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SPECIAL SYMPOSIUM ISSUE: INTERNATIONAL  
ORGANISATIONS AND THE RULE OF LAW:  
PERILS AND PROMISE

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THIS ISSUE INCLUDES CONTRIBUTIONS BY

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TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI



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# ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS: THE POTENTIAL ROLE OF NGOs IN THE WORK OF DISARMAMENT BODIES

*Treasa Dunworth\**

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*This article explores the role of NGOs in the disarmament sphere to enquire whether they can enhance accountability of relevant international organisations and regimes. Drawing on the work of Scholte and Mulgan, accountability is understood as having four aspects: transparency, consultation, evaluation and correction. Using a variety of examples, the article suggests that while there is considerable success in transparency, there is only partial progress in consultation and evaluation. There is little, if any, avenue at present for NGOs to encourage correction if or when an organisation or regime acts in a way as to cause harmful consequences.*

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## **I INTRODUCTION**

The Symposium aimed to "take a fresh look at the resources that international law possesses to ensure that international organisations are held accountable for their errors and excesses".<sup>1</sup> As the Call for Proposals suggests, much ink has already been spilt on the need for better transparency and accountability in international organisations. Sometimes the issue is termed as a question of a democratic deficit sometimes it is framed within the rule of law discourse, or the related rubric of constitutionalism. It is also explored through the lens of global administrative law, and even the law of responsibility. In common with all these approaches is the idea that powerful institutions should be responsible to their publics.<sup>2</sup> If that idea is accepted, then it seems clear that as international

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\* Faculty of Law, University of Auckland. This article is based on a paper delivered at the "International Organisations and the Rule of Law: Perils and Promise" Symposium (Victoria University of Wellington, 7 December 2015). The author would like to thank the anonymous reviewer for their insightful and helpful comments, as well as all the participants at the Workshop, especially Lisa Yarwood and Jana von Stein.

1 Call for Proposals for the "International Organisations and the Rule of Law: Perils and Promise" Symposium (Victoria University of Wellington, 7 December 2015).

2 See Richard Mulgan *Holding Power to Account: Accountability in Modern Democracies* (Palgrave MacMillan, Basingstoke, 2003).

organisations become more powerful, it becomes increasingly important to examine ways in which those bodies might be made more responsible to their publics.

In recent years, increasing attention has been paid to the idea that non-governmental organisations (NGOs) might be a means of contributing to greater accountability or transparency of international bodies.<sup>3</sup> It has long been accepted in the domestic sphere that engagement by NGOs is an important feature of increasing transparency and accountability of national or local government activities.<sup>4</sup> The question then becomes whether this same dynamic is possible, or even desirable, in the international context. The aim of this article is to explore that question by taking a narrow focus and examining the work of some selected NGOs operating in the field of international disarmament bodies. In this way, an attempt is made to move away from the more general discussion into an (admittedly selective) empirical examination of NGOs and consequent accountability.

My conclusion from this admittedly incomplete survey is that despite questions around the representativeness and accountability of some NGOs working in this field, they do form an important part of the growing need to achieve better governance and accountability of international disarmament bodies. This conclusion is consistent with other empirical studies that have explored a range of different types of international organisations and regimes.<sup>5</sup>

The article proceeds as follows: Part II sets out my working definition of the concept of accountability which will form the basis of my subsequent analysis of various disarmament regimes. This is an essential starting point as there is a vast literature on the meaning of accountability, and this is a particularly difficult issue in the context of international organisations. However, so as to have a manageable working definition, I draw on the work of Professor Scholte, who identifies four features of accountability.<sup>6</sup> These four features are: transparency; consultation; evaluation and correction. In this Part, I also canvass the broader debate that is being conducted about whether NGOs are an appropriate mechanism for achieving accountability. Having thus established my working definition

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3 See for example Jens Steffek, Claudia Kissling and Patrizia Nanz (eds) *Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit?* (Palgrave MacMillan, Basingstoke, 2008); Jonas Tallberg and others (eds) *The Opening Up of International Organizations: Transnational Access in Global Governance* (Cambridge University Press, Cambridge, 2013); Jan Aart Scholte (ed) *Building Global Democracy? Civil Society and Accountable Global Governance* (Cambridge University Press, Cambridge, 2011); and Andrea Bianchi and Anne Peters (eds) *Transparency in International Law* (Cambridge University Press, Cambridge, 2013).

4 See for example G Shabbir Cheema and Vesselin Popovski *Engaging Civil Society: Emerging Trends in Democratic Governance* (United Nations University Press, Tokyo, 2010).

5 See Steffek, Kissling and Nanz, above n 3.

6 See Jan Aart Scholte "Civil Society and Democratically Accountable Global Governance" (2004) 2 *Government and Opposition* 211; and Jan Aart Scholte "Global governance, accountability and civil society" in Jan Aart Scholte (ed) *Building Global Democracy? Civil Society and Accountable Global Governance* (Cambridge University Press, Cambridge, 2011) 8.

of accountability and defended the role of NGOs in contributing to accountability I turn, in Part III, to providing an overview of civil society engagement in international disarmament regimes both historically and in terms of contemporary practice. In Part IV, I apply each of the four criteria of accountability to selected international disarmament bodies. Part V concludes.

## ***II ACCOUNTABILITY AND CIVIL SOCIETY***

### ***A A Working Understanding of Accountability***

Like democracy and the expression the rule of law, accountability defies concise definition. Broadly speaking, it is understood to be a "general term for any mechanism that makes powerful institutions responsive to their particular publics".<sup>7</sup> In other words, it is about providing mechanisms to scrutinise and control authority.<sup>8</sup> While a precise definition might be elusive, accountability can be seen as having a number of different elements. Professor Mulgan, writing about accountability in the context of national democracies, identifies the core sense of accountability as being transparency (seeking information, explanation and justification) and effective rectification.<sup>9</sup>

However complicated multidimensional accountability might be in the domestic political sphere, it is even more complex at a global level.<sup>10</sup> The first, and possibly most serious difficulty, is that while we can see reasonably clearly in the domestic context who or what the public might be, in the international context, there are no fixed understandings of the public. It clearly includes states, but the more difficult question is whether, or the extent to which, it captures non-state entities, including people. If the public does include people, is it possible to work out what people, in what contexts? A second difficulty in considering accountability in the international context is that there are few standing structures (or often, no structures at all) to provide formal political or legal accountability such as courts, or parliaments in which a challenge to the exercise of power can be made. While some form of accountability can exist within the constituent instrument for a particular international organisation, these mechanisms generally would only extend to the member states (if at all) and not to any broader public. Finally, authority is still exercised in a jealously guarded sovereign space. Often international organisations, far from being beacons of internationalist post-sovereign sensibilities, are

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7 Mulgan, above n 2, at 8.

