

United Nations

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1 Introduction

The United Nations (UN) is unique among the contemporary international organizations (IOs). As the only organization established for general political purposes and with almost universal membership (193 member countries), the UN is one of the most important arenas in which world politics is played out. On the other hand, it is also a reflection of it, due to the great tension, greater than in other organizations, between sovereign equality and effective power relations, inherent to the Westphalian system.

Created in 1945 'to save succeeding generations from the scourge of war' (Preamble to the UN Charter), the UN has been assigned competences primarily in the field of peace and politico-military security, and has been conceived as a relatively centralized instrument for managing the use of force, based on the theory of collective security. At the same time, it has been put at the centre of a decentralized system of functional institutions, i.e. specialized agencies, programmes and other organizations, which has developed incrementally and through which it should guarantee the world the public goods that are instrumental in securing peace, such as economic and social development as well as human rights and environmental protection. Therefore, the UN may be referred to as an international organization headquartered in New York, as well as a system of institutions linked to the centre by relations that are to a greater or lesser degree close and defined.

Combined together, these two dimensions form the core of a global governance system without global government (Rosenau and Czempel 1992) through which states, led by US hegemonic power, have attempted since the Second World War to secure the provision of international public goods of an ever more diverse nature—e.g. peace and politico-military security, monetary stability, free trade, development, economic and social justice, environmental protection, the protection of workers in the context of globalization, the governance of migration—without giving up their sovereignty (Levi 2013). While elements of supranationalism have increased in number and been strengthened over time, the UN and its system are, therefore, basically intergovernmental. Non-governmental actors form an integral part of today's UN (Weiss 2009b, 9), but their participation in decision and policy-making processes, though increasingly strong, is quite subordinate to member states.

It is precisely by virtue of its unique competences and membership, but also because of its structural limitations, that the UN has been, perhaps more than any other organization, the subject of debates and campaigns concerning its supranational and democratic reform, since before its inception (see below, para. 2). While focus was initially placed mainly on the UN's lack of effectiveness on the grounds that since it was intergovernmental, it would never be able to end war, problems relating to democratic legitimacy have gradually emerged, primarily attributable to the UN Security Council (UNSC)'s exclusivity with respect to both UN member states and civil society. Unlike in the past, several authors now recognize that there is no *trade-off* between efficiency and democracy, which are two faces of the same coin to be pursued together in order to save the UN from the crisis of legitimacy it is now facing (Puchala *et al.* 2007, 181–99; regarding the UNSC, Russett *et al.* 1997, 154–62).

This awareness originates from the processes of transformation triggered by globalization in the international system. The increased speed and reduced costs of the movement of people, goods, services and capital, resulting from technological evolution, have produced the proliferation and significance of non-state actors: non-governmental organizations and transnational civil society movements, transnational

terrorist cells, local authorities as well as transnational corporations (TNCs). Furthermore, issues of the utmost urgency have arisen, which UN Secretary-General Kofi Annan has referred to as 'problems without passports' (Annan 2002, 30–31). These include global warming, the proliferation of weapons of mass destruction, international terrorism, global epidemics, the governance of migrations as well as wars, which, though now are rarely interstate, can hardly be defined as civil, i.e. confined within the borders of one state (Kaldor 1999, 2003). Also, due to the decline of US hegemony, the UN and its system have become the natural recipients of new and growing political demands, which, however, they do not seem capable of addressing due to their structural limitations, which are largely attributable to their anachronistic adherence to pre-globalization, Westphalian principles. The UN has never been consistent with the international system within which it has had to operate. Conceived by the USA of Franklin D. Roosevelt (hegemonic power) to work in a multipolar system composed of a few great powers sharing a common interest in the maintenance of peace (i.e. the *status quo*), its role was limited first by an international bipolar system (the Cold War), then by a unipolar one (post-Cold War). This resulted in the UN being an organization in a perpetual state of crisis. However, the crisis it is now facing is completely different, because it does not only concern the distribution of power, but also the very nature of the actors populating the international system.

The inadequacy of the UN faced with this overload of input is likely to cause its irrelevance. The UNSC, crippled by the right of veto, is too frequently bypassed by coalitions of the willing, while regional organizations, given a central role by the Charter (Chapter VIII), equip themselves to intervene without the consent of the Council.¹ Oligarchic and less institutionalized forums like the G20 acquire powers that go well beyond the economic and financial matters, and that come into conflict with the UN.² In addition, proposals have been made to create, for example, a League of Democracies (or Concert of Democracies) consisting only of democratic states, put forward by some scholars and politicians in the USA and elsewhere (see para. 4). While not designed to replace the UN, such initiatives would certainly deprive the organization of much of its meaning.³ The increasingly modest role that states, with the USA in the lead, are now assigning to the UN is also well evidenced by the less-than-charismatic current Secretary-General (SG) Ban Ki-Moon. Therefore, it is not surprising that many scholars argue that today, more than ever, the UN is at a crossroads: reform or irrelevance.

As has been noted since the 1990s by the study group on cosmopolitan democracy, globalization has posed serious problems even to democracy, which is currently undergoing an unprecedented crisis due to the decline of the nation-state, in the context of which it has historically developed. To survive, as has been suggested, democracy should be extended to international relations, which means democratizing IOs and endowing them with effective powers (among others, Held 1995; Archibugi *et al.* 1998; Archibugi 2008a), starting with the UN. Not surprisingly, some of the most influential scholars of IOs have recently reopened a debate that had been shelved at the time of the war in Korea in 1950: the one on the desirability and possibility of a world government (Wendt 2003; Weiss 2009a, 2009b; Craig 2008, 133–42; Attali 2011) as a tool to secure for humanity the public goods 'without passports', which the current global governance has not proven capable of providing.

In the face of a revival of 'reformist ferment', which has emerged in civil society and the academic world over the last two decades, the official debates on the reform has produced modest results. The states,

as has been pessimistically noted, do not want any major supranational and democratic reform (Puchala *et al.* 2007); therefore, the structure and principles of the UN have remained formally unchanged for decades. However, out of the spotlight of negotiation rounds and the endless intergovernmental debates on major reforms, a slow but significant democratization process is under way. This process is often barely visible, the result of constant debate and struggle between the opposite and changing forces of progress and conservatism, involving a variety of different subjects, from member countries to non-governmental actors and UN civil servants.

The results of this process are the subject of this chapter, which will analyse them according to the international democracy indicators outlined in the preface to this book.

2 History and governance structure of the UN

2.1 The foundation of the UN

The UN was conceived by Franklin Delano Roosevelt, Democratic president of the USA from 1935 to 1944, to put an end to war once and for all. This was a new step on the road to positive peace, i.e. to the creation of a legal and political order guaranteed by a power superior to that of the states and therefore by the necessary centralization of sovereignty to prevent states from waging war on each other (Kant 1988, 117). Until the creation of the UN, this goal had been entirely confined to the field of political philosophy: over the centuries, thinkers such as Dante, Henry IV (of France), William Penn, Abbé de Saint-Pierre, Hamilton, Jay and Madison, as well as Kant had proposed supranational solutions to end war not once ('negative peace'), but forever (Baratta 2004a, 27–33; Archibugi 1992). Roosevelt had been assistant secretary of the Navy during Wilson's presidency and a fervent supporter of the League of Nations, which for the first time institutionalized the so-called 'collective security theory'. According to this theory, the monopoly of the legitimate use of force which is typical of a world government can be effectively replaced by the invincible force of the international community. In other words, to preserve peace states would not have to sacrifice their sovereignty because, moved by a common interest in maintaining the status quo, they would present a united front against the aggressor as a sort of police force (Wolfer 1962, 168). According to this model, the League was based on the inviolability of state sovereignty, sovereign equality and unanimity in the decision-making processes. It was made up of an Assembly, which was to include all the states in the world and meet once a year in Geneva to discuss the international problems of the moment, assisted by two executive bodies, i.e. the Council, which would meet no fewer than four times a year, and a permanent Secretariat. These bodies exercised the function of examining disputes that could lead to war and promoting an equitable solution by peaceful means. By joining the League, all members agreed to submit their disputes either to arbitration or judicial settlement or enquiry by the Council or Assembly, which would be followed by a Report drawn up by the Council or the Assembly within six months. The states parties to the dispute also undertook to refrain from resorting to war for three months following the delivery of the judgment, sentence or report; otherwise, it was the duty of the other members to take common action, namely the so-called economic and military sanctions. Therefore, war was not completely banned, but only if it was waged before all the procedures established by the Covenant had been followed. In addition, if the Council proved unable unanimously to recommend a resolution to the dispute, the member states would 'reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice' (Art. XV of the Covenant).

The League failed to fulfil its tasks. It did not stop and did not react to the invasion of Manchuria by Japan, nor to that of Ethiopia by Mussolini's Italy, nor, finally, to the Nazi territorial expansion in Central Europe. Above all, it did not prevent the outbreak of the Second World War. There are various reasons for its failure. Its membership was not universal, since even the USA, which had promoted it through Wilson, did not participate in it.⁴ In addition, the League did not have its own capacity for action, but relied entirely on the will and the capabilities of the states. In fact, the Council could recommend common actions, but could not take them independently or impose them on the states. Moreover, due to the unanimity principle, decision making was difficult and states could not build trust in the system of collective security, with the result that power politics and the arms race

were still instruments upon which to rely for national security. Ultimately, as Lord Lothian has noted (Lothian 1990, 237–38), the reason for its failure depended 'on the foundation of the complete sovereignty of the signatory and member states. The fact of state sovereignty is the vital flaw in the Covenant'.

The failure of the League and the destruction caused by the Second World War gave new impetus to those who had been calling for the establishment of a genuine world government. The dropping of two atomic bombs on Hiroshima and Nagasaki (August 1945), which for the first time made the world confront the spectre of self-destruction, facilitated the unprecedented convergence of peace, federalist and atomic scientists movements in the USA and elsewhere in their call for the creation of a world government, shouting the slogan 'One World or None': the unification of the world, or its destruction. As shown by the polls at the time, during 1946 a good portion of US public opinion had moved in that direction (Baratta 2004a, 2004b; Wittner 1993, 167).⁵

In 1943, in his Christmas Eve speech, Roosevelt told the nation that 'Peoples of the world are fighting for the attainment of peace—not just a truce, not just an armistice—but peace that is as strongly enforced and as durable as mortal man can make it'.⁶ However, he did not have a world government in mind, but rather a 'revised version of the League' (Claude 1984, 60), which diverged from the fictitious sovereign equality typical of traditional international organizations, to assign to 'four policemen'—the USA, the UK, China and Soviet Union—special leadership responsibilities with respect to the international community and the collective security system to prevent and punish future aggression (Hoopes and Brinkley 1997, 108–9). During the Moscow Conference in October 1943, the USA, the UK and the Soviet Union, the great powers allied against the Axis, agreed on the need to establish an organization for the maintenance of peace and security based on the sovereign equality of peaceful states. From 21 August to 7 October 1944, at Dumbarton Oaks, near Washington, the three-party conference responsible for defining the future organization was held. China, which could not participate in it due to the opposition of the Soviet Union (which intended to preserve its neutrality in the Pacific War), then joined the three powers when they convened the San Francisco Conference (25 April–26 June 1945),⁷ aimed at drawing up and adopting the UN Charter. The 50 countries that had signed the *Declaration by United Nations* of 1942⁸ or had waged war on the Axis powers before March 1945 (22 from the Americas, 13 from Europe, nine from Asia, four from Africa and two from Oceania) were invited. On 26 June, 51 countries adopted the Charter of the UN (Poland, excluded from the conference, was then included among the founding countries), which came into force on 24 October 1945.

2.2 The governance structure of the UN as envisioned by the Charter

The structure of the UN resembles that of the League of Nations, although with substantial differences. The Charter provides for six main bodies.

2.2.1 The UN General Assembly

The UN General Assembly (UNGA) is the plenary body composed of all UN member states, which are represented on an equal footing (one country, one vote). Therefore, it is where sovereign equality and universality are represented. Because of these and other features, it has also been called 'The Parliament of the World' or the 'Global Parliament' (Ziring *et al.* 2000, 36). In fact, the Charter stipulates that the UNGA may 'discuss any questions or any matters within the scope of the present Charter ... and may make recommendations to the Members of the United Nations or to the SC or to both on any such questions or matters' (Art. 10); that it may discuss, in particular, issues relating to peace and security (Art. 11); and that it may 'promote international cooperation in the economic, social, cultural, educational and health fields [and ... assist] in the realisation of human rights and fundamental freedoms for all' (Art. 13). This allows the Assembly to discuss 'all aspects of international life' (Smith 2006, 150). Moreover, it wields powers similar to those of a national parliament in the area of the UN budget (Art. 17). The UNGA considers and approves the budget, and through binding decisions apportions the expenses of the organization, which individual states must pay through financial contributions. This is a supranational power, something that has not always been well received by the states,⁹ especially the permanent members (P5) of the UNSC. Furthermore, the Assembly is given supervisory powers over all

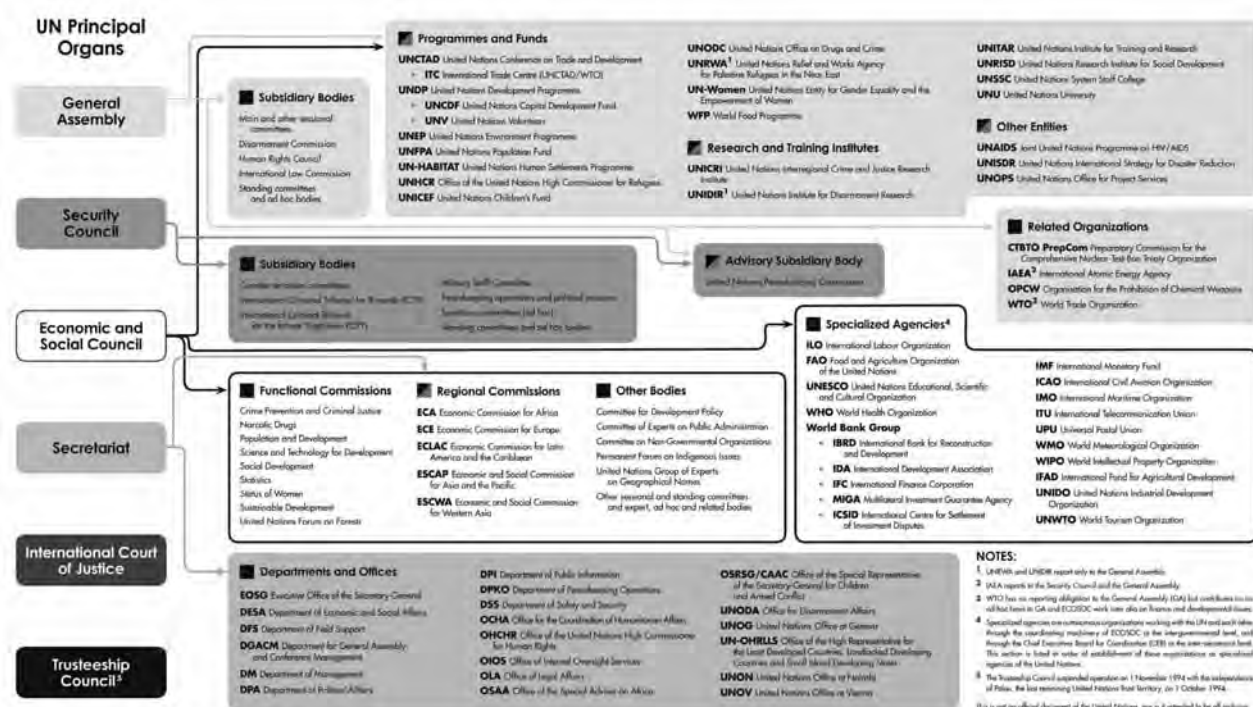


Figure 4.1 United Nations system organizational chart
 Source: UN website, www.un.org/en/aboutun/structure/org_chart.shtml

the other UN bodies (Art. 15), to the point that it has harshly criticized the UNSC and oriented it in new directions (Smith 2006, 150).

Its decision-making procedures and structure are what make the Assembly more closely resemble a national parliament. Decisions are adopted by a two-thirds majority of the member countries present and voting when considering 'important questions', i.e. relating to maintaining international peace and security, the election of non-permanent members of the UNSC, the election of members of the Trusteeship Council, the admission of new members to the UN, the suspension of the rights and privileges of membership, the expulsion of members, questions relating to the operation of the trusteeship system, and budgetary questions (Art. 18). In all other cases, the Charter requires a majority of the members present and voting. However, as in many other IOs, the majority principle in practice has been replaced by consensus, unless there is a large coalition in terms of numbers determined to impose the decision it personally prefers (Peterson 2006, 72).

It meets annually in regular session over a period of three months, from the third Tuesday in September to the third week in December. Since 1978, it has also met one or more days in the late spring or early Summer. Art. 20 of the Charter also provides that Special sessions of variable lengths may be convened at the request of the SG or a majority of the member countries. The 'Uniting for Peace' Resolution (A/RES/377(V), 3 November 1950) also introduced the practice of emergency special sessions, which may even be called at 24 hours' notice in response to particular events when the UNSC is blocked by one or more vetoes.¹⁰ The regular session opens with a two-week general debate, in which the representatives of the states, usually the heads of state and government or foreign ministers, have 15 minutes to discuss any matter they deem significant, launch new proposals and present their own view of the state of the world (Peterson 2006, 58). Many argue that the general debate is unnecessary, since it results in a series of monologues instead of a real discussion (Luard and Heater 1994, 42). However, as has been noted, it offers the opportunity, *inter alia*, for the smallest countries to be heard, and is a barometer of international opinion on certain issues, facilitating the identification of areas in which convergence is being created. It also creates the necessary environment for further informal consultations (Smith 2006, 155–56).

