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Two Centuries of Participation: NGOs and International Governance

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TWO CENTURIES OF PARTICIPATION: NGOS AND INTERNATIONAL GOVERNANCE

Steve Charnovitz*

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INTRODUCTION

Nongovernmental organizations (NGOs) are expanding their participation in international governance.¹ This is especially true in environmental affairs where NGOs regularly take part in multilateral conferences and monitor the implementation of treaties.² NGOs are also increasing

1. *The Growing Role of Nongovernmental Organizations*, in 89 PROC. AM. SOC'Y INT'L L. 413-32 (1995); Paul Ghils, *International Civil Society: International Non-governmental Organizations in the International System*, 44 INT'L SOC. SCI. J. 417 (1992); Jessica T. Mathews, *Power Shift*, 76 FOREIGN AFF. 50 (Jan./Feb. 1997); A. Dan Tarlock, *The Role of Non-Governmental Organizations in the Development of International Environmental Law*, 68 CHI.-KENT L. REV. 61 (1993).

2. Philippe J. Sands, *The Environment, Community, and International Law*, 30 HARV. INT'L L.J. 393, 412-17 (1989); Barbara J. Bramble & Gareth Porter, *Non-Governmental Organizations and the Making of U.S. International Environmental Policy*, in THE INTERNATIONAL POLITICS OF THE ENVIRONMENT 313-53 (Andrew Hurrell & Benedict Kingsbury eds., 1992); Nancy Lindborg, *Nongovernmental Organizations: Their Past, Present, and Future Role in International Environmental Negotiations*, in INTERNATIONAL ENVIRONMENTAL TREATY MAKING 1-25 (Lawrence E. Susskind et al. eds., 1992); David Scott Rubinton, *Toward a Recognition of the Rights of Non-States in International Environmental Law*, 9 PACE ENVTL. L. REV. 475 (1992); CAROLINE THOMAS, THE ENVIRONMENT IN INTERNATIONAL RELATIONS 15-18, 27-29, 63-70 (1992); Martha L. Schweitz, *Indigenous Environmental NGOs and International Law: A Reconstruction of Roles and Possibilities*, 27 U. BRIT. COLUM. L. REV. 133 (1993); ENVIRONMENTAL NGOs IN WORLD POLITICS (Thomas Princen & Matthias Finger eds., 1994); LAWRENCE E. SUSSKIND, ENVIRONMENTAL DIPLOMACY 46-53 (1994); Wolfgang E. Burhenne, *The Role of NGOs*, in SUSTAINABLE DEVELOPMENT AND INTERNATIONAL LAW 207-11 (Winfried Lang ed., 1995); Jeffrey L. Dunoff, *From Green to Global: Toward the Transformation of International Environmental Law*, 19 HARV. ENVTL. L. REV. 241, 295-300 (1995); Patricia Waak, *Shaping a Sustainable Planet: The Role of Nongovernmental Organizations*, 6 COLO. J. INT'L ENVTL. L. & POL'Y 345 (1995); James Cameron, *Compliance, Citizens and NGOs*, in IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW 29-47 (James Cameron et al. eds., 1996); Hilary French, *The Role of Non-State Actors*, in GREENING INTERNATIONAL INSTITUTIONS 251 (Jacob Werksman ed., 1996); Adil Najam, *Nongovernmental Organizations as Policy Entrepreneurs: In Pursuit of Sustainable Development* (Yale PONPO Working Paper No. 231, 1996); GARETH PORTER & JANET WELSH BROWN, GLOBAL ENVIRONMENTAL POLITICS 50-59 (George A. Lopez ed., Westview Press 2d ed. 1996); Kal Raustiala, *States, NGOs, and International Environmental Regimes*, 41 INT'L STUDIES Q.

their work in the World Bank³ and in human rights agencies.⁴ This growing role for NGOs in international law and policy is a significant development but not an unprecedented one. NGO influence on international governance increased in previous eras, most notably around the turn of the century and in the early years of the League of Nations.⁵ Although some observers seem to perceive NGO involvement as a late-twentieth-century phenomenon, in fact it has occurred for over 200 years. Advocates of a more extensive role for NGOs weaken their cause by neglecting this history because it shows a longtime custom of governmental interaction with NGOs in the making of international policy.

This article explores the past and present role of NGOs in international governance. Part One reviews the history of NGO involvement, focusing on the period between 1775 and 1949.⁶ It shows how NGO activism helped to engender international organizations. Part Two examines some key issues that arise from the expanding involvement of NGOs. It catalogs the pros and cons of an active NGO role, discusses various functions that NGOs fulfill, and lists ten techniques of NGO participation. Part Two also considers a hypothesis that NGO involvement is cyclical.

Definitions

What are NGOs?⁷ NGOs are groups of individuals organized for the myriad of reasons that engage human imagination and aspiration.⁸ They

(No. 4, forthcoming 1997).

3. Seamus Cleary, *The World Bank and NGOs*, in "THE CONSCIENCE OF THE WORLD": THE INFLUENCE OF NON-GOVERNMENTAL ORGANISATIONS IN THE UN SYSTEM 63 (Peter Willetts ed., 1996) [hereinafter THE CONSCIENCE OF THE WORLD]; PAUL J. NELSON, *THE WORLD BANK AND NON-GOVERNMENTAL ORGANIZATIONS* (1995); Ibrahim F. I. Shihata, *The World Bank and Non-Governmental Organizations*, 25 CORNELL INT'L L.J. 623 (1992).

4. Felice D. Gaer, *Reality Check: Human Rights NGOs Confront Governments at the UN*, in *NGOs, THE UN, AND GLOBAL GOVERNANCE* 51 (Thomas G. Weiss & Leon Gordenker eds., 1996); Michael H. Posner & Candy Whittome, *The Status of Human Rights NGOs*, 25 COLUM. HUM. RTS. L. REV. 269 (1994); Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America*, 47 INT'L ORG. 411 (1993).

5. See PHILIP MARSHALL BROWN, *INTERNATIONAL SOCIETY* 120 (1923) (suggesting that the influence and results of societies that cut straight across frontiers are too profound to be properly estimated).

6. For many of the historical episodes discussed here, information is not available on the impact of the NGO role. In some instances, government policymakers might have reached the same outcome without any NGO involvement. Measuring the collective impact of NGOs decade by decade is beyond the scope of this article.

7. Other terms used in commentary about NGOs include "INGOs" for international non-governmental organizations, "BINGOs" for business international non-governmental organizations, and "GONGOs" for government-organized NGOs. CLIVE ARCHER, *INTERNATIONAL ORGANIZATIONS* 37-38 (1983).

8. See G. D. H. COLE, *SOCIAL THEORY* 206-07 (1920) (noting that big social changes

can be set up to advocate a particular cause, such as human rights, or to carry out programs on the ground, such as disaster relief.⁹ They can have memberships ranging from local to global.¹⁰ Indeed, some NGOs are more "global" than intergovernmental organizations (IGOs). For example, the International Amateur Athletic Federation includes twenty-one more members than the United Nations (U.N.)¹¹

The Encyclopedia of Public International Law defines NGOs as private organizations "not established by a government or by intergovernmental agreement which are capable of playing a role in international affairs by virtue of their activities"¹² The *International Law Dictionary* defines an NGO as a "private international organization that serves as a mechanism for cooperation among private national groups in international affairs"¹³ Both of these definitions are reflective of the international context of the origin of the term "non-governmental organization," which came in the U.N. Charter.¹⁴ While such definitions are suitable for this article, it should be noted that in contemporary parlance, the term NGO is also used to describe organizations involved only in national affairs. Such organizations are also called interest groups or pressure groups.

One could devote considerable discussion to who is or is not an NGO, but that is a task for another article.¹⁵ Instead, I will explain how

seldom occur unless the impetus to change has behind it the force of an organized group or association based on a vital common need).

9. In general, the "operational" activities of NGOs will not be discussed here. See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, VOLUNTARY AID FOR DEVELOPMENT: THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS (1988); Andrew S. Natsios, *NGOs and the UN System in Complex Humanitarian Emergencies: Conflict or Cooperation?*, in NGOs, THE UN, AND GLOBAL GOVERNANCE, *supra* note 4, at 67. The oldest operational NGO may be the Association of the Ladies of Charity of Saint-Vincent-de-Paul, founded in 1617, which renders material and moral aid to the poor.

10. See generally JULIE FISHER, THE ROAD FROM RIO: SUSTAINABLE DEVELOPMENT AND THE NON-GOVERNMENTAL MOVEMENT IN THE THIRD WORLD (1993) (discussing the variety of organizations operating in developing countries).

11. Roger Thurow, *When Primo Nebiolo Says "Jump," Athletes Respond, "How High?"*, WALL ST. J., Apr. 3, 1996, at A1.

12. Hermann H.K. Rechenberg, *Non-Governmental Organizations*, 9 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 276 (1986).

13. THE INTERNATIONAL LAW DICTIONARY 77 (Robert L. Bledsoe & Boleslaw A. Boczek, 1987).

14. U.N Charter art. 71. The term "non-governmental activities" was used by one commentator in 1932. CHARLES HODGES, THE BACKGROUND OF INTERNATIONAL RELATIONS 256 (1932).

15. See WERNER J. FELD & ROBERT S. JORDAN, INTERNATIONAL ORGANIZATIONS: A COMPARATIVE APPROACH 21-22 (3rd ed. 1994) (discussing definition of international NGO); Finn Seyfersted, *Applicable Law in Relations Between Intergovernmental Organizations and Private Parties*, 122 ACADÉMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS 433 (1967)

the term "NGO" will be used here. This article will look mainly at formal organizations and thus will not cover the larger phenomenon of informally organized "movements."¹⁶ It will include associations of businesses (e.g., the European Business Roundtable), but will generally exclude profit-seeking entities themselves.¹⁷ Thus, the activities and influence of multinational enterprises, international public corporations, cartels, and criminal alliances will not be discussed. The article will, however, include discussion of organizations of subnational governments, parliamentarians, government officials, and bureaucracies. The article will also make a critical distinction between an inter-governmental organization (IGO), comprised of nation States pursuant to an international agreement, and a government-related NGO, which may include government agencies or government officials as members. For example, the Inter-Parliamentary Union, founded in 1888, is treated here as an NGO.¹⁸

For practical reasons, this article is unable to discuss many other groups that might be considered NGOs. The most important omissions are religions, charities, foundations, research organizations (that is, universities, institutes,¹⁹ and laboratories); and groups seeking formal power,²⁰ such as political parties or liberation movements.²¹ Also omitted are the historic influences of the Crusaders,²² the Hanseatic League,²³ the Jacobites, guilds, settlers, missionaries, and pirates. Furthermore, while the essential focus of this article is NGO activity in international governance, it should be noted that NGOs also have an impact on world

(defining NGOs); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 221(c) (1987) (defining non-State participation); J. JOSEF LADOR-LEDERER, INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS, at 60 (stating that NGOs are non-governmental, non-profitmaking, and non-uninational).

16. See generally Hans Kohn, *Pan-Movements*, in 11 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES (Edwin R.A. Seligman ed., 1933); SIDNEY TARROW, *POWER IN MOVEMENT* (1994).

17. The practice of excluding commercial organizations from the category of "associations" goes back at least to the establishment of the Union of International Associations in 1910. See H.R.G. GREAVES, *THE LEAGUE COMMITTEES AND WORLD ORDER* 111 (1931).

18. See generally, YEFIME ZARJEVSKI, *THE PEOPLE HAVE THE FLOOR: A HISTORY OF THE INTER-PARLIAMENTARY UNION* (Nicholas Albrecht trans., 1989).

19. See, e.g., Philip C. Jessup, *Banff Meeting of the Institute of Pacific Relations*, 27 AM. J. INT'L L. 752-53 (1933) (discussing conference with broad participation of economists, business men, bankers, politicians, and observers from the League of Nations).

20. Myres S. McDougal, Harold D. Lasswell, & W. Michael Reisman, *The World Constitutive Process of Authoritative Decision*, in INTERNATIONAL LAW ESSAYS: A SUPPLEMENT TO INTERNATIONAL LAW IN CONTEMPORARY PRACTICE, (Myres S. McDougal & W. Michael Reisman eds., 1981) (defining private associations as groups not seeking power) [hereinafter McDougal et al.].

21. See MALCOLM N. SHAW, *INTERNATIONAL LAW* 168-70 (1991) (discussing national liberation movements).

22. See generally Jonathan Riley-Smith, *Reinterpreting the Crusades: Religious Warriors*, 337 ECONOMIST 63 (Dec. 23, 1995-Jan. 5, 1996).

23. See generally T.H. LLOYD, *ENGLAND AND THE GERMAN HANSE, 1157-1611* (1991).

politics by changing the behavior of individuals, businesses, and society at large.²⁴ Although intriguing, this sociological aspect of the NGO is beyond the scope of this article.

In concluding this definitional section, it should be noted that the term "nongovernmental organization" is on the decline. It is criticized as being too negative, that is, as describing NGOs for what they are not.²⁵ Twenty years ago, Cyril Ritchie suggested a new appellation, extra-governmental organizations (EGOs).²⁶ It did not take hold. The emerging nomenclature seems to be "civil society."²⁷

International Personality

Leaving aside the Red Cross, NGOs do not have international legal personality.²⁸ They are governed by the laws of the State in which they are incorporated. There is some reciprocal recognition between countries. For example, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations provides for general recognition of the legal personality acquired by an NGO in any Party State.²⁹ States can also make international commitments regarding NGOs. Under its Headquarters Agreement with the United Nations, for example, the United States has an obligation not to impede transit of the representatives of NGOs "recognized by the United Nations for the purpose of consultation under Article 71 of the [United Nations] Charter."³⁰

24. Paul Wapner, *Politics Beyond the State: Environmental Activism and World Civic Politics*, 47 *WORLD POL.* 311, 337 (1995) (presenting thesis that civic power is the forging of voluntary and customary practices into mechanisms that govern public affairs). See also FISHER, *supra* note 10 (discussing grassroots organizations).

25. See Georges Langrod, *Some Reflections on the Private Sector of International Cooperation*, 17 *INT'L ASS'NS* 134, 136 (1965) (noting that the label "non-governmental" cannot continue to be applied to NGOs, since a negative criterion cannot suffice to characterize it in a satisfactory way).

26. Cyril Ritchie, *The "Extragovernmental Organisations"*, in *THE FUTURE OF TRANSNATIONAL ASSOCIATIONS FROM THE STANDPOINT OF A NEW WORLD ORDER* 145 (Union of International Associations, Doc. No. 22, 1977). Ritchie was Secretary General of the International Council of Voluntary Agencies.

27. Daniel J. Shepard, *Nongovernmental Organizations Move from Grassroots to Corridors of Diplomacy*, *EARTH TIMES*, Mar. 15-31, 1995, at 20.

28. TARLOCK, *supra* note 1, at 64; LYMAN CROMWELL WHITE, *THE STRUCTURE OF PRIVATE INTERNATIONAL ORGANIZATIONS* 265 (1933) (stating that the Red Cross is an organism *sui generis* in international law).

29. European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, Apr. 24, 1986, art. 2(1), *Europ. T.S. No. 124*.

30. Agreement on the Headquarters of the United Nations, June 26, 1947, sec. 11, 61 *Stat.* 3416. Article 71 of the U.N. 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." U.N. CHARTER art. 71. See also Yuen-Li Liang, *Note on Legal Questions Concerning the United Nations, Question of Access to U.N. Head-*

In addition, States sometimes intervene with other States on behalf of NGOs.³¹

Discussions about the granting of international personality to international associations began at least as early as 1910.³² In 1923, the Institut de Droit International prepared a draft treaty on the juridical status of international associations.³³ It defined such associations as non-profit private groups having an international purpose and permitting membership from different countries.³⁴ The Convention provided for central international registration of these associations, after which the NGO was to enjoy the rights of incorporation in any of the Party States.³⁵ In the event of a dispute, the association was to have the right of appeal to the Permanent Court of International Justice.³⁶ In supporting the proposed convention, Werner Kaufmann argued that international law was no longer solely about relationships among States but also about relations among individuals and associations.³⁷ It appears as though no government seized the opportunity to adhere to this convention.

PART ONE: HISTORY OF NGO INVOLVEMENT

Some commentators portray the history of NGO involvement as starting after World War II.³⁸ It is said that as private groups demonstrated their utility to sovereign States and international organizations after the War, NGOs were increasingly accepted as legitimate participants in international lawmaking. Viewed in this way, involvement by NGOs

quarters of Representatives of Non-Governmental Organizations in Consultative Status, 48 AM. J. INT'L L. 434 (1954).

31. See, e.g., PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 1883, at 824-39, 818 (1884) (discussing successful U.S. government demarche to Turkish Government on behalf of American Bible Society).

32. 23 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 551 (1910). See also PETER H. ROHN, RELATIONS BETWEEN THE COUNCIL OF EUROPE AND INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS 17-19 (Union of International Associations, No. 6, 1957) (discussing efforts since 1910 to provide international legal recognition of NGOs).

33. Convention relative à la Condition Juridique des Associations Internationales, 30 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 385 (1923); James Brown Scott, *The Institute of International Law*, 17 AM. J. INT'L L. 751, 753-56 (1923).

34. Convention relative à la Condition Juridique des Associations Internationales, *supra* note 33, at art. 2.

35. *Id.* arts. 4, 7. There was an exception for concerns about public order.

36. *Id.* art. 7.

37. 30 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 353 (1923).

38. See, e.g., DAVID ARMSTRONG ET AL., FROM VERSAILLES TO MAASTRICHT: INTERNATIONAL ORGANISATION IN THE TWENTIETH CENTURY 5, 55, 85, 250 (1996); Christopher Tracy, *The Roots of Influence: Nongovernmental Organizations and the Relationship Between Human Rights and the Environment*, 3 DET. C. L. J. INT'L L. & PRACTICE 21, 29 (1994).

is a story of continuous, though uneven, growth. This article contends that the history of NGO involvement in international governance is more complex. NGO involvement began much earlier than 1945. Growth has not been continuous.

Although on the whole NGOs are more influential now than ever before, in some ways NGO penetration into international organizations is no deeper than it was seventy years ago. The involvement of NGOs seems to rise when governments need them and to fall when governments and international bureaucracies gain self-confidence, suggesting a cyclical pattern. This pattern of NGO involvement can be roughly divided into seven historical periods:

Emergence	1775–1918
Engagement	1919–1934
Disengagement	1935–1944
Formalization	1945–1949
Underachievement	1950–1971
Intensification	1972–1991
Empowerment	1992–?

The historical events discussed in this article do not perfectly fit the time periods delineated above. Thus, some episodes will be discussed out of sequence to facilitate exposition. This article, moreover, will not attempt a comprehensive history of NGO involvement. Instead, it will focus mainly on NGO involvement before 1945. This era contains experience that is relevant to understanding how NGO participation has evolved.³⁹ Analyses that examine only post-1944 developments will miss important events that should inform our understanding of how NGOs interact with IGOs.

NGOs existed before 1775 of course. The earliest internationally active NGO was probably the Roman Catholic Church.⁴⁰ The fourth

39. See Bill Seary, *The Early History*, in *THE CONSCIENCE OF THE WORLD*, *supra* note 3, at 15–30.

40. RECHENBERG, *supra* note 12, at 278. For many centuries, the status of the Papacy is ambiguous and might be viewed as a government actor. Currently, the Holy See is a member of several international organizations. Yasmin Abdullah, *The Holy See at United Nations Conferences: State or Church?*, 96 *COL. L. REV.* 1835, 1835–37 (1996); *INTERNATIONAL LAW CASES AND MATERIALS* 299–300 (Louis Henkin et al. eds., 3d ed. 1993).

Lateran Council, called by Pope Innocent III for 1215, included not only 400 bishops, but also envoys of many European kings and the personal representative of Emperor Frederick II.⁴¹ The Council of Constance, in 1414–18, has been called the most spectacular international conference in history.⁴² England, France, Spain, the German States, and the Italian States each had one vote, as did the Catholic cardinals as a group.⁴³ As legal scholar Francis Wharton has noted, these ecumenical councils “were, in many respects, international congresses” that wrote canon law.⁴⁴ They are perhaps the earliest example of a *mixed* international congress.⁴⁵ One could dwell for many pages on such prior art, but we should instead begin examining the inventiveness of late-eighteenth and nineteenth century NGOs.

I. EMERGENCE (1775–1918)

During this period, individuals with shared interests created issue-oriented NGOs to influence policymaking. By the mid-nineteenth century, NGOs recognized the importance of transnational cooperation and became catalysts in the creation of several public international unions.⁴⁶ A key development was the mixed international conference, a type of meeting that brought together government officials, NGO representatives, and individuals to address social problems. As the scope of international cooperation expanded, governments added non-diplomats to their delegations. Even when they were not invited, NGOs traveled to international conferences to pursue their interests.

A. *Organizing for Influence*

Issue-oriented national NGOs activated in the late eighteenth century. Their first target was the slave trade. In 1775, the Pennsylvania Society

41. Lateran Council, 7 *THE NEW ENCYCLOPÆDIA BRITANNICA* (Micropædia) 178 (15th ed. 1990). The Council's most significant impact on English legal history was the abolition of the Ordeals.

42. GERARD J. MANGONE, *A SHORT HISTORY OF INTERNATIONAL ORGANIZATION* 99 (1954).

43. Council of Constance, 3 *THE NEW ENCYCLOPÆDIA BRITANNICA* (Micropædia) 559–60 (15th ed. 1990).

44. FRANCIS WHARTON, *A TREATISE ON THE CONFLICT OF LAWS* § 171 (1881).

45. FREDERICK SHERWOOD DUNN, *THE PRACTICE AND PROCEDURE OF INTERNATIONAL CONFERENCES* 49–50 (1929).

46. PAUL S. REINSCH, *PUBLIC INTERNATIONAL UNIONS: THEIR WORK AND ORGANIZATION* 144–47 (1911). See also F. MELIAN STAWELL, *THE GROWTH OF INTERNATIONAL THOUGHT* 204 (1929) (pointing out that all of the great movements of thought in Europe have been international in origin).

for Promoting the Abolition of Slavery was founded.⁴⁷ In 1787, some British citizens started the Society for Effecting the Abolition of Slave Trade.⁴⁸ In 1788, the Société des Amis des Noirs was founded in France.⁴⁹ At the advent of the Congress of Vienna in 1815, 800 petitions were presented to the British House of Commons to stop the international slave trade.⁵⁰ This public pressure spurred the British government to press for action at Vienna.⁵¹ Yet the only agreement that could be achieved was a declaration condemning the slave trade.⁵² In 1817, Great Britain and Portugal signed a treaty to prevent the slave trade.⁵³ In 1839, the British and Foreign Anti-Slavery Society was established with the aim, among others, of changing public opinion.⁵⁴ In 1840, the Society convened the International Anti-Slavery Conference in London.⁵⁵ According to one commentator, the Society was “perhaps the first transnational moral entrepreneur—religious movements aside—to play a significant role in world politics generally and in the evolution of a global prohibition regime specifically.”⁵⁶ A year later, several European countries agreed to a treaty abolishing the slave trade.⁵⁷ In 1842, anti-slavery societies in both the United States and Britain sought to influence the ongoing Webster-Ashburton negotiations on the issue of fugitive slave extradition.⁵⁸

The second initiative to inspire globalizing NGOs was the pursuit of peace. Peace societies began sprouting in 1815.⁵⁹ The American Peace

47. MARY STOUGHTON LOCKE, *ANTI-SLAVERY IN AMERICA* 87–98 (1901). Benjamin Franklin was an early President of this Society.

48. W.H. VAN DER LINDEN, *THE INTERNATIONAL PEACE MOVEMENT, 1815–1874*, at 19 (1987); Peter Archer, *Action by Unofficial Organizations in Human Rights*, in *THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 162–63 (Evan Luard ed., 1967).

49. EVAN LUARD, *INTERNATIONAL AGENCIES: THE EMERGING FRAMEWORK OF INTERDEPENDENCE* 167–68 (1977).

50. JOSEPH CHAMBERLAIN, *INTERNATIONAL ORGANIZATION* 92 (1955).

51. CHARLES KINGSLEY WEBSTER, *24 PEACE HANDBOOK NO. 153: THE CONGRESS OF VIENNA* 134–35 (1920).

52. Declaration of Eight Courts relative to the Universal Abolition of the Slave Trade, Feb. 8, 1815, 63 Consol. T.S. 473.

53. Additional Convention between Great Britain and Portugal for the Prevention of the Slave Trade, July 28, 1817, 67 Consol. T.S. 396.

54. BETTY FLADELAND, *MEN AND BROTHERS: ANGLO-AMERICAN ANTISLAVERY COOPERATION* 258 (1972). Today, it is the Anti-Slavery Society.

55. F.S.L. LYONS, *INTERNATIONALISM IN EUROPE 1815–1914*, at 291 (1963).

56. Ethan A. Nadelmann, *Global Prohibition Regimes: The Evolution of Norms in International Society*, 44 *INT’L ORG.* 479, 495 (1990).

57. Treaty for the Suppression of the African Slave Trade, Dec. 20, 1841, 92 Consol. T.S. 437.

58. FLADELAND, *supra* note 54, at 315–18.

59. EDSON L. WHITNEY, *THE AMERICAN PEACE SOCIETY: A CENTENNIAL HISTORY* 10–12 (1928).

Society was founded in 1828.⁶⁰ A renowned international Peace Congress was held in Paris in 1849.⁶¹ The Universal Peace Union was founded in 1866.⁶² These peace societies had a significant influence on international organization and law.⁶³ Many supported efforts to promote international arbitration.⁶⁴ For example, in 1840, William Ladd, President of the American Peace Society, developed the first plan for what would become the Permanent Court of Arbitration.⁶⁵ In 1856, at the end of the Crimean War, peace groups pressed successfully for a mediation clause in the ensuing peace treaty.⁶⁶ In the 1890s, Randal Cremer and his colleagues in the International Arbitration League lobbied on both sides of the Atlantic for an arbitration treaty between the United States and Great Britain.⁶⁷ By 1900, there were 425 peace societies throughout the world.⁶⁸

A third focus of issue-oriented NGOs was worker solidarity. The earliest international meeting of workers occurred in 1864 and led to the establishment of the International Working Men's Association.⁶⁹ Transnational worker activity increased in the 1870s, perhaps as a result of improvements in transportation and communication.⁷⁰ The first transnational labor union was the International Federation of Tobacco Work-

60. *Id.* at 19.

61. ELIHU BURRITT: A MEMORIAL VOLUME CONTAINING A SKETCH OF HIS LIFE AND LABORS 76 (Chas. Northend ed., 1879). Burritt calls it "the most remarkable assembly that had ever convened on the continent of Europe, not only for its objects, but for its personal composition." *Id.*

62. C. ROLAND MARCHAND, THE AMERICAN PEACE MOVEMENT AND SOCIAL REFORM, 1898-1918, at 17 (1972).

63. JOSEPH H. CHOATE, THE TWO HAGUE CONFERENCES 41 (1913).

64. A.C.F. BEALES, THE HISTORY OF PEACE 137 (1931); MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 111-13 (2d ed. 1993); BENJAMIN F. TRUEBLOOD, THE DEVELOPMENT OF THE PEACE IDEA AND OTHER ESSAYS 109 (1932).

65. JAMES BROWN SCOTT, Preface to GEORG SCHWARZENBERGER, WILLIAM LADD: AN EXAMINATION OF AN AMERICAN PROPOSAL FOR AN INTERNATIONAL EQUITY TRIBUNAL, x-xvi (1935).

66. HOWARD EVANS, SIR RANDAL CREMER 64-66 (1910); Norman Angell, *Peace Movements*, in ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 41, 43 (Edwin R.A. Seligman ed., 1934); Protocol of Conference, Apr. 14, 1856, 2 MAP OF EUROPE BY TREATY 1277, 1279 (Edward Hertslet ed., 1875).

67. EVANS, *supra* note 66, at 155, 186. The treaty failed to gain the consent of the U.S. Senate. *Arbitration*, in 3 UNPERFECTED TREATIES OF THE UNITED STATES OF AMERICA, 1776-1976, at 253.

68. Angell, *supra* note 66, at 46.

69. ABDUL-KARIM TIKRITI, TRIPARTISM AND THE INTERNATIONAL LABOUR ORGANISATION 75-76 (1982) (Studies in Int'l Law, vol. 7).

70. See LYONS, *supra* note 55, at 14-15 (presenting chart showing growth of international NGOs).

ers, founded in 1876.⁷¹ Other groups focusing on international labor issues included the International Federation for the Observation of Sunday, founded in 1876, the Permanent International Committee on Social Insurance, founded in 1889, the International Federation of Trade Unions, founded under another name in 1901, and the International Congress on Occupational Diseases, founded in 1906.⁷²

Another mobilizing goal for NGOs of this period was free trade. From 1838 to 1846, the Anti-Corn Law League campaigned against the British corn tariff and promoted the cause of free trade.⁷³ In 1846, two new free trade NGOs were established: the Free Trade Association in France and the Belgian Association for Commercial Liberty.⁷⁴ Beginning around 1866, Cobden Clubs started forming in Europe to promote freer trade.⁷⁵ The International Association for Customs Reform, founded in 1856, promoted the creation of an International Union to publicize custom tariffs because businesses needed easy access to current tariff schedules.⁷⁶

NGOs also organized to strengthen international law. The Institut de Droit International, founded in 1873, promoted the idea of a court of arbitration and concluded numerous landmark treaties.⁷⁷ It also contributed to the modest success of the First Hague Peace Conference.⁷⁸ The International Law Association, also founded in 1873, promoted the codification of international law and stimulated the development of private international law on shipping.⁷⁹ For example, the Association helped

71. UNION OF INTERNATIONAL ASSOCIATIONS, *THE 1,978 ORGANIZATIONS FOUNDED SINCE THE CONGRESS OF VIENNA*, 21 (1957). The League's *Handbook* puts its founding in 1890. LEAGUE OF NATIONS, *HANDBOOK OF INTERNATIONAL ORGANIZATIONS* (1938), League Pub. XII.B.4. 302 (1937) [hereinafter LEAGUE OF NATIONS (1938)].

72. DAVID HUNTER MILLER, *INTERNATIONAL RELATIONS OF LABOR* 7 (1921); *THE 1,978 ORGANIZATIONS FOUNDED SINCE THE CONGRESS OF VIENNA*, *supra* note 71, at 22; U.S. WAR LABOR POLICIES BOARD, *REPORT ON INTERNATIONAL ACTION AND MACHINERY REGULATING LABOR AND INTERNATIONAL LABOR OPINION AS TO PEACE TERMS 5-9* (1919).

73. *See generally* NORMAN McCORD, *THE ANTI-CORN LAW LEAGUE* (1958). McCord views the League as an early example of a highly organized pressure group with centralized administration and a propaganda apparatus. *Id.* at 187.

74. VAN DER LINDEN, *supra* note 48, at 278.

75. MEMBERS OF THE CLUB, *HISTORY OF THE COBDEN CLUB* (1939); GEORGE L. RIDGEWAY, *MERCHANT OF PEACE: TWENTY YEARS OF BUSINESS DIPLOMACY THROUGH THE INTERNATIONAL CHAMBER OF COMMERCE* 386 (1938).

76. *THE 1,978 ORGANIZATIONS FOUNDED SINCE THE CONGRESS OF VIENNA*, *supra* note 71, at 18; Convention Concerning the Formation of an International Union for the Publication of Customs Tariffs, July 5, 1890, 26 Stat. 1518 (1890).

77. JAMES W. GARNER, *RECENT DEVELOPMENTS IN INTERNATIONAL LAW* 655-56 (1925); JACKSON H. RALSTON, *INTERNATIONAL ARBITRATION FROM ATHENS TO LOCARNO* 139 (1929).

78. PHILIP C. JESSUP ET AL., *INTERNATIONAL REGULATION OF ECONOMIC AND SOCIAL QUESTIONS* 28 (1955).

79. INTERNATIONAL LAW ASSOCIATION, *REPORT OF THE TWENTY-SECOND CONFERENCE HELD AT CHRISTIANIA vii-xiv* (1906) (summarizing impact).

devise the "York-Antwerp Rules" of 1890.⁸⁰ The Association of International Law in Japan was founded in 1897 to study and diffuse knowledge of international law.⁸¹ In 1906, the American Society of International Law was founded to "foster the study of international law and to promote the establishment of international relations on the basis of law and justice."⁸² One commentator notes that between 1872 and 1914, twenty-six law-related NGOs were created, many of them engaged in the preparation of international legislation.⁸³

Finally, NGOs also organized to promote NGOs. In 1910, a World Congress of International Associations was held in Brussels with the participation of 132 international associations and thirteen governments.⁸⁴ At that Congress, the Union of International Associations was founded.⁸⁵

B. NGOs and Intergovernmental Conferences

Attempts by NGOs to influence intergovernmental conferences have a long lineage. When the Congress of Vienna convened in 1815, representatives came from the Jewish community of Frankfurt and the Jewish people in the Hanseatic cities.⁸⁶ These individuals submitted petitions and met with Prince Metternich, the President of the Congress.⁸⁷ The Congress approved a provision providing for the civil rights of Jews.⁸⁸ There was also a representative of German publishers present in Vienna to seek protections.⁸⁹ The Treaty of Vienna contains a provision calling for liberty

80. LYONS, *supra* note 55, at 83. The York-Antwerp Rules standardized the application of the general average to apportion losses in maritime accidents. See generally N. GEOFFREY HUDSON, *THE YORK-ANTWERP RULES* (1991).

81. Shigeru Kuriyama, *Historical Aspects of the Progress of International Law in Japan*, 1 JAP. ANN. INT'L L. 1, 4 (1957).

82. Frederic L. Kirgis, *The Formative Years of the American Society of International Law*, 90 AM. J. INT'L L. 559, 565 (1996).

83. J. JOSEF LADOR-LEDERER, *INTERNATIONAL GROUP PROTECTION: AIMS AND METHODS IN HUMAN RIGHTS* 385 (1968).

84. See generally 1 Congrès Mondial des Associations Internationales 1910 (1911) & 2 Congrès Mondial des Associations Internationales 1910 (1912).

85. UNION OF INTERNATIONAL ASSOCIATIONS, *UNION OF INTERNATIONAL ASSOCIATIONS 1910-1970*, at 26-27 (1970).

86. HAROLD NICOLSON, *THE CONGRESS OF VIENNA: A STUDY IN ALLIED UNITY 1812-1822*, at 132 (1946); WEBSTER, *supra* note 51, at 59-60; *The Right of Petition*, at ¶ 13, U.N. Doc. E/CN.4A/419 (1950).

