



**International Council on Social Welfare  
Black Sea NGO Network**



**ADVOCACY IN INTERNATIONAL INSTITUTIONS  
BY CIVIL SOCIETY ORGANISATIONS**

**A Practical Guide**

by Ioannis Stribis

Yerevan 2008



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## I

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### THE BLACK SEA NGO NETWORK

From 15<sup>th</sup> to 17<sup>th</sup> January 2004 representatives of civil society organizations (a term used in this respect to include non-governmental organisations, NGOs) from the Member States of the Organisation of the Black Sea Economic Cooperation<sup>1</sup> met in Yerevan. The invitation was issued by the Armenian NGO, Mission Armenia with the assistance of the International Council on Social Welfare (ICSW).

The ICSW is a global NGO which promotes social welfare, social justice and social development throughout the world.<sup>2</sup> ICSW's membership consists of global, regional, national and local organisations in more than 70 countries situated in every region of the world. It undertakes policy development, advocacy and capacity building for its own members and other NGOs. In this framework, ICSW launched in 2001 the Regional Cooperation Project to encourage civil society organisations to be active in social development issues and to advocate the implementation of social policy instruments and programmes at a regional level. The Regional Cooperation Project aimed to strengthen structures and processes for regional cooperation between governments and NGOs, among NGOs as well as between regional intergovernmental institutions and NGOs. A new programme Global Advocacy and Strengthening the South was the successor to the Regional Cooperation Project. The new programme contains a component on regional cooperation.

The practical means for achieving the goals of regional cooperation are regional civil society forums. In the forums NGOs and other civil society representatives from a range of sectors (sex, age, ethnicity, social standing, etc.) meet in order to define policy initiatives. Policy is developed in the areas of poverty reduction, human rights, rights of vulnerable categories of persons, environment and other areas of civil society involvement. The format of the regional civil society forums mirror the pattern of most representative regional organisations that also deal with social matters. The forums aim to strengthen the national and international activities of civil society organisations in a given region of the world by fostering advocacy within national and regional intergovernmental organisations. The strengthening activities include improving the NGO structures and abilities to influence government policies.

In January 2004 NGOs from the BSEC member states met as the Black Sea Regional Civil Society Forum. The participants acknowledged the role of NGOs in:

- monitoring state responsibility in the implementation of social policy;

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<sup>1</sup> Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Serbia, Turkey, Ukraine. In the 1<sup>st</sup> Black Sea Regional Forum NGOs from eight BSEC member states participated. In the subsequent two editions of the Forum (Yerevan, 17-20 December 2005; Sofia, 7-9 December 2007) NGOs from all twelve BSEC member states joined the Regional Cooperation Network.

<sup>2</sup> Information on the ICSW is taken from "Regional Cooperation in a Globalising World: A Brief Introduction to ICSW's Civil Society Forums", [www.icsw.org](http://www.icsw.org).

- providing social services to the population;
- developing standards for social protection of specific social groups;
- lobbying for the interests of targeted social groups to national and international agencies;
- raising public awareness of social problems and the means for their solution;
- initiating and promoting dialogue between government and the general population in order to enhance the development of targeted and effective social programmes;
- ensuring citizen participation in the decision making processes on all levels;
- promoting civic minded society and social partnerships;
- designing and transmitting a new democratic culture; and,
- upholding values of mutual support and philanthropy.

The participants in the first Black Sea Regional Forum (2004) identified developments which had negative social effects on the cohesion of societies and the welfare of the citizens. These impacts included growing unemployment, declining public health, labour driven mass migration, violation of human rights and deterioration of the environment. The Forum proposed to focus the action of NGOs in the Black Sea region on the problems faced by vulnerable groups in the regional states (the elderly, refugees and internally displaced people, persons with disabilities as well as children and youth).

In order to cope successfully with the developments challenging social welfare in the Black Sea region, the participants in the 1<sup>st</sup> Regional Black Sea Civil Society Forum decided to establish a Network of Non-Governmental Organisations of the Member States of the Black Sea Economic Cooperation. The Forum adopted a framework for management and representation. The Network was established to advance interaction and partnership of all stakeholders, including NGOS, in the field of social welfare.<sup>3</sup>

The Network is conceived as an inclusive coalition of civil society organisations which engage in various types of work. It brings together under the motto “Poverty Reduction and Sustainable Development in Region” forty organisations from the wider Black Sea region and remains open to interested new adherents. The aims of the NGOs include advocacy, campaigning, lobbying, media and awareness-raising work and education. Advocacy is often combined with other activities such as networking, funding, policy planning, legal assistance, research, technical assistance and training. Networking involves developing and strengthening communication and exchange systems between organisations and/or individuals. Funding involves providing financial assistance to programmes and/or projects in support of the aims of the donor NGO. Policy planning relates to the formulation and development of specific policies. Legal assistance includes direct legal assistance to individuals. The research activities of NGOs comprise surveys and in-depth studies on specific issues as well as publication of the results of such activities. Technical assistance is an important activity of civil society organisations at national, regional and global levels. It encompasses a broad range of activities including consultancy support, hands-on assistance in the field, transfer of know-how to other actors, state and non-state and

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<sup>3</sup> For an account of the civil society situation in the Black Sea region, see Ayse GUNES-AYATA, Ayca ERGUN, Isil CELIMLI (eds.), *Black Sea Politics. Political Culture and Civil Society in an Unstable Region*, London: I.B.Tauris, 2005.



capacity-building in order to empower the beneficiaries of the technical assistance. Technical assistance is usually provided within the framework of concrete projects. Finally, NGOs promote their objectives and agenda through training activities designed to transmit and/or strengthen specific skills and knowledge. The means for training include workshops, conferences, courses, campuses and similar actions. A significant aspect of training activities, of interest to most NGOs active in the wider social welfare field is education in new technologies. Computer literacy, access to internet, use of e-business and other applications of modern communication can have a tremendous impact on civil society organisations achieving their aims in the wider social welfare field.

ICSW seeks to facilitate through regional civil society forums, the establishment of a structured dialogue among the civil society organisations at a regional level. The process involves the formation of alliances and networks capable of strengthening civil society input into regional and global intergovernmental organisations. This objective was pursued by the first Black Sea Regional Civil Society Forum. Participating NGOs from the BSEC member states formed the nucleus of the later Black Sea NGO Network. They “declare[d] [their] willingness to actively cooperate with governments, intergovernmental structures, international organisations and all stakeholder institutions with the purpose of reducing poverty and ensuring sustainable development in the region”.<sup>4</sup> The participating NGOs set up a Lobbying Group representing the NGO members of the Network “to facilitate and stimulate cooperation between the Network and intergovernmental and international structures, specifically the Black Sea Economic Cooperation (BSEC) and the Parliamentary Assembly of the Black Sea Economic Cooperation”.<sup>5</sup>

The singling out of the Organisation of the BSEC and its related parliamentary body PABSEC is a natural consequence of the regional character of the Network. BSEC is the only all-inclusive, treaty-based, institutionally mature organisation in the wider Black Sea area. Its achievements over the fifteen years of existence comprise a significant number of acts legally or politically binding upon its member states. It covers a wide range of areas including transport, energy, tourism, relations with NGOs, institutional renewal and good governance. The Black Sea NGO Network is a natural interlocutor of the BSEC, an organisation open to civil society and its concerns, suggestions and recommendations.

One of the main interests of this study is the relation of NGOs with the BSEC. However, we note that the aims of the Network can also be implemented through advocacy in other international institutions that are interested and active in the Black Sea region. The first such structure is the European Union. After the enlargement to Bulgaria and Romania the EU has shores with the Black Sea. Its activities in the economic, political and social fields encompass the whole Black Sea region through accession negotiations, the European Neighbourhood Policy and the partnership with Russia. This interest of the European Union has been clearly manifested by the European Commission in its Communication to the Council and the European Parliament on *Black Sea Synergy - A New Regional Cooperation Initiative* in April

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<sup>4</sup> International Council on Social Welfare Black Sea Regional Civil Society Forum, Resolution, 17 January 2004, Yerevan, Republic of Armenia, paragraph 2.

<sup>5</sup> *Ibid*, paragraph 6.



2007<sup>6</sup> and reiterated several times thereafter<sup>7</sup>. The European Union has become a significant actor in the wider Black Sea region and it is therefore very important to enable the Black Sea region NGOs to advocate their concerns within the European Union.

The aims of the Black Sea NGOs Network as provided for in the founding resolution of 17th January 2004 encompass development and public health objectives. These can be promoted by regional action with the relevant universal international institutions including the World Health Organisation (WHO) and the United Nations Development Programme (UNDP). Advocacy within these institutions can help the development and implementation of actions, programmes and projects with a Black Sea regional focus that take into account regional needs and is tailored to address these needs. These institutions actively engage civil society organisations. Black Sea NGOs should be aware of the existing opportunities and be able to take full benefit of them for the good of the peoples of the region.

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<sup>6</sup> Commission of the European Communities, *Black Sea Synergy - A New Regional Cooperation Initiative*, Communication from the Commission to the Council and the European Parliament, COM(2007) 160 final, COM(2007) 160 final Brussels, 11 April 2007.

<sup>7</sup> See, for example, European Commission Communication on *A Stronger European Neighbourhood Policy*, COM(2007) 774 final, Brussels, 5 December 2007, or European Parliament Resolution on a Black Sea Regional Policy Approach, 17 January 2008 (2007/2101(INI)). On 25 June 2007, the Council of the Ministers of Foreign Affairs of the BSEC Member States acceded to the European Commission's request and granted it observer status in the BSEC.

## II

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### THE INCREASING ROLE AND IMPORTANCE OF CIVIL SOCIETY ORGANISATIONS IN INTERNATIONAL AFFAIRS: PRACTICAL IMPLICATIONS OF A THEORETICAL APPROACH

#### 1. Introduction

Civil society, and the organisations they are active in it, belong to these social phenomena that are more usefully described than defined. The difficulty, and ultimately pointlessness of the attempt to define civil society has been highlighted by the European Commission in a Discussion Paper submitted by the President and the Vice-President, Romano Prodi and Neil Kinnock, in 2000: “The NGO-sector has often been described as extremely diverse, heterogeneous and populated by organisations with hugely varied goals, structure and motivations. It is therefore not an easy task to find a common definition of the term ‘non-governmental organisation’. It cannot be based on a legal definition given the wide variations in laws relating to NGO activities, according to which an NGO may have, for instance, the legal status of a charity, non-profit association or foundation.”<sup>8</sup> The Discussion Paper shows that the variety of the entities belonging to the wider concept of civil society is also expressed by the term “non-governmental organisations” (NGOs); the two terms are used in the present paper as essentially describing the same social reality, together with the more comprehensive term *civil society organisations*.

A thorough commentator, who has contributed a lot to the theoretical analysis of the social reality of non-governmental organisations in national and international affairs, has lucidly observed that “The concept of civil society *is abstract as well as virtual*. Nobody knows how many organisations have mobilised in its name. These groupings have many denominations and include non-governmental organisations (NGOs), but also a multitude of other unions of people, associations and ‘initiatives’. None of them alone represents society as a whole or even civil society as such. Yet, the impossibility of defining their agendas has a positive aspect, since established social forces would never be able to control, domesticate or appropriate all of them. Most groups in civil society are organised in one of the forms provided for by domestic civil law (associations, non-profit organisations, societies, informal groups under civil law). The acquisition of legal status under domestic law is necessary for reasons of identification and transparency.”<sup>9</sup> The common feature of these entities is that they intersect and overlap with each other mostly in spontaneous ways, though more structured collaborations are also possible through the creation of networks. The importance of networks of civil society organisations cannot be overestimated as such

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<sup>8</sup> European Commission, Discussion Paper presented by President PRODI and Vice-President KINNOCK, *The Commission and Non-Governmental Organisations: Building a Stronger Partnership*, COM(2000) 11 final, OJEC L 002, 5 January 2000, p. 67. One can draw the same conclusion by the limited number of ratifications (10 as of 22 August 2006) that has received so far the European Convention on the recognition of legal personality of international non-governmental organisations, Strasbourg, 24 April 1986, *European Treaty Series*, n° 124.

<sup>9</sup> Emmanuel ROUCOUNAS, “Civil society and its international dimension”, in *Droit du pouvoir, Pouvoir du droit. Mélanges offerts à Jean Salmon*, Bruxelles: Bruylant, pp. 555-556, italics in the text.

networks afford their participants an increased weight on the international level and allow them to maximize their impact and influence.

The antecedents of the present-day term of civil society date back to the 4<sup>th</sup> century B.C. and Aristotle's teaching on *political-civil society*<sup>10</sup>, as the form of political organisation of a given society encompassing all elements of the *polis* and whose essential qualities were democracy and citizens' participation.<sup>11</sup> In that sense the Aristotelian concept of *politiki koinonia* covers more than the present understanding of civil society, in that it denotes the whole political organisation of the society and is akin to the present-day term of state. However, the term translated as *societas civilis*, was introduced in the philosophical and political parlance of pre-Enlightenment Europe by Philip Melancton (1497-1560) meaning mainly *bourgeois* society. With this understanding the notion was further developed by Friedrich Hegel as *bürgerliche Gesellschaft* and used by Karl Marx and Friedrich Engels.<sup>12</sup>

Without entering the vibrant analytical debate on the concept and manifestations of civil society,<sup>13</sup> for the purpose of the present inquiry the phenomenon of civil society is understood in the sense of the intermediate organisation, as Alexis de Tocqueville envisaged it, between the individual (or the family) on the one side and the state on the other<sup>14</sup>. Moreover civil society constitutes a third sector, existing alongside and interacting with the state and market. In this sense, civil society encompasses actors that operate within the formal organisation of the society (state and institutions) and aim at promoting the common good, as understood by each individual entity. The meaning of what is the common good and how it can be attained in a given setting certainly vary from one civil society organisation to another. It is necessary however for the concept of civil society that the entities claiming to be part of it to pursue such a *social finality* (for example development, human security, poverty reduction, human rights, rights of vulnerable categories of persons, environmental protection, culture, etc.) and not merely individual interests.

The presence and *participation* of civil society organisations in the national and international fields express the active reaction of citizens to a feeling of dissatisfaction or at least unease with the way the established institutions, political, economic, social

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<sup>10</sup> "Politiki koinonia", *Politics*, IV 1299 a, 16-17. The term has been translated into Latin in the 15<sup>th</sup> century as "societas civilis".

<sup>11</sup> Cf. THUCYDIDES, *History of the Peloponnesian War*, II 40, 2, highlighting the importance of being a *citizen* instead of an *idiotes*, a person who does not care about the community.

<sup>12</sup> Emmanuel ROUCOUNAS, "Civil society and its international dimension", in *Droit du pouvoir, Pouvoir du droit. Mélanges offerts à Jean Salmon*, Bruxelles: Bruylant, 2007, p. 555.

<sup>13</sup> See, among many, Anton VEDDER (ed.), *NGO Involvement in International Governance and Policy. Sources of Legitimacy*, Leiden: Brill, 2007; J. Math NOORTMANN, "The Role of Civil Society in International Institutional Reform; Decreasing the Private by Increasing the Private", in *International Institutional Reform*, The Hague: T.M.C.Asser, 2007, pp. 3228-336; Franz CEDE, "The International Community and Non-State Actors", in *The Law of International Relations: Liber Amicorum Hanspeter Neuhold*, Utrecht: Eleven international Publishing, 2007, pp. 19-31; Steve CHARNOVITZ, "Nongovernmental Organizations and international Law *American Journal of International Law*, 1999 (v. 93), pp. 596-624", *American Journal of International Law*, 2007 (v. 100), pp. 348-372; Ashot ALEXANYAN, "The Civiliarchic Transformation of Civil Society in Armenia: Civiliologic Discourse", in Ayse GUNES-AYATA, Ayca ERGUN, Isil CELIMLI (eds.), *Black Sea Politics. Political Culture and Civil Society in an Unstable Region*, London: I.B.Tauris, 2005, pp. 130-140; Fritz SCHARF, *European Governance: Common Concerns v. The Challenge of Diversity*, Max-Planck-Institut für Gesellschaftsforschung Working Paper 01/6, September 2001.

<sup>14</sup> Alexis DE TOCQUEVILLE, *De la démocratie en Amérique*, vol. III, Paris: Pagnere, 1848 (12<sup>th</sup> ed.; 1<sup>st</sup> ed. 1840), pp. 201-250.

and others, handle the problems and challenges of a given period and their achievements in favour of the citizens. It is therefore logical that the activity of civil society organisations grows rapidly when the society is confronted with formidable changes creating fear and crisis among people. This was the case on the eve of the industrial revolution and again during the past decades (essentially since the 1970s). During this period civil society organisations developed in most countries and further beyond state borders. They sought to address concerns of people feeling that environmental degradation, climate change and above all globalisation overpower the traditional, institutional social actors. We can attempt to paint globalisation with three broad strokes: markets, media and migration. By this we mean rapidly increased flows of trade, investment, finance, ideas and people across national borders. It has become common to say that globalisation both inspires fear and represents an opportunity. At the same time globalisation equally creates the need for civil society participation. Globalisation offers the practical possibility to organise such a movement on a universal plane, through the establishment and functioning of networks of political, cultural, religious, environmental and other collaborations.

## 2. The emergence of non-state actors in the world community

The civil society networks created a novel situation in international affairs.<sup>15</sup> Over the past few decades, international society has undergone a profound transformation in many respects. One of the most important structural changes is the erosion of the omnipresence and particularly the omnipotence of the State as the dominating figure in the traditional outlook of international society and its law. This resulted from the emergence of new actors in the international arena. The 20<sup>th</sup> century brought about the development of inter-governmental organisations. These organisations played, and continue to play, a central role in a vast array of international fields and developments. Composed of mainly, if not exclusively, sovereign States these institutions instilled new elements in international politics and law. However they remain, from the qualitative point of view, more or less, part of the classical, Grotian, paradigm of international law, which has state, and therefore sovereignty, as its unavoidable keystone and constitutive element.<sup>16</sup> The civil society organisations and the transborder networks they establish, provide qualitatively different inputs in the international society: they do not rely on sovereignty and can actually function and yield results without direct reference to given state(s).

The parameters and consequences of this new<sup>17</sup> trend need further analysis and understanding. There is speculation that this evolution tends to an overall repudiation of the state-based foundations from international relations. The present evolution does not spell the doom of statehood, it does force, however, states to conform to the evolving situation through the creation of innovative patterns of cooperation between new and traditional actors of the international system. Such a development would prevent a full-scale revision of the existing international organisation through radical reshaping of its premises and foundations. Taking into account the ongoing character

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<sup>15</sup> Ariel COLONOMOS, "Transnational Networks. Old Game, New Rules", in Marie-Claude SMOUTS (ed.), *The new international relations. Theory and practice*, New York: Palgrave, 2001, pp. 112-125.

<sup>16</sup> Cf. Nico SCHRIJVER, "The Changing Nature of State Sovereignty", *British Yearbook of International Law*, 1999, p. 83, where inter-State organisations are qualified as "surrogates or forums for State activity".

<sup>17</sup> However, until and during the modern nation-state formative period, the papacy, churches and monastic orders, maritime companies administering the newly discovered territories, and other private initiatives were having an active role in the international relations.

of this process, no definite conclusions can be drawn at present. We should therefore keep in mind as a necessary constant of the new phase of the international organisation the synergetic element among the various and varying actors of the international society (states, inter-governmental organisations, various types of NGOs, interest groups, trade unions, religious organisations, the media, transnational corporations, individuals, etc.).

Starting with economics, phenomena such as the globalisation of markets, deregulation, privatisation and liberalisation of economic and social affairs or the growing importance of information and communication technologies are placing their stamp on the current developments, both domestic and international. This is done through the expanding influence of transnational corporations and multilevel regulation of international business. Activities such as communications, transportation, energy and space applications, to give only the most obvious examples, are progressively being transferred from the public to the private domain. In this respect, private enterprises are increasingly bound to become accountable for international obligations assumed by the States in fields like the international protection of human rights, environmental and labour standards, etc.<sup>18</sup> Even the possible privatisation of peace-keeping operations, whether or not under Chapter VII of the UN Charter, ceased being a taboo issue.<sup>19</sup> The unprecedented scale of the terrorist attacks of September 2001 has led to a tendency to “privatise” war itself. This evolution recreated the phenomenon of mercenaries now called “security corporations” or “security contractors” to which warring states have increasing recourse in battlefields.<sup>20</sup>

Taking into account these developments, it would not be a wild guess to assume that the rising influence of civil society entities in international relations will further expand in various fields of national and international interest. There are already strong indications, if not proof, that display the intensification of the involvement in international affairs on the part of agents that do not directly or indirectly emanate from States. These non-state entities are becoming more and more visible in a wide range of international issues, vindicating, in certain aspects, the visionary teaching of George Scelle that the global community is not a mere juxtaposition or co-existence of sovereign states but consists of the interpenetration of peoples through international trade and communication realised through mutual relations among individuals and groupings crossing national borders.<sup>21</sup>

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<sup>18</sup> Cf. European Court of Human Rights, *Costello-Roberts v. UK*, 25 March 1993, A Series, no. 247-C, pp. 57-58, paragraphs 26-27.

<sup>19</sup> See J. SCHULHOFER-WOHL, “Peacekeeping in Sierra Leone Could Be Privatized”, *International Herald Tribune*, 15 May 2000, p. 8. On traditional forms of non-state actors’ involvement in peacekeeping see Carsten STAHN, “NGOs and International Peacekeeping – Issues, Prospects and Lessons Learned”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 2001, p. 379.

<sup>20</sup> It was established, in 2003, that private corporations have penetrated modern warfare so deeply that they were the second biggest contributor to the coalition forces in Iraq, after the U.S. military, Ian TRAYNOR, “The privatization of war”, *The Guardian*, 10 December 2003. More generally, Kim Richard NOSSAL, “Global Governance and National Interests: Regulating Transnational Security Corporations in the Post-Cold War Era”, *Melbourne Journal of International Law*, 2001, p. 459; Anna LEANDER, *Eroding State Authority? Private Military Companies and the Legitimate Use of Force*, Centro Militare di Studi Strategici (CeMiSS), Soveria Mannelli: Rubbetino Editore, 2006; M.W. SINGER, *Can’t Win With ‘Em, Can’t Go To War Without ‘Em: Private Military Contractors and Counterinsurgency*, Foreign Policy at Brookings, Policy Paper, Number 4, September 2007.

<sup>21</sup> Georges SCELLE, *Manuel de droit international public*, Paris: Domat-Montchrestien, 1948, p. 18.



### 3. From mistrust ...

Civil society has been often considered as a factor undermining sovereign states or at least diminishing their role in international affairs. This assumption can be traced back to the transposition to the international level of a misconception rooted at the domestic level. It is believed that within a state endowed with representative institutions expressing the freely manifested will of the citizens, civil society organisations are either redundant or subversive to the established social order. The argument fails to see that in an arbitrary social system (where representative institutions are a sham) citizens are entitled to pursue their agendas parallel to the official institutions. In democratic societies the founding element of civil society, that is the participation of active citizens, is the quintessence of the development of democracy.<sup>22</sup>

Independently of the lack of cogency of the thesis negating the usefulness of civil society organisations at the domestic level, the said argument cannot be easily transposed in the international society where there are no representative institutions analogous to those existing within sovereign states. However, the opposition between civil society and sovereign state has become a received view in international affairs. For example Georges Scelle, “one of the most outspoken and tenacious critics of sovereignty”<sup>23</sup> vehemently condemned sovereignty as the modern expression of tribal nationalism<sup>24</sup> and opposed to it the participation of individual and groups in the global community. More significantly several states share this cautious stance towards the civil society. One of the recent examples of the tension between sovereignty and civil society was the decision of Singapore to deny entry to the country of several civil society representatives wishing to take part in the meetings and debates during the 2006 annual meeting of the International Monetary Fund and the World Bank. The decision of the Singaporean government is quite telling of the distrust by some states towards civil society organisations since the banned organisations have been accredited by the international institutions concerned (International Monetary Fund and World Bank)<sup>25</sup>. The ban could also have been prompted by the fear of violent protest that since the World Trade Organisation meeting in Seattle have been usual at meetings of international economic organisations.

In more general terms, the confrontation between civil society and states has intensified over the last years over the suspicion that some of its entities are operating as vectors of external interests aiming at the subversion of the national social order. Such argument has been invoked by a significant number of governments, from Russia to Indonesia, from Egypt to Central Asia and beyond, as justifying legislative measures to limit the activity of civil society actors or the actual crackdown against them. This is a real problem that has to be addressed with frankness by all concerned parties, states as well as civil society actors, because it is evident that civil society organisations cannot function adequately without, at least, the tolerance of the territorial state(s), in which they operate, as well as the trust of the population concerned.

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<sup>22</sup> Cf. Giovanni MORO, “Active Citizens as Actors of Democratic Governance”, *Romanian Journal of Int'l Affairs* 2000 (vol. VI), pp. 233-238.

<sup>23</sup> Antonio CASSESE, “Remarks on Scelle’s Theory of ‘Role Splitting’ (*dédoublément fonctionnel*) in International Law”, *European Journal of International Law*, 1990 (vol. 1), p. 216.

<sup>24</sup> Georges SCELLE, “Le phénomène juridique du *dédoublément fonctionnel*” in Walter SCHÄTZEL and Hans-Jürgen SCHLOCHAUER (eds.) *Rechtsfragen der Internationalen Organisation. Festschrift für Hans Wehberg zu seinem 70. Geburtstag*, Frankfurt a.M.: Klosterman, 1956, p. 333.

<sup>25</sup> See Declaration of the Presidency of the European Union, Brussels, 13 September 2006.

Some additional examples that are not so laden with political implications can illustrate the now and again difficult relationship between civil society and sovereignty.

The first is drawn from the adjudication procedure in the framework of the World Trade Organisation (WTO). In a dispute involving the US ban on imports of shrimps on environmental grounds (captured by techniques harming certain endangered species of sea turtles), the Appellate Body of the Dispute Settlement Body (DSB) of the WTO, declared that information provided by NGOs on their own initiative (Centre for Marine Conservation, Centre for International Environmental Law and World Wide Fund for Nature) to the panels should not be considered inadmissible by these first instance judicial organs and, hence, disregarded from the outset.<sup>26</sup> The Appellate Body has thus quashed the opposite decision of the Panel in the same case.<sup>27</sup> Two years later the Appellate Body reiterated the possibility of NGOs to “participate” in its proceedings.<sup>28</sup> By these moves, the Appellate Body opened the way toward potentially extensive participation on the part of NGOs in the proceedings on world trade issues.

Several States, members of the World trade Organisation did not view in a favourable way this development towards a more energetic role of civil society and its organisations in the dispute settlement procedures of the WTO. Their uneasiness was due to the feeling that in this way NGOs could intervene in international trade litigation on terms that were more favourable than the terms applicable to States. The acknowledgment of an active role for civil society organisations in the dispute settlement procedures in the WTO triggered criticism with respect to the opportunity of non-state actors to be involved in international trade litigation in terms perceived as being more favourable than those applicable to the States themselves. The Appellate Body interpreted the Dispute Settlement Understanding (DSU) which allows NGOs to submit briefs in cases under review by the Dispute Settlement Body of the WTO. Consequently several WTO Members considered their ability to intervene in procedures before the panels was less advantageous than that of civil society actors. Actually, in accordance with the Article 10, paragraph 2 DSU, only a WTO Member “having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a “third party”) shall have an opportunity to be heard by the panel and to make written submissions to the panel”. In contrast, the interpretation of Article 13 DSU given by the Appellate Body made it possible for NGOs to participate virtually in any matter they wished. Therefore WTO Members were placed, with respect to the participation to panels’ procedures, in a more onerous position than non members. To participate in the adjudication of a given

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<sup>26</sup> *US – Import Prohibition on Certain Shrimp and Shrimp Products*, Appellate Body Report, 12 October 1998, WT/DS58/AB/R paragraphs 108, 107.

<sup>27</sup> *US – Import Prohibition on Certain Shrimp and Shrimp Products*, Panel Report, 15 May 1998, WT/DS58/R, paragraph 7.8.

<sup>28</sup> See Additional Procedure Adopted Under Rule 16 (1) of the Working Procedures for Appellate Review, Communication concerning additional procedure to deal with any written briefs received by the Appellate Body from persons other than a party or a third party to the dispute “EC - Measures Affecting Asbestos and Asbestos-Containing Products”, WT/DS135/9, 8 November 2000.



case, the former have to prove a substantial interest in the proceedings and to notify it to the DSB.<sup>29</sup>

Equally disapproving reactions were caused by the involvement of civil society actors in procedures before the International Court of Justice (ICJ). The example is instructing because the ICJ is by statutory provision (article 34 of its Statute) inaccessible to the private sector. Despite this fact NGOs have exercised a significant role in the process of submitting to the ICJ the requests for advisory opinions on the legality of threat or the use of nuclear weapons, by both the UN General Assembly and the World Health Assembly.<sup>30</sup> They have also been active during the procedures that have followed this move, albeit indirectly. It is no secret that some states participating in these proceedings have benefited from the know-how of NGOs active in the fields of environmental protection, scientific research or pacifism. The intense implication of private actors submitting two requests to the ICJ for an Advisory Opinion on the legality of use or threat of use of nuclear weapons was met with opposition by traditional actors of the international society. This opposition found some echo in the bench. In particular in his separate opinion to the Court's Advisory Opinion in the case of the *Legality of the Threat or Use of Nuclear Weapons*, Judge Gilbert Guillaume "wondered whether, in such circumstances, the request for opinions [from the ICJ] could still be regarded as coming from the Assemblies which had adopted them or whether, piercing the veil, the Court should not have dismissed them as inadmissible."<sup>31</sup> Judge Guillaume continued in disapproving terms for the interference of NGOs in international affairs by declaring "I dare to hope that Governments and inter-governmental institutions still retain sufficient independence of decision to resist the powerful pressure groups which besiege them today with the support of the mass media."<sup>32</sup>

To conclude this section devoted to the opposition between civil society and sovereignty, civil society organisations have often been the target of critics. The critics say the civil society performs no better than governments of particular states in representation, legitimacy, transparency and accountability. Other critics have warned against the risk of "ideological" NGOs, which aspire to becoming international political parties and try to develop diplomacy, parallel to that of governments, although without legitimacy, democratic basis or control.<sup>33</sup>

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<sup>29</sup> Cf. WTO Doc. WT/GC/M/60, 23 January 2001; Josh ROBBINS, "False Friends: *Amicus Curiae* and Procedural Discretion in WTO Appeals Under the *Hot-Rolled Lead/Asbestos* Doctrine", *Harvard International Law Journal*, 2003 (vol. 44), p. 317; Petros C. MAVROIDIS, *Amicus Curiae Briefs Before The WTO: Much Ado About Nothing*, Harvard Jean Monnet Working Paper 02/01, 2001, pp. 2-9; Ioannis STRIBIS, *La manifestation des lacunes en droit international public*, Paris, 2001, pp. 515-518.

<sup>30</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, 8 June 1996, Dissident Opinion Shigeru ODA, *ICJ Reports*, 1996, p. 96, paragraph 16; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 June 1996, Dissident Opinion Shigeru ODA, *ICJ Reports*, 1996, pp. 335-336, paragraph 8.

<sup>31</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 June 1996, Separate Opinion Gilbert GUILLAUME, *ICJ Reports*, 1996, pp. 287-288, paragraph 2.

<sup>32</sup> *Ibid.*, p. 288, paragraph 2.

<sup>33</sup> These issues rank among the most important inquiries in the debate concerning NGOs. See Serge SUR, "Vers une Cour pénale internationale: la Convention de Rome entre les ONG et le Conseil de sécurité", *Revue générale de droit international public*, 1999 (vol. 103), p. 36; Julie MERTUS, "Human Rights and the Promise of Transnational Civil Society", in B.H. WESTON and S.P. MARKS (eds.), *The Future of International Human Rights*, Ardsley, New York: Transnational Publishers, Inc., 1999, pp. 452-455; Nico SCHRIJVER, "The Changing Nature of State Sovereignty", *British Yearbook of International Law*, 1999 (vol. 70), p. 96. Comp. Kenneth ANDERSON, "The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organisations and the Idea of

#### **4. ... to collaboration and complementarity**

Following the presentation of the cautious or hostile stance of sovereign states towards civil society, we examine in this section the practical reasons for a complementary approach by states and civil society.

The main argument for complementarity is that cooperation between states and civil society organisations does not impair the sovereignty of the former. In this respect the term “sovereignty” has many uses, misuses and abuses that allow for several approaches to the issue at hand. In a received idea sovereignty is equal to independence. In accordance with a celebrated dictum of Max Huber, arbitrator in the *Palmas Island* case, “Sovereignty in the relations between States signifies independence.”<sup>34</sup> The case concerned the notion of territorial sovereignty and the arbitrator went on to say that “Independence in regard with a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, has established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in setting most questions that concern international relations.” But even without the precision that prevents drawing general conclusions with regard to the political and legal nature of sovereignty,<sup>35</sup> the latter does not mean insulation. Especially in today’s world such an approach seems utterly unrealistic, though it still has some proponents mainly among newly independent states mesmerised by the belated gaining of sovereignty.

Sovereignty presently goes in hand with interdependence, so that the term “is legal shorthand for legal personality of a certain kind, that of statehood.”<sup>36</sup> This last feature marks the reappearance of the concept of sovereignty in the forefront of the international society. The reason for this is the phenomenon of failed or weak states. For a long period the strong state was suspected of being authoritarian, leaving no space for alternative expression. After Somalia, Liberia, Afghanistan, Sierra Leone, to name but a few, weak states are viewed as threats to their people and to other states.<sup>37</sup> In contrast strong states are considered to have the capacity to foster effective democratic institutions. It is true that the ultimate responsibility for free elections, fair trials, freedom of expression, prison conditions, ensuring health care and education, enacting protective measures for the environment or for fair trade and development lies with the state. However civil society does play an essential role in raising awareness among state and non-state actors for the promotion of such values and in assisting official institutions in achieving these goals.

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International Civil Society”, *European Journal of International Law*, 2000, p. 91; Ulrich BEYERLIN, “A critical account of NGO participation in international environmental cooperation”, *Miscellanea Iuris Gentium: Yearbook of the Jagellonian University of Cracow*, 2002-2005 (v. 5/6), pp. 7-22.

<sup>34</sup> *Palmas Island* case (USA/The Netherlands), Arbitral Award, 4 April 1928, *Reports of International Arbitral Awards*, vol. II, p. 838.

<sup>35</sup> Elihu LAUTERPACHT, “Sovereignty - myth or reality?”, *International Affairs*, 1997, pp. 137-150.

<sup>36</sup> Ian BROWNLIE, *Principles of public international law*, Oxford: Clarendon Press, 3<sup>rd</sup> ed., 1979, p. 110.

<sup>37</sup> See United States President George W. BUSH, “State of the Union Address by the President”, Washington, D.C., 31 January 2006, p.1, “On September the 11th, 2001, we found that problems originating in a failed and oppressive state 7,000 miles away could bring murder and destruction to our country.”

In an interdependent world the exclusion of civil society from international intercourse cannot be defended. Neither the concept of sovereignty, nor the international system are incompatible with the interaction between civil society and state. Openness to civil society, to the active citizens, is a key element of governance in international affairs. Collaboration among actors of the international society, on the basis of existing solidarities and interests is needed to achieve the objectives that the actors pursue by their international activity. This basic truth that should guide the attitude of states and civil society organisations towards each other is clearly enunciated in the resolution of the first Black Sea Regional Civil Society Forum. “We understand that within democratic societies the effectiveness and efficiency of measures to address social issues are formed by the interaction and partnership of various independent actors, including NGOs”.<sup>38</sup>

Civil society organisations perform a wide range of activities including *advocacy*, aimed at changing public opinion with regard to a given issue; *monitoring (watchdog)* following the commitments made by states and intergovernmental organizations and measuring the progress towards the implementation of such commitments; *networking*, coordinating NGOs that work in a particular or similar sectors.

These functions of civil society organisations can be supplementary or divergent to the action of the formal organisation of a given society. The formal organisation and civil society may differ on their perceptions of what constitutes the common good. Such views may be opposite when civil society actors operate within an authoritarian formal system. A third stance of the civil society towards formal organisation of the international society (states, international organisations) might be indifference<sup>39</sup>. In most cases the third model of activity is not a productive option for civil society organisations that strive to be relevant to the social developments and influence them in a given direction. Ignoring the territorial state (and intergovernmental organisations active in it) may be a necessary course of action in the case of the so-called weak or failed states. The price, however, to pay for this stance is that the action of the NGOs remains limited on the international level, where civil society organisations seek synergies with states and intergovernmental organisations. The cooperation becomes a necessity not only due to a utility criterion, that is the search to maximise the impact of the action, but also owing to the legal difficulty that presents the operation of NGOs beyond the borders of the state where they are established and/or have their statutory headquarters.<sup>40</sup> In such cases the support of the territorial state and of public international organisations is crucial for the achievement of the objectives of the civil society actors.

The cooperation between civil society organisations and states (or intergovernmental organisations) is not a one-way course. The complementarity principle operates in both directions. International society provides a multitude of concrete examples where states and international organisations seek the advice, support, help and experience of non-governmental organisations and other civil society actors in order to promote

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<sup>38</sup> International Council on Social Welfare Black Sea Regional Civil Society Forum, Resolution, 17 January 2004, Yerevan, Republic of Armenia, paragraph 5.

<sup>39</sup> See Anne-Marie SLAUGHTER, “International Law and International Relations”, *Recueil de cours de l’Académie de droit international*, vol. 285 (2001), pp. 101 ff, classifying the activities of NGOs into three categories: “(a) with the state, (b) against the state, (c) forget the state”.

<sup>40</sup> See, for example, Scott SNYDER, “American Religious NGOs in North Korea: A Paradoxical Relationship”, *Ethics & International Affairs*, 2007 (vol.21), pp. 423-430.

their objectives and achieve their policy aims. This does not mean that there may not be opposition or even antagonism between states, intergovernmental and non-governmental organisations on particular questions. However civil society actors are accepted as partners in international organisations. The action of international organisations is influenced, even determined (in terms of agreement or opposition) by the operation and activities of civil society. The civil society actors are legitimate interlocutors of states and international organisations. Naturally there is no general agreement on every issue at stake.

Consultation by national authorities with civil society is one of the forms of interaction. Officials from governments underline the benefits that can be reaped from practical and result-oriented relationship with voluntary associations<sup>41</sup> of the civil society. Such entities mobilise and have the support of thousands if not millions of people across the globe in tackling important universal problems (poverty, underdevelopment, human rights violation, degradation of the environment, alleviation of natural disasters, etc.). The advantage of these partnerships is that, while sovereignty depends on territory, civil society actors “can organise across national boundaries while representing the interests of local neighbourhoods and communities. They can be at once transnational and global, communal and local.”<sup>42</sup> It is the range and versatility of civil society organisations that make them valuable partners of governments and intergovernmental organisations.

A growing number of states have set up mechanisms in their domestic frameworks, for consultation with various actors of the civil society. Modern policy-making is based on consultation with stakeholders. In the USA an official of a former administration underlined that “in every area of our policy regarding democracy, human rights, and labour, the work of the US Government is increasingly being done not in isolation, but in partnership: not just with other public entities, such as governments and intergovernmental organisations and international financial institutions, but with private entities, such as human rights and humanitarian NGOs; the media; labour unions; religious organisations; and corporations and commercial entities.”<sup>43</sup> This inclusive list is indicative of the variety of civil society actors and of the need for cooperation among them and states. The sense of necessity is eloquently expressed by a senior official of the British Government saying that efficient relations with civil society “are the sort of partnerships governments must have at every level. They must be wide and deep; horizontal and vertical. Only by working together, in partnership, can we hope to meet the challenges we all face and harness the benefits of a rapidly changing world for the good of all.”<sup>44</sup>

Equally explicit has been a US Under Secretary for Political Affairs, R. Nicholas Burns. In his intervention at the 13<sup>th</sup> Ministerial Council of the Organisation for

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<sup>41</sup> The term is used in general and not with the technical sense that has in some municipal legal orders.

<sup>42</sup> Lord TRIESMAN (Foreign and Commonwealth Office Minister), “Wilton Park at 60 - 1946-2006”, London, 12 January 2006.

<sup>43</sup> See Harald H. KOH (Assistant Secretary of State for Democracy, Human Rights and Labor/ Clinton Administration), “Complementarity between International Organisation on Human Rights/ The Rise of Transnational Networks as the Third Globalization”, *Human Rights Law Journal*, 2000, p. 310. Compare President of the U.S., *National Security Strategy*, Washington, D.C., 2002, p. 22; Secrétaire d’Etat aux Affaires Etrangères, France, *Audition devant la Commission des affaires étrangères de l’Assemblée nationale*, <<http://diplomatie.gouv.fr/actu/bulletin.asp?liste=20031114.html#Chapitre8>>.

