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Section thématique 45 | Organisations internationales et acteurs non étatiques: vers de nouvelles pratiques démocratiques dans l'espace international?

Between constraint and strategic resource: the openness of the United Nations High Commissioner for Refugees (UNHCR) to Non-Governmental Organizations (NGOs)

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Introduction

During the last decade, a number of academic works have considered the role of Non-governmental Organizations (NGOs) in the negotiation and implementation of the international environmental policies[1]. However, these studies sometimes offer a generalist approach to the opening of International Organizations (IOs) to NGOs[2], but fewer are those who are interested in areas other than the environment[3]. The opening of IOs with expertise in international migration to NGOs has thus been hitherto a rather neglected topic, while – or perhaps because? – questions pertaining to territorial asylum and migration represent critical case studies as regards the evolution of state sovereignty and the opening of international *fora* to "new" actors such as NGOs. Academic studies on migration NGOs and IOs currently serve mainly the purpose of deploring this lack of in-depth studies, or of justifying these gaps in concluding that the trend is to limit rather than to expand the entry of NGOs in the intergovernmental decision-making processes.

The IOs' opening to NGOs has been the subject of many theoretical and empirical studies in international relations[4]. However, two limitations appear to affect the majority of these studies.

First, most of them imply that the process of democratization within OIs remains partly based on an increased openness to and a deeper involvement of NGOs. Two problems derive from this assessment. On the one hand, no quantitative study, to the notable exception of Tallberg[5], specifically assesses the supposed increase in the number of NGOs involved in IOs – none existing in the field of migration. It thus remains questionable to present this openness as being a general trend throughout the recent decades within all kinds of IOs. On the other hand, few studies – and they generally relate to specific IOs and not on specific policy areas –

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[1] Michele Merrill Betsill et Elisabeth Corell, *Ngo Diplomacy: The Influence of Nongovernmental Organizations in International Environmental Negotiations* (MIT Press, 2008); P. Glasbergen, Frank Biermann, et A. P. J. Mol, *Partnerships, Governance and Sustainable Development: Reflections on Theory and Practice* (Edward Elgar Publishing, 2008).

[2] Michael N. Barnett et Martha Finnemore, *Rules For The World: International Organizations In Global Politics* (Cornell University Press, 2004); Magdalena Bexell, Jonas; Jönsson Tallberg, et Anders Uhlin, « Democracy in Global Governance: The Promises and Pitfalls of Transnational Actors », *Global Governance* 16, n° 1 (2010): 81‑101; Steve Charnovitz, « Two Centuries of Participation: NGOs and International Governance », *Michigan Journal of International Law* 18 (1997 1996): 183; Andrew F. Cooper et Brian Hocking, « Governments, Non-governmental Organisations and the Re-calibration of Diplomacy », *Global Society* 14, n° 3 (2000): 361‑376; Eva Erman et Anders Uhlin, éd., *Legitimacy Beyond the State?: Re-examining the Democratic Credentials of Transnational Actors* (Palgrave Macmillan, 2010); Ann Florini, *Third Force, The; The Rise of Transnational Civil Society* (Carnegie Endowment, 2000); Christer Jönsson et Jonas Tallberg, *Transnational Actors in Global Governance: Patterns, Explanations, and Implications* (Palgrave Macmillan, 2010); Peter Willetts, *Non-Governmental Organizations in World Politics: The Construction of Global Governance* (Taylor & Francis US, 2010); Peter Willetts, « *The Conscience of the World »: The Influence of Non-Governmental Organisations in the Un System* (Brookings Institution Press, 1996).

[3] See for instance: Charlotte Dany, *Global Governance and NGO Participation. Shaping the Information Society in the United Nations* (Routledge, 2012).

[4] Barnett et Finnemore, *Rules For The World*; Bexell, Tallberg, et Uhlin, « Democracy in Global Governance »; Charnovitz, « Two Centuries of Participation »; Cooper et Hocking, « Governments, Non-governmental Organisations and the Re-calibration of Diplomacy »; Erman et Uhlin, *Legitimacy Beyond the State?*; Florini, *Third Force, The; The Rise of Transnational Civil Society*; Jönsson et Tallberg, *Transnational Actors in Global Governance*; Willetts, *Non-Governmental Organizations in World Politics*; Willetts, « *The Conscience of the World »*.

[5] Jonas Tallberg, « Explaining Transnational Access to International Institutions », in *International Studies Association 49th Annual Convention, San Francisco, CA*, 2008, http://www.transdemos.se/publications/tallberg-isa.pdf.

look beyond this quantitative approach to analyze the conditions and processes of openness. It is therefore difficult to know which level(s) of the political process, from the agenda-setting to the implementation and evaluation steps, involve an increased participation of the civil society[6], beyond the simple question of analyzing the truly democratic effects of this openness.

The second limitation is that most of these studies seems to consider that the NGOs' involvement in the work of IOs is a relatively recent phenomenon, since the creation of the United Nations in 1945, with a neat increase during the 1970s. However, as regards international migration, this assertion should probably be qualified as we'll in the first part of this paper.

So, many questions remain unanswered today: What are the conditions of this opening? To which NGOs, for which reasons and according to which criteria do IOs open to civil society representation? Does this opening, when it occurs, lead to a real association of NGOs at all stages of the political process, from agenda setting to the implementation phase, through negotiation and decision-making processes? What do the NGOs and the IOs have to gain from this openness?...

The main objective of our paper is to understand the reasons and the extend of the partnership between an IO and NGOs in the field of international migration. It relates to the openness of the United Nations High Commissioner for Refugees (UNHCR) to NGOs. In the case of UNHCR, the development of collaboration and partnerships with NGOs is a way for an organization, with a strong moral legitimacy but lacking financial resources and autonomy, to define new modes of action and develop new tools for political influence. These partnerships involve both the political and normative mandate of UNHCR – with NGOs specialized in advocacy – and the operational mandate with the coordination of assistance to refugees – with NGOs focusing their programs on the material assistance to refugees and Internally Displaced Persons (IDPs).

