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Accountability of Non-Governmental Organizations in Global Governance

Steve Charnovitz

INTRODUCTION

The issue of the accountability of NGOs in global governance has received increased attention in recent years. This chapter will analyse the issue, consider whether any public problems exist, and make recommendations on what could be done. The first part provides an overview of the current debate on NGO accountability, including the most significant commentary and scholarly work. The second part presents a new analysis of how to meet the challenge of enhancing NGO performance and accountability in the global arena. I will contend that accountability is needed and feasible where tasks are delegated to NGOs, but that accountability is an ill-conceived goal when the NGO acts autonomously to pursue its own interest. In general, NGO advocacy does not trigger a need for external accountability to the community and, in any event, no clear accountability holder exists. Certainly, one should not expect NGOs to be accountable to governments. Nevertheless, NGOs do need to be internally accountable (to directors, members and management), so it is wrong to say that NGOs are accountability-free actors.

I propose that the debate about NGO external accountability be reconfigured to seek better performance rather than accountability. Ideally, voluntary standards can be devised for discrete areas (for example, humanitarian work) and NGO performance can be independently rated. Such initiatives will help to place a check on NGO misbehaviour without relying on a form of control by government that would be inappropriate to a free society.

A SURVEY OF THE DEBATE ON NGO ACCOUNTABILITY

In recent years, the participation of unofficial groups in international meetings has led to heightened concerns regarding the accountability of these groups. In this section I will examine these concerns. In doing so, I will take note of some historical moments relevant to addressing claims about accountability. NGO accountability is connected to the much larger topic of civil society and its relationship to the individual, the market and the state (Bucholtz, 1998; Ehrenberg, 1999). For reasons of space, I will not venture into the caverns of debate about the meaning and role of civil society. Instead, I will focus on one feature of civil society, the NGOs, particularly those that think and/or act globally.

Because NGOs have been internationally active for over two centuries (Charnovitz, 1997), there are many historical episodes one could use as a springboard into a discussion of NGO accountability. Yet, before NGO influence is strong enough on a global scale to spark demands for accountability, such activist NGOs must exist. Therefore, an appropriate place to start will be an authoritative statement articulating the legitimacy of NGOs.

The earliest I know of is *Rerum Novarum*, the 1891 Encyclical of Pope Leo XIII on Capital and Labour, which had an important influence on the development of liberal regimes to oversee labor unions (Pope Leo XIII, 1891). The Encyclical contrasts 'civil society' with the 'lesser societies', and indicates that the latter, the private associations, 'are now far more common than before' (paras 51, 54). The Encyclical offers 'cheering hope for the future provided always that the associations we have described continue to grow and spread, and are well and wisely administered' (para. 55). The societies described in the Encyclical are societies of working men, employers and benevolent foundations (para. 48).¹

Entering into such societies is 'the natural right of man' (para. 51). Thus, the Encyclical explains that for a state to forbid its citizens to form associations contradicts the very principle of the state's existence, namely, to protect natural rights. The Pope concedes that the law should intervene to prevent certain bad associations, but counsels that 'every precaution should be taken not to violate the rights of individuals and not to impose unreasonable regulations under pretense of public benefit' (para. 52). Moreover, the state 'should not thrust itself into their [the associations'] peculiar concerns and their organization, for things move and live by the spirit inspiring them, and may be killed by the rough grasp of a hand from without' (para. 55). The Encyclical provides a philosophical underpinning for relaxed state regulation of NGOs.

The term 'non-governmental organization' came into use at least as early as 1920. In that year, Sophy Sanger employed the term in a discussion of how such organizations had not been able to participate in the first multilateral negotiations for labour treaties in 1906 (Sanger, 1920).² Sanger contrasted this pre-war practice to the advent of the International Labour Organization (ILO)

in 1919. The constitution of the ILO at Versailles call for the participation of representatives chosen in agreement with the workers who exist, which are the members of each member state send one representative and one worker. The ILO was created, however, because only

A question regarding the ILO was raised from The Netherlands Labour Conference in 1920, which was contested by the Netherlands Labour Conference extended Government, but asked the League of Nations to refer the matter to the International Justice (Pope Leo XIII, 1891) before and be decided if the ILO had not violated the Treaty of Versailles before it, the ILO was referred to the Labour Office and two Reports, Advisory Opinions and Recommendations.

The openness of the ILO to participation in the history of the ILO was a question were to come before the International Court would not allow participation in the ICJ. The ILO had received requests by NGO participation in contentious cases were referred to the international arena in the 1920s.

The ILO Constitution delegates are to be 'representatives of workers and employers'. Typically, the constitution of the ILO NGO participation depends on the role of the NGO is to participate in the work of the United Nations. The ILO Council may make suggestions to non-governmental organizations and may invite them to participate. Thus, the stated rationale for the ILO is to promote the well-being of workers rather than the broadest possible participation.

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in 1919. The constitutional provisions of the ILO set out in the Treaty of Versailles call for the participation of 'non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are the most representative of employers or workpeople, as the case may be, in their respective countries' (ILO, 1919, Article 3.5). In the ILO, each member state sends four delegates – two from government, one employer and one worker. The employers and workers are not members of the ILO, however, because only nation-states are members.

A question regarding the representativeness of the ILO worker delegate from The Netherlands arose during the third session of the International Labour Conference (1921) when the Dutch Government's choice was contested by the Netherlands Confederation of Trade Unions. The ILO Conference extended the credential to the delegate chosen by the Dutch Government, but asked the ILO Governing Body to request the Council of the League of Nations to seek an advisory opinion from the Permanent Court of International Justice (PCIJ). This disagreement became the first matter to come before and be decided by the PCIJ. In 1922, the PCIJ held that The Netherlands had not violated the Treaty of Versailles in making its selection. In considering the matter before it, the PCIJ welcomed oral statements from the International Labour Office and two international labour union federations (1 World Court Reports, Advisory Opinion No. 1).

The openness of the PCIJ to statements by NGOs was an important episode in the history of NGO roles in international law. If an NGO-related question were to come to the International Court of Justice (ICJ) today, that Court would not allow NGOs to submit their own statements. No NGO participation in the ICJ has occurred since it was established in 1946, and the last requests by NGOs for an opportunity to submit amicus briefs in non-contentious cases were denied (Shelton, 1994).³ The ICJ may be the only international arena in which NGOs have lost participatory opportunities since the 1920s.

The ILO Constitution is unusual in positing that the non-governmental delegates are to be 'representative' of specified constituencies within a country. Typically, the constitutions of international organizations that provide for NGO participation do not call for a representative body or suggest that the role of the NGO is to represent anyone in particular. For example, Article 71 of the United Nations (UN) Charter states that: 'The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence'. Thus, the stated rationale for NGO consultation is the concern of the NGO rather than the breadth of its membership or its representativeness.

Nevertheless, when it implemented Article 71 in 1950, the UN Economic and Social Council (ECOSOC) formulated a set of principles providing that the consulted organization 'shall be of recognized standing and shall represent a substantial portion of the organized persons within the particular field in which it operates'.⁴ This requirement, to some extent, has been carried forward into the current ECOSOC Credentialing Arrangements, adopted in 1996.

