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TABLE OF CONTENTS

I	INTRODUCTION	11
1	STATE OF RESEARCH	12
2	SUBJECT OF ANALYSIS.....	16
3	RESEARCH QUESTIONS AND INTERESTS	16
4	METHODOLOGY	17
5	TERMINOLOGY	18
5.1	<i>Non-governmental organizations</i>	18
5.2	<i>States</i>	20
II	THE HUMAN RIGHTS COUNCIL IN THE UNITED NATIONS SYSTEM OF HUMAN RIGHTS PROTECTION.....	21
1	OVERVIEW OF UN INSTITUTIONS WITH RELATION TO HUMAN RIGHTS	22
1.1	<i>Treaty-based UN bodies</i>	22
1.2	<i>Charter-based UN bodies</i>	25
2	ECONOMIC AND SOCIAL COUNCIL – ECOSOC.....	30
3	OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS	31
4	HUMAN RIGHTS COUNCIL	32
4.1	<i>Human Rights Council Sessions: Agenda, Working Methods and Rules of Procedure</i>	37
4.2	<i>Universal Periodic Review</i>	40
4.3	<i>Special Procedures</i>	42
4.4	<i>Advisory Committee</i>	44
4.5	<i>Complaint Procedure</i>	44
4.6	<i>Specialised Mechanisms</i>	45
III	ACCESS OF NGOS TO THE HUMAN RIGHTS COUNCIL.....	47
1	ECOSOC CONSULTATIVE STATUS.....	47
1.1	<i>Three categories of consultative status and the selection criteria</i>	49
1.2	<i>Rising Numbers of NGOs in consultative status</i>	52
1.3	<i>Committee on Non-governmental Organizations</i>	55
1.4	<i>Application Process</i>	58
1.4.1	<i>Infinite questioning</i>	59
1.4.2	<i>Procedural particularities</i>	61
1.4.3	<i>Sensitive Cases</i>	62
1.5	<i>Quadrennial Reports</i>	65
1.6	<i>Cases of suspension or withdrawal</i>	66
2	FACTORS DETERMINING <i>DE FACTO</i> ACCESS	68
2.1	<i>ECOSOC status – an advantage but not a necessity</i>	69
2.2	<i>Presence in Geneva</i>	69

2.3	<i>The cost-benefit ratio</i>	71
2.4	<i>Know-How</i>	72
IV	ENGAGEMENT OF NGOS WITH THE INTERGOVERNMENTAL MECHANISMS OF THE HUMAN RIGHTS COUNCIL	75
1	TYPES OF NGOS IN THE COUNCIL AND THEIR GOALS	76
2	FORMAL WAYS OF ENGAGEMENT	77
2.1	<i>Oral statements</i>	80
2.2	<i>Written statements</i>	83
2.3	<i>UPR</i>	84
2.4	<i>Complaint Procedure</i>	88
3	INFORMAL WAYS OF ENGAGEMENT	89
3.1	<i>Informal contacts to State delegations</i>	90
3.2	<i>Consultations on resolutions</i>	93
3.3	<i>Parallel events</i>	96
4	STRATEGIES OF ENGAGEMENT	99
5	TRENDS OF PARTICIPATION	102
5.1	<i>Lost momentum of NGO attendance</i>	102
5.2	<i>Shrinking space for oral statements</i>	104
5.3	<i>Differing opinions on written statements</i>	108
5.4	<i>Increasing number of side events</i>	110
5.5	<i>Increasing or shrinking space?</i>	111
6	FUNCTIONS OF NGOS AT THE HUMAN RIGHTS COUNCIL	114
V	SUMMARY AND CONCLUSIONS	117
VI	LIST OF REFERENCES	125

Annex

List of interviewees in alphabetical order

Interview transcriptions

Abstract

Curriculum Vitae

List of Tables

Table 1: Operational treaty bodies and their procedures

Table 2: Establishment of consultative relationships

Table 3: Consultation with Commissions and Other Subsidiary Organs of the Council

Table 4: Number of NGOs in consultative status with ECOSOC

Table 5: Number of NGO applications before the Committee

Table 6: Number of NGOs attending the last sessions of the Commission on Human Rights and the Human Rights Council

Table 7: Number of NGO interventions during March sessions

Table 8: Shares of NGO and State speaking time

Table 9: Speaking time assigned to a session and speaking time utilized

Table 10: Written statements by NGOs

Table 11: Number of NGO side events

Table 12: Functions of NGOs in the Human Rights Council

List of Abbreviations

CETIM	Centre Europe – Tiers Monde
COC Netherlands	Cultuur en Ontspanningscentrum Netherlands
DESA	Department for Social Affairs
DPI	Department of Public Information
ECOSOC	Economic and Social Council
EU	European Union
FAO	Food and Agriculture Organization
FES	Friedrich-Ebert-Stiftung
FIDH	Fédération Internationale des Droits des Hommes
FIDH	International Federation for Human Rights
GA	General Assembly
GONGO	Government-Organized NGO
GRULAC	Latin American and Caribbean Group
HABITAT	United Nations Human Settlements Programme
HRC Net	Human Rights Council Network
ICJ	International Court of Justice
IGLHRC	International Gay and Lesbian Human Rights Commission
ILGA	International Lesbian and Gay Association
ILHR	International League of Human Rights
ILO	International Labour Organization
ISHR	International Service for Human Rights
NAM	Non-Aligned Movement
NGO	Non-governmental organization
NHRI	National Human Rights Institutions
OHCHR	Office of the High-Commissioner for Human Rights
OIC	Organization of the Islamic Conference

SPT	Subcommittee on the prevention of torture
the Council	Human Rights Council
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOG	United Nations Office at Geneva
UPR	Universal Periodic Review
WEOG	Western European and Others Group
WHO	World Health Organization

I Introduction

During the last two decades, non-governmental organizations (NGOs) became one of the most popular objects of research in political science. Although the first NGOs were already active in the framework of the League of Nations, strong academic interest only occurred in the 1990s when the NGO movement gained unprecedented strength and visibility due to its role in various United Nations (UN) world conferences. Hence, international relations scholars had to acknowledge that non-State actors such as NGOs play a role in international politics. Proponents of various theoretical schools tried to interpret the 'NGO phenomenon' according to their wider understanding of the international system. However, no distinct and comprehensive field of NGO studies arose. Some approaches hailed the potential of NGOs to increase democracy and legitimacy of international institutions. Some scholars saw NGOs as a new powerful actor due to a 'power shift' from States to NGOs and other non-State actors. Others perceived them as a manifestation of an arising global civil society. However, all of them agreed that the 'NGO phenomenon' is difficult to grasp, due to the diversity of actors that are usually referred to by the term NGO.

Today, NGOs are active in virtually every sector of UN activity and their involvement in the field of human rights is one of the strongest and most visible. This can also be observed in the context of the Human Rights Council (the Council) in Geneva, which is the main intergovernmental organ responsible for human rights in the UN system. The Council offers a broad range of opportunities for engagement for NGOs, although it is a subsidiary organ of the General Assembly, where NGOs are formally limited to a role as quiet observers. The Council, on the contrary, allows for actual NGO participation, such as delivering oral statements in the plenary or submitting written statements. Furthermore, NGOs may also engage informally with the States represented in the Council, for instance by taking part in consultations on the draft texts of resolutions.

Such a high level of NGO integration into an intergovernmental human rights institution is fairly surprising, given that the work of human rights NGOs is essentially directed at criticizing the behaviour of States. This results from the fact that human rights are by nature directed at regulating the behaviour of States towards persons under their jurisdiction. As a consequence, the activities of most human rights NGOs are directed at criticizing human rights violations by States. Therefore, human rights NGOs are in general perceived as inconvenient opponents from the point of view of States. Nevertheless, NGOs enjoy a wide range of engagement opportunities in the Council.

This observation was the starting point which led to the decision to analyze the work of NGOs in the framework of the intergovernmental mechanisms of the Council. The aim of this study is to provide an analysis of the terms of NGO engagement in the Council that goes beyond a summary of formal rules and provides a thorough examination of the actual practice. Due to a scarcity of literature on NGO engagement in the Council, this assignment takes an open and practically oriented approach that shall permit to grasp both formal rules and informal practices.

Before going into the substance of the matter, chapter one discusses the present state of research, the methodology, and key terminology that will be applied. One of the main sources of information will be semi-structured expert interviews with professionals working in the framework of the Council.

Chapter two outlines the institutional background. It offers an overview on the UN human rights system and emphasizes the difference between expert mechanism and intergovernmental mechanisms which is essential to understand the role of the Council in these arrangements. Most importantly, chapter II discusses the institutional design and mechanisms of the Council, which is an indispensable precondition for analyzing the role of NGOs in these arrangements.

Chapter three examines the conditions for NGO access to the Council. It discusses the formal rules of access and reveals the biased and politicized practices of the NGO Committee, a sub-committee of the UN Economic and Social Council (ECOSOC), comprised of 19 States that decide on whether or not to accord NGOs the so-called ECOSOC consultative status. Without this recognition, NGOs cannot formally engage with the Council. Furthermore, chapter three identifies additional factors that influence whether or not NGOs have *de facto* access to the mechanisms of the Council.

Chapter four discusses the engagement opportunities that are open to NGOs in the Council. It demonstrates that in addition to formal engagement opportunities, a large portion of the work of NGOs in the Council happens on informal level. This is partly due to the fact that the rules for NGO engagement are kept very vague, which is a welcome opportunity for NGOs to establish new practices. Moreover, the chapter discusses the conflicting relations between States and NGOs that range from close cooperation to hostile attempts to curtail NGO participation.

1 State of research

The rise of NGOs as a player in the political arena has coincided with an increase of the level of attention given to it by international relations scholars. However, no single field of

NGO studies has emerged and a number of theoretical approaches are trying to capture and explain the emergence and role of NGOs, such as pluralism, transnationalism, collective social action theories, international regime theory, interdependence theory and the global governance paradigm (Chi 2005, 11). According to Kerstin Martens (2006), one can distinguish two groups among the various approaches: Transnational and transsocietal approaches.

The transnational approach turns away from a state-centred perspectives towards “[...] society-dominated views on world politics” (Martens 2005, 5). As a consequence, the role of private actors, including NGOs, is taken into account. Robert O. Keohane and Joseph S. Nye are major proponents of transnationalism (1971). Following their understanding, “[...] transnational interactions can be described as the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of a government or an intergovernmental organization” (Chi 2005, 13). Transnational approaches acknowledge the ability of NGOs to influence the formulation of public policies. Transnationalists argue that NGOs do not only play a role in agenda-setting, but also participate in the policy-formulation phase itself, for instance by providing concrete language suggestions for resolutions (Reinalda 2001, 27). In this view, according to Peter Willets, NGOs and intergovernmental organizations cooperate “[...] because governments and IGOs might have high authority [...] and low legitimacy (with regard to the number of people obeying these decisions), while private organisations might have low authority but high legitimacy” (Reinalda 2001, 22). As a consequence, NGOs are interesting partners for governments since they bring the potential to increase the legitimacy of the process.

An important question that is asked by transnationalists is how NGOs use international structures to influence domestic policy. Intergovernmental organizations are perceived as additional channels for NGOs to influence domestic politics. This idea was captured by the so-called boomerang model which was developed by Margaret E. Keck and Kathryn Sikkink (1998). In this model, domestic NGOs use intergovernmental organizations to put additional pressure on a State in order to move ahead on an issue where they did not make progress on domestic level. The boomerang model “[...] exposes how domestic NGOs form alliances with international groups and with IGOs in order to put pressure on the repressive state” (Martens 2004, 81). Like throwing a boomerang, an NGO takes its concerns to the international level in order to ensure changes on the national level. Keck and Sikkink call these alliances transnational advocacy networks. An adaption of this concept is the spiral model that was developed specifically with the field of human rights in mind and identifies the single steps of bringing about change (Risse/Sikkink 1999).

The global governance approach can also be counted among the transnational approaches. According to a global governance perspective, the problems that governments face are no longer confined to national borders. Therefore, new solutions for transnational problems are needed and the expertise of NGOs plays an important role in this search for “[...] more orderly and reliable responses to social and political issues that go beyond capacities of states to address individually” (Gordenker/Weiss 1995, 375). Unfortunately, the term ‘global governance’ surpasses even the term NGO in its ambiguity and variety of interpretations. One of the founders of the global governance paradigm, James N. Rosenau, understands the term as describing not only governmental institutions but also informal, non-governmental mechanisms. Global governance therefore includes systems of rule at all levels of human activity, such as the family, the State, or international organizations, where the pursuit of goals through the exercise of control has transnational repercussions (Rosenau 1995, 13f). Despite its broad meaning, the global governance idea is a popular approach for the explanation of the NGO phenomenon.¹

The transsocietal approaches view the growing importance of intergovernmental organizations as the consequence of the translation of national political processes to the international level. Simultaneously, societal actors, such as NGOs, also focus their activities on the international level (Martens 2005, 15). In this view, NGOs form the societal bonds that connect national societies with each other on the individual level. They are a manifestation of a rising global civil society (Martens 2005, 15): “NGOs, in this respect, are perceived as a major component of global civil society, as they are its political organisations and seek to change and influence international political processes” (Martens 2006, 694). Thereby, engagement with intergovernmental organizations is useful for NGOs, since they offer “[...] a formal way to advance societal aims and goals [...] [and] legitimize global civil society by consulting and honouring NGOs with a recognized status” (Martens 2005, 15). However, the concept of global civil society is not only confined to bringing NGOs into the analysis, but many more actors: According to a common definition, global civil society can be understood as “[...] the sphere of ideas, values, institutions, organizations, networks, and individuals located between the family, the state, and the market and operating beyond the confines of national societies, polities, and economies” (Anheier et al. 2001, 21). Not only because of this broad conceptual base, the idea of global civil society is contested:

“[...] [T]he sociological preconditions for a global civil society are lacking. That is, without a global state there is limited resource infrastructure to support global civil

¹ Janina Curbach (2003) looked at global governance and NGOs in the context of international networks. Caroline E. Schwittler-Marsiaj (2004) chose a global governance perspective to examine the role of NGOs in the ‘global governance of human rights’ and Kerstin Seifer (2007) looked at the influence of NGOs in global governance.

society organization, and few openings to build – through face-to-face interaction – the close-knit social networks required for transnational identity formation and collective action” (Taylor 2002, 342).

An analytical concept that is used in transsocietal approaches is the idea of political opportunity structures and resource mobilization, in order “[...] to capture both the structural and the agential aspects of influence. While the ‘political opportunity structure’ refers to changes in formal and informal institutions as well as symbolic events, ‘mobilizing resources’ relates to the assets of NGOs, such as the expertise and experience they or their constituents possess” (Joachim 2011, 291).

Overall, one can conclude that there are a vast number of attempts to explain the role, functions, and impact of NGOs on the international level. However, there is no single theoretical approach or paradigm of ‘NGO studies’ that distinguishes itself from the wide range of attempts to grasp the phenomenon. This could be due to the dominance of case studies:

“Many of the existing studies concerning NGOs are based on single cases, devoted to one NGO, a particular policy area or a specific cycle in the decision making process. Therefore, the picture of NGOs is rather fragmented” (Joachim 2011, 293).

The body of case studies on NGOs also includes studies devoted the work of NGOs at the Human Rights Council and at its predecessor, the Commission on Human Rights. Papers that focus on the Council were mostly written during the transition phase. But the work of NGOs at the Council or the Commission also received some attention. Julia Ziegler (1998) wrote her doctoral dissertation on the involvement of NGOs in the UN human rights system, including the former Commission for Human Rights. In the same year, a master’s thesis was published by Carolina Ortega-Barrales, focusing on NGO involvement in the Commission. These two publications give a useful overview on the work of NGOs at the Commission for Human Rights, but there is a clear lack of research on the involvement of NGOs in the fully operational Council. A more recent master’s thesis on NGOs and the Council was published in 2007 by Doreen Schulz. However, this was at a time when the Council had just completed its institution-building phase and it was not yet clear how things would develop. The present master’s thesis therefore fills a gap by providing the first comprehensive analysis on the work of NGOs in the fully operational Council.

2 Subject of Analysis

The present analysis focuses on the work carried out by non-governmental organizations in the framework of the intergovernmental mechanisms of the UN Human Rights Council. Any NGO that works or would like to work with the Human Rights Council is of interest. A definition of the contested term 'NGO' is provided below in part 5.1.

It is important to note that only the engagement of NGOs with the *intergovernmental mechanisms* of the Council are of interest for this work.² This excludes the expert mechanisms of the Council, such as the so-called Special Procedures.³ A detailed discussion of the mechanisms and procedures of the Council is provided in chapter II.

3 Research questions and interests

This work is guided by the following research question:

- Which factors determine the involvement of NGOs with the intergovernmental mechanisms of the Human Rights Council and what are the consequences?

The research will focus on two analytical categories.

- The first category is the *access* of NGOs to the system of the Human Rights Council. The aim is to determine and analyze factors that influence whether an NGO gains access and can participate in the framework of the intergovernmental mechanisms of the Council or whether it is excluded. It shall reveal the dynamics of exclusion and inclusion that apply in this political arena.
- The second category is the *engagement* of NGOs in the framework of the Council. The aim is to identify which opportunities for participation are open to NGOs. Special attention will be given to the difference between formal and informal engagement.

² Of interest are the procedures and mechanisms of the Council that involve States as main actors, not experts. These are first and foremost the plenary sessions of the Council and the Universal Periodic Review (see also chapter II, 4.1 and 4.2).

³ The Council mandates experts and groups of experts, the so-called Special Procedures (see also chapter II, 4.3). They deal with particular human rights issues and their mandates are usually focused on field work, such as carrying out fact finding missions. Generally, NGOs do play an important role in the work of Special Procedures. But due to the large number and diverging approaches of Special Procedures towards collaborating with NGOs, to discuss them in detail goes beyond the scope of this work.

4 Methodology

Data and information will be gathered by combining different research methods:

First of all, the study of existing literature will be the starting point of this work. However, due to the scarcity of up to date publications that focus on this particular field, existing literature will only complement other sources.

Therefore, the main source of information will be primary data collected through semi-structured expert interviews. As a qualitative research method, semi-structured expert interviews allow for the necessary flexibility needed to grasp a multitude of aspects. There are no standardized questionnaires but flexible interview guides which are essentially a "[...] grouping of topics and questions that the interviewer can ask in different ways for different participants" (Lindlof/Taylor 2002, 195). The interview guide will be informed by the previous study of literature and includes open ended questions. Due to the flexibility of these interviews, newly arising questions or findings that were not anticipated by the guide can *ad hoc* be integrated into the interview and can also be incorporated into later stages of the research process. As a consequence, future guidelines can be altered and tailored to the specific field of expertise of the interviewee.

The experts will be selected according to their personal experience and their insights with regard to the object of research. "Experts have technical process oriented and interpretative knowledge referring to their specific professional sphere of activity" (Flick 2009, 166). Thus, in the context of this work, their experience with working in the framework of the Human Rights Council is the decisive criterion. The majority of these experts acquired their experience by working for NGOs in the framework of the Council. Subsequently, the recordings will be transcribed and coded according to categories which will be established on the basis of the research interest. The transcriptions of the recordings, as well as a complete list of interviewees and their organizational affiliation are included in the annex.

An additional source of information will be statistical data on NGO participation. Mainly, this data was collected by the Office of the High Commissioner's Civil Society Section and the Council Secretariat (see OHCHR 2010b). In addition, some quantitative data will be collected by reviewing documents, such as reports of the Human Rights Council or the ECOSOC NGO Committee.

Furthermore, this work is informed by participatory observation during the 15th and 16th session of the Council in September 2010 and March 2011 as well as during the 9th and

10th session of the Universal Periodic Review Working Group in November 2010 and January 2011.

5 Terminology

5.1 Non-governmental organizations

In international law and among scholars, there is no universally agreed definition of what a non-governmental organization (NGO) is. This is surprising, since the term first occurred in international law as early as 1945: The UN Charter was the first legal document to use the term NGO but did not offer a definition of its meaning.⁴ From the 1970s onwards, the term found its way into popular usage (Willets 2002). However, both in popular language and academics, there is a vast pool of synonyms that does not facilitate an unambiguous definition. NGOs and the NGO sector are sometimes also called

“[...] voluntary associations, nonprofit sector, not-for-profit sector, charitable organizations, benevolent societies and third sector. Depending on who uses these terms, they may, or may not, include bodies such as labour unions, trade associations, professional societies, or legally unrecognized (and even illegal) bodies such as cartels and crime rings” (Judge 1994).

The difficulties in defining the term arise from the fact that, even in the narrowest sense, the diversity of actors that it encompasses is stunning. What makes a clear definition even more difficult is the problem that the notion of what an NGO is often includes a normative component that portrays NGOs as “[...] well-meaning, uncontroversial, non-political groups [...]” (Willets 2002). Some see NGOs as “The Conscience of the World”, as the title of a book edited by Peter Willets (1996) suggests. However, Willets (2002) opposes this notion and expresses very eloquently that the idea of NGOs as ‘the good guys’ has to be rejected:

“We have seen that there is often an assumption that NGOs are operating for the general public good or even that they are ‘progressive’. However, there is such diversity to the values advocated by different NGOs that they oppose each other, as well as putting pressure on governments and companies. Many women's NGOs oppose religious NGOs on questions of sexual and reproductive behavior. Hunters, farmers and fishing communities oppose animal rights groups.

⁴ UN Charter, article 71: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultations with the Members of the United Nations concerned.”

Environmental and development NGOs have different perspectives on sustainable development from each other. Many radical NGOs are hostile to reformist NGOs who accept incremental change. It is not logically possible for anybody to support all NGOs nor indeed to be hostile to all NGOs" (Willems 2002).

Despite the undisputed diversity of NGOs, there is a need for a common understanding of the term in academia and in international law. In the context of the Human Rights Council, the notion of the term that prevails in the UN system is particularly relevant. ECOSOC resolution 1996/31 is the most important document with respect to NGO participation in the UN system. However, this resolution does not provide a clear definition of the term and neither does any other legal UN document. Resolution 1996/31 simply sets out the criteria that NGOs have to fulfil in order to be granted consultative status, but it avoids giving an explicit definition of the term NGO itself.⁵ The list of criteria and their consequences for the access of NGOs to the system will be further explored in chapter III, part 1.1.

Many scholars opt for a definition that combines negative and positive features, such as Willems (2002), who states:

"[A]n NGO is defined as an independent voluntary association of people acting together on a continuous basis, for some common purpose, other than achieving government office, making money or illegal activities" (Willems 2002).

A more precise and therefore quite popular approach is Salamon and Anheier's 'structural-operational definition' (1997, 38) which includes five criteria. Slightly altered, this approach is also the understanding of the term that is applied in this work.

According to Salamon and Anheier, NGOs

- possess a formal institutional structure with some permanence
- are private organizations, therefore institutionally independent from the State although they might receive government support
- are not profit-oriented or profit-distributing
- are self-governing – able to control their own affairs
- might receive voluntary input through monetary contributions or other activities

(Salamon/Anheier 1997; Seifer 2009, 36; Lewis 2007, 48)

⁵ Closest to a definition of the term NGO is article 12 of ECOSOC resolution 1996/31, which focuses on the independence of NGOs from governments by stating: "Any such organization that is not established by a governmental entity or intergovernmental agreement shall be considered a non-governmental organization for the purpose of these arrangements, including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization."

In addition to these criteria, it is important to note another particularity with respect to the usage of the term. In the present work, as in many other works in this field, the term NGO will often be used in a sense that implies that *the NGO itself* takes action. This unclear use of the term is tolerated for the sake of readability. In fact, it is of course the representative of an NGO that acts on behalf of this organization. A similar concession was made with regard to the usage of the term 'State', as outlined below.

5.2 States

In this study, States are not in the focus, but play nevertheless a key role since they are the counterpart of NGOs that engage in the Council. Therefore, it is necessary to provide a clarification on the usage of the term in the present work. As already outline in the context of the term NGO, the term 'State' will be on some occasions used in an almost personified sense. When talking about the *actions of States* in the Council, what is meant is in fact the actions of agents of a State, acting on behalf of a government. In the case of the Council, these agents are diplomats that form part of a delegation, sent by the Ministry of Foreign affairs or another domestic administrative body, again acting on behalf of the government. Hence, when the term 'State' is used in a context that implies actions in the Council it has to be understood as diplomats taking action on behalf of the government of the respective State.

II The Human Rights Council in the United Nations system of human rights protection

„[...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small [...]“ (UN Charter 1945, Preamble)

Human rights are counted among the core founding principles of the United Nations (UN) and constitute one of the three pillars of the UN Charter. In addition to human rights, the other pillars or fields of activity include the maintenance of international peace and security, as well as development. Over the years the system of UN organs that were established to implement the principles set out in the Charter grew into a complex web of institutions. More than one UN organization is dedicated to the advancement of human rights. Some have adopted human rights as an important guiding principle of their mandates and some are exclusively dedicated to the advancement of human rights. Therefore it is difficult to draw a clear line of distinction between UN institutions that focus specifically on human rights and those that do not. This complex situation is a consequence of mainstreaming human rights into all UN activities and programmes – an approach that was introduced by Secretary-General Kofi Annan in the course of the UN reform in 1997 (A/51/950, 79; Oberleitner 2007, 103ff). This principle is also referred to as a rights-based approach that should impact the self-perception of UN institutions and the way in which they frame the discourse and carry out their activities. When following a rights-based approach, UN institutions call on States to fulfil their legal obligations under international human rights law rather than their moral responsibilities.

This chapter outlines the institutional characteristics of the three main UN human rights institutions: the Economic and Social Council (ECOSOC), the Office of the High Commissioner for Human Rights (OHCHR) and in particular the Human Rights Council (the Council). To create a better understanding of the role of these organizations the chapter starts with an overview of human rights activities in the UN system.

1 Overview of UN institutions with relation to human rights

When examining the UN human rights system, it is particularly important to distinguish between charter-based UN bodies and treaty-based UN bodies. Treaty-based bodies were established on the grounds of international human rights treaties that are binding for State parties. The implementation of these treaties is overseen by committees of independent experts. In contrast, the mandate of charter-based institutions derives directly or indirectly from the UN Charter. These organizations can either be inter-governmental bodies, such as the General Assembly and the Human Rights Council, or bodies of the UN itself, such as the UN Secretariat.

1.1 Treaty-based UN bodies

There are nine international human rights treaties, each of them negotiated between States, which build on the provisions that are contained in the Universal Declaration of Human Rights (UDHR). However, in contrast to the UDHR, these treaties are binding under international law for States that have ratified them. Each of these treaties are equipped with a committee of experts who have a number of procedures at their disposal which complement their supervision of the implementation of treaties. The experts are elected by the State parties but serve in their personal capacity and in accordance with the principles of impartiality and objectivity (ISHR 2010, 1f). Table 1 contains a list of all operational treaty bodies and their procedures.

Table 1: Operational treaty bodies and their procedures

Treaty	Treaty body	Procedures
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Committee on the Elimination of Racial Discrimination (CERD)	<ul style="list-style-type: none">- Examination of State reports- Individual communications- Inter-State complaints- Follow-up procedure- Early warning and urgent action procedure
International Covenant on Economic, Social and Cultural Rights (ICESCR) & Optional Protocol to ICESCR on individual communications (not yet in force)	Committee on Economic, Social and Cultural Rights (CESCR)	<ul style="list-style-type: none">- Examination of State reports- Individual communications (not yet in force)- Inquiry procedure (not yet in force)- Follow-up procedure

International Covenant on Civil and Political Rights (ICCPR) & Optional Protocol to ICCPR on individual complaints & Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty	Human Rights Committee	<ul style="list-style-type: none"> - Examination of State reports - Individual communications - Inter-State complaints - Follow-up procedure
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) & Optional Protocol to CEDAW on individual communications	Committee on the Elimination of Discrimination against Women (CEDAW)	<ul style="list-style-type: none"> - Examination of State reports - Individual communications - Inter-State complaints - Inquiry procedure - Follow-up procedure
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) & Optional Protocol to CAT on the establishment of the Subcommittee on Prevention of Torture	Committee against Torture (CAT)	<ul style="list-style-type: none"> - Examination of State reports - Individual communications - Inter-State complaints - Inquiry procedure - Follow-up procedure
	Subcommittee on Prevention of Torture (SPT)	<ul style="list-style-type: none"> - Inquiry procedure - Follow-up procedure
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC)	<ul style="list-style-type: none"> - Examination of State reports
International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW)	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)	<ul style="list-style-type: none"> - Examination of State reports - Individual communications
Convention on the Rights of Persons with Disabilities (CRPD) & Optional Protocol to CRPD on individual communications and an inquiry procedure	Committee on the Rights of Persons with Disabilities (CRPD) Optional Protocol to CRPD	<ul style="list-style-type: none"> - Examination of State reports - Individual communications - Inquiry procedure
Convention for the Protection of All Persons from Enforced Disappearances (ICPED)	Committee on Enforced Disappearances (CED)	<ul style="list-style-type: none"> - Examination of State reports - Individual communications - Inter-State complaints - Inquiry procedure
Source: based on ISHR 2010, 34		

The reporting procedure is the primary mechanism used by all treaty bodies with the exception of the Subcommittee on the prevention of torture (SPT).⁶ In the framework of the reporting procedure individual States must submit periodic reports, usually every four or five years, concerning their progress and possible obstacles they may face in the implementation of the treaty (ISHR 2010, 12). The report is then considered by the committee of experts and a State delegation is invited to a public session of the Committee where experts ask the delegates questions that were not answered in the written report. Moreover, the experts frequently inquire about information submitted by non-governmental organizations (NGOs), who are invited to submit alternative reports on the country situation. Furthermore, committees have established opportunities for NGOs to attend public sessions and brief committee members. After the consideration of the State report, the committee publishes concluding recommendations aimed at improving the domestic framework of rights protection of the State under review (ISHR 2010, 11f).

A number of treaties also provide for an individual communications procedure which gives individuals or groups of individuals the opportunity to lodge a complaint about human rights violations after they have exhausted all domestic remedies. If the complaint fulfils the criteria of admissibility, the committee considers the case in a session closed to the public and the State concerned. Following the closed session, the decision is communicated to the complainant and the State. If a violation has taken place, the committee issues unbinding recommendations that should be implemented by the State (ibid., 28-29). Additionally, several treaty bodies have established a separate follow-up procedure, monitoring the State's progress in implementing recommendations (ibid., 30).

Some treaties also provide for inter-state complaints, where one State party can accuse another State party of human rights violations before the committee. This procedure however, is highly unpopular due to its political nature and, to date, has never been invoked (ibid., 31).

Furthermore, committees applying the inquiry procedure can initiate inquiries if they receive information about grave and systematic human rights violations. The committee members may then conduct a confidential inquiry, prepare a report and, with the consent of the concerned State, conduct a country visit.

Distinct from other treaty bodies, the Committee on the Elimination of Racial Discrimination (CERD) comprises of an urgent action procedure permitting immediate reaction to contain the escalation of grave human rights violations.

⁶ The SPT conducts visits to places of detention and submits confidential reports containing recommendations to the concerned State.

Despite weaknesses, such as notoriously late reporting by a number of States or extensive reservations, treaty bodies are at the core of the international system of human rights protection. Despite lacking enforcement mechanisms, they are, nevertheless, an important instrument for raising awareness of human rights situations on a global scale, drawing attention to States and holding them accountable for their actions. Crucially, committee members also contribute extensively to further developing human rights norms by adopting general comments on the interpretation of the respective treaty. In contrast to intergovernmental resolutions that are rarely more than declarations of good intent, States are bound by the treaties they have ratified giving human rights increased credibility whilst making it more difficult for States to deny their obligations. Together with the UDHR, the rights contained in the treaties form the foundation of the UN system of human rights protection and promotion. It is the rights contained in these treaties that all UN bodies refer to when discussing human rights.

1.2 Charter-based UN bodies

The term charter-based comprises of the principal UN bodies that were established by the UN Charter and their subsidiary organizations, created later. Since the adoption of the UN Charter in 1945, the web of charter-based bodies with a human rights approach has grown impressively. This section therefore aims to give a brief overview of the system of charter-based human rights organizations. The overview is not exhaustive but highlights those charter-based institutions that have, to some extent, assumed a human rights-based approach in carrying out their mandate.⁷ A comprehensive account of the three UN institutions that focus primarily on human rights will ensue later in this chapter.

The UN Charter established six principle organs, namely the Security Council, the General Assembly, the Secretariat, the Economic and Social Council (ECOSOC), the Trusteeship Council, and the International Court of Justice. This section will examine the role of these organs in the promotion and protection of human rights prior to an examination of the programmes and funds established by the General Assembly and specialized agencies coordinated by ECOSOC.

At present, the Security Council, one of the principle UN organs, has “[...] left behind much of its ignorance towards human rights and has begun to acknowledge the links between peace, security and human rights” (Oberleitner 2007, 141). This is also evident in the context of the responsibility to protect doctrine that calls for UN interventions in

⁷ An exhaustive chart of charter-based UN institutions, published by the UN Department for Public Information can be found online: http://www.un.org/aboutun/chart_en.pdf (19.4.2011). The overview in this chapter is mainly based on Oberleitner (2007) and Nowak (2003), who can also be referred to for more detailed accounts on the role of below mentioned organizations in the field of human rights.

cases of gross human rights violations.⁸ The Security Council has at its disposal various means of protecting and promoting human rights, particularly in situations of gross human rights violations such as genocide and human rights violations deemed a threat to international peace. These measures include integrating human rights components in peace operations, denouncing violations of humanitarian law and establishing international criminal tribunals (ibid., 141).

The General Assembly, also a principle organ of the UN, has the task to consider all matters of the UN Charter (UN Charter, art. 10). This includes promoting respect for human rights (ibid., art. 3), initiating studies and issuing recommendations “[...] for the purpose of [...] assisting in the realization of human rights and fundamental freedoms for all [...]” (ibid., art. 13, para. 1b). Furthermore, the General Assembly can adopt international human rights conventions (ibid., art. 62). Yet, the General Assembly demonstrates markedly few human rights initiatives and is especially reluctant to address country situations (Oberleitner 2007, 84), justified in line with the UN Charter’s principle of non-intervention (art. 2, para. 7). The General Assembly’s main role in the UN human rights system is to receive and consider reports on the activities of the Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR), and the treaty bodies. Formally, the General Assembly also adopts draft texts submitted by the Council, which is usually reduced to rubber-stamping them (Oberleitner 2007, 85). Before these documents are considered in the plenary, most of them are allocated to the so-called Third Committee.

Most of the General Assembly’s work is carried out in its six main committees. Human rights issues are considered in the Social, Humanitarian and Cultural Affairs Committee (Third Committee) which “[...] has been reduced to a mere additional bureaucratic layer, occasionally tinkering with the resolutions of subsidiary bodies” (Oberleitner 2007, 87). Furthermore, it is criticised for clustering items arbitrarily and merely repeating the work of the Council (ibid., 86). Another relevant Committee for the UN human rights system is the Administrative and Budgetary Affairs Committee (Fifth Committee) which has the final say on resolutions with budgetary implications that are, for instance, submitted by the Human Rights Council (ibid., 87). The relationship between the General Assembly and its subsidiary, the Human Rights Council, will be examined more closely in section four of this chapter.

The Secretariat, a principle UN organ established by the UN Charter, is headed by the Secretary-General, currently Ban Ki-moon, who is appointed by the General Assembly upon recommendation of the Security Council for a renewable term of five years (UN

⁸ For a more in-depth discussion of the debate around the responsibility to protect see Bellamy (2010).

Charter, art. 97). The Secretary-General is the highest UN official but has only few competences of his own (Nowak 2003, 131). Although being regarded by many as a moral authority and the face of the United Nations, his role with regard to human rights is principally that of a whistleblower, inter alia following UN Charter article 99, stating that he “[...] may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”

The UN Secretariat itself is “[...] an extremely complex administrative apparatus consisting of many different offices, departments, programmes, institutions and coordinating mechanisms” (Nowak 2003, 131). Staff members are international civil servants and therefore not accountable to any government. The duties they carry out “[...] are as varied as the problems dealt with by the United Nations” (UN 2011). With regards to human rights, the most important office associated to the Secretariat is the Office of the High Commissioner for Human Rights (OHCHR). The OHCHR was established by the General Assembly following a recommendation of the Vienna World Conference on Human Rights in 1993 (A/RES/48/141). Later, OHCHR incorporated the Centre for Human Rights, a department of the UN Secretariat, which further prioritised the office within the UN system. Since the OHCHR is the focal point of the UN human rights agenda it will be discussed at length in section three of this chapter.

The Economic and Social Council (ECOSOC) is one of the main organs of the UN and was established by the UN Charter. Although originally intended to be one of the organs principally responsible for human rights, it has nowadays lost most of its importance in this field. But ECOSOC still plays a crucial role for the participation of NGOs in the Human Rights Council and will therefore be discussed in more detail in part two of this chapter.

The International Court of Justice (ICJ) is one of the principle organs of the UN, established by the Charter, and the main judicial forum for the settlement of disputes between States. Human rights are not at the core of its mandate and “[w]hile the ICJ has never shied away from invoking human rights law, it has also never given primacy to human rights in its considerations” (Oberleitner 2007, 157). This is due to the fact that only States can be parties in cases before the Court and that the rights of individuals are only considered in so far as they are implicated in an inter-state dispute (UN Charter, Annex, art. 34 para. 1). Another reason is that other institutions and procedures, treaty body procedures for instance, are better suited to address such violations. Only in a handful of cases⁹ have States claimed a violation of international human rights law by

⁹ For a brief discussion of cases before the ICJ with human rights implications see Oberleitner (2007), 153-157.

other States, including in the context of apartheid, genocide, the death penalty, the right to life, and humanitarian law (Oberleitner 2007, 153).

The Trusteeship Council was established as one of the principle organs of the Charter (UN Charter, Chapter XII-XIII) to lead the trust territories towards independence (UN Charter, art. 76b).¹⁰ Part of its mandate is also “[...] to encourage respect for human rights and for fundamental freedoms for all without distinction [...] and to encourage recognition of the interdependence of the peoples of the world” (UN Charter, art. 76c). The Trusteeship Council has not been in operation since 1994 when Palau, the last trust territory, gained independence.

Programmes and funds established by the General Assembly cover a wide range of thematic areas and assume a human rights-based approach to differing degrees. The United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF) and the United Nations Human Settlements Programme (HABITAT) are amongst those who have most embraced the concept of human rights.

- UNDP follows a human rights-based approach to development that leads to the integration of human rights principles into all activities as well as to capacity building projects in the field of human rights (Oberleitner 2007, 112).
- UNHCR, although the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol are the basis of its work, has adopted a self-perception that integrates human rights: “After all, [...] many human rights treaties recognize the right to seek asylum. In turn, the Refugee Convention protects a number of human rights of refugees [...]”(ibid., 120).
- Within UNICEF there has been a shift towards using the human rights Convention on the Rights of the Child as the main basis of work and acting as its main implementing agent (ibid., 115).
- HABITAT “[...] stands as an example of a ‘technical organization which has accepted and increasingly appreciates the human rights implications of its mandate” (ibid., 125). Having at the core of its mandate the promotion of better living conditions, the organization deals mainly with human rights such as the right to adequate living, health, housing, water, and participation in the conduct of public affairs (ibid., 124).

¹⁰ Trust territories included former German colonies in Africa, territories lost by the Axis powers as a consequence of the Second World War, and territories voluntarily placed under the oversight of the Trusteeship Council.

Specialized agencies, coordinated by ECOSOC, cover an equally broad range of issues. They hold very independent mandates but are part of the wider UN family. Below, the most important specialized agencies shall be discussed:

- The International Labour Organization (ILO), although limited to a particular sector of human rights, “[...] may [...] be called the first ever international human rights institution [...]” (ibid., 103).¹¹ The ILO adopted over time an impressive body of 187 Conventions and 198 recommendations, also called the International Labour Code. With its goal to protect labour rights of the individual, the organization clearly has a human rights mandate and “[...] to some extent the ILO paved the way for the creation of the UN human rights regime” (ibid., 106).
- The Food and Agriculture Organization (FAO), although being instrumental in introducing the right to food into the Covenant on Economic, Social and Cultural Rights (1966), is reluctant to adopt a human rights-based approach. FAO rather perceives itself as a provider of technical expertise in the areas of food security and the improvement of living conditions in rural areas (Oberleitner 2007, 127f).
- The United Nations Educational, Scientific and Cultural Organization (UNESCO) has adopted a plan to mainstream human rights but does not seem to incorporate them in its operational activities. UNESCO is reluctant to address its field overall with a cultural, economic and social rights-based approach (ibid., 119).
- The World Health Organization (WHO) has used a rights-based rhetoric with regard to health from the beginning, however due to the complex nature of the right to health, engagement has proven difficult. Today, the organization “[...] may be on its way to becoming another example of how to overcome the ‘sociopolitical’ role’ [...]” (ibid., 125).
- The World Bank Group and International Monetary Fund (IMF) are prime examples of organizations that prefer to see themselves as a-political agents that merely provide assistance in the field of economy and finance. Yet, since many of their policies, for example in the field of human development, do have human rights implications, their self-perception started to change – at least with respect to the World Bank Group. The IMF is still very reluctant to adopt a human rights approach and in 2001, its legal counsel even rejected the relevance and applicability of the Covenant on Economic, Social and Cultural Rights to the policies of the organization (ibid., 133).¹²

¹¹ Founded in 1919, the organization was operational during the Second World War and became the first specialized agency of the UN in 1946.

¹² The question, whether the global financial institutions are bound by human rights law and should therefore gear their policies at these provisions, has caused an extensive and controversial debate. On this issue, see also Clapham (2006).

2 Economic and Social Council – ECOSOC

The Economic and Social Council (ECOSOC) is one of the principal organs of the UN, established by the UN Charter (Chapter 10). It consists of 54 UN member States elected by the General Assembly for a term of three years (UN Charter, art. 61). Within the UN system of human rights protection as it is today, it plays only a limited role, although historically it was intended to be the focal point of the UN's human rights agenda. Today, ECOSOC is relevant mainly due to its role in governing the formal access of NGOs to several UN entities. ECOSOC's political power and relevance are extremely limited and it is considered one of the weakest UN organs which failed to match expectations (Oberleitner 2007, 81). Conversely, its lack of actual influence is overshadowed by the impressive range of areas and activities that fall under its mandate, namely:

- "Promoting higher standards of living, full employment, and economic and social progress;
- Identifying solutions to international economic, social and health problems;
- Facilitating international cultural and educational cooperation;
- Encouraging universal respect for human rights and fundamental freedoms" (ECOSOC 2011).

In accordance with its mandate, ECOSOC can initiate studies and reports, prepare and assist international conferences, or prepare draft conventions for adoption in the General Assembly (UN Charter, art. 62). ECOSOC is also involved in organising World Conferences and their follow-up, such as the Vienna Conference in 1993 or the 1995 World Conference on Women in Beijing. Its main work is done in its sub-commissions that have either a regional or a functional mandate and used to include the Commission on Human Rights (the Commission), predecessor of the Human Rights Council. In addition, the UN specialized agencies are associated with ECOSOC as well as the UN programmes and funds whose reports ECOSOC considers. In practice, ECOSOC's main role is to coordinate the above mentioned entities (Oberleitner 2007, 80).

Historically, according to the UN Charter the thematic area of human rights was assigned to ECOSOC (UN Charter, art. 68). Therefore, ECOSOC established the Commission on Human Rights in 1946. In the course of the Commission's existence however, it came under increasing criticism for its double standards and politicization until it was finally reformed in 2006 to become the Human Rights Council. The Council is no longer a subsidiary organ of ECOSOC but of the General Assembly. With that, ECOSOC has lost even more of its relevance in the field of human rights. This seems little surprising, considering that ECOSOC, in the eyes of many, carried out its human rights mandate in

a way that actually was detrimental to human rights (Oberleitner 2007, 81f) because it “[...] uses its institutional weight and the powers conferred on it to cut back the UN’s consideration of human rights” (ibid., 81). Furthermore, it “[...] failed in its coordinating tasks and in linking human rights with the wider social and economic field:” (ibid., 82).

Nonetheless, it is one of ECOSOC’s main tasks to establish consultative relationships with NGOs, carried out by one of its standing committees, the Committee on Non-governmental Organizations (NGO Committee). Therefore, ECOSOC plays a crucial role regarding the access of NGOs to participation in the Human Rights Council, since only NGOs with ECOSOC consultative status are granted access to the mechanisms of the Human Rights Council. The manner with which the NGO Committee – which has even been described by some as an “Anti-NGO-Committee” – conducts its duties is highly controversial and will be further examined in Chapter III.

3 Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR) is part of the UN Secretariat and the principal UN organ for the protection and promotion of human rights. Since 2008, Navanethem Pillay has been High Commissioner for Human Rights, corresponding to the rank of Under-Secretary-General. The High Commissioner and her office have principal responsibility over UN human rights activities and the protection of human rights in the UN system. Her independence from political considerations is one of the strengths of her office which carries a broad mandate, including

- playing an active role in promoting and protecting the effective enjoyment of human rights, including the right to development,
- making recommendations to UN bodies,
- providing advisory services, technical and financial assistance to States and regional human rights organizations,
- coordinating the human rights promotion and protection activities throughout the UN system (A/RES/48/141, para. 4).

OHCHR’s field presences are central to its work all over the world. Currently, OHCHR maintains 12 country offices¹³ and 12 regional offices¹⁴ which aim to integrate a human rights perspective into UN country teams through the provision of technical assistance. Furthermore, OHCHR supports human rights through 15 peace missions. In addition, to

¹³ Bolivia, Cambodia, Colombia, Guatemala, Guinea, Mauritania, Mexico, Nepal, the Occupied Palestinian Territories, Kosovo (Serbia), Togo, and Uganda.

¹⁴ East Africa (Addis Ababa), Southern Africa (Pretoria), West Africa (Dakar), Central America (Panama City), Latin America (Santiago de Chile), Europe (Brussels), Central Asia (Bishkek), South East Asia (Bangkok), Pacific (Suva), Middle East (Beirut), Centre for Human Rights and Democracy for Central Africa (Yaoundé, Cameroon), and Training and Documentation Centre for South West Asia and the Arab Peninsula (Qatar).

prevent the escalation of human rights abuses, OHCHR can conduct fact-finding missions as part of its rapid response unit. Activities carried out by country offices include monitoring, public reporting, provision of technical assistance, and the development of long-term national capacities (OHCHR 2011b).

With regards to the overall UN human rights programme, OHCHR's most important contribution is the provision of secretariat services to the treaty bodies, the Human Rights Council and its Special Procedures which is carried out by the Human Rights Council and Treaties Division and the Special Procedures Division.¹⁵ The Secretariat sections carry out mostly administrative tasks. In the case of the Human Rights Council, this includes the maintenance of the list of speakers or the distribution of rooms for negotiations between States, among other duties. The Council Secretariat works in close collaboration with the Civil Society Section, which forms part of OHCHR's Executive Office. This is the main point of contact for NGOs working with the UN human rights programme. The Civil Society Section provides information and advice to civil society. Its goal is to enhance cooperation and assist civil society in engaging with the UN human rights programme (OHCHR 2008). One of their methods of achieving this was through their key publication, the Civil Society Handbook (OHCHR 2008) which outlines how civil society can engage with the UN human rights programme. Furthermore, they conduct advocacy on these issues and the Civil Society Section sends email broadcasts to inform about news and activities of the UN human rights mechanisms (OHCHR 2011c).

4 Human Rights Council

The Human Rights Council (the Council) is the principal intergovernmental UN organ to address human rights issues. It is the successor of the Commission on Human Rights (the Commission) that was founded in 1946 but "[...] increasingly came under criticism for its double standards and selectivity in the treatment of country situations and failure to address severe human rights violations occurring in many countries" (Abraham 2006, 11).¹⁶ This perception was also reflected by Secretary-General Kofi Annan's report "In Larger Freedom" (A/59/2005) in which he made several suggestions for the establishment of a new organ for the protection of human rights within the UN system. Following some of these suggestions, the UN General Assembly decided during the Second World Summit in 2005 to begin negotiations on transforming the Commission into the Human Rights Council (A/RES/60/1, para. 157). The Human Rights Council was

¹⁵ For an overview of OHCHR's organizational structure, see http://www.ohchr.org/Documents/AboutUs/IK_OHCHR_structure_En.pdf (14.3.2011).

¹⁶ To name two examples, the Commission was heavily criticized for re-electing Sudan as a member in 2004 and choosing the Ambassador of Libya as chairperson (Abraham 2007, 6).

then established by General Assembly Resolution 60/251 in March 2006 and met for the first time on 19 June 2006. The establishment of the specifics of the institutional arrangements however did not happen by General Assembly resolution 60/251 but was left to the Council. In its first session, the Council decided therefore on an institution-building phase during which the Council's mechanisms and structures were clarified. This led to the adoption of the so-called institution-building package (A/HRC/RES/5/1) by the Council a year later on 18 June 2007.

