax Christi International (PCI). The criticisms expressed by the first two states were respectively based on the use of the terms 'Kurdistan' and 'Tibet' in the organization's report. Iraq requested the suspension of PCI's status. Cuba noted the seriousness of the allegations formulated by the representatives of the two states and called for the organization to be reclassified from category II to the Roster.⁸⁴ In the end of this 1995 session, the Committee decided to request from PCI a report on its activities from 1992 to 1993.⁸⁵ The legal basis of the decision is not stated in the report.

By doing this, the Committee created a precedent that would be formalized in 1997, when a complaint was lodged by Cuba before the Committee against the International Association of Educators for World Peace organization.⁸⁶ In 1997, Cuba tells of 'an incident at the United Nations' office at Geneva' involving this organization. It requested a special report from the association, pursuant to paragraph 61 c) of resolution 1996/31. The United States requested

⁸² E/1999/109, para. 48.

⁸³ *Ibid.*, para. 55. In 2002, at the examination of the quadrennial report of Human Rights Watch, the same states pushed this logic further: Cuba and Zimbabwe 'questioned the criteria selected by the organization in its country studies' whilst 'one delegation believed that the organization should be more balanced in its views and judgements and not lead the campaign against African countries as the organization has done recently in the Sudan and Zimbabwe'. Iran also gave HRW a lecture on the evolution of human rights in the world, advising the organization to have a 'balanced approach' in order to 'to address all human rights issues and dynamics at the national and international level'. Cf. doc E/2003/32 (Part II), p. 9.

⁸⁴ Regarding the different consultative status categories, see *supra* note 43.

⁸⁵ E/1993/63, paras 37–41.

⁸⁶ E/1997/90, paras 94–97.

a vote on this proposal which was adopted by nine votes to four. Thus, the Committee seems to have found a 'legal basis' for the use of 'special reports'.⁸⁷

There followed a series of complaints expressed in the same manner. In 1998, a complaint was lodged by a 'state representative' against Libération and the Society for Threatened Peoples regarding incidents that took place at the 49th session of the Sub-Commission on Human Rights and the 53rd session of the Commission: some 'individuals with a criminal past' had allegedly been accredited by two organizations.⁸⁸ The same year, a special report was requested from four organizations, on the grounds that Iran had filed a complaint.⁸⁹ In 1999, it was the International Federation of Human Rights Leagues' turn, on the grounds of an Algerian complaint.⁹⁰

In 2000, the presence of members of the Cuban opposition in exile within three International NGOs, the International Council of the Association for Peace in the Continents (ASOPAZCO), the Agence des cités unies pour la coopération Nord-Sud and Freedom House, angered Cuba, which tried, with

⁸⁷ Paragraph 61 c) of resolution 1996/31 is the exact transposition of paragraph 39(b) of resolution 1296 (XLIV), 23 May 1968, which governed the consultative status up until 1996. It is drafted as follows (only the last sentence is relevant to the 'special reports'): 'Organizations in general consultative status and special consultative status shall submit to the Council Committee on Non-Governmental Organizations through the Secretary-General every fourth year a brief report of their activities, specifically as regards the support they have given to the work of the United Nations. Based on findings of the Committee's examination of the report and other relevant information, the Committee may recommend to the Council any reclassification in status of the organization concerned as it deems appropriate. *However, under exceptional circumstances, the Committee may ask for such a report from an individual organization in general consultative status or special consultative status or on the Roster, between the regular reporting dates*' (emphasis added).

⁸⁸ E/1998/8, para. 45.

⁸⁹ Cf. E/1998/72/Add.1, paras 33–4. The organizations in question are the World Confederation of Labor, Pax Christi International, the International Federation of Women in Legal Careers and the Movement Against Racism and for Friendship Among Peoples (MRAP). In 2001, Iran lodged a new complaint against five organizations, the International Association for Democratic Lawyers (IADL), the International Federation of Human Rights Leagues, New Human Rights, Women's Human Rights International Association, the Movement Against Racism and for Friendship Among Peoples (MRAP). See doc. E/2001/86, paras 111–12; E/2002/10, para. 92; E/2002/71 (Part II), paras 108–12.

⁹⁰ E/1999/109, para. 82. See report by the International Federation of Human Rights Leagues reproduced in E/C.2/1999/3/Add.1. On this basis, Algeria decided to withdraw its complaint but requested that 'in the future, if such situations reoccur, the Committee will take the appropriate measures'. Cf. E/1999/109/Add.2 (Part II), para. 78.

very long statements, to establish links between these organizations and Cuban 'terrorist' organizations.

The first of the two organizations was suspended for three years after summary proceedings.⁹¹ The second was required to hand in a special report to clarify its activities and the links they share with the ASOPAZCO.⁹² The third organization, Freedom House, entered a long justification process, perpetuated not only by Cuba, but also by China, Sudan and Iran: each year, the four states demanded that Freedom House furnish written answers to their very detailed questions.

In 2001, the complaint procedure became common law but also broadened its reach. Thus Mauritius, Bahrain and China strengthened the grounds for a *délit d'opinion* at the Commission on Human Rights, by basing their complaints and requests for special reports on the mere distribution of 'subversive' documents by NGOs. Mauritius passed a request for a special report from the World Confederation of Labour for the circulation of a document by its representative at the 56th Session of the Commission on Human Rights.⁹³

Bahrain made a long statement to complain regarding the 'activities' of one of the representatives of the 'International Confederation of Human Rights' (which is in fact the International Federation of Human Rights) who had 'circulated materials detrimental to the Government of Bahrain', at the 56th session of the Commission on Human Rights. The content of the documents circulated by the delegate was 'detrimental to the Government of Bahrain, in violation of the rules and regulations established by the Economic and Social Council for the enjoyment of consultative status by non-governmental organizations'. Bahrain then called 'upon the Committee to take action to prevent this type of person from engaging in such behaviour' and stated its openness to take into account all the requests it had received concerning human rights, in order to stop 'persons like [the delegate of the International Federation of Human Rights] and his cohorts, who represent no one but themselves, to sully the reputation of States Members of the United Nations and the organizations through which they operate'. Even if the Committee ended up closing the case, Bahrain succeeded in pushing forward the idea that circulating documents 'detrimental' to the states' reputation was an infringement of the ECOSOC regulations! The Chair of the Committee himself – Levent Bilman (Turkey),

⁹¹ See *infra*.