These Arrangements state that the NGO 'shall be of recognized standing within the particular field of its competence or of a representative character'. The Arrangements also state that: 'The organization shall have a representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes'.⁵

Although most of the international legal agreements that provide for public participation in international organizations extend that participation to NGOs rather than to individuals, one prominent exception is the World Bank Inspection Panel that permits requests for inspection from 'any group of two or more people in the country where the Bank-financed project is located who believe that as a result of the Bank's violation their rights or interests have been, or are likely to be, adversely affected in a direct and material way'.⁶ The Inspection Panel is a good example of a clear accountability mechanism for an international organization because the Panel reviews whether the Bank's actions are consistent with a prescribed set of standards – in this case, the Bank's own rules.

Overview of NGO accountability literature in international law and politics

A voluminous literature exists on the accountability (or lack thereof) of NGOs. Those writing on NGO accountability include lawyers, political scientists, economists, journalists and others. Some of the studies discussed below mix the issues of legitimacy, democratic accountability and plain accountability.

Starting with some opinion-shapers, in 2003 *The New York Times* (21 July) editorialized that: 'non-governmental organizations are now part of the power structure too'. They receive donations from the public and advocate policies that each group claims are in the public interest. As they become part of the established political landscape worldwide, 'these groups owe it to the public to be accountable and transparent themselves' (*The New York Times*, 21 July 2003). Pursuing a similar theme shortly afterwards, *The Economist* ran an influential essay 'Who Guards the Guardians?', which put forth the 'novel idea' of 'auditing NGOs' (*The Economist*, 20 September 2003). More so than any other general interest journal, *The Economist* has been attentive to the phenomenon of NGOs. In 2000, *The Economist* asserted that NGOs 'can get into bad ways because they are not accountable to anyone' (29 January 2000).⁷

Perhaps the most critical perspective on NGOs comes from John Bolton. Writing in 2000 before he joined the Bush Administration, Bolton expressed concern about the 'extra-national clout of NGOs' in global governance and worried that 'Civil society also sees itself as beyond national politics, which is one of the reasons its recent successes have such profoundly anti-democratic implications' (Bolton, 2000). The problem, as analysed by Bolton, is that NGO participation 'provides a second opportunity for intrastate advocates to

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mechanisms that provide for public participation to NGOs. The position is the World Bank's position from 'any group of two or more persons who are located where their rights or interests have been affected in a direct and material way'.⁶ The stability mechanism for an international treaty depends on the views whether the Bank's standards – in this case, the

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(or lack thereof) of NGOs. Lawyers, political scientists, and others discussed below mix and plain accountability. *The New York Times* (21 September 2003) states that 'the public and advocate groups are now part of the global movement. As they become part of these groups owe it to the public' (*The New York Times*, 21 September 2003). More recently, *The Economist* (29 September 2003) stated that 'NGOs are not accountable to anyone' (29

September 2003). This comes from John Bolton. In his article on global governance and international politics, which is widely known for its profoundly anti-democratic stance, Bolton, is that NGO advocates to

reargue their positions, thus advantaging them over their opponents who are either unwilling or unable to reargue their cases in international fora'. Moreover, he contended that 'the civil society idea actually suggests a "corporatist" approach to international decision-making that is dramatically troubling for democratic philosophy because it posits "interests" (whether NGOs or businesses) as legitimate actors along with popularly elected governments'.

Bolton, who is known for speaking his mind, went even further to claim that such corporatism is synonymous with fascism and that 'Mussolini would smile on the Forum of Civil Society' while 'Americanists would not'.⁸ Yet this assertion by Bolton elides the fact that the Italian dictator and the fascist movement were seeking to control associations and to suppress any independence from the state (Tannenbaum, 1969). Bolton does not advocate suppressing NGOs, but he seems to want a government to shut its eyes to them. Bolton's article fails to explain why he thinks that 'Americanists' (a term he does not define) should not smile on a Forum of Civil Society. No other published criticism rivals Bolton's venom towards NGOs. All of the studies discussed hereafter offer criticisms of the NGO role within an analytical framework that accepts the legitimacy of voluntary, independent associations.

Several years ago, Kenneth Anderson wrote an article about the efforts by NGOs during negotiations for the treaty on landmines and he used that case study to offer more general observations on the NGO role (Anderson, 2000). Anderson's article made an important contribution to the international law scholarship on NGOs. Anderson calls attention to the development of a 'romance', 'partnership' or 'symbiotic' relationship between international NGOs, sympathetic states and international organizations. Anderson objects to this relationship because, in his view, 'international NGOs' are not conduits from the 'people' and do not operate from the bottom up.⁹ Rather, he says, 'the glory of organizations of civil society is not democratic legitimacy, but the ability to be a pressure group' that will speak horizontally to other global elites. Such a horizontal conversation has a 'worthwhile, essential function in making the world – sometimes at least, a better place – but it does not reduce the democratic deficit' (Anderson, 2000).

These observations by Anderson about the NGO role show considerable insight and balance, but in more recent scholarship, Anderson seems to have lost that balance (Anderson, 2001). In offering advice to the Bush Administration, Anderson warns against a 'pragmatic conservative model' that would not oppose NGOs, but rather would merely seek 'to temper their extreme impulses and encourage them towards sensible actions and advocacy positions'. Instead, Anderson argues that stronger policies are needed because there are 'risks to democracy' from the activities of international NGOs. These risks ensue because there is a difference between NGOs operating domestically in a democratic society and NGOs operating in the international field. The alleged difference is that the NGOs do their domestic lobbying within a democratic structure, but that 'in the undemocratic international world' matters are different because the 'international system... has no democratic legitimacy'.

The degree of legitimacy declined after the international system began 'embarking on the path of downgrading democratic sovereigns and upgrading the supposed legitimacy of international NGOs'. Anderson (2001) points to two specific harms from NGOs. First, 'international NGOs muddy the waters of the critical question of how much power ought to be assigned to a system of international organizations that cannot ever be democratic'. Second, 'international NGOs actively seek to undermine the processes of democracy within democratic states whenever the results of those democratic processes produce, in the view of the international NGOs, uncongenial substantive outcomes'. As a result, he says, one should regard 'international NGOs, unlike their domestic counterparts – or unlike the international NGOs themselves when they work within sovereign democratic systems – as not merely undemocratic, but as profoundly antidemocratic'. Furthermore he asserts that international NGOs have felt themselves on the defensive with respect to the fundamental question asked by David Rieff (1999), namely, 'So who elected the NGOs?'.¹⁰

A number of unanswered questions leap out of Anderson's analysis. One is what is the difference between the criticized NGO activity of seeking to undermine or reverse the decisions taken by a democratic state and the uncriticized activity of NGOs working within the domestic political system to undermine official decisions? Why does Anderson think that the situs of NGO advocacy changes its democratic character? Another question is why could it be antidemocratic for international NGOs to focus their advocacy efforts on the decisions being made by and within international organizations?¹¹ I certainly do not share Anderson's view that the international organizations are undemocratic or cannot ever be democratic, but even if international organizations are undemocratic today, how can the NGO voice *reduce* the level of legitimacy since ultimately it is up to sovereigns to decide whether to follow any of the advice being offered by the NGOs? Another puzzle in Anderson's analysis is how NGOs could pose 'risks to democracy when international NGOs propose themselves as substitutes for democracy' if, as he believes, there is no democracy at risk anyway in the realm of international organizations? If Anderson's point is that NGOs pose risks to national democracy when they lobby in UN meetings, then he does not explain what that risk is.

