

**A ‘Global Crackdown on Civil Society’?
Assessing the Accreditation Practice of the United Nations
Committee on NGOs**

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Abstract

In recent years, applications of NGOs for consultative status with the UN have reached record numbers, while, at the same time, several UN Member States and NGOs voice complaints about a ‘global crackdown on civil society’. This paper analyzes key aspects of the practice of the NGO Committee – the central gate through which civil society organizations can gain access to the UN – in order to assess such claims of a crackdown on civil society. First, this paper provides the relevant definitions and institutional contexts in order to outline, secondly, the legal mechanisms that govern the accreditation of NGOs at ECOSOC. Thirdly, against this backdrop, the paper analyzes original data collected at the NGO Branch in order to assess the performance of the NGO Committee in the last decade on both a quantitative and a qualitative level. The findings indicate that there are no substantial changes in the number of applications deferred relative to the total number of applications, and that the proportion of granted statuses relative to new applications considered has even slightly increased. Finally, the paper contextualizes these findings by examining recent highly politicized cases, and offers some comments on possible trajectories. It concludes that there is no evidence of a more restrictive accreditation practice of the NGO Committee.

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I. Introduction

In the early 1990s, the substantial increase of NGO participation in global politics led to the idea of a societal and political transformation towards a truly global civil society.¹ Many scholars claimed that civil society was becoming increasingly central to global politics, arguing that a ‘global civil society’² was emerging, while the state was in ‘retreat’.³ In the context of the UN, NGOs were increasingly seen to act as a ‘Third UN’,⁴ with substantially expanding numbers of nongovernmental participants at UN-funded conferences,⁵ culminating in the 1992 Earth Summit in Rio de Janeiro and the 1995 women’s conference in Beijing with some 17,000 nongovernmental participants in the former, and 32,000 in the latter.⁶

Today, however, this momentum – or at least the perception of its dynamics – has fundamentally changed. In a climate of re-emerging nationalism and protectionism, several NGOs and Member States of the UN have complained about an increasingly restrictive stance towards civil society and argue that the principles of the UN are being undermined by such trends. Numerous articles write about ‘crack-downs’ on civil society not only in Russia⁷ and China,⁸ but also in Egypt,⁹ Azerbaijan¹⁰ and, more recently, Turkey.¹¹ Some commentators fear that the re-emergence of anti-immigration sentiment and populist protectionism could

¹ See Rebasti (2008), who speaks of an ‘NGO revolution’ in the early 1990s (Rebasti, 2008, p. 22).

² See, for instance, Lipschutz (1992, pp. 389-390) and Anheier, Glasius, and Kaldor (2001, pp. 16-17). In a paper discussing the sovereign limits of global civil society, Ann Marie Clark, Elisabeth J. Friedman and Kathryn Hochstetler (1998) argued that ‘the construction of a global society is under way but is far from complete’.

³ Most famously, this argument has been put forward by Susan Strange (1996).

⁴ From its beginning in 1945, three distinct types of non-state actors (NSAs) have been of direct relevance to the UN system. This group of NSAs consists of NGOs, academics and experts who contribute, participate, and often influence policies by working as consultants, advisors or in independent commissions (Mingst & Karns, 2011, p. 89). The importance of this agglomeration of NSAs has led scholars to refer to it as the ‘Third UN’, which often is seen as increasingly important: ‘What once seemed marginal for international relations now is central to multilateralism’ (Weiss, Carayannis, & Jolly, 2009, p. 123). The terminology ‘Third UN’ expands the traditional distinction formulated by Inis L. Claude (1956, 1996) which only encompasses two components, namely between the UN as an intergovernmental arena on the one hand, and as a secretariat on the other. This third realm encompasses ‘certain nongovernmental organizations (NGOs), external experts, scholars, consultants, and committed citizens who work closely with the UN’s intergovernmental machinery and secretariats’ (Weiss et al., 2009, p. 123).

⁵ See Mingst and Karns (2011, pp. 89-92).

⁶ Jolly, Emmerij, and Weiss (2009, p. 35).

⁷ Gorbunova and Baranov (2013).

⁸ See further Hernández (2016).

⁹ United Nations News Centre (2016).

¹⁰ Office of the United Nations High Commissioner for Human Rights (2015).

¹¹ Amnesty International (2017, p. 367) reports a ‘massive government crackdown on civil servants and civil society’ since the Turkish *coup d’état* attempt in July 2016.

threaten the transnational activities of civil society organizations, or, more drastically, indicate the beginning of the end of a global civil society.¹²

At the UN, these tensions are reflected on the global political stage. As the most recent UN Global Trends Report highlights, several factors continue to restrict ‘broad-based participation’ as well as further achievements in the protection of human rights.¹³ Reports of both the UN Secretariat and NGOs in consultative status with ECOSOC have openly complained about a ‘global crackdown on civil society’.¹⁴ For instance, in an open letter addressing Secretary-General António Guterres, a transnational association of civil society advocates recently urged him to build a more inclusive UN, and to ‘pursue his pledge to make cooperation with civil society ‘a key element in solving global problems’.¹⁵ The Special Rapporteur on the rights to freedom of peaceful assembly and association has repeatedly expressed his concerns about the lack of transparency of the practice of the NGO Committee as well as its often-exclusionary tendencies.¹⁶

At the same time, the Secretary-General emphasized in his vision statement on 4 April 2016 that in order to ensure effective multilateralism, a ‘strong culture of partnership’ is needed.¹⁷ Acknowledging the need to fully recognize the role of civil society and the private sector in providing global public goods, Guterres stressed that the ‘strategic cooperation [of relevant UN organizations] with their civil society partners’ must be further developed.¹⁸ As early as the Millennium Report, former Secretary-General Kofi Annan emphasized the crucial

¹² See Rutzen (2016).

¹³ United Nations Development Programme and United Nations Research Institute for Social Development (2017, p. 26). See also International Center for Not-for-Profit Law (2016).

¹⁴ The International Service for Human Rights (2017) spoke recently of a ‘global scale of the crackdown on civil society and human rights defenders’ in the context of the Human Rights Council's General Debate. An example of a highly polemic portrayal of the NGO Committee’s most recent session is the report by Human Rights Voices (2017), which is concerned about a ‘repression of civil society voices within the UN’ by the NGO Committee. In the same session, the representative of the United States has also repeatedly expressed grave concern about the ‘global crackdown on the participation of civil society’; see UN Doc. E/2016/32 (Part I), p. 31, 33, 52, 53.

¹⁵ United Nations Association – UK, Friedrich-Ebert-Stiftung New York Office, CIVICUS, and Avaaz (2017).

¹⁶ Particularly illustrative in this respect is the Secretary-General’s 2014 report to the General Assembly (UN Doc. A/69/365, para. 72-80).

¹⁷ Guterres (2016, p. 4). The Secretary-General mentions three levels: first, to increase cooperation with regional organizations, second, to strengthen partnerships with international financial institutions, and third, to enhance the engagement with civil society and the private sector (Guterres, 2016, p. 4).

¹⁸ In June 2015, former Secretary-General Ban Ki Moon also stressed the importance of involving civil society actors in the UN: ‘No country, no matter how powerful or resourceful, can do this work alone. The United Nations cannot do this work alone. All actors need to join hands as never before – Governments, business, civil society’ (United Nations Democracy Fund, 2015).

role civil society plays for the UN.¹⁹ In line with several more recent UN reports, he acknowledged the increasing importance of non-state actors (NSAs) in multilateralism, and international relations more broadly conceived.²⁰

Today, more than fifteen years after the Millennium report, and more than a year after the adoption of the 17 Sustainable Development Goals (SDGs), it is worth reassessing the practice of the NGO Committee of the UN in order to better understand the general relations between civil society and the UN. Is there a ‘crackdown on civil society’ in the practice of the United Nations Committee on NGOs? That is, has its accreditation practice become more *restrictive*?