87. *The Right of Petition*, *supra* note 86, at ¶ 13.

88. FEDERAL CONSTITUTION OF GERMANY, June 9, 1815, art. XVI, reprinted in 1 KEY TREATIES FOR THE GREAT POWERS 1814-1914, at 38 (Michael Hurst ed., 1972).

89. NICOLSON, *supra* note 86, at 132; *The Right of Petition*, *supra* note 86, at ¶ 13.

of the press and measures against literary piracy.⁹⁰ In 1878, the Congress of Berlin set up a procedure to hear petitions.⁹¹ About 145 petitions were deemed important enough to log in and almost all of these came from individuals or private associations.⁹² Such petitions could not be discussed at the sessions, however, unless formally introduced by a plenipotentiary.⁹³ In 1889–90, an intergovernmental conference was held in Brussels to combat the slave trade.⁹⁴ Representatives of the British Anti-Slavery Society, the Aborigines' Protection Society, and the United Committee for the Prevention of the Demoralization of Native Races by the Liquor Traffic journeyed to Brussels to press their views on the government delegates.⁹⁵ The conference produced the General Act for the Repression of African Slave Trade.⁹⁶ In that treaty, the parties agreed to "encourage, aid and protect such national associations and enterprises due to private initiative as may wish to co-operate in their possessions in the repression of the slave trade."⁹⁷

When the First Hague Peace Conference convened in 1899, numerous peace societies from the United States and Europe sent representatives.⁹⁸ According to one commentator, "They conducted themselves as though they were official members of the conference, and they sought to make their influence felt."⁹⁹ For example, Eleonore Selenka from Munich brought a petition signed by millions of women in eighteen countries and had a short meeting with the President of the Conference.¹⁰⁰ Deputations from oppressed peoples also came to the Hague—for example, Poles, Finns, Armenians, and Macedonians—and met with various delegations.¹⁰¹

90. FEDERAL CONSTITUTION OF GERMANY, *supra* note 88, art. XVIII(D), *reprinted in* 1 KEY TREATIES FOR THE GREAT POWERS 1814–1914, *supra* note 88, at 39.

91. E.L. WOODWARD, THE CONGRESS OF BERLIN 1878, at 31, *reprinted in* 24 PEACE HANDBOOK No. 154 (1920). The topic of the Congress was national boundaries and political issues in the Balkans.

92. *The Right of Petition*, *supra* note 86, at ¶ 15.

93. WOODWARD, *supra* note 91, at 31.

94. REGINALD COUPLAND, THE BRITISH ANTI-SLAVERY MOVEMENT 223–24 (2d ed. 1964).

95. JOHN HARRIS, A CENTURY OF EMANCIPATION 222–23 (1933); SUZANNE MIERS, BRITAIN AND THE ENDING OF THE SLAVE TRADE 238, 275–76 (1975).

96. General Act for the Repression of African Slave Trade, July 2, 1890, 27 Stat. 886.

97. *Id.* at art. IV. This opportunity for private initiative was "subject to their receiving previous authorization, such authorization being revokable at any time, subject also to their being directed and controlled, and to the exclusion of the exercise of rights of sovereignty." *Id.*

98. WHITNEY, *supra* note 59, at 209; BARBARA W. TUCHMAN, THE PROUD TOWER: A PORTRAIT OF THE WORLD BEFORE THE WAR, 1890–1914, at 257 (1955).

99. CALVIN DEARMOND DAVIS, THE UNITED STATES AND THE FIRST HAGUE PEACE CONFERENCE 97–102 (1962).

100. *Id.* at 99–100.

101. FREDERICK W. HOLLS, THE PEACE CONFERENCE AT THE HAGUE 329 (1900).

To review private petitions, the conference set up a Commission of Correspondence.¹⁰² The activism of these popular groups during the Hague Conference foreshadowed the method employed by NGOs in recent decades¹⁰³ of using intergovernmental meetings as opportunities for coordinated lobbying and mass publicity. Another innovation begun at the Hague was the unofficial newspaper. The writer and peace activist, W.T. Stead, wrote a regular chronicle of the conference in French and Dutch in defiance of the conference's rule of secrecy.¹⁰⁴

At the Second Hague Peace Conference of 1907, the peace groups again descended on the Hague.¹⁰⁵ The Conference President officially received two delegations, one from the International Council of Women and one from the Salvation Army.¹⁰⁶ For this conference, Stead published a four-page daily newspaper.¹⁰⁷ Stead, the Baroness Bertha von Suttner, and other peace leaders also started "Le Cercle Internationale," which welcomed conference delegates every afternoon for tea and lectures.¹⁰⁸ This was probably the first "parallel" NGO forum at an intergovernmental conference. In addition, congresses of Zionists, Socialists, and Anarchists convened near the Hague to appeal to or denounce the Peace Conference.¹⁰⁹

Finally, on another continent, one of the most unusual NGO episodes of this period involved the International African Association founded by King Leopold of Belgium.¹¹⁰ The Association and its Committee for the

102. Nathan Feinberg, *La Pétition en Droit International*, 40 *ACADÉMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS* 549-54; *The Right of Petition*, *supra* note 86, at para. 17.

103. Peter J. Spiro, *New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions*, 18 *WASH. Q.*, 45, 49 (Winter 1995); Barbara Crossette, *Once a Sideshow, Private Organizations Star at U.N. Meetings*, *N.Y. TIMES*, Mar. 12, 1995, at A6.

104. JAMES BROWN SCOTT, *THE HAGUE PEACE CONFERENCES OF 1899 AND 1907*, at 172-73 (1909) (noting that Stead was in effect a "delegate at large"); 1 *FREDERIC WHYTE, THE LIFE OF W.T. STEAD* 153-54 (1925).

105. CALVIN DEARMOND DAVIS, *THE UNITED STATES AND THE SECOND HAGUE PEACE CONFERENCE 192-94* (1975).

106. INTERNATIONAL COUNCIL OF WOMEN, *WOMEN IN A CHANGING WORLD: THE DYNAMIC STORY OF THE INTERNATIONAL COUNCIL OF WOMEN SINCE 1888*, at 31, 141 (1966). The Council was founded in 1888. The Salvation Army was founded in 1865.

107. WHYTE, *supra* note 104, at 290. Stead's last journey came in 1912, when he sailed for New York—on the *Titanic*—to attend a conference on the "World's Peace." *Id.* at 313.

108. *Id.*

109. WILLIAM I. HULL, *THE TWO HAGUE CONFERENCES AND THEIR CONTRIBUTIONS TO INTERNATIONAL LAW* 27 (1908).

110. FRANCIS BOWES SAYRE, *EXPERIMENTS IN INTERNATIONAL ADMINISTRATION* 80 (1919). The Association was headed by a central committee composed of the Belgian King, one German, one Frenchman, and one American. *Id.* at 80-81.

Study of the Upper Congo were putatively organized for philanthropic and scientific purposes, but soon pursued commercial and political goals.¹¹¹ Over the next few years, the Association transmogrified from an NGO-like entity into the Congo State.¹¹² At the Congress of Berlin in 1884–85, the Congo State was put under the guardianship of King Leopold.¹¹³ After reports of heinous conditions reached London, a Congo Reform Association was founded.¹¹⁴ By 1908, the King was forced by other governments to relinquish personal control.¹¹⁵

C. Promoting New International Regimes

The significance of NGO involvement in the nineteenth century went far beyond lobbying at conferences in Vienna, Berlin, Brussels, and the Hague. NGOs also achieved much by sparking intergovernmental cooperation.¹¹⁶ Although the exclusivity of a diplomatic conference was a long-time practice, this format became less useful as the international agenda broadened. Governments recognized a need to hold technical conferences. Obtaining expertise required going beyond diplomats to include other government officials and, at times, private citizens.¹¹⁷ One of the earliest conferences to use technical experts was the first International Sanitary Conference of 1851–52. Each government was represented by two delegates—a diplomat and a physician.¹¹⁸ These delegates voted individually, not as a unit.¹¹⁹

Governments also began to find it useful to participate in privately initiated conferences. In an era where few public international organizations existed, the distinction between the IGO and the NGO had not yet crystallized. For example, from 1853 to 1876, several International Statistical Congresses were held to discuss improvements in statistics.¹²⁰ The congresses included government representatives and delegates from

111. *Id.*

112. *Id.* at 81.

113. C.W.W. GREENIDGE, *SLAVERY* 163 (1958).

114. *Id.* at 164.

115. *Congo Free State*, in 3 *THE NEW ENCYCLOPÆDIA BRITANNICA* (Micropaedia) 534 (15th ed. 1985).

116. GARNER, *supra* note 77, at 605 (noting that private conferences contributed powerfully in some cases toward inducing international regulation and administration).

117. FREDERICK CHARLES HICKS, *THE NEW WORLD ORDER* 280–81 (1920).

118. NEVILLE M. GOODMAN, *INTERNATIONAL HEALTH ORGANIZATIONS AND THEIR WORK* 43 (1971). It is unclear whether the physicians were government employees.

119. WORLD HEALTH ORGANIZATION, *THE FIRST TEN YEARS OF THE WORLD HEALTH ORGANIZATION* 7 (1958).

120. J.W. NIXON, *A HISTORY OF THE INTERNATIONAL STATISTICAL INSTITUTE, 1885–1960*, at 6, 14–15 (1960).

learned societies.¹²¹ Another example occurred in 1872 at the International Penitentiary Congress. The participants included representatives from governments, prison societies, prisons, and societies of jurists.¹²² Conferences with similar attendance were held in subsequent years.¹²³ Because of their mixed composition, conferences like these have been termed "semi-public"¹²⁴ or "semi-official"¹²⁵ conferences.

Scientists stimulated some of the earliest intergovernmental cooperation. For example, associations of scientists and statisticians sought the creation of an International Bureau of Weights and Measures.¹²⁶ The Bureau was created at the International Metric Conference of 1875, which had a special commission of scientists from each country.¹²⁷ In the early 1880s, geographers and engineers pressed for an international conference to establish a prime meridian for longitude.¹²⁸ In 1895, the Sixth International Geographical Congress included representatives from governments and scientific societies.¹²⁹ One recommendation of the Congress was that Antarctica should be explored.¹³⁰ At the turn of the century, meetings of marine scientists led to the establishment of the International Council for the Exploration of the Sea in 1902.¹³¹

In some cases, the transformation to an international organization took many decades. For example, a meeting of meteorologists in 1872

121. *Id.* at 11–12.

122. REPORT ON THE INTERNATIONAL PENITENTIARY CONGRESS 2 (1872).

123. *See, e.g.*, HOWARD ASSOCIATION, PARIS PRISON CONGRESS: SUMMARY REPORT 1 (1895).

124. NORMAN L. HILL, THE PUBLIC INTERNATIONAL CONFERENCE 154 (1929). *See also* D.W. BOWETT, THE LAW OF INTERNATIONAL INSTITUTIONS 4–5 (4th ed. 1982) (noting the artificiality of a rigid distinction between "public" and "private" international unions).

125. REPORT ON THE INTERNATIONAL PENITENTIARY CONGRESS, *supra* note 122, at 1 (quoting M. Charles Lucas who states that the semi-official nature of the 1872 Congress stamps it with "complete originality").

126. John A. Johnson, *Scientific Organizations and the Development of International Law*, PROC. AM. SOC'Y INT'L L., Apr. 1960, at 206–07; LYONS, *supra* note 55, at 122; CRAIG N. MURPHY, INTERNATIONAL ORGANIZATION AND INDUSTRIAL CHANGE 71 (1994).

127. Convention for the establishment of the International Office of Weights and Measures, May 20, 1875, 149 Consol. T.S. 237; COMMISSION INTERNATIONALE DU MÈTRE, PARIS, DOCUMENTS DIPLOMATIQUES DE LA CONFÉRENCE DU MÈTRE (1875).

128. DONALD HESTER, PRACTICE AND PROCEDURE IN PREPARING FOR INTERNATIONAL CONFERENCES WITH SPECIAL EMPHASIS ON UNITED STATES TECHNIQUES 41 (1959). *See also* REPORT ON THE THIRD INTERNATIONAL GEOGRAPHICAL CONGRESS AND EXHIBITION (1885). The Prime Meridian Conference was held in 1884.

129. REPORT OF THE SIXTH INTERNATIONAL GEOGRAPHICAL CONGRESS HELD IN LONDON 1895, App. A, at 12–19 (1896). For example, some participating organizations included the French Geographic Society (founded in 1821), the Geographic Society of Lima, and the Asiatic Society of Japan.

130. *Id.* at 780.

131. STUDY OF THE SEA xii, 10 (E.M. Thomasson ed., 1981); Convention for the International Council for the Exploration of the Sea, Sept. 12, 1964, 652 U.N.T.S. 237 (providing constitution for sixty-two year old organization).

was followed by an intergovernmental conference in 1873.¹³² This led to the formation of the International Meteorological Organization (IMO) in 1891. The IMO was composed of the directors of national meteorological services, some of which were government agencies and some private.¹³³ During the twentieth century, the IMO was gradually imbued with more intergovernmental character. Yet it was not until 1947 that a mixed international conference drafted the charter for the World Meteorological Organization, a U.N. specialized agency.¹³⁴

NGOs in this period also stimulated the development of several international regimes. Governments often used the preparatory work of private conferences to formulate multilateral conventions.¹³⁵ Episodes involving the Red Cross, intellectual property, transportation, prostitution, narcotics, workers, agriculture, nature, and liquor are discussed below.

RED CROSS. The Red Cross provided a pattern for how NGOs could help formulate international law. In 1863, Henri Dunant persuaded the Geneva Public Welfare Society to set up a committee to address the problem of relief for wounded soldiers.¹³⁶ The committee called for an international conference of government delegates and private participants.¹³⁷ This conference recommended that voluntary societies be created in all countries for relief of the wounded.¹³⁸ It also recommended holding an official conference to effectuate a treaty.¹³⁹ At the ensuing official conference in 1864, the attendees were mainly medical and military experts, rather than diplomats.¹⁴⁰ The conference approved the first Geneva Convention.¹⁴¹ The Geneva organizing committee became the

132. 1 DAVID M. LEIVE, *INTERNATIONAL REGULATORY REGIMES* 166 (1976).

133. *Id.* at 167-68.

134. HENRY G. SCHERMERS, *INTERNATIONAL INSTITUTIONAL LAW* 17 (1980); Marc Peeters, *World Meteorological Organization*, 5 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 414-15 (1983).

135. Simeon E. Baldwin, *The International Congresses and Conferences of the Last Century as Forces Working Toward the Solidarity of the World*, 1 *AM. J. INT'L L.* 565, 576 (1907) (noting that it has often been found that the public congress of moment to the world has been the immediate consequence of a private congress).

136. JAMES AVERY JOYCE, *RED CROSS INTERNATIONAL AND THE STRATEGY OF PEACE* 38 (1959).

137. HICKS, *supra* note 117, at 283-84.

138. *INTERNATIONAL CONFERENCE OF GENEVA, OCTOBER 29, 1963, RESOLUTIONS AND RECOMMENDATIONS THEN ADOPTED*, 4 *AM. J. INT'L L.* 237 (Supp. 1910).

139. JOYCE, *supra* note 136, at 43.

140. DUNN, *supra* note 45, at 114. Dunn notes that the delegates discussed whether voting should be by country or individually. The few professional diplomats present explained that no voting was called for since unanimity was required. *Id.*

141. George Davis, *The Sanitary Commission—The Red Cross*, 10 *AM. J. INT'L L.* 546, 551-52 (1910). Convention for the Amelioration of the Condition of the Wounded in Armies

International Committee for the Relief of Wounded Soldiers, which was later renamed the International Committee of the Red Cross (ICRC).¹⁴² The voluntary national societies around the world organized themselves in 1919 as the League of Red Cross Societies.¹⁴³ The Red Cross is governed by a quadrennial conference composed of delegates of both the national societies and the States Parties to the Geneva conventions.¹⁴⁴

INTELLECTUAL PROPERTY. NGO activism inspired the invention of an international regime for intellectual property. On the occasion of the Universal Exposition of 1878, the French government organized an International Congress on Industrial Property.¹⁴⁵ This Congress included government delegates and private individuals.¹⁴⁶ It created a commission that drafted a convention for the protection of industrial property. This draft convention was approved by an official conference in 1883.¹⁴⁷ The protection of copyrights evolved in a similar way. The first international congress was held in 1858.¹⁴⁸ This congress was attended by official delegates from six governments, unofficial government delegates from several countries, fifty-four delegates from learned societies, and over 250 other individuals.¹⁴⁹ The congress approved resolutions, but they had no immediate impact.¹⁵⁰ At the Universal Exposition of 1878, there was a Literary Congress presided over by Victor Hugo.¹⁵¹ This Congress created an association that later became the International Literary and Artistic Association. In 1883, this Association convened a conference of authors, artists, and jurists to propose ways to institutionalize the protection of intellectual property. In 1884, the Swiss government hosted an official

in the Field, Aug. 22, 1864, 129 Consol. T.S. 361. *See also* Convention for the Ameliorating of the Condition of the Wounded of the Armies of the Field, Dec. 19, 1906, arts. 10, 11, 23, 27, 35 Stat. 1885, 1893-97.

142. JOYCE, *supra* note 136, at 43; LEAGUE OF NATIONS (1938), *supra* note 71, at 83.

143. GEORGES WILLEMIN & ROGER HEACOCK, *THE INTERNATIONAL COMMITTEE OF THE RED CROSS* 26 (*INTERNATIONAL ORGANIZATION AND THE EVOLUTION OF WORLD SOCIETY* 1984).

144. Denise Bendschedler-Robert, *Red Cross*, in 5 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 252 (1983).

145. STEPHEN P. LADAS, *THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY* 75 (1930).

146. *Id.* at 74-75.

147. LADAS, *supra* note 145, at 84. Convention for the Protection of Industrial Property, Mar. 20, 1883, 116 Consol. T.S. 40.

148. SAM RICKETSON, *THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS 1886-1986*, at 41-42 (1987).

149. *Id.* at 42.

150. GERARD J. MANGONE, *supra* note 42, at 85-86.

151. 1 STEPHEN P. LADAS, *THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY* 73 (1938).

conference of governments to consider a draft convention based on the Association's proposals.¹⁵² The president and vice-president of the Association attended as part of government delegations.¹⁵³ In 1885, a follow-up conference redrafted the convention.¹⁵⁴ Success came in 1886 when governments approved the International Union for Protection of Literary and Artistic Works.¹⁵⁵

TRANSPORTATION. NGOs helped lay the groundwork for greater cooperation on transportation policy. For example, in 1885, various railroads and governments established the International Railway Congress Association.¹⁵⁶ This Association led to the creation in 1890 of the fully intergovernmental Central Office for International Railway Transport.¹⁵⁷ In 1888, business groups convinced the U.S. government to convene an International Marine Conference.¹⁵⁸ The Maritime Exchange of New York played a key role in securing the participation of the British government.¹⁵⁹ One committee at the Conference considered a proposal from Scandinavian business groups for the establishment of a Permanent International Merchant Shipping Commission, but the committee acted unfavorably on this proposal.¹⁶⁰ In 1897, the International Maritime Committee was founded as a voluntary association of jurists, shipowners, merchants, and underwriters.¹⁶¹ This Committee drafted international conventions on maritime law which were then considered in diplomatic conferences convened by the Belgian government.¹⁶² These conferences resulted in numerous treaties.¹⁶³

152. *Id.* at 75-77.

153. RICKETSON, *supra* note 148, at 58.

154. LADAS, *supra* note 151, at 78-82.

155. Convention for the Creation of an International Union for the Protection of Literary and Artistic Works, Sept. 9, 1886, 77 B.F.S.P. 22, 168 Consol. T.S. 185.

156. LEAGUE OF NATIONS (1938), *supra* note 71, at 385-86.

157. MURPHY, *supra* note 126, at 81.

158. HESTER, *supra* note 128, at 43. The U.S. government's delegation included two Navy officers, one official of a Life Saving Service, two masters from the merchant marine, and two citizens familiar with shipping and admiralty practice. An Act Providing for an International Marine Conference to Secure Greater Safety for Life and Property at Sea, 25 Stat. 243 (1888).

159. HESTER, *supra* note 128, at 43-44.

160. 3 U.S. DEP'T OF STATE, INTERNATIONAL MARINE CONFERENCE, 1889, at 346-48, 391 (1890).

161. C. John Colombos, *The Unification of Maritime International Law in Time of Peace*, 21 BRIT. Y.B. INT'L L. 98 (1944).

162. ALBERT LILAR & CARLO VAN DEN BOSCH, *LE COMITÉ MARITIME INTERNATIONAL 1897-1972*, at 16 (1973).

163. *Id. passim.* See, e.g., Convention relating to Assistance and Salvage at Sea, Sept. 23, 1910, 37 Stat. 1658.

PROSTITUTION. Prostitution was another problem for which private groups solicited public action. Following efforts by Josephine Butler and others to develop a network of activists, the first international congress was held in 1877.¹⁶⁴ In 1899, the English National Vigilance Association called a congress in London that led to the establishment of the International Bureau for the Suppression of Traffic in Women and Children.¹⁶⁵ An international technical congress was held in 1902.¹⁶⁶ This was followed by a diplomatic congress in 1904 which agreed to a convention regulating traffic in women.¹⁶⁷ In 1909, a mixed congress of governments and NGOs led to a tougher treaty a year later.¹⁶⁸

NARCOTICS. NGO activity was a key stimulant in the construction of an international narcotics regime. The Anglo-Oriental Society for the Suppression of the Opium Trade was founded in 1874.¹⁶⁹ It was part of an influential anti-drug movement that included missionaries and temperance groups.¹⁷⁰ In 1904, U.S. Secretary of State John Hay held a public hearing in which the International Reform Bureau and various missionary societies urged the U.S. government to induce Great Britain to release China from treaty compulsion to tolerate traffic in opium.¹⁷¹ In 1906, Bishop Charles Brent of the Philippines wrote a letter to President Theodore Roosevelt that is credited with triggering U.S. government support for the Opium Conference in Shanghai.¹⁷² At the subsequent diplomatic conference in 1911–12, the U.S. delegation included Bishop Brent, Dr. Hamilton Wright (a physician-activist), and Henry J. Finger (a pharmacist).¹⁷³ This conference approved the Hague Opium Convention of 1912.¹⁷⁴

164. PETER D. LOWES, *THE GENESIS OF INTERNATIONAL NARCOTICS CONTROL* 5 (1966).

165. SECRETARIAT OF THE LEAGUE OF NATIONS, *TEN YEARS OF WORLD CO-OPERATION* 289 (1930); LYONS, *supra* note 55, at 280.

166. LEAGUE OF NATIONS (1938), *supra* note 71, at 99. *See also* MINISTÈRE DES AFFAIRES ÉTRANGÈRES, *DOCUMENTS DIPLOMATIQUES: DEUXIÈME CONFÉRENCE INTERNATIONALE POUR LA REPRESSION DE LA TRAITE DES BLANCHES* 96 (1910) (providing history of the Union Internationale des Amies de la Jeune Fille).

167. LEAGUE OF NATIONS (1938), *supra* note 71, at 99. Agreement for the Repression of the Trade in White Women, May 18, 1904, 35 Stat. 1979.

168. LYONS, *supra* note 55, at 283–85; Convention for the Suppression of the White Slave Traffic, May 4, 1910, 211 Consol. T.S. 45.

169. VIRGINIA BERRIDGE & GRIFFITH EDWARDS, *OPIUM AND THE PEOPLE* 176 (1981).

170. LOWES, *supra* note 164, at 73.

171. S. Doc. No. 58-135, at 1, 8–10 (1905).

172. LOWES, *supra* note 164, at 108; DAVID F. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTICS CONTROL* 30–31 (1987).

173. MUSTO, *supra* note 172, at 31, 50.

174. Convention for the Suppression of the Abuse of Opium and Other Drugs, Jan. 23, 1912, 38 Stat. 1912.

WORKERS. The problem of labor conditions emerged as an international issue in the late nineteenth century. Beginning in 1890, several official and unofficial international conferences were held. The first conference was called by the German government.¹⁷⁵ Many of the national delegations were mixed.¹⁷⁶ The conference passed a number of resolutions addressing child labor, women's labor, and hours of work.¹⁷⁷ In 1900, a meeting of individuals, NGOs, and government officials, including those from the U.S. government, established the International Association for Labor Legislation.¹⁷⁸ The Association held conferences every one to two years composed of both government and private delegates.¹⁷⁹ These conferences served as a model for the International Labour Organization (ILO). In 1905, the Swiss government called a technical meeting to discuss health hazards from phosphorus match production and night work by women.¹⁸⁰ This meeting, which was attended by governments as well as private groups, produced draft conventions.¹⁸¹ It was followed in 1906 by a diplomatic conference that approved two official conventions.¹⁸²

The first International Congress on Unemployment was held in 1906.¹⁸³ It included representatives from government labor bureaus, international unions, and charitable organizations, as well as individual experts.¹⁸⁴ The conference recommended the creation of an international employment exchange, but no action was taken.¹⁸⁵

Planning ahead for a post-war world, the American Federation of Labor (AFL) adopted a resolution in 1914 calling for a conference of

175. LYONS, *supra* note 55, at 143-44.

176. MINISTÈRE DES AFFAIRES ÉTRANGÈRES, CONFÉRENCE INTERNATIONALE DE BERLIN 40-41, 67-68 (1890). For example, the British delegation included government officials, Members of Parliament, a mine owner, a factory inspector, and an officer of a textile worker association.

177. LYONS, *supra* note 55, at 146.

178. John B. Andrews, *Introductory Note*, 9 AM. LAB. LEGIS. REV. 302 (1919); An Act Making Appropriations for the Legislative, Executive, and Judicial Expenses for the Fiscal Year Ending June 30, 1903, and Other Purposes, 32 Stat. 120, 168 (1902).

179. U.S. BUREAU OF LABOR STATISTICS, BULL. NO. 268, HISTORICAL SURVEY OF INTERNATIONAL ACTION AFFECTING LABOR 89-91 (1920).

180. G.A. JOHNSTON, INTERNATIONAL SOCIAL PROGRESS 28 (1924); HICKS, *supra* note 117, at 151.

181. LYONS, *supra* note 55, at 150-53.

182. U.S. BUREAU OF LABOR STATISTICS, *supra* note 179, at 123-28. At this conference, the Swiss government delegation included the President of the Swiss Association of Spinners, Weavers, and Twisters. 203 Consol. T.S. 4, 6.

183. U.S. BUREAU OF LABOR STATISTICS, *supra* note 179, at 110.

184. *Id.*

185. *Id.*

trade unions to be held at the same time as the peace Conference ending World War I.¹⁸⁶ In 1918, the Inter-Allied Socialist and Labour Conference recommended that national delegations to the Peace Conference include a representative of the workers.¹⁸⁷ A separate worker conference was held in Berne at the time of the Paris Peace Conference, but the AFL did not participate because the Berne gathering had a socialist orientation.¹⁸⁸

AGRICULTURE. In 1896, David Lubin, a successful businessman turned activist, planted the seed of an international organization for agriculture.¹⁸⁹ Lubin visualized a bicameral organization.¹⁹⁰ The upper house was to include government delegates. The lower house was to include representatives elected by voluntary agricultural associations, proportionately to the size of these organizations.¹⁹¹ As Lubin viewed it, the organization would have authority to propose draft agreements for State action on issues such as the regulation of forests and watersheds, pure food, and agricultural credit.¹⁹² Lubin was successful in getting the King of Italy to call an organizing conference in 1905. While Lubin himself was not invited to the conference, the U.S. delegation included a representative from the Pennsylvania Grange.¹⁹³ The German, Austrian, and Hungarian delegations included representatives of national farmers' organizations.¹⁹⁴ Lubin's full plan was not accepted by the governments. At the insistence of the French delegation, the new International Institute of Agriculture was created as a government-only organization.¹⁹⁵ It was pointed out, however, that nothing stopped governments from choosing delegates from private organizations.¹⁹⁶ Moreover, in developing recommendations for governments, the Institute was to take account of recommendations made by international agricultural congresses and agricultural societies.¹⁹⁷

186. See AUSTIN VAN DER SLICE, *INTERNATIONAL LABOR, DIPLOMACY, AND PEACE 1914-1919*, at 292 (1941).

187. See *id.* at 293.

188. *Id.* at 353.

189. See ASHER HOBSON, *THE INTERNATIONAL INSTITUTE OF AGRICULTURE* 24 (1931); See generally OLIVIA ROSSETTI AGRESTI, *DAVID LUBIN: A STUDY IN PRACTICAL IDEALISM* (1922).

190. See HOBSON, *supra* note 189, at 48.

191. See AGRESTI, *supra* note 189, at 189.

192. See *id.* at 190.

193. See *id.* at 205.

194. See HOBSON, *supra* note 189, at 45.

195. AGRESTI, *supra* note 189, at 208-10. Convention for the Creation of an International Agricultural Institute, June 7, 1905, 35 Stat. 1918, 198 Consol. T.S. 355.

196. See AGRESTI, *supra* note 189, at 210.

197. Convention for the Creation of an International Agricultural Institute, *supra* note 195, 35 Stat. 1918, 1921 art. 9f.

NATURE. NGOs germinated international action to protect nature. The first international meeting for nature protection was probably the Congress of the Society for the Protection of Animals, held in 1860.¹⁹⁸ In 1909, a privately organized International Congress for the Protection of Nature pointed out the need for more intergovernmental cooperation.¹⁹⁹ Four years later, the Swiss government convened an official conference that approved the creation of a Consultative Commission.²⁰⁰ Seventeen European governments participated in this meeting.²⁰¹

NGOs were also successful in their efforts to safeguard birds. In 1884, the First International Ornithological Congress began analytical work for a future convention on bird protection.²⁰² In 1895, governments held a conference to draft a treaty on birds.²⁰³ Many of the seventeen participating governments appointed ornithologists as part of their delegation.²⁰⁴ Although this treaty failed to enter into force, another conference in 1902 redrafted a treaty that did become law.²⁰⁵ At the Fifth International Ornithological Congress in 1910, delegates proposed that the next Hague Peace Conference draft a convention to prohibit trade in birds and feathers.²⁰⁶ A third Hague Conference was never held, however.

Some key NGO environmental activity was binational. In 1902, the North American Fish and Game Protective Association held its first meeting.²⁰⁷ The Association urged the legislatures of New York and Ontario to enact measures prohibiting spring shooting of wildfowl.²⁰⁸ In 1911, the American Game Protective and Propagation Association was

198. UNION DES ASSOCIATIONS INTERNATIONALES, INTERNATIONAL CONGRESSES 1681 TO 1899, at 14 (1960).

199. ROBERT BOARDMAN, INTERNATIONAL ORGANIZATION AND THE CONSERVATION OF NATURE 29 (1981).

200. Acte de fondation d'une Commission consultative pour la Protection internationale de la Nature, Nov. 19, 1913, 9 Martens Nouveau Recueil (ser. 3) 668; see also INTERNATIONAL OFFICE FOR THE PROTECTION OF NATURE, THE INTERNATIONAL OFFICE FOR THE PROTECTION OF NATURE: ITS ORIGIN, ITS PROGRAMME, ITS ORGANISATION 5-7 (1931).

201. BOARDMAN, *supra* note 199, at 29.

202. OTTO HERMAN, THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF BIRDS CONCLUDED IN 1902; AND HUNGARY 59-67 (1907).

203. *Id.* at 100.

204. *Id.* at 100-02. For example, the Secretary of the Madrid Royal Agricultural Society served on the Spanish delegation. *Id.* at 101.

205. *Id.* at 117, 126; Convention for the Protection of Birds Useful to Agriculture, Mar. 19, 1902, 102 B.F.S.P 964, 191 Consol. T.S. 91.

206. THOMAS GILBERT PEARSON, ADVENTURES IN BIRD PROTECTION 205-06 (1937).

207. JANET FOSTER, WORKING FOR WILDLIFE 124 (1978).

208. *Id.* at 125.

established.²⁰⁹ This Association worked for the establishment of a Canada-U.S. treaty to conserve migratory birds.²¹⁰ John Burnham of the Association explained to Canadian officials that while U.S. federal legislation to protect birds was of questionable constitutionality, a treaty could end those doubts.²¹¹ American bird preservation groups promoted the idea of a treaty in both countries.²¹²

NGOs recognized early on that fisheries required international management. For example, in 1892, the North Sea Fisheries Protection Association worked with the British government in convening an inter-governmental meeting to consider fishery problems in the North Sea.²¹³ In 1908, the International Fisheries Congress included delegates from governments and from national NGOs—for example, the Imperial and Royal Austrian Fisheries Society.²¹⁴ Among its recommendations was the adoption of “uniform measures” for the extermination of injurious fish along the Atlantic coast.²¹⁵

NGOs in this period also called attention to the need for concerted action to protect marine mammals. In 1907, the Seventh International Zoological Congress considered a resolution advocating a treaty to stop the slaughter of fur seals at sea; it was vetoed by the Russian delegate.²¹⁶ Other private groups took up the cause of the seal, notably the Camp Fire Club and the American Humane Association.²¹⁷ A treaty to protect fur seals was ultimately achieved in 1911.²¹⁸

NGOs have also been involved in preventing cruelty to animals. For example, in 1824, the (subsequently Royal) Society for the Prevention of Cruelty to Animals was established.²¹⁹ In anticipation of the Geneva (Red

209. WILLIAM S. HASKELL, *THE AMERICAN GAME PROTECTIVE AND PROPAGATION ASSOCIATION: A HISTORY* 11 (1937).

210. *Id.* at 24–25.

211. JANET FOSTER, *supra* note 207, at 143–44. See *Missouri v. Holland*, 252 U.S. 416 (1920).

212. Kurk Dorsey, *Scientists, Citizens, and Statesmen: U.S.–Canadian Wildlife Protection Treaties in the Progressive Era*, 19 *DIP'L. HIST.* 407, 426–27 (1995). Convention for the Protection of Migratory Birds, Aug. 16, 1916, Can.–U.S., 39 Stat. 1702.

213. A.E.J. WENT, *SEVENTY YEARS AGROWING: A HISTORY OF THE INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA 1902–1972*, at 3 (1972).

214. 1 *PROCEEDINGS OF THE FOURTH INTERNATIONAL FISHERY CONGRESS* 5–10 (1910).

215. *Id.* at 67.

216. WILLIAM T. HORNADAY, *THIRTY YEARS WAR FOR WILD LIFE* 174 (1931).

217. JAMES THOMAS GAY, *AMERICAN FUR SEAL DIPLOMACY* 123–24 (1987).

218. Convention respecting Measures for the Preservation and Protection of Fur Seals, July 7, 1911, 37 Stat. 1542, 214 Consol. T.S. 81.