⁹² The case of the complaint was finally closed by the Committee. Cuba took note with satisfaction, as 'an example to be followed of good practices and willingness to respect and comply with the provisions of Council resolution 1996/31', the fact that the NGO withdrew, at the 58th session of the Commission, their accreditation from the two people affected by the Cuban complaint. See E/2002/71 (Part II), paras 103–7.

⁹³ E/2001/8, para. 93.

seemed satisfied with this specious interpretation by concluding that the Secretariat of the Commission on Human Rights in Geneva 'should be informed once again that necessary precautions should be taken to avoid such incidents recurring during future sessions of the Commission'.⁹⁴

China complained of 'abuses in violation of Economic and Social Council resolution 1996/31' committed by the Society for Threatened Peoples and the Transnational Radical Party at the 57th session of the Commission on Human Rights: 'Such misconduct included distribution of materials in violation of the rules, making statements disregarding the topic under discussion, and vile behaviour of representatives.'⁹⁵ In 2002, at the review of the quadrennial report by the France-Libertés – Fondation Danielle Mitterrand organization, China won a double victory when it got the Committee to require that the French organization submit a 'special report' to 'correct' its comments regarding 'China's relationship with Tibet'.⁹⁶

A first victory: it is now possible to require a 'special report' merely for a *délit d'opinion*. France-Libertés – Fondation Danielle Mitterrand was told to 'think properly' by being made to state that Tibet has always been a Chinese province. Formerly, complaints for délits d'opinion were always accompanied by reproaches, such as regarding the behaviour or the identity of representatives of the organization at the Commission on Human Rights.

A second victory: this special report was required following consideration of a quadrennial report. It did not, as in the previous cases, originate in an 'incident' at the Commission on Human Rights.⁹⁷ The France-Libertés – Fondation Danielle Mitterrand special report was considered by the Committee at its ordinary session in 2002. China made a long statement to express its dissatisfaction regarding the organization's report, in particular the statement that China 'has invaded and occupied Tibet', which is, for China, a serious attack on the 'United Nations Charter' and 'represents an open challenge and contempt for China's sovereignty and territorial integrity, as well as violating article 2 of the resolution 1996/31 of the ECOSOC . . . China was asking the Committee to put its President in charge of sending a letter to the organization reminding it 'to correct its erroneous position on Tibet'. The Committee only acceded to the second request which was for France-Libertés – Fondation Danielle Mitterrand to hand in a supplementary special report on the matter at the resumption of its 2002 session in January 2003.⁹⁸

At the report's consideration, the Chinese representative 'stated that she

⁹⁴ Ibid., paras 94–8.

⁹⁵ E/2001/86, para. 116.

⁹⁶ E/2002/10, paras 80 and 95.

⁹⁷ E/2002/10, para. 80.

⁹⁸ E/2002/71 (Part II), paras 113 and ff.

regretted that the organization had clung to its erroneous position on the question of Tibet and that Tibet had been an inalienable part of Chinese territory since the thirteenth century'. She also stressed that China could have asked for the suspension of the organization's status, but instead it wanted to 'show flexibility' by giving France-Libertés – Fondation Danielle Mitterrand 'another opportunity to reconsider its position on Tibet in a further special report'. The proposal was ratified by the Committee.⁹⁹ Finally, in 2003, the organization backed out: Danielle Mitterrand met the Chinese Ambassador in Paris to tell him 'she was sorry for the misunderstanding the statement provided in the special report may have caused' and that she was delighted to be able to dissipate it as 'the organization had never intended to question the territorial integrity of China'. At the Committee, China took note that 'the organization had expressed its respect for the sovereignty of China and its territorial integrity and also its intention to abide by the principles and purposes of the Charter' and there the story ended.¹⁰⁰

In the meantime, new complaints were lodged by Vietnam (against the Transnational Radical Party), Sri Lanka (against the Asian Legal Resource Centre), Turkey (against the International League for the Rights and Liberation of Peoples) and Colombia (against *Agir ensemble pour les droits de l'homme*).¹⁰¹ The complaints by Turkey and Sri Lanka were for the circulation of 'offensive' documents at the last session of the Commission on Human Rights.

Finally, in 2003, Libya made its contribution by lodging a complaint to the Committee against the Simon Wiesenthal Centre. The latter was accused of having 'distributed a letter urging Member States to oppose the candidacy of the Libyan Arab Jamahiriya for the chairmanship of the fifty-eighth session of the Commission on Human Rights', which amounted, according to Libya, to interfering 'in the affairs of a Member State, thus violating the rules of conduct as stipulated in Council resolution 1996/31'.¹⁰²

The special reports have been distorted from their original purpose, which was to have NGOs provide explanations of specific incidents that, generally, took place at the annual session of the Commission on Human Rights. The reports had been turned into a sanction, wielded arbitrarily by a number of states within the same Commission, against independent thinking. Henceforth, the slightest criticism of the human rights situation, the slightest protest

⁹⁹ Cf. E/2003/11, pp. 27–8.

¹⁰⁰ E/2003/32 (Part II), p. 18, para. 64.

¹⁰¹ E/2002/71 (Part II), paras 117ff. and E/2003/11.

¹⁰² E/2003/32 (Part II), p. 20, para. 79. In the end, because the members could not come to an agreement on the follow-up of the case, the Committee decided to end its examination on 27 May 2004, doc. E/2004/32, p. 37.

against history's official version, the slightest comment 'detrimental to the reputation of a State', can lead to disciplinary action that starts with the request for a special report and can end with a sanction being issued.

The Sanctions

The sanctions against NGOs are (A) status suspension, or (B) the withdrawal of the NGOs' consultative status.

