

THE ROLE OF INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS IN HUMAN RIGHTS PROTECTION

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Abstract

One of the main concerns of democratic states and intergovernmental or supranational international organisations is referring to the respect of human rights. International nongovernmental organisations have also an important role in establishing human rights violations, boosting in taking measures for their removal, and also in the improvement of specific international regulations.

For awareness of the role of these organizations, it is necessary to investigate their involvement in activities of human rights protection, with the argumentation of the necessity in extending their actions regarding the cooperation with intergovernmental institutions and organizations, in order to prevent or terminate violations of human rights and to eliminate negative consequences arising from such facts

Keywords: *human rights, non-governmental organizations, international community, defence measures of human rights, United Nations Organization.*

1. Introduction

Throughout history, the cooperation between the states of the international community has been diversified, along with the relations among states, thus creating forms of international coordination and collaboration, by the intermediary of transnational organizations.

Concerning the point of view of the quality of members, the international organizations may be:

- Inter-governmental organizations, created by agreement of the states;
- Supranational international organizations, which are created by the states, but their institutional bodies operate similar to the bodies of state power, administration or jurisdiction;
- International non-governmental organizations, which are situated between the public sector, because of the services it performs and the private sector, due to the manner of organization.

International non-governmental organizations have an old history, as in the year 1914 they had already founded 1083 similar organizations¹. They had, throughout their evolution an important contribution in sustaining the movements against slavery, for the rights of women or in other domains regarding the protection of human rights. As a result, the study concerning the role of these organizations in protecting the human rights, aiming at knowing the mechanisms and means by which they may intervene in the situation of the breach of these rights, presents a particular importance, as only by presenting these mechanisms may the methods of action be improved in view of preventing the acts by which the respective values are negatively influenced, in the same time taking the best measures to avoid the negative consequences of the mentioned acts.

2. The appearance and characteristics of international non-governmental organizations

In ancient times, social philanthropic issues were left to the church, however, with the commencement of society's evolution, because of its impossibility to deal with the increasing level and complexity of social problems, the governments were compelled to assume more liabilities for the poor or the persons that faced different social problems. Similarly, the non-governmental

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¹ Oliver P. Richmond and Henry F. Carey, *Subcontracting Peace - The Challenges of NGO Peacebuilding* (Aldershot: Ashgate Publishing, 2005), p.21.

organizations appeared which were permanently developing, thus reaching a functional division of liabilities between the state and the volunteering².

In the present numerous international non-governmental organizations such as: Amnesty International, International Committee of the Red Cross³, Human Rights Watch, International Institute of Humanitarian Law, „Article 19” etc. develops an intense activity regarding the defence of human rights.

The notion of „non-governmental organization” began to be used more frequently after it was introduced in the constitutional documents of the United Nations Organization, in the year 1945, thus accepting the consultative role of the respective organizations⁴, following their request to officially participate in the works of the bodies belonging to the United Nations Organization⁵.

International non-governmental organizations represent international associations, without a lucrative purpose, created from a mixt or private initiative, which groups natural or legal persons with different nationalities, in conformity with the domestic law on the territory of which they are headquartered.

The notion of *international non-governmental organizations* is used for designating international organizations which were not founded by an international treaty⁶, being created and administered by private persons, which do not officially represent the state. They are organizations of the civil society, that does not develop a political activity, but which functions in the public sphere, completing or influencing the activities of the government in the sense of improving the social activities from certain domains⁷.

International non-governmental organizations are defined by certain common *traits*:

- Embody a legal personality, thus they activate in their own name;
- They are private, functioning separately from governmental institutions, but they may receive governmental support or include in their councils of administration members or representatives of the governments;
- Do not offer profit to the members, and if it is accomplished, it will be reinvested for the benefit of the organization;
- They control their own actions by procedures of internal management, benefiting from a high degree of autonomy;
- Involves a significant level of voluntary participation.

