

Controversial Issues in the NGO Committee

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Introduction

The purpose of this paper is to study the conflicts and debates that occur in the ECOSOC Committee on NGOs over specific NGOs applying for or already in consultative status. The Committee is formally a technical Committee but frequently becomes the stage for debate on political issues. I will examine the debates that have taken place in the formal sessions of the Committee between 2008 and 2010 and try to identify recurrent controversial topics and patterns of conflict. I will also study the background and underlying reasons for these conflicts.

During the three years covered by this study, only certain NGOs caused enough disagreement in the Committee on NGOs for a voting to take place, or for Member States to feel the need to make their position known in a statement that would be reflected in the report of the Committee to ECOSOC. These organizations represent certain issues that are sensitive to Member States, for different reasons. Debates in the Committee frequently revolve around similar issues, and they will serve as a focal point for this study.

The main issues identified for the purpose of this paper are: Separatism; Terrorism; Lesbian, Gay, Bisexual and Transgender (LGBT) Rights; Freedom of Expression; and Human Rights. These are not entirely separate issues. For example, freedom of expression and LGBT rights are both human rights, and the issue of terrorism is often linked to separatism. The human rights defender of one is the separatist of another. However, these different concepts are used in somewhat different contexts in the Committee, so to make for a more nuanced analysis, I will treat them separately.

The outline of this paper is as follows: first, I will present a short background on the consultative relationship that eligible NGOs can establish with the Economic and Social Council of the United Nations, where the Committee on NGOs constitutes the main and only gateway. Then I will proceed to present each of the issues mentioned above and finally conclude with a short reflection on the implications of the findings of this study.

ECOSOC consultative status

Consultative status with the Economic and Social Council of the United Nations (ECOSOC) is an accreditation framework that gives NGOs access to the meetings of the Council and its subsidiary bodies as well as the Human Rights Council. This framework is governed by ECOSOC resolution 1996/31. NGOs are granted Consultative status by the Council, following recommendations by the Committee on Non-Governmental Organizations which is in charge of considering applications for status.

The Committee on NGOs convenes twice per year, in January (regular session) and in May (resumed session). It consists of 19 members who are elected on the basis of equitable geographical representation: five members from African States; four members from Asian States; two members from Eastern European States; four members from Latin American and Caribbean States; and four members from Western European and other States. The term of office of its members is four years, but there are no limitations as to the number of terms.

The recommendations of the Committee are presented in a report to ECOSOC at its substantive session each year in July. The Council makes the final decisions on the granting, suspension or withdrawal of the consultative status of NGOs, usually following the recommendations of the Committee. The 54 members of the Council are elected by the General Assembly for overlapping three-year terms. Seats on the Council are allotted based on geographical representation with fourteen allocated to African States, eleven to Asian States, six to Eastern European States, ten to Latin American and Caribbean States, and thirteen to Western European and other States.

Today, more than 3,400 NGOs have consultative status with the Council, and the number of applications per year is increasing.¹

¹ The NGO Branch, the ECOSOC NGO Committee Secretariat at the UN Department of Economic and Social Affairs, processed 300 applications for the Committee session of 2010, 354 for 2011 and 416 for 2012.

Separatism

Between 2008 and 2010 there were three organizations being criticized in the Committee for not respecting the territorial integrity and sovereignty of member states implicating they were part of or supported separatist movements in those states.

The first one, *Kurdish Human Rights Project*,² an NGO based in the United Kingdom, was applying for consultative status in 2008, but withdrew its application just before the regular session that year, stating in a letter that “in light of information received [it was] of the view that its application for consultative status with ECOSOC [was] not going to receive a fair hearing [...] and therefore it wishe[d] to withdraw its application”.³ During the regular session, the Committee took note of the request of the NGO to withdraw its application. Following the withdrawal, the representative of Turkey made a statement saying that “the Kurdish Human Rights Project [did] not respect even the basic principles of the Charter of the United Nations, such as respect for territorial integrity of States”, because it had published maps of “Kurdistan” on its website, used non-UN terminology and worked for the removal of PKK/Kadek/Kongra-Gel from lists of international terrorist organizations. Furthermore, the NGO had stood for costs and expenses of applicants in court cases against Turkey at the European court of Human Rights.