219. EDWARD G. FAIRHOLME & WELLESLEY PAIN, *A CENTURY OF WORK FOR ANIMALS: THE HISTORY OF THE R.S.P.C.A., 1824–1924*, at 54 (1924).

Cross) Conference of 1906, the Royal Society asked its affiliates to press national governments to include a provision for mercy killing of horses badly wounded on the battlefield.²²⁰ This effort was unsuccessful.

Following pressure from both preservationists and hunters, the British government in 1899 proposed a treaty to protect game in Africa.²²¹ Although a treaty was signed, it never entered into force.²²² In 1903, the Society for the Preservation of the Wild Fauna of the Empire was founded.²²³ It continued to focus attention on the need for wildlife management in Africa.

LIQUOR. The first temperance organization was founded in 1842, and the first private international conference on alcohol was held in 1885.²²⁴ At the Twelfth International Congress on Alcoholism in 1909, some government delegations included NGO representatives,²²⁵ but these public and private efforts did not engender international legislation.²²⁶ The one exception involved liquor trade with African natives. Temperance groups, reform societies, and missionaries had some influence in obtaining prohibitions in several treaties.²²⁷

D. Pre-League NGO Involvement

In the decade before World War I, there were many international meetings that involved both governments and NGOs. One topic was world commerce. The first International Congress of Chambers of Commerce was held in 1905.²²⁸ Participants included both government

220. *Id.* at 205.

221. JOHN McCORMICK, *RECLAIMING PARADISE: THE GLOBAL ENVIRONMENTAL MOVEMENT* 18 (1989).

222. Convention for the Preservation of Wild Animals, Birds and Fish in Africa, May 19, 1900, 94 B.F.S.P. 715, 188 Consol. T. S. 418 (not in force).

223. RICHARD FITTER & SIR PETER SCOTT, *THE PENITENT BUTCHERS: THE FAUNA PRESERVATION SOCIETY 1903-1978*, at 8 (1978). Today it is Fauna and Flora International.

224. ERNEST GORDON, *THE ANTI-ALCOHOL MOVEMENT IN EUROPE* 83 (1913); LYONS, *supra* note 55, at 266-67.

225. TWELFTH INTERNATIONAL CONGRESS ON ALCOHOLISM, *REPORT OF OFFICIAL DELEGATES APPOINTED BY UNITED STATES GOVERNMENT I* (1909). For example, the U.S. delegation included the Secretary of the Scientific Temperance Federation. The Dutch delegation included the President of the Protestant Anti-Alcohol Societies. *Id.*

226. Nadelmann, *supra* note 56, at 509.

227. WILBUR F. CRAFTS, *A PRIMER OF INTERNATIONALISM* 52-53 (1908); MIERS, *supra* note 95, at 276-84; ARNOLD H. TAYLOR, *AMERICAN DIPLOMACY AND THE NARCOTICS TRAFFIC 1900-1939*, at 26-28 (1969). See also General Act for the Repression of African Slave Trade, *supra* note 96, at ch. VI (measures to restrict liquor traffic).

228. BOSTON CHAMBER OF COMMERCE, *FIFTH INTERNATIONAL CONGRESS OF CHAMBERS OF COMMERCE AND INDUSTRIAL ORGANIZATIONS* 5 (1912).

officials and business delegates from affiliated chambers of commerce.²²⁹ In 1912, President William H. Taft was authorized to invite other governments to come to Boston for the Fifth International Congress.²³⁰ This Congress approved several resolutions, one of which called for an International Court of Arbitral Justice for suits between individuals and foreign States.²³¹ In 1900 and 1913, there were international Congresses on Custom Regulations comprising government officials and businessmen.²³²

Another topic of the international meetings of this period was transportation. In 1905, the International Railway Congress held a conference of delegates from governments, railroads, and railroad associations.²³³ In 1909, NGOs participated in drafting a Convention regarding the International Circulation of Motor Vehicles.²³⁴ Most national delegations included government officials and representatives of automobile clubs—for example, the Touring Club of Belgium.²³⁵ In 1912, an International Navigation Congress was held in Philadelphia.²³⁶ This Congress included both government ministry delegates and non-government delegates. The latter came from NGOs—for example, the Atlantic Deeper Waterways Association.²³⁷

Public health was another emerging concern. In 1905, an International Congress on Tuberculosis was composed of delegates from governments, universities, and private associations.²³⁸ In 1907, an Interna-

229. *Id.*

230. Joint Resolution Making Provision for the Fifth International Congress of Chambers of Commerce and Commercial and Industrial Associations, 37 Stat. 636 (1912).

231. BOSTON CHAMBER OF COMMERCE, *supra* note 228, at 13.

232. RIDGEWAY, *supra* note 75, at 205.

233. INTERNATIONAL RAILWAY CONGRESS ASSOCIATION, SUMMARY OF PROCEEDINGS, 7TH SESSION 33, 43 (1905). For example, officers of the Association of Italian Tramways were participants. *Id.* at 68.

234. Convention with respect to the International Circulation of Motor Vehicles, Oct. 11, 1909, 4 AM. J. INT'L L. 316 (Supp. 1910); MINISTÈRE DES AFFAIRES ÉTRANGÈRES: DOCUMENTS DIPLOMATIQUES, CONFÉRENCE INTERNATIONALE RELATIVE À LA CIRCULATION DES AUTOMOBILES (1910).

235. MINISTÈRE DES AFFAIRES ÉTRANGÈRES, DOCUMENTS DIPLOMATIQUES: CONFÉRENCE INTERNATIONALE RELATIVE À LA RÉPRESSION DE LA CIRCULATION DES PUBLICATIONS OBSCÈNES 29–31 (1910).

236. PERMANENT INTERNATIONAL ASSOCIATION OF NAVIGATION CONGRESSES, REPORT OF PROCEEDINGS OF THE XIIITH CONGRESS (1912). These congresses included government and nongovernment delegates from the beginning. LYONS, *supra* note 55, at 66.

237. PERMANENT INTERNATIONAL ASSOCIATION OF NAVIGATION CONGRESSES, *supra* note 236, at 58–72.

238. JOHN CULBERT FARIES, THE RISE OF INTERNATIONALISM 92 (1915).

tional Congress on School Hygiene was composed of delegates from governments, schools, and NGOs.²³⁹ In 1914, there was an International Dental Congress in London under the patronage of the King. Attendees included government delegates, representatives from dental societies (such as the International Dental Federation), and interested individuals.²⁴⁰

NGOs were also involved in the fight against pornography. In 1908, a conference of private organizations called for a treaty to combat obscene literature.²⁴¹ A treaty was approved at an intergovernmental conference in 1910.²⁴² Some government delegations at this conference included academics and members of NGOs.²⁴³

International police cooperation also originated during this period. In 1914, Prince Albert of Monaco called a conference of police officials, jurists, and lawyers to discuss efforts to combat international crime.²⁴⁴ The war prevented further meetings, but in 1923, the police commissioner of Vienna convened the Second International Criminal Police Congress.²⁴⁵ This Congress established the International Criminal Police Commission. Although its members were official police bodies, the Commission later sought and received U.N. consultative status as an NGO.²⁴⁶ The Commission was renamed "Interpol" in 1956.²⁴⁷ In 1971, Interpol was successful in getting its status at the United Nations changed to an intergovernmental organization.²⁴⁸

During this period there were also mixed scientific meetings. For example, in 1915, the Second Pan-American Scientific Congress included representatives of scientific societies, universities, and private associa-

239. 3 SECOND INTERNATIONAL CONGRESS ON SCHOOL HYGIENE, TRANSACTIONS 71, 73, 77, 92 (1908). Two of the NGOs were the American School Hygiene Association and the British Physical Education Society.

240. HILL, *supra* note 124, at 159.

241. INTERNATIONAL CONGRESS AGAINST PORNOGRAPHY, CONGRES INTERNATIONAL CONTRE LA PORNOGRAPHIE 161 (1908). The French government sent three delegates to the conference. *Id.* at v.

242. Agreement for the Repression of the Circulation of Obscene Publications, May 4, 1910, 37 Stat. 1511.

243. DOCUMENTS DIPLOMATIQUES, *supra* note 235, at 15, 24.

244. MICHAEL FOONER, INTERPOL 11 (1973).

245. *Id.* at 13-14.

246. *Id.* at 34-35, 40.

247. *Id.* at 26-27.

248. *Id.* at 41; S.K. CHATTERJEE, LEGAL ASPECTS OF INTERNATIONAL DRUG CONTROL 501 (1981).

tions, as well as government officials.²⁴⁹ A parallel Women's Auxiliary Conference was held too.²⁵⁰

E. *Private Sector Participation*

Some episodes involving private sector participation established precedents for later involvement by NGOs. For instance, in 1871, the International Telegraph Union invited private companies to participate in its meetings.²⁵¹ In 1889, the U.S. delegation to the First Pan American Conference included manufacturers, merchants, and several lawyers.²⁵² This was one of the earliest occasions when a U.S. delegation to a plurilateral conference included individuals from the private sector.

In 1915, the U.S. Congress authorized the President to call a conference of States from Central and South America with the aim of establishing closer financial relations.²⁵³ Each State was to be represented by its ministers of finance and by leading bankers. This first Pan-American Financial Congress met later that year with mixed delegations from each state.²⁵⁴ For instance, some of the private sector delegates from the United States were the presidents of the First National Bank of Chicago and the U.S. Chamber of Commerce.²⁵⁵

In the early twentieth century, there were two extraterritorial agreements that provided for private participation. In 1906, the International Conference of Algeciras established a committee on customs valuation that included members appointed by the Moorish government, the diplomatic body at Tangier, the State Bank of Morocco, and one agent of the consortium of banks that had made a loan to Morocco in 1904.²⁵⁶ In 1912, the Whangpu Conservancy Agreement provided new rules for the

249. JAMES BROWN SCOTT, *SECOND PAN AMERICAN SCIENTIFIC CONGRESS: THE FINAL ACT AND INTERPRETATIVE COMMENTARY* 7, 16 (1916).

250. MRS. GLEN LEVIN SWIGGETT, *REPORT ON THE WOMEN'S AUXILIARY CONFERENCE* 12-16 (1916).

251. GEORGE ARTHUR CODDING JR., *THE INTERNATIONAL TELECOMMUNICATION UNION: AN EXPERIMENT IN INTERNATIONAL COOPERATION* 25-26 (1952); Denys P. Myers, *Representation in Public International Organs*, 8 AM. J. INT'L L. 81, 102 (1914).

252. SAMUEL GUY INMAN, *INTER-AMERICAN CONFERENCES 1826-1954: HISTORY AND PROBLEMS* 36 (1965).

253. Act of March 4, 1915, ch. 145, 38 Stat. 1116, 1127 (1915) (making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1916).

254. *PROCEEDINGS OF THE FIRST PAN AMERICAN FINANCIAL CONFERENCE* 7 (1915).

255. *Id.* at 45.

256. General Act of the International Conference of Algeciras, Apr. 7, 1906, arts. 56, 94, 34 Stat. 2905, 201 Consol. T.S. 39.

use of the Whangpu (now Huangpu) River in China.²⁵⁷ The Agreement established a Whangpu Conservancy Consultative Board that included five members appointed by foreign governments and one member appointed by the Chinese Chamber of Commerce.²⁵⁸

F. Summary

Issue-oriented NGOs emerged at the end of the eighteenth century and became international by 1850. By the end of the nineteenth century, there was a pattern of private international cooperation evolving into public international action.²⁵⁹ As one commentator explained: "Sometimes, it is true, governments did take the lead, but it is no exaggeration to say that in most aspects of nineteenth century internationalism they followed reluctantly and hesitantly a trail blazed by others."²⁶⁰ Behind many IGOs stood idealistic and active NGOs. Although many of the episodes discussed above bore little relationship to each other, there was enough governmental practice to demonstrate that policymakers recognized the benefits of securing input from NGOs. Governments officials evinced little embarrassment in participating alongside NGOs in international conferences. During this period, therefore, NGOs discovered their capacity to influence governments. There were NGO fingerprints on new international conventions regarding rules of war, intellectual property, admiralty, prostitution, narcotics, labor, and nature protection. When general multilateral conferences were held, NGOs invited themselves. This period also saw the beginning of NGO self-awareness, as demonstrated by the creation of the Union of International Associations.

II. ENGAGEMENT (1919-34)

During this period, the ILO was established with worker and employer delegates. NGOs also gained a small role in some committees of the League of Nations. The position of *assessor* was created to obtain private expertise. NGOs submitted petitions to secure minority rights. A few NGOs, especially the International Chamber of Commerce, gained

257. Whangpu Conservancy Agreement, Apr. 9, 1912, 3 Malloy 3043.

258. *Id.* at para. 10.

259. See RAYMOND LESLIE BUELL, INTERNATIONAL RELATIONS 271 n.2 (1925) (pointing out that practically all of the international humanitarian activities of governments have been the result of the efforts of private and voluntary international organizations).

260. LYONS, *supra* note 55, at 20. See also HAROLD M. VINACKE, INTERNATIONAL ORGANIZATION 138 (1934) (noting that private international conferences put pressure on governments to summon public international conferences on the question at issue).

official roles in economic conferences held by the League. Outside the League, NGOs and governments sometimes worked together in the establishment of new treaties and organizations. Some treaties explicitly acknowledged an NGO role in implementation or provided for NGO input through a formal advisory committee.

A. Paris Peace Conference

Before and during World War I, many private groups had begun to plan for the creation of an intergovernmental institution to maintain peace. Among the various proposals were those developed by the League to Enforce Peace, the League of Nations Society of London, and the Union of International Associations.²⁶¹ The Inter-Parliamentary Union and the World Court League promoted the establishment of the Permanent Court of International Justice (PCIJ).²⁶² The *Comité Hollando-Scandinave Socialiste* pushed for new international machinery to prevent economic nationalism and protective tariffs.²⁶³

In 1915, an International Congress of Women was held at the Hague. This Congress passed several resolutions regarding the war and sent delegations to meet with key governments in Europe and the United States.²⁶⁴ The organizers soon called themselves the Women's International League for Peace and Freedom (WILPF).²⁶⁵ This NGO pioneered many of the methods used by late-twentieth-century NGOs in international lobbying.

When the Peace Conference convened in Paris in 1919, several peace groups sent representatives to press their views.²⁶⁶ Other groups held conferences and passed copies of their resolutions to the peace delegates.²⁶⁷ The WILPF held a congress in Zurich that recommended improvements to the draft Covenant of the League of Nations.²⁶⁸ The

261. See generally 2 DEVELOPMENT OF THE LEAGUE OF NATIONS IDEA 784-852 (John H. Latané ed., 1932); GREAVES, *supra* note 17, at 112 (1931).

262. BEALES, *supra* note 64, at 193; DAVIS, *supra* note 105, at 103-110; WARREN F. KUEHL, SEEKING WORLD ORDER 208-09 (1969).

263. S. SHEPARD JONES, THE SCANDINAVIAN STATES AND THE LEAGUE OF NATIONS 32-33 (1939).

264. INTERNATIONAL CONGRESS OF WOMEN: REPORT 35-41 (1915); GERTRUDE BUSSEY & MARGARET TIMS, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, 1915-1965, A RECORD OF FIFTY YEARS WORK 21-23 (1965); CATHERINE FOSTER, WOMEN FOR ALL SEASONS: THE STORY OF THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM 212 n.12 (1989) (listing ministers who met with WILPF).

265. BUSSEY & TIMS, *supra* note 264, at 32.

266. KUEHL, *supra* note 262, at 267.

267. CLASINA A. KLUYVER, DOCUMENTS OF THE LEAGUE OF NATIONS 298, 320-22 (1920).

268. BUSSEY & TIMS, *supra* note 264, at 29-31; WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, REPORT OF THE INTERNATIONAL CONGRESS OF WOMEN (1919).

WILPF proposed, for example, that treaties be ratified only after approval of an elected legislative body.²⁶⁹

In addition to peace NGOs, many representatives of oppressed groups came to Paris to push for an accord on minority rights.²⁷⁰ A Committee of Jewish groups addressed the official Council of Ten and submitted draft language for the peace treaty.²⁷¹ Other private groups were permitted to address some of the special commissions of the Peace Conference.²⁷² A young Ho Chi Minh, living in Paris, sent a petition advocating Vietnam's emancipation.²⁷³

Feminist groups also came to Paris. A joint delegation of the International Council of Women and the Inter-Allied Conference of Women Suffragists made a presentation to President Wilson and the other leaders on the League of Nations Commission.²⁷⁴ The delegation sought: an agreement to suppress traffic in women, the eligibility of females for League employment, the right of women to vote in plebiscites on changes in nationality, creation of international bureaus of education and public health, and a statement in favor of arms control.²⁷⁵ Language reflective of some of these demands appeared in the Treaty of Versailles.²⁷⁶

Another area of private efforts was narcotics control. The International Anti-Opium Association (in China) sent a telegram to the Peace Conference asking that the suppression of opium be placed on the

269. REPORT OF THE INTERNATIONAL CONGRESS OF WOMEN, *supra* note 268, at 245.

270. BARNET LITVINOFF, WEIZMANN: LAST OF THE PATRIARCHS 129 (1976); LOWELL W. LIVEZEY, NONGOVERNMENTAL ORGANIZATIONS AND THE IDEAS OF HUMAN RIGHTS 87 (1988); STEPHAN BONSAI, SUITORS AND SUPPLIANTS: THE LITTLE NATIONS AT VERSAILLES 118, 186, 241, 267 (1946).

271. DAVID LLOYD GEORGE, MEMOIRS OF THE PEACE CONFERENCE 747-8 (1939); *Memorandum of Jewish Delegations at the Peace Conference*, in JACOB ROBINSON ET AL., WERE THE MINORITIES TREATIES A FAILURE? 319 app. II (1943).

272. CARL AAGE NØRGAARD, THE POSITION OF THE INDIVIDUAL IN INTERNATIONAL LAW 100 (1962).

273. YEVGENY KOBELEV, HO CHI MINH 31-33 (Vic Schneierson et al. trans, 1968); JEAN LACOUTURE, HO CHI MINH: A POLITICAL BIOGRAPHY 24 (Peter Wiles trans., Random House 1968) (1967).

274. INTERNATIONAL COUNCIL OF WOMEN, *supra* note 106, at 45, 344-45; David Hunter Miller, *The Making of the League of Nations*, in WHAT REALLY HAPPENED AT PARIS 421 (Edward Mandell House & Charles Seymour eds., 1921); 2 THE DRAFTING OF THE COVENANT 361-62 (David Hunter Miller ed., 1928); ARNOLD WHITTICK, WOMAN INTO CITIZEN 70-71 (1979).

275. KLUYVER, *supra* note 267, at 317-20; FANNIE FERN ANDREWS, MEMORY PAGES OF MY LIFE 115-17 (1948) (discussing efforts in favor of an international bureau of education).

276. Treaty of Peace Between the Allied and Associated Powers and Germany, June 28, 1919, arts. 7 (employment), 23(c) (traffic), 88.4 (plebiscite), 112 B.F.S.P. 1, 225 Consol. T.S. 188 [hereinafter Treaty of Versailles].

agenda.²⁷⁷ The British and U.S. governments were also interested in this matter, and so they put language in the Treaty of Versailles stating that its ratification would be deemed a ratification of the Hague Opium Convention (of 1912).²⁷⁸

The most extensive NGO participation in Paris involved the issue of labor. At the first plenary session of the Peace Conference a special commission was established to draft labor provisions for the treaty.²⁷⁹ To represent the United States, President Wilson appointed Samuel Gompers, President of the AFL, and A.N. Hurley, President of the American Shipping Board.²⁸⁰ The other countries appointed government officials, but later France named Léon Jouhaux, the French trade union leader, as a substitute delegate.²⁸¹ Gompers was elected chairman of the Labor Commission and steered the group away from supranational proposals.²⁸² For example, he opposed the British proposal to make ILO conventions binding unless a national parliament voted against ratification.²⁸³ The Labor Commission devoted a session to presentations by feminist groups such as the International Council of Women.²⁸⁴ This advocacy may have contributed to the incorporation of certain provisions into the Treaty of Versailles. For example, one of the general principles of the ILO is that "men and women should receive equal remuneration for work of equal value."²⁸⁵

It has been speculated that the Council of Ten established a labor commission in order to deflect attention from the socialist-dominated conference in Berne.²⁸⁶ That conference urged that the League of Nations be designed to represent parliaments rather than executives.²⁸⁷ It also urged that the League seek to prevent economic war by subjecting

277. WILLIAM O. WALKER III, *OPIUM AND FOREIGN POLICY* 29 (1991). The Chinese government supported this request.

278. *Id.* See also Treaty of Versailles, *supra* note 276, at art. 295.

279. NATIONAL INDUSTRIAL CONFERENCE BOARD, *THE INTERNATIONAL LABOR ORGANIZATION OF THE LEAGUE OF NATIONS* 20–21 (Res. Rep. No. 48, 1922).

280. James T. Shotwell, *Labor Provisions in the Peace Treaty*, 9 MONTHLY LAB. REV. 329 (1919); 1 JAMES T. SHOTWELL, *THE ORIGINS OF THE INTERNATIONAL LABOR ORGANIZATION* 128–29 (1924).

281. VAN DER SLICE, *supra* note 186, at 350.

282. PAUL PERIGORD, *THE INTERNATIONAL LABOR ORGANIZATION* 86 (1926).

283. JOHN MAINWARING, *THE INTERNATIONAL LABOUR ORGANIZATION: A CANADIAN VIEW* 14–15 (1986); VAN DER SLICE, *supra* note 186, at 217.

284. PERIGORD, *supra* note 282, at 104.

285. Treaty of Versailles, *supra* note 276, at art. 427(10).

286. VAN DER SLICE, *supra* note 186, at 301–06.

287. *Id.* at 322.

customs tariffs to League approval.²⁸⁸ The resolutions from Berne were presented to the President of the Peace Conference through the arrangement of Arthur Henderson, a leader of the British Labour party.²⁸⁹

B. *International Labour Organization*²⁹⁰

The ILO is the most daring of all international organizations in its approach to NGO participation.²⁹¹ Tripartism is its quiddity.²⁹² Under the ILO's constitution, each member nation sends four delegates—two from government, one from employers, and one from workers.²⁹³ The employer and worker delegates are chosen by governments through agreement with industrial organizations "which are most representative of employers or workpeople, as the case may be, in their respective countries."²⁹⁴ ILO

288. *Id.* at 322–23.

289. *Id.* at 353; TIKRITI, *supra* note 69, at 104.

290. Treaty of Versailles, *supra* note 276, Part XIII. For the current organic act, see CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION 5–24 (1980) [hereinafter ILO CONST.].

291. See Stephen M. Schwebel, *The Prescience and Pertinence of the ILO*, in VISIONS OF THE FUTURE OF SOCIAL JUSTICE: ESSAYS ON THE OCCASION OF THE ILO'S 75TH ANNIVERSARY 257 (1994). Judge Schwebel writes: "the structure no less than the focus of the ILO is altogether modern. How in advance of its time was the tripartite design of the ILO. How much the experience of the ILO has to teach in respect of the influence of the non-governmental organization on governmental policy and on the policy of international institutions."

292. MANLEY O. HUDSON, PROGRESS IN INTERNATIONAL ORGANIZATION 48 (1932) (noting that the ILO marked the first time in history that international cooperation was organized with some reference to other than national interests). See also JOHN FISCHER WILLIAMS, ASPECTS OF MODERN INTERNATIONAL LAW 35 (1939) (noting that two of the powers in the ILO are not national in character but rather international).

293. Treaty of Versailles, *supra* note 276, art. 389(1); ILO CONST., *supra* note 290, art. 3.1.

294. Treaty of Versailles, *supra* note 276, art. 389(3); ILO CONST., *supra* note 290, art. 3.5. The method of selecting NGO representatives was disputed early in the ILO's history and led to a request by the ILO Conference for an Advisory Opinion of the Permanent Court of International Justice (PCIJ). 1 WORLD COURT REPORTS 115–21 (Manley O. Hudson ed., 1934) (the official request for the Advisory Opinion came from the League Council). This was the PCIJ's first decision. Advisory Opinion No. 1, Nomination of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference, 1922 P.C.I.J. (ser. B) No. 1, at 9–27.

The issue before the Court was whether the Government of the Netherlands acted properly in naming its worker delegate. 1 WORLD COURT REPORTS, *supra* note 294, at 115. In 1921, the Government had bypassed the labor federation with the most members and instead designated three individually smaller federations, which together had a membership greater than the largest single federation, to select the ILO delegate. *Id.* at 116–17. The largest federation had been permitted to name the worker delegate for the 1919 and 1920 conferences. *Id.* In its Advisory Opinion, the Court validated the selection process of the Netherlands and held that "[n]umbers are not the only test of the representative character of the organisations. . . ." *Id.* at 119, 121. If a government necessarily had to choose the largest single federation, the Court reasoned, there could easily be situations when that selection would be in opposition to the great majority of the workers. *Id.* at 120–21. The Court also noted that a

delegates from each country vote individually.²⁹⁵ Employer and worker delegates cannot be government officials.²⁹⁶ Thus, NGO delegates may vote in opposition to their governments.

The ILO plays a key role in drafting conventions that regulate labor rights and standards.²⁹⁷ Government members are obliged to bring each convention before the authority within whose competence the matter lies for the enactment of domestic legislation or other action.²⁹⁸ According to George N. Barnes, the British delegate to the 1919 Labor Commission, the balance of government, employer, and worker delegates on national delegations demonstrates that ILO conferences were viewed "as an opportunity for initiating highly practical labour reforms, and not merely as a convenient medium for expressing vague idealistic aspirations."²⁹⁹

The ILO has a Governing Body selected by delegates to the ILO annual conference. One half of the members are nominated by government delegates, one quarter by employer delegates, and one quarter by worker delegates.³⁰⁰ As one analyst explained, the inclusion of non-governmental interests on the Governing Body marked "a vitally important and significant departure from precedent."³⁰¹

government's decision was reviewable by the ILO Conference, which could refuse to admit any particular delegate whose selection by the government was inconsistent with ILO rules. *Id.* at 119; Treaty of Versailles, *supra* note 276, art. 389(7).

This PCIJ decision is significant here for three reasons. First, it demonstrates a difficulty in choosing representative NGOs to participate in international conferences. Second, it shows that international judgments can help resolve such disputes. The advisory opinion of the PCIJ remains influential seventy-four years later. Letter from Francis Maupin, Legal Adviser, ILO, to Steve Charnovitz (Mar. 22, 1996) (on file with the *Michigan Journal of International Law*). Third, the decision is an early example of an international court permitting NGOs, in this case, Dutch labor federations, to make oral pleadings. 1 WORLD COURT REPORTS 116; Hugh McKinnon Wood, *The World Court, in* WORLD ORGANIZATION 289-90 (Symposium of the Institute on World Organization, 1942). The PCIJ heard oral statements from labor and employer NGOs on three subsequent occasions. 1 WORLD COURT REPORTS 122, 745; 3 WORLD COURT REPORTS 99.

295. Treaty of Versailles, *supra* note 276, art. 390(1); ILO CONST., *supra* note 290, art. 4.1. Delegates representing governments presumably vote according to government instructions.

296. TIKRITI, *supra* note 69, at 233-34.

297. See generally N. VALTICOS & G. VON POTOBOSKY, INTERNATIONAL LABOUR LAW (1995).

298. Treaty of Versailles, *supra* note 276, art. 405(5); ILO CONST., *supra* note 290, art. 19.5(b).

299. G.N. Barnes, *The Scope and Purpose of International Labour Legislation, in* LABOUR AS AN INTERNATIONAL PROBLEM 21 (E. John Solano ed., 1920).

300. Treaty of Versailles, *supra* note 276, art. 393; ILO CONST., *supra* note 290, art. 7.1.

301. GREAVES, *supra* note 17, at 163. The establishment of a Governing Body itself was a departure from the usual practice of consensual governance.

The Treaty of Versailles and the ILO Constitution provided a mechanism to hear complaints alleging that a government was failing to observe an ILO convention it had ratified.³⁰² Such complaints could be lodged by a delegate to an ILO conference or by a government party to the ILO convention.³⁰³ When such complaints occurred, the Governing Body could establish a Commission of Inquiry to investigate and report findings and recommendations.³⁰⁴ These recommendations could include (1) steps that should be taken by the government, and (2) indications of measures of an "economic character" that could be taken against a defaulting government.³⁰⁵ Either government involved could then refer the complaint to the PCIJ.³⁰⁶

Upon receiving such a case, the judges were to be assisted by four technical assessors, "chosen with a view to ensuring a just *representation* of the competing interests."³⁰⁷ The PCIJ decision was to be final as to findings, recommendations to the defaulting government, and indications of economic measures that other governments would be justified in adopting.³⁰⁸ Imposition of economic measures suggested by a Commission or the PCIJ was left to the discretion of governments.³⁰⁹ No such economic sanctions were ever suggested.

The ILO carried out its activities in a tripartite manner.³¹⁰ For example, in 1920, it established a Joint Maritime Commission that included representatives of shipowners and seamen.³¹¹ When it served on a League

302. Treaty of Versailles, *supra* note 276, art. 411; ILO CONST., *supra* note 290, art. 26.1.

303. Treaty of Versailles, *supra* note 276, art. 411; ILO CONST., *supra* note 290, arts. 26.1, 26.2. The Governing Body could also initiate the process on its own motion. *Id.* art. 26.4.

304. Treaty of Versailles, *supra* note 276, arts. 411, 414; ILO CONST., *supra* note 290, arts. 26.1, 28.

305. Treaty of Versailles, *supra* note 276, art. 414; ILO CONST., *supra* note 290, art. 28. The current art. 28 provision does not include the economic sanctions.

306. Treaty of Versailles, *supra* note 276, art. 415; ILO CONST., *supra* note 290, art. 29.2.

307. Statute of the Permanent Court of International Justice, Dec. 16, 1920, art. 26, 6 L.N.T.S. 390 (emphasis added). See also GILLIAN M. WHITE, *THE USE OF EXPERTS BY INTERNATIONAL TRIBUNALS* 46-47 (1965). The assessors were appointed, but no labor referral eventuated. MANLEY O. HUDSON, *THE PERMANENT COURT OF INTERNATIONAL JUSTICE* 150, 328 (1934).

308. Treaty of Versailles, *supra* note 276, arts. 417-18; ILO CONST., *supra* note 290, arts. 31-32. The current art. 32 provision does not include the economic sanctions.

309. Treaty of Versailles, *supra* note 276, art. 419. Governments were to discontinue such sanctions if the defaulting government came into compliance. *Id.* art. 420.

310. C. Wilfred Jenks, *The Significance for International Law of the Tripartite Character of the International Labour Organisation*, 22 *TRANSACTIONS OF THE GROTIUS SOC'Y* 45-47 (1937).

311. JOHNSTON, *supra* note 180, at 148-49. This Commission continues to set international minimum wages for skilled seamen. See G. Boglietti, *Negotiating Instruments for our Global Age*, *WORLD OF WORK: THE MAGAZINE OF THE ILO* 30 (No. 6, 1993).

committee, the ILO typically attended with workers and employers. The tripartism of the ILO is viewed as the key to its success and survival as the only remaining institution of the original League of Nations.³¹² This strength was not immediately apparent. As one member of the League secretariat confided to a colleague at the ILO:

In the early days, people in League of Nations circles used, frankly, to regard the [International Labor] Organization as rather ridiculous Well, we have now come to realize that the participation of employers' and workers' representatives in your meetings, with full voting rights, was a source of strength, not of weakness³¹³

Despite its name, the ILO maintained close ties to employer organizations.³¹⁴ For example, the ILO worked directly with the International Shipping Federation.³¹⁵ Indeed, the ILO catalyzed organizing by employers. In 1926, the ILO published the first Directory of Employers' Organizations.³¹⁶ In 1929, the Federation of Japanese Chambers of Commerce appointed a representative in Europe with the special duty of keeping in touch with the ILO and the International Organisation of Industrial Employers.³¹⁷

Other NGOs, besides business and labor, participated in the ILO's work. For example, in 1921, the ILO convened a conference on disabled workers. In addition to government officials, this conference included experts from associations for the disabled and from the Red Cross.³¹⁸ In 1926, the ILO created a position for an in-house priest to advise on relationships to the Vatican and with Catholics.³¹⁹ Women's groups were active in the ILO from the beginning.³²⁰

312. INTERNATIONAL LABOUR OFFICE, *FUTURE POLICY, PROGRAMME AND STATUS OF THE INTERNATIONAL LABOUR ORGANIZATION* 40-41 (1944); DANIEL PATRICK MOYNIHAN, *ON THE LAW OF NATIONS* 55-58 (1990).

313. *Quoted in* David H. Blieloch, *The International Labor Organization*, in *WORLD ORGANIZATION*, *supra* note 294, at 321.

314. INTERNATIONAL LABOUR OFFICE, *THE INTERNATIONAL LABOUR ORGANIZATION: THE FIRST DECADE* 347-52 (1931).

315. INTERNATIONAL LABOUR OFFICE, *id.* at 350. The Shipping Federation was founded in 1909.

316. *Id.* at 349.

317. *Id.*

318. *Id.* at 174.

319. G.A. JOHNSTON, *THE INTERNATIONAL LABOUR ORGANISATION* 82-83 (1970).

320. *See generally* CAROL RIEGELMAN LUBIN & ANNE WINSLOW, *SOCIAL JUSTICE FOR WOMEN: THE INTERNATIONAL LABOR ORGANIZATION AND WOMEN* (1990).

C. League of Nations Activities

The Covenant of the League of Nations had only one provision pertaining to NGOs. It provided that the members of the League "agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world."³²¹ In 1920, the League Council sent a representative to the General Conference of Red Cross Societies. In his first report to the Assembly, the League Secretary-General stated that "The Council has, whenever an opportunity occurred, given its moral support to Associations having for their object the development of international cooperation."³²²

There was another provision in the Covenant—Article 24—that addressed League relationships with IGOs.³²³ Article 24 stated that all international bureaus already established by general treaties would be placed under the direction of the League if the parties to such treaties consented.³²⁴ Since this provision made no mention of international bureaus *not* created by treaty, the League Council, in 1921, decided to give a wide interpretation to Article 24 to make it possible for the League to support "non-public" and "semi-public" international organizations.³²⁵ Two years later, the Council reversed itself and decided not to apply Article 24 to NGOs.³²⁶ The Council was worried that the appearance of official supervision could inhibit the activity of voluntary international organizations.³²⁷

321. LEAGUE OF NATIONS COVENANT art. 25; *see also* 4 THE INTIMATE PAPERS OF COLONEL HOUSE 257–59 (Charles Seymour ed., 1928) (providing memorandum by Colonel House suggesting that governments give moral endorsement to Red Cross).