In order to answer this question, the paper limits its focus to the specific institutional setting in which the decisions for the accreditation of NGOs take place at the UN. The NGO Committee is the central gate for civil society to gain access to the UN, and it promises to be a valuable focal point for studying the tensions mentioned above. An analysis of the legal mechanisms and the practical work of the Committee, however, is still absent in scholarly literature. This is particularly surprising as highly politicized cases at the NGO Committee have received much public attention in recent years. Additionally, most accounts of relations between NGOs and the UN do not take into account the *procedural aspects* of the work of the Committee, while criticisms of the Committee coming from NGOs often seem overly polemic.²¹ They often presume a somewhat homogenous group under the label ‘civil society’, which is then portrayed as somehow morally superior to their alleged ‘opponents’, namely the Member States of the UN.²² This paper proposes a middle way to these two extreme perspectives, and proceeds in three steps.

First, it provides definitions of the relevant terms, arguing that a normatively neutral definition of NGOs is most suited to analyzing the recent developments in the NGO Committee’s practice. Drawing on conceptual history, the section briefly highlights the definitional problems in the specific context of relations between the UN and civil society.

Against this backdrop, the second section assesses the legal mechanisms and the procedural side of accrediting NGOs to the UN. The section argues that the legal basis of the

¹⁹ Kofi Annan (2000, p. 67) stressed that ‘[t]oday, global affairs are no longer the exclusive province of foreign ministries, nor are states the sole source of solutions for our small planet’s many problems. Many diverse and increasingly influential non-state actors have joined with national decision makers to improvise new forms of global governance’.

²⁰ See, for instance, United Nations (2016, pp. 30-32).

²¹ An exception is Aston’s (2001) research, which focuses on the legal aspects, and being published in 2001, does not account for more recent developments.

²² Willetts (2011, pp. 1-31) shows that it is *principally* impossible to view NGOs or CSOs as a group in moral terms, simply because of the heterogeneity of the actors denoted with such groupings.

accreditation mechanism and the political nature of its practical implementation constitute what is best understood as a ‘political filter’²³ of civil society accreditation at the UN.

Third, drawing on these definitions and clarifications, the paper analyzes original data collected at the UN DESA NGO Branch. The data permits an assessment of (1) the number of applications received by the NGO Branch, (2) the consultative statuses granted and (3) the applications deferred by the NGO Committee since 2009. On a qualitative level, the section will also examine the Reports of the Committee of the last ten years in order to assess the specific aspects of the NGO Committee’s practice that could give reason to the claim of a ‘global crackdown on civil society’. It considers a particularly politicized category of the NGO Committee, namely the so-called ‘Special Reports’, and provides an assessment of highly politicized cases in order to illustrate tensions and developments in the NGO Committee, focusing on its most recent Regular Session of 2017.

The paper concludes that the overall performance of the Committee has, in fact, been *stable*, and, in terms of consultative statuses, has not become more restrictive but indeed more *liberal*. Finally, it offers some comments on possible trajectories. It concludes that, while the findings presented here do not indicate a ‘global crackdown on civil society’, the particularly politicized cases might nevertheless lead to the perception of an increasingly restrictive practice of the NGO Committee. If complaints about such practice increase to critical levels, they might, ultimately, lead to pressures for reform.

II. Cracking Down on What? Contextualizing Contested Terms

In contemporary political, public and academic discourse, the terms ‘civil society’ and ‘NGOs’ are often used interchangeably, and, most of the time, imply a positive connotation.²⁴ Such positive connotations, in turn, often underpin – implicitly or explicitly – *normative* claims, such as, for instance the portrayal of ‘civil society’ as a morally superior opposition to specific ‘state interests’.²⁵ In order to shed light on this somewhat undifferentiated usage of the terms, and their semantics in the context of the UN, a brief conceptual history is helpful. An emphasis on the historical dimension of the contemporary discourses not only allows us to

²³ As Rebasti (Rebasti, 2008, p. 25) argues, the accreditation mechanism is best conceived of as a ‘political filter’ as it is established in order to assess a ‘predefined set of admission conditions’ that are written in ‘non-restrictive terms’, but nevertheless allow Member States to restrict NGOs’ access to the UN for *political* reasons (Aston, 2001). See further the third section of this essay below.

²⁴ Götz (2011, p. 185).

²⁵ See further Halliday (2001).

avoid both too drastic claims about the current developments, but also ‘one of the maladies of NGO-related scholarship’,²⁶ namely the tendency to assume the recency of the relevance and influence of NGOs in international politics.²⁷

What do we mean when we speak of ‘civil society’ and ‘NGOs’, and what is at stake when we speak of a ‘global crackdown’ on them? Historically, the concept ‘civil society’ emerged in ancient Greece; its genealogy leads back to Aristotle’s *Politics*, and, more precisely, to the very beginning of the first book. Aristotle here deploys the term ‘koinonia politike’ with reference to the *political* realm, that is, literally to the ‘political community’.²⁸ Having its historical index in the Athenian polis, the term here refers to an organic *unity* of state and society, not modern forms of the state.²⁹ The term ‘koinonia politike’, then, was translated into Latin as ‘societas civilis’, which continued to signify the *political* sphere: in fact, just as in Aristotle’s *Politics*, the term refers to ideas of political order, and its maintenance by law.³⁰

This connotation did not change substantially until the late eighteenth century, when during the revolutionary period 1750–1850 the term transformed into a meaning which was in *contrast* with the political sphere of government, namely the realm of *social* life.³¹ Precisely this social realm is what then came to be called the ‘public sphere’ in the philosophical traditions of the Enlightenment,³² namely a sphere of voluntary association, publishing institutions, and market exchanges of citizens in the *private* realm, as deliberately opposed to the realm of immediate state authorities’ influence and institutions.³³

²⁶ Charnovitz (2006, p. 350).

²⁷ Indeed, much scholarship and recent political activism mistakenly takes the alleged historical novelty of ‘transnational civil society’ or ‘International NGOs’ (‘INGOs’) as a starting point. Such studies argue that civil society organizations would experience new momentum in the twenty-first century, portraying them in opposition to forms of statism. Historians have often dated the beginning of transnational civil society and INGOs at least back to the late nineteenth century, and more recent scholarship has argued that the origins can be traced back to earlier changes and events in the late eighteenth century. See Boli and Thomas (1999), Iriye (2002) and, for a more recent account Davies (2014), who also quotes the former two investigations (Davies, 2014, p. 4). Davies’ account of these earlier origins, namely of the transitions taking place between the 1760s and the 1860s can be found in the first chapter Davies (2014, pp. 19-76), and particularly on pages 19-44.

²⁸ Aristotle (1995).

²⁹ The ‘polis’ ontologically precedes the household, i.e. the ‘oikos’; see, for instance, Arendt (1998).

³⁰ See further Keane (2010).

³¹ Keane (2010, p. 461).

³² On the general relation between these notions, see Lang (2012).

³³ Still worth reading is the reconstruction of the temporal, geographical, and semantic transformations of the increasing bifurcation between the state and civil society in John Keane’s (1988) *Despotism and democracy. The origins and development of the distinction between civil society and the state, 1750–1850*. More recently, Castells (2008) has argued that a ‘new public sphere’ is emerging in the context of global civil society, communication networks, and newly emerging trends of global governance.

Today, we generally continue to refer to this meaning when we deploy the term ‘civil society’.³⁴ On the one hand, its semantic scope makes the term broad enough to encompass such diverse phenomena as social movements, human rights, sustainable development, cosmopolitanism, and free market economic restructurings, as opposed to state intervention. On the other hand, the term’s versatility also renders it open to interpretation, and consequently to political contestation.³⁵

This is precisely what is at stake when NGOs and UN Member States deploy the formulation ‘crack-down on civil society’ today: It evokes imaginaries of political interference in the private or social realm, or, formulated more polemically, of state interference in the very heart of civic liberty and the possibility of free association.³⁶ Indeed, while sovereign states are limited in geographical and temporal terms by definition, civil society actors are often organized on a *transnational* scale. They are, moreover, commonly occupied with the advancement of agendas of universal scope, such as, for instance, human rights, gender equality, or environmental protection.³⁷

The term ‘NGO’ itself is often deployed as an equivalent to ‘civil society’, and in particular to ‘Civil Society Organization’ (‘CSO’).³⁸ Understanding ‘NGO’ as a less inclusive term than ‘CSO’, this essay is concerned with the most visible and arguably most important of civil society actors, namely *formally* organized and *legally* recognized NGOs. ‘Civil society’ remains contested and difficult to define, but NGOs can, in fact, be deployed analytically as a marker of recent developments. They form an analytically useful category for the research question at hand as they are structurally identifiable and the only civil society entity that can

³⁴ Until the late twentieth century, the term ‘civil society’ had, in fact, largely disappeared from political and intellectual discourse, but it re-emerged all the more powerfully in the 1990s; see further Keane (1998).