The Council's mandate is defined by General Assembly Resolution 60/251 which establishes that the Council should be guided in its work "[...] by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights [...]" (A/RES/60/251, para. 4). The mandate includes the following key roles:

- The Council shall serve as a forum of dialogue on thematic human rights issues (A/RES/60/251, para. 5b). This function is mainly fulfilled by the regular Council sessions. In addition, the Council can also initiate events outside the regular session by adopting a resolution. These events usually bring together experts for a panel discussion on a specific human rights issue, with participation of States and civil society.¹⁷
- The Council shall make recommendations with regard to the promotion and protection of human rights (ibid., para. 5i) as well as recommendations to the General Assembly on the development of international human rights law (ibid., para. 5c).
- The Council shall undertake a universal periodic review (ibid., para. 5e). This is the main novelty introduced by the transition and aims at ensuring that every State's human rights situation receives equal attention by the Council (see also part 4.2).
- The Council shall contribute to the prevention of human rights violations and respond promptly to emergencies (ibid., para. 5f). To this end, the Council can convene special sessions, which will be discussed below.
- The Council shall promote the full implementation of States' international human rights obligations and conduct follow-up (ibid., para. 5d). This function is primarily fulfilled by the Universal Periodic Review (UPR). Furthermore, resolutions frequently recall this goal.

¹⁷ Examples for such events are the seminar on traditional values and human rights, initiated by Council resolution 12/21 or the expert workshop on the elimination of all forms of violence against women requested by Council resolution 11/2.

- The Council shall promote human rights education, advisory services, technical assistance and capacity-building, and provide it to States with their consent (ibid., para. 5a). The Council has various means at its disposal to implement this, of particular importance is the appointment of Special Procedure mandates (see also part 4.4).
- The Council shall work in close cooperation with governments, regional organizations, national human rights institutions and civil society (ibid., para. 5h). In practice, the closest form of cooperation with governments is the UPR. Cooperation with regional organizations only happens on an ad-hoc basis. With respect to NGOs, there are a number of opportunities for cooperation which will be examined more closely in chapter IV.
- The Council shall report annually to the General Assembly (ibid., para. 5j). This requirement is also a new feature of the Council in contrast to the mandate of the Commission, which reported to the ECOSOC rather than the General Assembly. The annual reporting constitutes the main link between the two bodies.

The Council assumed most of the mandates of the Commission. However, some institutional mechanisms were added or revised and some changes were made with regards to procedural matters. One substantive reform was the elevation of the Council within the UN system to the level of a subsidiary organ of the General Assembly as opposed to that of the Economic and Social Council (ECOSOC), as the Commission had been. The proposal of the report “In Larger Freedom” (A/59/2005, para 183), to give the Council even more importance by elevating its status to one of the principle UN organs, such as the General Assembly, could not prevail. Nevertheless, becoming a subsidiary of the General Assembly also brought about several institutional improvements, including the application of the rules of procedure for committees of the General Assembly, which allow for more flexibility and interactivity, rather than those of ECOSOC (Abraham 2006, 20). Furthermore, the election process has been improved and a new peer review procedure, the Universal Periodic Review (see part 4.2) was introduced.

The Council now consists of 47 member states, only a minor downsizing compared to the size of the Commission with 53 member states. The members are elected by the General Assembly following the principle of equitable geographical distribution (A/RES/60/251, para. 7). This is based on the group system that is in place in several UN organs, including the General Assembly. Thirteen seats are allocated to the African Group, thirteen to the Asian Group, six to the Eastern European Group, eight to the Group of Latin America and Caribbean Countries (GRULAC), seven to the Western European and Others Group (WEOG) (ibid.). Due to the general downsizing, the

distribution of seats between the groups shifted.¹⁸ GRULAC and WEOG both lost three seats and the African Group lost two seats, while both the Asian and Eastern European Group gained one seat. The altered distribution of seats reduced the influence of the WEOG and opened the door for joint initiatives from the African Group and the Organization of the Islamic Conference (OIC) which sometimes are questionable if taking the Council's mandate of protecting human rights as yardstick. For example, they frequently use their voting power to push resolutions that politically delegitimize Israel, while initiatives by other regional groups have to be fought for much harder (Starl 2007, 110). For a number of reasons this system of geographic distribution is criticized by those that want to reform the UN and many blame it for the decline of the Commission, especially when it comes to the election of new members: "Regional groups have usually put forward as many candidates as seats available, thus leaving others no choice but to ratify the decision of the respective group" (Oberleitner 2007, 65). These 'clean slates' render the election process a farce because they make it impossible for the General Assembly to avoid the election of States with a questionable human rights record to the Council. Furthermore, the group system does not reflect newer and stronger alliances that were formed, such as the European Union or the OIC (ibid.). Especially these two groups, in addition to the Non-Aligned Movement (NAM), are actively involved in the politics within the Council and try to deliver coordinated statements.

In addition to equitable geographic distribution, the General Assembly also has to apply normative criteria when electing members to the Council. Candidates have to make voluntary pledges and commitments with regard to improving the protection and promotion of human rights nationally and internationally (A/RES/GA/60/251, para. 7). These should be taken into account in the voting process, but there is no specific follow-up mechanism and thus there are no sanctions if these pledges are not implemented. In addition, the resolution does not specify the nature of these pledges. To give States guidance, OHCHR issued a document with suggested elements (OHCHR 2011). Frequently encountered pledges include the ratification of human rights treaties, extending standing invitations to Special Procedures, and outlining intended measures on a national level. In addition, the conduct of member States should be cooperative and live up to the highest standards of promotion and protection of human rights. Furthermore, the State has to be reviewed under the UPR during its term of membership (A/RES/60/251, para. 9).

There are no formalized follow-up mechanisms attached to these principles. The only repercussion a member State might face is suspension if it commits gross and

¹⁸ In the Commission, the African Group had 15 seats, GRULAC had 11 seats, the Asian Group had 12 seats, WEOG had 10 seats, and the Eastern European Group had 5 seats.

systematic violations of human rights (*ibid.*, para. 8). In this case, the General Assembly is empowered to suspend the rights of membership by a two-thirds majority.¹⁹

Once per year, the Council reports directly to the General Assembly, which means they submit their annual report containing all their resolutions, decisions, and presidential statements. Usually, the General Assembly decides to allocate the consideration of the report to the Third Committee to take action on recommendations and the plenary of the General Assembly then endorses the report as a whole.²⁰

The fact that the Human Rights Council is now a subsidiary organ of the General Assembly explains its increased prioritization in the human rights agenda within the UN. The close connection does not only exist on symbolical level but has very practical consequences. Being closer connected to the General Assembly means that the main intergovernmental forum of the UN must focus more on human rights issues, for example when Human Rights Council resolution call for the consideration of reports by the General Assembly. This happens frequently in the context of Special Procedures whose mandate can request them to report regularly to the General Assembly in addition to reporting to the Council. Another connection between the General Assembly and the Human Rights Council exists on the level of funding. The Council's budget has to be approved by the General Assembly's Fifth Committee although the fact that the Fifth Committee only meets twice a year protracts the establishment of new mandates that need funding.²¹ This can be a problem with regard to actions by the Council that have to be implemented immediately, such as fact-finding missions. Late budget decisions force OHCHR, responsible for conducting these activities, to divert funding from other parts (Amnesty International/Bahá'í International Community 2011).²²

The optimism at the time of the institutional transformation from the Commission to the Council – the Friedrich-Ebert-Stiftung (FES) and the International Service for Human Rights (ISHR) were hoping for “A New Chapter for Human Rights” (Abraham 2006) – has evolved into disillusion. It quickly became apparent that the political realities would not allow for a radical reform of the system that could effectively strengthen the protection of human rights and that the most important improvement was the introduction of the UPR (Abraham 2007, 5).

¹⁹ So far this provision was applied only once, namely in the case of Libya which was suspended in March 2011.

²⁰ There is no definite rule whether the report has to be considered by the plenary or the Third Committee. If the report would in future only be considered by the Third Committee, as advocated by some States, this would constitute a downgrading of the Council's institutional status within the arrangements of the UN (ISHR 2007, 5f).

²¹ The Fifth Committee meets during the main session of the General Assembly from September to December and in March for a resumed session, as well as in May for a second resumed session on Peacekeeping.

²² In addition, the General Assembly has in principle the power to refuse funding for newly established procedures. However, in practice this power was never exercised.

A given an opportunity for improvement, the review of the Council, also fell short of expectations in the eyes of States and civil society alike (ISHR 2011). The review was provided for in General Assembly resolution 60/251 which established that the Council had to review its work and functioning before March 2011 (ibid., para. 16). To this end, already in October 2010, the Council had established an open-ended intergovernmental Working Group, which negotiated the review outcome that was subsequently adopted in the Council in March 2011 (A/HRC/WG.8/2/1). The outcome failed to address institutional shortcomings and the most pressing issues due to lack of consensus among States. Only few concrete alterations were made, including some changes to the modalities of the UPR, a new requirement for candidates for Special Procedure mandates to submit a letter of motivation, and a changed date for the meetings of the Advisory Committee, which, it was decided, would be held before the March and September sessions of the Council. More controversial proposals, such as the idea to create a mechanism to address urgent and chronic human rights situations, were not included in the final outcome (ISHR 2011). In the view of many civil society organizations the review has failed to agree on modalities to enable civil society and National Human Rights Institutions (NHRI) to participate more effectively (Amnesty International et al. 2011). The proposal to use information technology such as videoconferencing to enhance access of stakeholders shall, according to the outcome document, merely be explored (A/HRC/WG.8/2/1).

Furthermore, the General Assembly has to review the status of the Council within five years after its establishment, meaning also in 2011 (A/RES/GA/60/251, para. 1). The parallel review process in the General Assembly deals with issues such as the relationship and reporting between the two institutions, the Council's budget, and criteria of membership (ISHR 2011).

4.1 Human Rights Council Sessions: Agenda, Working Methods and Rules of Procedure

The Council meets for a minimum of three sessions for a total of no less than ten weeks per year, while the Commission only met once a year for six consecutive weeks. The proceedings of the session are determined by the Council's agenda, working methods and rules of procedure. Only few changes were made to these rules during the transition phase and also the review left them widely untouched.

The Council's agenda is now less rigid than the agenda of the Commission and consists of 10 items:

Item 1: Organizational and procedural matters

Item 2: Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Item 4: Human rights situations that require the Council's attention

Item 5: Human rights bodies and mechanisms

Item 6: Universal Periodic Review

Item 7: Human rights situation in Palestine and other occupied Arab territories

Item 8: Follow-up and implementation of the Vienna Declaration and Programme of Action

Item 9: Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Item 10: Technical assistance and capacity-building (A/HRC/RES/5/1, Chap. 5)

The agenda also includes broader and more flexible items, such as item 3 which constitutes an umbrella for the discussion of a wide range of topics and cross-cutting issues, or item four that provides an opportunity to raise concerns about particular country situations. The fact that the agenda is structured but not fixed allows for a stronger focus of attention, flexibility and less duplication. And, while being flexible, the programme of work retains a certain level of predictability which is important for NGOs, especially if they are not based in Geneva (see also chapter III). In particular, NGOs working on national level depend on a certain level of predictability to plan their future participation (Abraham 2007, 12-13).

One of the concerns about the agenda of the former Commission was the duplication of topics. This was addressed by the new structure of the Council's agenda, however, many actors still see a need for improvement. This was also discussed during the Council review but States were unable to find consensus and therefore left the agenda untouched. One of the proposals on the table brought forward by Human Rights Watch suggested to merge items 3, 8 and 9 into one item to allow for debates on thematic issues and merge items 4, 7 and 10 to create one item on situations and capacity-building. To prevent an imbalanced focus on certain countries, they further recommended structuring these debates into separate regional segments (Rathgeber 2010, 6). Another proposal would enable other entities than States, such as the High Commissioner for Human Rights, the Secretary-General, or a group of Special

Procedure mandate holders to put topics on the agenda. This should alleviate the political bias towards the consideration of country situations and make the Council more responsive (Rathgeber 2010, 5).

Each session follows a programme of work that includes the schedule of items and the topics that shall be discussed within these items. For domestic civil society organizations wishing to participate in the session, this document is essential to plan their stay in Geneva. Since there exists no deadline, the programme is finalized on short notice, in some instances no more than two weeks before the session (ibid., 6). The resulting unpredictability has a negative impact on the inclusion of civil society (see also chapter III, 2.2).

Presently, the Council has more working methods at its disposal than the former Commission. In addition to resolutions and decisions, the working methods also allow for recommendations, conclusions, summaries, discussions or presidential statements (A/HRC/RES/5/1, para. 118). This change was welcomed by NGO representatives (Abraham 2007, 14) and the option to make presidential statements has already proven to be a good compromise when dealing with controversial initiatives. Another welcome change was that the Council now applies the rules of procedure of the main committees of the General Assembly (A/HRC/RES 5/1, rule 1). These allow for more flexibility than the rules of procedure previously used in the Commission.

Another means to achieve increased responsiveness to human rights violations is the new option to hold special sessions (A/GA/RES/60/251, para. 10): The Council can convene special sessions on request of one of the members if supported by at least one third of its members. This new mechanism was embraced by the Council and is widely regarded as a success. As of April 2011, 16 special sessions had taken place. However, the special sessions are also an illustration of the fact that the re-start in 2006 could not fully eliminate politicization. Of the four sessions held in the first year, three were concerned with the conduct of Israel and one with the human rights situation in Darfur.²³ It proved to be much more difficult to acquire sufficient votes to hold a special session on the human rights situation in Sudan than to hold sessions on the situation in Israel (Starl 2007, 110). Recently, this instrument was used more responsibly, when holding special sessions on the pressing human rights situations in Côte D'Ivoire (December 2010), Libya (February 2011) and Syria (April 2011).

²³ Special sessions in 2006: on 5-6 July about the human rights situation in the Occupied Palestinian Territories, on 11 August about human rights violation during Israel's intervention in Lebanon, on 15 November about Israel's military incursion to the Occupied Palestinian Territories, and on 12-13 December on the human rights situation in Darfur (Sudan).

The Council's rules of procedure include a provision on NGO engagement, repeating the framework of participation and consultation with observers of the Council, including NGOs, as laid down in General Assembly Resolution 60/251 para. 11: It

“[...] 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.”

Accordingly, the access of NGOs is for the most part still governed by the same rules as it had been under the Commission but can be revised by the Council (see chapter IV, 2).

4.2 Universal Periodic Review

The Universal Periodic Review (UPR) mechanism is the main novelty and innovation that was introduced by the transformation of the Commission to the Council. Every UN member State must undergo this review of its human rights record with a certain periodicity: Originally four years, the cycle was extended to four and a half years by the review of the Council (ISHR 2011). General Assembly Resolution 60/251 (para. 5e) stipulates the guiding principles for this mechanism. The Council shall

“[u]ndertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs [...]”

During the institution-building phase, the Council amplified the modalities of the UPR in Resolution 5/1, Chapter 1. The main objectives of the review are:

- the improvement of the human rights situation on the ground;
- the fulfilment of the State's human rights obligations and commitments;
- the enhancement of the State's capacity and of technical assistance with the consent of the State concerned;
- sharing of best practice among States and other stakeholders (A/HRC/RES/5/1, para. 4).

The basis of the UPR for assessing States' human rights obligations and commitments are the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), human rights instruments to which a State is party, voluntary pledges and commitments made when presenting their candidature for the Council, and applicable

humanitarian law (A/HRC/RES/5/1, para. 1-2). This broad legal basis, including the Charter and the UDHR, constitutes a major improvement. It means that a State under review can be questioned about virtually every human right even if it has not ratified the associated human rights treaty, because the UDHR is of such a broad scope that it includes reference to all human rights that were later amplified in separate binding treaties. Yet, the universal nature of this review results not only from the fact that all human rights commitments are reviewed, but also from the fact that each of the 192 UN member States is up for review regularly, once every four years. This cycle was extended in the course of the review and starting 2011 the periodicity will be four and a half years (A/HRC/WG.8.2/1, para. 3). The Council's member States have to be reviewed during their term of membership.

The UPR is conducted by the UPR Working Group which consists of all 47 Council members. This constellation, where the Council operates under a different name, is a compromise between two conflicting proposals.²⁴ In addition, the fact that the UPR is conducted by a Working Group also means that the mechanism only takes little time away from regular Council sessions. The UPR Working Group meets three times a year for two weeks and reviews 42 States per year.

The Working Group relies on three sources of information (A/HRC/RES/5/1, para. 15): The main basis of the UPR is the national report of 20 pages that should be prepared by the government in broad consultation with civil society and other stakeholders. Furthermore, other UN entities such as treaty bodies, Special Procedures or specialized agencies provide information which is summarized by OHCHR in a report of ten pages. The third source of information is a report containing information from other stakeholders, in practice NGOs and NHRIs (see also chapter IV, 2.3). NGOs do not need consultative status with ECOSOC to submit information since this report is mainly intended to contain information provided by NGOs that are active within the country under review. Thus, in theory even individuals can submit information to the OHCHR to be included in the report if the information fulfils the criteria of being "credible and reliable" (A/HRC/RES/5/1, Chapter 1, 15c). Information provided by civil society is summarized by OHCHR into a report of ten pages, called the 'Other stakeholders report'.

The review itself takes three hours and is conducted in the form of an interactive dialogue. In total, the State under review is given one hour to present its report, reply to questions, and make concluding comments after member and observer States have had their two hours to ask questions or to comment on the human rights situation. Other

²⁴ The establishment of the UPR Working Group in its current set-up is a compromise between two proposals made during the institution building phase: conducting the UPR in the Council's main sessions as opposed to conducting it in a smaller Working Group with a reduced number of Council members (Abraham 2007, 35).

stakeholders, such as NGOs, are not allowed to make oral statements during the review. Nevertheless, they are allowed to attend the review, provided they hold ECOSOC consultative status. A draft outcome document is then submitted to the next session of the Council, which usually takes place a few months later. The outcome document contains recommendations made by States during the review and annotates which State made the recommendations. During the adoption of the draft outcome in the Working Group, the State under review can indicate which recommendations it accepts, which ones it rejects and which ones it defers for consideration by national bodies until the consideration in the next Council session. During the following Council session, one hour is dedicated to the consideration of the UPR outcome document and its adoption: The State under review has 20 minutes to comment on the recommendations, followed by 20 minutes of comments by the Council members. After this and before the vote, NGOs also have the opportunity to take the floor for 20 minutes to comment on the outcome. This is the only time during the UPR process in which NGOs are permitted to make oral statements.

The evaluation of the UPR mechanism is mixed: “The UPR is not, at least on paper, the strongest of mechanisms that could have been set up. Neither is it the weakest”, writes for instance Meghna Abraham in her analysis of the institution-building year (2007, 5). After being operational since 2008, the assessment is generally still positive (Rathgeber 2010, 8). States, in particular, agreed in the framework of the Council review that this mechanism was largely successful and only made minor adjustments to the process, such as extending the periodicity of the review which allows slightly more time for the consideration of each State. A problem that is more difficult to address is the practice of filibustering, meaning that States use their speaking time exclusively to praise another State’s accomplishments instead of raising pressing human rights issues. Or they simply are “[...] wasting time with lengthy, irrelevant commentaries, rather than engaging in a substantive dialogue on the countries’ rights record” (FIDH 2009, 4). Another concern is the lack of follow-up which should be integrated in the second UPR cycle (A/HRC/WG.8/2/1, para. 6).

4.3 Special Procedures

Special Procedures is an umbrella term for a number of expert mandates that were set up by the Commission and taken over by the Council. They are probably the main achievement of the Commission. Special Procedures is an umbrella term for mandates such as Representatives, Special Representatives, Independent Experts, and Working Groups. These positions are filled with experts serving in their personal capacity whose tasks are in general to examine, monitor, advise and report publicly on human rights

situations. The specificities of the mandates and instruments that are available to them are laid down in the respective Human Rights Council Resolution establishing a mandate. A basic distinction can be made between country-specific mandates on the one hand, such as the Independent Expert on the situation of human rights in Sudan, and thematic mandates on the other hand, such as the Special Rapporteur on the right to education. By 1 November 2010, there were 8 country mandates and 31 thematic mandates.²⁵

Due to their political independence, Special procedures are one of the most effective tools for the advancement of human rights since they can be quite outspoken. In the framework of the Council, they are an important counterbalance to the Council's intergovernmental plenary meetings which often fail to address the most pressing issues and country situations. Also, they are an important tie to the domestic level, since they can conduct fact-finding missions on invitation of the concerned State. They can receive individual communications on human rights violations and establish direct contact to governments on these issues. Furthermore, they can prepare thematic studies and issue press releases to communicate their work to the public (OHCHR 2008, 107).

During the transition period, a number of States tried to curtail the independence of Special Procedures. Country specific mandates are especially frowned upon by many States. The Council's attempt to bring the Special Procedures under tighter control resulted in the adoption of a Code of Conduct for Special Procedures during the institution-building phase (A/HRC/RES/5/2). This resolution is a potential threat but it can be evaluated as a success that generally-speaking the independence of the Special Procedures was sustained.

The appointment process of experts for a specific mandate is a sensitive matter, since the strength of a Special Procedure depends strongly on the individual holding the mandate. For this reason, a complicated procedure with several stages was developed. In the end of the process, after consultation with member States, the Council's president proposes an individual for each mandate which is then approved by the plenary of the Council.²⁶

The flow of information between the Council and Special Procedures is upheld by annual activity reports that are considered during Council sessions. But the Council may also request the Special Procedure to report on a topic of specific interest or to report additionally to the General Assembly (OHCHR 2008, 117).

²⁵ For a list of current mandates, visit <http://www2.ohchr.org/english/bodies/chr/special/index.htm> (1.11.2010).

²⁶ A detailed explanation of the appointment process can be found in OHCHR's Civil Society Handbook (2008, 111-112).

As regards the cooperation with NGOs, it is the duty of mandate holders themselves to decide how they cooperate. The cooperation is not formalized and in principle anybody can access a Special Procedure. The most important collaboration happens with domestic NGOs that provide information on country situations or submit complaints about individual cases (OHCHR 2008, 108). Although cooperation with civil society is crucial for Special Procedures and NGOs alike, it is beyond the scope of this work to assess this cooperation in more detail.

4.4 Advisory Committee

The Advisory Committee is a body of 18 experts that replaced the former Sub-Commission on the Promotion and Protection of Human Rights. It follows the principle of equal geographical representation and States can propose candidates from their own region. The Advisory Committee serves as a think tank, conducts studies by request of the Council and gives research-based advice. Compared to the Sub-Commission, the Advisory Committee's powers were strongly curtailed which makes it one of the weakest mechanisms of the Council. It meets for only ten working days annually and needs the Council's approval to hold additional sessions. Furthermore it has no power to adopt resolutions or decisions. The gravest shortcoming may be its inability to initiate studies itself – it can do so only upon request of the Council (OHCHR 2008, 81). In practice, the former Sub-Commission also allowed for NGOs without ECOSOC status to participate in many of its sessions (Abraham 2007, 16). Formally, in the Advisory Committee, only ECOSOC accredited NGOs are allowed access.

4.5 Complaint Procedure

The Council's complaint procedure is confidential and aimed at addressing consistent patterns of gross and reliably attested human rights violations in any part of the world. It is based on the former 1503 procedure of the Commission, which was only slightly modified (see also OHCHR 2011a). Complaints may be submitted by individuals, groups or organizations that are either victims or have reliable knowledge about such violations. Two Working Groups carry out the procedure. First, the Working Group on Communications decides on the admissibility of the complaint. The group is composed of five experts from the Advisory Committee. Then, the intergovernmental Working Group on Situations, composed of five members of the Council – one from each regional group – drafts a confidential report that is subsequently brought to the attention of the Council. The Council may

- keep a situation under review and ask the State to provide further information or appoint an expert to monitor the situation and report to the Council;
- recommend that OHCHR should provide technical cooperation
- discontinue its consideration of the situation (OHCHR 2008, 82).

The problem of making politicized decisions on which country shall be considered by this procedure was not eliminated by the transition from the old 1503 procedure to the new complaint procedure. Still only few complaints are forwarded to the Working Group of Situations. Unfortunately, exact data on the use and the decisions of this procedure is not publicly available.

4.6 Specialised Mechanisms

There are other mechanisms in the Council's framework, most of which were established by the Commission and are now subsumed under the umbrella term Specialised Mechanisms. Yet, they are of less importance compared to the mechanisms explained above and shall only be mentioned briefly:

The Social Forum meets once a year for three days of dialogue and brings together different stakeholders, such as States, ECOSOC accredited civil society representatives, and UN specialized agencies. The Human Rights Council defines the topic of discussion which usually revolves around issues relating to poverty.²⁷

The Forum on Minority Issues is a similar mechanism that meets for two days annually and is guided by the independent expert on minority issues, which is one of the Special Procedures.²⁸

The Expert Mechanism on the Rights of Indigenous Peoples, composed of five experts, was created to provide thematic expertise to the Council and meets for three days annually.²⁹

Working Groups are another component of the Council's framework. These are intergovernmental mechanisms focusing on the elaboration of new human rights standards or on discussions of thematic human rights issues.³⁰

²⁷ More information on the Social Forum can be found on OHCHR's website on <http://www2.ohchr.org/english/issues/poverty/sforum.htm> (16.4.2011).

²⁸ More information on the Forum on Minority Issues can be found on OHCHR's website <http://www2.ohchr.org/english/bodies/hrcouncil/minority/forum.htm> (16.4.2011).

²⁹ More information on the Expert Mechanism can be found on OHCHR's website on <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/index.htm> (16.4.2011).

³⁰ More information on the Working Groups can be found on OHCHR's website on <http://www2.ohchr.org/english/bodies/hrcouncil/> (16.4.2011).

III Access of NGOs to the Human Rights Council

“Some countries in that NGO Committee do not want critical voices. That's how they govern their countries, by shutting down critical voices, and that's how they want to govern the UN” (Interview 3).

Since the world conferences of the 1990s, there has been an increasing amount of interaction between States and non-governmental organizations (NGOs) on the intergovernmental level and NGOs are given formal access to the United Nations (UN) system in order to provide UN mechanisms with expert information and advice that represents a variety of public opinions (E/RES/1996/31, art. 20). However, not every NGO that wants to engage with the UN system in general, or the Human Rights Council (the Council) in particular, will encounter open doors. This chapter will explore along what lines the selection process is taking place, thereby dealing with the first research category: factors that determine and influence whether an NGO can access the Council or whether it is excluded from participating.

First of all, the formal requirements for access to the Council will be explored. The precondition for full participation of NGOs in the Council is consultative status. This status is accorded to NGOs by the Committee on Non-Governmental Organizations (NGO Committee) of the Economic and Social Council (ECOSOC) through a highly politicized process. As a consequence, NGOs working on human rights issues face particular scrutiny when applying for consultative status. Furthermore, this chapter identifies a number of additional factors that determine whether an NGO has *de facto* access to the Council. Even among NGOs in consultative status, not every NGO has the option to participate on equal footing with other NGOs in the Council. First and foremost, NGOs that are not based in Geneva face difficulties in accessing the Council. In addition, resources and know-how strongly influence whether an NGO can participate in the Council.

1 ECOSOC consultative status

Obtaining ECOSOC consultative status is the main precondition for physical access to UN buildings and for taking part in the proceedings of the Council. Establishing

consultative relationship with NGOs is one of ECOSOC's main tasks and derives directly from article 71 of the UN Charter:

“The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned“ (UN Charter, art. 71).

The purpose of this article is to establish general guidelines on where in the hierarchy of the UN NGOs are put and how far relationships with NGOs should go (Ortega Barrales 1998, 4). Although this article formally limits NGOs to interaction with ECOSOC and its sub-organs, other UN entities developed a practice to grant access to NGOs on the basis of their ECOSOC consultative status.³¹ Since article 71 is of very general nature, it was the task of ECOSOC to develop more detailed guidelines, which was achieved by a resolution in 1946. Since then, the resolution was revised several times, in particular because the growing number of NGOs required new arrangements.³² Today, consultative status is governed by ECOSOC resolution 1996/31 which, for the first time, contains a provision expressly encouraging participation of national NGOs. Resolution 1996/31 also identifies two main purposes for the establishment of consultative relations with NGOs, namely

“[...] for the purpose of enabling the [Economic and Social] Council or one of its bodies to secure expert information or advice from organizations having special competence in the subjects for which consultative arrangements are made, and, on the other hand, to enable international, regional, subregional and national organizations that represent important elements of public opinion to express their views” (E/RES/1996/31, art. 20).

Thus, according to this resolution, States allow NGOs to access the UN because they want their expert advice and because they want to include the diverse views of representatives of the public in the UN system. This is important to be kept in mind as this chapter moves along, since it will show that this idealistic declaration and welcoming stance towards NGO involvement is not always upheld in practice.

³¹ E/RES/1996/31 only expressly establishes rules for NGO consultation with ECOSOC (part IV), its Commissions and other subsidiary organs (part V), its ad-hoc bodies (part VI) and international conferences (part VII).

³² The first arrangement was ECOSOC Resolution 2/3 of June 1946, which was replaced by ECOSOC Resolution 288 B (X) of February 1950. This was followed by a review in 1968 which resulted in ECOSOC Resolution 1296 (XLIV). By the 1990s, the rising numbers of NGOs seeking access to the UN system made new arrangements again indispensable. The review process resulted in ECOSOC Resolution 1996/31 which is still in force.

The decisions about granting, suspending and withdrawing consultative status are taken by 19 States in the ECOSOC Committee on Non-Governmental Organizations (E/RES/1996/31, para. 15) – the so-called NGO Committee. More precisely, the NGO Committee can only make recommendations to its parent body ECOSOC, which has the final say. Unfortunately, since its decisions clearly follow political considerations, the NGO Committee is one of the most criticized bodies of the whole UN system (Martens 2005, 131) and was even called the Anti-NGO-Committee (Non-paper 2009). It meets twice a year for a total of about 16 working days, first in January/February for its regular session and then in May/June for its resumed session.

1.1 Three categories of consultative status and the selection criteria

ECOSOC resolution 1996/31 avoids giving a clear definition of the term non-governmental organization, but does offer a number of criteria an NGO has to fulfil in order to be eligible for consultative status:

- The organization has to “[...] attest that it has been in existence for at least two years as at the date of receipt of the application by the Secretariat” (E/RES/1996/31, art. 61 h).
- It shall be an organization “[...] that is not established by a governmental entity or intergovernmental agreement [...] including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization” (ibid., art. 12) and if the organization receives financial support from a government it has to be openly declared (ibid., art. 13).
- “The aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations” (ibid., art. 2).
- The organization shall work to “[...] support the work of the United Nations and to promote knowledge of its principles and activities [...]” (ibid., art. 3).
- “The organization shall be of recognized standing within the particular field of its competence or of a representative character” (ibid., art 9).
- The organization shall have an established headquarters and a democratically adopted constitution providing for a representative body responsible for policy decisions (ibid., art. 10) and a representative structure with mechanisms of accountability to its members (ibid., art. 12).

These broad criteria are in principle the grounds on which decisions of granting consultative status should be made by the NGO Committee. In practice however, political

considerations clearly influence the decision-making of the Committee. Moreover, human rights NGOs face particular scrutiny – in practice and on paper. They are the only type of NGO that receives particular mention by ECOSOC resolution 1996/31:

"Organizations to be accorded special consultative status because of their interest in the field of human rights should pursue the goals of promotion and protection of human rights in accordance with the spirit of the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action" (ibid., art. 25).

If granted consultative status, the NGO is put into one of three hierarchical categories according to their organizational features as outlined in table 2.

Table 2: Establishment of consultative relationships

	General consultative status	Special consultative status	Roster
Field of activities	Be concerned with most of the activities of ECOSOC (para. 22)	Be concerned specifically with few of the fields of activity of ECOSOC (para. 23)	Be able to make occasional and useful contributions to ECOSOC (para. 24)
Nature of contribution	Make substantive contributions to achieving the objectives of the United Nations in the field of work of ECOSOC (para. 22)	Have a special competence in its area (para. 23)	Be available for consultation at the request of ECOSOC or its subsidiaries (para. 24)
Organizational feature	Be involved with the economic and social lives of the peoples of the areas they represent (para. 22)		
Organizational feature	Have a considerable membership, broadly representative of major segments of society in a large number of countries in different regions all over the world (para. 22)	Be known within the field for which they have or seek consultative status (para. 23)	
Source: E/RES/1996/31, part III			

Each category warrants varying participation rights. The broadest range of rights is open to NGOs in general consultative status, followed by those in special consultative status and NGOs on the roster. As shown in table 3 below, the rights of involvement vary among the respective categories.

Table 3: Consultation with Commissions and Other Subsidiary Organs of the Council

	General consultative status	Special consultative status	Roster
Be communicated the session's Agenda (para 33).	Yes	Yes	Yes
Propose items for the provisional agenda (para 34).	Yes, the item shall be included if adopted by a two-thirds majority of States members	No	No
Attend public meetings as observers (para 35).	Yes	Yes	Yes, if concerned with matters within the NGO's competence
Submit written statements to States (para 36, 37).	2.000 words on subjects within the NGO's special competence	1.500 words on subjects within the NGO's special competence	1.500 words on subjects within the NGO's special competence on invitation by the Secretary-General or the body itself
Oral presentations during meetings, according to the arrangements of the subsidiary organ (Para 38).	Yes	Yes	Yes
Undertake specific studies on recommendation (para. 39)	Yes	Yes	Yes
Source: E/RES/1996/31, Part V			

While NGOs on the roster have only limited options for engagement at their disposal, NGOs in special and general consultative status can choose from a broader range of formal options for participation. At the core of these rights is the possibility to attend public meetings because it enables NGOs to experience the proceedings firsthand without having to rely on secondary sources, such as press releases or official reports. But NGOs are not limited to their role as quiet observers. They can also actively take part and provide input to an intergovernmental process by submitting written statements and delivering oral statements during meetings. How NGOs exercise these rights in the framework of the Human Rights Council will be further explored in Chapter IV.

1.2 Rising Numbers of NGOs in consultative status

With the global rise of the number of NGOs in the 1990s, also an increasing number of NGOs started to show interest in working with the UN mechanisms and therefore applied for ECOSOC consultative status. The number of NGOs in consultative status has been continuously growing. In 2010, exactly 3382 NGOs held consultative status, while in 1992 this number was significantly smaller, with only 724 NGOs holding consultative status (table 4).

Table 4: Number of NGOs in consultative status with ECOSOC

Year	General	Special	Roster	Total
1992	18	297	409	724
1993	40	334	410	784
1994	40	334	410	784
1995	65	406	415	886
1996	76	468	497	1041
1997	85	582	517	1184
1998	100	742	663	1505
1999	111	918	909	1938
2000	122	1048	880	2050
2001	124	1132	895	2151
2002	131	1197	906	2234
2003	131	1316	903	2350
2004	134	1474	923	2531
2005	136	1639	944	2719
2006	136	1780	952	2869
2007	136	1956	955	3052
2008	137	2072	976	3187
2009	138	2166	983	3287
2010	139	2218	1025	3382
Sources: Martens (2005), Global Policy Forum (2011), E/2009/INF/4, E/2010/INF/4.				

The figures in table 4 show that the increase is not linear but that there are noticeable peaks. For instance, numbers were rising particularly fast in 1998 and 1999. One of the reasons for this upsurge was the opening of consultative status to national NGOs in 1996 (E/RES/1996/31). Another period of fast growth is noticeable between 2004 and 2007, followed by slower growth during the consecutive three years.

The number of NGOs in consultative status grew only slowly between 2008 and 2010, but the number of pending applications before the Committee sharply increased during the same period (table 5).

Table 5: Number of NGO applications before the Committee

NGO Committee session		Pending applications	Recommended applications (absolute/percent*)	Deferred applications (absolute/percent*)
2001 sessions	regular	145	44 / 30 %	101 / 70 %
	resumed	150	56 / 37 %	92 / 61 %
2002 sessions	regular	161	93 / 58 %	65 / 40 %
	resumed	147	89 / 61 %	52 / 35 %
2003 sessions	regular	107	57 / 53 %	48 / 45 %
	resumed	129	69 / 53 %	59 / 46 %
2004 session	regular	171	115 / 67 %	50 / 29 %
2005 sessions	regular	144	87 / 60 %	52 / 36 %
	resumed	148	105 / 71 %	40 / 27 %
2006 sessions	regular	144	97 / 67 %	39 / 27 %
	resumed	96	55 / 57 %	37 / 39 %
2007 sessions	regular	140	92 / 66 %	42 / 30 %
	resumed	136	42 / 31 %	89 / 65 %
2008 sessions	regular	145	70 / 48 %	68 / 47 %
	resumed	126	64 / 51 %	55 / 44 %
2009 sessions	regular	153	64 / 42 %	82 / 54 %
	resumed	142	36 / 25 %	101 / 71 %
2010 sessions	regular	242	76 / 31 %	149 / 62 %
	resumed	253	55 / 22 %	182 / 72 %
2011 sessions	regular	352	112 / 32 %	216 / 61 %
	resumed	333	146 / 44 %	154 / 46 %

Source: Reports of the Committee on Non-Governmental Organizations on its regular and resumed sessions, 2001-2011.
 * Percentage in relation to the number of pending applications. The percentages do not add up to 100% due to other types of decisions the Committee may take which are not included in the table because they are rarely applied. These decisions are for instance to 'not recommend' an NGO or to 'close consideration' of an NGO.

This is due to the fact that the Committee is confronted with an increasing backlog of applications. A glance at the reports of the Committee between 2001 and 2011 sheds

further light on the performance of the NGO Committee (table 5), since they include the number of NGOs that were considered, recommended or deferred to future sessions. In addition to recommending or deferring an NGO, the Committee can also decide to 'not recommend' or to 'close consideration' of an application – two options that are only rarely applied and – for the sake of clarity – will not be further explored at this point.

The Committee usually meets twice a year for a regular and a resumed session. As the figures in table 5 show, the number of applications the Committee has to deal with during these sessions is rising. One can even say that the number of pending applications has roughly doubled during the past ten years.³³ While in 2001 the Committee only had to deal with about 300 applications, this number rose to over 600 applications in 2011. For years, the number of applications was fluctuating between 100 and 150 pending applications. In 2010 and 2011 however, an especially steep rise in the number of pending applications was noticeable, with around 350 applications to be considered in each of the 2011 sessions.

This rise of pending applications is closely linked to a rising number of deferred applications because they, in turn, add up to the number of pending applications. A rising number of deferred applications could be considered as a logical consequence of the increasing workload of the Committee. It has to be noted however, that deferred applications are not only on the rise in absolute terms but also in relation to the number of pending applications: The proportion of NGOs that are deferred to a future session has been rising³⁴, especially since 2007. The years 2009 and 2010 saw especially elevated percentages of applications being deferred to consideration in the following year, namely 70 and 71 percent.

Simultaneously, the percentage of recommended applications in relation to the number of pending applications declined in recent years. While the proportion of recommended applications was fluctuating between 60 and 70 percent between 2002 and 2006, this percentage declined to around 50 percent in both 2008 sessions and declined even further in 2007 to a proportion of 41 and 25 percent. The smallest fraction of NGOs – 22 percent – was recommended in the resumed 2010 session, after having recommended 31 percent in the regular 2010 session.

A new peak in the number of received and recommended applications was reached in 2011. The regular NGO Committee session of February 2011 was to "[...] review a record number of applications by NGOs seeking consultative status with ECOSOC [...]" (DESA 2011) with 170 new and additional 180 applications that were deferred from previous

³³ A handful of organizations are considered both in the regular and the resumed session and are therefore counted twice for the respective year.

³⁴ In relation to all applications that are to be considered in the respective session.

sessions. During this 2011 regular session, 112 NGOs were granted consultative status and a further 150 during the resumed 2011 session (E/2011/32 Part I and Part II), which means that 262 NGOs were granted consultative status in 2011. Despite the fact that never before so many organizations were recommended for consultative status, the performance of the Committee is hardly improving in relation to the workload it is facing. About 46 percent of the applications that were to be considered in 2011 were deferred to be considered in 2012.

Despite this peak in the number of processed applications in 2011, the backlog is building up. One reason for the backlog are time constraints, since the Committee is only meeting for about 16 working days a year. The lack of time to consider applications leads to a high number of applications that cannot be considered and are deferred. Together with the high number of new applications this builds up the backlog. At the same time, the Committee is not using the limited time it has at its disposal efficiently. Hence, it is frequently criticized for its inefficient working methods, tactics of filibustering, and politicized decision making (Interviews 2, 3, 5). For instance, the Committee defers applications by certain types of NGOs on a systematic basis to avoid taking a negative decision on them. This keeps them in the process and adds to the number of organizations that have to be considered. These issues shall be further explored in the following parts.

1.3 Committee on Non-governmental Organizations

The 19 States on the NGO Committee serve for a period of four years but there is no limit to re-election. The principle of equitable geographic distribution is applied and the regional groups decide internally which States will serve in the Committee. Being member of ECOSOC is no requirement. As a consequence of this highly non-transparent selection process, a number of States with questionable human rights records that are not committed to a strong civil society serve in the Committee (Interview 5). China and Cuba for instance have been members of the NGO Committee for decades (Martens 2005, 131). As a representative of an NGO in the process of applying put it:

“Some countries in that NGO Committee do not want critical voices. That's how they govern their countries, by shutting down critical voices, and that's how they want to govern the UN” (Interview 3).

Recently there was a change in the composition of States in the Committee which was perceived by some NGOs as a shift towards an even more hostile composition of States that are opposed to an open and outspoken civil society (Interview 5). Observers of the

work of the NGO Committee perceive a noticeable link between the States serving in the Committee and the degree of politicization of the Committee's decisions.

For the term of 2011-2014 the composition of the NGO Committee is the following:

African Group: Morocco, Mozambique and Senegal (replacing Angola, Egypt and Guinea), Sudan, and Burundi;

Asian Group: Kyrgyzstan (replacing Qatar), China, India, and Pakistan;

Eastern European Group: Bulgaria (replacing Romania) and the Russian Federation;

Latin American and Caribbean Group: Nicaragua, Venezuela (replacing Colombia and Dominica), Cuba, and Peru;

Western European and Others Group: Belgium (replacing the United Kingdom), Israel, Turkey and the United States.

The Committee's task is to decide on the grounds of the principles set out in ECOSOC resolution 1996/31 whether or not it shall recommend ECOSOC to accord consultative status to an NGO. While the criteria set out in the resolution are widely regarded as "[...] straightforward and legitimate [...]" (Interview 8), the problems arise in their application. It is undoubtedly necessary and useful to have a screening of NGOs to ensure that those who are granted access to the UN comply with the principles set forth in ECOSOC resolution 1996/31 (see part 1.1). In short, this means having an advocacy perspective and supporting the issues on the table (Interview 2), thereby always in accordance with the principles of the Charter and without using or supporting criminal or terrorist strategies. In practice however, a number of States are clearly basing their decisions on what they perceive as their national interest instead of the principles of resolution 1996/31 or the question of whether or not the NGO can actually contribute to the UN (Interview 2). This is not a new phenomenon – it was already identified by Anthony Judge in 1994:

"The regulations governing admission to different levels of consultative status are in principle designed to privilege those NGOs of greatest relevance to the programmes of the intergovernmental institution in question. In practice, and increasingly, such relevance is determined on purely political grounds as part of the wider trade-off between factions amongst the member states" (Judge 1994, 4).

NGOs as well as certain States criticize that some Committee members disregard the fact that they do not have to support the specific issues an NGO is working on as long as

they are in conformity with the principles of ECOSOC resolution 1996/31 (Interview 3). On the occasion of a particularly controversial decision in the NGO Committee,

“[...] the United States, the United Kingdom, Romania and Israel reiterated their concerns about the fact that instead of encouraging the inclusion of diverse voices and opinions from civil society to prevail in the work of the United Nations and the [Economic and Social] Council, certain members of the Committee were stifling them, as evidenced by their biased and repetitive voting patterns” (E/2009/32 Part II, 16).

ECOSOC resolution 1996/31 allows for a broad range of issues an NGO can be working on to be eligible for consultative status. There are only two requirements with regard to the substance of the work an NGO is carrying out, namely that it has to be in conformity with the Charter of the United Nations (E/RES/1996/31, art. 2) and support the work of the United Nations (ibid., art. 3). Disregarding this open approach also runs against the primary reasons for including NGOs in the UN in the first place, which are to provide expertise and represent important elements of public opinion (ibid., art. 20).

The significant contribution of NGOs to the United Nations, as a forum for discussion to find solutions to global problems, has been frequently recognized, for example in the Cardoso report on UN and civil society relations (A/58/817). Yet, many States in the NGO Committee disregard the principles of openness and dialogue. As an NGO representative put it: “If we would all agree in the UN, there wouldn't be work anymore, would there? So, we disagree, but we have a place where we can actually talk [...]” (Interview 3). But criticism is by far not only coming from the side of civil society. Also member States of the NGO Committee are passing harsh criticism on the Committee, even during the session. In the May/June 2009 session, the delegate of the United States said according to the session's report,

“[...] that it was incumbent on the United Nations and its subsidiary bodies and organs to defend civil society's right to provide constructive criticism of Governments since the United Nations was a democratic institution built on the very foundation that a variety of opposing viewpoints openly expressed would make for a better and more informed decision. Furthermore, he deplored the use of what he termed ‘standard filibuster tactics’, namely, asking infinite questions of non-governmental organizations to avoid making decisions on granting them consultative status” (E/2009/32 Part II, 19).

The difficulties alluded to in this statement will be further explored in the following parts of this chapter.

1.4 Application Process

The application for consultative status is a lengthy process. An application has to be submitted to the NGO Branch of the Department of Social Affairs (DESA), a department of the UN Secretariat, by the 1st of June of the year before the NGO wants to be considered by the NGO Committee. For example, an application handed in by July 2011 would be in time for the deadline of 1st of June 2012 and would ideally be considered in the Committee in 2013, depending on the workload of the Committee. DESA screens the application with regard to its formal admissibility and the NGO will be informed in writing when it is put on the agenda of the NGO Committee. Attending the meeting of the NGO Committee, which is public, is possible for NGO representatives but not mandatory. If questions arise, they are sent to the NGO in writing. The NGO should then respond as quickly as possible, ideally during the ongoing session, in order to avoid the deferral of the application to future sessions (DESA 2011a).

The working methods of the Committee – which are unwritten – are criticized frequently and are seen as one of the main causes for the dysfunctional nature of the Committee. The European Union has called time and time again for a reform of the working methods – a call that so far has fallen on deaf ears (Interview 6). The fact that these efforts have amounted to next to nothing is an expression of the lacking will of most of the States in the Committee. A look at their comments and actions shows that they are not on the Committee to facilitate access of civil society to the UN but to hamper it and keep it under control. Written working methods that set out clear rules for the Committee would make the tactics of deliberate self-sabotage that are applied by some States significantly more difficult. Instead, States pursue an approach of frustrating NGOs in order to make them back out of the process (Interview 5).

During the session, applications are considered on a case by case basis. The order of consideration is determined in advance in an informal meeting of member States. There are two lists with a sub-division in North and South. The likelihood to be recommended for status seems to be higher on list one/South although in principle organizations from each list and sub-division can get status (Interview 6). Within a sub-division, the order is alphabetical. The criteria for being placed on the lists are not particularly transparent (Interview 6). Whether an NGO is put on list one or two seems to be dependent on whether States in the Committee deem the organization to be controversial or not. If a State raises an objection to an NGO in the informal meeting it will be put on list two, the list for the 'difficult' cases. The sub-division into North and South is equally controversial. It depends on where the NGO has its seat, but, for example, NGOs from Eastern Europe are counted amongst NGOs from the South, which is fairly illogical (Interview 6). During

the session, NGOs from list one/South are considered first, followed by list one/North and then list two/South, followed by list two/North. As a consequence of the time constraints, an NGO that is put on list two, sub-division North, whose name starts with the letter Z has the lowest chance to be even considered by the Committee during the session to which its application was originally allocated (Interview 3).

The agenda of the session, however, tells little about the exact time the application of an NGO will be considered, because there is no speaking time limitation and each delegation can speak as long as they want about an NGO and ask as many questions as they want. Delegates of applying NGOs therefore have to sit during the whole session in order to make sure they do not miss the moment when their organization will be considered (Interview 3). The numbers of representatives heard during a session was ranging from about seven up to 23 in the past ten years, with a slight trend to hear a higher number of representatives (Reports of the NGO Committee, 2001-2011).

The fact that there is unlimited speaking time for States is problematic, keeping in mind the high number of applications. Lengthy comments by delegations are wasting precious time and slowing down the whole system. This carries special weight in light of the Committee's very short meeting time which is restricted to about 16 working days per year. The lack of speaking time limitation leads to a very selective consideration by the Committee. While some organizations are not discussed at all before being recommended for status, others are discussed at length. Most of the NGOs that face increased scrutiny do so because of political considerations by member States.

1.4.1 Infinite questioning

Instead of deciding to 'Not recommend' the application of an NGO for consultative status, the Committee has adopted a practice of infinite questioning. Under the false pretence of not having enough information about an NGO they keep sending new sets of questions from one session to another. In cases of NGOs that were not recommended for status for years, an analysis of the different sets of questions shows that frequently the same questions were asked, with only slight changes in the wording (Interview 5, 3). There is no limit to how many sets of questions can be sent to an NGO, so in the most complicated cases it can take up to ten years before the Committee takes a decision. If an NGO receives new questions, its application is most of the time deferred to be considered during the next session which adds to the backlog of applications. In theory, NGOs are requested to provide answers as quickly as possible to allow a second consideration of their application during the same session. In practice however, it is rarely possible for the Committee to consider one application twice during the same session. As long as there are questions sent to an NGO, there will be no decision taken:

“There is no timeline fixed for the duration of the consideration of an application by the ECOSOC NGO Committee which makes that member States can ask additional questions each time the application is considered. It can last for years and years and years until they finally happen to take a decision. And this is what's happening on the most complicated cases” (Interview 2).