<sup>44</sup> Lord TRIESMAN (Foreign and Commonwealth Office Minister), “Wilton Park at 60 - 1946-2006”, London, 12 January 2006.

Security and Cooperation in Europe (OSCE) Under Secretary Burns stated: “In our work, we have valuable partners in civil society and non-governmental organisations. A strong, independent and transparent civil society, free from interference or pressure by governments: that is what contributes fundamentally to the promotion of democracy and human rights. One of the most important changes that we have seen in international politics over the last generation has been the rise of the NGOs, in number, in quality, and in the impact that they have in the world. The great majority of them, the overwhelming majority, do good work in development, the rule of law and democracy. So we should welcome them in our societies, and my country certainly welcomes all the NGOs that work in the United States.”<sup>45</sup>

The partnership between governments and civil society organisations to pursue the international objectives is naturally extended to the multinational level. Civil society organisations participate in international conferences and intergovernmental organisations. Around forty such organisations were present in San Francisco, in 1945, at the Conference for an International Organisation that elaborated the Charter of the United Nations. The article 71 of the UN Charter that provides for institutional relationship between the UN and civil society organisations is one result of the advocacy of these forerunners to today’s vibrant civil society movement. Since then civil society organisations are actively participating in all major universal and regional international conferences; we have seen them in forums on human rights (Vienna, 1993, Beijing, 1995 – status of women), the environment (Rio de Janeiro, 1992, Johannesburg, 2002), development (Cairo, 1994) and so on. The same happens at international forums where major international agreements are negotiated; the list is long, and it would be more accurate to say that it is now exceptional that civil society organisations do not take part in major international conferences or do not contribute in the elaboration of multilateral treaties.

Building on this experience, civil society actors entertain institutionalised relations with intergovernmental organisations,<sup>46</sup> which allow them a more effective participation in the work of the latter. The existence of such working relations with civil society is a widespread phenomenon in the practice of intergovernmental organisations. At universal level (United Nations and specialised agencies) as well as on the regional level the association between intergovernmental and non-governmental international organisations is modelled largely on the pattern of article 71 of the Charter of the United Nations, which reads as follows:

“The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence.”

This provision institutes the *consultative status* as the practical modality for interaction with the civil society. This status is also recognised by most United Nations organs other than the ECOSOC, by the specialised agencies and several regional inter-governmental organisations.<sup>47</sup> Other organisations construct their interaction with civil society organisations on the pattern of *observer status*, while a

<sup>45</sup> Under Secretary for Political Affairs R. Nicholas BURNS, Intervention at the Thirteenth OSCE Ministerial Council, United States Mission to the OSCE Ljubljana, Slovenia December 5, 2005

<sup>46</sup> Ioannis STRIBIS, “Institutionalisation of Cooperation Between Inter-Governmental Organisations and NGOs: The BSEC Experience”, *Non-State Actors and International Law*, 2005 (vol. 5), pp. 21-57.

<sup>47</sup> See, Marcel MERLE, “Article 71”, in Jean-Pierre Cot & Alain Pellet (eds.), *La Charte des Nations Unies. Commentaire article par article*, 2<sup>nd</sup> ed., Paris: Economica 1991, pp. 1047-1059; Rainer LAGONI, “Article 71”, in Bruno SIMMA (ed.), *The Charter of the United Nations*, 1994, pp. 902-915.



third category of intergovernmental institutions have opted for the status of *affiliate membership*.<sup>48</sup> The terminology varies but the common features of the three variations mentioned above are the participation of civil society organisations in meetings of the intergovernmental institutions concerned, the presentation of proposals as well as the participation in operational activities and programmes carried out by the intergovernmental institutions. More active modalities of cooperation can be provided for in some intergovernmental organisations (for example, involvement of civil society organisations in monitoring and other field activities of intergovernmental agencies<sup>49</sup>). It is also significant to note that the participation of NGOs in intergovernmental institutions is not limited to technical organs of these institutions but has been gradually expanded to the political ones. In the United Nations civil society actors take part in the work of the General Assembly and consult also with the Security Council on issues on the latter's agenda, in the framework of the so-called *Diego Arria Formula* meetings<sup>50</sup>. The role of civil society organisations in some organs of intergovernmental organisations is considered so central that member states express the belief that without the presence of NGOs the success of the organs concerned is gravely compromised.<sup>51</sup>

The third modality of cooperation between states and civil society is the field of initiating and co-sponsoring international binding texts as well as co-organising campaigns aiming at the adoption of such normative instruments.<sup>52</sup> The complementarity between the efforts of civil society and state authorities is acknowledged by the governments in many instances.<sup>53</sup>

One of the most characteristic examples of decisive involvement of NGOs in the process of international treaty-making is the negotiation and conclusion of the 1997

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<sup>48</sup> Cf. article 7 of the Constitution of the World Tourism Organisation. In the sense of this provision, affiliate membership for non-state actors (comprising a wide range of organisations and companies working directly in travel, tourism and related sectors, including: airlines and other transport, hotels and restaurants, tour operators and travel agents, banking institutions, insurance companies, travel assistance, publishing groups, etc.) is akin to the UN consultative status and not to membership in its traditional meaning.

<sup>49</sup> See the Convention on the Safety of United Nations and Associated Personnel (1995) equating members of non-governmental organisations participating in field actions of the UN with agents of the Organisation.

<sup>50</sup> See Ambassador Juan SOMAVÍA (Permanent Representative of Chile to the UN; current President of the Security Council), "Civil Society and the Security Council. Remarks to the NGO Working Group on the Security Council", 29 April 1996; Pierre KLEIN, "Les Nations Unies, les Etats et le Conseil de sécurité: la place et le rôle des organisations non gouvernementales au sein de l'ONU", in Rostane MEHDI (ed.), *La démocratisation du système des Nations Unies*, Paris, 2001, p. 97.

<sup>51</sup> Philippe DOUSTE-BLAZY, Minister of Foreign Affairs of France, "Intervention à la première session du Conseil des Droits de l'Homme des Nations Unies", Geneva, 19 June 2006, "Un deuxième geste, tout aussi fort sera de confirmer la place unique que doivent continuer à occuper les ONG dans notre enceinte. Sans ces représentants de la société civile, porte-parole des victimes des Droits de l'Homme, l'efficacité de ce nouveau Conseil serait gravement hypothéquée."

<sup>52</sup> D. CHANDLER, "The Road to Military Humanitarianism: How the Human Rights NGOs shaped a New Humanitarian Agenda", *Human Rights Quarterly*, 2001 (vol. 23), p. 678.

<sup>53</sup> In one recent case the Minister of Foreign Relations and International Commerce of Argentina, Jorge TAIANA, the Minister of the Presidency of Chile, Paulina VELOSO, the Minister of Foreign Affairs of France, Philippe DOUSTE-BLAZY and the Under-Secretary of Multilateral Affairs and Human Rights of Mexico, Maria Del REFUGIO GONZALES, declared at a joint conference (Geneva, 19 June 2006) that their states could not have presented the draft International Convention for the Protection against Forced Disappearance without the support and assistance of several NGOs (including Amnesty International, Human Rights Watch, International Jurists Commission, International Federation of Human Rights Leagues and Latin American Federation of Associations of Parents of Disappeared-FEDEFAM).

Convention banning anti-personnel landmines.<sup>54</sup> The signing of this Convention is the result of a major campaign instigated by motivated and well-organised NGOs. These NGOs were eventually supported by some States with similar concerns, and matured into formal negotiations, which were kept outside the UN Disarmament Conference.<sup>55</sup> The role played by the International Campaign to Ban Landmines (an association of interested NGOs), together with the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies has been of vital importance in the process of the negotiation of this Convention and adoption of the final text. The International Campaign to Ban Landmines was therefore awarded the Nobel Peace Prize for the cooperation between NGOs and governments that led to a “convincing example of an effective policy for peace”.<sup>56</sup> In this way the International Campaign to Ban Landmines joined other civil society organisations that had been awarded earlier the same prize (the International Physicians for the Prevention of Nuclear War, 1985; Amnesty International, 1977; the Permanent International Peace Bureau, 1910).<sup>57</sup> Civil society organisations have also been influential in the establishment of the International Criminal Court.<sup>58</sup>

The quest for complementarity of the activities of civil society and states is furthermore demonstrated by their cooperation in applying international instruments and policies. NGOs are given a decisive role in the implementation of programmes and projects of states and intergovernmental agencies on development and social standards, human rights, environment, good governance, capacity building and other fields of international cooperation.<sup>59</sup> In some fields states are seeking the active participation of civil society to achieve the goals they are pursuing.

To establish an efficient instrument for breaking the link between the illicit exploitation of diamonds and armed conflict, the so-called Kimberley Process,<sup>60</sup> the participating states invited the diamond industry and civil society to cooperate in stemming the flow of conflict diamonds (rough diamonds that are used to finance the war efforts of rebels against legitimate governments). As stated in the Kimberley Process Certification Scheme<sup>61</sup> the Process is “inclusive of concerned stakeholders, namely producing, exporting and importing states, the diamond industry and civil

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<sup>54</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Oslo, 18 September 1997, *International Legal Materials*, 1997 (vol. 36), p. 1507. See R. PRICE, “Reversing the Gun Sights: Transnational Civil Society Targets Land Mines”, *International Organisation*, 1998, pp. 613-644.

<sup>55</sup> Some ninety States fully participated in the negotiations, while thirty States, the UN, the ICRC, the International Federation of Red Cross and Red Crescent Societies and the International Campaign to Ban Landmines attended as observers.

<sup>56</sup> Press Release by the Norwegian Nobel Committee, 10 Oct. 1997, p. 1.

<sup>57</sup> Individuals also involved in NGO work, such as Sean MacBride and Philip Noel-Baker have been awarded the Nobel Peace Prize, in 1947 and 1959 respectively.

<sup>58</sup> William R. PACE, Jennifer SCHENSE, “The Role of Non-governmental Organisations”, in Antonio CASSESE, Paola GAETA, John R.W.D. JONES (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, vol. I, Oxford: Oxford University Press, 2002, pp. 105-143.

<sup>59</sup> See, *inter alia*, Ian MCCARTNEY, UK Trade Minister, “Trade Unions and Globalisation”, Speech at the *Unions 21* meeting, Brighton, 11 September 2006, p. 2, praising the partnership of the British Foreign Office with civil society organisations in raising labour standards throughout the world, for example to crack down on child labour in Brazil or enhance mine safety in China.

<sup>60</sup> Named after the city Kimberley in South Africa, where in May 2000 met the Southern African diamond producing states and launched their joint initiative.

<sup>61</sup> A voluntary system imposing on the Kimberley Process participants extensive requirements to certify that shipments of rough diamonds do not contain conflict diamonds, agreed in Interlaken, Switzerland, on 5 November 2002.



society.”<sup>62</sup> Groups belonging to the latter (Global Witness and Partnership Africa Canada) are integral parts of the Kimberley Process. They have been involved with it since its inception and are continuing to contribute to the effective implementation and monitoring of the Certification Scheme. They are providing technical and administrative expertise to the organs of the Process (Secretariat and Working Groups), its participants and applicants. The participation of civil society representatives is considered by the participating states as “greatly enhancing”<sup>63</sup> the efficiency of the Kimberley Process. This joint state-diamond industry-civil society initiative is an important instance of complementarity between states and non-state actors in international affairs.

States and intergovernmental institutions can benefit from the participation of civil society organisations even in forums that are in principle inaccessible to non-state actors. We referred previously to the participation (direct or indirect) of NGOs to adjudicating organs of the world community, such as the WTO Dispute Settlement mechanism or even the International Court of Justice. As we have seen, this development was opposed by some states and commentators on the grounds that it constitutes a more favourable treatment of NGOs compared with states. It is however significant to underline that the opposing states and scholars were less than those who approved (or not opposed) the upgraded participation of the civil society organisations in WTO dispute settlement instances.

Concerning the WTO Dispute Settlement system, the wish to involve civil society actors in the determination of cases has been even facilitated by the extensive and liberal interpretation of article 13 of the Dispute Settlement Understanding, enabling NGOs to submit on their own initiative (*proprio moto*) their views on a given case.<sup>64</sup> The indirect participation of civil society in the proceedings for advisory opinion on the case of the *Legality of the Threat or Use of Nuclear Weapons* can equally be seen as an example of collaboration of the civil society with the sovereign state. The states that could not afford the cost of hiring highly qualified and professional advocates for their case found the means to do so through sponsorship from civil society organisations

The deeper reason for this openness towards collaboration with civil society is the widespread and ever growing aspiration of the international public opinion for representation, transparency, and legitimacy. In spite of the not always satisfactory record of all civil society organisations in these fields, with comparison to national governments or other state agencies, the former can contribute to the fulfilment of the aforementioned aspirations. “As small and medium enterprises are the backbone of market economy, civil society is the backbone of democracy.”<sup>65</sup> Despite the fact that this general statement may call for qualification, the main idea expressed therein has a

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<sup>62</sup> Kimberley Process Certification Scheme, Preamble, 8<sup>th</sup> paragraph.

<sup>63</sup> Alan W. EASTHAM, U.S. Special Negotiator for Conflict Diamonds, “Testimony before the Senate Committee on Government Affairs, Subcommittee on Oversight of Government Management”, Washington, D.C., 13 February 2002, <http://hsgac.senate.gov/021302eastham.htm>.

<sup>64</sup> See Additional Procedure Adopted Under Rule 16 (1) of the Working Procedures for Appellate Review, Communication concerning additional procedure to deal with any written briefs received by the Appellate Body from persons other than a party or a third party to the dispute “EC - Measures Affecting Asbestos and Asbestos-Containing Products”, WT/DS135/9, 8 November 2000.

<sup>65</sup> Progress Report (October 1999-April 2000), Doc. BS/FM/R(00)1, Annex VII, Attachment 4, in *BSEC Handbook of Documents*, vol. V, 2002, p. 62.

large echo with the states and intergovernmental institutions and seems unchallenged in the present state of international affairs. It is legitimate to assume that the purpose of the Appellate Body of the WTO in the cases instanced above (*Shrimps, Asbestos*), where it interpreted extensively the right of the Panels to seek information and technical advice from NGOs, was equally to facilitate the involvement of civil society in the proceedings. The Appellate Body was thus seeking to instil in the WTO – an organisation very often blamed for being cut off from average daily concerns – some elements of democracy and openness.<sup>66</sup> The same concern must have inspired the protest of the European Union against the Singaporean ban on civil society actors to attend the annual conference of the World Bank and the International Monetary Fund, held in Singapore, in September 2006.<sup>67</sup>

## 5. Concluding Remarks

It is not an irrefutable presumption that NGOs may serve the causes of transparency, legitimacy and good governance more effectively than other actors on the international scene. It is, however, beyond doubt that the cooperation between actors can be instrumental in attaining common goals. There are many examples of civil society's positive influence in international affairs.

The key concept in this regard is that of complementarity. As a general rule the participation of NGOs in international relations is not only useful but also necessary. This is the case for global, regional and sub-regional initiatives. During the early nineties in Europe regional cooperation of NGOs and other civil society organisations has been an essential means for developing pluralistic, open societies and for forming regional (or sub-regional) solidarities. These transcend national borders and contribute to the realisation of the objectives pursued by the relevant initiatives.<sup>68</sup> This vision emerges from the belief and expectation that civil society organisations can play a supportive role in the attainment of common goals set forth by governments. Civil society can contribute to the promotion and implementation of the objectives of states and intergovernmental institutions.

We live in a cooperation phase that has permeated international affairs. This phase has affected the relations between states and civil society. Cooperation should not lead to collusion with states. This is the predicament of governmentally controlled non-governmental organisations. Some NGOs abandon the robe of civil society to become ventriloquists of the state. The situation is prejudicial to the credibility of civil society. It harms state action as the distinct roles of the various actors guarantees fruitful cooperation. The distinct roles require that cooperation between civil society, states and intergovernmental organisations does not interfere with limitations of action experienced by different international actors. In this respect civil society organisations

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<sup>66</sup> Comp. WTO Director-General Pascal LAMY, "Keynote Address to the WTO Public Forum", Geneva, 4 October 2007, [www.wto.org](http://www.wto.org).

<sup>67</sup> See *Interdiction de participation aux reunions annuelles de la Banque mondiale et le FMI à des représentants de la société civile emise par Singapour: Déclaration de la Présidence de l'Union européenne*, Brussels, 13 September 2006

<sup>68</sup> See *Action Program for the Baltic Sea States Co-operation*, Fifth Ministerial Session, Kalmar (Sweden), 2-3 July 1996, paragraph 1.3, "Independent civil organisations are an *indispensable* element of democratic societies. An adequate role for these organisations in public life, in keeping with the priorities, which they themselves set, must be ensured. Regional co-operation between NGOs will further strengthen them, and such co-operation is an end in itself." (emphasis added).

should strike a balance between activism and not being active. Too vocal intervention can be counter productive to international negotiations and can harm the adoption of an instrument or reaching a common position. Cooperation can be effective if the actors involved recognise the uniqueness of each of them. Under these conditions successful cooperation is more likely to yield beneficial results for the whole international community.

Civil society organisations have a wealth of practical experience and community involvement. They know the needs and priority areas of intervention and support required by citizens. They serve these segments of society at a national level. Therefore they are in a privileged position to promote international action for citizens at sub-regional, regional and global levels. Such action at the international level is necessary in the modern globalised world, where problems are universally felt and where solutions can but be achieved universally.

### III

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## THE ORGANISATION OF THE BLACK SEA ECONOMIC COOPERATION

### **1. The institutional framework**

As we have already pointed out the Organisation of the BSEC is the only inclusive, representative, treaty-based intergovernmental organisation in the wider Black Sea region stretching from the eastern shore of the Adriatic and Ionian seas to the western border of the Caspian Sea. Over the fifteen years of its existence, it has developed a mature institutional structure that allowed BSEC to foster dialogue and common programmes and projects in a wide range of fields. Before addressing the main issue of this paper, a general presentation of the Organisation of the BSEC is required in order to facilitate understanding the functioning of this intergovernmental institution as well as the scope and implications of its cooperation with non-governmental actors.

#### *A. Origin and evolution of the BSEC*

For a long period in history, spanning several centuries, if not millennia, the Black Sea region and its *hinterland* has been a space of intense interaction in the economic, social, cultural and human contacts fields. This communication has been overall beneficial to the people of the region despite the frictions and conflicts, which sometimes were taking a violent turn. The culture of communication revolving around trade, exchanges, travelling and sea faring survived even during and after violent episodes and conflicts, based on the common perception of the interdependency of the inhabitants of the wider Black Sea region and on the actual benefits that the interaction was yielding to them.

This state of affairs changed radically after the establishment of the Soviet Union and even more significantly after the Second World War, the end of which saw the, politically and psychologically heavy, iron curtain cutting across the Black Sea region severing the interaction and even the simple contacts between the shores of the Black Sea. This new, and historically abnormal, situation came to an end in the early nineties with the end of the cold war, that for about fifty years had frozen the, normally warm, Black Sea. The initiative to establish the Black Sea Economic Cooperation is the product of this “melting of the ice” and aimed since its inception not only to contribute to further thawing animosity and conflict but also in a more positive manner to build bridges and to establish synergies in the place where for nearly fifty years there were mainly confrontation and barbed wires.

The end of the cold war was marked by a regain of interest in regional and sub-regional cooperation and the ensuing appearance of structures and other arrangements among states pursuing such aim. This general approach was particularly perceptible in the European space and was also followed in the region around the Black Sea: in 1992 eleven states of the wider Black Sea area launched their regional experience establishing the Black Sea Economic Cooperation. The eleven founding states were Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania,

Russian Federation, Turkey and Ukraine. Twelve years after the establishment of the BSEC Serbia acceded to the BSEC,<sup>69</sup> bringing its membership to twelve states.

The above list of countries calls for an explanation; it is larger than the enumeration of the Black Sea coastal states (Bulgaria, Georgia, Romania, Russian Federation, Turkey and Ukraine), including also states without Black Sea littoral. This is a deliberate expansion, which takes into account the economic and political character of the BSEC endeavour.<sup>70</sup> The initiators of the latter had in mind the wider economic and political region, which outstretches the geographical limits. The economic and political understanding of the Black Sea region encompasses the Balkans, the Caucasus and the countries in-between, while for many participants this region extends further into central Asia or Eurasia. In this way a new geopolitical entity emerged on the international scene: the BSEC region, covering the space from the Adriatic to the Caspian Sea.

The Black Sea Economic Cooperation was launched in 1992 by the *Summit Declaration on Black Economic Cooperation* signed by the heads of state or government of the eleven aforementioned states, on 25 June 1992, in Istanbul.<sup>71</sup> This seminal document outlines the basic principles of the cooperative process (which have been later reiterated and supplemented in legally binding terms in the Charter of the Organisation of the BSEC). In accordance with the 1992 Summit Declaration, the BSEC initiative was assigned with the lofty aim to transform the wider Black Sea area into an area of peace, stability and prosperity by achieving further development and diversification of the bilateral and multilateral cooperation between and among the participating states, to foster their economic, technological and social progress, and to encourage market economy and free enterprise. The underpinning of this cooperation consists of a set of shared values: the adherence to the principles of the United Nations Charter, the Helsinki Final Acts and the Paris Charter for a New Europe, the commitment to international law, the allegiance to human rights, free enterprise, democracy and rule of law as well as determination to act in a spirit of friendship, good neighbourliness, dialogue and confidence. The Summit Declaration defines also the areas of cooperation of the newly established forum: trade and industrial cooperation, transport, communications, informatics, energy, mining, tourism, agriculture, health care and pharmaceuticals, science and technology and environment. The founding fathers announced in their Declaration their intention to consider the establishment of a banking institution, in order to expand the economic and commercial cooperation of their countries and to implement specific projects of common interest in the Black Sea area. The Declaration, quite wisely at that early stage, provided for institutional flexibility of the new endeavour, with regular meetings of the Ministers of Foreign Affairs of the participating states and the possibility to establish, by common understanding, ad hoc and permanent working groups to foster the cooperation in concrete fields.

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<sup>69</sup> On 14 April 2004. The twelfth BSEC member state was “Serbia and Montenegro”, to which Serbia succeeded in July 2006.

<sup>70</sup> The European Commission proposes another understanding of the term it uses “Black Sea region”, one that it does not encompass the Western Balkans, that is BSEC minus Albania and Serbia, see European Commission Communication on *A Stronger European Neighbourhood Policy*, COM(2007) 774 final, Brussels, 5 December 2007.

<sup>71</sup> Summit Declaration on Black Sea Economic Cooperation, Istanbul, 25 June 1992, in Ioannis STRIBIS, Dimitrios KARABELAS (eds.), *The BSEC at Fifteen: Key Documents 1992-2007*, Athens: International Centre for Black Sea Studies, 2007, pp. 50-53. On the same date the leaders adopted also the Bosphorus Statement, *ibid.*, pp. 54-55.

The flexible institutional scheme attained the goal to maintain a regular institutionalised dialogue among the participating states. The Ministers of Foreign Affairs met regularly every six months. To these regular meetings one should add the periodical meetings of the Working Groups and Working Groups of Experts established, in pursuance to the Summit Declaration of 1992 (agriculture and agro-industry, avoidance of double taxation, banking and finance, communications, science and technology, tourism, energy, environmental protection, promotion and protection of investments, trade and industrial cooperation, and transport). These frequent meetings and consultations of Ministers of Foreign Affairs as well as senior officials and experts from a wide range of state agencies strengthened the cooperation spirit and contributed to the creation of a political climate favourable to the consideration of outstanding concerns in various parts of the region and to the relaxation of potential sources of conflict.

The dynamic created by the web of contacts and encounters convinced the participating states that in order to attain its goals more efficiently, BSEC should be bestowed with a permanent institution to secure secretarial services for the growing network of meetings. They established thus the Permanent International Secretariat (PERMIS), which has been the first permanent institution of the BSEC process since its inception. PERMIS became operational as of 10 March 1994.

The trend towards institutionalisation built up gradually and in 1996 received the assent of the heads of state or government of the BSEC states, at their summit meeting in Moscow (25 October 1996). The high participants “agree[d] that one of the priorities at present [was] the strengthening of the institutional and legal basis of the BSEC which will contribute to enhancing effectiveness of the Black Sea economic cooperation”.<sup>72</sup> The decision to transform the BSEC initiative which was functioning following the model of a diplomatic conference into a fully-fledged regional economic organization, with international legal personality, was of great political and legal importance. Not only would it give to the BSEC wider opportunities for action and more efficient tools for achieving its goals, but also it was the assertion of the commitment of the participating states to the BSEC and of their trust to the potential of such cooperation for their benefit.

In order to implement the decision of the Moscow Summit, the participating states started negotiations that ushered in the elaboration and signature of the Charter of the Organisation of the Black Sea Economic Cooperation, in a Summit meeting held in Yalta, Ukraine, on 5 June 1998.<sup>73</sup> The Charter has been subsequently ratified by the national Parliaments of the BSEC member states and entered into force on 1 May 1999, completing legally the materialisation of the new subject of public international law, the Organisation of the Black Sea Economic Cooperation.

The Charter confirmed in legally binding terms the common values on which the cooperation has been established, provided for organs with specific tasks and

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<sup>72</sup> Moscow Declaration of the Heads of State or Government of the Participating States of the BSEC, Moscow, 25 October 1996, in Ioannis STRIBIS, Dimitrios KARABELAS (eds.), *The BSEC at Fifteen: Key Documents 1992-2007*, Athens: International Centre for Black Sea Studies, 2007, p. 44.

<sup>73</sup> Charter of the Organisation of the Black Sea Economic Cooperation, Yalta, 5 June 1998, in Ioannis STRIBIS, Dimitrios KARABELAS (eds.), *The BSEC at Fifteen: Key Documents 1992-2007*, Athens: International Centre for Black Sea Studies, 2007, pp. 17-28.



attributions and endowed the process with a binding framework. The latter is composed by resolutions, which are approved by consensus and are mandatory for all the BSEC member states, and decisions, adopted by qualified majority and binding for the member states that have voted in favour of them. The Charter provides also for recommendations which are adopted by simple majority of the member states and which are not binding for the members.

The change of status of the BSEC and the opportunities for more effective action of the Organisation rendered necessary the elaboration of an agreed set of priorities that would chart the future course of the BSEC and its organs. This has been done by the adoption, in 2001, of the BSEC Economic Agenda for the Future.<sup>74</sup> This document of strategic importance for the BSEC has been the outcome of meticulous negotiation at different levels of the BSEC.<sup>75</sup> Probably its single more important feature is the inauguration of the *project based approach of the BSEC*, with the elaboration of guidelines for project elaboration and promotion and the endorsement of the proposal to establish a “Seed Money Fund”, for financing pre-feasibility studies and other related activities.<sup>76</sup> The Agenda provides also for policies aiming at accelerating the effective multilateral economic cooperation and attaining sustainable development, with concerted action for economic expansion of the member states. The document defines priorities of the cooperation in BSEC in specific sectors of the economy (energy, transportation, telecommunications, environmental protection, science and technology, information and communication technology, investment in education and training, tourism, small and medium enterprises). The document emphasises the collaboration in intra-regional trade and investment promotion, border crossing and customs procedures as well as banking and finance as factor facilitating the progress and strengthening of the BSEC process. In addition the BSEC Economic Agenda for the Future introduces the cooperation in the BSEC in the field of institutional renewal and good governance, key sector for economic development and mobilisation of the civil society organisations in the region; this area of cooperation was not provided for either in the 1992 Summit Declaration, or in the Charter. On the occasion of the elaboration of the BSEC Economic Agenda, its drafters included guidelines for a rather new, at that time, domain of BSEC activities, the soft security measures in the framework of multilateral economic cooperation, in particular combating crime and emergency assistance and response, issues on which multilateral agreements have been concluded in the BSEC framework.<sup>77</sup> This is another field where useful partnerships with civil society organisations are possible and desirable.

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<sup>74</sup> *BSEC Economic Agenda for the Future – Towards a more Consolidated, Effective and Viable BSEC Partnership*, in Ioannis STRIBIS, Dimitrios KARABELAS (eds.), *The BSEC at Fifteen: Key Documents 1992-2007*, Athens: International Centre for Black Sea Studies, 2007, pp. 71-101.

<sup>75</sup> The first round of negotiation was completed in the framework of an *ad hoc* Study Group, coordinated by the International Centre for Black Sea Studies (ICBSS), which produced the draft text of the Economic Agenda. This draft was considered anew at the level of the Committee of Senior Officials, while an outstanding issue was agreed upon by the Council of Ministers of Foreign Affairs of the BSEC Member States (Fourth Meeting, Moscow, 27 April 2001).

<sup>76</sup> The implementation of this proposal ushered in the establishment of the BSEC Project Development Fund, see *infra*.

<sup>77</sup> Agreement among the Governments of the Participating States of the BSEC on collaboration in Emergency Assistance and Emergency Response to natural and man-made Disasters, Sochi, Russia, 15 April 1998, in Ioannis STRIBIS, Dimitrios KARABELAS (eds.), *The BSEC at Fifteen: Key Documents 1992-2007*, Athens: International Centre for Black Sea Studies, 2007, pp. 155-164; Agreement among the Governments of the Participating States of the BSEC on Cooperation in Combating Crime, in Particular in its Organised Forms, Kerkyra, 2 October 1998, *ibid.*, pp. 105-111. The conventional framework has been expanded with the signature, after the adoption of the BSEC Economic Agenda for the Future, of two additional protocols to the Agreement on combating crime (establishment of a



In 2002, a significant evolution occurred in the BSEC opening the so far almost exclusively economic character of the Organisation to stability and security concerns. Despite the security significance of several post cold war regional formations that emerged in Europe in the 1990s (from the Baltic to the Black Sea), most –if not all– did not envisage for themselves any role in security or conflict resolution, leaving this area to the agenda of larger and better equipped organisations (e.g. OSCE, NATO, EU). Yet, everyone engaged in economic development knows that stability and security are prerequisites to long-term success. In the BSEC, the afore mentioned shift occurred at the Summit meeting organised on the occasion of the tenth anniversary since its inception. The heads of state or government adopted the Decennial Summit Declaration,<sup>78</sup> which affirmed the desire of the member states to further continue and strengthen their cooperation in the already agreed areas of collaboration. The Decennial Summit Declaration contained also the innovation we are speaking about, in the form of a call to the BSEC Council of Ministers of Foreign Affairs “to consider ways and means of enhancing contribution of the BSEC to strengthening security and stability in the region.” (paragraph 4). By this decision, the heads of state or government of the BSEC member states ushered the Organisation to a new area of cooperation, security and stability, complementing the existing so far BSEC doctrine, the so-called “pragmatic concept”, consisting in achieving security and stability through economic cooperation and development, by a more direct involvement in security issues. It is submitted that this breakthrough was due mostly on external, global developments that, after the appalling terrorist attacks of September 11, 2001, brought in the limelight of the activity of every international actor the security concern. BSEC could not remain idle in front of such general trend and this is the reason of the embrace of security and stability by the BSEC. This new threat of a conflict of an unseen type limited the absolute value of the belief that states – and the economic interests within them – would be most reluctant to let wars (of the classical type) interfere with the cool logic of mutual economic profit generated by sustained economic cooperation.

A landmark of the BSEC in its progress as a project-oriented organisation has been the establishment in 2002, of the Project Development Fund.<sup>79</sup> This Fund is constituted on the principle of voluntary contributions from the BSEC member states, the BSEC related bodies, observers as well as third parties and external donors, provided their contributions are from legal and transparent sources. The purpose of the Fund is to facilitate the elaboration and promotion of projects with high regional cooperation and development impact, at their early stage of conception. The financing provided by the Fund is in the form of grants, which are limited to a maximum \$ 15,000 per selected project. Any type of operations leading up to the stage of pre-feasibility stage (studies, concept development, demonstration activities, etc.) are eligible for funding. In order to ensure the regional character of the projects to be funded, the relevant proposals should involve at least three BSEC member states. The recipients should be legal entities from the BSEC member states and the proposals should have the support of the relevant national authorities of the interested member states. The process leading to the grant starts at the level of the BSEC Working

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Network of liaison Officers, Kiev, 15 March 2002, *ibid.*, pp. 119-123; struggle against terrorism, Athens, 2 December 2004, *ibid.*, pp. 112-118) and one to the Agreement on emergency assistance and response (establishment of a Network of liaison Officers, Kiev, 20 October 2005, *ibid.*, pp. 165-168).

<sup>78</sup> Istanbul, 25 June 2002.

<sup>79</sup> Council of Ministers of Foreign Affairs of the BSEC Member States, 7<sup>th</sup> Meeting, Tirana, 25 October 2002, Resolutions, Decisions, Recommendations, Doc. BS/FM/R(2002)2.

Groups, who consider the proposals in their respective areas of cooperation and forward to the Committee of Senior Officials the most promising projects for endorsement. The Project Development Fund is managed by a Steering Committee which has the decision making power on the distribution of the Fund's assets. The start of operations of the Fund, marked by the first grant to a project application in 2004, opened new perspectives for practical cooperation among the BSEC member states. For the time being the operation of the Project Development Fund is under review (provided for after the completion of three years of functioning). A major limitation of the PDF is its modest financial assets. More importantly, the project proposals submitted thus far have been too technical or limited. As a consequence their funding by the PDF has not had significant impact on the cooperation among the BSEC member states. It is however submitted that, provided the ongoing review process is conducted in a meaningful way,<sup>80</sup> the Project Development Fund can create a promising dynamic for the enhancement of regional cooperation in several fields.

### *B. Structure of the BSEC*

In accordance with its Charter the BSEC is an intergovernmental organisation, encompassing principal and subsidiary organs. The structure is headed by the Summit of heads of state or government, which is convened on extraordinary occasions, mainly on the occasion of anniversaries of the BSEC or whenever the need appears to take a major decision on the future course of the Organisation.<sup>81</sup> The next scheduled Summit meeting is to be convened in Istanbul, on 25 June 2007, on the occasion of the fifteen years of the BSEC.

#### *Council of Ministers of Ministers of Foreign Affairs of the BSEC Member States*

The principal decision-making organ of the BSEC is the Council of Ministers of Foreign Affairs of the BSEC member states (hereinafter: CMFA, BSEC Council of Council), which is entrusted with deciding on all issues pertaining to the functioning of the BSEC, considering all matters submitted to it by the subsidiary organs as well as any other related matters it may deem appropriate. In so doing, the Council adopts legally binding resolutions and decisions as well as recommendations. The Council meets regularly every six months, at the end of the term of each sessional Chairman-in-Office and can have also special meetings, following the decision of the member states.

#### *Committee of Senior Officials*

The sessions of the Council of Ministers of Foreign Affairs are prepared by the Committee of Senior Officials, which is composed of high-ranking personnel from the Ministries of Foreign Affairs of the BSEC member states. The BSEC Charter and other statutory documents do not specify the periodicity of the Committee's meetings. It convenes upon convocation of the Chairman-in-Office on an average five to six times per year. In accordance with the Charter (article 15), the Committee represents the Council and acts on its behalf. Its attributions include the review of activities of the subsidiary organs, the evaluation of the implementation of decisions and

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<sup>80</sup> As a matter of urgency BSEC should successfully address the issues of the sustainability of the Project Development Fund, whose resources are seriously depleting as well as that of the quality and potential regional impact of the projects for which funding is sought from the PDF.

<sup>81</sup> For example, decision to transform BSEC into an international organisation, 1996; signature of the BSEC Charter, 1998; expansion of the BSEC activities to security and stability, 2002.

recommendations of the Council and the elaboration of recommendations and proposals for the Council. Moreover, the Committee of Senior Officials considers issues related to coordination and cooperation with BSEC related bodies, informs the Council about these issues and works out, if necessary, pertinent recommendations and proposals, and submits to the Council for approval the annual budget of the BSEC. Both in the statutory texts and in the practice, the Committee is a pivotal organ where all BSEC issues are discussed and the relevant recommendations submitted to the Council for final approval are elaborated.

#### *Chairman-in-Office*

The top structure of the Organization is completed by the Chairman-in-Office, which rotates every six months, and is entrusted with the coordination of all activities carried out within the framework of the BSEC, the proper conduct of the BSEC proceedings as well as the implementation of the resolutions and decisions adopted by the Council.

#### *Troika*

The Charter provides also for the Troika, composed of representatives of the Chairman-in-Office, its predecessor and its successor to this function. The Troika is convened upon request of the Chairman-in-Office in order to exchange views on current and prospective activities of the BSEC and on its relations with other international organisations and institutions. This tripartite mechanism constitutes a valuable tool for smooth and efficient transition from one Chairman-in-Office to the other assuring the upholding of priorities and the continuance of the activities of the BSEC in a harmonious way through the successive Chairmanships. In addition, the troika meetings provide an appropriate forum for the discussion of new ideas that may afterwards be pursued by the Chairman-in-Office.

#### *Subsidiary Organs*

The bulk of the groundwork of the BSEC is laid by the subsidiary organs, mainly Working Groups and Group of Experts. There are Working Groups for most areas of cooperation provided for in the BSEC Charter or agreed thereafter (trade and economic development, banking and finance, communications, energy, transport, agriculture and agro-industry, health care and pharmaceuticals, environmental protection, tourism, science and technology, exchange of statistical data and economic information, cooperation in combating crime, emergencies, education, institutional renewal and good governance, and so on). Expert Groups are constituted on an *ad hoc* basis whenever the need arises for studying specific issues. The subsidiary organs are established by resolution of the Council and function in accordance with their mandate, defined also by the Council, develop joint programmes and projects, submit recommendations and pursue their implementation following approval by the Council. The Working Groups constitute the backbone of the Organisation of the BSEC. They accomplish the most important work by establishing their agenda, and consequently the agenda of the BSEC in the respective areas of cooperation and, following the establishment of the Project Development Fund, they elaborate the proposals to be funded by the Fund.

#### *Country Coordinator*

In order to achieve better coordination of the activities of the Working Groups and mobilise the member states to invest more human resources and initiative (without additional financial burden) to the endeavours of each Group, the Ministers of Foreign

Affairs introduced in 1998 the institution of the Country-Coordinator.<sup>82</sup> Following that resolution a Country-Coordinator is appointed to each Working Group for a two-year term in office. The role of the Country-Coordinator is essential for the successful work of the Working Groups. The BSEC member states assuming the role of Country-Coordinator to the sectoral Working Groups have the time (compared with the six-month term of the Chairman-in-Office) to steer the deliberations of the Groups and to mobilise the existing national resources for the benefit of a regional approach. The institution has not yet shown all its potentialities for the enhancement of the BSEC process but it is already yielding positive results.

#### *BSEC PERMIS*

The Permanent International Secretariat has been maintained in its functions by the BSEC Charter (article 16) and its role has been strengthened in becoming the coordinating centre in the flow of information and for the work pursued in the BSEC process.

#### BSEC Related Bodies

The inter-governmental structure of the BSEC is rounded off by four dimensions, a parliamentary, a business, a financial and an academic/research one. These dimensions are qualified by the Charter as BSEC related bodies. The inter-parliamentary component of the BSEC is the *Parliamentary Assembly of the Black Sea Economic Cooperation (PABSEC)*, which will be dealt with separately here below under part IV. The *BSEC Business Council* representing the business circles of the BSEC member states is a non-governmental organisation which has the role to act as a hub of interaction, incubating business opportunities within the BSEC process. The financial dimension of the BSEC, the *Black Sea Trade and Development Bank (BSTDB)*, was established in 1995 by a distinct inter-governmental agreement.<sup>83</sup> The BSTDB operates in line with private banking principles and is expected to help to mobilize and channel financial resources within the BSEC, to finance bankable regional projects, to act as a catalyst in the development of ventures by banks, to encourage co-financing on the international plane and to contribute in stimulating flow of investments to the region. The BSEC academic and research pillar is the *International Centre for Black Sea Studies (ICBSS)*, mandated with carrying out reliable scientific work, policy-oriented research and studies on topical issues of common concern which can contribute to the realisation of the BSEC objectives. In this way the ICBSS is the acknowledged think-tank of the BSEC. Furthermore the Centre promotes the academic cooperation within BSEC and between BSEC, EU and international scientists and researchers by fostering contacts among them and establishing structures of dialogue and cooperation in the field of science and technology (for example, the Council of the Presidents of the National Academies of Sciences of the BSEC Member States.).

In charting the course of cooperation, BSEC has set a number of priorities, mainly economic. These priority sectors of cooperation have been identified in the BSEC Charter (article 4) and further developed, together with specific implementation mechanisms, in the BSEC Economic Agenda for the Future, adopted in 2001. The priority areas include trade and economic development, banking and finance,

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<sup>82</sup> Meeting of the Ministers of Foreign Affairs, Sofia, 9 December 1993, Resolutions, Decisions and Recommendations, Doc. BS/FM/R(93)2, Annex VII, paragraphs 36-37, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 65.