A first step of our contribution consists in discussing the reasons of UNHCR's openness to NGOs, by analyzing the persistent constraints relating to the institutional framework of UNHCR, fiercely negotiated after the Second World War.

We will then look at the modes of integration of NGOs in the work of UNHCR. NGOs are associated at different levels in more or less restricted *fora* and committees. We discuss the cooperation mechanisms aiming at smoothing the transfer of experiences, standards and practices between the UNHCR and NGOs.

Finally, the last part of this paper presents the results of a study on the characteristics of UNHCR's NGO partners. This study focuses specifically on the development of NGOs' representation during the sessions of UNHCR's Executive Committee from 1970 to present, with a more specific focus on the 2000-2011 period, and is based on the analysis of the lists of participants at these sessions. Beyond the quantitative aspect of the NGOs representation, this study provides a better understanding of what types of NGOs are accredited, under which procedures, but also a more detailed analysis of the balance – or imbalance – in this representation according to the size (local, national, international) of these NGOs. This study also aims at analyzing the stability of the representation (the turnover in NGO delegations between sessions), but also the cases of integration of NGOs in Member States' delegations.

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[6] Jönsson et Tallberg, *Transnational Actors in Global Governance*.

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I. An openness to NGOs driven by external factors

As we'll see in this part of the paper, it is difficult to conclude that a general trend of openness or closeness of IOs to NGOs is taking place in the field of international migration. The general picture is indeed more blurred, and it would be rather bold to link the openness of UNHCR to NGOs to its evolving participation in the institutions of a complexified regime, some of these being rather closed than open.

The study of international cooperation for managing migration is an interesting case study from a theoretical perspective in International Relations, notably because migration are by definition related to border management and concern very concretely some key dimensions of state sovereignty – such as the management of the state borders or the citizenship issues. The theories of international regimes renewed the studies of international cooperation in the 1980s. However, if the development of the theories of international regimes[7] has largely paved the way for empirical studies on the development of cooperation, integrating new players, in the field of international environmental policies[8], this was not the case for studies on international migration. Yet the more recent concept of regime complexity could inform not only the development of intergovernmental cooperation but also the openness to NGOs in this field. While these experiences for international migration are probably less diverse than those in the environmental field, however, they tend to become more complex since the 1990s. There is actually not a single regime of international migration, and the academics and practitioners generally distinguish the international migration regime from the refugee and asylum regime[9]. In this context, the regime complexity theories[10] could interestingly be mobilized, by focusing on networks of actors and institutions, but also by raising the question of the place and role of NGOs in such complex systems.

The evolution of the migration regimes and the question of the openness to NGOs have been nonetheless the focus of two recent studies[11]. The first one, by Thouez, concludes that NGOs are currently poorly organized at the international level, which weakens their power. She concludes that this would be normal, since the states themselves enrolled in cooperation processes relatively recently. In short, following her conclusion, interstate cooperation is practically seen as a prerequisite for the development of non-governmental cooperation, in some kind of a two-steps process. The second study, by Kalm, explains that the mobilization

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[7] Stephen D. Krasner, *International Regimes* (Cornell University Press, 1983); Andreas Hasenclever, Peter Mayer, et Volker Rittberger, *Theories of International Regimes* (Cambridge University Press, 1997).

[8] Oran R. Young, *International Cooperation: Building Regimes for Natural Resources and the Environment* (Cornell University Press, 1989); Oran R. Young, « The politics of international regime formation: managing natural resources and the environment », *International Organization* 43, n° 03 (1989): 349‑375; Oran R. Young, *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms* (MIT Press, 1999); Frank Biermann et al., « The Fragmentation of Global Governance Architectures: A Framework for Analysis », *Global Environmental Politics* 9, n° 4 (14 octobre 2009): 14‑40, doi:10.1162/glep.2009.9.4.14; Frank Biermann, Philipp Pattberg, et Fariborz Zelli, *Global Climate Governance Beyond 2012: Architecture, Agency and Adaptation* (Cambridge University Press, 2010).

[9] Rieko Karatani, « How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins », *International Journal of Refugee Law* 17, n° 3 (1 janvier 2005): 517‑541.

[10] Kal Raustiala et David G. Victor, « The Regime Complex for Plant Genetic Resources », *International Organization* 58, n° 2 (1 avril 2004): 277‑309; Karen J. Alter et Sophie Meunier, « The Politics of International Regime Complexity », *Perspectives on Politics* 7, n° 01 (2009): 13‑24.

[11] Colleen Thouez, « The Role of Civil Society in Shaping International Migration Policy », *Fleishman Civil Society Fellow Paper. Terry Sanford Institute of Public Policy, Duke University* (2003); Sara Kalm, « Limits to Transnational Participation: The Global Governance of Migration », in *Transnational actors in global governance : patterns, explanations, and implications* (Palgrave Macmillan, 2010).

and participation of NGOs remain rather limited, the international cooperation being essentially state-led by nature, due to the willingness of states to restrict, especially in the new processes of cooperation, the input of civil society.

However, these studies are limited in their understanding of openness to NGOs. From our point of view, Thouez' conclusion should be qualified as the genesis of the international cooperation for refugees in the 1920s was prompted by the pressure of the civil society on the Member States of the League of Nations (see part II). Regarding Kalm's explanations, this limitation of NGOs entry in state-led processes appears true with regard to the club diplomacy within informal regional consultative processes, but this should also be qualified as regards the participation of NGOs in formal intergovernmental organizations.

For instance, as regards UNHCR, in a context of scarce resources, but also competition between organizations in the migration regime – for instance, ILO, IOM, UNHCR and others –, the opening is a crucial strategy for increasing the legitimacy and authority of the organization, but also for gaining additional leeway in terms of implementation and funding of its programs. Between the two regimes identified in the field of the movements of people, the regime of asylum seekers and refugees is often presented as less complex than that of international migration, as UNHCR appears as the central and relatively undisputed institution within this regime. However, in recent years, this regime has itself been tending towards complexity, mainly because of the distinction between international and internal forced displacements – that is between refugees and Internally Displaced Persons (IDPs). Since 2006, UNHCR is responsible for the coordination of actions in favor of IDPs, and this expanded mandate leads the institution to evolve in a complexified regime, marked by the proliferation of institutions and constant overlaps between the refugee and the emerging migration regimes[12].