8 At 6.

9 At 9–11.

10 For a discussion of the difficulties of engaging with accountability in the global context see Robert O Keohane and Joseph S Nye Jr "Redefining Accountability for Global Governance" in Miles Kahler and David A Lake (eds) *Governance in a Global Economy: Political Authority in Transition* (Princeton University Press, Princeton, 2003) at 386.

manifestations of deep sovereign sensibilities. This is particularly the case in disarmament bodies, being so directly related to concerns about national security, and matters of international peace and security.

Despite all these complexities, there is a range of suggestions as to how accountability should be understood in the context of global governance (understood here as the activities of formally constituted international organisations, informal networks or regimes, activities of NGOs and civil society actors).<sup>11</sup> This article adopts the approach of Professor Scholte, who has written extensively about civil society and its role in accountable global governance.<sup>12</sup> He identifies four principal aspects of accountability, which in many respects echo and complement those of Professor Mulgan, who writes about accountability in the domestic sphere. Professor Scholte's schema is adopted here because it echoes and complements the work of Professor Mulgan, one of the leading authorities on accountability in the domestic sphere and introduces those ideas into the global governance space.<sup>13</sup> Consistent with Professor Mulgan's work, Scholte identifies four principal aspects of accountability: transparency, consultation, evaluation and correction.

The first aspect of accountability, transparency, means that the affected constituents (the public) must be able to see what the affecting actor (here, the international disarmament body) is doing. Transparency, Professor Scholte says is a "sine qua non of accountability".<sup>14</sup> Without transparency, there can be no accountability. In other words, transparency is an essential first step to achieving accountability. While it might be argued that transparency comes about because of accountability, in a decentralised system with no formal accountability mechanisms, more often transparency is a first tentative step towards accountability. The second aspect of accountability is consultation, that is, incorporating the views of affected people into deliberations and thus providing the opportunity to shape the outcomes of any decision-making process.<sup>15</sup> Again, this is difficult in the international sphere as it is difficult, if not impossible, to work out who are affected people. The third element of accountability is evaluation, that is, the opportunity to independently monitor and assess the impacts

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11 See for example Jeremy Farrall's work on the rule of law in the context of the Security Council: Jeremy Farrall *United Nations Sanctions and the Rule of Law* (Cambridge University Press, Cambridge, 2007).

12 See Scholte "Civil Society and Democratically Accountable Global Governance", above n 6; and Scholte "Global governance, accountability and civil society", above n 6.

13 See Mulgan, above n 2; and Scholte "Global governance, accountability and civil society", above n 6, at 16–18.

14 Scholte "Global Governance, accountability and civil society", above n 6, at 16; and see Scholte "Civil Society and Democratically Accountable Global Governance", above n 6, at 217.

15 Scholte "Global governance, accountability and civil society", above n 6, at 17; and see Scholte "Civil Society and Democratically Accountable Global Governance", above n 6, at 219–220.

of the exercise of authority.<sup>16</sup> The fourth and final aspect of accountability is correction, that is, a means to ensure that there are mechanisms whereby affecting actors take responsibility for their actions, particularly for any harmful consequences and learn from mistakes. This might happen informally or formally.<sup>17</sup>

Thus, Professor Scholte concludes "a global governance institution would be accountable to the extent that it is transparent to those affected, consults those affected, reports to those affected and provides redress to those who are adversely affected."<sup>18</sup> In this contribution, I use these four criteria to evaluate the contribution that NGOs are making in holding selected disarmament bodies accountable for their actions (or inaction).

Before turning to this substantive analysis however, it is necessary to sidetrack into a discussion in general terms about whether it is appropriate at all for NGOs to take this accountability role. This has been the matter of quite some debate in the international relations literature and it is to that I now turn.

## ***B Should NGOs Play a Role in Promoting Accountability?***

### ***1 The question of representation***

The foregoing discussion has shown that a central tenet of accountability is a relationship between those who hold and exercise authority and those affected by the exercise of that authority – the public. In raising the question then of whether NGOs should play a role in promoting accountability, the issue of whether NGOs can be considered to represent the public must be addressed. This question of the representativeness of NGOs, and indeed more generally civil society, has been the subject of considerable debate.<sup>19</sup> In terms of the question of representation, here the argument is that NGOs do not, and cannot, represent the people, or the poor or the marginalised or any other constituency because they have no mandate, elected or otherwise, to do so. Thus, their claims to represent the global community are false. To take an example from the disarmament context, the International Campaign to Ban Landmines cannot represent those injured or killed by landmines, because they have not been appointed or elected to do so.

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16 Scholte "Global governance, accountability and civil society", above n 6, at 17; and see Scholte "Civil Society and Democratically Accountable Global Governance", above n 6, at 220–221.

17 Scholte "Global governance, accountability and civil society", above n 6, at 17; and see Scholte "Civil Society and Democratically Accountable Global Governance", above n 6, at 221–222.

18 Scholte "Global governance, accountability and civil society", above n 6, at 17.

19 For an excellent synopsis of the debate in the literature including a statement of his own views, see Enrique Peruzzotti "Civil Society, Representation and Accountability: Restating Current Debates on the Representativeness and Accountability of Civic Associations" in Lisa Jordan and Peter van Tuijl (eds) *NGO accountability: politics, principles, and innovations* (Earthscan, London, 2006) 43.