<sup>83</sup> Agreement Establishing the Black Sea Trade and Development, Tbilisi, 30 June 1994 in BSEC, *Handbook of Documents*, vol. I, 1995, pp. 483-513.

communications, energy, transportation, agriculture, environmental protection, tourism as well as science and technology. The principal economic agenda of the organisation is rounded out by cooperation in other fields of common interest for the member states that are the struggle against organised crime and terrorism as well as emergency assistance.

In pursuing its objectives, BSEC adopts in its relations on the international stage an open stance. The Organisation is open to membership to any state abiding by the principles of the Charter. Thus far, Serbia has acceded to the BSEC.<sup>84</sup> Furthermore it welcomes observers and partners. These are states (current observers are Austria, Belarus, Croatia, Czech Republic, Egypt, France, Germany, Israel, Italy, Poland, Slovak Republic, Tunisia and United States of America<sup>85</sup>, while Hungary is a BSEC sectoral dialogue partner), international organisations (Energy Charter Conference, Commission on the Protection of the Black Sea Against Pollution, Coordination Transport Meeting of the Member States of the Commonwealth of Independent States, Regional Commonwealth in the field of Communications) as well as the Commission of the European Communities. The Organisation of the BSEC maintains also treaty-based or working relations with numerous international institutions, including the United Nations (UN) and its agencies (UN Industrial Development Organisation, UN Economic Commission for Europe, UN Environmental Programme, UN Development Programme, etc.), the Council of Europe, the OECD, the World Trade Organisation, the World Tourism Organisation, and most of the regional initiatives and groupings in Europe.

Particular attention is attached to BSEC relations with the European Union. The interest to develop a meaningful relationship with the European Union was first expressed by the heads of state and government at their 1996 Summit (Moscow, 25 October 1996). The following year the European institutions reciprocated by a communication of the European Commission on *Regional co-operation in the Black Sea area: State of play, perspectives for EU action encouraging its further development*<sup>86</sup> and by a section in the Conclusions of the EU Council (19 December 1997) on the Black Sea region. Both texts highlight the strategic importance of the Black Sea region to the EU, the role that BSEC could play in that respect and possible priority objectives for cooperation. In response, the Ministers of Foreign Affairs of the BSEC participating states adopted the *Platform for Cooperation between the BSEC and the EU* (Tbilisi, 30 April 1999). During the following years, several BSEC-EU contacts at various levels took place, with mostly inconclusive results. The Hellenic Chairmanship-in-Office of the BSEC (November 2004 – April 2005) adopted a more pragmatic approach. A special meeting of the BSEC Committee of Senior Officials (CSO) with representatives of EU institutions and Member States took place in Brussels (11 April 2005), which was followed by the decision of the BSEC Council (Komotini, 23 April 2005) to establish an *ad hoc* Group of Experts charged with the task of preparing a Working Paper on BSEC-EU interaction. Under the Moldovan

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<sup>84</sup> Furthermore the applications for membership of the Islamic Republic of Iran, the Former Yugoslav Republic of Macedonia and the Republic of Uzbekistan are pending.

<sup>85</sup> The application of Bosnia-Herzegovina, Cyprus, Jordan, Kazakhstan, Lithuania, Montenegro, Slovenia and United Kingdom are under consideration. Iran, a candidate for membership since 1996, applied in 2007 for observer status.

<sup>86</sup> Doc. COM (97) 597final, Brussels, 14 November 1997. The Communication contains an assessment of the Black Sea region's potential and several pertinent observations such as the emergence of valid and promising synergies in the region and also the possibility to identify concrete fields for constructive interaction between the EU and the BSEC as a regional organisation.



Chairmanship-in-Office, the BSEC Council (Chisinau, 28 October 2005) adopted a Declaration on the enhancement of cooperation with the European Union and decided to mandate the Hellenic Republic to proceed with exploratory consultations with relevant EU institutions with a view to the adoption of a declaration by the EU Council on an enhanced BSEC-EU partnership and the eventual formulation of an appropriate Black Sea dimension of the EU regional policies. In pursuance of its mandate, the Greek side prepared a Working Paper entitled *Towards an EU Regional Dimension in the Wider Black Sea Area*, which was presented at the meeting of the Working Party on Eastern Europe and Central Asia (COEST) in Brussels (25 January 2006). A second meeting of the BSEC Committee of Senior Officials with representatives of EU institutions and member states took place in Brussels on 11 April 2006. On the EU part, the General Affairs and External Relations Council (Brussels, 14 September 2006) had a debate on the subject of strengthening the relations between EU and BSEC and the European Commission presented a communication on the European Neighbourhood Policy, specifically mentioning the possibility of closer contacts with BSEC, including observer status, and announcing the intention to produce a special Communication on strengthening the Black Sea dialogue in the course of 2007<sup>87</sup>. By the same time the *ad hoc* Group of Experts charged with the task of preparing a Working Paper on BSEC-EU interaction had completed its task and the Committee of Senior Officials adopted on behalf of the BSEC Council,<sup>88</sup> the document entitled *BSEC-EU Interaction: The BSEC Approach* (17 January 2007). The document has been presented to the EU institutions and several initiatives are in progress, including a scheduled joint meeting of the BSEC Committee of Senior Officials with the EU Troika and member states, with the aim to further strengthening the BSEC-EU cooperation and ultimately establishing an EU regional dimension for the wider Black Sea area. In April 2007, the European Commission addressed to the Council and the European Parliament a communication on a *Black Sea Synergy - A New Regional Cooperation Initiative*<sup>89</sup>, which opens substantial opportunities for future cooperation, in fields such as energy, transport, environment, democracy, respect for human rights and good governance, managing movement and improving security, trade, maritime policy and fisheries, education, research, science and technology, employment and social affairs, regional development, etc.

## **2. The relations between NGOs and the BSEC**

In the general spirit of openness to third parties, the involvement of business communities and civil society at large was one of the main aims of the launch of the BSEC initiative since its inception in 1992. In this endeavour the initiating states provided a place and role for participants other than states in the new process in their Summit Declaration of 25 June 1992 establishing the Black Sea Economic Cooperation.<sup>90</sup> This early manifested interest for involving non-state actors in the

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<sup>87</sup> Doc. COM (2006) 726final, Brussels, 4 December 2006.

<sup>88</sup> The BSEC Council had by a resolution authorised the Committee of Senior Officials to adopt the document, Resolutions, Decisions and recommendations, Moscow, 1 November 2006.

<sup>89</sup> Commission of the European Communities, *Black Sea Synergy - A New Regional Cooperation Initiative*, Communication from the Commission to the Council and the European Parliament, COM(2007) 160 final, COM(2007) 160 final Brussels, 11 April 2007.

<sup>90</sup> Summit Declaration on Black Sea Economic Cooperation, Istanbul, 25 June 1992, paragraph 13, in Ioannis STRIBIS, Dimitrios KARABELAS (eds.), *The BSEC at Fifteen: Key Documents 1992-2007*, Athens: International Centre for Black Sea Studies, 2007, p. 51.

BSEC development is consistent with the belief that in the political and economic conditions that emerged after the end of the Cold War, the main goal of the BSEC, i.e. economic development of the region and of the participating states could no longer be regarded as the responsibility of governments alone; it required a genuine partnership of governments with the social partners, the private sector, labour and non-governmental organisations. It was believed (or hoped) that such an innovative approach could contribute to the continued interaction between the societies of the participating States and broaden the network of contacts in the Black Sea region.<sup>91</sup> For these reasons the BSEC founding fathers provided for an open organisation, an organisation which welcomes the interaction with other international organisations, inter-governmental and non-governmental.

#### *A. The uncertainty in the period before the adoption of the BSEC Charter*

The newly established BSEC manifested its interest in cooperating with NGOs – in the BSEC context this term is used for civil society organisations – already at the First Meeting of the Ministers of Foreign Affairs of the BSEC Participating States (MMFA), held in Antalya on 10 December 1992, merely six months after the launch of the BSEC. The MMFA instructed “the Working Group on Organisational Matters to define the relations between the BSEC and Non-Governmental Organisations, recognised as such by the United Nations.”<sup>92</sup> Significantly, equally swift was the interest of NGOs to cooperate with the new regional initiative: an impressive score of 26 had approached BSEC in its first six months with the wish to cooperate.<sup>93</sup>

At that point the exact configuration of the relationship between the BSEC and NGOs was not pre-empted. The reference to the UN may have implied the kind of interaction existing in this framework, i.e. consultative status (see *infra* under part V). Be that as it may, it is beyond doubt that at that early stage of the consideration of this issue in the BSEC, the UN model was of crucial significance. The Working Group on Organisational Matters (WGOM), at its first meeting in February 1993, considered the matter without reaching any conclusions and therefore decided to return to the issue. However the discussions brought to the surface the question of establishing *criteria* that needed to be elaborated in order to specify what type of NGOs would be permitted to collaborate with the BSEC.<sup>94</sup> Thus the need for a set of criteria appeared for the first time in the deliberations in the BSEC context with respect to the interaction with NGOs. The second novel element that emerged from the debate was the scepticism *vis-à-vis* the necessity of establishing relations exclusively with NGOs “recognised as such by the United Nations”. There is no UN procedure by which entities are “recognised”. NGOs are ascribed “consultative status”. In addition, several BSEC member states questioned whether the Organisation should disregard without deliberation the NGOs which are not recognised as such by the UN, but which are active in the BSEC region.<sup>95</sup>

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<sup>91</sup> See Ashot ALEXANYAN, “The Role of Civil Society Institutes in the democratization processes in the Wider Black Sea Region”, (in Armenian), [www.aipreg.org](http://www.aipreg.org).

<sup>92</sup> Meeting of the Ministers of Foreign Affairs, Antalya, 10 Dec. 1992, Report, Doc. BS/FM/R(92)1, Annex IV, Resolution, paragraph 14, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 29.

<sup>93</sup> See list in Working Paper on Relations between the BSEC and NGOs, Doc. BS/OM/WG(93)11, Annex 1-3, 17 September 1993.

<sup>94</sup> Working Group on Organisational Matters, Istanbul, 23-24 February 1993, Report, Doc. BS/OM/WG/R(93)1, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 333.

<sup>95</sup> *Ibid.*



The issue of the relations between the BSEC and NGOs was dealt with at the highest level by the 2<sup>nd</sup> Meeting of the Ministers of Foreign Affairs (Istanbul, 17 June 1993), while adopting the Rules of Procedure (RP) of the BSEC. Article 24, paragraph 1 RP provided that any state, international or regional organisation which desired to obtain the *observer status* in the BSEC could submit their *application* to this effect to the BSEC Chairman-in-Office.<sup>96</sup> This provision was applicable to NGOs in accordance with Article 1 RP, defining the term “international organisation” as “an international organisation with universal character as well as a regional organisation covering a limited number of countries, *whether governmentally or non-governmentally established*”.<sup>97</sup> In this way the RP were defining the *form* (at least one) of the relationship between the BSEC and NGOs: *observer status*, which is the same status provided for states and intergovernmental organisations; from this point of view NGOs were placed on equal footing with the traditional subjects of international law.<sup>98</sup> The same provision of the RP determined also the question of the *method* for establishing the relations between the BSEC and NGOs: *application* by the interested NGOs.

Having these main issues resolved, the Working Group on Organisational Matters that followed (26-27 October 1993) took up the question again with the emphasis put on elaborating criteria that an interested NGO should meet in order to establish relations with the BSEC. In order to facilitate the deliberations of the Working Group on Organisational Matters, the BSEC Secretariat<sup>99</sup> submitted a *Working Paper on Relations between the BSEC and NGOs* containing a nucleus of three criteria:<sup>100</sup>

- 1) the objectives and activities of the NGO must be in consonance with those of the BSEC,
- 2) the NGO should be based or operational in one or more of the BSEC participating states, and
- 3) the NGO should be a non-for-profit and a non-political organisation.

The Working Group on Organisational Matters elaborated and expanded the proposed list and drew up the following five “Criteria for Establishing Relations with the Non-Governmental Organisations”<sup>101</sup> which were adopted by the 3<sup>rd</sup> MMFA (Sofia, 9 December 1993):<sup>102</sup>

- “a) The NGO should agree with and abide by the principles and provisions embodied in the Summit Declaration on the BSEC signed by the Participating States on 25 June 1992 in Istanbul.

<sup>96</sup> 2<sup>nd</sup> Meeting of the Ministers of Foreign Affairs, Istanbul, 17 June 1993, Report, Doc. BS/FM/R(93)1, Annex IV, Attachment 1, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 528.

<sup>97</sup> *Ibid.*, p. 517.

<sup>98</sup> In the international practice the observer status is provided also for national liberation movements as well as individuals and private companies, see Henry G. SCHERMERS and Niels M. BLOKKER, *International Institutional Law*, 3<sup>rd</sup> ed., 1995, pp. 123-126 (paragraphs 182-184), 133-134 (paragraphs 196-197).

<sup>99</sup> Until early 1994, when the Permanent International Secretariat (PERMIS) was established, the secretarial services were assured by rotation by the ministry of foreign affairs of the member state chairing the initiative.

<sup>100</sup> *Working Paper on Relations between the BSEC and NGOs*, Doc. BS/OM/WG(93)11, 17 September 1993, p. 5.

<sup>101</sup> Working Group on Organisational Matters, Ankara, 26-27 October 1993, Report, Doc. BS/OM/WG/R(93)3, Annex III, p. 1.

<sup>102</sup> “Criteria and Method of Establishing Relations with the Non-Governmental Organisations” (hereinafter Resolution on the Criteria), BS/FM/R(93)2, Annex VII, Attachment 1, BSEC, *Handbook of Documents*, vol. I, 1995, p. 65.

- b) The NGO should be in a position and willing to contribute to the fulfilment of the objectives and activities of the BSEC.
- c) The NGO should be based or operational in one or more of the BSEC Participating States.
- d) The NGO should make an official statement that it will not misuse its relations with the BSEC to seek financial gain and that it will not get involved in any political activity whatsoever against the interests of any Participating State.
- e) The NGO should be non-political.”

It is worth noting that the criteria adopted did not refer to the observer status, as it could be expected in compliance with Article 24, paragraph 1 RP, but aimed at “establishing relations”, that remained unspecified in the resolution, between the BSEC and NGOs. This language implies that in the mind of the BSEC participating states the issue of the form of the relationship BSEC and NGOs remained open and that other types of interaction were envisaged besides observer status; Article 24, paragraph 1 RP had thus not exhausted this item and one should anticipate that the participating states would return to that particular question at another juncture.

In addition, the Resolution on the Criteria settled the early controversy on the necessity of some kind of “recognition” of NGOs as such by the UN as a prerequisite for establishing relations with the BSEC. Such condition was no longer necessary; the Resolution requires that NGOs wishing to establish relations with the BSEC “should be based or operational in one or more of the BSEC Participating States.” The international character of the applicant is not required in that a NGO active in just one BSEC participating state (national NGO) could establish relations with the BSEC, provided it fulfilled the remaining criteria. The same is valid for the non-profit character of the applicant NGO, which is less understandable and defensible.

Be that as it may, the possibility opened up by the provisions of the RP on granting observer status also to NGOs has been used immediately after their approval: at the same 3<sup>rd</sup> Meeting, which adopted the RP and the Resolution on the Criteria, the Ministers of Foreign Affairs of the BSEC participating states granted observer status to the International Black Sea Club (IBSC).<sup>103,104</sup> The relevant resolution of the Sofia Meeting was the first application of article 24, paragraph 1 RP and concerned, along with the IBSC, the Arab Republic of Egypt, the State of Israel and the Slovak Republic.<sup>105</sup> Before the adoption of the RP, at the 1<sup>st</sup> MMFA, observer status had been granted (along with Poland<sup>106</sup>) to a non-state actor, the BSEC Council.<sup>107</sup> For the role and importance attached to the cooperation with non-state actors, it is worth noting that in the first two instances of granting observer status in the BSEC, non-state

<sup>103</sup> 3<sup>rd</sup> Meeting of the Ministers of Foreign Affairs, Sofia, 9 Dec. 1993, Report, Doc. BS/FM/R(93)2, Annex VII, paragraph 10, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 61.

<sup>104</sup> The IBSC is a non-governmental organisation of local authorities of twelve cities from six BSEC member states (in 1993, currently twenty cities from six member and one observer – Italy – states), established in 1992 and registered as legal entity under Bulgarian legislation in 1993.

<sup>105</sup> 3<sup>rd</sup> Meeting of the Ministers of Foreign Affairs, Sofia, 9 Dec. 1993, Report, Doc. BS/FM/R(93)2, Annex VII Resolutions, paragraph 10, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 61.

<sup>106</sup> Meeting of the Ministers of Foreign Affairs, Antalya, 10 Dec. 1992, Report, Doc. BS/FM/R(92)1, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 24.

<sup>107</sup> *Ibid.*, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 31. The BSEC Council is an informal grouping of businesspeople from the BSEC member states. The status of the latter, whose title became in the meantime *BSEC Business Council*, was upgraded in the BSEC Charter which recognized it as a BSEC Related Body (art. 21).

actors figure along states (BSEC [Business] Council – Poland, IBSC – Egypt, Israel, and Slovakia).

The resolution of 1993 to grant observer status to the IBSC after the enactment of the RP was not an *ad hoc* measure intended just to accommodate one NGO; it was on the contrary inscribed in the already mentioned larger strategy to involve civil society actors in the BSEC process. However the criteria adopted the same year at the 3<sup>rd</sup> MMFA have not been applied, for no application has been considered by the Ministers of Foreign Affairs of the BSEC Participating States after their adoption.<sup>108</sup> One may assume that the initial enthusiasm gave place to some caution and second thoughts among the BSEC participating states with respect to the opening of their initiative to non-state actors.<sup>109</sup>

The new spirit of cautiousness towards the implication of NGOs in the BSEC work explains also the decision of the Working Group on Organisational Matters (7-9 May 1994) to postpone the consideration of the applications of NGOs that had been received by then on the grounds that the observer status was one of various types of relationship of the BSEC with non-state institutions.<sup>110</sup> The Working Group however fell short from specifying which the other possibilities hinted at were, depriving thus their “feeling”<sup>111</sup> from practical results. For this reason the request (by the Working Group) to the BSEC Secretariat “to explain to the applicant institutions that there were various forms of establishing relations with the BSEC” and the invitation to the applicant NGOs “to make their choice among these various types of relations”<sup>112</sup> had no practical use and was not followed by any concrete action by either the BSEC Secretariat or the interested NGOs.

Conscious of the peculiar situation created by the failure to spell out what other types of relations could be established with NGOs that would not be granted observer status in the BSEC, the Working Group on Organisational Matters returned to the issue at its next meeting (21-22 September 1994) with a recommendation, endorsed by the 5<sup>th</sup> MMFA,<sup>113</sup> concluding, firstly, that at that stage observer status could not be granted to NGOs, and, secondly, that it would be desirable to encourage a kind of cooperation with interested NGOs either by inviting them to various meetings of the BSEC subsidiary bodies or by exchanging relevant information through the PERMIS channels.<sup>114</sup> This arrangement, contained in a recommendation, could not supersede the explicit provision of the RP (article 24, paragraph 1) and consequently the

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<sup>108</sup> It is even doubtful if the decision to grant observer status to the IBSC was preceded by an assessment of the compatibility of its statute and activities with the adopted criteria.

<sup>109</sup> Note however that the following, 4<sup>th</sup> MMFA (Tbilisi, 30 June 1994) instructed the WGOM to “discuss at its next session the requests of a number of organisations, to work out the recommendations for granting observer status and elaborate the principles and guidelines to encourage the introduction of NGOs in the BSEC.”, 4<sup>th</sup> Meeting of the Ministers of Foreign Affairs, Tbilisi, 30 June 1994, Report, Doc. BS/FM/R(94)1 Annex VI Recommendations, paragraph 24, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 95.

<sup>110</sup> WGOM, Istanbul, 7-9 May 1994, Report, Doc. BS/OM/WG/R(94)1, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 354.

<sup>111</sup> *Ibid.*, “The WG *felt* that the door should be kept open for all types of relations between the BSEC and the applicant institutions, including the status of observer.”

<sup>112</sup> *Ibid.*

<sup>113</sup> 5<sup>th</sup> Meeting of the Ministers of Foreign Affairs, Athens, 14 April 1995, Report, Doc. BS/FM/R(95)1, Annex VI Recommendations, paragraph 59, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 124.

<sup>114</sup> Working Group on Organisational Matters, Athens, 21-22 Sept. 1994, Report, Doc. BS/OM/WG(94)2, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 362.

interested NGOs continued to submit applications for observer status,<sup>115</sup> which was the only possibility anchored in the normative BSEC texts. Therefore the issue could not have been avoided any longer.<sup>116</sup> The institutional maturity of the BSEC initiative and its transformation into an international organisation with the entry into force of the Charter (1 May 1999) gave a fresh opportunity for considering the issue again.

### *B. The observer status*

At the 13<sup>th</sup> Meeting of the Ministers of Foreign Affairs (Tbilisi, 30 April 1999), the Ministers of Foreign Affairs of the BSEC participating states agreed, with regard to the applications of the NGOs for Observer Status in the BSEC, “to refer to the practice of other related international organisations in order to elaborate, *inter alia*, the definition of the international non-governmental organisations in the framework of the BSEC at a Meeting of the WG on Organisational Matters.”<sup>117</sup> This move has made clear that the BSEC Member States were considering the list of criteria adopted before in 1993 incomplete or even obsolete, due to the entry into force of the BSEC Charter that contained specific, new provisions on this score (articles 8 and 9), and that they were ready to consider the issue anew. In accordance with this mandate, a session of the Working Group on Organisational Matters was held (29-30 June 1999) with an item on its agenda titled “Applications of NGOs for Observer Status” with the following two sub-items “a) Definition of the international NGOs in the framework of the BSEC; b) Required criteria for Observer Status”.<sup>118</sup>

#### i) The search for criteria for granting observer status to NGOs

It is interesting to note that the relevant item of the agenda refers explicitly to “observer status” putting again this concept at the centre stage of the relevant discussion in the BSEC. The split however of the task of the Working Group on Organisational Matters into the elaboration of a definition and of criteria gave rise to an argument on the necessity of establishing criteria for observer status. According to one view the only task of the Working Group on Organisational Matters should be the elaboration of the definition of NGOs for BSEC purposes.<sup>119</sup> This view was based on a rather narrow understanding of the task assigned by the Ministers to the Working Group on Organisational Matters; the latter consisted in “elaborat[ing], *inter alia*, the definition of the international non-governmental organisations in the framework of the BSEC...”<sup>120</sup> The language clearly indicates that drafting a definition was not the exclusive assignment of the Working Group.

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<sup>115</sup> Fifteen applications of NGOs were filed with the PERMIS, all of them before the entry into force of the Charter.

<sup>116</sup> The WGOM had decided to “reconsider the issue in the light of the responses to be received from” the interested NGOs, Report, Doc. BS/OM/WG/R(94)1, in BSEC, *Handbook of Documents*, vol. I 351, 354 (1995).

<sup>117</sup> 13<sup>th</sup> Meeting of the Ministers of Foreign Affairs, Tbilisi, 30 April 1999, Report, Doc. BS/FM/R(99)1, Annex V, Resolution, paragraph 16, in BSEC, *Handbook of Documents*, vol. IV, 2000, p. 89.

<sup>118</sup> Note of the Ministry of Foreign Affairs of the Hellenic Republic No. AS.222 of 28 May 1999.

<sup>119</sup> Note of the Ministry of Foreign Affairs of the Republic of Turkey No. ÇEGY-III/300-340/631 of 1 June 1999.

<sup>120</sup> 13<sup>th</sup> Meeting of the Ministers of Foreign Affairs, Tbilisi, 30 April 1999, REPORT, Doc. BS/FM/R(99)1, Annex V, Resolution, paragraph 16, in BSEC, *Handbook of Documents*, vol. IV, 2000, p. 89.

If there had been doubts about the task assigned to the Working Group on Organisational Matters, these would have borne on the contrary to the issue of definition. Generally speaking definition is a matter of science, not legislation. In this case however it would have been a case of a legislative definition that is a *genuine* one, in the sense that the definition can be used in the place of the defined notion without impairing the accuracy of any proposition in a given discipline. This condition would have been fulfilled by the definition expected by the Working Group on Organisational Matters. It is however doubtful whether the conditions in order to reach such a formal – and rigid – definition of international NGOs were fulfilled in the case at hand. The presence and function of NGOs on the international plane is “a rather fragmented phenomenon.”<sup>121</sup> The European Commission has underlined in clear terms the difficulty of defining such phenomenon.<sup>122</sup>

Putting aside the extreme complexity of reaching a legislative (genuine) definition of NGOs, the usefulness of it, is the real question. By its inherent focus on the essentials a definitional approach does not contribute to sharpen the inquiry on issues that have multiple facets and lack sufficient theoretical elaboration like the cooperation between intergovernmental and non-governmental organisations. As we have already mentioned, NGO is a concept better described (and discussed) than defined. Under these terms a discussion on the required criteria for the involvement of NGOs in the work of an inter-governmental institution would be more productive and provide a realistic and useful framework for such interaction. For both doctrinal and practical reasons the issue of criteria should logically precede the consideration of a definition.

The mandate of elaborating a draft list of criteria for observer status of NGOs in the BSEC was entrusted by the Ministers of Foreign Affairs of the BSEC member states to the PERMIS. In fulfilling this task PERMIS studied the relevant practice of other international organisations and took also into account the applicable provisions of the BSEC statutory documents (Charter of the Organisation of the Black Sea Economic Cooperation and the Rules of Procedure). As a result PERMIS submitted a list of criteria that NGOs should fulfil in order to qualify for observer status in the BSEC.<sup>123</sup>

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<sup>121</sup> Nico SCHRIJVER, “The Changing Nature of State Sovereignty”, *British Yearbook of International Law*, 1999, p. 96.

<sup>122</sup> *The Commission and Non-Governmental Organisations: Building A Stronger Partnership*, Commission Discussion Paper presented by President PRODI and Vice-President KINNOCK, COM (2000) 11 final, *Official Journal of the European Communities*, L 002 5 January 2000, p. 67, “The NGO-sector has often been described as extremely diverse, heterogeneous and populated by organisations with hugely varied goals, structure and motivations. It is therefore not an easy task to find a common definition of the term ‘non-governmental organisation’. It cannot be based on a legal definition given the wide variations in laws relating to NGO activities, according to which an NGO may have, for instance, the legal status of a charity, non-profit association or foundation.”

<sup>123</sup> *Background Paper Prepared by the Permis*, Doc. BS/OM/WG/AA(99)2, 17 June 1999, p. 6:

“NGOs shall,

- be independent from states and governments (they must not be state run institutions, nor composed by state administrations, nor being under state direction whatsoever and not receiving guidelines from any government);
- be willing and able to make practical and valuable contribution to the work of BSEC;
- have international character (founders and administrators must be under the jurisdiction of two or more BSEC Member States, be operational in at least two BSEC Member States, have their statutory and real seat in one BSEC Member or Observer State);
- do not have political character (NGOs shall not endanger the relations between the parties, nor international peace and security, shall not get involved in any political activity against the interests of any Member State, shall not resort to the use of violence, nor condone the use of violence, terrorism, racial, religious or ethnic hatred, and shall not endanger the national security of a party,



Based on the PERMIS proposal, the Council of Ministers of Foreign Affairs of the BSEC Member States (Thessaloniki, 27 October 1999) adopted the following “Criteria for Granting Observer Status to NGOs”<sup>124</sup>:

*“a) Observer Status shall only be granted to NGOs, which are truly international.*

An organisation shall be deemed international (regional or sub-regional) if it has its statutory and real seat in one of the BSEC Member or Observer State, its administrators are under the jurisdiction of two or more BSEC Member States, and it is operational in at least two BSEC Member States.

It is without saying that the applicant NGO must have a permanent headquarters and an internal organisational structure.

b) The purposes of the applicant must be directly related to the purposes of the BSEC and fully in harmony with the spirit and functions of it as defined in the relevant articles of the BSEC Charter.

c) The applicant NGO has to be of a non-political character. This means that it shall not endanger the relations between the Member States, nor international peace and security, it shall not get involved in any political activity against the interests of any Member State, it shall not resort to the use of violence, or condone the use of violence, terrorism, racial religious or ethnic hatred, and shall not endanger the national security of a Member State, nor infringe its public safety, the public order and prevention of crime, health and morality protection as well as the rights and liberties of others.

d) The applicant NGO has to be independent from states and governments. It must not be a state run institution, nor composed by state administrations, nor being under state direction and not receiving guidelines from any government.

e) The applicant NGO must be non profit-making institutions, financially independent and should not use the observer status for economic or financial purposes.

f) The applicant NGO shall be of a recognized standing in its field of activities.”

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nor infringe its public safety, the public order and prevention of crime, health and morality protection, as well as the rights and liberties of others);

- be non-profit making institutions.”

<sup>124</sup>CMFA, 1<sup>st</sup> Meeting, Thessaloniki, 25 October 1999, Report, BS/FM/R(99)2, Annex V, Attachment 1, in BSEC, *Handbook of Documents*, vol. IV, 2000, p. 138. At the same Meeting, the Council adopted also the following definition of NGOs, for the BSEC purposes, *ibid.*, pp. 132-133:

“NGOs eligible for Observer Status in the BSEC, shall be international organisations of non-political, non-profit character, independent from States and Governments, willing and able to make practical and valuable contribution to the work of the BSEC and of a recognized standing in their field of activities.”

This definition is a mere juxtaposition of the main elements of the adopted criteria providing thus a further justification of the opinion exposed *supra* that a definition of NGO was not necessary for the conceptual elaboration of the issue of criteria. In any case this definition has been used neither by the BSEC organs nor by NGOs; they all focus to the criteria, which have a clear practical value and use.

These criteria were adopted by resolution of the BSEC Council and therefore they are binding for the Organisation of the BSEC as well as for its member states. They set the normative framework for granting observer status to NGOs in the BSEC. They have to be fulfilled by NGOs that apply for this status and in this sense they have mandatory value for these actors also, despite the fact that they have been enacted by unilateral act of the Organisation. Initial or subsequent non-compliance with these criteria by a NGO prevents or disrupts its observer status. From that point of view the intergovernmental organisation maintains a prevailing position over NGOs: it is the former that sets the binding framework for the interaction with NGOs; the latter have to abide by it, if they wish to cooperate. Moreover, in adopting the above list of criteria, the BSEC organs have not sought the opinion of civil society. Hopefully, it may be different for subsequent amendment of this list, because NGOs are now represented in the BSEC proceedings.

The above list is an encompassing text containing the core elements of the notion of NGO, which describe the non-governmental, non-for-profit, independent segment of society, together with the more specific elements required for the institutionalised interaction with the BSEC.

ii) Presentation of the criteria for granting observer status to NGOs

**International character**

The first requirement that an NGO should fulfil in order to be granted observer status in the BSEC is the *international character*. This is a requirement directly stemming from the Charter of the Organisation, which provides in its article 8, paragraph 1 that “Observer status in the BSEC shall be open, upon request, to any State or *international* organisation which expresses its readiness to make practical and valuable contribution to the work of the BSEC.”

The Charter itself defines the term “international organisation” as covering both intergovernmental and non-governmental international organisations (article 2, *litt.* (d) Charter).

Following the wording of the Charter, the relevant resolution of the 13<sup>th</sup> Meeting of the Ministers of Foreign Affairs (Tbilisi, 30 April 1999) instructed the Working Group on Organisational Matters to elaborate “the definition of the *international* non-governmental organisations”. An element of “internationality” is, therefore, absolutely necessary for granting observer status to NGOs in the BSEC framework. This element has been specified in the criteria by the requirement relating to the nationality of the founders and administrators of the candidate NGOs, who should be under the jurisdiction of two or more BSEC member states. Furthermore it is also necessary for affirming the international character of an NGO that the latter must be operational in at least two BSEC Member States.

With respect to the issue of the seat of the applicant NGOs, two different approaches were advanced. For some member states BSEC should grant observer status only to NGOs whose (statutory and/or real) seat would be located in the territory of one BSEC member state. A more liberal approach consisted in granting observer status to interested NGOs irrespective of the location of their seat, provided that they are active in the BSEC region. The issue was eventually resolved by allowing the observer status also to NGOs located in BSEC observer states that have activities in two or

more BSEC member states. This is a “compromise” that may widen the circle of NGOs eligible for observer status in the BSEC.

Furthermore the Criteria require that the applicant NGO has permanent headquarters and an internal organisational structure. It is therefore necessary that an NGO should have a permanent secretariat, located at a place agreed by the appropriate body of the NGO, where correspondence can be addressed and the NGO can be contacted. The permanent headquarters fulfils also another essential function, that of the legality control exercised by the host state over the activities of the NGO. It is further required that the applicant NGO should have provided in its internal administration documents for representative organs and procedures for the adoption of the decisions pertaining to the functioning and activities of the organisation. The conditions of headquarters and decision-making organs and procedures clearly imply the *necessity that an NGO applying for observer status in the BSEC should have legal personality in its host state*, that is to have been established in accordance with the relevant domestic procedures of the BSEC member or observer state, where the NGO has its seat.

### **Compatibility between the objectives of the BSEC and those of the NGOs**

This condition is inspired by article 8, paragraph 1 of the BSEC Charter:

“Observer status in the BSEC shall be open, upon request, to any State or international organisation which expresses its *readiness to make practical and valuable contribution to the work of the BSEC.*”<sup>125</sup>

The adopted criteria do not repeat the language of the Charter, but, in a rather succinct formulation, add to its interpretation. The direct relation between the purposes of the applicant NGO and those of the Organisation of the BSEC and the conformity of the NGO activities with the BSEC Charter are translating in effect the overall consideration of the *“readiness to make practical and valuable contribution to the work of the BSEC.”* For this purpose, it is necessary that, in practical terms the applicant NGO should clearly declare the required readiness to make practical and valuable contribution to the BSEC activities and also submit relevant documents proving that its is in a position to fulfil both the objective (“able”) and the subjective (“willing”) component implied by this second criterion. The “readiness to make practical and valuable contribution to the work of the BSEC” supposes first that the interested NGO agrees with and abides by the relevant BSEC texts and that it is in a position (objectively and subjectively) to contribute in a practical and valuable way to the work of the BSEC. The latter requirement reinforces also what was said under the first criterion, that NGOs shall have organisational structure and lasting character, guaranteeing their ability to contribute to the achievement of the overall aims of the BSEC.

### **Non-political character of the NGO**

This criterion is closely related to the non-governmental character of the applicant NGO. It risks however of being construed in a rigid way, aiming at preventing numerous NGOs from being granted observer status. In order to avoid potential abuse inherent in such broad formulation, the BSEC Council has rightly adopted a precise and detailed description of activities, which should bar NGOs from establishing formal relations with intergovernmental organisations. The language of these negative

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<sup>125</sup> Comp. article 21, paragraph 2 Rules of Procedure:

“Applications [for observer status] shall be examined on a case by case basis, on equal level, in view of the readiness of the applicants to make practical and valuable contribution to the work of the BSEC.”

conditions is clear and it is self-understood that any NGO wishing to cooperate with an intergovernmental organisation must avoid being entangled in activities endangering the relations between the member states of this organisation, or international peace and security. It has also to abstain from getting involved in any political activity against the interests of any member state,<sup>126</sup> as well as from advocating or condoning the use of violence and other internationally illicit acts, such as terrorism, racial, religious or ethnic hatred. The respect of the international legality implies also the respect for the national security of the member states, its public safety and public order, the prevention of crime, the protection of health and morality, as well as the respect of the rights and liberties of others.

### **Independence from states or governments**

An evident criterion for granting observer status to NGOs is that of the *non-governmental character of the applicant institution*. This seems to be tautological; it entails however some more detailed conditions, which are required from an NGO wishing to obtain observer status in the BSEC: the concerned organisation must not be a state run institution, nor composed by state administrations, nor being under state direction whatsoever and not receiving guidelines from any government. *Independence from states and governments is a necessary element of every definition of NGOs* and consequently a *sine qua non* criterion for observer status in the BSEC. This condition should also apply to the so-called GONGOs (governmentally-controlled non-governmental organisations), which constitute a growing phenomenon distorting the overall picture of non-state actors in international law. This issue has not been addressed in the BSEC practice. It is however submitted that GONGOs do not qualify for observer status or other institutionalised relations with the BSEC.

### **Non-profit character**

As we have pointed out the first set of criteria for observer status of NGOs in the BSEC, adopted in 1993, omitted the requirement that the NGOs interested in establishing relations with the BSEC be non-for-profit, though it had been included in the initial proposal.<sup>127</sup> The 1993 resolution stipulated only that “the NGO should make an official statement that it will not misuse its relations with the BSEC to seek financial gain.” Consequently an NGO having institutional relations with the BSEC could be a profit-making body (company, corporation, etc.) as long as there was no misuse of its status in the BSEC initiative for lucrative purposes. The meaning of this provision, rightly understood, is that any use of the relations of NGOs with the BSEC with the aim of obtaining financial advantage should be renounced by official statement of the applying NGO before the establishment of relations with the BSEC.<sup>128</sup> It is clear however that the official statement provided for could not replace the explicit enunciation of non-eligibility of non-state profit making organisations.

The exclusion of the criterion of the non-for-profit character of the NGOs seeking to cooperate in an institutional framework with the BSEC raises a score of questions on

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<sup>126</sup> See a controversy on the activities of the International Black Sea Club, which are deemed by a member state as directed against its interests.

<sup>127</sup> *Working Paper on Relations between the BSEC and NGOs*, Doc. BS/OM/WG(93)11, 17 September 1993, p. 5.

<sup>128</sup> This requirement is laid down in an inadequate way and hence is something that interpretation should remedy: what appears as a criterion for establishing relations between the BSEC and an NGO is merely a formal, procedural condition. From a material point of view, this part of the 1993 Resolution on the Criteria stipulated a reason for suspension or termination, in accordance with article 24, paragraph 12 RP, of an already established relationship.

its expediency as well as on the intention of the drafters of the 1993 Resolution on the Criteria. The motives are not substantiated and the subsequent practice has not shed any light on them. In any case the cooperation of an intergovernmental institution with profit making non-state actors follows a different pattern than the relations with non-for-profit NGOs and the legal texts have to reflect this different type of legal relationship. It is therefore wise that the new list of criteria explicitly mentions the requirement of the non-profit character of the applicant NGO together with the commitment that the NGO granted with observer status should not use the observer status in the BSEC for economic or financial gain.

### **Recognised standing**

This criterion allows the Council of Ministers of Foreign Affairs of the BSEC member states to judge the performance of the applicant NGOs in their field of activity and to decide consequently whether the cooperation with it can bring “practical and valuable contribution to the work of the BSEC”. It is one that confers a wide range of discretionary power to the BSEC decision-making organs responsible for granting the observer status. It is therefore imperative that each applicant NGO meticulously prepares the documentation (activity reports, projects realised, assessment by other relevant international bodies, etc.) showing its achievements and recognised standing in its area of competence and also how this information can be translated into practical and valuable contribution to the work of the BSEC. It is the interested NGOs that bear the “burden of proof” with respect to this criterion.