Martha Schweitz offers a more positive view on the question of whether NGO participation in world governance is legitimate (Schweitz, 1995). She explains that the issue is not the legitimacy of a claim to obedience, but rather the legitimacy of participation by NGOs in distinct roles in the international governance process. A key myth to dispel, she proclaims, is 'the myth that NGOs must be representative organizations in order to be legitimate participants'. She explains that NGOs have at least three reasons for being that have nothing to do with representing anyone in particular: first, being sources of information and expertise; second, delivering services to people; and third, standing up for a core value. In her view, there is no minimum threshold for the number of people in the world that need to share a value for it to be heard in the international arena. Schweitz also addresses whether there should be some 'standards of conduct' pertaining to certain

NGO roles and suggest a global world citizen'.

Gary Johns (2000) is among the NGO accounts that they are a new form of democracy, then NGO participation of private as 'limited' perspective, and to represent a view' and to represent democracy. In his view, the integrity and truth

Several analysts point to general accountability problems. Martha Schweitz warned of the 'risks' (Schweitz, 1995). She notes that the 'rule of democracy' is a conclusion she reaches that these actors may continue to act in a clear and consistent manner.

Jan Aart Scholte, a Dutch scholar, argues that 'civil society groups' actions and omissions are 'unimaginative accounts' (Scholte, 2004). He argues that 'civil society' groups should reject the legitimacy of their actions. Scholte reports on a number of examples, such as the Philippines' 'rigorous scheme of 'no-go' (Golub in this volume).

Peter Spiro (2002) argues that the accountability of NGOs should be distinguished from that of governments. He argues that distinction between internal and external accountability is exaggerated (but not membership) that accountability, he cautions against such as the democratic metric, especially by 'crude tool for keeping' away with an awful Regarding external accountability, this process now c

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NGO roles and suggests that 'We need to think about what makes an NGO a good world citizen'.

Gary Johns (2000) raises concerns about some of the assumptions underlying the NGO accountability movement. Johns argues that when NGOs posit that they are a new form of democratic legitimacy or the greatest expression of democracy, then NGOs may become subject to 'a policy of heavy-handed regulation of private associations'. Johns sees this path as undesirable from a 'liberal' perspective, and suggests that each NGO should 'claim no more than to represent a view' and should not seek to belittle the authority of representative democracy. In his view, the only scrutiny needed for NGOs is 'the ordinary scrutiny of any group or person who seeks to make claims on the public', that is, the 'integrity and truth of the proposal'.

Several analysts point to standards of conduct that NGOs violate or to general accountability problems with NGOs. For example, a decade ago, Julie Mertus warned of the 'dangers of NGOs that violate democratic norms' (Mertus, 1995). She notes that the operations of NGOs 'are at times decidedly opaque', and that the 'institutions of civil society may run against the most basic rule of democracy, namely, to govern with the consent of the governed'. One conclusion she reaches is that 'As long as international law fails to articulate a clear and consistent position as to the responsibility of non-State actors', these actors may continue to neglect human rights.

Jan Aart Scholte, a long-time scholar of 'civil society', observes that even though 'civil society groups have an obligation to answer to stakeholders for their actions and omissions', most of these groups 'have operated very limited and unimaginative accountability mechanisms in relation to their own activities' (Scholte, 2004). He sees such accountability shortfalls as being politically costly to 'civil society' work because authorities seize on missing accountability to reject the legitimacy of those groups in global governance. In contrast, Scholte reports on a number of innovative actions to promote accountability. For example, the Philippine Council for NGO Certification has developed a rigorous scheme of 'nonofficial oversight for civil society in that country' (Golub in this volume).

Peter Spiro (2002) seeks to unpack NGO accountability by asking to whom the accountability should be developed. His answer is that NGOs should be accountable both to their constituencies and to process, and he frames that distinction as internal versus external accountability. Regarding internal accountability to members, he suggests that the problem of accountability is exaggerated because there are practical constraints on NGOs (such as membership) that keep them in line. In evaluating NGO internal accountability, he cautions against the 'fetishization of other forms of association', such as the democratic state, which is 'implicitly idealized on the accountability metric, especially by virtue of periodic elections'. In Spiro's view, voting is a 'crude tool for keeping governmental authorities in line' and 'governments can get away with an awful lot before having to answer to their memberships'. Regarding external accountability of NGOs to 'the system', Spiro contends that this process now operates sub-optimally because, given the present infor-

mal arrangements for NGO participation, NGOs lack incentives to be accountable. Spiro's proposed solution is for states to accept 'formal inclusion of non-state actors in international decision-making' in order to 'hold NGOs, as repeat players, accountable to international bargains'.

Michael Edwards is one of the world's most thoughtful and experienced analysts of NGO activities. Edwards (2000) explains that 'NGO accountability is weak and problematic, since there is no clear "bottom line" for results and no single authority to which NGOs must report on their activities'. Edwards advocates a 'New Deal' in which more participation in global governance is granted 'in return for transparency and accountability on a set of minimum standards for NGO integrity and performance, monitored largely through self-regulation' plus a 'much larger array of voluntary regulations and other, non-coercive means of influencing destructive behavior'. Greater accountability, in Edwards's view, is needed both upward, to donors, and downward, to the poor. Edwards contributes the useful notion of vertical accountability, namely, that on development issues, the claims made by the large NGOs should be rooted in the experience at the local level. Another constructive suggestion is to foster innovation in global governance through 'a period of structured experimentation in NGO involvement'.

Hugo Slim offers a working definition of NGO accountability, which is 'the process by which an NGO holds itself openly responsible for what it believes, what it does, and what it does not do in a way that shows it involving all concerned parties and actively responding to what it learns' (Slim, 2002). Slim proposes constructing a map of the NGOs' various stakeholders in a given situation because NGO accountability cannot be expected to be uniform across a wide range of NGO activity. The map may reveal conflicting interests and will help in the design of the right accountability mechanisms, such as social audits or a complaint procedure.

Benedict Kingsbury (2002) reflects on NGO accountability as a constitutional challenge. He explains that the struggle to articulate a useful approach to establishing 'rigorous accountability of non-state actors suggests that international civil society has at present minimal conceptual resources other than First Amendment liberalism for structuring thought about problems of accountability'. Yet First Amendment liberalism, according to Kingsbury, offers few means of NGO accountability except via markets, and it tends to view demands for other forms of accountability with suspicion. Moreover, he says, First Amendment liberalism is not very helpful in addressing the participatory claims of ascriptive groups, such as indigenous peoples exercising governmental powers. Kingsbury calls for the development of 'a richer international constitutionalism' to help address accountability, mandate, representation and participation.

An extremely impressive analysis of human rights NGO accountability has recently been authored by Robert Charles Blitt (2004). Blitt takes a self-described law and economics approach to the question of whether human rights NGOs should be regulated in order to enhance their accountability. Blitt refers to human rights NGOs as 'human rights organizations' or HROs. First, in order

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to make a case for regulation of the HRO industry, there needs to be a problem. The overall problem Blitt sees is that the current market for HRO ideas and activism does not operate in a way so as to assure that the product is safe for those who consume or are affected by it. He suggests that HROs 'shoulder a virtual duty of care to the general public'. Blitt provides a number of reasons to be doubtful that the *internal* accountability controls on HROs are adequate – for example, he says that NGO reliance on government funding may operate to limit the independence of NGOs or, conversely, cause them to neglect their primary interests in reliability and objectivity. Then Blitt analyses the potential *external* controls, such as the media, donors, international organizations and the free market, and finds these controls to be inadequate. He devotes many pages to analysing the marketplace of ideas and argues that like any market, it may need regulation if there are dysfunctions. Among the harms he notes are the damage to an impugned body's reputation from misleading allegations, the facility of seeking judicial relief on small-size transactions and the difficulty of private law remedies because of extra-jurisdictional issues. Although I do not agree with every point he makes, his analysis is cogent on the whole and would be applicable to NGOs well beyond the human rights field.