Although their quality of being a matter of international law is not explicitly acknowledged, in conformity with present regulations, the non-governmental organizations embody a legal personality, and in certain limits it contributes to creating the international law, in cooperation with certain inter-

² Cristian Jura, *Rolul organizațiilor nonguvernamentale pe plan internațional* (Bucharest: All Beck, 2003), p.10 and foll.

³ Oleg Balan, *Protecția drepturilor omului în conflictele armate: Monografie* (Chisinau: Universitatea de Studii Europene din Moldova, 2009), 18 and foll.

⁴ In conformity with art. 71 of chapter 10 from the United Nations Organization Charter, „The Economic and Social Council may take any appropriate disposition for consulting the non-governmental organizations which deal with issues in accordance with its competence”.

⁵ Thomas Buergenthal and Alexandre Kiss, *La protection internationale des droits de l'homme* (Strasbourg et Arlington: N.Q. Engel et Kehl, 1991), 155 and foll.

⁶ In accordance with the Resolution no. 288/1950 of the Economic and Social Council „each international organization which is not created by intergovernmental agreements will be considered an non-governmental international organization”. See also Paragraph 7 from the Resolution no. 1296 (XLIV) of the Economic and Social Council regarding relative dispositions to consultations with non-governmental organizations from the 23th of May 1968.

⁷ These are *non-profit*, *private* organizations by form and *public* by the services performed. Although the non-governmental organizations are private from the perspective of domestic law, as simple associations submitted to state legislation in which they were founded, they may sometimes play an important role in the framework of the international law.

governmental organizations from the U.N.O system, thus acknowledging certain competences that are limited in the framework of relations of international law⁸.

An argument in favour of considering international non-governmental organizations as a subject for the public international law would be that, as this quality was acknowledged in other (intergovernmental) organizations, not only sovereign states, it should be also acknowledged for non-governmental organizations, as the later will be able to freely exercise its activities, at an international as well as at a national level; until the present, however, the only legal instrument whose regulations are in favour of acknowledging the character of subjects of the international law of these organizations is the *Convention on the recognition of the legal personality of international non-governmental organizations*, adopted by the Council of Europe, in April 1968.

3. Categories of activities achieved by international non-governmental organizations in the domain of the defence of human rights

Non-governmental organizations have an important contribution regarding the observance of human rights, as they bring valuable information to the bodies of the U.N.O. which are commissioned to solve the issues in this domain, signal the acts that breach the human rights⁹ and contribute to promoting and applying the norms that refer to these rights¹⁰; when they must deal with issues concerning human rights¹¹, *the bodies from the system of the United Nations Organization* frequently require the non-governmental organizations with a consultative status to supply *information*, especially upon the situations at hand¹².

⁸ By the Resolution 1996/31, adopted on the 25th of June 1996, the Social and Economic Council of the U.N.O. was pronounced for acknowledging the consultative statute of non-governmental organizations in relation to the United Nations Organization, establishing many applicable principles in the relations between non-governmental organizations and the U.N.O., the manner of establishing consultative relations, the participation conditions of non-governmental organizations to the international conferences of the U.N.O. and to their preparation process, as well as suspension or cancellation of the consultative statute. By this resolution, the non-governmental organizations are acknowledged a certain capacity of international law, in relation with the U.N.O., however they did not acquire a veritable legal statute of an international subject in this respect.

⁹ An example of the implication of non-governmental organizations in stating the infringement of human rights is the „Written Declaration” of the *International Association against Torture*, non-governmental association with a special consultative statute, presented to the *Human Rights Commission* at the 54th session, from the 17th of March, in which it is stated that the Association wishes to attract the attention of the Commission concerning the obstacles in implementing the Commission regarding the prohibition of torture. The negative aspects presented by the Association come from Spain and the United Nations of America, concluding that, because of the fact that underdeveloped countries, such as the ones presented below, have committed infringements of human rights, the Commission will have to act immediately. As a result, the Association demanded the Commission to denominate a special rapporteur to investigate these situations, as no other way of ensuring the liability of the countries that persisted in breaching the human rights, established by the treaties and conventions ratified existed.