### *C. Other forms of cooperation between BSEC and NGOs*

The main type of relationship between the BSEC and NGOs that has been studied so far was the observer status. However, as already said, other types of relations, considered more flexible, were looked for by the BSEC since 1993. The possibility of other than observer status, type of cooperation with NGOs, was envisaged from the early stages of the consideration of the issue in the BSEC: the Working Group on Organisational Matters which elaborated the first list of criteria for establishing relations with NGOs in 1993 had also provided for the possibility for the Meeting of the Ministers of Foreign Affairs to “decide, on a case by case basis, on the form of relationship with an NGO which does not ask for observer status.”<sup>129</sup> The general idea that there were other than the observer status means for BSEC – NGOs cooperation was confirmed by the WGOM the following year, which concluded that at that stage observer status could not be granted to NGOs and suggested, as an alternative, that it would be desirable to encourage a kind of cooperation with interested NGOs either by inviting them to various meetings of the BSEC subsidiary bodies or by exchanging

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<sup>129</sup> Working Group on Organisational Matters, Ankara, 26-27 October 1993, Report, Doc. BS/OM/WG/R(93)3, Annex III 2. The quest for alternative to the observer status form of BSEC-NGO relationship was clearly manifested at the, previously referred to, meeting of the Working Group on Organisational Matters (7-9 May 1994). At that meeting “the WG felt that the door should be kept open for all types of relations between the BSEC and the applicant institutions, including the status of observer”, Working Group on Organisational Matters, Istanbul, 7-9 May 1994, Report, Doc. BS/OM/WG/R(94)1, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 354. The language used indicates a wish of the participants to institute other types of relationship than a *lex lata* which could be resorted to at that moment. This “feeling” or wish explains also the lack of indication of the other possibilities, but the observer status, and the decision to postpone the consideration of all pending applications from NGOs. The *de lege ferenda* viewpoint of the participants to the WGOM is further attested by their “belie[f] that it would be more appropriate to start with a loose type of relationship with a view to upgrading it in the future when the circumstances warrant it.”



relevant information through the PERMIS channels.<sup>130</sup> This recommendation was endorsed by the 5<sup>th</sup> MMFA,<sup>131</sup> offering thus some type of alternative to the observer status, provided in the Rules of Procedure, in the form of working relations (attendance of BSEC meetings, exchange of information of mutual interest) with the NGOs, whose applications for observer status were turned down.<sup>132</sup>

#### i) The sectoral approach

It was not before 1997 that the afore-mentioned options for BSEC – NGOs cooperation were integrated in a more coherent normative framework. This framework was set up by the so-called “sectoral approach” introduced at the 9<sup>th</sup> Meeting of the Ministers of Foreign Affairs. The reasoning for this system was “that since the majority of the applicant NGOs [were] specialised organisations, a sectoral approach would be advisable, by indicating those concrete fields of cooperation with the BSEC in which the respective NGOs are involved.”<sup>133</sup> This approach would be appropriate in order to address the growing scores of applications of NGOs, whose scope of activities were limited to some, most often to one, areas of cooperation of the BSEC. It is therefore legitimate to assume that the *rationale* of the new approach was to allow the interaction BSEC – NGOs in limited fields (relating to the cross-cutting interest of the parties) and with restricted participatory rights (attendance of meetings of common interest, exchange of information). The aim was not to resolve the issue immediately but to streamline the action of the BSEC in this field in anticipation of a solution that would be given by the BSEC Charter, which was under elaboration at that time and expected to be adopted in a relatively short span of time.<sup>134</sup>

#### ii) Article 9 of the BSEC Charter: the partnership concept

The BSEC Charter did actually address the issue as anticipated. It contains a specific article entitled “Relations with Third Parties” (article 9), that comes immediately after article 8 (observer status), and envisages other modalities of cooperation *inter alia* with non-governmental organisations:

“The BSEC shall promote a relationship with third parties (states, international organisations and institutions) interested to cooperate on various matters of mutual concern through:

- a) dialogue partnership, within a frame of periodic exchanges and consultations;
- b) sectoral dialogue partnership; possibility of attending meetings on specific subjects;

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<sup>130</sup> Working Group on Organisational Matters, Athens, 21-22 Sept. 1994, Report, Doc. BS/OM/WG/R(94)2, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 362.

<sup>131</sup> 5<sup>th</sup> Meeting of the Ministers of Foreign Affairs, 14 April 1995, Report, Doc. BS/FM/R(95)1, Annex VI, Recommendations, paragraph 59, in BSEC, *Handbook of Documents*, vol. I, 1995, p. 124.

<sup>132</sup> This recommendation seems to apply in case an NGO does seek observer status; it is however clear, for the identity of reason, that the Ministers could have resorted to other type of relationship for objective reasons, would they have deemed it appropriate.

<sup>133</sup> 9<sup>th</sup> Meeting of the Ministers of Foreign Affairs, 30 April 1997, Report, Doc. BS/FM/R(97)1, Annex V, Recommendations, paragraph 39, in BSEC, *Handbook of Documents*, vol. III, 1998, p. 46.

<sup>134</sup> This objective is explicitly admitted by the decision of the 9<sup>th</sup> MMFA “to further consider the issue of the relationship between the BSEC and the NGOs in the work of the Drafting Group of the BSEC Charter and prepare relevant recommendations on this subject.”, 9<sup>th</sup> Meeting of the Ministers of Foreign Affairs, Istanbul, 30 April 1997, Report, Doc. BS/FM/R(97)1, Annex V, Resolution, in BSEC, *Handbook of Documents*, vol. III, 1998, p. 47.

- c) invitation of guests; possibility of attending sessions of the BSEC upon the invitation of the Chairman-in-office and with the consent of all the Member States.  
Dialogue partnership and sectoral dialogue partnership may be granted following the resolution of the Council.”

The *sectoral approach* takes thus a more concrete shape and the legal possibility for institutionalised relations with NGOs, other than observer status, is for the first time formally available. This type of relations with third parties concerns primarily the sectoral dialogue partnership and the dialogue partnership; the other possibilities (invitation of guests, attendance of BSEC sessions) do not have permanent character. Consequently the following remarks are relevant to the sectoral dialogue and/or the dialogue partnerships. With regard to these statuses, article 9 of the Charter leaves open the significant question concerning the conditions under which BSEC can resort to the options provided therein.

The first indicator in this respect is to be found in the comparison of articles 8 and 9 governing the cooperation of the BSEC with third parties. Whereas article 8 relating to the observer status requires the intention and the ability of the interested third party (including NGOs) “to make practical and valuable *contribution* to the work of the BSEC”, article 9 aims at third parties (including NGOs) “interested to *cooperate* on various matters of mutual concern”. There is a gradation of the intensity of the desired relationship, contribution or cooperation, which is not easy to establish *in abstracto*. The term contribution implies active participation of the interested third party to the BSEC work, while cooperation may be construed as more distant or passive involvement in the BSEC affairs. In practice however such a distinction cannot be helpful to the BSEC Council of Ministers when deliberating on an actual application of an NGO (or for that matter of any third party, state or intergovernmental organisation). Decisive in this respect remains the stance adopted by the candidate NGO, the intention it expresses. In case the applicant third party applies for one of the modalities provided for in article 9, it is reasonable that the BSEC Council limits its consideration to one of them. The same should apply when the application contains language or other elements that clearly indicate that the aim of the candidate NGO is (simple) cooperation and not active contribution. The choice therefore of one of the possibilities of article 9 depends primarily on the applicant than on the decision-making organ of the BSEC. Nevertheless, in practical terms there are few NGOs that apply straightforwardly for one of the options provided for in article 9 of the Charter,<sup>135</sup> a circumstance that makes the distinction between “cooperation” and “contribution” more difficult in terms of its application in concrete cases.

A second consideration for the interpretation of article 9 is to be found in the origin of this provision, in particular in the afore-mentioned “sectoral approach”, with regard to the relationship with NGOs, as envisaged by the 9<sup>th</sup> MMFA (“since the majority of the applicant NGOs are specialised organisations, a sectoral approach would be advisable, *by indicating those concrete fields of cooperation with the BSEC in which the respective NGOs are involved.*”<sup>136</sup>) This approach would justify the application of

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<sup>135</sup> Up to now only one NGO, the Black Sea Cruising Association (BSCA) has applied for sectoral dialogue partnership, see Committee of Senior Officials, Yerevan, 16-17 April 2003, Annotated Agenda, Doc. BS/SOM/AA(2003)3, 2 April 2003, paragraph 38, p. 6.

<sup>136</sup> 9<sup>th</sup> Meeting of the Ministers of Foreign Affairs, Istanbul, 30 April 1997, Report, Doc. BS/FM/R(97)1, Annex V, Resolution, in BSEC, *Handbook of Documents*, vol. III, 1998, p. 46 (emphasis added).

article 9 with respect to NGOs whose activities are less wide than the areas of cooperation of the BSEC. This was the understanding that the BSEC PERMIS gave to the said provision in its opinion on the application for sectoral dialogue partnership of an intergovernmental body, the Coordination Transport Conference of the Member States of the Commonwealth of Independent States (CTC CIS). Appreciating the merits of the afore-mentioned application, the PERMIS noted that “the mandate of the CTC CIS, as it is described in its Regulations, covers one of the BSEC areas of cooperation, namely transport, and it is limited to that sector. The sectoral dialogue partnership status is precisely designed to foster this type of cooperation between the BSEC (which has a larger mandate) and third parties *interested in some aspects* of the BSEC activities.”<sup>137</sup>

This construction, consistent with the letter of the Charter, is however restrictive with respect to NGOs in that it places almost all these organisations outside the scope of article 8 of the Charter (observer status). It is hardly possible that a non-governmental organisation has a scope of activities comparable with the competency of the BSEC as described in article 4 of the Charter. For that reason the practice may lead to mellowing the strict letter of the Charter and admitting the possibility for granting observer status to an NGO, despite the limited scope of its activities, especially when it is acknowledged that the concerned NGO could “make practical and valuable contribution to the work of the BSEC” (art. 8). Such development is in full compliance with the paragraph 6 of article 21 RP stating that

“Observer status granted to third States or to international organisations may be valid for all or *only selected activities of the BSEC* to be determined by the Council.”<sup>138</sup>

This provision *introduces thus a sectoral approach with respect to the observer status as well*. Granting observer status for “selected activities of the BSEC” is a possibility that, although not used up to now, can be a practical compromise between the limited scope of activities of an NGO and its readiness to “make practical and valuable contribution to the work of the BSEC.” It is therefore submitted that the BSEC organs should pay more attention to this possibility and resort to it, especially when dealing with NGOs’ applications for observer status.

On the other hand the sectoral approach is not a part or necessary condition for the *dialogue partnership* status, which is one of the most under worked provisions of the BSEC Charter, despite the interesting possibilities that opens for both the BSEC and third actors (NGOs, but also states and intergovernmental organisations). It provides for the establishment of a framework of periodic exchanges and consultations, without submitting this framework to the limitations of the cooperation in specific areas of interest. It is submitted that BSEC should pay greater attention to the possibility of dialogue partnership with third parties.<sup>139</sup> On their part, NGOs should not hesitate to apply for dialogue partnership, when they feel that the sectoral approach may restrict the scope of the expected interaction with the BSEC (especially when the interests and activities of the former span several BSEC areas of cooperation).

The interpretation has to reconcile in practical terms the application of articles 8 and 9 of the BSEC Charter wherever the conditions for their application concur. The Charter

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<sup>137</sup> Opinion on the application of the Coordination Transport Conference of the Member States of the Commonwealth of Independent States (CTC CIS) for sectoral dialogue partnership in the BSEC (by the BSEC PERMIS), paragraph 6 (emphasis in the text).

<sup>138</sup> Emphasis added.

<sup>139</sup> See Ministry of Foreign Affairs, Note Verbale APF3510/OSEP/AS 1821 dated 14 December 2007.

does not reserve the possibilities of article 9 just to NGOs neither exclude the latter from the scope of its article 8. The belief that the sectoral dialogue partnership status befits the specific characteristics of NGOs as organisations with limited field of interests, compared to these of the BSEC, and the ensuing inference that this status is appropriate for NGOs in general is oversimplifying. Until recently the practice of the Organisation of the BSEC seemed to lend some support to such idea. The two inter-governmental organisations that have been granted observer status in the BSEC, the Energy Charter Conference and the Commission on the Protection of the Black Sea Against Pollution, meet exactly the terms of the sectoral approach, because of their respective scope of competencies (energy and environmental protection respectively). Nevertheless the option of sectoral dialogue partnership has been excluded for these organisations on the grounds that they were intergovernmental institutions. However, in October 2007 a state, Hungary, has been granted sectoral dialogue partnership status with the BSEC.<sup>140</sup>

There is however nothing disparaging or depreciative in the possibilities provided for in article 9, which can be, and actually *are* envisaged explicitly for states or international organisations, that, irrespective of their scope of competencies, “are interested to cooperate on various matters of mutual concern” with the BSEC. The practice provides the instance of the Coordination Transport Conference of the Member States of the Commonwealth of Independent States (CTC CIS), which is an intergovernmental institution<sup>141</sup> that applied for sectoral dialogue partnership. This choice by the applicant institution was motivated by the scope of the CTC CIS which embraces only one BSEC area of cooperation, transportation, and it demonstrates that the sectoral dialogue partnership is not confined to NGOs, nor that interaction with NGOs should be limited to such status.

Another approach towards resorting to the possibilities of article 9 Charter could be to consider these options as the first stage of cooperation between the BSEC and third parties, including NGOs. In case such an understanding is accepted, the term of sectoral dialogue partnership (or of the other options of article 9 – dialogue partnership, invitation, possibility of attending BSEC sessions) would be a sort of “probationary” period, during which the BSEC and the concerned NGO would test their interest for further, closer cooperation and consequently decide whether the status should evolve into observer status or remain the same, if it provides the appropriate framework for the desired interaction. Although this explanation has not been explicitly supported by the BSEC practice, it cannot be excluded as a possible course of action, especially taking into account its practicality.

### iii) Identity of requirements for partnership and observer status

The decision to resort to the possibilities of article 9 of the BSEC Charter for establishing institutionalised relations with, *inter alia*, NGOs, raises the question of the requirements for the modes of cooperation provided therein, in particular for the sectoral dialogue partnership. The question that arises is whether such cooperation

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<sup>140</sup> Meeting of the Council of Ministers of Foreign Affairs of the BSEC Member States, 17<sup>th</sup> meeting, Ankara, 25 October 2007, Resolutions, Decisions and Recommendations, Doc. Annex VII to BS/FM/R(2007)2, paragraph 23, p. 5.

<sup>141</sup> The CTC CIS Regulations (art. 1) describe the Conference as the “common body of inter-governmental regulation of transport activities on the territory of the CIS established in compliance with the Agreement on principles and conditions of relations in the field of transport dated December 30, 1991.”

between BSEC and NGOs could be established irrespective of criteria. And if not which criteria should fulfil an organisation seeking to establish relations with the BSEC under article 9 of the Charter?

In the first occurrence that the sectoral dialogue partnership was established between the BSEC and four NGOs<sup>142</sup> (April 2000), the Council of Ministers of Foreign Affairs of the BSEC member states examined whether the applicants were fulfilling criteria for observer status in order to grant them sectoral dialogue partnership.<sup>143</sup> At this first instance the Council checked the fulfilment of the criteria for observer status, giving thus the message that *the requirements for establishing sectoral dialogue partnership with NGOs were identical with the criteria for granting observer status to NGOs*. The Charter itself contains two requirements for the application of article 9: the international character of the interested institution<sup>144</sup> as well as the existence of matters of mutual concern between the BSEC and the interested NGO. These two requirements are reflected in the two first criteria for granting observer status to NGOs (international character, compatibility between the objectives of the BSEC and those of the NGOs). The remaining criteria that relate to the necessary elements for an institution being an NGO (criteria (c) to (e): non-political character, independence from states and governments, non-profit making character) are also minimum requirements that the BSEC Council rightfully expects from NGOs that wish to have institutionalised relationship with the Organisation. The same goes for the requirement of the recognised standing of the NGO in its field of activities (*litt.* (f) in the 1999 list of criteria). *The practice according to which NGOs shall fulfil the same criteria for being granted observer or sectoral dialogue partnership status has been followed since then*. The BSEC organs are carefully screening the existence of criteria for observer status when establishing sectoral dialogue partnership. It is characteristic that, so far, the only case where this type of partnership was denied to international NGOs was when the applicants could not produce the proof of their legal personality. For the identity of the reason, the criteria for observer status should be also fulfilled by international NGOs applying for dialogue partnership.

The consistent practice in the BSEC testifies that it is not in the intentions of the BSEC organs to elaborate a distinct list of criteria for the dialogue partnership or the sectoral dialogue partnership. For the predictable future the interested NGOs should therefore fulfil identical criteria, irrespective of the type of institutionalised cooperation they seek to establish with the BSEC.

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<sup>142</sup> These NGOs were: Black Sea Region Association of Shipbuilders and Ship Repairers (BRASS), Black Sea International Ship Owners Association (BINSOA), Regional Working Group for the Cooperation in the Field of Energy among the Black Sea Region and Central Asia Countries (RWEG), Black Sea Universities Network (BSUN). They had all applied for observer status.

<sup>143</sup> Council of Ministers of Foreign Affairs of the BSEC Member States, 2<sup>nd</sup> meeting, Chisinau, 27 April 2000, Report, Doc. BS/FM/R(2000)1, Annex VII, Resolutions, paragraph 7, in BSEC, *Handbook of Documents*, vol. V, 2000, p. 17, “these NGOs were selected in accordance with the definition and criteria approved by the First Meeting of the Council, and are granted the sectoral dialogue partnership...” (emphasis added).

<sup>144</sup> There is a difference in the language of article 8 Charter providing for observer status only for states and international organisations (intergovernmental and non-governmental) and article 9 opening the partnership status to the previous two categories and also to international *institutions*. This difference does not alter the right of NGOs, already covered, but allows partnership with international intergovernmental structures that are not organisations, i.e. they do not have distinct legal personality; such institutions can be international entities such as organs, programmes and projects of international organisations, or informal international coalitions and the like.



Currently five NGOs have sectoral dialogue partnership with the BSEC: Black and Azov Seas Ports Association (BASPA), Black Sea International Shipowners Association (BINSAs), Black Sea Region Association of Shipowners and Shiprepairers (BRASS), International Network for Small and Medium Enterprises (INSME), and Union of International Road Transport Association in the BSEC Region (BSEC-URTA),<sup>145</sup> There is, thus far, no dialogue partner of the BSEC.

#### *D. Rights and obligations of NGOs with institutionalised relationship with the BSEC*

After having studied the forms that the institutionalised cooperation between the BSEC and interested NGOs (observer status, sectoral dialogue partnership or dialogue partnership), it is suitable to address the issue of rights and obligations that entail for these actors the establishment of one of the types of institutionalised relations. It has already been pointed out in this paper that the criteria for granting observer status are applied in practice also for establishing sectoral dialogue partnership. The identity of the criteria entailed also the uniformity of the legal and practical consequences attached to the two forms of institutionalised cooperation between BSEC and NGOs. Consequently the rights and obligations of NGOs stemming from the observer status and the sectoral dialogue partnership will be presented under one heading.

The legal framework in which the interaction between BSEC and NGOs develops is set up by unilateral normative texts enacted by the competent BSEC organs. In the first place there are texts of general application for all NGOs wishing to establish institutionalised relations with the BSEC, such as the Rules of Procedure and the Resolution on the Criteria for Granting Observer Status to NGOs. The legal framework is completed by the individual resolutions by which the BSEC Council grants observer status, sectoral dialogue partnership or dialogue partnership to applicant NGOs. The Charter and the Rules of Procedure provide that the three aforementioned types of relationship with NGOs require a resolution of the Council. This requirement entails, first, that the consensus of the member states is needed for granting these statuses to interested NGOs and, second, that the relevant acts are legally binding for the Organisation and its member states; they are also binding for the concerned NGOs in the sense that if they do not respect the otherwise unilateral BSEC resolutions, their relations with the BSEC could be severed. They can be binding for NGOs from another point of view: the Council of Ministers of Foreign Affairs of the BSEC member states may attach to its resolution granting observer status or sectoral dialogue partnership to an NGO clauses or conditions specific to the concerned organisation (for example limiting the observer status to selected BSEC activities or requiring specific conduct from the beneficiary NGO). Such particular provisions have also to be respected by the addressee NGOs.

From the practical point of view the cooperation of the BSEC with partners and observer NGOs is entrusted with the PERMIS, which serves for the transmission of information between the BSEC organs and NGOs.<sup>146</sup>

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<sup>145</sup> In addition to these NGOs, sectoral dialogue partnership with the BSEC have two intergovernmental institutions: Coordination Transport Meeting of the Member States of the Commonwealth of Independent States and Regional Commonwealth in the field of Communications.

<sup>146</sup> Rule II of the Regulations for the Staff of the BSEC PERMIS:

Notwithstanding the possibility of enunciating specific provisions for individual NGOs, the rights and obligations of the BSEC and NGOs with institutionalised relations with the former are set out in general terms in the BSEC Rules of Procedure with respect to the observer status.<sup>147</sup> Concerning the sectoral dialogue partnership the only relevant provision is to be found in the Charter providing that sectoral dialogue partners have the “possibility of attending meetings on specific subjects” (article 9, *litt. b*). Observers, on the other hand, may attend BSEC meetings without limitation (article 21, paragraph 8). They may even “attend, with special permission of the Chairman-in-Office, a meeting of restricted nature or part of a meeting during which an item of restricted nature is being discussed” (article 21, paragraph 7). Moreover, when attending meetings observers may be authorised by the Chairman-in-Office “a) to address the meeting; b) to participate in the discussions of technical or expert level meetings; c) to receive official BSEC documents; d) to submit written statements on particular items of the agenda” (article 21, paragraph 8). The sheer comparison of the rights conferred to observers to that attached, by the texts, to the sectoral dialogue partnership demonstrates the statutory distinction between these two modes of BSEC – NGOs relations as well as the difference between participation and consultation. Nonetheless, filling in the gap in enunciating rights and obligations for this type of relationship, *the practice has assimilated for all practical purposes the sectoral dialogue partnership with observer status*. In practice, NGOs sectoral dialogue partners of the BSEC receive full information on the BSEC proceedings, are invited in all BSEC events, including the meetings of the Council of Ministers of Foreign Affairs, have the right to address the BSEC meetings and submit oral or written proposals. Hence the practice of the BSEC organs has provided for a kind of

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“The PERMIS shall be entrusted with the following functions: ... (1) to conduct consultations with the Member States, Observers, BSEC related bodies and non-governmental organisations (NGOs), involved in the BSEC activities...”

<sup>147</sup> “Article 21. Observer Status

1. The Chairman-in-Office shall circulate to the Member States a copy of the application to the Chairman-in-Office expressing its willingness to obtain such a status.
2. Applications shall be examined on a case by case basis, on an equal level, in view of the readiness of the applicants to make practical and valuable contribution to the work of the BSEC.
3. The application for an observer status shall be included in the agenda of the earliest possible Council's Meeting.
4. Observer status shall be granted to a State for a renewable period of 2 years.
5. Observer status may be granted to international organisations for an unlimited period.
6. Observer status granted to third States or to international organisations may be valid for all or only selected activities of the BSEC to be determined by the Council.
7. Observers may attend, with special permission of the Chairman-in-Office, a meeting of restricted nature or a part of a meeting during which an item of restricted nature is being discussed.
8. Observers attending the meetings of the BSEC may be authorized by the Chairman-in-Office :
  - a) to address the BSEC meetings;
  - b) to participate in the discussions of technical or expert level meetings;
  - c) to receive official BSEC documents;
  - d) to submit written statements on particular items of the agenda.
9. The observer status of a State or an international organization may come to an end upon the request of the State or the organization in question.
10. The observer status of a State or an international organization may be suspended or terminated by the Council.
11. If consensus can not be secured to renew the observer status at the end of the two year period, such status shall come to an end for the State in question.”

“compensation” for the less formal status that is granted to non-state actors by conferring to this mode of cooperation the rights attached to the observer status.

These developments of the BSEC practice lead further to the conclusion that *whichever status are applying for or are granted by the Council, civil society organisations contribute actively to policy shaping in the BSEC process*. There are numerous examples of this active interaction between BSEC and NGOs enjoying sectoral dialogue partnership. The inclusion into the program of work of the BSEC of the issue of facilitation or simplification of issuance of entry visas for particular categories of economic actors nationals of the BSEC member states (businessmen engaged in export, import or investment activities in the BSEC member states,<sup>148</sup> lorry drivers engaged in international road transport of goods in the BSEC region<sup>149</sup>) is the result of the initiative of the BSEC Business Council, for the first category of persons, and of the Union of International Road Transport Association in the BSEC Region (BSEC-URTA), for the lorry drivers. BSEC-URTA has also submitted a proposal to conclude an Agreement among the BSEC Member States on Mutual Recognition of Diplomas, Certificates and Other Evidence of Formal Qualification for Road Vantage Operators and Road Passenger Transport Operator,<sup>150</sup> which is under consideration by the BSEC Working Group on Transport. The same Working Group had on its agenda a vast proposal on maritime transportation, submitted by two interested NGOs (Black Sea Region Association of Shipbuilders and Ship Repairers and Black Sea International Ship Owners Association). Recently the Council has established and *ad hoc* Expert Group with the aim to study the draft Memorandum of recommendations in the sphere of development of shipbuilding, shiprepairing and shipping.<sup>151</sup>

Moreover, NGOs having a cooperation scheme with the BSEC are also given the possibility to be associated in the management of concrete projects in the field of their activities and also to *submit proposals for projects to be financed through the BSEC Project Development Fund* (PDF). Such a proposal submitted in accordance with the requirements of the PDF, by the sectoral dialogue partner BSEC-URTA has been funded through this Fund.<sup>152</sup> This is a very important possibility open to NGOs cooperating with the BSEC, as it allows a, certainly modest, financial assistance for the start of the implementation of concrete NGO projects. The opportunity has been seized by a Russian NGO (Non-Commercial Partnership Charity Centre “Rafail”), which has submitted a project idea on “Integrating Mentally Disabled Children into Civil Society: development of new methodologies of social behaviour as a model for

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<sup>148</sup> Draft Agreement on Simplification of Visa Procedures for the Businessmen Nationals of the BSEC Member States, *Ad hoc* Expert Group on Visa Simplification Procedures, Istanbul, 29-30 January 2003, Doc. Annex III to BS/SVPBLD/GE/R(2003)1.

<sup>149</sup> Draft Agreement on Simplification of Visa Procedures for Professional Drivers Nationals of the BSEC Members, *Ad hoc* Expert Group on Visa Facilitation for Lorry Drivers, Istanbul, 22-23 January 2004, Doc. Annex III to BS/SVPBLD/GE/R(2004)1.

<sup>150</sup> See Working Group on Transport, Istanbul, 19-20 February 2004, Annotated Agenda, 2 February 2004, Doc. BS/TR/WG/AA(2004), p. 3.

<sup>151</sup> Council of Ministers of Foreign Affairs of the BSEC Member States, 13<sup>th</sup> Meeting, Chisinau, 28 October 2005, Doc. Annex VII to BS/FM/R(2005)2, paragraph 17.

<sup>152</sup> Proposal submitted by the BSEC-URTA for the project “Development of Distant Professional Learning Software for the International Road Transportation Industry” aimed at developing a sophisticated professional competency training software for the international road transport as well as implementing and monitoring a harmonised and sustainable distance-learning programme with the intention of delivering the Certificate of Professional Competence (CPC) training for international freight transport operators in the BSEC region, Working Group on Transport, Baku, 1-2 October 2003, Report, Doc. BS/TR/WG/R(2003)1, paragraph 15, p. 3.

BSEC Member States”. The project proposal is currently under consideration by the relevant BSEC Working Group on Health Care and Pharmaceuticals.<sup>153</sup>

Despite all the afore-mentioned participatory rights the NGOs with institutionalised relations with the BSEC remain third parties. The most important implication is that they do not affect formally the decision-making process in the Organisation. Their lobbying activities may occasionally have some effect, but not on a regular or formal basis. Another result of the position of NGOs in the BSEC is that their status in the Organisation does not have an impact on their standing in the domestic legal orders of the BSEC member states. Their interaction is limited to the BSEC organs and they are not entitled to claim any other participation in governmental processes at the level of individual states.

### 3. Conclusion

#### *A. Lessons learned and reflections for the future*

Concluding the part on institutionalised relations of the BSEC with NGOs, some general conclusions on the main features of this relationship can be drawn.

##### i) Usual type of BSEC-NGOs cooperation: the sectoral dialogue partnership

First, it is important to underline the readiness of the BSEC, expressed since its inception, to cooperate with non-state actors, which translates a clear positive evaluation of the role of NGOs in the international process. Concerning the format of the desired BSEC – NGOs relations the BSEC Charter provides for three options: the observer status (article 8), as well as the dialogue partnership and the sectoral dialogue partnership (article 9). The dialogue partnership has not been sought by NGOs, and consequently not established by the BSEC Council. Observer status has not been granted to NGOs. The only exception was the International Black Sea Club. Its observer status, however, was granted back in 1993, long before the adoption of the BSEC Charter. It has not been confirmed nor renewed after the entry into force of the BSEC Charter. This is a clear negative practice, because the observer status granted to *all other* third parties during the period before the transformation of the BSEC into an international organisation, has been confirmed and renewed.<sup>154</sup> The different treatment of the International Black Sea Club by the Organisation of the BSEC leads to the conclusion that its observer status has become obsolete and eventually expired. This is also the implicit admission of the IBSC itself, which has not participated nor been involved in any activities of the BSEC since the entry into force of the Charter of the Organisation.

This negative stance towards observer status for NGOs is all the more curious, taking into account that one of the first institutional measures that the BSEC member states have approved immediately after the entry into force was the enactment of “Criteria for Granting Observer Status to NGOs”. Instead this set of criteria has been applied in order to establish sectoral dialogue partnership with NGOs applying for observer status. Although there is no correlation between NGOs and sectoral dialogue status in

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<sup>153</sup> Working Group on Health Care and Pharmaceuticals, Moscow, 1 November 2006, Report, Doc. BS/HP/WG/R(2006), paragraph 24.

<sup>154</sup> The lack of consensus for confirming and renewing the IBSC’s observer status is the proof of the Club has not observer status with the BSEC.

the Charter, one has the impression that states and inter-governmental organisations are entitled to observer status while NGOs shall cooperate with the BSEC through the modes provided for in article 9 of the Charter, in particular sectoral dialogue partnership. Taking into account the practical identity of the rights and obligations attached to the two categories of relations, it is not far-fetched to submit that the difference between them has become one of the beneficiaries of the respective status and not one of substance.

ii) Opening BSEC to wider segment of civil society: the voluntary associations

Another feature that emerges from the number and character of NGOs that have received or applied for institutionalised relations with the BSEC is the fact that most of the non-state actors that have sought and entertain institutionalised relations with the BSEC are professional or lobbying groups.<sup>155</sup> This situation calls for some balancing. It is natural that BSEC as an economic organisation fostering cooperation in the field of economic development constitutes a forum where the professional associations of its member states seek to table their proposals and eventually influence in their favour the decision-making process on a regional level. Nonetheless the overall aim of sustainable development can benefit from the implication in the BSEC work of a wider range of non-state actors, including civil society, environmental, human development, labour, cultural, etc. NGOs, community-based and grassroots organisations. There is therefore a real advantage, if not need, for the BSEC to be attractive to such type of organisations as well and to be open to them whenever they manifest their desire to cooperate with the Organisation.

An example of such regional initiative, which contributed in a specific way to the BSEC endeavours, has been the Conference of the Red Cross and Red Crescent Societies of the BSEC participating states (Istanbul, 11-13 April 1997). The Ministers of Foreign Affairs concluded that the recommendations of this Conference “should be taken into account during the elaboration of a draft Agreement between the Governments of the BSEC Participating States on practical cooperation in emergency mitigation and elimination of consequences of natural and man-made disasters.”<sup>156</sup> Equally the contribution of the Black Sea NGOs Network (above under part I) could assist BSEC in promoting its aims of social development and cohesion and the well-being of the peoples in the Black Sea region.

This appeal to the BSEC should and actually cannot be ignored in today’s international life. This is not the appeal of a given civil society grouping, but the call of modern time. It is a good thing for the BSEC that civil society actors turn themselves to the Organisation; it is a sign of its relevance. The indifference of civil society towards an organisation is a symptom of the latter’s weakness. The various BSEC Working Groups should therefore take appropriate initiatives in order to stimulate the interest and contribution of civil society actors in their activities. The Working Group on Environmental Protection, for example may wish to debate the issue and invite interested NGOs focusing on environment and/or sustainable development to submit in writing their views on the regional cooperation in the field of the protection of the environment, the Working Groups on Healthcare and

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<sup>155</sup> See, for example, Murat ZÖNGÜR, “The role of NGOs in the wider Black Sea region”, *International Economic Issues*, Special edition, 2007 (year 7), pp. 80-82.

<sup>156</sup> 9<sup>th</sup> Meeting of the Ministers of Foreign Affairs, Istanbul, 30 April 1997, Resolutions, Decisions and Recommendations, Doc. Annex V to BS/FM/R(97)1, paragraph 20, in BSEC, *Handbook of Documents*, vol. III (1998), p. 41.



Pharmaceutics, on Education and so on, may proceed in the same way with NGOs active in the field of their respective competencies. The relations could start at a working level, while institutionalisation of the cooperation should be left for a later stage and shall follow the modalities established by the Charter and the BSEC by-laws. When the various Working Groups shall have acquired sufficient experience of working relations, the Committee of Senior Officials should be seized with this issue, in order to elaborate a general approach towards the voluntary associations of the civil society, which has to take into account the particularities of these organisations compared with the “professional” NGOs. On their part, the interested “voluntary” NGOs should elaborate an agreed platform on their meaningful participation to the BSEC endeavours.

### iii) Realistic expectations from the cooperation with BSEC

The aim of the cooperation of the BSEC with NGOs is to become more open and responsive to the citizens’ concerns. However it is not wise for NGOs cooperating with the BSEC to have excessive expectations from such cooperation. In some cases such (unrealistic) aspirations can prove counter-productive, when member states feel that NGOs are too demanding or present an excessively heavy agenda of wishes. It is therefore important for NGOs to strike the right balance between representing the concerns of the civil society and, in particular, their grassroots and not frustrating the decision-makers in the BSEC, that is state agencies.

As already pointed out NGOs that cooperate with the BSEC as sectoral dialogue partners have, in practice, the same rights, as those recognised by the Charter for observers. It is important, therefore, to note that this practice, considered by some member states too generous, may backfire. The danger is that judging the present system too liberal *vis-à-vis* NGOs, member states tend to adopt a more restrictive approach towards admitting them in the BSEC framework. If this tendency gains further ground, the advantages of the implication of NGOs in the BSEC process would shrink with negative results with regard to the openness of the Organisation to civil society and other private actors. It is therefore submitted that some rights, presently attached to the sectoral dialogue partnership status, such as the unrestricted participation of NGOs in the meetings of the Council of Ministers of Foreign Affairs, of the Committee of Senior Officials or in some other events should be reviewed in order not to hamper the expansion of this cooperation. In particular the Council of Ministers of Foreign Affairs is, and should, not be transformed into a general discussion forum; its character as the decision-making organ needs to remain intact. Sectoral dialogue partners, as well as observers admitted for selected activities (article 21, paragraph 6 Rules of Procedure), can contribute in a meaningful and effective way to the BSEC work by participating in the meetings of the subsidiary bodies that deal with the sectors concerned; it is in these organs, composed by experts from the member states, that the decisions are actually shaped in order to be presented to the politically responsible decision-making instances of the BSEC. It is therefore of great importance that NGOs admitted to institutionalised relationship with the BSEC carefully select the Working Groups (or other BSEC instances as warranted) in which it would be more useful to participate and present their views, concerns, requests, etc. Moreover, when need arises, NGOs may request, or be invited, to intervene in meetings of the BSEC Council or the Committee of Senior Officials.

### iv) Periodic assessment of the cooperation between BSEC and NGOs

Taking into account the sometimes fragile character of the relations between state and non-state actors, it is constructive to provide for some streamlining in the BSEC procedures relating to the interaction with NGOs, in order to enhance the level of the cooperation and avoid uncertainty.

The first observation in this respect relates to the need to establish as a rule the periodic evaluation of the cooperation between the Organisation and NGOs enjoying institutionalised relations with the former, in order to decide whether to maintain such relations or to discontinue them. A meaningful periodic evaluation of the level of cooperation between BSEC and NGOs would imply an obligation of the latter to submit periodically a report on their activities, past and planned, with particular emphasis to their contribution to the BSEC work, on the sources of their funding, the participation, the governing organs (new appointments) and other data, that the NGOs may consider relevant or the BSEC organs may require. Such report should be submitted in particular together with the application for extension of the existing cooperation scheme, even in the case the Council has not requested it in order to consider applications for renewal. Though the BSEC organs have not introduced such an obligation of the observer and partners NGOs, the latter should present their periodic reports as a matter of unilateral commitment. Such course of action shall undoubtedly strengthen the position and raise the influence of NGOs in the BSEC process. Moreover, the periodic assessment would enable the BSEC Council to proceed to the suspension or withdrawal of the observer or partnership status, in case of misconduct of the NGO or violation of the criteria for granting the respective status.

The second direction facilitating the meaningful assessment of the level of BSEC – NGOs cooperation could be the introduction of a periodic conference of NGOs that have institutionalised relations with the BSEC (observers, sectoral dialogue and dialogue partners). Such conference should be convened once a year (or maximum every other year), preferably at the sidelines of an event where all the NGOs would be invited. The most appropriate event for such purpose would be a meeting with the Committee of Senior Officials, during which a specific agenda item concerning the review of the cooperation with NGOs would be included.

This practice will allow first hand reciprocal information on the activities of the Organisation and the observers and partners NGOs, as well as on the expectations they have from their interaction. The participating NGOs will be thus given the opportunity to expose the orientation of their relations with BSEC and to acquire a global image of the course of the Organisation that only the Committee of Senior Officials (CSO) can give, due to its pivotal role in the BSEC process. In addition, the personal contact between the NGOs and the members of the CSO as well as among the NGOs taking part in the conference is invaluable in establishing a wide-ranging and future-oriented mutually beneficial cooperative partnership, which will promote the attainment of the Organisation's objectives. Moreover, the periodic conference proposed will contribute in raising the awareness of all participants of their belonging to the BSEC, with beneficial effects on their mobilisation towards the realisation of the aims of the Organisation. The organisation of such "thematic" conferences will also have the positive effect to appease the fears, justified or not, that NGOs have acquired far too much participatory rights in the BSEC process, by addressing all meetings of the Council and other ministerial conferences.

## B. The issue of national NGOs<sup>157</sup>

A category of civil society actors that need to be considered as a distinct case in the BSEC are the national NGOs. These organisations are excluded from the cooperation schemes provided for in articles 8 or 9 of the Charter. Both are reserved to *international* NGOs.<sup>158</sup> This is a formal requirement of the Charter and as such has overriding power. For this reason the few applications of national NGOs seeking institutionalised cooperation with the BSEC have not been submitted to the competent BSEC organs and any national civil society organisation has been kept hitherto afar from the BSEC. However, the issue of national NGOs that wish to cooperate with the BSEC could not be considered disposed of, at least in the perspective of a modification of the statutory documents. It is significant in this respect to refer to the practice in the framework of the United Nations: the United Nations was also reserving, since its inception, the institutionalised cooperation with NGOs (consultative status, see below under part V) that had international character. However after almost fifty years of such practice, the conditions for consultative status were revised and the requirement that an NGO must be “international” was dropped.<sup>159</sup> Over the last ten years it has become routine to accept national NGOs to consultative status with the United Nations. This openness of intergovernmental institutions to citizens’ concerns requires further consideration of the issue also in the BSEC context. National NGOs can be also helpful in allowing civil society expression and may as well contribute to addressing major issues of interest.<sup>160</sup> That is why it is submitted that practical arrangements could and should be found in order to associate national NGOs to the BSEC activities.

The arrangements to be devised for opening the BSEC to national NGOs shall not contravene the Charter and shall take the form of *working relations*, including consultations with BSEC organs, in particular PERMIS, as well as invitation (by the Chairman-in-Office and/or the PERMIS) to specific BSEC events of mutual interest. In such cases the principle *expressio unius est exclusio alterius* could not be invoked in order to rule out any involvement whatsoever of national NGOs in the BSEC activities. What the Charter prohibits, in its present form, is granting observer status and sectoral dialogue partnership to national NGOs. The extension of such limitation to other forms of interaction is not warranted and disregards policy considerations for openness to all non-state actors, though through other means of cooperation. The BSEC practice provides an instance of such alternative ways of allowing national NGOs to have a say in the BSEC process: a national association of maritime industry

<sup>157</sup> This issue has been dealt with by the author in Ioannis STRIBIS, *Decision-Making in the BSEC. A Creative Cartography of Governance*, Xenophon Paper No. 1, Athens: International Centre for Black Sea Studies, 2006, pp. 77-80.

<sup>158</sup> See articles 8 and 9 of the Charter. Also the first of the Criteria for Granting Observer Status to NGOs, CMFA, 1<sup>st</sup> Meeting, Thessaloniki, 25 October 1999, Doc. Attachment 1 to Annex V to BS/FM/R(99)2, in BSEC, Handbook of Documents, vol. IV (2000), p. 144:

“a) Observer Status shall only be granted to NGOs, which are truly international.

An organisation shall be deemed international (regional or sub-regional) if it has its statutory and real seat in one of the BSEC Member or Observer State, its administrators are under the jurisdiction of two or more BSEC Member States, and it is operational in at least two BSEC Member States.”

<sup>159</sup> UN Economic and Social Council, Resolution 1996/31, “Consultative relationship between the United Nations and non-governmental organisations”, 25 July 1996; for details, see below, part V.

