

NON-GOVERNMENTAL ORGANIZATIONS (NGOS) - NEW WORLD ACTORS OF CONTEMPORARY INTERNATIONAL RELATIONS

Jelica GORDANIĆ*

Abstract: The paper examines the status and influence of NGOs on international relations. It analyses major dilemmas regarding the position of NGOs. It examines their historical development, consultative status within the United Nations and possibilities of formal interaction with the UN Security Council. NGOs have had a noticeable impact on the development of international law, particularly in the areas of human rights and environmental law. They have influenced resolutions of the UN Security Council regarding the rights of women and the rights of children during conflicts. Lately, their growing influence has been characterized as problematic by some states. NGOs have been considered non-state actors. The author concludes that NGOs have developed some characteristics of legal subjectivity. The state is gradually losing its exclusivity in international relations. Without NGOs, international law and international politics would not be the same. Having in mind their growing role and influence, the author concludes that NGOs might be considered actors in the future of international relations.

Keywords: NGOs, international relations, international law, United Nations, Security Council, legal subjectivity.

INTRODUCTION

The Peace of Westphalia, signed in 1648, established a framework for contemporary international law whose primary participants are states.

* Research Fellow, Institute of International Politics and Economics, Belgrade. E-mail: jelica@diplomacy.bg.ac.rs.

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States enjoy entitlements and have obligations under international law. As such, they are subjects of international law. The possibility of recognizing subjects other than states was acknowledged by the International Court of Justice (ICJ) in the *Reparation for Injuries Suffered in the Service of the United Nations* case (ICJ Reports, 1949). The ICJ stated that the “subjects of the law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature may depend upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States”. Those “certain entities” have become known as non-state actors — individuals, multinational companies, private financial institutions, private military organizations, NGOs, etc. As non-state actors, NGOs are often considered controversial, especially in transition countries. NGOs are playing a very active role in international relations. Their actions influence numerous areas: democracy building, conflict resolution, disarmament and military surveillance, human rights, environmental activism, politics, etc. It is actually very hard to find an area in which NGOs are not included. They have become indicators of changes in international relations. NGOs have made a long journey from the 18th-century missionary associations to actors with a consultative status within the UN and an emerging goal of establishing formal cooperation with the UN Security Council. This paper poses the question of whether NGOs are old or new actors in contemporary international relations. With the aim of answering this question, the author analyzes the development of NGOs, their status within the UN, their contribution to international law development, as well as their growing influence.

DEFINING NGOs

Due to the variety of NGOs, it is not easy to make a clear definition. Some theorists use the term “NGO” to describe many different types of organizations that are not governmental, such as multinational companies, national liberation groups, etc. For others, the term “NGO” is used for private non-profit organizations encouraging higher values within the legal scope of their society (Martens, 2003, p. 2). Generally, despite the lack of a definition, there is agreement about the major characteristics of NGOs. An organization is an NGO if it is independent

of the direct control of any government. Also, an NGO is not constituted as a political party; it is non-profit-making, and its actions must be non-violent. Of course, in practice, some NGOs might be close to political parties or they might have an income from commercial activities (Willets, 2002). The term "international non-governmental organization" was used for the first time in United Nations Economic and Social Council Resolution 288B (X) from 1950 regarding cooperation between the ECOSOC and international NGOs. For the purpose of this arrangement, "any international organization which is not established by inter-governmental agreement shall be considered as a non-governmental organization". The agreement requires NGOs to have "an established headquarters, with an executive officer (...), as well as "conference, convention or other policy making body". Besides international NGOs, there are national NGOs whose activities take place under the law of the state in which territory they have been established. NGOs are not subjects of international law. They enjoy legal personality under national law, whether they are national or international NGOs. The lack of status in international law has been used by NGOs as an opportunity to contribute to political and legal issues when they would otherwise be excluded (Martens, 2003, p. 2). Along with the term NGO, there are also other terms used for this type of organizations, such as "non-state", "third sector", "voluntary", "non-profit" or "civil society organizations".