Concerning its structure, the UNGA, like a national parliament, is led by a president, elected annually by the Assembly itself, who chairs the plenary sessions, promotes and chairs informal consultations as well as represents the Assembly on official occasions. The president must perform his/her functions in an impartial way, something that has not

always happened.¹¹ From October to November, the Assembly's activities are carried out within its six Committees, the majority of which are composed of representatives from all the states. They are: 1) on disarmament and international security; 2) on economics and finance; 3) on social, humanitarian and cultural concerns; 4) on special political and decolonization issues; 5) on administrative and budgetary affairs; and 6) on legal issues.

Despite their similarities, defining the UNGA as a 'global parliament' is incorrect for at least two reasons. First, although it plays an important role in the development and codification of international law, as provided for in Art. 13 of the Charter, it cannot produce binding acts, and thus cannot exercise the main function of any parliament, i.e. the legislative function (see para. 5). In addition, this similarity reflects a state-centric conception of international relations, hardly compatible with international democracy, given that the Assembly is not composed of representatives of citizens, but of representatives of states.

2.2.2 The UN Security Council

When the UN was created, the UNSC was an innovative body, in which for the first time the principles of positive peace started to be modestly institutionalized. The Council is in fact clearly identified as the body entrusted with the responsibility of guaranteeing international peace and security (Art. 24), and was conceived as a restricted body, composed of 15 members¹² with representation aspirations that would reflect not only the international community, but also the power relations among its members. To make it more effective, the unanimity principle was replaced by the majority principle—decisions are taken by a majority of nine members out of 15 (Art. 27)—while introducing one element, the absence of which was fatal to the League: the Council's adherence to world power distribution. Accordingly, five out of 15 members—the 'Four Policemen' plus France—were given the right to veto non-procedural decisions as well as permanent member status (Art. 23).¹³ The 10 non-permanent members would instead be elected by the UNGA every two years on the basis of appropriate criteria combining effectiveness and representativeness (see para. 3).

Unlike the Council of the League, the UNSC acts 'on behalf' of all UN members and makes decisions that are binding upon the entire membership of the organization (Art. 24). In addition, it is a body that is organized so that it functions continuously (Art. 28), and at present it is almost always in session (Puchala *et al.* 2007, 56). This is justified on the basis of the powers and responsibilities assigned to it, making it the

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highest authoritative body within the UN system (Cronin and Hurd 2008). In fact, the Council performs the function of settling disputes by peaceful means (Chapter VI of the UN Charter) and taking action with respect to threats to the peace, breaches of the peace, or acts of aggression (Chapter VII). The peaceful settlement of a dispute, which must be sought as a first resort (Art. 33), implies that the Council has the authority to 'investigate any dispute, or any situation which might lead to international friction or give rise to a dispute' (Art. 34) and 'recommend appropriate procedures or methods of adjustment' (Art. 36) regarding any dispute brought to its attention by any state (Art. 35). To this end, the Council may use various means, such as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional agencies or arrangements (Art. 33). These measures are intended to help states resolve disputes, and therefore retain their sovereignty. Nevertheless, when the Council, once its efforts to settle a dispute peacefully have failed, finds that there is a threat to peace, breach of the peace or act of aggression (Art. 39), it may then decide upon different types of sanctions, i.e. the interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communications and the severance of diplomatic relations (Art. 41). As a last resort, it may take actions such as 'demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations' as need be to maintain or restore international peace and security (Art. 42).

Without prejudice to the right to individual and collective self-defence in the event of an armed attack (Art. 51), the Charter designates the Council as the sole authority that may legally take military action, through contingents made available by the UN member states, even on a permanent basis (Art. 43), and led by the Military Staff Committee composed of the chiefs of staff of the P5 (Art. 47). The ban on the use of force first prescribed by the Charter (with the exception of the Kellogg-Briand Pact of 1928) is therefore a prerequisite to making the system of collective security clearly based on the Council, and to alluding (and it is only an allusion ...) to the centralization of the monopoly on the legitimate use of force. However, this first institutionalization of positive peace is encumbered by two factors. First, the international police force envisaged in Art. 43 never came into operation due to the divisions of the Cold War, and second, this centralization of legitimate physical force, albeit effective, is located in a body composed of the most powerful states. Therefore, paradoxically, it does not put an end to power politics, but rather is based on it, with all the problems that this entails.

2.2.3 The Economic and Social Council

The plan for the creation of the UN was not designed in isolation, but was part of the wide-ranging plan of the US presidency, determined to propose a method of international co-operation in order to overcome once and for all the temptations of political nationalism and economic protectionism of the 1930s. Agencies and IOs—e.g. the International Labour Organization (ILO)—that had arisen and been strengthened between the two world wars did not cease to exist. On the contrary, during the May 1943 Hot Springs Conference in Virginia, the Statute of the Food and Agriculture Organization (FAO, operational since 1945) was drawn up, while during the UN Monetary and Financial Conference held in Bretton Woods on 1–22 July 1944, 44 countries launched the establishment of the International Bank for Reconstruction and Development (the World Bank—WB) and the International Monetary Fund (IMF). The third pillar of the international economic order, the International Trade Organization, remained pending due to US uncertainty. These organizations, followed by the UN Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the UN Children's Fund (UNICEF) and so on, created an institutional system that would promote economic and social development as well as establish 'functional networks so that these states would learn cooperation in functional areas. This functional cooperation would eventually spill over into "political" areas, allowing international agreement on aggression, self-defence, intervention, and the other subjects entailed in international peace and security' (Weiss *et al.* 2004, 227).

Economic and social development and peace were two sides of the same coin, and the Economic and Social Council (ECOSOC), especially advocated by small and medium-sized countries with the well-intentioned support of the USA, was designed to connect them. ECOSOC was assigned two main and new tasks in the context of international law: to promote respect for human rights—to this end, the Human Rights Commission was established (see para. 9)—and to carry out political,

economic and social studies aimed at promoting 'higher standards of living, full employment, economic and social progress' (Art. 62). ECOSOC was also conceived as a potential co-ordination tool of the developing specialized agencies, hence, as an 'institutional hub' of UN involvement in the international political economy (Puchala *et al.* 2007, 60) and human rights. However, it was immediately very difficult to limit the autonomy of institutions that in most cases had been established under specific international treaties, the membership of which was in many cases different from that of the UN. This task proved even more complicated with the WB, the IMF and the World Trade Organization (WTO), which are not UN specialized agencies. If the large (excessive) number and the extreme heterogeneity of these institutions is also taken into account, it is not surprising that the language of the Charter is rather vague and far from peremptory: 'The Economic and Social Council *may* enter into agreements' with specialized agencies, and 'it *may* coordinate' their activities 'through consultation with and recommendations to such agencies and through recommendations to the UN General Assembly and to the Members' (Art. 63, emphasis added).

ECOSOC is currently composed of 54 countries, 18 of which are elected by the UNGA each year for a three-year term. According to some, the huge size of this body and the limited powers conferred upon it by the Charter have marginalized it within the UN. The fact that it has been reduced to 'talking shop' makes it ineffective both as a decision-making body and as a co-ordination centre, which is why even former Secretary-General Kofi Annan had proposed to reform it.

2.2.4 The Trusteeship Council

The Trusteeship Council also has its roots in the League of Nations, in which it was made responsible for the so-called 'mandates', i.e. territories under the administration of great powers, but under its supervision. This idea continued to be developed in the Council, which was created under the authority of the UNGA to ensure, through visits to the trust territories and the analysis of the petitions and reports sent by the administering powers, that the latter would guarantee 'The economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence'. The body was therefore responsible for promoting the decolonization and the implementation of the principle of the self-determination of peoples recognized in Art. 1 of the Charter. Following the independence of Palau in 1994, the activities of the Trusteeship Council ceased, without ever being formally abolished.

2.2.5 International Court of Justice

The International Court of Justice (ICJ) is defined in the Charter as 'the principal judicial organ of the United Nations' (Art. 92). All the members of the organization (Art. 93) are automatically parties to its Statute, but this does not mean—and this is one of its most serious limitations—that its jurisdiction is automatic: the Court has jurisdiction only if and to the extent that the states parties to a dispute have expressly accepted it. This can be determined on a case-by-case basis, when the dispute has already arisen (optional jurisdiction), or *ex ante*, for example when a state signs a treaty that also stipulates that any dispute relating hereto must be referred to the Court, or when it signs the 'optional clause' provided for in Art. 36(2) of the Statute of the Court, under which it declares its acceptance of the compulsory jurisdiction of the Court in its relation with any other state accepting the same obligation. As has been noted, 'the unwillingness of states to submit themselves to compulsory adjudication has been one of the crosses it has had to bear' (Ramcharan 2000, 178). At present, the declaration has only been signed by 67 countries, of which only Britain is a permanent member of the SC. In addition, many of them have attached important reservations, aimed at excluding from the jurisdiction of the Court some more or less broad categories of disputes. The most harmful reservations are the automatic ones, under which it is up to the state itself to assess case by case whether or not a given dispute falls within the scope of the reservation.

The judgments are binding upon the states that have accepted its jurisdiction, but their enforcement is *de facto* entrusted to the will of the states themselves. Art. 94(2) provides that 'if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council', which may recommend or decide upon measures to be taken in order to ensure the execution of the judgment. However, it is clear that the coercive measures provided for in Chapter VII of the Charter can be taken or authorized by the Council only in the event that the

failure to execute the judgment constitutes a threat to the peace, and in any case, obviously, they are subordinate to the political will of the members of the UNSC, especially the P5. The latter, by vetoing, can de facto exempt themselves from compliance with unwelcome judgments. Therefore, the supranationalism of the system of the judicial settlement of disputes is limited by the fact that it is, in practice, subject to power politics.

Another category of acts produced by the Court regards advisory opinions, requested by the UNGA or the UNSC on any legal question, or by other UN bodies and specialized agencies on legal questions arising within the scope of their activities (Art. 96).

The ICJ is composed of 15 independent judges elected for a nine-year term (renewable).

2.2.6 The Secretary-General and the Secretariat

The post of Secretary-General is central to the UN's activity. S/he does not only head a bureaucratic and non-political structure supporting the great powers, as Sir Eric Drummond, Secretary of the League of Nations intended his office (Beigbender 1988, 18), but also contributes to defining the organization's policies.

First, the Secretary-General is the chief administrative officer (Art. 97), the head of a body of more than 20,000 civil servants whose function is to serve the other UN bodies and implement inputs coming from them.¹⁴ In particular, on the one hand, s/he is the Secretary-General of each body, which his/her staff assists by providing the necessary services (e.g. simultaneous translation and translation of documents; their editing and circulation among delegations; advising the president (chair) of each body; intervening, when required, to present existing policies and practices; producing statistics for ECOSOC; guaranteeing public access to documents via the Internet). On the other hand, the Secretary-General receives instructions from the other bodies to perform a large number of tasks; for example, any decision taken by the UNGA on each of the average 200 subjects on the agenda places a considerable burden on the Secretary-General and his/her staff.

As the chief administrative officer, s/he is responsible for the recruitment and quality of the staff of the Secretariat, even though this prerogative is limited by the strong pressure exerted by the states (see para. 3). Its members as well as the Secretary-General him/herself must not accept instructions from governments, which must refrain from influencing them (Art. 100). All of this is to ensure the international nature, independence and impartiality of civil service—qualities that, however, are in sharp decline (Weiss 2009b, 107).

For the first time, the Secretary-General has also been explicitly given a political role in Arts. 98 and 99, thus becoming a driving force for the development of the organization. In fact, Art. 98 provides that 'The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council and shall perform other functions as are entrusted to him by these organs', and entrusts him/her with submitting to the Assembly an 'Annual Report on the Work of the Organisation'. This report, which is the starting point for the work of the regular session of the UNGA, gives the Secretary-General the opportunity to propose his/her own vision on the state of international relations, to highlight what the organization has achieved, its successes and failures, but also to launch new proposals and give impetus to the other UN bodies (Smith 2006, 84). More generally, the reports and texts signed by the Secretary-General, which may contain the examination of problems, complaints, observations and suggestions in relation to the objectives set out in the Charter, provide to an often inattentive broad public the prodding of a global conscience (Gordenker 2005, 2). Some of them have been particularly critical of the international community and, therefore, more or less directly, of the UNSC (see, for example, Kofi Annan's report on the UN's role in the genocide in Rwanda—UN Secretary-General 1999). Others have been very peremptory in reminding member states of their responsibilities (see Boutros Boutros-Ghali's insistence that Arts 42 and 43 of the Charter finally be applied in the post-Cold War context—UN Secretary-General 1992). In addition, his/her reports can particularly help review the role of the international community and the UN in ever-changing international relations, opening debates on key issues such as development, democratization, intervention (see, for example, Boutros-Ghali's three Agendas, or Annan's support to 'The Responsibility to Protect': UN Secretary-General 1992, 1994, 1996 and 2005a).

Art. 99 also assigns the Secretary-General a new task, i.e. to 'bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security'.

Therefore, s/he can gather information and draw conclusions on possible threats to the peace, thus playing an important role in conflict prevention. However, this does not mean that the Council acts upon his/her inputs. On the contrary, it most likely does not even examine them (Gordenker 2005, 36). In any case, gathering qualitative information is fundamental to the Secretary-General, which is made possible by his/her staff, particularly the Political Affairs Department, as well as by ongoing dialogue with the governments of the member states, especially the largest ones. However, the Secretariat has never been equipped with real diplomatic service due to member states' resistance. It has tried to overcome this by using personal representatives in the field, who gather information and undertake conciliation missions. In some cases, these missions have been directly undertaken by the Secretary-General, with mixed success (Gordenker 2005, 40).

However, there is no doubt that the international political situation, the attributes of the Secretary-General and his/her interpretation of his/her own role and that of the UN all contribute to defining the scope of the political role only outlined in the Charter (see para. 6). To cite a few examples, the inhibiting structural conditions posed by the Cold War on the collective security system led Secretary-General Dag Hammarskjöld along with Canadian Foreign Minister Lester Pearson to 'invent' 'interpositional' peace-keeping in 1956 as an alternative to peace enforcement. Successfully applied to the Suez Crisis in 1956 (operation UNEF I), it made Hammarskjöld into a sort of hero, to the point that a 'dangerously complacent "leave it to Dag" mentality began to take hold' within the UN (MacQueen 1999, 31). Furthermore, peace-keeping gave the SG an important role in the recruitment of troops and operations, after the first mission of peace-enforcement authorized by the UNSC in Korea (1950) and conducted by a US-led coalition of the willing had completely marginalized it. The role of the Secretary-General was enhanced during the second generation of peace-keeping operations developed after the end of the Cold War, the peace-building component of which assigns responsibilities to him/her and his/her staff.

However, the Secretary-General's room for manoeuvre is still relatively narrow, albeit large: on different occasions disputes have arisen first with one, then with other permanent members, which in some cases have been fatal for the Secretary-General. (Boutros-Ghali was not re-elected after the first term due to his dispute with the USA; Dag Hammarskjöld was attacked especially by the USSR, and was killed during the war in the Congo; Kofi Annan as well, because of his opposition to the Iraq war, was subject to an aggressive campaign in the Republican press, which artfully trumped up the oil for food scandal—Meisler 2007, 282).

3 Appointment

The UN bodies, apart from the UNGA, are all more or less restricted in their composition. Therefore, to assess the democratic quality of the UN, it is important to understand the rules and practices governing the election or appointment of their members as well as the relationship between the appointed/elected and the organization's membership. When the Charter stipulates independence and competence, as in the case of the members of the Secretariat, do the appointment mechanisms truly ensure them? When the Charter provides for election mechanisms among states, do they result in relationships of political representation? If so, to what extent are these links and mechanisms effective and appropriate?

3.1 The Security Council

The appointment mechanisms of the UNSC are devised to ensure two qualities: effectiveness and representativeness.

The principle of effectiveness. One of the main concerns that guided Roosevelt and the Big 4 while they were designing the UN was that the UNSC, unlike the system of the League, be effective. Therefore, its membership was to reflect world power distribution and take the relative 'weight' of the states into due account in UN activity as well as the role of the states in providing the UN with adequate capacity. Hence, the new privileged status of permanent membership with the right of veto that the five great powers granted themselves on the grounds that they, first and more than the others, would shoulder the economic and military burden to maintain international peace and security.

This self-appointment totally contradicted democratic principles, and was imposed in San Francisco on small and medium-sized countries using the coercive rhetoric of 'take it or leave it' (Russell 1958). In

addition, for several reasons, the commitments made by the P5 have never been honoured. For more than 40 years, the Cold War made peace-enforcement missions impossible, and peace-keeping became the main UN instrument to ensure peace. Its objective of preventing peripheral crisis from being contaminated by the bacteria of the Cold War, and the principle of neutrality on which it was based, made the use of the great powers' troops inappropriate (MacQueen 1999, 27ff.). From 1945 to 1989 the military contribution of the P5 was therefore rather marginal, and at present the situation has not changed as expected. In the first four months of 2012, the major contributors among the P5, namely China and France, respectively took 16th and 18th places as far as troop provision was concerned, while the UK, the USA and Russia took 42nd, 46th and 55th places, surpassed by countries like Italy, Brazil, South Africa, Egypt, Nigeria and India, as well as by countries that had only been elected to the Council once, such as Uruguay and Rwanda.¹⁵ The great powers are presently still rather averse to serving under the command of the UN (Laurenti 2005, 71). Moreover, the USA, the UK and France are ranked first, seventh and 11th among the major 2010 debtor countries to the UN.¹⁶ In the light of these data, it is not surprising that since the 1990s countries such as Germany, Japan, India and Brazil (the so-called G4) have been demanding to be appointed as new permanent members of the UNSC.