<sup>160</sup> For an interesting case study of the impact of a national NGO in intergovernmental institutions, see Liza D. FALLON and Lorne K. KRIWOKEN, “International Influence of an Australian Nongovernmental Organisation in the Protection of Patagonian Toothfish”, *Ocean Development & International Law*, 2004, pp. 221-266.

of Ukraine, UKRUSUDPROM, submitted jointly with two international NGOs, sectoral dialogue partners of the BSEC (Black Sea Region Association of Shipbuilders and Ship Repairers and Black Sea International Ship Owners Association) a proposal on “General Directions of Governmental Policy of the BSEC countries in the sphere of shipbuilding, marine fleet and shiprepair”.<sup>161</sup> BSEC did not deny considering the joint proposal, despite the fact that it has been submitted also by a national NGO with no standing in the BSEC. Such kind of arrangement could be a precedent for involving national NGOs in BSEC activities. No modification of the BSEC normative documents is required in order to implement this proposal. The relevant issues will be dealt with on an individual basis, with *ad hoc* decisions of the Council or the Committee of Senior Officials to authorise some type of working relations with national civil society organisations that are willing and able to contribute in specific ways to the BSEC process.

An additional recommended action of great importance should be the encouragement of national NGOs approaching the BSEC and seeking to cooperate with it, to work towards the establishment of *regional networks bringing together national or regional organisations with similar interests, with a view to setting up NGOs with international character*, eligible for institutionalised cooperation with the BSEC. It is submitted that, whenever the Organisation is approached by national NGOs with a request for cooperation, the BSEC organs, primarily PERMIS, should advise the applicant(s) to set up a region-wide network of civil society associations active in the same or related fields and approach the BSEC with this international format, which will have better chances for meaningful cooperation with the Organisation<sup>162</sup>. The interested NGOs should work together in order to convince BSEC instances that, in such cases the Chairman-in-Office should facilitate the endeavour by assisting and hosting, in the BSEC headquarters, meetings of the interested NGOs from the member states. The arguments that NGOs can raise for making possible such course of action are that, in this way, the Organisation will benefit in several aspects. It will first succeed in having representative interlocutors from the civil society of the member states for its activities in different areas of cooperation. In addition, the BSEC shall also achieve to pool resources for the realisation of its objectives in the specific areas of cooperation (environment, healthcare, emergency assistance, tourism, migration, etc.). Ultimately, the assistance to the creation of regional networks of civil society actors shall in and of itself enlarge the regional cooperation in promoting human contacts, a distinct area of cooperation provided for in article 4 of the Charter. Cooperation of NGOs and other civil society organisations across the BSEC region is an essential means for developing pluralistic, open societies and for forming regional solidarities, which transcend the national borders and contribute to the realisation of the objectives pursued by any regional cooperation organisation<sup>163</sup>. The already cited examples of the Black Sea Regional Civil Society Forum or the Conference of the

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<sup>161</sup> Joint letter of BRASS, BINSAs and UKRUSUDPROM dated 9 February 2001.

<sup>162</sup> This piece of advice was given in 2002 to the Turkish environmental NGO TURKMEPA, which was seeking cooperation with the BSEC Working Group on Environmental Protection. Despite of the existence of similar MEPAs or other environmental NGOs in several BSEC member states, BSEC instances have had no information on a possible follow-up of this advice. The Working Group on Environmental Protection should probably inquire the issue.

<sup>163</sup> Cf. BALTIC SEA STATES CO-OPERATION, Fifth Ministerial Session, Kalmar (Sweden), 2-3 July 1996, *Action Program for the Baltic Sea States Co-operation*, paragraph 1.3, “Independent civil organisations are an *indispensable* element of democratic societies. An adequate role for these organisations in public life, in keeping with the priorities, which they themselves set, must be ensured. Regional co-operation between NGOs will further strengthen them, and such co-operation is an end in itself”.

Red Cross and Red Crescent Societies of the BSEC member states testify of the possibility and the benefits of such initiatives.

In the longer term, NGOs could advocate in favour of an amendment to the article 9 of the Charter (to be considered in the framework of the larger discussion on amending the BSEC Charter), by adding the phrase “*or national*” to the third parties eligible for the cooperation schemes provided in this article.<sup>164</sup> In this way the observer status will remain reserved to international organisations, intergovernmental or non-governmental, while the Council have the *discretion* to grant one of the less formal cooperation partnerships (sectoral dialogue partnership, dialogue partnership, invitation as guest) to national NGOs that warrant, in the appreciation of the member states<sup>165</sup>, an institutionalisation of their relationship with BSEC.

In the meantime, national NGOs that cannot have institutionalised cooperation with the BSEC could avail themselves of existing *ad hoc* possibilities for interaction. There is for example the practical possibility to advocate their concerns by joining forces with NGOs that already are observers in the BSEC or have dialogue or sectoral dialogue status. This was case with the afore mentioned national Ukrainian association of maritime industry UKRUSUDPROM, which submitted its wishes by join letter co-signed by two sectoral dialogue partners of the BSEC. It is however a possibility with limited interest, as it does not allows the participation in BSEC meetings and the direct presentation of their views and suggestions.

Another option is the possibility for NGOs to submit, without requirement of having international character, project proposals to be funded by the Project Development Fund (PDF). The selection of such proposal by the relevant BSEC organs (Working Group, Committee of Senior Officials, Steering Committee of the PDF) creates a structured relation with the BSEC as the beneficiaries of the PDF have regular contact and reporting obligations towards concrete BSEC organs. This possibility was resorted to recently by a national (Russian) NGO, the Non-Commercial Partnership Charity Centre “Rafail”, which, as it was already mentioned, submitted to the Working Group on Health Care and Pharmaceuticals a project idea on “Integrating Mentally Disabled Children into Civil Society: development of new methodologies of social behaviour as a model for BSEC Member States”. The Working Group “took note of the presentation ... and agreed to consider the said project idea during the next Meeting of the Working Group after consultation with national institutions and the submission of a detailed project by the applicant. The participants recommended to the applicant country to submit a formal application according to BSEC Project Development Fund procedure.”<sup>166</sup> This positive stance opens up useful prospects for NGOs, national and international alike.

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<sup>164</sup> The proposed formulation shall be:

“Article 9  
Relations with Third Parties

The BSEC shall promote a relationship with third parties (states, international *or national* organisations and institutions) interested to cooperate on various matters of mutual concern through: (...).”

<sup>165</sup> The relevant decision requires consensus (article 11, paragraph 2, *litt.* (c) RP).

<sup>166</sup> Working Group on Health Care and Pharmaceuticals, Moscow, 1 November 2006, Report, Doc. BS/HP/WG/R(2006), paragraph 24.



## IV

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### THE PARLIAMENTARY ASSEMBLY OF THE ORGANISATION OF THE BLACK SEA ECONOMIC COOPERATION

#### 1. Structure and functioning

The Organisation of the BSEC does not have an exclusively intergovernmental dimension. As previously said there are parliamentary, business, banking and academic structures. The inter-parliamentary component of the BSEC is the Parliamentary Assembly of the Black Sea Economic Cooperation (PABSEC), a consultative body composed of members of the parliaments of the BSEC member states.

The PABSEC was established eight months after the adoption of the Summit Declaration of the Black Sea Economic Cooperation (25 June 1992), on 26 February 1993, by the *Declaration on the Establishment of the Parliamentary Assembly of the Black Sea Economic Cooperation*, of the Speakers of the Parliaments of nine countries – Albania, Armenia, Azerbaijan, Georgia, Moldova, Romania, the Russian Federation, Turkey and Ukraine. The Greek Parliament joined the PABSEC in June 1995. Two years later (June 1997), the Bulgarian Parliament became the eleventh member of the PABSEC. Following the adhesion of Serbia in BSEC, the Parliament of the country also joined PABSEC, in November 2004, bringing its country membership to twelve. In accordance with the PABSEC Rules of Procedure (article 27, paragraph 2), the parliament of any member state of the BSEC can apply for membership in the PABSEC. The decision on applications for membership are taken by the PABSEC General Assembly.

The Parliamentary Assembly is composed of 76 members appointed by the respective national parliaments. The number of parliamentarians from each member country in PABSEC depends on the population of the member countries, with the proviso that the minimum seats for each national delegation is four. Following the demographic criterion adopted for the composition of the PABSEC, Albania, Armenia and Moldova have 4 seats each in the Assembly, Georgia, Azerbaijan and Bulgaria 4, Greece and Serbia 6, Romania 7, Ukraine and Turkey 9, and the Russian Federation 12 members. The term in office of each individual member shall not be less than one year, starting from the first general assembly of the PABSEC that the member attends. The membership in the PABSEC ceases when a member stops, for whatever reason, being a member of the national parliament that has appointed him/her to PABSEC or in case the member assumes governmental function in the national government.

The main bases of the PABSEC action as described in the *Declaration on the Establishment of the PABSEC* of February 1993 are the steadfast commitment to pluralistic democracy based on human rights and fundamental freedoms and to prosperity of the peoples of the PABSEC member states through economic liberty and social justice. In order to realise these paramount guiding principles, PABSEC has

assumed (by the Declaration of 26 February 1993 and the Rules of Procedure of 17 June 1993, as amended) the tasks

- to provide the legal ground for the realisation of the principles and the goals of respect for human rights, rule of law and democratic values as embodied in the main BSEC statutory documents;
- to provide for the democratic participation and support of the peoples of the BSEC member states with the help of the parliaments,
- to develop friendly relations and cooperation between the parliamentarians and Parliaments of the BSEC member states,
- further promoting the atmosphere of confidence and good neighborhood among peoples,
- to enact legislation needed for the implementation of decisions taken by the Heads of State or Government or by the Ministers of Foreign Affairs,
- to promote cooperation with other international and regional organisations.

The main body of the PABSEC is the General Assembly, which meets twice a year in ordinary session (spring and autumn sessions) in the country of its President. The PABSEC presidency rotates every six months and is assumed by the Speaker of the parliament of the presiding member country. The Assembly elects also from its members five Vice-Presidents for two-year terms. The biannual sessions of the General Assembly (spring and autumn) are the culminating activities of the PABSEC. The ordinary session of the General Assembly consists of meetings of the Bureau and the Standing Committee in the first day, and the plenary meeting of the General Assembly in the next two days. The plenary meetings of the PABSEC General Assembly provide a forum for discussion and debate as well as for assessment of BSEC activities. It also during its plenary meetings that the General Assembly votes on the adoption of reports and specific recommendations, declarations and decisions by absolute majority of the votes cast. These documents are transmitted to the BSEC Meetings of the Ministers of Foreign Affairs, the national parliaments and governments of the member countries and relevant international organisations.

The work of the General Assembly is prepared by three Committees with specialised attributions: the *Economic, Commercial, Technological and Environmental Affairs Committee*; the *Legal and Political Affairs Committee*, and the *Cultural, Educational and Social Affairs Committee*. The members of the Assembly are distributed among the three Committees, taking care that members from all national delegations sit in each Committee. The members of the Committees elect the Chairman and two Vice-Chairmen each from a different national delegation. Each Committee designates a *Rapporteur* for the item on the agenda. The agenda items are chosen from a list drawn up and periodically updated according to the main themes and projects on the BSEC agenda.

Some recent items that have been considered by the PABSEC Committees are: Promoting Sustainable Agriculture and Rural Development; Economic Integration in the BSEC Region: Current State and Future Prospects; The Black Sea Trade and Development Bank: the Financial Pillar of the Cooperation in the Black Sea Region; Information Society: the Role of New Technologies; Cooperation in the Field of Energy; Black Sea Informational Alliance; Shaping A European Economic Space; Sustainable Development of the Tourism Industry; Facilitating the Movement of People and Goods Across Borders; Economic aspects of resolving environmental problems in the BSEC Member States; Development of the transport infrastructure in

the Black Sea Region; Cooperation in the fight against economic crime in the Black Sea region; Cooperation in combating the bird flu in the Black Sea region; Alternative energy resources and their possible application in the Black Sea region (by the Economic, Commercial, Technological and Environmental Affairs Committee).

In the last five years the Legal and Political Affairs Committee has taken up and prepared recommendations on issues such as Globalisation: Challenges and Prospects for the PABSEC Member-States; Cooperation among the PABSEC Member-Countries in Strengthening Good Governance; Black Sea region within the context of the Enlargement of the European Union; Framework of the Cooperation between the PABSEC and the European Parliament; Regional Dimension of Stability and Security – Perspective of the BSEC Region; Institution of Ombudsman in the BSEC Member States; Role of the local governments in strengthening cooperation in the Black Sea Region; Role of the civil society in the Black Sea economic cooperation process; Strengthening the legislative framework for protection of intellectual property.

The Cultural, Educational and Social Affairs Committee devoted its deliberations to Women's Participation in the Political, Economic, Social and Cultural Life; Social Reintegration of Jobless People; Role of Culture in the Development of the BSEC Region; The Fight against Poverty in the BSEC Member-States; Improving Social, Economic and Civil Rights of People with Disabilities; Preservation and Enhancement of Cultural Heritage of the BSEC Member States; Cooperation in the sphere of cultural tourism in the Black Sea Region; Cultural, educational and social aspects of the EU enlargement: consequences for the Black Sea Region; The dialogue among cultures as a mean to build trust among the nations; The process of globalisation and the potential threat to the cultural diversity.

As we can see the issue of globalisation, relevant to the role and responsibilities of civil society organisations<sup>167</sup> is among those recurrently considered by the PABSEC instances. In all cases the designated *Rapporteur* prepares, on the basis of the information provided by the PABSEC national delegations and in consultation with the International Secretariat, a draft report and a draft recommendation on the selected agenda item. Draft reports and recommendations are approved by the Committees, by absolute majority vote, and submitted to the General Assembly for discussion and adoption. The Committees shall examine the action taken on recommendations and decisions adopted by the Assembly after discussion of their reports.

The President of the Assembly, the Vice-Presidents, the Chairmen of the three Committees and the Heads of national delegations are the members of the PABSEC Standing Committee. The Standing Committee is endowed with the tasks of supervising the implementation of the decisions of the Assembly, endorsing the PABSEC budget, drawing up the agenda, calendar and venue of the Assembly meetings, coordinating the activities of the three specialised Committees, and ensuring coordination between the BSEC and the PABSEC as well as cooperation between the PABSEC and other international organisations. The Standing Committee adopts its decisions by consensus.

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<sup>167</sup> See Karsten NOWROT, “Legal Consequences of Globalization: The Status of Non-Governmental Organizations under International Law”, *Indiana Journal of Global Legal Studies*, 1999, pp. 579 ff.

The Bureau of PABSEC consists of the President and the five Vice-Presidents of the Assembly. The Bureau is responsible for ensuring the implementation of decisions of the Standing Committee and for the effective functioning of the Assembly between meetings of the Standing Committee. It determines the agenda and venue of the Standing Committee meeting and decides also on the representation of PABSEC in various international forums. The Bureau meets four times a year - before and during the Spring Session and the Autumn Session of the General Assembly – and takes decisions by a majority vote. The meetings of the Bureau are held in camera, in the country of the President of the Assembly.

The secretarial services of the PABSEC are being fulfilled by an International Secretariat in Istanbul. The International Secretariat has been established by decision of the First Plenary Session (1993) as an executive and technical body mandated with the tasks of fostering permanent links with the members national parliaments and their delegations to the PABSEC, of organising and arranging the meetings of all the PABSEC bodies, of preparing and circulating to the national delegations the draft documents to be considered at the PABSEC meetings. The International Secretariat also serves as a central communications link between the PABSEC parliamentary delegations, between BSEC and its related bodies and the Parliamentary Assembly, as well as between PABSEC and other institutions and international organisations. The International Secretariat is led by the PABSEC Secretary General, elected for the term of office of three years by the General Assembly upon the proposal of the Bureau, by the simple majority of the total number of the members of the Assembly. In the exercise of his duties, the Secretary General is responsible to the General Assembly. The International Secretariat's management is completed by two Deputy Secretaries General, also elected by the General Assembly for the term of office of three years, and professional staff responsible for the work of the three Committees.

The meetings of the General Assembly and other established bodies of the PABSEC are the forums where decisions, declarations, reports and recommendations are adopted. In addition to these statutory activities, PABSEC organises seminars and conferences on issues within its competences. PABSEC seminars and conferences aim to bring together parliamentarians and experts to consider issues in a more relaxed atmosphere, without the constraints of the decision-making process.

Moreover PABSEC has been promoting regional cooperation among various public sectors of the member states. PABSEC has thus organised meetings of the Governors and Mayors of the Black Sea Capitals, which resulted to the establishment of Black Sea Capitals Association (BSCA), of the Public Radio and Television Broadcasters of the BSEC member states as well as of the Constitutional Courts of the BSEC member states. In this way PABSEC is fostering the deepening of the regional cooperation in the wider Black Sea area.

## **2. Outreach of the PABSEC**

### *A. Relations with the Organisation of the Black Sea Economic Cooperation (BSEC)*

PABSEC is defined in article 20 of the BSEC Charter as a related body of the Organisation of the BSEC. In this capacity PABSEC has administrative and budgetary

autonomy allowing for setting and promoting its own agenda,<sup>168</sup> within the general aims of the Black Sea cooperation process set out in the founding documents of both organisations (BSEC Charter, BSEC Summit Declarations and agreed documents, 1993 Declaration on the Establishment of the PABSEC and subsequent PABSEC policy documents). In this framework PABSEC “provides consistent support to the Black Sea cooperation process on a consultative basis” (article 20 BSEC Charter).

From its inception, PABSEC has had a regular and formalised high-level interaction with the BSEC. In accordance with the guiding principles contained in the principal documents cited above, BSEC and PABSEC closely cooperate in attaining BSEC objectives in the Black Sea region and outside it. The PABSEC and the BSEC may organise joint meetings at different levels as well as joint activities, which shall serve common objectives, with the aim of developing the Black Sea Economic Cooperation process. To that end, PABSEC committed itself to undertake, in cooperation with the intergovernmental instances of the BSEC, appropriate steps aimed at the adoption of legislation necessary to implement relevant resolutions and decisions of the BSEC. Upon invitation, representatives of the PABSEC and the BSEC may attend at various levels each others meetings. They may exchange information on current activities and are entitled to take the floor, in accordance with the procedures of the relevant meetings. According to PABSEC Rules of Procedure, all documents adopted by the PABSEC General Assembly are transmitted to the BSEC Meeting of Ministers of Foreign Affairs for consideration. The Assembly is represented at every level of official BSEC meetings and the PABSEC International Secretariat maintains a close working relationship with the BSEC Permanent International Secretariat. The two administrative bodies exchange information on the activities of the PABSEC and the BSEC and advise each other of their respective progress of work with the view to enhancing coordination of future activities and measures to be taken. At a general level the goal of enhanced coordination among BSEC and its related bodies is being pursued by the biannual Joint Coordinating Meetings which provide the necessary forum for consultations and result-oriented coordinated actions.

### *B. Cooperation with third parties*

The PABSEC has established its own identity on the international scene, developing cooperation and working relations with national parliaments and other inter-parliamentary bodies as well as international organisations. The modality for such cooperation is the *observer status* granted by PABSEC.

The first class of third parties with access to observer status in the PABSEC are the parliaments of the states having observer status in the BSEC. These parliaments, upon their application, may be granted observer status by decision of the PABSEC General Assembly following the recommendation of the Standing Committee. Observer status can also be granted by the General Assembly to the following inter-parliamentary bodies, expressly provided for in the PABSEC Rules of Procedure (article 10, part B): the Parliamentary Assembly of the Council of Europe, the Parliamentary Assembly of the Organisation on Security and Cooperation in Europe, the Inter-Parliamentary Assembly of Commonwealth of Independent States, the North Atlantic Assembly, the

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<sup>168</sup> In accordance with the general rule of article 19 BSEC Charter: “The BSEC related bodies that have their own budgets shall perform their functions in accordance with their basic instruments and with due respect to the principles of the BSEC set forth in the “Summit Declaration on Black Sea Economic Cooperation” of 25 June 1992 and in this Charter.”



Parliamentary Assembly of the Western European Union, the Inter-Parliamentary Union and the European Parliament. The last category of third parties which may be granted observer status in the PABSEC are regional and international organisations which apply for observer status in the PABSEC. These organisations, distinct from the inter-parliamentary bodies mentioned above, are admitted to observer status with the consent of the Standing Committee as endorsed by the General Assembly. The observers in the PABSEC have the right to address the latter's meetings and to participate in debates but not to vote.

The second modality of working relations of PABSEC with third parties is *invitation* to take part in meetings of the three specialised PABSEC Committees and of the General Assembly. This is a flexible means of cooperation with national parliaments, inter-parliamentary bodies, governments and intergovernmental organisations, etc. PABSEC has promoted these less formal relations, on specific items of mutual interest, with the Baltic Assembly, UNESCO, United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM). The invitation to take part in the meetings of the Committees is addressed to the guest institution by the Chairman of the Committee concerned, while for the meetings of the PABSEC General Assembly the invitation is extended by the President of the Assembly.

### 3. Relations with NGOs

#### *A. Principles of PABSEC interaction with NGOs*

Before examining the ways by which PABSEC interacts with NGOs, it is important to underline that in 2006 the Assembly devoted a meeting of the Legal and Political Affairs Committee (Athens, 3-4 May 2006) to the "Role of civil society in strengthening the Black Sea economic cooperation process". The reason for the decision to assess the role of civil society in the Black Sea economic cooperation process was "the steadily growing interest in popular engagement in political life with an emphasis that a strong civil society sustains integration and the fact that the concept of civil society has moved to the centre of the international stage".<sup>169</sup> The spring 2006 meeting of the PABSEC Legal and Political Affairs Committee considered and submitted to the General Assembly a Report and a Recommendation which were eventually adopted at the Twenty Seventh Plenary Session of the General Assembly in Yerevan on 7 June 2006.

The PABSEC 2006 Report<sup>170</sup> contains the general observation that civil society is well placed to work in complementary role to support regional processes through significant experience in various fields. The report recognises the capacity of civil society to understand the issues that affect people in the region and the gaps in existing responses at national or regional levels. Thus, civil society organisations can make unique contributions to cooperation processes through their experience of direct contact with local people and good understanding of local social, cultural and environmental contexts. This type of local and national level work empowers people also to influence decisions affecting them (paragraph 27). The Report highlights the

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<sup>169</sup> Legal and Political Affairs Committee, Twenty Sixth Meeting, Tbilisi, 18 October 2005.

<sup>170</sup> PABSEC General Assembly, Twenty Seventh Plenary Session, Yerevan, 5-7 June 2006, Report, "Role of Civil Society in Strengthening the Black Sea Economic Cooperation", PABSEC Doc.: GA27/LC27/REP/06, 7 June 2006.

growing significance of civil society at all levels in promoting democracy and social cohesion. It recognises that civil society and its organisations mobilise millions of persons around the world in the struggle for better lives, pluralist democracy, good governance and sustainable development. Civil society organisations have been adding a new dimension to traditional politics at national and international levels searching new forms of addressing the topical issues. Voluntary participation by citizens in political activity through non-profit organisations has often become a tool to overcome certain political stalemates (paragraph 4). A significant asset of NGO action is that their role in advancing economic and social development is not viewed only in terms of their own effectiveness and efficiency. It is also and increasingly seen as stimulating the overall cooperation process. Many societies nowadays are confronted with similar fundamental problems and despite existing differences, they share common perspectives that civil society serves as a potential mediator for achieving genuine social cohesion and integration (paragraph 5).

The Report underlines also the role and contribution of civil society in the BSEC region in a number of areas including education, training, gender issues, health, sustainable development, social issues, etc., and reviews the extent to which the Black Sea Economic Cooperation framework provides the space for partnership with civil society organisations and ways in which civil society engagement can be enhanced (paragraphs 9-21). The overall assessment is positive, though it is recognised that the Black Sea Economic Cooperation might have been more effective had the community been more involved in it through a wide array of sectoral activities. There is no doubt that enlargement of the Black Sea Economic Cooperation context with such involvement will only enhance effectiveness of the cooperation process. It will ensure better integration using more comprehensive scope (paragraph 24). It is further acknowledged that there is often a lack of awareness on the roles and activities of the regional intergovernmental structures among civil society organisations. In this framework, the report deems it essential to set up mechanisms for strengthening civil society input into a regional intergovernmental structure through creating, enhancing or invigorating the existing interface. Nevertheless, interaction by civil society organisations depends primarily on existing capacities of a national or sub regional institutions (paragraph 11).

Based on this Report the PABSEC General Assembly adopted at its Twenty Seventh Plenary Session (Yerevan, 5-7 June 2006) the Recommendation 88/2006 on *the role of civil society in strengthening the Black Sea Economic Cooperation process*.<sup>171</sup> The Recommendation expresses the conviction that stronger partnership at all levels, including increased involvement of civil society, is vital for ensuring more efficient and consolidated economic, political, and social integration in the region. It states the commitment of the PABSEC to fully combine its diverse strengths to meet the challenges facing the region amidst the rapidly changing international environment (paragraph 1). Moreover the Assembly recognises the fact that civil society organisations have been adding a new dimension to traditional politics at national and international levels through searching for new forms of addressing topical issues. Representative democracy has been an indispensable condition for stability and development, contributing to the consolidation of democratic values, social cohesion and solidarity. Civil society is a driving force for democratic consolidation.

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<sup>171</sup> PABSEC General Assembly, Twenty Seventh Plenary Session, Yerevan, 5-7 June 2006, Recommendation 88/2006 on the role of civil society in strengthening the Black Sea Economic Cooperation process, PABSEC Doc.: GA27/LC27/REC88/06, 7 June 2006.

Individuals with different ideals live together compatibly within a plurality of views, are a necessity for the efficient functioning of democratic societies (paragraph 2). The Recommendation 88/2006 further stresses that civil society as an essential pillar in promoting transparency, accountability and other aspects of good governance. Civil society is well placed to work in a complementary role to support regional processes through its unique experience in many different fields. Effective involvement of civil society at national and regional levels increases qualitative contribution to the ongoing endeavours and undertakings. The underpinning role of civil society in economic, political and social areas strengthens trust and cooperation, fosters stability, and contributes to build economic prosperity (paragraph 3).

Passing from the general to the specific Black Sea regional context, the PABSEC Recommendation underscores the conviction that increased participation of civil society in the region will promote strengthening of social solidarity for meeting the goals and objective of the Black Sea Economic Cooperation process. Civil society participation will add value to the process of maintaining peace and political stability in the region (paragraph 8). Based on these premises, PABSEC General Assembly recommends the parliaments and the governments of the BSEC Member States, among others,

- to *support* the initiatives of non-governmental organisations in order to foster closer relations among the communities and peoples of the region;
- to *seek to involve effectively* the civil society organizations (CSO) in the process of regional integration;
- to *encourage* more active civil society organisations' participation in developing linkages in the region to perform an effective coordinating function for promoting cooperation through the establishment of regular contacts between their representatives and the exchange of information;
- to *provide resources for* creating or enhancing the mechanisms for strengthening civil society input into a regional intergovernmental structure with a view to corroborate partnership arrangements between NGOs, governments, and the public, in order to identify workable models;
- to *render necessary support* to the development of a permanent structure or a framework for a regional dialogue among CSOs aiming at the strengthening of a more cohesive sense of regional identity;
- to *fully use the potential* of civil society networks for achieving wider public awareness on the activities in the Black Sea region and on latest developments in the region;
- to *facilitate* joint projects between CSOs with responsibilities in the same field with a particular emphasis on topical regional issues; and
- to *encourage* greater cooperation between governments, civil society and the private sector in the region through more effective collaboration and capacity building in order to develop new and dynamic policies and programs aimed at maximizing the benefits of community involvement in the regional processes (paragraph 9).

#### *B. Modalities of PABSEC interaction with NGOs*

The flexible and result-oriented pattern of cooperation with third parties upon invitation of the PABSEC (President of the Assembly, Chairmen of the Committees) has been provided for the interaction of PABSEC with non-state actors, including

NGOs. The provision of article 10, part C of the PABSEC Rules of Procedure entitled “Guests” provides that

“Personalities and representatives of parliaments, governments, *non-governmental organisations* and business circles may be invited to the committee meetings and the General Assembly upon the invitation of the Chairmen of the committees and the President of the Assembly. They may take floor with the consent of the chairman of the sitting.”

As we can see PABSEC does not differentiate between the various parties that can be invited as guests, though there are substantial differences between state and non-state actors as well as between civil society and the market.<sup>172</sup> Moreover PABSEC has not elaborated formal guidelines addressing in a uniform way the invitation of NGOs to PABSEC meetings. It has been considered that the adoption of guidelines would limit the discretion of the authorised PABSEC officials to treat each case according to its merits and particularities. Though the formal frameworks provided for in some international institutions give more participatory rights to NGOs, they run the risk of sacrificing sometimes diversity and openness to the respect of the formal requirements.<sup>173</sup> The afore mentioned PABSEC Report on the “Role of Civil Society in Strengthening the Black Sea Economic Cooperation” positively assesses the “less formal constraints” of NGOs in linking up various social actors across regions and sectors<sup>174</sup>. Therefore, it is expected that PABSEC would not place barriers and other formal impediments to the effective involvement of NGOs in its endeavours.

By adopting a less formal attitude towards civil society PABSEC can be more open to the interaction with NGOs. The absence of formal conditions or other requirements relieves NGOs interested in cooperating with PABSEC from providing information, required for example for the establishment of a formal relationship with the Organisation of the BSEC. The requirements can be time-consuming or difficult to obtain from national authorities and submitted on time to the relevant PABSEC bodies. What is important is to provide NGOs with the *practical* opportunity to make their opinion known. The focus is put on effectiveness and influence of the interaction with NGOs, and for these aims to be achieved the substance and not the form of the input is important. The easier and simple access of NGOs to PABSEC meetings is compatible with the parliamentary character of PABSEC.<sup>175</sup> Its objective is to secure the understanding and adoption by the peoples of the member countries of the ideals, objectives and aims of the organisation based on common values.<sup>176</sup> The realisation of this objective requires openness to civil society of the PABSEC member countries and interaction with them, in order to facilitate the dissemination and promotion among the peoples of the PABSEC goals.

PABSEC less formal stance on interaction with NGOs can fill in the “gap” created by the impossibility under the actual legal framework of the BSEC to cooperate with

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<sup>172</sup> See Benoît FRYDMAN, “Vers un statut de la société civile dans l’ordre internationale”, *Droits fondamentaux*, n° 1; juillet-décembre 2001, p. 152.

<sup>173</sup> Zoe PEARSON, “Non-Governmental Organisations and International Law: Mapping New Mechanisms for Governance”, *Australian Yearbook of International Law*, 2004, pp. 99-101.

<sup>174</sup> PABSEC General Assembly, Twenty Seventh Plenary Session, Yerevan, 5-7 June 2006, Report, “Role of Civil Society in Strengthening the Black Sea Economic Cooperation”, PABSEC Doc.: GA27/LC27/REP/06, 7 June 2006, paragraph 28.

<sup>175</sup> Dirk JARRÉ, “Why N.G.O.s: The role of non-governmental organisations in parliamentary democracy”, *Annuaire européen*, 1986, pp. 33-41.

<sup>176</sup> PABSEC Rules of Procedure, Preamble, first paragraph.

national NGOs. The readiness of PABSEC to acknowledge national NGOs as potential partners has been testified in the Report on the “Role of Civil Society in Strengthening the Black Sea Economic Cooperation”. This explicitly refers to the close cooperation of the PABSEC with national NGO networks<sup>177</sup>. In the PABSEC case there are also several steps to be taken in order to effectively engage the potential represented by national NGOs. These steps are easier to achieve due to the informal pattern of PABSEC – NGOs interaction. In this respect, it is significant to mention that when national NGOs approach BSEC with the request of collaboration, the BSEC PERMIS regularly suggests to the interested national organisations to address PABSEC in order to initiate collaboration with the BSEC institutional family.

The deliberate absence of formal criteria for the collaboration of NGOs with the PABSEC indicates the will of the PABSEC to cooperate with NGOs on a broad and inclusive basis. The use of the term “non-governmental *organisations*” in the previously quoted text of article 10, part C of the PABSEC Rules of Procedure seems however to indicate that there is a requirement that interested NGOs need to have a legal personality to cooperate with PABSEC. In principle the term “organisation” implies structure, organs, registration in a state. There are non negligible advantages in cooperating with civil society organisations that possess legal personality. As underlined in part II, the possession of legal personality makes easier the control of legality exercised by the authorities of the state of registration. However, the absence of formalism of the existing modalities of interaction between the PABSEC and NGOs interested in cooperating with the Assembly should lead to the conclusion that also associations with no legal personality may be invited as guests by the Committees and the General Assembly of the PABSEC. In this way informal civil society actors such as community-based unions, grassroots organisations and other unions without official registration can be involved in the activities of the PABSEC organs, should the Chairmen of the Committees or the President of the Assembly consider that the participation of such actors may enlighten the relevant PABSEC body and offer useful information and insight.<sup>178</sup> This conception would also benefit the networks of NGOs that often do not possess legal personality, independent of the fact that their member organisations may be legal entities in their respective countries.

In general terms, as stated in the Report on the “Role of Civil Society in Strengthening the Black Sea Economic Cooperation”, the PABSEC has been following the practice of participation by civil society organisations in its activities. This has occurred especially, through closer cooperation with its specialised Cultural, Educational and Social Affairs Committee. Various civil society organisations traditionally have been attending the sessions of the General Assembly and the committee meetings.<sup>179</sup> The Report goes on to explain that “this tradition of PABSEC cooperation with civil society organisations is based on the significant contributions these organisations make, providing knowledge and additional information, raising

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<sup>177</sup> PABSEC General Assembly, Twenty Seventh Plenary Session, Yerevan, 5-7 June 2006, Report, “Role of Civil Society in Strengthening the Black Sea Economic Cooperation”, PABSEC Doc.: GA27/LC27/REP/06, 7 June 2006, paragraphs 32, 33.

<sup>178</sup> On the role of civil society organizations as providers of information to parliaments, see Kenneth A. ARMSTRONG, “Civil Society and the White Paper – Bridging of Jumping Gaps?”, in *Symposium: Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance*, Jean Monnet Working Paper No. 6/01, pp. 5-7.

<sup>179</sup> PABSEC General Assembly, Twenty Seventh Plenary Session, Yerevan, 5-7 June 2006, Report, “Role of Civil Society in Strengthening the Black Sea Economic Cooperation”, PABSEC Doc.: GA27/LC27/REP/06, 7 June 2006, paragraph 22.



new issues and concerns, lending expert advice in their areas of expertise, that, in many cases, have been subsequently addressed within the PABSEC framework.”<sup>180</sup> This statement adopted by the PABSEC General Assembly constitutes an appeal to NGOs for closer and more effective cooperation with the PABSEC aiming at the realisation of the goals and objectives of all the interested actors.

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<sup>180</sup> *Ibid.*

## V

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### THE UNITED NATIONS DEVELOPMENT PROGRAMME

The United Nations Development Programme (UNDP) is the lead United Nations organisation in poverty reduction and sustainable development, working as a global development agency, advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. UNDP is on the ground in 166 countries, working with them in order to help them devising their own solutions to global and national development challenges. In all its activities, UNDP encourages the protection of human rights and the empowerment of women. The Programme contributes to capacity-building for development in the United Nations member states, in particular helping developing states attract and use aid effectively. The main axes of the UNDP expertise and involvement are poverty reduction; democratic governance; energy and environment; crisis prevention and recovery; HIV/AIDS; and information and communication technologies for development. UNDP has the role to coordinate in the field all development activities of the United Nations system as a whole. Through such coordination, UNDP seeks to ensure the most effective use of the United Nations and other, international or national, aid and resources. In this endeavour, the UNDP draws on its staff and collaborators as well as on its wide range of partners, among which civil society organisations occupy a prominent position. Consequently, civil society is both a vital asset and a critical constituency for UNDP in a world characterised by increasingly complex development challenges<sup>181</sup>.

#### 1. The consultative status in the UN Charter

Before examining the forms of interaction between UNDP and civil society organisations, it is necessary to review the relationships that exist in general between NGOs and the United Nations Economic and Social Council (ECOSOC), whose agency is the UNDP. In fact the arrangements made for ECOSOC – civil society organisations are equally applicable for its subsidiary bodies. By virtue of explicit provision of the ECOSOC resolution governing the relations between the United Nations and NGOs (Resolution 1996/31 examined in detail here below) applies also to the whole United Nations system.<sup>182</sup>

The ECOSOC is the principal United Nations organ, composed of 54 members elected by the UN General Assembly. It is entitled to make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly to the United Nations members, and to the specialised

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<sup>181</sup> Mark Malloch BROWN, UNDP Administrator, *in* UNDP Civil Society Organisations Advisory Committee, Report, 2003, p. 5, “As the lead United Nations organisation in poverty reduction and sustainable development, UNDP has a natural constituency in civil society organisations that are consistent and effective advocates for the poor and marginalized.”

<sup>182</sup> United Nations Economic and Social Council, Resolution 1996/31, “Consultative relationship between the United Nations and non-governmental organisations”, 25 July 1996, paragraph 14.

agencies concerned. It has also the special responsibility in the United Nations system of submitting recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. For the fulfilment of these tasks, ECOSOC may call, in accordance with the rules prescribed by the United Nations, international conferences as well as draft conventions on matters falling within its competence (article 62 UN Charter).

This relationship between the United Nations and NGOs<sup>183</sup> is as old as the Organisation itself. NGOs contribute to the realisation of the invocation “We, the Peoples”, in whose name the United Nations Charter was written. It has already been pointed out that around forty civil society organisations were present in 1945, at the San Francisco Conference, where the Charter of the United Nations was elaborated. Article 71 of the Charter of the United Nations providing that

“The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence.”

was supported by the representatives of the civil society organisation in San Francisco and seen as the continuation of their involvement during the drafting Conference. This provision instituted the “*consultative status*”. This status is also recognised to NGOs by other (than ECOSOC) United Nations organs, by the specialised agencies and most other regional intergovernmental organisations.<sup>184</sup> Other organisations refer to observer status of NGOs or affiliate membership.<sup>185</sup> The terminology may vary but the common feature is that the participation of NGOs is limited, especially the latter do not partake directly to the decision-making process and do not control the resources affected by the decisions of the organisation concerned.

## **A. Institutional structures**

For the application of article 71 UN Charter, the ECOSOC set up in 1946 the *Committee on NGOs*, mandated with the consideration of applications of NGOs for consultative status and the monitoring of their activities. The Committee has a central role in the overall relationship on NGOs with United Nations bodies. This institutional structure was supplemented two years later by the creation of the Conference on Non-Governmental Organisation in Consultative Status with the ECOSOC (CONGO). Since its establishment this body has coordinated the activities of NGOs in the consultative system and promoted their interests within the United Nations. The services of the United Nations Secretary-General provide support to NGOs in consultative status with the ECOSOC. The Secretary-General is in particular authorised, within the means at his disposal, to offer to NGOs in consultative relationship facilities that include:

- (a) prompt and efficient distribution of such documents of the Council and its subsidiary bodies as shall in the judgement of the Secretary-General be appropriate;

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<sup>183</sup> The term used in the UN Charter and in the ECOSOC practice for civil society is non-governmental organisations (NGOs).

<sup>184</sup> See, Marcel MERLE, “Article 71”, in Jean-Pierre COT & Alain PELLET (eds), *La Charte des Nations Unies. Commentaire article par article*, 2<sup>nd</sup> ed., 1991, pp. 1047-1059; Rainer LAGONI, “Article 71”, in Bruno SIMMA (ed.), *The Charter of the United Nations*, 1994, pp. 902-915.

<sup>185</sup> Cf. Article 7 of the Constitution of the World Tourism Organisation; on this provision, see *supra*, part II.

- (b) access to the press documentation services provided by the United Nations;
- (c) arrangement of informal discussions on matters of special interest to groups or organisations;
- (d) use of the libraries of the United Nations;
- (e) provision of accommodation for conferences or smaller meetings of consultative organisations on the work of the ECOSOC; and
- (f) appropriate seating arrangements and facilities for obtaining documents during public meetings of the General Assembly dealing with matters in the economic, social and related fields.

Moreover the Secretary-General shall make appropriate arrangements so that all NGOs in consultative relationship with United Nations bodies be able to consult with officers of the sections of the Secretariat on matters in which there is a mutual interest or a mutual concern. Such consultation shall be upon the request of the NGO or upon the request of the Secretary-General of the United Nations.