The lack of the representative nature of NGOs is frequently cited as a challenge to the growing voice of NGOs in matters of global (and indeed, local) governance. In an editorial in *The Economist* for example in 2000 (in the wake of the Seattle riots), the question was asked "Who elected Oxfam?"<sup>20</sup> Kenneth Anderson is one of the most vocal critics of NGOs on the basis that they do not in fact represent the people. His earlier career was closely involved in a number of NGOs, but he has adopted an increasingly strident objection to NGO participation in any global governance, let alone as mechanisms of accountability.<sup>21</sup> A number of responses can be made to his assertion that NGOs should not be the agents of accountability on the basis that they do not represent any public.

First, it may be true that there can be a tendency on the part of some NGOs to claim a representative role. It is beyond the scope of the current work to determine if that is so as an empirical matter, although it must be said that a review of primary materials suggests that this is not a common explicitly stated position. Mostly, it seems, NGOs do not themselves make a claim to be representative of a group of people but rather of an idea. In the specific context of disarmament NGOs, frequently the NGO claim to participate is based on their expertise, or their ability to present a particular point of view, rather than a claim that they represent a particular constituency. In other words, the NGOs do not themselves constitute the public, but rather they constitute stakeholders by virtue of their expertise (technical, scientific, humanitarian, political) in a particular framework of global governance.

A particularly clear example of this can be seen in the work of the scientific community in response to nuclear testing throughout the 1950s and 1960s.<sup>22</sup> The widespread opposition of scientists to nuclear weapons and nuclear testing led to the creation of several NGOs, including the Federation of American Scientists, as well as to more loosely constituted civil society groups – such as the Pugwash Conferences on Science and World Affairs launched in 1957.<sup>23</sup> Those scientists did not purport to represent any particular constituency. Rather, their campaigns were based on a sense of professional responsibility about the proper use of science.<sup>24</sup> A more recent example of NGOs

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20 At 50 citing "Anti-capitalist protests: Angry and effective" *The Economist* (Washington DC, 23 September 2000) at 85–87.

21 See Kenneth Anderson "The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society" (2000) 11 EJIL 91; and Kenneth Anderson "Global Governance: The Problematic Legitimacy Relationship between Global Civil Society and the United Nations" (Research Paper 2008-71, Washington College of Law, 2008). Other critics include David Rieff "The False Dawn of Civil Society" *The Nation* (online ed, New York, 4 February 1999); and John Bolton "Should We take Global Governance Seriously?" (2000) 1 Chicago Journal of International Law 205.

22 See Joseph Rotblat "Movements of Scientists against the arms race" in Joseph Rotblat (ed) *Scientists, the Arms Race and Disarmament* (Taylor & Francis, Abingdon, 1982) 115.

23 Joseph Rotblat *Scientists in the Quest for Peace: A History of the Pugwash Conferences* (MIT Press, 1972).

24 See Lawrence Wittner *Confronting the Bomb: A Short History of World Nuclear Disarmament Movement* (Stanford University Press, 2009).

working in the disarmament context articulating a point of view, rather than purporting to represent a constituency, is the way in which chemical industry representatives have been closely involved with, and supportive of, the negotiation and conclusion of the Chemical Weapons Convention<sup>25</sup> and the work of its implementing body, the Organisation for the Prohibition of Chemical Weapons.<sup>26</sup> Even NGOs that work with the victims of some weapon types do not rely on a representative justification for their position. Rather, it rests on their expertise. Take the early work of Physicians for Human Rights in opposition to the use of landmines during the Indochinese wars. The platform on which the NGO spoke out was not on the basis of representing the victims, but rather putting into the discourse proper medical information on the real world impact of the weapons.<sup>27</sup>

Another way in which an NGO might participate in a discussion about a disarmament issue, without purporting to represent any particular group of people might come about when the NGO in question holds itself out as "keepers of the moral flame".<sup>28</sup> The idea here is that the NGO represents an idea or a philosophy (such as, for example, it would be good to eliminate nuclear weapons), rather than purporting to represent a particular group of people or public.

Looking at it more theoretically, Professor Peruzzotti challenges the idea of the need for representativeness pointing out that it is erroneous for civil society to either claim to be or to be understood as being representative. That is because "civil society is not a representative instance, but a constituent one".<sup>29</sup> That is to say, civil society does not represent the people in the way that elected officials do with the consequent delegation of power. Rather, civil society is part of participatory democracy, not representative democracy. Professor Steve Charnovitz also challenges the concerns about false claims of representation.<sup>30</sup> He says that an NGO does contribute to the democratic process

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25 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1974 UNTS 45 (opened for signature 3 September 1992, entered into force 29 April 1997) [Chemical Weapons Convention].

26 For discussion, see Catriona McLeish and Maarten Lak "The Role of Civil Society and Industrial Non-State Actors in Relation to the Chemical Weapons Convention" in Walter Krutzsch, Eric Myjer and Ralf Trapp (eds) *The Chemical Weapons Convention: A Commentary* (Oxford University Press, 2014) at 40.

27 See for example Physicians for Human Rights *Landmines in Cambodia: The Coward's War* (Human Rights Watch, September 1991).

28 Martha L Schweitz "NGO Participation in International Governance: The Question of Legitimacy" (1995) 89 *Proceedings of the Annual Meeting (American Society of International Law)* 415 at 419.

29 Peruzzotti, above n 19, at 46–49.

30 Steve Charnovitz "Accountability of Non-Governmental Organizations in Global Governance" in Lisa Jordan and Peter van Tuijl (eds) *NGO accountability: politics, principles, and innovations* (Earthscan, London, 2006) at 35–38.

by "advocating its own view of the common good rather than by demonstrating that its view truly reflects the common will".<sup>31</sup>

Thus, there are strong grounds for saying that even where NGOs engage in a rhetorical claim to being representative, in fact that is not their value and is not a requirement for their legitimate involvement. They are not representative of the public at large (although they may in fact represent their own expert constituency), and they do not need to be. Whether their idea is that weapons should be eliminated, or that accountability is a per se value or even an instrumental value (leading to better decision-making for example), they have a role to play – in advancing that idea, rather than representing any particular broader public.