The second one, *Interfaith International*,⁴ got its consultative status suspended for two years following a complaint by Pakistan for “politically motivated activities to undermine sovereignty and territorial integrity of Pakistan”. A representative of the Swiss-based organization had made an oral statement⁵ during the 11th Session of the Human Rights Council where he stated Baluchistan, a Pakistani province, had been forcibly occupied by Pakistan in 1948 and that the Pakistani government had “enslav[ed] the Baluch, exploit[ed] and plunder[ed] Baluchistan’s resources”. He accused the Pakistani government of killings, torture and abductions in the province and of trying to silence him personally through false accusations of crime and terrorism. The NGO had also

² E/2008/32 (Part I), para 40

³ Letter from Catriona Vine to the Secretariat of the NGO Committee, dated 18 January 2011.

⁴ E/2010/32 (Part I), paras 24-26

⁵ Statement delivered by Mehran Baluch on behalf of Interfaith International. Available at [http://www.thebaluch.com/061009_address_a.php] (consulted July 27, 2011).

organized a side event during the 10th session with another NGO, not in consultative status on the Human Rights situation in Baluchistan, and, according to the complaint from Pakistan, invited “terrorist representatives”.

The third case was *Centre Europe-tiers monde*,⁶ also based in Switzerland. During the resumed session in 2010, the NGOs status was suspended for two years after Turkey presented a complaint against it for its “disrespect of the territorial integrity and political unity of Turkey”, “unsubstantiated and politically motivated allegations against Turkey”.

The NGO made a statement⁷ in 2010 at the Human Rights Council under the universal periodic review of Turkey where it accused the Turkish government of having implemented “policies of assimilation and repression [...] against the Kurdish people with their retinues of serious violations of human rights: large-scale massacres, disappearances, torture, rape, mass deportations, expropriations, assimilations, destruction (villages, forests, crops, livestock), deprivation of fundamental rights.” It also lists a number of other examples of Human Rights violations in Turkey, regarding among others the right to life and security, freedom of opinion and expression, religious freedom, rights of the Child and trade union rights. The report also highlighted the fact that the European Court of Human Rights (ECHR) had condemned Turkey 1,668 times between 1998 and 2008.

In its letter of complaint, Turkey said the NGOs statement was “replete with unfounded allegations and politically motivated falsifications against Turkey and [...] not acceptable in its entirety.”

In 2002, the NGO had also made a statement where it called on the Sub-commission on Human Rights to urge the EU Council rethink its decision of including the PKK on its list of terrorist organizations in light of the unilateral ceasefire the PKK had declared in 1999. Therefore, Turkey complained that the NGO was “inciting and condoning act of

⁶ E/2010/32 (part II), paras 43-46.

⁷ Joint statement with Women’s International League for Peace and Freedom, Mouvement contre le racisme et pour l’amitié entre les peuples and International Association of Democratic Lawyers. Available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/JS2_UPR_TUR_S08_2010_JointSubmission2_Document_E.pdf] (consulted on July 27, 2011)

terrorism” and that it acted as a propaganda vehicle of the terrorist organization PKK/Kongra-Gel.

The principle that existing borders are not to be moved is very strong in the United Nations, which is why accusing an NGO of separatism is a quite powerful argument against it getting status, or for suspending or withdrawing its status if it has already obtained it.