³⁵ In fact, the most commonly agreed on definitional characteristic of CSOs – and arguably of NGOs – remains their independence of ‘direct government control and management’. On the distinction between these two terminologies, see United Nations Development Programme (2013, pp. 123-126).

³⁶ The most obvious and frequent criticism remains that CSOs and NGOs lack democratic legitimacy. More generally, the participation of NGOs in international organizations can either be portrayed as a positive development, or as an indicator of anti-democratic tendencies. See further Raustiala (2000, p. 409) and Houghton (2014).

³⁷ Carver and Bartelson (2010, p. 4). The empirical observation of ‘global civil society’, i.e. of an entity which comprehensively qualifies as ‘global’ in nature and scope, remains contested and thus ‘global civil society’ refers to the realm of future aspiration than empirical description for most scholars (Anheier et al., 2001, p. 17). A much less contested and much wider accepted denotation, therefore, is to speak of ‘transnational’ civil society, which simply refers to activities which transcend national borders of states, and is much easier to observe empirically (Florini & Simmons, 2000, p. 7).

³⁸ Even though the term ‘NGO’ itself is often deployed as an equivalent to civil society, and in particular to a ‘Civil Society Organization’ (‘CSO’), it emerges only in the twentieth century, and can usefully be understood as a less inclusive term than ‘CSO’. The term ‘transnational civil society’ is also deliberately broader than ‘NGO’, and encompasses numerous institutions, ranging from social movements to advocacy networks (Davies, 2014, p. 2).

be legally accredited in a consultative relationship with the UN.³⁹ Since this paper addresses NGOs in global politics, it is reasonable to follow the UN definitions of NGOs, and what the UN accepts as an NGO in practice.⁴⁰

In fact, the term ‘non-governmental organization’ – or ‘NGO’ – was first brought into common usage by the UN itself, namely by the UN Charter in 1945.⁴¹ This was largely triggered by the necessity to deploy a legally binding terminology: At its inception the UN had to differentiate between the rights of those specialized agencies that were *intergovernmental*, and those who were not, that is, those who were *international*, but – simultaneously – *private*.⁴² Before the inception of the UN in 1945, organizations in the realm of civil society had mostly been referred to as ‘private international organizations’⁴³ or simply ‘private organizations,’ for instance by the League of Nations.⁴⁴ Indeed, at the San Francisco Conference in 1945, there were not only 850 government delegates and around 2500 members of the media participating, but also the ‘vast unofficial presence’ of about 1,500 NGO representatives and members of civil society.⁴⁵ The pressure arising from their presence and lobbying work at the San Francisco conference contributed to the inclusion of provisions in the UN Charter with ‘dramatic human rights implications’,⁴⁶ such as the establishment of the Commission on Human Rights as an organ of ECOSOC, as set out in Article 68.⁴⁷

Yet, the *ex-negativo* definition of such private organizations as ‘non-governmental’ in the UN Charter remains broad. Any organization that acts independently from government control and that does not challenge Member States’ sovereignty can technically be considered an NGO from the legal point of view of the UN system, regardless of whether the organization is, for instance, profit-based or not.⁴⁸ In practice, however, the term commonly refers to *non-profit* organizations, which are *not* constituted as a political party, and which are

³⁹ Willetts (2011, p. 3).

⁴⁰ This is a reasonable definitional basis for this paper not only because the UN remains the main focal point for many NGO political activities, but also because the UN’s practice and policy has been highly influential on other international organizations (Willetts, 2011, p. 3).

⁴¹ The first documented case of the usage of the term ‘non-governmental organization’ was just after World War I, when Dwight W. Morrow (1919) contrasted ‘non-governmental organizations’ with those composed of sovereign states in his book *The Society of Free States*. This reference is taken from Charnovitz (2006, p. 351).

⁴² Willetts (2006b).

⁴³ White (1933); cited in Davies (2014, p. 3).

⁴⁴ Willetts (2006b).

⁴⁵ Jolly et al. (2009, pp. 35, 54).

⁴⁶ Jolly et al. (2009, p. 55). See further Seary (1996).

⁴⁷ ‘The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions’ (UN Charter, art. 68).

⁴⁸ See the discussion of Resolution 1996/31 below, which governs the work of the NGO Committee.

non-violent.⁴⁹ For the purpose of this essay, such an *ex negativo* definition is sufficient, as it is in line with the requirements for accreditation and recognition by the UN, but also because its versatility allows us to account for the ambiguous combination of the technical and political nature of the NGO Committee's accreditation practice.⁵⁰

Indeed the boundaries of what qualifies as an NGO are not only often blurred, but they also principally depend on the political will of the 19 Member States in the NGO Committee, as well as the will of the 54 Member States in its parent body, ECOSOC. Therefore, any legal analysis must be attentive to the *political* discourse that conditions the way in which the legal frameworks are interpreted. Before we proceed to an analysis of the recent practice of the NGO Committee, a better understanding of the rules of procedure and the legal basis for its work is required. In other words, what are the specific accreditation arrangements between the UN and NGOs?

III. Understanding the Accreditation Mechanism of Resolution 1996/31 as a 'Political Filter'

The legal basis for the consultative relationship between ECOSOC and NGOs was first established in the UN Charter.⁵¹ In the tenth chapter, the Charter sets out that the 'Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence'.⁵² It further specifies that 'such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member States of the United Nations concerned'.⁵³ Thus, the UN Charter authorized ECOSOC – not the General Assembly – to grant consultative status to certain NGOs. This authorization was further formalized in Resolution 1296 (XLIV) of 23 May 1968, which regulated the accreditation of NGOs with the UN until the mid-1990s.

In that period, after the end of the Cold War, the influence of NGOs in global politics grew both qualitatively and quantitatively. In order to administer the substantial increase of

⁴⁹ Willetts (2006b).

⁵⁰ Formulated positively, then, one can heuristically define an NGO 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' (Willetts, 2006b).

⁵¹ See, for an early study of this relationship, Chiang (1981).

⁵² UN Charter art. 71.

⁵³ UN Charter art. 71.

applications for consultative, ECOSOC introduced a new legal framework in 1996. After years of debate, ECOSOC Resolution 31 was adopted on 25 July 1996 and provided the legal mechanism that continues to govern the work of the NGO Committee today.⁵⁴

Part 2 of Resolution 1996/31⁵⁵ reiterates the fundamental distinction between participation ‘without vote in the deliberations of the Council and the arrangements for consultation’ of Articles 69 and 70 of the UN Charter.⁵⁶ That is, in contrast to international organizations and Member States of the UN, NGOs can obtain a *consultative* role, which may include the presentation of statements to certain bodies of the UN and access to the UN buildings, and to a range of Councils, including the United Nations Human Rights Council (OHCHR).⁵⁷ ECOSOC categorizes this consultative role of NGOs in three more specific statuses, corresponding to the ‘nature and scope’ of its activities and to the assistance it may provide to ECOSOC in carrying out the functions specified in Chapters IX and X of the UN Charter.⁵⁸

Depending on these functions, ECOSOC classifies NGOs in three distinct categories, namely (I) general consultative status,⁵⁹ (II) special consultative status,⁶⁰ and (III) Roster.⁶¹ The latter refers to those NGOs that make occasional contributions to the work of the UN, but did not obtain general or special consultative status.⁶² Depending on the type of status, specific rights are granted to the NGOs. Those organizations in general and special consultative status are entitled to submit written and oral statements, the length of which

⁵⁴ UN Doc. E/1996/31.

⁵⁵ ECOSOC Res 1996/31, para. 18.

⁵⁶ UN Charter art. 69 and art. 70.