A: Status suspension

Status suspension is the most commonly used sanction, probably because it lies in between requesting a special report and revoking status. Out of the seven suspension cases, four deserved some sort of sanction from the Committee, even though the appropriate sanction, in light of the criteria established by resolution 1996/31, might not have been suspension.¹⁰³

In 1994, the International Lesbian and Gay Association (ILGA) was challenged by the USA because one or several of its affiliated associations supported paedophilia.¹⁰⁴ In 2003, nearly ten years later, the US requested suspension for the Indian movement Tupaj Amaru, whose representatives at the Commission on Human Rights 'rushed towards the United States delegation carrying a large cylindrical object' and had – which is less serious – unfurled a banner with 'Peace' written on it while chanting anti-American slogans in front of a Cuban television crew.¹⁰⁵

In 2004, Cuba requested a three-year suspension for the organization Reporters without Borders based on three points: the incidents that took place in France at the demonstrations organized by the association in front of the Cuban Embassy in Paris and the peaceful occupation of the Cuban tourism information office; the interruption at the opening of the 59th session of the Commission on Human Rights in Geneva, when the representatives of

¹⁰³ The resolution makes provision for the Committee to either suspend or withdraw the status of an NGO in the following cases: '(a) If an organization, either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against Member States of the United Nations incompatible with those purposes and principles; (b) If there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities such as the illicit drugs trade, money-laundering or the illegal arms trade; (c) If, within the preceding three years, an organization did not make any positive or effective contribution to the work of the United Nations and, in particular, of the Council or its commissions or other subsidiary organs.'

¹⁰⁴ See *infra*.

¹⁰⁵ See *infra*.

Reporters without Borders threw flyers from the top of the public gallery to denounce the election of Libya as the Commission's chair; the fact that the organization had not submitted any quadrennial report since it had been granted consultative status to the council in 1993.¹⁰⁶

Finally, in 2005, China lodged a complaint against A Woman's Voice International, because one of its representatives at the 61st session of the Commission on Human Rights 'had introduced an illegal weapon into the meeting room'.¹⁰⁷

The other cases are based on purely political motives. In 2000, Cuba had requested a three-year suspension for the International Council of the Association for Peace in the Continents (ASOPAZCO), an NGO made up of Cuban exiles founded in Madrid, for having 'distributed information published by Miami-based organizations that organized, supported and financed subversive activities both inside and outside Cuba for the purpose of overthrowing the constitutionally elected government'.¹⁰⁸ As for the Transnational Radical Party (TRP), it was twice confronted with demands for its suspension: the first time by Russia in 2000, for accrediting one of Chechen President Aslan Maskhadov's representatives so that he could address the Commission on Human Rights;¹⁰⁹ and the second time in 2002, by Vietnam because it had accredited a member of a 'terrorist' organization called the Montagnard Foundation based in Carolina, in the United States.¹¹⁰

¹⁰⁶ See E/2003/32 (Part II), pp. 21–3.

¹⁰⁷ See E/2005/32 (Part II), pp. 26–9. A recommendation of a one-year suspension of the consultative status was adopted by 15 votes to one with one abstention. At the ECOSOC, the decision was adopted by consensus (decision 2005/238) but the United States made an intervention to say they dissociated themselves from the consensus and to express their support towards the organization that had 'spoken about government persecution of Chinese Christians and the leaders of unregistered Christian churches'. E/2005/SR.35, pp. 5–6.

¹⁰⁸ See *infra*.

¹⁰⁹ The request for suspension was adopted by consensus by the Committee; the United States dissociated themselves from it. The TRP then transmitted a letter of explanation to the Secretariat, which became the organization's ground of defence before the ECOSOC. In the end, the request for suspension was rejected by 23 votes to 20 with nine abstentions. Cf. E/2000/SR.46, para. 55.

¹¹⁰ The report requested from the TRP by Viet Nam was examined in 2004. China proposed a three-year suspension of the status. The Committee adopted the proposal by nine votes to eight with two abstentions. Viet Nam led a campaign at the ECOSOC for the ratification of the recommendation: two letters were sent to the members and delivered as official documents. The first letter contained a series of documents which were supposed to establish MFI's guilt. The European Union answered back with a letter also with enclosed documents pleading in favour of the organization. On 23 July 2004, the Committee of NGO's recommendation was finally rejected by 22 votes to 20 with

Beyond the causes which led to these suspension requests, all these cases highlight the extreme politicization of the sanction procedure. The positions of the States, within the Committee on NGOs, are dictated purely or solely by their national interests.

First, the ASOPAZCO and Tupaj Amaru cases show the USA and Cuba fighting each other through the intermediary of NGOs. The United States, supported by the Europeans, came to the ASOPAZCO's rescue, while Cuba and its allies of the moment (China, Russia, Zimbabwe) tried to save Tupaj Amaru.

In 2000, Cuba refused to defer the vote on its suspension request to enable the representatives of the ASOPAZCO to answer their questions.¹¹¹ The United States was able to get a hearing at the ECOSOC for the organization in exchange for acquiescing in the suspension of its provisional consultative status.¹¹²

In 2003, a representative of Tupaj Amaru was invited to appear before the Committee in New York, but, for controversial reasons, was absent. According to Tupaj Amaru and Cuba, he was not granted a visa to enter the United States. According to the latter, no application for a visa was ever made. The US requested a one-year suspension. Cuba considered such a sanction unjustified, since the NGO had apologized and withdrawn their accreditation from the two representatives concerned: to decide to suspend in these conditions 'by taking action in this way, the Committee would pursue a policy totally different from the practice followed during the past 10 years.'¹¹³ Finally, the request by the US was adopted with ten votes in favour, four against and five abstentions.¹¹⁴ For Cuba, such a decision established a precedent: 'where recognition of mistakes and apologies will no longer be seen as being sufficient in considering similar cases'.

Second, the International Lesbian and Gay Association (ILGA) case highlights well the risks that a state assumes when it wants to use 'objectively' the suspension procedure. Following the United States' accusations, the

11 abstentions. In the name of the European Union, the Dutch Ambassador declared that an NGO should not have its consultative status suspended on the sole basis that it had denounced human rights violations.

¹¹¹ The proposal for deferral presented by the United States was rejected by five votes to 12 with two abstentions. Cf. E/2000/88 (Part II), para. 83. The Cuban proposal for a three-year suspension was then adopted by 11 votes to five with two abstentions.

¹¹² Cf. E/2000/SR.45, para. 126 for the American proposal and para. 143 for the vote on the proposal (rejected by 21 votes to 17 with seven abstentions).

¹¹³ E/2004/32, para. 120.