Article 2 of the UN Charter clearly states that “[t]he Organization is based on the principle of the sovereign equality of all its Members” and that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”

According to paragraph 2 of ECOSOC resolution 1996/31 on the arrangements for consultative relations with NGOs, the aims and purposes of an organization in consultative status must be “in conformity with the spirit, purposes and principles of the Charter of the United Nations.” This includes the respect for the territorial integrity and sovereignty of Member States, which means that any organization that strives to change existing borders or questions the sovereignty of a member state over its territory is not eligible for consultative status. Paragraph 57 states that “[t]he consultative status of non-governmental organizations with the Economic and Social Council and the listing of those on the Roster shall be suspended up to three years or withdrawn [...] if an organization, either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against Member States of the United Nations incompatible with those purposes and principles”.

It stands clear that an organization working for the independence of a territory currently considered part of a UN member state is violating the UN Charter and cannot have consultative status. But it seems like not all NGOs accused of not respecting the territorial integrity on member states are actually separatist organisations. Here, one can

see a difference between the cases described above. The statement made by Mehran Baluch on behalf of Interfaith International described the Pakistani government as having illegally occupied Baluchistan, and stated that “national liberation of Baluchistan is the final solution”.⁸ Even if the NGO itself is not primarily working for Baluch liberation,⁹ its representative and his statement can easily be seen as having a separatist agenda.

On the other hand, the other two organizations, Kurdish Human Rights Project and Centre Europe-tiers monde, do not seem to have advocated separatism, but merely to have criticized Turkey for violations of Human Rights. The complaint of the Turkish delegation is based on two things. First, the usage of “terms not in line with UN terminology” such as “Kurdistan”, and second, the efforts to have the PKK/Kongra-Gel removed from lists of terrorist organizations.

It has been noted before¹⁰ that the work of the Committee on NGO is much politicized, and that independent Human Rights organizations that criticize member states have difficulties getting status, or, if they already have status, member states try to silence them by intimidation or by having their status withdrawn.

In the two above cases where the status of the organizations was suspended, the delegations that made the complaint originally requested the status to be withdrawn, and were supported by a number of delegations. Certain other delegations argued that suspension was a more appropriate sanction, and it was also said that the Committee should not censor NGOs.¹¹

⁸ See footnote 5

⁹ On its website, Interfaith International mentions Sudan, Iraq and the Gulf States, Afghanistan, Pakistan, India, Kashmir, Sri Lanka, Bangladesh and China as “the countries and regions mainly concerned” and says “[i]ts purpose is to provide a space to its members and associates to promote the rights of persons of all different religions and ethnic groups”. [<http://www.interfaithonline.org/>] (consulted July 27, 2011)

¹⁰ Olivier de Frouville 2008: “Domesticating civil society at the United Nations” in Dupuy and Vierucci: *NGOs in International Law, Efficiency in Flexibility?*, Edward Elgar Publishing.

¹¹ Regarding Interfaith International, Pakistan, China, Burundi, Cuba, Egypt, Angola, Turkey, Qatar, the Sudan, Guinea and the Russian Federation supported withdrawal, while the UK, the US, Dominica, Romania, Peru, Israel, Colombia, and the observer for Switzerland supported suspension. In the case of Centre Europe-tiers monde, Romania, the UK and the US “expressed concern that the complaint was not sufficient to merit withdrawal”, while China, India, Egypt, Pakistan, Qatar and the Sudan “urged the adoption of strict measures so that organizations are fully aware of the privileges of consultative status” and Turkey of course requested the withdrawal in the first place.

Terrorism

In addition to the two abovementioned NGOs, which were criticized for their support of PKK/Kongra-Gel, there were two NGOs that were specifically brought up because one of their members or affiliates were considered terrorists in their respective countries of origin. The first one was the US-based Human Rights Foundation, and the second one the Arab Commission for Human Rights.

*Human Rights Foundation*¹² was applying for consultative status in 2008, when Cuba raised objections to the organization, stating that its chairman, Armando Valladares, had been convicted for terrorist activities in Cuba, and that the organization carried out subversive activities in Bolivia. The US defended the organization by stating Mr. Valladares had been a prisoner of conscience in Cuba for 22 years and was now a distinguished poet and writer living in the US. The US, supported by Israel, Peru and the UK asked for the consideration of the application to be deferred, but, after the Committee voted,¹³ it was decided that the Committee would recommend not granting status to the NGO.