⁵⁷ Office of the United Nations High Commissioner for Human Rights (2017).

⁵⁸ ECOSOC Res 1996/31, para. 21.

⁵⁹ This status applies to those ‘Organizations that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in fields set out in paragraph 1 above, and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries in different regions of the world shall be known as organizations in general consultative status’ (ECOSOC Res 1996/31, para. 22).

⁶⁰ ‘Organizations that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status shall be known as organizations in special consultative status’ (ECOSOC Res 1996/31, para. 23).

⁶¹ ‘These organizations [on the Roster] shall be available for consultation at the request of the Council or its subsidiary bodies. The fact that an organization is on the Roster shall not in itself be regarded as a qualification for general or special consultative status should an organization seek such status’ (ECOSOC Res 1996/31, para. 24).

⁶² ECOSOC Res 1996/31, para. 24.

depends on their respective status.⁶³ All NGOs in consultative status, however, are allowed to participate at international conferences and events, and to designate observers to public meetings of ECOSOC.⁶⁴ But what are the criteria for obtaining consultative status?

Part I of Resolution 1996/31 outlines the most important components that continue to govern the processing of applications by the NGO Branch of DESA. First, an NGO needs to be ‘concerned with matters falling within the competence of the Economic and Social Council and its subsidiary bodies’.⁶⁵ The substantive evolution of ECOSOC in recent decades allows a wide range of topics to be relevant, and therefore enables NGOs working in extremely different fields to apply for consultative status. Yet, as Article 12 of Resolution 1996/31 instructs, the NGO must have ‘a representative structure and possess appropriate mechanisms of accountability to its members’.⁶⁶ That is, the organization must provide a constitution, statutes or charter which describe its governance structure and decision making process.

Furthermore, the NGO needs a certain institutional maturity, and is required to provide a proof of existence for ‘at least two years as at the date of receipt of the application’.⁶⁷ As long as the organization is not established by a governmental entity or intergovernmental agreement, it ‘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’.⁶⁸

The direct consequence of the adoption of Resolution 1996/31 was the substantial increase of NGOs in consultative status, mainly due to the granting of access to national-level NGOs.⁶⁹ A related consequence was the increase of applications of NGOs from the Global South, which was not only an objective of Resolution 1996/31 but also an added value to this new framework adopted in 1996.

Yet, Resolution 1996/31 can indeed be seen as a ‘political compromise’ as it ‘merely postponed’ fundamental questions and tensions to future debates in the NGO Committee and

⁶³ ECOSOC Res 1996/31, para. 30-32. The Secretary-General may also invite NGOs on the Roster to submit written statements; see ECOSOC Res 1996/31, para. 31.

⁶⁴ ECOSOC Res 1996/31, para. 29.

⁶⁵ ECOSOC Res 1996/31, para. 1.

⁶⁶ ECOSOC Res 1996/31, para. 12. The paragraph further specifies that the members, in turn, ‘shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes.’

⁶⁷ ECOSOC Res 1996/31, para. 61.

⁶⁸ ECOSOC Res 1996/31, para. 12. Emphasis added.

⁶⁹ By 1996, the number of NGOs in consultative status with ECOSOC increased to more than 3,000. Up to that point, only International NGOs were permitted to obtain consultative status, and were almost exclusively from the developed world.

in ECOSOC.⁷⁰ The fact that the procedural rules set out in Resolution 1996/31 are vague frequently leads to disagreement among delegates about how to interpret them.⁷¹ The NGO-Committee regularly has to ask for guidance by the Secretariat, and, in particularly contested cases, has to vote on procedural questions. This situation is sometimes lamented by members of the Committee, but primarily by NGOs. In particular, the Conference of Non-Governmental Organizations in Consultative Status with the United Nations Economic and Social Council (CONGO) has repeatedly called for clarifications of the procedural rules for participation at the UN. The Cardoso Report of 2003 has also, in several ways, echoed the call for a substantial enhancement of civil society participation at the UN.⁷²

But this ambiguity can be also interpreted as a reflection of a more fundamental disagreement among Member States regarding the extent to which the UN should increase or decrease participatory rights of NGOs.⁷³ The vagueness of the definitions and instructions does not only open the door for the deployment of the accreditation mechanism as a ‘political filter’, but also for the possibility of a large amount of applications by a wide range of NGOs.⁷⁴

In fact, as the next sections will show, these two paths – ‘closing’ and ‘opening the door’ – have been taking *simultaneously* during the last decade.⁷⁵ The tensions outlined above are not only reflected in disagreement among Member States and in the complaints about the NGO Committee’s work, but also in the figures indicating its performance in recent years.

⁷⁰ Aston (2001, p. 946).

⁷¹ This ambiguity also led to request by representatives of NGOs to further clarify the language, and apply principles more consistently. The Report of the Secretary-General of September 8 in 1999 entitled *Views of Member States, members of the specialized agencies, observers, intergovernmental and non-governmental organizations from all regions on the report of the Secretary-General on arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system* mentions that ‘A group of NGOs felt that the report described but did not systematically evaluate how the various existing arrangements with NGOs were functioning. They proposed that the Joint Investigation Unit examine the specific ways in which the Secretariat was or was not achieving what was outlined in ECOSOC resolution 1996/31. Some NGOs were of the opinion that the use and implementation of ECOSOC resolution 1996/31 was not dealt with adequately by the report. The application of this resolution, which was supposed to provide a minimum standard for the participation of NGOs in ECOSOC and its subsidiary bodies, had, in their view, been applied inconsistently. Further clarification of the language of resolution 1996/31 was called for, in terms of objectives, functions, responsibilities and methods of operation. It was felt that this would help each NGO make self-assessments of its own activities for better functioning and advancement.’ See UN Doc. A/54/329, para. 25.

⁷² Normative issues of the Cardoso Report are discussed in Willetts (2006a).

⁷³ Aston (2001, p. 946).

⁷⁴ Rebasti (2008, p. 25).

⁷⁵ Aston (2001, pp. 949-957).

IV. Closing or Opening the Door? Assessing the Practice of the United Nations Committee on NGOs

Today, the DESA NGO Branch registers a total of 4,507 NGOs in consultative status.⁷⁶ While only 41 were granted consultative status by the Council in 1946, the number of NGOs had already increased to more than 700 by 1992.⁷⁷ Recent developments, however, remain largely unexplored. Did applications for consultative status continue to increase, and, if so, how did the Committee deal with such a large number of applications?

This section will present original data collected from the iCSO database of the NGO Branch and from the official Reports of the Committee of the last ten years.⁷⁸ First, it examines the total number received by the NGO Branch, and then presents data on deferred and granted applications relative to the total number of applications. Finally, it draws on the Reports of the NGO Committee in order to contextualize these figures by examining recent highly politicized cases.

Methodologically, there are two possibilities to assess the performance of the NGO Committee. Either by examining *only* new applications it considers in each cycle, or, by looking at the *combined* number of applications it considers in each cycle, including new *and* deferred applications. For the research question at hand, the adequate way to assess the performance of the Committee is to use the total number of applications it had before it in each cycle, that is, new applications *combined* with deferred applications. This allows for an assessment of the overall performance of the Committee without overstating the relevance of specific cases.⁷⁹

⁷⁶ These figures can be retrieved from UN Doc. E/2015/INF/5.

⁷⁷ United Nations Department of Economic and Social Affairs NGO Branch (2011, p. 2).

⁷⁸ Figures were collected from the iCSO database of the NGO Branch in DESA, and were controlled by crosschecking with the Committee Reports since 2009. The year 2009 is selected as a starting point because of internal changes in the database and availability of reliable figures concerning earlier sessions of the Committee. The iCSO database can be accessed at <http://esango.un.org/civilsociety/login.do>.