HISTORICAL DEVELOPMENT OF NGOs

Contrary to popular belief, NGOs are not a product of the 20th century. They originate from the 18th century. The roots of NGOs come from various forms of religious institutions, missionary associations, scientific societies, fraternities, or humanitarian organizations. The technical and social development of the 18th century created an environment suitable for the establishment and development of international non-governmental organizations. NGOs have been established in Europe, as well as in Asia and America. Their scope has been related to medical and humanitarian issues. The period of the 19th century was characterized by the expansion of transnational NGOs. The activities of NGOs were focused on the rights of women, sports, the protection of animals and medical issues. Three NGOs established during this period are still active: the Organization of the Red Cross, the International Olympic Committee, and the International Council of Women (Davies, 2018, pp. 16-19). In the 20th century, NGOs reached a whole new level and had a more active and

visible role. NGOs have made a significant contribution to decolonization and the development of anti-colonial norms. Along with the development of transnational companies, NGOs have been highlighting and drawing attention to some of the bad practices of multinational corporations. The emergence of regional organizations has been followed by the incensement of the establishment of regional-based NGOs and the possibilities of their cooperation (Davies, 2018, pp. 25-26). NGOs additionally established themselves as aspiring actors in international relations through cooperation with two universal organizations – the League of Nations and the United Nations. The Covenant of the League of Nations in Article 25 stated that “the Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.” During its short existence, the League of Nations has successfully cooperated with national Red Cross organizations.

NGOs AND THE UNITED NATIONS

The next universal organization, the United Nations, continued the League of Nations’ cooperation with NGOs. According to Article 71 of the UN Charter, “the Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned”. In the absence of international NGO law, the UN Charter and Article 71 have served “de facto as a charter for NGO activities”. (Charnoviz, 2006, p. 357). The UN Committee on Non-Governmental Organizations is in charge of considering the applications of NGOs for consultative status with the UN and makes recommendations to the ECOSOC. In the meantime, formal arrangements for consultations with NGOs have changed several times: in 1950, 1968, and 1996. These have become the so-called “NGO rules”. The NGO Rule from 1950 required that an NGO be of “recognized standing” and that it “represent a substantial proportion of the organized persons within the particular field in which it operates” (UN Economic and Social Council, 27 February 1950). The NGO Rule from 1968 is less strict compared to the NGO Rule from 1950. It requires that an NGO must “be of recognized

standing within the particular field of its competence or of a representative character". This rule also requires an NGO to "have a democratically adopted constitution" and to "have a representative structure and possess appropriate mechanisms of accountability to its members who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making process" (UN Economic and Social Council, 23 May 1968). The NGO Rule from 1996 regulates the suspension or withdrawal of the consultative status of NGOs with the Economic and Social Council. This might happen if an organization, either directly or through its affiliates or representatives acting on its behalf, "clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations", "if there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities", or "if, within the preceding three years, an organization did not make any positive or effective contribution to the work of the United Nations and, in particular, of the Council or its commissions or other subsidiary organs" (UN Economic and Social Council, 25 July 1996). Some theorists consider that the Cold War influenced the UN's actions until the fall of the Berlin Wall in 1989. During the period from 1948 to 1989, the development process of the UN objectives was frozen and not very much open to the participation of non-governmental organizations in the governance process (Giorgi, 2019). On the other hand, consultative status makes a difference between NGOs and other non-state actors. It is some kind of recognition for NGOs. As consultative partners of the ECOSOC, NGOs perform numerous functions: they gather information, educate member states, help draft treaties, mobilize governmental and citizen support for the goals and politics of the UN, provide valuable information about on-the-ground conditions relevant to the UN, offer advice, etc. Even from the outside, NGOs are playing an important role in the UN. They are educating UN personnel, representatives of states, and the general public about emerging crises or issues that might cause international concern. NGOs pressure the UN and states to pay attention to such issues through lobbying, protests, naming and shaming, or media campaigns. Former president of Brazil, Fernando Cardozo, once stated: "The rise of civil society is indeed one of the landmark events of our times. Global governance is no longer the sole domain of Governments. The growing participation and influence of non-state actors is enhancing democracy and reshaping multilateralism" (Wapner, 2007, pp. 257-258).