322. *Report by the Secretary-General to the First Assembly of the League on the Work of the Council* 21 (1920).

323. *See generally* Bertram Pickard, *Article 24 of the League of Nations and its Interpretation*, 7 INT'L ASS'NS 576–78 (1955).

324. LEAGUE OF NATIONS COVENANT art. 24. James T. Shotwell, a member of the U.S. government delegation to the Peace Conference, had proposed a broader article that would have permitted the League to use periodic international conferences and other "semi-external instruments" to address specific issues such as colonies and economic relations. JAMES T. SHOTWELL, AT THE PARIS PEACE CONFERENCE 230, 232, 253 (1937). Shotwell believed that had this "conference method," or what he called, "specific parliaments," been followed, there "would have been better media for League activities." *Id.* at 232, 253, 302. Shotwell favored such functional conferences as a way of lessening nationalism. *Id.* at 302.

325. *Handbook of International Organizations*, League of Nations Pub. XII.B, International Bureau 1921.1 (1921)[hereinafter LEAGUE OF NATIONS (1921)]; 2 LEAGUE OF NATIONS O.J. 759 (1921).

326. 4 LEAGUE OF NATIONS O.J. 858–59 (1923).

327. CHIANG PEI-HENG, NON-GOVERNMENTAL ORGANIZATIONS AT THE UNITED NATIONS 37 (1981); 4 LEAGUE OF NATIONS O.J. 858 (1923).

Nevertheless, the League continued to assist NGOs. For example, the League Secretariat published a quarterly bulletin detailing the activities and policy recommendations of NGOs.³²⁸ The Secretariat also sent representatives to attend NGO conferences.³²⁹ Beginning in 1925, the League assigned one staffer responsibility for overseeing relations with voluntary organizations.³³⁰ In addition, the League gave a grant to the Union of International Associations.³³¹ The League also collected information for, and published, the *Handbook of International Organisations*.³³² The *Handbook* included public, semi-public, and private organizations, but excluded organizations with a commercial objective.³³³ The *Handbook's* editors viewed NGOs as part of the "international movement."³³⁴ Each edition of the *Handbook* was "said to mark a new stage in international life."³³⁵

Even without a constitutional directive to do so, the League often invited NGOs to participate in meetings.³³⁶ While the Assembly and Council of the League never permitted NGOs to participate in debate, the Presidents of each body occasionally met with NGO representatives.³³⁷ For example, each year the leadership of the Federation of League of Nations Societies met with the President of the Assembly to present resolutions from the Federation.³³⁸ The Federation had been created in 1919 to pursue a double role of support and constructive criticism of the League.³³⁹

Many NGOs located themselves in Geneva to facilitate contacts with the League.³⁴⁰ For example, the WILPF moved its office from Amster-

328. See, e.g., Q. BULL. OF INFO. ON THE WORK OF INT'L ORGS., League of Nations No. 1 (1922).

329. LEAGUE OF NATIONS (1938), *supra* note 71, at 6.

330. INTERNATIONAL COUNCIL OF WOMEN, *supra* note 106, at 143.

331. 1 LEAGUE OF NATIONS O.J. 305-07 (1920). The grant was to be used to publish resolutions of international congresses.

332. See, e.g., LEAGUE OF NATIONS (1921), *supra* note 325.

333. *Id.* at 10.

334. LEAGUE OF NATIONS (1938), *supra* note 71, at 6.

335. *Id.*

336. NORMAN BENTWICH & ANDREW MARTIN, A COMMENTARY ON THE CHARTER OF THE UNITED NATIONS 138 (1951); BERTRAM PICKARD, THE GREATER UNITED NATIONS 44-45 (1956).

337. LYMAN CROMWELL WHITE, INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS 250 (1951).

338. BULL. OF THE INT'L FED'N OF LEAGUE OF NATIONS SOCIETIES 224 (1934).

339. BULL. OF THE INT'L FED'N OF LEAGUE OF NATIONS SOCIETIES 8 (1925); I.F.P. WALTERS, HISTORY OF THE LEAGUE OF NATIONS 199-201 (1952).

340. LEAGUE OF NATIONS (1938), *supra* note 71, at 487-89 (NGOs in Geneva); JOHN I. KNUDSON, A HISTORY OF THE LEAGUE OF NATIONS 117-18 (1938); ROBERT DE TRAZ, THE

dam to Geneva.³⁴¹ During the first months of the League, the WILPF circulated memos to Assembly delegates and “pressed successfully for the League to set up a commission to investigate the condition of women and children deported from Asia Minor and held in Turkey.”³⁴² The WILPF used two techniques: its Geneva office made direct approaches to League delegations, and its national sections lobbied governments at home.³⁴³ NGOs played a significant role in the League’s work in finance and trade, statistics, transportation, health, narcotics, refugees and relief, minority rights, mandates, disarmament, children, women, and nature. Each of these areas is detailed below.

FINANCE AND TRADE. In 1920, the League convened an International Financial Conference in Brussels with delegates from thirty-nine countries.³⁴⁴ Although these delegates were named by governments, they came as experts rather than as official representatives.³⁴⁵ One NGO attended the conference—the International Chamber of Commerce (ICC).³⁴⁶

The ICC blazed a path for NGO involvement. Founded in 1920, the ICC held periodic congresses that were viewed as a “world parliament of business.”³⁴⁷ An official from the League’s Economic and Financial Section attended the early conferences, and the ICC and the League soon developed close working relations.³⁴⁸ Host country government officials also participated. For example, when the ICC met in Rome in 1923, Prime Minister Benito Mussolini chaired the first session.³⁴⁹ These ICC congresses were open to the public.³⁵⁰ According to historian George L. Ridgeway, the League took note of the feasibility of public meetings and thereafter opened up its assemblies and conferences.³⁵¹

SPIRIT OF GENEVA 109–12 (Fried-Ann Kindler trans., 1935). See also SALVADOR DE MADARIAGA, *THE WORLD’S DESIGN* 275 (1940) (observing that “a whole vegetation of international societies has sprung up, or has gathered round, the League—pacifist, feminist, juridical”).

341. BUSSEY & TIMS, *supra* note 264, at 32.

342. *Id.* at 37.

343. *Id.* at 35; MERCEDES M. RANDALL, *IMPROPER BOSTONIAN: EMILY GREENE BALCH* 283–91 (1964).

344. LEAGUE OF NATIONS, *INTERNATIONAL FINANCIAL CONFERENCE, 1 PROCEEDINGS OF THE CONFERENCE* 3–4 (1920).

345. *Id.*

346. *Id.* at 36.

347. WHITE, *supra* note 337, at 20; RIDGEWAY, *supra* note 75, at 59–60.

348. RIDGEWAY, *supra* note 75, at 122, 146, 169, 204, 250, 279.

349. *Id.* at 168–69.

350. *Id.* at 123.

351. *Id.*

In 1923, the League held an International Conference on the Simplification of Customs Formalities.³⁵² The ICC had been a leading advocate of this effort and helped the League prepare for the Conference.³⁵³ Even more significantly, the ICC was permitted to send eight delegates to the Conference in a consultative capacity.³⁵⁴ Many of the ICC's recommendations were incorporated into the treaty being drafted, and its contributions were singled out in the closing statement by the Conference President.³⁵⁵ In a notable departure from diplomatic practice, the ICC was permitted to *sign* the Final Act of the Conference.³⁵⁶

In 1925, the League announced plans for the first World Economic Conference, to be held in two years.³⁵⁷ To help lay the groundwork for this Conference, the League Council appointed a Preparatory Committee of government officials, industrialists, merchants, farmers, bankers, labor unions, consumer groups, and economists.³⁵⁸ This was probably the earliest occasion when a spectrum of NGOs served on a preparatory committee for an international conference.

Like the Financial Conference of 1920, the World Economic Conference of 1927 was not technically an intergovernmental meeting. Although the national delegations were named by governments, the delegates spoke in their individual capacities.³⁵⁹ Still, the conference was pathbreaking in three respects. First, it had a broad agenda covering the economic issues of the day.³⁶⁰ This was perhaps the earliest occasion when labor and business representatives united in favoring lower trade barriers.³⁶¹ Second, the League Council appointed special delegates.³⁶² Some of these delegates came from NGOs such as the International Co-operative Alliance, the International Federation of Trade Unions, and the

352. *Id.* at 76–77, 212.

353. *Id.* at 205–08.

354. *International Conference on Customs and Other Similar Formalities, Official Instruments Approved by the Conference*, League of Nations Doc. C.D.I. 96(1) (1923), at 22–23.

355. WHITE, *supra* note 337, at 21. *See generally* International Convention Relating to the Simplification of Customs Formalities, Nov. 3, 1923, 30 L.N.T.S. 372.

356. International Conference on Customs, *supra* note 354, at 24–25.

357. *The World Economic Conference: Final Report*, League of Nations Doc. C.E.I. 44(1) (1927), at 5.

358. *Id.*

359. MARTIN HILL, *THE ECONOMIC AND FINANCIAL ORGANIZATION OF THE LEAGUE OF NATIONS: A SURVEY OF TWENTY-FIVE YEARS' EXPERIENCE* 47 (1946).

360. *The World Economic Conference: Final Report*, *supra* note 357, at 3.

361. *See* RIDGEWAY, *supra* note 75, at 244, 338–39.

362. *The World Economic Conference: Final Report*, *supra* note 357, at 5.

Workers' Educational Association.³⁶³ Third, there were over 100 "experts" in attendance either as part of national delegations or as official invitees of the President of the Conference. Several of these experts came from NGOs—for example, Rotary International.³⁶⁴ These experts did not represent NGOs in a formal sense, but their participation probably reflected the attitude of their organizations. Although the U.S. government was not a member of the League of Nations, it sent a delegation that included NGO representatives.³⁶⁵

The League was appreciative of the input received from NGOs. Following the Conference, the League established a "Consultative Committee" to monitor the implementation of the Conference's recommendations.³⁶⁶ The membership of the Consultative Committee included individuals competent in industry, commerce, agriculture, finance, transport, labor, and "questions relative to consumption."³⁶⁷ This inclusive approach was characterized by one contemporary analyst as the "League method."³⁶⁸ The Consultative Committee worked in tandem with the League's Economic Committee, which was a government-only committee.³⁶⁹

The year 1927 was probably the high water mark for NGO participation in economic matters. At the League conference that year on the abolition of import and export restrictions, the ICC was permitted to send a four-person delegation.³⁷⁰ But this inclusive approach did not continue into the 1930s. At the World Monetary and Economic Conference of 1933 (in London), what Ridgeway calls the "League technique" of NGO participation was not utilized.³⁷¹ He indicates that the excuse given was that there were too many officials from governments to permit the seating of a committee of businessmen.³⁷² Ridgeway also points to

363. INTERNATIONAL ECONOMIC CONFERENCE, LIST OF MEMBERS OF THE CONFERENCE 46-47 (1927).

364. *Id.* at 48. Rotary International was founded in 1905.

365. *Id.* at 15. It is interesting to note that the U.S. *delegates* were private citizens and that these delegates were accompanied by *experts* from the U.S. Departments of State and Commerce. *Id.*

366. WALLACE MCCLURE, WORLD PROSPERITY 121-22 (1933).

367. *Id.*

368. CHARLES W. PIPKIN, THE ECONOMIC CONSULTATIVE COMMITTEE OF THE LEAGUE OF THE NATIONS 16 (1929). Pipkin was a professor of comparative government. *See also* C. HOWARD-ELLIS, THE ORIGIN, STRUCTURE & WORKING OF THE LEAGUE OF NATIONS 451, 477 (1928) (discussing the Consultative Committee).

369. GREAVES, *supra* note 17, at 48.

370. *International Conference for the Abolition of Import and Export Prohibitions and Restrictions*, League of Nations Doc. D.559 M.201 1927 at 45 (1927).

371. RIDGEWAY, *supra* note 75, at 371-72, 388.

372. *Id.* at 372.

economic nationalism as a factor inhibiting participation by the “international economic reform movement” identified with the ICC.³⁷³

Even so, the ICC remained involved in many areas of the League’s work. The ICC spurred consideration of the problem of double taxation and participated in a League meeting in 1928 to draw up a model bilateral tax treaty.³⁷⁴ This conference led to the establishment of the League’s Fiscal Committee, on which the ICC was regularly represented in a consultative capacity.³⁷⁵ The ICC also had opportunities to give input into the League’s work on industrial property. For example, in 1925, an official non-voting delegation from the ICC took part in a conference to revise the multilateral Convention on Industrial Property.³⁷⁶ In 1927, the ICC sent a representative to the League’s committee of experts on scientific property.³⁷⁷

The League’s effort in commercial law was of special interest to the ICC. During the mid-1920s, the ICC worked closely with the League in the development of a treaty to enforce arbitral awards.³⁷⁸ In 1931, the League held an international conference on Bills of Exchange, Promissory Notes and Cheques.³⁷⁹ The ICC participated in an advisory capacity.³⁸⁰ There were other NGOs, besides the ICC, that made recommendations to governments regarding finance and trade. For example, in 1928, the International Federation of League of Nations Societies held an International Economic Conference in Prague.³⁸¹ One recommendation was that ILO conventions be inserted into commercial treaties.³⁸² In 1929, the International Federation of Trade Unions recommended that governments should aim to keep the purchasing power of gold as stable as possible.³⁸³

The WILPF was also active on economic issues as part of its strategy to remove the causes of war.³⁸⁴ For example in 1921, the WILPF held a

373. *Id.* at 373, 388.

374. *Id.* at 279–82.

375. WHITE, *supra* note 337, at 27.

376. RIDGEWAY, *supra* note 75, at 276.

377. Stephen B. Ladas, *The Efforts for International Protection of Scientific Property*, 23 AM. J. INT’L L. 552, 565 (1929).

378. RIDGEWAY, *supra* note 75, at 327–29; HILL, *supra* note 359, at 42–43.

379. *International Conference for the Unification of Laws on Bills of Exchange, Promissory Notes and Cheques, Final Act of the Conference*, League of Nations Doc. C.461 M.198 1931 II B (1931).

380. *Id.* at 7.

381. INTERNATIONAL FEDERATION OF LEAGUE OF NATIONS SOCIETIES, INTERNATIONAL ECONOMIC CONFERENCE: TEXT OF RESOLUTIONS (1928).

382. *Id.* at 2.

383. J.H. RICHARDSON, ECONOMIC DISARMAMENT: A STUDY IN INTERNATIONAL COOPERATION 188–89 (1931).

384. BUSSEY AND TIMS, *supra* note 264, at 35.

conference on economic dislocation.³⁸⁵ In 1924, a remarkable report, *The New International Order*, was presented and discussed at the WILPF's conference in Washington.³⁸⁶ Declaring that "The World is not organized for Peace," the report advocated several recommendations including an international currency and the abolition of customs barriers.³⁸⁷

STATISTICS. In 1919, the International Statistical Institute participated in a League-sponsored conference on international cooperation in statistics.³⁸⁸ The Institute had been established in 1885 to promote uniformity and improvement of statistics. Unlike the earlier semi-official congresses on statistics, the Institute had no official character.³⁸⁹ In 1922, the League created a committee on statistics that included four members of the Institute.³⁹⁰ This committee carried out several years of preparatory work for the International Conference on Statistics held in 1928. The ICC was a signatory to the Final Act of this Conference.³⁹¹

TRANSPORTATION. NGOs were regularly involved in the League's work on transportation. For example, in 1923, the League held a conference to consider conventions relating to railways, ports, and power.³⁹² The International Union of Railway Administrations and the ICC participated in an advisory capacity.³⁹³ The ICC also participated in the League's Maritime Committee along with other business NGOs such as the International Chamber of Shipping and the International Shipping Conference.³⁹⁴ In 1931, the League convened a European conference on road traffic that was attended by several NGOs in an advisory capacity.³⁹⁵ The conference adopted two treaties pertaining to road signals and the taxa-

385. *Id.* at 44.

386. REPORT OF THE FOURTH CONGRESS OF THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM 163-74 (1924).

387. *Id.* at 163, 168-69.

388. NIXON, *supra* note 120, at 28.

389. *Id.* at 12-13.

390. *Id.* at 31.

391. *Proceedings of the International Conference relating to Economic Statistics*, League of Nations Doc. C.163 M.64 1929 II, at 25-26, 99 (1929).

392. *Second General Conference on Communications and Transit: Official Instruments Approved by the Conference*, League of Nations Doc. (1923).

393. *Id.* at 61-62.

394. J.J. LADOR-LEDERER, INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS 330 (1963) [hereinafter LADOR-LEDERER (1963)]; LEAGUE OF NATIONS (1938), *supra* note 71, at 391-92.

395. OSBORNE MANCE, INTERNATIONAL ROAD TRANSPORT, POSTAL, ELECTRICITY AND MISCELLANEOUS QUESTIONS 12 (1947). Among the participating NGOs were the International Touring Alliance, the International Association of Recognized Automobile Clubs, the International Transport-workers Federation, the International Union of Towns and Local Authorities, and the ICC. *Id.*

tion of foreign motor vehicles.³⁹⁶ In 1927, the League established an Organization for Communications and Transit.³⁹⁷ The rules of the Organization established an Advisory and Technical Committee that could invite representatives of qualified international or national organizations to take part.³⁹⁸ For example, international transport workers' unions were often invited.³⁹⁹

HEALTH. In 1920, the League called a conference to formulate a plan for a health organization.⁴⁰⁰ The conference included government officials and representatives from the ILO and the League of Red Cross Societies.⁴⁰¹ In 1923, the League established its Health Organization.⁴⁰² One of its functions was to confer and cooperate with International Red Cross societies "and other similar societies."⁴⁰³

NARCOTICS. The establishment of intergovernmental machinery expanded opportunities for NGO influence on international narcotics policy. Once NGOs had an institutional focal point, they were able to have their voices heard. In 1921, the League established an Advisory Committee on Opium that included both governmental representatives and outside experts as assessors.⁴⁰⁴ These assessors were appointed in a personal capacity.⁴⁰⁵ In 1924, the League's International Opium Conference held a special meeting to hear from private organizations.⁴⁰⁶ Some of the NGOs that spoke included the Society for the Suppression of the Opium Trade, the International Missionary Council, and the Foreign Policy Association.⁴⁰⁷ The International Pharmaceutical Federation sent recommendations to the Conference advising against "administrative provisions which might prove a source of worry and annoyance" to pharmacists.⁴⁰⁸

396. Convention on Unification of Road Signals, Mar. 30, 1931, 150 L.N.T.S. 247; Convention on Taxation of Foreign Motor Vehicles, Mar. 30, 1931, 138 L.N.T.S. 149.

397. Statute of the Organization for Communications and Transit, Sept. 2, 1927, 3 MANLEY O. HUDSON, INTERNATIONAL LEGISLATION 2106.

398. *Id.* art. 15.3.

399. WHITE, *supra* note 337, at 249.

400. GOODMAN, *supra* note 118, at 109.

401. *Id.*

402. *Id.* at 135.

403. THE LEAGUE YEAR-BOOK 1934, at 64 (Judith Jackson & Stephen King-Hall eds., 1934).

404. L.E.S. EISENLOHR, INTERNATIONAL NARCOTICS CONTROL 274-76 (1934); LEAGUE OF NATIONS UNION, HUMAN WELFARE AND THE LEAGUE 16 (1933).

405. CHATTERJEE, *supra* note 248, at 77. One assessor was Mrs. Hamilton Wright, who carried on her husband's work after his accidental death. *Id.* at 104 n.22.

406. W.W. WILLOUGHBY, OPIUM AS AN INTERNATIONAL PROBLEM 79-80 (1925).

407. *Id.* at 236 n.3.

408. KETIL BRUUN ET AL., THE GENTLEMEN'S CLUB: INTERNATIONAL CONTROL OF DRUGS AND ALCOHOL 153 (1975).

In 1930, the WILPF hosted a forum in Geneva on "Opium and Noxious Drugs."⁴⁰⁹ The attendees approved a resolution urging the League to convene an international conference to limit the manufacture of narcotics.⁴¹⁰ Such a conference was held in 1931. An unofficial Anti-Opium Information Bureau was also established in Geneva to assist the public in monitoring the League's work on narcotics.⁴¹¹ At the beginning of the 1931 conference, the Bureau gained agreement by the conference to make all non-confidential documents available to the public at the same time they were given to delegates.⁴¹² This was probably the first documentation center run by an NGO.

NGOs also participated in the 1931 narcotics conference; during the first week, five NGOs were permitted to address government representatives.⁴¹³ At the conclusion of these remarks, the Conference President stated that "the representatives of the private associations were but encouraging the Conference still further, and stimulating it, if that were necessary, to do something great and decisive."⁴¹⁴ The conference approved a new treaty on narcotics control.⁴¹⁵ After the conference, Christian NGOs played a significant role in lobbying for the treaty's ratification.⁴¹⁶

REFUGEES & RELIEF. NGOs were involved in all of the League's programs for refugees and relief. In 1920, the ICRC proposed that the League address the problem of refugees.⁴¹⁷ The International Federation of Trade Unions was also an early advocate of this initiative.⁴¹⁸ The League responded in 1921 with the creation of a High Commissioner for Refugees.⁴¹⁹ In 1924, the League Council asked governments and private

409. WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, OPIUM AND NOXIOUS DRUGS (1930).

410. *Id.* at 110–11; BUSSEY & TIMS, *supra* note 264, at 71–72 (suggesting that the Women's International League for Peace and Freedom proved influential).

411. CHATTERJEE, *supra* note 248, at 506–07.

412. *Records of the Conference for the Limitation of the Manufacture of Narcotic Drugs*, League of Nations Doc. C.509 M.214 1931 XI at 70 (1931).

413. *Id.* at 64. The speakers came from four organizations: the Association de défense internationale contre les stupéfiants, the Comité national français de défense contre les stupéfiants, the Catholic Union of International Studies, and the Women's International League for Peace and Freedom. *Id.*

414. *Id.* at 70.

415. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, July 13, 1931, 139 L.N.T.S. 301.

416. CHATTERJEE, *supra* note 248, at 508; WHITE, *supra* note 337, at 251.

417. GARY B. OSTROWER, THE LEAGUE OF NATIONS FROM 1919 TO 1929, at 96 (1996).

418. LEAGUE OF NATIONS UNION, *supra* note 404, at 79; WHITE, *supra* note 337, at 81.

419. LEAGUE OF NATIONS (1938), *supra* note 71, at 75.

organizations to provide aid to Albania.⁴²⁰ In 1929, representatives of the Permanent International Conference of Private Organizations for the Protection of Migrants joined government officials in reviewing the League's draft agreement on transit cards.⁴²¹ When the Nansen International Office for Refugees was established in 1930, its Governing Body included three private organizations for refugees.⁴²²

Several NGOs involved in relief work promoted the establishment of an International Relief Union.⁴²³ When a conference to write a convention was launched in 1927, the ICRC and the League of Red Cross Societies served on the preparatory committee.⁴²⁴ At the official conference, these two NGOs participated in an advisory capacity.⁴²⁵ The Relief Union envisaged the cooperation of unofficial organizations in efforts to assist stricken areas.⁴²⁶ National Red Cross societies are specifically mentioned in the convention establishing the Relief Union.⁴²⁷

MINORITY RIGHTS. NGOs did not generally participate in the League's work on political matters, but there were a few exceptions. The most important was minority rights. The League established a petitioning process with strict criteria on admissibility.⁴²⁸ Petitions could be accepted from individuals or from NGOs.⁴²⁹ If accepted, the petition was sent first

420. BUELL, *supra* note 259, at 282.

421. MANCE, *supra* note 395, at 244; International Agreement Concerning Transit Cards for Emigrants, June 14, 1939, 95 L.N.T.S. 277.

422. In 1937, these members came from the British United Committee, the Central Committee for Armenian Refugees, and the Central Commission for the Study of the Condition of Russian Refugees. *Nansen International Office for Refugees: Report of the Governing Body for the Year Ending June 30th, 1937*, League of Nations Doc. A.21 1937 XII, at 20-21 (1937).

423. TEN YEARS OF WORLD COOPERATION, *supra* note 165, at 280-81; Convention on the Establishment of the International Relief Union, July 12, 1927, art. 24, 3 Hudson 2090 (editor's preface and text of agreement). See generally CAMILLE GORGÉ, *THE INTERNATIONAL RELIEF UNION* (1938).

424. *Draft Statutes and Statement Drawn up by the Preparatory Committee for the Ciraolo Scheme*, League of Nations Doc. C.618 M.240 1926 II, at 1 (1926).

425. *International Conference for the Creation of an International Relief Union: Convention and Statute Establishing an International Relief Union, Final Act*, League of Nations Doc. C.364 M.137 1927 V, at 18 (1927).

426. THE LEAGUE YEAR-BOOK 1934, *supra* note 403, at 148.

427. Convention on the Establishment of the International Relief Union, *supra* note 423, art. 5.

428. JULIUS STONE, *INTERNATIONAL GUARANTEES OF MINORITY RIGHTS: PROCEDURE OF THE COUNCIL OF THE LEAGUE OF NATIONS IN THEORY AND PRACTICE* 50 (1932).

429. STONE, *supra* note 428, at 42-44. For example, petitions were accepted from the Methodist International Committee and the National Ukrainian Union in Prague. *Id.* See also *Letter from the International Philarmenian League*, 2 LEAGUE OF NATIONS O.J. 510-11 (1921) (calling for the League to fix and recognize Armenia's borders and for the withdrawal of Turkish troops).

to the relevant State government for comment.⁴³⁰ A special committee of the League would then decide whether to bring the matter to the League Council.⁴³¹ This could lead to discussions with the government, an advisory opinion of the PCIJ, or a direct request to the government to take action.⁴³² Although the process was difficult and lengthy, it ameliorated conditions in some cases.⁴³³ For example, four girls imprisoned by the Romanian Government were freed following a petition from the National Association of Hungarian Women.⁴³⁴ NGOs were generally critical of the League's procedures for minority rights. For example, in 1925, a Congress of European National Minorities was convened and held sessions annually.⁴³⁵ In 1931, this Congress charged that even "the gravest attacks upon life and property were treated [by the League] in a manner calculated to shatter the faith of those affected."⁴³⁶

MANDATES. There was a modicum of NGO involvement in the administration of the Mandates.⁴³⁷ For example in 1920, the British branch of the International Abolitionist Federation wrote to the Secretary-General about weak regulation of prostitution in the Mandate territories.⁴³⁸ The Secretary-General circulated this letter to members of the League. In 1928, Marcus Garvey, head of the Universal Negro Improvement Association, traveled to Geneva to petition the League to consider creating a United Commonwealth of Black Nations in West Africa.⁴³⁹ The League took no action however.

Non-State organizations were involved in the administration of the Palestine Mandate. The World Zionist Organization—later the Jewish Agency for Palestine—had been founded in 1897 and consisted of

430. *Resolution Adopted by the Council on October 25, 1920*, League of Nations Doc. C.8 M.5 1931 I (1931), reprinted in STONE, *supra* note 428, at 276.

431. STONE, *supra* note 428, ch. 5. By contrast, the Convention on Upper Silesia provided that petitions by minorities could be sent directly to the Council. Convention Relative to Upper Silesia, May 15, 1922, Germ.-Pol., art. 147, 118 B.F.S.P. 365, 412. See Jan Herman Burgers, *The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century*, 14 HUM. RTS. Q. 447, 455-59 (1992).

432. STONE, *supra* note 428, at 208-12 (discussions), 212-15 (PCIJ), 24, 217, 266-67 (requests).

433. See, e.g., JACOB ROBINSON ET AL., *WERE THE MINORITIES TREATIES A FAILURE?* (1943) (concluding that the process in the early years of the League made States realize that they might be called to account for their actions).

434. KATHLEEN GIBBERD, *THE LEAGUE IN OUR TIME* 174 (1933).

435. *THE CONGRESS OF THE EUROPEAN NATIONAL MINORITIES* 7 (1938).

436. ROBINSON ET AL., *supra* note 433, at 253.

437. See AARON M. MARGALITH, *THE INTERNATIONAL MANDATES* 86-91 (1933).

438. League of Nations, Assembly Doc. 36 (1920). The International Abolitionist Federation had been founded in 1875.

439. E. DAVID CRONON, *BLACK MOSES: THE STORY OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION* 147-49 (1969).

federations and societies in about fifty countries.⁴⁴⁰ In 1922, the League recognized it for the purpose of advising and cooperating with the Administration of Palestine.⁴⁴¹ Later the Mandatory Government recognized the Arab Executive Committee as the representative entity of the Palestinian people.⁴⁴²

DISARMAMENT. In 1921, the Council set up a Temporary Mixed Commission for the Reduction of Armaments composed of eminent individuals, experts from League Committees, and representatives from the ILO employer and worker groups.⁴⁴³ The Mixed Commission did preparatory work for the Convention for the Pacific Settlement of International Disputes and the Locarno Agreements of 1925.⁴⁴⁴ Thereafter, the Mixed Commission was replaced by a Joint Commission on Disarmament that advised the preparatory commission for the forthcoming League Conference for the Reduction and Limitation of Armaments (the Disarmament Conference).⁴⁴⁵

In September 1931, several NGOs representing over 45 million women established the Peace and Disarmament Committee of the Women's International Organizations.⁴⁴⁶ It was created to focus public pressure on the Disarmament Conference.⁴⁴⁷ Some of the founding groups included the International Council of Women and the WILPF.⁴⁴⁸ The Peace and Disarmament Committee timed some of its meetings in Geneva to coincide with the League Assembly.⁴⁴⁹ In the run-up to the official Disarmament Conference, an unofficial conference was held in Paris in late 1931. The WILPF delegate urged that national delegations to the Disarmament Conference include representatives of peace groups and exclude persons having an interest in war industry.⁴⁵⁰ Even before the Disarmament Conference convened, a newly-formed Disarmament Information Committee started publishing a journal.⁴⁵¹

440. LEAGUE OF NATIONS (1938), *supra* note 71, at 17-18.

441. Anis F. Kassim, *The Palestine Liberation Organization's Claim to Status: A Juridical Analysis Under International Law*, 9 DENV. J. OF INT'L L. & POL'Y 1, 14 (1980).

442. *Id.* at 15.

443. WALTERS, *supra* note 339, at 171; 2 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 297-98 (1922).

444. WALTERS, *supra* note 339, at 171.

445. *Id.*; VINACKE, *supra* note 260, at 205.

446. LEAGUE OF NATIONS (1938), *supra* note 71, at 26.

447. *Id.* at 27.

448. *Id.* at 26.

449. *Id.* at 27.

450. BUSSY & TIMS, *supra* note 264, at 97.

451. The first edition was 1 DISARMAMENT (No. 1 1932).

When the Disarmament Conference commenced in February 1932, a session was held to hear presentations from individuals representing women's organizations, religious organizations, League of Nations associations, peace societies, student groups, trade unions, and the International League for the Rights of Man and Citizenship.⁴⁵² The session was packed.⁴⁵³ According to Arthur Henderson, President of the Conference, "No one who was present will ever forget the deep impression which it [the session] made upon the delegations there assembled."⁴⁵⁴ In an effort to influence the Conference, several disarmament groups established full-time offices in Geneva.⁴⁵⁵ At the end of the first phase of the Conference, a group of NGOs issued a joint statement commenting on the Conference proceedings.⁴⁵⁶ In July 1932, the International Consultative Group for Peace and Disarmament was formed to coordinate NGO lobbying activities.⁴⁵⁷

CHILDREN. NGOs were involved in the League's efforts to promote child welfare. In 1923, the "Save the Children" International Union proposed a Declaration of the Rights of the Child.⁴⁵⁸ A year later, this Declaration was approved by the League Assembly.⁴⁵⁹ In 1925, a Joint Committee of Major International Associations was formed to promote better education for the "rising generations" on the virtues of international collaboration.⁴⁶⁰ This Committee worked with various bodies of the League. The League's Child Welfare Committee included government

452. VOX POPULI COMMITTEE, VOX POPULI 11 (1932); *The Call of the Peoples*, 2 DISARMAMENT 6-7 (No. 4 1932). Soon afterward, the International Conference of Associations of Disabled Soldiers and Ex-Service Men submitted a declaration to the President of the Conference. See *Ex-Service Men Call for Disarmament*, 2 DISARMAMENT 5 (No. 5 1932).

453. CHIANG, *supra* note 327, at 34-35. The author contrasts this episode in 1932 with an episode in 1978 when NGOs were permitted, for the first time, to make oral statements to a Committee of the Whole of a special session of the U.N. General Assembly devoted to disarmament and yet spoke to a half-empty hall. *Id.* at 35-36.

454. VOX POPULI COMMITTEE, *supra* note 452, at 14.

455. JAN KOLASA, INTERNATIONAL INTELLECTUAL COOPERATION 114 (1962).

456. *Memorial of Organisations in Geneva to the President of the Conference and Heads of Delegations*, in THE FIRST STAGE OF DISARMAMENT 53-54 (Geneva Special Studies, Vol. 3, No. 8 1932).

457. LEAGUE OF NATIONS (1938), *supra* note 71, at 25; Malcolm Waters Davis, *Unofficial International Agitation*, 1 RECOVERY 9 (Nos. 11 & 12 1933).

458. CYNTHIA PRICE COHEN, THE HUMAN RIGHTS OF CHILDREN, 12 CAP. U. L. REV. 369, 371 (1983).

459. *Id.*

460. Bruce Barnard, *Business group wants special role in WTO*, J. COMM., March 5, 1997, at 3A (quoting ICC President Helmet O. Maucher, who explains that the ICC is "different from the groups defending the number of butterflies in the world" because the ICC, in favoring free trade, is "not driven by short-term interests.")

representatives and assessors from NGOs such as the International Union of Catholic Women's Leagues and "Save the Children."⁴⁶¹

In 1921, an International Association for the Protection of Child Welfare was established with a mixed membership of governments and associations.⁴⁶² Three years later, the League of Nations took over the governmental activities of this Association.⁴⁶³ The Association continued to carry out non-governmental activities. This is an early example of an IGO-NGO merger.