An illustrative example for how questioning is misused to delay decision-making was observed during the January/February 2011 session of the NGO Committee. When the application of an NGO called Mental Health Initiative for Africans in Crisis came up, “[...] Burundi’s delegate asked whether the NGO only focused on Africans” (ECOSOC/6456-NGO/710) which is a rather surprising question, taking into account the unambiguous name of the organisation and the information they had already provided in their application:

“Although the name of the organisation is clear, as Belgium’s delegate underlined in the session, and the application even mentioned in which countries in Africa the organisation is operating, Burundi’s delegate insisted on the question to be sent to the applicant and therefore deferred the application” (HRHF 2011, 2).

This shows that States misuse the option to ask questions to defer consideration of a case to a later session in the hope that the organization will sooner or later give up and abandon their quest for consultative status.

Some States also misuse the option of asking questions to inquire details that have no relevance as regards the decision on eligibility for consultative status. The delegation of China, for instance, asked an NGO named Dynamic Christian World Mission Foundation questions about its membership in China that the organization refused to answer. The delegation of the United States argued

“[...] that resolution 1996/31 did not require a non-governmental organization to provide the names and residential addresses of all of its members and that this information had no bearing on the eligibility criteria outlined in the resolution.” (E/2009/32 Part II, 15).

A majority of member States of the Committee finally voted in favour of closing the application. The action of closing an application is not to be confused with ‘not recommending’ an NGO. It means that the Committee closes consideration because the NGO does not fulfil formal requirements of the application process, i.e. does not answer questions posed by the Committee or is not an officially registered NGO in its country. As illustrated, this option provides large room for misuse.

1.4.2 Procedural particularities

Another particularity of the NGO Committee that allows member States to protract the whole decision-making process is their interpretation of the rule of consensus as a *de facto* veto right (Interview 3). As in every UN body, the goal of its members is to reach consensus before a decision is taken. The NGO Committee however, has adopted a practice of permanent consensus, which amounts to a *de facto* veto right for each delegation. As long as only one of the member States disagrees with the common opinion, there will normally be no vote:

“Everybody has to agree. It's not like: ‘If we can't reach consensus but there is a clear majority, well, then we are just going to vote’ [...]. As long as not everybody agrees, they don't decide. Instead they send more questions to the organization [...]” (Interview 3).

Not surprisingly, neither NGOs that are applying nor observer States have the right to call for a vote. A vote on the application of an NGO has to be requested by a member State of the Committee (Interview 6). In recent years, some NGOs have taken their chances and tried to convince ‘friendly’ governments to call for a vote when it became clear that there would be no decision taken anytime soon (Interview 5). This was the case with an NGO that monitors the Human Rights Council:

“[I]n reality we called the bluff of the NGO Committee because we said: We know we're qualified. If you want to reject us, we are going to force you to actually formally reject us. And, when they formally rejected us, that put them on the documentation of making a decision that was a poor decision” (Interview 5).

As soon as the NGO Committee takes a decision on an application, it is included as a draft decision in the report to its parent body ECOSOC. Since in fact the Committee's decisions are merely recommendations that have to be approved by ECOSOC, they can easily be overturned by ECOSOC and that is what the ‘controversial’ applicants are hoping for: Instead of protracting their application process infinitely, these NGOs want the Committee to vote on their case, even if they risk losing the vote. This gives NGOs the opportunity to lobby ECOSOC member States to reverse the Committee's recommendation. Last, because of the different composition of States, chances to succeed with lobbying efforts are often higher.

Since a few years ago, some of the States on the Committee try even harder to circumvent the formal rejection of an NGO because their decisions are now more and more often overturned by ECOSOC. The Committee has therefore taken up a new strategy to prevent applicants from going to ECOSOC. The rules of procedure of the

functional commissions of ECOSOC provide for a rather peculiar procedural motion, called a 'no-action motion':

"The commission may, after each vote on a proposal, decide whether to vote on the next proposal. [...] A motion requiring that no decision be taken on a proposal shall have priority over that proposal" (E/5975/Rev.1, Rule 65).

An example for the use of a no-action motion in the Committee is the application of the International Gay and Lesbian Human Rights Commission (IGLHRC) which had entered their application in 2007. When they appeared before the Committee in its May/June 2010 session it was already the third time and they had received and answered 44 questions in writing. The delegation of the United States therefore argued in favour of taking immediate action on the case,

"[...] emphasizing that members of the Committee had had ample time to consider the responses of the organization [...] and arguing that the organization had made significant contributions to the field of HIV/AIDS research and had fully met the requirements set out in resolution 1996/31" (E/2010/32 Part II, 29).

When it became clear that Egypt and Qatar would just continue to ask questions, the United States requested a vote on whether to recommend status for IGLHRC. This prompted Egypt on behalf of the African Group to call for a vote on a no-action motion to prevent voting on IGLHRC, arguing that there were questions the organization had not sufficiently answered. The no-action motion was accepted, so there was no vote on IGLHRC and the consideration of the application was deferred to the next session of the Committee in January/February 2011 (*ibid.*). The case of IGLHRC is also an example for the increasingly frequent practice of ECOSOC to overturn decisions made by the NGO Committee, as seen in ECOSOC's July 2010 session. The delegation of the United States proposed to grant consultative status to IGLHRC although it had been deferred to a future session of the NGO Committee. The proposal was accepted by a vote of 23 in favour, 13 opposed and 13 abstentions and IGLHRC was granted consultative status. ECOSOC's president later released a statement that this vote had made IGLHRC the third NGO advocating for LGBT rights that was granted consultative status with ECOSOC (ISHR 2010a).

1.4.3 Sensitive Cases

According to a UN official, "[a]bout 80 per cent of all applications of NGOs for consultative status are accepted. Of those not approved, many simply had not completed the application process correctly" (Martens 2005, 130). However, it is rare that the Committee actually formally rejects an organization, so the actual number of rejected

application is in fact even lower. A look at reports of the Committee on their sessions during the last 10 years – 2001 to 2011 – shows that during that period the Committee has only taken 23 decisions to explicitly not recommend status to an NGO. Of those 23 organizations, 10 were advocating the rights of LGBT people which, again, shows how politically biased the decisions of the NGO Committee are. In general, the Committee's strategy is to keep unwanted NGOs in the application loop as long as possible without taking a decision, in the hope that it will frustrate them sufficiently to back out of the process. This happened for instance to the International Crisis Group that withdrew its application in 2008 after being deferred and receiving new sets of questions for more than five years.

An analysis of the rejected applications and the organizations whose applications are deferred deliberately to prolong the process, as well as information collected through interviews reveals a notable bias against certain types of NGOs, namely:

- NGOs advocating the rights of LGBT people
- NGOs explicitly working for human rights and in particular those that work on country situations
- NGOs that are working in the context of international disputes

This observation coincides with what Doreen Schulz (2007) notes about NGOs encountering the most resistance:

“On the one hand, these are NGOs which are generally or specifically opposed to a particular government's activities. On the other hand, the current international constellation provokes enormous difficulty for Lesbian, Gay, Bisexual and Transgender NGOs with regard to moral views and for NGOs which discuss secession due to the high value that is assigned to territorial integrity” (Schulz 2007, 60).

The most obvious and systematic discrimination and strongest opposition is faced by NGOs that are advocating LGBT rights:

“So, certainly the NGO Committee has systematically rejected any NGO working on issues of sexual orientation and gender identity. And for no reason other than overtly discriminatory rationales. They've asked questions linking groups working on sexual orientation issues with questions of paedophilia, they challenge whether these are legitimate human rights issues” (Interview 4).

Aside from two NGOs advocating LGBT rights that were already granted status in the 1990s³⁵, LGBT NGOs had not succeeded in obtaining consultative status before 2006.³⁶ At first, all of them were rejected by the NGO Committee and were only later granted status by ECOSOC itself, with the single exception of COC Netherlands which won the vote in the NGO Committee in 2008 (ILGA 2009).

Secondly, NGOs that are clearly pursuing a human rights agenda are likely to be subject to great scrutiny. An example is the NGO Human Rights House Foundation whose application process took over ten years before the organization was finally granted special consultative status. Reasons for this protracted application process are complex. To begin with, it was certainly not an advantage to carry 'human rights' in the name of the organization. As a diplomat told the NGO informally, the organization would probably have received status long ago if the name of the organization was 'ABC house foundation' (HRHF 2011, 6). Furthermore, this NGO is also an example for the difficulties triggered by work on country situations, since it collaborates with local civil society in several regions of the world.

Difficulties are also experienced by NGOs that work in the context of national or international disputes or have their origin in a country involved in such a dispute. Notable examples include: Morocco and Western Sahara, India and Pakistan because of their conflict over Kashmir (HRHF 2011, 3) or Russia and Chechnya (Martens 2005, 133). Also Kurdistan can be a hot topic, considering that the most recent suspension of an NGO happened after a complaint by Turkey about an NGO's agenda on Kurdistan (Interview 2). This issue will be further addressed in part 1.6, which deals with suspensions and withdrawals of consultative status.

Although many genuine NGOs face difficulties, "[s]ome very curious bodies [...] manage to acquire consultative relationship [...]" (Judge 1994, 4). This is due to the fact that States on the Committee only look at the applications of aforementioned types of organizations in great detail. If an NGO has an unsuspecting name there is a high likelihood that it will receive status irrespective of the contribution it might be able to make to the work of the UN. An illustrative example is the case of the Association of World Reindeer Herders which was recommended for special consultative status in the NGO Committee session in February 2011. As an observer of the session writes: "It is certain that none of the delegations looked into its work on indigenous issues given the fact that no questions were brought up" (HRHF 2011, 6). However, if the Committee had

³⁵ International Wages Due Lesbians and Coalition of Activist Lesbians

³⁶ In recent years, the following NGOs that advocate for LGBT rights were granted consultative status: Danish National Association for Gay and Lesbians, European Region of the International Lesbian and Gay Association (ILGA-Europe), and the Lesbian and Gay Federation in Germany (LSVD) in 2006; Gay and Lesbian Coalition of Québec, Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights in 2007; COC Netherlands and the Spanish Federation of LGBT Groups in 2008 (ILGA 2009).

paid closer attention to this NGO, they would have noticed that their agenda on indigenous issues merits questioning. Furthermore, some States infiltrate the system with their own governmentally organized 'NGOs' – so-called GONGOs – which usually do not have difficulty in obtaining consultative status. This phenomenon is hard to grasp since it is not always clear which organizations fall into this category. It seems that in particular countries such as Cuba, Tunisia, China, Pakistan and India try to infiltrate the system with their GONGOs (Petroula 2001, 53 quoted in Martens 2005, 131). Observers of the situation are of the opinion that the problem of GONGOs taking space away from genuine NGOs is increasing (Interview 7, 8). Some States in the NGO Committee seem to

“[...] have a clear interest in undermining the whole system by accrediting NGOs that are not independent. And it [...] detracts obviously time and space in UN fora from legitimate NGOs but it also casts a shadow on the work of civil society in general because many of these organisations don't respect any rules, they don't abide by the basic rules on how you participate in a meeting. So they create a lot of tension and a lot of problems and it's very easy for governments to not distinguish between them and other NGOs” (Interview 8).

Therefore, time and space for engagement are at stake, as well as the reputation of genuine NGOs that want to engage with the Human Rights Council and its mechanisms.

1.5 Quadrennial Reports

After having obtained ECOSOC consultative status, NGOs have to provide a report to the NGO Committee every four years, briefly outlining their activities. These reports are then considered by the NGO Committee but with the increased number of NGOs in consultative status, the burden is becoming heavier and heavier. In its regular 2011 session, the Committee reviewed 213 reports (E/2011/32 Part I, 1).

While the reporting requirement had been a formality for a long time, quadrennial reports of certain organizations are now examined with increased scrutiny (Interview 8). The Committee can request additional information from an NGO and States make use of this opportunity in select cases. The selective attention accorded to quadrennial reports is comparable to the selective scrutiny faced by certain types of NGOs during the application process. It can lead to similarly long rounds of questioning that can go on for years and years. Among the NGOs whose quadrennial reports receive particular scrutiny are many high profile human rights NGOs, such as Human Rights Watch, Amnesty International, Freedom House, Reporters Without Borders and others (HRHF 2011, 8). Although the consideration of quadrennial reports has not yet led to the suspension of

withdrawal of consultative status of an NGO, the increasing scrutiny can be regarded as a form of intimidation and a reminder for NGOs that States are the ones having the upper hand.

1.6 Cases of suspension or withdrawal

NGOs that have obtained consultative status have to carry out their activities in accordance with the rules established by ECOSOC resolution 1996/31. If their activities are in breach of these principles, the NGO Committee can decide to suspend their consultative status for up to three years or withdraw it. In particular, status can be withdrawn if the NGO's activities run counter the principles of the UN Charter or are politically motivated and directed against a UN member State. Furthermore, status can be suspended or withdrawn if the organization is involved in internationally recognized criminal activities and if they did not make a contribution to the work of the United Nations within the preceding three years (E/RES/1996/31, art. 57). Observers note that States make increasingly use of this option, particularly since 1996, when a new resolution governing consultative status was passed. Since then, a higher number of NGOs are concerned by suspensions and withdrawals (Martens 2005, 32). During the last ten years (the period between 2001 and 2011), the consultative status of four³⁷ organizations was withdrawn and the status of seven³⁸ NGOs was suspended. In many cases it was at least debatable whether the withdrawal or suspension was actually legitimate (Interview 2). What is true for all cases is that – in contradiction to the application process – a withdrawal or suspension of consultative status is usually pushed through swiftly. This makes it extremely difficult for the concerned NGOs to defend themselves. They are only made aware of the request to suspend or withdraw their status in writing, shortly before their case is actually considered in the NGO Committee. As a consequence, these NGOs lack sufficient time and information that would enable them to prepare and defend themselves properly. After the consideration of a possible suspension or withdrawal, NGOs are not directly informed. They have to wait for the publication of the official report of the NGO Committee to learn about the decision that was taken on their case (Interview 2).

The most recent suspension of an NGO happened in 2010 because of its agenda on Kurdistan: Centre Europe – Tiers Monde (CETIM), an NGO working mostly on social and economic issues, was suspended for two years following a complaint by Turkey (Interview 2). Turkey claimed that the NGO had not adhered to the principles of the UN

³⁷ General Federation of Iraqi Women; Liberal International; Islamic African Relief Agency; Asociacion para la Paz Continental (ASOPAZCO).

³⁸ Centre Europe-tiers monde (2 years); Interfaith International (two years); Arab Commission for Human Rights (one year); A Woman's Voice International (one year); Indian Movement "Tupaj Amaru" (one year); Transnational Radical Party (three years); Reporters sans frontières-International (one year).

Charter by disrespecting the territorial integrity of Turkey. CETIM was accused to undertake politically motivated allegations against Turkey as well as to incite to and condone acts of terrorism (E/2010/32 Part II, 43). The complaint focused on CETIM's statements in the framework of the Council over a long period of time, including the NGO's submission to the Universal Periodic Review of Turkey, which included, according to Turkey, "[...] unfounded allegations and politically motivated falsifications against Turkey [...]" (E/2010/32 Part II, 48). Other complaints focused for instance on the fact that some terminologies used by the NGO were not internationally accepted. The letter of complaint made obvious that the delegation of Turkey had been closely observing the statements of the NGO and had been collecting them for a long period of time. Although some States³⁹ in the Committee were of the opinion that the allegations were not sufficiently substantiated and that proof of incitement to violence was lacking, the case was dealt with swiftly. Within a week the Committee decided to suspend the NGO (Interview 2).

The possibility to suspend or withdraw consultative status is a lever that allows States to exercise power over NGOs. It makes clear once again that the UN is an intergovernmental forum in which States are the ones making the rules and that NGOs are not on equal footing. Of course, the right of States to make a complaint before the NGO Committee about the conduct of NGOs is legitimate and so are the provisions of ECOSOC resolution 1996/31 that stipulate the criteria for suspension or withdrawal. Problems arise however when this option is misused to silence inconvenient criticism. Having the NGO Committee in charge of making a decision on suspension or withdrawal of consultative status opens another door to the politicization of the relationship between States and NGOs in the UN framework. The case of CETIM shows that some States are able and willing to use their power to limit freedom of expression of NGOs (Interview 2).

In turn, NGOs are very well aware of the possibility to lose their consultative status if they give States any occasion – be it legitimate or just an excuse – to bring the NGO's case before the Committee. That clearly raises the question of freedom of expression and censorship: In fact, States rarely resort to making a complaint before the NGO Committee, but the threat of losing consultative status has become more and more immediate for NGOs in recent years (Interview 8). Authors such as Schulze (1994, 134) argue that as a result of the integration of NGOs into the system, they lose their independence and cannot anymore fulfil their role as critical observers (Martens 2005, 134). While the possibility to lose consultative status might not directly lead to self-censorship, the threat of losing accreditation can in some cases influence the strategies

³⁹ In particular Switzerland as observer State expressed its concern that the Committee had not clearly established whether there had been incitement to violence and regretted the harsh decision to suspend consultative status (E/2010/32 Part II, 44).

employed by NGOs and make them more careful in carrying out their work (Interview 8). This also refutes the perception of some scholars that there has been a power shift from States to NGOs. There is no doubt that States are the ones holding the reins. NGOs can influence policies in UN fora – maybe even more than it is visible at first sight – but in the end it is still States that have the last word.

2 Factors determining *de facto* access

It is true that “[...] consultative status does not necessarily portray a representative sample of the NGO Community” (Martens 2005, 134). But the selection process carried out by the NGO Committee is only the starting point. In addition to the formal requirement of having ECOSOC consultative status there are several other factors and preconditions that determine whether an NGO can *de facto* participate in the framework of the Council or whether it is excluded. Although in theory all NGOs in consultative status enjoy equal access to the mechanisms of the Human Rights Council, in practice it is easier for some NGOs than for others to participate. In this regard, the reality runs counter the basic idea behind NGO participation in the UN system, which is to bring a diversity of voices into intergovernmental fora such as the Human Rights Council. However, the NGOs that have access to the Council do not reflect the diversity of NGO voices. The influential factors that are responsible for this will be explored below.⁴⁰

While at the outset of the research process the factors of influence were believed to be mainly along the lines of financial resources, reality proved to be more complex. One of the main influences on participation in the Council’s framework is the question of whether or not an NGO maintains a permanent office in Geneva, where the Council is based (see part 2.2). In connection with that, the problem of resources arises, since the expenses for engaging in the Council are much higher for NGOs outside of Geneva. This also plays a role in the general considerations of an NGO on whether or not to engage with the Council. Some NGOs – although they would in principle like to engage – might come to the conclusion that the impact they can make by engaging with the Council does not justify the necessary investment of their limited human and financial resources (see part 2.3). In addition to financial and human resources, the engagement of an NGO is connected to know-how. Knowledge about both formal mechanisms and informal dynamics is indispensable for an NGO that wants to engage with the Council (see part 2.4).

⁴⁰ At this stage, it is important to note once again that the research interest of this work is focused on the intergovernmental mechanisms of the Council. The collaboration of NGOs with the Council’s expert mechanisms, such as the Special Procedures, cannot be explored in this work. In many cases there is close and active collaboration between NGOs and Special Procedures, which is however very distinct from the relations between NGOs and States in the framework of intergovernmental mechanisms. Also, the rules and preconditions for accessing the expert mechanisms are entirely different.

2.1 ECOSOC status – an advantage but not a necessity

As shown in the beginning of this chapter, NGOs that want to accredit their representatives in order to enable them to attend the Council sessions need ECOSOC consultative status. In the survey *Views from the Ground*⁴¹, 17 percent of the respondents – the third largest fraction – said that their lack of ECOSOC consultative status was a key challenge in their engagement with the Council. However, not having consultative status is not equivalent to not having access to the Council. The NGO community has developed a quite practical approach to circumvent this obstacle at least in part. NGOs that hold ECOSOC consultative status are allowed to request accreditation for any person they would like to send to the session as their representative and for how many persons they want, which allows NGOs to accredit staff members of other NGOs in addition to their own representatives, as well as human rights defenders, victims of human rights violations or, in short: anybody. This practice was contested by some States, but so far there were no serious attempts to prohibit it. While physical access to the session is easily established for NGO representatives – “[...] in real life, everybody has access to the UN [...]” (Interview 3) – it is a different matter as regards the formal ways of engagement, such as oral or written statements. This will be further discussed in chapter IV.

2.2 Presence in Geneva

One of the main influences on the engagement of NGOs with the mechanisms of the Council is the question whether the NGO maintains a permanent presence in Geneva, where the Council sessions are held. Not having an office or a representative in Geneva certainly makes effective engagement much more difficult and can also prevent NGOs from contributing to the Council’s work although they might be in principle able and willing to do so.

First of all, this is closely connected to the question of resources. NGOs that are based outside of Geneva have to pay travel expenses which can be difficult, especially for small NGOs and for NGOs that come from remote areas of the world. In the survey *Views from the Ground* (Forum-Asia et al. 2010) the biggest fraction – about 32 percent of all respondents – answered that financial constraints with regard to attending Council sessions was the key challenge for their participation in the work of the Council.

⁴¹ The survey *Views from the Ground* (Forum Asia et al. 2010) was conducted by a group of NGOs in October 2010 (Forum-Asia, Cairo Institute for Human Rights Studies, Conectas Direitos Humanos and International Service for Human Rights). It was sent to local and national NGOs, with one of the questions being “What are the key challenges for your organization in participating in the work of the Human Rights Council?” The findings are included below.

Furthermore, it is not only a question of financial resources but also a question of human resources. This is also reflected in the survey (ibid.): the second largest fraction of respondents – 27 percent – said their key challenge for participating in the work of the Council was limited staff capacity. If an NGO wants to follow all Council sessions, it has to send a representative to Geneva three times a year for a total of 10 weeks. Not all organizations can afford to have a staff member away even for the duration of one whole session which is three weeks or four weeks in the case of the main session (Interview 1). During the era of the Commission on Human Rights this was less problematic because the Commission met only once a year for a six-week session. Meeting time was shorter which enabled more organizations from outside of Geneva to participate, since sending a representative for six weeks to Geneva once a year is more feasible than sending representatives to several sessions a year.

The second main influence that has to be looked at is the agenda of the Council sessions. During a three week session not everything is always of interest to all NGOs. In particular, NGOs that specialize with the protection of a specific human right are usually only interested in attending certain days of a session. As a consequence, they try to save time and money by timing their stay in Geneva accordingly. However, the agenda of the Council is not set in stone and can change very quickly. In the survey *Views from the Ground* (Forum-Asia 2010) 13 percent of NGO respondents declared limited predictability of the developments in the Council as the key challenge to their participation in the Council. Frequently the session lags behind in schedule which leads to the deferral of an agenda item. For instance, an item which should be considered on Friday afternoon will only be on the agenda of the following Monday morning session. As a consequence, NGOs who planned their stay in Geneva around a certain agenda item may miss the debate they came for and then go home without having made their statement because they could not change their flights or could not afford to stay longer. This problem does at times not only affect NGOs but even Special Rapporteurs who are supposed to report to the Council and have to leave before they can do so because the Council lags behind its schedule (Interview 1). Some observers think that the agenda of the Commission on Human Rights was more rigid and therefore more predictable. The fact of the matter is however, that short-noticed changes in schedule are not all that new and were already noted in relation to the Commission by Carolina Ortega Barrales in 1998 (32f):

“For those NGO representatives that attend the Commission only for specific items of the agenda, it is difficult to know exactly when the consideration of an item will begin because the timetable of the Commission changes constantly or falls behind schedule some people can find themselves waiting for days.”

NGOs without permanent presence in Geneva are trying to remedy the aforementioned disadvantages in a number of ways. Firstly, some of them have hired part-time human rights consultants that represent them throughout the year in addition to permanent staff that comes into town for a number of days during the sessions (Interview 1). This is especially useful in order to enable NGOs to take part in informal meetings and networking events that take place in between regular Council sessions (see also chapter IV, 3.1). Others are taking advantage of their contacts to NGOs that are based in Geneva to stay up to date with respect to developments that are of interest to them, to receive help in accessing the Council, and to gain know-how.

Another option to facilitate access of NGOs that come from faraway regions of the world is to use new communication technologies. The idea to use video conferencing to enable participation of local civil society was discussed in particular during the review of the Council. However, the outcome document of the review merely states: “The Council shall explore the feasibility of the use of information technology, such as video conferencing or video messaging [...]” (A/HRC/WG.8/2/1, para. 59). Despite a strong lobbying effort from the side of NGOs and some States, opposition against that innovation was too strong to allow for a more concrete declaration. The arguments used by States opposing that idea make it obvious that their reasons are in fact excuses and that they feel threatened by the possibility of an increased participation of nationally based NGOs from all parts of the world. One of the arguments against the use of video conferencing was for instance the question how the identity of the speaker could be checked to make sure that it is really a person that is entitled to speak, i.e. belongs to an NGO in consultative status.

However, despite strong opposition against using technology to bring in voices from outside of the Council, technology is already in use when it comes to spreading information about what is going on inside the Council. Interested individuals or NGOs can watch a live webcast of the session or watch archived webcast videos. That way, anybody who is interested has the opportunity to know exactly what is being said in the plenary of the Council.

2.3 The cost-benefit ratio

First and foremost, it is of course the mandate of an NGO that influences whether or not an NGO aims to engage with the Council. NGOs whose mandates are focused on conducting advocacy work in the UN human rights system will most certainly strive to participate in the framework of the Council. Which types of NGOs are in the end actively involved in the mechanisms of the Council, will be discussed in chapter IV, part 1. This section deals with the cost-benefit considerations that some NGOs might apply before

deciding to engage with the Council: Is the impact that can be achieved in a certain forum worth the deployment of staff and financial resources that are necessary? This consideration can be observed especially in NGOs whose mandate is not solely focused on the international arena but who are more focused on situations on the ground. And even if they are focused on working on the international level to achieve the realization of human rights some NGOs might consider it more useful to engage with other parts of the UN human rights programme, such as the treaty bodies or other expert mechanisms. Human rights NGOs that are not already by virtue of their mandate focused on advocacy work at the Council will ask themselves whether their engagement on the intergovernmental level will in return have a positive impact on the field they are working in. Furthermore, NGOs with a small budget may feel that their resources would be better allocated to activities with a more immediate and tangible impact. The example of South America shows, that many NGOs from this part of the world prefer to engage with the regional human rights protection mechanism instead of the Council because the Inter-American Court for Human Rights is a quite strong mechanism (Interview 1):

“So, much of the energy and the resources will go into that. Because it does have concrete results [...] And it's a quasi-judicial body plus a judicial body, whereas here, it's political. So, that's certainly not where you can get the most out of for the purposes of Latin American countries that are, of course, some not that democratic, but where the civil society would have the possibility to engage” (Interview 1).

That leads to the conclusion that NGOs who could in principle bring valuable knowledge and experience into the Council can be discouraged by the lack of concrete results. In other words, the inefficiency of the process discourages them. This is a consequence of the institutional design and the inherent dynamics of an intergovernmental forum.

2.4 Know-How

A determining factor for access to the Council is also to have the necessary know-how to be able to engage formally and informally. First of all, NGOs have to be familiar with the UN system and with the Council to know how to engage effectively. This includes knowledge about the Council's mechanisms and the formal ways of engagement that are open to them, such as the option to make oral or written statements. Furthermore, NGOs have to be familiar with the working methods and rules of procedure and they have to know where space for engagement is provided for them. Often, NGOs that participate for the first time, lack this kind of information.

Some NGOs have recognized this gap and offer trainings that explain how the system works and where options for engagement are, with a view to empower them to use the UN human rights mechanisms effectively to pursue their goals (ISHR 2011a). In addition, there are a number of federative NGOs with a permanent representation in Geneva that offer their local member organizations help and advice with regard to accessing the Council. Examples for such NGOs would be the International Federation for Human Rights (FIDH) and the International League of Human Rights (ILHR) (Martens 2005, 153). They explain how the system works, where opportunities for engagement are, and offer practical help in carrying out engagement. In short, they serve as a local contact point and thanks to their consultative status they are able to accredit their national affiliates.

In addition to pursuing formal ways of engagement, many NGOs who engage with the Council also pursue their agenda informally. How this is happening in practice will be further explored in chapter IV. With respect to successfully accessing the Council, it is important to be informed about informal processes and how they can be used to advance their goals. A lack of this information can be encountered frequently among NGOs that are not based in Geneva. As a result of their lacking presence in Geneva they are excluded from many of the informally ongoing activities, since

“[...] processes go very fast...and it's difficult to have a general picture of how things are evolving and have a political sense of what would be the right strategy that you may not get if you're not in informal meetings. Because so many things happen, especially during the Council, in informal settings” (Interview 1).

NGOs without a permanent representation in Geneva that want to engage in informal lobbying or advocacy will face difficulties for a number of reasons. First of all, they often “[...] lack an insider's understanding [...]” (Interview 2) of how the Council works – how its mechanisms work, but also how to establish contacts with diplomats. Many NGO representatives that are not based in Geneva do not have the personal contacts to diplomats that are necessary to lobby successfully (Interview 2). These contacts are usually built over time and need to be fostered and maintained. NGO representatives that only attend the Council sporadically will find it difficult to establish *ad hoc* a good working relationship with diplomats. Furthermore, there are processes going on in between sessions, such as working groups or preparatory meetings that NGOs from outside of Geneva will have difficulty to attend and maybe also not find worth sending a representative, keeping in mind the financial cost and strain on human resources.

IV Engagement of NGOs with the intergovernmental mechanisms of the Human Rights Council

“[...] as an intergovernmental body, the Human Rights Council is greatly enriched by the knowledge and expertise, the witness-bearing role, and the grass-roots relevance that NGOs bring to its work” (OHCHR 2008, 91).

Despite the fact that many non-governmental organizations (NGOs) have to overcome obstacles before they are granted access to the Human Rights Council, their presence at the Council is strong and visible. Their participation benefits from a relatively wide choice of engagement opportunities that are open to them in the framework of the intergovernmental mechanisms of the Council. OHCHR writes: “NGOs enjoy a high level of participation in the Human Rights Council, inherited from the Commission that is unique in the United Nations system.” (OHCHR 2008, 91). The ‘uniqueness’ becomes evident when comparing the participation rights of NGOs in the Council to the rights they have in the Council’s parent body, the General Assembly. The General Assembly never established formal rules for NGO participation. In fact, there is only one provision that deals with seating arrangements and the distribution of official documents for NGOs (Willets 2001, 57). Although NGOs with ECOSOC consultative status are allowed to attend sessions of the General Assembly, NGOs are far from having the same opportunities for participation as in the Council.

This chapter discusses the formal and informal opportunities for engagement that are open to NGOs. Formal ways of engagement will be understood as those opportunities that are laid down in resolutions. Informal ways of engagement, on the contrary, are those that are customary. Moreover, informal engagement is not only engagement behind the scenes but comprises opportunities for engagement that were simply never laid down in an official document. The aim of this chapter is to explore how and to what extent NGOs use these opportunities. An analysis of statistical data on NGO engagement shall shed light on trends and levels of NGO activity in the Council. Furthermore, this chapter looks at the relationship between States and NGOs. The dynamics that are at work in the Human Rights Council are characterized by a paradox: On the one hand, NGOs are welcome consultants and sometimes almost partners and service providers for States. On the other hand, NGOs are traditionally perceived as

antagonists of States, since States fear their criticism and public ‘naming and shaming’. The relations between States and NGOs can range from close partnership on certain issues to very hostile relationships. This chapter examines how this delicate balance between States and NGOs, that can be partners and enemies at the same time, influences the engagement of NGOs in the Council. Furthermore, this chapter seeks to identify trends with regard to the engagement of NGOs and finally provides an overview on the functions that NGOs fulfil in the Council.

1 Types of NGOs in the Council and their goals

Studies about the world of international NGOs generally distinguish two types of NGOs, namely advocacy NGOs and service NGOs (Martens 2005, 30). The latter provide assistance to people in need and are often concerned with humanitarian or development aid. But in practice the division between advocacy NGOs and service NGOs is not always as strict as it seems in theory. Thus, there are advocacy NGOs that also provide services and service NGOs that integrated an advocacy component. It is fair to say, however, that in general one of the two components prevails. In the case of the Human Rights Council, participating NGOs belong mainly to the category of advocacy NGOs.

“Advocacy NGOs usually have strong causes and seek to change the ideological context of an issue at stake or to bring forward their concerns [...]” (Martens 2005, 30).

To draw attention to an issue, advocacy NGOs pursue various strategies. They might try to put officials under public pressure by creating a public debate, mobilize citizen protests or use media coverage to increase public awareness. At the same time, they

“[...] often seek close contact with governmental representatives so that they can place direct pressure on them. Most importantly, NGOs confront governments and IGOs during international negotiation processes and urge states to adopt internationally agreed-upon rules [...]” (Martens 2005, 31).

This is especially true for NGOs that are active at the Human Rights Council. Although generally a lot of NGOs use public pressure to advance an issue, in the context of the Council the majority seems to rely on informal contacts (see also part 3.1).

Before going into detail about the options for engagement that NGOs have at their disposal, it is important to take a step back and look at what NGOs hope to achieve by engaging with the Council. What are the goals of their engagement? This question is not easily answered due to the diversity of NGOs that are active in the Council. The division between advocacy NGOs and service NGOs only provides a rough categorization along

the lines of the strategies that are mainly applied by NGOs. In the Council there are NGOs that focus on such a wide range of issues and represent an even larger amount of opinions and positions on these issues that it is difficult to give a full-fledged account. There are, for instance, large generalists such as Amnesty International and Human Rights Watch that do not have a strongly pronounced focus on a particular issue or a particular region but deal with all human rights worldwide. There are federative NGOs, such as the International Federation for Human Rights (FIDH) that have nationally based member organizations all over the world. And, of course, there are NGOs that focus on particular rights or issues, such as women's rights organizations, disability groups, children's rights organizations or NGOs working on issues of sexual orientation and gender identity, to name a few of the most prominent ones (Interview 8). In addition, there are NGOs whose focus lies on particular countries or regions.

With such a diversity of NGOs that are active in the Council, it is impossible to identify a universally applicable catalogue of goals they pursue. But during the research process, the most common goals of NGO engagement could be identified. And, although the list below is not exhaustive, many NGOs pursue one or more of the goals stated here:

- NGOs want to influence the drafting and adoption of resolutions according to their principles.
- NGOs want to take part in the multilateral dialogue on human rights issues by making their voices heard and by influencing the agenda.
- NGOs want to advance the international human rights framework.
- NGOs urge States in the Council to improve their human rights situation, sometimes by convincing other States to exert pressure.
- NGOs want to provide input to the Universal Periodic Review (UPR) process.
- NGOs monitor the Council and publicly report on it.

2 Formal ways of engagement

The formal basis for NGO engagement in the Human Rights Council was laid down by the resolution that established the Council - General Assembly Resolution 60/251, paragraph eleven.⁴² Later, the same paragraph was included as rule seven in the rules of procedure of the Council, laid down in Council resolution 5/1. Rule seven stipulates that

“[...] the 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

⁴² For the purpose of this work, formal opportunities for engagement will be understood as those that are expressly based on a provision contained in a document with legal character, such as a resolution.

observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities” (A/HRC/RES/5/1, rule 7).

This implies that NGO participation in the Council is essentially governed by the same rules as it was at the Commission on Human Rights (the Commission), despite the fact that the Council is not a subsidiary of ECOSOC anymore. While this provision is not considered especially innovative, Willets (2011) points to an interesting aspect: In contrast to the Commission, which was a subsidiary organ of ECOSOC, the Council is a subsidiary organ of the General Assembly. Hence, sustaining the provisions on NGO engagement that were applicable in the Commission was the first time ever that a General Assembly body extended formal participation rights on a permanent basis to NGOs: “This was a radical change for the UN, in formally extending consultative status, on a permanent basis, to a General Assembly body, for the first time in its history” (Willets 2011, 48). Seen from an institutional perspective and in the context of the wider UN system, this can indeed be qualified as a significant change.

Rule seven contains different elements: Most importantly, it states that ECOSOC resolution 1996/31, which deals with the consultative status of NGOs, is the main legal basis for determining the rights of engagement of NGOs. This is notable because, as just pointed out, said resolution used to be exclusively applicable to ECOSOC and its subsidiary organs. In brief, this reference entails that only NGOs holding ECOSOC status have access to the Council and are accorded certain formal participation rights (see also Chapter III).

Furthermore, rule seven talks about “[...] arrangements [...] and practices observed by the Commission on Human Rights” (A/HRC/RES/5/1). This implies that the engagement of NGOs in the Council is not only governed by ECOSOC resolution 1996/31 but also by established custom. The wording of this paragraph is very vague and leaves room for a wide margin of appreciation. As a consequence, there is no detailed and unambiguous legal basis that protects the practices of NGO engagement in the Council, since also ECOSOC resolution 1996/31 only stipulates general guidelines. Most participation rights are based on established practices which developed over time in the Commission but were never formally recorded. The president of the Council and the Council Secretariat are the ones that are mainly in charge of upholding these practices. They are also the ones that have the immediate power to broaden or cut back the opportunities of NGO participation. But in principle, member States too hold the power to broaden or cut back engagement opportunities, if only indirectly. This puts OHCHR, which provides the secretariat services to the Council, in a difficult position: From the side of NGOs, they are expected to be the “guardians of the practice” (Interview 2, 8) and to advocate for strong

NGO participation. At the same time, OHCHR depends on States to carry out activities in the field, since OHCHR needs funding and the permission of States to operate. Taking a strong stance in favour of civil society could jeopardize these activities.

Yet, the insecurity that arises out of the fact that rule seven (A/HRC/RES/5/1) only stakes out rough guidelines for NGO participation can also be considered as an opportunity from the point of view of NGOs. It means that the system is flexible and that there is still room for emerging practices that can expand space for NGO engagement:

“[E]ven during the five years of the Council there have been new opportunities created. And if they are repeated a couple of times you can claim that as a practice and so it allows you to continue to build practice [...]. Once you have it written down, that's pretty much it and it becomes much more difficult to create [...] new ways of interacting” (Interview 8).

While in the beginning of the research process the premise was that NGOs would see the lack of clearly stipulated rules as a risk, it quickly became evident that the opposite is true and that the situation is in fact seen optimistically.

“One of the positive elements is actually the flexibility of the resolution 96/31. [...] It makes things flexible enough for us to push the boundaries in a more informal manner depending on which bodies we interact with” (Interview 8).

Therefore, many NGOs prefer to leave the terms of their engagement vague because as soon as they are written down, they become very difficult to change. And before something is agreed on in an intergovernmental forum, it is subject to intense negotiations among States. This consideration was also shared by the first president of the Council, Mexican ambassador Luis Alfonso de Alba:

“He was careful not to lay down strict guidelines on NGO participation, as this may have opened the issue up for debate in the Council. He instead relied on NGOs themselves to manage the time available and suggested broad principles rather than strict quotas to manage the number of times an NGO spoke and the choice of speakers” (Abraham 2007, 14).

Therefore, the same general guidelines that were established by paragraph 11 of General Assembly resolution 60/251 were repeated in the rules of procedure of the Council that were adopted at the end of the institution-building phase (A/HRC/RES/5/1, rule 7). The result of negotiations on detailed rules for NGO participation would most likely be to curtail existing options, rather than to provide a secure legal basis for established practices. The only safeguard contained in paragraph eleven is the section

stating that the Council must ensure “[...] the most effective contribution of these entities” (A/RES/60/251), meaning the most effective contribution of NGOs to the Council.

Following the content of ECOSOC resolution 1996/31, there are two options for formal engagement of NGOs in the Council: Firstly, there is the option to submit written statements as part of the official documentation of a session. Secondly, NGOs can take the floor in the plenary to deliver oral statements. In addition, there is a new option for engagement in the context of the Universal Periodic Review (UPR), for which NGOs are expressly encouraged to provide input. The terms of their engagement with the UPR are also laid down in Council resolution 5/1. Lastly, there is the complaint procedure, which will only be discussed briefly, since reliable information is scarce due to its confidential nature.

2.1 Oral statements

The most significant opportunity for engagement that is open to NGOs is the option to take the floor in the plenary of the Human Rights Council. The right to actually speak during a session stands in stark contrast to the participation rights of NGOs in other organs of the UN system. The basic right to make oral statements in the Council derives from ECOSOC resolution 1996/31 (para. 38) but how this provision is implemented in practice, is left to the Human Rights Council and its president to decide. NGOs without ECOSOC status can only participate by signing on to oral or written statements that are submitted by an NGO in consultative status. Their representative can take the floor but has to deliver the statement in the name of the NGO that accredited him/her and can mention his/her NGO only as a co-sponsor.

The session follows strict rules of procedure that are enforced by the president of the Council. In general, member States are taking then floor first, followed by observer States and at the end of the segment NGOs and National Human Rights Institutions (NHRIs) are given the floor. NGOs need to plan ahead with respect to the agenda items about which they want to make statements, because they have to submit their requests as of 8a.m. on the first day of the session to OHCHR which serves as the Council Secretariat. Previously, the request had to be handed in on paper but now it has to be made through an online request form to simplify the process and to facilitate the participation of NGOs outside of Geneva (Interview 7). When signing up to make oral statements, NGOs have to indicate their priorities. Then, the Secretariat determines the list of speakers “[...] on basis of requested priorities, [...] when the request was made, the number of requests received per speaking slot, and the time allocated under the Programme of Work” (OHCHR 2010, 7). NGOs can speak once under each agenda item

and they can co-sponsor statements delivered by other NGOs under the same agenda item. Compared to their participation in the Commission this equals broadened speaking rights, since during the sessions of the Commission each NGO was limited to a maximum of six statements (Interview 8).

The content of NGO statements is subject to a few general rules. Most importantly, the statement has to be relevant to the item under discussion. Statements during interactive dialogues with Special Procedure mandate holders should relate to the reports under consideration or to the mandate and work of the Special Procedure. The same is applicable to the interactive dialogue with the High Commissioner for Human Rights. During so-called 'general debates' the intervention should relate to the item under consideration (OHCHR 2010, 8). The question of relevance, however, is subject to differing interpretations. In the era of the Commission, neither NGOs nor States were allowed to mention the name of a specific country unless the agenda explicitly dealt with it. In the mid-1970s this was very common, but "[w]ith time this practice has been loosened, to the point where now, NGOs are free to determine the content of their statements as long as they refer to the item under discussion" (Ortega Barrales 1998, 37). However, some States still argue that country situations should only be discussed under agenda item four⁴³ and that under other agenda items human rights violations can only be referred to by way of example because statements should not focus on the situation in just one country (Interview 7, 8). For NGOs that only work on the situation in one country this would mean that there is no space for their participation in the Council, because:

"They can't talk about what's going on in another country, they may not know anything about it. It's not within their mandate, and it's not why they come to the Council – not to talk in abstract terms about a human rights theme and then drawing on examples in an academic way from several regions or several different countries" (Interview 8).

The possible impact of oral statements is contested. Critics say that two minutes speaking time gives too little space to an NGO to get their message across. Furthermore, the fact that NGOs are always the last ones to speak also means that often their audience is not particularly receptive anymore. Under these circumstances it is questionable how much attention is paid to NGO statements. Furthermore, "[...] since oral statements are not subsequently circulated as official UN documents, the impact of months of research and information-gathering may be virtually nil" (Posner 1994, 415 quoted in Ortega Barrales 1998, 40). But this view disregards aspects that lead to a more

⁴³ Agenda item four: Situations requiring the Council's attention

positive evaluation of the usefulness of oral statements. First of all, oral interventions give NGOs a high degree of visibility which they do not possess in many other UN fora. Often, their statements provide what the statements of State delegations lack: They are more open in their criticism and less bound by diplomatic considerations. NGOs think that oral statements can add an important element to the debate:

“Hearing civil society voices in debates and hearing the real concerns is very, very important. So, that may not have direct impact on outcomes but it helps influence what is discussed and how it's discussed. And it provides more of a reality check or a real perspective rather than just a government policy perspective” (Interview 8).

Moreover, the fact that NGOs have the right to take the floor in the Council carries an important symbolic meaning. It legitimizes civil society voices by allowing them to speak in an intergovernmental setting. And it does not only legitimize the role of NGOs on the international level, it also gives legitimacy to their concerns. Furthermore, the presence of NGOs and their statements are a constant reminder for States that they are not operating in a vacuum and that their statements matter, because they are speaking in a public forum. As a consequence, the visibility of NGOs and their right to take part in debates increases the accountability of the process.

From the point of view of NGOs themselves, oral statements might not have a direct impact, but they are an element in a wider strategy of engagement:

“[I]t does not on its own contribute much to shaping the opinions of member states and others, but I think it's an important element in the overall strategy of an organization. It gives you a lot of visibility. [...] It's a public space and it can help you to put pressure on certain countries. You can re-use the fact of having made an oral or written statement in your other types of work. I think it also contributes to the perception of your organization as an actor in the Council” (Interview 9).

The fact of having made a statement in the plenary is useful in a number of ways. For one, the statement can be used in the broader public relations strategy of an NGO. A message in a UN forum increases its credibility and weight in the eyes of the public. The publicity of these statements can also serve to put a State under public pressure if the statement criticizes the human rights situation in a particular country. This is also the reason why certain States argue that country names should not be mentioned in statements and some States try to sabotage the statements by misusing points of order. Furthermore, oral interventions raise the profile of an NGO and build its reputation as an actor in the Human Rights Council. Being known to member and observer States is especially important if the NGO also pursues informal lobbying and advocacy activities

(see part 3.1). While it is true that the simple fact of making the statement and the information it brings to the table will not change the attitudes and policies of most delegations, the implications of an oral statement might.

2.2 Written statements

The opportunity to submit written statements as part of the official documentation of the Council is accorded to NGOs in consultative status by ECOSOC resolution 1996/31 (para. 36). The length of a statement depends on the category of consultative status. NGOs in general consultative status can submit texts of up to 2.000 words, but the overwhelming majority of human rights NGOs holds special consultative status, which allows statements of up to 1.500 words. NGOs have to send their statement to the Secretariat of the Human Rights Council, which is run by OHCHR. The document has to be handed in at least two weeks before the start of the session to allow OHCHR to format and read it, in order to ensure that it is in conformity with UN language, that the names of territories are correct, and that there is no abusive or inflammatory language. If there should be reason for concern, the Secretariat would contact the NGO, but there is no censorship:

“We are not vetting the statements, we are just giving advice because we also know that if there is one statement that is very, let’s say, inflammatory, this can backfire to the whole NGO community [...] and for some NGOs there can even be major consequences. Their ECOSOC status could be suspended or withdrawn afterwards” (Interview 7).

If the statement is in accordance with the basic rules, it is included in the official documentation of the session. All statements are listed in the ‘Order of the Day’ document under the respective agenda item. The full statements are publicly available online, but they are not handed out to the delegations (Interview 2).⁴⁴ Therefore, many NGOs are of the impression that their written submissions are not read, which significantly diminishes their popularity in comparison to oral statements. Nevertheless, the number of statements that are submitted is on the rise. This phenomenon will be further explored in part 5.3.

Although it is questionable whether written statements actually reach their primary audience – State delegations – there are also positive aspects to written statements: First of all, they provide the opportunity to discuss human rights concerns in depth. This is their main advantage over oral statements, since it is impossible to expand on a topic

⁴⁴ ‘Order of the Day’ documents can be downloaded at <http://www2.ohchr.org/english/bodies/hrcouncil/> in the section devoted to the respective session (20.9.2011).

during a two minute speech. Furthermore, just as oral statements, they help to build the profile of an organization:

“You can re-use the fact of having made an oral or written statement in your other types of work. I think it also contributes to the perception of your organization as an actor in the Council and therefore it gives you more capital for your informal discussion” (Interview 9).

In addition, the fact that a statement was submitted to a UN mechanism might increase the credibility of an organization in the eyes of the media or other observers.

2.3 UPR

The Universal Periodic Review (UPR) is one of the most extraordinary opportunities for engagement in the framework of the Council and widely regarded as one of the main improvements achieved by the transition from the Commission to the Council. The general features of the UPR mechanism were already outlined in Chapter II and this part will focus particularly on NGO engagement with the UPR.

What sets the UPR apart from other intergovernmental mechanisms is that it expressly includes civil society in the process. While A/HRC/RES/5/1 paragraph 3d clarifies that the UPR essentially is “[...] an intergovernmental process, United Nations Member-driven and action-oriented”, the resolution also emphasizes that ‘all relevant stakeholders’ shall be included in the process: The UPR shall

“[e]nsure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard” (A/HRC/RES/5/1, Annex para. 3m).

As the phrase ‘all relevant stakeholders’ suggests, the UPR is open to participation by a variety of actors, including national NGOs, grassroots organizations, other types of associations and even individuals, as long as OHCHR regards them as credible sources of information. Although ECOSOC resolution 1996/31 is mentioned, the provision is not interpreted as limiting NGO participation to those NGOs that hold ECOSOC consultative status. Furthermore, States are encouraged to actively seek advice and information from NGOs in the preparation of their report, since States shall “[...] prepare the information through a broad consultation process at the national level with all relevant stakeholders” (A/HRC/RES/5/1, para. 15 a).

NGOs therefore have a number of options at their disposal if they want to engage with the UPR process.⁴⁵ First of all, NGOs can participate in the consultation process with the State and provide input, advice and information for the report that will be prepared by the State. This already takes place about one year before the State is reviewed by the UPR Working Group in Geneva (UPR Info 2009). Whether these consultations take place or not depends to a large extent on the country. There are cases of good practice, but some countries claim during their review that they had held consultations with civil society, while in fact this took place only on a very superficial level. Unfortunately, it is almost impossible

“[...] to ensure that this is a meaningful consultation, that all NGOs are invited and that their views, are taken on board. Because some States just say ‘We invited NGOs.’ and in fact they invited only two, close to their views and not all the other NGOs” (Interview 10).