## 2 *The question of accountability of NGOs*

A second challenge to the role of NGOs in promoting accountability of international organisations is often raised. It is argued (or often, simply assumed), that NGOs are not accountable themselves and therefore their claim to be legitimate participants in international governance is weakened, particularly when one of the desired outcomes of that participation is to make international organisations more accountable. In fact, some authors go so far as to argue that far from being agents of democracy, NGOs are profoundly anti-democratic.<sup>32</sup> That line of reasoning is based on two arguments: first, that engagement with NGOs lends a veneer of legitimacy on an international institutional structure that is not itself democratic and can never be.<sup>33</sup> Thus, in providing a veneer of legitimacy, NGO participation perpetuates the legitimacy problem. A second argument that is sometimes made is that NGO lobbying at an international level is an attempt to over-ride the democratically arrived at decision at a national level.<sup>34</sup> Here the idea is that by the time an issue (as an example, the abolition of landmines) is being discussed at an international level, domestic policies have already been formed in each negotiating state. During that domestic process, civil society had an opportunity to engage in the public debate and therefore, to continue to engage at the international level is a form of double-dipping and thus illegitimate.

In terms of responses to these claims, the first is to challenge the assumption that NGOs universally are not sufficiently accountable. Many NGOs are, in fact accountable – to their funders, to their members and in the marketplace of ideas. However, a second response is that civil society does not need to be accountable itself in order to be an agent of accountability in international

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31 At 37.

32 Kenneth Anderson "The Limits of Pragmatism in American Foreign Policy: Unsolicited Advice to the Bush Administration on Relations with International Nongovernmental Organizations" (2001) 2 *Chicago Journal of International Law* 371.

33 Anderson, above n 32.

34 Bolton, above n 21.

governance.<sup>35</sup> In the domestic context, many entities are seen as perfectly legitimate (indeed, indispensable) agents of accountability without themselves being subject to formal accountability mechanisms. Two examples readily spring to mind – that of the media and academics. Other than through formal employment law, and perhaps the law of defamation in some extreme circumstances, academics and journalists are not accountable other than through the credibility and validity of their analysis and information. Media entities are as credible as the standard of their work, evaluated over time. Similarly, the work of academic commentators on domestic matters is as credible as the standard of their work. Both are essential to the overall healthy functioning of a democratic society and yet neither have any formal accountability mechanisms in place. In the same way, in the context of international governance, NGOs will stand (or fall) on the credibility, validity and reliability of their information and analysis. Further, at the international level, it must be noted that there are many states with governments that are neither representative nor accountable and these states still have the capacity to participate in international organisations, including by availing themselves of any accountability mechanisms that might exist.<sup>36</sup>

### 3 Conclusion

To conclude then on the general question of the appropriate role of NGOs in accountability of international organisations, it is clear that it is a vexed question with wide-ranging views. Broadly speaking, concerns coalesce around two issues. The first is that NGOs are not representative. However, I have shown that this is not a requirement in other contexts and in any event, NGOs tend to represent an idea rather than a particular group of people. The second concern raised is that NGOs themselves lack accountability and thus should not themselves be agents of accountability. I reject that assumption (although I readily concede that there is likely to be ample room for improvement as with many other agencies, domestic and international), but in any event, there are many other instances in which the agent of accountability (the media and academics for example) are not themselves formally accountable.

We can now return to the question whether NGOs might in fact enhance the accountability of international disarmament regimes.

### **III NGOS IN DISARMAMENT**

Contrary to the perception that the role of civil society in international politics is a contemporary phenomenon, in fact, it is part of a long tradition, stretching back to at least 1775 with work on the opposition to the slave trade.<sup>37</sup> Disarmament NGOs were active in the form of the peace societies

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35 Peruzzotti, above n 19.

36 My thanks to the anonymous reviewer of this article for this insight.

37 Steve Charnovitz "Two Centuries of Participation: NGOs and International Governance" (1997) 18 Mich J Intl L 183 at 191–192.

emerging in the late 19th century. In fact, as Professor Charnovitz shows, by 1900 (immediately following the First Hague Peace Conference held in 1899), there were already 425 peace societies in existence.<sup>38</sup> Further, one of the most significant NGOs working in disarmament – the Women's International League for Peace and Freedom (WILPF) formed in 1915 – is also one of the oldest. As we will see, an arm of the WILPF, Reaching Critical Will, is one of the most active, engaged and effective NGOs working in the disarmament sphere still today.

Despite this longevity, international bodies dealing with disarmament or arms control issues have traditionally been very resistant, even hostile, to the influence of NGOs. From the mid-20th century, there was a conscious shift away from engagement with NGOs working in the area of disarmament. In part, this reflected international law's disengagement with the project of disarmament, so prominent in the work of the League of Nations, but ill-suited to the pragmatism of the new United Nations. The birth of the United Nations is sometimes identified as an important milestone for NGO engagement in international life. This is on the basis of art 71 of the Charter of the United Nations which provides for consultation by the Economic and Social Council (ECOSOC) with certain accredited NGOs on matters within the Council's competence.<sup>39</sup> However, in the context of disarmament activism, this actually represented a regressive step because it excluded disarmament NGOs because matters of disarmament did not fall within the competence of ECOSOC.<sup>40</sup>

Other organs of the United Nations were similarly resistant to disarmament of NGOs. The Security Council, with its primary responsibility for international peace and security, has no formal provision in the Charter for engaging with civil society. Rule 39 of the provisional rules of procedure of the Council provides that the Council may invite "other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence".<sup>41</sup> However, there have been only rare examples of NGOs being given an audience in the Security Council.<sup>42</sup> There has been some momentum on NGO participation in the General Assembly. For example, the General Assembly, during its First Special Session on Disarmament in

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38 At 192. See the excellent discussion of the emergence of peace activism: Thomas Richard Davies *The Possibilities of Transnational Activism: The Campaign for Disarmament between the Two World Wars* (Martinus Nijhoff, Lieden, 2007) at ch 3.