WOMEN. The League involved feminist groups in its activities.⁴⁶⁴ For example, the League's Committee on Traffic in Women and Children included government officials and assessors from NGOs such as the All-India Women's Conference.⁴⁶⁵ These assessors were considered members of the Committee except for the right to vote.⁴⁶⁶ They were allowed to speak, present reports, initiate discussions, propose resolutions and amendments, and be assigned to subcommittees.⁴⁶⁷ In 1920, the International Woman Suffrage Alliance asked the League of Nations to convene an annual conference to consider questions relating to the welfare and status of women.⁴⁶⁸ The conference was to be composed of government officials, international women's societies (such as the WILPF), and national women's organizations.

In 1930, the League sponsored a conference for the codification of international law. One of the conventions considered by the conference involved the rules of nationality.⁴⁶⁹ Women's groups saw this as an

461. Grace Abbott, et al. *Social Welfare Co-operation*, in *WINDOWS ON THE WORLD* 53, 62 (The League of Nations ed., 1939); *THE LEAGUE YEAR-BOOK* 1934, *supra* note 403, at 437.

462. LEAGUE OF NATIONS (1921), *supra* note 325, at 41. See also Agreement concerning the Creation of an International Association for the Protection of Children, Aug. 2, 1922, in HUDSON, *supra* note 397, at 876-77 (providing for State support of Association).

463. LEAGUE OF NATIONS (1938), *supra* note 71, at 51.

464. See *id.* at 444-45 (listing twenty-six NGOs under the rubric of "feminism"). See generally DEBORAH STIENSTRA, *WOMEN'S MOVEMENTS AND INTERNATIONAL ORGANIZATIONS* 55-77 (1994).

465. *Advisory Committee on Social Questions: Report on the Work of the Committee in 1937*, League of Nations Doc. D.235 M.169 1937 IV, at 7 (1937).

466. INTERIM COMMITTEE TO CONSULTATIVE NON-GOVERNMENTAL ORGANIZATIONS, *CONSULTATION BETWEEN THE UNITED NATIONS AND NON-GOVERNMENTAL ORGANIZATIONS*, 3 *United Nations Studies* 12-13 (1949).

467. Janet Robb, *League Committees and Assessors*, 7 *INT'L ASS'NS* 579 (1955).

468. Resolutions officially transmitted by a deputation from the International Woman Suffrage Alliance, 1 *LEAGUE OF NATIONS O.J.* 292-95 (1920). This recommendation was not followed by the League.

469. *Convention Concerning Certain Questions relating to the Conflict of Nationality Laws*, Apr. 12, 1930, 179 *L.N.T.S.* 89.

opportunity to seek equal treatment between men and women in determinations of nationality and, therefore, sent representatives to the Hague where the conference was held.⁴⁷⁰ A conference official allowed the women's groups to make a statement, but warned that nothing the women said could change the opinions of delegates or their instructions from their governments. After the women were seen lobbying the delegates, they were denied readmission to the Peace Palace. The continued opposition of the women's groups was one factor in the decision by the U.S. government to vote against the convention.⁴⁷¹

In 1931, the Secretary-General surveyed women's organizations on how to improve the League's collaboration with women.⁴⁷² The International Federation of University Women responded that there were many private organizations "doing spadework for the League of Nations," and it suggested informal conferences between the League and these organizations.⁴⁷³ The Liaison Committee of Women's International Organisations responded that notice of subjects to be discussed at League meetings should be sent to the Liaison Committee at the same time notification is sent to governments.⁴⁷⁴ The Liaison Committee also volunteered to set up expert committees in order to "relieve the League of any necessity of directly forming a consultative committee for any special purpose."⁴⁷⁵ Open Door International responded that the League should increase the number of women in the Secretariat, especially in the higher grades.⁴⁷⁶ The Women's Peace Association of Japan responded by suggesting more peace education through toys, songs, films, and broadcasting programs.⁴⁷⁷ The International Co-Operative Women's Guild said that it opposed the idea of setting up a special "Women's committee" in the League because there "would be a tendency to refer only so-called 'women's questions' to the committee."⁴⁷⁸

In 1935, the League Council invited women's organizations to submit reports on problems related to nationality of women and on the

470. Laura M. Berrien, *The Campaign of the National Association of Women Lawyers for Equal Nationality Rights*, 18 *WOMEN LAWYERS' J.* 8-10 (Apr.-Oct. 1930). Among the groups attending were the International Council of Women, the International Association for Suffrage and Equal Citizenship, and the League of Women Voters.

471. *Id.* at 11; 1 *FOREIGN RELATIONS OF THE U.S.* 221-22 (1930).

472. *Collaboration of Women in the Organisation of Peace: Report by the Secretary General*, League Doc. A.10 1932, at 1-2 (1932).

473. *Id.* at 7.

474. *Id.* at 11.

475. *Id.*

476. *Id.* at 13.

477. *Id.* at 15.

478. *Id.* at 7.

status of women generally.⁴⁷⁹ The Women's Consultative Committee asked the League Assembly to seek revisions of provisions in the Hague Nationality Convention that contained distinctions based on sex.⁴⁸⁰ Several organizations asked that the Equal Rights treaty be approved by the League Assembly and submitted to all League members.⁴⁸¹ In the following year, a report was received from the Pan-Pacific Women's Association asking the League to collect information from governments on native customs that have the force of law.⁴⁸²

One other episode is worth noting. In 1925, Margaret Sanger, founder of the American Birth Control League, tried to interest the League of Nations in population policy and birth control.⁴⁸³ She organized a World Population Congress in Geneva in 1927, but could not persuade the League to take action.

NATURE. Despite NGO efforts, the League did little on nature protection. In 1922, the International Committee for Bird Preservation was established.⁴⁸⁴ It held a conference in 1928 attended by observers from the League and from the International Institute of Agriculture.⁴⁸⁵ The Committee passed a resolution urging that either the League or the Institute convene an intergovernmental conference to improve the bird protection treaty of 1902.⁴⁸⁶ Neither organization took action however.⁴⁸⁷ In the early 1930s, the League took up the issue of oil pollution after environmental groups pressured the U.K. government.⁴⁸⁸ A draft League treaty was never signed however.⁴⁸⁹ During the same period, the Interna-

479. See *Nationality and Status of Women, Statements Presented by International Women's Organizations*, League of Nations Doc. A.19 1935 V (1935). It is interesting to note that the Secretary-General "felt himself precluded by the terms of the Council's resolution and the practice of the League from including statements from national [versus international] associations." *Id.* at 2.

480. 5 HUDSON, *supra* note 462, at 359 (noting in editor's preface concern by women's organizations).

481. *Nationality and Status of Women, Statements Presented by International Women's Organizations*, *supra* note 479, at 18, 28. Equal Rights Treaty, Dec. 26, 1933, 6 Hudson 632 (not in force).

482. *Communications from Governments and Women's International Organizations*, League Doc. A.33 1936 V at 32 (1936).

483. MARGARET SANGER, *MARGARET SANGER: AN AUTOBIOGRAPHY* 378 (1938); DAVID M. KENNEDY, *BIRTH CONTROL IN AMERICA* 103 (1970).

484. LEAGUE OF NATIONS (1938), *supra* note 71, at 45.

485. PEARSON, *supra* note 206, at 408-09.

486. *Id.* at 411; see also *supra* note 205.

487. *Id.* at 412; SHERMAN STRONG HAYDEN, *THE INTERNATIONAL PROTECTION OF WILD LIFE* 98 (1942).

488. SONIA ZAIDE PRITCHARD, *OIL POLLUTION CONTROL* 42-43 (1987).

489. *Id.* at 60.

tional Humanitarian Bureau of Animal Lovers lobbied the League on animal protection issues.⁴⁹⁰ It is unclear whether the Bureau should get credit for the provision to prevent animal suffering in the League's treaty of 1935 regarding the Transit of Animals.⁴⁹¹

The one environmental issue on which the League did act was whaling. In view of current NGO activism in the whaling regime, it is ironic that NGOs were apparently not involved in this work. In 1929, six leading zoological organizations set up a council to advocate the conservation of whales.⁴⁹² But no NGO seems to have taken part in the League's Whaling Conference of 1931. According to one analyst, it was Norwegian companies that helped persuade the British and German governments to convene the international whaling conference of 1937.⁴⁹³

MISCELLANEOUS. NGOs were involved in the League's programs on education. In 1921, the League Assembly authorized the creation of the International Committee on Intellectual Cooperation.⁴⁹⁴ One of its most interesting projects was an effort to improve school textbooks. The first suggestion for this came from the Japanese Association of Teachers.⁴⁹⁵ This project proved controversial, however, and it was not until 1937 that the League reached agreement.⁴⁹⁶ In 1926, the League's International Institute of Intellectual Cooperation set up an advisory committee of international student organizations.⁴⁹⁷

A rare inversion occurred in 1927 when the League held a Conference of Press Experts.⁴⁹⁸ The national delegates were publishers, editors, reporters, and representatives from press associations.⁴⁹⁹ Special delegates

490. See LEAGUE OF NATIONS (1938), *supra* note 71, at 41–42.

491. International Convention concerning the Transit of Animals, Meat and Other Products of Animal Origin, Feb. 20, 1935, art. 5, 193 L.N.T.S. 39.

492. J.N. TØNNESSEN & A.O. TØNNESSEN, THE HISTORY OF MODERN WHALING 401 (1982).

493. KARL BRANDT, WHALE OIL: AN ECONOMIC ANALYSIS 95 (1940).

494. LEAGUE OF NATIONS, THE LEAGUE OF NATIONS AND INTELLECTUAL CO-OPERATION 7 (Revised ed. 1927); see also WALTER H.C. LAVES & CHARLES A. THOMSON, UNESCO: PURPOSE PROGRESS PROSPECTS 8–9 (1957) (discussing nongovernmental conferences on education in nineteenth century).

495. P. ROSSELLO, LES PRÉCURSEURS DU BUREAU INTERNATIONAL D'ÉDUCATIONÉ 250–51 (1943). The Teachers also recommended that the League establish an International Bureau of Education. *Id.*

496. KOLASA, *supra* note 455, at 68–78; Declaration on the Teaching of History (Revision of School Text-Books), Oct. 2, 1937, 7 HUDSON, *supra* note 397, at 850.

497. THE INTERNATIONAL LAW OF YOUTH RIGHTS 6–7 (William D. Angel ed., 1995).

498. *Conference of Press Experts: Final Report*, League of Nations Pub. Gen. 1927.15 (1927).

499. *Id.* at 25–30; VLADIMIR D. PASTUHOV, A GUIDE TO THE PRACTICE OF INTERNATIONAL CONFERENCES 13 (1945).

came from the International Federation of Journalists and the International Union of Press Associations.⁵⁰⁰ This time, it was the government officials, mainly from government press bureaus, who were the assessors.⁵⁰¹

Finally, two episodes in moral policy are worth noting. In the early 1920s, the British and Foreign Anti-Slavery Society urged the League to address the problem of slavery.⁵⁰² Success came in 1926 when an International Slavery Convention was negotiated using information provided by the Society.⁵⁰³ In 1925, the ICRC influenced the drafting of the Geneva protocol of 1925 to prohibit asphyxiating gasses.⁵⁰⁴

D. NGO Activity Outside the League

NGOs also participated in international institutions outside the League. The areas of greatest involvement were transportation, communication, health, criminal law, nature, and commodities.

TRANSPORTATION. Industry NGOs were involved in numerous inter-governmental institutions addressing transportation. For example, the International Air Traffic Association (IATA) gave advice to the International Commission for Air Navigation.⁵⁰⁵ In 1923, the Air Transport Committee of the ICC advocated the drafting of international civil air law.⁵⁰⁶ Two years later, following a French government proposal, the first international conference on private air law was held with representatives of forty-three States.⁵⁰⁷ In 1926, the ICC performed a similar catalytic role with respect to air mail rules. As one commentator notes, "The story of the collaboration between the International Chamber of Commerce and the Universal Postal Union is a conspicuous example of effective cooper-

500. *Conference of Press Experts: Final Report*, *supra* note 498, at 31.

501. *Id.* at 25, 31.

502. GREENIDGE, *supra* note 113, at 166.

503. *Id.* International Convention to Suppress the Slave Trade and Slavery, Sep. 25, 1926, 46 Stat. 2183.

504. WILLEMIN & HEACOCK, *supra* note 143, at 23. Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, 94 L.N.T.S. 65.

505. KENNETH W. COLEGROVE, INTERNATIONAL CONTROL OF AVIATION 120-21 (1930); JESSUP ET AL., *supra* note 78, at 30. The Association was initially formed in 1919 and was reconstituted in 1945 as the International Air Transport Association. RICHARD Y. CHUANG, THE INTERNATIONAL AIR TRANSPORT ASSOCIATION: A CASE STUDY OF A QUASI-GOVERNMENTAL ORGANIZATION 20 (1972). Beginning in 1946, many bilateral air treaties named the IATA as the rate-setting body for the signatory's international airlines. *Id.* at 147.

506. COLEGROVE, *supra* note 505, at 96.

507. *Id.* at 97.

ation between a private and a public international agency"⁵⁰⁸ In 1927, the ICC participated in a special conference called by the Universal Postal Union to improve air mail rules.⁵⁰⁹ Yet the ICC fell short in its effort to secure formal participation by postal users.⁵¹⁰ The ICC was more successful in advocating the adoption of an international agreement on shipper's liability—the Warsaw Convention of 1929.⁵¹¹

In 1930, the Sixth International Road Congress was held in Washington.⁵¹² This Congress included delegates from governments, chambers of commerce, technical institutions, and professional associations.⁵¹³ U.S. Secretary of State Henry L. Stimson presided over the opening session.⁵¹⁴ Among the private delegates from the United States were the presidents of the American Road Builders Association and the American Automobile Association.⁵¹⁵ According to one commentator, the conference showed "that modern civilization must recognize unity of interests as a basis of representation in congresses on international relations, as well as established principles of state representation, and sometimes even in place of state representation."⁵¹⁶ The issue of participation by business interests on national delegations arose in 1933 at a conference to revise the Berne conventions on transport of goods and passengers by rail.⁵¹⁷ The government of Hungary sought to be represented by two shippers, but other countries objected.⁵¹⁸ The issue of who may represent a government at an international meeting has remained unsettled.

COMMUNICATION. With the growing importance of communication, business NGOs sought access to international policymaking. At the 1927 Radiotelegraph Union Conference, delegates from associations joined private companies in an advisory role.⁵¹⁹ For example, the American

508. *Id.* at 112.

509. RIDGEWAY, *supra* note 75, at 306.

510. MANCE, *supra* note 395, at 97-99.

511. COLEGROVE, *supra* note 505, at 118; *see generally* Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000.

512. PERMANENT INTERNATIONAL ASSOCIATION OF ROAD CONGRESSES, SIXTH INTERNATIONAL ROAD CONGRESS: PROCEEDINGS OF THE CONGRESS (1931).

513. *Id.* at 230.

514. *Id.* at 3.

515. *Id.* at 250.

516. George Grafton Wilson, *Permanent International Association of Road Congresses*, 25 AM. J. INT'L L. 112-13 (1931).

517. Gustav Pollaczek, *International Legislation in the Field of Transportation*, 38 AM. J. INT'L L. 577, 598 (1944).

518. *Id.*

519. CODDING, *supra* note 251, at 116-17.

Railway Association and the Shipping Federation of Canada attended.⁵²⁰ In 1928, the International Telegraph Conference invited the ICC to speak for the interests of the users.⁵²¹

HEALTH. NGOs worked with governments to combat disease. For example, in 1920, several governments and anti-tuberculosis societies founded the International Union Against Tuberculosis.⁵²² Three years later, governments and Red Cross societies created the International Union for Combating Venereal Diseases.⁵²³

CRIMINAL LAW. In the absence of an international regime on criminal law, government officials and NGOs sometimes worked together to promote cooperation. In 1928, an International Bureau for the Unification of Criminal Law was established by governments.⁵²⁴ Several private institutions played a role in the Bureau, including the Howard League for Penal Reform and the International Association of Criminal Law.⁵²⁵ In 1933, the Association held a congress that included official government delegates and NGOs (e.g., the International Association for the Protection of Child Welfare).⁵²⁶

NATURE. NGOs were typically involved in intergovernmental efforts to protect nature, especially in the areas of forestry, fisheries, water, and wildlife. In 1926, the International Institute of Agriculture and the Government of Italy organized a World's Forestry Conference in Rome.⁵²⁷ One of the purposes of the conference was to promote a "system that will maintain a certain balance between production and consumption" and pay more attention to "the requirements of future generations."⁵²⁸ The delegations were mixed: for example, the members of the U.S. delegation included an official from the U.S. Forest Service, state government officials, various academics, representatives of the American Forestry Association, and representatives of the Society of American Foresters.⁵²⁹ The Japanese delegation included government officials, a

520. *Id.* at 117 n.151.

521. Irvin Stewart, *The International Telegraph Conference of Brussels and the Problem of Code Language*, 23 AM. J. INT'L L. 292, 299 (1929).

522. LEAGUE OF NATIONS (1938), *supra* note 71, at 224-25.

523. *Id.* at 226.

524. *Id.* at 236.

525. *Id.*

526. TROISIÈME CONGRÈS INTERNATIONAL DE DROIT PÉNAL, ACTES DU CONGRÈS 21-22 (1935).

527. COMMITTEE OF THE INTERNATIONAL FORESTRY CONFERENCE, WORLD'S FORESTRY CONGRESS: REGULATIONS AND PROGRAMME 9 (1926).

528. *Id.* at 11-12.

529. *Id.* at 52-54.

representative of the Japanese Forestry Association, and a professor of agriculture and forestry.⁵³⁰

In 1930, Canada and the United States agreed to a treaty on halibut fisheries.⁵³¹ The treaty created an International Fisheries Commission to promulgate rules.⁵³² To facilitate its work, the Commission established a Conference Board consisting of representatives of the fishermen's unions and owner's associations.⁵³³ Canada and the United States also agreed to a treaty on sockeye salmon fisheries.⁵³⁴ When the U.S. Senate consented to this treaty in 1936, it did so subject to three understandings that were later accepted by Canada.⁵³⁵ One provided that the new International Pacific Salmon Fisheries Commission would set up an advisory commission of five persons from each country who were to be "representative of the various branches of the industry."⁵³⁶ This participation was linked to representation rather than to expertise.

In the early 1930s, Japan and the U.S. had a commercial dispute about Japanese floating canneries being moved into the Bering Sea.⁵³⁷ Prodded by the American salmon fishing industry, the U.S. Bureau of Fisheries worked out a "gentleman's agreement" with the Japanese Crab Canners' Guild. The Crab Canners' Guild agreed to influence the Salmon Canners' Guild not to fish close to the United States in return for a U.S. government agreement to refrain from encouraging a new U.S. crab industry.⁵³⁸

In 1925, Canada and the United States agreed to use an International Joint Commission to resolve differences regarding their common frontier; one issue that received consideration over several years involved the Rainy Lake.⁵³⁹ The Commission held two public hearings⁵⁴⁰ to hear

530. *Id.* at 63.

531. Convention on Halibut Fishery of Northern Pacific Ocean and Bering Sea, May 9, 1930, U.S.-Can., 47 Stat. 1872.

532. *Id.* arts. I, III.

533. HOMER E. GREGORY & KATHLEEN BARNES, NORTH PACIFIC FISHERIES 238 (1939); JOZO TOMASEVICH, INTERNATIONAL AGREEMENTS ON CONSERVATION OF MARINE RESOURCES 159 (1943).

534. Convention concerning the Sockeye Salmon Fisheries, May 26, 1930, U.S.-Can., 50 Stat. 1355.

535. Convention concerning the Sockeye Salmon Fisheries: Protocol of Exchange, July 28, 1937, 50 Stat. 1361.

536. *Id.*

537. L. LARRY LEONARD, INTERNATIONAL REGULATION OF FISHERIES 128 (1944).

538. *Id.* & n.28. After the Japanese canners failed to keep this agreement, the U.S. Congress appropriated \$100,000 to study the possibilities of a crab fishery. *See id.*

539. Treaty Between the United States and Great Britain Respecting Boundary Waters Between the United States and Canada, January 11, 1909, 36 Stat. 2452, art. IX; Treaty and Protocol between the United States and Great Britain in respect to Canada, to regulate the level of the Lake of the Woods, Feb. 24, 1925, 44 Stat. 1191.

540. *See* Robert A. MacKay, *The International Joint Commission Between the United States and Canada*, 22 AM. J. INT'L L. 292, 315 (1928) (discussing the public hearing process).

witnesses from subnational governments, corporations, and NGOs. Among the NGOs involved were the Izaak Walton League, the Western Ontario Chambers of Commerce, and the American Legion.⁵⁴¹

In 1931, there was an International Congress for the Protection of Nature with attendees from ten governments and numerous NGOs.⁵⁴² The Congress made a number of suggestions to governments, including that the unratified African wildlife treaty of 1900⁵⁴³ be revived.⁵⁴⁴ The Society for the Preservation of the Fauna of the Empire sent missions to Africa to collect information about endangered species.⁵⁴⁵ This information was used in 1933 when an official conference met to effectuate a new treaty.⁵⁴⁶ Members of the Society serving on government delegations played an active part in the conference.⁵⁴⁷ The U.S. government sent the chairman of the American Committee for International Wildlife Protection as an official observer.⁵⁴⁸

COMMODITIES. Business NGOs during this period worked with governments to initiate commodity agreements. For example, in the early 1930s, rubber grower associations in colonies of the United Kingdom, the Netherlands, and France convinced these States to establish an inter-governmental agreement to regulate the rubber trade.⁵⁴⁹ In 1940, an Inter-American Coffee Agreement was concluded with the help of the U.S. National Coffee Association.⁵⁵⁰ In 1933, tea producer associations in London, Amsterdam, and Batavia entered into a production agreement that was to be enforced by the British and Dutch governments.⁵⁵¹

541. INTERNATIONAL JOINT COMMISSION BETWEEN THE UNITED STATES AND CANADA, FINAL REPORT OF THE INTERNATIONAL JOINT COMMISSION ON THE RAINY LAKE REFERENCE 8, 10 (1934).

542. DEUXIÈME CONGRÈS INTERNATIONAL POUR LA PROTECTION DE LA NATURE, PROCÈS-VERBAUX, RAPPORTS ET VŒUX 14-16 (1932). Some of the NGOs included the Save the Redwoods League and the Poland League for the Protection of Nature.

543. See *supra* note 222.

544. DEUXIÈME CONGRÈS INTERNATIONAL POUR LA PROTECTION DE LA NATURE, *supra* note 542, at 543; HAYDEN, *supra* note 487, at 42-43.

545. HAYDEN, *supra* note 487, at 42-43; BOARDMAN, *supra* note 199, at 34.

546. Convention Relative to the Preservation of Fauna and Flora in Their Natural State, Nov. 8, 1933, 172 L.N.T.S. 241.

547. FITTER & SCOTT, *supra* note 223, at 17.

548. HAYDEN, *supra* note 487, at 44.

549. K.E. KNORR, WORLD RUBBER AND ITS REGULATION 93, 107-09 (1945); Agreement for the Regulation of Production and Export of Rubber, May 7, 1934, 171 L.N.T.S. 203.

550. V.D. WICKIZER, THE WORLD COFFEE ECONOMY WITH SPECIAL REFERENCE TO CONTROL SCHEMES 175-77 (1943); Inter-American Coffee Agreement Nov. 28, 1940, 8 Hudson 597.

551. V. D WICKIZER, TEA UNDER INTERNATIONAL REGULATION 3, 72, 142 (1944). The two governments each had a representative on the private committee that administered the agreement. *Id.* at 73-74.

At least two commodity agreements provided for NGO input. The rubber agreement was overseen by the International Rubber Regulation Committee, which had an advisory panel of three representatives of rubber manufacturers.⁵⁵² In 1937, a commodity agreement on tin provided for the participation of two representatives of the tin users.⁵⁵³ The representatives were permitted to attend official meetings and give advice.⁵⁵⁴ In surveying these agreements, the ILO noted that the problem of securing representation of final consumers deserved more attention.⁵⁵⁵

MISCELLANEOUS. Whenever governments engaged in industry-specific cooperation during this period, NGOs were typically involved. For example, in 1920, the International Institute of Refrigeration was established by convention.⁵⁵⁶ The convention provided for the participation of the British and American Associations on refrigeration.⁵⁵⁷ Indeed, the U.S. government named the American Association on Ice and Refrigeration as the U.S. delegate.⁵⁵⁸ In 1923, the U.S. government invited the World's Dairy Congress to meet in the United States.⁵⁵⁹ Delegates came from national governments, subnational governments, and member associations like the Belgian National Society of Dairying.⁵⁶⁰ In 1927, an International Agricultural Coordination Commission was established. The Commission included both IGOs and NGOs.⁵⁶¹

NGOs of this period also maintained involvement in pre-League organizations. For instance, in 1923, the International Association on Unemployment, founded in 1910, held its first meeting since World

552. Agreement for the Regulation of Production and Export of Rubber, *supra* note 549, at art. 18. The U.S. representative on the advisory panel was the Rubber Manufacturers Association. KNORR, *supra* note 549, at 149–50, 173–74.

553. Agreement on the International Tin Control Scheme, Jan. 5, 1937, para. 6, 7 Hudson 618.

554. K.E. KNORR, TIN UNDER CONTROL 245–46 (1945) (describing and criticizing these provisions).

555. INTERNATIONAL LABOUR OFFICE, INTERGOVERNMENTAL COMMODITY CONTROL AGREEMENTS xxxix–xli (1943).

556. International Convention for the Foundation of an International Institute of Refrigeration, June 21, 1920, 8 L.N.T.S. 66.

557. *Id.* art. 2; LEAGUE OF NATIONS (1938), *supra* note 71, at 161.

558. HANDBOOK OF INTERNATIONAL ORGANISATIONS, League of Nations Doc. 1927.XII B.1, at 116 (1926).

559. 2 PROCEEDINGS OF THE WORLD'S DAIRY CONGRESS 1531 (1924); An Act Making Appropriations for the Department of Agriculture for the Fiscal Year Ending June 30, 1922, Pub. L. No. 367, 41 Stat. 1347 (1921) (authorizing President to invite foreign governments).

560. 2 PROCEEDINGS OF THE WORLD'S DAIRY CONGRESS, *supra* note 559, at 1531.

561. INTERNATIONAL INSTITUTE OF AGRICULTURE, SOME ASPECTS OF THE WORK OF THE INTERNATIONAL INSTITUTE OF AGRICULTURE 1905–1940, at 24–25 (1942). For example, one participating NGO was the International Confederation of Agricultural Syndicates.

War I.⁵⁶² Eleven national governments sent delegates to the meeting. There were also representatives from local governments, employer organizations, unions, and private institutions for the prevention of unemployment.⁵⁶³ In 1928, an international conference for the protection of literary and artistic works was held in Rome.⁵⁶⁴ Many of the government delegations included representatives from artistic or literary associations.⁵⁶⁵

In 1923, the Statute of the Tangier Zone provided for an international legislative assembly.⁵⁶⁶ Seventeen members were to be named by foreign consulates; six Mussulman subjects were to be named by the Mendoub; and three Jewish subjects were to be chosen by the Mendoub from a list of nine names submitted by the Jewish community.⁵⁶⁷ Although these members were not NGOs, this episode demonstrates interest group participation in an international administration.

NGOs also played a role in the intergovernmental Conference of 1924 on Emigration and Immigration.⁵⁶⁸ For example, the Committee of International Associations for the Protection of Immigrants presented a resolution to the government delegates.⁵⁶⁹ Among the principles adopted by the Conference was that governments should facilitate the work of private associations seeking to protect immigrants.⁵⁷⁰

Significant public-private cooperation characterized the Pan-American system despite the fact that Inter-American conferences were governmental. For example, in 1928, at the Sixth International Conference of American States, several resolutions were passed with provisions pertaining to NGOs.⁵⁷¹ One called on governments to promote the creation of Red Cross societies.⁵⁷² A second sought to publicize the Code of Journalistic Ethics approved at the First Pan American Congress of Journalists.⁵⁷³ A third recommended creating a Pan American Commission on standard-

562. *The General Assembly of the International Association on Unemployment*, 8 INT'L LAB. REV. 689 (1923).

563. *Id.* at 690.

564. *The International Convention of the Copyright Union as Revised and Signed at Rome on June 2, 1928*, 4 Malloy 5622-24.

565. *Id.*

566. *Convention Regarding the Organisation of the Statute of the Tangier Zone*, Dec. 18, 1923, 28 L.N.T.S. 542.

567. *Id.* art. 34. *See also* GRAHAM H. STUART, *THE INTERNATIONAL CITY OF TANGIER* 86, 111 (1955) (discussing the role of the Mendoub).

568. *The Rome Conference*, 11 INDUS. & LAB. INFO. 54 (1924).

569. *Id.* at 65.

570. *Id.* at 63.

571. *Sixth International Conference of American States, Final Act* (1928).

572. *Id.* at 3.

573. *Id.* at 5-6.

ization to be composed of organizations of producers, exporters, and consumers.⁵⁷⁴ A fourth recommended convening an intergovernmental conference on tropical agriculture, forestry, and animal industry in which relevant private organizations would participate in a consultative capacity.⁵⁷⁵ A fifth recommended that national chambers of commerce reach agreements among themselves for arbitration of commercial controversies.⁵⁷⁶ The 1928 Conference also agreed to hear a presentation of feminist associations in a special plenary session.⁵⁷⁷ This presentation stimulated the creation of the Inter-American Commission of Women.⁵⁷⁸

In 1929, the semi-public International Bureau of Education was transformed into a public international union.⁵⁷⁹ The convention effectuating this change was negotiated among governments and the University Institute of Educational Sciences.⁵⁸⁰ The convention provided for adherence by both governments and private organizations.⁵⁸¹ This is a rare example of a treaty open to nongovernment parties.

Finally, NGOs had a faint presence with respect to military issues. In 1929, the Geneva Convention on Prisoners of War created a role for private relief societies.⁵⁸² Furthermore, the Convention called for the establishment of a central information agency regarding prisoners, but declared that these provisions "must not be interpreted as restricting the humanitarian activity of the International Committee of the Red Cross."⁵⁸³ Peace groups seized opportunities when they arose. In 1921–22, the Women's Peace Union sought to influence the Washington Naval conference.⁵⁸⁴ In 1930, a delegation of women's peace groups presented memorials to Ramsay MacDonald, President of the London Naval Conference, and to other government delegates.⁵⁸⁵ The memorials urged a substantial reduction in armaments.

574. *Id.* at 110.

575. *Id.* at 120.

576. *Id.* at 122.

577. *Id.* at 15.

578. James Brown Scott, *Inter-American Commission of Women*, 24 AM. J. INT'L L. 757, 759 (1930).

579. Marie Butts, *The International Bureau of Education*, 235 ANNALS AM. ACAD. POL. & SOC. SCI. 10, 12 (1944).

580. Statutes of the International Bureau of Education, July 25, 1929, 14 U.S.T. 311.

581. *Id.* at 318.

582. Convention Relative to the Treatment of Prisoners of War, July 27, 1929, arts. 77–78, 47 Stat. 2021, 118 L.N.T.S. 303.

583. *Id.* art. 79.

584. HARRIET HYMAN ALONSO, *THE WOMEN'S PEACE UNION AND THE OUTLAWRY OF WAR, 1921–1942*, at 13, 18, 23 (1989).

585. MERLE CURTI, *PEACE OR WAR: THE AMERICAN STRUGGLE 1636–1936*, at 292 (1936); BUSSEY & TIMS, *supra* note 264, at 91.

E. Summary

During this sixteen-year period, the practice of governments was to provide for NGO participation in intergovernmental meetings and international agencies. The League of Nations engaged NGOs in many of its committees and conferences.⁵⁸⁶ Close observers called this the League "method" or "technique." To be sure, NGO involvement was not a consistent practice. But it happened enough to warrant expectations for its recurrence. As Professor Georges Scelle noted in 1926:

If one wishes to seek at Geneva the embryo of a true internationalism in opposition to the *inter-statism* that the Council and Assembly are faulted for incarnating, one can do so in another direction where observation leads us. In closely regarding [the League], one can say that there is a phenomenon of *international professional representation*, though still fragmentary and embryonic.⁵⁸⁷

There were often two stages of NGO involvement. In the first stage, NGOs were outsiders working to ripen issues for intergovernmental consideration.⁵⁸⁸ In the second stage, NGOs were insiders working directly with government officials and international civil servants to address an international problem. This second stage occurred frequently. The best example is the ILO, in which governments, the worker group, and the employer group collaborated on an equal basis. By 1934, the ILO had approved forty-four conventions.⁵⁸⁹ The ILO experience also showed that institutions could be designed to encourage antagonistic groups to work together.

Leaving aside the Red Cross, two NGOs stand out as international actors—the WILPF and the ICC.⁵⁹⁰ Operating in apparent disjunction,⁵⁹¹

586. ALFRED ZIMMERN, *THE LEAGUE OF NATIONS AND THE RULE OF LAW 1918-1935*, at 329 (2d ed. 1939) (suggesting that public-private cooperation under the League was a curious combination of Fabianism and Cobdenism).

587. GEORGES SCELLE, *UNE CRISE DE LA SOCIÉTÉ DES NATIONS* 142 (1926) (author's translation) ("Si l'on veut pourtant chercher à Genève l'embryon d'un véritable internationalisme pour l'opposer à l'*Inter-etatisme* qu'on reproche au Conseil et, à l'Assemblée d'incarner trop exclusivement on peut, semble-t-il, le faire encore dans une autre direction où l'observation nous sollicite. Ce que l'on peut constater en y regardant de près, c'est un phénomène de *representation professionnelle internationale*, mais encore fragmentaire et embryonnaire").

588. VINACKE, *supra* note 260, at 398 (observing that States are led to organization for a specific purpose only after opinion has been ripened through the activities of private bodies); ZIMMERN, *supra* note 586, at 35 (observing that NGOs ripen issues for international consideration).

589. INTERNATIONAL LABOUR ORGANIZATION, *1 INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS ix* (1996).

590. The WILPF did not have the dominant status among feminist groups that the ICC enjoyed among business groups. The International Council of Women was also a pillar NGO.

591. See BUSSEY AND TIMS, *supra* note 264 (no mention of ICC in index); RIDGEWAY, *supra* note 75 (no mention of WILPF in index). More research is needed on this point.

the women in the WILPF and the men in the ICC charted the course for subsequent waves of NGOs. The WILPF was one of the first NGOs to see the benefit of moving to Geneva. It operated publicly at both the international and national levels. It utilized policy conferences as a tool to influence the League.⁵⁹² The Paris-based ICC employed a different style. It was the quintessential inside player, even to the point of signing final acts of League conferences. The ICC's strength came from its expertise and its ability to draw support from business leaders. Between the two, the ICC was more successful. But both organizations shared frustrations about a world spinning out of control to the detriment of commerce, peace, and freedom.