With a view to ensuring the Council's effectiveness, Art. 23 of the Charter provides that non-permanent members are to be appointed by the UNGA on the basis of two criteria, the first of which is candidates' contribution to maintaining international peace and security. Schwartzberg (2004), however, identified serious anomalies in the selection mechanism of non-permanent members. The island of Mauritius, for example, with a population of 1.2m., has served the Council for four years, like Indonesia, which is the fourth most populous country in the world; Mexico has been a member of the Council for five years while Panama, with a population 35 times smaller, has been there for eight years. So far, as many as 72 countries have never been elected to the Council and the explanation is not really clear. Some of these countries, such as Saudi Arabia or Myanmar, are or were considered 'rogue states'. However, the distinction does not seem to be based on the good conduct of the states in international relations, if one considers that over the years countries that can hardly be included among the 'good citizens' of the international community have been elected, such as Iraq, Jordan, Iran, and Spain under the Franco regime, or even Rwanda from 1994 to 1995, with genocide underway.¹⁷

Many countries have indeed directly observed the excessive politicization of the selection process of rotating members and the overwhelming role the P5 has played in it, the insufficient weight given to merit and the high price tag of courting members of the UNGA for candidate countries (Malone 2000).

The principle of representativeness. Given the powers conferred upon the UNSC to produce binding acts for the entire membership and enforce them, even with the use of force, a certain degree of representativeness has needed to be incorporated into the appointment mechanisms of its members for legitimacy purposes. Under pressure from medium and small countries, at the San Francisco Conference the criterion of equitable geographical distribution for the appointment of non-permanent members was also included in Art. 23 of the Charter, and as a result of a gentlemen's agreement (1946) it was given absolute priority over all other considerations. It is still being applied in somewhat different ways to all the restricted bodies of the UN, and even the reform proposals of the Council put forward are unlikely to disregard it.¹⁸ The Agreement, which divided the UN membership into electoral groups for which seats were allocated, was replaced by a second agreement in December 1965, when the UNSC was expanded from 11 to 15 members (Geiger 2002). Since then, three seats have been allocated to the Group of African States (GAFS), two to the Group of Asian States (GASS), two to the Group of Latin American and Caribbean Countries (GRULAC), two to the Western European and Others Group (WEOG), and one to the Group of Eastern European States (EES).

The concept of 'equitable geographical distribution' is usually wrongly made to correspond to that of 'equitable geographical representation', making implicit reference to the idea that, for example, the two GASS countries elected to the Council could 'represent the Asia region'. However, the geographical level and the political level should not be confused: only political solidarity can give substance to mechanisms of regional representation, and this certainly cannot develop automatically on a continental basis. As noted by Nye (1968, vii), the geographical contiguity serves to define the region, but must be accompanied by a certain degree of interdependence (which may be economic, social, cultural and political) among its members. The 'regions' established by

the agreements, however, are electoral groups within which the UNGA appoints the members of the Council largely based on rotation or geopolitical considerations. Suffice it to consider the byzantine provision of the 'Western Europe and Others' group, or the fact that the USA has long tried to break the monolithic block of Eastern Europe under Soviet control by promoting the entry of Greece and Turkey into that group. This seat allocation system does not originate from the existence of 'regions' which share interests, values and identity, and very few countries can therefore consider themselves to be represented in the UNSC, no matter what its composition may be—11, 15, or even 20 members. If the existing regional organizations were allowed—and if they had the ability—to hold a seat in their representation in the Council, as many wish for the European Union (EU) (Finizio 2013; Köchler 2013; European Parliament 2004; Levi 2005), the situation would be different. In view of these considerations, the problem concerning the deteriorating ratio between the members of the UNSC and the whole membership of the UN (Schwartzberg 2004) is pushed to the back burner.¹⁹

3.2 The Secretary-General and the Secretariat

The Secretariat is a major body that, along with the Secretary-General who heads it, is omnipresent in all UN activity. Consequently, states are obviously expected to attempt to enter into the appointment mechanisms established by the Charter in order to control and orient its activities.

The Charter provides that (Art. 100):

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be to the necessity to securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting ... on as wide a geographical basis as possible.

The Secretary-General should be responsible for the selection and quality of his/her officials, for example, by ensuring that the principle of geographical distribution is observed but not at the expense of the other requirements of competence and effectiveness. Actually, the states immediately tried to dilute the independence and international nature of the Secretariat. In 1945 the P5 reached an agreement under which they began to appoint 'their' second-ranking officials directly, i.e. those immediately below the Secretary-General (Gordenker 2005, 14; Lie 1954, 45–49), and this malpractice spread rapidly to other countries. Due to the entry into the UN of a growing number of developing countries as a result of the decolonization process, since the 1950s and 1960s, the number of officials has dramatically increased (from 300 people in 1946 to 3,237 in 1964; Beigbeder 2000, 202) and the number of candidatures from all over the world has also risen to the point that the Human Resource Department of the Secretariat is not able to examine them all. As a result, the Secretary-General and his/her staff rely in large part on the suggestions of governments, especially the most influential ones. Even the UNGA restricts the Secretary-General's room for manoeuvre, by requesting him/her to meet specific geographical targets in the selection of officials.

This subdivision poses problems with respect to officials' impartiality, and has led to serious distortions in their relations with their countries of origin. During McCarthyism and the witch-hunts of the 1950s in the USA, Congress and the Federal Bureau of Investigation (FBI), convinced that many US officials in the Secretariat favoured communism, led President Truman to create a structure responsible for reporting on Secretary-General candidates who were potentially unfaithful to the country (Meisler 1995, 82–83). A sort of patriotism assessment with respect to US officials continued in different ways up to 1986. The People's Republic of China, once it had replaced the Taiwan seat in the UN (1971), requested the replacement of various Chinese officials. The USSR and the other socialist countries distinguished themselves in their control over the recruitment of their nationals in IOs, demanding that their loyalty to communist ideology come before their loyalty to the institution (Beigbeder 2000, 202).

The Secretariat, the appointment mechanisms and its reform were (and still are) widely exploited by the states for power politics purposes (Polsi 2013). Under Ronald Reagan's presidency, which stood out because of its ideological inclination towards the dismantling of IOs, in the 1980s the USA came to challenge the Secretariat directly, accusing it of inefficiency, corruption, hypertrophy, preventing recruitment and refusing to pay the amount due to the UN, which was at risk of going bankrupt.

The Charter stipulates the highest standards of efficiency, competence and integrity even for the figure of the Secretary-General. However, his/her appointment is completely political and the appointment process is nebulous and dominated by the great powers (Gordenker 2005, 8). His/her candidature is actually proposed by the UNSC and approved by the UNGA, and there is no defined procedure for the selection of candidates, which is based on secret negotiations. The P5 may veto a candidature or threaten to veto it for any, to a greater or lesser extent noble, reason. After more than 65 years of UN history and eight secretaries-general some tendencies may be identified. Only in one case did the selected candidate come from the UN—Kofi Annan, whose long career in the Secretariat had made him well known and appreciated among governments. In other cases, the candidates came from the foreign ministries of national governments. An unwritten rule provides for some degree of geographical rotation, and candidates from the P5 or great powers have always been excluded. In addition, three out of the five secretaries-general elected during the Cold War came from neutral countries.²⁰

The Charter does not specify whether the Secretary-General can be re-elected and for how many terms. No one has been in office for more than two terms, and in the case of a number of Secretary-Generals their second term was opposed by a permanent member. The Secretary-General's room for manoeuvre is largely determined by the international context, and he/she must possess great sensitivity, cunning and luck not to offend the sensibility of one power or another. Lie, for example, was vetoed by the USSR for his support of the US-led intervention against the Democratic People's Republic of Korea (North Korea, 1950), while Hammarskjöld raised the ire of the USSR and France (for different reasons) as a result of UN involvement in the war in the Congo in 1960. As a direct result of the grievances caused by Hammarskjöld and the 'visionary' and idealistic conception of the UN he had cultivated, the USSR proposed to replace the office of the Secretary-General with a troika composed of three figures, one representing the Western bloc, one representing the Eastern bloc and another figure representing the group of non-aligned countries, bearing witness to the fact that the P5 have never tolerated a truly independent Secretary-General. Even the re-election of Boutros-Ghali was blocked, this time by the USA, because of the excessive autonomy he wanted to assign to his role and the UN.

3.3 The other bodies

The appointment mechanisms of the other bodies are based on a logic that is quite similar to that of the UNSC and the Secretariat. For instance, the International Court of Justice, like the Secretariat, is a body made up of individuals, and the appointment procedures aim to ensure impartiality and independence with respect to the states. The Charter provides that the 15 judges are elected regardless of their nationality from among persons of high moral stature and recognized competence. The Court may not include more than one national of any one state among its members, and the fact that one-third of its composition is renewed every three years with the election of five judges, was also set out to ensure impartiality with respect to governments. The appointment of judges is carried out in two stages: first, candidates are nominated through a procedure involving the national groups in the Permanent Court of Arbitration.²¹ Once the list is prepared in alphabetical order, the UNGA and the UNSC proceed to an independent vote by an absolute majority. Therefore, the first stage is mainly guided by technical considerations, and the second is the prerogative of political bodies, creating some distortions in the process resulting from power relations among states. The Statute of the court also provides that the composition of the court as a whole must then ensure the representation of the main forms of civilization and of the principal legal systems of the world (Art. 9). This does not exactly correspond to equitable geographical distribution, but it does have some features in common with it.

This appointment mechanism is not entirely suitable to ensure the court the necessary independence and competence. Among its judges, it has included some of the most important jurists of its time, but 'its benches have also been occupied by politico-legal entrepreneurs who have attracted harsh criticism. On its benches have sat some who have trampled on human rights at home and then gone on to champion the principles of justice from its precincts' (Ramcharan 2000, 178). Several authors have defined these figures as 'legal diplomats' (Peck and Lee 1997, 167–68). Despite its limits, the Court has demonstrated its ability to make decisions independently, considering, for instance, the 1986 judgment that condemned the USA for its violation of various

international law norms as a result of its support of the Contras intervention against the government of Nicaragua.

Unlike the ICJ, ECOSOC is a body made up of states, and hence political. The Charter does not provide for the election criteria of its 54 members, even though there are two very important criteria, imported from the UNSC, that have become established practice. The first one is the extension of the principle of equitable geographical distribution to ECOSOC, which in the absence of further balances, provides representation to countries that have very different capabilities to contribute to the discussion and implement the approved policies. The second one is the perpetual guarantee of appointment for the P5, which have claimed this privilege in all major UN political bodies as a result of an informal agreement called the 'permanent member convention' by the P5, and the 'cascade effect' by its critics (Daws 1999, 27).²²

4 Democracy at the national level

The UN is an organization with almost universal membership; therefore, it consists of states that are more, less or not at all democratic (see the Introduction to this volume). In fact, respect for democratic principles has never been a prerequisite for membership in the UN. Among the UN promoters, at least two countries—Russia and China—cannot be considered democracies. On the contrary, the UN Charter states that 'membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter' (Art. 4). The idea that democratic countries were relatively peace loving was quite clear in Roosevelt's mind, but democracy was not included among the basic principles of the UN, neither was the promotion of democracy included among its objectives. It could not have been any other way, given the divisions between the East and West which precluded any possibility of convergence on this matter. On the other hand, neither of the two superpowers took into account the quality of democracy of the candidate countries when preventing their UN membership, and each of them negatively assessed their love for peace when aligned with the opposing bloc.²³ In fact, the principle of universality has always taken precedence over other requirements simply because it has always been considered necessary for the functioning of the collective security system. If relatively powerful countries had been excluded from the system, the fate of the UN would have been the same as that of the League of Nations.

The universality of membership, albeit considered necessary by the majority of member states, has always been much debated, even among the post-Second World War world federalists.²⁴ With the end of the Cold War, the issue was brought up again. The victory of the West over the USSR established liberal democracy as a successful and peaceful political model that would then spread throughout the world, even leading Fukuyama to rather unwisely theorize 'The End of History' (Fukuyama 1992). In the 1990s, the term 'peace-loving nations' in Art. 4 of the UN Charter acquired new implications. The so-called democratic peace theory, introduced for the first time by Michael Doyle in 1983, became increasingly popular and was taken up again by many other theoretical and empirical studies aimed at demonstrating that democratic states do not wage war—or at least, do not wage war on each other (Doyle 1983; Russett 1993). Therefore, according to the empirical data, if all states were democratic, world peace would be guaranteed.

This normative implication was internalized in the UN by Secretary-General Boutros-Ghali (1992–96), who interpreted democracy as a universal value and established democracy, peace and development as UN's core values (Haack and Kille 2012, 38–39). More specifically, through the publication of three consecutive agendas (*An Agenda for Peace*, *An Agenda for Development* and *An Agenda for Democratization*: UN Secretary-General 1992, 1994, 1996), Boutros-Ghali defined them as interdependent values to be promoted and pursued by the whole international community. Despite the Secretary-General's statement declaring that it was up to each state to identify its priorities in pursuing these objectives, that there was no single model of democracy to be applied to any one reality and that it was up to the United Nations simply to support endogenous processes of democratization, he received strong criticism from many UN member states and civil servants resulting from his attempt to define democracy as a 'norm of the UN'.

The contribution of the next Secretary-General, Kofi Annan, was to build a practice of democracy promotion, based on the idea that democracy was more than elections, and that 'institutions, rights and processes are all important for a successful democracy' (Haack and Kille 2012, 47). Since the 1990s, the Electoral Assistance Division and

Electoral Assistance Information Network have been created within the Department of Political Affairs along with the fundamental contribution of non-governmental organizations (NGOs), IOs and private associations (Archibugi *et al.* 2000, 130). Electoral assistance had already gradually become an integral part of all UN peace-building operations (Fox 2004). However, where civil society and democratic institutions were weak, electoral assistance was likely to be functional to façade operations (as in the case of Algeria, 1997). Therefore, under Kofi Annan the concept of *good governance* took centre stage in the process of democratization. He institutionalized a multi-disciplinary, inter-agency framework based on 11 principles of good governance drawn up based upon the different approaches and experiences of the 13 agencies that, in one way or another, were engaged in democracy support. As a result, in October 2000 Annan established the practice of democracy assistance, which, unlike electoral assistance, involved greater UN intervention in the domestic jurisdiction of states.

Within this context, the Democracy Fund was established by Annan in 2005, at the instigation of the USA and India, with the aim of supporting democratization funding projects to strengthen the voice of civil society, promote human rights and encourage participation in democratic processes. Its distinguishing feature is that the projects financed are implemented by civil society, which makes this instrument complementary to the other agencies that generally support governmental institutions (Rich 2010, 430). So far, 330 projects have been funded in 110 countries in the field of community development, rule of law and human rights, as well as tools for democratization, women, youth and the media. The focus of these projects is innovative in the UN and has allowed it to overcome the narrow conception of democratization as a mere 'set of institutions, rights and norms that enable citizens to choose their leaders and influence ... policy' (Fox 2004, 75–76) developed by the UNSC. However, the Fund, financed by voluntary contributions from the states, is underfunded. Suffice it to say that in 2011 the major donors, the USA and India, paid US\$5m. each, while out of the remaining 10, six donors paid contributions that were less than \$25,000 and three paid the equivalent of \$5,000. Furthermore, the annual amount of donations amounted to half that in 2005 (\$13.5m. rather than \$27.4m.).²⁵

It is also worth mentioning one further development in the UN democracy agenda. After some authors have theorized the existence of the right to democratic governance (Franck 1992), thanks to Kofi Annan the definition of democracy as a human right made its way into the language and practice of the UN. In addition, owing to Annan's proposal to proceed with the mainstreaming of human rights in the UN system, calling for the adoption of a human rights-based approach as a fundamental principle underlying the execution of all the activities carried out by UN agencies (Haack and Kille 2012, 47), democratization has been integrated into a framework of ideas and practices focused on human dignity which reinforce and influence each other, such as human security, responsibility to protect and human development (*ibid.*: 48). The same approach was also subsequently endorsed by the current Secretary-General Ban Ki-Moon, expressed in his 2009 paper 'Guidance Note on Democracy'.²⁶

Democratizing its largely undemocratic membership has been, therefore, the UN's response to the requirements of the democratic peace theory, and universality continues to be considered a primary value: the last state joining the organization, South Sudan, is not a democratic state. This response has been considered ineffective and useless by many scholars and politicians who, from different perspectives, have resumed the debate on universal vs. partial membership, arguing that the UN cannot function precisely because of its universality, and hence is largely composed of undemocratic states. Rather, the democratic peace theory implies that to achieve peace a League (or Concert) of Democracies must be established, i.e. an alliance composed only of democratic states. The USA's proposal has been put forward by scholars aligned with the Democratic Party, such as John Ikenberry and Anne-Marie Slaughter (2006), and then resumed in a bipartisan way by Barack Obama's advisers such as Ivo Daalder and Anthony Lake, as well as by the opposing candidate in the 2008 presidential election, John McCain. It is argued that a group of 50 democracies working together could protect human rights, enforce peace and increase prosperity in the world, and probably even affect undemocratic nations by helping them along the road to democracy (Schlesinger 2009). The supporters of this solution believe that the failure of the UN is the responsibility of non-democratic states, in particular Russia and China, whose veto in the SC would systematically block any resolution involving the use of force, particularly when necessary to interfere in the domestic

jurisdiction of a state to stop gross violations of human rights and preserve peace.