39 Charnovitz, above n 37, at 249–253. For framework and evolution see Nicolas Hachez "The Relations Between the United Nations and Civil Society: Past, Present, and Future" (2008) 5 IOLR 49 at 50–71. See also Dianne Otto "Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society" (1996) 18 Hum Rts Q 107.

40 Charnovitz, above n 37, at 249–253.

41 *Provisional Rules of Procedure of the Security Council S/96/Rev7* (1983), r 39.

42 Peter Willetts cites letters written to the Council regarding the nuclear provisions in Palau's constitution; the briefing by a number of NGOs on the humanitarian situation in the Great Lakes in Africa in 1997 and Oxfam lobbying the Council regarding conflict in Africa. See Peter Willetts "From 'Consultative Arrangements' to 'Partnership': The Changing Status of NGOs in Diplomacy at the UN" (2000) 6 Global Governance 192.

1978, allowed 25 NGOs to make statements to the Assembly – quite a radical step for its time, but still very modest.<sup>43</sup> Today, there is much better engagement: for example, in the First Committee of the General Assembly. However, it remains the case that the disarmament work of the United Nations is among the least penetrated areas of activity by NGOs.

While the United Nations remains relatively closed to NGOs in disarmament matters, the last twenty years have seen some important and far-reaching changes in terms of participation and involvement in the broader disarmament sphere. The landmines campaign is perhaps the most well known example but other treaties such as the Cluster Munitions Convention, the recently concluded Arms Trade Treaty and the on-going humanitarian initiative in the context of nuclear weapons are important examples where civil society has had a renewed energy and engagement with the work of states in concluding these agreements.<sup>44</sup> Less well known, but equally important is the role of NGOs through the long decades of the negotiation of the Comprehensive Test Ban Treaty.<sup>45</sup>

Sweeping claims have been made as to the impact and role of civil society as a norm entrepreneur in this context, in particular in the context of the landmines campaign.<sup>46</sup> However, an evaluation of these dynamics is well beyond the scope of this contribution, because those discussions are about the role of civil society in the context of norm formation, rather than accountability of international organisations (or regimes) per se.<sup>47</sup> Important though all those initiatives are from a normative perspective in terms of building the stigmatization of certain weapons, the focus of this contribution is to consider whether and to what extent civil society has a role to play in making international regimes dealing with issues of disarmament any more accountable for their actions. Much less attention has been paid to this aspect of NGO involvement in disarmament.<sup>48</sup>

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43 Charnovitz, above n 37, at 264.

44 On the Cluster Munitions Convention see John Borrie *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won* (United Nations Institute for Disarmament Research, Geneva, 2009).

45 Rebecca Johnson *Unfinished Business: The Negotiation of the CTBT and the End of Nuclear Testing* (United Nations Institute for Disarmament Research, Geneva, 2009).

46 Compare for example the different accounts in Maxwell A Cameron, Robert J Lawson and Brian W Tomlin *To Walk Without Fear: The Global Movement to Ban Landmines* (Oxford University Press, Oxford, 1998) and Frank Faulkner *Moral Entrepreneurs and the Campaign to Ban Landmines* (Rodopi, Amsterdam, 2007).

47 In one sense of course, the entire campaign to ban landmines can be seen as a holding to account (a form of redress) the general United Nations machinery dealing with weapons, given the failure of the United Nations system to bring about a ban.

48 There are a handful of pieces that address these issues: Mirko Sossai "Transparency as a Cornerstone of Disarmament and Non-Proliferation Regimes" in Andrea Bianchi and Anne Peters *Transparency in International Law* (Cambridge University Press, Cambridge, 2013); Claudia Kissling *Civil Society and Nuclear Non-Proliferation: How do States Respond?* (Routledge, Abingdon, 2008); and McLeish and Lak, above n 26.

Despite this being a relatively narrow area of study, it is still not possible to canvass all the NGOs working in this area and all the agencies or regimes. It has therefore been necessary to narrow the focus of this contribution to a selection of agencies as and when they prove to be informative illustrations. Thus, this contribution does not purport to be a systematic evaluation of all disarmament related regimes or even a comprehensive mapping of NGO activity in this sector. It is also important to note that the examples considered here involve NGO engagement in formally constituted international organisations as well as within informal networks, a reflection of the fact that many significant disarmament and arms control initiatives occur outside of formal organisations. Although not explored in this contribution, it would be interesting to examine whether accountability might function differently in formal and informal settings.<sup>49</sup>

#### ***IV ASSESSMENT OF DISARMAMENT NGOS AND ACCOUNTABILITY***

Returning then to Professor's Scholte's four indicators of accountability, this section aims to assess the work of key NGOs in these areas in promoting the accountability of the work of the various international regimes (that is, formal international organisations and other more informal networks or regimes) dealing with disarmament issues.

##### ***A Transparency***

Professor Scholte points out that it is impossible to hold governors to account if their governance is invisible to constituents.<sup>50</sup> Thus, the first step in holding regimes to account is working towards increased transparency in terms of the activities, decision-making processes and outcomes of those regimes. There is an irony at play when one considers the question of transparency in the disarmament sphere. As between states, disarmament will only ever be possible when states come to believe that there is full and open information as to holdings of weapons stockpiles and technological capabilities. Thus, in that sense, transparency between states is the lynchpin of successful disarmament and security.<sup>51</sup> And yet, disarmament treaties are traditionally the most closed to external actors – studies of access by civil societies to global governance regimes show that security-related regimes are more resistant to external scrutiny and rate badly in the transparency stakes.<sup>52</sup>

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49 Thanks again are due to the anonymous reviewer for this suggestion.

50 Scholte, above n 6, at 217.

51 Sossai, above n 48, at 395.

52 See the conclusion by Tallberg and others (eds) *The Opening Up of International Organizations: Transnational Access in Global Governance* (Cambridge University Press, Cambridge, 2013) at 255 that civil society has permeated issue areas of human rights, development and trade successfully, whereas institutional platforms for influence are "rare, underdeveloped, or nonexistent" in the issue areas of finance and security (which includes disarmament).