In the case of *Arab Commission on Human Rights*,¹⁴ Algeria made a complaint on the grounds that this organization had allowed an individual to replace its originally designated representative at the eight session of the Human Rights Council in 2008, without prior notification. The concerned individual, Rachid Mesli, had been convicted in absentia by an Algerian court on criminal charges of association with a terrorist organization. He had also used the opportunity to speak in the HRC on behalf of another NGO that was not accredited (Alkarama).

¹² E/2008/32 (Part II) paras 32-48.

¹³ There were actually two votes. The first one, on a motion from the US for adjournment of the debate (i.e. to defer the application), was rejected by 12 to 6. Colombia, Israel, Peru, Romania, the UK and the US voted for, while Angola, Burundi, China, Cuba, Dominica, Egypt, Guinea, Pakistan, Qatar, Russia, Sudan and Turkey voted against, and India abstained. In the second voting on the Cuban proposal not to recommend granting status, Angola, Burundi, China, Cuba, Dominica, Egypt, Guinea, India, Pakistan, Qatar, Russia, Sudan and Turkey voted for, while Colombia, Israel, Peru and the US voted against, and Romania and the UK abstained.

¹⁴ E/2009/32, paras 50-57

The representative of the United States called for a vote on the case, and subsequently abstained from voting, saying there was not enough information to make an informed decision on the matter. All other 18 delegations voted to suspend the status of the NGO. The delegate from Israel stated that the fact that Rachid Mesli had spoken for a non-accredited NGO was sufficient ground for suspension, while other delegations emphasized the fact that Mesli had been convicted by a court of a UN Member State.

According to Amnesty International,¹⁵ Rachid Mesli was a prisoner of conscience, who “has been targeted by the Algerian authorities for over a decade”, “because of his activities exposing violations committed by the Algerian authorities during the 1990s internal conflict and violations that continue to be committed in the present in the context of counterterrorism measures”. The international arrest warrant issued against him in 2002 alleged that he committed the offences attributed to him in June 1999, when in fact he was in prison until July 1999.¹⁶

At the meeting of the NGO Committee, the observer for Switzerland confirmed that Rachid Mesli had refugee status in Switzerland, but there does not seem to have been any debate in the Committee on whether the accusations of Mesli being a terrorist were fair or not.

In both these cases, there is a kind of word-against-word situation, where the complaining Member State accuses a representative of the NGO for being a convicted terrorist, while these accusations are said to be false by others.

The first case can also be seen as part of a series of instances of Cuba and the US fighting a symbolic battle in the NGO Committee, described by de Frouville,¹⁷ through NGOs, where the US supports organizations where the members are exiled opponents of the Cuban government and opposes other Cuban NGOs (that have the support of the Cuban authorities).

¹⁵ In special consultative status since 1964.

¹⁶ Amnesty International, *A Legacy of Impunity: A Threat to Algeria's Future*, 30 March 2009, MDE 28/001/2009, pp. 52-53, available at: <http://www.unhcr.org/refworld/docid/49d0c5752.html> [accessed 25 July 2011]

¹⁷ See footnote 10.

In the second case, the issue of whether Mesli was a terrorist or not was not a subject for debate, since the fact that he spoke for a non-accredited organization was deemed reason enough for sanctions.

However, a common trait in both these cases, and also in the cases of Kurdish Human Rights Project and Centre Europe-tiers monde, is that the NGOs in question are all human rights organizations that had previously criticized the complaining countries for violations of human rights.