Another factor of complexity relates to the overlapping and complementarity between different scales, from the international to the local through the regional level[13]. The proliferation of new institutions at the regional level does not result from a serendipitous process, but is rather the by-product of Western immigration states' forum shopping strategies[14] beginning in the early 1980s, during the asylum crisis in Europe[15]. These forum shopping strategies began with the creation of the Intergovernmental Consultations on Asylum and Refugees (IGC) in 1984, when Western immigration states, also the main funders of UNHCR, launched a process of informal consultations with the ambiguous support of

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[12] Randall Hansen, Jobst Koehler, et Jeannette Money, *Migration, Nation States, and International Cooperation* (Routledge, 2012); Rahel Kunz, Sandra Lavenex, et Marion Panizzon, *Multilayered Migration Governance: The Promise of Partnership* (Taylor & Francis, 2011).

[13] Colleen Thouez et Frédérique Channac, « Shaping international migration policy: The role of regional consultative processes », *West European Politics* 29, n° 2 (2006): 370-387.

[14] Kenneth W. Abbott et Duncan Snidal, « Why States Act through Formal International Organizations », *The Journal of Conflict Resolution* 42, n° 1 (1 février 1998): 3-32; Marc L. Busch, « Overlapping Institutions, Forum Shopping, and Dispute Settlement in International Trade », *International Organization* 61, n° 4 (1 octobre 2007): 735-761; Emilie Hafner-Burton, « Forum shopping for human rights: the transformation of preferential trade », in *annual meetings of the American Political Science Association, Washington DC, September*, 2004, 1–4; Emilie M. Hafner-Burton, « The Power Politics of Regime Complexity: Human Rights Trade Conditionality in Europe », *Perspectives on Politics* 7, n° 01 (2009): 33-37.

[15] Frédérique Channac, « Vers une gouvernance globale des migrations? Genèse et renouveau du système multilatéral des migrations internationales » (Université Montesquieu-Bordeaux IV, 2009).

UNHCR[16]. This first experiment was then exported and replicated in several regions of the world, and all these informal processes are now known as the regional consultative processes for migration (RCPs). It is particularly interesting to point out at this stage that this ensuing informal regionalization derives from a process implemented originally within UNHCR. It has had direct consequences for this institution in the sense that most regional processes develop cross-thematic approaches on migration and asylum. This approach blurs even more the boundaries between the migration and the asylum and refugee regimes. Alexander Betts, studying the evolution of the refugee regime, explains that this "has enabled Northern states to engage in forum shopping and regime shifting, addressing their concerns with spontaneous-arrival asylum while by-passing their obligations under the refugee regime. This has contributed to a net reduction in international cooperation within the refugee regime. In response, UNHCR has adapted its own strategy, pursuing states into the alternative regimes into which they have shifted, and engaging in a wider political context"[17]. If we agree with Bett's general conclusion, however, our observation differs slightly as regards the origin of this process of increased complexity and multi-scaled institutional proliferation: States have not benefited from proliferation to engage in forum shopping strategies, but they have encouraged this proliferation in order to reduce their obligations and to open up opportunities for forum shopping[18].

According to Betts, UNHCR devised several responses to deal with this complexity and states' forum shopping strategies: (1) by addressing mixed flows and irregular migration issues; (2) by promoting the "protection in the region" policy, thus offering an opportunity for Western immigration states to abate migration pressure by controlling the flows upstream in the regions "producing" refugees; and (3) by becoming "an increasingly itinerant actors, engaging in other forums beyond the refugee regime". However, the last line of this strategy led UNHCR to participate within forums that are themselves more or less open to international civil society and NGOs. While informal regional consultative processes remain relatively closed to civil society's participation, other informal, non-binding and government-led processes, such as the Global Forum for Migration and Development (GFMD) created in 2007, acknowledge the added value of the civil society and invite the representation of NGOs within some of their meetings[19].

It is therefore difficult to conclude that a general trend of openness or closeness is taking place in the field of international migration. The general picture is indeed more blurred, and it would be rather bold to link the openness of UNHCR to NGOs to its evolving participation in the institutions of a complexified regime, some of these being rather closed than open. Therefore, the factors explaining the openness of UNHCR to NGOs ought also be search in the internal constraints weighting on this institution.

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[16] Frédérique Channac, « Vers une politique publique internationale des migrations ? », *Revue française de science politique* 56, n° 3 (2006): 393; Channac, « Vers une gouvernance globale des migrations? Genèse et renouveau du système multilatéral des migrations internationales ».

[17] Alexander Betts, *Forced Migration and Global Politics* (John Wiley & Sons, 2009).

[18] Channac, « Vers une gouvernance globale des migrations? Genèse et renouveau du système multilatéral des migrations internationales ».

[19] Romeo Matsas, « The global forum on migration and development: A new path for global governance », in *ACUNS Annual Meeting The United Nations and Global Development Architecture Bonn, Germany*, 2008, 5–7. See also: http://www.gfmd.org/en/

2. An openness resulting from internal constraints

To understand the opening of UNHCR to NGOs' involvement and to the proliferation of partnerships with civil society, it is necessary to analyze the first experiences of international cooperation for refugees. Moreover, in order to document the persistence and deepening of these UNHCR/NGOs relationships, some explanatory factors are to be found in the negotiation that defined the mandate and the structure of UNHCR, at the time of its inception in 1950. The mandate and constitution that were negotiated by the UN's member states at the time determined on a long-term basis, and still shape the relations between UNHCR and civil society.

2.1. Civil society, the League of Nations and the assistance to refugees in the interwar period

From the 1920s, when the first institutions of the League of Nations attempting to resolve the refugee issue were created, until the 1950s, with the constitution of UNHCR, the international cooperation and institutions were not established in a linear manner, by simple capitalization and cumulative learning from successive institutional experiences. Instead their development was complex and muddled, in order to meet the wish of the League of Nations' member states to withdraw as soon as possible from any program pertaining to the assistance to refugees. The League of Nations devised intentionally weak institutions, treating the symptoms rather than the causes of the refugee question, and allowing the states to avoid any binding and long term international commitment.