¹¹⁴ E/2004/32, pp. 34–7 and, for the vote, p. 36, para. 125. In favour: Cameroon, Chile, Colombia, France, Germany, Ivory Coast, Peru, Romania, Turkey and US; against: China, Cuba, Russian Federation, Zimbabwe; abstentions: India, Iran, Pakistan, Senegal, Sudan.

organization decided, at its annual conference in June 1994, to ban member organizations supporting paedophilia and to adopt a resolution stating that groups or associations ‘whose “predominant aim” was to support or promote paedophilia were incompatible with the future development of ILGA’. But this was not sufficient for the US, because it considered that the wording of the resolution allowed other groups whose ‘predominant aim’ was not paedophilia to retain their membership. The organization replied that ‘they did not have the means or capacity to screen all affiliated members or to determine the goals and objectives in every case’. The United States’ delegation proposed that ‘the Association’s consultative status with the Council should be suspended until such time as ILGA could provide such assurances’ that ‘there were no other organizations in its membership which promoted, condoned or supported the legalization of paedophilia’.¹¹⁵ Resolution 1994/50, ‘status of the International Lesbian and Gay Association with the Council’, takes up this proposal.

Although it has no legal basis in resolution 1996/31 of the ECOSOC, this new mechanism invented by the United States enabled *prima facie* softening the suspension procedure’s rigour, by providing an option to terminate the procedure in response to ‘assurances’ provided by the organization. In reality, this mechanism had a pernicious effect: by leaving it to the Committee to decide on the reinstatement of the status, it gave certain states the power to make the suspension permanent, whereas, according to resolution 1996/31 (paragraph 57) the sanction cannot exceed three years. This is what happened to the ILGA.

In 1998, the organization submitted a request to regain its status. The request was only reviewed in 2001. A number of delegations questioned the ILGA regarding the means put into place to assure none of its affiliates supported paedophilia. The discussion went on at the 2001 resumed session of the Committee where several states, such as Senegal, Sudan, Lebanon and Pakistan, launched attacks. Sudan pointed out that it is the NGO’s responsibility to give evidence that it does not maintain any ties with organizations encouraging paedophilia. As there was no evidence, Sudan proposed to the Committee not to recommend status for the Association. Sudan’s proposal was adopted by eight votes to six with five abstentions.¹¹⁶

According to one of the voting states in favour of the proposal, ‘there was a clear congruence between homosexuality and paedophilia’.¹¹⁷ In the end, not

¹¹⁵ See E/1994/SR.50, pp. 2–11.

¹¹⁶ E/2002/10, paras 12 and ff; and regarding the vote, para. 7. Voted in favour of the proposal by Sudan: China, Ethiopia, Lebanon, Pakistan, Russian Federation, Senegal, Sudan, Tunisia; against: Bolivia, Chile, France, Germany, Romania and US; abstained: Algeria, Colombia, Cuba, India, Turkey.

¹¹⁷ *Ibid.*, para. 29.

only was the procedure initiated against the ILGA by the Committee illegal for having no basis in resolution 1996/31, but it was also dangerous, as it finally ended with a disguised withdrawal.

In 2004, the mechanics of restoring status once it had been suspended were somewhat different for Reporters Without Borders (RWB) and the ASOPAZCO. For RWB, Cuba presented a draft decision that would require the organization reporting to the Committee on its compliance with the Council's resolution 1996/31 that year. The Committee would then pronounce itself on status restoration 'in the light of the answer'. For the ASOPAZCO, Cuba proposed that the Committee ask the organization to submit a 'special report' that would be consulted at the following session. France went on to seek advice from the United Nations legal affairs department. The latter concluded that status should be reinstated automatically upon the expiration of the suspension period, which can last for 'up to three years' in accordance with paragraph 57 of resolution 1996/31. According to France, the ILGA case did not constitute a precedent as consultative status had been suspended in 1994, before resolution 1996/31 had been adopted. But still, both cases had to be put to a vote. The decision to restore RWB's status was adopted by 13 votes to five, with one abstention,¹¹⁸ whereas the Cuban proposal regarding the ASOPAZCO won a majority of ten votes to three with six abstentions.¹¹⁹

B: Status withdrawal

In this section, we will examine the cases of two organizations that had their status withdrawn following the recommendations from the Committee on NGOs: Christian Solidarity International (CSI), on a Sudanese initiative, and the ASOPAZCO, whose status had already been suspended following a complaint from Cuba.¹²⁰

¹¹⁸ Cf. E/2004/32, pp. 26–8. In favour: Cameroon, Chile, Colombia, France, Germany, India, Ivory Coast, Peru, Romania, Senegal, Sudan, Turkey and US; against: China, Cuba, Pakistan, Russian Federation, Zimbabwe; abstention: Iran.

¹¹⁹ Cf. E/2004/32, pp. 28–30. In favour: China, Cuba, Colombia, Iran, Ivory Coast, Pakistan, Russian Federation, Senegal, Zimbabwe; against: Chile, Turkey, USA. Abstentions: Cameroon, France, Germany, India, Peru, Romania.

¹²⁰ As of this writing, a third organization had its status withdrawn, on the initiative of the US, the Islamic African Relief Agency, based in Sudan. In the Committee, the US 'stated that the organization had been placed on the list of terrorist organizations by the United States Department of the Treasury for its involvement in terrorist financing, specifically of Al-Qaida and Hamas. The Agency is formerly affiliated with Maktab Al-Khidamat, which was co-founded and financed by Osama bin Laden and is the precursor organization of Al-Qaida'. The Organization was defended by the Ambassador of the Sudan. As no answer had been received from the organization, the Committee took the decision to withdraw its status. See E/2006/32 (Part I), paras 90

First, on 28 April 1999, Sudan wrote a letter to the Committee on NGOs to lodge a complaint against CSI because the organization had accredited 'and given the floor to speak' to John Garang, 'the Commander of the terrorist separatist group of Southern Sudan'. Sudan stated that this action by the NGOs constituted a 'flagrant breach and abuse of status'¹²¹ and asked the Committee for the status to be withdrawn. The complaint was passed on to the Committee on 3 May 1999 and sent, through the post, to CSI on 2 June 1999. CSI was requested by the Committee to hand in a special report on the incident. On 7 June 1999, the organization answered that it did not have sufficient time to prepare the report. On 9 June, the Secretariat requested a written account of the incident for the Committee in lieu of a special report. It also suggested that the organization dispatch a representative before the Committee to answer its members' questions.