States are encouraged but not obliged to hold these consultations with civil society. In addition, consultations do not necessarily entail that States do in fact take into account information that was presented to them by NGOs when they draft their report.

NGO information mainly finds its way into the process through the summary of submissions by ‘other stakeholders’ that is produced by OHCHR. That means NGOs can prepare their own report and submit it to OHCHR while consulting States simultaneously. Submissions by individual NGOs are limited to five pages, but coalitions of NGOs can submit up to ten pages to serve as the basis for the summary of ‘other stakeholders’ information. The official recourse on information from NGO sources is one of the innovations introduced by the UPR:

“I think this is quite unique. To have NGO information as an official document, even though it's summarized by the Office of the High Commissioner, but being official sources of information [...]. In treaty bodies NGOs can submit more information, but it's still a shadow report” (Interview 10).

The official recognition of NGO information as a reliable and trusted source of information is an important feature of the UPR process. It is the only mechanism that directly and openly uses NGO information as the basis for an official UN report. In the context of other mechanisms of the Council, NGO participation is merely encouraged.

The number of NGO submissions varies greatly between the different country reviews. Especially in the case of Small Island States there are usually only a few NGO

⁴⁵ As already outlined in chapter II, the UPR is conducted on the basis of three written submissions, including a report prepared by the State under review and another one containing information by other relevant stakeholders, which is summarized by OHCHR.

submissions or even no NGO submission at all. Often, information about these countries is provided by an international NGO but not by local civil society. On the other end of the scale are countries whose 'Other stakeholders report' summarizes around thirty or forty NGO submissions (Interview 10). The intensity of NGO engagement in the UPR process depends on a number of factors. First of all, there has to be awareness about the UPR mechanism among NGOs in the country. Since the UPR is a rather new mechanism, not all of the NGOs that could in principle feed important information into the process are even aware of its existence. However, NGO participation in the first session started out already quite strong. The Philippines, for instance, had about thirty submissions. Furthermore, the level of NGO engagement obviously "[...] depends on the human rights situation in the country and the number of civil society organisations present" (Interview 10).

Notwithstanding the prominent role of NGOs as sources of information, they are limited to be quiet listeners during the actual review of a country in the UPR Working Group. They are not allowed to take the floor and, although any NGO can feed information into the process, only NGOs with consultative status are allowed to attend the review in the Working Group, irrespective of whether or not they submitted information. In practice, representatives of NGOs without consultative status are frequently accredited through partner organizations that hold status. But this requirement is still an obstacle to the participation of NGOs in the process. During the review, NGOs are not allowed to take the floor to make a statement, which aims at preserving the intergovernmental character of the process. This illustrates that, on the one hand, States want to harness the expertise of NGOs, but on the other hand they are eager to protect the Council from too much NGO presence and influence. While many NGOs were disappointed with the fact that the actual review does not provide space for civil society, some have reconsidered their view, not least because

"[t]he review is just three hours in Geneva out of four years. So, it's a national mechanism. NGOs have to work with the governments and the governments have to implement the recommendations. So, most of the process is happening in the country" (Interview 10).

Besides, NGOs have other means to indirectly take part and influence the review in Geneva. Lobbying proved to be an effective tool to integrate the messages of NGOs into the UPR process. In general, it can be difficult to know whether it was the effort of an NGO that led a State to adopt a certain position (Interview 9). In the case of the UPR, however, it is often obvious that NGOs influence the statements of State delegations to a large extent. In their statements, States are supposed to give concise recommendations

on how to improve the human rights situation in the country under review. When preparing their statements, many States rely heavily on the 'Other stakeholders report', that is, NGO information, to prepare their statements. In addition, plenty of delegations are open to being approached with pre-formulated recommendations by NGO representatives:

“[...] NGOs have been very amazed when they sit in the room and they hear word by word the questions and recommendations they gave to States. So, they usually feel very pleased with this part. They can see a concrete result in coming to Geneva or lobbying at home. They can hear word by word what they told States to say” (Interview 10).

NGOs try to contact State delegations either in Geneva or directly in the country under review. They approach foreign embassies in the country to provide them with information about the human rights situation as well as with pre-formulated recommendations. This proved to be successful, since diplomats in Geneva often contact their colleagues in the country under review to consult them about their UPR statement. Furthermore, it also enables NGOs that cannot travel to Geneva to lobby for their point of view.

Although NGOs are not allowed to speak during the actual review, they are allowed to make a statement at the adoption of the UPR outcome document during one of the subsequent Council sessions. At this occasion, the State under review has 20 minutes to comment on the recommendations, followed by 20 minutes of comments by the Council members. After this and before the vote, there is another segment of 20 minutes during which NGOs are given the opportunity to take the floor in order to comment on the outcome. This is the only occasion during the UPR process that allows NGOs to make oral statements. Each NGO has two minutes to comment on the concluded UPR which means that a maximum of 10 NGOs can take the floor.

The adoption of the UPR outcome document, however, is not where the process ends. The UPR is a continuous cycle of recommendations, implementation and follow-up. Each State is supposed to work on the implementation of the recommendations it receives from the Working Group. Then, it is up to the following review, four and a half years later, to assess the progress and the commitment the State shows with regard to improving its human rights situation. The first cycle of the UPR was concluded in mid-2011 and it remains to be seen whether or not the second cycle will successfully integrate a follow-up component. It is certain however, that NGOs will play a role in the implementation of the UPR recommendations. To what extent, depends of course on the attitude of the concerned State towards civil society involvement. In any case, NGOs will be able to play the role of watchdogs and provide an account on the efforts made by a State.

Furthermore, States are officially encouraged to engage in a consultation process with NGOs in the follow-up phase.

As shown above, the UPR is in a number of ways distinct from the aforementioned options for engagement:

- NGOs do not need ECOSOC consultative status to be able to officially contribute to the process
- The inclusion of local civil society into the whole UPR process is expressly encouraged and national NGOs are welcome to participate
- NGOs are officially recognized as a source of information on the human rights situations in countries
- For the most part, the UPR process takes place outside the regular Council sessions and a large part is essentially a domestic process

2.4 Complaint Procedure

The complaint procedure is, in contrast to the public sessions of the Council, a confidential mechanism that addresses consistent patterns of gross and reliably attested human rights violations. The institutional features of this procedure were outlined in Chapter II, part 4.5. This section aims at assessing the role of NGOs in this procedure. Unfortunately, information on this confidential mechanism is scarce, which impedes a thorough assessment of the role of NGOs. The plenary meetings in the framework of the complaint procedure cannot be attended by NGOs or the media. But it is clear that NGOs are an important source of information for this procedure, because they can bring forward complaints or 'communications', as they are called by Council resolution 5/1. (A/HRC/RES/5/1, para 87d). The complaint procedure is also an opportunity for nationally based NGOs to engage with the mechanisms of the Council. In fact, national NGOs are those that are most likely to have first hand information about consistent patterns of human rights violations. ECOSOC consultative status is no requirement and even individuals can submit a complaint.

Usually, there is not much information about the complaint procedure that leaks to the public, which makes it difficult to assess the efficiency of the mechanism. However, it is known that very few complaints make it through the screening by the two Working Groups. As a consequence, NGOs are discouraged to use this mechanism. Furthermore, it is a lengthy process and therefore not suited for urgent cases (OHCHR 2008, 159). NGOs might also think of the lack of publicity as an impediment to improving the situation. And the fact that a key role is played by the Working Group of Situations,

consisting of five member States, makes the process prone to politicization which is an additional discouragement for NGOs to choose this mechanism.

3 Informal ways of engagement

In addition to seizing formal opportunities of participation, NGOs can also engage informally with the States that are represented in the Council. Many NGO representatives feel that their use of formal opportunities of engagement is of little importance if it is not complemented and reinforced by informal engagement. Such informal engagement can take place on a number of occasions, most importantly through face-to-face talks with diplomats, participation in consultations on resolutions or through so-called parallel events on the margins of the Council session.

Informal opportunities for engagement in the Council are based on practices that developed in the Commission on Human Rights. And although it lies in the nature of informal participation that it is not based on official rules, one might say that the opportunities for informal engagement are at least to some extent based on the rights accorded to NGOs through their ECOSOC consultative status. For instance, it is only due to the basic right to be present inside and outside the meeting rooms that many opportunities for informal engagement become possible. In addition, paragraph eleven of General Assembly resolution 60/251 gives informal practices a certain level of formal acknowledgement, by stating that NGO engagement in the Council shall also be based on “[...] practices observed by the Commission on Human Rights [...]” (A/RES/60/251, para. 11). But it is still up to NGOs themselves to insist on respect for these practices and to establish new ones by seizing opportunities.

The present section will discuss the most important informal options for engagement. At the core of these opportunities are personal contacts to diplomats, as they have a crucial impact on all other activities in the framework of the Council. Most importantly, these contacts are significant in the context of consultations on resolutions. In particular, NGOs with a strong advocacy mandate are involved in these negotiations. Furthermore, NGOs, as well as States, have the opportunity to organize parallel events on the margins of a Council session. Although publicly visible, these events count among the informal options for engagement, since the right to organize such events was never stipulated by an official document.

3.1 Informal contacts to State delegations

Building informal contacts to State delegations is considered by many NGOs as one of the most important ways to engage in the framework of the Council. It helps NGOs to get their point across and reinforces the message conveyed by their formal oral and written statements. Often, informal contacts develop not necessarily between ‘the NGO’ and ‘the State’, but form on a personal level, such as between certain NGO representatives and certain diplomats. As a representative of Amnesty International told Kerstin Martens (2005, 64): “Often it is not the entire government or all diplomats of a delegation interacting with Amnesty International, but only an individual delegation member who has good relations with a single AI representative [...]”

In general, whether there are informal relations between an NGO and a State at all, depends first and foremost on the profile of both the NGO and the State concerned. In both groups, one can find a diversity of approaches, attitudes, strategies and goals. Even though there are many ‘friendly States’ that are open to collaboration with NGOs, some go to the other extreme and employ their power to restrict NGO involvement. The relations can

“[...] range from very close engagement and agreement – sort of almost alignment and very much shared interests – to very opposed interests which usually go along with very limited communication, next to no communication, [...] or very hostile relations” (Interview 9).

An example for a Council member State with a very hostile attitude towards NGOs is China, with a relationship towards some NGOs that “[...] almost amounts to an intimidation type reaction” (Interview 9). On the side of NGOs, the level of fruitful interaction with States depends considerably on the organization’s standing. Especially in the decision-making phase, States “[...] do not rely on just any NGO [...]” (Joachim 2011, 298). They prefer well-reputed NGOs with previous long-term engagement on a particular issue, with a particular UN institution, or with States.

Carefully building these personal contacts and maintaining them in the long run is key to informal involvement. Networking is a major part of the work of NGOs that engage with the Council. NGO representatives are regularly invited by States to participate in receptions and meetings to get to know each other (Martens 2005, 64). Hence, NGOs without an office in Geneva or without the resources to send someone for the duration of the whole session are considerably disadvantaged (see also chapter III, 2.2). Some NGOs try to remedy this drawback by employing a part-time representative that is based in Geneva:

“I think there are particular obstacles to not being permanently in Geneva, which now we are trying to compensate that with the fact that I'm here as a part-time representative and that's precisely because they have realized that they might miss some of the opportunities and flexibility that you need in order to be able to speak at the right time to the right people” (Interview 1).

The disadvantages arise partly from the fact that a significant share of networking events happens outside the regular Council sessions. NGOs that do not employ a permanent representative in Geneva will often be unable to attend such events. In addition, it is difficult for them to maintain contacts in the long run, which is essential for building informal relations with States. Furthermore, a permanent presence in Geneva allows NGOs to take matters into their own hands and to create further opportunities for informal involvement by organizing briefings, receptions or other types of events that aim at creating an additional forum where State delegations and NGOs can exchange their views. It “creates a conversation” (Interview 9) between NGOs and States, for instance by inviting “[...] diplomats – where you feel that they are key in each of their regions – to an informal discussion to just share ideas and discuss with them, for instance, what direction the Council could take, how a certain problem could be addressed [...]” (ibid.).

The highest degree of interaction between NGOs and States can be observed during Council sessions. The presence of both NGO and State delegates at the *Palais des Nations* in Geneva enables them to have face-to-face talks on the margins of the session. As Betsill and Corell (2001) put it, slightly exaggerated, NGO representatives “[...] lurk... in corridors, hoping to corner delegates” (Betsill/Corell 2001, 95 quoted in Joachim 2011, 297). These talks provide an occasion to discuss a wide range of issues:

“There are lots of chats over coffee and discussions in corridors. Much of which, I think, focuses directly on what the Council is discussing or doing at that session. But somehow it also is an opportunity for human rights defenders to talk about the situation in their country and see what opportunity there is for support from those governments. And a lot of is related to the negotiations, resolutions where NGOs can provide concrete text suggestions and strategic advice to governments [...]” (Interview 8).

Many NGOs have these kinds of meetings with States, “[...] with a view to really push them one by one to take a certain position or to provide [NGOs] with relevant information” (Interview 2). Personal relations between NGOs and States serve both sides to acquire information:

“Most such information is exchanged on an informal basis. In particular, personal contacts between AI representatives and UN officials allow the NGO to gain and

feed in information which would otherwise not be accessible or distributed” (Martens 2005, 58).

But the exchange of information is not a one-way street. On the contrary: “As a result of these tight bonds between the UN and AI, information provision is mutual [...]” (Martens 2005, 64). Information flows in both directions: States provide NGOs with information on the affairs of the Council that are happening behind the scenes and NGOs provide States with expertise on various issues related to the Council’s work, such as information about human rights violations, strategic advice or language suggestions for resolutions. States usually welcome the expertise that many NGOs have to offer – especially in the context of the drafting of resolutions:

“Deliberations about international standards allow NGOs to play their trump card, i.e. their expertise. Short of staff, time and knowledge of the subject, both secretariats and member states need information and they rely on NGOs to provide it” (Joachim 2011, 298).

Moreover, delegations are usually composed of diplomats who do not necessarily specialize in human rights by virtue of their education:

“As their profession involves rotating between posts, diplomats regularly change their location and tasks, whereas NGO representatives are not changed on a routine basis” (Martens 2005, 50).

Therefore, many diplomats lack concrete knowledge on human rights issues, especially with regard to information on particular country situations. Hence, NGOs provide them with factsheets and briefings about situations on the ground or recent trends with a view to influence their position (Interview 2). Countries from all regional groups have recognized the importance and usefulness of receiving this type of information from NGOs. And, in some instances, NGOs are successful in convincing delegations to change their position on certain issues after they provided them with more information on a subject. It seems that sometimes African delegations are especially open to reconsider their position upon receiving detailed information from NGOs:

“They are willing to move ahead but many of them are not doing it because they don’t have all the information we have. But once you provide them with this kind of briefing on where things stand on the ground and why you think information and action is needed, their behaviour can change significantly” (Interview 2).

In general, one can say that diplomats from ‘friendly’ States often rely on materials and analysis that are provided by trusted and well-reputed NGOs. Many NGOs have worked continuously on a certain issue in the framework of the Council. Therefore, they know

very well about the surrounding problems or the positions of other concerned parties and are able to provide delegations with reliable background information.

“Often, what NGOs bring to the table are not only their own views and arguments, but often it is substantive expertise that States don't have. Because, although they are usually called experts, [...] they are only experts because they work in this field and it's not necessarily because they are experts in human rights. So, they often rely on NGOs to get information and analysis of the human rights issues that they deal with” (Interview 9).

Providing expertise is especially relevant in the context of resolutions, but also in the UPR, as was pointed out in part 2.3 of this chapter. However, the role of personal contacts in the context of lobbying for their positions is slightly different in the UPR. The UPR frequently leads to the engagement of NGOs that are focused on a particular country and would not necessarily engage with the Council if it were not for the UPR. And since the UPR is still a young mechanism, these NGOs often have no history of engaging with the Council and have not established contacts with diplomats. Despite these shortcomings, their engagement and their informal talks and briefings with diplomats are successful. This could be mainly due to two reasons: Firstly, since the UPR is always focused on a particular country, their local experience gives their information additional credibility. Secondly, State delegates cannot be experts on the human rights situation in every country of the world. Therefore, they have to rely on NGO information in the UPR even more than in other contexts to do their work.

3.2 Consultations on resolutions

The main task of the Council is to adopt resolutions that make recommendations or declarations about human rights issues. For advocacy NGOs, one of their main goals in the Council is to influence the content of these resolutions.

The negotiation process can take place in different fora and it is up to the State that sponsors the resolution to decide how the negotiations are arranged. Usually, States hold open consultations, especially at the beginning of the negotiation process. During these consultations, member and observer States are invited to voice their opinions on the draft and bring forward any suggestions for new language or alterations that they may have. It is common practice to allow NGOs to attend these open consultations. This practice was not stipulated by a resolution but developed over time. Later in the process, or in sensitive cases, there might also be closed consultations, usually among the group of co-sponsors. NGOs are not allowed access to these meetings. A great part of the negotiation process is also taking place in informal meetings. These meetings are often

bilateral or between key States and aim at finding consensus with regard to particularly contentious points.

The practice of allowing NGOs access to the negotiation process stands in contrast to most other intergovernmental institutions. This is one of the reasons why the Council can be counted among the UN institutions with the strongest integration of NGO actors into its proceedings. In some cases, NGOs are not only quiet observers in the room but take the floor to propose specific language, just as States do. For the most part however, NGOs choose to contribute to the negotiation process behind the scenes:

“We don't make it publicly. But it happens that NGOs draft paragraphs of resolutions which are handed to diplomats and then reflected either in the same language or slightly altered in the first or later drafts of the resolutions” (Interview 2).

NGOs have several options at their disposal to make suggestions, always depending on the content of the resolution and who is sponsoring it. One of the most effective ways is to contact the sponsor of a resolution directly to make language suggestions on the draft. However, this is only useful if the sponsoring State has a positive attitude towards civil society. It is common practice for many States to consult with NGOs that have similar positions (Interview 8). And many are not only receptive to be approached by NGOs with language proposals, but also take initiative themselves and contact NGOs to benefit from their expertise on an issue (Interview 9).

NGOs “[...] feed them with ideas, which – in the context of resolutions – can go up to providing them with specific language that they can include in their text or arguments that they can then use in their own negotiation” (Interview 9).

Thus, it is common practice among many States to include language that was proposed by NGOs in the draft of their resolution. In addition, NGOs are sometimes not only integrated in the drafting process but also in the strategic process of mobilizing support for contentious provisions included in the draft.

However, the limits of cooperation between States and NGOs are quickly reached when it comes to issues where NGOs and States have diverging views. In general, it has to be kept in mind that the ‘openness’ of some States to cooperate with NGOs is less the result of their general appreciation of civil society than the result of coincidentally overlapping positions: “[O]n areas where States either don't have the expertise or align with the interests of NGOs, they are very receptive. But on other areas, more difficult areas, it's very difficult to influence States” (Interview 9). Even States that collaborate closely with NGOs in the Human Rights Council on some issues can be very hard to convince when

it comes to issues where there is fundamental disagreement between the State and the NGO. The 'openness' of some States may just be the result of a generally higher level of compatibility with NGOs than it is the case with States that are perceived as hostile towards NGOs:

"Of course, most States that are perceived as hostile to NGO engagement often have much more substantive disagreements with NGOs, which is why they try to prevent them from even engaging. And it's probably true that those more positive States have less diverging views from NGOs and therefore they can afford to be more open" (Interview 9).

If the sponsor of a resolution is less open to civil society and if the resolution may even be seen as harmful to the advancement of human rights from the point of view of human rights defenders, NGOs usually choose another way to influence the negotiation process. In this case, an NGO can use its contacts to delegations that are open towards its position to convince them to bring forward the language the NGO would like to see in the resolution. That way, the NGO does not have to bring forward the suggestions itself. Especially with regard to controversial resolutions, pushed forward by States that do not have a particularly good human rights record, many NGOs choose to pursue their agenda in the background.

All this suggests that NGOs have a strong influence on the content of the resolutions that are adopted by the Council. This is another feature that sets the Council apart from other intergovernmental institutions where NGOs are significantly less involved in the decision-making stages. Many scholars are of the opinion that, traditionally, "[...] NGOs take a back-seat in the decision-making phase of formulating international rules" (Joachim 2011, 299). Jens Steffek, who looked particularly at NGO involvement in the Security Council and intergovernmental economic institutions, writes:

"NGOs face an uphill struggle during the formulation and decision phases [of policies] as they do not have voting rights but need to rely on state delegations to take their interests on board" (Steffek 2007, 19).

This is to a certain extent also applicable to the Council, where of course member States also have the last word. They are the ones holding the voting power which means that NGOs always have to rely on States to bring in their points of view which "[...] creates a sort of unequal relationship" (Interview 9).

But the influence of NGOs during the formulation phase of resolutions is strikingly strong in the Council. The 'intergovernmental core' as Steffek (2007, 21) calls it, is significantly more accessible to NGOs than it is the case with other intergovernmental organizations.

As intergovernmental core are understood “[...] those processes of negotiation in which a political decision is imminent and state representatives [...] are the driving force” (ibid.). Drawing on knowledge about the proceedings in the UN security Council and institutions of economic governance, Steffek concludes that “[...] IGOs are eager to protect an intergovernmental core of decision-making against NGO influence, even if they have a long track record of co-operation with civil society (like the UN)” (Steffek 2007, 21). While this might be true in the context of many intergovernmental institutions, it only applies to a certain extent to the Human Rights Council. A common explanation for the exclusion of NGOs from the formulation and decision phase is a lack of incentives on the side of States to work with NGOs (ibid.):

“[T]he IGO or the state representatives negotiating in it are not likely to reap any benefits from NGO presence at this stage. On the contrary, public exposure threatens to obstruct package deals being made among diplomats and politicians” (Steffek 2007, 20).

This assumption can largely be dismissed in the context of the Council and simultaneously provides an explanation for why the Council is by and large an exception in this regard: In the Council, States have an incentive to include NGOs also in the last phase of the decision making process, since NGOs provide them with expertise and experience, which they sometimes lack (see also part 3.1). But it is true that also in the Council a high level of public exposure is not particularly welcome by diplomats. NGOs are well aware of that and there seems to be consensus to refrain from public reporting on the open consultations, since NGOs would risk their access to these meetings.

However, it must be noted that the entire negotiation process does not take place in open consultations. Therefore NGOs are indeed largely excluded when States make special deals amongst each other. But in general, the integration of NGOs into the formulation and negotiation process in the Council is remarkably high. This might also be due to the fact that human rights are considered a ‘soft issue’, unlike economic or security policy, and because Human Rights Council resolutions do not exert direct influence on domestic policy. Therefore, many States are more likely to be open to cooperation with NGOs on the intergovernmental level since, from their point of view, there is less at stake than in other intergovernmental decision making bodies.

3.3 Parallel events

While both of the previously discussed options for informal engagement are exercised mainly behind the scenes, there is another, more public option for informal engagement: NGOs as well as States have the option to organize events on the margins of a Council

session. These events are usually called parallel events or side events and aim to draw attention to a particular human rights concern. Such events can be organized by NGOs and States alike. The opportunity to organize these events is not based on any particular resolution but is a practice that developed over the years in the framework of the Commission on Human Rights. The only prerequisite for NGOs that want to organize side events is that the NGO registering the room holds ECOSOC consultative status⁴⁶ and that the topic is pertaining to the work of the Council (Interview 7). These requirements still allow for a broad range of issues that can be addressed by side events. Many NGOs dedicate an event to a specific issue that is on the agenda of the main Council session, but this is not a strict requirement.

Unlike oral statements in the plenary, parallel events provide more time for NGOs, which enables them to present in-depth information. In the plenary their statements are usually limited to two minutes, while parallel events can take between one to three hours and provide an additional platform for engagement (Interview 8). Furthermore, NGOs are not limited to just one side event but can choose to organize several events in the course of one Council session. The number of events is only limited by the resources of the NGO and the availability of meeting rooms.

In addition to providing information, parallel events also serve as a forum for NGOs and States to present and exchange ideas or to hold debates on controversial issues. Side events increase the visibility of NGOs as an active player in the framework of the Council (Interview 6) and help to shape their image in the eyes of State delegations. But NGOs are not the only ones to seize the opportunity to organize side events: States also have the option to organize such events. Often, they organize parallel events on a topic that corresponds to a resolution they are sponsoring to increase the understanding of an issue and to gather and increase support for their initiative.

The audience of parallel events is usually a mix of NGO representatives, diplomats and sometimes journalists. Diplomats from many countries clearly show interest in the information that is provided by NGOs during these events, since numerous side events are attended by State representatives (Interview 8). Anybody who has access to the *Palais des Nations*, the UN building where the Human Rights Council sessions are held, can attend these events. In addition, the organizers can submit a guest list to OHCHR which makes the necessary arrangements to issue badges for the persons on the list to enable them to attend the event.

⁴⁶ NGOs without consultative status can register for rooms under the name of a partner NGO which holds consultative status in order to organize side events.

Parallel events can take several forms. For the most part, NGOs organize panel discussions on a specific issue that is related to the programme of the session. The panellists often come from diverse backgrounds: In the past, there were panels involving victims of human rights abuses, activists from grassroots NGOs, distinguished academics, OHCHR officers, Special Procedure mandate holders and others. By way of video conferencing technology, side events sometimes feature video calls from human rights defenders that are based in remote areas of the world and are unable to attend the session.

Often, NGOs do not expect their side event to have a direct impact on the debate in the plenary of the Council. They rather see it as “[...] another piece in the overall puzzle” (Interview 9) of oral and written statements in the plenary and lobbying. Awareness raising through side events might attract attention to an issue by State delegates or change their attitude in the long term. But at least in one instance, a side event in Geneva had direct impact on the situation in a country, when a side event deplored prison conditions in a certain region of Brazil (Interview 1). In concert with national media coverage, the side event put the government under pressure and provoked a reaction. Furthermore, the fact that such an event is organized in the context of a UN meeting gives the NGO and the information that is presented increased weight and credibility. It can also create a forum of dialogue between the authorities and civil society (Interview 1).

The Council Secretariat plays a crucial role with regard to side events since they are in charge of distributing the available meeting rooms among NGOs. As the OHCHR officer in charge describes it, NGOs

“[...] can register for the side event online and then [...] we review all the requests and take into account when the request was made. And then, [...] if an organization has put a request for six side events, we ask them to prioritize which ones they really feel they need to do in the lunch time slot. And then we are trying to allocate rooms as much as we can.” (Interview 7).

These events are usually between one to three hours long and NGOs prefer to hold their event during the three-hour time slot that coincides with the lunch break of the Council. But due to the limited availability of rooms, not all NGOs can be provided with a room during lunchtime.

4 Strategies of engagement

How NGOs use and combine the formal and informal engagement opportunities that are open to them depends first and foremost on the profile of the NGO. The NGOs that participate in the Human Rights Council come from diverse backgrounds and place emphasis on different thematic areas (see also part 1). How they utilize opportunities for engagement varies according to their thematic focus and the context. It is therefore beyond the scope of this work to give a detailed account of all the different approaches of NGOs with regard to their work at the Council. However, some widespread practices could be identified.

Most NGOs that engage with the Council make use of a mix of several engagement opportunities, in order to multiply the channels through which they push a concern (Interview 1). For instance, they might deliver oral statements in the plenary, but also organize side events on the same topic and maintain personal contacts with diplomats to communicate their message informally. Many NGOs find this approach useful, because public pressure and informal advocacy can mutually reinforce each other:

“[T]he formal opportunities, in my view, should be [...] tools for informal advocacy. You know, it's something that you put on the record but if you don't use it afterwards... An NGO has to integrate its public statement in a broader advocacy strategy with diplomats” (Interview 2).

In this view, public statements and side events build the profile and reputation of an NGO among State delegations and serve to put the positions of an NGO on public record. The statements are heard in a public and official forum and they contribute to setting the agenda and to framing the discussion. But in terms of advocacy and influencing the outcome of the Council's work, an approach that is limited to delivering formal statements has only limited impact (Interview 8). Personal contacts to diplomats and face to face conversations in informal settings can remedy this shortcoming (see part 3.1 and 3.2).

Furthermore, NGOs have the option to issue joint written or oral statements or to co-sponsor parallel events. On the one hand, this permits NGOs without consultative status to participate formally in the Council, since they are allowed to sign on to statements of NGOs in consultative status. But the fact that several NGOs support a statement also adds more weight to a concern. This type of cooperation happens largely *ad hoc* and among NGOs that share similar positions on certain issues. When statements or events are co-sponsored, there is usually not much coordination with regard to its content. Often, one NGO drafts a statement and asks organizations that share similar objectives

whether they want to sign on to it, since a large number of signatories give more weight to a statement.

Moreover, there are frequent informal meetings between NGOs in which matters of common interest are discussed (Interview 2). Coordination or cooperation often develop around thematic issues where NGOs agree to work towards the same objective (Interview 8) but it also develops on a personal level: Similar to the relations between diplomats and NGO representatives, collaborations often arise out of personal contacts between individuals, not necessarily between the NGOs as such.

But cooperation and coordination are not always achieved easily, due to the diversity of NGO actors that are represented in the Council. They pursue different strategies and are keen on strengthening their own profile, reputation and independence. Therefore, some NGOs are wary about coordination. There is a wish to preserve the diversity of the NGO movement which is indeed one of the key characteristics of the whole phenomenon (Interview 8).

“[O]verall coordination and speaking with one voice, I think, is felt by many to be not strategic and detrimental to the civil society movement; trying to homogenise all the different approaches and thinkings in civil society” (Interview 8).

At the same time, collaboration is seen as very positive by the vast majority because it gives more weight to a message. This led many NGOs to adopt a flexible approach to collaborating with NGO partners:

“[W]e come from so many different persuasions. So we may be able to work together on one thing and on something else we'd have completely different approaches. And so it's important to be able to work in a flexible way with those where you agree and work perhaps with a whole other set of partners when that's the most effective” (Interview 8).

But there are also groups of NGOs in the framework of the Council that are more stable. Usually, they form around a specific issue. A particularly interesting case is the Human Rights Council Network (HRC Net) that aims at linking advocacy on the international level to the national level. It is composed of a core group of fourteen NGOs and can be characterized as a hybrid of a loose network and a coalition (Interview 2). Their day-to-day work is distributed among its members: They can choose to be involved less on one issue but reversely spearhead the efforts on other topics and try to mobilize the rest of the network. However, every member is supposed to contribute to the long-term goals, which are essentially to build a bridge between the national level and the Council and to address specific country situations. The network was created to strengthen the link

between NGOs that work mainly on the national level and those that focus their work on the Human Rights Council. This shall increase the understanding of the Council's mechanisms among national NGOs, make the Council more visible in the national media, and make governments aware that NGOs are not only looking at what they are saying in the Council but also at how they behave nationally (Interview 2). Thereby, the network aims at addressing the underlying problems that arise in the context of the participation of regional and national NGOs in the Council, who are facing difficulties because of

“[...] the lack of understanding of the Council, the lack of information about when and how to do advocacy and the lack of follow-up and long-term approach to their initiative and the lack of connection with the rest of the NGO community” (Interview 2).

Furthermore, the network aims at creating an additional opportunity to push for changes on the intergovernmental level by combining lobbying in Geneva with lobbying on the national level. To this end, members of HRC Net establish direct contact to the ‘capital’, meaning the Ministry of Foreign Affairs in the country itself or other relevant government bodies. Their objective is to convince the domestic authorities to instruct their diplomats in Geneva to take certain positions. In some instances, HRC Net can also use the contacts of its national and regional members. In this way, HRC Net tries to push for changes in the foreign policy of States on domestic level, although advocacy for positions in the Human Rights Council usually targets diplomats on the international level. But sometimes

“[i]t doesn't work, because they don't have the time, because they need to have the guidance and the authorization from their capital and [...] maybe they don't have the guts to try to convince their government to do something. So, then you come back to the capital, and the capital is instructing them to do the thing we want them to do.”

The role of the capital varies amongst the delegations. But generally one can say that many decisions have to be approved ‘by capital’ and that they do have the last word. So, in cases where advocacy among the delegations in the Council is unsuccessful, lobbying in the capital can be a solution. This strategy was applied for the first time in the context of a country resolution on Honduras: HRC Net established direct contact to the government of Honduras to present them their opinion and to convince them to alter their position in the Council. Eventually, the efforts of the network proved successful (Interview 2).

5 Trends of participation

5.1 Lost momentum of NGO attendance

In academic literature on NGOs working on the international level, one frequently encounters the assumption that the number of NGOs participating on the international level is on the rise. While it is true that the 1990s saw a sharp increase in the number of NGOs that wanted to influence international politics, it seems that the growth of NGOs wishing to participate has slowed down – at least in the framework of the Human Rights Council. More precisely, the statistics show a sudden slump in the number of attending NGOs at the time when the Commission transitioned to the Council (see table 6).

Table 6: Number of NGOs attending the last sessions of the Commission on Human Rights and the Human Rights Council

Commission on Human Rights	Number of NGOs attending
59 th session (March 2003)	230
60 th session (March 2004)	230
61 st session (March 2005)	261
62 nd session (March 2006)	123
Human Rights Council	Number of NGOs attending
<i>Institution-building phase</i>	
1 st session (June 2006)	150
2 nd session (Autumn 2006)	150
3 rd session (December 2006)	100
4 th session (March 2007)	180
5 th session (June 2007)	100
<i>Operational Council</i>	
6 th session (September 2007)	164
7th session (March 2008)	180
8 th session (June 2008)	169
9 th session (September 2008)	126
10th session (March 2009)	200
11 th session (June 2009)	165
12 th session (September 2009)	197
13th session (March 2010)	222
14 th session (June 2010)	158
Sources: Schulz 2007, 29; E/CN.4/2005/9, 2; Reports of the Human Rights Council, available at http://www2.ohchr.org/english/bodies/hrcouncil/ (20.9.2011)	

While the last substantive session of the Commission (61st session) was attended by 230 NGOs, the first substantive session of the Council after its institution-building phase (6th session) was only attended by 164 NGOs. During the institution-building phase (1st to 5th sessions), the attendance of NGOs was very low. It is somewhat surprising that not more NGOs took the opportunity to help shape a new intergovernmental mechanism for the protection of human rights. However, the 4th session, which was a very decisive one, was attended by 180 NGOs, which is a noticeable peak. This indicates that NGOs were interested in taking part in the process, but that some NGOs probably had difficulty attending every single session during that one year period. On the one hand, this could be due to limited resources. On the other hand, it is not unlikely that some NGOs just lost interest because matters were moving ahead too slowly or because they wanted to focus on substantive human rights issues. But even after the institution-building phase was completed, the number of NGOs attending the session started to rise only slowly. Apparently, the transition from the Commission to the Council had a considerably negative impact on the level of NGO participation in the Council:

“I think the institutional period meant that the Council really wasn't operating properly for more than a year and I think some national NGOs were really left out of that process and so quite disenfranchised and never really re-engaged” (Interview 8).

Another interesting pattern is that there were much more NGOs in attendance at the main session in March than at the other sessions in June and September. In March 2010, 222 NGOs attended the session, which constituted the highest number of NGO engagement in the period of 2006 to 2010. This stands in great contrast to the following session in June 2010, attended by 158 NGOs, which was one of the sessions with the lowest level of NGO participation. Apparently the NGO community has not yet fully embraced the fact that there are now three shorter Council sessions throughout the year, as opposed to one six-week session of the Commission:

“I think NGOs are only learning to use the different kinds of opportunity that are presented to us through [...] three different sessions a year and the ability to build from one session to the other. So, I think people are only just understanding how to use the different cycles and also how to keep the wheel going between the sessions [...]” (Interview 9).

Of course, one has to keep in mind another factor that puts these figures into perspective: The overall meeting time per year increased by four weeks. Particularly NGOs that are not based in Geneva might have difficulty attending every session, because it requires more resources (see also chapter III, 2.2). As a consequence, lower

numbers of attendance per session do not necessarily imply that many NGOs have generally disengaged. Some just might choose to limit their attendance to one or two sessions per year, depending on the topics that are on the agenda. The perception of some observers is, however, that the division into several sessions throughout the year had a negative impact on the level of NGO engagement:

“So, there are probably more opportunities... on the other hand, the number of NGOs participating has diminished quite radically. [...] I think, with multiple sessions, a lot of national NGOs have abandoned trying to follow” (Interview 8).

But the level of NGO attendance seems to recover: While the decline of NGO engagement in the institution-building phase was striking, it appears that the NGO movement slowly regains momentum.

5.2 Shrinking space for oral statements

Over the years, the length of NGO speeches in front of the Council was step by step reduced. Nowadays, an NGO has in general two minutes at its disposal to deliver a statement. During the institution-building phase, speaking time for NGOs was set at three minutes (Schulz 2007, 29). But soon there was a further reduction of speaking time for all actors in the Council. Now, NGO speakers are given in general two minutes for their interventions – the same amount of time that is given to observer States (Interview 7). Member States of the Council, on the other hand, usually have three minutes to make a statement. Two minutes for the interventions of NGOs seems ridiculously small when compared to the length of statements at the Commission on Human Rights:

In the early 1990s, an NGO could speak for up to ten minutes. Due to the growing number of NGOs that attended the sessions of the Commission, speaking time was cut to five minutes in the late 1990s (Ortega Barrales 1998, 38). In addition, the number of statements per NGO diminished. In 1993, when an NGO was still allowed to speak for up to ten minutes, 196 NGOs made a total of 364 oral statements which translates on average to 2,4 interventions per NGO (ibid., 36). In 1994, 158 NGOs made 337 statements, which translate on average to 2,1 statements per NGO (ibid., 36). In 1997, with five minutes speaking time, NGOs delivered 386 oral statements which amounts to an average of 1,9 interventions by each NGO (ibid., 35). In the Council, the average number of interventions per NGO hovers around two statements per NGO, if assuming that every NGO attending a session is delivering a statement. Table 7 provides an overview on the average number of statements during March sessions from 2008 to 2010. Interestingly, it shows that both the number of NGOs attending the March sessions and the number of oral interventions were growing. Due to a slightly stronger rise of the

number of interventions, there was also a slight increase of the average number of interventions per NGO.

Table 7: Number of NGO interventions during March sessions

Human Rights Council Session	Number of NGOs attending the session	Number of NGO interventions	Average number of interventions per attending NGO
7 th session (March 2008)	180	164	0,9
10 th session (March 2009)	169	327	1,93
13 th session (March 2010)	197	432	2,19
Source: based on OHCHR 2010b			

While it is undisputed that the time allocated to individual NGO speakers was reduced, the developments with regard to the time allocated to the NGO segment as a whole are ambiguous. Table 8 provides a comparison of the shares of speaking time of States compared to the speaking time of NGOs.

Table 8: Shares of NGO and State speaking time

	Speaking time of States*	Speaking time of NGOs	Number of NGOs attending the session
6 th session (September 2007)	71%	29% (7%)**	164
8 th session (June 2008)	78%	22% (5%)**	169
9 th session (September 2008)	78%	22% (8%)**	126
11 th session (June 2009)	73%	27% (0%)**	165
12 th session (September 2009)	78%	22% (1%)**	197
14 th session (June 2010)	81%	19% (3%)**	158
Source: based on OHCHR 2010b			
* Speaking time of States (member and observer States, including groups of States). The percentages are based on the total speaking time of States and NGOs. Speaking time of other actors in the Council was not considered in this evaluation.			
** The parentheses indicate the shares of joint statements with regard to the total speaking time of States and NGOs. The shares of joint statements are also included in the general share of NGO speaking time			

Table 8 is a simplified depiction, since it leaves aside the speaking time of other speakers, such as panellists, UN officials or the president of the Council. The comparison focuses solely on the ratio of speaking time of States⁴⁷ on the one hand and NGOs on the other. The speaking time is expressed in percentages to allow a more accurate comparison between sessions, which vary in length (see table 9 for the exact duration). For the same reason, table 8 does not include the main sessions in March, because they are one week longer than the other regular sessions. The parentheses in the second column indicate the share of joint statements comprised in the total share of NGO speaking time. Furthermore, the last column includes the numbers of NGO attendance as an indicator for the general interest of NGOs to participate in the session. Although the development is not linear, the overall trend seems to point to a decreasing share of NGO speaking time compared to the share of States. With the exception of a peak at the 11th session, the ratio changed from 71%/29% in 2007 to 81%/19% in 2010, which amounts to a 10 percent decrease of the NGO segment compared to the State segment. One of the explanations for this decrease could be lower attendance of NGOs at the session. While it is not to say that all NGOs attending a session want to take the floor, this number gives an indication about the general interest of NGOs to participate. However, a look at the level of NGO attendance shows no distinct correlation between the decreasing share of NGO speaking time and the number of NGOs attending a session. While the 6th session was attended by 164 NGOs and saw a quite large share of 29 percent NGO speaking time, the 12th session had a notably lower ratio of 22 percent, although it was attended by 197 NGOs – the highest NGO attendance during that period. This backs the assumption that the decreasing share of NGO speakers during a session is not caused by a lack of interest on the side of NGOs.

But the fact that the share of NGO speaking time seems to be shrinking in comparison to the speaking time States have at their disposal does not necessarily imply that the speaking time is also decreasing in absolute terms. Table 9 gives an overview on the time that is assigned to a session according to its programme of work and the time that is then effectively used by all actors. In fact, although the share of NGO speaking time was decreasing in the June and September sessions 2009 and 2010, in the same period the absolute speaking time that was generally available was growing. This means that the absolute number of NGO interventions in the same period was most likely also on the rise in the June and September sessions. Available data on the March sessions (table 7) shows that this was definitely the case in the main sessions. Data in table 8 and 9 points to the same trend for the June and September sessions. So, although the number of

⁴⁷ 'States' includes the speaking time of member States, observer States and groups of States.

interventions and the absolute time available is not shrinking, the share of NGO speaking time seems to be shrinking compared to the speaking time used by States.

Table 9: Speaking time assigned to a session and speaking time utilized

	Time assigned to the session hh:min:sec	Time utilized hh:min:sec	Time not utilized hh:min:sec	Time not utilized (in % of assigned time)
6 th session (September 2007)	90:00:00	84:20:00	5:40:00	6,30%
8 th session (June 2008)	83:30:00	79:50:00	3:40:00	4,39%
9 th session (September 2008)	72:00:00	58:16:00	13:44:00	19,07%
11 th session (June 2009)	94:00:00	66:27:00	27:33:00	29,31%
12 th session (September 2009)	96:00:00	82:15:00	13:45:00	14,32%
14 th session (June 2010)	108:00:00	115:55:00	+07:55:00	+7,33%
Source: based on OHCHR (2010b)				

An important factor in this regard is the time management that is exercised by the president of the Council. It has considerable influence on whether the available time is seized to the largest extent possible and whether there is a fair distribution of speaking time. In some instances, the number of NGOs taking the floor was cut due to time constraints. This happened for instance during the adoption of the UPR outcome document. Usually, NGOs should have 20 minutes, which allows ten NGO speakers to take the floor for two minutes each. But since the comments in the segments of member and observer States took longer than expected, the president cut the NGO list of speakers down to seven speakers. This is disappointing from the point of view of many NGOs which see the president as the person that should protect the space for NGO engagement in the Council and because “[c]utting the number of NGOs to speak is not the way out. It’s not the solution for time management issues” (Interview 2).

The collected data for the period 2007-2010 allows the following conclusions on the development of oral statements by NGOs:

- The length of individual statements was diminished step-by-step and now NGOs are given in general two minutes to deliver their oral statement.

- The number of oral interventions by NGOs in the March sessions 2008-2010 was growing. The average number of statements per NGO attending the session was also slightly increasing.
- The share of NGO speaking time of September and June sessions 2007-2010 showed a tendency to decrease in comparison to the speaking time of States.
- The rising level of NGO attendance backs the assumption that the decreasing share of NGO speaking time is not caused by a lack of interest on the side of NGOs.
- In some sessions, between 14 to 30 percent of the allocated time was not used due to delays, breaks or early endings.

5.3 Differing opinions on written statements

The opinion on written statements seems to be divided among the NGO community. Many NGO representatives feel that written statements are ineffective because diplomats do not read them:

“The relative unpopularity of written statements is due to their perceived ineffectual nature. Written statements are considered a less 'active', less 'visible' form of participation than oral statements” (Ortega Barrales 1998, 47).

The figures tell a different story. Back in the 1990s, the practice of submitting written statements was discovered by NGOs as a useful opportunity and an alternative to get their message across. At that time, space for oral statements started to shrink, because of the overall rising number of NGOs wishing to participate. In the 1980s, NGOs submitted no more than a total of 50 or 60 written statements during a session, but this figure increased during the 1990s: In 1996, NGOs submitted about 90 written statements (Martens 2005, 46) and in 1998, they submitted 122 statements (Ortega Barrales 1998, 46). In subsequent years, the number grew even faster, and in 2002, about 200 written statements were submitted to the session (Martens 2005, 46).

However, the number of NGOs that actually use this option is significantly smaller than one might think when looking at the number of written statements, since one NGO can submit several statements during one session. Taking the 54th session of the Commission on Human Rights in 1998 as an example, there were 122 written NGO statements by only 49 organizations. “This proves that submitting these statements is common practice only among a few organizations” (Ortega Barrales 1998, 46).

A look at the number of written statements that were submitted to the Human Rights Council after its institution-building year (table 10) shows that there is a notable difference between the number of documents that NGOs submitted to the main sessions in March in comparison to the June or September sessions. In some instances, NGOs

submitted around twice as many written statements to the March sessions than the other sessions in the same year.

Table 10: Written statements by NGOs

Human Rights Council Session	Written NGO statements
6 th session (September 2007)	67
7th session (March 2008)	98
8 th session (June 2008)	47
9 th session (September 2008)	55
10th session (March 2009)	121
11 th session (June 2009)	55
12 th session (September 2009)	57
13th session (March 2010)	139
14 th session (June 2010)	65
15 th session (September 2010)	80
16th session (March 2011)	136
Source: Lists of written NGO statements, provided by OHCHR for each session online on http://www2.ohchr.org/english/bodies/hrcouncil/ (12.9.2011).	

While NGOs submitted significantly less written statements during the institution-building phase, this practice gained new popularity when the Council became fully operational. In general, there is a trend towards an increasing number of written statements. This contradicts the perception of some NGO representatives who are of the opinion that written statements are used less and less (Interview 2). However, this perception might be true with regard to the number of NGOs submitting these statements: Despite the large numbers of submissions in some sessions, they often come from only a few NGOs.

If we take the 16th session in March 2011 as an example, we see a fairly high number of submissions (135), although the level of 200 written statements per session in the years before the abolishment of the Commission was not reached. But this is also due to the fact that – despite the emphasis on March sessions – the number of written statements is now distributed on several sessions throughout the year. As expected, there is a handful of NGOs that submit a large number of statements which boost the total number of submissions for the 16th session: With 15 written statements, the NGO Asian Legal Resource Center (ALRC) submitted by far the largest number of written statements. They are followed by the organization Human Rights Advocates and a coalition of two

Iranian and a Lebanese NGOs⁴⁸ who each submitted six statements. Five statements each were submitted by International Educational Development and the Society for Threatened Peoples. Furthermore, three NGOs⁴⁹ submitted three written statements each and 14 NGOs submitted two statements each. The remaining 65 NGOs and coalitions of NGOs submitted one written statement each.

5.4 Increasing number of side events

A comparison of the number of parallel events that were hosted during the March sessions in recent years shows that the number of side events that are organized is rising (table 11).

Table 11: Number of NGO side events

Human Rights Council Session	Number of NGO side events
7 th session (March 2008)	69
10 th session (March 2009)	82
13 th session (March 2010)	76
16 th session (March 2011)	111
Source: Orders of the day, available at http://www2.ohchr.org/english/bodies/hrcouncil/ (12.9.2011).	

Allocating the rooms for these events is sometimes challenging because the conference services of the United Nations Offices at Geneva (UNOG) can only offer a certain number of available rooms which are then distributed by the Council Secretariat. Furthermore, the demand for rooms is increasing. As the OHCHR officer in charge describes the situation,

“[...] more and more parallel events are being organized. And we always run into the problem of people of course wanting to do side events during the lunchtime, which is the best, because it's outside the session. And we cannot satisfy this because [...] we then have to share also with the permanent missions which also want to organize events” (Interview 7).

Limited room is also a concern because of the increasing participation of government-organized NGOs (GONGOs) that also want to host parallel events. This leads to shrinking space for genuine NGOs and damages the reputation and credibility of the

⁴⁸ Organization for Defending Victims of Violence, the Kham Rehabilitation Center for Victims of Torture, the Network of Women's Non-governmental Organizations in the Islamic Republic of Iran

⁴⁹ Kham Rehabilitation Center for Victims of Torture; Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students); Permanent Assembly for Human Rights (APDH)

NGO movement as a whole. If GONGOs hold ECOSOC status, the Secretariat has to treat them just like any other NGO in consultative status, irrespective of their independence or credibility (Interview 7).

5.5 Increasing or shrinking space?

As explained above, the provisions governing the engagement of NGOs in the Council are kept very vague. This could be perceived as a constant threat to NGOs to have opportunities for engagement taken away from them, but in practice it proved to be an opportunity to increase space for engagement and to establish new practices. The transition to the Council was a welcome occasion for NGOs to push for the creation of new opportunities for engagement. In some respects the attempts were successful, and although the progress made seems to be confined to details, observers are of the opinion that “[...] NGOs gained a lot from the transition from the Commission to the Council” (Interview 8). All of the new practices that could be identified during the research process were created in the context of the right of NGOs to deliver oral statements in the Council.