Since countering terrorism is a common goal for the international community and something that has been much highlighted in the United Nations, especially since the attacks of September 11 in 2001, accusing an organization of terrorist activities or even of condoning terrorism is a very effective way of discrediting it. Terrorism is an “internationally recognized criminal activity” *par excellence* and therefore sufficient ground for suspension or withdrawal of consultative status according to 1996/31.¹⁸

On the other hand there is a potential conflict between counter-terrorism measures and the protection of human rights. This was recognized when the United Nations Global Counter-Terrorism Strategy was adopted in 2006. According to that resolution, “any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law”.¹⁹ Many states have also been criticized for using broad definitions of terrorism that allows them to detain individuals who are critical of the regime. In fact, both Turkey and Algeria have been criticized for this.²⁰

Resolution 1996/31, para 57: The consultative status of non-governmental organizations with the Economic and Social Council and the listing of those on the Roster shall be suspended up to three years or withdrawn [...]: (b) If there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities such as the illicit drugs trade, money-laundering or the illegal arms trade;

¹⁹ A/RES/60/288 Section IV, para 2.

²⁰ For Algeria, see for example the report of the UN Committee Against Torture from 2008, CAT/C/DZA/CO/3 para 4; for Turkey see for example the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism from 2006, A/HRC/4/26/Add.2, paras 9 and 18.

LGBT-rights

A phenomenon that has got some attention both in the ECOSOC and in the international media, is the reluctance²¹ of the NGO Committee to recommend consultative status to NGOs working for the rights of, or representing, lesbian, gay, bisexual or transgender (LGBT) people.

During the three years covered in this study, there were four such organizations applying for consultative status, namely *Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales*,²² *Federatie van Nederlandse Vereiningen tot Integratie van Homoseksualiteit COC Nederland*,²³ *Associação Brasileira de Gays, Lésbicas e Transgêneros*²⁴ and *International Gay and Lesbian Human Rights Commission*.²⁵ These NGOs had all had their applications deferred from previous sessions because the Committee had had questions for them, and finally, a Committee member asked the Committee to vote on the applications to recommend them status. In the first and third cases,²⁶ the Committee decided not to recommend status for the NGO. In the second one,²⁷ status was recommended, and in the fourth case,²⁸ the application was deferred after a motion for adjournment of the debate.

²¹ De Frouville 2008, p. 109 (see footnote 10). Also in the regular session of the Committee in 2008, the representative of Romania “emphasized that the Committee did not present a balanced record of recommendations regarding organizations that defended and promoted the rights of homosexuals, since out of the past 10 applications of such organizations brought to its consideration, the Committee had recommended none” (E/2008/32 (Part I), para 25).

²² E/2008/32 (Part I), paras 13-25

²³ E/2008/32 (Part II), paras 18-27

²⁴ E/2008/32 (Part I), paras 7-10 and E/2009/32 (Part I) paras 9-19

²⁵ E/2010/32 (Part II), paras 6-17

²⁶ For *Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales*, Colombia, Dominica, Israel, Peru, Romania, the UK and the US voted for, and Burundi, China, Egypt, Pakistan, Qatar, Russia and Sudan against recommending status. Angola, Guinea, India and Turkey abstained. For *Associação Brasileira de Gays, Lésbicas e Transgêneros*, Colombia, Israel, Peru, Romania, the UK and the US voted for, and Burundi, China, Egypt, Guinea, Pakistan, Qatar, Russia and Sudan against recommending status. Angola, Dominica, India and Turkey abstained.

²⁷ Colombia, Dominica, Israel, Peru, Romania, the UK and the US voted for, and China, Egypt, Pakistan, Qatar, Russia and Sudan against recommending status. Angola, Burundi, Guinea, India and Turkey abstained.

²⁸ Angola, Burundi, China, Cuba, Egypt, Guinea, Pakistan, Qatar, Russia and Sudan voted for, and Colombia, Israel, Peru, Romania, the UK and the US against the motion for adjournment of the debate. India and Turkey abstained, while Dominica was absent.