On 17 June, the Committee considered CSI's answers dated 7 and 15 June. Several members of the Committee found them 'unsatisfactory'. The representative of the United States introduced a motion of order to ask for the adjournment of the debates, on the ground that the consideration of the complaint from Sudan was not part of the meeting's agenda. The motion was rejected by 13 to one with four abstentions.¹²² A second motion was then introduced by the United States to determine whether the Committee was competent to propose the withdrawal of CSI's consultative status, on the basis that it had not handed in a special report, as provided in paragraph 55 of resolution 1996/31.¹²³ The motion was rejected by 11 votes to one with four

and ff. But at the resumed session in May, an answer had been received. Thus Sudan proposed to reverse the decision previously taken. The motion was rejected by a vote of nine against to eight in favour and two abstentions. Sudan regretted the decision, India and Pakistan stated that the organization 'had the right to be heard and provide all information on its activities'. In addition, Pakistan said that 'the Committee did not have the authority to look at the alleged accusation of terrorist activities lodged by the United States', while Cuba 'would have liked to have the information on the activities implemented by the organization before a decision was taken in January. His delegation condemned all terrorist activities'. See E/2006/32 (Part II), paras 74–86.

¹²¹ E/1999/109, para. 69.

¹²² Ibid., para. 72.

¹²³ Paragraph 55 of the resolution, in the eighth section on the 'suspension' and the 'withdrawal' of the status, on the role of the Committee: 'In periodically reviewing the activities of non-governmental organizations on the basis of the reports submitted under paragraph 61(c) below and other relevant information, the Council Committee on Non-Governmental Organizations shall determine the extent to which the organizations have complied with the principles governing consultative status and have contributed to the work of the Council.' It therefore clearly appears, that a decision of the Committee regarding the suspension or the withdrawal of the status of an organization can only apply following the examination of a report submitted in accordance with paragraph 61(c) of the resolution.

abstentions.¹²⁴ Finally, Sudan's proposal for status withdrawal was put to a vote and won by 12 votes to one with four abstentions.¹²⁵

On 28 July 1999, the general debate regarding NGOs at the ECOSOC was very tense. Finland intervened on behalf of the European Union and associated countries of central and eastern European states, as well as Cyprus, Malta and other states, to denounce the drift in the Committee on NGOs' work. It was of course alluding to the CSI's status withdrawal 'incident':

All NGOs applying for consultative status with the Council should be given the same treatment, strictly based on an evaluation in conformity with Council resolution 1996/31. There was a disturbing tendency to set aside those criteria and to take up politically motivated considerations. It had become far too easy for Governments which felt uncomfortable with the accreditation of a particular NGO to block that NGO's participation in the Council's work. The European Union was also of the view that any NGO facing withdrawal or suspension of consultative status, regardless of its possible merits or alleged misconduct, was entitled to have its case considered with fairness, impartiality and mature reflection, in accordance with due process.¹²⁶

In the same way, Canada called for an 'urgent review' of the Committee's procedures.¹²⁷ The NGOs' Conference on consultative status with the ECOSOC (CONGO) also made a long intervention to say that it 'was deeply concerned at the manner in which Council resolution 1996/31 was being applied, in particular regarding the granting and withdrawal of NGOs' consultative status'. It denounced the fact that 'NGO Committee decisions appeared to be increasingly politically motivated. It might even be wondered whether some NGOs which had obtained consultative status actually met all the criteria set forth in paragraphs 9 to 13 of resolution 1996/31, regarding their goals, and, especially, their independence vis-à-vis their Governments.'¹²⁸

Conversely, India, Cuba, Pakistan (the latter in the name of the member states of the Organization of the Islamic Conference) and Comoros, intervened to denounce 'misuses' of the consultative status by certain NGOs, such as 'the representation of several NGOs by the same individual' (India, Cuba), untimely remarks (Cuba) and NGOs that 'misrepresent Islam' (Pakistan).¹²⁹

On 30 July 1999, Indonesia presented a new draft decision aiming at

¹²⁴ Ibid., para. 74.

¹²⁵ Ibid., para. 76. Voted in favour: Algeria, China, Cuba, Ethiopia, India, Lebanon, Pakistan, Russian Federation, Senegal, Sudan, Tunisia, Turkey; voted against: US; abstentions: Chile, France, Ireland, Romania.

¹²⁶ E/1999/SR.44, p. 3.

¹²⁷ Ibid., p. 6.

¹²⁸ Ibid., pp. 6–7.

¹²⁹ Ibid., pp. 3–4 for India; p. 4 for Cuba; pp. 5–6 for Pakistan; p. 7 for Comoros.

replacing the draft decision written up by the Committee on NGOs on CSI's status withdrawal. The draft decision, which grew out of extensive consultations, was adopted by consensus. Sudan immediately pointed out its flexibility. The decision requested the Committee to convene in order to consider Sudan's complaint. In order to do this, CSI was given until 31 August 1999 to submit a written report addressing the Committee's concerns. The latter would therefore meet to consider the answers in order to make a recommendation to the Council on the decision to make before it resumed its session on 16 September 1999. In the meantime, the privileges CSI benefited from thanks to its status were temporarily suspended.¹³⁰

For Canada, '[h]uman rights NGOs must be free to speak out, even when their message might cause discomfort to Governments. Any deliberations concerning them by the Council or its subsidiary bodies, therefore, must meet the highest standards of transparency and due process. Those standards had not been met in the case in question'.¹³¹

Finland, for its part, on behalf of the European Union and the countries associated with it, pointed out that the provisional suspension procedure was not part of resolution 1996/31 and that the Council's decision must not, in this respect, be considered as a precedent.¹³²

The Committee on NGOs met on 7 September to 'resume and complete its consideration of the question of the consultative status' of CSI. The Committee was to consider a document that the NGO had submitted and could ask questions of its representative. Sudan made a long statement to denounce CSI and all 'such rebellious and terrorist organizations, which are involved in activities against sovereign States'.¹³³

The United States proposed to change the withdrawal measure to a three-year suspension, but Sudan's request for withdrawal was adopted by 14 votes to one, with four abstentions.¹³⁴ Sudan's motion to vote on CSI's status withdrawal, even though the question was not on the agenda and the organization was not given a chance to submit its report, appears flagrantly to violate the spirit and the letter of resolution 1996/31 and the general principle of respecting the rights of the 'defendant'.