However, in the majority of cases involving the non-intervention of the UN since the end of the Cold War, the obstacle has not only been posed by China and Russia—see, for example, the intervention in Iraq in 2003 and the failure to respond to the genocide in Rwanda in 1994²⁷—or rather their opposition was based on reasons that had little to do with the features of their political system—see the war in Kosovo, in which the opposition of Russia was rather due to its strong economic, linguistic and religious ties with Serbia (Archibugi 2008b). In addition, partial membership would cause further global divisions by increasing conflicts, and would be much less effective in tackling a wide range of issues that require co-operation and joint action by the entire international community (Laurenti 2008, 48). In other words, entrusting the governance of the world to a League of Democracies would mean thinking that interdependence involves only half the globe. Moreover, opposition between democratic and non-democratic countries would not be useful to the advancement of democracy throughout the world.

The various proponents of this solution have a different understanding of the UN. Ikenberry and Slaughter believe that a League of Democracies would be necessary only if the UNSC could not be reformed by abolishing the right of veto, whereas the Republican establishment regards the right to veto as a sacrosanct instrument to protect the USA (Laurenti 2008, 50). In any case, the realization of this proposal would hopelessly deprive the UN of much of its meaning. According to some critics of the League of Democracies, the solution to promote democracy within states and at the same time peace in the world is precisely the democratization of the UN (Archibugi 2008a).

5 Five to rule them all: unlimited power for the Security Council?

The UN does not have a system of checks and balances that provides for the existence of an effective and well-separated executive, legislative and judiciary power (Bianchi 2007), 'a condition that, in structural terms, almost resembles the decision-making procedures in a dictatorial system' (Köchler 2013, 263). The problem is the excessive power the UNSC wields over the other UN bodies, in part established by the Charter and in part caused by the tendency of the Council, which intensified after the Cold War, to arrogate to itself competences well beyond what is provided for in the Charter.

The Charter gives the Council primarily the monopoly of executive power, to the extent that it imposes sanctions and authorizes measures that may or may not involve the use of force, in response to those situations that pose threats to the peace, are a breach of the peace or constitute acts of aggression. Its discretion is very broad. In fact, Art. 39 provides that the Council 'shall determine the existence of any threat to the peace, breach of the peace or act of aggression', and decides, at its sole discretion, which actions should be taken. The Charter does not contain an exhaustive list of these actions, which gives the Council *de facto* carte blanche. It is true that it must act 'in accordance with the Purposes and the Principles of the United Nations' (Art. 24(2)); however, it is actually subject to an almost non-existent control of legality. The ICJ has claimed (for example, with reference to the Lockerbie case) that there are, in principle, legal restraints on the powers of the Council and that the Court, always in principle, may call them into question. Nevertheless, the Court has never annulled any of the Council's actions (Martenczuk 1999), even though there have been several opportunities for the SC to engage in unlawful acts (for example, recently, in the management of the war in Libya; Bernardini 2011). Advisory opinions may be requested regarding the acts of the Council, even though this does not affect their validity.

Conversely, the political control of the Council is held by the UNGA, which is primarily responsible for receiving and considering the Council's regular reports (Art. 15 of the Charter). However, unlike the reports from the other bodies, the Council's annual report is almost never discussed by the Assembly (Smith 2006, 150). Quite often the Assembly has used the powers assigned to it by Art. 11 to make recommendations to the Council and draw its attention to issues that may affect peace and international security, to the point of even censuring it (the Secretary-General has also done this on occasion, at his/her own peril) or putting pressure on it to adopt new approaches (Smith 2006, 150). However, there is certainly no fiduciary relationship between the two bodies like the one that exists between the government and parliament in a democratic state.

It should also be noted that the balance of power between the UNSC and the UNGA has changed a lot over time and, as a result, also the ability of the Assembly to act as a counterweight to the Council. During the 1950s, characterized by tension between East and West as well as divisions within the Council and the Assembly's convergence with US interests, the Assembly was enhanced to the point of challenging the Council's role and developing powers not provided for by the Charter (see the case of the 'Uniting for Peace' Resolution). With its transformation in the 1960s in a Third World-orientated forum, caused by the decolonization and expansion of UN membership, it was boycotted more and more by the Northern countries, led by the USA, which began to consider it a device that was in conflict with its own interests (see, for example, the launch of the New International Economic Order or the Assembly's repeated criticisms of Israel). The end of the Cold War laid the foundations for the strengthening of the Council and removed the last obstacle to the marginalization of the Assembly, embodied in the USA's and the USSR's need to court members of the Non-Aligned Movement (NAM), or at least not to make them their enemies. The US-led intervention against Iraq in 1991, authorized by an almost unanimous Council, inaugurated the plan for a 'new world order' launched by George H. Bush, who assigned the Council, orchestrated by the USA, a new key role, symbolized by the convening of its first meeting at the level of heads of state and government (1992). Freed from the yoke of systematic vetoes, from 1991 to 1995 the Council was able to authorize more peace-keeping operations than in the previous 40 years. Its agenda began to broaden to include issues related to human rights, humanitarian intervention, as well as issues such as the fight against HIV and environmental protection, once the prerogative of the UNGA. The gradual reformulation of the concept of security in terms of multidimensional and human security facilitated this process.²⁸ Nowadays it may be said that harmony among the P5 has come to an end, and the Council is going through a crisis of legitimacy mainly due to its anti-democratic composition and decision-making process. However, this does not seem to have increased the importance of the Assembly, if one considers, on the one hand, that today's politics of bargained national interests in the Council is no longer paralysing and pragmatism prevails (Puchala *et al.* 2007, 56–57), and on the other, that the Southern countries now consider the Assembly 'a talk shop in decline' (Puchala *et al.* 2007, 58). The situation could even worsen if countries like Brazil, South Africa and India, champions of the Global South, achieved permanent seats on the Council, as many have proposed.

Therefore, the only real check on the power of the Council is within the Council itself, i.e. its decision-making process. The Council can only act if a majority of nine members is reached and no permanent member is contrary. This check mechanism is rather weak, especially if one considers the 'tendency among the permanent five to confine much of the work of the Council to themselves, turning deliberations into an exclusive club' (Razali 1994, in Köchler 2013, 263). Neither does information often circulate outside the club, making the excessive power of the Council the excessive power of the P5 (Bennis 2004).

In the light of this, it is not surprising that the Council has also gradually arrogated to itself quasi-legislative and legislative functions. In the early 1990s, it gave itself the power to establish international criminal tribunals, but the legality of these acts has been widely contested (Köchler 2003, 166–84; Sandholtz 2008, 135–40). This was the case for the Criminal Tribunals for the Former Yugoslavia (1993) and Rwanda (1994). More recently, there have been cases in which it has produced 'rather than commands relating to a particular situation ..., law for all states in a general issue area, without setting any time limit or conditions for terminating the obligations' (Johnstone 2008, 81–82). This is the case of Resolution 1373 of 28 September 2001, adopted under Chapter VII, which obliges all states to prevent and stop the financing and other forms of support of terrorist acts and organizations, thus extending the application of existing conventions on terrorism to the entire international community. The second case is that of Resolution 1540 of 28 April 2004, also adopted under Chapter VII, which requires states to refrain from supporting attempts to gain access to weapons of mass destruction by non-state actors, as well as to enact appropriate legislation to prohibit such phenomena and enforcement measures aimed at preventing the proliferation of these weapons.

On the contrary, the UNGA has not been given any legislative power by the Charter. Despite this, many authors recognize that 'given an expanded international society that needs and demands more rapid formulations of governing standards, the Assembly resolution can be understood as a modern adjunct to the traditional mode of law-creation by "international custom"' (Falk 1969, 69). From a technical perspective, the Assembly's Resolutions are nothing more than the expression of the will of the majority of the international community regarding what it deems mandatory in given circumstances. Hence, the solemn declarations broadly embraced during the voting would constitute fully fledged international law (see, for instance, the 1948 Universal Declaration of Human Rights).²⁹ Doctrine on this subject remains divided, while others assign it a quasi-legislative function, based on the fact that the Assembly's resolutions, while not binding in and of themselves, may contribute to the creation of customary law as the praxis of states (Ziring *et al.* 2000, 44–45).

6 Supranationalism

Many consider the UN to be a confederation like the League of Nations and most of the other IOs: an association of sovereign states that have underwritten a treaty to agree on given questions (e.g. Archibugi 2008a, 102). At the centre of the confederal model of the union of states is the autonomous state, thus excluding any element of supranationalism.

The UN may largely fall into this model, albeit not completely. In particular, some 'interstices of supranationalism' can be identified, which have developed over time without any formal amendment to the Charter.

Membership. The UN is exclusively composed of states and there are no bodies in which citizens are represented. As will be noted later in

Table 4.1 The confederal model of union of states

| | |
|---------------------------|--|
| Components | Members are governments and not individuals. |
| Citizenship | Individuals have neither rights nor duties vis-à-vis the confederation, except those envisaged by their own state. |
| Membership criteria | Merits of the candidates' political constitution are not analysed. Accepted members are governments that have effective control of the territory whose membership is deemed advantageous to the other members. |
| Decision-making criterion | There is formal equality among states, embodied in the principle of 'one state, one vote'. |
| Internal sovereignty | Internal sovereignty is held by the member states. |
| External sovereignty | External sovereignty is partially relinquished even though foreign and defence policy is the exclusive prerogative of state governments. |
| Powers of coercion | The confederation has no powers of coercion of its own. Its military actions rely on the armies of the members states. |
| Jurisdiction of states | No compulsory jurisdiction is envisaged. Any legal power that exists is more arbitrational than jurisdictional. |
| Criminal jurisdiction | Absent. Only the national courts have jurisdiction in individual crimes. |
| Participation | The participation of member states is voluntary and revocable. |
| Territorial delimitation | The borders delimiting each state are accepted by all members and may be modified only on a consensual basis. |

Source: Archibugi 2008b, 103–06

this chapter, NGOs participate in different ways in the activities of the organization, but they hold neither rights nor duties with respect to it.

Decision making. Even the decision-making processes within the UN political bodies tend to be of an intergovernmental nature, and here a few clarifications need to be made. Traditional confederal organizations may produce acts that are binding upon the states, but only when the latter have approved them and have expressed their intention to be bound by them. This results in respect for the principles of sovereign equality ('one country, one vote') and unanimity in the decision-making processes. From this perspective, elements of supranationalism can be found in the United Nations, not so much in the UNGA, which decides by majority but has no binding powers,³⁰ as in the Council. In fact, a small assembly of 15 members makes decisions that bind the entire membership of the UN and has the authority to enforce them, even with the use of force if it deems that their non-implementation is likely to threaten peace and international security. The objective of Art. 43 *et seq.*, which have never been applied, was precisely to equip the Council with the adequate military capabilities of coercion, provided also on a permanent basis by the states and managed by a Military Staff Committee composed of the chiefs of staff of the P5. The restricted nature of this body and its power to bind the entire international community constitute elements of supranationalism as well as the majority principle (nine out of 15 members), provided for as a general rule for the Council's decision making. They are, however, largely deprived of their potential by the diabolic right of veto that the P5 may exercise in non-procedural matters.³¹

This prerogative (or privilege) has had a devastating effect on the UN, probably much more than the drafters of the Charter had envisioned. Far from being responsibly used by the P5, as they had promised in San Francisco, it was immediately used carelessly, often for purely propaganda purposes (for example, France threatened on several occasions to use it to prevent the election of secretaries-general who could not speak French properly; Polvi 2005). After 45 years characterized by the frequent use of the veto, first by the Soviets (1946–65) and then by the USA (1966–89), it has declined since the end of the Cold War and was not used at all from 1990 to 1993, while from 1993 to 1997 it was used on only three occasions, despite the Council's considerable increase in activity compared to previous decades.

However, statistics do not include veto threats, which are still being used today and are sufficient to prevent a particular matter from being voted on, and even from being discussed in the Council (so-called 'prenatal' effect of the veto; Wilcox and Marcy 1955, 315–16).³² Therefore, the very existence of the right of veto compromises the functionality of the system of collective security, and its effects also have an impact on the entire UN system. For example, when the International Criminal Court came into operation on 1 July 2002, the USA did not hesitate to threaten to veto any future peace-keeping operations unless its soldiers were granted immunity from the court's jurisdiction.

Implementation of decisions. The elements of supranationalism cited above are also weakened by the fact that the implementation of decisions ultimately depends on the autonomous will of the member states. One of the main causes of the failure of sanctions imposed by the Council is precisely their non-implementation by the states, especially by the great powers (Mack and Khan 2004, 112–13), while the UN's lack of civil and military forces implies that any peace-enforcement or peace-keeping action must rely upon the armies of the member states and the willingness of their governments. It is not therefore surprising that, on the one hand, since the 1990s sub-contracting peace enforcement to self-appointed groups of states has become common practice, and on the other, that the Council's requests for troops for missions in hazardous locations such as Somalia, Haiti, the Democratic Republic of the Congo, Liberia and Sierra Leone have been welcomed rather half-heartedly (Luck 2006, 53–55).

Domestic jurisdiction. The confederal model ensures absolute respect for the domestic jurisdiction of the states by the organization. In fact, this is laid down in Art. 2(7) of the Charter, which states that 'Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state'. However, the fall of the Berlin Wall and the acceleration of globalization have laid the foundations for the progressive erosion of the principle of non-interference. The new transnational wars in the 1990s, characterized by the gross violation of human rights used as a real instrument of war, opened a debate on the relationship between sovereignty and intervention. The new context and new emergencies made it necessary to re-conceptualize sovereignty as the state's responsibility to protect its citizens, rather than as an inviolable

right of the state (Deng *et al.* 1996). On several occasions Kofi Annan insisted on this rethinking (Annan 1999), stating that the principle of non-interference did not justify the gross violation of human rights by the state, which was an 'instrument at the service of its people, and not vice versa'. The International Commission on Intervention and State Sovereignty (ICISS), sponsored by the Canadian government, developed the so-called Responsibility to Protect (R2P) doctrine (ICISS 2001). It provides for a sort of subsidiarity of responsibility, according to which it is the international community's duty to interfere in the domestic jurisdiction of a state when it commits gross violations of human rights within its territory or does not have the ability or the will to prevent them.

On the other hand, since 1991 the UNSC has begun to authorize coercive measures on the grounds that gross violations of human rights are likely to threaten international peace and security, thus justifying UN action in accordance with Chapter VII of the Charter (MacFarlane and Khong 2006, 166–77). As has been noted, threats to peace have not always been real, but 'the Council exploited the underspecification of what such threats were in order to override Art. 2.7's protection of domestic jurisdiction for essentially humanitarian reasons' (*ibid.*: 168). The first case of this kind was the Somali civil war that broke out in 1991 following the flight of dictator Siad Barre. First, an embargo was imposed on arms transfers to the warring factions, then military action led by the USA (Unified Task Force—UNITAF) was authorized to remove obstacles to sending humanitarian aid and risks for relief personnel working in the country; and finally, a peace-keeping force (UN Operation in Somalia—UNOSOM II) was sent with similar objectives. The second case was the crisis in Bosnia in 1992, during which the Council took various actions under Chapter VII, including a peace-keeping operation (UN Protection Force—UNPROFOR) to facilitate the delivery of humanitarian aid and protect personnel on site, an arms embargo, a naval blockade, a system of sanctions and the creation of safety areas. The Council, under Chapter VII, has also established the first ad hoc international criminal tribunal since the Nuremberg Tribunal, the International Criminal Tribunal for the Former Yugoslavia.

However, cases such as the crisis in Rwanda in 1994 and, at present, in Syria, in which the Council has not found the political justification to intervene and stop the massacre of civilians still under way, show that this movement towards supranationalism and the relativization of sovereignty is far from rapid and obstacle-free. Thanks to the efforts made by Kofi Annan, the 'Responsibility to Protect' principles were recognized in the outcome statement of the 2005 World Summit,³³ even though their acceptance is far from unanimous. The reactions of many developing countries (e.g. most Latin American countries, India, Egypt, South Africa and Nigeria) have been half-hearted, while Russia, China, and Asian and the Middle Eastern countries, as well as 'pariah' states like Iraq, Iran, North Korea and Cuba, are openly hostile (Weiss 2000, 12). In any case, as long as decision-making power and the use of coercive powers are dependent on the will of member states rather than on a truly supranational authority, the policy of double standards will remain the rule and any doubts regarding the use of these principles as instruments of power politics will be a formidable deterrent to their diffusion.

Jurisdiction of states. Within the confederal organization, states may autonomously decide whether to accept the jurisdiction of a court in the area of dispute settlement. As already noted, this also applies to the UN, in which the compulsory jurisdiction of the ICJ has not been provided for. The Court has a supranational composition, as it is a body made up of individuals appointed *intuitu personae* and not of representatives of the states, but the independence granted to them by the Charter is not adequately ensured by the appointment mechanism (see para. 3). The right granted to the states parties to a dispute to appoint their own judge when not already present in the Court bears witness.