As mentioned above, the Economic and Social Council usually follows the recommendations of the Committee in its decisions. However, for these organizations, this was not the case. In fact, all three NGOs that did not receive a positive recommendation from the Committee were later granted consultative status by the Council in spite of the Committee recommendations,²⁹

The issue of LGBT-rights has divided the United Nations when some member states have worked for an official recognition of the rights of LGBT-people, while others have strongly opposed it. Until June 2011, the UN had never passed a resolution affirming the rights of LGBT people. Such a resolution was proposed by South Africa and passed in the Human Rights Council on June 17, 2011, “request[ing] the High Commissioner [on Human Rights] to commission a study to be finalised by December 2011, to document discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity”.³⁰

There had previously been other attempts to have resolutions passed in the Commission on Human Rights or the General Assembly, but there was always a strong opposition from the Vatican and the Organization of the Islamic Conference (OIC).³¹

In the Committee on NGOs, one can also see a polarization that suggests that the attitude of the members is based more on principles and political positions than on judgements on the individual NGOs. Looking at the votes of the delegates, it appears that China, Egypt, Pakistan, Qatar, the Russian Federation and the Sudan were consequently opposing giving these organizations status, while Colombia, Israel, Peru, Romania, the United Kingdom and the United States supported all four NGOs. If one is to look at which delegations made statements to express their reservations or support, Egypt, Pakistan,

²⁹ For Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales, see A/63/3, paras 129-137, for Associação Brasileira de Gays, Lésbicas e Transgêneros, A/64/3, paras 96-101 and for International Gay and Lesbian Human Rights Commission, A/65/3, paras 154-158.

³⁰ A/HRC/17/L.9/Rev.

³¹ For the situation up to 2005, see Elizabeth Kukura 2005: “Sexual Orientation and Non-Discrimination”, *Peace Review: A Journal of Social Justice*, 17:181–188.

Qatar and the Sudan were the most active in voicing their opposition, while Romania, the UK and the US were the most vocal in their support.

Egypt, Pakistan, Qatar and the Sudan are all OIC members and are arguably among the more conservative member states when it comes to questions of sexual orientation and gender identity. With the exception of Egypt, homosexuality is criminalized in these countries and punishable by imprisonment or, in the case of the Sudan, even with death.³² However, the arguments they present in the Committee do not condemn the NGOs for representing LGBT people, but usually refer to questions still pending. In two of these cases, concerns were also raised over possible implications the NGOs' members or associates could have in pedophilia.

The delegations defending these NGOs, on the other hand, referred to the need to not discriminate against LGBT organizations, to the value of a diversity of NGOs contributing to the work of ECOSOC, and recognized to good work these organizations had carried out in areas of Human Rights and HIV/Aids.

Freedom of expression

The issue of freedom of expression is usually not a primary one when a controversial NGO is under debate in the Committee on NGOs, but is more used as an argument for defending organizations that are being criticized. For example, in the cases of Interfaith International and Centre Europe-tiers monde discussed above, some delegations invoked freedom of speech and said the Committee should not censor NGOs.

Article 19 of the Universal Declaration of Human Rights (UDHR) states that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The preamble of the Declaration even

³²ILGA, International Lesbian and Gay Association 2008, *State-sponsored Homophobia A world survey of laws prohibiting same sex activity between consenting adults*. Available at [http://ilga.org/historic/Statehomophobia/ILGA_State_Sponsored_Homophobia_2008.pdf] (consulted 28 July 2011).

says “the advent of a world in which human beings shall enjoy freedom of speech [...] has been proclaimed as the highest aspiration of the common people.”

However, there are also limits to the freedom of expression, mentioned for example in article 29 of the UDHR,³³ Freedom of expression does not mean the right to defamation, and, as previously mentioned, Resolution 1996/31 prohibits “unsubstantiated or politically motivated acts against Member States”.

There is inevitably a grey area where these principles may collide and assessing whether criticism of a government is substantiated or not, or whether it is “politically motivated” is indeed difficult at times.