Second, in 2004, the Committee on NGOs had decided, upon Cuba's request, to ask ASOPAZCO to submit a special report, as a prerequisite for all

¹³⁰ E/1999/SR.46, p. 13 and Decision 1999/268, in E/1999/INF/2/Add.2.

¹³¹ *Ibid.*, p. 14.

¹³² *Ibid.*, p. 15.

¹³³ E/1999/109/Add.1, para. 5.

¹³⁴ *Ibid.*, para. 32. Voted in favour: Algeria, Bolivia, China, Colombia, Cuba, Ethiopia, India, Lebanon, Pakistan, Russian Federation, Senegal, Sudan, Tunisia, Turkey; against: US; abstentions: Chile, France, Ireland, Romania.

decisions concerning the restoration of consultative status.¹³⁵ The report was considered in January 2005 and Cuba, deeming the report unsatisfactory, requested that the organization 'submit a new application' to the Committee. The proposal led to an animated debate, with Cuba, China, Sudan, the Russian Federation, Iran and Pakistan drawing on the ILGA precedent, and Germany, France and the United States responding that this case could not serve as a precedent because it had occurred before the 1996 reform. The United States introduced a motion of adjournment that was dismissed by eight votes to five with five abstentions. The United States then proposed to amend the Cuban request: the ASOPAZCO was asked to present an *updated* application instead of a new one, which would be considered at a later session.¹³⁶ It was conceding too much with regard to resolution 1996/31, which stipulates that a suspension can last no more than three years and only plans a 'new application' in the case of status withdrawal.¹³⁷

The Committee did examine the application when it resumed its session in May 2005. On 11 May, Cuba, of course, sought to throw out the organization's application as it was 'trying to misinform the Committee on matters that it had hidden, misrepresented or omitted' and ended by agreeing 'reluctantly [. . .]' that the organization would be notified by the Secretariat of the Committee's intention to act on a proposal to withdraw its status during the current session'. The ASOPAZCO was granted an extension of five working days to answer Cuba's questions. On 19 May, Cuba reformulated its request by asking for the withdrawal of the organization's consultative status. This proposal was put to the vote after an animated debate and won a majority of eight votes to four with six abstentions.

The Europeans (Germany, France, and Romania) pointed out that the procedure was flawed for two reasons: because the organization was not given enough time to prepare its defence and, most importantly, it had already been punished for the same facts; that is, that the withdrawal followed the suspension without a new complaint being officially lodged.¹³⁸

¹³⁵ See *supra*.

¹³⁶ E/2005/32 (Part I), pp. 16–19.

¹³⁷ Res. 1996/31, para. 59: 'An organization whose consultative status or whose listing on the Roster is withdrawn may be entitled to reapply for consultative status or for inclusion on the Roster not sooner than three years after the effective date of such withdrawal.'

¹³⁸ E/2005/32 (Part II), pp. 15–18. Voted in favour of the Cuban proposal: Cameroon, China, Cuba, Iran, Russian Federation, Senegal, Sudan, Zimbabwe; against: France, Germany, Romania, US; abstentions: Chile, Colombia, India, Pakistan, Peru, Turkey.

Recommendation to Deny the Consultative Status to NGOs

This should logically be the first step taken in order to put NGOs in line, but, chronologically, this type of recommendation (applied to NGOs that cannot be suspected of not respecting the terms of resolution 1996/31) has appeared only recently. It happened in a rather spectacular way, as four gay and lesbian NGOs applied for consultative status at the same time and saw their application altogether rejected by the Committee. If it was meant to be a test in order to show how much the Committee is biased, one could say the test had been totally successful.

At its 2006 session, the Committee had to examine the applications of the five following NGOs: International Lesbian and Gay Association, which had already been subject to the Committee's sanctions (see *supra*); the Danish National Association for Gays and Lesbians; the International Lesbian and Gay Association – Europe; the Lesbian and Gay Federation in Germany; and the Coalition Gaie et Lesbienne du Québec.

The latter was given some time, as the answer it had provided to the questions put by some Committee members was in French, and not translated into English yet.¹³⁹ But the other four could not escape: Germany led the fight in their defence, by proposing the adjournment of the debate on each organization. Each time the adjournment was refused. Then the Committee went to vote on a decision not to grant the status, and each time the decision was adopted.¹⁴⁰ After the votes on the ILGA and the Danish Association, the representative of Germany stated that 'the Committee had taken two decisions that would haunt them for a long time'. He continued as follows:

The Committee had committed an act of discrimination against two organizations whose sole purpose was to combat discrimination. These decisions reflected badly on a Committee that had been criticized in the past for introducing partisan political considerations into its work in a manner that was inappropriate for an administrative Committee of the Economic and Social Council. However, he was convinced that those who hoped to stifle the debate on human rights and sexual orientation had achieved the exact opposite. He was convinced that member States will live to see the day when it would be universally accepted that discrimination on the grounds of sexual orientation was impermissible.¹⁴¹

¹³⁹ E/2006/32 (Part II), para. 20.

¹⁴⁰ For the ILGA, see E/2006/32 (Part I), paras 35ff; for the Danish National Association for Gays and Lesbian, see E/2006/32, paras 51ff; for International Lesbian and Gay Association – Europe, see E/2006/32 (Part II), paras 39ff; and for Lesbian and Gay Federation in Germany, see E/2006/32 (Part II), paras 22ff.

¹⁴¹ E/2006/32 (Part I), para. 64.

In the ECOSOC, the debate went on, and Germany led the defence of the five NGOs. About ILGA and the Danish Association, it proposed to amend the draft decision in order to replace ‘the Council decides *not* to grant consultative status’ with ‘the Council decides *to grant* consultative status’. Russia, invoking rule 67.2 of the Council’s rules of procedure, required that the Council take no decision on the proposal put forward by Germany. This no-action motion was put to a vote: in the first case (ILGA) the motion was adopted.¹⁴² Germany then asked for a vote to be taken on the draft decision and lost.¹⁴³ In the second case, the majority turned out to be different and, though the no-action motion was adopted,¹⁴⁴ the draft decision not to grant consultative status to the Danish Association was rejected.¹⁴⁵

This debate found an unexpected follow-up, as the Special Representative on the Situation of Human Rights Defender, Hina Jilani, took up the cases of those NGOs and sent a communication to ECOSOC members drawing their attention to the refusal to grant consultative status to NGOs working on human rights for Lesbian and Gay persons. This action provoked a debate during the second session of the Human Rights Council where Algeria, on behalf of the African group, along with Ghana, Tanzania and China, attacked the Special Representative for having taken such an initiative it regarded as going beyond her mandate. As the ‘Council Monitor’ of the International Service for Human Rights reports, ‘They used the incident to call for the adoption of a code of conduct for special procedures to avoid such “erratic action”.’¹⁴⁶ The Special Representative tried to explain that she had withdrawn that communication from her report, but it seemed that this would not satisfy the complaining states.