¹⁰ In the framework of U.N.O., different control mechanisms within which the non-governmental organizations play a role of major importance were established. Thus, for example, when presenting the reports regarding the observance of human rights, by the state parties, a significant number of non-governmental organizations send the experts that are charged with examining these reports, information regarding the real situation from those countries, which are very useful for them.

¹¹ At the San Francisco Conference in 1945, when the United Nations Organization was founded, approximately 40 non-governmental organizations representing syndicates, women, ethnic groups and religious groups united their forces in order to impose a common language for the human rights, their *lobbying* resulting in the adoption of several norms concerning this domain, which were incorporated in the United Union Charter. Thus, in the Preamble of the Charter it is stated: „the faith in fundamental human rights, in the dignity and value of the human individual, in the equality of rights of both men and women ...”, and in the art. 1 it is stated that one of the main tasks of U.N.O. is to promote „the respect for human rights and for the fundamental liberties of all the individuals”.

¹² In some cases, the information presented to the Economic Council by the non-governmental organizations are based on specific requests which were addressed to them, such as the Resolution of the Social and Economic Council no. 1987/5 from the 26th of May 1967 by which information was demanded referring to the observance of rights contained in the International pact for economic, social and cultural rights.

Decentralized and diverse, they act rapidly upon issues that seem grave for the majority of the inter-governmental organizations, whose activity is, above all, bureaucratic and political.

In the framework of the U.N.O, the relations with the non-governmental organizations are regulated by the resolutions of the Social and Economic Council 288B(X) from 1950 and 1296(XLIX) from 1968.

Together with the expansion of non-governmental organizations interested in human rights the possibility of affirming themselves opened within all the relevant bodies of the United Nations Organizations. Thus, by means of the U.N.O. Conference regarding human rights from 1993, in Viena, the indispensable role of the non-governmental organizations within the protection mechanism of human rights was emphasized; as a result, certain humanitarian non-governmental organizations were also engaged to work together with the U.N.O, for the defence of human rights within the conflicts that exist on the planet¹³.

These international organizations also participate, in the activity of *specialized institutions in the defence of human rights*, by supplying information from the states involved, by informing and involving the public opinion in cases of serious breaches of human rights or by putting pressure on international organizations, for taking certain measures such as: sending special rapporteurs, organizing work groups etc. Moreover, non-governmental organizations frequently elaborate reports parallel with those belonging to the states, in certain issues concerning the observance of human rights, which they present to the international institutions.

There exists an older practice of the cooperation between the United Nations, Council of Europe, Organization for Security and Cooperation in Europe and certain non-governmental organizations, as the Council of Europe annually submits to the attention of the Council of the United Nations for Human Rights reports concerning its activity¹⁴.

The Council of Europe had recognized from the year 1952 the importance of non-governmental organizations in certain domains of activity, as well as their contribution to these activities, by accepting to consult the respective organizations on issues that belong to the competence of the Council¹⁵. In the year 1972, the Committee of Ministers of the Council of Europe adopted the Resolution 72(35), which contains new regulations referring to the relations of the Council with non-governmental organizations, irrespective of the fact that they benefited of a consultative status or not.

International non-governmental organizations with a consultative status are liable to the Council of Europe¹⁶:

¹³ Bianca Selejan-Guțan, *Protecția europeană a drepturilor omului*, 4-th edition, (Bucharest: CH Beck, 2011), 18 and foll.

¹⁴ There is a Memorandum of Understanding between the United Nations and the Organization for Security and Cooperation in Europe, one with the Bureau for Democratic Institutions and Human Rights and, also, many agreements with different organizations. U.N.O. is working with the Bureau for Democratic institutions and Human Rights at several projects, including, for example, founding national institutions in Central Asia and preparation courses, referring to human rights, for those responsible with the monitoring in Kosovo. Similarly, there were different forms of cooperation and exchange of information with the missions of the Organization for Security and Cooperation in Europe from Bosnia-Herzegovina, Croatia and Kosovo. The United Nations founded, along with the Organization for Security and Cooperation in Europe, *joint human rights offices* in Abkhazia, Georgia. All these forms of cooperation developed with the support of international non-governmental organizations, involved in the issue of human rights.