However, even acknowledging that traditional resistance, transparency is an important feature of the work of this NGO sector. In fact, as the subsequent analysis will show, disarmament NGOs perform at a high level in this aspect of the work, because while their access can be quite limited in comparison to other regimes, they perform the valuable role of translating or making accessible information that can be jargon-laden.<sup>53</sup> It is not enough to simply provide information, as that information must be understandable to the public to constitute transparency. Transparency activities are most straightforward when NGOs have been permitted to have some kind of access to treaty negotiations, Review Conferences or involvement in the work of implementation bodies of treaties. There are many instances of this happening where in fact the reports of various NGOs are the only understandable and publicly accessible accounts of the work of the organisation or process in question.

One important example is in the context of the Chemical Weapons Convention, which creates the Organisation for the Prohibition of Chemicals Weapons (OPCW) to implement its terms and particularly its verification system.<sup>54</sup> The OPCW was then, and remains, the only international organisation created and designed to oversee the elimination (disarmament) of an entire category of weapons. Thus, transparency is important not just in terms of the accountability of this particular disarmament regime, but also in terms of disarmament more broadly, as this system is often considered a blueprint for future verification of disarmament systems.

Overall, the participation by entities other than states in the work of the OPCW has been limited when compared to other regimes in international law, not involved in disarmament or security.<sup>55</sup> As noted above, this is unsurprising given its security dimensions. In addition, the system was devised in the 1990s, as the new wave of engagement by civil society in the landmines campaign and for the International Criminal Court was only just beginning.<sup>56</sup> A third point calls to be made and that is that historically, the civil society sector involved with the chemical weapons sector were less grass roots

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53 Often the issues are technically complicated and this, combined with diplomatic-speak, can render official reports and accounts incomprehensible to the outside observer.

54 Chemical Weapons Convention, above n 25.

55 McLeish and Lak, above n 26, at 40. For discussion on the interactions between civil society and the OPCW, the scholarship is limited but see Maarten Lak "Governance in the international security arena: A role for non-state stakeholders as co-providers of security" (Research Paper, Clingendael Institute, October 2009); and Daniel Feakes "Global Civil Society and Biological and Chemical Weapons" in Mary Kaldor, Helmut Anheier and Marlies Glasius (eds.) *Global Civil Society 2003* (Oxford University Press, Oxford, 2003) 87.

56 Participation by civil society in the OPCW is governed by its Rules of Procedure adopted by the States Parties to the First Conference of the States Parties in 1997, and since amended: *Rules of Procedure of the Conference of the States Parties C-1/3/Rev2* (2013), r 33.

advocacy groups and more academic-based scientists and analysts. As such, while there was important work happening within that community of experts, there was less attention being paid to external transparency.<sup>57</sup>

That said, there was some important transparency work. Early on in the preparatory phase (from when the treaty was signed in 1993 to its entry into force in 1997), there was engagement between some sectors of civil society and the Preparatory Commission to 1997 and from then with the OPCW itself. In terms of transparency activities, an important example was the agreement between the Preparatory Commission and the Harvard Sussex Program on Chemical and Biological Weapons (HSP) to place a HSP Researcher within the Provisional Secretariat to report on the work. Those reports were published in the HSP Bulletin from 1993 through to 2005.<sup>58</sup> The only publicly available accounts of the work of the Preparatory Commission for the OPCW remains this work of the Harvard Sussex Programme on Arms Control and Arms Limitation. These are significant in and of themselves of course, showing how a treaty with the first multilateral disarmament verification system was devised and developed. Those accounts followed through into the work of the Organisation itself. For example, during the 'Bustani affair' at the OPCW, during which the Organisation dismissed the Director-General at the behest of the United States, the only meaningful contemporary account of what happened within the organisation came from the Harvard Sussex Programme's Bulletin.<sup>59</sup>

Today in the workings of the Organisation, there is restricted access by NGOs at the high level meetings (for example, the Review Conferences held five yearly) as well as in the everyday workings of the Organisation. For example, the Conference of the States Parties that meets each year has restrictive rules for participation and the Executive Council that meets throughout the year is even more restrictive. Funding has also been an issue with attention moving away from the CBW issues and towards the perceived threats by non-state actors in the wake of the attacks in the United States in September 2001.

An area which has seen ever-increasing transparency towards NGOs has been in the context of nuclear weapons. The cornerstone of the treaty regimes in this context is the Treaty on the Non Proliferation of Nuclear Weapons (NPT).<sup>60</sup> The NPT entered into force in 1970 and today the overwhelming majority of states are party to the treaty.<sup>61</sup> The treaty does not establish a formal

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<sup>57</sup> Feakes, above n 55, at 101.

<sup>58</sup> Entitled "Progress in the Hague": see Harvard Sussex Program "The CBW Conventions Bulletin" (2008) University of Sussex <[www.sussex.ac.uk](http://www.sussex.ac.uk)>.

<sup>59</sup> The episode was subsequently recounted in Treasa Dunworth "Towards a Culture of Legality in International Organizations: The Case of the OPCW" (2008) 5 IOLR119.

<sup>60</sup> Treaty on the Non-Proliferation of Nuclear Weapons 729 UNTS 129 (opened for signature 01 July 1968, entered into force 5 March 1970).

<sup>61</sup> Exceptions being India, Pakistan, the Democratic Peoples' Republic of Korea, Israel and South Sudan.

international organisation or secretariat: rather the verification activities that take place happen through the mechanisms of Safeguards Agreements concluded between the relevant NPT States Parties and the International Atomic Energy Agency.<sup>62</sup> However, the Treaty provides for five yearly Review Conferences, and these have been held every five years since 1975, serviced by the United Nations. The function of the Review Conference mechanism is "to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised".<sup>63</sup> The Review Conferences are held in New York and generally last for three weeks.

A key debate in this context is the failure to move to meaningful disarmament negotiations as many states believe is required by Article VI of that Treaty. This failure to make any progress over the decades has attracted increasing attention (and disapproval) from NGOs, and demands to move beyond the non-proliferation treaty and at least start work on a nuclear weapons disarmament agreement are increasing. While this is a normative exercise on one view (and thus not within my scope of enquiry), it is also an exercise in transparency in that the work of NGOs is exposing the failure of the Review Conferences for making progress on an obligation in the founding treaty.