Up to 1950, the consultative status was granted on a case-by-case basis. The experience acquired over this first period was systematised by ECOSOC Resolution 288 X (B) of 27 February 1950, which provided for criteria, procedures rights and obligations relating to the consultative system. These were reviewed in 1968 and ECOSOC adopted Resolution 1296 (XLIV) of 23 May 1968, slightly amending the 1950 resolution.<sup>186</sup> In 1993, after the remarkable participation of scores of NGOs in the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), ECOSOC decided to proceed with a general review of arrangements for consultation with NGOs. The aim of the revision was to introduce coherence in the normative framework governing the consultative status and the participation of non-governmental organisations in international conferences convened by the United Nations.<sup>187</sup> After nearly four years of elaboration<sup>188</sup> the Resolution 1996/31 (25 July 1996), superseding Resolution 1296 (XLIV) was adopted by the ECOSOC.<sup>189</sup> The new Resolution, which presently regulates the consultative status of NGOs in the United Nations, follows in general the initial resolution 288 X (B), so that we can say that the main features of the consultative status have been in force for more than fifty years.

## ***B. Principles for the establishment of consultative status***

In accordance with the ECOSOC Resolution 1996/31, consultative relationships may be established with international, regional, sub-regional and national NGOs, in conformity with the Charter of the United Nations and with the following eight principles and criteria, provided for in the resolution:

- 1. The fields of interest/activities of the applicant NGO should be relevant to the matters falling within the competence of the Economic and Social Council and its subsidiary bodies.

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<sup>186</sup> The most notable amendment was the change in the names for the categories of NGOs.

<sup>187</sup> ECOSOC Resolution 1996/80 of 30 July 1993.

<sup>188</sup> In the Open-Ended Working Group on the Review of Arrangements for Consultation with Non-Government Organisations, established for this purpose.

<sup>189</sup> UN Economic and Social Council, Resolution 1996/31, "Consultative relationship between the United Nations and non-governmental organisations", 25 July 1996.

The Resolution specifies that in considering applications of NGOs for consultative status, ECOSOC should pay particular attention to organisations having special expertise or experience which will be helpful for the Council and other UN agencies. In addition, in considering the establishment of consultative relations with a NGO, the Council will take into account whether the field of activity of the organisation concerned is wholly or mainly within the field of a United Nations specialised agency, and whether or not it could be admitted when it has, or may have, a consultative arrangement with a specialised agency. The *rationale* of this provision is to avoid multiple representations of one NGO to several United Nations forums, allowing thus more NGOs to be active in the appropriate instances. It aims thus to safeguarding the principle of speciality, in accordance with which NGOs should be involved in the work of intergovernmental organisations with fields of interest that coincide or are similar. This is a condition of the effective and fruitful cooperation between intergovernmental institutions and NGOs.

- 2. The aims and purposes of the NGO should be in conformity with the spirit, purposes and principles of the Charter of the United Nations, and the organisation seeking consultative status shall undertake to support the work of the United Nations and to promote knowledge of its principles and activities, in accordance with its own aims and purposes and the nature and scope of its competence and activities.

In accordance with these requirements, NGOs in consultative status with the ECOSOC shall *respect* and *promote* in their actions the primary purpose of the United Nations to maintain international peace and security, as well as the principles of justice and international law, the friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, the peaceful settlement of international disputes, and the respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion (articles 1 and 2 United Nations Charter).

This criterion imposes upon NGOs with consultative status the obligations to abide in their functioning by the general principles and objectives of the United Nations, and also to disseminate and promote them among the constituencies of the NGOs concerned.

- 3. The NGO applicant for consultative status shall be genuinely non-state and non-governmental.

Following this provision organisations that are established by governmental entities or intergovernmental agreement cannot benefit from the arrangements for consultative status. It is however specified that this requirement is deemed fulfilled by NGOs, even when an NGO accepts members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organisation. In this respect there is a challenge for NGOs that have to deal with governments.<sup>190</sup>

- 4. The applicant NGO shall have independent and transparent financial resources.

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<sup>190</sup> See Daniel BELL and Jean-Marc COICAUD, *The Ethical Challenges of International Human Rights NGOs*, United Nations University Policy Brief, no. 9, 2006, pp. 3-4.



The Resolution 1996/31 provides in particular that the basic resources of the NGO shall be derived in the main part from contributions of the national affiliates or other components of the organisation in consultative status, or from individual members thereof. Where voluntary contributions are permitted and have been received by an NGO, their amounts and donors shall be faithfully revealed to the ECOSOC (through its Committee on Non-Governmental Organisations). Where, however, the above criterion is not fulfilled and an organisation is financed from other sources, it must explain to the satisfaction of the Committee on NGOs the reasons for not meeting the requirements laid down in this paragraph. The financial contribution or other support, direct or indirect, from a government to NGOs is not in principle prohibited; it is an established fact that NGOs and governments effectively cooperate in many fields with beneficial results for the constituencies of both. However, the ECOSOC Resolution requires in case of governmental financial and other support, that it shall be devoted to purposes in accordance with the aims of the United Nations and fully recorded in the financial and other records of the organisation. In addition the beneficiary NGO shall have the obligation to declare to the ECOSOC Committee on NGOs the contributions or other support received by government sources.

- 5. The applicant NGO should be of recognised standing within the particular field of its competence or of a representative character.

In case there exists a number of organisations with similar objectives, interests and basic views in a given field, they may, for the purposes of establishing consultative status, form a *joint committee* or *other body* authorised to carry on such consultation for the group as a whole. This is a significant provision as it encourages individual NGOs to form networks that would allow them to present more effectively their views and requests.

- 6. The NGO shall have an established headquarters, with an executive officer. This is a requirement that has been provided for, in almost the same terms in the BSEC Criteria for Granting Observer Status to NGOs. Its consequence is also identical: in order to be admitted to consultative status with ECOSOC (and the United Nations system in general), an NGO should have a permanent head office, where its secretariat is located and the NGO can be contacted. From this requirement stems also the necessity of legal personality of the NGOs in consultative status in their host states (states of registration); this is equally valid for international (universal, regional or sub-regional) and national NGOs. In this way, there is a framework of control of legality over the activities of the concerned NGOs.

- 7. The NGO shall have a representative structure and a democratic decision-making mechanism.

This principle is further specified into the requirement to have a democratically adopted basic document (charter, constitution, etc.), a copy of which shall be deposited with the Secretary-General of the United Nations, and which shall provide for the determination of policy by a conference, congress or other representative body, and for an executive organ responsible to the policy-making body. In accordance with this basic statutory document, the NGO shall have authority to speak for its members through its authorised representatives. Furthermore, the basic statutory document of NGOs applying for consultative status should provide for appropriate mechanisms of accountability of the executive instances of each NGO to its members. The latter should have the right to exercise effective control over the NGO's policies and actions

through the exercise of voting rights or other appropriate democratic and transparent decision-making processes.

- 8. The applicant NGO shall be in existence for at least two years before applying for consultative status.

This requirement must be proved by official registration documents or other evidence of establishment, acceptable to the ECOSOC, of the country where the organisation is incorporated/holds tax exemption status and/or non-for-profit status.

A special requirement guiding the decision of the ECOSOC in granting consultative status is the concern to achieve a just, balanced, effective and genuine involvement of NGOs from all regions and areas of the world, reflecting in a balanced way the major viewpoints or interests in their respective fields. Particular emphasis is given to the participation of NGOs from developing countries and countries with economies in transition. This is an objective requirement facilitating the participation of a class of NGOs, and not a subjective requirement to be fulfilled by interested organisations.

As it has already been pointed out, one of the main innovations of the Resolution 1996/31 compared to its predecessors (ECOSOC Resolutions 288 X (B) of 27 February 1950 and 1296 (XLIV) of 23 May 1968) is the *openness of the consultative status also to national NGOs*:

“Except where expressly stated otherwise, the term "organisation" shall refer to non-governmental organisations at the national, sub regional, regional or international levels.” (paragraph 4).

The preamble of the Resolution explains this evolution in the mentality of the UN approach by the need to take into account the full diversity of the non-governmental organisations, expressed at the national, regional and international levels. As to the procedure, the Resolution requires, with respect to national NGOs applying for consultative status, the prior consultation with the United Nations member state concerned (under the jurisdiction of which the NGOs is placed). In a concern of equity it is further regulated that the views expressed by that member state, if any, should be communicated to the applicant NGO, which has the right to respond to those views through the Committee on Non-Governmental Organisations.

As a general rule applying to the decision-making procedure of the ECOSOC Committee on NGOs relating to the consultative status of NGOs ((establishment, suspension, withdrawal), an NGO shall have the opportunity to respond to any observations or objections being raised in the Committee before the Committee takes its decision.

### **C. Categories of consultative status**

Resolution 1996/31 provides for three classes of consultative status of NGOs: General, Special and Roster status.<sup>191</sup>

*General consultative status* is to be granted to NGOs that<sup>192</sup>

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<sup>191</sup> These categories are equivalent to Category I, Category II and Roster status that were defined in ECOSOC Resolution 1296 (XLIV). A fourth category of status, namely “NGOs accredited to the Commission on Sustainable Development” has been established by ECOSOC Resolution 1996/302.

- are concerned with most of the activities of the Council and its subsidiary bodies;
- have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in matters falling within the competences of ECOSOC and its subsidiary bodies;
- are closely involved with the economic and social life of the peoples of the areas they represent, and
- have considerable membership which is broadly representative of major segments of society in a large number of countries in different regions of the world.

*Special consultative status* is open to NGOs 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 seek consultative status.<sup>193</sup>

The *Roster status*<sup>194</sup> applies to NGOs that are considered capable of making occasional and useful contributions to the work of ECOSOC or its subsidiary bodies or other United Nations bodies. NGOs are granted roster status by the ECOSOC (ECOSOC Roster) or by the Secretary-General of the United Nations in consultation with the ECOSOC or its Committee on Non-Governmental Organisations (Secretary-General's Roster). A third sub-class of roster status covers NGOs in consultative status or a similar relationship with a specialised agency or a United Nations body (Agency Roster).

#### ***D. Modalities of consultative status in the United Nations system***

The concrete rights, obligations of NGOs in consultation with ECOSOC and other United Nations bodies depend on the category of consultative status they belong to. There are however two common paramount principles that govern and orient the modalities of the consultative status of all NGOs in the United Nations system.

The first is based on the fundamental distinction made by the United Nations Charter between participation without vote in the deliberations of the Council and arrangements for consultation of NGOs. The first is reserved to the United Nations member states that are not among the members of ECOSOC (article 69 UN Charter) and to specialised agencies brought into relationship with the United Nations (article 70 UN Charter). The consultative status (article 71 UN Charter) is clearly distinguished from such participation without vote in the deliberations of the Council and the practical arrangements called for by article 71 of the Charter should not be such as to accord to NGOs the same rights of participation as are accorded to states not members of the ECOSOC and to the United Nations specialised agencies.

The second major principle of the exercise of the consultative status is that any arrangement that is adopted to this purpose should not be such as to overburden

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<sup>192</sup> Resolution 1996/31, paragraph 22.

<sup>193</sup> *Ibid.*, paragraph 23.

<sup>194</sup> *Ibid.*, paragraph 24.

ECOSOC or transform it from a body for coordination of policy and action, as contemplated in the United Nations Charter, into a general forum for discussion. The aim therefore of the consultative status is to assist policy and action-oriented activities of the ECOSOC by inputs from NGOs possessing valuable expertise and experience and representing important elements of public opinion, and not to transform it into a “talking-shop”. In so doing it is important that NGOs show respect to the prerogatives of governments. Therefore, the arrangements for consultation made with *each NGO* should relate to the subjects for which that *organisation* has a special competence or in which it has a special interest. NGOs given consultative status should be limited to those whose activities in matters falling within the aims and purposes of the United Nations qualify them to make a significant contribution to the work of ECOSOC. Such contribution consists in enabling the Council (or one of its bodies) to secure expert information or advice from NGOs having special competence in the subjects for which consultative arrangements are made.

#### i) Drafting of the agenda

The provisional agenda of meetings of the ECOSOC is communicated to all NGOs (irrespective of the category of consultative status they belong to. However proposals on the inclusion of items in the provisional agenda can be tabled only by organisations in general consultative status. Such proposals should concern items of special interest to the proposing organisation and are submitted to the Secretary-General of the United Nations, either directly (for meetings of the subsidiary bodies) or through the ECOSOC Committee on Non-Governmental Organisations (for meetings of ECOSOC)

#### ii) Attendance at meetings

NGOs in general consultative status and special consultative status have the right to sit as observers at public meetings of the ECOSOC and its subsidiary bodies. To that purpose they have to designate authorised representatives. NGOs on the Roster may have representatives present at such meetings, when the deliberations concern matters within their field of competence. The United Nations bodies may be supplemented with a view to including other modalities of participation.

NGOs in general or special consultative status may submit to the UN Secretary-General, for appropriate action, written statements that are

1/ relevant to the work of the ECOSOC or other UN body to which they are addressed;

2/ pertain to subjects in which submitting NGOs have a special competence;

3/ submitted in one of the official languages; and

4/ submitted in sufficient time for appropriate consultation to take place between the Secretary-General and the NGO before circulation.

It is further provided that the NGO that submits a written statement shall give due consideration to any comments that the Secretary-General may make in the course of such consultation before transmitting the statement in final form. The same conditions are applicable to written statements that are submitted by NGOs on the Roster, *upon invitation* of the Secretary-General, in consultation with the chairman of the respective United Nations body, the ECOSOC or its Committee on Non-Governmental Organisations.

The Resolution 1996/31 provides also the conditions under which the Secretary-General of the United Nations may circulate to the members of the ECOSOC (or other United Nations body) the written statements submitted by NGOs in consultative status. Statements submitted by NGOs in general consultative status will be circulated in full if they do not exceed 2,000 words. A written statement submitted by an NGO in special consultative status or on the Roster will be circulated to the ECOSOC in full if it does not exceed 500 words. It can also be distributed to ECOSOC subsidiary bodies if it does not exceed 1,500 words. Where a statement is in excess of the specified in each case number of words, the NGO shall submit a summary, which will be circulated or shall supply sufficient copies of the full text in the working languages for distribution. A statement will also be circulated in full, however, upon a specific request of the ECOSOC or its subsidiary bodies concerned. A written statement or summary, as the case may be, will be circulated by the Secretary-General in the working languages, and, upon the request of a member of the ECOSOC or subsidiary body, in any of the official languages.

NGOs in general consultative status may make oral presentations to the ECOSOC, upon recommendation of the Committee on NGOs and subject to the approval of the Council. The authorised oral statements should bear on items on the agenda of the meeting and concern matters where the NGO has expertise and experience. Whenever the Council discusses the substance of an item proposed by an NGO in general consultative status and included in the agenda of the Council, such an organisation shall be entitled to present orally to the Council, as appropriate, an introductory statement of an expository nature. Such an organisation may be invited by the President of the Council, with the consent of the relevant body, to make, in the course of the discussion of the item before the Council, an additional statement for purposes of clarification.

NGOs in special consultative status (or in general consultative status if they request so) may make oral statements during meetings of subsidiary bodies, upon approval of the subsidiary body concerned. On the recommendation of the Secretary-General and at the request of UN subsidiary organs, NGOs on the Roster may also be heard by the requesting body.

Subject to the relevant rules of procedure on financial implications, an ECOSOC subsidiary organ may recommend that an NGO that has special competence in a particular field should undertake specific studies or investigations or prepare specific papers for the subsidiary body. Equally subject to the relevant financial regulations, the UN Secretary-General may request NGOs in general consultative status and special consultative status and those on the Roster to carry out specific studies or prepare specific papers.

### iii) Reporting obligation

NGOs with general and special consultative status have the obligation to submit to the ECOSOC Committee on NGOs every four years a brief report of their activities, specifically as regards the support they have given to the work of the United Nations (*quadrennial report*). The Committee on NGOs is entitled to request in addition to the



quadrennial one, a special report in certain instances, for example when there is a complaint by a United Nations member about the behaviour of an NGO.

### ***E. Suspension and withdrawal of consultative status***

When granted consultative status NGOs (of all categories) assume the commitment to conform at all times to the principles governing the establishment and nature of such status. In periodically reviewing the activities of NGOs on the basis of the quadrennial reports and other relevant information, the ECOSOC Committee on NGOs shall determine the extent to which the organisations have complied with the principles governing consultative status and have contributed to the work of the Council, and may recommend to the Council suspension of or exclusion from consultative status of organisations that have not met the requirements for consultative status. In case the Committee on NGOs decides to recommend that the consultative status of an NGO (including its listing on the Roster) be suspended or withdrawn, it has to provide to the organisation concerned in writing the reasons for such recommendation. In addition, the NGO is entitled to present its response for appropriate consideration by the Committee as expeditiously as possible.

The consultative status of NGOs with the ECOSOC (and the listing of those on the Roster) can be suspended up to three years or withdrawn when: (a) an NGO, either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in acts contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against member states of the United Nations incompatible with those purposes and principles; (b) there exists substantiated evidence of influence from proceeds resulting from internationally recognised criminal activities such as the illicit drugs trade, money-laundering or the illegal arms trade; (c) an NGO did not make, within a period of three years in consultative status, any positive or effective contribution to the work of the United Nations and, in particular, of the Council or its commissions or other subsidiary organs. The decision suspending or terminating the consultative status is taken by the ECOSOC on the recommendation of its Committee on NGOs. The termination of the consultative status of an NGO prevents it from reapplying for such status before three years after the effective date of such withdrawal.

### ***F. Participation in international conferences convened by the United Nations***

Specific regulation has been included in the Resolution 1996/31 with regard to the participation of NGOs in international conferences convened by the UN and in their preparatory process. Such participation is conditional on invitation by the UN and accreditation by the UN member states. Such accreditation is granted as a rule to NGOs in consultative status (general, special and roster).

NGOs not in consultative status that wish to be accredited to an international conferences convened by the UN may apply to the secretariat of the conference for

this purpose. The application shall contain information on the competence of the applicant NGO and the relevance of its activities to the work of the conference. The application shall in particular be accompanied by

- 1/ a statement on the purpose of the NGO;
- 2/ information as to the programmes and activities of the NGO in areas relevant to the conference and its preparatory process and the country or countries in which they are carried out;
- 3/ confirmation of the activities of the NGO at the national, regional or international level;
- 4/ copies of the annual or other reports of the NGO with financial statements, and a list of financial sources and contributions, including governmental contributions;
- 5/ a list of members of the governing body of the NGO and their countries of nationality;
- 6/ a description of the membership of the NGO, indicating the total number of members, the names of organisations that are members and their geographical distribution; and
- 7/ a copy of the constitution and/or by-laws of the NGO.

Upon receipt of the application, the secretariat of the conference shall prepare a preliminary evaluation of the request for accreditation to the conference and its preparatory process, based on the NGOs background and involvement in the subject areas of the conference. In the discharge of its functions, the secretariat of the conference shall work in close cooperation and coordination with the Non-Governmental Organisations Section of the United Nations Secretariat. The secretariat of the conference shall publish and disseminate to the United Nations member states on a periodic basis the updated list of applications received. Member states may submit comments on any of the applications on the list 14 days from receipt of the above-mentioned list. The comments of the member states shall be communicated to the NGO concerned, which shall have the opportunity to respond.

In cases where the secretariat of the international conference believes, on the basis of the information provided, that the applicant NGO has established its competence and the relevance of its activities to the work of the preparatory committee, it shall recommend to the preparatory committee that this NGO be accredited. In cases where the secretariat does not recommend the accreditation, it shall make available to the preparatory committee its reasons for not doing so. The secretariat should ensure that its recommendations are available to members of the preparatory committee at least one week prior to the start of each session. The secretariat must notify such applicants of the reasons for non-recommendation and provide an opportunity to respond to objections and furnish additional information as may be required.

The decision on all recommendations for accreditation is to be taken by the preparatory committee of the international conference convened by the United Nations within 24 hours after the recommendations of the secretariat have been taken up by the preparatory committee in plenary meeting. In the event of a decision not

being taken within this period, interim accreditation shall be accorded until such time as a decision is taken.

The accreditation of an NGO by the preparatory committee of an international conference convened by the United Nations to attend a session of the preparatory committee, including related preparatory meetings of regional commissions, enables such organisation to attend all future sessions of the committee, as well as the conference itself. NGOs accredited to an international conference convened by the United Nations may make written presentations during the preparatory process in the official languages of the United Nations, as they deem appropriate. Those written presentations shall not be issued as official documents except in accordance with the United Nations rules of procedure. With respect to oral interventions, the accredited NGOs may be given, in accordance with established United Nations practice and at the discretion of the chair and the consent of the body concerned, an opportunity to briefly address the preparatory committee and the conference in plenary meetings and their subsidiary bodies.

## 2. UNDP-Civil Society Interaction

The focus of the UNDP action is on sustainable human development that places people at the centre of development, and therefore cannot be achieved without the robust engagement of civil society and its organisations. Given the collective power of CSOs in building social, economic and political agendas – both locally and globally – it is clear that strengthening partnerships with CSOs is crucial if UNDP is to remain a relevant and effective development player. Consequently the Programme is committed to ensuring a voice for civil society groups and of mobilising them through voluntary action to address local, national, regional and universal development challenges.<sup>195</sup> In many of the world's poorest countries, civil society organisations are directly involved in the poverty reduction strategy process to bring people's priorities to the table. This is a crucial contribution that UNDP-civil society organisations partnership supports.

Until 1993, UNDP, following the United Nations Charter and practice, used the term non-governmental organisation (NGO) to describe all the non-state/non-business organisations it worked with. The term civil society organisation (CSO) is now the term used, as it is considered, for UNDP purposes, that encompasses a wider variety of organisations engaged in development work. CSOs comprise the full range of formal and informal organisations within civil society: NGOs, community-based organisations (CBOs), indigenous peoples' organisations (IPOs), academia, journalist associations, faith-based organisations, trade unions, and trade associations, for example.

UNDP defines civil society organisations in its policy of engagement with CSOs as:<sup>196</sup>

CSOs are non-state actors whose aims are neither to generate profits nor to seek governing power. CSOs unite people to advance shared goals and interests.

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<sup>195</sup> UNDP, *Annual Report 2005/06*, Chapter 3: Community mobilization through voluntary action. Engaging Civil Society.

<sup>196</sup> *UNDP and Civil Society Organisations: A Policy of Engagement*, 2001.

UNDP collaborates with CSOs whose goals, values and development philosophies accord with its own.

In general, UNDP collaborates with CSOs whose goals, values and development philosophy correspond to its own. It engages, in particular with CSOs concerned with (inter)national public policy and governance as well as those with expertise in service delivery. UNDP tends to work with NGOs that have sufficient capacity to handle large development projects. Increasingly, however, UNDP is working with a wide variety of CSOs, including grassroots organisations, faith-based organisations and IPOs, on a smaller, localised scale. Over the last decade there has been a considerable increase both in the number of CSOs and in the scope of their activities.

The Civil Society Organisations (CSO) Division, housed in the Bureau for Resources and Strategic Partnerships (BRSP), leads UNDP efforts to put into practice its commitment to partnerships with CSOs. The division is responsible for strengthening UNDP policies and procedural methods to collaborate more effectively and systematically with CSOs. It provides programme support and guidance to country offices to strengthen their capacity to work with CSOs. In close collaboration with other UNDP bureaux, the division also supports strategic processes of civic engagement at local, regional, and global levels. In order to further enhance the interaction between the UNDP and CSOs, the former set up in May 2000, the Civil Society Organisations Advisory Committee to the Administrator and invited representatives of leading civil society groups (the initial number being ten from the South and two from the North), selected for their policy expertise, to be on this Committee. The CSO's Committee aims at ensuring that UNDP becomes more open and sensitive to the concerns within civil society. It provides a mechanism for mutual agenda-setting, policy debate, individual accountability, and ease of access for exchanges between UNDP senior management and civil society leaders on future directions for UNDP.

#### *A. Principles and commitments of UNDP-CSO engagement*

The relationship between the UNDP and CSOs is based on five principles and corresponding commitments that together provide a coherent foundation for partnership.<sup>197</sup> These principles and commitments of the UNDP directly reflect on CSOs wishing to cooperate with the former: the CSOs should also be guided in their interaction with the UNDP by these principles and commitments.

- *Principle and commitment 1: Partnership founded on equality, trust, inclusion and mutual capability.*

Partnership of UNDP with CSOs is founded on the principle of a horizontal relationship between the parties, which, while institutionally different, are of equal standing in promoting the same development objectives, especially poverty reduction through sustainable human development. The relationship is premised on mutual trust. UNDP is committed to investing in enhancing trust with CSOs that share its goals. In doing so, UNDP acknowledges the frequent asymmetry between its capabilities and those of CSOs with which it wishes to engage. Consequently, the UNDP contribution to CSO capacity development remains a cornerstone of its approach to development and partnership.

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<sup>197</sup> UNDP and Civil Society Organisations: A Practice Note on Engagement, 28 March 2006, paragraph 25.

- *Principle and commitment 2: Recognition of obligations arising out of the tripartite (UNDP, member states and CSOs) relationship for promoting human development.*

In fulfilling its mission and engaging with CSOs, UNDP recognises its responsibility as a duty-bearer towards member governments, in terms of supporting their fulfilment of public obligations, and simultaneously towards civil society as legitimate claimants on governments and UNDP as a public body. Correspondingly, interacting with civil society is a duty and not an option for UNDP at all levels of its work. UNDP is committed to engaging with CSOs as an expression of their right to development, not simply because of institutional convenience.

- *Principle and commitment 3: Negotiation and mutual agenda-setting with individual accountability.*

This principle and commitment expresses the reciprocal respect between UNDP and CSOs cooperating with it, with regard to principles, priorities, procedures, etc. Neither UNDP nor CSOs are required to accept or endorse each other's agendas, interpretations of events or methods. The UNDP-CSOs engagement is founded on the principle of negotiation towards a common interest that recognises complementarity of roles, not a sharing of institutional responsibilities. Each party is individually accountable for its behaviour to its constituencies and stakeholders. While not imposing each other's own agenda, UNDP and its partner CSOs are committed to seeking common ground for action that respects the distinct priorities, enriching thus the agenda of all involved organisations.

- *Principle and commitment 4: Disaggregation, selection and intellectual differentiation.*

This principle and commitment is based on a very significant element of the civil society and its organisations: diversity and pluralism. UNDP recognises these capital features of the civil society and the fact that CSOs are, by their very nature, heterogeneous. Both diversity and pluralism are valuable development assets and the engagement of CSOs with UNDP should preserve them and not result in a "homogenisation" of the former. To this end, UNDP adopts the principle of respecting CSO diversity. UNDP is committed to enhancing its own insight and capability to differentiate between CSOs while adopting practices that correspond to and respect their differences. At the same time, CSOs should take care to safeguard their distinct characteristics, when they coalesce as partners of the UNDP or by promoting and implementing the latter's principles and decisions.

- *Principle and commitment 5: Macro-micro coherence and balance: connecting upstream and downstream.*

As we have seen UNDP is a global actor pursuing policy objectives in many countries round the world. It is important for its effective functioning to strive for coherence and consistency in its engagement with CSOs at local, national level as well as in its international (regional and global) activities. This principle is implemented by the commitment to balanced treatment and investment between CSO engagements at all levels of their activity that is in its operations and policy dialogues, within countries, regionally and internationally. This requirement implies that CSOs cooperating with UNDP should undertake actions that are complementary to the activities of the UNDP as well as to those of the other CSOs with formal relations with the UNDP.



## **B. Fields of UNDP-CSOs cooperation**

Based on the five principles and commitments of UNDP-CSO engagement and drawing from the UNDP experience (country offices and headquarters) and a process of UNDP-CSO consultations, the following broad priorities have been identified as potential entry points for UNDP-CSO interaction:<sup>198</sup>

- Leveraging the relatively trusted relations of UNDP with governments of the United Nations member states to create the suitable political space for civil society to express alternative views and influence policy dialogue and decision-making at all levels (local, national, regional and global).
- Ensuring genuine CSO engagement in the development, implementation and monitoring of key policy processes.
- Creating an enabling legal and regulatory environment for a vibrant civil society and ensuring the inclusion of CSOs in key legislative processes.
- Initiating multi-stakeholder partnerships between governments, donors and civil society for sustainable human development at all levels (local, national, regional and global).
- Supporting the capacity of civil society to articulate demands, offer options and defend the rights of people living in poverty at all levels. This implies supporting the crucial intermediary role played by CSOs in building bridges between local realities and macro-level policy issues.
- Facilitating the relational capacity of CSOs to negotiate their concerns with government and business sectors of society.
- Jointly identifying “campaign issues” and mobilising a broad-based constituency (at local and global levels and especially between South and North) using and *advocating greater access to information technology*.
- Facilitating traditional and horizontal linkages between CSOs that are critical to determining the quality of relationships between communities (otherwise known as bridging social capital). This has been found to be particularly crucial in both preventing and resolving conflict.
- Recognizing the differentiated impact of development on diverse vulnerable populations, particularly indigenous peoples, and ensuring that they have a voice in key development policy processes affecting their lives.
- Taking a stand on international human rights norms and standards and working with CSOs to realise the rights and obligations they entail for people. These include supporting the societal watchdog functions of CSOs in defending and monitoring the commitments of United Nations conferences and human rights.

It is clear that the list is not exhaustive and that CSOs individually and/or collectively as well as together with UNDP may add other possible fields of interaction, change the order and redefine priorities depending on the place and time where a specific pattern of interaction is to be established.

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<sup>198</sup> UNDP and Civil Society Organisations: A Practice Note on Engagement, 28 March 2006, paragraph 33.

## C. Modalities of UNDP-CSOs interaction

UNDP can engage with NGOs in two major ways: project-driven cooperation and long-term partnership. Each of these different models of interaction has its own distinctive features; however the two ways are not incompatible and in several cases the two roles can be fulfilled by the same CSO, while the success in implementation of concrete projects by a given CSO constitutes an excellent start for the establishment of a strategic partnership with the Programme.

### i) Project-driven collaboration

The collaboration of UNDP with CSOs on the basis of concrete projects can take the following forms: (a) CSO as manager of a UNDP project. In this case, the CSO would be an implementing partner; (b) CSO as a contractor. In this case, procurement procedures and contracts would apply; and (c) CSO as recipient of UNDP grants. In this case a grant agreement in the form of a Memorandum of Understanding is signed.

#### a) CSO as Implementing Partner

When CSO are designated as an implementing partner for UNDP activities,<sup>199</sup> management responsibility for the entire project, including achieving the project outputs lies with the CSO. The Implementing Partner is the entity responsible and accountable for managing a project, achieving project outputs, and for the effective use of UNDP resources. A single implementing partner is designated to lead the management of each UNDP-supported project. However the implementing partner may enter into agreements with other organisations or entities (governmental or non-governmental) to assist in successfully delivering project outputs. This “sub-contracting” is done through a competitive process in accordance with the description of management arrangements in the UNDP Project Document and under the supervision of the UNDP office in the country of implementation of the project.

In order for a CSO to qualify to become the implementing partner of a UNDP project (or other concrete activity) it has

*1/ to be legally registered in the country where it will be operating.*

The applicant for implementing partner arrangement CSO may be a national or an international organisation. In either case, the CSO must have the legal status to operate in accordance with the laws governing non-governmental organisations in the country of implementation of the project.

*2/ to be a non-profit organisation, group or institution that operates independently from a government.*

*3/ to have humanitarian or development objectives.*

*4/ to produce the technical, financial, managerial and administrative data required by the UNDP that can enable the Programme to assert that the applicant CSO has the resources, capacity and expertise needed for the successful implementation of the project.*

The CSO has in particular to provide concrete information attesting that it has

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<sup>199</sup> Other possible Implementing Partners include government institutions, eligible United Nations agencies, or other organisations.

- ◊ adequate staff
- ◊ reasonably sound financial status,
- ◊ experience in working with international organisations or donors,
- ◊ the necessary capacities within its fields of expertise to carry out the concrete activities and achieve results on behalf of UNDP,
- ◊ indication of any exceptional support measures required to ensure that the candidate CSO can meet UNDP requirements for managing projects.

*5/ to establish that it can assure close interaction with target groups of the concrete project (e.g. the poor and vulnerable, disabled persons, sick, etc.).*

The capacity of the CSO to carry out the project is assessed by the UNDP office in the country of implementation of the project. Normally, UNDP use a competitive process to select a CSO to manage one of its projects. Since such designation of a CSO is not a procurement action, the local UNDP country office reviews the proposal to designate the CSO and verifies its competitiveness. The CSO is designated where one specific organisation is clearly the most suitable to manage the project or when no other organisations are available or interested. In its assessment the UNDP country office must describe in writing the outcome of the review, the alternatives considered and the reasons why the proposed CSO was selected.

As a material condition for becoming an implementing partner, a CSO should apply for this arrangement only if it is capable (and can prove it to the satisfaction of the UNDP instances) to provide the bulk of project inputs or can undertake the project activities, and has the necessary administrative/accounting capacity to manage the project, track and report expenditures. The advantage of this type of relationship for the CSO is that the implementing partner has full control over project operations, and can use its own supply channels for recruitment and procurement, provided that the process is in line with UNDP standard requirements and based on “best value for money”. The amount a CSO can receive as implementing partner is limited by its management capacity, as assessed by an expert UNDP body.<sup>200</sup> The CSO receives the funds through advances, based on its financial reporting. The relations between UNDP and implementing partners CSOs are regulated by a standard Project Cooperation Agreement that is concluded for the implementations of each concrete project. This Agreement serves as the basic legal framework between UNDP and the designated CSO. The advantage that UNDP can expect from the implementing partner CSO arrangement is the benefit of expertise where CSOs may have a comparative advantage. Moreover it also enlarges the range of UNDP partners and it offers an opportunity to enhance the dialogue between the government and the CSO community in the country of implementation of the project.

All projects whose implementing partner is a CSO must be audited periodically. The audit must be carried out by the auditors of the choice of the managing CSO or by a qualified audit firm, which has to produce an audit report and certify the financial statement. The project may be subject to audit by the auditors of UNDP. The latter have the right of access to the relevant records of the implementing partner CSO. Where a United Nations agency participates in CSO-managed projects as an implementing agency, the auditors of the project appointed by the CSO should restrict the scope of the audit, stating that the audit opinion does not cover expenditures incurred by organisations of the United Nations system. This restriction also applies to expenditures incurred by UNDP.

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<sup>200</sup> The Local Project Appraisal Committee (LPAC).

### **b) CSO as Contractor**

This arrangement with CSOs is resorted to by the parties when UNDP considers a concrete CSO as the best supplier for the service (or goods) needed for a project input or for conducting a specific project activity. While a CSO within a contract can be tasked to take over a certain degree of project management, the overall responsibility, especially regarding budget control and reporting, rests with the implementing partner (national institutions, United Nations agency, SCO or UNDP country office). Within the framework of a contract, the implementing partner and the CSO can freely agree on the scale and scope of the service, the timetable, the reporting requirements/frequency, and the payment schedule. The contractor arrangement is a flexible one, functioning on an ad hoc basis. The selection criteria varies depending on the project, time, country of implementation, etc. There is, however, a Procurement User Guide that applies in contracts with CSOs. This provides for special procedures regarding contracting in countries in special development situations.

### **c) CSO as Grantee**

“Grants” are UNDP funds to finance proposals from civil society. There are a number of UNDP programmes designed to provide small grants to CSOs, in particular community-based organisations (CBOs), grassroots organisations and NGOs. A grant mechanism can be incorporated into technical cooperation programmes with implementing CSOs. While UNDP sets the general parameters and selection criteria, CSOs applying for grants design the grant projects based on their ideas, needs and capacity.

In contrast to contracts, competitive bidding in the conventional sense does not apply for UNDP grants to CSOs. A steering/selection committee is established to select grants on a competitive basis emphasizing innovative ideas, new approaches, sustainability, impact, feasibility and cost. Grants are limited to US \$150,000 per organisation and project and several organisations may often work on different aspects of the same project, but nevertheless only one grantee is selected. In cases where the project design calls for individual grants larger than US \$150,000, a specific request should be submitted to the UNDP headquarters. Once clearance is obtained from the appropriate UNDP instance, larger grants can then be awarded using the same procedures. For complex activities, it is often more advantageous to split them into several components, for example into a grant component with a community-based organisation/NGO, and a separate procurement contract with a private supplier. This will reduce the total grant amount and at the same time may reduce overall cost because goods are procured directly from the supplier and not via the NGO (import duties, tax exemption).

#### **ii) Long-term partnerships**

In addition to project-driven collaboration, which is as a rule of occasional character, UNDP has developed arrangements based on a long-term engagement with CSOs. This is an important policy shift prompted by UNDP global and country experience pointing to the importance of creating an institutionalised forum for UNDP-CSO dialogue and debate on wider policy directions.

### **a) Long-Term Agreements**

A Long Term Agreement for Professional and/or Consultancy Services (LTA) is a mechanism for the procurement of services that is both effective and efficient. The LTA allows UNDP to enter into agreements with various providers of professional services in a number of areas including partnership building, and operational support and specific professional service. By entering into LTAs UNDP aims at reducing the contracting costs associated with the sourcing, solicitation and bidding processes, achieving lower costs through volume leverage, and also reducing the end-to-end process time currently required to award the contract. UNDP has elaborated User Guidelines for Long-Term Agreements that provide information on contracting, areas of work, pricing and roles and responsibilities.

The purpose of Long-Term Agreements is to pre-determine and plan a joint response by UNDP and a partner, like a CSO, in a given situation based on a generic scenario, without necessarily specifying a country. This kind of arrangement is particularly useful in crisis or post-crisis environments as it provides a way of working with CSOs quickly because it establishes areas of work ahead of time. UNDP country offices are encouraged to develop a roster of CSOs with whom they would like to partner before a crisis erupts. This type of arrangement is also especially useful in the context of global, interregional, and regional projects, so that UNDP can identify partners with a capacity to respond in more than one country in advance.

### **b) Partnership Agreements**

Partnership Agreements are entered to by the UNDP when the Programme wants to work with another entity, such as a CSO (but also United Nations agencies, intergovernmental organisations, governmental agencies, private sector) in areas of mutual interest over a longer period of time. Partnership Agreements (or Memoranda of Understanding for the same purpose) should not be used in the place of a contract in the procurement area, that is when the purchase of a service or good is the essence of the relationship.

Each Partnership Agreement is unique and expresses a commitment to collaborate on a specific set of issues. It is therefore hard, and ultimately not useful to try to find some common features. The interested CSO should negotiate concrete terms of cooperation with UNDP, taking into account a host of specificities that directly or indirectly influence the scope and contents of the partnership agreement to be concluded.

### **c) Strategic Partnership**

After a series of consultations, the UNDP Civil Society Organisations Advisory Committee to the Administrator identified a set of mutually agreed broad areas of common UNDP-civil society concerns: (a) poverty reduction and sustainable debt; (b) inclusive globalisation – democratising trade and finance; (c) conflict prevention and peace-building; (d) human rights and human development; and, (e) private-sector engagement. There are also structured dialogues between members of the CSO Advisory Committee and the UNDP Executive Board on issues including policy options and perspectives in trade, poverty reduction, monitoring the Millennium Development Goals, human-rights based approaches to development, and gender-mainstreaming. These areas of mutual UNDP-civil society concern are considered as the fields in which it is desirable to establish strategic UNDP-CSOs partnerships.



Such strategic policy partnerships are yet to be established. UNDP has already identified a number of guiding principles and mechanisms to that end. These include:<sup>201</sup>

- CSO mapping

The rapidly changing nature of CSOs with shifting alliances and evolving institutions that grow and contract in response to social, economic and political imperatives often requires a continuous reading of the civic environment if UNDP is to stay abreast of current trends and developments. Periodic mapping of CSOs enables country offices to stay close to the popular pulse on emerging issues. It also provides a country office with the opportunity to reassess and focus the goals of its partnership strategy: with whom does it partner and to what development end?

- Selection process

Wide variations in national CSO history, diverse configurations, inter-CSO relations and state attitude will inevitably require UNDP to select carefully with whom to engage and how. To assist in the selection process, it is important to assess, develop and publish situationally relevant criteria to determine with which actors from civil society to engage and why. Some significant factors are domestic rootedness, demonstrated mandate, legitimacy as claimant, competence, expertise and accountability.

- Multi-stakeholder initiatives

Building on its role as impartial convenor, UNDP has a distinct comparative advantage in facilitating dialogue around sensitive issues that bring together different development actors from society, government and the market to work towards a shared solution. Country office experience in conflict and post-conflict reconciliation processes highlight the value-added of bringing CSOs, including indigenous people's organisations, into all stages of the reconciliation and rehabilitation process.

- Creating an enabling environment for CSOs

While the preparation of a legal framework for the operation of CSOs is often associated with an "enabling CSO environment", it is not necessarily conducive for creating vibrant civic engagement in key national processes. A legal regulatory framework for CSOs is an important but not sufficient condition. Country office experience points to the valuable role that UNDP can play in brokering and creating space to enable full participation of CSOs in national development processes.

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<sup>201</sup> UNDP *and Civil Society Organisations: A Practice Note on Engagement*, 28 March 2006, paragraph 36.