The first of these institutional experiences is the High Commissioner of the League of Nations for Russian refugees in 1921. At the time, Russian refugees found themselves in an administrative and legal deadlock, and only voluntary agencies provided a material assistance. In the face of such a generalized aporia, the funds of these charitable agencies tended to run out, and they found that the lack of a central agency coordinating their actions was undermining their efforts. In this context, in February 1921, the International Committee of the Red Cross and the League of the Red Cross Societies convened a conference gathering private charities who decided to ask the League of Nations to take a series of concrete measures for assistance to refugees. The NGOs' pressure thus led to the creation of the High Commission for Russian refugees. The involvement of civil society is then an essential factor explaining the genesis of the intergovernmental cooperation in the field of migration.

Throughout the interwar period, all the organizations created by the League of Nations – High Commissioner of the League for Russian Refugees, Office International Nansen, High Commissioner of the League of Nations for Refugees from Germany – bore the seeds of the same weaknesses: no political power, no financial autonomy, no budget for material assistance. The budget granted by the states, when existing, was limited and exclusively used to cover administrative expenses. This limitation led Nansen to create a stamp, affixed to the passports of the same name. Concrete and material assistance to refugees, covering their daily subsistence until their relocation when it was possible, and the funding of these institutions were in practice borne almost entirely by charitable organizations. This situation derived mainly from the states willingness to systematically seek, through the negotiation of the statutes of these organizations, to exempt themselves from funding this assistance.

Later, the same limitations also affected the International Refugee Organization (IRO) that was established within the United Nations to deal with the issue of the displaced Europeans after the Second World War. Beyond the question of the statute of the organization that led to difficult negotiations in the Committees of the General Assembly, the question of the

organization's budget was more consensual, no state wishing to assume significant financial burden. A compromise was negotiated at the time, following a proposal of the French delegation to ensure that the special fund created for resettlement operations was supplied on the basis of voluntary state contributions.

2.2. The negotiation of the UNHCR's statute in 1950

The limitations plaguing UNHCR in terms of institutional autonomy and funding are indeed the direct extension of these inter- and postwar period experiences. As in the past, at the time of the creation of UNHCR – which is a program and not a specialized agency of the United Nations –, two means were used to limit the jurisdiction and scope of the organization: adopting a very restrictive definition of the refugee eligible to receive assistance and/or designing an institutional and financial straitjacket to reduce the margin of autonomy and initiative of the organization. And these two methods will be mobilized during the negotiations on the statute and mandate of UNHCR.

On the one hand, from the outset, UNHCR's mandate is temporary, with a term of three years regularly renewed by the General Assembly. On the other hand, during these negotiations, the question arises as to know whether UNHCR will only be responsible for the legal protection of refugees or whether it will also provide a material assistance – and, if so, how and by whom this assistance will be funded. At the time, France and some other European states joined the position of Secretary General: if UNHCR were entitled to receive public and private funds on a voluntary basis, then it should be advised by a committee on how to use these funds, specifically by relying on governments and charities to fund specific projects directly without using these funds to provide individual assistance to refugees. The United States, meanwhile, strongly opposed the idea that UNHCR could be authorized to conduct assistance operations on its own, and even more strongly vetoed the idea that UNHCR could be able to collect and manage funds. During discussions at the General Assembly, the United States suggested that UNHCR could only launch an appeal to raise funds after approval by the General Assembly. The adoption of this proposal led to a paradoxical situation: UNHCR may well incur any expenditure deemed necessary to organize actions to support refugees, but it will be particularly difficult to obtain these funds.

Finally, the paragraph 10 of UNHCR's Statute reads as follows: "The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance. The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilized. The High Commissioner shall not appeal to Governments for funds or make a general appeal, without the prior approval of the General Assembly".

In addition, the paragraph 20 of UNHCR's Statute further restricts the budgetary autonomy of the organization: "The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditures relating to the functioning of the Office of the High Commissioner shall be borne on the budget of the United Nations and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions".

As it is drafted, the statute thus establishes a clear distinction between the two functions of the High Commissioner for which he does not enjoy the same degree of initiative. On the one hand, the function of protection is at the heart of its mandate. Protection is designed as a

temporary legal assistance, by providing a legal status to refugees. But the role of UNHCR's international protection is primarily defined as an advocacy role to governments: UNHCR does not provide direct services to refugees. On the other hand, UNHCR works to find permanent solutions to refugee problems. This second function pertains with the assistance for voluntary repatriation or the assistance for the economic and social integration of refugees in host countries. In this case, UNHCR does not act directly and must provide material assistance through governments and/or NGOs. This distinction reflects the concerns of states wishing to obtain assurance that operational costs are managed, constrained and controlled, and that the new organization for refugees could not empower itself beyond measure in the field of material assistance.

It is thus clear that the way UNHCR's Statute was negotiated in the 1950s can only have a direct impact on the relationship between the organization and NGOs, on the one hand with regard to the implementation of assistance programs – the intervention of the UNHCR being systematically mediatized through states and/or NGOs –, on the other hand with regard to the funding of these programs – the contributions are voluntary, and today, more often earmarked[20].

3. The scope and modalities of the UNHCR's openness to NGOs

NGOs are involved in UNHCR at several levels. This integration was gradually extended over the years, including the creation of specific forums for NGOs, outside UNHCR's official bodies.

On the one hand, instances of consultation with NGOs have been established, either to prepare for the sessions of UNHCR's Executive Committee or to gather NGOs' standpoint regarding the evolution of the legal status and refugee protection. Some of these bodies include only NGOs, under the auspices of UNHCR. On the other hand, NGOs can also be invited to attend meetings of UNHCR's Executive Committee, and in two ways: either as organizations enjoying observer status, either as members of a state delegation. Finally, NGOs are also involved in the implementation of UNHCR's programs. It is also for this reason that they can be represented at sessions of the Executive Committee.