The first president of the Council, Luis Alfonso de Alba, assumed a crucial role in establishing new opportunities for NGO participation. He displayed his pragmatic stance towards civil society in his first address of the Council, when he said:

“Let’s open our doors to a full participation of key actors, such as civil society organizations and national human rights institutions. Their presence in the field is useful to all of us and we should capitalize on that” (de Alba 2006).

De Alba was instrumental in creating a new opportunity for NGO engagement with great symbolic meaning: NGOs are now allowed to take the floor at the very end of the session, “[...] so, essentially, NGOs get to always say the last word” (Interview 8). The last days of a session are usually spent with voting on decisions. And since NGOs have no voting power, they are just silent observers in the room. But now, NGOs can make general remarks at the end of the session which gives them the opportunity to comment on the past session and assess its successes and failures. There is no agenda item or any formal decision that established this practice. Basically it is because of the good relationship between de Alba and NGOs that this opportunity was created. He saw opportunities and took advantage of them to create new occasions for NGO involvement (Interview 8).

Another space for engagement that de Alba helped to create was the opportunity for NGOs to speak at the end of the so-called general segment. This segment is on the agenda in every March session, after the high-level segment, which kicks off the session.

During the high-level segment, high-ranking government officials, such as ministers or presidents, address the Council. The general segment gives delegations that are not represented by a high-level government official the opportunity to address the Council. NGOs seized the opportunity of the transition period to negotiate the opportunity to let their own high-level representatives address the Council during the general segment: “[I]t was negotiated with the first president of the Council for the opening session. But then we were able to use that as a precedent to then negotiate it at every session” (Interview 8).

A further significant step was that, in contrast to the practices in the Commission, the number of oral statements is not limited anymore. Whereas NGOs could only make a maximum of six statements and only one per agenda item, there are no such limitations in the Council. NGOs can speak once under each agenda item and they can also join the statement of another NGO under the same agenda item (Interview 8).

Furthermore, NGOs were granted the right to speak during interactive dialogues while in the Commission only States were allowed to take the floor on that occasion (Schulz 2007, 60). These dialogues are held with Special Procedure mandate holders or the High Commissioner. The mandate holder gives a short presentation, followed by questions and comments by member and observer States and two occasions for the mandate holder to respond. In the beginning, NGOs were only given an opportunity to speak at the very end of the segment, when the dialogue was already over. As a consequence, they could comment on the topic but could not pose questions because the mandate holder had no opportunity to respond (Schulz 2007, 28). Now, NGOs are fully integrated into the interactive dialogues.

Despite the successes that NGOs had in enlarging their space for engagement, they almost seem to be more focused on keeping the opportunities they already have instead of focusing on enlarging them. Furthermore, with regard to the formal provisions governing their engagement, many NGOs feel that they should be kept as they are because they do not rule out the creation of new practices. But – although many States are open to working with civil society – there are also States that are hostile towards civil society. This can go up to punishing national NGO activists with reprisals after they return home. A less severe and very common sanction are points of order: If an NGO disregards procedural rules it might be stopped by a delegation that raises a point of order with the president of the Council, who may give the floor to the delegation to explain their complaint.⁵⁰ Unfortunately, some delegations misuse their right to raise points of order regardless of whether or not it is justified, and “[...] of course this brings in

⁵⁰ For instance, it is important that NGOs use the official names of territories: Instead of saying ‘Tibet’, speakers are expected to talk about ‘the Autonomous Region of Tibet’.

general an intimidating climate for NGOs” (Interview 7). States interrupt NGO statements to put speakers off their stride and to prevent them from delivering a clear message. Taking the 12th session of the Council in September 2009 as a random sample, shows that 13 out of 37 points of order were directed against NGOs. Iran raised three points of order in a row against Women’s Human Rights International Organization during their statement under item four, and Egypt raised three points of order in a row against a statement of the Coordinating Board of Jewish Organizations under item seven (OHCHR 2009).

Furthermore, if a statement is delivered by a representative of an NGO without consultative status conjointly with a partner NGO who holds status, it is crucial to mention the name of the NGO in consultative status in the beginning of the statement. Otherwise this could provide a reason for States to seek to suspend or withdraw the status of the accredited NGO. Moreover, in recent years States began to argue that NGO speakers have to be members of the NGO on whose behalf they take the floor (Interview 7). If there is a complaint, the president has to stop the NGO representative from speaking and the Council Secretariat checks on the status of this individual:

“We have to go back to the head of the NGO to check whether this person is authorized to speak. [...] And of course, the agenda item moves forward, and the person is prevented from speaking. Sometimes the agenda item can even end and the person will not speak” (Interview 7).

Primarily, this is aimed at preventing non-ECOSOC NGOs from speaking, because they are often nationally based NGOs whose work focuses on particular States or regions, which, as a consequence, will be the main focus of their statement. Secondly, it is aimed at preventing the practice of NGOs accrediting victims of human rights abuses to allow them to give their account in the plenary of the Council. In short, it is aimed at shutting out inconvenient voices.

In addition, reprisals are an issue of particular concern, since they can consist of death threats, torture, and even killings. Unfortunately, it is beyond the scope of this work to go into this in more detail, but it is certain that some human rights defenders had to face reprisals for their engagement on the international level. A report by the High Commissioner for Human Rights, Navanethem Pillay, has looked into the issue of reprisals for human rights defenders as a consequence of their cooperation with UN mechanisms. During the reporting period, she received information about “[...] acts of intimidation or reprisal following cooperation with OHCHR, the Human Rights Council, the United Nations Voluntary Fund for Indigenous Populations, Special Procedures, treaty bodies and the universal periodic review mechanism” (A/HRC/18/19, para 14)

which is virtually the whole UN human rights system. So, although there are slightly more opportunities for NGOs to deliver statements, the general atmosphere in the Council is not unconditionally friendly.

6 Functions of NGOs at the Human Rights Council

There is almost no study that deals with the work of NGOs on the international level that misses the chance to put forward a typology of the roles and functions of NGOs. When comparing these typologies one quickly notices that, although being by and large very similar, they all differ in some way or another. This is little surprising, considering the diversity of NGOs and their numerous fields of activity. Many scholars attempt to identify functions that are universally applicable to NGOs on the international level and adapt a policy cycle model to grasp these functions (Joachim 2007; Martens 2005; Willets 2011; Simmons 1998). This work, however, does not aim at devising a universally applicable typology but instead creates a catalogue of functions that NGOs assume specifically in the Council. Many of them were already mentioned when the respective engagement opportunities were discussed. Table 12 provides a summary that draws on the previously discussed opportunities to provide a final overview that links engagement opportunities to the functions that NGOs assume.

Table 12: Functions of NGOs in the Human Rights Council

Function	Formal engagement	Informal engagement
Providing Expertise on human rights issues	Oral and written statements, UPR process	Side events, personal meetings with diplomats, informal briefings, e-Mails, phone calls, reports
Providing information on situations on the ground	Oral and written statements, UPR process	Side events, personal meetings with diplomats, informal briefings, e-Mails, phone calls, reports
Advising the drafting of resolutions	—	Taking part in public consultations, personal meetings with diplomats, informal briefings, provide fact sheets, provide language
Enhancing accountability and transparency of the process	Attending public meetings, representing a diversity of views	Public relations work of NGOs, monitoring, publicizing the proceedings of the Council
Agenda and standard setting	—	Maintaining informal contacts with diplomats, providing information and expertise
Creating an additional forum for dialogue	—	Side events, informal meetings bringing together various stakeholders, other events outside the framework of the Council such as receptions

V Summary and Conclusions

The present work examined the participation of non-governmental organizations (NGOs) in the framework of the intergovernmental mechanisms of the United Nations (UN) Human Rights Council (the Council) in Geneva. The aim was to identify factors of influence and their consequences on the engagement of NGOs with the Council. For this purpose, the analysis was structured along the lines of two research categories: The first category focused on the access of NGOs to the Council. It analyzed the application process that NGOs have to undergo in order to be granted access to the Council. Moreover, additional factors were identified that determine whether NGOs also have access in practice or face difficulties attaining it. The second research category focused on the options for engagement that are open to NGOs once they have gained access to the system. In addition to formal engagement opportunities, the analysis also identified informal engagement opportunities. As outlined in chapter I, the research was mainly informed by semi-structured expert interviews with professionals working in the framework of the Council, in addition to the review of UN documents and academic literature.

Chapter II provided an overview on the UN human rights system to set the stage for a discussion of the institutional features and mechanisms of the Council. The Council is a subsidiary organ of the General Assembly and the main intergovernmental UN institution to deal with human rights. Although it was only created in 2006, its roots go back to the Commission on Human Rights, established in 1946, which was abolished because of its blatant double standards and lack of credibility. The institutional transition introduced several novelties. One of the changes was the increase of meeting time, from one six-week session a year to three sessions a year with a total of ten weeks meeting time. As it turned out, this change had a fundamental impact on the engagement of NGOs (chapter IV, 5.1). However, the main innovation was the introduction of a new mechanism, the Universal Periodic Review (UPR). The UPR is an intergovernmental mechanism that reviews the human rights situation in every UN member State with a periodicity of four and a half years (chapter II, 4.2). One of the most notable features of the UPR is the central role that is accorded to NGO information during the review process (chapter IV, 2.3).

Chapter III explored, which NGOs are granted access to the Council and which NGOs face difficulties. The main requirement for participation at the Human Rights Council is accreditation with the UN Economic and Social Council (ECOSOC). An ECOSOC sub-

Committee composed of 19 States is in charge of the application process for the so-called consultative status. While ECOSOC resolution 1996/31 sets out very general and reasonable principles that govern whether or not an NGO should be granted status, the decisions of the NGO Committee are often biased and discriminatory. Nevertheless, the numbers of applications show a high demand for consultative status among NGOs worldwide (chapter III, 1.2). Yet, the Committee deliberately defers the applications of unwanted NGOs, protracts the process wherever possible and hides behind the pretense of overload. As a consequence, the NGO Committee is one of the most discredited organs of the UN. In practice, ECOSOC consultative status is not the only factor that determines whether an NGO will be able to participate in the Council. Additional factors that could be identified were resources, know-how and, arguably most importantly, whether or not an NGO employs a permanent representative in Geneva (ibid., 2.2).

Chapter IV looked at the practices of formal and informal NGO engagement with the Council. What distinguishes the Council from other intergovernmental organs is the formal opportunity for NGOs to take the floor during sessions and to submit written statements. However, research showed that the rules for NGO participation are purposefully kept vague to allow for the creation of new practices and to preserve space for informal engagement. Another important opportunity for formal engagement that could be identified was the UPR. Formal NGO participation in this mechanism distinguishes itself from regular Council sessions by giving NGO information formal recognition as a trusted source. NGO information on a State is compiled in the 'Other stakeholders report' which serves States as one of the main sources of information. In addition, informal engagement proved to be an important element in the strategies of many NGOs in the Council. This includes for instance maintaining personal contacts to State delegates and providing expertise during the drafting process of resolutions. In this regard, the comparatively strong role of NGOs, even in the last stages of decision-making, was striking. However, the participation of NGOs is not unconditionally welcome and while new occasions for participation were created, attempts of certain States to curtail NGO participation did not cease to exist (chapter IV, 5.5). Finally, chapter IV analyzed statistics in order to identify trends in the use of engagement opportunities. It showed that the transition from the Commission to the Council had considerable impact on the level of NGO engagement.

The overarching aim of this assignment was to identify factors that determine whether an NGO has access to the Council and how it engages with the Council. The main findings are summarized here:

ECOSOC consultative status

The formal requirement for NGO participation in the Council is ECOSOC consultative status. A close look at the application process revealed that this is not simply a formality but provides leverage that enables States to keep NGO access to intergovernmental UN mechanisms under control. Furthermore, it quickly became evident that the decisions of the NGO Committee are often based on purely political and discriminatory considerations. While some NGOs are accorded consultative status without further questions, others find themselves in a seemingly endless application process (chapter III, 1.4.1). Research showed that especially NGOs working on issues of sexual orientation and gender identity, NGOs working on particular country situations, and human rights NGOs in general are particularly scrutinized and often confronted with obstacles (ibid., 1.4.3). Many of these NGOs are applying for consultative status in order to participate in the Human Rights Council but have to wait for years before they will be formally accredited.

However, the NGO community has developed a quite practical approach to circumvent this obstacle at least partly, since NGOs in consultative status can accredit anyone as their representative to attend the sessions of the Council (ibid., 2.1). Therefore, representatives of NGOs without consultative status often get accredited in the name of another NGO that holds status. Thus, physical access to the UN premises is easily established. Nonetheless, the situation is different with regard to formal engagement. NGOs without consultative status cannot formally participate in the session, not even if they are present. But there is another loophole: An NGO without consultative status can sign on to statements of NGOs with consultative status (chapter IV, 4). These joint statements can even be delivered by the representative of the NGO without status. It is crucial however, that the name of the NGO with consultative status is mentioned first. If NGOs disregard this rule, they run risk of losing their consultative status. This illustrates, that NGOs found a pragmatic way of dealing with the formal access requirements. But this cannot completely remedy the fact that NGOs without ECOSOC status are not on equal footing with NGOs that hold status.

The only occasion for NGOs without consultative status that allows them to participate officially in the framework of the Council, is the UPR. But this mechanism only allows them to provide information in writing for the 'Other stakeholders report' and does not enable them to attend the session.

The organizational features of NGOs

Another quite self-evident influence on the engagement of NGOs with the Council are the organizational features of the NGO itself. But the diversity in the world of NGOs is

striking and therefore generalizations should only be made with caution. However, during the research process, various features were identified that exert major influence on the engagement of NGOs. The requirement to hold ECOSOC consultative status was already discussed, but there are other factors that arguably have an even bigger impact on NGO engagement. One factor distinguished itself above all others, since it seemed to be applicable to all NGOs, no matter their organizational particularities: The question, whether the NGO employs permanent representatives in Geneva or sends them only to Geneva to attend Council sessions.

NGOs without permanent presence in Geneva are significantly disadvantaged in a number of ways: First of all, not being present in Geneva in between Council sessions is detrimental to maintaining informal contacts to diplomats, since there are informal meetings during that period. Furthermore, it raises the costs of attending sessions, since it requires representatives to travel to Geneva especially for the sessions. As a consequence, some NGOs choose to travel to Geneva only for particular items. But this can lead to disappointing results, since, in some instances, NGOs had to leave before the item they came for was on the agenda, because the session lagged behind in their schedule.

Another factor is resources – both financial and human resources. Naturally, resources have an important impact on the engagement of NGOs. They determine how intensively NGOs will be able to engage with the Council. Small NGOs with scarce resources, for instance, may have difficulties to organize side events and may choose a more narrow focus for their engagement. Furthermore, in order to engage most effectively with the Council, it is crucial to have a certain level of know-how about the mechanisms and the formal and informal engagement opportunities that are open to NGOs. This know-how either comes with experience or is transferred by partner NGOs or NGOs that carry out trainings with a view to facilitating the participation of NGOs.

Relations between States and NGOs

Since States are the main actors in the Council, their approach towards NGOs is one of the main influences on the engagement of NGOs. However, generalizations about the relations between States and NGOs are difficult. Many States are very open to cooperation with NGOs. These ‘friendly’ States take on board language suggestions for resolutions or incorporate NGO information on country situations into their statements (chapter IV, 3.1). On the other end of the scale, there are States that try to curtail and sabotage NGO participation, for instance by abusing their right to call points of order during NGO statements (ibid., 5.5). But regardless of this distinction between friendly and hostile States, the relations between States and NGOs are generally characterized by a

paradox: On the one hand, States welcome NGO information and expertise that is useful to back their own position, and they are open to defending the position of an NGO in the Council if it coincides with their own. On the other hand, States are wary to grant NGOs open access to the Council because they want to limit public criticism by NGOs as much as possible. In short, service is welcome, vocal criticism is not. An example that illustrates this contradiction is the UPR: Any NGO – with or without ECOSOC consultative status – can feed information into the process. Usually, this information is heavily used by States when drafting their statements on the human rights situation of the State under review. But with regard to allowing NGOs to provide comments during the review, their approach is significantly less open. NGOs are not allowed to speak during the actual review, although they are a major source of information. The only opportunity to give comments is provided for NGOs when the outcome document is adopted in the Council. But, as usual, only NGOs in consultative status can attend the review or comment on the outcome. That means, although States use information from NGOs without consultative status, they do not allow them to speak in the Council.

The role of the president of the Council

The participation of NGOs at sessions of the Human Rights Council is to a large degree based on unwritten practices. As a consequence, the president of the Council, together with the Council Secretariat, is the person in charge of upholding these practices. This is especially true with regard to the sessions in the plenary and the opportunity for NGOs to make oral statements. In the transition phase, the first president of the Council allowed new occasions for NGOs to take the floor (chapter IV, 5.5). He established the practice to give NGOs the floor at the very end of the session, to enable them to provide comments on the outcome and to draw a balance on the past session. This is notable since there is no agenda item or any other formal background to justify this. Conversely, lax time management by Council presidents can have a negative impact on NGO engagement, since the segment for NGO speakers is usually at the end of each item. (ibid., 5.2). As a consequence, it has happened that the president resorted to cutting the list of NGO speakers due to time constraints.

The institutional design of the Council

The Human Rights Council is a good example to illustrate the influence of the institutional design of intergovernmental fora on the engagement of NGOs. When the Commission was transformed into the Council, the environment in which NGOs carry out their engagement changed as well. Although the formal rules of access were maintained (chapter IV, 2), the institutional reform had an impact on the participation of NGOs. The most visible and immediate impact was a sudden slump in the numbers of NGOs

attending the sessions during the institution-building phase of the Council (ibid., 5.1). In part, the sudden decline in NGO attendance can be explained with the fact that the Council did not deal with substantive human rights issues during that period. But the statistics show that in subsequent years NGO attendance gained only slowly momentum, which points to an additional cause: Unlike the Commission, the Council convenes several sessions a year. Furthermore, the total meeting time increased by four weeks. While this new setup certainly increases the timeliness and efficiency of the Council, it has a negative impact on the participation of NGOs that are not based in Geneva (chapter III, 2.2). It implies higher costs of travel and requires more staff resources. Therefore, not all NGOs that engaged with the Commission can afford to send a representative to all three sessions in one year.

Another interesting pattern is the fact that the main sessions in March attract significantly more NGOs than the other sessions (chapter IV, 5.1) and that NGOs also submit more written statements to March sessions (ibid., 2.2). This appears to be a relic from the days of the Commission which held its sessions during March and April. The fact that there are now several sessions a year demands adjustments in the overall strategies of NGOs, since they have to adapt their formal and informal engagement to these new conditions.

Moreover, the UPR is a major institutional novelty with equally far reaching consequences for NGOs. It is not only the success story of the transition but also an entirely new opportunity for engagement. From an institutional perspective, it provides a new entry point for national NGOs and encourages them to participate by providing information. As a consequence, the UPR opens up the Council for NGOs with national focus that might not engage with the Council if it was not for the UPR. In some instances, national NGOs, who had never before worked with multilateral organizations, took the opportunity to engage with the UPR. Although national NGOs are not allowed to make statements without ECOSOC consultative status, the UPR was a step towards stronger inclusion of national NGOs into the Council.

In conclusion, one can state that, at any given moment, there are a multitude of factors at work that influence the engagement of NGOs at the Council. The concerted influence of the institutional structure, the formal and informal rules, and the personal relations between States and NGOs create a unique environment, characterized by many contradictions. The present research is useful to give an overall picture, but there is a need for further looking into many of the aspects that were only briefly touched upon. For instance, the dynamics between the domestic level and the Council need to be examined. The international and the domestic level are more closely interlinked than

often assumed. Contrary to what many people believe, changes in the attitudes of decision makers are not always achieved on the international level and subsequently brought to the national level. Sometimes, the dynamics work the other way around and changes in the foreign policies of States are more easily achieved domestically. Either way, NGOs proved to be influential actors that have to be taken into account by political science without overstating or underestimating their power. Another central issue that needs closer examination are the relations between States and NGOs which are among the most decisive factors for NGO participation. However, these relations are so diverse and sometimes contradictory that they are difficult to grasp. Linked to that, issues of particular concern are reprisals as a consequence of NGO engagement in the Council. Despite a report by the High Commissioner for Human Rights (A/HRC/18/19), there is little to no comprehensive academic research on this issue in the context of the Council. But without this aspect, the picture of NGO engagement is incomplete and tempts to draw wrong conclusions.

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Annex

List of interviewees in alphabetical order

Name	Organizational affiliation	Date of interview
Dokhi Fassihian	Democracy Coalition Project	March 2011
Florian Irminger	Human Rights House Foundation	February 2011
John Fisher	ARC International	March 2011
Katrine Thomasen	International Service for Human Rights	December 2010
Lidiya Grigoreva	Office of the High Commissioner for Human Rights	February 2011
Margareta Ploder	Ständige Vertretung Österreich, New York	18 March 2011
Mariana Duarte	Conectas/CELS/Corporación Humanas	March 2011
Michael Ineichen	International Service for Human Rights	July 2011
Philippe Dam	Human Rights Watch	February 2011
Roland Chauville	UPR Info	July 2011

Interview transcripts

Interview 1:

- (1) Could you start briefly by describing the activities of Conectas in the framework of the Human Rights Council? #00:00:30-2#
- (2) Ok, so, just as an introduction so that you know, maybe some of the answers I may give you may relate to one of the two other NGOs I also represent in Geneva. Also, because I've seen you had a question on the ECOSOC status. And one of those three doesn't have the status. So it might be relevant to your research. I'll summarize very quickly the work at the Council for each of those three: Conectas has been in engagement with the Council since its institution building phase. It's a ten year old NGO, pretty young, based in the South, in Brazil, but with an international focus. They have both programmes dealing with the human rights situation in Brazil and work that's more related to ensuring access of the UN bodies and in particular the Human Rights Council for NGOs from the South and not only from Brazil. So, they have both focuses, therefore, their engagement here at the Council has these two focuses: On the one hand they will bring situations occurring in Brazil. Particularly conditions of detention, as an example and... a broad range of issues. But, many criminal justice and detentions issues, amongst other issues. CELS in Argentina, that's the other organization I represent from the region. They are older, in terms of existence. They are a thirty year old organization that came up during the dictatorship, and they deal also with a wide range of issues. They don't have ECOSOC status but they've been engaged in the Council through its mechanisms. But also increasingly since the Council began - more actively than under the Commission. And the third one is called Humanas- Corporación Humanas, it's based in Chile, focusing on women's rights. They do not engage so actively with the Human Rights Council, but are quite active with mechanisms such as the Special Procedures and the treaty bodies, rather than engaging with the Council directly. So, that's the third one I represent in Geneva. #00:03:17-7#
- (3) So, the third one, does it have ECOSOC status? #00:03:17-7#
- (4) No, the second one doesn't. Even though it's the oldest and the biggest of the three actually, in terms of staffing... #00:03:18-9#
- (5) Why do you think is that? I suppose they have applied? Or haven't they? #00:03:23-3#
- (6) They are in the process of applying now. I think it's because their international work is much more focused on litigation and for that reason they haven't thought that it was necessary to concentrate their human resources into applying and then reporting under ECOSOC. But they are in the process now of preparing the submission... the application for status. While they're intending to reinforce their engagement with the Human Rights Council in particular and the UN bodies in Geneva more generally. So, that's one aspect of their international work that they want to reinforce and that's why they think now the status is useful. But in the past they've come to Commission sessions under other organizations accreditation and they didn't come regularly enough to feel like it was really necessary. But now they intend to do it more regularly. #00:04:33-6#
- (7) So, do you think they will receive status without a problem?... I'm sorry, have they submitted their application or are they just thinking about it? #00:04:48-3#
- (8) They are in the process of preparing the documents to submit. I don't think they have submitted it yet. But I know they began the process of preparing the application in the past few months. If it has happened, it was very recent, and if it hasn't, it will be very soon, that's

what I can tell you. And in terms of their chances to obtain the status: I think it shouldn't be a problem, because they certainly going to have the support of their government, they have a very good relationship to the government. So, I think there won't be any obstacles to their acceptance... just that it's a lengthy process. #00:05:34-3#

(9) Conectas and the other NGOs you represent are from the South, from emerging countries... Do you think that NGOs from developing countries face particular difficulties when accessing the Council? #00:06:01-8#

(10) I think there are particular obstacles to not being permanently in Geneva, which now we are trying to compensate that with the fact that I'm here as a part-time representative and that's precisely because they have realized that they might miss some of the opportunities and flexibility that you need in order to be able to speak at the right time to the right people. That's certainly an obstacle for anyone who is not based in Geneva and who doesn't have the resources to have somebody come throughout a whole session. The resources issue is a problem and the physical presence in Geneva, as being related to that, it certainly affects NGOs from the South more than any other NGO, that's for sure. That's the reason why I've been hired by all three. #00:07:07-1#

(11) Ok. How long are you doing this already? #00:07:11-8#

(12) I started last June. Fairly recent. #00:07:19-6#

(13) So, have you worked before for any of these organizations or did you just start to work for them here in Geneva, as their representative? #00:07:27-0#

(14) Yes, the second. I used to work with an international NGO based in Geneva before. I knew them, had contact with them indirectly, but hadn't worked with them before. #00:07:44-1#

(15) So, would you say, basically, not having a presence in Geneva is something that could affect any organization, not only from developing countries. #00:07:59-0#

(16) Yes, because actually the agenda changes all the time. Processes go very fast and it's difficult to have a general picture of how things are evolving and have a political sense of what would be the right strategy that you may not get if you're not in informal meetings. Because so many things happen, especially during the Council, in informal settings. I think that's what makes it important to be here physically. Not all information is in written form, accessible on the web, and... in that sense, sure! #00:08:37-8#

(17) So, we touched already upon the ECOSOC status. In how far do you think influences this requirement of having ECOSOC status the participation of NGOs from the South? #00:08:56-3#

(18) I think generally, if you have good contacts, it's not that difficult to be able to be accredited and be in the room. But that doesn't mean you can take the floor on behalf of that organization which has to be the case, even if you mention the name of your organization. So, it does limit you, in that sense, not being able to take the floor formally. But also, I do think that symbolically it could be... You have to ask this favour every time to an international NGO or another national NGO that may have the status. It kind of creates an unbalance in the relationship you may have with those partners. So, in terms of empowering Southern NGOs I think the purpose of having the status has a symbolic aspect to it as well. #00:09:52-3#

(19) So, do you have an idea of how many NGOs based in the South do hold ECOSOC status?
#00:10:02-1#

(20) I have no clue in terms of numbers. #00:10:07-8#

(21) And, in terms of activity in the framework of the Council? Would you say they are active?
#00:10:13-9#

(22) Well, from Latin America there are very few countries active here, regardless of status or not... For a very simple reason, which is the fact that in Latin America you have a... or, in the Americas, you have a very strong regional system. The Inter-American Commission, the Inter-American Court... So, much of the energy and the resources will go into that. Because it does have concrete results, for instance in terms of being able to brief a Commission of Independent Experts on human rights situations... And it's a quasi-judicial body plus a judicial body, whereas here, it's political. So, that's certainly not where you can get the most out of for the purposes of Latin American countries, that are, of course, some not that democratic, but where civil society would have the possibility to engage. Those are not the countries where you get the most from the Council. I would say there are a couple of exceptions. Conectas is one, for sure, because every session they have some kind of engagement in the Council. Not only with Brazil, as I mentioned, but also to support partners from other regions. But, I would say Colombia is an example where you have strong civil society engagement, both in the Inter-American and the UN system. They do use a lot the system. Certainly also because they have an Office of the High Commissioner that is quite strong there and the High Commissioner reports to the Council on the human rights situation in Colombia. So, there you have a good reason. And, to a lesser extent, you have the two other ones that I mentioned, Argentina and Chile, these organizations, and Mexico has had some engagement, some Mexican civil society organization had some degree of engagement, participation, organizing events, and so on. So, from the years that I've been here, these are the few countries in Latin America that do have civil society engagement here, regardless of the ECOSOC status issue. #00:12:35-3#

(23) So, would you say that the engagement has increased? Or stayed the same? Could you judge that? #00:12:44-7#

(24) I think it's been quite stable in terms of the examples that I mentioned, since the creation of the Council. I'm hoping that maybe this initiative, the joint permanent presence of these three might encourage others to do the same. The only increase has been a stronger engagement maybe from Argentina now. They've applied for the status now, but else... From the few years that I've been coming here, I haven't seen that much of an increase or rather some stability. But the rising of the engagement of Conectas, because the Colombian partners, they have been engaging with the Commission already quite a lot. I don't see many Cuban activists coming. Even though the situation would deserve it, or Venezuelan.. So, yes, I do think that the dynamics of regional versus international system does play against the Council which hopefully that could change. There is more room to address human rights situations in a wider diversity of countries than those that have been discussed. #00:14:13-5#

(25) Do you have an idea about NGOs from other areas, like Asia or Africa, in terms of their engagement? #00:14:27-6#

(26) It would be hard for me to tell. I'm not that knowledgeable on that. #00:14:35-3#

(27) Now, also in terms of the ECOSOC status: there is the possibility to have the status suspended or withdrawn. Do you know of cases of NGOs from Latin America, for example,

where status has been withdrawn or suspended, out of political reasons for example?
#00:15:13-1#

(28)No, I'm not aware of any such cases...There may have been... But none that I can recall.
#00:15:25-7#

(29)Ok, so you don't see like... some States might make use of this opportunity to restrict NGO involvement in a way? #00:15:37-0#

(30)I mean, I'm aware that it's been used, but I haven't been directly involved in, you know, in any of those organizations that have suffered that kind of reprisal, if you might say, or attempt to control or circumvent the issues that they address at the Council or elsewhere. But, I'm fully aware that that's been used pretty recently on the request of some of the States that felt attacked, according to them unduly. But there is certainly a need to clarify the rules and make the process fair and transparent, in terms of decisions of suspension or withdrawal. That certainly is a very important issue that we're interested in following closely and call on ECOSOC members to be aware and to look into that. #00:16:43-8#

(31)So, in your opinion, what changes should be made to the system of access or, to facilitate the access of NGOs from developing countries or from countries from the South? #00:17:00-2#

(32)Well, the process has to be made more expeditious, for sure. Perhaps having a kind of a referee system that could speed up the process by being recommended by X number of ECOSOC status NGOs. We could think of a system where all... or perhaps the regional platforms that could have status and lend it to its members, to privilege or to give as a priority the status to those regional platforms. So, I do think there are creative ways in which we could try to make access more universal and democratic. #00:17:57-0#

(33)And, also in terms of other, like... regardless the ECOSOC status, what changes could be made? Maybe in terms of the agenda or the number of session... whatever. #00:18:15-7#

(34)I'm not sure the number of sessions is a huge issue. I think the main issue is predictability in terms of what issues are going to be discussed when. Making sure that any last minute changes to the agenda are done in such a way that you would allocate lunchtime for those last minute changes, so that people who would come for two, three days wouldn't find themselves in a situation where they have to leave and then not be able to deliver their statement or engage in the dialogue with this or that person. We've seen also Special Rapporteurs not being able to deliver or even reply during a session themselves, because they had come for a fixed number of days and then the agenda has changed for a number of reasons. So, I do think... the availability of a precise programme of work, an annual agenda that is quite detailed concerning what resolutions are going to be tabled when, and normally what issues are going to be addressed in those resolutions in advance of the session would help any NGO that wouldn't be able to come throughout the session at every single session. So, in terms of the predictability and publicity of that information and I think that's important to NGOs from the South. And then, of course, human resources. That's a permanent issue for many of these NGOs that have to decide what's more important. And I mean that not only related to costs of travel, but also costs of having a staff member being away for several weeks. Not every NGO is in the position to do that. So, these are some of the limitations which we hope if a video conferencing or video messaging system could be put in place that would help. Maybe, to be able, you know... To let them engage with the system without having to come all the way to Geneva. Then, looking into ways of multiplying the force of the

funding for NGO participation is an important part of ensuring real engagement. #00:20:54-4#

(35)But, as far as I know the Council itself doesn't provide any funds for civil society? #00:21:01-8#

(36)No, not the Council. Maybe some UN indirectly, but not under the Council, not a fund mandated by the Council. That doesn't exist. It's one of the things we have suggested but we realize there is not enough ground to be successful this time, but that's something we keep on the agenda. #00:21:32-8#

(37)And also video conferencing and use of new technologies: Do you think some States are opposing it? #00:21:43-4#

(38)Some are quite reluctant. They have said there is no way, we won't accept it. Because they know that with such NGOs, especially from the South... I mean, those States are not really favourable to them, so they are using arguments that would be technical issues or the question of how to ensure that those who are speaking have really the ECOSOC status. I mean, issues like that could be solved very easily so it makes it easy for us to give arguments to why it shouldn't be a problem. So, we'll continue engaging and we're hoping that it will come out of the review as it is. But we know that they are not really favourable to it because they know that they would have to listen to civil society from their country speaking - be it under their own name, or the umbrella of an international NGO. So they would try to define rules that would limit access for their own civil society... It's predictable, but if we get the principles out then we can start finding ways to go around any of the obstacles they want to put. #00:23:11-7#

(39)Ok, so we'll see how the review goes. Maybe, briefly, now on informal engagement and the impact side events, for example, can have, or other particular forms of engagement. So, let's start with the side events. What impact, do you think, can side events have? #00:23:51-4#

(40)Hard to tell. I think it's mainly a forum for NGOs to express themselves in a way they wouldn't be able to in the room, where they only have three minutes to speak. So, also for those who come all the way to Geneva from far and who have so much to tell about the human rights situation in their country it's an important space, but it's not really clear to what extent that could influence the agenda of the Council. It certainly is a pressure on the country and hopefully that can have an impact on dialogue at the national level. We do have a very good example from Conectas from last year, if I'm not mistaken... March last year Conectas organized a side event on the conditions of detention in a particular State within Brazil. They had people coming from there. So, they told the national media that they would organize this event, it had a lot of impact on national media, which put some pressure on the States that felt like they should send in their national authorities to be here to respond and participate in the side event. So, in that case it created a forum for dialogue and it did have an impact in a judicial decision concerning this particular situation of detention there. So, in that sense, because it's a country where you have open media and strong civil society, that space was very important, to be doing it in Geneva, so that Geneva sees it, even though it's not in the formal setting of the Council. So, it can have an impact for sure, but not necessarily in the formal agenda of the Council, at least from the examples that I would be able to give you for my region. #00:26:01-3#

(41)So, it can also be an opportunity to draw attention from national media and maybe, give Geneva, although it's in Geneva but, have an impact on the human rights situation directly. #00:26:12-8#

(42)Yes, which is the main goal of many southern NGOs at least. Not every NGO but those that come from particular countries' civil society. That's the ultimate goal #00:26:29-6#

(43)Ok. There are of course several ways of involvement, but what would you see the most useful, in terms of impact or outcome. #00:26:59-2#

(44)That's very broad. It really depends on the situation at hand, which stage you're engaging on... And, yes, really the situation at stake. You know, that for some countries or some situations you are never going to get a country resolution and... About those countries, certainly, you have to pick other options. What could I tell you... I think, often, what's most useful, is to use different avenues at the same time. Meaning that you will make a statement here, you will send a delegation to a Special Procedure, you will submit a report to a treaty body and you will make a submission to the UPR hoping that in the end you get something. So, I think it's to multiply the channels through which you push something. It's very seldom that choosing only one channel will make a difference. And, I think that's the strategy that almost every human rights NGO, if not every human rights NGO, pursues... But in terms of the dynamics of the Council itself, I think the inter-regional work that's been done by a group of NGOs here, meaning, in the case of those NGOs I represent, we often take positions and push the governments of Brazil, Argentina, for instance, to take certain positions on certain situations and that could be very efficient, if it's... It's energy consuming, that's why we need to work together with a group of NGOs, to touch on different regions, different countries. But that can have positive results in changing majorities of decisions and resolutions. Collective work in that sense is a good strategy that is being used in the Council. #00:29:02-0#

(45)Ok, so, NGO coalitions pushing for the same issue. Ok. #00:29:09-6#

(46)For sure, yes. But, again, multiplying strategies as well, not only focusing on one avenue but using different. #00:29:16-7#

(47)And, this coalition you mentioned, it's more informal, I guess?

(48)It's pretty informal, but structured in a sense, and also adaptable, depending on if you are putting in more or less. There is a core group, that's called Human Rights Council Net. Have you heard of that? #00:29:36-4#

(49)Yes. #00:29:41-2#

(50)Conectas and CELS are part of it. When it comes to influencing positions or contacting Argentinean or Brazilian authorities in capital or missions here in Geneva, we are involved in that. #00:30:18-4#

(51)Thank you!

Interview 2:

(1) I would like to start with the ECOSOC status and as you can see my first question is about the consequences of the provisions for obtaining ECOSOC status and... What consequences does that have for the involvement of NGOs do you think? #00:00:29-2#

(2) Ok... The positive aspect should be that there is a kind of a screening of the NGOs which participate in the UN system which makes sense because of some of the NGOs do not necessarily have an advocacy objective or could not necessarily have the capacity to contribute to the UN. So that is in theory the positive element. It helps to make sure that

those who contribute are the NGOs that are supporting the issues on the table. This is only in theory. And the negative aspect is on the contrary that... Well, the negative aspect is due to the fact that the attribution of the ECOSOC consultative status is given by member States and not by the... let's say... any experts part of the UN system. Meaning that the attribution of not only the consultative status is mostly political and it's not based in the capacity of the NGOs to actually contribute to the UN. So many NGOs with... let's say with legal experience or expertise get granted ECOSOC status to participate in the UN while other which are working on particular human rights issues are delayed or not granted or further complicated and it raises some flags within some States which are sitting within the NGO Committee. So, coming back to the... I think that the most positive aspect has been so far that NGOs are granted an almost full access badge to the Human Rights Council meeting rooms, for formal and informal meetings. Having access to the UN and the capacity to speak up at the UN is definitely the most positive aspect. #00:02:37-3#

- (3) So, you mentioned that human rights NGOs have difficulties getting accredited sometimes. Do you see a difference regarding to what issues the NGO is working for that is applying for status? #00:02:54-9#
- (4) Well, I don't have statistics, but many human rights NGOs wherever they come from have been experiencing delays or questions or remarks by member States because of their application process. So, that's a fact, that it's certainly more difficult for human rights NGOs. Again, it needs to be checked out with some kind of statistics... but, the fact that human rights NGOs have been having more difficulties or it's more sensitive... the application process is more sensitive than for NGOs working on other issues, such as environment or economic and social development. #00:03:35-1#
- (5) Ok, so, do you see any trend there? Is it becoming more difficult or easier for human rights NGOs to get status? Or... for instance, the NGOs that have status have to provide a report... #00:03:58-9#
- (6) Ok, yes, I think that was the most identifiable trend maybe. Apparently, and, well, you know NGOs have to submit a quadrennial report to the Committee on NGOs and apparently they got... There are more and more questions raised on the way in which NGOs contribute to the UN on human rights issues. And over the past three years Human Rights Watch was asked questions and I think - that's to be checked - but Amnesty International and Civicus were also asked questions about what they actually did at the UN, where the funding comes from, and these things, which apparently was not the case before. So, it's something which is not yet extremely dangerous, because it's only questions and there will not... Member States in the Committee will not retaliate against such major international human rights NGOs but it's a trend. Also, there a small number of cases of suspension of the ECOSOC consultative status for NGOs participating in the HRC. Maybe we can come back to that later. Cases of suspension of NGOs for what they did at the Commission on Human Rights. One of the most famous cases was in the early 2000-something when Reporters Without Borders were suspended for three years for organizing a demonstration during the session of the Commission and throwing flyers from the balcony, which was fairly bad. But now we are facing cases which are much more difficult to evaluate. Arguments used by member States for suspending the consultative status of NGOs for one, two years are more based on the substance of the NGO contribution to the HRC. So I think we will come back to that later. But this is also a change. #00:05:44-6#

- (7) With regard to the Human Rights Council in particular the engagement of NGOs is based on "arrangements and practices", says the resolution...It's this question on the guideline.
#00:07:01-3#
- (8) Ok, let's try to answer the first two questions: Why hasn't there been any change? It's a quite vast question. Why not changes on the ECOSOC consultative status? The main change we would like to see happening would be a change of the actors who are entitled to accredit NGOs to participate in the UN. Now it's only member States doing it. So, there is not at all any substantive involvement of the Secretariat. The Secretariat is only here to process requests, to put them in the right format and to submit it to member States. That's it. Ideally, it would be up to the Secretariat to identify which NGOs should be granted the ECOSOC consultative status or not, depending on a certain number of objective criteria, such as their expertise, maybe size, maybe representativity, maybe funding, etc. There could be a number of such criteria. An in-between solution would be to have a similar system of accreditation as to many UN summits and conferences. For example, to have a Secretariat preparing a list of NGOs respecting these criteria, and to present such list to member States for adoption. So, basically it could be up to the Secretariat to give advice to the NGO Committee or directly to the ECOSOC and then member States are validating it (for many states, the NGO accreditation process would need to remain an intergovernmental process). But such a result is very difficult to get, because States will not accept to lose their complete control over the attribution of the consultative to NGOs. This is the reason why basically we wanted to keep the current system because at least we have the security that NGOs already having the consultative status would not have to go through a re-application process after the establishment of the HRC. There are a lot of risks to try to largely reform the system for, in particular, NGOs who already have it and who might lose it if we try to re-negotiate this kind of arrangements. One of the positive elements is actually the flexibility of the resolution 1996/31. If we look at the way in which the modalities of this resolution have been implemented in many of the ECOSOC subsidiary commission, at the ECOSOC itself and at the Human Rights Council, we can see that this is done in various ways. And certainly, the fact that the only provisions in the resolution in terms of the rights for NGOs are the capacity to send written statements, to make oral presentations, to attend meetings, to receive the agenda and to contribute in some ways to the agenda. It makes things flexible enough for us to push the boundaries in a more informal manner depending on which bodies we interact with. Hence, at the Human Rights Council you have NGOs participating under each agenda item, plus interactive dialogues, plus attending to informal negotiations, organising side events, etc. etc. So this is thanks to the flexibility contained in that resolution. So this is one of the positive aspects of it. Something which should be changed in our view would be the working methods of the ECOSOC Committee on NGOs, which grants or not the consultative status. I would like to flag two elements here: There is no timeline fixed for the duration of the consideration of an application by the ECOSOC NGO Committee which makes that member States can ask additional questions each time the application is considered. It can last for years and years and years until they finally take a decision. And this is what's happening on the most complicated or sensitive case. In our view, there should be some kind of a limit on the rounds in which States can ask questions to NGOs. Right, when they've got the answers it should be fine and they have to take a decision. This is not the case. And the second element in terms of timeline and procedures are also for the cases in which the Committee considers suspensions or withdrawals of the consultative status. It would make sense to have some kind of working methods provisions to give necessary time or respect the right of NGOs to defend themselves and to provide counter-information to the Committee. There are not any of such rules, so basically the ways in which these requests for suspension or withdrawal have been considered by the Committee are completely ad-hoc, are very expeditive and are not respecting any of the reasonable timeframe or modalities for respecting the right of the NGO to defend itself. So, one of the elements to be addressed,

and which could be worked on in a realistic manner without being detrimental to NGOs, without backfiring, would be the working methods of the Committee. Making them more transparent, etc., etc. As you know the Economic and Social Council can, during its annual main plenary session, reverse the decisions recommended by the NGO Committee. So, in case reasonable working modalities are not implemented by the Committee, we could have a second chance. But then there is still a need to strengthen an understanding around working methods of the Committee on NGOs – which does not exist for the time being. And I think I already answered to the changes to arrangements and practice. Basically, I think NGOs gained a lot from the transition from the Commission to the Council. What is difficult to maintain is actually the speaking time, the number of minutes. It has been reduced for all actors within the Human Rights Council, not only NGOs but also member States. So, the baseline is that we want to maintain that NGOs have the same speaking rights as observer states within the HRC. So, in a way so far it has been ok in principle but the reduction of speaking time is still a challenge for NGOs as it passed from three to two minutes in three years. #00:13:27-2#

(9) Is that due to an increased number of NGOs or just in general. #00:13:32-4#

(10) It is due to an increased number of NGOs and States taking the floor. So, I'm quite happy with this element of following the same arrangements and practices because it leaves enough flexibility. Now the question is how NGOs are able to participate in all the informal processes of the Human Rights Council but these are challenges which go a little bit beyond 1996/31 and the modalities of work of the Human Rights Council. Why no change from the Commission to the Council? Because we thought it would be too risky to go for that and we preferred to go step by step. And what we work on now is, as I said, the working methods of the Committee and the informal ways in which we can push the boundaries for NGO involvement within the Council. We feel it's safer this way than pushing member States to re-discuss about the whole modalities. #00:14:38-0#

(11) I think we can go to question three. I mean, we have already covered that a little bit, the question about withdrawing or suspending ECOSOC status. There have been cases of suspension. I don't know... it's probably difficult to assess whether this was legitimate... but... I don't know if you're familiar with the recent cases? #00:15:07-9#

(12) Over the past two years there were four cases of suspension and withdrawal. Three of them were suspensions. There was the Arab Human Rights Commission. This was two years ago. It was a case in which the Arab Human Rights Commission made a joint statement with Alkarama, a Pan-Arabic human rights organization based in Geneva. Alkarama does not have the ECOSOC consultative status and the statement was delivered by an Algerian lawyer who was defending some of the leaders of the Islamic Front in Algeria. Of course this created a lot of tension within the Algerian diplomats here and the argument which was used to suspend for one year the consultative status was twofold in a way. First of all, the Algerian government alleged individual who spoke was actually a terrorist supporter (he defended in front of a court people suspected to have terrorist activities). While this can be discussed he was indeed accused of supporting terrorist activities by the Algerian government, but these accusations have not been supported by other governments. And the second argument which was used was that the Arab Human Rights Commission may have offered its consultative status to a non-ECOSOC NGO. This, again, is extremely difficult to argue in favour or against. Formally, everything was ok. The speaker was accredited by the Arab Human Rights Commission, the speaking slot was requested by the Arab Human Rights Commission... there was some confusion because the statement started by mentioning Alkarama. So, what they should have been doing was to say: "The Arab Human Rights Commission in partnership with Alkarama states that etc." They started by only mentioning

Alkarama throughout their statement. Either because they didn't know or because of the time constraints and it may have been clear for them that the Arab Human Rights Commission was the one speaking in support... with the support of a non-ECOSOC NGO. Anyway, that case was dealt with in one week between the request by the Algerian government to the Committee on NGOs and the final decision of the Committee... well, here it is... The second case took place last year: it is the one of CETIM - Centre Europe - Tiers Monde, an NGO based in Geneva. CETIM has been working mostly on economic and social issues, health and human rights... I think business... access to food... and happened to have some kind of engagement around Kurdistan issues because the head of the organization in Geneva is Kurdish. So, they were contributing in statements on Kurdistan. And this upset the Turkish government, which wrote a complaint last year. Not on one specific case but on repeated cases of what the Turkish government considered as non-respect of the sovereignty of Turkey and incitation to terrorism. When looking at the actual statements delivered at the HRC by this organisation, there is ground to say that this claim by Turkey was completely abusive, both on the substance and on the process. Because it's definitely a way to limit the freedom of expression of the NGO concerned. And the way it was handled by Turkey was also completely abusive of the right of the NGO to express and defend itself. We have seen no statement by this organisation inciting to terrorist activities, or infringing on the sovereignty of the country. And, procedurally as well, it was also done in one week. With days off in between. Third case, I don't know very well about it. It's Interfaith International, which was used to accredit dozens of... of people coming from Kashmir, among other regions. These people were coming to Geneva, they were completely untrained, they organized side events on sensitive issues, they made one-sided statements in support of India and this upset the Pakistani diplomats in Geneva. Same, situation, Pakistan accused them of infringement of the sovereignty of the country... They were suspended for a year. And the last case is the Iraqi Women Society or Federation, and this is a case of withdrawal of consultative status. Again, it was done in a very short timeframe. So, the Iraqi government affirmed that this NGO did not exist anymore, but actually it was still existing in the UK. So, again, it was done expeditiously. So, these are the four recent cases. So, all of them being either illegitimate or at least without the right of the NGO to defend itself properly. #00:20:50-5#

(13) So, NGOs have no possibility to make a statement there, right? #00:20:56-6#

(14) Well, they should be having it, but how can you get properly prepared in three days? If you receive a letter by post from the Secretariat explaining you in two lines what's happening, you don't have information... I think the NGOs still have the right to defend themselves - in theory. But given the timeframe it's impossible to fly over and to get prepared. So, you see? Could we finish that next question and then we have a 20 minute break? #00:21:35-3#

(15) Sure! #00:21:35-3#

(16) Ok, so, question number 4: It should just be a formality. In a way it makes sense, you know? If an NGO disappears the only way to get information is to consider that no quadrennial reports have been sent for 10 years for example then you cut the NGOs from that list. Which should make sense. It can also help to get rid of some NGOs which may have very critical contribution to the UN or whatever. So, it should just be a formality. And it's been a formality and I haven't heard about any case of a quadrennial report which was used to suspend or withdraw the consultative status. But there is a recent practice from some states to ask additional questions before taking note of the quadrennial report of some NGOs. There is not yet any consequence... but the fact that some States have been using it in the past few years is maybe a sign that they would be willing to use it more aggressively in the future... #00:22:33-8#