In terms of formal NGO participation it was not until the 1995 Review Conference that NGOs were permitted to even observe the proceedings.<sup>64</sup> Even then, access was only to general plenary meetings, which are almost set-pieces and often the written version of speeches is available in any event. There was no access to working groups in which more detailed discussion and work takes place.<sup>65</sup> However, over time, there have been some changes, particularly in terms of the scale of participation by NGOs. By the 2005 RevCon, only ten years and two Review Conferences after their first admission, nearly 1,800 individual civil society representatives had registered, from 119 different organisations.<sup>66</sup> Despite the limited participation at a formal level (civil society representatives were not permitted to attend the working groups), solid relationships with certain civil society friendly delegations allow a good understanding by NGOs of the issues.

A good example of that transparency in action is in the work of Reaching Critical Will, the disarmament programme of the Women's International League for Peace and Freedom and the writings of Dr Rebecca Johnson, the Executive Director of the Acronym Institute for Disarmament

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62 Treaty on the Non-Proliferation of Nuclear Weapons, above n 60, art 3(4); and Statute of the International Atomic Energy Agency, art 3(A)(5).

63 Treaty on the Non-Proliferation of Nuclear Weapons, above n 60, art 8.

64 Kissling, above n 48, at ch 8.

65 Discussed by David C Atwood "NGOs and Disarmament: Views from the Coal Face" in Kerstin Vignard and others *NGOs as Partners: Assessing the Impact, Recognizing the Potential* (United Nations Institute for Disarmament Research, Geneva, 2002) at 8. The 1995 Review Conference was particularly significant as it was the Conference that agreed to the indefinite extension of the NPT which when agreed to initially had a life-span of only 25 years.

66 Kissling, above n 48, table 6.1 at 51.

Diplomacy.<sup>67</sup> In both instances (and there are others), comprehensive and detailed information and analysis is clearly presented for a wide readership. The analysis shows that what is really important is that the NGO involved has a sound understanding of the issues so that the formal statements and positions of state delegations can be interpreted for a wider audience.

In conclusion then, on the question of the transparency aspect of accountability in the context of disarmament, NGOs score very highly here, particularly in light of the closed and secretive nature of much of the negotiations and proceedings in this issue area.

### ***B Consultation***

As defined by Professor Scholte, the second aspect of accountability is consultation – that is, incorporating the views of affected people into deliberations and thus providing the opportunity to shape outcomes of any decision making process. In other issue areas (say, human rights or fair trade) examples of consultation might be where a state canvasses the views of the public as regards proposed ratification (or even negotiation) of an international treaty. Thus, NGOs might undertake an independent study of the consequences of a particular policy or treaty. An example of consultation with an international body is the process of receiving shadow reports regarding human rights compliance of states.

In the context of accountability of international disarmament regimes, consultation tends to be less about engagement on a particular policy and more about engagement as regards to scientific or technical expertise. One example of this happening is in the context of the Chemical Weapons Convention where there is an on-going debate about what exactly the Treaty requires regarding the use of incapacitating chemicals in situations short of armed conflict (for example, hostage situations or United Nations peace enforcement operations).<sup>68</sup> The debate is at least assisted (if not influenced) by scientists from academia or research institutes,<sup>69</sup> the International Committee of the Red Cross,<sup>70</sup> and other scientific commentary.<sup>71</sup> That being said, these activities are less about consultation and more properly seen as the NGOs attempting to bring expert scientific commentary to the political debate with the aim of facilitating good decision-making.

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67 See respectively Reaching Critical Will <[www.reachingcriticalwill.org](http://www.reachingcriticalwill.org)>; and The Acronym Institute <[www.acronym.org.uk](http://www.acronym.org.uk)>.

68 Article 2(9) of the Chemical Weapons Convention, above n 25, allows for an exception to the ban on chemical weapons providing that toxic chemicals can be used for law enforcement purposes. For discussion see Treasa Dunworth "The Silent Killer: Toxic Chemicals for Law Enforcement and the Chemical Weapons Convention" (2012) 10 New Zealand Yearbook of International Law 3.

69 One notable example being the work at Bradford University in the United Kingdom.

70 Admittedly not exactly an NGO, but nevertheless, not a traditional inter-governmental structure either.

71 As one example, see the Bulletin of the Atomic Scientists.

A more structured attempt to engage or consult with NGOs is evident in the relationship between the private chemical industry and the states negotiating the treaty over 20 years, as well as in the treaty implementation since its entry into force.<sup>72</sup> Indeed, representatives from the private chemical industry have even acted as advisors on state delegations. It must be said that chemical industry representatives have never had a formal independent role in the negotiations, in implementation discussions or in monitoring. Nevertheless, the engagement with delegations has been an important example of consultation aimed at getting the science right. Another example of consultation is the engagement during the negotiation period with the Pugwash Conferences on Science and World Affairs.<sup>73</sup> Starting in 1959, in the very early days of discussion in the Conference on Disarmament, the Pugwash Chemical and Biological Weapons Study Group has remained engaged in these issues, working on the design of on-site inspections in chemical industry facilities, often bringing policymakers from opposite sides of the divide together in a non-political, independent forum.<sup>74</sup>

In the nuclear weapons arena examples of consultation can be seen in providing technical and other expertise to inform policy making, as well as technical expertise in terms of design of credible and reliable verification mechanisms. In the context of informing policy making, examples include the work of medical and environmental experts setting out the likely impact of a nuclear weapons detonation. While this was a very active engagement during the Cold War, it has been revived with the contemporary "Humanitarian Initiative" – an initiative aimed at re-engaging states with the catastrophic consequences of a nuclear weapons detonation. In three conferences so far in Norway 2013, Mexico in February 2014 and Austria in December 2014, a key focus of the discussions has been evidence presented by leading scientists and experts.<sup>75</sup>

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72 For a detailed discussion see McLeish and Lak, above n 26, at 37–48.