¹⁵ The cooperation regulations between the Council of Europe and the non-governmental organizations are governed by the Resolution of the Committee of Ministers no. (93)38, in art. 2 of this resolution being stated that the consultative state will be guaranteed for the international non-governmental organizations, which are representative in their domain of competence and at an European level. In the present, more than 400 non-governmental organizations have a similar statute within the Council of Europe.

¹⁶ Jura, *Rolul organizațiilor nonguvernamentale pe plan internațional*, 142.

- To supply information, documents or notifications, that the General Secretary may require related to their domain of competence;
- To maximize the advertising of the initiatives taken by the Council of Europe or its achievements, in the domain of their competence;
- To submit every two years to the General Secretary a report within which the following must be identified: their participation to the works of different bodies of the Council of Europe (committees of experts, parliamentary committees etc.), to the manifestations organized by the General Secretary (reunions of general informing, sectorial reunions), to the reunions of groups belonging non-governmental organizations, on sectors of interest, which entertain relations with the corresponding sectors of the General secretary, as well as in the reunions, that were organized and to which the Council of Europe was invited to participate, thus also maintaining the actions performed in view of promoting the activity developed by the Council of Europe.

Non-governmental organizations are getting more and more involved in the activities of *international inter-governmental organizations* regarding the defence of human rights as representatives of non-governmental organizations participate in the works of these organizations and to the process of *issuing certain norms of international law of human rights*, by promoting new ideas in the filed or by proposals to adopt norms or amendments.

The involvement of non-governmental organizations in the redaction and adopting of the Statute of International Penal Court, fact which resulted in important consequences upon their direct participation before this court is noticeable Thus, in conformity with article 15 from the Statute of International Penal Court, the Prosecutor must analyse the information received from the part of non-governmental organizations¹⁷.

An important role is played by the international non-governmental organizations before the international jurisdictions from the domain of human rights. Thus, they may be involved in the initiation of certain requests addressed to these courts¹⁸, may support actions in their capacity of plaintiffs before an international jurisdiction, and their representatives may become representatives of the individual plaintiffs, in the litigations in front of the international jurisdictions, or even *amici curiae*, when they express their opinion upon several serious issues of general interest, regarding a certain cause or presents a report concerning the above-mentioned issues, before the court. These actions are possible, as, when flagrant and systematic breaches of the human rights occur, the international non-governmental organizations are better placed than the individuals in apprehending the competent authorities (national and international), as well as in the preparation and presentation of the communications necessary¹⁹.

By this type of activities, non-governmental have considerably influenced the working methods and even the reasoning of several international courts, such as the European Court of Human Rights. Moreover, the participation of non-governmental organizations such as *amici curiae* influenced the regulation procedure developed before these courts, thus consolidating the equality of weapons in favour of the plaintiff.

Concerning the jurisdictional activity of the European Court of Human Rights, international non-governmental organizations may develop numerous activities in order to establish infringements on human rights. Thus, in conformity with art. 25 par. 1 from the European Convention of Human Rights, these organizations may file complaints referring the claimed violations of the Constitution,

¹⁷ This article already received a practical application, in the month of February 2003, when the non-governmental organization *International Federation of Human Rights* formally brought, the first case before the International Penal Court. It refers to the situation in the Central-African Republic, where the organization mentioned stated the certain executions, rapes, murders regarding the civil population were performed.

¹⁸ Frequently the plaintiffs are guided by the non-governmental organizations to file complaints, when a right has been breached.