Blitt's solution is industry self-regulation, in other words, the major HROs should establish detailed standards for operations, and invite all HROs to subscribe to them voluntarily. The standards would cover: professional staff and board membership criteria; financial and financial disclosure transparency; best practices for research, fact-finding and reporting; and protocols for issuing public retractions. Blitt makes clear that 'governments would have no role to play in setting HRO standards'. Once standards are adopted, they could be monitored and enforced in several ways, such as an independent monitoring agency, annual ratings of HROs, or best practices for financial agreements. He concludes that 'while individuals may remain free to establish fly-by-night HROs, recognized HROs will have an authoritative and objective tool that can be harnessed to credential themselves in the eyes of the media, governments, intergovernmental agencies, courts and the public at large' (Blitt, 2004).

NGO accountability is also being addressed in the reports of major international advisory commissions. In June 2004, the Panel of Eminent Persons on United Nations–Civil Society Relations appointed by Secretary-General Kofi Annan delivered its report and suggested that UN practices for engaging civil society should work to define 'standards of governance, such as those for transparency and accountability' (UN, 2004). In particular, according to the Panel, the UN Secretariat should discuss with the private groups advising the UN 'possible codes of conduct and self-policing mechanisms to heighten disciplines of quality, governance and balance'.

In January 2005, a Consultative Board appointed by the World Trade Organization (WTO) Director-General delivered an extensive report that included a brief section on NGO accountability (WTO, 2005). The Board noted the criticism that 'those lobbying for more access' are 'often neither especially accountable nor particularly transparent themselves'. Furthermore,

the Board intoned: 'While there is now a broad recognition among member states of the UN of the substantial and proven benefits of non-governmental participation in intergovernmental debate on global issues, there are continuing concerns about the legitimacy, representativity, accountability and politics of non-governmental organizations.'

In reaching its conclusion, the Board of eight men neglected to hold any public hearings or to solicit public comments during its investigation, a period that lasted over 18 months.

RECONCEPTUALIZING NGO ACCOUNTABILITY

Centering accountability on the individual

Considerations of public control of authority and power should begin with the individual, and because I start with that assumption, I believe that the current debate about accountability in global governance should give more attention to the important contributions of Myres S. McDougal and Harold D. Lasswell. In their 1959 article in the *American Journal of International Law*, 'The Identification and Appraisal of Diverse Systems of Public Order', McDougal and Lasswell describe a 'world social process' in which the participants 'are acting individually in their own behalf and in concert with others' (McDougal and Lasswell, 1959). They emphasize that 'The ultimate actor is always the individual human being who may act alone or through any organization', and they talk of associations that 'do not concentrate upon power but primarily seek other values'.

By starting with the individual, McDougal and Lasswell avoid two analytical pitfalls. First, because individuals are seen as active participants, social and power process can be viewed as 'expanding circles of interaction' or as a 'series of arenas ranging in comprehensiveness from the globe as a whole... to nation states, provinces and cities, on down to the humblest village and township'. In this analytical approach, there is no need to explain why individuals should be able to participate at broader (or higher) levels of decision-making, just as they do in narrower (or lower) levels. Second, in positing the expanding circles, McDougal and Lasswell avoid the 'impossible separation of national and transnational law' (Lasswell and McDougal, 1997). The jurisprudence of human dignity they propose is applicable at all levels.

The notion of the individual being governed in a multitude of arenas is empirically convincing and normatively valuable. On any given day, the individual may be confronted with the dictates and decisions of his homeowner community, employer, local government, provincial government, national government and international organizations. The distance between the individual and his homeowner community may be closer than the distance to the UN, but the ability of the individual to influence any of the authoritative decisions may be very limited. Consider, for example, the innocent victims who suffer collateral damage as a result of sanctions ordered by the UN Security Council

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Reinisch, 2001), or the individuals dying of fatal illnesses who are being denied potentially effective drug treatments due to the precautionary approach used by the US Food and Drug Administration (Minor, 2005).

The normative value of seeing the individual as the object of simultaneous, multiple levels of lawmaking is that the truth becomes self-evident that an individual will have an interest in influencing all of the authoritative decisions that affect her, including not only those made by officials that she has elected, but also decisions made by others. From the perspective of the individual, the webs of authority enveloping her may be distinct in some ways, but the need to engage in politics is omnipresent. Although the strategies one uses in various political arenas will likely differ, the moral justification for purposive action will be the same – the pursuit of self-fulfillment and a just community order.

When is NGO accountability needed?

The literature on NGO accountability features a common thread, which is that internationally active NGOs should be subject to oversight and restraints by accountability holders. When a lens of democratic accountability is placed over NGOs, they can appear to be unaccountable because they are not publicly elected and because of the non-existence of a global public for ongoing validation of NGO actions. Moreover, the restraints against abuse – fiscal, reputational and legal constraints – may not operate very well for some NGOs. The potential abuses include violating national laws, making false claims that tarnish the reputations of others, engaging in activities that abridge human rights, wasting financial contributions and misapprehending the public interest. I certainly agree that sometimes, some NGOs go agley. The question is what to do about it.

In answering, one should start with the individual. What accountability for an individual's actions is expected? We expect the individual to be accountable to her conscience, to her family, to whatever deity she recognizes, to the laws of the governments that have jurisdiction over her, to entities with which she has entered contractual relations (such as employers), and generally to those to whom she has made a commitment. This is an extensive range of accountability, but hardly seems all-encompassing in the sense that an individual is to be accountable to all humans for all of her thoughts and deeds. In other words, my claim is that on a day-to-day basis, the individual engages in many acts of volition that are an exercise of her autonomy and for which no accountability is expected. If I am right about that, then when individuals act in concert, for example, through NGOs, we should not be surprised to see many decisions being taken for which there is no specific accountability to anyone outside the NGO.

Certainly, accountability needs to be in place for physically harmful NGO activities. Whenever an NGO engages in illegal or terrorist activity, then obviously it ought to be accountable to national criminal justice systems or to the UN Security Council. In recent years, the Security Council has often targeted non-state actors with economic sanctions (Hufbauer and Oegg, 2003).

Such retaliation against private persons through joint governmental action is not a new development, as multilateral legislation against dangerous organizations began with the Protocol of 1904 against the Anarchist Movement.¹²

Mundane illegal activity in NGOs can incur accountability under domestic law. An association committing criminal acts such as financial disruptions or eco-terrorism may be prosecuted (Crimm, 2004). Associations and their employees may also be liable under domestic law for potential torts such as negligence or defamation, and for violations of tax and corporate governance requirements.