CONCLUSION

Judging by its reports, the Committee on NGOs has never engaged in collective deliberation about the phenomenon of servile NGOs. The question was only mentioned once and all that remains of it is an enigmatic passage in the

¹⁴² By 25 votes to 21, with five abstentions. See E/2006/SR.34, p. 7.

¹⁴³ By 22 votes to 19, with nine abstentions. *Ibid.*, p. 8.

¹⁴⁴ By 23 votes to 23, with six abstentions. *Ibid.*, p. 9.

¹⁴⁵ By 22 votes to 19, with nine abstentions. What happened is that the United States and Australia, who had voted against the granting of consultative status to ILGA, voted in favour of the Danish Association. At the same time, the Republic of Korea who had abstained in the first case, also voted in favour of the Danish Association. The majority was thus reversed.

¹⁴⁶ See Human Rights Council, 2nd session, Preliminary Overview, *Council Monitor (ISHR)*, 6–7, <http://www.ishr.ch/hrm/council>.

Committee's 1999 report under the heading 'Independence from Government Influence':

In the course of the Committee's review of new applications, it encountered several instances of small and large organizations, predominantly from the South, that had significant ties to government. After serious discussion during which several delegations expressed concern regarding the ability of such organizations to retain their independence from undue influence and freedom of expression, it was recognized that at times *such organizations required government assistance in order to function*, particularly in such matters as the sharing of expertise in the areas of technology and project management.¹⁴⁷

It is more important than ever to understand the servile society phenomenon. At stake are both the future of the United Nation's protection of the Human Rights system – since, as we have seen, the problem mainly concerns this domain – and the principle of letting NGOs contribute to the works of international organizations. The 'rationalizing' processes of the Commission on Human Rights at the UN multiplied during the last years of this body, leading to an erosion of the rights initially granted to the NGOs. Using the excuse of the increase in the numbers of NGOs benefiting from consultative status of the ECOSOC in the last ten years,¹⁴⁸ a number of states tried to impose restricted access and limited speaking time.

In this unfavourable context, the United Nations Secretary-General, Kofi Annan, decided to 'assemble a group of eminent persons representing a variety of perspectives and experiences to review past and current practices and recommend improvements for the future in order to make the interaction between civil society and the United Nations more meaningful'.¹⁴⁹ This decision probably reflects the realization of the new role played by the NGOs at the United Nations. At the same time, it is risky, as all the reform processes that were started in recent years at the United Nations resulted in a decrease in the rights of the NGOs without compensation elsewhere, such as in the level of participation.

The group of eminent persons handed in its final report in June 2004.¹⁵⁰ The Secretary-General answered it in a report in September 2004, by highlighting several suggestions.¹⁵¹ The two reports were transmitted to the

¹⁴⁷ E/1999/109/Add.2 (Part II), pp. 11–12, para. 45 (emphasis added).

¹⁴⁸ The number of NGOs endowed with the status has quadrupled in a little more than 30 years: 500 NGOs were endowed with the status in 1968; around 1600 in 1995; 2613 in 2005.

¹⁴⁹ A/57/387, para. 141.

¹⁵⁰ A/58/817.

¹⁵¹ A/59/354.

General Assembly to be considered. The latter has not, for the time being, followed it up, even for the United Nations global reform process ratified by resolution 60/1 of 16 September 2005, '2005 World Summit Outcome'.¹⁵²

The proposals regarding the reform of the consultative status are, on the face of it, heading the right way, in the sense that they plan to extend the consultative status to all the United Nations' systems – no longer only to the ECOSOC and its subsidiary bodies – and to establish the accreditation procedure at the General Assembly level.¹⁵³ But if the Committee on NGOs future seems over, there is no certainty that its replacement will be better, as a political organ will continue to hold the power to rule on granting, suspending or withdrawing status.¹⁵⁴ A study of the conduct of the Committee on NGOs over 15 years pleads against this solution. The stakes in a possible reform to come are important. Beyond the United Nations, the evolution of the consultative status to the ECOSOC can be used as a reference for all the other international organizations working with NGOs. Indeed many international organizations already have a definite consultation status, more or less inspired by the ECOSOC's system, and are also trying, because of the increasing numbers of NGOs, to reform the status.¹⁵⁵ Other organizations maintain

¹⁵² The World Summit contents itself with a minimal reference to civil society, at the end of the document, which tends to show that this question is no longer a priority: '172. We welcome the positive contributions of the private sector and civil society, including non-governmental organizations, in the promotion and implementation of development and human rights programmes and stress the importance of their continued engagement with Governments, the United Nations and other international organizations in these key areas. 173. We welcome the dialogue between those organizations and Member States, as reflected in the first informal interactive hearings of the General Assembly with representatives of non-governmental organizations, civil society and the private sector.' Regarding the 'interactive hearings', see the note of the President of the General Assembly H.E. Jean Ping, 'the informal interactive hearings of the General Assembly with representatives of non-governmental organizations, civil society organizations and the private sector'. A/60/331.

¹⁵³ Proposal 19 of the Panel of Eminent Persons, transmitted by the Secretary General.

¹⁵⁴ Proposal 20 of the Panel consists in setting up a two step procedure: first, the examination of the applications for accreditations is left to an 'Accreditation Unit' created within the General Assembly Secretariat. This Unit would be in charge of setting up an advisory body that would help decide 'whether applications should be recommended or not'. Subsequently, a General Assembly Committee would come to a decision based on this organ's recommendations. In his report A/59/354, the Secretary General transmits the idea of a 'pre-screening' by the Secretariat, but is less specific about the terms of the examinations by the governments as he only proposes that '[m]ember States should be provided with consolidated lists of applications for consideration'.