## VI

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### THE WORLD HEALTH ORGANISATION

#### 1. Structure and functioning

The World Health Organisation (WHO) is the United Nations specialised agency for health. It will celebrate its sixtieth anniversary in 2008. The paramount objective of the WHO, as provided for in its Constitution,<sup>202</sup> is the attainment by all peoples of the highest possible level of health. Health is defined in the Constitution of the WHO as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. WHO is headquartered in Geneva and has also Regional Offices for Africa, the Americas, South-East Asia, Europe, Eastern Mediterranean and the Western Pacific.

##### *A. Decision-making*

The supreme decision-making body of WHO is the World Health Assembly composed of representatives of all the WHO member states (currently 193). The World Health Assembly is entrusted with determining the major policies of the Organisation; it approves the WHO programme and budget, supervises the financial affairs of the Organisation and the execution of the budget, elects the members of the Executive Board and appoints the Director-General. It similarly considers reports of the Executive Board, which it instructs in regard to matters upon which further action, study, investigation or report may be required. As a rule, the World Health Assembly convenes in regular session once a year (in May) in Geneva.

The Executive Board of the WHO is composed of 34 members technically qualified in the field of health. Its members are elected for a three-year term. The main Board meeting, at which the agenda for the forthcoming Health Assembly is agreed upon and resolutions for forwarding to the World Health Assembly are adopted, is held in January every year. A second, shorter meeting is held immediately after the Health Assembly, in May, to deal in principle with more administrative matters. The main functions of the Board are to give effect to the decisions and policies of the World Health Assembly, to advise it and generally to facilitate its work.

The chief administrative officer of the WHO is the Director-General, who is appointed by the World Health Assembly, following the proposal by the Executive Board. The Director-General heads the WHO Secretariat, with expert and support staff employed at the headquarters, in the six regional offices, and in individual countries, where WHO is implementing programmes and projects.

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<sup>202</sup> WHO Constitution (following the coming into force of amendments adopted by the Fifty-first World Health Assembly), *WHO Basic Documents*, Forty-fifth edition, Supplement, October 2006.

## *B. Purpose and functions*

In accordance with its Constitution (art. 2), the main tasks of WHO are;

- to act as the directing and coordinating authority on international health work;
- to establish and maintain effective collaboration with the United Nations, specialised agencies, governmental health administrations, professional groups and such other organisations as may be deemed appropriate;
- to assist governments, upon request, in strengthening health services;
- to furnish appropriate technical assistance and, in emergencies, necessary aid upon the request or acceptance of governments;
- to establish and maintain such administrative and technical services as may be required, including epidemiological and statistical services;
- to stimulate and advance work to eradicate disease (epidemic, endemic and other);
- to promote, in cooperation with other specialised agencies where necessary, the prevention of accidental injuries, the improvement of nutrition, housing, sanitation, recreation, economic or working conditions and other aspects of environmental hygiene;
- to promote cooperation among scientific and professional groups which contribute to the advancement of health;
- to propose conventions, agreements and regulations, and make recommendations with respect to international health matters;
- to promote maternal and child health and welfare and to foster the ability to live harmoniously in a changing total environment;
- to foster activities in the field of mental health, especially those affecting the harmony of human relations;
- to promote and conduct research in the field of health;
- to promote improved standards of teaching and training in the health, medical and related professions;
- to study and report on, in cooperation with other specialised agencies where necessary, administrative and social techniques affecting public health and medical care from preventive and curative points of view, including hospital services and social security;
- to provide information, counsel and assistance in the field of health;
- to assist in developing an informed public opinion among all peoples on matters of health;
- to standardise diagnostic procedures as necessary;
- to develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products; and
- generally to take all necessary action to attain the objective of WHO.

## **2. WHO – NGO interaction**

### *A. Institutional aspects*

As we can see from this broad range of functions, there are several that necessitate or could be facilitated by the association with civil society organisations. Health work of

such a wide scope cannot be the exclusive domain of medical specialists.<sup>203</sup> It requires the involvement of politicians, economists, lawyers, communicators, social scientists as well as ordinary people everywhere. Evolving concepts about health and the articulation of its links to poverty, development and environment widen the range of potential WHO's partners.<sup>204</sup> This fact was taken into account by the drafters of the WHO Constitution, who inserted a specific provision (article 71) providing that the Organisation may make suitable arrangements for consultation and cooperation with NGOs in carrying out its international health work:

“The Organisation may, on matters within its competence, make suitable arrangements for consultation and co-operation with non-governmental international organisations and, with the consent of the Government concerned, with national organisations, governmental or non-governmental.

In addition to the article 71, reference to issues of WHO – NGO interaction are to be found in three other provisions of the WHO Constitution: in article 2(h) providing that one of the functions of WHO is the establishment and maintenance of effective collaboration with

“the United Nations, specialised agencies, governmental health administrations, *professional groups and such other organisations as may be deemed appropriate*”;

in article 33 establishing that

“The Director-General or his representative may establish a procedure by agreement with Members, permitting him, for the purpose of discharging his duties, to have direct access to their various departments, especially to their health administrations and to *national health organisations, governmental or non-governmental*. He may also establish direct relations with *international organisations* whose activities come within the competence of the Organisation. He shall keep regional offices informed on all matters involving their respective areas.”,

and in article 18(h) regarding the functions of the World Health Assembly

“to invite any organisation, *international or national, governmental or non-governmental*, which has *responsibilities related to those of the Organisation*, to appoint representatives to participate, without right of vote, in its meetings or in those of the committees and conferences convened under its authority, on conditions prescribed by the Health Assembly; but in the case of national organisations, invitations shall be issued only with the consent of the Government concerned”.

Civil society has a long history of involvement in public health, and represents one of the organised non-state mechanisms through which society contributes to health gains. CSOs have contributed for more than a century to health service provision and have played a role in transforming public understanding of, and attitudes towards, health; promoting healthy public choices; building more effective interactions between health services and clients; and enhancing community control over and commitment to health interventions.

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<sup>203</sup> United Nations Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt*, UN Doc. A/HRC/4/28, 17 January 2007, pp. 6-7.

<sup>204</sup> Cf. Alejandro COLÁS, *International Civil Society: Social Movements in World Politics*, Cambridge: Polity, 2002.

Implementing the directive of article 71 of the WHO Constitution the first World Health Assembly (1948) adopted a set of working principles governing admission of NGOs into Official Relations. These were amended and expanded by later WHAs, with the current *Principles governing relations between the World Health Organisation and nongovernmental organisations* having been in place since 1987.<sup>205</sup>

In recent years, NGOs within the health sector have become more prominent, more visible, and more diverse, with a growth in their number, types and budget turnover.<sup>206</sup> NGOs have intervened across all areas of health activity, generating a diversity of experiences and issues. There is significant evidence of NGO contributions to technical expertise, community or social experience and information to health systems. NGOs also bring institutional and financial resources for health outreach. NGO contributions are reported to be more effective in areas of health intervention that demand social action, public advocacy, or innovative and community based responses to health problems. Within global policy processes, NGOs are found to strengthen public interest lobbies and balance corporate and market pressures, making what is reported to be a valuable and sometimes essential contribution to successful policy outcomes. It is significant in this respect to highlight the fact that the only UN agency that has included representation of NGOs within its governing body is one that deals with health problems, UNAIDS. At the national level case studies have also demonstrated NGO impacts on enhancing the public accountability of policy processes.<sup>207</sup>

Collaboration with NGOs is a standing agenda item at both the Executive Board and WHA. Moreover it was the theme of Technical Discussions in 1985 and was highlighted in the 1997 and 1998 revised Health for All process in 1997.<sup>208</sup> WHO resolutions have called on NGOs and national governments to work in partnership with each other and WHO. The governing bodies of WHO have shown long-standing support and encouragement for strengthened WHO relations with NGOs. WHO has also made a special commitment in the recent *Corporate Strategy* approved by Governing Bodies in 2000.<sup>209</sup> It envisions broadening the scope of WHO's partnerships within new areas of work such as human rights and poverty reduction and to new actors spanning both the private sector and civil society.

In recognition of the growing importance of civil society, the Director-General of WHO (Dr. Gro Harlem Brundtland) established the Civil Society Initiative (CSI) in 2001, to: "Establish a programme of evidence collection, consultation with a broad range of actors and analysis – within and outside WHO – to identify and develop propositions for more effective and useful interfaces and relationships between civil society and the WHO. This work will be developed within the context of WHO's mandate, the expressed interests of the Executive Board and the World Health Assembly, and in response to interest shown by groups from civil society. (Civil society here includes social movements, voluntary organisations, nongovernmental organizations, grassroots organisations and other non-state and not-for-profit

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<sup>205</sup> WHA, Resolution 40.25, Principles Governing Relations between the World Health Organisation and Non-governmental Organisations, WHO, Basic Documents, Geneva 2001.

<sup>206</sup> Judith ASHER, *The Right to Health: A Resource Manual for NGOs*, Leiden: Brill, 2007.

<sup>207</sup> WHO, Civil Society Initiative, *WHO's Interactions with Civil Society Organisations. Short Historical Background*, Doc. CSI/2001/WP1.

<sup>208</sup> See in particular EB61.R38; EB79/1987/REC/1, Part1; A38/Technical Discussion/1; A51/5.

<sup>209</sup> WHO "A corporate strategy for the WHO secretariat". Report by the Director General to the Executive Board 105th session. EB105/3.



actors.<sup>210</sup>) It is anticipated that within a year this initiative will be followed by concerted action at country, regional and Geneva levels.”<sup>211</sup>

The aim of the Civil Society Initiative is to foster relations between WHO and non-governmental organisations and other civil society actors. The Initiative is responsible for the administration of formal relations as set out in the 1987 Principles governing relations between WHO and nongovernmental organisations. Counterparts at each WHO Regional Office serve in the same capacity. WHO country offices may also work with NGOs at the national level.

In 1987 the Fortieth World Health Assembly adopted the current version of the *Principles governing relations between the World Health Organisation and nongovernmental organisations* (1987 Principles or Principles). These Principles constitute the current legal basis for all aspects of the relations between WHO and NGOs. They declare WHO’s objectives in working with NGOs to be the promotion of its policies, strategies and programmes, collaboration in the implementation of these, and the co-ordination or harmonisation of intersectoral interests among the various sectoral bodies concerned in a country, regional or global setting.

The 1987 Principles define the objectives pursued by WHO when promoting collaboration with NGOs: to promote the policies, strategies and programmes derived from the decisions of the Organisation’s governing bodies; to collaborate with regard to various WHO programmes in jointly agreed activities to implement these strategies; and to play an appropriate role in ensuring the harmonisation of intersectoral interests among the various sectoral bodies concerned in a national, regional or global setting.

## ***B. Operational aspects***

### **i) Forms of relations between WHO and NGOs**

The Principles distinguish the relations of the WHO with NGOs to formal and informal.<sup>212</sup> The formal relations with NGOs are qualified *official relations*, and are established and maintained with NGOs which fulfil the criteria prescribed by the 1987 Principles. The official relations are established following the decision of the WHO Executive Board, upon request of the interested organisation. All other contacts, including working relations, are considered in the WHO framework to be of an informal character.

The establishment of relations with NGOs is provided for as an evolving process, consisting of a number of separate, consecutive stages, during which WHO and also

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<sup>210</sup> As we have seen, the 1947 WHO Constitution refers to the word NGOs, a term that was used by subsequent World Health Assembly resolutions in setting up the current system of official relations. In the current practice of WHO the term CSOs is also used when referring in general to interaction with civil society.

<sup>211</sup> Dr Gro Harlem Brundtland, Message from Director-General, 11 May 2001.

<sup>212</sup> In accordance with statistics from the WHO out of the total established relations with NGOs approximately 45% are with NGOs in official relations and 55% were with NGOs in informal relations, WHO, Civil Society Initiative, *WHO’s interactions with Civil Society and Nongovernmental Organisations External Relations and Governing Bodies*, Review Report, Doc. WHO/CSI/2002/WP6, p. 10.

the NGO in question decide whether to advance to the next stage, up to the establishment of formal relations.

The first step in this sequence of stages of WHO – NGO interaction is the inauguration of initial contacts between WHO and an NGO through exchanges of information and reciprocal participation in technical meetings. The objective of such preliminary contacts is to lay the ground for creating mutual understanding and assisting in developing mutual interests. This is done through mainly informative interactions with occasional exchange of information and ideas (for example inclusion in address and e-mail lists, exchange of newsletters, reports, publications and other materials, exchange of visits, participation in WHO meetings, events, campaigns and consultations, promotion of WHO advocacy materials etc.). Moreover, during this early stage of interaction, the parties (WHO and NGOs) explore the prospect of defining broad(er) objectives of collaboration and the possibility of enlarging its scope to include specific joint activities in line with the particular expertise of the NGO. However, there is no time limit provided for the duration of this type of informal contacts. They may continue on an ad hoc basis for as long as the parties deem it appropriate for their interests and without written agreement from either party.

In case WHO and a NGO identify, during the aforementioned first stage of interaction, a number of specific joint activities that they wish to pursue on a more active basis, they may decide to bring their initial collaboration to the next stage provided for by the 1987 Principles, that of *working relations* (paragraph 2.4). This form of interaction is established by an exchange of letters. It is considered an informal arrangement for consultation and cooperation. Such letters set out the agreed basis for the collaboration, they contain the details of the activities of mutual interest to be undertaken during the period, provide an estimate of the resources to be supplied by WHO and the NGO, and indicate focal points in the NGO and in WHO (designated technical officer) for communication. Under the regime of working relations the WHO – NGO interaction becomes more systematic. It allows in addition to the informative aspect of the interaction in the first stage, regular contributions of the NGOs concerned to WHO policy and normative work, through participation in expert committees, policy discussion fora, development of guidelines, or standard setting.

The working relations stage is usually established for a two-year period. At the end of this period WHO and the NGO proceed to a joint assessment of the outcome of the collaboration under this scheme of interaction. The assessment includes also the issue of the future of the existing WHO – NGO relationship. The options available at this stage are

- 1/ the continuation of the working relations for a further period, if the aims of both parties are being satisfactorily achieved;
- 2/ the establishment of official relations of the NGO in working relations, should there be a number of activities which might form the basis of a long-term and closer relationship with WHO; and
- 3/ the decision that there is no scope for further contacts in the foreseeable future.

#### ii) Criteria for official relations between WHO and NGOs

In case a NGO opts to apply for entering into official relations with WHO, there is a number of requirements that shall be fulfilled so that the WHO Executive Board may

grant this status to the applicant. In accordance with the 1987 *Principles* (chapter 3) these criteria are:

1. *The main area of competence of the applicant NGO shall fall within the purview of WHO.*

This first requirement sets out the principle of speciality as a guideline for the establishment of WHO – NGOs official relations. It requires that the aims and activities of the NGO shall be in conformity with the spirit, purposes and principles of the WHO Constitution. The criterion establishes a presumption in favour of NGOs whose central interests and activities focus on development work in health, in the wide sense that the WHO Constitution defines it,<sup>213</sup> or health-related fields. While originally NGOs eligible for formal relations with WHO were drawn from the medical and public health fields, NGOs with broader mandates have increasingly been admitted as official partners of WHO. At present NGOs in official relations with WHO include:

- health-related NGOs (such as those involved in occupational health, education, technology or safety and who have health as one of their objectives);
- professional associations (such as those representing nurses, or other professionals in the field of health); disease specific NGOs (e.g. those dealing with malaria, HIV/AIDS);
- development NGOs, in particular those working on poverty reduction;
- humanitarian NGOs (e.g. those dealing with emergency situations);
- patient group NGOs (e.g. those representing diabetic patients);
- public interest NGOs (such as those representing consumers);
- scientific or academic NGOs, mainly those involved in medical or health-related research;
- foundations that raise resources for health development activities in different parts of the world;
- as well as NGOs promoting international health.

2. *The applicant NGO shall be non-profit organisations.*

The 1987 *Principles* specify this criterion as a requirement that the applicant NGO “shall be free from concerns which are primarily of a commercial or profit-making nature.” (paragraph 3.1). This language has allowed the establishment of official relations with not-for-profit organisations that represent or are closely linked with commercial interests, such as those representing the pharmaceutical industry. In this way professional associations (and other lobbying organisations) can be admitted into official relations with WHO.

3. *The applicant NGO shall normally be international in its structure and/or scope, and shall represent a substantial proportion of the persons globally organised for the purpose of participating in the particular field of interest in which it operates.*

Under this criterion there are in reality two requirements that the applicant NGO should fulfil. On the one hand there is the *international character* of the applicant, necessitating that the interested NGO should have its membership and composition of its executive bodies coming from more than one country and also have activities not

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<sup>213</sup> WHO Constitution, Preamble, paragraph 1, *WHO Basic Documents*, Forty-fifth edition, Supplement, October 2006, p. 1: “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

limited to one national territory. On the other hand there is the *representative character* of the NGO, which requires that the membership of the NGO should comprise international organisations with federated structure, made up of national or regional groups or having individual members from different countries, representing as much as possible wide segments of the organisations and persons engaged in the particular activity. It is further provided that when there are several international NGOs with similar areas of interest, they may be encouraged by the competent WHO organs to form a joint committee or other body authorised to act for the group as a whole.

The 1987 Principles provide also for the possibility of the Organisation to establish, in exceptional cases, official relations with national NGOs. Such a national NGO (or a number of national organisations working under a federated (umbrella) structure, such as an informal network) shall be eligible for official relations with WHO provided that the major part of its activities and resources are directed towards international health and related work; it has developed a programme of collaborative activities with WHO under the status of working relations; and its activities offer appropriate experience upon which WHO may wish to draw. The relevant decision is taken by the WHO Executive Board in consultation with and subject to the recommendations of the WHO Regional Director and the WHO member state involved.

4. *The NGO shall have a constitution or similar basic document, an established headquarters, a directing or governing body, an administrative structure at various levels of action, and authority to speak for its members through its authorised representatives. Its members shall exercise voting rights in relation to its policies or action.*

This is a requirement common to most organisations that maintain institutionalised relations with NGOs. It offers a guarantee as to the legality control exercised in the framework of a national legal order and the existence of an appropriate decision-making mechanism of the interested NGO. Importantly, it sets the condition of internal democracy and representativeness of NGOs in official relations with WHO.

5. *The NGO shall have had at least two years of successfully completed working relations with the WHO.*

This condition follows the logic that a test period is necessary before the establishment of official relations between the WHO and NGOs. This is a common sense requirement which allows for a considerate decision on both parts, whether to apply for and whether to grant official relations status. The requirement is not an absolute one, as the 1987 Principles consider the existence of the two-year “test period” as the general rule to which exceptions can be justified, for example in case of an application by a new international NGO whose expertise in particular field(s) could be very useful for the realisation of specific WHO objective(s).

### iii) Modalities of interaction

#### **a) Procedure of establishment of official relations**

An NGO deeming that it fulfils the criteria set out in the 1987 Principles and wishing to be admitted in official relations with WHO has to submit an application to the WHO Executive Board. The same procedure has to be followed by NGOs that are invited by WHO to establish official relations. The applications shall specify a structured plan for collaborative activities agreed upon by the applicant NGO and WHO. Applications from national NGOs shall contain the endorsements of the WHO

Regional Director and the government of the member state concerned. Applications are normally transmitted to the members of the Executive Board by the WHO Secretariat two months in advance of the session at which they will be considered. Applications received by the end of July of each year are considered by the Executive Board at its regular meeting in January of the following year. The applications are considered by the five-member Standing Committee on Nongovernmental Organisations of the Executive Board. Should the Standing Committee consider that it needs more information or clarifications on a candidature, it may invite the NGO concerned to speak before it in connection with the organisation's application.

After consideration of the applications, the Standing Committee submits relevant recommendations to the Board. Should the applicant organisation be considered not to meet the established criteria, and bearing in mind the desirability of ensuring a valuable continuing partnership based on defined objectives and evidenced by a record of successful past collaboration and a framework for future collaborative activities, the Standing Committee may recommend postponement of consideration or rejection of an application. The Executive Board, after considering the recommendations of the Standing Committee, decides whether an NGO is to be admitted into official relations with WHO. A re-application from an NGO shall not normally be considered until two years have elapsed since the Board's decision on the original application. After the session of the Executive Board, the Director-General informs each NGO of the Board's decision on its application. The Director-General maintains a list of the organisations admitted into official relations, and circulates to the WHO members this list and any amendments thereto.

After the positive decision of the Executive Board, the admitted NGOs are invited to agree on a plan for collaboration with the WHO based on mutually acceptable objectives and outlining activities for the coming three-year period. Such plan forms the basis of official relations between WHO and the NGO. This plan is transmitted also to the WHO regional offices to encourage closer collaboration at regional level as appropriate.

#### **b) Participation of NGOs in the WHO activities**

Following the decision of the WHO Executive Board to establish working relations with an NGO, the latter is entitled to a number of rights and also bears responsibilities towards WHO.<sup>214</sup>

##### *Attendance in meetings of WHO organs and conferences*

With respect to the World Health Assembly, the right of participation is provided for in the WHO Constitution (article 18(h), authorising the Assembly

“to invite any organisation, international or national, governmental or non-governmental, which has responsibilities related to those of the Organisation, to appoint representatives to participate, without right of vote, in its meetings or in those of the committees and conferences convened under its authority, on conditions prescribed by the Health Assembly; but in the case of national organisations, invitations shall be issued only with the consent of the Government concerned.”<sup>215</sup>

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<sup>214</sup> For statistics and assessment see Christophe LANORD, *A study of WHO's Official Relations system with Nongovernmental Organisations*, WHO, Civil Society Initiative, June 2002, Doc. CSI/2002/WP4, pp. 6-8.

<sup>215</sup> Based on this article, the WHA has included two relevant provisions in its *Rules of Procedure*:



The general provision on attendance in WHO meetings is however to be found in the 1987 Principles (paragraph 6.1).<sup>216</sup> In accordance with the latter NGOs in official relations with WHO have the right to appoint a representative to participate, without right of vote, in WHO's meetings or in those of the committees and conferences convened under its authority.

#### *Possibility to make statements*

As we have seen the participation of NGOs in official relations with WHO in meetings of organs of the latter or in conferences held under its auspices does not include the right to vote. The second element of the right of participation (next to the attendance) is the possibility to make statements in WHO meetings and conferences. The only condition on the right of participation in the 1987 Principles is that NGOs can make their statements on the items of the agenda in which an NGO has a particular interest. When this condition is fulfilled, the NGO concerned, at the invitation of the chairman of the meeting or on his acceding to a request from the NGO, shall be entitled to make a statement of an expository nature. The NGO may, with the consent of the meeting, be invited by the chairman to make, in the course of the discussion of the item before the meeting, an additional statement for purposes of clarification.

#### *Access to WHO documents*

This right is subject to specific decisions of the WHO Governing Bodies and includes access by NGOs in official relations to non-confidential WHO documentation and such other documentation as the Director-General may see fit to make available through such special distribution facilities as WHO may establish.

### The right to submit a memorandum

The status of official relations entails also the right of NGOs to submit memoranda to the Director-General. It is the latter who determines whether and to which WHO organs such memoranda would be disseminated. The 1987 Principles regulate further the follow-up that the Director-General may want to give to a memorandum submitted by an NGO. In case the Director-General considers that an NGO memorandum might be placed on the agenda of the World Health Assembly, such memorandum shall be placed before the Executive Board for possible inclusion in the agenda of the Assembly.

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Rule 19 - "Plenary meetings of the Health Assembly will, unless the Health Assembly decides otherwise, be open to attendance by (...) invited representatives of the United Nations and of other participating intergovernmental and *non-governmental organisations admitted into relationship with the Organisation*.";

Rule 49 - "*Representatives of non-governmental organisations* with which arrangements for consultation and co-operation have been made, in accordance with Article 71 of the Constitution, may be invited to *attend plenary meetings and meetings of the main committees* of the Health Assembly and to *participate without vote* therein in accordance with those arrangements, when invited to do so by the President of the Health Assembly or by the chairman of a main committee, respectively."

<sup>216</sup> See reference in Rule 4, paragraph 2 of the Rules of Procedure of the Executive Board, "Representatives of nongovernmental organisations in official relations with the Organisation may participate in the deliberations of the Board as is provided for participation in the Health Assembly in the 'Principles governing relations between the World Health Organisation and non-governmental organisations'."

### **c) Responsibilities of NGOs in their relationship with WHO**

NGOs admitted to official relations assume a number of responsibilities towards WHO:

- NGOs shall be responsible for implementing the mutually agreed programme of collaboration and shall inform WHO as soon as possible if for any reason they are unable to fulfil their part of the agreement.
- NGOs shall utilise the opportunities available to them through their normal work to disseminate information on WHO policies and programmes.
- NGOs shall collaborate individually or collectively in WHO programmes to further health-for-all goals.
- NGOs shall individually or collectively collaborate with the WHO member states where their activities are based in the implementation of the national/regional/global health-for-all strategies.

### **d) Termination of official relations**

The 1987 Principles provide that every three years the WHO Executive Board, through its Standing Committee on Nongovernmental Organisations, shall review collaboration with each NGO and shall determine the desirability of maintaining official relations. The Board's review shall be spread over a three-year period, one-third of the NGOs in official relations being reviewed each year. Following the review process, the Executive Board may discontinue official relations if it considers that such relations are no longer appropriate or necessary in the light of changing programmes or other circumstances. Similarly, the Board may suspend or discontinue official relations if an organisation no longer meets the criteria that applied at the time of the establishment of such relations, or fails to fulfil its part in the agreed programme of collaboration.

### **e) Relations with NGOs at the regional and national levels**

The afore mentioned rights and responsibilities are those attached to the status of official relations. However the 1987 Principles extend the privileges related to official relations to national/regional NGOs having working relations with WHO regional offices as determined by the Regional Directors in consultation with the regional committees. However, in the WHO framework a national NGO which is affiliated to an international NGO covering the same subject on an international basis shall normally present its views through its government or through the international NGO to which it is affiliated, unless other arrangements are made in view of its particular relationship with WHO.

In this respect, there are three possibilities. The first one is the case when national NGOs are affiliated to international NGOs in official relations with WHO. These NGOs are, by definition, in official relations with the WHO Regional Office(s). They shall develop and implement a programme of collaboration with the regional and national levels of WHO to ensure implementation of health-for-all strategies at the country level. The second possibility is the case of national NGOs for which there is no international NGO. The regional WHO office concerned may establish working relations with such organisations, subject to consultation between the Regional Director and the Director-General of WHO. The last pattern concerns national NGOs affiliated to international NGOs not in official relations with WHO. In such a case and in order that WHO be able to promote and support the formation of strong international NGOs in the various technical fields, the regional office concerned may establish working relations with the above-mentioned regional or national organisations, subject to consultation between the Regional Director and the Director-

General of WHO. Such working relations shall be based on a programme of activities developed and implemented under the status of working relations.

### ***C. Expected benefits from WHO – NGOs interaction***

#### **i) WHO**

The World Health Organisation can pursue three sets of benefits from its interaction with NGOs and other civil society organisations. The first advantage for WHO from the interaction is advocacy support for WHO's activities, programmes and projects. NGOs can be instrumental in advocating issues of public health promoted by WHO and taking it to a broad audience. They perform a watchdog function in the protection of public health concerns. They are also able to bring up sensitive issues that WHO, as an intergovernmental organisation, may not be in a position to address for political reasons. This is especially true for NGOs working with a rights-based approach. The second benefit that NGOs can provide is access to public opinion. By collaborating with NGOs, WHO can ascertain the direction and content of public opinion on various health matters. This can prove invaluable when formulating programmes and provides a reality check for WHO. NGO collaboration in policy development also strengthens the democratisation of international relations and cooperation. It makes the work of WHO more visible and transparent and contributes towards actively building public accountability within the context of the widening United Nations framework for governance in global policy. Finally, NGOs can be instrumental in programme implementation, because NGOs are often involved in the testing of methods and approaches at field level, in building up the national capacity of health systems and implementing WHO programmes at country level. National NGOs concerns for equity in health, closeness to local communities and capacity to respond to community needs are strengths that WHO can draw upon. Collaboration with some NGOs makes outreach to remote areas and disadvantaged populations possible for WHO. In emergency relief, WHO effectively benefits from the flexibility and rapid response of humanitarian NGOs by channeling aid through them.

#### **ii) NGOs**

NGOs on their part have also to gain from their interaction with WHO, firstly in the field of capacity support. Interaction with WHO provides NGOs with enhanced access to expertise, skills and resources, especially on technical and policy issues. This access helps improve the work of NGOs in general. This is especially important for NGOs from developing or transition countries where expertise is hard to find or too expensive to acquire for NGOs. Furthermore, the collaboration with WHO enhances **the** public relations capacity of NGOs. Being associated with an international agency like WHO strengthens the status, credibility and recognition of NGOs and enhances their public relations and fund-raising opportunities. Last but not least, NGOs cooperating with WHO increase their outreach and influence potential. In fact, working with WHO enables NGOs to reach beyond their immediate audience and contribute their valuable expertise, experience and advocacy support to the technical and policy work of WHO and public health in general.

## VII

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### THE EUROPEAN UNION

The European Union (EU) is a family of European countries, committed to working together for peace and prosperity. Not a (federal) state, nor an international organisation of any given type, the EU is a unique endeavour of international cooperation. Its historical roots lie in the determination of European peoples after the Second World War to prevent killing and destruction ever happening again on the European continent. EU member states have set up common institutions to which they delegate some aspects or segments of their sovereignty so that decisions on specific matters of joint interest can be made democratically at European level.

The cooperation started between six countries and mainly about trade and the economy. Gradually both the membership and the fields of joint interest have increased. At present the EU embraces 27 countries and 490 million people. It deals with a wide range of issues from economic affairs in general to justice and home affairs and foreign policy and defence.<sup>217</sup> The EU fosters cooperation among the peoples and states of Europe based on shared values such as democracy, freedom and social justice, promoting prosperity, understanding and unity while preserving diversity and ensuring that decisions are taken as close as possible to the citizens. To these ends the EU established a common market. It established an economic and monetary union and implements common policies or activities to promote a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.<sup>218</sup>

#### 1. Institutional setting: A brief overview

For the realisation of the afore mentioned lofty objectives the EU has set up a number of institutions, with distinct structures and tasks. The main organs are the European Parliament, the Council of the European Union, the European Commission and the Court of Justice. Of particular interest for the involvement of civil society and its organisations are two other EU structures, the European Economic and Social Committee and the Committee of the Regions.

The European Parliament is elected every five years by the people of Europe to represent their interests. The present parliament, elected in June 2004, has 785 members from all 27 EU countries. Nearly one third of them are women. The main

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<sup>217</sup> The intensity of the EU engagement in the particular fields of common interest varies depending on the level of integration as translated in the normative documents of the EU.

<sup>218</sup> Article 2, Treaty establishing the European Community (consolidated text), *Official Journal of the European Community*, C 325, 24 December 2002.

job of the European Parliament is legislation. However, it shares this responsibility with the Council of the European Union, and the proposals for new normative acts come from the European Commission. Parliament and Council also share joint responsibility for approving the EU's annual budget (approximately €100 billion). The European Parliament has the power to dismiss the European Commission. The Parliament elects the European Ombudsman, who investigates citizens' complaints about maladministration by the EU institutions.

Members of the European Parliament (MEPs) do not sit in national blocks, but in seven Europe-wide political groups. The largest of these are the centre-right European People's Party (Christian Democrats), followed by the Socialists, the Liberals and the Greens. Between them, MEPs represent all views on European integration, from the strongly pro-federalist to the openly Eurosceptic. As a rule the plenary meetings of the European Parliament are held in Strasbourg, while the parliamentary commissions convene in Brussels. Like all other EU institutions, it works in all 23 official EU languages.

The Council of the European Union – formerly known as the Council of Ministers – represents the voice of the EU member states. It consists of ministers from the national governments of all the EU countries. The Council meets in various compositions depending on the issues on the agenda. Meetings are attended by the ministers responsible for the items to be discussed. The only requirement set by the relevant article 203 of the Treaty establishing the European Community is that

“The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.”<sup>219</sup>

There are presently nine different Council configurations: — General Affairs and External Relations (the EU's relations with the rest of the world are dealt with by the Council in this format. But this Council configuration also has wider responsibility for general policy issues, so its meetings are attended by whichever minister or state secretary each government chooses); — Economic and Financial Affairs (ECOFIN); — Justice and Home Affairs (JHA); — Employment, Social Policy, Health and Consumer Affairs; — Competitiveness; — Transport, Telecommunications and Energy; — Agriculture and Fisheries; — Environment; and — Education, Youth and Culture.

The Council of the European Union shares with European Parliament the responsibility for adopting the EU legislation and taking policy decisions. It also bears the main responsibility for what the EU does in the field of the common foreign and security policy and for EU action on some justice and freedom issues. Each country has a number of votes in the Council broadly reflecting the size of their population, but weighted in favour of smaller countries. Most decisions are taken by majority vote, although sensitive issues in areas like taxation, asylum and immigration, or foreign and security policy, require unanimity. Up to four times a year the presidents and/or prime ministers of the EU member states meet as the European Council. These “summit” meetings set overall EU policy.

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<sup>219</sup> Treaty establishing the European Community (consolidated text), *Official Journal of the European Community*, C 325, 24 December 2002.



The European Commission (EC) represents and promotes the EU common interest. It is independent of governments of the EU member states. It has the responsibility to elaborate and submit proposals for new EU legislation to the European Parliament and the Council of the EU (right of initiative). It manages the day-to-day business of implementing EU policies and spending EU funds. The Commission is also entrusted with the mission of overseeing the implementation of the EU normative acts by and in the member states. It can act against rule-breakers, taking them to the Court of Justice if necessary.

The Commission consists of 27 women and men – one from each EU country. They are assisted by about 24,000 civil servants, most of whom work in Brussels. The President of the European Commission is chosen by EU governments and endorsed by the European Parliament. The other commissioners are nominated by their national governments in consultation with the in-coming President, and must be approved by the Parliament. As said, the commissioners do not represent the governments of their home countries. Instead, each of them has responsibility for a particular EU policy area. The President and members of the Commission are appointed for a period of five years, coinciding with the period for which the European Parliament is elected.

The EU has established a Court of Justice, whose mission is to uphold the rule of law in the activities of the EU and to make sure that EU law is interpreted and applied in the same way in all member states, thereby ensuring that the law is equal for everyone. The Court therefore makes sure that EU member states and institutions do what the law requires them to do. The Court is located in Luxembourg and has one judge from each member country.

The Court is one of the institutions that is not easily accessible to NGOs. In accordance with article 230 of the Treaty on European Community NGOs do not have *locus standi* in the European Community jurisdictional organs, unless they are addressees of the attacked Community act or if they are directly and individually concerned.<sup>220</sup> The issue has been debated in the EU with respect to the access to justice, the so-called “third pillar” of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (signed on 25 June 1998 by 15 EU Member States and the European Commission). Due to the limitations on access to the European Community courts, the European Commission, when signing the Aarhus Convention, emitted the declaration that it would consider making a reservation upon ratification for certain issues, such as access before the European Court of Justice. In this framework a discussion has opened in the EU whether it would be advisable to amend article 230 providing for example for “*locus standi* being created for environmental – and possibly health and consumer protection – NGOs fulfilling certain objective and qualitative criteria to be established at the EC level.”<sup>221</sup>

To these principal organs we should add another two that play an important role with respect to the involvement of the civil society, the European Economic and Social

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<sup>220</sup> European Court of Justice, *Greenpeace* case, C-321/95P, 2.4.1998, ECR [1998] I-1651.

<sup>221</sup> George KREMLIS, “European Perspectives on Access to Justice in Environmental Matters”, in Agni VLAVIANOU-ARVANITIS (ed.), *Biopolitics*, vol. VIII, 2001, p. 113.

Committee and the Committee of the Regions. The latter represents the local perspective of the EU. It is consulted on upcoming EU decisions with a direct impact at the local or regional level in fields such as transport, health, employment or education. Its members are often leaders of regional governments or mayors of cities.

The European Economic and Social Committee is the EU organ where the civil society is institutionally represented. Its 344 members represent a wide range of interests from the economic and social components of organised civil society: from employers to trade unionists, from consumers to ecologists, passing through professional occupations such as producers, farmers, carriers, workers, dealers, craftsmen, and the general interest.<sup>222</sup> The Committee is an advisory body which must give its opinion on proposed EU decisions about employment, social spending, vocational training, etc. There are cases provided by the EU law in which the European Economic and Social Committee must be consulted by the Council of the EU or by the European Commission. Additionally the Committee may be consulted by the Council or the Commission in all cases in which they consider it appropriate. It may be consulted by the European Parliament. The Economic and Social Committee may also issue an opinion on its own initiative in cases in which it considers such action appropriate. The Economic and Social Committee undertakes initiatives aimed at strengthening its links with civil society, including NGOs, in order to provide an improved forum for the dialogue with the European citizens. To this end, it also organises Conventions of Civil Society Organisations working with the Committee and more generally with the EU.

## 2. Interaction with NGOs

The presence of civil society organisations has been a steady phenomenon in the European construction. Dialogue and consultation between NGOs and the EU institutions have to be seen in the framework of the democratic decision-making process of the European institutions. A number of fora for dialogue and consultation have been developed in a range of policy fields. The Final Act of the Intergovernmental Conference adopted a Declaration entitled *Cooperation with charitable associations* “stress[ing] the importance, in pursuing the objectives of Article 117 on the Treaty Establishing the European Community, of cooperation between the latter and charitable associations and foundations as institutions responsible for social welfare establishments and services.”<sup>223</sup>

Before the Treaty of Maastricht many European institutions, and in particular the European Parliament, the Economic and Social Committee, and the Committee of the Regions had a strong tradition of close contacts with NGOs. Over the last decades, the partnership between the EU institutions and NGOs has expanded on all fronts. This intensification has covered a range of issues, from policy dialogue and policy delivery, to project and programme management, both within the EU and in its partner countries. It results from a number of interwoven factors, related both to changes and

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<sup>222</sup> See the, lately inserted by the Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community Article 256a of the Treaty on the Functioning of the European Union (new title of the Treaty Establishing the European Community):

“The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas.”

<sup>223</sup> Maastricht Treaty Intergovernmental Conference, Final Act, Declaration no. 23.

developments within the EU institutions themselves, as well as to developments within the NGO sector. As the European Union has been expanding its reach to cover an ever-increasing number of areas of cooperation and acquired additional responsibilities in new policy areas, an equally growing number of NGOs operating within and outside Europe has been engaged with EU institutions.<sup>224</sup> This trend can be seen in the rising number of national NGOs creating or joining European associations and networks, taking into account that many policy areas are now being decided at European level.<sup>225</sup>

NGOs are cooperating with all the EU institutions in the sphere of their respective interests. It is however the European Commission that pursues a coherent, coordinated and structured policy and practice in its relationship with NGOs, demonstrating its willingness to maintain and strengthen its partnership with NGOs. Several hundred NGOs in Europe and worldwide are receiving funds from the EU. In particular, the European Commission allocates over one billion euros to NGO projects. The major part of this sum is spent in projects implemented by NGOs in the field of external relations for development cooperation, human rights, democracy programmes, and, in particular, humanitarian aid (an average of 400 million euros). Other important allocations are in the social, educational and environmental fields. Though brought under the same umbrella, it must be borne in mind that the size and scope of activities of NGOs can vary considerably. Some NGOs consist of a limited number of persons; others may have thousands of members and hundreds of professional staff. In functional terms NGOs can focus on operational and/or advocacy activities. Operational NGOs contribute to the delivery of services (such as in the field of welfare), whereas the primary aim of advocacy NGOs is to influence the policies of public authorities and public opinion in general.

#### *A. Overview of the existing relationships between the EC and NGOs*

##### *i) Requirements for the establishment of relations between the EC and NGOs*

The European institutions uphold in their functioning the principle of open government, and consequently the cooperation also with civil society organisations. The latter is based on a practice of the EU organs ensuring that systematic and regular consultations with NGOs are meaningful, efficient and conducted in a transparent manner. Within this broad framework, the approach of the European Commission towards collaboration with NGOs is characterised by the lack of formalism and by flexibility with respect to the requirements for the establishment of relations with NGOs. Some NGOs have raised the issue of introducing in the EU framework an official consultative status for NGOs along the lines of existing systems in the United Nations, the specialized institutions thereof and other international organisations. The EU institutions have consistently rejected the establishment of an official consultative status for NGOs. The main reason for such a refusal is the wish “to maintain a

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<sup>224</sup> Jorge SAMPAIO, “A Governação Europeia – Expectativas e Preocupações, uma Visão Pessoal”, *Studia iuridica*, 2002, no. 294, pp. 3-7.