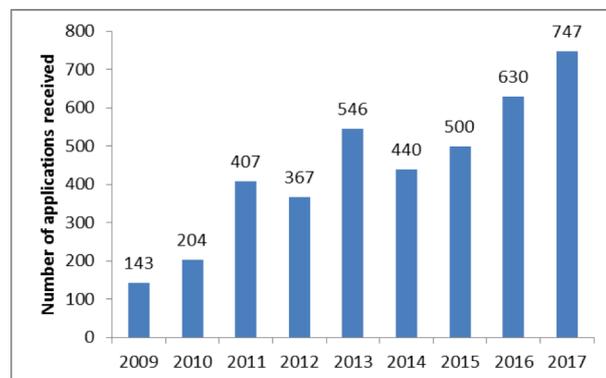
⁷⁹ One might argue that this selection creates a bias because of the tendency for deferred applications to be deferred again. Since this analysis aims to assess the overall performance of the Committee in terms of granted and deferred applications, however, this objection is not pertinent. In fact, the potential bias makes the findings of this analysis even more surprising, as they nevertheless indicate a more liberal stance of the Committee (see Figure 2 below).

IV. 1. Recent Trends in Received Applications for Consultative Status with ECOSOC

Examining the applications received by the DESA NGO Branch shows a clear overall trend of an *increasing* number of applications.⁸⁰ In fact, the last two review cycles, namely 2016 and 2017, have seen record numbers of applications by NGOs for consultative status with ECOSOC (see Figure 1). In the 2009 cycle the NGO Branch received 143 applications, showing a peak in the 2013 cycle, finally culminating in 747 applications in the 2017 cycle.⁸¹ This is the highest number of applications ever received.

We can only speculate about the reasons for this substantial increase. It seems most likely, however, that these peaks are related to the general momentum triggered by the discussions on the post-2015 development agenda, which received considerable attention by NGOs. From 2015 to 2016, the number of received applications increased by roughly 26%, and then again by 19% from 2016 to 2017. These augmented figures are, in turn, likely to be related to the debates and the adoption of the 2030 Agenda. Similarly, it seems likely that the United Nations Conference on Sustainable Development (Rio+20) held in 2012 triggered the peak of applications in the 2013 cycle.⁸²

Figure 1: New applications for consultative status with ECOSOC received by the NGO Branch per year



Apart from these speculations about causations, however, these figures clearly indicate civil society's principal valuation of the consultative arrangements with the UN. NGOs continue to find it worth applying for consultative status, and they seek to contribute to the work of ECOSOC. The substantial increase in applications also shows civil society's interest

⁸⁰ It is important to emphasize that the *total number of applications* considered by the NGO Committee differs from the *total number received* by the NGO Branch (Table 1). Only those applications that are in line with the criteria outlined in Resolution 1996/31 are admitted by the NGO Branch and then brought before the NGO Committee.

⁸¹ The figures in Table 1 do *not* indicate the performance of the NGO Committee itself. Rather, the figures show the applications received by the NGO Branch, which processes these applications and then presents them to the NGO Committee in order to be recommended for the granting or withdrawal of consultative status.

⁸² NGOs are required to submit quadrennial reports on their activities once in consultative status. This paper does not address the problems and trends associated with this process, as these reports are not of direct relevance for the research question at hand.

in participating in the 2030 Agenda process more generally, as Navid Hanif, Director of the Office for Economic and Social Council Support and Coordination in the Department of Economic and Social Affairs, pointed out at the Opening Session of the NGO Committee in 2017.⁸³

It is important to note, however, that these figures do not provide any insight into the *quality* of applications. Some applications of a low quality might be accepted without discussion because they are politically uncontested, and other, high quality applications dealing with contested issues such as human rights might be deferred. In fact, some NGOs have even argued that the increased total number of NGOs in consultative status with ECOSOC has led to the devaluation of the reputation of this status *per se*.⁸⁴ But the figures also point to the paradoxical situation mentioned above: The peaks of received applications fall into a period in which many NGOs and some members of the NGO Committee complain about a ‘global crackdown on civil society’. So how did the NGO Committee deal with this increase of applications? Did they grant more or less statuses since 2009?

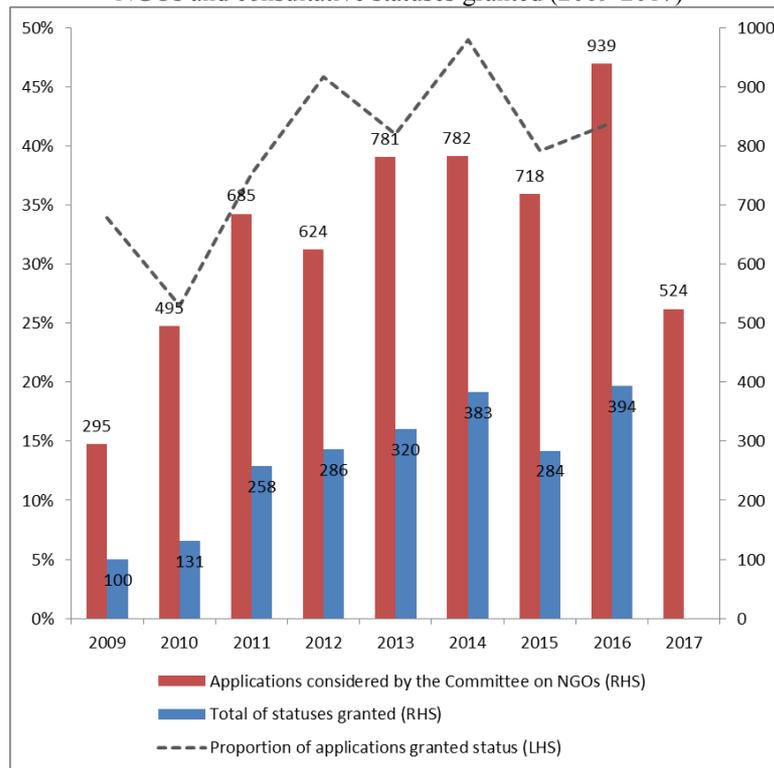
IV. 2. Towards a More Restrictive Stance on Civil Society?

These two questions – one about granted and one about deferred statuses – have to be considered separately in order to assess the general trends of the NGO Committee’s stance on NGO applications. Figure 2 shows the figures of *granted* consultative statuses relative to the total applications considered by the NGO Committee. In fact, these figures do not show an increasingly restrictive, but rather an increasingly *liberal* practice of the Committee: The proportion of granted statuses even slowly increased, peaking in 2014. In that year, the NGO Committee recommended to grant consultative status to an unusually large proportion of NGOs, almost 49% of the applications considered during that cycle.

⁸³ While this exponential growth in applications is generally to be welcomed, it also affects the capacity the NGO Branch in DESA to effectively process these applications, given the fact that the Fifth Committee (Administrative and Budgetary) had withdrawn temporarily approved additional resources. See <https://www.un.org/press/en/2017/ecosoc6805.doc.htm>.

⁸⁴ Aston (2001, p. 951).

Figure 2: Applications considered by the Committee on NGOs and consultative statuses granted (2009-2017)⁸⁵



It is important to note, however, that these figures only provide some general sense of the performance of the Committee, and are only indicative of a trend towards a more liberal stance on NGO applications. They have to be considered in the broader *context* of the work of the Committee. For instance, there might have been a large number of NGOs with politically uncontested activities applying in one year, which is likely to lead to a high proportion of accepted applications.