A key question underlying the debate about NGO accountability is whether a new system is needed for oversight of NGOs, and if so, whether it should be formulated as a legal instrument. Ironically, the international organization on the cutting edge of applying international rules to NGOs is the WTO. The WTO has rules regarding public and private organizations that engage in standard-setting on products (that is, goods).¹³ These rules appear in the WTO Agreement on Technical Barriers to Trade (TBT), which directs governments to 'take such reasonable measures as may be appropriate to them to ensure that local government and non-governmental standardizing bodies within their territories... accept and comply' with the TBT Code of Good Practice for the Preparation, Adoption and Application of Standards.¹⁴ Among the requirements of the Code are that governmental and non-governmental standardizing bodies shall: first, play a full part in relevant international standardizing bodies with participation, whenever possible, taking place through one delegation representing all standardizing bodies in the territory; second, make every effort to achieve a national consensus on the standards to be developed; third, publish a work programme at least once every six months; fourth, before adopting a standard, allow a period of at least 60 days for the submission of comments by interested parties within the territory of that Member; fifth, take any submitted comments into account and, if so requested, reply to them as promptly as possible; and sixth, make an objective effort to resolve any complaints submitted by other standardizing bodies that have accepted the Code.¹⁵

Although the term 'accountability' is not used, the WTO TBT Code contains limited accountability norms of representation, consensus building, transparency, addressing complaints and giving a reply. The supervision of NGO operations through the TBT Agreement is a little-noticed phenomenon in WTO law. While there is nothing substantively wrong with the norms being demanded of standardizing organizations, some dissonance exists because the WTO itself does not practice what it preaches. The internal procedures of WTO committees do not provide for a public notice and comment period for WTO rule-making, and governments at the WTO can take positions without showing that their view is backed by a national consensus.

The WTO has increased the power of public and private international standard-setting bodies that devise international standards because such standards are now enforceable through the WTO. Under TBT rules, WTO member governments must use international standards where they exist as a

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private international law standards because such TBT rules, WTO where they exist as a

basis for the government's own technical regulations.¹⁶ Because a national government can be required to follow international standards even when it disagrees with them, governments may want to assure that national interests are well represented by the national organization that serves on the international body. Typically, the national organization is an NGO. A little-known US law, enacted in 1979, addresses this situation and provides authority to the Secretary of Commerce to oversee the adequacy of the 'representation' of US interests in standard-setting, and if necessary, to take steps to provide for adequate representation.¹⁷ To my knowledge, no use has been made of this important administrative mechanism.

Beyond specialized WTO rules, no other multilateral discipline exists for NGO accountability. Should there be? Because NGO activity is multifarious, the answer to this question has to be highly textured. For operational activities by NGOs (for example, immunizations), one might demand more accountability than for advocacy by NGOs. For some operational activities, NGOs act as contractors. When NGOs are in a principal-agent relationship, certainly the NGO should be accountable to the principal. Yet much of NGO activity in world politics does not fit that typology because it lacks an external principal, and thus there is no ability to account to anybody. For NGOs, the key relationship is membership. The individual joins the NGO and puts time, money, voice and loyalty into it, and at some point exits the NGO.

Peter Spiro's (2002) distinction between internal and external accountability is a useful place to begin an analysis. When NGOs are in a corporate form, various internal governance obligations (in national law) ensue, such as accountability of the executives of the NGO to its trustees, accountability of employees to management and restraints against financial self-dealing. To enhance internal (and external accountability), governments often impose reporting and transparency requirements on NGOs. The UN has demanded that an NGO in consultative status 'possess appropriate mechanisms of accountability to its members' (note 7, Arrangements, para. 12). Stronger internal accountability can be responsive to the concern that NGOs are totally unchaperoned and are not accountable to anyone.

With respect to *external* accountability, funding agencies and foundations are likely to demand and obtain some degree of accountability (Ovsiovitich, 1998; Pettit, forthcoming). Sometimes in an NGO, there may be tension between accountability to the foundation giving it financial support and allegiance to the intended beneficiaries who may see the world differently than the foundation's grant officer. The most difficult issue regarding external accountability is the extent to which an NGO needs to be explicitly accountable to 'the public', or to the class of beneficiaries that the NGO purports to aid. When analysts criticize NGO activity, the criticism often takes the form that the NGO is not serving the cause it claims to serve. Assuming that such a problem exists, how can we address it through more intelligently designed accountability systems?

A key design consideration will be that if the concern is external global accountability of NGOs, then the optimal system may need to be transnational.

When legal measures are used, some harmonization of law or mutual recognition should be considered so that NGOs operating globally are not subjected to conflicting domestic laws.¹⁸ When market or voluntary measures are used, there will be challenges of identifying the relevant stakeholders and sorting out inconsistent preferences among the stakeholders. For example, suppose an NGO in one country wants to preserve the wildlife in another, and yet the residents of the second country prefer development over preservation. In that situation, no unambiguous measure of NGO accountability seems to exist.

With so many different kinds of NGO activity in global governance, one promising approach is to distinguish various pieces. Consider a distinction between: first, delegated responsibilities; second, assumed responsibilities; and third, advocacy.

1 *Delegated* responsibilities occur when the international community delegates a task to an NGO. For example, the UN Security Council occasionally requests NGOs to provide assistance.¹⁹ The Red Cross organizations are authorized and expected to perform various humanitarian functions (Forsythe, 1996–97; O’Connell, 2005). NGOs are used to certify vessel compliance with international rules regarding pollution from ships and safety of life at sea (Murphy, 2005). Although not exactly a delegated function, it is interesting to note that in June 2004, two NGOs were invited by the UN Security Council to give a briefing to the Council, meeting in regular session, regarding the role of civil society in post-conflict peace building.²⁰

2 *Assumed* responsibilities occur when an NGO takes on a needed task that no one else is doing adequately. For example, Rotary International has launched a project to eradicate polio. Another example is election monitoring, which has been greatly facilitated by NGOs (Glidden, 2001). In the same way, the international regime to protect endangered species benefits immeasurably from constant monitoring by TRAFFIC, a joint program of the World Wildlife Fund and IUCN (The World Conservation Union) (www.traffic.org).

3 *Advocacy* is the NGO’s use of its voice to influence world policy-making within international organizations and in national capitals. Just about every issue today experiences NGO advocacy.

The nature of an accountability system should vary depending on what is being carried out. As I see it, the external accountability requirements should be highest for the tasks delegated to NGOs, and lowest for activities that the NGO itself originates, with the assumed responsibilities lying somewhere in between.

The significance of making a person (a natural person or NGO) accountable is that the person owes a duty to a single or discrete set of accountability holders. For many NGO activities that duty exists, but for many others it does not. To suggest that an NGO should be accountable to the ‘general public’ or to the ‘system’ is doubly wrong – first, because drawing such dotted lines of accountability to the public itself is not feasible, and second and more importantly, because the general public is not the accountability holder of a free association of individuals. This is particularly so when the NGO activity at issue is the expression of ideas. The fact that NGOs may use their voice to call

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for intergovernmental organizations to be more accountable to the public does not provide a reason to turn the tables on the NGO and demand it to be equally accountable to the public. A similar problem would ensue in trying to make NGOs 'accountable' to beneficiaries. I would reformulate that goal to say that an NGO should better think through what it advocates so that its proposals will be more likely to help the intended beneficiaries and to do so without hurting others.