Between 2008 and 2010, there was one NGO that apparently crossed the limits of its freedom of expression. The *World Union for Progressive Judaism*³⁴ was subject to a complaint lodged by the delegation of Cuba on behalf of the Non-Aligned Movement. At the 6th session of the Human Rights Council, a representative of the organization had, in his oral statement,³⁵ “attempted [...] to delve into issues that fell beyond the scope of the mandate of the Human Rights Council”, and had been asked three times by the President of the Council to focus on the issue at hand, namely the Human Rights Situation in Palestine and other occupied Arab territories. The NGO representative said it was “time for the council to recognize that the most serious Palestinian problem [was] the occupation of Gaza by Hamas, a recognized terrorist group backed by the Iranian regime, whose president regularly defies the UN charter, by calling for Israel to be wiped off the map and using Hamas and Hezbollah for that genocidal aim”, when the delegate of Egypt made a point of order, saying Iran was not on the agenda. When the NGO representative

³³ Article 29: (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations

³⁴ E/2008/32 (part II), paras 82-92.

³⁵ Webcast of the Council session available at [<http://www.un.org/webcast/unhrc/archive.asp?go=070920>] (consulted August 2, 2011).

cited the charter of Hamas and its religious references, the Egyptian delegate made a second point of order, saying Islam was not the topic of discussion, whereupon the President gave the NGO representative a final warning.

In the NGO Committee, Cuba requested that the secretariat of the Human Rights Council investigate the matter, so the Committee could determine if action should be taken against the NGO. In the end, the NGO submitted a letter of apology, and its president also addressed the Committee in person saying there had been no intention to offend any Member State.

It is telling that in this case, even though the representatives of the United States and Israel were defending the NGO by praising its past work with the United Nations and saying a written excuse should not have been necessary, no one invoked freedom of speech in this case, which implies the consensus was that the NGO had gone past the limits of this freedom.

Human rights

All of the cases described above have a bearing on human rights. LGBT organizations are specifically working for the right to a life without discrimination and threats on the basis of sexual orientation or gender identity. In some countries, this might include fighting for the most basic human right of all, the right to life. And just as these NGOs denounce discrimination against LGBT people, there have been concerns over discrimination in the NGO Committee against LGBT organizations.

Then there are the human rights organizations that report on human rights violations in different countries only to be accused of “unsubstantiated or politically motivated acts against Member States”.

Another NGO that is related to this category is the *Democracy Coalition Project*,³⁶ This NGO, based in the United States, had its application considered by the Committee at the

³⁶ E/2009/32 (part II), paras 24-33.

resumed session of 2009. The application had previously been deferred,³⁷ but during this session the representative of the United States asked the Committee to take action to recommend granting consultative status to the organization, since he was of the view that the same questions were being asked several times. However, after a vote,³⁸ the Committee decided to recommend to the Council not to grant status to the NGO.

The delegations opposing the NGO argued that it “engaged in politically motivated activities against certain Member States and [...] thereby discriminated against them”, that its work was “contrary to the provisions [of] resolution 1996/31 because [...] it was critical of the actions of some Member States”³⁹ and that there were inaccuracies in its publications⁴⁰ on voting patterns in the General Assembly.⁴¹

In this case it seems strikingly clear that the only reason for not giving status to the NGO was the fact that it was critical of certain Member States, as this was (surprisingly) even expressed by delegates. But this certainly raises the question of what kind of human rights organizations should be allowed to work with the United Nations, if the ones who criticize members are ineligible.

The protection of Human Rights has been cited as one of the main reasons for the creation of the United Nations. Indeed, there are several references to human rights in the UN Charter, including Article 1 that states: “The Purposes of the United Nations are: [...] (3.) *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*” (emphasis added). The Universal Declaration of Human Rights, adopted in 1948, defines the “human rights and fundamental freedoms” referred

³⁷ The application was first presented to the Committee at the regular session in 2008.