Basically, these three types of representation and openness to NGOs more or less overlap the various stages of the development and implementation of programs, from the agenda-setting to implementation, through the decision making processes. NGOs are therefore present during all these phases. However, the rules of representation, the right to speak or to vote are very different, more or less closed and constrained depending on political and strategic issues and the presence of the states, between the three levels of representation. An Inter-Agency Unit was created within UNHCR in 1975 in order to prepare partnerships and to respond any questions pertaining to policy or operational issues. This Unit, with a focal point for NGOs, plays a central role, as it promotes information exchange between UNHCR and NGOs, organizes regularly regional meetings or meetings on specific issues with NGOs, and prepares the pre-Executive Committee consultations with NGOs.

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[20] Raimo Väyrynen, « Funding Dilemmas in Refugee Assistance: Political Interests and Institutional Reforms in UNHCR », *International Migration Review* 35, nᵒ 1 (2001): 143–167; Gil Loescher, Alexander Betts, et James Milner, *The United Nations High Commissioner for Refugees (UNHCR): The Politics and Practice of Refugee Protection into the 21st Century* (Routledge, 2008).

3.1. Consultative processes and partnerships between UNHCR and NGOs

Even if the partnerships between NGOs and UNHCR were already strong since the inception of the organization in the 1950s, the number of NGO partners grew rather rapidly during the 1970s as the scope of the organization's activities expended. In the early 1990s, recognizing the growing involvement of NGOs in activities related to refugees but also to other people of concern for UNHCR, the organization launched a new initiative, the Partnership in Action (PARinAC). This initiative, now ended, was more welcomed as it designed a new framework of cooperation and opened new avenues to discuss issues of common concern between UNHCR and its NGO partners. In 1993, six regional meetings took place, the process finally merging in a global conference in Oslo in 1994, having included more than 500 NGOs and been finalized with the adoption of a Plan of Action with 134 recommendations.

Another recent initiative as regards the openness to NGOs has been the creation of the High Commissioner's Structured Dialogue at the end of 2011. This dialogue is guided by a steering group, gathering representatives from the International Council of Voluntary Agencies (ICVA), InterAction and the International Federation of the Red Cross and Red Crescent Societies (IFRC). This dialogue has enabled the participating institutions to attend meetings on thematic issues – security in camps, resettlement programs, faith and assistance to refugees –, with an aim at "achieving mutual respect and trust through open communication, transparency in decision making, and clear accountabilities between UNHCR and respective partners"[21].

The same incentive to broaden and deepen the dialogue with NGOs led to the creation of the pre-Executive Committee NGO Consultations which take place each year, during three days, the week before the Ex Com session. Last year, UNHCR's Annual Consultations with NGOs gathered 391 representatives from 233 NGOs. At the end of the consultations, a report is written, to be presented by an NGO rapporteur during the Executive Committee's session. Moreover, NGOs attending the plenary session of the Executive Committee are invited as observers to meetings of the UNHCR Standing Committee during the following year.

Two types of partnerships exist as regards UNHCR and NGOs. UNHCR develops "implementing partnerships" with NGOs: in this case, UNHCR provides a financial support to the NGO in order to enable this partner to deliver specific services for refugees. A formal project agreement is then signed between UNHCR and the NGO. The second type of partnerships is "operational", where UNHCR does not provide financial support, but acts as a voluntary coordinator. This kind of partnership is implemented in areas such as emergency assistance or resettlement operations for refugees.

Today, 42% of UNHCR's expenditures are implemented through partners – governments, IOs or NGOs –, and more than a third of UNHCR's total expenditure (34%) is implemented through NGO partners, more than 600 national NGOs and 150 international NGOs being considered implementing partners[22].

In any case, the NGOs, to become partners, must respond to different criteria, relating to their accountability as well as their operational capacities: they should be legally registered at their headquarters' location or on the location where they operate; they should be able to

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[21] See InterAction website: http://www.interaction.org.
[22] UNHCR, "UNHCR and Humanitarian Partnerships", 05/02/2013, for New Staff of Permanent Missions and NGOs in Geneva, by UNHCR Inter-Agency Unit.

operate a bank account and keep separate records of expenditures engaged on UNHCR's behalf; and they have to prove their financial reliability, via official audit reports. The evaluation of the NGO's quality of service, its capacity to respond rapidly, notably for emergency intervention, the continuity of its staff, can also count as additional criteria for initiating or perpetuating a partnership with UNHCR.

These partnerships can potentially cause problems, especially in terms of training of NGOs' staff[23]. It is for this reason that training programs have been developed in collaboration between UNHCR and several NGOs such as the program Reach Out – *Reach Out Refugee Protection Training Project* – initiated in 2001 by NGOs, the movement of the Red Cross and Red Crescent Societies and UNHCR. This program was subsequently closed in 2005, but the training materials are always available to NGOs, whether on UNHCR's website or that of the International Council of Voluntary Agencies.

As the partnership requires that UNHCR rules and procedures must be respected, some practical guides on rules, procedures and good practices were drafted in order to clarify these rules and procedures for new NGO partners[24]. In 2008, UNHCR also opened a Global Learning Centre, in Budapest, in order to train UNHCR's staff but also the staff of its partners. Most importantly, as UNHCR tries to develop partnerships with national and local NGOs, which are located all over the world, the Global Learning Centre created an on-line learning platform, enabling some 4000 external staff to follow courses.

In brief, during the last decades, as UNHCR expended its partnerships with NGOs, new avenues, more or less formal, were opened to provide means of information exchange and deepened cooperation. As seen in the first part of this paper, UNHCR openness to NGOs is constrained by its statute, but the institution designed new tools to ensure that this collaboration remains respectful of its rules and procedures, which is crucial to ensure that the partnerships would not hinder or threaten UNHCR's credibility, authority and legitimacy. However, it remains to be seen if and how these rules and procedures have evolved under this increased partnership, a "dialogue" with partners never being a one-way process.