The real problem with NGOs is not that they are unaccountable, but rather that they suffer in various degrees from poor management and poor performance. Such behaviour often leads people to say that NGOs should be more 'accountable', but what they really seem to mean is that the NGO should act with more thoughtfulness, honesty, fidelity and probity. Recall the Encyclical of Pope Leo XIII in which he explained that associations need to be 'well and wisely administered'. The Pope also recognized that such ideal behaviour could not be forced by the 'grasp of a hand from without' (Pope Leo XIII, 1891, para. 55). That insight remains relevant in our own time as we consider how to achieve better NGO performance in global governance. The grasp of a hand from without should be avoided in favour of a steadier hand from within and the invisible hand of the market.

Let me suggest the following framework to enhance NGO performance, specifically with reference to international advocacy activities. Rather than try to control what NGOs say and do, we should be improving the quality of public discourse so that good ideas from NGOs are more likely to be accepted by elected officials and bad ideas are more likely to be ignored. The way to improve the marketplace of ideas is to make it as competitive as possible among bureaucrats, NGOs and business participants (Esty, 1998). When NGO outputs are poor, they are not wholly to blame because they receive so little advice on how to be constructive.

We live in an age of international standards and NGOs could certainly benefit from more refined standards as to what constitutes good practice in NGO advocacy. Some positive attributes are a high degree of transparency of NGO activities, an orientation toward data-driven analysis and strong international governance mechanisms when an NGO operates in corporate form. In addition, governments owe it to the public and to the NGOs to enforce laws against NGOs that engage in illegal behaviour. Poor enforcement undermines the reputation of NGOs. In suggesting more attention be given to NGO performance, rather than to accountability, I am mindful that 'performance' is a quantity that should be measurable. Good analytical work is being done to construct such measures, but in the words of Michael Edwards and David Hulme, 'assessing NGO performance is a difficult and messy business' (Edwards and Hulme, 1995).

Debunking NGO 'representation'

Although the real issue in NGO accountability is whether the NGO is thoughtful, accurate and fair in its statements, most of the attention to NGO

accountability has been on a different issue – that is, whether the NGO is representative of its members. To me, representation is simply a red herring. If the ideas being propounded are completely wrong, then the NGO for that reason may lack accountability to the community. In other words, I would give much more weight to how useful the ideas are that emanate from an NGO than I would give to whether the ideas faithfully represent the views of the NGO's membership.

If the adequacy of NGO representation of membership was ever a useful indicator of NGO accountability, surely the age of the internet and blogs changes that. For any powerful idea, a coordinator can put together many people in many countries who will support it. Such a virtual NGO might not have any organization in the traditional sense, but would be fully justified in saying that it faithfully represented its uniformly-thinking members. But surely the repetition or amplification of mistaken views is hardly sufficient for NGO accountability.

Although much NGO activity occurs in traditional affinity organizations, we often see a phenomenon whereby the potential impact of governmental decisions creates a new constituency concerned about it (King, 2003). Individuals who may have little in common with each other will join an organization to promote a particular cause that unites them. Such temporary, single-issue organizations may be highly representative of membership, but their accountability should be judged more substantively.

Another representational critique of NGOs seems to be that NGOs are pursuing merely a partial interest, special interest or single issue, and so perforce NGOs will not be accountable to the public as a whole, which is motivated by general interests. Yet as philosophers have noted for centuries, ascertaining the general interest is no easy task. The US Supreme Court has declared that 'The two houses of Congress are legislative bodies representing larger constituencies'.²¹ Such representativeness is a source of the Congress's legitimacy, but the fact that there are two different houses suggests that neither was expected to be a perfect representative of the public. Acting in concert, however, they attempt to do so. Although NGOs may be a fixture of democracy, they are not themselves democratic institutions intended to represent the public in making decisions about the use of government power. NGOs do not compete with legislatures to represent public opinion.

At most, an NGO can represent a particular constituency or point of view. Yet the quality of its representation does not itself justify the NGO's role in influencing governmental outcomes. The representation of the public through elections is different from the nature of representing shared ideas and interests through an NGO. The root term 'represent' may get double duty, but representing ideas is different from representing voters.

Kenneth Anderson (2000; 2001) is right that some NGOs have made exaggerated claims that they represent civil society or the public and right again that NGOs sometimes assert that their participation in global governance makes it more accountable. Yet I do not worry about overreaching NGO rhetoric by NGOs as much as Anderson does. To the extent that NGOs do

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claim that their endorsement of a particular intergovernmental act gives it democratic legitimacy, I doubt that any government officials take that seriously. More importantly, I believe Anderson is wrong to call certain NGO advocacy anti-democratic merely because the NGO continues to try to change uncongenial policies of a government that the NGO has failed to convince regarding the merits of the NGO's position.²²

The value derived from NGOs is not that they are better representatives of public opinion than are elected officials, or that NGOs supplement geographic representation via elections with interest group, pluralist representation. Those claims would not be justified and do not square with contemporary democratic theory. The true contribution of NGOs is that they seek to inform and influence the views of voters, elected officials and bureaucrats. That function of NGOs – to communicate information and values – fits comfortably in democratic theory because there is much more to democracy than the 'spasmodic majority vote' (Greaves, 1931).

As Alexis de Tocqueville postulated in *Democracy in America*, 'no countries need associations more... than those with a democratic social state' (De Tocqueville, 1988). His monumental book explains a number of advantages for democracy of political and civic associations, including that associations contribute to 'stimulating competition', and that they allow members 'to discover the arguments most likely to make an impression on the majority'. Thus, an NGO contributes to the democratic process by advocating its own view of the common good rather than by demonstrating that its view truly reflects the common will.

The basics do not change when policy discourse crosses national borders (Marks, 2001). NGOs are not created by governments to operate solely within a domestic political space. NGOs emerge through 'spontaneous creation' and will want to pursue their agendas at whatever level of government they need to. John Bolton claims that 'it is precisely the detachment from governments that makes international civil society so troubling, at least for democracies' (Bolton, 2000). Yet Bolton does not explain why he views voluntary associations as troubling when they detach themselves from government, other than to say that NGO participation in global governance 'provides a second opportunity for intrastate advocates to reargue their positions' and 'provides them at least the possibility of external lobbying leverage, to force domestic policy results they could not have otherwise achieved'. I do not share Bolton's fears about listening to competing views.

The approach that I offer here is to explain why there is no great need for special accountability for NGO advocacy functions in the public sphere. As voluntary organizations, NGOs depend on individuals who choose to belong to them, to work for them, to fund them and to listen to them. In 1999, the UN General Assembly endorsed strong freedom of association principles in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Declaration states that 'Everyone has the right, individually and in association with others, to promote and to strive

for the protection and realization of human rights and fundamental freedoms at the national *and international levels*' (UN, 1999, emphasis added). With respect to NGOs, the Declaration states, among other things, that 'Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms'. This NGO role in making the public more aware is the key to understanding why NGO outputs injected into the marketplace of ideas are fully consistent with republican democracy.

Performance versus accountability in the marketplace of ideas

The best check on bad ideas from NGOs is criticism from others. Consider the recent episode of the spring 2005 report by Amnesty International that likened the US detention centers in Guantanamo to 'gulags'. President George Bush called that charge 'absurd' and Amnesty received considerable criticism for using a loaded term and making a claim for which they did not have evidence.²³ Personally, I do not know enough about the conditions at Guantanamo to judge whether Amnesty's claim was absurd or just exaggerated. This episode was valuable, however, in showing that a controversial statement by an NGO can be criticized by stakeholders and commentators, and that mistakes can hurt an NGO's reputation.