Criminal jurisdiction. The existence of a permanent International Criminal Court (ICC) performing the function of prosecuting genocide crimes, crimes against humanity and war crimes committed by individuals contradicts the confederal model. The court, which was established by the 1998 Rome Statute and came into force on 1 July 2002, is not a UN body, therefore the countries that are parties to the Statute do not correspond to the UN member countries, and the main countries that have not ratified the Statute are the USA, China and Russia. The prosecutors can act *motu proprio*: a) when prosecuting a national of a state party; or b) when the crime has been committed on the territory of a state party. However, the UNSC can autonomously refer to the court even in cases where neither of the two conditions is met. For example, Sudanese President Omar al-Bashir was indicted for genocide

Table 4.2 Changing patterns in the use of the veto in the Security Council

| Period | China* | France | Britain | United States | USSR/Russia | Total |
|---------|--------|--------|---------|---------------|-------------|-------|
| Total | 9 | 18 | 32 | 83 | 128 | 269 |
| 2012 | 2 | — | — | — | 2 | 2 |
| 2011 | 1 | — | — | — | 1 | 3 |
| 2010 | — | — | — | — | — | — |
| 2009 | — | — | — | — | — | — |
| 2008 | 1 | — | — | — | — | — |
| 2007 | 1 | — | — | — | — | — |
| 2006 | — | — | — | 2 | — | 2 |
| 2005 | — | — | — | — | — | — |
| 2004 | — | — | — | 2 | 1 | 3 |
| 2003 | — | — | — | 2 | — | 2 |
| 2002 | — | — | — | 2 | — | 2 |
| 2001 | — | — | — | 2 | — | 2 |
| 2000 | — | — | — | — | — | 0 |
| 1999 | 1 | — | — | — | — | 1 |
| 1998 | — | — | — | — | — | 0 |
| 1997 | 1 | — | — | 2 | — | 3 |
| 1996 | — | — | — | — | — | 0 |
| 1986–95 | — | 3 | 8 | 24 | 2 | 37 |
| 1976–85 | — | 9 | 11 | 34 | 6 | 60 |
| 1966–75 | 2 | 2 | 10 | 12 | 7 | 33 |
| 1956–65 | — | 2 | 3 | — | 26 | 31 |
| 1946–55 | 1* | 2 | — | — | 80 | 83 |

Note: * Between 1946 and 1971 the Chinese seat on the Security Council was occupied by the Republic of China (Taiwan).
 Source: Global Policy Forum website

(14 July 2008) for the first time precisely at the instigation of the SC, but at present the outcome of the trial leads one to make observations similar to those proposed for humanitarian intervention. Since the UN lacks coercive instruments, Omar al-Bashir's arrest warrant was entrusted to the states, which have not (yet) executed it. Although many African states signed the treaty establishing the court, the African Union (AU) has decided not to co-operate with it,³⁴ and the organization's Assembly has declared that any attempt to exercise universal jurisdiction against African leaders 'is a clear violation of the sovereignty and territorial integrity of these states' (Mills 2012, 418). The problem is that many people on the continent consider international criminal justice an insidious force, part of the North's 'legal campaign' against Africa aimed at recolonizing it. All of the ICC's ongoing cases are located in Africa, a fact that considerably aggravates this sense of uneasiness especially when the court is referred to by the Council, which is perceived as elitist and dominated by Northern countries.

The Secretary-General and the Secretariat. Although for some scholars it is 'bizarre' that the UN can be a partially autonomous actor in international relations and can take action independent of the will of the member states (Puchala *et al.* 2007, x), more and more scholars, especially the constructivist ones, believe that the IOs are comprised of individuals and that 'individuals matter'. This refers to what has been called 'the second United Nations'—the first being that of governments—primarily composed of the Secretary-General and the civil servants of the Secretariat, who may lead the organization to take individual actions or to move in directions that are unwanted or unexpected to those who appointed them (Oestreich 2012, 13; Mathiason 2007). The civil servants of IOs tend to consider themselves independent of the states, which leads them to seek ever greater independence (Cortell and Peterson 2006). This is especially true for large and complex organizations like the UN. The Secretary-General has, in particular, some space for manoeuvre, which may be, to a greater or lesser degree, broad depending on the international situation and the attributes of the holder of the office, but still broader than their colleagues in other IOs by virtue of his/her competences and visibility (see para. 2.2.6). As exemplified by the role played by Boutros-Ghali and Annan in expanding the UN democratic agenda and making it central to the organization (see para. 4), the supranational leadership of the Secretary-General heavily relies on his/her role as a 'norm entrepreneur', i.e. a promoter of ideas and their operationalization (Gordenker 2005; Haack and Kille 2012, 50). However, this greatly depends on his/her personal abilities and ability to interpret the constraints imposed

by the international system which, if too often overlooked, can result in unpleasant consequences for him/her.

All these 'interstices of supranationalism' represent the many fronts of the daily struggle between those who consider the UN an instrument of defence of sovereignty and those who call for more powers and supranationalism for it: more or less autonomy for the Secretary-General, more or less power and capacity for action in the event of the violation of human rights, more or less space for universal jurisdiction and the ICC, as well as the greater or reduced role of NGOs in the UN's activity. The positions of the different actors in the field vary depending on the issue and, above all, on the specific case.

The movement towards supranationalism is proceeding largely due to pressures exerted by globalization and through debates, ideas and the clash of national interests. It is a rough road, which is the reason why things are moving ahead slowly. However, they are moving ahead.

7 Interstate democracy

Traditional IOs are based on the principle of sovereign equality (one country, one vote) which, however, appears as an 'organized hypocrisy', a mask hiding power asymmetries and the traditional logic of power politics. The UN Charter acknowledges the tension between power and right, and provides for an UNSC controlled by the P5, along with the UNGA in which each state is represented on equal footing. The UNGA is therefore generally considered the *locus* of democracy in the United Nations and, as many parties have suggested, should be strengthened with respect to the Council to enhance the democratization of the organization. It is useful to note that it is true that each state is represented in the UNGA 'regardless of number of nuclear warheads or size of national treasury' (Bennis 2004, 127), but the principle of sovereign equality does not take into account population size, which means that San Marino counts as much as India, China or the USA.

On the other hand, the quality of states' participation in decision-making processes, within the UNGA and elsewhere, has always been heavily influenced by the deep and changing asymmetries in world power distribution. Generally speaking, when economic and military power is more widespread, member states can more freely contribute to the organization's activities and the rules contained in the Charter or issued by the UN bodies are better observed. Conversely, an undue concentration of power increases the likelihood of deviating from the rules and of large countries having greater influence over small ones.

For decades the strong asymmetry inherent in bipolarity has restricted the freedom of movement of all the countries in the two blocs, resulting in an almost automatic alignment of voting behaviours in the Council and the UNGA with the will of the two superpowers. The situation did not improve with the fall of the Berlin Wall, as the concentration of economic and military power in the hands of the only remaining superpower perpetuated its strong interference in the political choices of tens of countries. Yemen, for example, a non-permanent member of the Council at the time of the first Gulf War, paid dearly for its refusal to support Resolution 678 authorizing the intervention of the international community against Iraq. The USA completely cut its aid package (US \$70m.) to Yemen—one of the poorest countries in the region—and Saudi Arabia, which it supported, contributed to this memorable reprimand by expelling hundreds of thousands of Yemeni workers (Bennis 2004, 38–39). It was a warning for the future for countries with any plans to undermine decisions that were important to the USA. Every year, a few months before the opening of the regular session of the UNGA, the US mission to the UN publishes a compendium, specifying the issues Washington considers a priority and its position on all of them (Bennis 2004, 78). The WB and the IMF, more easily managed by the USA (see the chapters by Strand and Zappile in this volume) and not under the control of the UN, have been helpful on several occasions regarding this pressure. In the case of the first Gulf War, Washington offered aid, access to WB credit and the rearrangement of IMF grants or loans to Colombia, Ethiopia and Zaire, also non-permanent members of the Council, in exchange for their favourable vote (Bennis 2004, 36). Coercive measures and retaliation are not necessarily explicit. In fact, some have defined them as ‘psychological pressure on the South’: ‘Sometimes all it takes is for a poor country’s ambassador to be asked, pointedly, “Do you have a loan pending?” for them to get the message’ (Bennis 2004, 78; see also Bueno de Mesquita and Smith 2010). Under such pressure, it is not surprising that the countries of the South present in the Council have never reached the cohesion necessary to block a decision supported by the P5.

The evolution of asymmetries in power distribution has always directly influenced institutional balance and overall UN effectiveness as well. The USA was the only truly hegemonic power that emerged after the Second World War (Attinà 2003), and had conceived the UN as a tool to perpetuate its hegemonic position. On the one hand, the UN was functional to the preservation of the *status quo* which was in the USA’s best interests; on the other, the UN, together with other post-war international institutions such as the WB, the IMF and the General Agreement on Tariffs and Trade (GATT), can be viewed as an instrument through which the USA provided the ‘governed states’ with the necessary public goods (politico-military security, monetary stability, reconstruction and development) for its own international legitimacy.³⁵ After all, US control of the organization was assured: within the UNGA two-thirds of the member countries were aligned with it, while only one permanent member of the Council—the USSR—was hostile.³⁶ Not surprisingly, the isolated USSR made systematic use of the veto in the first two decades of UN history to block resolutions contrary to its national interests (see Table 4.2).

The Uniting for Peace Resolution in 1950 should be interpreted from this perspective. Even today, many propose it as a democratic solution to the problems resulting from the ineffectiveness of the Council (see, for example, ICISS 2001). It illegitimately granted³⁷ the UNGA the power to authorize armed intervention in the event that the Council was blocked by one or more vetoes, and was introduced by the USA in the Assembly to bypass the last obstacle to its complete control of the UN, i.e. the Soviet veto. Taking advantage of its automatic majority in the UNGA, the USA tried (and succeeded, at least temporarily) to undermine the institutional framework which it had itself created from 1943 to 1945.

The USA gradually found it increasingly difficult to control the UN, the membership of which doubled in 1960 as a result of decolonization. The establishment of the NAM, often supported by the USSR, and of the Group of 77 (G77), which clashed with the interests of the USA and the West, led the USA to use the veto more frequently and, under the Reagan presidency, financially boycott the UN. The amount of the regular budget (apart from the budget dedicated to peace-keeping and specific agencies) to be paid by each member state is apportioned by the UNGA on the basis of its contribution capacity, and therefore, *inter alia*, on the basis of national product, population and debt level (Smith 2006). Therefore, the amounts reflect the power asymmetries in the international system, and it is not surprising that the amount due by the USA is now 25%. This provides Washington with a

powerful lever to influence the UN according to its own priorities and interests. Not surprisingly, when in 1985 Swedish Prime Minister Olof Palme suggested that no member state should have paid more than 10% of the UN budget, the USA opposed it (Childers and Urquhart 1994, 154). Therefore, Washington’s refusal to pay a considerable amount of its dues was sufficient to create serious difficulties for the UN. The boycott of the Reagan Administration, under pressure from Congress, was part of an ideological framework pursuing deregulation and deinstitutionalization at both the domestic and international levels, but in 1995, under the Bill Clinton multilateralist presidency, US debt still amounted to US \$1,180,000m., including regular budget and unpaid peace-keeping assessments. The stock of US debt has increased and decreased over the course of time, but still today, under the Obama presidency, it is substantially high (approximately 36% of the total UN debt, as of May 2012).³⁸

Current trends in world power distribution in favour of post-state actors such as the EU and emerging powers such as Russia, China, India, Brazil and South Africa make the system increasingly multipolar (Telò 2006) and make US control of the organization increasingly difficult. The intervention in Iraq in 2003 was opposed in the Council by three out of five permanent members (Russia, China and France), a sign that the post-Cold War efforts of George H. Bush to transform the Council and the UN into an implementer of the policies promoted by the USA are no longer realistic. The UN failed to stop the illegal war against Saddam Hussain, but the international community’s frustration with Washington and its unwillingness to comply with UN multilateral commitments became clear, *inter alia*, after the USA failed to be elected to the Human Rights Commission in 2001 (the first in the UN history). Also for this reason, both McCain and Obama’s entourage, rather than promoting its relaunch, have suggested or promoted alternatives to the UN such as the League of Democracies or the strengthening of the G20.

Current multipolar trends can only help the future of the UN, because unipolarity compromises its functioning and prevents its reform, starting with that of the UNSC. Most of the reasons for the failure of the 2005 round of negotiations for UN reform originated from George W. Bush’s lack of interest, if not hostility, to any solution that altered a balance favourable to the USA. As noted by Weiss (2003, 159), it is useless fervently to discuss reform proposals in New York when power is centralized in Washington.

8 Input legitimacy

The development of a transnational sphere of political and social participation in which citizens’ groups, social movements and individuals interact, exchange views, debate and negotiate with each other, with various governmental and intergovernmental actors as well as the business world is an integral part of globalization, and as such accelerated in the 1990s. The sphere of civil society, which according to the Gramscian tradition (Gramsci 1971) lies between the scope of government and sovereign institutions on the one hand and the market on the other, is composed of a combination of individual and collective actors who, while acting as private entities, play a public role that concerns (and addresses) the common good (Barber 1998). Associations, non-governmental organizations, movements, discussion networks and religious circles are all actors that populate the area of civil society and, due to globalization, have partially developed a transnational dimension—which tends to be global—in terms of structure, focus and scope.

First of all, cost reductions and the increased speed of transportation and communication help national civil societies to overcome state boundaries and the exclusive relationship with their own state, connecting them in such a way that they begin to lose their national connotations (transnationalization) (Naughton 2001).

On the other hand, the growing urgency of ‘problems without passports’ has led many non-governmental actors to network and organize themselves—i.e. to create stable structures—at a global level. In other words, the inter- and non-governmental dimensions of the international organization process are both the result of pressure exerted by interdependence. The international NGOs (INGOs) are in fact the main component (but not the only one) of global civil society, and have dramatically increased in number in recent decades.

The existing economic and financial globalization, which is aggressive and non-regulated, is also a driving force for the development of global civil society, to the extent that it is perceived as a threat to the common good, both because it erodes state sovereignty, which still holds the only institutional means of self-government enjoyed by

citizens, and because it leads to social polarization, environmental degradation, unsustainable development and war.

8.1 The United Nations and the development of global civil society

The traditional function of civil society is to articulate political demands, which in the internal context of the nation-state are aggregated by the parties, i.e. converted into general policy alternatives (Almond and Powell 1966, 98), and transformed into policies and law by the government (along with the parliament, if it is a democratic state). As has been noted, 'unlike the early modern civil societies, which typically hatched within the well-established containers of territorial empires and states, global civil society has emerged and today flourishes in the absence of a global state or world empire' (Keane 2001, 36). Therefore, at the global level, there are no supranational government, no world parliament and no political parties.³⁹ Since IOs have proliferated and have increased their powers and competences, with some of them demonstrating their relative openness to non-governmental participation, many civil society actors have organized themselves at global and transnational levels in order to interact with them effectively.

The UN has provided significant incentives in this regard, for example, through the provision in Art. 71 of the Charter of the so-called 'consultative status' with ECOSOC to NGOs (see para. 10). During the Cold War years, many civil society actors channelled all their energies into issues such as human rights, the environment and social justice as well as opposition to the Viet Nam War and nuclear weapons, but these developments took shape entirely outside the UN (Falk 2005, 158). The 1990s marked a decisive change in direction. The so-called UN Global Conferences (Schechter 2005), the first of which was held in Stockholm in 1971 (Conference on the Human Environment), began to provide accreditation to NGOs on a systematic and regular basis. The Conference on Environment and Development in Rio de Janeiro in 1992 was an unprecedented initiative from this point of view, because it was open to a great number of NGOs, including many that did not enjoy consultative status with the ECOSOC. Their presence and their involvement in these conferences, to varying degrees depending on the situation, began to influence their final outcomes, so that soon a number of countries came to oppose their involvement.

For this reason, and because of the inability—or unwillingness—of the participating states to provide effective solutions, civil society has begun to meet in parallel summits in the same city and discuss the same themes of the conferences (Pianta 2001), articulating counter-proposals—and/or protests—which at times may be considered by the official summits.

Therefore, parallel summits and conferences provide civil society with the opportunity to influence governments and public opinion, but also carry out a process of 'internal strengthening' through networking among the actors involved. This aspect is defined by the protagonists of parallel summits as one of the biggest and most important successes of such initiatives (Pianta 2001, 185–86).

The UN also contributes to networking through the process of internationalization of human rights (see para. 9), i.e. the development, since the 1948 Universal Declaration of Human Rights, of an international code of human rights and of political, quasi-judicial and judicial instruments to ensure their observance. Frequent references to the international law of human rights as a parameter to justify their campaigns and political demands provide a broad range of actors—from eco-pacifist associations to those advocating human rights and democracy, from popular movements working to create social and economic justice to indigenous peoples fighting for the right to exist—with a cultural and operational reference paradigm as well as legitimacy as political actors in the international system (Mascia 1993). Moreover, the affirmation of the interdependence of all human rights—civil, political, economic, social and cultural rights, right to the environment, peace and development—spreads awareness of the interdependence of their campaigns among the actors of global civil society, favouring their convergence on common goals.