Simultaneously, however, there might have been a small number of NGOs dealing with contested subjects – such as, for instance, human rights – whose applications might have been deferred for political reasons.⁸⁶ This, in turn, would *not* make a substantial difference in terms of the overall proportion of accepted applications in the iCSO-database. Finally, the composition of Member States in the Committee is not reflected in these figures, and neither

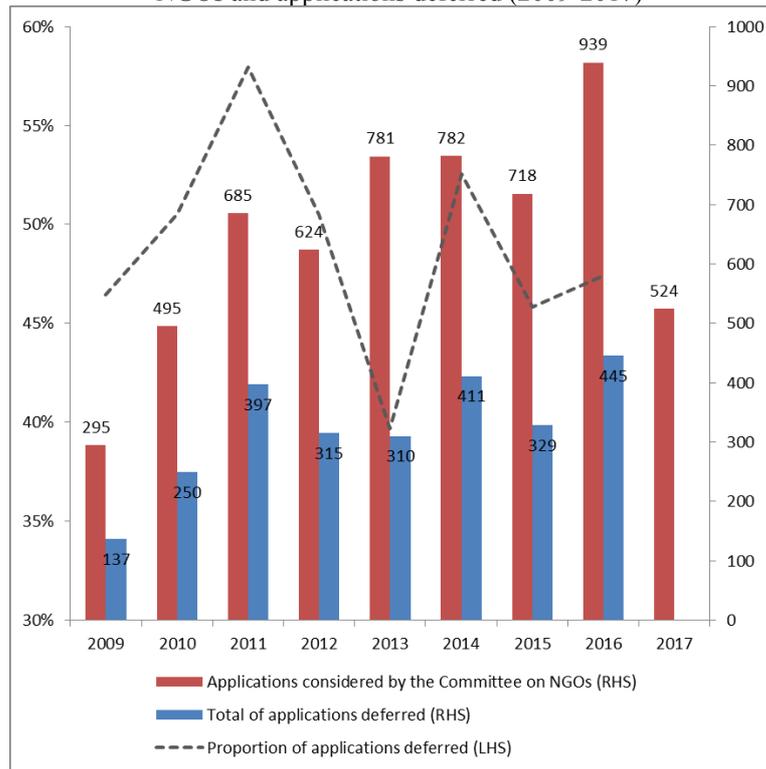
⁸⁵ The Figures under ‘Applications considered by Committee on NGOs (RHS)’ indicate the total of a year’s cycle, that is, the sum of applications considered during the Regular and Resumed Sessions of the Committee. Considering the sessions separately would not add value to examining the Committee’s performance and thus to the research question at hand, as the consideration of applications in two sessions is a mere technical aspect of the Committee’s practice.

⁸⁶ On the changing role of Human Rights NGOs at the UN specifically, see Breen (2005).

is the performance of the NGO Branch of DESA, which, as outlined above, reviews the applications of NGOs before they are presented to the Committee.⁸⁷

Bearing these remarks in mind, we can turn to the second question at hand: Did the Committee *defer* more or less applications over the same period? Figure 3 shows the figures of deferred applications relative to total applications.

Figure 3: Applications considered by the Committee on NGOs and applications deferred (2009-2017)⁸⁸



These figures are, in fact, *not* indicative of any trend, but rather a stable performance with slight fluctuations. Generally speaking, as the total number of applications increases each year, so does the number of deferrals. Yet, this does not imply that the Committee has been increasingly restrictive: while the total number of deferred applications increases, the number

⁸⁷ The composition of the NGO Committee is based on the principle of equitable geographical representation. Its 19 members are composed of 5 members from African States; 4 members from Asian States; 2 members from Eastern European States; 4 members from Latin American and Caribbean States; and 4 members from Western European and other States. Members are elected for a period of four years. From 2015-2018, the Committee is composed of the following members: Azerbaijan, Burundi, China, Cuba, Greece, Guinea, India, Iran, Israel, Mauritania, Nicaragua, Pakistan, Russian Federation, South Africa, Sudan, Turkey, United States of America, Uruguay and Venezuela (Bolivarian Rep.). The updated composition of the NGO Committee can be accessed in the CSO Net at <http://csonet.org/?menu=105>.

⁸⁸ As in Table 1, figures under ‘Applications considered by Committee on NGOs (RHS)’ show the *combined* number of applications the Committee considered in each cycle, including new *and* deferred applications. See corresponding footnote above.

relative to the new applications is relatively stable with some fluctuations. In 2013, for instance, only a relatively small number of applications were deferred, which is likely to be correlated to the events mentioned above.

As already explained, it is important to understand the distinct methodology and practice of the NGO Committee to make sense of the figures above. Some of the numbers might refer to cases in which NGOs failed to provide an answer to a question by the NGO Committee in time, while some of them might be deferred because a Member State is not satisfied with the answer provided by a representative of the respective NGO.

It is crucially important to understand this latter reason for deferred applications, as this procedure allows Member States to conveniently ‘block’ applications from NGOs they disagree with. If a Member State wishes to reject the application of a specific NGO, it can continue to pose questions to that NGO without ever accepting a response, technically for years.⁸⁹ Since Resolution 1996/31 does not provide any guide or limit on such practice, there is virtually no possibility of a legal objection by the NGO. Indeed, this practice remains the most common way to ‘block’ NGOs from obtaining consultative status with ECOSOC. Therefore, some of the NGOs that appear in the figures above under ‘deferred applications’ are *de facto* temporarily rejected applications.

Such cases often receive considerable public attention and gain notable political weight, but which are not reflected in the data analyzed above. The next section qualitatively examines a selection of highly politicized cases over the last ten years in order to provide a more nuanced understanding of the Committee’s accreditation practice.

IV. 3. The Role of Politicized Cases, Special Reports and Complaints by Member States

In order to facilitate a better understanding of politicized cases, it is necessary to examine them in detail on an individual basis. To be sure, such case studies over-expose selected cases and thus *a priori* tend to evoke a false emphasis on their overall relevance. But such cases of disagreement also render visible underlying tensions within the Committee, and thus allow for

⁸⁹ This practice has also led to a significant number of NGOs that simply stop responding to the questions posed by the NGO Committee, as they lose hope in the possibility of obtaining status. Such cases then lead to a closure of the respective application, but they do not show up in the figures under ‘deferred applications’. An example of such a case is the NGO Collectif des Familles de Disparu(e)s en Algerie.

a thicker description of the Committee’s practice. Moreover, precisely those cases give reason for complaint about a ‘global crackdown on civil society’ by Member States and NGOs.⁹⁰

In fact, the long-term deferrals mentioned above are one of the main reasons for complaints about the work of the NGO Committee, but the figures concerning deferred cases have not been assessed. Examining the Reports from 2008 to 2016 allows us to retrieve the figures of applications for consultative status deferred from previous sessions of the Committee, and thus enables us to put the claims of a ‘blocking’ of NGOs into perspective (Table 4).⁹¹

Table 4: Applications for consultative status deferred from previous sessions of the Committee on NGOs held in 2008-2016, as to be considered in the 2017 Regular Session

Application Year	2008	2009	2010	2011	2012	2013	2014	2015	2016
Applications deferred from previous sessions	1	1	4	3	5	10	17	31	159

The most famous example of such a case is the International Dalit Solidarity Network (IDSN), which has been deferred for the 18th time in the 2016 session, making it the longest deferral of an NGO of its kind.⁹² In the recent regular session of 2017, the application was deferred again.⁹³ Another case that recently raised concern is that of Christian Solidarity Worldwide (CSW). OHCHR conveyed a joint communication which shared concerns about the ‘implementation of ECOSOC resolution 1996/31’ with regards to CSW’s application but also ‘more generally on the working methods of the NGO Committee’.⁹⁴ In fact, CSW was deferred for eight years, and, ultimately, rejected in the recent Regular Session of 2017.⁹⁵

⁹⁰ The Reports of the respective sessions are available in the UN documentation system, and are quoted according to the official denomination. They can be accessed at <http://www.un.org/en/documents/index.html>.

⁹¹ The Figures shown in Table 4 were collected by analyzing the Committee Reports from 2008-2016. See also footnotes concerning data collection above.

⁹² International Dalit Solidarity Network (2016).

⁹³ CSOs complained about the deferral of IDSN in 2016, and it is likely that they will do so again about the deferral in 2017. While it is both legitimate and understandable from the viewpoint of NGOs to complain about this continued deferral, it is impossible to deduce an argument about the *general* practice of the NGO Committee from *particular* cases.

⁹⁴ This joint communication was sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief. The joint communication can be retrieved at http://ohchr.org/Documents/Issues/Opinion/Legislation/OL_OTH_5_2017.pdf.

⁹⁵ At its 9th meeting, on 3 February 2017, in which the Committee considered the application of Christian Solidarity Worldwide, Greece called for a vote on this NGO. While the Committee voted against the NGO, it is possible that ECOSOC, given its current composition of Member States, will turn over this decision. See further UN Doc. E/2017/32 (Part I), p. 33.