<sup>225</sup> Marlene WIND, “The Commission White Paper. Bridging the Gap between the Governed and the Governing?”, in *Symposium: Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance*, Jean Monnet Working Paper No. 6/01; Daniel BODANSKY, “The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?”, *American Journal of International Law*, 1999 (v. 93), pp. 596-624.

dialogue which is as open as possible without having to enforce an accreditation system.”<sup>226</sup>

Instead of criteria the Commission refers in its documents to “characteristics”, a term implying a less formal attitude towards NGOs and a cooperation based on a mainly pragmatic basis, based nevertheless on accepted principles.<sup>227</sup>

These characteristics that the European Commission normally attributes to NGOs are:<sup>228</sup>

- *NGOs are not created to generate personal profit.*

Though NGOs may have paid employees and engage in revenue-generating activities they do not distribute profits or surpluses to members or management.

- *NGOs are voluntary.*

This means that they are formed voluntarily and that there is usually an element of voluntary participation in the organisation.

- *NGOs are having some degree of formal or institutional existence.*

This is a characteristic that distinguishes NGOs with which the EC cooperates, from informal or ad hoc groupings, grassroots organisations, and the like. Usually, NGOs have formal statutes or other governing document setting out their mission, objectives and scope. They are accountable to their members and donors. It is important for the European institutions that NGOs and networks of NGOs be democratic and transparent as regards their membership and claims to representativeness. In this context, the European Commission encourages organisations to work together in common associations and networks at the European level since such organisations considerably facilitate the efficiency of the consultation process.<sup>229</sup> In particular, the ability of European associations and networks of NGOs to channel and focus the views of the various national NGOs is extremely useful for the EU. It therefore seems reasonable that the Union’s institutions, in particular the European Commission, should provide practical support for these NGOs. However, for the consultation process to take place via such associations and networks, these organisations need to ensure that their structures are representative, in particular regarding their roots in the different EU member states.

- *NGOs are independent, in particular of government and other public authorities and of political parties or commercial organisations.*

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<sup>226</sup> European Commission, *Communication on An open and structured dialogue between the Commission and Special Interest Groups*, Official Journal of the European Communities, C 63, 5 March 1993.

<sup>227</sup> For a recent discussion of the participatory rights of civil society in the European Union in view also of the article 46 draft Constitutional Treaty (The principle of participatory democracy) see Fransesca BIGNAMI, *Three Generation of Participation Rights in European Administrative Proceedings*, Jean Monnet Working Paper 11/03, 2003, pp. 15-32.

<sup>228</sup> *The Commission and Non-Governmental Organisations: Building A Stronger Partnership*, Commission Discussion Paper presented by President Prodi and Vice-President Kinnock, COM (2000) 11 final, 18 January 2000, pp. 3-4. Comp. the list of common features of voluntary organisations proposed by the Commission in its Communication of June 1997 *Promoting the Role of Voluntary Organisations and Foundations in Europe*, COM/97/0241 final, Official Journal of the European Communities, L 40, 11 February, 1997, pp. 11-13.

<sup>229</sup> Helmut ANHEIER, Marlies GLASIUS and Mary KALDOR (eds), *Global Civil Society 2001*, Oxford: Oxford University Press, 2001, pp. 4-6.

This is the characteristic that justifies the expression of NGOs as being the so-called “third sector”, distinct from both governmental structures and business interests.

- *NGOs are not self-serving in aims and related values.*

Their aim is to act in the public arena at large, on concerns and issues related to the well being of people, specific groups of people or society as a whole. They are not pursuing the commercial or professional interests of their members.

These characteristics are common to the non-governmental, non-business organisations. To these *stricto sensu* NGOs we might, in a broader sense, consider trade unions and business or professional organisations as non-governmental organisations. The approach to consultation processes that has been developed for NGOs sharing the afore mentioned characteristics, should be used as a model for other categories of organisations, in so far as these consultations do not take place under a specific institutional framework (e.g. Social Dialogue).

The flexibility of the EU approach towards NGOs wishing to cooperate with its institutions does not preclude the presence in particular cases of specific objectives and pre-established reasons for selecting the NGOs for the purpose of interaction with a given EU institution. The European Commission in particular, pays attention to:

- the structure and membership of the interested NGOs;
- the transparency of their organisation and the way they work;
- their previous participation in committees and working groups of EU institutions;
- their track record with respect to the competence to advise in a specific field; and
- their capacity to work as a catalyst for exchange of information and opinions between the Commission and the citizens.

#### ii) Fields of EU institutions– NGOs interaction

The interaction of NGOs with European institutions, in particular the EC – NGOs collaboration,<sup>230</sup> has specific aims and is articulated around five main policy areas of increased interest for the EU and NGOs wishing to collaborate with the Commission.

#### a) Promoting participatory democracy

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the member states. The right of citizens to form associations to pursue a common purpose is a fundamental freedom in a democracy.<sup>231</sup> The greater involvement civil society organisations has been explained (and promoted) by the

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<sup>230</sup> See European Commission, Communication “An open and structured dialogue between the Commission and special interest groups”, 2 December 1992, *Official Journal of the European Communities*, C 63, 5 March 1993.

<sup>231</sup> See Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community, new Article 8 A, paragraph 3 of the Treaty Establishing the European Union:

“Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.”,

and new Article 8 B, paragraph 1 of the Treaty Establishing the European Union:

“The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.”



European Commission in its 2001 *White Paper on European Governance*.<sup>232</sup> However, in the EU, as in national democracies, the decision making process is first and foremost exercised by the elected representatives of the people, sitting in the European Parliament. That explains the fact that the European Commission's White Paper was received with caution by the members of the European Parliament.<sup>233</sup> The European Parliament is not the exclusive EU legislator, because it shares this mission with the Council of the EU (inter-governmental composition). Increasingly NGOs are recognised as a significant component of civil society and as providing valuable support for a democratic system of government. The EU institutions are taking more notice of them and involving them in the policy- and decision-making process.

The contribution of NGOs and civil society in general is acknowledged also in the external relations of the EU. In the framework of the enlargement process, according to the so-called Copenhagen criteria, membership in the EU requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. NGOs can make an important contribution to the development of democracy and civil society in the candidate countries. In the context of relations with other states, developing and consolidating democracy is also the EU's general policy objective in its cooperation with developing countries and goes therefore far beyond the enlargement process. Partnerships with local NGOs in developing countries are particularly significant in this regard.

#### **b) Representing specific views and interests to the EU institutions**

This section is about the role of NGOs in representing the views to the European Institutions of specific groups of citizens (such as people with disabilities, ethnic minorities, etc.) or on specific issues (such as the environment, world trade, development, etc.). It is accepted in the EU framework, that many NGOs have an ability to reach the poorest and most disadvantaged and to provide a voice for those not sufficiently heard through other channels. In the European context, NGOs perform this role in relation to the European Parliament, the Commission, the Economic and Social Committee, the Committee of the Regions and the Council. In times where knowledge about the EU and its actions is not sufficient among the European people and communication is a major objective for the EU institutions, NGOs involvement in policy shaping and policy implementation helps to win public acceptance for the EU. In some cases, they can act as a balance to the activities and opinions of other interests in society.

#### **c) Providing information to the policy making process**

As it has been said NGOs have become reliable partners for national and international institutions due to their expertise and dedication to specific fields. The specific expertise that NGOs can contribute to is policy discussions. This characteristic has been acknowledged in the EU framework and it is accepted that NGOs, through their links at local, regional, national and European level, can provide expert input for EU

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<sup>232</sup> Commission of the European Communities, *European Governance. A White Paper*, COM(2001) 428 final, Brussels, 25 July 2001, *Official Journal of the European Communities*, C-287, 12 October 2001.

<sup>233</sup> Barbara DELCOURT, "De la souveraineté à la gouvernance? Quelques propos apaisants..."; in *Droit du pouvoir. Pouvoir du droit: Mélanges offerts à Jean Salmon*, Bruxelles: Bruylant, 2007, pp. 340-355.

policy-making. In particular, they can provide feedback on the success or otherwise of specific policies thereby contributing to the Commission's task of defining and implementing policies by fully taking into account its overall public policy responsibility.

#### **d) Contributing to project management**

As is the case with UNDP, the EU institutions rely on the specific expertise that NGOs can contribute to managing, monitoring and evaluating projects financed by the EU. The contribution of NGOs is particularly important in tackling social exclusion and discrimination, protecting the natural environment, and the provision of humanitarian and development aid.<sup>234</sup> The expertise, commitment and perseverance of NGO staff and their willingness to work under difficult operational conditions mean that NGOs are vital partners for the EU both in Europe and beyond.

#### **e) Contributing to European integration**

The lofty objective of achieving European integration is a constant process, where all actors are required to play their role. By encouraging national NGOs to work together to achieve common goals, the European NGO networks are making a significant contribution to the formation of a "European public opinion", usually seen as a prerequisite to the establishment of a true European political entity. At the same time this also contributes to promoting European integration in a practical way and often at grassroots level. Moreover, the ability of European NGO associations and networks to channel and focus the views of the various national NGOs is very useful for the EU. Therefore, strengthening the relationship between the EU institutions and NGOs can help both parties to be more successful in achieving their respective goals. At the same time, the Commission will need to recognise and support the development and independence of the NGO sector.

By way of conclusion we can summarise the various aspects of the relationship of EU institutions, in particular the European Commission, with NGOs as follows:

- Fostering the development of civil dialogue and civil society at the European level and the strengthening of civil society as an objective in cooperation programmes with non-member countries.
- Dialogue with and consultation of NGO representatives in the context of policy shaping. Certain NGOs and networks, especially those at European level, have been established or selected in order to provide information, experience and expertise. Some Directorates-General of the European Commission have established specific *fora* in order to provide a framework for dialogue.
- NGOs as information relays. European NGOs and their networks and national members, can serve as additional channels for the EU institutions to ensure that information on the European Union and EU policies reaches a wide audience of people concerned by and affected by its policies.

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<sup>234</sup> Marie-Cécile THIRION, "EU food aid and NGOs", in Edward CLAY and Olav STOKKE (eds), *Food aid and human security*, London, F. Cass, 2000, pp. 274-288.

– Funding of NGO-led activities, within the EU and abroad, which are coherent with and contribute to the implementation of policies agreed at European level. These programmes are characterised by a high degree of NGO ownership of the actions financed.

– NGOs as actors implementing EU programmes and projects, in particular in the field of non-member countries cooperation. In these cases, NGOs have been chosen as partners because of their specificity coupled with their expertise and technical capacity.

## B. Forms of cooperation

Regarding the requirements for the establishment of relations with NGOs, EU institutions have adopted flexible approaches concerning the forms that their collaboration with NGOs may take. The European Commission in particular envisages dialogue and consultation with NGOs as an important complement to the institutional process of policy-shaping. The specific value of these consultations derives notably from the Commission's right of initiative. Timely consultation with all stakeholders at an early stage of policy-shaping is increasingly part of the Commission's practice of consulting widely, in particular before proposing legislation, to improve policy design and to increase efficacy.

### i) *Ad hoc* contacts

In many fields, EU institutions have developed extensive contacts with NGOs in the context of policy-making. These contacts range from *ad hoc* meetings and the participation of NGO representatives in expert groups to more formalised arrangements such as regular meetings with European NGO associations and networks, or the participation of NGOs in advisory committees as part of a formal consultation process. The EU institutions, the Commission in particular, underline their faith in the need to remain open to outside input.<sup>235</sup> Therefore the institution remains open and accessible to a wide variety of organisations including NGOs which wish to put their views forward, in fields varying from agriculture or employment and social affairs to environment and humanitarian aid. Moreover the European Commission Directorates-General responsible for co-operation with non-member countries have a large number of meetings with NGOs, both European and non-European, on a range of issues.

While it is logical that consultation on policy-shaping and implementation of specific programmes or projects is best done at sector level, some more general cross-cutting coordination is desirable in certain circumstances. Such coordination is necessary in order for the partners from the EU and the NGO sector to have accurate and comprehensive information on each other.

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<sup>235</sup> European Commission, Communication "An open and structured dialogue between the Commission and special interest groups", 2 December 1992, *Official Journal of the European Communities*, C63, 5 March 1993.

## ii) Structured dialogue

A second form of interaction between the EU institutions and NGOs is the “structured dialogue”. Structured dialogue is the modality of EU institutions – NGOs relations based on an established practice of systematic, regular meetings with NGOs to discuss policy issues, though without the formal structure of a committee or other structure with operating rules. For example the European Commission services are holding biannual meetings with the member organisations of the Platform of European social NGOs. Sometimes the structured cooperation scheme is not a formal one as it is the case with the 25-year old tradition of quarterly meetings of the European Commission relevant services with the Liaison Committee of Development NGOs, a representative Europe-wide NGO structure. The agenda of these meetings contains both policy and procedural issues of mutual EC and NGO interest. What is valid for development happens is also relevant for trade, a field in which the competent Directorate-General has regular exchanges of view, both horizontally and sector-by-sector, with NGOs on issues related to trade policy and in particular the WTO. The cooperation in the field of trade has reached a point where NGO representatives accompany the European Commission delegation at the, (controversial from the viewpoint of numerous NGOs), WTO Ministerial Meeting.

Structured dialogue has been established also in the field of humanitarian aid in cases of natural and man-made disasters (Framework Partnership Agreement concluded by ECHO and more than 160 NGOs). In the sensitive field of environment, the head of the relevant Directorate-General meet twice a year with the biggest pan-European environmental NGOs (“Group of Eight”) to discuss the work programme of the Environment Directorate-General and the general relationship between the NGOs and this EC service. In an effort to avoid the failures of the past, during the biannual sessions, any problems encountered in the six months prior to the biannual session can be discussed. The Environment Directorate-General also organises twice-yearly a meeting “EU and Candidate Countries NGO Dialogue on Accession”.

Another field of structured dialogue between the EU institutions and NGOs has been provided by the presentation in Brussels, during a seminar hosted by the Commission in November 1998, to present to some 200 representatives of Brussels-based NGOs the *Vade-mecum on grant management*. Representatives of four NGO “families” (environment, social affairs, development aid and human rights) participated in the seminar. Representatives of the same four NGO “families” are in regular contact with the Grant Management Network on the implementation of the *Vade-mecum*.

## iii) Formalised consultation

NGOs may also be consulted during the decision-making process, on a particular issue by the European institutions, in particular the Commission on the basis of a formal commitment. Another form of formal relationship with NGOs is their participation as members or observers in advisory groups or consultative committees with defined procedures. This has been the case with the agricultural advisory committees which provided for about 40 years a formal mechanism for regular and systematic consultation by the European Commission of NGOs and socio-professional organisations. In the field of social economy, the Commission has established the

Consultative Committee for Co-operatives, Mutuals, Associations and Foundations, including the NGO sector, with the task to advise on issues affecting the EU social policy. Formal relations with NGOs are also provided for in the EU external relations, in particular in its relations with ACP (African, Caribbean and Pacific) states at the level of the institutions and for implementation of concrete programmes.

In order to establish the above forms of cooperation with NGOs, the EU institutions attach particular attention to the representativeness of the NGO interested in cooperating with the EU. Such representativeness concerns both the number of states where the NGO is active and the persons that participate in the organisation. Equally significant is the track record of the interested NGO as well as its ability to contribute substantial policy inputs to the discussion.

#### iv) Project partners

As already briefly pointed out, increasingly NGOs are selected by the European Commission in particular as partners for the implementation of concrete projects financed or co-financed by European funds. It is not an exaggeration to say that NGOs are the European Commission's main project partners in a growing number of policy fields. This form of cooperation means in practical terms that EC funding (in all its various forms) to NGOs account for an important part of Community expenditure, providing thus the European Community with a flexible instrument to support implementation of its various policy objectives. The major part of EC funding to NGOs is not paid directly by the European Commission but through the national and regional authorities of the member states. This is the case, for example, of most payments under the structural policy financial instruments. However, the Commission also pays grants direct to beneficiaries (public or private bodies – universities, businesses, interest groups, NGOs – and in some cases individuals) in pursuance of common policies in a wide number of fields (external policies, research and development, education, training, the environment, consumer protection, and information policy).

This particular form of cooperation poses a number of questions that need to be resolved. One of the problems encountered in allocating funding to specific project implementation is the challenge of managing the financing both by the European Commission and by the recipient NGOs. The Commission in some cases opts for concentrating the available resources on a smaller number of larger projects with a view to alleviating the administrative burden of grant management. It is however worth mentioning, and the Commission is not unaware,<sup>236</sup> that this approach cannot be applied across the board as in certain policy fields the small size of a project run by an NGO might be a necessary precondition for implementing it successfully.

Another issue of concern in the management of grants awarded to NGOs is the way in which the Commission applies its procedures that are aimed at ensuring the sound management of Community funds. As the European taxpayer's money must be spent in a judicious, economic and transparent way, the award and management of EU

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<sup>236</sup> *The Commission and Non-Governmental Organisations: Building A Stronger Partnership*, Commission Discussion Paper presented by President Prodi and Vice-President Kinnock, COM (2000) 11 final, 18 January 2000, p. 16.



grants are subject to specific conditions and requirements. The applicant NGO must demonstrate its capacity, both operational (technical and managerial) and financial. This means that the Commission must be able to assess the capacities of NGOs in order to ensure that they are capable of carrying out the projects entrusted to them and also of accounting properly for the funds involved.

At the same time some characteristics of the NGO sector such as the small size of the organisations, a sometimes tight cash flow situation, difficulties in providing financial guarantees, may well mean that their internal structure and capacities are not necessarily well adapted to meet the administrative requirements placed on them by the EU institutions when they apply for grants. In recent years, for instance, increased scrutiny linked in particular to the question of financial security of grants has resulted in a tightening of requirements which has led to longer delays in a number of cases. In particular, the question of financial guarantees to be provided by NGOs has led to some friction in recent times. The challenge is to design management procedures which provide the necessary guarantees on the proper use of public money while at the same not placing an unnecessary administrative or financial burden on NGOs since the Commission is often not the only donor providing funds to a particular NGO. The Commission must be prepared to allow the NGO sufficient flexibility to comply with the requirements of different donors. It must be accepted however that, particularly for innovative projects or operations carried out in developing countries, or in the framework of humanitarian or emergency actions, a risk component is implicit and unavoidable for the timely and successful implementation of an EC-funded project.

### *C. Guidelines for effective EU institutions – NGO interaction*

EU institutions are complex structures with often arcane rules and practices of functioning. NGOs are diverse in many aspects. In their interaction the differing characteristics lead to difficulties and setbacks. These problems affect all types of EU institutions – NGO cooperation.

#### *i) Weaknesses of the existing system*

In the first place the cooperation of EU institutions, in particular the European Commission, with NGOs is normally organised by policy areas (environment, social affairs, humanitarian and development aid, trade, etc). This implies considerable disparities and inequalities in the relationship between NGOs and the Commission from one sector to another with regard to access to information, the way dialogue and consultation is organised and the availability of core-funding. Such differences are justified by the specificity of different sectors, however there is a feeling in the NGO community working with EU institutions that there should be a greater effort at a coherent approach.

A serious impediment for promoting mutual beneficial cooperation between EU institutions and NGOs is inadequate information. On the one hand, there is a lack of sufficient information for NGOs in particular on funding and financial procedures. It is important for the EU institutions, the Commission in the very first place, to adopt clear rules on application procedures. The Commission needs to provide

comprehensible application forms and better guidance with respect to their completion. This is to help NGOs that do not have a sophisticated administrative structure, to benefit from the financial assistance by the Commission, without placing increasing bureaucratic burdens on the organisations. As part of its overall policy on transparency, the Commission should provide better information to NGOs and improve communication with them as a means of building a true partnership. On the other hand, the NGO sector is a dynamic one which is constantly evolving. Commission departments, as well as services of the other EU institutions often find it difficult to follow this evolution. In particular they lack adequate information on the various NGOs with which they come into contact.

The afore mentioned impediments often lead to delays in handling applications from NGOs, ill-adapted procedures particularly for dealing with small projects, misunderstandings and eventually in a breakdown in confidence. The ways and means of redressing this situation, which should not be exaggerated lie with both parties of the relationship. For its part the European Commission recognises that it must improve and strengthen its relationship with NGOs. The NGOs must recognise their own responsibilities in making the relationship work. It is of crucial importance that each side should be able to acknowledge and take into account the priorities and realities of the other. This does not, of course, mean coincidence of views, methodology or general philosophy.

In the area of policy dialogue, the Commission has to discharge its inter-institutional responsibilities in this area, as well as offering, within these boundaries, dialogue and consultation to the NGOs as representatives of civil society. The NGO working with the EU institutions must recognise and take into account this formal institutional set-up. Other obligations might relate to representativity, a recurrent problem for the legitimacy of NGO action (see *supra*), proper communication of information to member organisations and respect of confidentiality of information where required.

In the field of funding, NGOs must accept, for example, that there will always be a legitimate need for the EU institutions, the Commission in particular, to impose certain conditions and controls to safeguard EU funds. NGOs have a duty to demonstrate that they have the expertise, management systems and internal quality control systems appropriate to the work they are undertaking in behalf of the Commission or other EU institutions.

## ii) Initiatives for improving EU institutions – NGO interaction

### a) Improving dialogue and consultation

In order to overcome the weaknesses of the existing system, it is important to develop a framework of principles for identifying best practice in the interaction between EU institutions and NGOs. In this endeavour the following issues are pivotal:

- *Definition of the scope and nature of the interaction (dialogue, consultation, etc.) between EU institutions and NGOs;*
- *Clarity of criteria and procedure for the selection of NGOs to be included in the various consultation processes;*
- *Joint establishment of the agenda of any consultation process by the concerned EU institution and NGOs;*

- *Bringing the opinions voiced by the NGOs to the attention of the department/officials of the relevant EU institutions and ensuring, where possible, that NGOs receive appropriate feedback on how their contributions and opinions have affected the eventual policy decision, thereby making the relationship a real dialogue;*
- *Assistance in the organisation, running and the follow-up of any dialogue consultation procedure.*

### **b) Improving transparency**

During the last fifteen years there has been in the European Union a strong commitment towards openness and transparency<sup>237</sup>. The European leaders that elaborated the Maastricht Treaty declared, in 1992 that “The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public’s confidence in the administration. The Conference accordingly recommends that the Commission submits to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions.”<sup>238</sup> This intergovernmental initiative was followed by the adoption, at the Interinstitutional Conference (Luxembourg, 25 October 1993), of a joint *Interinstitutional Declaration on democracy, transparency and subsidiarity*, expressing the adherence of the Council, Parliament and Commission to the objective of transparency in their activities<sup>239</sup>.

It is important to underscore the introduction of the transparency concept in the EU aimed at the information of business and other economic actors. This was mainly due to the originally predominant economic character of the European Communities.<sup>240</sup> The NGO community became a beneficiary of this mentality change in the EU at a later stage, in conjunction with the rise of visibility and influence of civil society in European and world affairs. In the field of EU institutions – NGO interaction greater transparency means, in practical terms, providing more information on how the institutions concerned select (or have selected) their partners for dialogue, consultation, project management or other possible form of interaction. Another aspect of transparency is also adequate information on the EU structures that welcome NGO contributions, their composition and some details about the NGOs participating. On the other hand, and in a reciprocity move, where it is the NGO community that nominates interlocutors for dialogue with EU institutions, transparency requires that the NGO associations and networks provide information on the criteria and reasons for selecting these NGOs.

The commitment of the EU to promoting greater transparency in its functioning and endeavours became obvious during the elaboration of the draft Treaty establishing a Constitution for Europe<sup>241</sup>. Though the draft Constitutional Treaty did not enter into force and was later abandoned, the EU institutions did not wait for the entry into force

<sup>237</sup> Juliet LODGE, *Communicating Europe: transparency and democratic EU governance*, <http://www.leeds.ac.uk/jmce/p-commun.htm> (visited on 6 February 2006).

<sup>238</sup> Maastricht Treaty Intergovernmental Conference, Final Act, Declaration no. 17.

<sup>239</sup> *Bulletin of the European Communities*, no. 10-1993, p. 118.

<sup>240</sup> Christian TIETJE, Karsten NOWROT, “Der Anwendung der EG-Transparenz-Verordnung mit Blick auf zivilrechtliche Schadenersatzansprüche in Wettbewerbssachen”, *Zeitschrift für Rechtsvergleichung, Internationales Privatrecht und Europarecht*, 2004, pp. 56-64.

<sup>241</sup> Draft Treaty establishing a Constitution for Europe adopted by consensus by the European Convention on 13 June and 10 July 2003 and submitted to the President of the European Council in Rome on 18 July 2003.

of the Treaty establishing a Constitution for Europe in order to start implementing the measures proposed in the relevant provision of the draft. The European Convention mandated to negotiate the draft constitutional treaty agreed to include article 49. This draft provision is very instructive with regard to the role that EU is tending to recognise to the civil society and its organisations and therefore it is not redundant to quote it *in extenso*:<sup>242</sup>

“Article 49

Transparency of the proceedings of Union Institutions

1. In order to promote good governance and ensure the participation of civil society, the Union Institutions, bodies and agencies shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council of Ministers when examining and adopting a legislative proposal.
3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State shall have a right of access to documents of the Union Institutions, bodies and agencies in whatever form they are produced, in accordance with the conditions laid down in Part III.
4. A European law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.
5. Each institution, body or agency referred to in paragraph (e) shall determine in its own rules of procedure specific provisions regarding access to documents, in accordance with the European law referred to in paragraph 4.”

This is not the place to proceed to an in-depth analysis of the above article. For the purposes of the present work it is sufficient to notice the acknowledgement of the close relationship between, on the one hand, good governance and participation of civil society actors and on the other openness and transparency (paragraph 1). Equally important is the enunciation of the legal principle according to which the general rule for the functioning of the institutions, bodies and agencies of the EU is openness. Confidentiality should be seen as an exception that is specifically provided for (paragraph 1). Such exception is not allowed in the meetings of the European Parliament and the Council of Ministers in the fulfilment of their legislative tasks (acting as European co-legislators) (paragraph 2). The following three paragraphs regulate in general terms the right of the citizens of the Union and of natural and legal persons residing or having their registered office in a EU member state to have access to documents of the EU institutions, bodies and agencies and provide for the adoption of a specific European law detailing the principles of, conditions for and limits to the exercise of this right. It is clear that beneficiaries of this right are also NGOs, under the condition that they have legal personality in one of the Union’s member states.

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<sup>242</sup> It is submitted that, independently of the fate of the Treaty establishing a Constitution for Europe, the enhanced role of civil society and the commitment to transparency in EU activities of interest to NGOs, will remain as a point of overall convergence among the EU member states, and as such it already constitutes a guiding principle for the action of the EU institutions in the field.

Many of the elements of the aforementioned article of the draft constitutional treaty survived in the recently concluded (December 2007) Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community. The new Article 16 A, paragraphs 1 and 2 of the Treaty on the Functioning of the European Union (new title of the Treaty Establishing the European Community) reiterate the two first paragraphs of Article 49 of the draft constitutional treaty:

- “1. In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council of Ministers when considering and voting on a draft legislative act.”

In addition, the new Article 8 B, paragraphs 2 and 3 of the Treaty Establishing the European Union provide:

- “2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.”

*- European Commission*

The European Commission championed the cause and “made transparency one of its strategic objectives for the 2005-2009 mandate period”.<sup>243</sup> In particular it has launched a far-reaching process of administrative reform which includes among its aims a more service-oriented behaviour and an improvement in the management culture of the Institution. A greater effort is being made to increase transparency and accountability to principal interlocutors as well as improving efficiency for instance by speeding up payments to all beneficiaries.

Even before the referenda in France and in The Netherlands, that resulted in the non-ratification by these countries of the Treaty establishing a Constitution for Europe, the Commission held an orientation debate with the theme “A Possible European Transparency Initiative” (18 May 2005), based on a communication presented by the President Barroso and Commissioners Wallström and Kallas<sup>244</sup>. The objective of this debate was to first to assess the achievements in the EU in the fields of transparency and accountability. Second, to consider what further steps could be taken to increase the transparency with which the EU handles the responsibilities and funds entrusted to it by European citizens. As an outcome of this debate, the European Commission launched the idea of a *European Transparency Initiative* and set up an Interdepartmental Work Group (chaired by the Secretariat-General), with the task of presenting, by October 2005, a report analysing the points raised in the

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<sup>243</sup> Siim KALLAS (Vice-President of the European Commission and Commissioner for Administrative Affairs, Audit and Anti-Fraud), “The Need for a European transparency initiative”, Speech/05/130, at the European Foundation for Management, Nottigham Business School, Nottigham, 3 March 2005, p. 3.

<sup>244</sup> Communication to the Commission from the President, Mr Kallas and Ms Wallström for an orientation debate on a possible European Transparency Initiative, SEC(2005)644/4, 17 May 2005.



communication and the orientation debate, covering the technical and legal feasibility and implications in terms of resources of concrete measures under the planned European Transparency Initiative<sup>245</sup>.

As a first step to improve information about ongoing and planned consultations the European Commission committed itself to announce all major consultative meetings on the EU's EUROPA website, including links to more specific information with the appropriate Directorate-General. Moreover The Commission is working towards compiling and incorporating into the special EUROPA website on NGOs<sup>246</sup>, a list of the committees and working groups involved in formal and structured consultation procedures and the NGO belonging to them. Where consultations are held on a regular basis with a limited number of NGO associations and networks and individual NGOs (e.g. in the context of advisory committees or other forms of structured consultation processes), it seems also desirable, in the interests of transparency, to provide the general public with some information about these structures and NGOs which belong to them. This information could include, for example, the legal status of the NGOs, their objectives, membership structure, and main sources of financing.

On 9 November 2005 the European Commission has formally adopted a *Transparency Initiative* proposing better access of EU citizens and civil society to a wider range of documents, including letters sent to commissioners and lists of EU fund recipients. The initiative requires the EU executive to take a number of immediate steps, such as to “improve the coverage of the existing commission register of documents.” The move should lead to European Commission's documents, including mail to both the Commission as such and its individual members, being accessible for public scrutiny through a better-developed database. This is a further step to the existing since 2001, regulation 1049/2001 providing for public access to documents of the European Parliament, Council and Commission<sup>247</sup>. The Initiative provides also that, in view of publishing EU fund recipients, the Commission will “create a central web portal, acting as a single entry point, which will establish links to information on end beneficiaries of funds” which are managed by directorates-general. The Commission's portal should then be interconnected with the websites of member states and provide information about EU beneficiaries, controlled at national level<sup>248</sup>. Moreover the Commission is presently reflecting on the sensible issue of lobbying transparency and ethics. The result of this brainstorming will be of great interest to the NGO community, taking into account the concerns expressed with regard to some advocacy and lobbying activities of non-state actors, in particular professional associations but also NGOs. Such concerns tarnish sometimes the public image of the non-state actors and may have an indiscriminate negative impact also to activities of NGOs that do not speak in the name of professional actors.

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<sup>245</sup> Commission Staff Working Document, Report of the Inter-Departmental Working Group on a possible “European Transparency Initiative”, SEC(2005) 1300 final (annex to the Communication to the Commission from the President, Ms. Wallström, Mr. Kallas, Ms. Hübner and Ms. Fischer Boel proposing the launch of a European Transparency Initiative, 9 November 2005).

<sup>246</sup> See [http://europe.eu.int/comm/sg/sgc/lobbies/index\\_en.html](http://europe.eu.int/comm/sg/sgc/lobbies/index_en.html) and [http://europe.eu.int/comm/echo/en/index\\_en.html](http://europe.eu.int/comm/echo/en/index_en.html).

<sup>247</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission document, *Official Journal of the European Communities*, L 145, 31 May 2001, pp. 43ff.

<sup>248</sup> Lucia KUBOSOVA, “Letters to commissioners to go public in EU transparency drive”, EUOBSERVER/ Brussels, 9 November 2005.

On 1 February 2006 the Vice-President of the European Commission, M. Wallström, presented a White Paper on a European communication policy<sup>249</sup>. The White Paper aims at establishing a European communication policy that focuses on citizens and civil society. It aims to promote dialogue with, rather than monologue of, European institutions. The proposals therein are to be discussed with several stakeholders at meetings organised by the European Commission to that effect. The consultation period during which institutions, governments, industry, NGOs, think tanks and citizens were given the opportunity to comment on the ideas put forward in the White Paper ran from February to July 2006, and, as expected, it drew the interest of a wide public and mobilised the “European public opinion” in the drive towards openness of the European institutions to the citizens. In the meantime (May 2006), the European Commission addressed a relevant Communication to the Council on the European Union, entitled *A Citizens’ Agenda: Delivering Results for Europe*, which contained concrete proposals for enhancing the civil society and citizens’ participation in the affairs of the European Union.<sup>250</sup>

- *Council of the European Union*

In a parallel, and equally significant move, the Council of the European Union decided, in December 2005, to render its (already open to a very large extent) proceedings more transparent and accessible to the public. The decision had immediate effect and enumerates “practical steps to improve openness and transparency of its formal sessions and to reach the widest possible audience”<sup>251</sup>. The approved measures include public attendance to all sessions of the EU Council of Ministers under the co-decision procedure, where the legislative proposals of the European Commission, given their importance, are presented orally by the Commission and to the ensuing debate on them. Equally open to the public shall be all final Council deliberations on legislative proposals under the co-decision procedure, i.e. all debates that take place once the other institutions or bodies have submitted their opinions. The relevant items on the provisional agenda for the Council session concerned will be marked with the words “public deliberation”. The vote on all legislative acts adopted under the co-decision procedure is taken in public and the outcome of the vote shall be displayed visibly on the television screen relaying the vote to the public.

In addition to these measures with immediate effect, which allow citizens and interested organisations to follow the positions taken by ministers in meetings of the EU Council, the European Union’s main decision-making institution, the Council indicated its intention to take the transparency initiative forward. It decided that it will hold more debates in public on important new legislative proposals on items other than those covered by the co-decision procedure. It will enable the EU Presidency to propose that the Council opens up wide public deliberations on non-legislative issues, if they involve important issues affecting the interests of the Union and its citizens. In order to implement the above mentioned decisions, the Council of the European Union announced that the general public and the media will be informed in advance of upcoming public discussions in Council sessions. There will be announcements on

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<sup>249</sup> Doc. COM(2006) 35 final, 1 February 2006.

<sup>250</sup> Commission of the European Communities, Communication from the Commission to the European Council, *A Citizens’ Agenda: Delivering Results for Europe*, COM(2006) 211 final, Brussels, 10 May 2006.

<sup>251</sup> Council of the European Union, 2702<sup>nd</sup> session, Brussels, 21 December 2005, Conclusions on Improving openness and transparency in the Council (15834/05 + ADDI).

the Council's website and Council agendas will be published on the Council's public register. Additionally, in order to ensure as wide an access as possible to the general public, all public debates and deliberations, as well as public votes on co-decision items, will be broadcast in all languages through video-streaming on the Council's website starting from the summer 2006. Finally it was decided that the functioning of all these practical steps would be assessed during 2006, and in the light of this assessment, the Council would reflect on all possible options for further improving openness and transparency, including, *inter alia*, the possibility of amending the rules of procedure. In this context and in view of its assuming EU Presidency (July – December 2006), Finland announced that “in order to improve openness to the public of the Council's activity, transparency w[ould] have a major role in communications during the Presidency” and to this effect it included in the programme of Presidency the proposal that “Council sessions on all key issues and matters of interest to citizens be made public”<sup>252</sup>.

These decisions of the EU Council of Ministers and initiatives of individual EU member states seem quite an advanced step towards transparency. When fully implemented they will allow NGOs to have a more accurate insight into the EU endeavours. It will enable them to better prepare and present their positions in the appropriate EU fora. The effort however towards improving transparency and, by way of consequence, better interaction of NGOs with EU institutions should remain a constant concern of NGOs. The European Ombudsman, Mr. Nikiforos Diamantouros, who has been seized by a complaint against the lack of transparency in the EU Council's deliberations, highlighted the need for this EU institution to do better. Acknowledging the aforesaid decision of the Council of 21 December 2005, the European Ombudsman stated that “it is obvious that more steps remain to be taken” in this field, and that the Council had “only partially” responded to his demand for full transparency of its legislative activity<sup>253</sup>. The Ombudsman made thus an appeal for the extension of the transparency in all the debates of the EU Council of Ministers<sup>254</sup>. Similar plea was voiced also by the Europeans Parliament's Committee on Petitions in February 2006 and debated in the Parliament Plenary in April 2006<sup>255</sup>.

NGOs in the European Union and in the Union's partner countries should pay great attention to the developments in the EU concerning transparency and accountability as they are, by their very nature, extremely significant for the role that NGOs are called to play in the EU context, and enhance their potential for fruitful interaction with the EU institutions.

### **c) Establishing contact/focal points for NGOs**

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<sup>252</sup> Ministry of Justice, Finland, “Transparency of European Union decision-making to increase during Finland's Presidency”, Press release, 31 March 2006.

<sup>253</sup> “Ombudsman criticises EU council opaqueness”, Interview of European Ombudsman, Mr. Nikiforos DIAMANTOUIROS, to Mark BEUNDERMAN, *EUObserver*, 20 January 2006, p. 1.

<sup>254</sup> “The [21 December 2005] decision is limited to the Council's first deliberations after the European Commission has presented its proposal and the final vote. The debates in between are still closed to the public.”, *ibid*.

<sup>255</sup> European Parliament, Committee on Petitions, *Report on the Special Report from the European Ombudsman following the draft recommendation to the Council of the European Union in complaint 2395/2003/GG concerning the openness of the meetings of the Council when acting in its legislative capacity (2005/2243(INI))*, Doc. A6-0056/2006, 2 April 2006 (Rapporteur: David HAMMERSTEIN MINTZ).

There is plan by the European Commission to set up a number of “one-stop-shops” or information points in the European Commission departments at the headquarters and delegations in the member states and abroad working with NGOs, in order to provide the latter with a better service. The role of such information points would have to be carefully defined and the resource implications studied. Regarding information on funding, it would be more logical to make such information points available to all potential beneficiaries, although for many departments, NGOs are the main beneficiaries of direct funding from the Commission.

It also seems desirable to provide a horizontal department for general coordination of the relationship between the European Commission and the NGOs. This department could play a role in promoting and widening the debate on NGO issues amongst the Commission services whilst respecting the specificity of European Commission – NGOs relations in the different sectors. In any case, given the specific nature and competence of the different NGO communities, the main responsibility for managing the Commission – NGOs relationship in each sector should be kept within the respective Commission department. This department would have responsibility in particular for coordinating measures to improve both information for NGOs as well as information on NGOs for European Commission departments.

## VIII

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### COMMON RECOMMENDATIONS FOR SUCCESSFUL ADVOCACY

We have seen the particular terms, criteria and conditions that a number of international institutions require for establishing and maintaining formal or working relations with civil society organisations. The fulfilment of such criteria by interested civil society organisations is a necessary condition for a fruitful and mutually beneficial cooperation with inter-governmental instances.

There is however a number of practical guidelines generally valid for effective advocacy by civil society organisations. These guidelines can yield successful results when followed by civil society organisations in their endeavours and participation in most inter-governmental organisations and institutions.

- Properly plan dialogue or consultations with intergovernmental organisations and display a high level of commitment by all participants throughout the process.
- Provide accurate and reliable information on the topic on which you are about to approach (national or international) decision makers. To establish legitimacy it is important that NGOs consult their own members properly, thereby helping to ensure the quality and representativeness of the NGO input.
- Do not assume that the (national or international) decision makers are as knowledgeable about the issues you want to discuss with them.
- Be clear so that the authorities you address understand the underlying issues and have a clear picture of the existing problems and the remedying actions you promote; use language and style accessible to the NGO audience and avoid being pedantic.
- Introduce your organisation and yourself(ves) in every contact with the (national or international) decision makers.
- Whenever possible (in newsletters, press releases, activity reports, etc.) try to positively mention the activities of the international institutions you are dealing with and the relations your organisation has with them.
- Whenever possible try to be physically present in meetings with or of organs or the international organisations you want to collaborate with – face-to-face contacts are generally more fruitful than correspondence or telephone calls.
- Assess the availability of your interlocutors; try to avoid presenting your case in hectic periods of the organisation or when it is faced with complex internal problems and disputes; in the latter cases it is advisable to keep a low profile



and to wait for the time when the organs are more receptive. Make more effective time management.

- Always have a positive attitude, even when your requests are not met with the expected or anticipated acceptance.
- Self-regulation on the part of NGOs should be considered. A small number of NGOs have caused problems by not showing responsible behaviour (such as carelessness in granting accreditation to insufficiently vetted persons). A prime condition is to have qualified personnel. Skills can be developed through quality training programmes and mentoring. Some NGOs misuse the time at their disposal, others are careless and repeat what has already been said. Repetition is counter productive and irritates.
- A constructive consultative status is a two-way process, with information sharing going in both directions.
- NGOs need to be respectful of the prerogatives of the governments.