Furthermore, the absence of a world supranational authority able to guarantee the global common good and effectively respond to the political demands articulated by global civil society, urges it to develop an interest in how global governance works and the issue of its reform (Mascia 1991, 176). Some of its actors show signs of their rejection of international institutions, which are considered a vehicle for neoliberal globalization, and are calling for a return to the centrality of the nation-state. While the WB, the IMF and the WTO (the so-called 'trinity' of

globalization) are the usual objects of their disgust, the UN is generally exempted, due to its relative degree of openness to civil society and to the needs of the countries of the South, and also because the merits of its objectives are being recognized. Others believe that globalization should be 'civilized', hence governed by supranational and democratic structures. So far, the most radical reform proposals of the UN come precisely from civil society, such as the establishment of a United Nations Second Assembly representing the peoples of the world. The International Network for a United Nations Second Assembly (INFUSA), established in 1986 and comprising more than 100 NGOs, or conferences such as CAMDUN-1 and CAMDUN-2 (Conference on a More Democratic United Nations), respectively organized in New York in 1990 and Vienna in 1991 (Barnaby 1991; Segall and Lerner 1992; Köchler 1993), were pioneering networking attempts by civil society regarding the theme of the democratic reform of the UN. In 1995, the year of the 50th anniversary celebration of the UN, the first meeting of the Assembly of the People's United Nations was held in Perugia, Italy, a civil society conference attended by representatives from more than 100 countries, each invited by an Italian local authority. Since then, the Assembly, organized by the *Tavola della Pace* (Peace Roundtable) co-ordinating 500 local and national Italian groups and 350 local authorities, has been held every two years with different focuses, albeit always related to the call for a new democratic world order (Lotti and Giandomenico 1996), which cannot be separated from the revitalization of the UN. Even events with rather substantial global participation, such as the World Social Forum, the first of which was held in Porto Alegre in 2001, regularly hold conferences on the reform of the United Nations. This is a sign that many civil society organizations (CSOs) perceive that institutional reform is critical to the successful pursuit of their own statutory objectives—such as, for example, environmental protection, development co-operation and worker protection—thus responding to the appeal of the Commission on Global Governance, which in its report *Our Global Neighbourhood* (1995), in putting forward various proposals for strengthening the UN, argued that:

A special responsibility devolves on the non-governmental sector. If our recommendations and those from other sources are worthy of support, international civil society must prevail on governments to consider them seriously. By doing so they would ensure that 'WE THE PEOPLES' are the main instruments of change to a far greater extent than they were fifty years ago ... Governments can be made to initiate change if people demand it ... If people are to live in a global neighbourhood and live by neighbourhood values, they have to prepare the ground.

Some authors—whose opinion is certainly shared by many governments—argue that NGOs should stop trying to play a role in the construction of global governance, and instead start channelling their limited energies into grassroots contributions to human betterment (David Rieff and Kenneth Anderson, cited in Falk 2005, 164). On the contrary, others re-launch. Aware of governments' resistance to calls for change coming from CSOs, they propose that global civil society also take on a constituent function, by waging a non-violent revolution for the creation of a new democratic international order (Papisca 1995). Gramsci himself had a good understanding of the revolutionary potential of civil society (Bobbio 1988). Attempts at this constituent—or co-constituent—function were made, for example, during the Millennium Forum, held in May 2000 at UN Headquarters, which brought together about 1,000 NGOs from all over the world. This single, isolated initiative could have become a de facto assembly of the People's United Nations, with the blessing of Secretary-General Kofi Annan. Even the creation of the International Criminal Court is largely due to pressure exerted by global civil society both during the launch phase of the project and in the drafting of the Treaty at the 1998 Rome Conference, as well as after its adoption, through the establishment of the Coalition for the International Criminal Court.⁴⁰ The statute has been signed and ratified by governments, but the ICC may rightly be called 'a global civil society achievement' (Glasius 2007).

9 Human rights

The promotion and protection of human rights are among the major contributions of the UN to global governance. After the 18th century theories on natural law (from John Locke onwards) affirmed the idea

that every human being has natural rights that cannot be denied him, not even by the state, and after the French and American Revolutions initiated the positivization of human rights in national constitutions, whereby their affirmation was put into action at the cost of their universality, the UN Charter launched a new phase in the history of human rights, i.e. their internationalization (Bobbio 1997, 52). This process entailed their codification within international law instruments and the construction of a special international system of guarantee. Two world wars, the violence of the Holocaust and the advent of nuclear weapons had cast doubt on the ability of the state to ensure the safety of its citizens, and this process can be interpreted as 'attempts (by the same citizens or humankind) to reclaim the rights that had been metaphorically "transferred" to the state' (MacFarlane and Khong 2006, 108–9). The internationalization of human rights implied that governments are not free to act as they see fit with respect to their citizens, and that they must be accountable to the international community or to the supranational bodies created by it. The Charter did not directly create a *system* for the protection of human rights, nor did it contain a list of rights to be protected, but rather it only included scattered references to human rights to 'establish a nascent infrastructure and goals for human rights enforcement' (Mertus 2009, 37). The Universal Declaration of Human Rights adopted by the UNGA in 1948 and defined as 'the Magna Carta of mankind' (Kennedy 2006, 180) was the first step. For the first time, a series of civil, political, economic, social and cultural rights were recognized in a single international document which, albeit with no binding force, soon became a fundamental tool available to public opinion world-wide (NGOs, media) to monitor the behaviour of governments towards their citizens and press them to protect human rights. However, the negotiations had highlighted the following inter-related issues, which are still far from being solved: issues of universality, interdependence and implementation of human rights.

The Declaration was approved with no votes against it, but many peoples subject to colonial rule (in Africa, the Caribbean and Asia) were unable to attend the conference; moreover, there were eight abstentions that challenged certain rights, such as freedom of religion (Saudi Arabia), participation in government (South Africa) and the prominence given to civil and political rights (the socialist countries). Although the Declaration is now mentioned in the preambles of almost all the documents adopted in the various regional systems for the protection of human rights (e.g. the AU, the Council of Europe—CoE and the Organization of American States—OAS), the question of universality clearly emerged again at the UN Conference in Vienna in 1993, convened to discuss the progress made since 1948 in the field of human rights. Several resolutions put forward at that meeting from Cuba, South Africa on behalf of the NAM, and China 'voiced essentially the same theme: human rights are culturally defined, and every country should promote human rights as its culture prescribes *free from interference by outside agencies*' (Puchala *et al.* 2007, 76). Art. 2(7) of the Charter was included precisely to protect state sovereignty, and during the Declaration negotiations, the majority of the delegates tried very carefully to avoid any language that implied any obligation of implementation. All the great powers had their own dirty laundry to deal with at home: the USA had racial discrimination, the USSR had the Gulags, France and the UK had colonial exploitation. The indivisibility and interdependence of human rights, which are today founding principles of the UN and its agencies and are repeatedly reaffirmed by the UNGA, the Secretary-General and the Office of the High Commissioner for Human Rights (OHCHR), albeit implicit in the Declaration, were at that time far from being shared. While Joseph Stalin's USSR could not be described as a champion of civil and political rights and gave high priority to economic and social rights, large areas of the US establishment still believe that these rights should fall within the competence of the UN specialized agencies and programmes, rather than of the human rights system (Schaefer and Groves 2009, 159).

The declamatory nature of the Declaration was also a sign that human rights were about to become one of the fronts of the battle to overcome state sovereignty and strengthen UN authority, essential elements for their protection.

9.1 The path to the enforcement of human rights

As has been noted, 'The global human rights regime involves widely accepted substantive norms, authoritative multilateral standard-setting procedures, considerable promotional activity, but very limited international implementation that rarely goes beyond mandatory reporting

procedures' (Donnelly 2003, 135). In fact, the Charter assigned competence in the field of human rights to various UN bodies, but gave them no explicit power of enforcement. The UNGA, for example, by virtue of Art. 13, giving it the power to 'initiate studies and make recommendations for the purpose of ... assisting in the realisation of human rights', has issued a number of important resolutions, including the Universal Declaration of Human Rights. These can exert significant influence, especially when directly accusing one or more states of gross violations of human rights, when authorizing the creation of special rapporteurs to investigate and report on particular issues referred to by ECOSOC, or when, after some time, they become international law (Mertus 2009, 40). ECOSOC, given the power in Art. 62 to make or initiate studies and reports and make recommendations on human rights, has addressed several issues such as genocide and the protection of minorities. In 1946, in accordance with Art. 68, which provides for the power to set up committees for the promotion of human rights, established the Commission on Human Rights (UNCHR), which soon became, under the chairmanship of Eleanor Roosevelt, the central pillar of the entire UN human rights system.

For its first 25 years, however, the commission's interpretation of its competences was rather narrow. It focused especially on standard-setting activities (which are very important: in fact, the UNCHR drafted the Universal Declaration on Human Rights, later adopted by the UNGA), but it refrained from instituting any human rights enforcement and monitoring mechanisms, and the UN went on without them until the mid-1960s. Only then, under pressure by many developing countries emerging from decolonization and calling for a response to human rights violations in South Africa and the colonized countries, the UNCHR started studying gross violations of human rights (1967). Since 1970 it has also started to consider individual complaints on the basis of a particular procedure, amended in 2000 and now relatively open to public opinion, enabling ECOSOC to make cases submitted to the UNCHR public and publish its decisions on the website of the OHCHR. Furthermore, it has begun to use 'special procedures', such as the appointment of special rapporteurs or the establishment of working groups focused on particular issues, or more frequently, on particular countries where gross violations of human rights were believed to have taken place.

The new *modus operandi* of the UNCHR, which was tougher on the states, was soon challenged because of its excessive politicization. This was a clear congenital defect, as the commission was a political body and therefore inherently subject to exploitation and the risk of double standards. Apart from Russia, criticized for its human rights violations in Chechnya, the P5 have almost never been censured by the UNCHR; as the USA, among others, has complained, in 40 years more than 30% of the country-specific resolutions of the UNCHR have targeted Israel (Schaefer and Groves 2009, 140), and regimes such as that of Robert Mugabe in Zimbabwe have been spared any accusation of wrongdoing. In addition, many developing countries, fearing that the UNCHR was being used as a political weapon against them by the West, began to use their seats to block its action. The mechanism of members' recruitment, which was based on equitable geographical distribution regardless of the merits of the candidates, led to the paradox of a UNCHR composed of delegates from some of the bloodiest regimes (in 2002 Muammar al-Qaddafi was even elected as president).

George W. Bush was not the only leader to become quite impatient with the UNCHR, to the point that in 2005 Kofi Annan admitted that the politicization of its sessions and the selectivity of its work had produced distortions that were likely to undermine the reputation of the entire United Nations (UN Secretary-General 2005b). The UNCHR was thus replaced by the new Human Rights Council (HRC), established in 2006 by the UNGA with several initial flaws. First of all, its size, which was not unlike that of the UNCHR: 47 members (instead of the UNCHR's 53 and the 32 proposed by the USA). Although the UNGA resolution provided that the members were to be elected individually rather than by regional slates, and on the basis of their contribution to the promotion of human rights as well as their voluntary pledges and commitments, the traditional, non-merit-based principle of equitable geographical distribution prevails in practice: 13 seats for Africa, 13 for Asia, six for Eastern Europe, eight for Latin America and the Caribbean, and seven for Western Europe and others (Ramcharan 2011, 35–36). To avoid repeating the same selectivity of the UNCHR, the Universal Periodic Review (UPR) was established as an innovative mechanism through which the human rights records of every country are reviewed every four years, starting with the members of the HRC. However, the political nature of the HRC has begun very quickly to undermine this mechanism too. Its reports reflect the general tendency

not to offend the countries under review, and double standards in judgments are far from disappearing (Mertus 2009, 44). In addition, the special procedures in the transition to the new scheme of the HRC were weakened, to the extent that the experts were subject to a new 'code of conduct', which impinges greatly upon their working methods.

Therefore, the results of the political way to the protection of human rights have been unsatisfactory. However, the codification of the international law of human rights promoted by the UNCHR opened the way for a parallel track, which could be defined as 'quasi-judicial', and its results have been 'quietly encouraging' (Weiss *et al.* 2004, 175). The International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights, both of which were adopted in 1966 and came into force 10 years later, were then followed by seven other covenants on specific issues—Racial Discrimination, Discrimination against Women, Torture, the Rights of the Child, the Rights of Migrant Workers, the Rights of Persons with Disabilities, and Enforced Disappearance. Specific committees, composed of independent individuals, selected on the basis of their expertise and their 'high moral character', have been set up to uphold them. These committees perform some or all of the following functions: they examine regular reports that the member states of the Covenant are required to submit on their compliance with the rights contained therein and issue recommendations to these states to improve their performance; consider communications submitted by states about the violations of the Covenant by other states and communications (complaints) by individuals and NGOs; carry out inquiries with possible fact-finding missions in states in the event of reported serious and systematic violations of the Covenant; and produce general comments interpreting the contents of the Covenant.

The treaty bodies have been able to bring about actual changes in the domestic laws of states, thanks to the independence and competence of their members as well as their ability to acquire in-depth and timely information on the behaviour of states. However, their impact depends very much on to what degree their unbiased output is amplified in public opinion. The contribution of NGOs is essential for this purpose, and it is no coincidence that it is precisely the machinery for the protection of human rights that offers countless opportunities for participation to global civil society (see para. 10). Ultimately, however, the success of the quasi-judicial track depends on the willingness of states to respect the treaties and to be monitored by the committees. Many countries are reluctant to submit their reports, which are often superficial or do not correspond to the truth, while the so-called 'treaty congestion', which could prevent states from honouring overly onerous reporting commitments, does not seem a plausible justification.

The end of the Cold War, the spread of new transnational wars (Kaldor 1999), the use of gross violations of human rights as instruments of war, and the strengthening of global civil society have opened a new era in human rights implementation and enforcement. At the strong instigation of global civil society, in 1993 the Vienna Conference established the High Commissioner for human rights, an independent authority that provided a face for the UN Human Rights System, and was entrusted with rather vague but very challenging tasks such as to engage in dialogue with governments in order to secure respect of human rights, ensure the co-ordination of activities in favour of human rights in the UN system, remove obstacles to the full realization of human rights by promoting co-operation between the states and improve the efficiency and effectiveness of the human rights system. In addition, Kofi Annan has entrusted the High Commissioner with the task of mainstreaming human rights in all UN activities and agencies. The High Commissioner was put in charge of the OHCHR, which, although suffering from a chronic lack of resources and staff, over time has reached 850 units (2008), distributed between Geneva and New York. Like the Secretary-General, much of the impact of the High Commissioner depends on his/her personal characteristics, ability to interpret the international context and the intergovernmental environment and way of understanding the office, which may sometimes lead to clashes with the great powers. For example, after the first High Commissioner, Ecuadorean José Ayala-Lasso, who exercised quiet diplomacy rather than being a visible public advocate, Irish Mary Robinson did not hesitate to criticize openly many countries for their violations of human rights, including the USA for the Guantánamo prisons, Israel for the occupied territories, Russia for its repression in Chechnya and China for more than one reason (Weiss *et al.* 2004, 184; Mertus 2009). It is, therefore, unsurprising that the USA and Russia opposed her re-election. The OHCHR provided a decisive contribution to the establishment of human rights field missions, autonomous or

as part of peace-keeping operations, and to electoral assistance. However, several authors believe that the creation of this body has caused a certain amount of confusion in the human rights system, with overlapping competences with respect to the UNCHR/HRC and the Secretary-General.

New post-Cold War conditions have also led to the establishment of international criminal law, which punishes individuals who are responsible for gross violations of human rights (war crimes, crimes against humanity, crimes of genocide), and the establishment first of ad hoc tribunals for crimes committed respectively in the former Yugoslavia (1993) and in Rwanda (1994), and then of the ICC (1998). Therefore, even at the universal level, 50 years after the Nuremberg Tribunal, the jurisdictional way to the protection of human rights⁴¹ has been taken. On the other hand, in the 1990s, the enforcement of human rights became one of the concerns of the UNSC, which has repeatedly stated that gross violations of human rights constitute a threat to the peace, thus allowing the UN to intervene, overcoming the obstacles posed by Art. 2(7) of the Charter. The limits to both of these developments have already been observed (see para. 6), and overcoming them is one of the many fronts of the long battle for supranationalism in the UN.

In spite of these remarkable developments, the success of the process of the internationalization of human rights lies mostly in the gradual construction of a paradigm of values that has infused large sections of global civil society, has promoted its development and offered it new instruments for action (see para. 8). This process has been able to influence the concept of security (human security) and development (human development) as well as promote the rethinking of state sovereignty (R2P doctrine), and has fostered similar dynamics in different regional organizations.

10 We the peoples? Civil society participation in the UN processes

Although the Preamble to the Charter opens with the phrase 'We, the Peoples of the United Nations', there is no doubt that the official building blocks of the UN are its member states. However, the opportunities for participation offered to civil society do not even compare to those of the League of Nations, thanks to two inter-related factors: a) UN competences are incomparably greater and have substantially increased over time, which has led more and more civil society actors to seek to influence the UN decision-making process to achieve their own objectives; and b) actors such as NGOs have now become real actors in international relations, and their involvement is positive for the UN not only because they provide it with legitimacy, but also because they make it more effective. The formal and informal channels of participation of CSOs in UN activities have therefore multiplied over time, allowing their influence to grow dramatically, so that their contribution is now essential.