(17)Ok #00:22:33-8#

(18)Does the possibility to lose consultative status influence the way NGOs act? Yes... but not necessarily. NGOs are more careful but it has not been yet having the consequence of shutting down NGOs from speaking. I think it's more about the way in which we speak. So, you can analyse it in two ways, either we are more careful with a view to counter them when crisis happen or whether it's really influencing our behaviour. What has been more critical were actually points of orders used by member States against NGOs during the plenary session. This is what we don't necessarily want or at least want to be irreproachable when we address a statement which may be cut for substantial reasons. So, I think, what influences more the way in which NGOs contribute to the Council are repeated points of order, representing a sort of pressure on the NGOs.. More than the blade of Damocles coming from the ECOSOC Committee. Because we know that they will not be in the position to deal with ten cases every year. So it might be one or two of the smaller NGOs which is not really visible... So, we have to counter them as soon as it starts. That is clear, but it... I don't think it radically influences the way in which we work. #00:23:59-5#

(19)But are there initiatives to change the... or, to provide more procedural safeguards in the NGO Committee of the ECOSOC? #00:24:14-2#

(20)Yes, we are trying to push for that. There are more and more governments pushing for these changes in the working methods and rules of procedures of the NGO Committee in their statements to the ECOSOC... So, we are trying to expand the support for this kind of approach beyond the Western world, to find more than the EU, the US, Canada pushing for that. We want to secure more support to make sure that any decision or any guidance given by the Economic and Social Council to the Committee would be helpful, because it can't come from the Committee alone, given its current membership. So, in my view, it has to come from the ECOSOC itself if there is any decision to establish or to develop and implement additional safeguards. So, we are trying to develop this understanding at the ECOSOC level. There are more and more governments being supportive in principle. So, one of the next steps is to push for a cross regional joint statement. Along those lines, and then see whether there is enough support for some kind of guidance. #00:25:16-7#

(21)[BREAK]

(22)I've heard about this coalition of NGOs. #00:00:15-3#

(23)Ok, yes. It's an initiative which is called HRC Net - Human Rights Council Network. So, it's not formalized, it's something between a loose network of NGOs and a coalition itself. It was created with the idea that one of the main problems of the engagement of NGOs in the Human Rights Council was the lack of engagement of regional and national NGOs. This has been due to a number of factors, among which the lack of understanding of the Council, the lack of information about when and how to do advocacy and the lack of follow-up and long-term approach to their initiative and the lack of connection with the rest of the NGO community. So, there was a need to create a framework for international solidarity among NGOs to improve the participation of regional NGOs and also make the Council more visible and understandable for them at the local level. And from that, making the Council more visible in the media nationally, within other NGOs nationally and making governments understand that not only NGOs participate in Geneva but also are looking at the way in which they behave from their own capital. So, that was globally the understanding. The objective is not, however, to have a coalition of NGOs strictly speaking, signing up jointly every advocacy statement or having exactly the same objectives. So, this is why we want to keep it loose and semi-formal in a way. Now it's composed of 14 NGOs, a few of them are based in Geneva

(Human Rights Watch and ISHR). Two of them are based in the US - Open Society and Democracy Coalition Project. We have two members in Latin America, one based in Argentina, another one based in Brazil, which are both strengthening the capacity to monitor the policy and coalitions of their own country in the Human Rights Council. We have three members in Africa, one being a network in West Africa, another one being a network in East Africa and in the Horn of Africa. We have the Commonwealth Human Rights Initiative. We have the Cairo Institute for Human Rights, which is basically working from Morocco to Syria and the Arabic peninsula. We have one Egyptian national NGO because of the role that Egypt is playing and how we can try to accommodate that with our objective. And we have two Asian regional networks of NGOs. So, the purpose of this is to facilitate the participation of regional NGOs in the Human Rights Council and reversely to strengthen accountability of governments back home. So, these are the main objectives. How do we work? We have basically two different approaches to the Human Rights Council. We have several cross-cutting objectives: NGO participation, protection of SPs, response to country situations, etc. but these are the main long-term objectives on which everybody is supposed to contribute, and we have a more day-to-day follow up work in which some of the members of the network are either taking initiative or working together on a specific issue. Well, in December it has been Côte d'Ivoire, and for the next session such collaboration will be focused on a number of other issues. So, it doesn't need to have everybody on board, but at least to have a few of them - either working on their own, on a specific objective, or trying to mobilize the rest of the networks to sign up to statements and to do joint advocacy. So, this is why it's between a coalition and a network... Successes and challenges. Successes: yes. We've been able to combine advocacy in Geneva and advocacy on the national level. I can quote for example the advocacy before the resolution adopted on Honduras one and a half year ago which was the first time that we used this kind of methodology in which we tried in Geneva - it didn't work - so we went back to the Latin American capital saying: Ok, this is what we want. And it came back from the capital and we could follow-up in Geneva, getting what we wanted. So, this is why we try to develop more on some of the issues going on. Challenges... Well, the main challenge is to make sure that the national NGOs have the capacity to do the follow-up. The challenge is for the regional NGOs to have the capacity to do the follow-up of the positions of the countries within their region at the Human Rights Council. It's very much time consuming, it requires a lot of expertise, staff capacity, etc. etc. And we have been facing some challenges to make sure that we can replicate the good example that we have had in Latin America in particular, as well as in some of the African capitals. So, that, in my view, is the main challenge. And the second challenge in a way, that some of the NGOs, in particular the regional African networks, do not have the ECOSOC consultative status. They can sign up statements, but not come here and do advocacy at the Human Rights Council. #00:06:18-4#

(24) So, you said before that on the Honduras case for example, it didn't work in Geneva but then national NGOs put pressure on the local government and then it came back to Geneva and it worked. That's interesting because I think there is this theory that says the exact opposite that NGOs put pressure on international level which leads to changes on the domestic level. #00:06:42-1#

(25) Well... Yes... Both can work and this is why NGOs want to engage at the Human Rights Council. The difference being that... what you said is in general a hundred percent true when it comes to domestic issues. If you want to put pressure on the government to stop disappearances or to investigate on disappearances or to change certain policies - you do it nationally, and if it doesn't work, you come to Geneva and it has an impact because it's, you know, boosting the agenda also by having a discussion at the international level and helping putting pressure on the national government. I'm speaking the other way around, trying to exert pressure on diplomats to take a decision on foreign policy issues: It doesn't work

because they don't have the time, because they need to have the guidance and the authorization from their capital and maybe they don't have the time, maybe they don't have the guts to try to convince their government to do something. So, then you come back to the capital, and the capital is instructing them to do the thing we want them to do. #00:07:43-9#

(26)Ok, that makes sense. #00:07:48-0#

(27)But, there is not one side to an approach. So, sometimes it can work better in Geneva than it would work on the capital level, sometimes it's the other way around. So, the objective of the network is to develop capacity to do multiple advocacy as well. To have different entry points and to make sure that the message is going through and is not blocked between Geneva and the capital or the capital to Geneva. We have the same kind of information. Sometimes diplomats in Geneva block information or instructions which come from the capital. So, it's good to have insights from Buenos Aires, or from Accra, on what actually the government thinks, which we can then use to keep pushing the diplomats here. #00:08:30-1#

(28)And, you mentioned that your locally based NGOs don't have ECOSOC status. Would that be something desirable for them, to have ECOSOC status? #00:08:40-9#

(29)Yes, they are in the process of applying. #00:08:42-8#

(30)Ok. So, you think they'll all be able... #00:08:44-9#

(31)Well, I hope they will get it within one year. You know it takes a bit of time to get the ECOSOC status, right? First of all the NGO has to be at least three years old, then they apply, which will be considered by the Secretariat within one year and then there is a queue and when it comes to them, they are considered. And then they could be questioned. And then it can be further delayed. So, there is at least two years of application process if everything is going well. #00:09:15-3#

(32)Ok. So, maybe also, not only with regard to the network we were talking about earlier, but, to what extent do you think is there coordination among NGOs? #00:09:35-5#

(33)Yes, it's very much *ad hoc*. There is no institutionalization of any sort. We have an understanding that we should have regular meetings. We have regular meetings in which we discuss issues of common interest or issues of particular interest. It's far from being formalized. But it exists and we speak together very frequently. And, in which ways.. Yes, we sign joint statements or rather joint letters actually. Some joint statements but mostly joint letters when it happens to be used. Information sharing and burden sharing. So, if an NGO is trying to bring a team to Geneva, we try to make sure that.. it will not be at the same time or with the same or competing objective with another team from another NGO... and if Amnesty is bringing a group of researchers to speak about Egypt for example in the next session then we may not consider it also worth for Human Rights Watch to have it. They will do the work. Reversely, if we do it, they just back us up on public statements. So, we try to avoid overlapping and duplication of work. We try to rationalize and also save our energy and money too. But, again, it's very ad-hoc. #00:11:10-5#

(34)So, from what I've heard, NGOs are also kind of afraid that through coordination the diversity of approaches could be homogenized or diminished... so, that's maybe one of the reasons why NGOs are maybe a little bit wary about having coordination? #00:11:42-4#

(35)Well, I think it is also positive to have different voices on the same issue, from different perspectives, different sources of information. In general our objectives tend to go in the

same direction. So, we are trying to ensure... I mean, it is also in the interest of NGOs to show that we are not all in the same basket. And, if we have aggregated concerns then it's because they are important. Right? If you always share the same views so why are there many NGOs? Then why should I talk to Amnesty instead of Human Rights Watch or instead of FIDH... It's only... well.... there is limited concern about the funding but this is more... or the visibility... but this is more for smaller NGOs. I'm not sure it has impact on a macro level. It's more about the concern coming from the NGO which has the need to express itself on a given situation. And it might also be a practical difficulty. NGOs are also working in a centralized manner. So, if the Africa division of our NGO decides to engage more on a specific issue, then we should back them up. But if all of our divisions decide about the same thing and we have to see how to manage it...and maybe.. it's difficult to avoid what everybody wants to do be engaged in, that we don't do it. So, it's a practical element but also a perception that diversity is not that detrimental. States would like us to be more coordinated but we do not necessarily want to be coordinated. #00:13:23-4#

(36)Ok. So, you mentioned already informal ways of involvement of NGOs with States and NGOs among themselves. So, what importance do you think has informal involvement? #00:13:48-1#

(37)I think it is the most important element of NGO participation: Making written or oral statements or speaking there is useless as long as you're not interacting directly with the decision makers. So, what you listed here - attending public informals, that's fine but, again, part of the formal process. Side events are important, because they give a chance to brief diplomats about certain issues and to challenge the governments concerned. But I think that the most important element is the opportunity to have face to face meetings with diplomats, conversations with them, either by sitting down with them for half an hour here at Serpentine, or at their mission, with a view to really push them one by one to take a certain position or to provide us with relevant information. And that's what we are spending much more time on: getting information and pushing them to do things we would like them to do. And it's difficult for many small NGOs to articulate the public nature of the advocacy work, delivering statements, participating in the most informal way which is to gather information and to try to convince individuals to move ahead, to do something. And another element which I can mention here is the media and the public visibility of our work and our positioning. Which is also possible and... let's say... of a better quality when we have direct interaction and information or feedback.#00:15:38-7#

(38)So, also regarding the formal opportunities... Do you think that there are ways of formal involvement that are particularly often used? #00:15:53-2#

(39)Yes. So, let's try to divide it up. UPR submission is specific, because it's in a particular process with a view to compile an official document of the UN which is the OHCHR summary. So, I would put this aside. Oral statements and written submissions: Written submissions are less and less used. One of the reasons is that in the past these written contributions were given in the daily package of the Council to the diplomats. Now it's only available online. So... such submissions are not very often read by diplomats anymore. Oral statements are very much used and it's all the more important that it can help an NGO to put on the record of the UN proceedings its position on a certain issue. And also because it may push governments to react to that. Either by being over defensive: interrupting the NGO, denying the allegations... and trying to defend itself in a more or less aggressive manner. Or - on the contrary - to announce awareness of the concern expressed by the NGO and giving indication that they are willing to try to remedy that specific situation. So... what we would like, when we do an oral statement, is that States react to that. #00:17:25-2#

- (40) So, kind of, provocative, maybe? #00:17:29-1#
- (41) Not necessarily provocative. But like... putting a certain number of points on the table, expecting them to listen to us. So, either denying, which is also a good policy indication, or saying: Yes, well, we know that there is this problem. We have been trying to address this in these ways. We're trying to keep... we're trying that element et cetera. #00:17:53-0#
- (42) So, and you've mentioned before that the speaking time is diminishing? #00:18:00-4#
- (43) ...reduced, yes #00:18:02-3#
- (44) What could be a solution? Because more and more NGOs probably want to interact... #00:18:08-7#
- (45) Well... I'm not so sure about that. Well... more time for debate at the Human Council, less repetition of some of the debates, which are time consuming without being relevant... #00:18:27-5#
- (46) So, I've noticed, I assumed that NGOs are more and more involved, but I actually don't know if this is true. #00:18:40-8#
- (47) You should ask the Civil Society Unit. They used to compile statistics about NGO speaking time, the number of NGOs accredited... #00:18:55-9#
- (48) Ok. #00:19:00-8#
- (49) And, again, the formal opportunities, in my view, should be... you know... tools for informal advocacy. You know, it's something that you put on the record but if you don't use it afterwards... An NGO has to integrate its public statement in a broader advocacy strategy with diplomats. So, for me that's in a way a hook for... it's a visibility hook to try to convince diplomats to do stuff. #00:19:29-2#
- (50) So, which NGOs do you consider the most active, at the Human Rights Council? I mean... maybe, also what type of NGOs. Because there are NGOs working on specific issues, NGOs with a broader agenda... #00:19:57-1#
- (51) This is very difficult to say. Active - or - which have an impact - at the Human Rights Council? #00:20:11-5#
- (52) Well, ok, let's say impact. #00:20:13-0#
- (53) Yes... I don't know... It's really difficult to answer this question. Obviously I would say that the big generalist human rights NGOs are the ones which are the most visible. But then again these small coalitions of NGOs working on specific issues which have been, in a way, having much more impact in that specific agenda. If you look at the way in which the resolution establishing the Working group on discrimination against women, it was really pushed year after year by a very strong coalition of NGOs working from outside of Geneva and pushing diplomats to move on. So, here you can really see the direct impact of a couple of years of advocacy. Then, is it a visible action from the supporting NGO? Not necessarily - because they are acting behind the scenes and they may not be the most active actors within the Human Rights Council itself. So, I would put it this way: Without giving names, which are the most active and which have the most impact at the Human Rights Council are those which have been developing informal capacities to influence diplomats individually. So, not those

that come once in a while here, deliver a few statements and then go back or those who are just sitting in the room without necessarily interacting with diplomats. So, I think that, what can make an NGO active and impactful on the Council is capacity to influence key diplomats to move ahead. So, of course it's easier for international organizations having an office in Geneva, but it is also the case for some rather small NGOs working on a single issue with a very high level... sorry, with a good quality of staff, focusing on a small number of diplomats on the issue. So, I think that's it. Those which are excluded are those which have difficulty to access to... an insider's understanding of the work of the Human Rights Council. Many of them being outside of Geneva, coming once a year or once every two years and being very frustrated not to understand how things are moving, not having personal contacts with diplomats and having difficulty to capture the attention to move ahead the way they'd like it. And in general these ones are the NGOs which do not have a closed working partnership with another NGO in Geneva. If I take the example of the LGBT NGOs: There is one representative here which is serving as an access to put those visiting in contact with the diplomats. And that helps a lot. If you don't have that indirect connection, your advocacy work is useless. And very difficult. ... So, yes it's mostly NGOs from developing countries but not only. Small NGOs coming from Berlin or Spain also have a lot of difficulty to engage. It's not only about money. Money is an exacerbating factor of the difficulties to engage. #00:23:36-0#

(54) The main questions, I think you have answered, I think, very well, thank you! Maybe - if you have, some more time, I would have some further questions. For example question 11 in the questionnaire. You have already mentioned a few functions like raising awareness - also in the media. What do you think are the main functions that NGOs assume here at the Council? #00:24:13-4#

(55) I think...well... you put it very well: Providing information: You know, many diplomats don't really know what we are talking about. They are diplomats, they receive cables with instructions from their capitals, but they have so many questions about the facts on the ground that providing them with factsheets and detailed information on recent trends is always helpful to convince them to do something. Providing information is very important and this is true for diplomats from all regional groups. And I would say that you can see the different approach of African diplomats in particular when you provide them with detailed information. They are willing to move ahead but many of them are not doing it because they don't have all the information we have. But once you provide them with this kind of briefing on where things stand on the ground and why you think information and action is needed, their behaviour can change significantly. Yes? Creating accountability and transparency I think it's important. We are... you know sometimes States cannot denounce what's happening, even if they are friendly with our positions, so NGOs can do that by reaching out to the media to provide them with information about a specific situation. Creating public awareness: That would mean that the Council is... is visible on the outside. Advocacy - yes. And I think that, one of the elements you could add is to provide expertise and to also propose solutions to the issues we raise. Solutions which we hope could respond to the situation on the ground. Diplomats... human rights diplomats... don't necessarily know how to act on the ground, so... their capitals either. Sometimes they lack imagination so NGOs have in several instances been creative or imaginative in terms of proposing actions to be taken by diplomats. And these - let's say - we provide this kind of ideas informally, right? We don't make it publicly. But it happens that NGOs draft paragraphs of resolutions which are handed to diplomats and then reflected either in the same language or slightly altered in the first or later drafts of the resolutions. #00:27:01-1#

(56) So, now, to last question, about the OHCHR and its role in all these arrangements with NGOs and the Council. #00:27:14-2#

(57) I think over the past... recent years that the Office of the High Commissioner and the Human Rights Council Secretariat has... not been advocating enough for defending the participation rights of NGOs. We... we expect the OHCHR to be, in a way, the guardians of the practice, which has to be implemented by the HRC president et cetera... and... In many instances we had some drawbacks and it would be important to have the OHCHR being also an advocacy actor to remind the HRC president and the head of the Human Rights Council Secretariat that there have been practices which have to be respected whatsoever. And I regret that they have been losing that kind of safeguard role or advocacy role for NGO participation.
#00:28:31-9#

(58) What kind of setbacks were there? #00:28:34-0#

(59) Well... not major ones, but, you know, it's step by step and one of the examples could be the one of some of the UPR adoptions a couple of sessions ago. You know, it's three times one hour. There is time for ten NGO speakers for two minutes each. And this is in the rules on the functioning of the Council. And it happened on two or three occasions that... because time was missing at the end of the last of the three UPR adoptions they cut the NGO list of speakers to seven speakers because the interpreters are going to leave. So... we already have some constraints with the number of speakers and when they are even not able to advise a person that that should not be the way out... Cutting the number of NGOs to speak is not the way out. It's not the solution for time management issues. We're expecting them to do that. And... we have been in a position to pre-empt any negative precedents. But sometimes there are some announcements made that NGOs could not speak or... Right? So we have to run after them and to tell them what we really think and why we don't want it to happen. But we would expect that this would be the role to at least give him a phone call saying "Listen, this is what we've been trying to write... to flag that the president of the Council and it doesn't work." #00:30:21-2#

(60) Ok. Thank you! #00:31:28-9#

Interview 3

- (1) First I would like to ask you to explain the process your organization had to go through, the whole problem with the ECOSOC status for your organization. #00:05:08-7#
- (2) To make it short: Human Rights House Foundation has applied in 2005. And then the way it works in the NGO Committee of the ECOSOC is that the Committee is supposed to give an opinion on the application. That opinion will then be transferred to the ECOSOC. But without an opinion of the NGO Committee the Council cannot decide. As all UN bodies, they want to work on a consensus basis, same as the Human Rights Council, but in the NGO Committee the interpretation that members make of the consensus is a veto right to each member. Everybody has to agree. It's not like: 'If we can't reach consensus but there is a clear majority, well, then we are just going to vote and some will abstain, some will refuse and then the deal is done.' No. They actually have reinterpreted the rule of consensus as being a *de facto* veto right: A member of the Committee, because it's against an organization, can actually veto it. As long as not everybody agrees, they don't decide. Instead they send more questions to the organization, and to this date, Human Rights House Foundation has answered 42 questions in written and has answered a dozen of questions orally. In the four last years, we have been four times two weeks in New York to assist to the full sessions. And we have received again and again and again the same questions. Questions on our engagement in China and in Tibet; questions on our work in Latin America; questions on our cooperation with certain organizations, such as Voice of Tibet, the Norwegian Tibet Committee or the Human Rights Foundation. We have always answered them transparently, but it did not help until now. #00:07:12-9#

- (3) And, so you said you were also in New York and answered questions orally, so there are actually hearings or NGOs before the Committee? #00:07:20-8#
- (4) Yes. For small organizations it's probably more complicated to actually go to New York as often as we did. The Committee has an agenda where it states that Monday, Tuesday, Wednesday, Thursday morning will be for new applications. Tuesday, Wednesday, Thursday afternoon will be for deferred applications. And Friday, the whole day, for quadrennial reports. New quadrennial reports and deferred ones. Quadrennial reports are the reports that NGOs who already have the status have to present to the Committee every four years. The whole session is eight days, so in the second week, they have Monday, Tuesday, Wednesday. They have two sessions a year – an ordinary session in January and the resumed session in May. But you don't know when your organization will come up. Nobody knows. Of course, they could know, because they could actually calculate how much time each application needs and then at least have an approximate programme. In the NGO Committee it's not like that. Every delegation can ask as many questions as they want to any organization, every delegation has a veto right and every delegation has the right to talk and talk and talk. So, basically you have to sit there and try to actually come up. And push that your organization comes up. In the January/February session 2011 I have been in New York the whole session and from Wednesday in the first week I have put my organization on the list of organizations that would like to be on the podium of the session, to come back to your question if there is an interaction. From five to six every day, the Committee has a discussion slot. In the second week of the session - on Tuesday afternoon, which is the last moment of discussion with NGOs - I got on the podium at 17h45... All of the organizations that are from the North and are complicated cases with a name starting with Z will not be discussed. Then, our application, as deferred application from many years, hadn't been considered on Wednesday afternoon. And the session ended on Wednesday at six. Just to show you the problems. Now, of course they have this dialogue moment. But it is very tricky, because you are on the podium and these delegations prepare the questions they have, so they read them out and you are supposed to answer all of them. Some countries in that NGO Committee do not want critical voices. That's how they govern their countries, by shutting down critical voices, and that's how they want to govern the UN. And the real question behind the whole thing is: How will countries that accept critical voices react? Will they now finally say: "Now, this is enough. The UN is also a place where critical voices can be saying what they think." Doesn't mean we all agree. If we would all agree in the UN, there wouldn't be work anymore, would there? So, we disagree, but we have a place where we can actually talk and it's the same for NGOs as it is for the States. It's not because Cuba is member of the UN that it agrees with the USA. It is that they actually agree that there is a place where they can exchange views... A long way to get there. #00:14:18-6#
- (5) So, and the questions they asked you, were they any different from the questions you received in written? #00:14:26-3#
- (6) No. The questions in oral are often the questions in written. In 2011 we received basically exactly the same question than the previous years. A new one was about funding from the Norwegian Ministry of Foreign Affairs. But we already received questions on how we are funded and so on in previous years. It wasn't exactly the same, but was pretty close. However, other questions were similar; on the Norwegian Tibet Committee, on our work in China, in Tibet, other questions on our work in Latin America. Other questions on the Human Rights Foundation came again, too. And we had the same answer again. Because we can't invent another answer, if they like it or not. #00:15:17-1#

- (7) Of course. So, the questions... Are those very detailed questions or are they very broad? Do they ask for details, for names... #00:15:30-9#
- (8) Well, it really depends. I think some delegations do actually really look into the applications of the organizations and then come up with quite fair questions. If you look in the ECOSOC resolution 1996/31, one of the criteria to actually give ECOSOC consultative status is independence from government authorities. And I think it's a fair question to an NGO like ours, mainly governmental funded - not meaning one government or one country but mainly by States - is: "How independent are you from your donors?" And it is a fair question, because we also have it internally, of course. And then we explain how we deal with it. We cannot give another answer than saying: "First of all, in our Board or in any decision positions or in any implementing positions, there are no governmental agents and no former governmental agents. There is no one from the Ministry of Foreign Affairs in our Board and will never be in our Board. Second, we do not create projects for donors, we create projects as we want them, apply for funding to donors who then decide if they want to give money. It isn't the other way around. Of course, third, we do not play a role of intermediary with money. Meaning that, if you have a donor and an applicant NGO with which we work, the money doesn't go via us, it's a direct relation. We build up a direct relation between the local NGO and the donor by supporting also local NGOs in how to apply and how to report on money received. So, we cannot say anything else but that and then it is also about how we function in our States. We receive money from various countries and from other donors, mainly private foundations. We do not become dependent from them. We are still allowed to criticize them. Actually, the more we are critical with a country like Norway, the more chances we have that our funding is not cut. Because then it would make a huge scandal in Norway. Of course, in some countries, you cannot do that. In some countries, receiving money from authorities means that you need to align. It is strange though that these questions come from countries that are not very well known for the independence of their own NGOs. You have other questions that are sometimes a little bit frustrating; because you have the feeling they just come up because suddenly the question popped up in the mind of the delegation. Like, one question we have had now three or four times is "Do you plan any engagement in Latin America?" Then we explain: We have four regions in which we work: Eastern Europe and Caucasus, Western Balkans, Eastern Horn of Africa, West Africa. What else can we say? We answer to local NGOs which have built up a coalition, want to work with us on the various programmes we have. We look into the feasibility. Then you have unfair questions, like, for example, the questions that were asked to an NGO called Christian Solidarity Worldwide. In the world of NGOs you have organizations that have similar names. The Christian Solidarity Worldwide has had only one question in its history with the NGO Committee: It is: "You are the Christian Solidarity International. You are the same organization." They have provided their statutes, they have provided their registration, they have provided everything they could from their side to show who they are. They cannot say who the other is. In this case the difference is evident; if you go on their website, it is very clear who the Christian Solidarity Worldwide is; a faith based organization engaging for freedom of religion - of all religions - and also engaging with Muslim people, and also engaging with Jew people. The two organisations have different websites, everything is different. You cannot rationally argue on that. Then you have questions that can be frustrating. Every Swiss-based organization gets one question: "But you are not officially an organization." Then you have the Swiss delegation taking the floor, saying: "Mr Chairperson, I would like to remind the delegation that in Switzerland there is no registration of NGOs. I would like to remind the delegation that under resolution 1996/31 of the ECOSOC, it is not the registration that the Committee shall check but the legal establishment of the organization since two years before they applied." Therefore, since the organization is not registered that doesn't say it does not legally exist in Switzerland. In Switzerland, an organization exists legally once it has statutes, adopted those statutes in a general assembly and as of the minute of this general assembly, the statutes,

those are the legal documents providing the legal existence of the NGO.” This is not enough for some delegations. This is the way we establish NGOs and the real problem behind it is that the NGO Committee does not accept that in one country there is a real freedom of association. An uncontrolled freedom of association. The State is not allowed, unlike most of the countries of the world, in Switzerland to do an a priori control; authorities have to do a posteriori control. Whatever NGO Committee members think about this law, they need to accept that it is the way we deal with Swiss NGOs in Switzerland. But they will never accept it. And that is just incredibly frustrating for Swiss NGOs. #00:26:44-6#

(9) To go back to the session of the NGO Committee: Is it public? Are the NGO representatives that are interested, can they attend the whole session, the whole meeting? #00:27:01-5#

(10) It is completely public. When you follow it, you can suddenly see, on the second week things change a little bit. But that means, that if now you're an NGO and you want to understand the ECOSOC Committee: Most of the things work out well. The problem is the problematic cases. The problem is also that in the Committee, you can see in the agenda, there is no discussion on the organization of the Committee, on its work methods, on its work rules, on its rules of procedure. That doesn't exist. Why? Because the delegations have this *de facto* veto right and therefore have a case by case approach. When you have a problematic NGO coming up then you have a whole discussion about this NGO and a discussion on the work methods and then a whole discussion on the rules of procedure and then a whole discussion about the reinterpretation by every delegation of the resolution. When you go through this, it's a huge time cost of sitting there for two weeks, doing nothing. And therefore, the result of it is that most of the countries do not persist. I mean, there are 19 members of the Committee formally, but observers can come and pressure. Switzerland is very active. Very high level representation. Always two people. And it's the same time cost, of course, for the NGOs. How do you finance as an NGO to have somebody monitoring this Committee? And you need actually two people. Because you can't sit there and take notes on everything. So you will need to have two people, putting that together. Then you have the reprisals: What happens if you report on what's going on in the NGO Committee? What happens if you criticize the Committee as such? Won't all these countries use it against you when you come up for review of your quadrennial report? And that is the basic reprisal problem. If you cooperate with the UN, meaning with the NGO Committee in this case, won't you face reprisals? And you do face reprisals! I think there is an urgent need for an NGO focal point, but there is an urgent need also to make it more visible, what is going on. Because it is so important. #00:31:35-7#

(11) So, the organizations that might be considered are allowed in there. And you said, reprisals are always a threat. Do you know about cases where, due to being critical with the NGO Committee reprisals have happened? #00:32:16-6#

(12) No. But, for example, some years ago a document called "The Anti-NGO Committee" was circulated. It was a non-paper, meaning there was no logo of the organization and no reference to the organization who wrote it, or to the person who wrote it. You cannot criticize this Committee. We are also publishing an analysis of the work of the Committee, but we don't put it on the website, because we know that if we did, we would get fierce reprisals. But we've put our logo. Because what we publish, what we say, we stand behind it. I don't know about a case of an NGO that really criticized the NGO Committee and then got suspended. But you have plenty of cases of organizations being critical, that either don't get in, or that get problems when their quadrennial report comes up. #00:33:12-7#

(13) So, what, in your opinion, could then a better system of accreditation be? #00:33:16-1#

- (14) If I could redesign the system of accreditation completely, meaning, we get out of the NGO Committee, I think it should be a committee of the General Assembly. I don't think it's an ECOSOC issue anymore. The Human Rights Commission was under ECOSOC and this ECOSOC was everything dealing with human rights. And NGOs were different 50 years ago. The real question is: When in the resolution 1996/31 the first paragraph says: You have to input to the ECOSOC, nobody considers this as still being relevant. Because paragraph two says you have to input into the United Nations system and paragraph three says we have to promote the United Nations, which shows that there is a broader approach. But why would one specific body be in charge of this issue, why wouldn't that be directly the General Assembly? Under General Assembly rules of procedure. Under General Assembly work methods. And especially under General Assembly diplomatic rules. I would have absolutely no problem to have a new Committee of the General Assembly doing that. The question is also: What do NGOs bring to the UN? What they bring to the UN is to create a debate. If we would all be in the UN just to simply agree with each other, it would be no fun. The idea of an international forum is actually to disagree and to try to find a solution. And that is the role of the NGOs, to actually be the critical voice. So, they also need to find a system within all these working methods that says: You are not allowed to be against an organization because it has a critical voice. You are actually only allowed to be against it for very clear reasons, such as, if there was no internal democracy in the organization. #00:38:01-3#
- (15) So, and now, keeping the reality in mind, what changes could be made to the existing system? #00:38:28-1#
- (16) Yes, the NGO Committee as such: I think, one of the problems is: There is a lack of publicity and knowledge of the NGO Committee. That's one thing. We have thought about three strategies:
- The first one is: There is a need - and an urgent need - for a focal point for NGOs. Meaning, you need to have some kind of coordinating focal point that will monitor the Committee and help NGOs. This focal point could really help NGOs to get into how the system works and then to defend themselves and to establish and build up contacts with the different delegations. If you're an NGO, you have your work, and then suddenly you are supposed to be in New York and be friends with the whole diplomatic community. You cannot do that. You have to have somebody doing that for you.
- The second thing is, on the publicity issue, one funny strategy, not one I can decide on, again, would be that an important NGOs sacrifices itself. It would have to be an NGO that has international visibility, strength, and internally a press department and an advocacy team that can take it if the NGO Committee suspends them. Then, it makes a huge mess. The next day, in the *New York Times*, maybe not on the front page, but at least A3, will be written: "The United Nations suspends a main human rights organization." What happens then? If then the NGO Committee in May does not accept the deferred quadrennial report and then a country says: "Now we stop it, we vote on this" and the NGO loses the vote. Suspension is decided by the NGO Committee. It's not implemented until this goes to the ECOSOC. So, until the ECOSOC confirmation the NGO doesn't lose anything, doesn't lose its access to the UN, nothing. The minute of the NGO Committee decision, the NGO, well prepared, issues a strong statement, explaining also what is going on in the NGO Committee, not only about themselves. The day after, the NGO's advocacy team, the one in Geneva for example, begins lobbying for the ECOSOC Council. In the last two years every decision of the NGO Committee has been reversed at the ECOSOC because there are not the same countries represented as in the NGO Committee. The NGO would not lose in the ECOSOC. They will get to a vote, and it might be very few votes for yes, but they will not lose. But in these three months you create momentum for change. You create a momentum and attention to the NGO Committee.

Third strategy: It is to say, quite rationally, the functional Committees of the ECOSOC cannot permanently be at a complete different level from the ECOSOC. This NGO Committee is simply an ECOSOC functional Committee, it has no decision power, it just gives its opinion. But if you look at the LGBT issue: Every time the NGO Committee has turned down an LGBT organization, the organization was accepted at the ECOSOC. So, now the new thing is not to let them go out anymore. You know, to defer them so that they never get as far as to ECOSOC. So that's a way the functional Committee creates power for itself. Well, one issue could be to say: With this Committee, it seems to be problematic. It's not problematic with the deforestation Committee to actually agree. They are at the same level in the ECOSOC. Well, maybe in the NGO Committee, the members of the Committee should be the same countries as in the ECOSOC. Meaning that, if you're a member of ECOSOC you can go into the NGO Committee. If you're not member of ECOSOC, well, you don't get into the Committee. It wouldn't solve the problem completely but it would at least bring back a little bit of balance. Especially in the African Group and in the Latin American Group.

Those are three possible strategies, but one real problem is that there are no clear work methods. Maybe it would also be good that the Western countries request an additional session, once, of one week and you only talk about work methods. And at the end of the thing you come out with a vote on work methods. To say: This is the way we are going to work. #00:45:16-7#

(17) So, when an organization gets deferred, that means they receive new questions, or that means... sometimes they are not even considered, right? #00:45:28-9#

(18) Well, there are three ways you can get deferred. Technically, the main way is that you have not answered the questions. For example, a lot of NGOs in the Committee do not answer the questions of the Committee. So, that's a problem. Then, you can get deferred if the Committee has more questions. And, the idea is, for example, if my deferred application comes up on Wednesday, I get the questions in written on Wednesday evening, then I can answer them by Thursday, Friday and then the second week the Committee still has time to look at my answers and then they give me an answer or take a decision or come up with more questions. The problem is that in real life they never have time to deal with each NGO application twice, which is the plan that they have. So, that is how you get deferred, too, because they need answers before they can actually look into your case. Now, there is a new way of getting deferred. New way, it's not new for the rules of procedure of ECOSOC but it's new in the NGO Committee: no-action motion. Meaning, you have a decision A to take, but then you have delegation P come up and say: "Well, I'm not ready to take a decision." In every normal institution it's like: "Well, you're one of all of us, I'm so sorry for you. Go out, go and do something and come back when the decision is taken." But not in the NGO Committee. So, delegation P would say: "I present a no-action motion on this decision." That is like a vote on: Do we decide? Yes or no. And, instead of calling that: "Do we vote on voting?" they call it the 'no-action motion'. It's funny because you could actually go very far. And then, do you make the no-action motion of the no-action motion? #00:50:03-4#

(19) Ok, that clarifies a lot. So, why is it important for your organization to have ECOSOC status and to have access to the UN system? #00:50:29-6#

(20) Ok, I think we need to separate having access to the UN system and having the ECOSOC consultative status. We have access to the UN system - one of our members has consultative status. Officially we don't have, but in real life, everybody has access to the UN. Now, however, without the consultative status you cannot officially organize side events, you cannot officially take the floor, you cannot submit written statements, and so on. So, there is a sort of a difference between working with the UN and having this ECOSOC status. You can actually work with the UN, with the treaty bodies, without having ECOSOC status. You can

submit reports to the UPR, too. The importance of ECOSOC status is also to get into meetings that are important. For instance, the High Commissioner for Human Rights holds meetings with civil society to discuss the Human Rights Council. But she meets only with consultative status organizations here in Geneva. I think, for international organizations, the main thing is to be able to fully work within the UN system, with the different tools there are. Also because - when you are an international, serious organization and you respect the rules - you cannot submit information in the name of another NGO. You cannot always be playing this game of hiding. Then, if you are a national organization, it does also give you a little bit of credibility. You see lots of national organizations that input a little to the UN. They would input a little bit, but that bit is very important. In quantitative terms it might be less than the big international ones, but in quality it's much more important for the UN system than the opinion of big international NGOs. In addition, the big international NGOs do not need the UN microphone as much, because wherever they say what they believe in, people will hear what they have to say. If they say it in the UN or outside of the UN - everybody will know it. If it is a small, national NGO, nobody will know about it. But if this small national NGO makes its statement in Geneva, people will know. So, for them, status is important and also provides them with a sort of credibility and indirect protection. I'm not saying that ECOSOC organizations are less threatened, but if you have that on your paper, on your header, you are a little bit less, maybe, a tiny little bit less at risk. #00:54:08-3#

(21)Ok, so that means you are actually able to... I mean, you are able to organize side events for example. #00:54:18-7#

(22)Yes, we did. #00:54:24-3#

(23)But, were you able to use your name? #00:54:24-3#

(24)Yes. I mean, to book the room, no. But then, on the flyer, yes. With the organization with which we did it. #00:56:08-5#

(25)So, is one of your, what your organization does, or the advocacy you do, is that also linked to facilitating access for domestic or local organizations? #00:56:34-4#

(26)Yes. The Foundation is the Secretariat of the Human Rights House Network and as such our role is not to advocate "on behalf of", it is "to advocate with". So, we do bring people here and the idea is that first, we build capacity for them to be able to work on international advocacy. It's often not an easy thing for national NGOs. Most of the people we work with don't speak English, to begin with, if you really work with locals and with coalitions of locals (meaning, not just one person that you work with for ten years who after two or three times he begins to be an international, because he knows the system as well as you do). We try to work also with youth organizations. It does have this challenge of bringing them here and also they will not use a diplomatic language, they will use their language, that's how they see the human rights issues. So, this is the core of our international advocacy. Now, in some countries we work with, it's not that easy to do. Like, in Eritrea or Ethiopia we can't officially work with local human rights defenders. #00:57:54-1#

(27)So, do you think that local organizations are represented well in Geneva? #00:58:13-2#

(28)I don't know if they should be represented well or not. Some years ago, organizations working with locals would be very few. Now everybody talks about that. There has been a change in the ways and in the strategies. Now, the problem in Geneva is that, if you look at the network organizations, they often have one member NGO in each country. In most of the countries, there is not that much of a change in their leadership. So, this one member comes

to Geneva for the last few years, once a year or twice a year. This one member is often a very famous person, having received awards. This is a good thing, because then you have a very strong personality and a very strong organization nationally and an organization that in a way knows the system well, is able to work with the system. But the whole challenge of the UN is, I think, to have people in the system, and to let them in, that actually do not fit in the system. So, the people coming here do not wear ties and grey suits. For instance, the treaty bodies and the UPR: Everybody can send the reports and everybody can actually go to a treaty body and participate in the session, they are very open with that. But, where the challenge is, and where I don't have the answer, is on the whole institutional lobbying that is done. When NGOs lobby, mainly few big human rights NGOs lobby on how the system works. They often say, "We lobby to make the system easier to access", and so on and so on. We are part of a whole group of NGOs lobbying for this treaty body reform. One of the points is: Unify the working methods of the treaty bodies! It's impossible to understand why nine different treaty bodies would have eight different working methods. Nobody understands. Unify it! Why are we saying this? Is it that we are just saying what we think would be best for the locals? Or is it really that locals actually ask for it? And I think locals actually don't ask for it, because they don't know the system and so on. So, that is where the whole problem lies. I think on the issues and the review of countries, actually, there is quite good access, but we need to make it stronger, we need to make it easier for locals to also take the floor and so on. I think these are things many NGOs fight for and you have also the locals taking the floor in the Council under the name of international organizations. But it is something else on the institutional framework. There is very limited input by local organizations. And, honestly, I think as a network NGO, it's honest to say that when you are the secretariat of a network, when you are a member based organization based in Geneva, you do not consult all your member organizations on these institutional issues. Then, the other question also is: Is it an important issue for locals to be involved in the UN when it's not about their country? #01:05:06-1#

(29)Also very interesting, what you mentioned in the beginning, that maybe sometimes local organizations come to Geneva and they are less diplomatic and maybe that's... Do you think that's a good thing or do you think that makes actually things more difficult? #01:05:30-4#

(30)No, I think that's a fantastic thing. I mean, we work with often very critical organizations. Before you go to do advocacy you need to understand the system. I think now - again, it changed in the few last years - but now most of the international organizations, including the ones not having networks, are working on capacity building of civil society or working on greater knowledge of the system. And I think that that's the key. The key is that what you say, as critical as it is, fits in the framework of what is actually being discussed. And I think that is what we at least are trying to do. #01:10:47-3#

(31)Thank you.

Interview 4

(1) The network your organization is part of: How was the ECOSOC application process for this network, do you know? #00:01:43-5#

(2) Well, I wasn't involved in their application process. They have the status for a number of years. I don't think they had the same difficulties that the LGBT groups have because they work on broader HIV/AIDS issues. But certainly, from amongst the first groups to have applied for ECOSOC status who work on sexual orientation and gender identity issues, were probably facing their own struggles at the NGO committee and at the ECOSOC. #00:02:12-6#

- (3) So, can you give me a few examples of the struggles you mentioned? #00:02:16-4#
- (4) Yes, it's clear that was a few minor exceptions. So, certainly the NGO Committee has systematically rejected any NGO working on issues of sexual orientation and gender identity. And for no reason other than overtly discriminatory rationales. They've asked questions linking groups working on sexual orientation issues with questions of pedophilia, they challenge whether these are legitimate human rights issues. They asked about sexual rights. They've always voted on these issues and the vote always goes against the recommendation I think with one exception, which was COC Netherlands. At least in recent years. There were a couple of NGOs working on these issues I think that were accredited a decade or two ago that were accredited, but I believe at a time before there was the same organized opposition that we now see. And then, we, I've attended myself a number of the sessions of the ECOSOC itself where the ECOSOC has voted to overturn the negative recommendations from of the NGO Committee. But it's quite clear that the NGO Committee is dominated by States that made it their business to get on there and block access to the UN by NGOs working on issues that they don't like. So, we feel that's unfortunate that there is really explicit discrimination from the NGO Committee. Thankfully, the ECOSOC itself has at least in the case of LGBT NGOs restored some of the integrity of the process. The first couple of years in which the ECOSOC began repealing the negative recommendations of the NGO Committee, the meetings of the ECOSOC itself were tied up in a lot of procedural wrangling: Votes of no-action motions, votes to delay... Thankfully, now the ECOSOC realizes that none of these procedural arguments have any merit and has overturned some of the NGO Committees' recommendations. #00:04:55-2#
- (5) So, do you think there is a trend towards more openness or... Is there a chance for LGBT organizations to get status? #00:05:05-5#
- (6) Not in the NGO Committee. The NGO Committee is just as... I mean, one would think that after having about a dozen of its decisions overturned by the ECOSOC, they would get the message and at least respect the decisions of their parent body. But that doesn't seem to be the case. They are still asking the same kinds of questions... I think it has got even worse in the sense that they often will try to avoid even making the decision. Solely in order to... because they know that once there is a decision, then there is something that can be appealed to the ECOSOC. Whereas, if they just keep on asking questions year after year, then there is no resolution that enables the ECOSOC to review their decisions. So we see a lot of stalling in the NGO Committee as well... a lot of unnecessary wasting of the time of both the NGO applying and the NGO Committee itself with the lists of questions where we all know that it doesn't matter what the NGO replies to those questions, the State asking them will never be satisfied. In the ECOSOC itself I think there has been an increasing recognition that these recommendations from the NGO Committee are discriminatory and therefore they wish to get straight to the point and vote on those recommendations. And we have seen an increasing emerging of support for the ECOSOC voting in favour of the accreditation of LGBT NGOs. I think in the first year or two the votes were very close. I think some of them were even tied. Now, there is, I think, a fairly comfortable margin. #00:06:44-0#
- (7) So, do you have an idea when this dynamic of Committee decisions overturned by ECOSOC started or why it started? #00:06:55-8#
- (8) The "why" is fairly straightforward. It's the same resistance to recognizing human rights in relation sexual orientation and gender identity that we see throughout the UN system, in the Human Rights Council we also face the reality that despite widespread violations on these grounds the Human Rights Council has never adopted a resolution on sexual orientation and

gender identity. A number of States continue to take the floor when those issues are raised and claim that these are not legitimate human rights concerns. So, it's an ongoing challenge. And it's the same States that are blocking accreditation of LGBT NGOs at the NGO Committee. One would hope that States might accept in relation to ECOSOC accreditation in principle, whether or not they support the particular human rights issues at stake. That said, they don't have to agree with the NGO in order to accredit them as stakeholders in the process. There are a number of States which have been supportive of accrediting NGOs working on sexual orientation and gender identity issues that have underlined that many NGOs having ECOSOC work on issues they not necessarily support but which they recognize, as a matter of freedom, especially NGOs are entitled to be raising and advancing. It's, been happening since about the last five years or so, that there's been pretty much every year a number of NGOs working on these issues at the NGO Committee. As I mentioned, there are some that, a decade or two, have got ECOSOC accreditation. ILGA had ECOSOC accreditation in the 90s but that was taken from them when it was clear that they had member organizations that had not taken a strong enough position in relation to age of consent laws. So the group worked to bring its membership requirements up to date but has still, not yet been re-accredited. They have an application this year that will be considered in July when the ECOSOC next meets. #00:09:12-5#

(9) Ok, so their status has been withdrawn or suspended, sorry I didn't get that. #00:09:19-8#

(10) ILGA had status in the 1990s I think, it was revoked. And they've applied again within the last year or so. And there that was, again, a no-action motion at the January session of the NGO Committee. And I expect that it will come to a vote in the ECOSOC in July 2011 when a number of... some of the decisions will be considered. #00:10:08-7#

(11) You mentioned the questions not being related the work or... Do you have samples of questions that LGBT NGOs received by the Committee? #00:10:34-0#

(12) Yes, I have some of the groups that we are more directly involved with, they could talk in a bit more detail about that. #00:10:55-2#

(13) So, my next question would have been cases of withdrawal of status for LGBT NGOs. You mentioned one. Do you know of any other suspensions or withdrawals? #00:11:08-5#

(14) I think that's the only one. Most began getting ECOSOC accreditation within the last four or five years. So the four year review has not yet come up. I think some of them did go through the four year review for the first time this year and I don't believe that there have been any suspensions. So, I hope that their process will go reasonably fast. #00:11:35-4#

(15) Ok, so, do you think, as the regards the organizations that have already submitted their report: Have you heard whether there was particular scrutiny or particular attention to their report? #00:11:52-7#

(16) Not that I'm aware. Certainly I haven't heard of any problems. #00:12:00-4#

(17) So, do you think that recently LGBT NGOs have been rejected more than ten years ago or were there just no applications ten years ago? #00:12:28-3#

(18) Well, ten or fifteen years ago there were a couple. And they seem to have gone through. One was called COAL, I think it stands for Coalition of Activist Lesbians, an Australian NGO. And then, International Wages Due Lesbians. Both got accredited. I'm not fully aware of the story behind those. Most NGOs who apply face a fairly straightforward process and if there wasn't

opposition... I think possibly they've gotten a bit under the radar. In recent years, as the issues have attained a lot more visibility, there has been more organized opposition as well. And, as a result, I think we've seen that there is more coordination in relation to opposing these applications in the last five or six years. It would be interesting to take a look at the composition of the NGO Committee from the days of those applications and see whether it's been as packed with States that are hostile to NGO consultation in the UN as it currently is. It's... maybe it's the same composition, but the issue attracted less scrutiny. Or maybe the composition was more balanced than it is now. #00:13:44-6#

(19) So, do you have an idea of how many LGBT organizations are accredited with the UN? #00:13:52-7#

(20) We would have a list somewhere, but about a dozen now, I would say. #00:14:02-5#

(21) How active do you think are LGBT organizations in the framework of the HRC? #00:14:07-7#

(22) It varies a lot from one to another. Some of the ones that have applied are quite active at the UN, like the International Gay and Lesbian Human Rights Commission which got status last year. COC Netherlands has been quite active, a number of the others have participated regularly in different UN meetings. Some of those have received the status but not applied it as regularly, perhaps they have supported joint statements or otherwise, but not necessarily attended meetings. Most of the NGOs are from the global North, I think ABGLT, it's a Brazilian LGBT organization, is the only one really from the global South at the moment. And, ideally we would like a few more NGOs perhaps from the global South applying for accreditation. #00:15:01-6#

(23) So, do you think that that bias with regard to the origin of NGOs... is it because there are just more LGBT organizations in the North? #00:15:15-9#

(24) Yes, partly. I think, when ILGA was denied accreditation in... the last time was around 2005... I think a number of the organizations that worked with them mostly in Europe applied as an alternative. And, perhaps their connections were less strong with NGOs in the global South. And of course there are questions around resources that are needed to come to Geneva or New York to participate in meetings. #00:15:48-2#

(25) So, but do you think that there is awareness among LGBT organizations of the UN mechanisms? Are they regarded as useful? With regard to the HRC in particular. #00:16:04-2#

(26) That varies a lot from NGO to NGO. I think increasingly there is an awareness as we certainly, as ARC, maintains a list of issues through which groups around the world are regularly informed about what's going on and opportunities for engagement. The UPR, I think, has served as a useful bridge between the work of the UN, in Geneva in particular, and the effects on the ground. And we see a quite strong take-up in relation to the UPR by NGOs who follow through on the recommendations. So, I think that's increasing. #00:16:41-0#

(27) I read on your homepage that your NGO is the only LGBT organization with a full-time presence in Geneva? Why do you think is that? Is that changing now? #00:16:57-3#

(28) A little bit. What we are seeing now is... It's still true that we are the only NGO in Geneva with a specific mandate on LGBT issues. Now, we are seeing more mainstream organizations increasingly incorporating these issues within their mandates. In the case of the International Commission of Jurists, for instance, they have a full-time sexual orientation and gender

identity staff person now... And the same is true for some other mainstream NGOs, also in New York. But really, there is a need, I think, for more attention to the issues and ... and it does need more work than one organization can do. So, we hope that others may also soon have a presence here. #00:17:43-2#

(29) So, how do you see the atmosphere in the Council for LGBT activists? #00:17:51-1#

(30) It's a difficult environment. I think... I've heard very negative reactions from people who come into the Council for the first time and experience it... They are particularly attentive to disappointment by the Council which is supposed to be the UN's premier human rights body to protect human rights for all people, including rights on sexual orientation and gender identity. But it still cannot even recognize these as legitimate human rights issues. And, so I think for many who I'm familiar with or who do experience that for the first time it can be quite difficult and disillusioning. For those of us who followed it for a while, I think, it's improving. There was a time when there was an overt hostility whenever the issues were raised. Now, in the context of the UPR, for instance, it has become integrated as a regular part of the recommendations and issues that are addressed. And an increasing number of States are endorsing joint statements on the issues and an increasing number of States are accepting recommendations within the UPR on these issues. And it's good, for example, to see UN Secretary-General Ban Ki-moon address the Council recently and include these issues in his remarks. Also the UN High Commissioner does that regularly now. So, it's improving. But there is still a long way to go. #00:19:20-7#

(31) When did this trend start? Is it a very recent trend that there is more openness from the side of some States and UN mechanisms towards these issues? #00:19:37-0#

(32) It's hard to say. I think LGBT groups have been engaging with the UN for some decades. Particularly from the times of the world conferences on women in the 1970s. But I think there certainly has been an intensification within recent years. More attention entails more visibility and engagement by LGBT groups. Certainly in Geneva and in New York and around the world. #00:20:02-4#

(33) So, you were talking about the UPR and that it's kind of the bridge for LGBT NGOs to participate. Why, do you think, is that? Is it because the national NGOs... Or, do you think that their engagement with the UPR will lead to a bigger engagement in general with the HRC? #00:20:47-0#

(34) That's hard to say. I think the UPR has been recognized as one of the more practical tools, where NGOs and countries around the world can highlight the human rights situation for LGBT people. And through that there has been an increasing engagement. It doesn't necessarily follow that those NGOs then choose to work on the Human Rights Council. It's more likely something that's on an as-needed basis. Although we wouldn't... I mean, we are trying to encourage groups from different regions to participate more regularly in the works of the Council, because I think the Council needs to hear from the voices of NGOs working on issues on the ground. #00:21:33-5#

(35) How do you help these organizations? What kind of services do you provide? #00:21:39-3#

(36) A large part of what we do is to identify opportunities for engagement and develop materials and send those out to groups around the world or through our listserv so that these groups can identify when it is useful for them to be involved. Some of the work is work that's focused here in Geneva or in New York and where it might be useful to have groups come in that happen to work with and support the people who are coming in and help to familiarize them

with the work of the Council. At other times, what's needed is work by NGOs in their own countries to encourage their governments to take more supportive positions. For example, on this session of the Council starting next week, there is going to be joint statement on sexual orientation and gender identity issues. And so we developed an action alert and background materials. And we'll work with NGOs coming to Geneva and supporting their statements, but we'd be also sending off materials to groups in countries around the world so that they can encourage their foreign Ministries to support statements in the capitals. #00:22:48-1#

(37)Thank you!