Three observations are worth mentioning here. First, IDSN is the longest deferral of any application, and consequently also the only one that has been deferred since 2008 (see Table 4). Second, there is only one NGO that has been deferred since 2009, namely the Asia Center for Human Rights (ACHR). Third, there are four NGOs whose applications have been deferred since 2010.⁹⁶ The only significant increase is in the recent years, namely 31 in the 2015 sessions, and 159 in those of 2016. It is impossible to assess whether or not the other NGOs ‘waiting’ in line will receive consultative status in the next sessions.

While it is rare for the NGO Committee to openly reject an application, there are cases in which it does. The Committee then proceeds to a vote on whether to recommend to reject or to grant consultative status to the respective organization.⁹⁷ Such a case received considerable public attention in the regular session of 2016, when the delegate of Cuba, speaking on behalf of the representatives of Nicaragua and the Bolivarian Republic of Venezuela, requested that the Committee would consider closing the application from the Khmers Kampuchea-Krom Federation.⁹⁸ After a lengthy debate, at its 10th meeting, on 29 January the Committee voted to close the application.⁹⁹ This closure triggered a considerable protest by NGOs, and is illustrative of a recommendation for closure that was portrayed as a highly politicized decision.¹⁰⁰

Generally speaking, Member States can vote on an application or withdraw the consultative status of NGOs, in which case a member of the Committee can voice a complaint

⁹⁶ Namely, Collectif des Familles de Disparu(e)s en Algerie, Assyrian National Congress, Bureau international pour le respect des droits de l'homme au Sahara Occidental, and Christian Solidarity Worldwide. Greece requested a vote on the latter, the outcome of which was against accreditation, but the vote might turn out differently during the reconsideration by ECOSOC in July 2017.

⁹⁷ The political risk associated with a vote prevents such votes, and makes Member States more inclined to simply defer applications instead of directly rejecting them.

⁹⁸ UN Doc. E/2016/32 (Part I), p. 30. The representative of Cuba argued that the application was ‘not in line with the principles of resolution 1996/31 since the aims of the organization went against the territorial integrity of a Member State,’ referring to an oral statement made by the observer for Viet Nam. This statement was presented to the Committee earlier in the session on 13 January 2016.

⁹⁹ UN Doc. E/2016/32 (Part I), p. 32. Since the representative of the United States of America did not share this view, the Committee proceeded to a vote on the application later that week. At the 6th meeting of the Committee, however, the announcement of the Chair that a representative of the Khmers Kampuchea-Krom Federation would participate in the question-and-answer session, resulted in an objection by a Member State of the Committee, and, ultimately, led to a vote with the result of adopting the appeal with respect to the Chair’s ruling (UN Doc. E/2016/32 (Part I), p. 31). While the United States made a statement after the vote, speaking of ‘silencing a non-governmental organization from responding to allegations brought against it’, and a ‘shocking lack of transparency in the work of the Committee’, the representative of South Africa was of the opposite few, highlighting that the ‘right to freedom of speech could never supersede the fundamental principles on which the United Nations was founded’ (UN Doc. E/2016/32 (Part I), p. 31). The representatives of Azerbaijan, Cuba, India, Islamic Republic of Iran, Nicaragua, Sudan and Bolivarian Republic of Venezuela concurred with South Africa. See UN Doc. E/2016/32 (Part I), p. 32.

¹⁰⁰ See, for instance, International Service for Human Rights (2016) and Human Rights Watch (2012).

about a specific NGO before the Committee. Listed under the agenda item called ‘Consideration of special reports and complaints by Member States’,¹⁰¹ these complaints have, in fact, never been subject to research, but are particularly telling for the research question at hand.

How did the Committee proceed with these complaints during the last ten years? An examination of the Considerations of special reports and complaints by Member States contained in the Reports of the NGO Committee from 2007-2017 shows that in almost all cases,¹⁰² the complaint led to a *vote* by the Committee. Furthermore, in all cases, the vote was for a recommendation of withdrawal or suspension, and, finally, in all cases, ECOSOC followed this recommendation. During the last ten years, there were one, two, or no complaints presented to the Committee, but at the most recent 2017 Regular Session, three complaints were brought before the Committee, and they all led to a vote. This highly unusual session is a particularly apt example to illustrate cases of vote. Not only did the structural tensions mentioned above become particularly visible in this session, but it also introduced some changes to the work of the NGO Committee on an unprecedented scale.¹⁰³

In a letter dated 23 January 2017, which had been circulated among Committee members beforehand, Turkey requested the withdrawal of consultative status of three NGOs.¹⁰⁴ After a highly unusual and lengthy debate, the Committee voted for the recommendation of withdrawal of status in all three cases.¹⁰⁵ What is even more exceptional, however, is a new interpretation of the guiding legal framework of Resolution 1996/31 outlined above. According to paragraph 56, in cases of recommendation for withdrawal the non-governmental organization concerned ‘shall be given written reasons for that decision

¹⁰¹ This category of reports refers to the ability of Member States of the NGO Committee to submit a special report or complaint to the Secretariat, which then is considered before the NGO Committee, but does not necessarily imply a withdrawal.

¹⁰² The only exception took place at the NGO Committee’s 17th meeting, on 29 May 2008, in which the delegate of Cuba presented a complaint about the NGO World Union for Progressive Judaism. After a lengthy debate, the Committee accepted the apology presented by the NGO in a later session. See further E/2008/32 (Part II). On 21 July 2008, at its 37th plenary meeting, ECOSOC decided to dispose of the complaint against the NGO (Decision 2008/227).

¹⁰³ The Regular Session was held from 30 January to 8 February 2017, and on 24 February 2017. The official Report can be retrieved under Symbol E/2017/32 (Part I).

¹⁰⁴ The three organizations were Kimse Yok Mu Dayanışma ve Yardımlaşma Derneği, Gazeteciler ve Yazarlar Vakfı, and Türkiye İşadamları ve Sanayciler Konfederasyonu. These NGOs, according to the letter, are affiliated with the Fetullahist Terrorist Organization, which had ‘staged a failed coup attempt on 15 July 2016 against the constitutional order in Turkey’ (UN Doc. E/2017/32 (Part I), p. 50). The Turkish parliament had approved the closure of these NGOs, which, according to the letter, implies that the condition for the possibility of the consultative status of these three NGOs had ceased to exist. The representative of the United States demanded more information before the discussion continued given the charges. See further UN Doc. E/2017/32 (Part I), p. 50-56.

¹⁰⁵ UN Doc. E/2017/32 (Part I), p. 52-56.

and shall have an opportunity to present its response for appropriate consideration by the Committee as expeditiously as possible'.¹⁰⁶ Yet, the Committee, again in a lengthy debate, voted *against* the application of paragraph 56 of the resolution,¹⁰⁷ which was one of the reasons for why the representative of the United States argued that this decision was part of a 'global crackdown on NGOs'.¹⁰⁸

It is not the aim of this paper to comment on the political side of these recent events. The three cases brought before the NGO Committee by Turkey are, however, insightful beyond their political significance and the two decisions taken by the NGO Committee are indeed without any precedent. The Committee decided that NGOs are not allowed to respond to a recommendation of their closure, which is a novel interpretation of paragraph 56, as explained above. Consequently, if a Member State claims that an NGO has ceased to exist, the withdrawal of consultative status can be recommended without communicating that recommendation to the NGO.¹⁰⁹

While it is too early to comment on any future trajectories it can be speculated that this new interpretation might lead to legal limitations in future cases. It renders the withdrawal of consultative status more convenient for members of the Committee, as they do not have to provide the respective NGO with the reasons for their decision, nor do they have to await a presentation of the response by an NGO. This reinterpretation, in turn, will almost certainly lead to protests by NGOs at ECOSOC.¹¹⁰

Examining the Reports over the last ten years thus provides two insights. First, these votes point to the political sensitivity of the complaints, as the debates they triggered could not be resolved by consensus, and therefore had to be put to a vote. In most cases, ECOSOC followed the recommendation, which is a surprising result given the differing compositions of the NGO Committee and ECOSOC. These examples illustrate the power dynamics in the

¹⁰⁶ UN Doc. E/2017/32 (Part I), p. 56.

¹⁰⁷ UN Doc. E/2017/32 (Part I), p. 54-55.