10.1 The front door to the United Nations: the consultative status with ECOSOC

These dynamics became immediately clear at the San Francisco Conference. The USA invited 42 NGOs to be members of its delegation in order to, *inter alia*, provide support to the new organization and ensure that the Senate would not oppose it, as happened with the League of Nations (Stephenson 2000, 273–75). The pressure exerted by them during the Conference was crucial for the inclusion of Art. 71 in the Charter, which provides that ECOSOC can 'make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence'. It was a victory for NGOs, the potential usefulness of which was recognized by the states and their right to participation institutionalized. The rules for granting the so-called 'consultative status' were set out in 1950 and then revised in 1968 and 1996. The current regime, governed by ECOSOC Resolution 1996/31 (the so-called 'Statute'), provides for 'general consultative status' to be granted to NGOs concerned with most ECOSOC activities and representative of major segments of society in a large number of countries in different regions of the world, which have substantive and sustained contributions to make; 'special consultative status' to be granted to NGOs known in their field but concerned with only a few areas of ECOSOC work; and a 'Roster' of NGOs that may provide occasional contributions to ECOSOC activities (Willets 2011, 34–35). For accreditation, all NGOs are required to be representative in nature, to have recognized international standing, democratic status, a permanent secretariat, a transparent budget and the legitimacy

to represent their own members as well as to draw their own financial resources mainly from their members and affiliated national associations.

The NGOs included in the first group (144, as of 1 September 2011)⁴² are entitled to participate in meetings, propose agenda items, submit short written statements and make oral presentations. Special consultative status (2,408 NGOs) grants the same rights, except the right to propose agenda items. The limits to the participation of the 984 NGOs included on the Roster are more stringent, since they can only participate in meetings that fall within their field and submit written statements only if invited to do so by the chair. The applications for consultative status are examined by a special committee on NGOs composed of 19 members appointed on the basis of the usual principle of equitable geographical distribution, which also decides when, if necessary, to suspend or withdraw consultative status.

The granting of consultative status is a key instrument for the participation of NGOs since it makes them legitimate international actors (Ritchie 1996, 180–81; Mascia 1991), as well as credible and useful actors that may also be involved by other UN bodies and even by other IOs. In addition, it opens the doors for them to the UN, allowing them to receive more information and especially to establish direct contact with the delegations of the member states. In fact, the influence of NGOs is being exerted not only through participation in formal debates within ECOSOC but also and especially in the vast hallways of the UN Headquarters and during the many side events such as lectures, seminars and debates organized by the states, the Secretariat or the NGOs themselves (Willetts 2011, 43). What's more, the work of the many ECOSOC functional commissions is more palatable than its official sessions, including in particular the Commission on Sustainable Development (CSD), the UN Commission on the Status of Women (CSW), and the Commission on Human Rights (UNCHR until 2006, then Human Rights Council, HRC), which in different ways but far more than others, attach great importance to the contribution of NGOs.

Consultative status provides privileged access to international conferences sponsored by the UN, i.e. ECOSOC and its commissions, the UNGA and the specialized agencies. Participation in these conferences, which, as already noted, has become far more widespread especially since the 1990s (Schechter 2005), has attracted increasing attention among NGOs and offered them greater opportunities to influence their work. They may be even more open to NGOs than ECOSOC itself, for example, due to the fact that they also admit organizations with non-consultative status. NGOs are often admitted to the pre-conference preparatory work, which, especially in the case of broad agenda, single-session conferences, can largely determine the final results of the conference. Here, as well as in the plenary session, NGOs' main source of influence is their expertise. In general, the newer the theme of the conference is in the area of intergovernmental action, the more likely it is that states and the Secretariat rely on NGOs to draft the preparatory reports, giving them the opportunity to influence significantly the setting of the agenda (Willetts 1996b, 49–50). Then, during the conference, their ability to influence is greater in the committees than in the plenary debates, during which their ability to take the floor can vary greatly depending on the rules of the conference. In general terms, 'NGO participation is likely to be allowed on a more informal, less restricted basis when the meeting is not the subject of public attention, when the subject matter is fairly technical, when a small number of delegates is present, when few of the delegates are lawyers and when there is a general desire to reach agreement by consensus' (Willetts 1996b, 50). Moreover, NGOs are often included directly by the states in their delegations. This especially applies to developing countries, which frequently lack the necessary expertise to deal with the proliferation of forums that require their presence; therefore, the participation of NGOs contributes to reducing inequalities among governmental delegations, in particular the knowledge gap (Falk 1998, 322), thus reducing the lack of interstate democracy in UN activity. At the 1994 Cairo Conference on Population and Development the US delegation itself was half composed of representatives of NGOs (Smith 2006, 133). Their impact on the outcome of the conference may therefore be considerable, even more so if the outcome of the conference is an international treaty, as in the case of the 1998 Rome Conference which established the ICC, or in the case of the Ottawa Conference which led to the Anti-Personnel Mine Ban Convention (1997).

10.2 Participation in other UN bodies

The participation of NGOs in the activities of bodies such as the UNGA and the UNSC has not been provided for in the Charter, because in 1945 the focus of NGOs was believed to have more to do with the matters of ECOSOC competences and because, especially in the case of the UNSC, the theme of international peace and security was understood as an exclusive domain of states. Nevertheless, over time these bodies have also partially opened to the contribution of civil society.

Concerning the UNGA, NGOs are not formally admitted to its regular meetings. From 1993 to 1996, when the reform of the Statute was underway, this issue was discussed, especially under pressure from developing countries. However, the USA opposed the participation of NGOs, fearing that the opening of the UNGA could set a dangerous precedent for the UNSC (Willetts 2011, 57). Furthermore, other countries of the South also oppose this prospect so as not to compromise the intergovernmental nature of this body (Willetts 2011, 59). However, NGOs are generally admitted to the UNGA special sessions and are often allowed by the UNGA to participate in its subsidiary bodies, some of which, like the HRC, maintain permanent relations with NGOs. Moreover, in June 2005 for the first time some 'Informal Interactive Hearings' were organized on the proposal by Kofi Annan and open to NGOs, the contributions of which were summarized and sent to the September official summit (Willetts 2011, 59).

The UNSC is less open to external inputs, but since the 1990s semi-formal and informal mechanisms for civil society involvement have been developed. As often happens, in fact, 'necessity becomes the mother of invention' (Luck 2006, 123). The strengthening of the leading role of the UNSC after 1989 as well as the diversification and complexification of the operations it authorizes—sanctions, peace-keeping, election monitoring, policing and post-conflict peace-building—made necessary 'the substantial incorporation of prominent humanitarian, human rights and development NGOs into the Council activities', especially those organizations already active on the ground in crisis areas (Graubart 2008, 158). The UNSC began to meet on a more continual basis and non-permanent members began to consider NGOs sources of information to exercise fully their responsibilities in the Council and act as counterweights to the large mission staff and vast intelligence capabilities of the P5 (Paul 2004, 374).

Therefore, in 1993 the so-called 'Arria Formula'⁴³ was developed, according to which UNSC members meet outside the Council Chamber with external experts and sometimes CSOs for frank exchanges of views on the pressing issues on the Council's table (Luck 2006, 123; Martens 2011, 52; Paul 2004, 379–80). These meetings are normally held once a month and attended by all UNSC members at the level of permanent representative or deputy. CSOs are involved especially in issues of human rights and humanitarian interventions and can sometimes exert considerable influence, as in the case of Resolution 1314 of 2000 on Children in Armed Conflict and Resolution 1325 of 2000 on Women, Peace and Security, both approved by the UNSC shortly after the Arria Formula meetings were held on these topics (Willetts 2011, 61). Over time, the Arria process has lost some of its appeal due to the declining participation of ambassadors and diplomats, which has led NGOs to divert part of their energies on informal and bilateral meetings agreements between individual NGOs and delegations of individual missions (Paul 2004, 380).

Another good example of NGO-UNSC co-operation is the Working Group on the Security Council, established in 1995 by James Paul, executive director of the Global Policy Forum. Initially focused on UNSC reform, it has established itself as a tool for dialogue between about 30 NGOs and the UNSC members. Similarly, the NGO Working Group on Women, Peace and Security was established in 2000 to promote the consideration of women's issues in response to conflicts (Martens 2005, 60). It should also be noted that several think tanks and university research centres based in New York are frequently invited by UNSC members to meetings organized to discuss difficult and emerging issues on the UNSC's table, and that the participation of NGO representatives in the formal meetings of the UNSC and its subsidiary bodies has recently increased (Luck 2006, 77).

10.3 NGOs and the UN human rights system

The involvement of NGOs in the UN human rights system is worthy of particular analysis, given their important contribution to its structuring. For example, in San Francisco the lobbying of NGOs was crucial for the inclusion of human rights among the competences of the new

organization, their contribution of ideas and documents was also important in the drafting of the Universal Declaration of Human Rights and subsequent international covenants. The OHCHR, first proposed in 1947, was only established in 1993 thanks to Amnesty International, which has reintroduced the idea after decades of neglect (Baehr 1995, 179–83).

Much of this contribution has been possible thanks to the prerogatives within the UNCHR (which has been the main driver of the internationalization of human rights) of NGOs holding consultative status with ECOSOC. They were entitled to, if permitted by their consultative status, propose items to be put on the agenda of UNCHR sessions, submit written statements relevant to the commission's work and be consulted by the commission during its meetings. In addition, NGOs were often required to carry out specific studies or investigations and prepare papers for the commission. The participation of NGOs in plenary sessions has considerably increased, if you consider that more than 2,000 organizations attended the 2005 meeting, as well as their ability to influence, if you consider that when the commission does act on serious violations in a country, it is usually because of NGOs, and the media (Howen 2005, 166).

The establishment of the HRC to replace the CHR has partly limited the participation of NGOs and partly opened new channels. On the one hand, the possibility of making oral statements before the commission, proposing agenda items and submitting studies on request are all qualitative losses since the HRC has been created (Ramcharan 2011, 117). In addition, the Council now meets for 10 weeks per year distributed over three sessions, instead of six weeks in a single session like the UNCHR, making the participation of NGOs more difficult, especially those less financially equipped. On the other hand, they still have the possibility of attending official meetings, which was not at all obvious given that the HRC, unlike the UNCHR, is not a subsidiary body of ECOSOC, but of the UNGA. Moreover, NGOs are eligible to participate in the plenary discussion of country reports under the UPR process.

Regarding the treaty bodies, their effectiveness depends very much on the contribution of NGOs, which, for example, are encouraged to submit written reports or information to the committees, especially for the purpose of reviewing the periodic reports of states. Since these reports are often elusive or not very accurate, the 'shadow reports' provided by NGOs are essential both as a source of counter-information and as a means of exerting pressure on the states (Mertus 2009, 68–69). They also participate in the production, by the committees, of general comments interpreting the related covenants, both by submitting parallel documents and by participating in thematic discussions. The NGOs themselves may also, where applicable, submit communications directly to the committees denouncing human rights violations by one state.

10.4 Resistance to participation

The UN thus provides multiple channels of access to non-state actors, in particular NGOs, each one with its own formal and informal rules. More than 500 NGOs seek to increase these opportunities through the Conference of NGOs in consultative status with ECOSOC (CONGO), which was established in 1948 with the aim of promoting and facilitating the effective participation of CSOs in the work of the UN and its agencies, influencing and democratizing global decision-making processes, as well as connecting with NGOs around the world to help them address more effectively the issues discussed in the UN forums (Bloem *et al.* 2008, 43–44). By contrast, states are often eager to limit civil society participation to preserve the intergovernmental nature of the organization and limit its interference in their internal affairs. Modes of resistance largely vary. The first, for example, is to delegitimize NGOs, which, unlike the states, would not be representative of any constituency. However, as noted among others by the Report of the Panel of Eminent Persons on UN–Civil Society Relationships (2004, 3), 'The legitimacy of civil society organizations derives from what they do and not from whom they represent or from any kind of external mandate. In the final analysis, they are what they do'. In other words, since they deal with 'human promotion' (Mascia 1991), they represent a sort of 'conscience of the world' (Willets 1996a).

Another mode of resistance by the states is to limit through the NGO Committee the accreditation of NGOs, closing the door to organizations that are potentially troublesome and contrary to national interests. Besides the requirements of Resolution 31/1996, the process of the accreditation of individual NGOs is in fact distorted by political considerations. This particularly concerns the human rights NGOs,

which are subject to more rigorous scrutiny since they are often a source of irritation for many governments. NGOs engaging in issues surrounding Chechnya or Kashmir can encounter, for example, quite a lot of difficulties when Russia and India are members of the committee (Martens 2005, 133). Even the withdrawal or suspension of consultative status are subject to distortion bias, if only considering that one of the possible causes of withdrawal is when an NGO engages in 'politically motivated acts against States Members of the United Nations contrary to and incompatible with the principles of the Charter'. The threat of withdrawal and suspension may sometimes become a real tool to limit the action of NGOs (Martens 2005, 132).

A third practice consists of influencing NGOs or even creating the so-called government-operated NGOs (GONGOs), i.e. NGOs sponsored and controlled by a government to defend national interests within particular forums, such as the UNCHR/HRC (McKeon 2009, 124). The extension of accreditation to national NGOs provided for under Resolution 31/1996 has increased conflict among NGOs with consultative status, because many national NGOs in developing countries are not truly grassroots movements and are influenced by governments, which causes friction with more structured and effective INGOs (Paul 1998, 2–3).

In the light of this resistance, it is not surprising that one of the main problems in the UN–civil society relationship is underfunding by the UN, i.e. the states. One of the consequences is that large Northern NGOs continue in practice to be favoured, accounting for 70% of the accredited organizations. As has been noted, 'it is a question not only of equity in the civil society world, but also of intergovernmental politics, since Southern governments see the domination of Northern NGOs in global policy forums as a prolongation of the long arm of Northern conditionalities' (McKeon 2009, 128).

Finally, it must be said that no progress is irreversible, as evidenced by the difficulties posed to the participation of NGOs by the transition from the UNCHR to the HRC. Rather, any broadening of the opportunities for participation of civil society is the result of the battle between opposing and changing forces that involve the same NGOs as well as the states and the Secretariat. The latter, in particular, is far from being monolithic in its attitudes. Compared to the often hostile attitude of many officials, who accuse NGOs of making their life more complicated (Alger 2002, 99), the Secretariat as a whole has sometimes proven to be the best ally of civil society. More than one SG has stressed the central role of NGOs in UN activity, and in 2003 Kofi Annan established the Panel of Eminent Persons on UN–Civil Society Relations with the task of putting forward proposals to relaunch partnerships with civil society. Among the many useful solutions proposed—from the extension of consultative status to the UNGA to the depoliticization of the accreditation process—little has been accepted by the states. Given the above considerations, it is no wonder.

11 Control

One of the objectives the UN shared with the League of Nations was to put an end to secret diplomacy, a practice that was jointly responsible for wars. The Headquarters of the organization, a 'glass building', was a symbol of this new practice of transparency, inclusiveness and openness to the scrutiny of states and citizens.

The Secretariat is responsible for promoting transparency and publicity through the Department of Public Information (DPI), which 'promotes global awareness and the greater understanding of the work of the UN, using various communications tools including radio, television, print, the Internet, videoconferencing and increasingly other new information technology'.⁴⁴ It manages, *inter alia*, the UN website, the UN News Centre, and disseminates the latest news from the UN, the Secretary-General and the 63 United Nations Information Centres scattered all over the world 'connecting the UN with the people it serves'.⁴⁵ Overall, it is a broad-ranging information system that also relies upon the partnership of 1,500 NGOs, only partly overlapping with the NGOs holding consultative status (Stephenson 2000, 279), which are associated with the DPI to promote the UN and disseminate information about the UN throughout the world. In this way, citizens, NGOs and the media can have access to everything that *should* be known, which in the case of the UN is a lot, but not everything. As has been noted, 'Though debates do take place in the Assembly, the more significant work of the UN happens in quiet consultation and negotiation. What the public hears is not the deliberation but only the resolutions' (Zweifel 2006, 70). The 'behind-the-scenes' negotiations take place everywhere: in the offices of the Permanent Representations, in

the hallways, in the meeting rooms before, after and during the meetings, as well as in restaurants. There is no doubt that informality and confidentiality hardly comply with the principle of transparency, but informal and out-of-the-spotlight contacts are obviously useful—if not necessary—because under these conditions it is easier to reach compromises and build coalitions and informal group of states, which are fundamental to the work of the UN (see, for example, Prantl 2006). One example amongst many others is the famous and successful Italy-led coalition called ‘Coffee Club’, founded in 1997 to counter a procedural plan drafted by Malaysian Ambassador Ismail Razaili to allow the enlargement of the SC to Germany and Japan (Mastrolilli 2005, 111; Bourantonis 2005, 82–85).⁴⁶

Therefore, the work of the UN takes place largely outside formal forums, and it cannot be any other way. This also applies to the UNSC, the lack of transparency of which, however, has caused growing impatience especially among medium-sized and small countries as well as throughout civil society for a good reason: it makes decisions on behalf of and potentially binding on the whole UN membership. The 1946 ‘provisional rules of procedure’ established that the meetings of the UNSC should be public, i.e. open to non-member states and NGOs, but also provided for the possibility of private meetings, i.e. restricted to Council members. This possibility was challenged by various countries led by Australia, on the grounds that this would be a reversion to secret diplomacy, and during the early years of the Cold War it was used only in special cases, such as the appointment of the Secretary-General (Sutterlin 1997, 8). The frequency of private and informal meetings has increased since the early 1970s in order to respond to the growing ineffectiveness of the UNSC, which following the enlargement of 1965 ‘on a few occasions ... turned into a mini-General Assembly, degenerating into a platform for the ideological battles between the North and South’ (Prantl 2009, 105). A spacious consultation room adjacent to the UNSC chamber was made available by Germany, with simultaneous translation services included (Sutterlin 1997, 8). After the Cold War, this tendency was even intensified to cope with the increasing workload of the UNSC (Prantl 2009, 106–7), to the point that much of the work of the Council took place in the informal meeting chamber, where the resolutions later adopted during the official meetings were often pre-concocted (Smith 2006, 239).