III. DISENGAGEMENT (1935-44)

During this period, there was a contraction in NGO participation within the League and few new milestones outside the League. After the League's activities became routinized, there was less need for NGO input. The evolving hostilities of World War II inhibited NGO participation.

A. League of Nations Activities

After 1932, only a few new episodes of NGO involvement occurred within the League. For example, in 1937, several international NGOs attended a League conference in Java to consider the problem of traffic in women and children.⁵⁹³ The conference made recommendations regarding enforcement and collection of information.⁵⁹⁴ It also recommended that governments welcome practical cooperation with voluntary organizations.⁵⁹⁵ Also that year, the League Assembly set up a Mixed Committee on Nutrition, which established contact with NGOs.⁵⁹⁶

While the early stance toward NGOs by the League was one of collaboration, in later years the League adopted a more stand-offish attitude.⁵⁹⁷ The Economic Consultative Committee was discontinued in

592. REPORT OF THE FOURTH CONGRESS, *supra* note 386, at 46-47.

593. *Traffic in Women & Children: Conference of Central Authorities in Eastern Countries, Report*, League of Nations Doc. C.476 M.318 1937 IV, at 103 (1937). For example, the Pan Pacific Women's Association participated. There were also national NGOs such as the China Child Welfare Association. *Id.*

594. *Id.* at 5-6.

595. *Id.* at 6.

596. SERGIO MARCHISIO & ANTONIETTA DI BLASE, *THE FOOD AND AGRICULTURE ORGANIZATION* 9 (1991).

597. WHITE, *supra* note 337, at 252.

the early 1930s.⁵⁹⁸ The assessors on the League's committees on women and children lost their automatic participation rights in 1937.⁵⁹⁹ Even the preeminent business organization, the ICC, perceived that the League was losing interest in it.⁶⁰⁰

Why did this disenchantment occur? Bertram Pickard, who was in Geneva during this period as Secretary of the Federation of Private International Organizations, postulated several possible reasons: (1) heightened world tensions, (2) the increasing number of NGOs, (3) a growing bureaucratization of the League Secretariat, and (4) the greater technical competence of NGO representatives, who left governmental members "in the shade."⁶⁰¹ Lyman Cromwell White, who was secretary of the U.N. committee on NGOs, suggested that as League operations became more established, officials were less willing to accept proposals that would upset routines or require additional work.⁶⁰² He also points out that the League had its own insecurities and was trying to avoid political problems.⁶⁰³ In commenting on the League's pullback from NGO participation, H.R.G. Greaves, a political scientist writing during that period, warned of a "danger lest the League Secretariat, and the League as a whole, should grow out of the timidity of childhood into the self-satisfaction of youth."⁶⁰⁴ These explanations do not answer every question. For example, to what extent did the nationalism of the 1930s undermine international solidarity among NGOs? Did legal restrictions—for instance, on travel—impede NGO international activities? Were NGOs rejected by the League because of substantive policy disagreements? Such issues deserve further research.

B. NGO Activity Outside the League

Outside the League, there were a few new opportunities for NGOs to pursue nature protection. In 1936, President Franklin D. Roosevelt called a North American Wildlife Conference that included government delegates from the United States, Canada, and Mexico.⁶⁰⁵ NGOs interested in

598. McCLURE, *supra* note 366, at 122.

599. *Advisory Committee on Social Questions: Report on the Work of the Committee in 1937*, *supra* note 465, at 5–6.

600. CHIANG, *supra* note 327, at 38.

601. PICKARD, *supra* note 336, at 54.

602. WHITE, *supra* note 337, at 254.

603. *Id.*

604. GREAVES, *supra* note 17, at 256.

605. U.S. Senate Special Committee on Conservation of Wildlife Resources, 74th Cong., *Wildlife Restoration and Conservation: Proceedings of the North American Wildlife Conference* at iii, 5–6 (2d Sess. Comm. Print 1936).

wildlife also attended—for example, the National Association of Audubon Societies.⁶⁰⁶ In the late 1930s, the Izaak Walton League and other NGOs pushed for talks between the United States and Canada on the conservation of fisheries in the Great Lakes.⁶⁰⁷ These efforts were requited in 1940 when the two countries established a Board of Inquiry for the Great Lakes Fisheries.⁶⁰⁸ During the same period, the American Committee for International Wild Life Protection pressed for the negotiation of what became the Pan American Convention on Nature Protection.⁶⁰⁹

Three unrelated episodes occurred in 1938. At the International Radio Conference, a few NGOs were allowed to participate.⁶¹⁰ At the Second Congress on Large Dams, the attendees included government officials, corporate representatives, and NGOs such as the International Union of Producers and Distributors of Electrical Energy.⁶¹¹ At the Eighth Inter-American Conference of 1938 in Lima, a number of NGOs showed up even though they lacked formal roles in the Conference.⁶¹²

In 1939, Eugene Staley, an American academic, proposed an International Economic Organization modeled on the ILO that would be composed of governments and NGOs.⁶¹³ Staley explained that his proposal was “not based on any supposed superiority of functional representation over territorial representation for general purposes of representative government.”⁶¹⁴ Rather, it was a response to the tendency of governments “to exaggerate the divergent interests of territorial groups organized into nation states, and to under emphasize the common interests that cut across national boundaries.”⁶¹⁵ This proposal was ignored in

606. *Id.* at vi.

607. LEONARD, *supra* note 537, at 119. The others NGOs included the American Fisheries Society, the National Wildlife Federation, and the Council of State Governments.

608. Establishment of the Board of Inquiry for the Great Lakes Fisheries, Feb. 29, 1940, E.A.S., No. 182.

609. BOARDMAN, *supra* note 199, at 35; Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Oct. 12, 1940, 161 U.N.T.S. 193.

610. Francis Colt de Wolf, *The Cairo Telecommunications Conferences*, 32 AM. J. INT'L L. 562-64 (1938). Among the NGO participants were the International Amateur Radio Union, the International Broadcasting Union, and the ICC. *Id.*

611. INTERNATIONAL COMMISSION ON LARGE DAMS OF THE WORLD POWER CONGRESS, 1 TRANSACTIONS: SECOND CONGRESS ON LARGE DAMS 116-28 (1938).

612. U.S. DEPARTMENT OF STATE, REPORT OF THE DELEGATION OF THE UNITED STATES OF AMERICA TO THE EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES 4 (1941).

613. EUGENE STALEY, WORLD ECONOMY IN TRANSITION 303-04 (1939).

614. *Id.* at 307.

615. *Id.* at 308.

the years before World War II, but as with many of his ideas, Staley was a half-century ahead.

Finally, two wartime episodes demonstrate NGO involvement. In 1943, the newly created United Nations Relief and Rehabilitation Administration⁶¹⁶ established a policy of enlisting the participation of voluntary relief agencies.⁶¹⁷ Over 125 agencies from about twenty countries participated in relief operations.⁶¹⁸ Some of these NGOs included the American Friends Service Committee and the Save the Children Fund. In 1944, the United Nations Monetary and Financial Conference was held in Bretton Woods. Although there were no NGO observers present, Costa Rica's delegation included an official from the national chamber of commerce.⁶¹⁹

C. Summary

This was a quiescent period for NGO involvement. Private groups and individuals played a more limited role at the League. Few new techniques for NGO participation were developed. Of course, the 1930s were not a high point for international cooperation. And the League itself was weakening. During World War II, opportunities for international NGO activity were limited.

IV. FORMALIZATION (1945-49)

During this period, Article 71 of the U.N. Charter provided for NGO involvement in certain activities of the United Nations. Significantly, NGOs participated as consultants to the U.S. delegation in San Francisco and assisted in the drafting of Article 71. NGOs also influenced the language on human rights in the Charter. As U.N. specialized agencies were created, they generally followed the Article 71 model. In the initial U.N.-sponsored conferences, NGO representatives participated in an advisory capacity.

616. See Agreement for the United Nations Relief and Rehabilitation Administration, Nov. 9, 1943, 3 Bevens 845. UNRRA was not part of the United Nations.

617. 2 GEORGE WOODBRIDGE, UNRRA: THE HISTORY OF THE UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION 67 (1950).

618. *Id.* at 75.

619. 1 U.S. DEPARTMENT OF STATE, PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE 297 (1948).

A. Drafting the U.N. Charter

By incorporating a provision on NGOs into the Charter of the United Nations, the drafters formalized the arrangements that had been used by the League of Nations.⁶²⁰ Since the NGO role had withered during the war years, Article 71 also served as a reaffirmation of the value of NGO participation. Article 71 states that the U.N. Economic and Social Council (ECOSOC)

may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.⁶²¹

Not everyone viewed Article 71 as a step forward for NGOs. Although most of the NGO participation under the League had occurred on economic or social issues, there had also been involvement in mandates and disarmament issues. Yet Article 71 did not go beyond ECOSOC. Indeed, Pickard viewed Article 71 as "a so-far-and-no-further obstacle to any continuance of the pragmatic but close IGO-NGO partnership developed under the League."⁶²²

The post-war era of NGO involvement began in February 1945, when representatives from business and labor were included as "advisors" on the United States delegation to the Inter-American Conference on Problems of War and Peace.⁶²³ Based on this experience, the Roosevelt Administration decided in the spring of 1945 to designate forty-two NGOs that could place "consultants" on the U.S. delegation to the U.N. Conference on International Organization.⁶²⁴ The invitation to the NGOs was motivated by the potential contribution of these groups to winning

620. RUTH RUSSELL, A HISTORY OF THE UNITED NATIONS CHARTER 800-01 (1958); Michael M. Gunter, *Toward A Consultative Relationship between the United Nations and Non-Governmental Organizations?*, 1 VAND. J. TRANSNAT'L L. 557, 560 (1977) (declaring that "although the League became more chary of NGOs near the end of its existence, it bequeathed a rather extensive experience in NGO collaboration to its successor, the United Nations").

621. U.N. CHARTER art. 71.

622. PICKARD, *supra* note 323, at 72.

623. American Delegation, *Inter-American Conference on Problems of War and Peace*, 12 DEP'T ST. BULL. 192 (1945).

624. RUSSELL, *supra* note 620, at 594-95; DOROTHY B. ROBINS, EXPERIMENT IN DEMOCRACY: THE STORY OF U.S. CITIZEN ORGANIZATIONS IN FORGING THE CHARTER OF THE UNITED NATIONS 88-89, 106 (1971). The use of consultants, rather than advisors, was deemed a "step back" by some observers. *Id.* at 89.

public support for the U.N. Charter.⁶²⁵ It was anticipated that the NGOs would prepare themselves to be spokesmen for the Charter. But once in San Francisco, they also contributed to the drafting process. After the Conference, U.S. Secretary of State Edward R. Stettinius Jr. called the NGO presence an "innovation in the conduct of international affairs" that proved to be "an important contribution to the Conference itself."⁶²⁶ There were other NGO representatives in San Francisco besides the U.S. groups; one analyst puts the total number at 1,200.⁶²⁷

Of all the U.S. consultants, the one who had perhaps done the most thinking about the role of NGOs was James T. Shotwell, President Emeritus of the Carnegie Endowment for International Peace, and the leading U.S. scholar on the ILO.⁶²⁸ Shotwell wanted to include a provision on NGOs in the U.N. Charter, and so he worked within the consultants group to build support.⁶²⁹ The idea had not been considered at the Dumbarton Oaks conference.⁶³⁰ Indeed, the steering committee for the San Francisco Conference had denied observer status to the World Trade Union Conference following a request by the Soviet Union.⁶³¹ The consultants proposed that ECOSOC "arrange conferences with and receive recommendations from major non-governmental organizations, national or international."⁶³² This recommendation influenced the U.S. government to propose what later became Article 71.⁶³³

At the same time, the Canadian government was backing a role for NGOs.⁶³⁴ An early draft of Article 71 did not make clear that the proposed cooperation could be with national as well as international

625. ROBINS, *supra* note 624, at 102-03.

626. *Id.* at 103.

627. Peter Willetts, *Pressure Groups as Transnational Actors*, in *PRESSURE GROUPS IN THE GLOBAL SYSTEM* 11 (Peter Willetts ed., 1982).

628. See, e.g., James T. Shotwell, *Historical Significance of the International Labour Conference*, in *LABOUR AS AN INTERNATIONAL PROBLEM*, *supra* note 299, at 50 (noting that, in the creation of the ILO, for the first time in the history of international law it was proposed that unofficial delegates be permitted to vote in an official international body).

629. ROBINS, *supra* note 624, at 122. See also *supra* note 324 for Shotwell's role in drafting the Covenant of the League of Nations.

630. LELAND M. GOODRICH ET AL., *CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS* 443 (3d ed. 1969).

631. GOODRICH ET AL., *id.* at 443-44; NØRGAARD, *supra* note 272, at 102; RUSSELL, *supra* note 620, at 799.

632. ROBINS, *supra* note 624, at 123.

633. *Id.* at 128, 160; ROBERT E. ASHER ET AL., *THE UNITED NATIONS AND PROMOTION OF THE GENERAL WELFARE* 101-02 (1957).

634. Rainer Lagoni, *Article 71*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 904 (Bruno Simma ed., 1994).

NGOs.⁶³⁵ Since many of the U.S. NGOs that provided consultants to the U.S. delegation were *not* international NGOs—for instance, the AFL—they pushed for a modification to encompass national groups.⁶³⁶ This placed the U.S. government in an uncomfortable position because in other parts of the Charter it was opposing U.N. entanglements in domestic affairs. A compromise was eventually reached whereby national NGOs could be involved after consultation between the home government and ECOSOC.⁶³⁷

U.S. NGOs advocated incorporating human rights provisions into the U.N. Charter.⁶³⁸ According to John P. Humphrey, the NGOs “conducted a lobby in favor of human rights for which there is no parallel in the history of international relations, and which was largely responsible for the human rights provisions of the Charter.”⁶³⁹ Article 55(c) states that the U.N. will promote “universal respect for, and observance of, human rights and fundamental freedoms for all”⁶⁴⁰ Article 68 states that ECOSOC shall set up commissions in economic and social fields “and for the promotion of human rights”⁶⁴¹

B. Implementing Article 71

The implementation of Article 71 can only be summarized here.⁶⁴² Following the entry into force of the U.N. Charter, the General Assembly called on ECOSOC to fashion arrangements for NGO involvement.⁶⁴³ ECOSOC defined NGOs as “any international organization which is not established by intergovernmental agreement.”⁶⁴⁴ This definition embraced

635. RUSSELL, *supra* note 620, at 801.

636. *Id.*

637. *Id.*

638. CLARK M. EICHELBERGER, ORGANIZING FOR PEACE 267–71 (1977); S.C. TIWARI, GENESIS OF THE UNITED NATIONS 331–33 (1968); HOWARD TOLLEY, JR., THE U.N. COMMISSION ON HUMAN RIGHTS 4–7 (1987).

639. JOHN P. HUMPHREY, HUMAN RIGHTS & THE UNITED NATIONS: A GREAT ADVENTURE 13 (1984). Humphrey, who was the first director of the U.N. Division of Human Rights, notes that this “experiment has never been repeated on the same scale in the halls of the United Nations.” *Id.*

640. U.N. CHARTER art. 55(c).

641. U.N. CHARTER art. 68.

642. See generally EDWIN A. BOCK, REPRESENTATION OF NON-GOVERNMENTAL ORGANIZATIONS AT THE UNITED NATIONS (1955); CHIANG; *supra* note 327; Lagoni, *supra* note 634, at 904–10; UNION OF INTERNATIONAL ASSOCIATIONS, COMMENTARY ON ARTICLE 71 OF THE CHARTER OF THE UNITED NATIONS 12–13 (1956); Peter Willetts, *Consultative Status for NGOs at the United Nations*, in THE CONSCIENCE OF THE WORLD, *supra* note 3, at 31–62.

643. G.A. Res. 4(I), Feb. 14, 1946; GOODRICH ET AL., *supra* note 630, at 445.

644. E.S.C. Res. 1/4, Feb. 16, 1946, at para. 8.

NGOs that have governments or government agencies as members. National NGOs were not admitted to consultative status without the approval of the NGO's home government.⁶⁴⁵ According to the ECOSOC guidelines of 1950, "[n]ational organizations shall normally present their views through international non-governmental organizations to which they belong."⁶⁴⁶ Two main categories of NGOs were established.⁶⁴⁷ Category A organizations were those with a basic interest in most of the activities of the Council. Category B organizations were those interested in some aspects of the Council's work. Among the earliest Category A organizations admitted were the World Federation of Trade Unions (WFTU) and the ICC.⁶⁴⁸ It should also be noted that ECOSOC decided that its commissions would comprise only government representatives. Thus, the League's practice of using assessors was not adopted. According to one commentator, both NGOs and "old hands" from the League were dismayed at this decision.⁶⁴⁹

C. NGOs in Other U.N. Organizations

Article 71 set a benchmark for other U.N. agencies. During the early 1940s, several private groups recommended the creation of a new international organization for education.⁶⁵⁰ At the founding conference of the U.N. Educational, Scientific, and Cultural Organisation (UNESCO) in 1945, the French delegation proposed that NGOs be given full membership in UNESCO.⁶⁵¹ Although this was not accepted, UNESCO expanded on Article 71 by providing for "consultation and co-operation" with NGOs.⁶⁵² Under its activist Director-General Julian Huxley, UNESCO moved quickly to involve international NGOs in all aspects of its

645. COMMENTARY ON ARTICLE 71, *supra* note 642, at 11.

646. Review of Consultative Arrangements with Non-Governmental Organizations, E.S.C. Res. 288(x), Feb. 27, 1950, para. 9, *reprinted in* LADOR-LEDERER (1963), *supra* note 394, at 388.

647. CHIANG, *supra* note 327, at 90-94. There was also a Category C which was later replaced with a Roster.

648. CHARLES HENRY ALEXANDROWICZ, INTERNATIONAL ECONOMIC ORGANISATIONS 239 (1953). In 1948, the WFTU put the issue of equality of pay for women on the ECOSOC agenda. H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 24-25 (1968).

649. Declan O'Donovan, *The Economic and Social Council, in THE UNITED NATIONS AND HUMAN RIGHTS* 110 (Philip Alston ed., 1992).

650. JAMES P. SEWELL, UNESCO AND WORLD POLITICS 34-37, 55 (1975).

651. *Id.* at 66-67, 72; Brenda M.H. Tripp, *Unesco in Perspective*, 497 INT'L CONCILIATION 330, 349 (1954).

652. Constitution of the United Nations Educational, Scientific and Cultural Organisation, Nov. 16, 1945, art. XI:4, 4 U.N.T.S. 275, 292 (emphasis supplied). This provision is limited to international NGOs.

work.⁶⁵³ When adequate NGOs did not exist, Huxley would use subventions and contracts to nurture new NGOs.⁶⁵⁴

In 1946, the U.N. convened the International Health Conference.⁶⁵⁵ Observers from several international organizations attended as well as from the League of Red Cross Societies, the WFTU, and the Rockefeller Foundation.⁶⁵⁶ The U.S. delegation included a representative from the American Medical Association on the watch for any flirtation with socialized medicine.⁶⁵⁷ The Conference approved the Constitution of the World Health Organization (WHO), which provides for NGO involvement in its Article 71.⁶⁵⁸ At the Second World Health Assembly in 1949, thirteen NGOs were represented and some spoke at the Assembly.⁶⁵⁹

Another action initiated by ECOSOC in 1946 was the preparatory meetings for the U.N. Conference on Trade and Employment. Many NGOs supported the creation of a world trading system, and the preparatory committee included participants from the ICC, the AFL, the WFTU, and the International Co-operative Alliance.⁶⁶⁰ In 1948, the Conference approved the Charter for the International Trade Organization (ITO).⁶⁶¹ The reports and statements of the ICC had a direct influence on shaping provisions in the Charter regarding investment and the relationship between the ITO and the International Monetary Fund (IMF).⁶⁶²

The ITO Charter contained two provisions for NGO participation.⁶⁶³ First, there was a complaint procedure against restrictive business prac-

653. See generally Richard Hoggart, *UNESCO and NGOs: A Memoir*, in *THE CONSCIENCE OF THE WORLD*, *supra* note 3, at 98–115.

654. *Id.* at 106–09; Sally Morphet, *NGOs and the Environment*, in *THE CONSCIENCE OF THE WORLD*, *supra* note 3, at 118–19.

655. WORLD HEALTH ORGANIZATION, *supra* note 119, at 44.

656. *Id.* at 479.

657. BRUUN ET AL., *supra* note 408, at 155.

658. Constitution of the World Health Organization, July 22, 1946, art. 71, 14 U.N.T.S. 185.

659. GOODMAN, *supra* note 118, at 384.

660. ELIOT GRINNELL MEARS, A TRADE AGENCY FOR ONE WORLD 38–61 (1945); *Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment*, U.N. Economic and Social Council Conf. on Trade and Employment, Oct. 1946, Rule 46, Annex 4, U.N. Doc. E/PC/T/33 (1946).

661. See generally ALSO PRESENT AT THE CREATION: DANA WILGRESS AND THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT AT HAVANA (Michael Hart ed., 1995) [hereinafter ALSO PRESENT AT THE CREATION]; Havana Charter for an International Trade Organization, U.N. Doc. E/Conf. 2/78 (1948), reprinted in ALSO PRESENT AT THE CREATION, at 171.

662. ALEXANDROWICZ, *supra* note 648, at 241–42.

663. John Jackson notes that a proposal to establish a mechanism for individual complaints about trade barriers was quickly put aside. JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT* 187 (1969).

tices.⁶⁶⁴ It provided that a member government could lodge complaints on its own behalf or "on behalf of any affected person, enterprise, or organization within that Member's jurisdiction."⁶⁶⁵ Once the ITO decided that an investigation was justified, it was to hold a hearing wherein governments, the commercial enterprise at issue, and the initiating persons, enterprises, or organizations, were to "be afforded reasonable opportunity to be heard."⁶⁶⁶ The second provision in the ITO Charter provided for "consultation and cooperation" with NGOs.⁶⁶⁷ In preliminary discussions, the governments seemed prepared to provide significant NGO involvement.⁶⁶⁸ But the ITO never came into being.⁶⁶⁹ Although the General Agreement on Tariffs and Trade (GATT) did not have a provision on NGOs, it permitted business NGO involvement during the 1950s.⁶⁷⁰ For example, the ICC participated in several GATT working parties.⁶⁷¹

In 1947, the General Assembly established the International Law Commission to promote the progressive development of international law and its codification.⁶⁷² This is not an NGO, but it is one of the few institutions in which individuals advise the U.N. in their private capacities. The Commission has drafted many important treaties.⁶⁷³

In 1948, the United Nations Maritime Conference established an Intergovernmental Maritime Consultative Organization.⁶⁷⁴ Four international NGOs participated in this Conference as observers.⁶⁷⁵ The new

664. Havana Charter, *supra* note 661, art. 48.

665. *Id.* art. 48(1).

666. *Id.* art. 48(4).

667. *Id.* art. 87(2). See Robert F. Housman, *Democratizing International Trade Decision-Making*, 27 CORNELL INT'L L.J. 699, 704-05 (1994).

668. Steve Charnovitz & John Wickham, *Non-Governmental Organizations and the Original International Trade Regime*, 29 J. WORLD TRADE 111, 116-21 (October 1995).

669. See ALSO PRESENT AT THE CREATION, *supra* note 661, at 50-52.

670. JACKSON, *supra* note 663, at 189. The GATT was not a U.N. organization so it does not strictly fit this subsection.

671. Customs Treatment of Samples and Advertising Material, Documentary Requirements for the Importation of Goods, and Consular Formalities: Resolutions of the International Chamber of Commerce, Oct. 24, 1951 GATT B.I.S.D. II, at 210 (1952); Documentary Requirements for Imports, Consular Formalities, Valuation for Customs Purposes, Nationality of Imported Goods and Formalities Connected with Quantitative Restrictions, Nov. 7, 1952, GATT B.I.S.D. (1st Supp.) at 100 (1953); *Nationality of Imported Goods*, Oct. 23, 1953, GATT B.I.S.D. (2nd Supp.) at 53, 57 (1954).

672. HERBERT W. BRIGGS, *THE INTERNATIONAL LAW COMMISSION* 20 (1965).

673. JANIS, *supra* note 64, at 16, 51-52, 190, 205-06 (giving examples of treaties drafted by the ILC).

674. Convention of the Intergovernmental Maritime Consultative Organization, Mar. 6, 1948, 289 U.N.T.S. 48.

675. D.H.N. Johnson, *IMCO: The First Four Years*, 12 INT'L & COMP. L.Q. 31, 32 (1963).

Organization provided for consultation and cooperation with international NGOs.⁶⁷⁶

In 1949, UNESCO held an International Technical Conference on the Protection of Nature.⁶⁷⁷ The national delegates included a mix of government officials and NGO representatives.⁶⁷⁸ There were also attendees from U.N. agencies and from international NGOs such as the International Committee for Bird Preservation.⁶⁷⁹ The Conference made several proposals; for example, it recommended that the problem of pesticides be tackled by creating a joint commission of relevant U.N. agencies.⁶⁸⁰

D. NGO Activity Outside the United Nations

In 1947, the International Organization for Standardization (ISO) was established.⁶⁸¹ It is a federation of over 100 national standard-setting bodies, some governmental and some private.⁶⁸² The ISO has been referenced in two recent trade agreements. In 1992, the North American Free Trade Agreement committed parties to use ISO standards when not ineffective or not inappropriate for national conditions.⁶⁸³ In 1994, the trade ministers directed the Secretariat of the World Trade Organization to develop a joint information system with the ISO.⁶⁸⁴

NGOs played a key role in the reflowering of intergovernmental environmental cooperation. In 1948, NGOs were official observers at the Inter-American Conference on Conservation of Renewable Natural Resources.⁶⁸⁵ For example, the Ecological Society of America and the

676. Convention of the Intergovernmental Maritime Consultative Organization, *supra* note 674, art. 48.

677. *International Technical Conference on the Protection of Nature: Proceedings and Papers* (1950).

678. *Id.* at 1-10.

679. *Id.* at 11.

680. *Id.* at 181.

681. [1996] 1 Y.B. INT'L ORGS. 1996/1997, (Union of International Organizations) at 1023.

682. Naomi Roht-Arriaza, *Shifting the Point of Regulation: The International Organization for Standardization and Global Lawmaking on Trade and the Environment*, 22 *ECOLOGY L.Q.* 479, 489 (1995). The acronym ISO is used because it does not correspond to the initial letters in the organization's name in any language and thus can be used in all languages. HAROLD K. JACOBSON, *NETWORKS OF INTERDEPENDENCE* 238-39 (2d ed. 1984).

683. North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., arts. 905.1, 915.1, 32 I.L.M. 289, 387, 391 (1993).

684. Decision on Proposed Understanding on WTO-ISO Standards Information System, 33 I.L.M. 1252 (1994).

685. INTER-AMERICAN CONFERENCE ON CONSERVATION OF RENEWABLE NATURAL RESOURCES, *PROCEEDINGS OF THE INTER-AMERICAN CONFERENCE ON CONSERVATION OF RENEWABLE NATURAL RESOURCES* 55 (1949). The Conference passed resolutions directed at the Pan American Union and participating governments. *Id.* at 22-23.

Society of American Foresters attended as observers.⁶⁸⁶ Also that year, the International Union for the Protection of Nature was established as a hybrid organization with both government and non-government members.⁶⁸⁷ Its current name is the World Conservation Union (IUCN). President Clinton has named a Special Representative.⁶⁸⁸

Finally, there was an interesting episode involving private sector participation. In 1947, the International Telecommunications Conference met in Atlantic City.⁶⁸⁹ The U.S. government objected to the suggested rules that would have allowed representatives of private operating agencies to participate in administrative, but not plenipotentiary, meetings.⁶⁹⁰ Instead, the U.S. government suggested that such agencies be admitted only as part of a government's delegation.⁶⁹¹ Other parties disagreed, pointing out that the Telegraph Union had a long tradition of allowing participation by private operating agencies. A compromise was worked out with an agreement that no private agency could make a proposal unless it was supported by the agency's home government.⁶⁹² The U.S. government also sought to prevent the participation of international NGOs. The British government objected successfully that such a restriction would run contrary to ECOSOC practices.⁶⁹³ It is also interesting to note that the International Radio Conference was held in parallel with the Telecommunications Conference.⁶⁹⁴ Several NGOs, such as the International Amateur Radio Union and the International Shipping Federation, were allowed to send observers to the Radio Conference.⁶⁹⁵

E. Summary

During this period, the U.N. Charter formalized a role for NGOs in global governance. This was significant for three reasons. First, the Covenant of the League of Nations lacked such a provision. Second, NGOs assisted governments in drafting Article 71. Third, Article 71 gave

686. *Id.* at 66.

687. BOARDMAN, *supra* note 199, at 43, 180; McCORMICK, *supra* note 221, at 35.

688. *See Nomination for Ambassador to Switzerland and Appointment of Representative to the World Conservation Union*, 29 WEEKLY COMP. PRES. DOC. 2172 (1993).

689. CODDING, *supra* note 251, at 318–21. At that time, the ITU was not a specialized agency of the U.N.

690. *Id.* at 284.

691. *Id.*

692. *Id.* at 285.

693. *Id.*

694. U.S. DEPARTMENT OF STATE, INTERNATIONAL TELECOMMUNICATIONS CONFERENCES (1948).

695. *Id.* at 133, 142.

NGOs a hunting license to pursue involvement in the U.N. beyond ECOSOC. Article 71 of the U.N. Charter is sometimes portrayed as inventing a new concept of NGO participation in international policymaking. Yet in fact what Article 71 did was codify the custom of NGO participation.⁶⁹⁶ The opportunities afforded to NGOs in the early years of the United Nations were no better than those afforded to NGOs in the early years of the League.

V. UNDERACHIEVEMENT (1950-71)

As noted above, the discussion of the years after 1949 will be compressed. NGOs were very active during the 1950s and 60s in the United Nations, but, in general, this was a period of underachievement. NGOs could have contributed more, but were limited by Cold War politics and the institutional weakness of ECOSOC. One commentator suggests that "the United Nations took account of the nuisance value of NGOs rather than of their positive nature."⁶⁹⁷ The allocation of building space also tells the story. Shortly before World War II, the *Palais Wilson* in Geneva became the combined headquarters of about 200 NGOs.⁶⁹⁸ A few years after the War, it was being used to house IGOs.⁶⁹⁹

The largest area of NGO activity at the United Nations during this period was human rights.⁷⁰⁰ For example, in the early 1950s, thirty NGOs took part in the conference that drafted the Convention on Refugees.⁷⁰¹ In 1955, ECOSOC convened a conference for NGOs interested in the eradication of prejudice and discrimination.⁷⁰² In 1956, NGOs participated in the U.N. conference drafting the Supplementary Conven-

696. But see ECOSOC's Guidelines approved in 1950 which declare that "the arrangements for consultation should not be such as to accord to non-governmental organizations the same rights of participation as are accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nation." Review of Consultative Arrangements, *supra* note 646, at para. 12. This might be read as implying that NGOs do have rights of participation, but lesser rights than enjoyed by States and specialized agencies.

697. LADOR-LEDERER (1968), *supra* note 83, at 396.

698. JOYCE, *supra* note 136, at 36.

699. *Id.*

700. See generally Jane Connors, *NGOs and the Human Rights of Women at the United Nations*, in THE CONSCIENCE OF THE WORLD, *supra* note 3, at 147; Helena Cook, *Amnesty International at the United Nations*, in THE CONSCIENCE OF THE WORLD, *supra* note 3, at 181.

701. Angela Penrose & John Seaman, *The Save the Children Fund and Nutrition for Refugees*, in THE CONSCIENCE OF THE WORLD, *supra* note 3, at 241, 248-49; Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150.

702. Lagoni, *supra* note 634, at 911 n.79.

tion on the Abolition of Slavery.⁷⁰³ Representatives from the Anti-Slavery Society, St. Joan's Social and Political Alliance, and the Liaison Committee of Women's International Organizations made oral presentations to the conference.⁷⁰⁴ NGOs were also influential in drafting the two human rights covenants approved by the General Assembly in 1966.⁷⁰⁵ At the U.N. Conference on Human Rights at Tehran in 1968, the International Commission of Jurists played a key role in catalyzing agreement for a revision of the Geneva conventions of 1949 on armed conflict.⁷⁰⁶ At the ensuing diplomatic conference in 1974 to begin drafting new Protocols, thirty-five NGOs had observer status.⁷⁰⁷ One representative from the International Commission of Jurists was permitted to address the plenary.⁷⁰⁸

The U.N. Commission on Human Rights began accepting comments by NGOs in 1964.⁷⁰⁹ By the early 1970s, some frank NGO statements at the Commission were embarrassing implicated governments and so, in 1975, the Commission asked ECOSOC to instruct NGOs to exercise proper discretion.⁷¹⁰ It was not until the 1980s that NGOs were allowed to name country violators in their comments to the Commission.⁷¹¹

Occasionally, the U.N. system asked NGOs to take specific action. For example, in 1950, the U.N. Security Council adopted a resolution requesting international and nongovernmental organizations to provide aid to refugees in Korea.⁷¹² In 1970, UNESCO passed a resolution demanding that NGOs enjoying consultative status with UNESCO conform to the anti-apartheid campaign.⁷¹³ A year later, UNESCO suspended relations

703. Archer, *supra* note 48, at 169; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3.

704. GREENIDGE, *supra* note 113, at 196.

705. DOMINIC MCGOLDRICK, *THE HUMAN RIGHTS COMMITTEE: ITS ROLE IN THE DEVELOPMENT OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 10* (1991); R.G. SYBESMA-KNOL, *THE STATUS OF OBSERVERS IN THE UNITED NATIONS 310* (1981).

706. KEITH SUTER, *AN INTERNATIONAL LAW OF GUERRILLA WARFARE 22-35* (1984).

707. *Id.* at 128, 178.

708. *Id.* at 134.

709. SYBESMA-KNOL, *supra* note 705, at 309.

710. Laurie Wiseberg, *Introductory Essay*, in *ENCYCLOPEDIA OF HUMAN RIGHTS xxvi-xxvii* (Edward Lawson ed., 1996).

711. Philip Alston, *The Commission on Human Rights*, in *THE UNITED NATIONS AND HUMAN RIGHTS*, *supra* note 649, at 202.