Interview 5

- (1) I read about the case of your organization. I read it took three years to get accreditation. Why did it take three years? #00:00:35-0#
- (2) Well, there is a process that an NGO has to go through to get accreditation. There is a technical application process and then there is a process by which the application is then considered by the NGO Committee. What happens in many cases, not just in our case, is that there are many delays in terms of how the Committee then processes these applications. There is a big backlog of applications and it's unclear really if it's a bureaucratic problem, or whether it's a political problem - the backlog issue. But there is also a political problem, which is that the NGO Committee itself, which gives final approval of accreditation, is made up of 19 governments and those 19 governments can delay basically giving accreditation to an NGO if they don't like that NGO, if they don't like the work of that NGO. So, in many cases we have found, that governments delay accreditation in order to provide time for themselves to review the work of the NGO and to decide whether or not they want to give accreditation and to give access to the NGO to the United Nations. So, largely, I think, it's political.
- (3) Did you receive questions by the Committee? #00:02:12-3#
- (4) Yes, we received many questions in fact. I'd have to go back and see how many but almost maybe close to ten sets of questions. And many times repetitive questions! The same questions. So, you would answer the questions and they would ask the same question in a different way. And... So, that was really frustrating for us, but we answered all the questions in writing and we were in the Committee as well every time the Committee met. As you know, it meets twice a year. #00:02:47-7#
- (5) So, the questions, were they relevant to the whole process and your work at the UN? #00:02:51-8#
- (6) Some of the questions are relevant and some of the questions are, in my view, irrelevant. Because some of the questions are getting down to issues related to your work, the substance of your work or the position that an NGO takes, versus, sort of the technical requirements that an NGO must meet. So, I think the governments are... have used different tactics to be able to ask questions in ways... to try to trip up an NGO? To try to frustrate an NGO. Part what we found, is that there have been very interesting tactics used to try to particularly NGOs that don't have resources, most NGOs don't have resources anyways, but, particularly NGOs from the developing world have less resources and... Asking a few sets of questions and using procedural tricks is enough to get an NGO to back down and to just stop the process. So, there are a variety of ways in that States have done that. #00:04:15-8#
- (7) Can you think of examples of organizations that have disengaged with the process because it took too long for example? #00:04:26-6#

- (8) I would have to go back, not of the top of my head, but definitely there have been cases where NGOs have disengaged. In fact, I think the International Crisis Group, which is a big NGO, decided at some point not to continue the process. I think there was an Ethiopian organization at some point... I don't imagine they ever got their accreditation, because there was a lot of opposition by the Ethiopian government to them. They were an Ethiopian human rights group. And, at that same time the Ethiopian government was passing a very restrictive NGO law, saying that no NGO in Ethiopia could be registered if they got more than ten percent of their money from sources overseas. So, a very restrictive NGO law, so... And this particular NGO had a lot of opposition from their government. So, I imagine they probably withdrew, but I'd have to check. #00:05:21-6#
- (9) So, and in the case of your organization: Do you think the reason why it took three years to get your status, was it this backlog or was it the issues you work on? Or was it a mix? #00:05:35-2#
- (10) Oh, in our case it was definitely the issues that we work on, because we monitor the work of the UN Human Rights Council and the General Assembly, and we look particularly at their foreign policies and the positions of each government on human rights resolutions. So, that's basically how each government votes on different resolutions and what positions they take on each debate in each body, each intergovernmental body. And, what we do is, we track it - we take a position on it. And then we track their positions against our position. And this makes States very uncomfortable... for obvious reasons. But, it's well within our right to do that. We're an organization that monitors the UN and I think this caused some States in the NGO Committee to feel that... they don't like the positions that we take. For example, if we support certain country resolutions. And the States that don't support those resolutions don't want us to have increased access to the UN. So, I think that was really the major problem with our organization. #00:06:56-3#
- (11) So, I've read that people perceive that it's becoming increasingly difficult for human rights NGOs to obtain status. Do you feel the same? #00:07:04-4#
- (12) I definitely feel the same and we feel that the makeup of the body and the membership of the NGO Committee is obviously going to be the determining factor of how difficult it is for human rights NGOs to get status. If countries that have serious human rights problems and aren't committed to a strong civil society are on the NGO Committee which is increasingly the case, then clearly they are going to try to block NGOs that are working on those issues. And in the past year, I think it was this year, the balance of the NGO Committee shifted to a degree where you saw more countries we fear are going to be hostile to NGOs or perceptibly not friendly to NGOs. So, there is definitely a problem in the institution. Just the institution of how to accredit an NGO, because you have a resolution that makes it clear what the two requirements are. There are two requirements for an NGO to be accredited. I'd have to look back at the 1996/31, but there are two major requirements. One is: You have to be working on an issue related to the UN and there is another technical requirement I think. And that's it. But then you got 19 governments making that judgement. Which doesn't make any sense. All you need is an office to look at the applications of an NGO to see whether or not they're working on that issue and whether they meet the other technical requirements, registration, whatever it is. So, the structure doesn't make sense. And the structure lends itself to politicization. #00:08:53-2#
- (13) So, do you think a better solution would be for example the Secretariat, the UN Secretariat, making the decisions? #00:09:03-2#

(14) I think so. I think there should be an office of the Secretariat... of the UN Secretariat. I don't see any reason why governments need to waste their resources and their time to sit down and debate whether an NGO meets those two technical requirements. It's a waste of time for the government. It's a waste of time for the NGOs. It's a waste of resources. It's not helping to promote democracy and human rights or any of the pillars of the UN - development, international security - to have such an inefficient, politicized process to get the voices of people heard around the world at the UN. Also, I think some States would like to get their governmental NGOs through. We have a problem with GONGOs too. NGOs who get a disproportionate amount of funding, or almost all their funding, or their instructions from a government, and their leadership is part of a government, directly or indirectly. And the governments work to get them through the NGO Committee which they shouldn't be getting through the NGO Committee. So, I just don't feel that this is a governmental job, frankly. This We are talking about nongovernmental voices. So, this just shouldn't be done by governments I think. But I do think it has to do with the agenda of a government and what a government perceives as its national interest. So they're basing their decision on that. And that's not... I don't think that that's a healthy way to have the process to be. #00:12:46-7#

(15) So, in the end you got accreditation, your organization was accredited. How did that come about? #00:12:57-4#

(16) We, like I said, we took part in the process for two or three years. And it was quite difficult, in the sense that we went to several of these meetings and spoke in front of the Committee and we were doing a great deal of lobbying and advocacy with governments directly. With all the governments in the Committee. Some would not talk to us. Though we continued to try to meet with them, continued to try to engage with them in the Committee sessions. And, so we really tried to meet with every single government and we were very persistent about it. When we realized that there wasn't going to be a way to try to convince governments that we met the requirements, we made a decision to call for a vote and to have those governments that were working to help us, that were supportive of our application, to call for a vote, and to see what happens. And if we didn't win the vote, we would then appeal at the ECOSOC. So, that took place and we finally called for a vote and we lost the vote. I can't remember the exact vote count. But we lost the vote. We were a little surprised, we thought we'd have a chance, but we lost it though. But anyways... that freed us to then go to the ECOSOC. Because then, what ended up happening was, the NGO Committee was forced to take a decision. In fact, what they try to do is to frustrate an NGO to pull out of the process, because they are scared of losing a vote or they don't have the resources to continue. But in reality we called the bluff of the NGO Committee because we said: We know we're qualified. If you want to reject us, we are going to force you to actually formally reject us. And, when they formally rejected us that put them on the documentation of making a decision that was a poor decision. And then they had to respond to their bigger body that they are a subsidiary of which made them look very, very bad and the work of the NGO Committee very, very bad. So then, it was a strategy on our part to say: put the decision on paper and force the vote and then we took it to the ECOSOC and we then had to lobby it much, talk to a much larger group of States. #00:15:31-5#

(17) But, sorry, you took it to the ECOSOC or was it an automatic mechanism? #00:15:36-0#

(18) Well, the report goes to the ECOSOC and what the ECOSOC does, is look at all the decisions of the NGO Committee. But we went to ECOSOC as well and spoke to all the governments in ECOSOC, one on one, informally. We went to all the governments and said we want this decision overturned because this is what happened in the NGO Committee and we gave them the background. We put a lot of effort into it by meeting with each government and we also had the support of our own government. And we worked very hard on our own

capital to make sure that our government made it a priority. And that's really critical. What I tell to NGOs that are having problems, particularly those that have the opportunity to work with governments that are friendlier to NGO participation, I always say: Really, you need your government support. For example, we were talking to a Japanese NGO now having problems. And my advice to them is to get the support of Japan, because if Japan takes it on and says: Why are you rejecting them? Then Japan really needs to make this a national issue for themselves and say: This is our NGO, it's a legitimate NGO that is doing good work and we're going to fight this fight. So, that's really important. We have that support from our government. So we were able to get their support and we also put a lot of work into it and then we overturned, basically. So, we had to. There had to be a motion within the ECOSOC to criticize, reject or table something, a motion, to basically overturn the NGO Committee. Which was quite dramatic in fact, when it happened. #00:17:21-2#

(19) I've heard that happens increasingly now. #00:17:26-1#

(20) Yes. There was an LGBT group... LGBT groups have a lot of problems. And I think there was an American LGBT group that ran into problems again and got voted down, I believe, in the NGO Committee. And then it was overturned recently. #00:17:44-7#

(21) Why do you think happens that? Is it because of the different composition of States in the ECOSOC compared to the NGO Committee that it gets overturned? #00:17:53-4#

(22) Yes. I think so. I think it's the different composition of States and also... But it's interesting because we had a few States change their vote. We had for example, and I recommend you go back and look at our vote, I think it might have been like two or three States that were in the NGO Committee that either abstained or voted no, I can't remember.. Except, India, for one, abstained in the NGO Committee and then voted yes. So, you see, you can see shifts. Particularly as the trend and the wave is going in one direction. You see that not only in the ECOSOC, but it's a serious UN body and they have to uphold their own resolutions. #00:18:53-4#

(23) Thank you!

Interview 6

(1) Hast du den Vergleich, wie es mit den NGOs in New York ist, im Vergleich zu Genf? #00:00:23-4#

(2) Den Vergleich habe ich jetzt direkt nicht, ich denke NGOs sind hier wahrscheinlich noch aktiver und noch präsenter als in New York, weil schon allein durch die vielen Side Events, die hier während des Tages stattfinden. In New York haben wir natürlich auch Kontakt zu NGOs und man sieht und hört sie auch, aber, es gibt auch Gelegenheiten für NGOs das Wort zu ergreifen, aber es ist nicht so gut strukturiert wie hier. Wo die NGOs sehr spürbar sind und wirklich auch das Geschehen wesentlich mitbestimmen, das ist bei Kommissionen wie bei der CSW - der Commission on the Status of Women, die voll mit NGOs und NGO Beteiligung ist und wo das auch ein wirklich sehr wichtiger Faktor ist. #00:01:19-8#

(3) Vor Kurzem war eben diese NGO Committee Sitzung. Wie war das? #00:01:27-5#

(4) Schwierig. Also, das NGO Committee hat sich in letzter Zeit leider nicht gerade durch große Effizienz ausgezeichnet. Es sind sehr viele NGOs wieder verschoben worden, also "deferred", auf die nächste Session. Es gibt jetzt, ich hab jetzt die Zahlen nicht hier, aber es gibt glaub ich einen Backlog von 200 oder zwischen 200 und 300 NGOs. Das ist natürlich enorm. Die hatten auch eine Rekordzahl an neuen Anträgen und es sind auch noch so viele

wie noch nie auch verhandelt worden und auch so viele wie noch nie haben den Konsultativstatus bekommen, nur angesichts dieser unglaublichen Zahlen an NGOs, die ja ihren Antrag stellen und die dann tatsächlich verhandelt werden, ist das wirklich ein Tropfen auf den heißen Stein. Und, wieder war es so, dass die meisten NGOs wieder deferred wurden bis zur wiederaufgenommenen Session im Mai. #00:02:37-2#

- (5) Und... überhaupt, die Entscheidungen, die das Komitee trifft, sind ja nicht unumstritten. #00:02:53-8#
- (6) Genau. Die Entscheidungen sind nicht unumstritten, weil ein gewisses Muster... weil man ein gewisses Muster feststellen kann, dass gewisse Arten von NGOs eigentlich fast automatisch, kann man sagen, deferred werden. Darunter auch viele Menschenrechts-NGOs. Die Arbeitsmethoden sind auch relativ umstritten. Es funktioniert so, dass zwei Listen erstellt werden in den vorbereitenden Sitzungen. Und zwar eingeteilt in "Nord" und "Süd", was man schon hinterfragen kann. Also, es gibt eine "Liste Eins", und das heißt eben Nord und Süd und eine "Liste Zwei", unterteilt eben in Nord und Süd und, oder eigentlich muss man sagen Süd und Nord, und also, sehr vereinfachend kann man sagen, die Liste "Eins - Süd" ist die unproblematischste Liste. Das geht dann immer ansteigend und die schwierigsten sind eigentlich immer auf der Liste "Zwei Nord". Und von diesen NGOs bekommen die allerwenigsten Konsultativstatus, sagen wir, zumindest nach erster Behandlung. #00:04:06-1#
- (7) Und was für NGOs sind das dann, nach welchen Gesichtspunkten landen die auf diesen Listen? #00:04:13-5#
- (8) Das ist ein relativ intransparenter Prozess, der unter den Mitgliedern des NGO Committee läuft. Es ist auch nicht immer ganz logisch. Zum Beispiel sind osteuropäische NGOs auf der Liste Süd. Es ist wirklich nicht sehr nachvollziehbar und es ist sehr intransparent. Österreich ist kein Mitglied des NGO Committee, wir sind nur Beobachter, das heißt wir hatten da auch keinen Vertreter, konnten an diesen Vorbereitungsprozessen nicht teilnehmen, aber es ist wirklich nicht unbedingt nachvollziehbar. #00:04:51-0#
- (9) Und, weil du vorher erwähnt hast, es gibt NGOs die allein von den Themen, für die sie arbeiten her, ausgeschlossen werden. Was wäre das zum Beispiel? #00:05:08-8#
- (10) Es ist ein Faktum, dass zum Beispiel LGBT NGOs noch nie, soweit ich informiert bin, im Komitee Konsultativstatus bekommen haben. Es gibt natürlich LGBT NGOs die Konsultativstatus haben, den sie aber vom ECOSOC bekommen haben, beziehungsweise weil eine negative Abstimmung im NGO Committee aufgrund der dort herrschenden Mehrheitsverhältnisse, dann vom ECOSOC, mit anderen Mehrheitsverhältnissen, overturned wurde. Und deswegen gibt es in der Tat einige LGBT NGOs die an der Arbeit der UNO mitwirken können. Aber, meines Wissens ist der Status eben durch das eigentlich zuständige Komitee noch nie verliehen, also, der Konsultativstatus noch nie an eine LGBT Organisation verliehen worden. #00:05:59-9#
- (11) Und, wie ist es mit NGOs die meistens eher zu bestimmten Ländern arbeiten? #00:06:14-8#
- (12) Auch in der Regel sehr schwierig, weil natürlich, wenn NGOs zu bestimmten Ländersituationen arbeiten, das dem betroffenen Land oder aber auch anderen Ländern, die ein „stake“ in dieser Arbeit haben, nicht genehm ist, dass auch zumindest so unangenehme Fragen gestellt werden, dass meistens ein deferral der wahrscheinliche Ausgang ist. Es gab den Fall auch letztes Jahr, mit einer iranischen... Also, es war keine iranische NGO, es war eigentlich eine amerikanische NGO die zu Iran arbeitet, es war eine syrische NGO, es war

eine algerische NGO die zur Westsahara arbeitet... Also, es gibt... Das Komitee kann per Abstimmung entscheiden, aber diese Abstimmung muss auch jemand verlangen. Und solange keine Abstimmung verlangt wird, zu einer bestimmten NGO, wird meistens auf ein deferral zurückgegriffen. #00:07:22-6#

(13) Es gibt ja dann auch die Möglichkeit, dass der Konsultativstatus suspendiert wird, oder entzogen wird. Sind dir da Fälle bekannt? #00:07:35-6#

(14) Ja, sind mir schon Fälle bekannt, aber jetzt keine wirklich schlagenden. Also, es kann ja passieren, dass eine NGO aufhört zu existieren, oder sich ihr Status ändert oder dass sie wirklich in ihrer Arbeit dann etwas machen was nicht vereinbar ist mit dem Konsultativstatus, also... Es gab Fälle in der Vergangenheit, die ich jetzt im Einzelnen nicht präsent hab, aber es gibt keine, sozusagen prominenten Fälle, oder zumindest sind sie mir nicht bekannt. #00:08:27-2#

(15) Ja, du hast schon erwähnt, die Working Methods und diese Listen und... überhaupt diese Politisierung, könnte man sagen. Was könnte deiner Meinung nach getan werden, um das zu ändern? #00:08:45-4#

(16) Also, ein sehr einfacher Schritt, der auch immer wieder von der EU gefordert wird, ist, dass man nach einer bestimmten Periode von deferrals automatisch zu einer Abstimmung schreitet. Zum Beispiel nach zwei Jahren. Also, wenn eine NGO durch zwei Jahre hindurch immer wieder nur verschoben wurde auf die nächste Session dann könnte man sagen, das Komitee soll zu einer Entscheidung kommen, die eben durch Abstimmung getroffen wird. Das wäre eine Arbeitsmethode die relativ einfach und wahrscheinlich recht effizient wäre. #00:09:23-4#

(17) Und Abstimmungen können nur von Staaten verlangt werden, also nicht von der NGO selber? #00:09:28-0#

(18) Nein, Abstimmungen können nur von den Mitgliedern des Komitees verlangt werden, also nicht einmal von Beobachterstaaten, sondern nur von Mitgliedern des Komitees. #00:09:34-3#

(19) Okay. Und, nochmal, um auf diese Listen zurückzukommen. Also, diese Listen sind die Listen von den NGOs, die behandelt werden, sozusagen, in der jeweiligen Sitzung. #00:09:47-3#

(20) Ja. #00:09:48-3#

(21) Okay. Und die sind dann quasi schon gruppiert in "Die bekommen wahrscheinlich nicht Status", mehr oder weniger? #00:09:59-1#

(22) Also, von jeder Liste und von jeder Sub-Liste NGOs haben NGOs den Konsultativstatus bekommen. Aber, ohne es jetzt empirisch überprüft zu haben, allein gefühlsmäßig, wenn man drinnen sitzt, sieht man, dass die Liste Eins relativ... Also, man sieht dass die Wahrscheinlichkeit für eine NGO Konsultativstatus zu bekommen auf der Liste Eins größer ist als auf der Liste Zwei. #00:10:28-7#

(23) Okay. Aber diese Listen, die legen dann die Reihenfolge fest, in denen die NGOs behandelt werden? #00:10:41-6#

- (24) Innerhalb der Sub-Listen ist es alphabetisch. Also, es wird eben unterteilt, Liste Eins, Liste Zwei und dann Liste Eins Süd und Nord und Liste Zwei Süd und Nord. Wobei, eben, das Kriterium ist, wo die NGO ihren Sitz hat, welchen Staat, deswegen hat die Schweiz zum Beispiel sehr viele NGOs, weil natürlich sehr viele NGOs in und um Genf ihren Sitz haben. Aber... Ja, dann innerhalb dieser Subgruppen gehts alphabetisch. #00:11:17-3#
- (25) Alles klar. Das heißt, auch eine Überarbeitung der Working Methods würde vielleicht eine Verbesserung bringen? #00:11:37-8#
- (26) Eine Überarbeitung der Working Methods ist eine mittlerweile langjährige Forderung der EU, weil es ist im Grunde sehr bedenklich, dass das Komitee, das ja die Teilnahme der Zivilgesellschaft fasilitieren und fördern soll, mit dieser Aufgabe offenbar nicht fertig werden kann, wenn man sich diesen ungeheuren Backlog an Anträgen ansieht. Und manche, es gibt ja Anträge, die liegen seit vielen Jahren. Also, grundsätzlich sind wir natürlich... hat das NGO Committee eine sehr wichtige Aufgabe, weil die Teilnahme der Zivilgesellschaft an den UNO Prozessen ist natürlich ein sehr wichtiges Anliegen. Aber derzeit kommt dieses Komitee eben nicht seiner Aufgabe nach, so wie es eben sollte. Deswegen muss man sich die Arbeitsmethoden auch ansehen, mit dem Ziel sie zu verbessern. #00:12:47-5#
- (27) Und, im Allgemeinen, also, jetzt auch einmal abgesehen vom NGO Committee selber, betreffend die grundlegenden Regeln für NGO Partizipation im UNO System, gibt es Bestrebungen da eine grundlegende Reform zu machen? Oder ist das eher so in den kleinen Dingen? #00:13:23-0#
- (28) Nicht dass ich wüsste. Also, es ist mir nicht bekannt, dass da jetzt eine grundlegende Reform geplant ist. Aber die Teilnahme von NGOs stellt sich ja nicht nur hinsichtlich des Konsultativstatus sondern in manchen Fällen kann sie sich auch stellen für NGOs, die den Konsultativstatus nicht haben aber an ad-hoc Veranstaltungen eigentlich viel beitragen könnten. Wir hatten den Fall in verschiedenen Zusammenhängen, zum Beispiel einem HIV/AIDS High-Level Event. Dann, zum Beispiel bei der Frauenstatuskommission im Jahr 2010, die ja 15 Jahre Peking gewidmet war. Da war die Frage, können die NGOs, die in Peking dabei waren, im Jahr 1995, aber keinen Konsultativstatus haben, trotzdem dann bei dieser Sitzung, die eben der Commemoration gewidmet war, teilnehmen. Es sind alles dann Arrangements, die dann ad-hoc diskutiert werden, und man sieht schon, eigentlich, dass das eher schwieriger wird für NGOs. Also, immer mehr die Forderung, dass zuerst eine Liste an NGOs erstellt wird, und dann auf einer no-objection Basis nur operiert wird, und, also, es ist... für NGOs die keinen Konsultativstatus haben, ist es bestimmt nicht einfacher geworden. #00:14:51-2#
- (29) Mhm, okay. Das finde ich interessant, weil man ja immer wieder Rufe hört, dass Civil Society wichtig ist, und so weiter, das heißt in der Praxis wirds eigentlich schwieriger, obwohl ja eigentlich, meiner Meinung nach zumindest, NGOs immer sichtbarer werden. #00:15:20-6#
- (30) Das stimmt, der Beitrag von NGOs ist unglaublich wichtig. Aber... und NGOs machen auch sehr gute Arbeit. Ich glaube auch, dass es schwer ist zu überprüfen, aber, rein gefühlsmäßig glaube ich auch, haben auch noch nie so viele NGOs wie jetzt Konsultativstatus gehabt. Aber, es ist der Konsultativstatus, dieser Prozess, den Konsultativstatus zu bekommen, ist nicht zuletzt aufgrund des NGO Komitees ein schwieriger und auch nicht alle NGOs haben den Konsultativstatus, könnten aber im Einzelnen sehr wohl etwas beitragen. Also, natürlich finden sich meistens Arrangements, wo das dann auch noch möglich ist, aber es ist eben, wie gesagt, ich glaub nicht, dass es leichter geworden ist. Vor allem für NGOs die... zu deren Arbeit es keinen wirklichen Konsensus gibt. #00:16:33-8#

(31) Was ich gehört habe, von NGO Seite her, wünschen sie viele so einen Akkreditierungsmechanismus, wo nicht Staaten, sondern zum Beispiel das UN Sekretariat entscheidet. #00:17:19-6#

(32) Wäre schön, aber ist sicher nicht realistisch. Also, das muss man ganz klar sagen. #00:17:28-4#

(33) Vielen Dank für das Interview.

Interview 7

(1) My first question is a very general one. Could you introduce briefly your work and how long you have been working for OHCHR? #00:00:13-1#

(2) With OHCHR I've been for a year. I've started last year in January. My position is called the NGO liaison officer. And this is part of the Civil Society Section which is the small section within OHCHR which is positioned outside the substantive departments. And it's supposed to facilitate engagement of civil society with OHCHR and vice versa. So, what we do is, we provide information updates to NGOs about the events happening, with all the human rights mechanisms, like the Human Rights Council and the UPR and et cetera. So, we have for example the webpage. People can inscribe to receive our regular updates. So, we try to convince colleagues within the house to send us information so that we can send the updates because it's not that the information is lacking but sometimes it will be just posted in internet and people wouldn't know that it's there. So, that's what we do. We have the... well, it's not a hotline, because we still work from 9 to 6, but it's a publicly available number - which is my number. So, any public phone calls are coming on my phone... if there is any question that NGOs or civil society actors have... And we have a dedicated e-mail address for these purposes which is civilsociety@ohchr.org. That's one area. That's the "sharing information" area. #00:01:52-4#

(3) What kind of information? Could you give an example? #00:01:52-4#

(4) For example, we started sharing... There is the internal briefing which is produced by the Special Procedures for example. This is what has happened during the week or what will happen in the week after with the Special Procedures - meaning, any visits by Special Rapporteurs to countries for example or any meetings of something like that. But that was for a long time only the internal resource for the office. So, what we do is, we sanitize it. Because sometimes it contains confidential information that cannot be shared with outside sources but we take it out and we send it weekly to the distribution list. So, that's for example: If you're an NGO in Guatemala and you're on our inscription list, then you receive an e-mail with information that the Special Rapporteur on the right to health is going to Guatemala in a month. Then you know, you will be prepared and you will be sending information or starting to lobby to be included in the meetings with the Special Rapporteur, so, these kinds of things. Different ones: If there is the Human Right Council session coming, which is your interest, then we'll be sending information about that. For example, like, five seconds ago I sent a broadcast - we call it the broadcast - sent a broadcast about the meeting which the president of the Human Rights Council will have before the session with NGOs. To discuss the programme of work and to go over the issues that might be of concern to NGOs. So, that's one area of our work, to share this kind of information. Then we are trying of course to also build the capacity of NGOs or civil society to interact with OHCHR and with the mechanisms. So, this book, "Working with the United Nations Human Rights Programme" is one of those. And there are some others, like this for example, the "Practical Guide for NGO Participation at the Human Rights Council". So, just producing the resources for civil society to be engaged. We don't have many chances of doing trainings ourselves,

outside of Geneva, for example, but, upon invitation or if there is a need with our limited resources we can do that also. We prioritize the regional meetings. If there is regional meetings of the defenders which we would attend and bring some light into it then we'll do it. And we're trying now to work more and more with OHCHR field offices. There are 56 of them. 56 different arrangements in the field. And in each region of the world there is a regional office. So in each regional office we now have a civil society focal point through who we are trying to work. So that's it in a nutshell. And I will give you a bit later also the brochure about our Section. #00:04:47-0#

(5) So, these focal points, their aim is to also facilitate the access of nationally based NGOs to mechanisms here in Geneva? #00:04:59-1#

(6) Yes. #00:05:03-3#

(7) And you mentioned this mailing list: Can anyone inscribe on this mailing list? #00:05:08-8#

(8) Anyone can inscribe on it. You go to our website - civil society page - and from there you just enter the e-mail and basic information about your organization or group, because, for what we are keeping them, it's a database of contacts. It's not that we are vetting anybody to start receiving the publicly available information from OHCHR. #00:05:33-6#

(9) So, you said, you are working for the Civil Society Section. Is that... I came across the wording Civil Society Unit. Is that the same? #00:05:46-2#

(10) Yes, this is because it had a different name. It was the Civil Society Unit and then it became a Section. Because we were one person and then we grew a bit. Now we are four persons, including two interns on six months basis. #00:06:01-3#

(11) Ok. You've already talked about what services you provide. What was the reason for OHCHR in the first place, to establish your section? #00:06:24-7#

(12) That was... Well, I mentioned in the beginning that of course all the substantive departments will be working with civil society and OHCHR as a whole. For example, if the High Commissioner is visiting a country, like she is doing now, she went to Israel and the Occupied Palestinian Territories. She will be meeting with civil society groups there for sure. So, that's part of any OHCHR visit, to meet governments, civil society, National Human Rights Institutions. If we're speaking about the Human Rights Council: You know, NGOs can get involved in the Council. Special Procedures, information from NGOs is the meat of their work. So, everybody is working with civil society. Why our unit was created is to... well, first to deepen the contact with civil society and to try to bring more groups that are not geographically or substantively yet represented and having contact with the OHCHR and the mechanisms, like indigenous groups, like some minority groups and others. And, to go beyond just an NGO, because there is a variety of civil society actors included, and then there are trade unions, students organizations, different kinds of arrangements. So, to go beyond that and to try to think and to work with colleagues on how to make our contact with civil society more effective and efficient. Like, this simple thing, the e-mail update, this is only recent. This is like, for the last eight months for example. Before, we used to have the list of the Geneva-based ECOSOC NGOs and we would be sending information to them. So, now we are spreading it further. Information is shared broader. #00:08:15-0#

(13) Ok, that's interesting. So, a major role of your office is facilitating access or distributing information, so to say? #00:08:31-9#

(14)Yes. #00:08:31-9#

(15)So, what obstacles do NGOs in your opinion face when they want to access the Council?
#00:08:41-3#

(16)Ok, so now we move to the Council. Because we are working for everybody. For the Special Procedures, for the treaty bodies, for other mechanisms. For the Council: Our unit or section, the historic creation of it, was that there was an NGO liaison person that was attached to the Council. Because of course the biggest involvement of NGOs is with the Human Rights Council session when many of them are coming for the session, especially now with the UPR etc. So, we historically just continued. Our involvement with the Council's work is probably more than with any other procedures. And if you look at my calendar, there is 22 weeks in one year that is the meetings. Meaning, this is the Human Rights Council session - the regular session - and not counting the special sessions because these we don't know about in advance - there is three UPR working groups, there is also the Expert Mechanism on Indigenous People, there is the Social Forum, the Minority Forum and other mechanisms of the Human Rights Council. So, this takes 22 weeks of my life, actually with being at Palais des Nations and trying to facilitate access of NGOs there. So... what was the question again?
#00:10:16-1#

(17)The specific question was: What obstacles do NGOs face when they want to access the Council? I imagine NGOs approach you with issues or questions... With what problems do NGOs approach you? #00:10:45-2#

(18)All sorts of problems. There are several major ways in which NGOs are engaging in the Council - in the main Council. It's only the NGOs in consultative status with ECOSOC that can come to participate in the Council sessions as observers. So, and the way they can participate in, is: They can submit written statements, that we are processing ourselves and these statements are then issued under the official UN number and it's included as a part of the documentation of the Human Rights Council. So, that's the written statement. There is also the oral statement that they can do during the Council session. Then there are parallel events that the NGOs can organize on the margins of the Human Rights Council. Basically, during the day they can organize one to three hour parallel events on the issues pertaining to the work of the Council. That's the three ways. I think that's all, actually. That's the major ways. So, in each of these categories of course there might be some problems. First of all, accessibility of the Council. Again, it's accessible only to NGOs in ECOSOC status, so some small national NGOs will not be able to participate. And of course sometimes the bigger NGOs are kind of lending their consultative status to somebody else so that they can attend Council sessions and also take the floor. So they are in a way facilitating the participation of the national NGOs. Of course it's easier for the NGOs that are based in Geneva to take part in the Council, because if you're based somewhere else you have to travel here. But the programme of work of the Council is not stable and set in stone. It can move, a session that is planned for Friday can be moved to Monday, because it just took longer. And for some people that poses a problem because they have to stay over the weekend, and financial problems. So, that's the one, the access of the NGOs. In terms of written statements: I don't think there is any problems in this area, because we just give the deadline, which is, like, for the session that is upcoming that starts on 28 February, the deadline is 14 February to submit the written statements, two weeks in advance of the Council, because these two weeks will enable us to process it. Because we have to put it in the right format, we are also reading the statements to see if the language is in conformity with the UN language - basically, if there is no abusive language there, if the names of the territories are correct, and if there are some issues with it, then we have to go get back to the NGO and ask. We are not vetting the statements, we are just giving advice because we also know that if there is one

statement that is very inflammatory, this can fire back to the whole NGO community, because then the member States will say: You are not supposed to do that. And even for some NGOs there can be major consequences: The ECOSOC status could be suspended or withdrawn afterwards. That's for the written statements. For the parallel events... Do you want to ask a question? #00:14:28-9#

(19) Yes, I wanted to briefly ask you whether the written statements are distributed in hardcopy, or how are they distributed among the member States? #00:14:41-1#

(20) They are included in the official documentation of the Council. So, for example, if, I don't know, agenda item 3 is discussed today, then in the morning of the day you will have the documentation relating to this agenda item at the documentation centre at the Palais in room XX over there. So, you can pick it up, and it's also included as a part of the documentation in the order of the day. So, these particular written statements. For the parallel events: What are the problems... There are some technical problems. We depend on the conference services to provide us with a number of rooms so that we can distribute them. The engagement of NGOs over this period of time has grown. Now the statistics show that every time there are more and more participating. And more and more parallel events being organized. And we always run into the problem of people of course wanting to do side events during the lunchtime, which is the best, because it's outside the session. And we cannot satisfy this because we get... I don't know... five rooms from the conference services, which we then have to share also with the permanent missions which also want to organize events. So, the availability of rooms might be one of the problems. #00:16:16-8#

(21) Are NGOs... like, as you said, availability of rooms is a problem, are then NGOs just asked to organize the parallel events earlier or later, outside of lunchtime? #00:16:30-9#

(22) Yes, we are just trying to accommodate all the requests that come. It's not always possible. We do it electronically, you know? You can register for the side event online and then we receive your request and then we review all the requests and take into account when the request was made. And then, depending on how many - if an organization has put a request for six side events, we ask them to prioritize which ones they really feel they need to do in the lunchtime slot. And then we are trying to allocate rooms as much as we can. So... that's the parallel events. On the speaking thing... #00:17:13-4#

(23) Just briefly... You just said, if an organization asks for six parallel events. How... Are there really organizations that organize six parallel events? #00:17:22-0#

(24) Yes, sure. #00:17:24-9#

(25) Which ones would that be? The big ones? #00:17:31-3#

(26) Yeah, like those ones... mostly... Yes, the big ones, but you know the NGOs, the major of the NGOs that are coming to participate in the Council, is also different. Because some NGOs are like... Amnesty International or Human Rights Watch or ISHR... that the NGOs that we know are credible, they work on human rights issues, they share information that has been collected through the normal monitoring processes. Sometimes there are organizations that are stimulated by their governments, for example. So, that's the different nature of NGOs. And sometimes the space of course is taken. But these NGOs, if they have ECOSOC status, they are equal participants of the process, so, there is no way to overcome that. And, of course, what we see more and more now is that these NGOs, so called GONGOs, they get registered, they get their ECOSOC status from the NGO Committee in New York more and

more. Because of the composition of the Committee, because of the requirements, because of the political situation. #00:18:54-4#

(27) So, that's an increasing problem, GONGOS? #00:19:01-3#

(28) That's also the problem, because they take space from the, let's say, genuine NGOs. #00:19:07-0#

(29) Maybe, let's come back to ECOSOC status a little bit later. You wanted to continue with the... #00:19:18-7#

(30) Well, if you want, I can continue with the three areas of engagement. I covered the... Now, it's speaking at the Human Rights Council. NGOs are always speaking at the end of the segment. There is always a concern that they don't have much time to speak. There is only, usually two minutes for the NGOs to speak. And sometimes there is not enough time for them to speak so this is always a problem. And, again, if the space is taken by some not so genuine NGOs then there is less space for the other NGOs to engage. And that's on the format. On the substance, there is also, of course, an issue which has been increasingly voiced by NGOs: that it's difficult to raise country situations. Either urgent human rights concerns or chronic human rights violations in the country, because the States, many States, insist that country situations can only be discussed within agenda item four, which is for the situations requiring the Council's attention. So, and in other items the country situations can only be brought up by way of example. But, you know, if you start speaking about State X, for example, for two minutes, during the agenda item nine on racism you will be speaking about racism in State X, which will not be appropriate and you will get a point of order from the delegation. And these things, we are seeing increasingly, that, if the NGO is speaking, then there might be points of orders coming from the member States to stop the NGO to speak. Then, of course, it's up to the president to decide whether the point is in order or not. So, and of course this brings in general an intimidating climate for NGOs. #00:21:13-9#

(31) So, would you say that the climate is increasingly hostile? #00:21:18-3#

(32) The climate is not getting warmer, for sure, for NGOS. And yes, the boundaries are always a bit pushed by the member States. For example, the trend that was not seen before... and, you know I've been here for a year only, so, I can only speak for my year. But, the States for example can question who is speaking from the NGO. Because, according to the rules, the procedures etc., NGOs can accredit anybody to be their representative. And now the States are questioning whether this should not be a member of the NGO. So, you will have somebody speaking and then, for instance, the delegate of State X will take the floor and say: We object to this person speaking because we don't think that this person is a member of the NGO. And of course, if there is a complaint, then we have to address this complaint. We will stop the person... I mean, the president will stop the person from speaking until the Secretariat checks on the status of this individual. We have to go back to the head of the NGO to check whether this person is authorized to speak. So far, this issue of representative or a member was not very exaggeratingly put on the table. But still, this is becoming an issue. And of course, the agenda item moves forward, and the person is prevented from speaking. Sometimes the agenda item can even end and the person will not speak, because we can't... If, again, if the head of the NGO is somewhere in the US and we are ahead of time, nobody will pick up the phone at the end of the line. #00:23:14-0#

(33) So, that was one example of States trying to curtail the ways of engagement of NGOs. Can you think of other ways? #00:23:29-2#

- (34) Other ways can be going to the parallel events and trying to intimidate NGOs there. To say that, what you are saying is inappropriate. There were situations when we would receive official complaints from member States to the Secretariat of the Human Rights Council saying that this parallel event that was organized by this and this NGO spread lies, there was misinterpretation, etc. etc. So, of course our official response is always that we do not... we cannot get engaged in the substance of what the NGO is discussing at the parallel events. But, there is of course the intimidating effect. #00:24:11-3#
- (35) Ok. So, you mentioned the Secretariat. Just, for me, to clarify: What is the division of work between the Civil Society Section and the Council Secretariat? Because it's not quite clear to me. #00:24:33-1#
- (36) For the Human Rights Council session myself and the two interns of ours are usually kind of attached to the Council Secretariat. The Council Secretariat is of course the Secretary of the Council and some other staff working there. There is another person, who is the NGO liaison officer within the Secretariat of the Human Rights Council. So, during the Council sessions we are just working together. We are sitting in one office and this is the NGO liaison office with a clear sign on the door. So, NGOs come there with any troubles that they might have. So, we are there to do all these things like registering people for the oral statements, written statements, etc. But we also see if there are any complaints coming from NGOs. For example sometimes there are intimidations, even going further, like... How can I put that... Like the NGO person being filmed or photos of the person will be taken. Not in the room XX but outside the room and then these photos would appear in a newspaper in the country, saying that this person is telling lies about our country. It's never clear whether the member States would be involved in this, but of course there is that possibility. #00:26:13-3#
- (37) And, in that case, what is your reaction to this? #00:26:20-7#
- (38) What is our reaction? Well, we record the case. I mean, every case is different. But in most of them - I mean, in all of them, there will be our communication with the member State that could be supposedly engaged, to receive some further information from them. #00:26:43-1#
- (39) Ok. So, and the Secretariat... Could it be described as your unit being the first entry point to talk to for NGOs, to bring up problems, and the Secretariat as more being involved in the administrative proceedings? #00:27:16-3#
- (40) No, we are just working together. Because there are many issues that they will not be able to deal with, because there is only one person that is kind of assigned for NGOs in the Council Secretariat. So, there is no way that she will be able to cope alone with everything. So, we are just working together on the same things. We are kind of interchangeable during the Council sessions. If there is any decisions that are beyond our control that have to be taken, then we bring it to the attention to the Chief of Branch of the Human Rights Council and the Human Rights Council Secretary plus the Chief of the Civil Society Section. If there are incidents, for example, then of course we go through the chain of command. #00:28:13-2#
- (41) So.. I think... for me, when I look at the Council, I see kind of three players. I see NGOs, I see States and I see the OHCHR. What would you say, what role does the OHCHR, the Council Secretariat or your office, assume in all this? In this constellation? #00:28:43-2#
- (42) Well, OHCHR is not a player. We are the Secretariat to the Council. So, we are serving the Council with information. The conference support is from the Palais des Nations, but we provide the technical support. Of course the High Commissioner is also a part of the process, because she reports, she presents reports to the Human Rights Council. And then,

sometimes there are resolutions that ask OHCHR to do research on a particular issue. So, then there will be the research and right to development division doing the research for the Council. But, I mean, States, if you divide them into two, there are member States and there are observer States. So, perhaps this division should be made. And also, the other partner are the National Human Rights Institutions that also come and speak. #00:29:44-1#

(43)I imagine it is probably a sensitive position, the OHCHR being a service provider to States. But at the same time, you position, being kind of a service provider for NGOs. #00:30:03-9#

(44)We're a service provider for all the parties to the process. NGOs are a party to the process, so... #00:30:14-1#

(45)Ok. So, yes... The resolution establishing the Human Rights Council talks about arrangements and practices that govern the relationships with NGOs. What does that mean for your work, for example? #00:30:35-9#

(46)I mean, there are clear rules. The main thing is this ECOSOC status and that's I think the basic rule, that only NGOs in consultative status with ECOSOC can participate in the Council. I think there is some language about the... I mean, it's also, as far as I remember the resolution... it gives the concrete technical things. Like, how many words for the written statement you can submit if you are an NGO in the special status or in the general status so there are some rules and regulations for the NGOs I guess. #00:31:14-6#

(47)Yes, I think that is in the ECOSOC consultative status resolution. But the resolution establishing the Human Rights Council: I think it has a very general wording, because I mean, aside of the requirement of having ECOSOC status, it really just talks about arrangements and practices. So, and that gives a lot of margin for interpretation I think. And I've heard people describe the OHCHR as a kind of guardian of these arrangements and practices. What do you think of that or what do you think do they mean by saying that? #00:32:03-7#

(48)I don't know what they mean. We are the Secretariat, so we have to make sure that everything works within the rules, but we also, from ourselves, because on the one hand as you said, we are the Secretariat, so we provide a service, but on the other hand, the High Commissioner is the highest authority of human rights. So we are also the substance of human rights. So, that's our role, also, to inject the substance in there. And our role as people working with NGOs is also to try to convince, to push and to ensure that the framework for engagement is not shrinking even further. So that's our main role, I think. To see it enlarging, yes, of course, in an ideal world, but at least to have it maintained in the same format. #00:33:07-6#

(49)Do you see the possibilities for involvement shrinking? #00:33:07-6#

(50)For NGOs, yes. Now there is the review of the Human Rights Council ongoing. So, NGOs are struggling to see that their space is not shrinking, but the review is not concluded yet, so I don't know how what will be there. I think, how the discussions are going, the space will be maintained. But, if it will be shrinking, I don't know now, what will come out of the Council review. #00:33:40-7#

(51)So, you've only been in your position for a year, but this general provision, talking about arrangements and practices, of course also allows for emerging practices and new practices. Have you seen any new practices of NGO involvement? Or possibilities for NGO involvement? #00:34:10-7#

- (52) There is only certain ways how NGOs can get involved, like mainly through the written or oral statements and parallel events, and of course doing their own lobbying and meetings with the member States and other NGOs during the Council. We are trying to make these processes a bit easier for everybody, including for us. Like, for example the online registration for the parallel events. That's one step forward because you can do it online from wherever you are. You can request a meeting room. And the same goes for the oral statements, because before it was a paper system, where the person had to bring the paper, filled in, register it, and then we'd make the list of speakers. Now it's also done online. So, at eight o'clock on Monday morning when the Council starts, an NGO can put in a request for speaking for as many items as they want, just indicating the priority. It's closed now, I can't demonstrate it to you, but at eight o'clock it will be open. And then it's easy also for those people not based in Geneva. Because, of course, if you are based in Geneva, you have preferential kind of... you come every year, you know your way, if you're based even in New York you have less opportunities. So, trying to make this process a bit more technologically advanced, I guess, from our side. #00:35:52-0#
- (53) So, maybe, coming back to the role of OHCHR with regard to States and NGOs. Do you think OHCHR can be sometimes seen as a mediator between States and NGOs? #00:36:24-5#
- (54) Yes, of course. I mean, again, the High Commissioner is the guardian of human rights. So, in any mission she would be meeting with both. And she will be... If there is any seminar, for example, organized by OHCHR, there will be always States and civil society actors involved. Or, if there is any consultations that we do. If, again, our research department is producing the paper for the Human Rights Council and they need input from States, they would be also inviting the civil society to contribute. So, yes, of course there is the mediating role. #00:37:05-0#
- (55) So, I mean, my next question would be the relationship between States and the OHCHR. I mean, you have already touched upon that. Well, from what I've heard it must be sometimes sensitive, because some States would like to see a less independent Office of the High Commissioner. #00:37:36-2#
- (56) Sure, but that is not the situation! The High Commissioner is independent, so, she is free to say what she thinks about human rights. And, of course relations with States are always sensitive. I am not relating myself with States, I am mostly liaising with NGOs, but yes, depending on the State, of course, if we are saying something critical about a State, of course nobody is happy in that State. #00:38:11-0#
- (57) So, would you say that States put OHCHR under pressure with a view to restricting NGO access to the Council? #00:38:28-2#
- (58) Pressure, I don't know! I mean, they can't put pressure on us, but... In the sense, that, if they are sending a *note verbale* to protest about the behaviour of this NGO or that NGO, I mean... Somehow, yes, we can say that this is a pressure on us. #00:38:46-4#
- (59) They send these to you, to your office? #00:38:53-1#
- (60) To the Secretariat of the Human Rights Council usually. To the Chief of Branch. Or to the High Commissioner directly. #00:38:58-7#
- (61) What consequences does that have or what reaction? #00:39:04-1#

(62)It's an official correspondence from a member State, so we have to respond. If the matter requires our investigation then we will do that. But, yes, we are just obliged to respond to any correspondence coming to this office. #00:39:20-2#

(63)So, from the viewpoint of your office or the OHCHR, what is the role of NGOs at the Human Rights Council? #00:39:40-3#

(64)The role? They bring sense to the Human Rights Council. Because, they are those who will be speaking frankly about human rights and the countries. It's not the member States that would speak frankly about the situation in their countries. And, not even other States speaking frankly sometimes about the situation in their neighbouring countries. Take the UPR: How the speaking is taking place in the Working Group is sometimes incredible. With the government of the country that is being reviewed presenting their opinion about their situation, which is of course always mostly positive. But then you would have a couple of countries that will be saying how great the situation is indeed in that country. And you will see from reading the reports that this is not true. #00:40:45-5#

(65)And, what, what functions do you think, NGOs assume in the framework of the Council? I mean, that's a very similar question to before... #00:40:59-0#

(66)Yes, well... They bring their independent voices to the Human Rights Council. #00:41:11-6#

(67)So, you already mentioned a few factors that impede the access, like, being not based in Geneva. So, despite that, which NGOs do you consider then the most active in the framework of the Council? #00:41:35-7#

(68)I mean, take a couple of the last reports of the Human Rights Council and see who is speaking there. So, you will see who is the most active. It's not different or really different NGOs that usually come. Sometimes, if there is a substantive discussion that is happening, like, last time for example there was a panel on trafficking, so that will attract perhaps a bit more different NGOs to come. Or if there is a discussion on disability rights, you will get some other NGOs, but usually it's the same crowd of NGOs. #00:42:14-8#

(69)Do you think that NGOs working on a particular human rights issue are less active, or equally, like NGOs covering all human rights? There are NGOs that are for example only working on children's rights or LGBT issues and there are NGOs like Human Rights Watch who just cover all human rights. Do you see a difference in the engagement? Or in, how they use the Human Rights Council? #00:43:06-7#

(70)Difference in engagement: I don't think so, it's just that the NGOs working on particular issues will be mostly pushing for that issue, while the generalists will be covering the whole spectrum of things. But there is not enough of the specialists entering the Council than the generalists. For instance the indigenous people: There are only two NGOs that usually.... say, who are called indigenous. They are represented at the Council. But there are much more issues from different geographic parts of the world, so I think they are all engaging in the same ways, it's just perhaps that the span of the specialists is not very represented at the Council. #00:43:51-8#

(71)Thank you!