³⁸ Colombia, Israel, Peru, Romania, the UK and the US voted for, and Angola, Burundi, China, Cuba, Egypt, Qatar, Russia and Sudan voted against recommending that status be granted, while Dominica, Guinea, India, Pakistan and Turkey abstained.

³⁹ E/2009/32 (part II), para 26.

⁴⁰ The NGO publishes reports each year, called "Human Rights Council Report Card: Government Positions on Key Issues " and "United Nations General Assembly Scorecard" on the voting patterns of member states in the HRC and the GA, available at [http://www.demcoalition.org/2005_html/activ_publi.html] (consulted on August 3, 2011).

⁴¹ *Ibid.*, para 28.

to in the Charter. The Human Rights Council was created to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”,⁴² and the General Assembly resolution that established the HRC explicitly acknowledges “that non-governmental organizations play an important role at the national, regional and international levels, in the promotion and protection of human rights”.⁴³

Still, the controversial NGOs studied in this paper were all somehow related to human rights. Bearing in mind that there are a wide array of fields in which NGOs in consultative status are active, including environmental protection, humanitarian aid and healthcare, it is noteworthy that human rights seems to be such a sensitive matter in all its importance.

What does it mean when criticism of human rights violations are dismissed as not in conformity with the spirit, purposes and principles of the Charter of the United Nations, or as “unsubstantiated or politically motivated acts against Member States”? Article 2 of the United Nations Charter,⁴⁴ listing the principles of the United Nations, is concerned with its Members, which are states, and the relationship between these Members, not with individuals. But human rights are essentially a matter of *individual* rights. When human

⁴² A/RES/60/251, para 3.

⁴³ A/RES/60/251.

⁴⁴ “The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

rights organizations who criticize Member States are regarded as not complying with the Charter, it is a way of saying the rights of states come before the rights of people. But what are states without their people?

Conclusion

In this paper on conflicts and controversial issues in the ECOSOC Committee on NGOs, I have focused on separatism, terrorism, rights of lesbian, gay, bisexual or transgender people, freedom of speech and human rights. It actually appears that all these subjects are more or less related to human rights, and that there is a somewhat problematic situation where NGOs are solicited to give an input to the work of the Human Rights Council, but at the same time not expected to criticize Member States too harshly.

Since consultative status is necessary for NGOs to gain access to the HRC, the Committee on NGOs has become the arena for struggles over which organizations should be admitted. Therefore, the work of the Committee, in theory a technical task, has become politicized. This leads to a situation where competent NGOs that could make important contributions to the work of the United Nations might be refused consultative status because of political reasons. When looking for an alternative to the present situation, one cannot overlook the fact that and intergovernmental body will inevitably reflect the dynamics and international relations between the different Member States. It would be naïve to expect states to overlook their national interests, in the NGO Committee as much as in any other part of the United Nations system.

But adopting such a realist perspective should not lead to the conclusion that nothing can be done to improve the fairness of the system. The Committee members are guided and limited in their work by the different rules pertaining to its work, in ECOSOC resolution 1996/31, the Rules of Procedure of the Committee and other documents, and these rules can be modified if it seems necessary. Transparent and just rules are essential to ensure fair and equal treatment of all NGOs applying for or already in consultative status with ECOSOC.

Since the scope of this paper is only a period of three years, it is hard to say anything about possible past and future changes in the patterns of conflict in the Committee. A broadened study could give a more nuanced picture. One category of NGOs that are sometimes controversial, which was not included here, is Indigenous People's organizations, and there might be others. It is also likely that some dynamics have and will change because of the increasing amount of applications for consultative status from NGOs that are presented to the Committee. Since deferring an application means increasing the workload of the next session, there might be calls for limiting the number of deferrals, like Turkey has already suggested.⁴⁵

⁴⁵ See for example E/2011/32 (Part II), para 14.