Such a market-like check is sufficient. The last thing the world needs is more governmental controls on Amnesty International to assure its accuracy and accountability. Common to the analyses by Edwards (2000) and Blitt (2004) is a conclusion that although NGOs could act voluntarily to develop standards to promote accountability, governments should not seek to impose such standards. NGOs tend to criticize governments, and so it will be difficult for governments to appear to be objective were they to police NGO statements as to whether they are honest and fair. Although I would agree with Edwards that 'structured experimentation' can be useful, I cannot endorse the recommendation of the UN Panel of Eminent Persons that urges the UN Secretariat to engage NGOs in discussion about codes of conduct and self-policing mechanisms. In my view, that would be an inappropriate role for international bureaucrats.

The right way to promote better NGO behaviour is by fostering the continuation of present trends of increased introspection by NGOs about their own performance and new efforts by NGOs to evaluate one another. Instead of seeking to coerce NGOs into being more 'accountable', we should instead seek ways to enhance incentives for NGOs to upgrade their performance. Today, NGO performance is being monitored more than ever before – but in the right way, by other NGOs. For example, the American Enterprise Institute and the Federalist Society for Law and Public Policy Studies have jointly set up 'NGO Watch' in 'an effort to bring clarity and accountability to the burgeoning world of NGOs' (www.ngowatch.org). So far, their web site is largely composed of news stories, related documentation and policy papers, but perhaps some serious watching will occur.

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Getting real mileage out of monitoring, or 'auditing' NGOs, as suggested by *The Economist*, requires the availability of performance standards that have been accepted by many NGOs. Earlier I noted that Blitt (2004) had recommended 'self-regulation' by NGOs and some observers have suggested an NGO Code of Conduct. Defined standards are a prerequisite for any numerical ratings of NGOs.

Standards would be very difficult to devise for advocacy, but could be doable for the operational activities of NGOs. In 2003, the Humanitarian Accountability Partnership International (HAP-I) was launched to improve the accountability of organizations engaged in delivering humanitarian services (Callamard in this volume). HAP-I promotes and assists self-monitoring by member organizations, which include well-known organizations such as CARE International and the Danish Refugee Council. The motto of HAP-I is 'making humanitarian action accountable to beneficiaries'. Another recent development is that Social Accountability International (SAI) has been asked by InterAction, an umbrella group of international charities, to inspect and certify the tsunami-related child sponsorship programs of five major NGOs (for example, Save the Children US). The certification requires allowing SAI to inspect documents and field activities, and also examines some management issues such as director conflicts of interest, accuracy of advertisements and a 35 per cent cap on administrative and fundraising costs relative to total expenditures.

New techniques are now being tested by governments to gain the benefits of NGO participation. One is multi-stakeholder roundtables or dialogues, which are sessions held during an intergovernmental summit or conference in which persons from governments, business and NGOs participate together in a discussion. Such dialogues were held, for example, at the UN Monterrey and Johannesburg Summits. Another technique is joint statements by a broad range of NGOs that are submitted to international conferences. For example, in June 2004, at the United Nations Conference on Trade and Development XI, the Civil Society Forum submitted a Declaration that consisted of an analysis and several specific recommendations. The Declaration stated that the Forum 'represents social movements, pro-development groups, women's groups, trade unions, peasants and agricultural organizations, environmental organizations, faith-based organizations and fair trade organizations, among others' (Civil Society Forum, 2004). This technique is distinguishable from the traditional parallel summit of NGOs that meets alongside an intergovernmental conference (Pianta, 2001). The difference is that statements emanating from a parallel summit are not an official part of the intergovernmental meeting, as they were with the UNCTAD Forum. It may be too soon to tell whether these new forms of encouragement of NGOs to cooperate with each other will lead to more reasoned outputs. Yet such efforts are worth trying. After all, combining the value of autonomous groups with sustained cooperation among them is likely to contribute to economic and social progress.

CONCLUSION: THE FUTURE OF NGO ACCOUNTABILITY

Democratic debate should not be subject to rigid zoning. Those who advocate ideas in one polity should be free to advocate them in another. When a transnational group gets together to promote a legitimate cause, it should be able to use its voice in any country or international organization.

The idea that NGOs active in global governance lack sufficient accountability has become conventional wisdom, and I would guess that the highest waves of accountability demands on civic society have yet to hit the shores. Because NGOs are extremely sensitive to threats to their influence, they can be expected to take steps to obviate those threats. Recognizing that NGO influence is now being undermined to some extent by the mantra for greater NGO accountability, NGOs will be eager to cooperate in the expansion of 'accountability' mechanisms.

An attempt to formulate a plan for greater government regulation of NGO political activities would run into many problems, starting with the trammels of statism. Government regulation tends to be territorial and yet this does not match up well with the domain of NGO action that can be global, or with the membership and participants in an NGO that can be transnational. The difficulty of this spatial challenge tends to be underestimated by those who would like to see greater NGO accountability to someone or something. It is one thing to say that Global Witness, for example, needs to be more accountable, but quite another to specify to what sovereign authority or global public accountability is to be owed.

Governments should not try to regulate directly the quality of advocacy of NGOs, but rather should improve it indirectly by establishing mechanisms that give NGOs an incentive to upgrade their own performance. NGOs are very likely to be criticizing governments and it will be difficult for governments to appear to be objective were they to supervise NGO statements.

The idea of providing better mechanisms for NGO debate works well whether the issues are technical/scientific or hinge on values. The WTO benefited enormously from the intellectual contributions of health NGOs who pointed out that the trade rule for compulsory licensing of patents could prevent a supply of essential medicines from being available to countries without a manufacturing capacity.²⁴ That point was an economic and technical one. The NGO critics of WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) also raised more general concerns about whether the WTO rules for patenting took sufficient account of health values. Over many decades, NGOs have shown themselves to be adept in advocacy on both the narrower technical points and the broader claims on values.

In the critiques of NGOs, one subtext seems to be that NGOs are pursuing only a 'partial' interest (or a single-issue campaign), and perforce NGOs will not be accountable to the public as a whole, which is motivated by general interests. Assuming that this is true and a problem, the solution might be to

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pay less attention to the NGOs or to mandate group altruism. In my view, that is the wrong diagnosis and the wrong solution. It is the wrong diagnosis because partiality or private interest can operate as a virtue not only in markets but also in politics. Constitutional rules may be valuable to tie a government's hands in order to make it less susceptible to the entreaties of special interests, but in my view, such constitutional rules should not include muzzling the private voice. It is the wrong solution because authoritative decision-makers need a constant infusion of competitive ideas and values in order to make the right public policy decisions. To quote De Tocqueville (1988), 'A government, by itself, is equally incapable of refreshing the circulation of feelings and ideas among a great people, as it is of controlling every industrial undertaking'. Government bureaucrats and politicians do not have any special competence to oversee NGO operations and guide them towards attainment of the common good. Ideally, any ensuing regulatory or accountability mechanisms should be devised by NGOs themselves as voluntary measures.

