

Status and Role of Ngos in International Law

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Abstract. In recent years, international law has shown a trend of humanization, which is more in line with the spirit of human rights. This also corresponds to the purpose of NGOs known as "the conscience of the world". After decades of development, NGOs are no longer transparent roles between sovereign states. Sovereign states have transformed from sole subjects to primary subjects. At the same time, international entities such as nation states and intergovernmental international organizations that strive for independence have emerged. Various private entities such as NGOs and individuals are eager to participate as much as possible in international affairs. Because they can use this to strive for the status of international law subjects. Through a literature review, this paper argues that the impact of non-governmental organization on international law has both advantages and disadvantages. However, it is generally inclined to better implement the spirit of human rights, to speak for the public and to extend a valuable helping hand to developing countries and vulnerable groups. The objectives of non-governmental organization and value-oriented international law are essentially the same. Their original intention was to work towards highlighting global human values, achieving world peace and security and promoting international cooperation and development. Maintaining and developing non-governmental organization is a better way to go than simply restricting it. The non-governmental organization plays an irreplaceable role internationally. It should actively improve the mechanism of restraint and accountability. Not to condone the non-governmental organization so much that it gives them both power and responsibility.

Keywords: Non-governmental organization; international law; pros and cons; promotion; fairness.

1. Introduction

In recent years, many new trends have emerged in the development of international law. This includes diversification of values, diversification of subjects, and humanization. They are becoming increasingly prominent in positive international law. This article believes that the most noteworthy aspect is the humanized development of international law. Because it allows the establishment and maintenance of individual rights and legal status to be reflected in the fundamental values and principles of international law. These are also reflected in the actual system and regulations. All of this is beneficial to the well-being of all humanity [1].

After the end of World War II, especially since the 1970s, the number of NGOs has increased at an unprecedented rate. They participate extensively in the activities of various international organizations and influence their agenda-setting and decision-making. From the establishment of treaties to the implementation of rules, from the international protection of human rights to the world environmental protection, have their impact. They have become an important force in the international community. They act as a lubricant between sovereign states [2].

Although many scholars and institutions such as the World Bank have made attempts. However, in the current international community, there is still no unified definition for NGOs. After screening and summarizing some common statements, this article ultimately identifies some widely recognized characteristics of NGOs [3].

First, NGO must be created by private or NGO. And its activities after its establishment should be independent of any country, government. Second, the NGO needs to aim at the public interest, such as the pursuit of environmental protection, the provision of social services and the promotion of social development. Thirdly, there is no doubt that the goals and principles of NGOs always follow the spirit and purpose of the United Nations Charter [3]. Fourth, profit cannot be the sole purpose of the organization. Fifth, an NGO must have at least two countries and more members and areas of activity.

However, it remains a legal person of a state and is governed by the domestic law of that state. Finally, the NGO must have its own charter and system, with conventional organisational structures such as headquarters and overseas offices [4].

At present, the status of NGOs is not equivalent to that of sovereign states internationally. It is only the subject of domestic law and is governed by the domestic laws of the country to which it belongs. Nevertheless, it can participate in international dispute settlement and international decision-making. They thus influence international law and help to monitor its effective implementation. When it comes to global challenges, it is clear that a single country cannot respond effectively to them. The main way to solve these problems is to internationalize them. Given national interests, there is bound to be disagreement among different countries on how to solve global problems. It is easier for NGO to co-ordinate as non-state actors [4].

2. Advantages and Disadvantages of NGO in the International Arena

2.1. How NGO Affect International Law

The NGO are involved in international law in a variety of ways. They assist or directly undertake operational development projects initiated by Intergovernmental International Organizations. They provide specific products and services to target groups and participate in emergency humanitarian relief. Many criminal courts, truth commissions and compensation funds were created in part by charitable donations from NGO. They use a variety of techniques and expertise to gather information for the drafting of certain international rules. They conduct research, initiate initiatives, shape public opinion, lobby, convene or assist in convening, chairing or assisting in chairing international conferences and forums [5]. In 1991, for example, the NGO, represented by EarthAction Network, launched a "Back" campaign to protest mcdonald's use of plastic boxes. It eventually forced mcdonald's to replace plastic packaging with paper packaging [6]. The Antarctic International Governance model with the Antarctic Treaty system at its core is regarded as a model of international cooperation today. The NGO is an indispensable key force in the system [7].

2.2. The Positive Effects of NGO

2.2.1 The crisis of legitimacy in international law has been alleviated to some extent

The lack of broad representativeness is a dilemma faced by international law in terms of legislation and enforcement. International Relations, whose main body is inter-state relations, cannot really represent the interests and values of the public. The public, on the other hand, has to accept increasingly stringent international regulations. This situation has caused a democratic deficit of international law, legitimacy crisis [3].

Due to the unique position of NGOs as private entities distinct from sovereign states, their participation in the formulation of international law has to some extent promoted public participation. They are organised to enable many vulnerable members of the public to express their views and to ensure that their voices are heard internationally. Usually, strong public opinion or demonstrations on human rights, environmental, and moral issues can prompt international law to attach importance to these issues. In this way, to a certain extent, the legitimacy crisis of international law has been alleviated [4].

2.2.2 Expert team

Having professional knowledge in relevant scientific fields is an important reliance for NGOs to participate in the development of the international legal system. And it is one of the important factors for it to gain influence. Neither economic nor human rights issues nor other global issues can be solved by a single domain of knowledge. The NGO has accumulated expertise in specific areas that enables it to provide scientific advice for international rulemaking, they have a relatively deep understanding of the knowledge in the industry field, and even to directly draft international rules or set relevant international standards [4]. For example, the International Union for Conservation of

Nature drafted the first draft of the Convention on Biological Diversity, which influenced the agenda of the convention negotiations [8].