¹⁹ Raluca Miga-Besteliu, *Drept internațional. Introducere în dreptul internațional public*, Third edition (Bucharest: All Beck, 2003), p.206.

however only if they are the victims of those violations²⁰. Moreover, non-governmental organizations may offer consultancy or ensure the legal representation for persons who wish to file complaints to the European Court of Human Rights²¹.

In the cases heard by the European Union of Human Rights, non-governmental organizations are permitted to submit short files *amicus curiae*, that ensure the necessary information to the analysis of the issues raised. In the virtue of the Rules of Court, „any person interested, except the applicant”, may submit commentaries written on different specific topics. The individuals or groups, must, however, prove that they manifest an interest for the case presented and, similarly, that their intervention has been done in the interest of a better legal administration²².

4. Conclusions

Given the above-mentioned, it can be stated that, in the context in which the observance of human rights constitutes one of the most important problems of contemporary life, the role of the international non-governmental organization is becoming more and more important, even existing opinion that these are the „locomotives” in the evolution of the international law of human rights. Of course, not all NGOs will be able to make a significant contribution to human security or will even be interested in engaging with questions of human security.

Pressures from NGOs on state institutions are necessary in order not to limit their activities only in the adoption of laws. Relations between states and NGOs are difficult and deficient, without proper communication, and, although the authorities are open to promote human rights, however changes in attitude and mentality are necessary.

One of the main objectives of the United Nations is strengthening the advocacy role of NGOs in maintaining and supporting democracy, human rights, access to information, freedom of expression and media independence, judicial independence and fight against corruption, professionalization of NGO movement and the development of cooperation with the UN human rights.

Nevertheless, numerous international non-governmental organizations collaborate with the inter-governmental organizations and the international institutions for the defence of human rights, and over 1500 of these organizations have a consultative status in addition to the Social and Economic Council²³, thus contributing to the process of making decisions²⁴. The non-governmental organizations are, also, involved in the activity of subsidiary bodies of the Social and Economic Council such as: the *Human Rights Commission*, *Commission for sustainable development*, the *Commission on the Status of Women* and the *Subcommittee on Prevention of Discrimination and Protection of Minorities*.

The cyclic and unpredictable nature of international aid funding, the conflict with government inherent in addressing political threats to human security, and the costs and difficulties associated with building strong NGO networks are all obstacles to full and effective NGO participation in

²⁰ The majority of complaints referred to the liberty of manifestation, right to association or public assembly.

²¹ Non-governmental organizations may also help to elaborate complaints, however rarely file complaints before the court, as they generally appeal to lawyers to perform this task.

²² Art. 36 par. (2) from the European convention of Human Rights, as amended in the Protocol no. 11, explicitly stipulates, what the intervention of a third party implies: an oral or written intervention from any person interested and who is not required, at the invitation of the President of the Court.

²³ The legal framework for the participation of non-governmental organizations to the works of the Economic and Social Council, is established by the Resolution 1296(XLIV) regarding the dispositions referring to consultations, which can be made in writing or orally, adopted by the Council on the 23rd of May 1968 and reviewed by the Resolution no. 31/1996. The Council acknowledges that these organizations must acquire the possibility to express their point of view, as they possess a special experience and valuable technical knowledge for the activities of the Economic and Social Council.

²⁴ For example, *The Conference regarding the environment from Stockholm*, in 1972, occurred subsequent to the pressures exercised upon governments by the non-governmental organizations, in this sense.

human security initiatives. Addressing these barriers will be one task for interested actors like the United Nations and the Commission on Human Security and will require the organization and facilitation of considerable dialogue between NGOs, governments and aid agencies. This will be a worthwhile task for such organizations to undertake, however. Despite the many pressures which NGOs already face on their time, the links which exist between human security and human development, and the connections and resources that NGOs stand to gain from their involvement in human security initiatives will all encourage NGOs to make a full and meaningful commitment to human security

However, we believe that in addition to the work of NGOs, it is necessary that people be more active in protecting their rights, knowing them. One of the solutions consists in heavily promote human rights in schools and also mass media has to draw attention to the problem and inform people how to defend their rights.

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