POSSIBILITIES OF FORMAL COOPERATION WITH THE UN SECURITY COUNCIL

One of the NGOs' challenges for the future is the establishment of formal cooperation with the UN Security Council (SC). The SC is one of the most important global bodies, with a very specific structure and functions. It is often characterized as an elite or oligarchic club. How do NGOs see cooperation with the SC and what might they expect from it? NGOs were included in the negotiations on the reform of the Security Council in the 1990s. NGOs based in New York and Geneva established the NGO Working Group on the Security Council in early 1995, with the aim of influencing the reform debate. The working group organized two public meetings on reform topics as well as several private meetings with delegates of the SC. Relatively soon, it was clear that the reform of the SC was a never-ending story. The NGO Working Group decided to change course, and it started to organize a public dialogue between the SC members and the NGO community in 1996 to establish formal interaction. The NGO Working Group was not able to take common positions on the most important security issues, so members formed separate *ad hoc* groups to work jointly on advocacy topics (Paul, 2010). Theorists consider that, with time, the Security Council members "have increasingly turned to NGOs as partners and service contractors in emergency and post-emergency situations under the Council's authority" (Hill, 2002, p. 27). This cooperation between the SC and NGOs "has been satisfactory", having in mind the reputation and structure of the SC (Gordanić, 2021, p. 61). So far, cooperation between NGOs and the Security Council has been informal. NGOs are using multiple methods to interact with the Security Council: the Arria formula, bilateral meetings, naming and shaming, and lobbying. The Arria Formula is an informal forum used by the SC members to enhance their contact with NGOs, including local NGOs suggested by United Nations field offices. It is an important source of expertise and testimony on certain thematic issues, especially humanitarian ones. It might be considered an additional source of information for the SC. The regular meeting process implies informal briefings between individual members of the Security Council and NGOs, outside the chambers of the Council. This kind of interaction has been promoted primarily by the elected members of the Security Council, who have had the most to gain by working with NGOs. Most of the elected members, because of their limited resources, are not able to deal with the workload of the Security Council. They often turn to NGOs in order to

obtain information and expertise. This kind of interaction has become quite common since the early 2000s. Naming and shaming is a method of pressure on the Security Council for its activities or lack of activities regarding certain topics. This method has been successful in the areas of terrorism, human rights, humanitarian crises, etc. Through lobbying, NGOs seek contact with the SC representatives in order to convince them to address the issues of concern. Lobbying is often used in cases of human rights violations in a particular country (Binder, 2008, pp. 12-16).

NGOS' INFLUENCE ON THE RESOLUTIONS OF THE SECURITY COUNCIL

Even if informal, the interaction between NGOs is very important for the improvement of transparency of the SC. But the success of NGOs is limited in three ways. Firstly, their influence on the SC is the strongest in the so-called soft policy areas. Secondly, NGOs cannot access issues important to the permanent members of the Security Council. Thirdly, on the issues of international peace and security, it is a necessity to take appropriate measures in a timely manner. Only formal cooperation between NGOs and the SC can provide this request (Gordanić, 2021, p. 61). Having in mind the structure and tradition of the SC, any kind of NGO influence is a good influence. So far, NGOs have had the most influence on the position of women in conflicts and the rights of children during conflicts. Influence on women's rights started in October 2000, when a group of women's NGOs from Sierra Leone, Tanzania, Guatemala, and Somalia addressed the Council in an Arrria Formula meeting, revealing the gender-specific conditions that women experience during conflicts. Under the presidency of Namibia, the Security Council held an open session during which speakers addressed issues of women, peace and security. As a result, the SC unanimously passed Resolution 1325 on Women, Peace and Security on October 31, 2000. The Resolution urges all parties to an armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict. The resolution provides a number of important operational mandates with implications for member states and the entities of the United Nations system. It might sound unbelievable, but Resolution 1325 was the first formal document from the Security Council dedicated to the protection of women in conflicts, especially the protection of women and girls from wartime sexual violence. Thus, in Resolution 2122, which