¹⁵⁵ Several organizations are thinking of ways to reform their relations with the NGOs: see the comments from the working groups of the NGOs of the World Bank:

informal relationships with NGOs and are studying the option to set up a definitive status.¹⁵⁶

In both cases, the precedents of the past years within the framework of the ECOSOC, as well as a possible reviewing exercise in the future, will certainly have a determining influence on the processes used by other international organizations. In the present state of affairs, the criteria established by resolution 1996/31 seem insufficient to enable an organ to dismiss on an objective basis the applications of servile NGOs. Paragraph 12 of the resolution imposes two conditions: the organization must not have been formed by 'a governmental entity or intergovernmental agreement'; and, regarding its formation, the organization can accept 'members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization'. Another condition that can be added is the obligation of financial openness, stipulated in paragraph 13 of the resolution: 'Any financial contribution or other support, direct or indirect, from a Government to the organization shall be openly declared to the Committee through the Secretary-General and fully recorded in the financial and other records of the organization and shall be devoted to purposes in accordance with the aims of the United Nations.' This last condition is a way of implicitly recognizing that if, on principle, an NGO must be mainly financed by private funding, the presence, even in the majority, of public funds, cannot be considered in itself as a distinctive criterion for a governmental NGO.

The autonomous highlighting of the principle of freedom of expression mentioned in paragraph 12 is missing from this list of criteria. Thus, an amendment of resolution 1996/31 should be adopted so that national NGOs should be able to prove, through their views and behaviour, their independence vis-à-vis the government they come under. But the legal criteria do not count for much so long as the process remains in the hands of the Committee on NGOs in its present composition. Indeed, as long as this organ remains purely

'Enhancing Civil Society Capacity to Influence the Emergence of Participatory Socio-Economic Policy Formulation in the World Bank. Re-Invigorating the Global Agenda of the NGO Working Group on the World Bank' (<http://www.worldbank.org/devforum/files/ngowg.pdf>). But also within the framework of the FAO, 'FAO Policy and Strategy for cooperation with non-governmental and civil society organizations', <http://www.fao.org/documents>.

¹⁵⁶ This organization is the case with World Trade. For a summary, see G. Marceau and P. Pedersen (1999), 'Is the WTO open and transparent? A discussion of the relationship of the WTO with non-governmental organisations and civil society's claims for more transparency and public participation', *Journal of World Trade*, 33(1), 5-49 and the International Federation of Human Rights League, report quoted in note 1. This is also the case for the Organization for Security and Cooperation in Europe (OSCE).

intergovernmental, these decisions will facilitate the entry of servile NGOs in the United Nations' system and will enable the use of the procedure, by certain states, to repress criticism of them within the Commission on Human Rights. Consequently, it appears urgent to modify the present system by adopting two measures:

1. Suppression of the advice procedure of paragraph 8, which gives de facto a right of veto to the 'concerned State', in other words to the state being criticized by the national NGO at issue. This procedure became meaningless when, in 1996, the ECOSOC decided to open the status to national NGOs.
2. Ending the intergovernmental nature of the Committee of NGOs. Its present set-up makes it a political organ, incapable of making decisions using the objective criteria defined in resolution 1996/31. Several alternatives can be considered. The Committee could, for example, be made up only of independent experts or even at parity of experts and of NGOs representatives appointed by the Secretary General by sectors.

Until the adoption of this type of reform, provisional measures have to be taken by the ECOSOC and the Committee in charge of the NGOs under the ECOSOC's instructions, in order to stop the development of the servile society at the UN and to end the unjustified attacks against independent NGOs. Such measures may consist of the following:

1. No 'request for explanations' expressed by a state towards the application or the quadrennial report from an NGO should have any effect if it is not officially ratified by the whole Committee. At the moment, one member state of the Committee can stop the review of the application or of the report of an NGO for years by a unilateral formulation of a request for explanations.¹⁵⁷
2. Precise regulation should be carried out of the mechanism by which the Committee requests an NGO to produce a 'special report' on an incident

¹⁵⁷ The French and the English version of the last sentence of para.15 of resolution 1996/31 may seem contradictory on this issue. The French version is: 'Une organisation non gouvernementale qui demande le statut consultatif général ou spécial ou son inscription sur la Liste doit avoir la possibilité de répondre à toute objection *que peut soulever le Comité* avant de prendre sa décision' (emphasis added). Whereas, according to the English version: 'A non-governmental organization applying for general or special consultative status or a listing on the Roster shall have the opportunity to respond to any objections being *raised in the Committee* before the Committee takes its decision' (emphasis added).

or a period of time shorter than the period covered by the quadrennial report. At present, the 'special reports' are used in the context of a disciplinary procedure that can constitute a preliminary step toward the withdrawal or the suspension of the status. This procedure, despite its gravity, is based merely on an elliptical sentence of resolution 1996/31 (paragraph 61-c), which gives no guarantee to the NGOs submitted to it.

3. The Economic and Social Council should declare illegal the procedure of conditional suspension it has adopted in its resolution 1994/50 against the ILGA. This procedure is against paragraph 57 of resolution 1996/31, which limits the suspension of the status to a duration of three years. At the same time as recognizing its illegality, the ECOSOC should commit itself not to use it again and to restore the status (Roster) of the ILGA, without conditions beyond those stipulated in resolution 1996/31.
4. The ECOSOC should also declare illegal the procedure of 'provisional suspension' of an organization's status, pending a definite decision from the Committee. This procedure has no legal basis in resolution 1996/31.
5. It must be clearly stated that resolution 1996/31 allows suspension for a period of three years maximum and that, beyond that deadline, the status of the organization must be automatically restored.
6. The case of an organization of whom the Committee is considering the withdrawal or the suspension should be on the Committee's agenda. In addition, the Committee should make sure this examination always takes place with a representative of the target NGO present. In order to achieve this, it is up to the Committee to get to the NGO a summons specifying the date on which the hearing will be held. Finally, the NGO should be given sufficient time to defend itself, by means of a report answering the accusations brought against it. In any case, the examination should never take place solely on the basis of the allegations of the state, as happened for Christian Solidarity International.
7. The Committee must respect the general principle *non bis in idem*, applicable in criminal and disciplinary matters, by virtue of which no one can be put on trial twice for the same deed.