Interview 8

(1) I would like to start with a general question on the ECOSOC status. What do you think about
180

the ECOSOC consultative status? #00:01:02-5#

- (2) Could you clarify your question a bit? #00:01:10-6#
- (3) Sure. What do you think are the consequences of these provisions for NGOs and for their access to the Human Rights Council and their engagement with it? #00:01:26-3#
- (4) I think ECOSOC resolution 1996/31 that sets out the rules governing NGO's accreditation with the UN is quite straightforward and legitimate. That NGOs need to do work that relates to the main objectives of the United Nations, that it's in line with the Charter, et cetera. I think where problems arise is in the application of the rules and the fact that it's intergovernmental bodies that decide on whether NGOs can receive this privileged status to engage with some of the mechanisms. We know that for working with other mechanisms you don't need ECOSOC status. And so the main problems I see is really in the membership of the NGO Committee of ECOSOC and how it works and the fact that there are not sufficient procedural safeguards that aren't in the rules of procedure and that States are clearly applying political consideration to their decisions about accreditation. #00:03:13-9#
- (5) Ok. So, basically, States are exercising their power to restrict NGO involvement? Or... with that, I mean through the ECOSOC status? #00:03:27-7#
- (6) Yes. So, we know that NGOs in certain countries will not be able to get ECOSOC status. For a long time, NGOs working on particularly controversial issues could never get status. Now that is changing a little bit and so we've seen several NGOs working on sexual orientation issues specifically being able to get status over the last few years. But for many years, that was completely impossible. #00:04:00-8#
- (7) Ok. So, what kind of changes, in your opinion, should be made to the ECOSOC consultative status? #00:04:14-3#
- (8) That's a difficult question because of the political realities of re-negotiating the existing rules. I would be very worried that an attempt to make things better would actually end up making things worse. So, I don't feel confident that an expert system could be put in place, for example. I don't think that that's realistic. I don't think governments would agree to that. That would be the ideal solution, for independent experts to assess whether NGOs are in fact complying with the requirements that are in the ECOSOC resolution. But that would... A new system would probably lead to a review of all NGOs that currently have status and that could be very difficult. We've seen there are regular reviews of NGOs that have status. So, you have to regularly periodically report on your activities and to the NGO Committee. And we've seen that they are increasingly asking questions and making that process more difficult as well. So, whereas before, that was almost a formality that you just submitted your report and it was kind of just rubber-stamped. And now, they're actually asking quite a lot of in depth questions about the operations of NGOs. Including which countries they operate in, who their members are, with details such as names and addresses, and funding sources in more detail than you've been required to provide so far. So that's quite a worrying tendency. #00:06:46-6#
- (9) So, on the hand, organisations that work on sensitive issues such as sexual orientation are increasingly accredited, but at the same time, all the accredited organisations are under much more scrutiny. #00:07:03-7#
- (10) Yes #00:07:03-7#

(11)Ok. So, there is also the possibility to lose consultative status. Does that happen? #00:07:10-1#

(12)It does actually. I wouldn't be able to give you a full picture, but, I can maybe point you towards, where you can find some more comprehensive information. This year, two NGOs lost their consultative status I think for a period of two years? Two or three years. For work that they had both done at the Human Rights Council. And it happened in 2009 as well. I think one organisation lost its status for one year. So, it seems to be an increasingly common phenomenon. #00:08:06-7#

(13)That's somehow contradictory with frequent statements by States that they wish to include civil society much more. #00:08:15-0#

(14)Yes. Well, I think, I think that's true that you won't hear any government saying that they don't like civil society. But we know that civil society makes governments very uncomfortable. And in some places to an extent that they actually don't allow them to operate. And where they operate on the international level they've now found ways of silencing them. It's very serious and it's really worrying. What we've been advocating with the NGO Committee is that it should develop procedural safeguards and due process rules, so that it's clear for NGOs... so that NGOs whose consultative status may be withdrawn, are given an opportunity to provide adequate responses to the NGO committee and are properly informed of the decision. And that has really been lacking in how the NGO committee dealt with the two cases that led to withdrawal this year. The NGOs were only made aware of that this was happening very shortly before it actually happened and then were never informed of the decision as such. They had to wait for the NGO committee's report to see that their status had been withdrawn. So, that's a real problem when you can't actually defend yourself when you're being accused of having violated rules that you didn't - or where at least that's debatable whether that's actually true. But I could provide you more information about that if you are interested. #00:10:22-4#

(15)Yes that would be really great. So what about GONGOs - governmental organised NGOs? Is that an increasing issue? #00:10:40-1#

(16)It probably is. It's been a big issue for a really long time. I think what changes is the governments who actually set up or support these organisations. So, GONGOs working on both sides of the Kashmir question have been around for decades. The conflict around the Western Sahara - there are civil society organisations sponsored by both Algeria and Morocco who debate that issue at the Council. And Iranian GONGOs are well-known as well. But there are new countries in a way that have started using this practice as well. So, as Sudan became a country subject of a lot of international scrutiny it has set up its own organisations to defend it or to speak in support of it at the international level. And there are a few other countries - Cuba... China not so much, maybe... But Cuba, Iran, Libya, I think. And some take a bit a different approach - will not necessarily sponsor an NGO just to defend themselves but just to defend their own interests, more on thematic issues. But it's very difficult to actually know how many there are and whether there are more than there were before. You only know by experience. Seeing them in action and hearing what they say. That's the only way you can get a sense of what their motivation is and who might be supporting them. #00:13:10-4#

(17)So, it's also really difficult to...well.... I think States wouldn't be particularly interested in avoiding accrediting GONGOs but even if so it would be difficult to find criteria. #00:13:27-5#

(18)NGOs who are interested in preserving effective space for civil society have had discussions

for years about strategies in this area. But it's extremely difficult to develop. And the NGO Committee really is dominated by a group of countries that are not civil society supportive. And who have a clear interest in undermining the whole system by accrediting NGOs that are not independent. And it detracts obviously time and space in UN fora from legitimate NGOs but it also casts a shadow on the work of civil society in general because many of these organisations don't respect any rules, they don't abide by the basic rules on how you participate in a meeting. So they create a lot of tension and a lot of problems and it's very easy for governments to not distinguish between them and other NGOs and it has become... that NGOs as a whole don't know how to behave themselves and how to engage in a constructive way with the opportunities that they have been given. So that's a part of the problem as well. #00:15:34-0#

(19) So, do you think NGOs... that they adjust their behaviour because they know that there is the possibility to lose their consultative status? #00:15:49-1#

(20) I don't know actually. I think international NGOs are very aware that this is happening and they are... as I have mentioned, their periodic reports are scrutinized in a way they weren't before. So I think we are very aware of the risks and as an organisation we have reconsidered doing certain things based on the environment, the changes to the environment, knowing that we are targeted. In terms of whether NGOs are censoring themselves during UN meetings... probably not as a direct result of a threat to their status but the pressure is being felt there as well. So the attempt to silence civil society are working on multiple levels and with different strategies and so governments have been arguing that you are not allowed to mention specific countries under certain agenda items in the Human Rights Council. That you can only refer to human rights violations as way of example and therefore you should not mention several situations and not focus just on problems in one country. And it doesn't make sense for national NGOs working in one country... They can't talk about what's going on in another country, they may not know anything about it. It's not within their mandate, and it's not why they come to the Council. Not to talk in abstract terms about a human rights theme and then drawing on examples in an academic way from several regions or several different countries. It's ridiculous. #00:19:24-1#

(21) So, apart from the ECOSOC status the engagement is also governed by arrangements and practices observed by the Commission. These practices are not really written down anywhere, so, what consequences does this have and why is this the case? #00:19:51-7#

(22) I think they really developed over time and there has never been an occasion or a need to write them down or record them. And again, I think NGOs feel that it's best to leave things vague if you can. Because as soon as you start writing things down, it provides a basis for government discussion on what the rules are. And we have... as long as there is a clear understanding with those who are upholding these rules, which is basically the Secretariat, of what the rules and practices are, many NGOs feel that this is sufficient safeguard for what those practices are. And it's really... We have seen that even during the five years of the Council there have been new opportunities created. And if they are repeated a couple of times you can claim that as a practice and so it allows you to continue to build practice rather than having something... Once you have it written down, that's pretty much it and it becomes much more difficult to create new things, new practices, new ways of interacting. #00:21:34-7#

(23) So, do you think there have been trends in recent years, there were new practices emerging... What do you think have been the trends? #00:21:50-8#

(24) Some of the new practices include that NGOs actually have an opportunity to speak up

during the main session of the Council, there is a high-level segment where Ministers and other high-level State dignitaries come to address the Council. And, so for those at a lower level, there's a general segment. And at the general segment we were able at the Council's first session to create a space for high-level civil society speakers who would come and address the Council in their personal capacity. And it never existed before the Council was established. It's an entirely new practice. It was negotiated with the first president of the Council for the opening session. But then we were able to use that as a precedent to then negotiate it at every session. Another new practice is that NGOs actually get to provide general remarks at the end of the session. So, essentially NGOs get to always say the last word. So, after the adoption of all the resolutions and decisions, observer States were basically given an opportunity to comment, make general comments on the outcomes. And in that space the President created an opportunity for one or two NGOs to really speak about the session, giving a kind of an assessment and commenting on the overall outcome. Basically there is no agenda item for that, there is no formal space... But those things just developed because the President, the Secretariat and NGOs had very good interaction, saw opportunities and took advantage of them. It's a very interesting dynamic. #00:24:36-9#

(25) So, would you say opportunities for interaction have increased over time? #00:24:38-7#

(26) Probably, because at the time of the Commission NGOs could only speak six times I think during the course of the session. And you could only speak once during an agenda item. Now you can basically speak under all agenda items so there are no limitations anymore. You can speak in the name of your own organisation and you can join the statement of another organisation under the same agenda item. So I think there are probably more opportunities than before. Before, NGOs couldn't participate in the interactive dialogue with the Special Procedures either. So that has changed as well which is really important. So, there are probably more opportunities... on the other hand the number of NGOs participating has diminished quite radically. #00:25:57-7#

(27) Ok, that's surprising! Because in academic papers you often read that the involvement or the work of NGOs increases on the intergovernmental level? #00:26:16-1#

(28) I think in the Human Rights Council that is not true. #00:26:23-0#

(29) Do you have an explanation for that? #00:26:23-0#

(30) I think with multiple sessions a lot of national NGOs have abandoned trying to follow. When there was just one session everyone gathered for that. And then you could pick and choose the weeks that you came for. But, I think the institutional period meant that the Council really wasn't operating properly for more than a year and I think some national NGOs were really left out of that process and so quite disenfranchised and never really re-engaged. But there are a lot of... there are a lot more victims in national NGOs that used to come to the Commission. I don't really have statistics to back up my claim but I know they exist, they are available and I am sure the Secretariat could provide them to you. They do make statistics now on NGO participation every session. And there are interesting trends there as well so it might be worth looking into. Some of that information is on the extranet and otherwise I can put you in touch with the person in the Secretariat who compiles it. #00:28:00-7#

(31) That would be great! #00:28:04-4#

(32) And I'm sure they can give you statistics from the Commission. Because they used to have interns who would basically sit with a stopwatch and time how many minutes NGOs spoke for, how many minutes governments spoke for. That was the job of several interns to just do

that. So, I am sure that they have that information. #00:28:30-8#

(33) That would be really helpful! Ok, so, do you think that in the course of the Council Review a reform of this access regime will happen? #00:28:42-8#

(34) I don't think there will be any major reforms with regard to NGO participation. There are enough supportive governments of civil society that those that have concerns about civil society will not be able to push negative proposals. There will probably be changes to the number of sessions and timing and that will obviously have an impact on civil society participation. I think maybe an increased role for National Human Rights Institutions will be agreed during the review. But I don't see major changes to NGO participation. But we will know that in a few months. Maybe I'll be proven wrong. #00:29:52-3#

(35) Yes, exactly. We'll see. Now I would like to move on to the next point which would be formal and informal NGO involvement and engagement. So, you have mentioned a few ways of informal involvement. What else is there? How would you judge the importance of formal involvement compared with informal involvement? #00:30:34-3#

(36) In terms of real influence on outcomes I think informal involvement is probably more effective. So, the role that NGOs play in the negotiations of resolutions is very important. And having access to... being able to attend the negotiations, that's one of the practices in a way. And it's hugely important. But I think the formal role should not be dismissed or disregarded. Hearing civil society voices in debates and hearing the real concerns is very, very important. So, that may not have direct impact on outcomes but it helps influence what is discussed and how it's discussed. And it provides more of a reality check or a real perspective rather than just a government policy perspective. I mean, side events serve that same purpose to bring priorities, key concerns and real situations to the Council's attention and having more time, more opportunities to explain a situation or a concern than the two, three minutes that you get in the formal discussions. So I think that's important, to give a more adequate or a more comprehensive picture. And governments are clearly interested in that. A lot of organised events attract State attendance. #00:33:13-3#

(37) So, what about relations directly with State delegations? #00:33:17-1#

(38) There are lots of chats over coffee and discussions in corridors. Much of which, I think, focuses directly on what the Council is discussing or doing at that session... but somehow also is an opportunity for human rights defenders to talk about the situation in their country and see what opportunity there is for support from those governments. And a lot of is related to the negotiations, resolutions where NGOs can provide real, concrete text suggestions, strategic advice to governments and it happens. It happens quite a lot, it's not well-known or public at all, but it's a very well-established practice. And quite a lot of governments will consult with NGOs in that way and take on board suggestions. Others obviously won't. But there is a lot of work being done behind the scenes by NGOs in providing advice and suggestions to governments. #00:35:07-8#

(39) So, does it also happen that governments approach NGOs for advice? #00:35:14-1#

(40) Yes, it happens quite a lot actually! But governments will prepare first drafts of the text and then discuss it with NGOs. #00:35:28-7#

(41) So, which governments would you consider the most open to practices like that? #00:35:35-6#

- (42) I think really quite a lot are. We've worked very closely with Norway on the Human Rights Defenders Resolution, having early discussions with them about strategy, content... I know Chile has done it with women's rights organisations on their gender mainstreaming resolution. Colombia, New Zealand worked with women's groups on the maternal mortality, discrimination against women resolution. There is quite a lot going on behind the scenes. And those are just the ones that I am most familiar with but I am sure that it happens on a lot of other resolutions. The thing is really that very often the expertise is with civil society. #00:36:37-6#
- (43) That actually brings me to next questions which is about the functions that NGOs assume with regard to the Council. So, you mentioned providing expertise. What else would you see as functions of NGOs? #00:37:02-4#
- (44) I think a real accountability function. Being able to observe as many discussions as possible and provide for that information to be public and for NGOs to be able to provide it and use it to hold governments to their commitments and obligations is really important. So that applies for the Council's normal sessions, negotiations, etc. And to really work as advocates. To push the human rights agenda forward and to try and influence governments to do the right thing for human rights, not just follow a political agenda. #00:38:21-2#
- (45) So, how well do NGOs succeed in doing that, you think? #00:38:33-9#
- (46) At times pretty well, I think. At other times it is extremely difficult. We don't know what would happen if NGOs just took a week off. But, I have a sense that things would very quickly start crumbling. So, I strongly believe that NGOs play an absolutely critical role and that we do have impact. It is rare to get exactly what you want. That hardly ever happens. But that hardly ever happens to anyone in intergovernmental, multilateral negotiations. There are just too many interests at stake for... to be able to push one sort of interest are unlikely to prevail unless that reflects the overall international interest. That's the nature of things, I think. But there is no doubt for me that civil society has had a huge impact on treaties, resolutions, reports and studies. #00:40:08-8#
- (47) In what ways do you think cooperation between NGOs is important, or does it happen... #00:40:27-2#
- (48) I think it's really important as a strategy. And there is no... It's clear to me that you have more impact if you're working collectively. But civil society and NGOs are so diverse that it's impossible for everyone to work together. But there are lots of coalitions on particular issues where NGOs come together and several can agree to work towards the same objective. And I think that's what, in my experience, can work very well and effectively. I think NGOs are very wary about coordination. But collaboration is seen as very positive by the vast majority. Some would like to see more coordination but I think for many that is not desirable and not possible. #00:41:46-1#
- (49) Why is it not desirable? #00:41:49-1#
- (50) Because I think there is a wish to maintain the diversity of civil society and we come from so many different persuasions. So we may be able to work together on one thing and on something else we'd have completely different approaches. And so it's important to be able to work in a flexible way with those where you agree and work perhaps with a whole other set of partners when that's the most effective. But overall coordination and speaking with one voice, I think, is felt by many to be not strategic and detrimental to the civil society movement, trying to homogenise all the different approaches and thinkings in civil society.

And that presents real risks to how these come about and how they work. #00:43:24-6#

(51) So, you've mentioned earlier for example that now nationally based human rights organisations are now less active than they used to be. Which NGO, which type of NGO do you consider the most active with regard to the Human Rights Council? And on the other hand, which do you feel are excluded? #00:43:52-9#

(52) Really, the local grassroots organisations are excluded for a number of reasons. They generally don't have ECOSOC status, they don't have access to resources of all kinds to be able to work with the international system. International and regional NGOs are those that are probably most active. And then a number of national organisations have a longstanding history of engagement with the international system because of the context in the country where they work in. And although some national NGOs have probably disengaged from the Council, we've seen increased engagement by others. And so we've been part of a network that was established when the Council was set up, as a cross-regional network to be able to mobilise national civil society and to work both at the international level directly with the Council but also in capitals and being able to actually... Because we recognize that decisions are mostly taken on capital level and Geneva is only the implementer of those policy decisions. And so we wanted to be able to connect international work with national level work. And that has meant that these organisations, the organisations that are part of this network, and I think today we are about 20, many of them had no regular systematic engagement with the Commission before they became part of this network. And now they are substantively engaged in regular work with the Council and campaigns of advocacy on issues they would not necessarily take up on their own initiative. But because the partner organisation is leading the advocacy of it and because there is this high level of trust and we've agreed to work together, they can support each other. They can support others that are leading advocacy work. And I think that this meant that a number of regional organisations have set up offices in Geneva because they saw that the potential to have greater impact and to do more work with the international system being relevant to what they want to achieve. And working together cross-regionally as civil society is really, really useful and definitely more effective than just international organisations working in a vacuum in a way without having a connection to the national level. #00:47:22-2#

(53) What type of NGOs are most active at the Council? #00:47:41-4#

(54) International and regional NGOs are the most active I think. #00:47:43-0#

(55) Would you see a difference between for example a human rights NGO that works for all human rights or just on a specific issue? #00:47:58-1#

(56) The Council deals with such a vast number of issues that there are opportunities for most civil society organisations I think. It's not doing perhaps so much on development and poverty issues but other parts of the UN are doing that work. There is probably more civil society engagement on civil and political rights issues but that's more a sense than anything else you would have to look at numbers really to verify that and to see if it's true. But that would be my sense. It may in part be also that international organisations are mostly focusing on civil and political rights issues, although that's changing. Women's rights organisations I think probably were excluded for a little while at the beginning of the Council but have been able to turn that around and create a lot of opportunities and a lot more attention to gender and women's issues. Children's organisations have been trying to do something similar but with less success I would say. But they've also been able to place that on the agenda. Disability groups have had a good impact I think. And groups working on sexual orientation are really actively engaged. #00:50:27-0#

(57) This actually brings me to the last point and that would be the role of the OHCHR in all that. How do you see this role? Regarding the involvement of NGOs... the Council? #00:50:45-2#

(58) Well they play a really important role as the Secretariat of the Council and as the key information provider about the Council's work and about how civil society can engage with it. They fulfil that role quite well I think. They provide a lot of information to NGOs. Mostly just logistical and practical information rather than strategic advice. They don't see that as their role. But they've also put together quite practical guides, like a handbook, and guidelines and little leaflets to explain to civil society activists that may not know much about the Council what it is and how it works. I think it also has a role in advocating for upholding the rules and practices and that role was quite well fulfilled for a number of years by a particular individual who was very committed to this issue. That's probably taking place to a lesser extent these days. And it may be due to a tension there is between the role of the Council and the role of OHCHR and the kind of blurry line there is between a pure Secretariat function and then the independent role that the office plays in promoting human rights basically. So I think there is more that could be done at the moment. To me they are really the guardians of the rules and practices and it's a really important role to have. I think that's really it. There is always more that could be done to reach out to civil society and to engage with them in the work I think and I guess that's a common challenge for everyone who is working in this field and who is engaged with the Council. And we fulfil or we try to fulfil one little part of that but there is always more that could be done. Because the need for information and capacity building is so huge. And so OHCHR could also increase its outreach to NGOs. I mean, they do quite a lot but they can always do more and better. #00:54:54-1#

(59) So, they are also a kind of a mediator maybe between States or the Council and civil society? #00:55:04-3#

(60) Not really directly. They try and play a role together with the president of the Council in diffusing tensions and taking care of complaints and problems but you would never see them sit down with a government representative and an NGO representative and say let's have a chat about this and we'll all walk away and agree to continue working together or agree to disagree or whatever. That's never going to happen. I think primarily the Secretariat sees itself as the service provider for States and so that's always what drives the machine more than anything else. And it's understandable. They rely on governments for their funding, to be able to operate in countries they need government agreement and if there is no government support they work will become really difficult. But, that said, they are quite open to listening to NGO concerns and to try and address the issues that we bring to their attention and we've had very good and regular interaction with them. #00:57:08-2#

(61) Thank you!

Interview 9

(1) My first question is: How would you characterize the relationship between States and NGOs in relation to the Council? #00:00:56-9#

(2) Ok. Maybe, before we start: I'll give you my personal views. So, you can attribute them to me, but not necessarily to my organization. I think that's probably more useful to you. And then, as you've seen yourself, the relations between States and NGOs differ a lot between different contexts, between different States, or different questions. They range from very close engagement and agreement - sort of almost alignment and very much shared interest - to very opposed interests which usually go along with very limited communication, next to no communication, between particular States and particular NGOs or very hostile relations. So, I

mean, maybe we can sort of try to narrow that down along several examples. If we for instance take the review of the Human Rights Council, which mainly dealt with procedural issues: States, and then taking our particular NGO, we had very much shared interests with many European States on many of the questions, so obviously there the relationship was much more open and positive and almost to the extent that States ask for input and then represent the positions that we have. So they also bring the voices of NGOs to the table, if they're in general open to NGOs. At the same time... So, that's probably one example where there is a lot of alignment of interests. Then, for instance, if we take the issue of sexual orientation, then again you have some States that are very open to NGOs and strategize together with NGOs. And then also coordinate their own outreach with the outreach of NGOs so that there is almost a joint strategy. And, at the same time you have opposing States that don't engage with NGOs on those questions at all. You've probably also seen, for instance, the relationship that China has with some of the Chinese NGOs, which is very conflictual and which is very hostile and almost amounts to an intimidation type reaction by those States to the NGOs. And then you have the...sort of the middle ground, where States engage fairly critically but openly also with NGOs. For instance, also in relation to the last session of the Council and this resolution on sexual orientation which was presented by South Africa and where South Africa had a very constructive engagement with NGOs. Often, what NGOs bring to the table are not only their own views and arguments, but often it's substantive expertise, that States don't have. Because, although they are usually called experts, the diplomats from the side of States, they are only experts because they work in this field and it's not necessarily because they are experts in human rights. So, they often rely on NGOs to get information and analysis of the human rights issues that they deal with... Maybe, just to add another point: So, that last point also means that often the relationship is almost a bit... I mean, from the perspective of an NGO it's useful to be able to feed information to States in that way, but at the same time it's... it creates a sort of an unequal relationship. Because often NGOs rely on States to bring in their points of view, which means that on areas where States either don't have the expertise or align with the interests of NGOs, they are very receptive. But on other areas, more difficult areas, it's very difficult to influence States. #00:06:47-6#

(3) Like what areas, for example? #00:06:50-8#

(4) Like, for instance, the whole issue of business and human rights, where for instance Norway, which is usually very open to the suggestions of NGOs, had very opposing views and therefore wasn't influenced much by the positions of NGOs. Whereas mostly it portrays itself as open and positive and receptive to those views, which in this case didn't really happen, because they have their own fixed position. This also sort of relativizes and puts the whole openness to NGOs into perspective a little bit. Of course, most States that are perceived as hostile to NGO engagement often have much more substantive disagreements with NGOs, which is why they try to prevent them from even engaging. And it's probably true that more positive States have less diverging views from NGOs and therefore they can afford to be more open. #00:08:41-7#

(5) So, in the case of States that are open to cooperation with NGOs, how does that happen, how does the informal involvement take place? #00:08:47-4#

(6) It's mostly also based on personal contacts. So, diplomats will call on NGOs specifically for specific points or, in turn, NGOs will target those diplomats where they know, there is a good working relationship to provide input to them. So, it's a fairly sort of informal but straightforward process, mostly. #00:09:31-6#

(7) So, also, in the form of input to resolution, or statements also? #00:09:38-5#

(8) Yes, I mean, where those relations exist, then often States will actively seek the input of NGOs. I mean, either during the public discussion or in private conversation. #00:10:10-0#

(9) So, you would say that NGOs have an important advocacy role? #00:10:20-8#

(10) Yes, absolutely. If you think, in terms of the substantive input, they define a lot of the agenda that then plays out in the formal setting between States. Of course, it's always a sort of give and take. I mean, it's similar to... It's probably similar to the relationships that you may have with journalists, where you just constantly feed information and through that you build a relationship which you can then activate when you have a specific interest or the other party has a concrete interest. Of course, there is many other ways in influencing the position that the States take at the Council. And that probably applies irrespective of how open they are at face value. For instance, one of the strategies that has worked well in several cases is to try to improve the accountability of States at home, so, to hold States to account for the positions that they take or don't take in Geneva. And that of course, then involves a sort of a lobbying element at the domestic level and an interest by the domestic NGOs and constituencies. #00:12:14-2#

(11) So, the goals of lobbying and advocacy for NGOs: Is just to get their position across? #00:12:36-8#

(12) Yes. I mean, again, this obviously depends a lot... I mean, generally, the people that we work with most, it's... I mean, as an example: We work with a network of NGOs, both international and regional and national NGOs which want to make the Council more effective, the mechanisms, in addressing concrete situations of violations. So, one of the key elements in recent months has been to try to get the Council to consider the situation in the Middle East. And also those, that are not necessarily where the US and other States have an interest, i.e. Bahrain and Jemen. So, there the goal was to try to build efficient will among member States and non-member States of the Council for this to be brought to the table and discussed. #00:13:52-1#

(13) So, what you say, what opportunities are open to NGOs to do lobbying and advocacy. I mean, how do they do it? Like, for example, input in resolutions, or maybe putting States under public pressure... #00:14:46-0#

(14) Yes, I mean, there is various ways and strategies to try to get to the outcome that you want of the Council and that includes, as you've said, public pressure, statements at the Council, but I think to a large extent it also depends on creating, sort of... building the will and talking to the right people and enabling conversations between the right people. So, I think, for instance, part of such efforts would be to invite people - different types of diplomats, where you feel that they are key in each of their regions - to an informal discussion to just share ideas and discuss with them, for instance, what direction the Council could take, how a certain problem could be addressed, and thereby sort of creating a conversation between them, so that when then the conversation happens in a more public space, they are already informed and they already know where you think it makes sense for them to come down. And of course, as I've said before, trying to build those relationships and feed them with information and feed them with ideas, which - in the context of resolutions - can go up to providing them with specific language that they can include in their text or arguments that they can then use in their own negotiation. So, I mean, it's difficult to say, because it's not sort of a specific opportunity, but you almost have to create those opportunities through your work. I mean, the reception that we did last time, you can do press releases, you can have press conferences, side events, I think all of that contributes to sort building... raising awareness, and then building the conversation. And, the difficulty with that both in terms of strategizing but also in terms of analyzing whether your strategy has worked is that the process is sort of erratic. You know, you can work for years and nothing happens and then suddenly something happens but then do you know that that's because of your previous efforts? That's, I think that's what makes lobbying and advocacy very challenging, because you require a lot of experience to see where something sort of established that causal link. I mean, that's very

general and probably applies to every type of lobbying but it definitely also applies in the Council. So, to sort of sum up, it would be fair to say that the opportunities... the real opportunities are not provided. But NGOs have to create them by having a strategy that leads to the creation of such opportunities. #00:18:59-7#

(15) So, and, in addition to the informal opportunities and everything, there are of course formal opportunities or semi-formal, like side events. So, would you say all these opportunities are increasing or are they shrinking? #00:19:15-6#

(16) I don't think that there is a clear trend. I think, you know, it sort of comes in waves. I think the Council has lost some momentum in that regard when it sort of transitioned from the Commission to the Council, because it was sort of caught up along the year and it takes a while to sort of build the critical mass again of NGOs that want to engage actively. That said, I think that it just means that there is more opportunity, but maybe not sort of at the same level of activity, but there is more regular opportunity. And I think that overall, that's a positive development. Again, I mean, I think in terms of the formal structure and framework, it hasn't changed dramatically. You know, there are always organizational challenges that come and go, because there are not enough rooms available. But I don't think that's then really sort of game changing as such. And, again, I think it comes back down to how those opportunities are used and I think NGOs are only learning to use the different kinds of opportunity that are presented to us through this concentration of, you know, three different sessions a year and the ability to build from one session to the other. So, I think people are only just understanding how to use the different cycles and also how to keep the wheel going between the sessions. So, I think, it may be a different, slightly different framework, but it's not more or less as such. #00:21:45-3#

(17) Do you think that, as regards oral statements, for example, do you think that sometimes NGOs maybe censor themselves because of their informal relations to States? #00:22:14-8#

(18) I'm sure it happens, and, again, that goes back to the multitude of different NGOs. NGOs are very diverse in their approach and in their independence and in their goals and I'm sure that there is a... It's a very organic system, so, the informal relationships don't stop at the oral statement and they influence each other. But I think there is ways of avoiding sort of slide into this, assuming that someone is in principle willing to remain independent, there are ways of trying to do that consciously. And I think sort of the general practice of the big NGOs is also to be open in their criticism, not only in their oral statement, but for instance to also alert States that they will be criticized in the statement and to sort of keep the working relationship separate from the message. But, of course, the dynamics influence what people can say and there's ways of framing a certain issue which you could probably describe as self-censorship, depending on your point of view. So, I can't give you any, sort of, concrete examples, but... Just to give you an example, if a State that we work with closely draws a positive elements to our attention that they have done, which fits within our general message, then, you know, and I can build that into our message, then I will try to do that. Because it's... There's always a give and take. And we share information and they share information and equally States support us and we can also support them if it fits within our mandate. And, I don't know if there is really sort of self-censorship. And, in a way, adapting your message to the forum where you deliver it shouldn't necessarily be considered self-censorship. #00:25:41-3#

(19) One of my interviewees mentioned that he has the impression that NGOs that NGOs coming from outside of Geneva are... well, their statements are different in the sense that they are sometimes more direct and more frank, maybe? Have you noticed the same thing? #00:25:59-5#

(20) I don't think it's an assessment that you can generalize like that. Because you would need to have in order to be able to draw that comparison you need to have two NGOs which have the

same mission and the same sort of culture and the same information and then also a similar strategy. And then you can sort of draw that comparison. What is probably true is that NGOs who work or have more experience and work more closely within the Geneva scene, if you wish, will maybe be more considerate in their messaging. And you can describe that as less direct or you can describe it as less blunt, in a way, and more strategic. So, I think, apart from the fact that it's hard to sort of do that generalization, you can interpret it both ways. #00:27:53-2#

(21) Do you think that the opportunity of making oral statements and also written statements, do you think it has an impact - or, what kind of impact does it have? #00:28:12-1#

(22) You mean the opportunity or the fact of making those statements? #00:28:17-5#

(23) The fact of making those statements. #00:28:15-9#

(24) I don't think it has a very direct impact. I don't think it contributes in itself, it doesn't contribute much to shaping the opinions of member states and others, but I think it's an important element in the overall strategy of an organization. It gives you a lot of visibility. It's a public space and it can help you to put pressure on certain countries. You can re-use the fact of having made an oral or written statement in your other types of work. I think it also contributes to the perception of your organization as an actor in the Council and therefore it gives you more capital for your informal discussion. So, I think, it's important. It's important but it doesn't in itself have an effect. #00:29:50-2#

(25) And, the same question a little bit, with regard to side events. Do you think side events have an impact? Also, what's the goal of organizing a side event? #00:30:06-0#

(26) I think it's similar. It's raising your profile and the profile of an issue which I think is important. It's another piece in the overall puzzle. So, I think it's an important aspect of shaping the opinion on an issue and also in building your own profile. #00:30:59-8#

Interview 10

(1) Could you please just briefly describe the activities of your organization? #00:00:21-2#

(2) The aim of the organization is to promote the Universal Periodic Review and to raise awareness and give capacity building to different actors engaged in the process, with special focus on NGOs. We want to facilitate their participation in the UPR and make it easier for them to participate and provide them with tools that will enhance their participation. And to do this we mostly run a website, providing documents, analysis, news on the UPR process. We also take part in conferences, trainings, and provide assistance in Geneva - by e-mail, by phone or even meeting NGOs, provide them with information and assistance. #00:01:19-9#

(3) Do you think that the UPR provides - the UPR how it was created - that it provides a good opportunity for NGOs to engage? #00:01:32-9#

(4) Well, I think the UPR provides good opportunities, yes. I think overall... it might not be evident for someone who is outside the UPR and just looks at whether NGOs are able or not to take the floor during the Working Group. That will be only one part of the whole participation of NGOs. And I think, in different ways, first with the national consultations, it's for NGOs the first entry point in the process and it gives them space and legitimacy to work with the government and then they have the option to submit information which gives their information an official place in the process and this is quite important. Then they can lobby, which is very effective, and a lot of NGOs are using it. It has proven to be a useful way, a meaningful way of influencing the review. And then they can take the floor at the plenary and

then again in the follow-up: the government is supposed to hold consultations with NGOs on the follow-up. So, there, again, is place and legitimacy for NGOs to engage in the process. So, the engagement might not be as visible as if they were taking the floor in the Working Group and when the UPR was created, that was what NGOs were hoping for. But I think after... At the end of the first cycle, I think there are not so many NGOs in favour of having NGOs taking the floor during the Working Group and they realize that their ways to participate in the process are very diverse and that they can provide them with great opportunities. #00:03:19-6#

- (5) So, do you think these opportunities, are they very distinct from the opportunities that are open in the framework of the regular Council sessions? #00:03:34-2#
- (6) Well, I think in different ways, yes. Because, again, the national consultation is quite unique. To have written on paper in the UN resolution that the State must consult NGOs, before the review and now, with the review of the Council also in the follow-up, they should consult. I think this is quite unique. To have NGO information as an official document, even though it's summarized by the Office of the High Commissioner, but being official sources of information, this is quite interesting. In treaty bodies NGOs can submit more information, but it's still a shadow report. So, I think this is quite interesting as well, and makes it in different ways quite unique. And also non-ECOSOC NGOs. A Human Rights Council Working Group is encouraging cooperation with non-ECOSOC NGOs. This is quite unique as well. But I am actually not sure, maybe in other organs also non-ECOSOC NGOs... I wouldn't know perfectly all the other mechanisms. #00:04:56-3#
- (7) Do you think that NGOs have made good use of the opportunities that were given to them? #00:05:03-9#
- (8) I think the UPR has received a lot of attention of NGOs. We have heard stories of national coalitions being created just for the UPR. And through this some NGOs were engaging with the international system for the first time through the UPR. In Colombia we had a coalition of over a thousand associations coming together, producing one report. In Kenya we had a coalition of a hundred NGOs, also coming together, producing one report and then producing an advocacy charter to influence the review. And then we've seen many NGOs coming to Geneva to do lobbying. Depending on the size of the country, for some countries there are only one or two NGO submissions, even none, for others there are about thirty, forty. So, it obviously depends on the number of NGOs in the country, but I think so far we can be happy to a certain extent with how many NGOs engaged in the process and how much energy they put into it. #00:06:17-3#
- (9) So, they are definitely interested in engaging and there is awareness? Because it is a rather new mechanism. #00:06:26-0#
- (10) Well, it's difficult to know who doesn't know about it. But it's easy to see who knows about it. Because they participate. But we would need to compare to how many NGOs exist in the world. I mean, obviously there are thousands of ECOSOC NGOs and not all of them participated. But not all of them are working in human rights. So it's difficult to know. I think there is still a lack of knowledge about the UPR. If we compare NGOs working for example on the Committee of the Rights of the Child: They have national coalitions in almost every country, they are much more organized and active than on the UPR. So a lot of NGOs are working with the international system and not yet with the UPR. There is a lot of suspicion about the process because of its political side and the nature of the recommendations. So not everyone is yet convinced of the potential of the UPR I think, which is a young mechanism. So, I think we can still aim for more participation. But I mean in certain countries

it has been good and, again, the creation of national coalitions among NGOs was interesting. In Ireland for example they created a website. They held national consultations for NGOs and then organized events in the country to gather the voice of the people on the ground and so on. So, there have been a lot of new initiatives and events organized around the UPR. So, it's been very interesting. #00:08:02-0#

(11) Do you think it kind of also opens up the Council to more participation by national NGOs?

#00:08:13-4#

(12) I think yes, the UPR has this potential. I mean, it's only a potential, I don't think it is the aim of the UPR, but it is a window of opportunity that maybe no one had foreseen before. And if the UPR can help in that, it's already a good thing. If the UPR can interest national NGOs. Because the UPR happens in Geneva for the main part... the review. But that definitely is not the whole part. The review is just three hours in Geneva out of four years. So, it's a national mechanism, NGOs have to work with the governments and the governments have to implement the recommendation. So, most of the process is happening in the country. So, it will be only normal that national NGOs are actually engaging in the process. So, there is still need for information and more NGOs should be made aware of the process, but I believe there have been NGOs not engaging with the Human Rights Council before and then engaging through the UPR. #00:09:24-4#

(13) So, also with other Human Rights Council mechanism or just... not having engaged with the international system before and then engaging with the UPR? #00:09:39-0#

(14) If there is NGOs that engage with the international system for the first time? #00:09:50-1#

(15) Yes. #00:09:50-1#

(16) Yes, there have been cases of that. It's difficult to give numbers. But obviously the NGOs aware of the UPR are usually NGOs working with the international system. They have contacts in Geneva or in the country with UNDP or the Office of the High Commissioner, the Regional Office of the High Commissioner and so on and so on. But I think there have been national NGOs not engaging with the international system before and then engaging with the UPR now. #00:10:24-7#

(17) So, you've already mentioned that it depends a lot from each country review to another how many NGOs engage and how they engage. Can you tell me a little bit more about that? #00:10:47-2#

(18) Well, for example in small island States - Samoa, Cape Verde, Tuvalu and so on: For those, I don't know the figures, but there might be one two or none NGO submissions. And sometimes, if there is an NGO submission, then it's an international NGO with a chapter there or with some knowledge about the country. And so the submission is not necessarily by a national NGO. And in other countries, if we take the United States for example, reviewed not so long ago, they had probably 50 NGO submissions. Philippines, which was the first session, so the knowledge about the UPR was even smaller, and still there were over 40 NGO submissions. So, obviously, it depends on the human rights situation in the country and the number of human rights organizations present there. #00:12:28-2#

(19) And where do you see the obstacles for NGO engagement? #00:12:39-8#

(20) Well, first, I think, even though I said NGOs are aware of the process, I think more NGOs need to be aware of it so that the first obstacle is not knowing about the UPR process and

then the second is not knowing enough. The aim of my organization is to do both, to spread the word about the UPR process and explain the different modalities. It's also time and resources, I think, for any NGO they usually have limited time and resources so they find it difficult to engage in a new mechanism or in an additional mechanism. And then within the process itself: Only ten NGOs can take the floor in the plenary adoption and those NGOs are only ECOSOC NGOs. And during the review of the Human Rights Council we tried with other NGOs to push for non-ECOSOC NGOs to be able to participate to make statements in Geneva but also to use video conferencing. This was not accepted but their participation at the plenary could be enhanced. Obviously the national consultation with the government before the review and in the follow-up could be... There should be guidelines. Maybe not guidelines, but there should be ways to ensure that this is a meaningful consultation, that all NGOs are invited and that their views are taken on board. Because some States just say: We invited NGOs and in fact they invited only two, close to their views and not all the other NGOs. So, this can be an obstacle. Because States just say: We had a national consultation. When in fact, they didn't, they just invited two NGOs and talked for an hour. Or they invited the NGOs the day before the deadline for the national report, and so on. So, this is another obstacle. There are different levels. #00:14:47-5#

(21)And then, in Geneva, or maybe also outside, what importance does lobbying have? You already mentioned it, but maybe you can tell a little bit more about how it is done? #00:15:07-0#

(22)Well, I think lobbying in the UPR... I think if an NGO had to choose where to engage in the process, I think definitely lobbying would be one of the key moments to engage. Because there they have a direct way to influence the content of the review and hence the recommendations made and the follow-up. So, NGOs, how they can do it is, they can just meet delegations in the country, at the embassies in their country or they contact the missions in Geneva or travel to Geneva. But they don't have to come to Geneva, they can just try to find the e-mail addresses, the phone numbers, and so on. But if they come to Geneva, they can just get appointments with missions or go to the UN and meet them there and submit questions and recommendations. Information has to be very concise, very specific on a few things, only a few questions and recommendations, so the delegates can just copy and paste into their statements the questions and recommendations of NGOs. And I think... NGOs have been very amazed when they sit in the room and they hear word by word the questions and recommendations they gave to States. So, they usually feel very pleased with this part. They can see a concrete result in coming to Geneva or lobbying at home. They can hear word by word what they told States to say. So, this is quite interesting. And, to emphasize again the importance: Lobbying is a way for NGOs to give their view on the human rights situation on the ground. And even though they can submit information, the information is not necessarily read, because there is a lot of NGOs submitting information and so States won't necessarily read all the different NGO submissions. And they might read the summary, prepared by the Office of the High Commissioner, but obviously this summary will not take up all the information of each NGO. So, this is a safe way for them to know that States will be aware of the priorities and to make sure that recommendations are made on those priorities. #00:17:31-4#

(23)And then, how would you characterize the relationship between States and NGOs in the context of the UPR? #00:17:45-7#

(24)Well, I think, again, going back to national consultations: I think, this has brought States and NGOs to realize that they can cooperate sometimes. I heard in a seminar a State saying: 'Through the UPR we realized that NGOs are not our enemies.' And, I mean on both sides there is this tendency to see the other one not as a partner but someone from the opposition.

But the UPR should be a mechanism where States and NGOs cooperate to improve the human rights situation on the ground. Obviously with certain States it is very difficult to cooperate, they have a very repressive approach to NGOs, so there are always exceptions, but in most countries this is how it should happen. So, I think the UPR really creates opportunities - nationally at least - for NGOs and States to work on the follow-up. NGOs should give their advice to States how to implement recommendations, what is the best solution to attain. For example, abolishing corporal punishment: NGOs working on rights of the child could provide expertise on how to reach that and so on or to launch awareness raising in the fight against FGM: the NGOs that have expertise on this, they could provide their knowledge. And then, even in Geneva this creates a lot of talk: NGOs meeting diplomats, sending their questions and recommendations. This has educated a lot of States.
#00:20:17-9#

(25) Finally, the topic of reprisals: What's your experience with that? #00:00:10-3#

(26) There have been cases of reprisals against NGOs participating in the UPR process. So, this is a great concern to everyone and some NGOs have taken up this issue of reprisals against human rights defenders cooperating with the UN. And this is a real problem and there should be more recommendations about this in the UPR process. But this is something that should not be ignored and there is a risk, because it's a public procedure, it's a very public mechanism, so NGOs should be aware of all the risks they take when they participate in the process. #00:00:57-8#

(27) What kind of reprisals did you hear about? #00:00:57-4#

(28) I have heard about cases of killings for example. #00:02:52-5#

(29) Do you think the threat of facing reprisals makes NGOs decide not to engage with the UPR?
#00:03:05-7#

(30) In a very limited number of countries this may be true, but only in a handful of countries really, I think, this could be the reason for not engaging. But I think in most countries not knowing about the UPR, the lack of time and resources are the main reasons, I think.

Abstract

The present work analyses the engagement of non-governmental organizations (NGOs) at the United Nations Human Rights Council on the basis of two analytical categories: The analysis of the *access of NGOs* to the Council shows that the UN system for NGO accreditation (ECOSOC consultative status) is biased and politicized. However, NGOs have found creative ways to circumvent this obstacle. The second category explores the *opportunities of engagement* that are open to NGOs in the framework of the intergovernmental mechanisms of the Council. It identifies both formal and informal opportunities and looks at how they are seized by NGOs. The institutional structure, as well as personal contacts between NGO representatives and diplomats, proved to be important determining factors for the engagement of NGOs.

Zusammenfassung

Die vorliegende Arbeit untersucht die Partizipation von Nichtregierungsorganisationen (NGOs) im Menschenrechtsrat der Vereinten Nationen anhand von zwei Analysekategorien: Die Analyse des *Zugangs von NGOs zum Menschenrechtsrat* zeigt, dass das System der Vereinten Nationen für NGO Akkreditierung (ECOSOC Konsultativstatus) diskriminierend und politisiert ist. NGOs haben jedoch kreative Wege gefunden, dieses Hindernis zu überwinden. Die zweite Analysekategorie untersucht die *Möglichkeiten für Engagement*, die NGOs im Rahmen der intergouvernementalen Mechanismen des Menschenrechtsrats offenstehen. Sowohl formelle als auch informelle Möglichkeiten für Engagement werden identifiziert und daraufhin analysiert, wie sie von NGOs genutzt werden. Die institutionellen Strukturen sowie persönliche Kontakte zwischen NGO Vertretern und Diplomaten stellten sich als wichtige Einflussfaktoren für das Engagement von NGOs heraus.

Curriculum Vitae

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Education

06/2005 *Matura* with distinction (academic high school diploma)
Since 10/2005 *Diplomstudium* in Political Science at the University of Vienna
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Concentrations: international politics, conflict and peace studies, political theory
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Since 2007 Enrolled in bachelor's degree programme in Sociology
09/2010 – 08/2011 Erasmus student exchange at the University of Geneva

Further Academic Experience

03/ 2008 Study trip to Cuba, lectures at the University of Havana
04/2009 Study trip to New York and Washington D.C., lectures at the United Nations, World Bank, IMF, and other institutions
12/2010 Contribution to the book "*Asylpolitik. Unterbringung – Politisierung – Verantwortung*" ("Asylum Policy. Accommodation – Politicization – Responsibility")
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Professional Experience

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07/ 2009 – 10/2009 Internship at the Austrian Development Agency – Coordination Office for Technical Cooperation in Prishtina, Kosovo
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