refers to women, peace and security, adopted by the Security Council on October 18, 2003, "the importance of civil society interactions is recognized". This kind of NGOs' acknowledgment by the Security Council is very motivational for further activities and efforts of NGOs. This resolution was not the last regarding the NGOs' acknowledgment by the Security Council. In this context, it is necessary to mention Resolution 2171 on the Maintenance of International Peace and Security, adopted by the SC on August 21, 2014. In this resolution, the SC "reaffirms its willingness to strengthen its relationship with civil society, including, as appropriate, through inter alia, meetings in an informal and flexible manner with civil society, to exchange analyses and perspectives on the issue of the prevention of armed conflict". Cooperation with NGOs might be a good opportunity for enhancement of the SC's transparency. Besides influencing the rights of women in conflicts, NGOs also make an important contribution to the rights of children during conflicts. Their lobbying on this issue resulted in the establishment of the United Nations' Special Representative of the Secretary-General on Violence against Children. As a result of NGOs' lobbying, the UN General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) in 2000. This document became legally binding in February 2002. At the same time, the Security Council adopted a series of resolutions on the rights of children in armed conflicts, especially regarding the sexual abuse of children by combatants and the issue of child soldiers. Some of the most important SC Resolutions regarding children in armed conflicts are 1261 (1999), 1308 (2000), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005) (Gordanić, 2021, p. 55).

NGOS AND INTERNATIONAL LAW

NGOs "bring expertise, commitment, and grassroots perceptions that should be mobilized in the interests of better governance" (Jacob Sending and B. Neumann, 2006, p. 663). They have been active participants in the process of the creation and development of international law. States, as subjects of international law, often consider NGOs as a periphery of international law-making. On the other hand, theorists point out that NGOs "have an important role in edging forward the boundaries of international law, by lobbying nationally, regionally and internationally, by attending and being witness to negotiations, by making written submissions and (...) by drafting alternative treaties" (Taylor, 1998, p.

325). NGOs have made a significant contribution to the development of human rights, environmental law, international humanitarian law, international criminal law, human security law and, to some extent, even economic law. Without the influence of NGOs, these areas of law would probably be less developed or differently shaped and structured. Treaties are immediate sources in international law. From the moment that states put themselves as signatories, they have duties. In the case of non-compliance, states will face some kind of sanctions that can harm their relations within the framework of international relations. The participation of NGOs in negotiations and the drafting of treaties is not insignificant, NGOs are increasingly “gaining space in the international scenario, because they also act as a bridge between society and states” (Giorgi, 2019). For example, NGOs have played important roles in developing proposals, promoting and building government support for a number of international agreements, including the UN Convention on the Rights of the Child, the Mine-Ban Convention (Ottawa Treaty) and the Rome Statute of the International Criminal Court. The Campaign for the Abolition of Torture by Amnesty International prompted governmental and non-governmental actors to embark upon an elaborate program of standard-setting aimed at the abolition and prevention of torture and related practices. To achieve this goal, Amnesty International has been mobilizing public opinion and exercising public pressure, which sometimes involves parliaments, political parties, churches and other religious bodies, trade unions, professional groups, and other organs of national and international society. NGOs also influence governments and parliaments in order to obtain the acceptance of international treaties through ratification or accession (Van Boven, 2015, p. 11). NGOs might have the status of observers. For example, Article 11 of the OSPAR Convention states, “The Commission may, by unanimous vote of the Contracting Parties, decide to admit as an observer (...) any international governmental or any non-governmental organization the activities of which are related to the Convention”. As observers, NGOs can present to the Commission any information or reports relevant to the objectives of the Convention. The role of NGOs is important in the implementation of treaties, especially in the case of human rights treaties. For example, Article 45 of the Convention on the Rights of the Child states, “the Committee may invite the specialized agencies, the United Nations Children’s Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates.