712. ARTHUR W. ROVINE, *THE FIRST FIFTY YEARS: THE SECRETARY-GENERAL IN WORLD POLITICS 1920-1970*, at 241 (1970).

713. SYBESMA-KNOL, *supra* note 705, at 316.

with forty-two NGOs that had not complied.⁷¹⁴ Generally, however, NGO relationships with UNESCO remained good. In 1969–70, NGOs helped UNESCO parties in the drafting of the Cultural Property convention.⁷¹⁵ Shortly afterward, NGOs assisted in the drafting of the World Heritage Convention.⁷¹⁶ This Convention gives NGOs an advisory role.⁷¹⁷

There were also new opportunities for NGO input outside of U.N. agencies. In 1957, the International Atomic Energy Agency (IAEA) provided consultative status to NGOs like the International Confederation of Free Trade Unions.⁷¹⁸ In 1961, the Organization for Economic Co-operation and Development (OECD) established a trade union advisory committee and a year later established a business and industry advisory committee.⁷¹⁹ The trade union committee had evolved out of an advisory committee to the Marshall Plan.⁷²⁰ Some new human rights treaties provided opportunities for NGO petitions. In 1960, the European Convention for the Protection of Human Rights permitted individuals, groups of individuals, and NGOs to file petitions claiming a violation of a right set forth in the Convention.⁷²¹ In 1969, the American Convention on Human Rights permitted NGOs and individuals to lodge petitions with the Inter-American Commission on Human Rights.⁷²²

Environmental NGOs had some notable successes during this period. In the early 1950s, a coalition of British NGOs, including bird protection and tourism groups, began pushing for an international conference to address marine oil pollution.⁷²³ This effort succeeded in 1954 when the

714. *Id.* at 317.

715. Hoggart, *supra* note 653, at 111; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 232.

716. Hoggart, *supra* note 653, at 114; Convention concerning the Protection of World Cultural and Natural Heritage, Nov. 23, 1972, 27 U.S.T. 37.

717. Convention concerning the Protection of World Cultural and Natural Heritage, *supra* note 716, at art. 8.3.

718. George C. Lodge, *Labor's Influence in the Development of International Legal Standards*, 54 PROC. AM. SOC'Y INT'L L. 213, 217 (1960).

719. HENRY G. AUBREY, ATLANTIC ECONOMIC COOPERATION 130–36 (1967); Convention on the Organisation for Economic Co-operation and Development, Dec. 14, 1960, 888 U.N.T.S. 179. See also David A. Wirth, *Public Participation in International Processes: Environmental Case Studies at the National and International Levels*, 7 COLO. J. INT'L ENVTL. L. & POL'Y 1, 19–22 (1996).

720. MICHAEL J. HOGAN, THE MARSHALL PLAN 147 (1987).

721. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 25(1), 213 U.N.T.S. 222, 237–38. Petitions can only be filed against parties that recognized the competence of the European Commission of Human Rights. *Id.*

722. American Convention on Human Rights, Nov. 22, 1969, art. 44, 9 I.L.M. 673, 687.

723. Ronald Mitchell, *International Oil Pollution of the Oceans*, in INSTITUTIONS FOR THE EARTH 199–200, 222–23 (Peter M. Haas et al. eds., 1993).

British government hosted an international conference that drafted a treaty on marine pollution.⁷²⁴ Beginning in the 1960s, the International Waterfowl Research Bureau began holding technical conferences to address the destruction of wetlands.⁷²⁵ This background work contributed to the negotiation of the Convention on Wetlands of International Importance in 1971.⁷²⁶ The Bureau continues to play an important role in the implementation of this Convention.⁷²⁷

Finally, the invention of nuclear weapons triggered cooperation among scientists seeking international control of nuclear energy. For example, in 1946, the Federation of American Scientists began studies on the feasibility of an international inspection system.⁷²⁸ In 1957, scientists began holding international meetings at Pugwash to promote arms control.⁷²⁹

VI. INTENSIFICATION (1972-91)

NGO involvement in international governance began to intensify in the early 1970s. NGOs grew in number, size, and diversity. Through expertise and tenacity, NGOs were able to increase their impact, especially on the environment and human rights.⁷³⁰ Both ECOSOC and the U.N. General Assembly started to call upon NGOs to assist in planning for international conferences.⁷³¹ In 1970, ECOSOC sought NGO support for the upcoming conference on the environment.⁷³² NGOs gathered in Stockholm for the U.N. Conference on the Human Environment in 1972 and continued the practice of NGO gatherings at subsequent U.N. conferences: for example, the World Population Conference (Bucharest, 1974), the World Food Conference (Rome, 1974), the Conference of the International Women's Year (Mexico City, 1975), the U.N. Conference on Human Settlements (Habitat I, Vancouver, 1976), the U.N. Conference

724. *Id.* at 200-02; FITTER & SCOTT, *supra* note 223, at 26; International Convention for the Prevention of Pollution of the Sea by Oil, May 12, 1954, 327 U.N.T.S. 3.

725. SIMON LYSTER, INTERNATIONAL WILDLIFE LAW 831 (1985).

726. *Id.*; Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, Feb. 2, 1971, 996 U.N.T.S. 245.

727. LYSTER, *supra* note 725, at 189.

728. See generally ALICE KIMBALL SMITH, A PERIL AND A HOPE, THE SCIENTISTS' MOVEMENT IN AMERICA: 1945-47 (1970). See also 1 BULL. ATOM. SCIENTISTS, Apr. 1, 1946, at 11-13 (reprinting the draft Convention prepared by Quincy Wright).

729. Fox Butterfield, *Antinuclear Group, 25, Gathers in Nova Scotia*, N.Y. TIMES, Jul. 19, 1982, at A2.

730. See generally ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY 250-70 (1995).

731. Lagoni, *supra* note 634, at 911; SYBESMA-KNOL, *supra* note 705, at 301.

732. E.S.C. Res. 1536, U.N. ESCOR, 49th Sess., Supp. No. 1, U.N. Doc. E/4904 (1970).

on Population (Mexico City, 1984), the World Conference on Women (Nairobi, 1985), and the World Summit for Children (New York, 1990).⁷³³ There was also a parallel NGO "Conference on a Non-Nuclear Future" alongside a 1977 meeting of the IAEA.⁷³⁴

The Stockholm environmental conference is often viewed as a watershed of NGO involvement.⁷³⁵ There were 113 governments and at least 225 accredited NGOs.⁷³⁶ NGOs were permitted to make a formal statement to the conference.⁷³⁷ NGOs also distributed a daily newspaper, a practice regularized at subsequent global conferences.⁷³⁸

Opportunities for NGOs generally grew during this period. At the Habitat I Conference in 1976, the Chairman of the Conference felt compelled to call a temporary adjournment before calling on Barbara Ward, President of the International Institute for Environment and Development, to make an address.⁷³⁹ In 1980, NGOs were given only fifteen minutes to speak at the United Nations Conference on Women (in Copenhagen).⁷⁴⁰ But within a few years, attitudes had changed. For example, in 1987, NGOs were allowed to speak at a plenary session of the conference drafting the Montreal Protocol on protection of the ozone layer.⁷⁴¹

NGOs played a key role in stimulating environmental treaties. For example, in 1968, the IUCN established a polar bear specialist group.⁷⁴² Over the next few years, the IUCN worked closely with governments in drafting the treaty of 1973 to protect polar bears.⁷⁴³ The IUCN played a

733. CHIANG, *supra* note 327, at 7; 89 PROC. AM. SOC'Y INT'L L. 420-21 (1995) (Remarks of Donna Sullivan).

734. MCCORMICK, *supra* note 221, at 147.

735. Willetts, *supra* note 642, at 54. See generally Anne Thompson Feraru, *Transnational Political Interests and the Global Environment*, 28 INT'L ORG. 31 (1974).

736. MORPHET, *supra* note 654, at 124.

737. TONY BRENTON, *THE GREENING OF MACHIAVELLI* 43 (1994).

738. Tom Burke, *Friends of the Earth and the Conservation of Resources*, in *PRESSURE GROUPS IN THE GLOBAL SYSTEM*, *supra* note 627, at 116 (calling the newspaper ECO an innovation to the world of diplomacy).

739. Jim MacNeill, *Beginnings: Putting Urbanization on the World's Agenda*, EARTH TIMES, May 29-June 15, 1996, at 10.

740. Georgina Ashworth, *The United Nations "Women's Conference" and International Linkages in the Women's Movement*, in *PRESSURE GROUPS IN THE GLOBAL SYSTEM*, *supra* note 627, at 125.

741. Letter from Winfried Lang, Austrian Ambassador to Belgium, to Steve Charnovitz (Oct. 30, 1996) (on file with the *Michigan Journal of International Law*). Ambassador Lang was chairman of the conference at Montreal.

742. Anne Fikkan et al., *Polar Bears: The Importance of Simplicity*, in *POLAR POLITICS* 96, 100 (Oran R. Young & Gail Osherenko eds., 1993).

743. *Id.* at 113-46; Agreement on the Conservation of Polar Bears, Nov. 15, 1973, 27 U.S.T. 3918.

similar role in the drafting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁷⁴⁴ NGOs also played an active role in the negotiation of the U.N. Convention on the Law of the Sea of 1982.⁷⁴⁵

For treaties that were already in place, NGOs worked to expand oversight and regulation. For example, environmental NGOs have been active participants in the activities of the International Whaling Commission.⁷⁴⁶ NGOs also worked to recruit new State members of the Commission in order to gain the votes needed to impose the moratorium on commercial whaling.⁷⁴⁷

NGOs also had success in gaining access to the regime governing the Antarctic environment. In the late 1970s, governments began inviting NGOs to join national delegations to meetings under the aegis of the Convention on the Conservation of Antarctic Marine Living Resources.⁷⁴⁸ In 1978, several NGOs formed the Antarctic and South Ocean Coalition (ASOC).⁷⁴⁹ Five years later, ASOC launched a successful campaign to keep Antarctica off limits to mineral resource extraction.⁷⁵⁰ In 1991, ASOC, with over 175 NGO members, was given observer status at periodic Antarctic Treaty Consultative meetings.⁷⁵¹ Greenpeace and the Cousteau Society have also attended these meetings.⁷⁵²

744. See BOARDMAN, *supra* note 199, at 88–92; Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 993 U.N.T.S. 243.

745. CLYDE SANGER, ORDERING THE OCEANS: THE MAKING OF THE LAW OF THE SEA 32–33 (1987); Final Act of the Third United Nations Conference on the Law of the Sea, Annex VI, Appendix, 21 I.L.M. 1245, 1260 (listing participating NGOs).

746. Lorna Siggins, *Greenpeace Well to the Fore in Race for Maximum Publicity*, IRISH TIMES, May 30, 1995, at 3 (discussing NGO activity at the meeting of the International Whaling Commission in Dublin); Kieran Mulvaney, *The International Whaling Commission and the Role of Non-Governmental Organizations* 9 GEO. INT'L ENV'T'L L. REV. 347 (1997).

747. CHAYES & CHAYES, *supra* note 730, at 263–66.

748. Convention on the Conservation of Antarctic Marine Living Resources, May 20, 1980, 33 U.S.T. 3476; Lee Kimball, *The Role of Non-Governmental Organizations in Antarctic Affairs*, in THE ANTARCTIC LEGAL REGIME 36–38 (Christopher C. Joyner & Sudhir K. Chopra eds., 1988). Kimball also discusses the role of scientific organizations in the Antarctic regime beginning in 1957. See *id.* at 33–63.

749. Lee Kimball, *Environmental Law and Policy in Antarctica*, in GREENING INTERNATIONAL LAW 38 (Philippe Sands ed., 1994).

750. *Id.* at 122, 129–30.

751. Rodney R. McColloch, *Protocol on Environmental Protection to the Antarctic Treaty—The Antarctic Treaty—Antarctic Minerals Convention—Wellington Convention—Convention on the Regulation of Antarctic Mineral Resource Activities*, 22 GA. J. INT'L & COMP. L. 211, 215, 225 (1992).

752. Jonathan D. Weiss, *The Balance of Nature and Human Needs in Antarctica: The Legality of Mining*, 9 TEMP. INT'L & COMP. L.J. 387, 396 (1995).

The participation of human rights NGOs in the U.N. during this period is too extensive to detail here.⁷⁵³ One important episode was the key role of NGOs in the drafting of the U.N. Convention on the Rights of the Child.⁷⁵⁴ NGOs also learned how to become international actors capable of applying direct pressure on governments. Groups such as Amnesty International and Human Rights Watch developed sophisticated information networks linking dissidents, sympathetic governments, and the media.

NGOs continued to be active on disarmament issues. In 1978, the General Assembly held a conference for NGOs to discuss disarmament, the planned topic of a Special Session of the General Assembly.⁷⁵⁵ At the Disarmament Session, a day was set aside to hear twenty-five representatives of NGOs.⁷⁵⁶

Finally, it should be noted that NGOs sought influence through action as well as words. For example, in 1983, the International Transport Federation and the U.K. National Union of Seamen called on transport workers not to handle radioactive wastes destined for sea dumping.⁷⁵⁷ As a result, the planned dumping never occurred.⁷⁵⁸ Some NGOs, most notably Greenpeace, have used physical protests and interference as a means of changing behavior.⁷⁵⁹ In 1985, Greenpeace itself encountered interference when French government agents destroyed the *Rainbow Warrior* in Auckland Harbor.⁷⁶⁰ This led to a dispute between New Zealand and France in which France was ordered to pay \$7 million in compensation.⁷⁶¹ A parallel arbitration between Greenpeace and France

753. See generally David Weissbrodt, *The Contribution of International Nongovernmental Organizations to the Protection of Human Rights*, in 2 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 403-38 (Theodor Meron ed., 1984); HENRY J. STEINER, *DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT* (1991); Diane Otto, *Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society*, 18 HUM. RTS. Q. 107 (1996).

754. Michael Longford, *NGOs and the Rights of the Child*, in THE CONSCIENCE OF THE WORLD, *supra* note 3, at 214-30; Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1457 (1989); Cynthia Price Cohen, *The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child*, 12 HUM. RTS. Q. 137 (1990).

755. SYBESMA-KNOL, *supra* note 705, at 305.

756. *Id.* at 306.

757. Remi Parmentier, *Radioactive Waste Dumping at Sea*, in GREENING INTERNATIONAL LAW, *supra* note 749, at 144. For a recent episode, see *Boycott of Modified Soybean Escalates as Greenpeace Blocks Shipment*, 19 INT'L ENV'T. REP. 1005 (1996).

758. Parmentier, *supra* note 757.

759. See generally MICHAEL BROWN & JOHN MAY, *THE GREENPEACE STORY* (1989).

760. *Id.* at 113-125.

761. *Rainbow Warrior (New Zealand v. France)*, 82 I.L.R. 499 (France-New Zealand Arb. Trib. 1990).

led to an award of \$8.2 million in damages.⁷⁶² This may have been the first time that an international damages case was arbitrated by agreement between a sovereign nation and an NGO.⁷⁶³

VII. EMPOWERMENT (1992-?)

A new period in NGO-IGO relations was inaugurated by the extensive participation of NGOs in the preparatory committee for the U.N. Conference on Environment and Development (UNCED) and at the UNCED Conference itself. NGOs in this current period are gaining access to more international organizations and exerting greater influence in multilateral negotiations. Many commentators now recognize the growing power of NGOs.

UNCED was important to NGOs in many ways. There were far more NGOs involved (over 650) than governments (178).⁷⁶⁴ These NGOs were able to push governments towards achieving agreements.⁷⁶⁵ Moreover, the Conference approved important policy statements about the role of NGOs. Specifically, it agreed that:

The United Nations system, including international finance and development agencies, and all intergovernmental organizations and forums should, in consultation with non-governmental organizations, take measures to . . . enhance existing or, where they do not exist, establish mechanisms and procedures within each agency to draw on the expertise and views of non-governmental organizations in policy and programme design, implementation and evaluation . . .⁷⁶⁶

There are at least four reasons why NGOs are more active in international policymaking now than they were a decade ago. First, the integration of the world economy and the increasing recognition of global problems have led to more intergovernmental negotiations that affect domestic policy.⁷⁶⁷ Second, the cessation of the Cold War ended the superpower polarization in world politics. Third, the emergence of a worldwide media, such as CNN International, provides opportunities for

762. Philip Shabecoff, *France Must Pay Greenpeace \$8 Million in Sinking of Ship*, N.Y. TIMES, Oct. 3, 1987, at 1-2.

763. *Id.*

764. Morphet, *supra* note 654, at 136.

765. PHILIP SHABECOFF, *A NEW NAME FOR PEACE* 170-77 (1996).

766. AGENDA 21, U.N. Conference on Environment and Development, ch. 27.9. U.N. Doc. A/Conf. 151/26/Rev. 1, U.N. Sales No. E.93.1.11 (1992). See also chs. 38.5, 38.8(d), 38.11, 38.13, 38.14.

767. See generally ROBERT Z. LAWRENCE ET AL., *A VISION FOR THE WORLD ECONOMY* (1996).

NGOs to publicize their views. Fourth, the spread of democratic norms has raised expectations about the transparency of international organizations and the opportunities they provide for public participation.⁷⁶⁸

Fifteen years ago, NGOs were barely mentioned by two eminent commissions that studied international problems: the Tinbergen Commission and the Brandt Commission.⁷⁶⁹ But two recent eminent commissions have given some attention to NGOs. The Commission on Global Governance recommends that once a year, the U.N. should convene a Forum of Civil Society to advise the General Assembly.⁷⁷⁰ The other commission, the Independent Working Group on the Future of the United Nations, recommends the creation of a U.N. Social Council that would "look to non-state representatives to assist in every stage of its work."⁷⁷¹

The U.N. conferences since UNCED have exhibited significant NGO participation. For example, at the World Conference on Human Rights in 1993, NGO representatives were invited to address the plenary session.⁷⁷² NGOs participated extensively in the negotiations on Desertification in 1993-94.⁷⁷³ At the U.N.'s Habitat II Conference in 1996, NGOs were given opportunities to make recommendations to the government delegates.⁷⁷⁴ At the 1996 Conference of the Parties to the U.N. Climate Change Convention, more than 500 NGO representatives took part in the debate.⁷⁷⁵

In 1993, ECOSOC initiated a general review of arrangements for consultation with NGOs.⁷⁷⁶ This culminated in a 1996 Resolution updat-

768. Hilary F. French, *Reforming the United Nations to Ensure Environmentally Sustainable Development*, 4 *TRANSNAT'L L. & CONTEMP. PROBS.* 559, 597-601 (1994).

769. JAN TINBERGEN ET AL., *RESHAPING THE INTERNATIONAL ORDER* (1976); WILLY BRANDT ET AL., *NORTH-SOUTH: A PROGRAMME FOR SURVIVAL* (1980).

770. COMMISSION ON GLOBAL GOVERNANCE, *OUR GLOBAL NEIGHBORHOOD* 258-60 (1995).

771. INDEPENDENT WORKING GROUP ON THE FUTURE OF THE UNITED NATIONS, *THE UNITED NATIONS IN ITS SECOND HALF-CENTURY* 36 (1995). The report also recommends an advisory role for NGOs and private individuals in a newly created U.N. Economic Council. *Id.* at 31-34.

772. Jack Freeman, *So much hope. So much hoopla.*, *EARTH TIMES*, June 30-July 14, 1996, at 13-14.

773. Kyle W. Danish, *International Environmental Law and the "Bottom-Up" Approach: A Review of the Desertification Convention*, 3 *IND. J. GLOBAL LEGAL STUD.* 113, 162-65 (1995).

774. Soon-Young Yoon, *Partnerships in the Process*, *EARTH TIMES*, June 30-July 14, 1996, at 23.

775. *United States Welcomes WTO Decision on Improving Public Access to Proceedings*, *INT'L ENV'T. REP.* 694 (1996).

776. UNITED NATIONS ASSOCIATION OF THE USA, *THE UNITED NATIONS' 'NGO REVIEW': REVIEWING A FIFTY-YEAR RELATIONSHIP AND WRITING THE RULES FOR THE FUTURE* (1995).

ing the previous framework established in 1968.⁷⁷⁷ Two provisions should be noted. First, the Resolution establishes a new principle that national, regional, and subregional NGOs may seek consultative status.⁷⁷⁸ Second, it sets a goal of "a just, balanced, effective and genuine involvement of non-governmental organizations from all regions and areas of the world."⁷⁷⁹ In a separate action, ECOSOC recommended that the General Assembly examine the question of NGO participation in all areas of the U.N.⁷⁸⁰

Today ECOSOC has three categories for NGO status. "General" status is for NGOs that are concerned with most of ECOSOC's activities, that can demonstrate sustained contributions to the achievement of U.N. objectives, and that are broadly representative of major segments of population in a large number of countries.⁷⁸¹ In 1996, sixty-nine NGOs qualified for this status.⁷⁸² "Special" status is for NGOs that are concerned with a few fields covered by ECOSOC and that are known internationally within these fields.⁷⁸³ In 1996, 436 NGOs qualified for this status. The third category, "Roster" status, is for NGOs that ECOSOC or its NGO Committee believe can make occasional useful contributions to U.N. bodies.⁷⁸⁴ In 1996, 563 NGOs qualified for this status. NGOs in "General" status have the most comprehensive consultation rights. They may propose items for the provisional agenda of ECOSOC, attend public meetings as observers, submit written statements, and request opportunities to make oral presentations.⁷⁸⁵ In addition, it should be noted that three NGOs have U.N. observer status: the ICRC, the International Federation of the Red Cross and Red Crescent Societies, and the Sovereign Order of Malta.⁷⁸⁶

777. E.S.C. Res. 1996/31, 51st sess., U.N. Doc. A 15113 (Part II) (1996). The previous framework was *Arrangements for Consultations with Non-governmental Organizations*, E.S.C. Res. 1296, U.N. ESCOR, 44th Sess., Supp. No. 1, at para. 9. U.N. ESCOR, 45th Sess., Supp. No. 1 at 21, U.N. Doc. E/4548 (1968), *reprinted in* THE CONSCIENCE OF THE WORLD, *supra* note 3, at 291.

778. E.S.C. Res. 1996/31, *supra* note 777, at para. 4.

779. *Id.* at para. 5.

780. E.S.C. Decision 1996/297.

781. E.S.C. Res. 1996/31, *supra* note 777, at para. 22.

782. Telephone interview with Farida Ayoub, NGO Section, United Nations (Oct. 18, 1996).

783. E.S.C. Res. 1996/31, *supra* note 777, at para. 23.

784. *Id.* at para. 24.

785. *Id.* at paras. 27-32.

786. Abdullah, *supra* note 40, at 1840 n.36. The Sovereign Order of Malta was founded in the eleventh century as the Order of the Hospital of Saint John of Jerusalem. See *Hospitallers*, 6 THE NEW ENCYCLOPÆDIA BRITANNICA (Micropædia) 78 (15th ed. 1990). It provides medical services to the needy. Although it controls no territory, the Order has partici-

In summary, NGO participation during the 1990s has risen to new heights. ECOSOC has responded with tentative steps to improve the process, but it is too early to tell what effect these steps will have. NGOs seem poised to strengthen their influence in the foreseeable future.

PART TWO: ANALYZING NGO PARTICIPATION

According to one commentator, "non-governmental organizations in consultative status play a limited but indispensable role within the system of the U.N."⁷⁸⁷ The debate today is whether NGOs should be playing a more extensive role and, if so, how to structure it to improve global governance. A better understanding of how NGO roles have evolved should help inform this debate.

I. CYCLICALITY OF NGO IMPACT

Although there is insufficient historical data to reach a conclusion, it may be that the impact of NGOs is cyclical.⁷⁸⁸ If one wanted to measure the significance of the NGO role, two variables would be important to examine. First, what is the degree of *penetration* of NGOs into intergovernmental meetings or international organizations? This involves process. Do NGOs submit petitions, attend meetings, speak at meetings, serve on advisory committees, receive documents, etc.? Second, are NGO proposals *influencing* governments? This involves substance. The second variable might seem to encompass the first, but NGOs tend to be process-oriented. They place importance in having governments hear their views even when their advice is not taken. It should also be noted that for most current international issues, there will be NGOs on both, or multiple, sides. This makes the second variable ambiguous.

If one uses these penetration and influence variables to examine the past 150 years, the following rough picture seems to emerge. The NGO role continuously increased over the 1850–1914 period, fell during World War I, and then resurged to a high level during the 1920s. It began falling in the early 1930s, fell more during World War II, and then recovered in 1945 to a level higher than the late 1930s but less than the 1920s. It plateaued during the 1950s and then began an ascent, at some

pated in intergovernmental conferences. Arthur C. Breycha-Vauthier, *The Order of St. John in International Law*, 48 AM. J. INT'L L. 554, 558–59 (1954) (noting participation in the International Relief Union Conference of 1927 and the Geneva Red Cross Conference of 1929).

787. Lagoni, *supra* note 634, at 915.

788. A decrease in opportunities for NGO involvement would provide new evidence for the hypothesis of cyclicity. Some observers predict a reaction against the expanding NGO involvement of the first half of the 1990s.

point surpassing the League experience. Starting around 1992, the NGO role surged to new heights. Assuming the rough accuracy of this cyclical pattern, how does one explain it?

A theory of NGO involvement can be based on two factors. First, one can look at the *needs* of governments, or more descriptively, of particular government agencies or officials. Second, one can look at the *capability* of NGOs. These two factors might also be viewed as political demand and supply.

The needs of governments can explain much of the cyclical pattern. During the nineteenth century, governments had little experience in establishing IGOs or drafting "non-political" treaties. NGOs were therefore used by governments to help chart a course. Many international organizations, particularly functional ones, were lifted on the shoulders of NGOs.⁷⁸⁹ As Paul S. Reinsch, an early scholar of international organization, explained: "States naturally move with caution . . . and it is only when a need has become imperative and when means and methods have been worked out and shown to be safe and practical, that public authorities feel justified in entering into international administrative arrangements."⁷⁹⁰ The young League of Nations also welcomed formal NGO input. Because NGOs were allies in establishing new international organizations, it was natural for these IGOs to see benefits in continuing NGO involvement. In the early days, IGOs and NGOs were part of the same "international movement." Yet after a decade of experience, governments no longer felt dependent on NGO help. The expertise offered by NGOs became more available within the secretariats of IGOs and within government ministries. During the 1930s, the lower expectations on the League reduced demand for NGO input. When the U.N. system was being created, NGOs were viewed as potentially constructive participants. But the promise of Article 71 was not attained because of the Cold War and because governments did not find ECOSOC very useful.⁷⁹¹ According to some observers, the power politics of the WFTU set back the cause of NGO participation.⁷⁹² Governmental interest in NGOs was rekindled as the U.N. agenda expanded to embrace new areas such as the environment, development, population, and food aid. Governments also learned how to use NGOs to strengthen their bargaining positions. IGOs under budget attack began recognizing that internationally-minded NGOs could be important political allies.

789. HICKS, *supra* note 117, at 280.

790. REINSCH, *supra* note 46, at 148-49.

791. See ARMSTRONG ET AL., *supra* note 38, at 85-86.

792. ALEXANDROWICZ, *supra* note 648, at 244; ASHER ET AL., *supra* note 633, at 105.

The second factor, capability of NGOs to participate, may partially explain a cyclical pattern. An NGO derives capability from political freedom, internal leadership, expertise, size of membership, reliable funding, and communications technology. All of these are present now for many NGOs. But many of these prerequisites were less present in earlier periods when the role for NGOs was smaller. For example, the decline in NGO involvement during the 1930s may be due partly to diminished political freedom.

How then does one explain the early involvement of NGOs? The period before 1930 was not a time of great political freedom or high NGO memberships. But many NGOs did enjoy good leadership, expertise, and reliable funding. One reason for the strength of NGOs in the late nineteenth and early twentieth centuries was that it was propelled by elites. For example, Andrew Carnegie was a key supporter of organizations to promote international law and peace.⁷⁹³ Edwin Ginn and Edward Everett Hale were also very active in the peace movement.⁷⁹⁴ Harriet Lawrence Hemenway helped found the Massachusetts Audubon Society in 1896 to promote legislation to protect birds.⁷⁹⁵ Such leaders helped NGOs gain the entrée that would have to be earned in future decades via large memberships.

In observing the surges and ebbs in NGO participation, one is struck by how key milestones seem to coincide with new eras of peace.⁷⁹⁶ After World War I, the ILO was established with NGO representatives as delegates. NGOs were also welcomed into the economic, social, and humanitarian work of the League. After World War II, a formal consultative role for NGOs was written into the U.N. Charter. After the Cold War, involvement by NGOs burgeoned. Because many of the salient issues of the 1990s—for example, the environment, human rights, and intellectual property—have traditionally entailed NGO activity, it is not surprising that NGOs are busier than ever on these issues at the international level. Nevertheless, it is still important to recognize the underlying dynamic. One reason why issues like the environment are so salient is that entrepreneurial NGOs have succeeded in placing them high on the agenda of influential governments.

793. See KUEHL, *supra* note 262, at 77, 96, 110.

794. MARCHAND, *supra* note 62, at 8, 20.

795. Joseph Kastner, *Long before furs, it was feathers that stirred reformist ire*, SMITHSONIAN, July 1994, at 96.

796. See Kjell Skjelsbaek, *The Growth of International Nongovernmental Organization in the Twentieth Century*, in TRANSNATIONAL RELATIONS AND WORLD POLITICS 70, 74 (Robert O. Keohane & Joseph S. Nye, Jr. eds., 1971) (showing spurts in numbers of NGOs after war).

II. AIMS OF NGO INVOLVEMENT

In thinking about how to structure the NGO role for the maximum advantage of world public order, one should start with an understanding of what NGOs do. A useful framework is the seven decision functions identified by McDougal, Lasswell, and Reisman.⁷⁹⁷ They are: intelligence, promotion, prescription, invocation, application, termination, and appraisal. As can be seen from Part One, NGOs engage in all of these functions.⁷⁹⁸

The *intelligence* function involves the gathering, analysis, and dissemination of information relevant to decisionmaking.⁷⁹⁹ Some historical examples are the daily newspaper distributed by W.T. Stead at the Second Hague Peace Conference and the missions of the Society for the Preservation of Fauna to gather data about endangered species in Africa. Another *intelligence* episode occurred in 1926 when the WILPF sent a mission to Haiti to examine the U.S. government occupation.⁸⁰⁰ This may have been one of the earliest human rights factfinding missions.⁸⁰¹ A current example is human rights reporting by NGOs.⁸⁰² Because of the expertise of their personnel, many NGOs are well positioned to expand their influence through intelligence.⁸⁰³

The *promotion* function involves the advocacy of policy alternatives to authoritative decisionmakers either directly or indirectly through a broader public.⁸⁰⁴ Some historical examples are the efforts of the Red Cross to stimulate treaties on international humanitarian law, of literary societies to seek better copyright policies, and of the bird groups to advocate a migratory bird treaty. NGOs are extremely active today in the promotion function, particularly on the environment and on social development.

797. McDougal et al., *supra* note 20, at 219, 221–22, 267–69.

798. LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW 69–73 (1989) (giving examples of the seven decision functions for NGOs).

799. McDougal et al., *supra* note 20, at 269–72.

800. RANDALL, *supra* note 343, at 303–05. See also FOSTER, *supra* note 264, at 20.

801. See generally OCCUPIED HAITI (Emily Greene Balch ed., 1927) (report of the WILPF's mission to Haiti).

802. See David Weissbrodt & James McCarthy, *Fact-Finding by International Nongovernmental Human Rights Organizations*, 22 VA. J. INT'L L. 1 (1981).

803. Peter M. Haas, *Introduction: epistemic communities and international policy coordination*, 46 INT'L ORG. 1, 32 (1992).

804. McDougal et al., *supra* note 20, at 272–74. See also Marc A. Levy et al., *Improving the Effectiveness of International Environmental Institutions*, in INSTITUTIONS FOR THE EARTH, *supra* note 723, at 397, 420 (stating that NGOs diffuse international norms).

The *prescription* function involves the designation of policies and the communication of authority and control intention.⁸⁰⁵ Some historical examples are the co-equal status of NGOs in writing ILO conventions and the participation of the ICC in the conference drafting the customs convention of 1923. A contemporary example is the International Olympic Committee whose decisions are often accepted in municipal law.⁸⁰⁶ Another example of prescription occurred in 1995 when a group of environmental NGOs negotiated an understanding with Mexico to safeguard dolphins.⁸⁰⁷

The *invocation* function involves the characterization of behavior as deviating from prescribed policy and the assertion of control to abate the deviation.⁸⁰⁸ Some historical examples are wartime inspections by the Red Cross and the petitions from NGOs regarding minority rights. A recent example is the North American Agreement on Environmental Cooperation.⁸⁰⁹ This Agreement permits NGOs to submit petitions alleging that a government is failing to effectively enforce its environmental law.⁸¹⁰ Election monitoring by NGOs can be another example of invocation.⁸¹¹

The *application* function involves giving effect to prescriptions in concrete disputes.⁸¹² NGOs are not typically involved in application. But there are at least two historical examples of it. First, worker and employer delegates to the ILO conference may file complaints with the ILO Governing Body that can lead to the appointment of a Commission of Inquiry. Second, since 1923 the ICC has sponsored a Court of International Arbitration that settles commercial disputes, including those involving States or State enterprises.⁸¹³ NGOs can also be active in promoting application by persuading governments or international

805. See McDougal et al., *supra* note 20, at 274–77.

806. James A. R. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 489, 491–93 (1992).

807. MARINE MAMMAL COMM'N, ANNUAL REPORT TO CONGRESS 1995, at 107 (1996). This accord formed the basis for the intergovernmental Declaration of Panama. *Id.*

808. See McDougal et al., *supra* note 20, at 277–79. See also Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 207 (noting that NGOs are important players in transnational legal process).

809. North American Agreement on Environmental Cooperation, Sept. 14, 1993, U.S.–Can.–Mex., 32 I.L.M. 1480.

810. *Id.* art. 14.