¹⁰⁸ The representative of the United States emphasized her delegation's concern about the 'global crackdown on NGOs' and she abstained from voting in two of the cases (UN Doc. E/2017/32 (Part I), p. 52). Yet, her delegation, along with Israel, voted against the withdrawal of the Journalists and Writers Foundation, which was listed in Turkey's request as Gazeteciler ve Yazarlar Vakfi (UN Doc. E/2017/32 (Part I), p. 53). According to the United States the NGO continued to be operational, with its headquarters in the United States, namely in New York. See UN Doc. E/2017/32 (Part I), p. 53.

¹⁰⁹ The inconsistency with the guiding Resolutions, that is, whether or not such a decision exceeds the competence of the NGO Committee dominated its 2nd meeting, on 30 January 2017. The debate led to the request of guidance by the Secretariat and to the overruling of the Chair rule to contact the NGOs. See UN Doc. E/2017/32 (Part I), p. 54-55.

¹¹⁰ It is, however, not in the interest of the majority Member States to trigger a substantial increase of complaints or protests as this might lead to a change of the guiding principles. Most Member States prefer to keep the status quo and avoid a substantial reform of Resolution 1996/31.

Committee, and the potential of its members to reject applications regardless of political risks. Second, the most recent regular session of the NGO Committee is exceptional, and should *not* be portrayed as being representative of the Committee's accreditation practice. Just as all the cases that provoked a vote in recent years, the cases discussed above should be placed in the political context of the respective period and its distinct discursive orders.¹¹¹

Yet, precisely those cases, while not being representative, might still have the political weight to provoke reform. Such reform, however, could either be towards a more restrictive, or a more liberal stance on the accreditation of NGOs. For instance, if there is a general sentiment among Member States that they can successfully render the UN into an intergovernmental organization *sensu stricto*, i.e. exclude NGOs from its work, they could attempt to further close the door to civil society participation. Recent studies have emphasized that human rights organizations continue to be the most vulnerable group for such rejection, and the new interpretation of Resolution 1996/31 is likely to worsen this vulnerability.¹¹² The novel interpretation of paragraph 56 might be indicative of such sentiments, but the actual effects – if any – will have to be seen in the coming sessions of the Committee.¹¹³

V. Conclusions

Since the establishment of the UN on 24 October 1945, there has been a fundamental tension between the UN's statist character on the one hand and its goal to represent civil society on the other. The central gate for the accreditation of civil society organizations at the UN – the NGO Committee – continues to be subject to frequent criticisms of both NGOs and Member

¹¹¹ In this case, for instance, the Turkish *coup d'état* attempt in July 2016, and the specific relations between the US and Turkey during the year 2017 have dominated the debate, and brought before the Committee underlying political disagreements.

¹¹² The regulative and legal restriction NGOs experience in their national environment is largely dependent on the areas they work in, and the most affected organizations within civil society are those who work in areas with which governments might disagree, in particular if they raise their concerns publicly. Typical areas that lead to such disagreement are human rights issues, good governance, minorities and indigenous issues, sexual and reproductive rights, and issues of democratic accountability. Organizations that work in welfare provision or charitable activities, however, are less likely to experience restrictions by states (Firmin, 2017, p. 2). Depending on several factors, such as the composition of its members, political trends, and the specific activities and region of the NGO, such disagreements can lead to a withdrawal of status or a blockage of respective NGOs (Firmin, 2017, p. 2).

¹¹³ In this context, it is worth reemphasizing the Secretary General's recent call on the NGO Committee 'to apply the criteria for assessing organizations in a fair and transparent manner, as they provide an indispensable contribution to the work and very purposes of the United Nations, in particular to the promotion and protection of human rights' (UN Doc. A/HRC/33/19, p. 6).

States of the UN. Mostly, such criticisms claim that the practice of the Committee is increasingly *restrictive*, and thus indicative of a ‘global crack down on civil society’.

The aim of this paper has not been to comment on the political debates in the NGO Committee, but rather to assess its accreditation practice. In the context of the recent protectionist and nationalist tendencies in global politics it is all the more important to understand the mechanisms at work, and to carefully examine both the work of the NGO Committee and its broader implications. Instead of reproducing the attention to highly politicized cases, this paper has drawn on legal, historical, and social scientific scholarship to place them into a broader historical and practical context in order to shed light on the broader developments of the relations between the UN and civil society.

First, this paper has provided a brief historical account of UN-Civil Society relations, and has, secondly, outlined the legal mechanisms, which govern the accreditation of NGOs at ECOSOC. Third, it has empirically assessed recent developments and cases, and has put the highly politicized cases into a broader context. It has concluded that the data considered here does not provide evidence of a more restrictive practice of the NGO Committee and, therefore, neither of a ‘global crackdown on civil society’. While the deferred applications do not show a significant change in recent years, the central procedural aspect of the NGO Committee’s work – namely the granting of consultative status – has, in fact, become slightly more ‘liberal’ since 2009. That is, the proportion of granted statuses relative to applications considered has slightly increased. Simultaneously, an examination of applications for consultative status received by the NGO Branch has shown a clear increase of applications, culminating in the highest number ever recorded in the 2017 cycle, which can be interpreted as an indicator of civil society’s interest in the work of ECOSOC, and more generally in contributing to the 2030 Agenda.

Against this backdrop, the highly politicized cases that are often portrayed as indicators for an increasingly restrictive practice of the NGO Committee remain exceptions in the long-term perspective. Deducing a ‘global crackdown on civil society’ by the NGO Committee from these cases would be overstating their overall relevance. Yet, as the last part of this paper tentatively suggests, such cases might nevertheless lead to incentives for reform, precisely because of their political weight.

Two objections to these findings are worth reiterating. First, the mere increase in numbers of NGOs in consultative status is sometimes considered not to be a *positive* but rather a *problematic* development. Too many NGOs in consultative status – so the argument goes – decrease the general value of the consultative arrangement *per se*. Regardless of

whether or not this is a legitimate concern, it would be wrong to conclude that the NGO Committee deliberately grants too many statuses in order to devalue the consultative arrangement as such. The frequent disagreement among Member States about whether or not a specific NGO should be granted consultative status clearly indicates the relevance Member States continue to attribute to the consultative arrangements.

Second, and more importantly, the data collected in this analysis does not take into account the *quality* of applications. For instance, it does not allow for an evaluation of whether or not the NGO Committee has taken an increasingly restrictive stance on NGOs promoting human rights in specific regions. The last section of the paper has therefore examined recent politicized cases, which illustrate the political nature of some of the Committee's decisions. Such politicized cases are often those that gain the most attention of both the media and NGOs, and therefore play a central part in the perception of a general hostility towards civil society. While the resentment of NGOs is understandable, the analysis of the Special Reports carried out in the last part of this paper nevertheless indicates that these cases remain exceptions, and therefore do not provide sufficient evidence for deducing a 'global crackdown on civil society'.

Certainly, this is not to say that the specific cases of rejections, deferrals or reinterpretations of procedural rules are desirable or justified. Such politicized deferrals of applications frequently lead to protest and complaints by NGOs and Member States, and, arguably in most cases, rightly so. Specific rejections and deferrals deserve to be taken seriously, and the findings above indicate that such cases, while not being representative, might nevertheless have the political weight to provoke debate and, potentially, reform.

While it is too early to ascertain future trajectories, the recent Regular Session of 2017 indeed illustrates the principal possibility of change, even though, in this case, it is towards a more *restrictive* interpretation of Resolution 1996/31. None of the Member States in the NGO Committee or ECOSOC currently expresses an interest in substantial reform given that the majority prefers to continue working with the current legal framework. It is neither in Member States' interest to provoke an increase in complaints about the NGO Committee's work, nor to openly contest the partly ambiguous legal mechanisms which continue to govern its practice. It is, however, precisely this ambiguity of the mechanisms, and the vagueness of the procedural rules, which present a chance to both Member States and NGOs, as it opens the door for political contestations and debate. If protests gain traction, the guiding resolutions might, just like before during their short history, be subject to reform. While the latter remains unlikely, it appears just as desirable.

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