3.2. NGOs participation in UNHCR Executive Committee

If NGOs are partners in the implementation of UNHCR programs, they are also invited as observers in the UNHCR committees involved in the decision-making process. They can attend UNHCR Executive Committee meetings as observers, or be invited as observers to meetings of the UNHCR Standing Committee – created in 1995 – if they attended the ExCom session. But the rules of participation, and then the UNHCR openness to NGOs, in theses instances, are also strictly defined.

The Executive Committee was established in 1958 and its mandate is three-folds: (1) it advises the High Commissioner, at his request, in the exercise of his functions; (2) it reviews funds and programs; and (3) it authorizes appeals for funds and approves projects of assistance. During its annual sessions, held in Geneva, it reviews the work of the Standing Committee, reviews financial requirements, approves the budget, and adopts decisions and conclusions.

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[23] Loescher, Betts, et Milner, *The United Nations High Commissioner for Refugees (UNHCR)*.
[24] See for instance, UNHCR, "Partnership: An Operations Management Handbook for UNHCR's Partners", revised edition, February 2003. Some other materials even provide information on faith and assistance to refugee, many NGO partners being faith-based organizations. One point of the agenda of the last Dialogue on Protection Challenges, in December 2012, was "Faith and protection".

To become an observer at the ExCom session, an NGO should meet at last one of the following criteria: (1) have a consultative status with the Economic and Social Council (ECOSOC); (2) be a member of the International Council of Voluntary Agencies (ICVA); (3) be an implementing partner of UNHCR in the preceding or current year; and/or (4) be an operational partner of UNHCR, with a written recommendation from the UNHCR field office concerned. According to the UN Charter and the rules of the ECOSOC, the ExCom grants a consultative status to NGOs. Under the rule 39 of the ExCom's Rules of procedure, "representatives of non-governmental organizations which have been granted consultative status by the ECOSOC, may submit statements to the Committee in accordance with paragraphs 28, 29 and 30 of the arrangements for consultation with non-governmental organizations approved by the ECOSOC in its resolution 288B(X) of 27 February 1950", a resolution superseded by the resolution 1296(XLIV) on consultative arrangements of 23 May 1998.

According to this resolution, NGOs are divided into four categories during the ExCom session: category I, category II, roster, and other organizations co-operating with UNHCR. Except the last one, these categories are the same that are defined by the ECOSOC to grant the accreditations[25]. Following the ECOSOC's resolution, only the organizations in categories I and II can submit written statements, and when the statements of category I should not exceed 2000 words, those of category II are limited to 1500 words. The organizations of the roster may submit written statements, but on the request of the ExCom. At the UNHCR ExCom, NGOs can make a joint statement per agenda item, but they are allowed to request permission for a second statement from the ExCom Chair.

So, where no kind of distinction or hierarchy between NGOs exists as regards their participation and intervention during the meetings of the instances designed to promote a dialogue between UNHCR and its NGO partners on the implementation of programs, these kind of limitations appear when talking about more political intergovernmental bodies invested in the decision-making phase.

Similarly, NGOs are requested to follow and respect the rules of procedures during the ExCom's session. To this end, UNHCR has even edited a booklet to ensure that NGO representatives are aware of these rules, a *Guide for NGOs to Participating in UNHCR's Annual Consultations with NGOs*, that reminds for instance the NGO representatives that they shouldn't take the floor or approach a government delegate during the session.

Finally, the rule of an NGO statement per agenda item is a restriction in itself, as it implies that NGOs are to negotiate a common position. On the agenda of the ExCom appear not only issues related to the implementation of programs and operational matters, but also perhaps more political issues, in particular related to the rights and legal protection for refugees. Some NGOs attending the ExCom session provide services for refugees, but also maintain an agenda as regards advocacy for refugee rights. As the participation of some of these NGOs in the ICVA for instance suggests, these NGOs could well form what Keck and Sikkink define

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[25] Category I, or general status, is "given to NGOs that represent large segments of societies in several countries. Their areas of work covers most of the issues on the agenda of ECOSOC and its subsidiary bodies. Those tend to be fairly large, well-established international NGOs with a broad geographic reach". Category II, or special status, "is reserved for NGOs that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by ECOSOC. These NGOs tend to be smaller and more recently established". Finally, the roster status "is conferred on NGOs that have a more narrow and/or technical focus and make occasional and useful contributions to the social work of ECOSOC or its subsidiary bodies". See: UN ECOSOC, "Working with ECOSOC. An NGOs Guide to Consultative Status", http://csonet.org/index.php?menu=17.

as "transnational advocacy networks", with actors "working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services", who gather around "shared values" and a "common discourse"[26]. However, the ExCom invites a broad range of NGOs, working in different fields, sometimes for different purposes. It is then questionable to assume that a consensus is easily reached between these actors, and the "one statement per agenda item" rule could well be a strong constraint in this instance. In brief, the voice of NGOs is rather more restrained in the political body of UNHCR.

3.3. An evolving representation of NGOs in UNHCR Executive Committee

We conducted a preliminary study in order to document the participation of NGOs to the UNHCR ExCom meetings. This study is based on an analysis of the lists of participants attending these sessions. Each year in the 2000s, more than 700 state, IO or NGO representatives participate in the ExCom session. The database is then quite extensive. For this paper, we chose to begin with a quantitative assessment of the evolution of NGO representation since 1970, with a focus on the 2000-2011 period.