The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities". NGOs have the status of *amicus curiae*. Some of the most relevant international courts, such as the European Court of Human Rights, the International Criminal Court for the former Yugoslavia, the International Tribunal for Rwanda, etc., have developed procedures to enable NGOs to attain the status of *amicus curiae*. This status is important for at least two reasons. NGOs have knowledge and expertise on certain issues. On the other hand, they are independent from the state. Courts can take their views and considerations as neutral, relevant and reliable (Gordanić, 2020, p. 210). For two reasons, critics claim that the influence of NGOs on international law is illegitimate. Firstly, NGOs often advocate for very special interests and very limited agendas. Secondly, in the sense of democratic representation, NGOs do not represent anyone. They are not elected or managed by citizens; their inner structure is often not democratic, and they are frequently asked questions about their finances and transparency. These critics are not very well-based because NGOs "do not have to prove any legitimacy" (Zengerling, 2013, p. 37). Legitimacy is a category related to state authority and the exercise of power by state organs in democratic societies.

THE POWER OF NGOs

Besides their power to influence international law, NGOs have the power to prevent the adoption of international treaties. A good example of this was the Multilateral Agreement on Investment (MAI), which was negotiated by the Organization for Economic Cooperation and Development (OECD) during the 1990s. The Agreement caused a lot of opposition and disagreement from various NGOs, which pointed to secret negotiations over the treaty to protect the rights of foreign investors and restrict the ability of governments to legislate in the public interest with respect to environmental and labor rights. NGOs started a campaign against the MAI. The campaign was focused on governments and citizens, and raised awareness regarding the treaty. NGOs' pressure and the campaign had been successful and the negotiations on MAI were abandoned (Carter, Weiner, Hollis, 2018, p. 151). How powerful and influential NGOs might be, proves the assertive legal strategies of some states. For example, China has made serious efforts through regulations to control and limit human rights organizations. In 2016, China enacted a

new law subjecting foreign NGOs to the prohibition of any activities that might endanger its national unity and security. Russia has a similar regulation. In 2021, Russia enacted new laws requiring NGOs that receive foreign funds to register with the Russian Ministry of Justice as foreign agents. A similar law, passed in 2015, allows Russian government officials to determine if a foreign organization is “undesirable” (essentially, a threat to national interests), subjecting it to administrative and criminal penalties and effectively banning its operation if it is found to be so (Plantan, 2017).

CONCLUSIONS

NGOs are unique actors in international relations. Unlike nation-states, they have no territory or sovereignty. Unlike multinational corporations, they have no economic power. Despite all this, NGOs have proven to be very influential actors, and sometimes very powerful ones as well. They have shown influence on international law. They have received international recognition due to their cooperation with the UN ECOSOC. They have shown influence on resolutions of the UNSC. Some states are afraid of their growing influence. Most NGOs’ shortcomings arise from their lack of legal personality. NGOs are objects of international law. Despite some optimistic opinions from theorists on recognizing NGOs as international legal subjects, it is not realistic to expect that any time soon. Having in mind the contribution of NGOs and their place in international relations, their status is closer to the subject than the object of international law. In the case of NGOs, there is a discrepancy between their *de jure* conception of non-state actors and their *de facto* global socio-political role (Nijman, 2010, p. 95). Their status makes them more similar to international organizations than to other non-state actors (Gordanić, 2020, p. 216). NGOs should continue to use their unregulated status as they used to do. In the absence of international NGO law, everything that is not forbidden is allowed for NGOs. The 21st century is an age of technological development. Perhaps NGOs might find some new areas to develop or discover some new mechanisms to influence the actions of states and international organizations. The Covid-19 pandemic “had shown the lack of international cooperation and deepened rivalry between the major global actors” (Gordanić, 2022, p. 244). The current crisis in Ukraine might influence the possibilities of UN reform. If that happens, NGOs should use all possibilities to upgrade their status within the UN and establish formal cooperation with the SC. Also, many states and international organizations should be more open toward NGOs and

their knowledge and resources. Having in mind their tradition from the 18th century, NGOs are not, for sure, new actors in contemporary international relations. Their development, influence, and perspectives make them the actors of the future in international relations.

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