NOTES

- 1 Thus, the Encyclical considers both mutual benefit and public benefit groups. The Encyclical does not specifically address lobbying activities of NGOs.
- 2 Sanger was one of the drafters of the provisions on labour in the Treaty of Versailles and she became the first head of the ILO's Legislative Section (Oldfield, 2004).
- 3 I am not aware of any formal requests by NGOs since Shelton's article was written.
- 4 Review of Consultative Arrangements with Non-Governmental Organizations, E.S.C. Res. 288(X), Feb. 27, 1950, para. 5.
- 5 Arrangements for Consultation with Non-Governmental Organizations ('Arrangements'), E.S.C. Res. 1996/31, para. 9 (emphasis added). The disjunctive 'or' seems to imply that not all NGOs given status have to be of a representative nature.
- 6 World Bank Inspection Panel Operating Procedures, para. II.A.4.a, available at: <http://wbIn0018.worldbank.org/IPN/ipnweb.nsf/WOperatingProcedures>. The request may also come from an organization, association, society, duly appointed representative, or foreign agent in some circumstances (Boisson de Chazournes, 2005).
- 7 'Sins of the Secular Missionaries' (2000) *The Economist*, 29 January. See also 'The Non-governmental Order' (1999) *The Economist*, 11 December.
- 8 According to Bolton, the Forum of Civil Society would be an annual conference of worldwide NGOs that would meet at the United Nations in New York.
- 9 The concept of 'international NGOs', which is at the center of Anderson's analysis, is not explicitly defined, as far as I can tell. As I read Anderson, he is discussing two phenomena: first, NGOs based in one country that act on global issues; and second, transnational NGOs that contain members (or subunits) from different countries.
- 10 Rieff (1999) has criticized NGOs by saying that the 'leaders of such groups, unlike politicians, do not have to campaign, hold office, allow the public to see their tax returns or stand for re-election'. In a recent study, two social scientists note the irony of complaints by journalists and academics that civic society associations are

- not democratically elected because, as they explain, no one elected the journalists and academics either (Verweij and Josling, 2003).
- 11 Perhaps a more basic question about Anderson's thesis is why lobbying by an NGO to a group of governments poses more risks to democracy than the same lobbying by that NGO to its 'home' government.
 - 12 Protocol respecting Measures to be Taken Against the Anarchist Movement, Mar. 14, 1904, 195 Consol. T.S. 118. Earlier multilateral treaties acted against the slave trade, a profit-making enterprise.
 - 13 The rules to be discussed below apply only to goods, not to services. See WTO Agreement on Technical Barriers to Trade ('TBT Agreement'), art. 1.3. Thus, a standard programme regarding services – such as the 'Equator Principles' on project finance – is not covered by these WTO rules.
 - 14 TBT Agreement, art. 4.1. In the WTO lexicon, a standard is something approved by a recognized body with which compliance is not mandatory. TBT Annex I, para. 2.
 - 15 This rule seems to include the possibility of complaints by bodies in any WTO member country.
 - 16 TBT Agreement, art. 2.4. An exception exists in situations 'when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate [national] objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems'. In the one dispute so far (dispute WT/DS231, EC – *Trade Description of Sardines*), this exception was applied strictly.
 - 17 19 USCS § 2543 (2005). The procedure provides for private persons to initiate complaints.
 - 18 One successful mutual recognition initiative occurred in the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, Apr. 24, 1986, ETS 124. International NGOs are defined broadly as those carrying on activities with effect in at least two states (art. 1). Once it has gained recognition in one party, the NGO has the right to invoke the Convention in another party to acquire recognition there (with some exceptions) (arts. 2, 4).
 - 19 The earliest episode was Complaint of Aggression Upon the Republic of Korea, S. C. Res. 85 (July 31, 1950) requesting appropriate NGOs to provide such assistance as the United Command may request.
 - 20 The two NGOs were CARE International and the International Center for Transitional Justice. See *Arria and Other Special Meetings between NGOs and Security Council Members*, available at www.globalpolicy.org/security/mtgsetc/brieindx.
 - 21 *United States v. Ballin*, 144 US 1, 7 (1892).
 - 22 Daniele Archibugi calls for 'institutions which enable the voice of individuals to be heard in global affairs, irrespective of their resonance at home' (Archibugi, 2000).
 - 23) See 'Amnesty Insufferable', *New York Post*, 29 May 2005, p26; Applebaum, A. (2005) 'Amnesty's Amnesia', *Washington Post*, 8 June, p.A21; Riley, J. (2005). 'Human-rights Group Says US Runs "Gulag of our Times"', *Chicago Tribune*, 26 May, p.15.
 - 24 See the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), art. 31(f).

Civil Society Accountability Debates on Accountability

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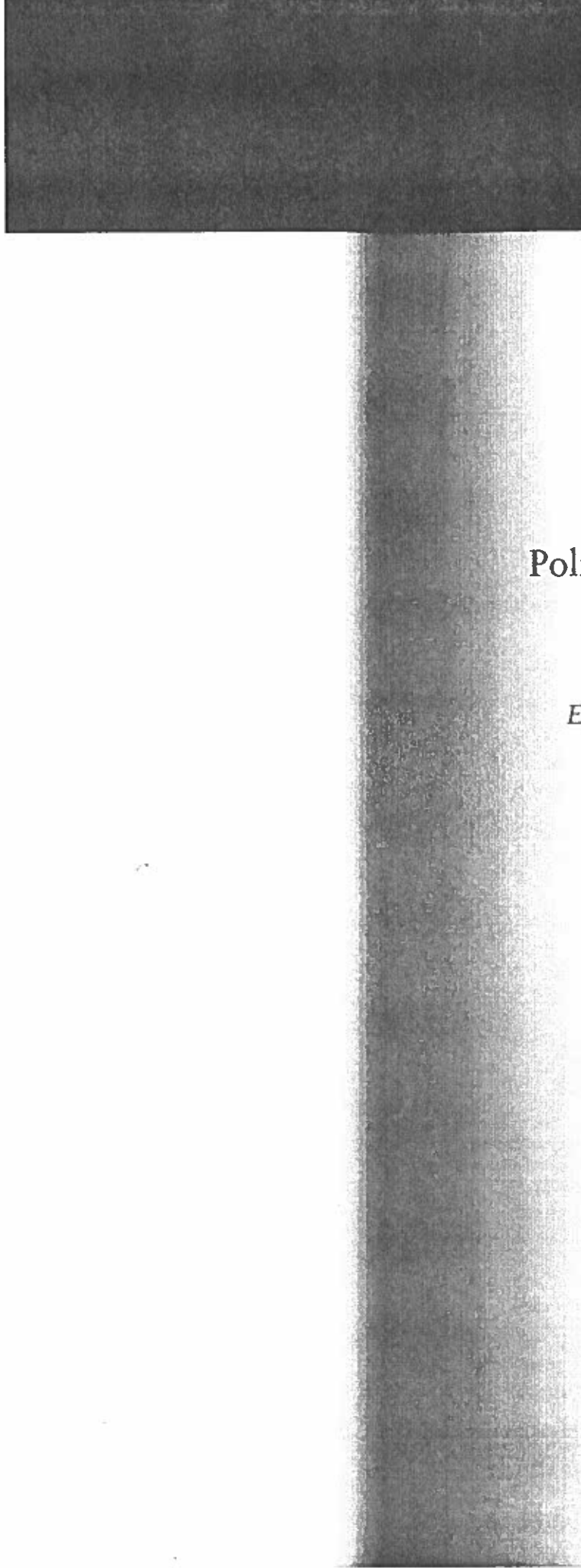
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