During the 1970s, the number of NGOs at the ExCom was stabilized at around 50 NGOs each year, represented by 75 to 90 persons. The 1980s were marked by a steep increase in NGO representation – 1990 witnessing a decline as two meetings were organized this year, one of them being a special session with a state-only representation following the event in Eastern Europe. Since the beginning of the 2000s, this NGO representation is declining slowly but steadily.
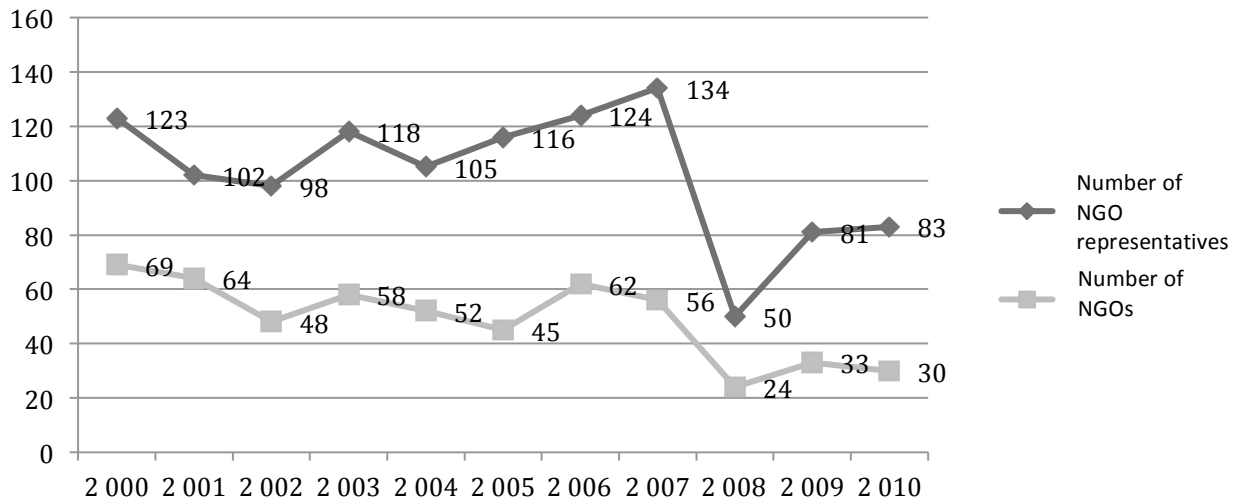
Table 1. Evolution of NGOs and NGO representatives, 1970-2011

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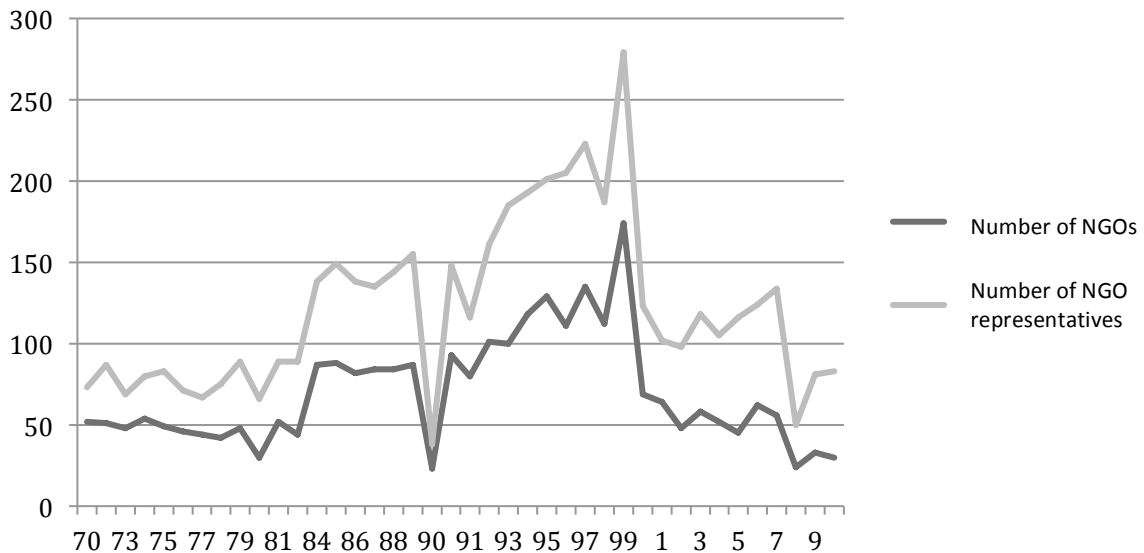
[26] Margaret E. Keck et Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998).

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Table 2. Evolution of NGOs and NGO representatives, 2000-2010

Several factors could explain these tendencies. At the beginning of the 1980s, UNHCR began to encounter financial difficulties, as the flows of refugees increased everywhere in the world, and particularly in Asia. At the same time, European states, the main founders of UNHCR, began their forum shopping strategy and advocated for a revision of the 1951 Convention, putting forward that they were dealing with an asylum crisis due to the development of mixed flows and false asylum seekers – following the restrictions on legal migration routes since the 1970s. The 1980s were also a period when new debates arose as regards the operational action of UNHCR: Most of the immigration countries wanted to refocused the programs on legal assistance to refugees and highlighted that some of the UNHCR's operations were more pertaining to development programs in countries of first asylum than to emergency operations. The legitimacy and authority of UNHCR was then threatened on two fronts: (1) on the definition of its programs; (2) on the extend of the operations. In this context, it seems logical that the partnerships with NGOs was a way to alleviate the pressures, and NGO partners or having an interest for UNHCR can be invited to attend the ExCom sessions, as they meet the fourth criteria required to obtain an accreditation (see point 3.2 above).

The steep decline in NGO representation from the 2000s is another story. At this point of our study, the explanatory factors are still elusive – and this preliminary study is to be complemented by interviews –, but they could be of two kinds.

First, the UNHCR/NGO partnerships were promoted by the HC at the beginning of the 2000s. At the same time, as seen above, new forums were created to enhance a dialogue between UNHCR and its partners (see 3.1 above). As NGOs don't really have a voice in the ExCom session and as the rule is one collective NGO statement per agenda item, it could be a good strategy for NGOs, and even more for small national or local NGOs that suffer from scarce resources, to participate in the meetings where they can have a voice and negotiate a common position, rather than to attend the ExCom meeting where they will be unable to express directly their point of view. This idea appears to be reinforced by the fact that the idea that even if UNHCR appealed for a greater association of national and local NGOs in the 2000s, at the same time, the representation between international and national NGOs inside the ExCom remained rather unbalanced. For instance, the international NGOs, having their

headquarters or permanent representation in Geneva, are over-represented – 49,2 % of all the NGOs represented during this period declared an address in Switzerland, the second most represented country being the United States of America with 10,8 % of all the NGOs.