73 For discussion, see Feakes, above n 55, at 99.

74 For accounts of the impact of the Pugwash Study Group on the chemical weapons issue see the discussion by two scientists closely involved: Julian Perry Robinson "The Impact of Pugwash on the Debates over Chemical and Biological Weapons" in A Cerreno and A Keynan (eds) *Scientific Cooperation, State Conflict: The Roles of Scientists in Mitigating International Discord* (1998) 866 *Annals of the New York Academy of Sciences*; and Joseph Rotblat *Scientists in the Quest for Peace: A History of the Pugwash Conferences* (MIT Press, Cambridge (Mass), 1972). For a more personal account, but with a focus on the nuclear weapons issue, see Martin Underwood *Joseph Rotblat: A Man of Conscience in the Nuclear Age* (Sussex Academic Press, Eastbourne, 2009).

75 See generally the preparatory work and reports of the conferences by the United Nations Institute for Disarmament Research and Oslo based International Law and Policy Institute at <[www.unidir.ilpi.org](http://www.unidir.ilpi.org)>.

A good example of technical design is in the work of the Verification Research, Training and Information Centre (VERTIC), which is an independent, non-profit making organisation which provides support to states through research and analysis and engagement with governmental, scientific and technical communities.<sup>76</sup>

In summary, there are some clear examples of consultation taking place by treaty negotiators and by international bodies implementing arms control treaties. In the main, this is seeking scientific and other technical advice, particularly to ensure competent and reliable verification of compliance. This seems to be quite different to the consultation that happens in other spheres: for example, human rights, during which actual policy might be discussed. There may well be other examples of consultation in this sense of policy advice at a domestic level, when a particular state is still considering its position on an issue. However, it does not seem that this engagement occurs at the international level.

### ***C Evaluation***

Professor Scholte's third criterion in assessing accountability is that of evaluation, that is, the process of independently monitoring and assessing the impacts of an international regime's decisions (or failure to take a decision as is often the case in the disarmament sector). As an example, in the context of human rights, this would take the form of independently written human rights reports on a particular situation, or on the work of a particular international body (for example, a peacekeeping deployment).<sup>77</sup>

In the disarmament sphere, a good example of an evaluation activity is the work of Reaching Critical Will in its NPT Action Plan Monitoring Report.<sup>78</sup> At the 2010 Review Conference of the NPT, states adopted a 64-point Action Plan. Since then, Reaching Critical Will has published an annual report assessing progress on those action points, which is made publicly available on their website. This is a means of holding states to account for the undertakings they agreed to in 2010. Reaching Critical Will also publishes a report called *The First Committee Monitor* which describes, explains and evaluates the work of the United Nations First Committee each year. For many years, the Harvard Sussex Program reported on the work of the OPCW as well as the meetings of the States Parties to the Biological Weapons Convention. In all of these cases, the reports are not simply descriptive but evaluative, in that they provide commentary on progress (or otherwise) being made by the states concerned, or by the organisation in question.

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76 See Verification Research, Training and Information Centre <[www.vertic.org](http://www.vertic.org)>.

77 See as one example Amnesty International *Kosovo (Serbia): The challenge to fix a failed UN justice system* (EUR 70/001/2008, January 2008).

78 See Reaching Critical Will, above n 67.

While these are important examples of evaluation activities of NGOs in the disarmament sphere, the range of evaluative material is not as extensive as is found in other issue areas. There are a number of possible reasons for the relative paucity. First, the issues are usually politically and technically complex and thus extensive understanding of the issues is required to prepare reliable evaluation, not to mention considerable time and resources. Another difficulty is lack of funding. While human rights issues, climate change issues and even free trade matters can attract significant funding from the non-governmental sector, disarmament issues unfortunately do not have an easy appeal. Thus, ultimately NGOs are dependent on states for funding, or a handful of key philanthropic institutions. Many of the NGOs must apply for funding annually and the erratic nature of funding often means a lack of continuity in personnel able to consistently track the work of relevant organisations.

In summary, there are some important examples of evaluation activities in the work of disarmament NGOs, but this is not as extensive as in other areas and there is scope for a great deal more work in this area.

### ***D Correction***

The final aspect of accountability identified by Professor Scholte is that of correction, that is, that when a decision-maker's actions have had harmful consequences, that there should be avenues to seek appropriate redress. There are some good examples of this in action in other issue areas – for example, the Inspection Panel for the World Bank established in 1994 and the Independent Evaluation Unit for the IMF established in 2001. In other issue areas, in particular human rights, this has taken the form of attempted litigation against various international entities, all of which have been unsuccessful so far due to questions about where legal responsibility lies and pragmatic issues around immunity.<sup>79</sup>

In the context of disarmament, unsurprisingly, civil society has not had any success in challenging the actions of any international regimes. This remains the most undeveloped of the four aspects of accountability but it is difficult to see that there is scope for improvement in the near term.

## ***V CONCLUDING REFLECTIONS***

Overall, despite a number of promising activities and developments, it would seem that disarmament NGOs currently have a more limited role as far as accountability of relevant international organisations is concerned.<sup>80</sup> This may be explained, at least in part, by the fact that when national

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79 An important example is the "Mothers of Srebrenica" litigation. See: *Stichting Mothers of Srebrenica and Others v Netherlands* (65542/12) Grand Chamber, ECHR 27 June 2013. The families of the victims of the genocide at Srebrenica had earlier tried to pursue proceedings against the United Nations in the courts of the Netherlands. This proceeding, in the European Court of Human Rights, was an attempt to challenge the decision of the domestic courts to terminate the proceedings on the basis of the immunity of the United Nations. The European Court of Human Rights unanimously declared the application inadmissible.

80 Atwood, above n 65.

security interests are involved, policy makers generally expect to retain tight control over decisions and the public has traditionally been content to let them do so.

However, the analysis in this article (partial as it has been) has shown that aspects of accountability are not entirely absent. For example, there seems to be considerable success in achieving transparency, and some success in particular aspects of consultation and evaluation, particularly where scientific and technical expertise is concerned. That being said, there are fatal gaps in seeking correction, the final aspect of accountability. Admittedly, this is consistent with many other issue areas but that is little comfort for those wanting to achieve greater accountability in the field of disarmament.