811. LIVEZEY, *supra* note 270, at 43–44 (discussing Freedom House).

812. See McDougal et al., *supra* note 20, at 279–82.

813. Gerhard Wegen & Thomas W. Welch, *The Role of International Commercial Arbitration, in Particular of the International Chamber of Commerce, in Dispute Settlement in International Economic Law, in ADJUDICATION OF INTERNATIONAL TRADE DISPUTES IN INTERNATIONAL AND NATIONAL ECONOMIC LAW* 386–94 (Ernst-Ulrich Petersmann & Günther Jaenicke eds., 1992).

agencies to seek authoritative judgments.⁸¹⁴ For example, in 1993–94, NGOs pressed governments to urge the U.N. General Assembly to seek an advisory opinion from the International Court of Justice (ICJ) regarding the legality of the threat or use of nuclear weapons.⁸¹⁵

The *termination* function involves putting an end to prescriptions that do not contribute to the common interest.⁸¹⁶ While NGOs do not themselves terminate legislation, NGOs are often catalysts in pressing for termination. Some historical examples are the efforts of the British and Foreign Anti-Slavery Society to end the slave trade and the efforts of NGOs to stop the trafficking of women. A modern example is the ILO Convention on Tripartite Consultations that directs governments to consult with employer and worker groups on proposals for the denunciation of any ratified ILO Convention.⁸¹⁷ Another example is the Convention on the Regulation of Antarctic Mineral Resource Activities that, although adopted unanimously by governments in 1988, failed to come into force after protests by environmental groups caused some governments to back down.⁸¹⁸

The *appraising* function involves evaluating the degree to which the policies of an international system are achieved in fact.⁸¹⁹ An early example is the criticism of the 1902 treaty on birds by the International Committee for Bird Preservation. Some current examples include reports by organizations like Worldwatch, Human Rights Watch, and Global Witness.⁸²⁰ Because international bureaucracies cannot easily evaluate themselves, the NGO role in this area is likely to expand.

This framework of decision functions is useful in showing the wide range of NGO activities. Because NGOs play multiple roles, the task of structuring their input is complex. Facilitating one function may hinder others. For example, intelligence and appraisal functions may be com-

814. It is interesting to note that in the early years of the PCIJ, private groups and individuals sometimes assumed that they could request advisory opinions of the Court. For example, the League of Germans Abroad sought a clarification of the term "German national" used in the Treaty of Versailles. See ANNUAL REPORT OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, Series E, No. 1, at 155, 158–59.

815. RICHARD A. FALK, ON HUMANE GOVERNANCE: TOWARD A NEW GLOBAL POLITICS 233 (1995). See also *Legality of the Threat or Use of Nuclear Weapons*, July 8, 1996 (Dissenting Opinion of Oda, J.), paras. 8, 44, 35 I.L.M. 843 (criticizing NGO involvement).

816. McDougal et al., *supra* note 20, at 282–85.

817. Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, No. 144, June 21, 1976, arts. 2.1, 5.1(e), Senate Treaty Doc. 99-20.

818. BRENTON, *supra* note 737, at 134; McColloch, *supra* note 751, at 214–17.

819. McDougal et al., *supra* note 20, at 285–86.

820. See, e.g., HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT (1997).

promised by promotional activities. NGOs are likely to continue strengthening their activities in all seven areas.

III. NGO ROLE: BENEFITS AND PROBLEMS

There are several potential benefits of NGO involvement.⁸²¹ First, NGO networks can deliver technical expertise on particular topics needed by government officials.⁸²² Second, NGOs can facilitate a negotiation by giving politicians access to competing ideas from outside normal bureaucratic channels.⁸²³ Third, NGOs can help government officials test controversial proposals by providing rapid feedback.⁸²⁴ Fourth, NGOs can help governments secure ratification or implementation of new treaties.⁸²⁵ Fifth, NGOs can vocalize the interests of persons not well represented in policymaking.⁸²⁶ Sixth, NGOs can help IGOs fulfill the role of being fiduciaries for future generations.⁸²⁷ The fact that some NGOs persist over decades shows that their programs have inter-generational authenticity. Seventh, NGO involvement may enhance the accountability of IGOs.⁸²⁸ Eighth, NGOs may enhance the accountability of governments by monitoring negotiating efforts. NGOs can also press compromises upon reluctant negotiators. Ninth, NGOs may strengthen international agreements by

821. See Martha L. Schweitz, *NGO Participation in International Governance: The Question of Legitimacy*, 89 PROC. AM. SOC'Y INT'L L. 415-18 (1995).

822. CHAYES & CHAYES, *supra* note 730, at 164-65, 171-72, 251.

823. STALEY, *supra* note 613, at 309 (asking: would it not be better to bring directly into international conferences on economic policy the representatives of the organized economic pressure groups which set the limits beyond which governments dare not go?). See also Daniel Esty, *Why the World Trade Organization Needs Environmental NGOs* 10-11 (Paper presented at University of Michigan, Nov. 8-9, 1996).

824. Kurt Wilk, *International Organization and the International Chamber of Commerce*, 55 POL. SCI. Q. 231, 244 (1940) (explaining that participation by private groups provides a mechanism for clarifying the reaction of people to international measures and thus tests the value of such acts).

825. RIDGEWAY, *supra* note 75, at 390.

826. Lyman C. White, *Peace by Pieces—The Role of Nongovernmental Organizations*, 264 ANNALS AM. ACAD. POL. & SOC. SCI. 87, 91 (July 1949). See also JESSUP ET AL., *supra* note 78, at 33 (noting that facilities offered for direct action by private international organizations serve to give vent to private interests not sufficiently protected by the national governments concerned).

827. James C. Wood, *Intergenerational Equity and Climate Change*, 8 GEO. INT'L ENVTL. L. REV. 293, 302-03 (1996).

828. As then U.N. Secretary-General Boutros-Ghali explained in 1994, "Non-governmental organizations are a basic form of popular representation in the present day world. Their participation in international organizations is, in a way, a guarantee of the political legitimacy of those international organizations." Statement by U.N. Secretary General Boutros Boutros-Ghali, *reprinted in* THE CONSCIENCE OF THE WORLD, *supra* note 3, at 311-12.

monitoring governmental compliance.⁸²⁹ Tenth, the consultation process may improve the behavior of NGOs by giving them a greater stake in policymaking.⁸³⁰

Although there is universal agreement that NGO involvement in developing projects can be constructive, some government officials—for example, from China and India—resist expanding the NGO role in policymaking.⁸³¹ Several problems are raised. First, the vast number of NGOs makes deeper participation impractical. Second, because many NGOs are from industrial countries, they amplify certain views—for example, on human rights or the environment—that may not be reflective of the views of developing countries. NGOs from developing countries may also be less well-financed than their industrial country counterparts and therefore less able to participate effectively. Third, and more fundamentally, some government officials argue that NGO involvement in international organizations is unnecessary because NGOs can seek influence through their own governments.

The first problem is one of numerosity. The NGO population increases daily. Numerosity could be tackled the same way we deal with it in national governance—by establishing elections for NGO representatives. But this raises difficult problems of how to weight votes, given that NGOs have different size memberships and that individuals may join more than one NGO. In the absence of formal selection procedures, one might look to informal ones. So far, NGOs have been able to work out among themselves how to allocate limited opportunities to attend meetings. For example, the European Environment Bureau coordinates the activities of over sixty NGOs with an interest in the European Union's environmental policymaking.⁸³² For human rights, a liaison committee was set up to select NGO representatives during the Human Rights

829. *Traffic in Women and Children: Report on the International Women's Associations*, League of Nations Doc. C.T.F.E 234 (1925), at 6 (noting that without well-organized, well-equipped social organizations, legislators would find it impossible to apply protective laws which are being asked for); OSBORNE MANCE, *INTERNATIONAL SEA TRANSPORT* 163 (1945).

830. David Mitrany, *An Advance in Democratic Representation*, 6 *INT'L ASS'NS* 136, 138 (1954). *But see* Jack Freeman, *The art of economizing the truth*, *EARTH TIMES*, Oct. 16–31, 1996, at 22 (observing that some journalists avoid ejection from UN meetings by showing their NGO credentials).

831. Spiro, *supra* note 103, at 54; Lindborg, *supra* note 2, at 9–10. *See also* David G. Victor, *The Montreal Protocol's Non-Compliance Procedure: Lessons for Making Other International Environmental Regimes More Effective*, in *THE OZONE TREATIES AND THEIR INFLUENCE ON THE BUILDING OF INTERNATIONAL ENVIRONMENTAL REGIMES* 78–81 (Winfried Lang ed., 1996) (noting problems with NGO involvement).

832. JAMES CAMERON & ROSS RAMSAY, *PARTICIPATION BY NON-GOVERNMENTAL ORGANIZATIONS IN THE WORLD TRADE ORGANIZATION* 12 (*GLOBAL ENV'T AND TRADE STUDY* No. 1), April 1995.

conference in 1993.⁸³³ Whether these informal practices will continue to work as NGOs multiply and become more diverse remains to be seen.

The second problem is one of imbalance among NGO participants. The earliest manifestation of this problem occurred in 1921 in the dispute concerning the Dutch worker delegate to the ILO. This was solved by alternating representatives. The growing number of NGOs in developing countries may help redress geographic imbalance.

Another facet of the balance issue is whether business groups should be able to participate. Some would draw the line between non-profit organizations, like the ICC, and profit-seeking enterprises, like ITT. Yet it seems inconsistent to exclude business entities while allowing the participation of NGOs that have business entities as members.⁸³⁴ Moreover, with the advent of database software and phone banks, it has become very easy to create organizations of like-minded individuals. ITT, for example, could create an international NGO of ITT employees and suppliers. Any system that tries to limit consultative status to certain kinds of NGOs is going to have a hard time justifying and policing its eligibility criteria.

The third problem is the easiest to address because it rests upon a faulty assumption. There is no requirement under international law that States have democratic governments. NGOs may be seeking input into an international organization precisely because a national government is not responsive. But even if national NGOs ought to keep their grievances at the national level, that says nothing about the grievances of *international* NGOs. It is illogical to tell an NGO like the ICC or the International Confederation of Free Trade Unions to channel its concerns through its own government. Such an instruction negates the purpose of the organization. As John Dewey pointed out in 1920, voluntary associations "do not coincide with political boundaries. Associations of mathematicians, chemists, astronomers; business corporations, labor organizations, [and] churches are trans-national because the interests they represent are worldwide."⁸³⁵ The case for permitting participation by international NGOs is strong for one more reason. Many NGOs are likely to push for socially beneficial policies. It is no accident that NGOs organize internationally to promote collective goals like peace and the protection of the

833. Spiro, *supra* note 103, at 53.

834. See Jonathan I. Charney, *Transnational Corporations and Developing Public International Law*, 4 DUKE L.J. 748, 782-83 (1983) (making argument for direct participation by business).

835. JOHN DEWEY, RECONSTRUCTION IN PHILOSOPHY 205 (1920).

global commons. While national NGOs may advocate militarism or protectionism, such goals will rarely inspire true international coalitions.

Although participation by NGOs does not mesh well with a State-centric view of global governance, such participation is consistent with earlier conceptions of the law of nations that reached individuals.⁸³⁶ Many NGOs have international outlooks and favor multilateral agreements. If allowed to participate, NGOs will lodge complaints in order to promote compliance by States with their treaty obligations. Many NGOs will also try to help underdeveloped, small States that lack the influence implied by their sovereign equality to larger States. Moreover, it would seem unfair to accuse NGOs of undermining international law when so many NGOs served on the front lines of developing positive international law.

Although the State-centric view continues to pervade international law, this dogma is losing coherence.⁸³⁷ One challenge is the increasing number of States. Another is the heterogeneity of States. After all, how much commonality really exists between China and the Marshall Islands? Are they both "powers," to use the old term for participants in international conferences?⁸³⁸ The dichotomy between States and NGOs is also challenged as NGOs gain some characteristics of States, such as a permanent population (dedicated members) and a capacity to conduct international relations.⁸³⁹ Although the ILO is recognized as an exception to the

836. Mark St. Korowicz, *The Problem of the International Personality of Individuals*, 50 AM. J. INT'L L. 533, 561 (1956) (observing that it is a well recognized principle of international law that States may, by common agreement, recognize the international personality of individuals not only in their duties and responsibilities, but also in their capacity for international procedural action). See also E. Suy, *The Status of Observers in International Organizations*, 160 ACADÉMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS 101-02 (1978) (noting that private groups and associations have always participated in international law directly and indirectly).

837. See generally Philip Allott, *The International Court and the Voice of Justice*, in FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE 17, 38-39 (Vaughan Lowe & Malgosia Fitzmaurice eds., 1996) (calling for the ICJ to reimagine itself as a source of a new legal reality); Claudio Grossman & Daniel D. Bradlow, *Are We Being Propelled Towards a People-Centered Transnational Legal Order?*, 9 AM. U. J. INT'L L. & POL'Y 1 (1993); Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503 (1995); Tarlock, *supra* note 1, at 64-68; NICOLAS POLITIS, *THE NEW ASPECTS OF INTERNATIONAL LAW* 30 (1920) (postulating that international law is in a transition period—no longer exclusively the law of States, but not yet completely the law of individuals).

838. See *List of Memorial International Conferences, Congresses or Associations of Official Representatives of Governments, Exclusive of those Mainly Concerned with the Results of a Particular War*, 1 AM. J. INT'L L. 808 (1907).

839. LADOR-LEDERER (1963), *supra* note 394, at 12-13, 243 (pointing out how NGOs have some of the attributes of States). See also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 (1987) (defining a State).

State-centric view,⁸⁴⁰ international law has not yet fully caught up to the reality of NGO participation.

A sixty-two year old decision from an Italian Court may point the way to how international law should treat NGOs. In that dispute, which involved the Sovereign Order of Malta, the Court opined that it is impossible to deny to "international collective units a limited capacity of acting internationally within the ambit and actual exercise of their own functions, with the resulting international juridical personality and capacity which is its necessary and natural corollary."⁸⁴¹ The Court viewed the Order of Malta as having juridical personality because of the "universal character of its aims and ideals."⁸⁴²

IV. SPAN OF NGO INVOLVEMENT

Today, NGOs enjoy varying degrees of involvement in many U.N. organizations dealing with environmental, social, and human rights issues. For instance, NGOs are permitted to speak at the U.N. Commission on Sustainable Development. In February 1997, three NGOs made a presentation to the Security Council on the crisis in Africa's Great Lakes region.⁸⁴³ Yet NGOs do not normally participate in the Security Council or the General Assembly.⁸⁴⁴ While such participation is not provided for in Article 71, there is no conceptual reason to preclude it.⁸⁴⁵

In view of the widespread interest of many NGOs in international peace and security, the Security Council could hold public hearings. A role for NGOs could give them a greater stake in the process and might help the U.N. secure greater funding for peacekeeping missions. The Security Council has occasionally addressed resolutions to NGOs. For

840. L. OPPENHEIM, INTERNATIONAL LAW § 340gg (H. Lauterpacht ed., 7th ed. 1948) (noting that the ILO "signifies a limited but important departure from the principle . . . that states only may take part in the process of creating new rules of international law and that only the interests of states as such are entitled to direct representation in the international sphere").

841. Nanni and Others v. Pace and the Sovereign Order of Malta, in 8 ANNUAL DIGEST OF REPORTS OF PUBLIC INTERNATIONAL LAW CASES, 1935-1937, at 2, 5 (H. Lauterpacht ed., 1941) (holding property title good despite lack of permission from Italian government).

842. *Id.* at 6; see also *supra* note 786.

843. Mark Tran, *Oxfam Harries UN for Help*, GUARDIAN, Feb. 13, 1997, at 14. The three NGOs were Care, Medecins sans Frontieres, and Oxfam.

844. Willetts, *supra* note 642, at 52-53.

845. See Report of the Open-Ended Working Group on the Review of Arrangements for Consultation with Non-Governmental Organizations, U.N. GAOR Economic and Social Council, 49th Sess., para. 89, UN Doc. A/49/215 (1995) (noting that some delegations urged that U.N. consultative arrangements be extended to the General Assembly and the Security Council).

example, in 1975, the Council invited NGOs to submit information about violations of the sanctions against Southern Rhodesia.⁸⁴⁶

NGO involvement works best in international organizations focused on specific functions. That is why it was easily effectuated in organizations like the ILO and the League's committees on transit and child welfare. The advantage of functional involvement by NGOs also explains why NGOs have been relatively successful in human rights work. The functional model does not provide a good fit, however, for NGO involvement in general organizations like the U.N. General Assembly.

Many NGOs would like to be able to submit *amicus* briefs to the ICJ. At present, NGOs are not permitted to do so for contentious cases.⁸⁴⁷ For advisory proceedings, the ICJ permitted the International League for the Rights of Man to submit a brief in the South-West Africa proceeding in 1950, but has not authorized NGO participation since then.⁸⁴⁸ So in this respect, the ICJ is less open to public participation than was the PCIJ.⁸⁴⁹

Outside the U.N. system, NGO involvement is uneven. NGOs have no ongoing role at the G-7, the International Monetary Fund, or the World Trade Organization (WTO). One reason may be that these organizations historically have operated behind closed doors. Those doors may now be cracking open. At a recent meeting of G-7 environment ministers, NGOs were invited to present opinions on agenda items.⁸⁵⁰ In December 1996, NGOs were granted observer status at the WTO ministerial conference in Singapore.⁸⁵¹

In the governance of international commerce, one of the controversial issues being considered is whether NGOs should have opportunities to participate in the WTO.⁸⁵² The WTO Agreement states that the WTO

846. CHIANG, *supra* note 327, at 223.

847. Dinah Shelton, *The Participation of Nongovernmental Organizations in International Judicial Proceedings*, 88 AM. J. INT'L L. 611, 625 (1994).

848. *Id.* at 623-24. See also Jeffrey Dunoff, *Institutional Misfits: The GATT, the ICJ & Trade-Environment Disputes*, 15 MICH. J. INT'L L. 1043, 1098-1100 (1994).

849. See discussion of PCIJ and early advisory opinions, *supra* note 294.

850. *G-7 Environment Ministers Discuss Links in Protecting Environment, Public Health*, 19 INT'L ENV'T. REP. 395 (1996).

851. *Free telephone calls, Tiger beer, extravaganzas*, EARTH TIMES, Dec. 16-31, 1996, at 10 (noting that NGOs were kept out of the important meetings). The 127 participating NGOs at the conference can be classified as fifty-three business, thirty-one development, seventeen environment or sustainable development, twelve labor, and fourteen other. 1 BRIDGES BETWEEN TRADE AND SUSTAINABLE DEVELOPMENT 8 (Mar. 1997).

852. Steve Charnovitz, *Participation of NGOs in the World Trade Organization*, 17 U. PA. J. INT'L ECON. L. 331 (1996); INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, *THE WORLD TRADE ORGANIZATION AND SUSTAINABLE DEVELOPMENT: AN INDEPENDENT ASSESSMENT* 15-16, 55-56 (1996); Martin Lukas, *The Role of Private Parties in the Enforce-*

General Council "may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO."⁸⁵³ Nevertheless, NGO participation is being resisted within the WTO because of the alleged "special character" of the WTO as both a legally binding treaty and a forum for negotiations.⁸⁵⁴ As this article goes to press, the ICC is strengthening its campaign for an "official dialogue" with the WTO.⁸⁵⁵

V. TECHNIQUES OF NGO INVOLVEMENT

Although NGOs were involved in the League throughout its life, the period of fruitful experimentation lasted about fourteen years. The United Nations has now existed twice as long as the League did, and NGOs have participated actively since 1945. Yet ironically, there are some techniques utilized by the League that have not been attempted in the United Nations. For example, ECOSOC does not have the equivalent of the economic Consultative Committee created in 1927 by the League. In 1996, the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) suggested establishing a Global Advisory Committee comprising representatives of business, trade unions, and academia.⁸⁵⁶ But this proposal was not accepted by the UNCTAD IX Conference.

Part One of this article demonstrated a variety of ways that NGOs have participated in international organizations. It may be useful to catalog them briefly:

1. An individual from an NGO can be included on a government delegation to an international conference. The role of the individual is to

ment of Uruguay Round Agreements, 29 J. WORLD TRADE 182 (Oct. 1995); Philip M. Nichols, *Extension of Standing in World Trade Organization Disputes to Nongovernmental Parties*, 17 U. PA. J. INT'L ECON. L. 295 (1996); William M. Reichert, *Resolving the Trade and Environment Conflict: The WTO and Consultative Relations*, 5 MINN. J. GLOBAL TRADE 219 (1996); G. Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 DUKE L. J. 829 (1995); Philip M. Nichols, *Realism, Liberalism, Values, and the World Trade Organization*, 17 U. PA. J. INT'L ECON. L. 851 (1996).

853. Agreement Establishing the World Trade Organization, Apr. 15, 1994 art. V(2), *reprinted in* 33 I.L.M. 1125, 1146 (1994). It should be noted that statehood is not a prerequisite for WTO membership. The WTO allows membership by non-State territories with full autonomy over their external commercial relations—currently, Hong Kong and Macau. *Id.* art. XII(1).

854. *Guidelines for Arrangements on Relations with Non-Governmental Organizations*, WTO Doc. WT/L/162, Jul. 23, 1996.

855. Bruce Barnard, *Business Group Wants Special Role in WTO*, J. COMM., Mar. 5, 1997, at 3A (quoting ICC President Helmut O. Maucher, who explains that the ICC is "different from the groups defending the number of butterflies in the world" because the ICC, in favoring free trade, is "not driven by short-term interests.").

856. *Report of the Secretary-General of the United Nations Conference on Trade and Development to the Ninth Session of the Conference*, at 74, U.N. Doc. TD/366 (1996).

advise a government; he is not free to conduct negotiations uninstructed by the government.⁸⁵⁷ An early example of this method was the mixed delegation sent by the United States to the First Pan American Conference. In 1994, the Cairo Population Conference urged governments to include NGOs on delegations to conferences where population and development are being discussed.⁸⁵⁸

2. An individual from an NGO can be included on a national delegation to an international conference. The role of the individual is to represent the NGO; she is free to conduct negotiations uninstructed by her government. The principal example is the ILO.

3. NGOs can send delegates to semi-public international conferences. An early example was the International Statistical Congress, which had representatives from governments and learned societies. A current example is the IUCN, whose membership includes seventy-five States, 105 government agencies, and 699 NGOs.⁸⁵⁹

4. An international organization can establish a formal advisory group that includes individuals from NGOs. These individuals are chosen for their expertise, not to represent the NGO. An early example was the Consultative Committee established by the League Council in 1927. A current example is the U.N Advisory Board on Disarmament Matters.⁸⁶⁰

5. An international organization can give NGOs an opportunity to participate in ongoing policy development. An early example was the League's Organization for Communications and Transit. A current example are the conferences of the Convention on International Trade in Endangered Species in which NGOs have substantial input.⁸⁶¹

6. An international organization can enlist NGOs in the implementation of programs. Some early examples were humanitarian operations coordinated by the International Relief Union.⁸⁶² Some current examples

857. UNESCO & INTERNATIONAL INSTITUTE OF ADMINISTRATIVE SCIENCES, NATIONAL ADMINISTRATION AND INTERNATIONAL ORGANIZATION 47 (1951).

858. *Report of the International Conference on Population and Development*, para. 15.12, U.N. Doc. A/CONF.171/13/Rev. 1 (1995).

859. Letter from Janique Pernet, Communications Division, IUCN, to Steve Charnovitz, (Dec. 12, 1996) (on file with author).

860. NEW ZEALAND MINISTRY OF FOREIGN AFFAIRS AND TRADE, UNITED NATIONS HANDBOOK 43 (1994).

861. See generally DAVID HARLAND, *KILLING GAME: INTERNATIONAL LAW AND THE ELEPHANT* (1994); Philippe J. Sands & Albert P. Bedecarré, *Convention on International Trade in Endangered Species: The Role of Public Interest Non-Governmental Organizations in Ensuring the Effective Enforcement of the Ivory Trade Ban*, 17 B.C. ENVTL. AFF. L. REV. 799 (1990).

862. See LADOR-LEDERER (1968), *supra* note 83, at 389 (noting many examples of NGO involvement in refugee programs during first half of 20th century).

are the assistance projects administered by the U.N. High Commissioner for Refugees.

7. An international organization can give NGOs an opportunity to participate in an official conference to draft a treaty. An early example was the League's Conference on Customs Formalities in which the ICC participated and signed the Final Act. NGO participation in environmental treaty drafting today is less formal and often is part of a government delegation. The new ECOSOC resolution declares that NGO participation in U.N. conferences "does not entail a negotiating role."⁸⁶³

8. An international organization can give NGOs an opportunity to participate on a preparatory committee for an international conference. An early example was the participatory meetings for the U.N. Conference on Trade and Employment in 1946-47. A recent example was the preparatory meetings for the UNCED conference of 1992.

9. An international organization can hold a special session to give NGOs an opportunity to make presentations. An early example was the League's conference on narcotics in 1924. A more recent example occurred in 1986, when NGOs were invited to address a Special Session of the General Assembly on Sub-Saharan Africa.⁸⁶⁴

10. An international organization can include NGOs as members. An early example was the International Bureau of Education. A current example is the International Commission for Scientific Exploration of the Mediterranean Sea whose membership includes twenty-two governments and eleven scientific committees.⁸⁶⁵

While instances of most of these techniques can be found in contemporary practice, some of them seem underutilized, particularly numbers four, five, and nine. Even today, much NGO activity at IGO conferences is unofficial and informal. The participation is sometimes no deeper than what occurred at the Hague Peace Conferences. In a recent report, Rubens Ricupero, the Secretary-General of UNCTAD, states that "[b]y and large, multilateral institutions have so far failed to give these new actors [NGOs] adequate room to express themselves and to make their weight felt."⁸⁶⁶

NGOs are here to stay. The challenge for policymakers therefore is to structure NGO involvement so as to optimize the benefits for international organizations. We need continuous experimentation with new

863. E.S.C. Resolution 1996/31, *supra* note 777, at para. 50.

864. DAVID C. KORTEN, *GETTING TO THE 21ST CENTURY: VOLUNTARY ACTION AND THE GLOBAL AGENDA* 201 (1990).

865. Y.B. INT'L ORGS., *supra* note 681, at 864-65.

866. *Report of the Secretary-General of UNCTAD*, *supra* note 856, at 78.

methods to permit “interpenetration of extranational and extra-governmental forces.”⁸⁶⁷

The most intensive form of participation—full voting rights like those enjoyed by NGOs in the ILO—is unlikely to be replicated in the near future. As Michel Hansenne, the ILO’s Director-General, pointed out, “[i]t is striking that all international institutions established since 1919 should have espoused the principle of the government being the sole representative of States.”⁸⁶⁸ Visionary proposals⁸⁶⁹ for an NGO assembly in the U.N. do not seem politically feasible. But it might be feasible to establish more advisory committees similar to what the League had in a few areas and to what the OECD now has for trade unions and business groups.

One difficulty with establishing advisory committees is determining whose advice to seek. In environmental policy, individuals opposed to stronger regulation have found it useful to create new organizations with environmentally friendly names.⁸⁷⁰ There is no way to distinguish such top-down organizations from grassroots organizations. It would seem as legitimate for the public to organize anti-environmental-regulation groups as pro-environmental-regulation groups. The diminishing costs of communication with like-minded individuals—for instance, through the Internet—may change the way we think about “organizations” in the future.

A related issue is the involvement of unorganized individuals. It seems clear that many of the advantages from the participation of NGOs could also be obtained from individuals. There is no reason, other than practicality, for distinguishing between the Cousteau Society and Jacques Cousteau himself. The new ECOSOC guidelines do not address individual participation.

Another issue is to what extent governments should subsidize NGOs in order to fructify NGO participation. Some governments regularly do this.⁸⁷¹ This had led to legal problems for some NGOs; for example, the Thai government is investigating some NGOs for accepting financial

867. This phrase is Ridgeway’s. RIDGEWAY, *supra* note 75, at 372.

868. *Report of the Director-General: Defending Values, Promoting Change*, International Labor Conference, 81st Sess., International Labour Organization (1994).

869. See ELISE BOULDING, *BUILDING A GLOBAL CIVIC CULTURE: EDUCATION FOR AN INTERDEPENDENT WORLD* 49–50 (1988); ERSKINE CHILDERS, *RENEWING THE UNITED NATIONS SYSTEM* 176 (1994).

870. Jane Fritsch, *Nature Groups Say Names Lie*, N.Y. TIMES, Mar. 25, 1996, at A1.

871. Joanna Macrae, *NGOs: Has the 'N' gone missing?*, RED CROSS CRESCENT, No. 3, 1996, at 18–19; *Parliament Votes to Endorse Proposal for Subsidizing Environmental Groups*, 19 INT’L ENV’T. REP. 1048 (1996).

support from abroad without Thai government approval.⁸⁷² The impact of such subsidies on the dynamics of NGO involvement needs further study.

Finally, NGOs sometimes ponder whether it is in their interest to enhance formal involvement in international organizations. Formal involvement provides an opportunity to influence decisionmaking, but also leads to a danger of co-optation. It seems likely that some NGOs will seek formal roles, while others will want to remain more independent so that they can feel freer to criticize.

VI. FUTURE PROSPECTS

During the 1990s, there has been an expansion of NGO involvement in international governance. It has been driven by economic globalization and a heightened recognition of ecological interdependence. NGOs are often in the vanguard of supporting deeper harmonization of national policies and the adoption of more intergovernmental agreements.⁸⁷³ Increasing democratization also provides more opportunities for NGOs. Thus, it would seem that conditions are right for greater NGO influence.

The changes occurring in national governments have been conducive to a greater role for NGOs. When governments downsize and privatize, they may perceive NGOs as a substitute. When there is reliance upon voluntary approaches—like codes of conduct and labeling—such programs are often administered by NGOs.⁸⁷⁴ Some recent examples are the certifications of the Forestry Stewardship Council and the child labor-free Rugmark.

The devolution of government is a phenomenon that plays to the strength of NGOs because they operate at all levels. The same NGO can send representatives to New York and Geneva for the United Nations, to Paris for the OECD, to national capitals, and to local governments. Large NGOs may also enjoy an advantage in dealing with governments that lack a continuity of personnel because NGOs may have better institutional memory.

This article discusses a number of advantages of NGO involvement. In closing, it might be useful to highlight two of them: how NGOs can improve IGOs and how NGOs can promote peace. The League and the

872. *Environment Organization Believed to be Among Groups Targeted for Investigation*, 19 INT'L ENV'T. REP. 1031 (1996).

873. But not always. In February 1997, seventy environmental NGOs joined to oppose a new forest treaty because they believe such a treaty would enshrine weak forest management standards. *Reject Idea of Global Forest Convention, Environmentalists Tell World Governments*, 20 INT'L ENV'T. REP. 158 (1997).

874. *See Commission Eco-Label Scheme Revision Calls for Independent Body to Set Criteria*, 20 INT'L ENV'T. REP. 5 (1997).

United Nations both came about as a result of horrible wars and an organized effort to create better global institutions. In its destructiveness, war enables rebirth. One of the reasons why the U.N. system is sometimes dysfunctional is because it is old. It needs revitalization, but there is no cataclysm to provoke constitutional change.⁸⁷⁵ In this fortunate predicament, NGO participation can be utilized as an antidote to the stultification of international organizations.⁸⁷⁶ As Alvin Toffler suggested twenty years ago, "the careful, deliberate strengthening of the NGO sector and the integration of U.N. activities with the activities of the NGOs would go a long way toward replacing the present bureaucracy with a flexible, effective ad-hocracy."⁸⁷⁷

Some of the earliest NGOs were born in the peace movement. Achieving peace requires more than eager NGOs, yet it seems clear that NGOs can help soften the friction between nations.⁸⁷⁸ In 1921, Sir Arthur Salter pointed out that: "[w]henver the citizens of different countries meet on a basis of common interest that transcends or cuts across national frontiers . . . the basis of international relations is broadened and international amity no longer rests precariously on purely political foundations."⁸⁷⁹ In the 1990s, the role of civic associations in achieving cooperation is receiving new attention from scholars. As Robert D. Putnam explains: "Networks of civic engagement are an essential form of social capital: The denser such networks in a community, the more likely that its citizens will be able to cooperate for mutual benefit."⁸⁸⁰ This insight could also be applied to the international level. That is, transnational NGOs can improve IGOs and promote peace not only by the merit of their ideas, but also by promoting social cohesion within our global village.⁸⁸¹

875. I owe this point to Harlan Cleveland.

876. See Dirk Jarré, *Why N.G.O.'s?—The Role of Non-Governmental Organisations in Parliamentary Democracy*, 34 EUR. Y.B. 33 (1988) (likening NGOs to white corpuscles). See also RIDGEWAY, *supra* note 75, at 391 (explaining that "contemporary civilization requires a readjustment of relationships between the state and those institutions which carry the seeds of a new world society").

877. THE FUTURE OF TRANSNATIONAL ASSOCIATIONS FROM THE STANDPOINT OF A NEW WORLD ORDER, *supra* note 26, app. 2, at 185.

878. Several NGOs have won Nobel Peace Prizes: the Institut de Droit International (1904), the Bureau International Permanent de la Paix (1910), the Red Cross (1917, 1944, 1963), the American Friends Service Committee and the British Society of Friends' Service Council (1947), Amnesty International (1977), and the International Physicians for the Prevention of Nuclear War (1985). See *Nobel Peace Prize*, ENCYCLOPEDIA OF HUMAN RIGHTS 1095-96 (1996); *Non-governmental Organizations*, *id.* at 1097.

879. J.A. SALTER, ALLIED SHIPPING CONTROL 255 (1921).

880. ROBERT D. PUTNAM, MAKING DEMOCRACY WORK, CIVIC TRADITIONS IN MODERN ITALY 173 (1993).

881. See 2 DEMOCRACY IN AMERICA BY ALEXIS DE TOCQUEVILLE 110 (Phillips Bradley ed., 1990) ("If men are to remain civilized or to become so, the art of associating together must grow and improve in the same ratio in which the equality of conditions is increased").

CONCLUSION

In 1949, Lyman C. White wrote: "Surely the time has come for the students and teachers of international affairs to realize that international nongovernmental organization is a great unexplored continent in the world of international affairs and that expeditions should be sent in search of the great riches to be found there."⁸⁸² This article is one modest expedition. There are riches to be found in a new realism that devotes due attention to NGOs.

Looking back over the past century, one sees a dynamic relationship between NGOs and international organizations. Before the League of Nations, there were few international organizations built by diplomats without advance work by NGOs and visionary individuals. The League provided for NGO involvement in its early years, but then NGOs were squeezed out in favor of routinized governmental interaction. In 1945, the U.N. Charter reaffirmed the benefit of NGO involvement in economic and social work. But the promise of Article 71 was not fully achieved during the Cold War. The decade of the 1990s has provided new opportunities for NGO participation.⁸⁸³

While there is widespread agreement that NGOs can make useful contributions, the debate continues on how to structure NGO involvement to provide the greatest beneficence. The thesis of this article is that useful lessons can be learned from the practices of the early public international unions, the ILO, and the League of Nations. If the boldness of those efforts is coupled with the energy of today's NGOs, we may be able to reform international organizations to face the challenges of the twenty-first century.

882. White, *supra* note 826, at 95.

883. "Is there anything whereof it may be said, See this is new? It hath been already of old time, which was before us." Ecclesiastes 1:10.