Table 3. Principal countries where NGOs attending the ExCom sessions are located
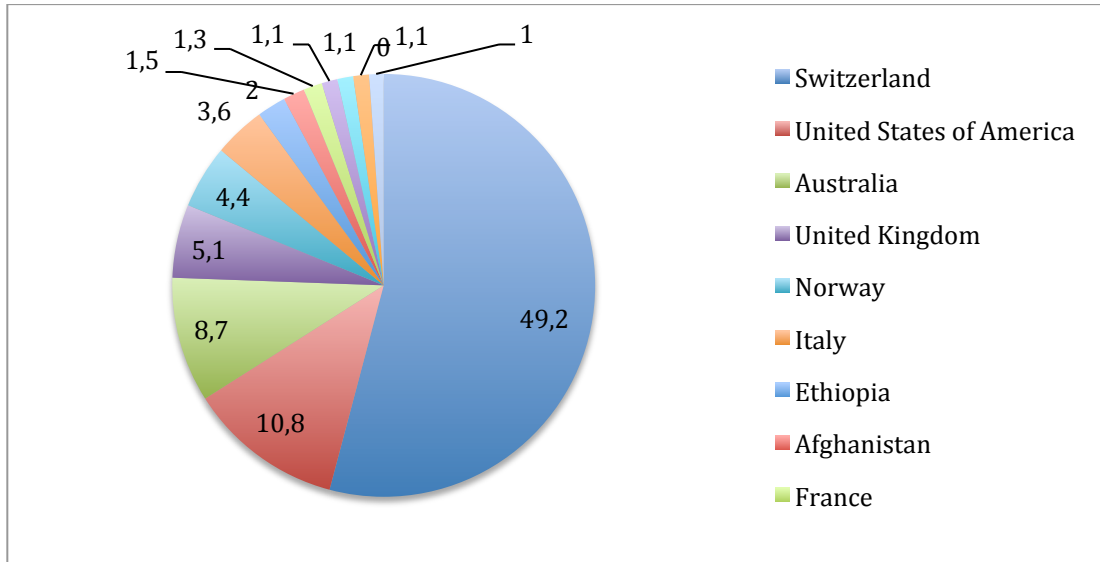
A second explanation could be that the ICVA encountered difficulties leading to the defection of a number of its members at the end of the 1990s. As ICVA's members are conferred a special status for representation in the ExCom's sessions, if their number declined, then, logically, this could have had an impact on NGO representation. This is all the more likely that during the period 2000-2011, among the NGOs attending the ExCom sessions, still 74,4% were ICVA members – when 24,2 % were accredited by ECOSOC. So, ICVA members represent the larger part of the NGOs at the UNHCR Ex Com. Only 17,4 % of these NGOs were at the same time ICVA members and ECOSOC accredited. Finally, 20,8 % related to the last category of civil society organizations allowed to attend the ExCom meeting, and were neither ICVA member nor ECOSOC accredited.

It is also worth underlining that the NGO representation doesn't seem as stable as it was during the preceding decades. From 2000 to 2011, 667 persons attended the ExCom session for an NGO with an observer status; and 71,6 % of them only attended one session. This turn-over in the representation could well be interpreted as a form of disengagement of NGOs, but this statistic need now to be corroborated with interviews to know the real sense of it. At the same time, 19,3 % of all persons representing NGOs were affiliated to different NGOs over this period. Finally, these two results certainly deserve further inquiries and a comparison on a long term period should normally provide new inside to identify the persons who ensure a kind of continuity in the NGO representation. In fact, this could be a precious indicator to identify the centrality of some actors in the network of NGOs attending the ExCom sessions – one of the following question raised being to assess the relative power of these actors during the negotiation of the NGO common statement for each agenda item.

Conclusion

As we've seen in this paper, which is conceived as a preliminary study of the openness of migration IOs to NGOs, the partnership between NGOs and UNHCR derives from a long history, the origin the international cooperation in this field being the consequence of the pressure exerted by voluntary agencies in the 1920s. Later, at the end of the 1950s, when the states negotiated the UNHCR's Statute, they exerted their might in order to reduce the political and operational leeway of the institution, transferring a major part of the operational and implementation side of the UNHCR's mandate on NGOs.

What we can observe from this trend of openness and its different factors, is that it seems driven by states willing to disengage from a cooperation process that can lead to political and, most of all, financial constraints for them. If UNHCR relies on partnerships with NGOs for implementing its programs, at the same time, states seem reluctant to open the political bodies to NGOs and to give them more voice or rights of floor during these meetings related to the decision-making process. The UNHCR openness to NGOs is thus restrained according to the level of political decision the meeting bestows on its voting participants.

At the same time, the NGO representation during the ExCom meeting seems affected by the inception of new forums and perhaps more effective means of participation. As the rules governing NGO participation at the ExCom limit their input at one statement per agenda item, it is more than probable that the more influential NGOs, being more experienced in advocacy and closer to the state representatives, with their offices permanently in Geneva, have a greater influence in the network of NGOs. This could well lead the smaller NGOs to develop new strategies – perhaps even NGO forum shopping strategies! –, by choosing to attend specific meetings for NGOs, rather than the ExCom sessions.

Finally, to complement our preliminary study, further researches on UNHCR's openness should also address another issue: That is the question of the modalities of the transfer of models between UNHCR and NGOs through these partnerships. As we've seen in the third part of this paper, UNHCR developed methods to ensure the compliance of its partners to its rules, norms and procedures. Further research should be focused on the schemes applying to these inter-organizational learning processes, in order to assess how these dialogues and learning processes affect, or not, the core values of each organization.

Finally, this preliminary study should be completed by a larger longitudinal study: (1) a longitudinal approach is currently under review, as we are building a database on the NGOs participation in ExCom meetings since the inception of this committee in 1959; (2) this longitudinal approach should also be completed by a comparative approach, with the study of NGO participation in the governing bodies of other IOs exerting competences in the field of migration.

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