Many have pointed out that the informal meetings of the UNSC are necessary because they facilitate compromise, allowing the UNSC to cope with its workload and provide it with flexibility, allowing the involvement of third actors depending on the needs of the situation (regional organizations, non-member countries such as the troop-contributing countries, experts and NGOs). Therefore, they can be instruments of inclusion and in this regard have paradoxically contributed to the relative openness of the UNSC (think, for example, of the Arria Formula). However, their effects are always exclusive, since they are held behind closed doors, and the P5 use them frequently to make decisions without involving non-permanent members.

In recent years, pressure for greater transparency, especially exerted by the members of the NAM as well as by a front of countries led by the so-called Small Five (S5: Switzerland, Costa Rica, Jordan, Lichtenstein and Singapore), has led to an increase in formal meetings rather than in informal ones (Luck 2006, 19; Prantl 2009, 106–7) and to the gradual reform of the working methods of the UNSC. For example, it is now established practice for the president of the UNSC to brief non-members and often the press on the results of informal consultations, and informal consultations and their agenda are announced in advance in the *UN Journal*; tentative monthly forecasts and the provisional agendas for the Council’s upcoming work are now regularly provided to non-members, as are provisional draft resolutions; furthermore, the format of the UNSC’s reports to the UNGA has also improved (Luck 2006, 123; Wood 1996, 150–61). Also worthy of mention is the UNSC’s practice of holding open thematic debates in which non-member countries can participate also, and which, for some years, have been held one or more times a month. However, several non-member countries have complained that the decisions resulting from them are almost always concocted before the meeting, which means that their contribution is largely ignored (Security Council Report 2010, 9). From 1993 to 1995 the three Western Permanent Members supported improvements in transparency in order to ensure that the non-aligned states would moderate their demands for changes in the composition of the UNSC (Bourantonis 2005, 52). In general, however, the P5 have opposed a certain resistance to further steps in this direction, and steps back may not be ruled out. For example, in 2001 the practice of holding interactive wrap-up sessions at the end of a presidency was established, but in 2005 it was inexplicably halted

(Security Council Report 2010, 10). Attempts to make informal consultations a little more democratic and acceptable for non-members of the UNSC, then, have collided with the fact that these instruments, which are becoming more and more ritualized, are less and less attractive for UNSC member countries, to the point that they ‘delegate consultations on most issues to lower level meetings of experts. In effect this produces even deeper layers of informality and confidentiality’ (Security Council Report 2010, 9).

In short, the battle for transparency continues, but it will be difficult to do away with non-transparent practices in the near future. However, their negative effects are curbed partly by the increasingly careful monitoring of the (formal and informal) activities of the UN and almost all its agencies, carried out by a growing number of NGOs, websites and research centres, which know very well how to use unofficial information and documents from the delegates of the member states and members of the Secretariat. The same constant presence of NGOs in the ‘glass building’ ensures an outward flow of information, which would otherwise be unimaginable. Among the many examples are the website of the Global Policy Forum⁴⁷ and the website of the Security Council Report,⁴⁸ funded by non-permanent members of the UNSC such as Canada, Norway and Switzerland; or, on the specific issue of UN reform, the *reformtheun.org*⁴⁹ project, sponsored by the World Federalist Movement/Institute for Global Policy. Instruments like these have now become a reference point for NGOs and scholars from all over the world.

Efforts and opportunities to scrutinize the activities of the organization are therefore increasing, even though many states, especially the great powers, are making every effort to continue to fog up the windows of the UN building.

12 Conclusion

The UN was conceived as a strictly intergovernmental, oligarchic and authoritarian organization, and was believed to be able to end the scourge of war once and for all with these features. However, it is precisely these features that have prevented the UN from successfully achieving its objectives, i.e. securing international peace and security, development and human rights for all. Not surprisingly, many authors now suggest overcoming these structural limitations as the only way to re-launch the UN and save it from being marginalized. Overcoming these limitations means introducing in the UN substantial elements of international democracy, conceived according to the indicators covered in this chapter and in this book.

This chapter has attempted to highlight how the UN, in practice, is slowly moving in this direction. One of the UN’s biggest successes has been its contribution to the development of what may be called the ‘culture of international democracy’. The UN has for the first time institutionalized civil society participation in international relations under Art. 71. It has initiated and promoted the internationalization of human rights, which has gradually led to the reconceptualization of state sovereignty and, in combination with Art. 71, has powerfully spurred the development of global civil society, able to articulate political demands and promote the global good. Art. 28 of the Universal Declaration of Human Rights, stating that ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’, legitimates civil society to seek and promote effective and democratic global governance, starting with the UN itself, and calls upon the states to act accordingly. Many of the ‘ideas that have changed the world’ promoted by the UN (Jolly *et al.* 2009), from the responsibility to protect to human security and human development, are inherently linked to this culture and underpin the idea that global governance should produce global public policies for the benefit of human beings, who therefore must be able to participate in their drafting. This requires a democratic UN at the core of the system.

For more than 65 years, the Charter has remained almost unchanged, but the interaction (and confrontation) between NGOs, member states and the Secretariat has led to significant progresses in the democratization process. The relatively greater supranationalism of the UN, the relatively greater participation of civil society in its activities, its relatively greater ability to enforce human rights, the relatively greater autonomy of the Secretariat, mechanisms of appointment that are relatively more representative, these are all the open fronts of the daily struggle for the democratization of the UN, which has resulted in substantial improvements as well as in a few setbacks. There is no doubt that today globalization is the most powerful driving force in this

process, to the point that today, like the nuclear threat in the 1940s, the idea of world government is being re-evaluated among scholars and intellectuals. Any progress in the UN's democratization process is an advance in that direction.

Notes

- 1 Due to the limitations of the UN collective security system, many parties identify regional organizations as the subjects on which to focus to conduct peace-enforcement and peace-keeping operations, based on a division of work according to which the UN authorizes and the regional organizations intervene (Weiss *et al.* 2004). However, there are those who go further, providing the opportunity for these organizations to act independently from the UN and without authorization by the UNSC, to be possibly sought at a later stage (ICISS 2001, 54), based on precedents such as the Economic Community of West African States (ECOWAS) intervention in Liberia and Sierra Leone in the 1990s (Abass 2004, 102, 144–45).
- 2 Not surprisingly, in response to those advocating the strengthening of the G20, the so-called 'Global Governance Group (3G)' was created, calling for the limitation of its powers in favour of the UN. (Chowdhury 2010). The 3G is now composed of 30 states.
- 3 The proposal was later abandoned by Obama's entourage only because they realized that a similar idea had been put forward by the Republican challenger, John McCain. For an in-depth discussion, see below.
- 4 In fact, the US Congress did not ratify the Covenant, fearing that the organization might drag the country into conflicts in which it had no interest in participating.
- 5 A survey carried out in August 1946, exactly one year after the dropping of the atomic bombs on Nagasaki and Hiroshima, highlighted that 54% of Americans wanted the UN to be transformed 'into a world government with the power to control the armed forces of each country, including the United States': (1946–47) 'The Quarter's polls'. *Public Opinion Quarterly* 10 (winter): 618.
- 6 *The New York Times*, 25 December 1943.
- 7 Charles de Gaulle's France, the fifth power invited by Roosevelt to sponsor the conference, refused as it had been excluded from the Dumbarton Oaks Conference in order not to over-represent Europe.
- 8 The Declaration, signed by 26 countries, committed the signatories to fighting the Axis powers and not to seek a separate peace. At the same time, it aimed at identifying the core values on which to build the post-war future. An additional 19 countries signed the Declaration in the months and years to come.
- 9 One tragic example occurred in the aftermath of the war in the Congo (1960–64), when the USSR waged a political and legal battle to exclude expenditures on peace-keeping operations from the regular UN budget, and submit its apportionment to the decision of the UNSC, where the USSR had the right of veto (MacQueen 1999, 49–52). In addition, since 1986 the major financial contributors have requested that the budget be adopted by consensus, rather than by the two-thirds majority required by Art. 18.
- 10 The first emergency special session was convened in 1950 in the context of the Korean War.
- 11 A case in point concerns Malaysian Ismail Razali, President of the Assembly in 1996. During that year, a real struggle to reform the Council was underway within the Open-Ended Working Group on the Reform of the Security Council, chaired automatically by the president of the Assembly. As many have pointed out, Razali backed the reform proposal by Germany, Japan, India and Brazil with all the powers at his disposal. However, the proposal was opposed by a broad front of countries led by Italy (Bourantonis 2005, 74–86).
- 12 Before the 1965 reform, there were 11 members.
- 13 During the San Francisco Conference, many medium-sized and small countries protested the privilege granted to the five winners of the Second World War. However, they were told that the solution adopted was a step forward in terms of effectiveness with respect to the League of Nations, because now the harmful unanimity principle was limited to the P5, which ensured that they would resort to their privilege only when their vital interests were threatened (Russell 1958, 672). On the other hand, Roosevelt wanted the right of veto granted to the USA to make the new organization appear more 'acceptable' to Congress and so as not to repeat Wilson's mistakes; that privilege was later extended to the other great powers.
- 14 Some 20,256, as of 30 June 2011. This figure excludes personnel involved in field operations (UN Secretary-General 2011, 17–20).
- 15 Data on the troop provision come from the Global Policy Forum website: www.globalpolicy.org/images/pdfs/Contributions-Size_2011_Complete.pdf.
- 16 Data come from the observatory of the Global Policy Forum: www.globalpolicy.org/images/pdfs/2010.pdf. US debt, in particular, accounted for about one-third of the total debt to the UN (Dec. 2011).
- 17 See the Report of the Independent Inquiry into the actions of the United Nations During the 1994 genocide in Rwanda, 15 December 1999: daccessdds.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf.
- 18 Model A proposed by the High-Level Panel on Threats, Challenges and Change (2004), then taken up by Kofi Annan's report *In Larger Freedom* (2005), provided for six new permanent seats without the right of veto, two of which were for Asia, informally identified in India and Japan, two for Africa (not specified), one for Latin America and the Caribbean (Brazil) and one for Western Europe (Germany); in addition to these, the proposal envisaged three new seats rotating every two years. Conversely, Model B proposed not to increase the number of permanent members, but to create a new category of eight four-year renewable seats (as opposed to the current two-year and non-renewable seats allocated to non-permanent members), and an additional seat with a normal two-year rotation. The choice would have been left to the major financial and troop-contributing countries *in the various regional groupings*.
- 19 In 1946 this ratio was in fact approximately equal to 20% but gradually decreased following the entry of new countries into the organization as a result of decolonization until, in 1965, under Resolution 1991 A (XVIII) of the UNGA, the UNSC was expanded to 15 members, increasing the proportion from 9.9% to 13.5%; however, the situation worsened again with a subsequent increase in membership, which again lowered this ratio to the minimum reached with the entry of South Sudan in 2011, i.e. 7.8%.
- 20 Trygve Lie (1946–53), Norway; Dag Hammarskjöld (1953–61), Sweden; Kurt Waldheim (1972–82), Austria.
- 21 The Permanent Court of Arbitration, established by the Hague Conventions of 1899 and 1907, is not a permanent court, but a list of persons appointed by the states, who form the national groups from which the parties to a dispute choose the components of the ad hoc tribunal.
- 22 The issue of the 'cascade effect' was first mentioned by Argentina in a working paper in 1995 (UN Doc A/49/965) and then put forward again by Costa Rica in 2005 (UN Doc A/59/856).
- 23 In particular, beginning with the Berlin crisis in 1948, which led to the solidification of the East–West conflict, the Soviet veto prevented the new countries that were former colonies that had gained their independence from entering, since most of the applications for membership came from countries in the Western camp. The West, in retaliation, prevented the entry of Albania, Mongolia and Bulgaria.
- 24 Clarence Streit, a *New York Times* correspondent at the League of Nations, in his book *Union Now* published in 1939, proposed the creation of a federal union of democracies to oppose the Axis powers (Streit 1939). To promote it, in 1940 he founded the organization called Federal Union. He believed that even the formation of the most modest federal union was not possible without sharing common values such as freedom and democracy. On the other hand, a federal union composed of a core of 15 democratic powers could prevent the war by setting an example and through its overwhelming economic, social and military force. Subsequently, in 1941 Federal Union split over partial vs. universal federation and Streit's group remained faithful to the initial approach, which was slowly declining (Baratta 2004a, 13, 49–59). Subsequently, in 1949 he presented a new version of his book with a new subtitle: *A Proposal for an Atlantic Federal Union of the Free*, in which he advocated a federation composed of the USA, Canada and European countries, which later were to become the North Atlantic Treaty Organization (NATO) (Yunker 2011, 50–51).
- 25 Data are available at: www.un.org/democracyfund/Donors.
- 26 Available at: www.un.org/democracyfund/Docs/UNSG_Guidance%20Note%20%20%20/On20Democracy.pdf.
- 27 The intervention in Iraq undertaken by the USA, leading a coalition of the willing, as well as by China and Russia, was opposed even by democratic countries such as France and Germany. The Rwandan genocide, however, did not lead to any action by the UN because of the lack of political will by the international community, the USA in the lead.
- 28 For example, in 2000 the UNSC declared HIV/AIDS a threat to peace and international security (Resolution 1308, 17 July 2000), and on 17

- April 2007 the Council met to discuss global warming, during which the connection between environmental protection and threats to peace and international security was repeatedly stressed (Brown and McLeman 2009).
- 29 The Universal Declaration on Human Rights did not receive any votes against, but only the abstention of eight states (out of the 56 that were then members of the United Nations), six of which were countries of the Soviet bloc. Archibugi and Beetham (1998, 24) also points out that among these eight states, after more than 50 years, only one regime has survived unchanged to the present day.
- 30 In addition, over time the practice of consensus has become established.
- 31 The Charter does not specify what 'procedural' means, so that during the first 15 years of the UN's activity the practice of 'double veto' was established, the first to prevent an issue from being defined procedural and the second 'on the substance'. Fortunately, this practice was later abandoned, as the praxis regarding what should be defined as procedural became more detailed (Bailey and Daws 1998, 225).
- 32 To give just one example, the intervention in Kosovo in 1999 was not even discussed in the Security Council because of the well-known opposition of Russia and China.
- 33 UN 2005 World Summit Outcome, A/60/L/1, 15 September 2005.
- 34 The states parties to the Statute thereby accept the jurisdiction of the court and are obliged to co-operate with it and, in particular, are required to arrest and surrender to the court individuals for whom an arrest warrant has been issued (Arts. 89 and 93 of the Rome Statute).
- 35 Attinà (2003) noted that during the Cold War, the USA, with or without the UN, guaranteed the public good 'security' to the system, when minimally considered as the probability of a state to survive an aggression. The only three exceptions are the invasion of South Viet Nam by North Viet Nam, the invasion of Tibet by China and the invasion of Western Sahara by Morocco.
- 36 After the 1949 communist revolution in China, the Nationalist government was forced into exile on the island of Formosa, now known as Taiwan, still holding its permanent seat in the UNSC, thanks to US support. The situation changed in 1971, when the People's Republic of China took over Taiwan.
- 37 Art. 12 of the Charter grants the UNGA the power to discuss any matter relating to the maintenance of international peace and security, although not while the UNSC is already working on it, and especially not to authorize measures involving the use of force.
- 38 Data available at: www.globalpolicy.org/images/pdfs/US_vs_Total_Debt2012.pdf.
- 39 The big party families have historically merged together into party internationals, which, however, are confederal structures, unsuitable for aggregative functions (Levi 2005). The case of the Transnational Radical Party (www.radicalparty.org) is somewhat different, because it is truly transnational in that anyone from any country can join it, without having to be member of a national party. The affiliation relationship member/transnational party is therefore direct. Paradoxically, however, it is also a trans-party actor, in that members of non-radical parties can also join it. In effect, it is not a real party—and cannot be as the objective of parties is to obtain the power to govern—but rather an INGO that has obtained consultative status with ECOSOC.
- 40 The Coalition for the International Criminal Court (CICC) includes 2,500 civil society organizations from 150 different countries working in partnership to strengthen international co-operation with the ICC; to ensure that the Court is fair, effective and independent; to make justice both visible and universal; and to advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.
- 41 Instruments for the judicial protection of human rights had already emerged decades earlier within the framework of regional and inter-regional organizations such as, for example, the CoE and the OAS.
- 42 Data on the consultative status are available online at: csonet.org/content/documents/E2011INF4.pdf.
- 43 In March 1992, during the crisis in the former Yugoslavia, Ambassador Diego Arria of Venezuela, the then President of the UNSC, invited other UNSC members to meet with a Bosnian priest for a coffee in the delegates' lounge—therefore, for the first time outside an official meeting (Paul 2003).
- 44 United Nations Information Centres webpage: unic.un.org/aroungworld/unics/en/whoWeAre/aboutDPI/index.asp.
- 45 unic.un.org.
- 46 Razali Ismail was simultaneously the president of the UNGA and of the Open-ended Working Group on the Security Council Reform.

The 'Club' regularly met at the café, and it was there that it was consolidated.

- 47 www.globalpolicy.org.
48 www.securitycouncilreport.org.
49 reformtheun.org.

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