2.3. The Negative Impact of NGO of Justice

2.3.1 The NGO lacks effective management and accountability mechanisms.

Of course, logically speaking, when NGOs participate in the formulation of international law, they must also comply with international law. However, currently, a widely recognized international agreement to regulate the behavior of NGOs has not yet emerged. In this situation, if NGOs make mistakes or even create unfair treaty texts during their participation, there will be no corresponding handling method. This means that they can avoid any responsibility. Indeed, the biggest problem with NGO participation in the creation of international law is that they are not bound by it [4]. In addition, the non-governmental organization have their own preferences on the issues [8].

2.3.2 NGO is not the embodiment of pure justice.

NGOs should have their own guidelines and goals for action. The protection of human rights, the protection of the environment, and the commitment to sustainable development are usually necessary elements in their constitutions. However, it has also been argued that NGOs are not necessarily representative of the affected individuals and groups, but more often represent special interests or factions [8]. From the perspective of international politics, it can be observed that NGOs are actually not that special, and their essence is the same as other entities involved in international politics. They can also be, or are likely to be entities that lack democracy, have a strict hierarchical system, and care about their own reputation and financial situation [4].

At the same time, most of the wealth is held by a small number of people, who are even wealthier than many countries. They are always able to use their wealth to manipulate politics, achieve goals, and control the fate of many vulnerable groups. [9]. The words and actions of NGO can be influenced by their sponsors and become tools for others to export their values. The NGO has increasingly become an important force for countries to seek an international voice [4]. On the other hand, non-governmental organizations are always secretive in some key respects. How much investment have they received and what are they prepared to do with these funds? No one else knows. Unclear purposes and undisclosed amounts are difficult to convince. This also tends to corrupt. This is because the public sector is unable to exercise public oversight over the process It was also unable to compare projects with similar projects in other countries [9]. As of August 2012, for example, some 1,000 NGOs were in the country promoting western democratic values and gathering intelligence. Which NGOs have the largest number and strongest financial resources? The answer is those NGOs from Japan, as well as Western countries such as the United States [10].

3. Recommendations for Improving the Effectiveness of NGO Behaviour

Over the years, the NGO has contributed greatly to many aspects of the international community, but there is still much that can be improved. Many international treaties and intergovernmental international organizations, more or less and directly or indirectly, through various forms, let International Law give NGOs, private actors rights they should not have as non-subject of international law. Although some international organizations and institutions have proposed their guidelines on how to engage and cooperate with non-governmental organizations or individuals in response to this issue. However, the scope of application of these cooperation guidelines and frameworks is not broad and clearly lacks comprehensiveness. For example, they did not elaborate on the correct timing for countries to join public-private partnerships. In any case, there are no rights without obligations. Since the exercise of power because of rights, there is an obligation to accept responsibility. The NGO must account for its actions to stakeholders in the process of international rule of law, and to accept the assessment of stakeholders, according to the results of the corresponding

punishment and reward [11]. Clarification of the issue of international legal liability could shape good private conduct and encourage philanthropy [9].

International law needs to clearly establish accountability and oversight mechanisms for NGO or individuals. It needs to ensure that the agenda of the United Nations is not distorted. Because NGO can be determined by where and how funds and resources are allocated, to distract the United Nations from its ultimate goal. For example, in 2016, the United Nations established detailed rules. It regulates the contact and cooperation between World Health Organization (WHO) and private actors such as NGOs and individuals. FENSA, also known as the Framework of Engagement with Non-State Actors, is a comprehensive document that elaborates on how the WHO collaborates with the private sector. Before it, no such document had ever been published. Of course, it also replaced the previously inadequate guidelines for cooperation with private entities. FENSA includes many provisions related to communication strategies and risk assessments with the private sector. Its focus is on raising funds. Meanwhile, FENSA also pointed out that although WHO is still very willing to accept various forms of donations, they cannot conflict with WHO's interests. These donations should belong to the overall work plan of WHO. In addition, charitable foundations should prioritize project budgets approved by the World Health Assembly when allocating donated funds [9].

In this way, countries/organizations/individuals investing or donating cannot freely borrow the hands of NGOs to do things that are in their interest. In addition, FENSA also meets certain transparency requirements. It publicly publishes donations from charitable entities and includes them in the financial reports of the WHO. However, the International Public Service Fund does not mandate donors to report their donation details. Although there are still shortcomings in this guideline, such as a bold attempt, it's commendable. After all, private donors may be less proactive in donating funds as a result. However, according to feedback from some WHO employees, FENSA has not been significantly affected in accepting donations from private actors [9].

Furthermore, MoU, also known as the Memorandum of Understanding, states in Article 12.1 that the World Health Organization Foundation is responsible for providing stable and immediate funding to WHO. It should ensure that 70% to 80% of the funds it has raised are directly provided to WHO for use within any specific two-year period. This means that these funds will directly flow to the overall work plan of WHO, supporting the priorities given by WHO, prioritizing the enhancement of WHO's technical capabilities and improvement standards. The foundation's funding has finally given priority to providing services to donors' scheduled projects and instead prioritized the implementation of WHO's general projects. Through the improvement of the funding mechanism of the foundation, WHO has finally been able to ensure the autonomy of funds and avoid interference from donor priorities [9].

Article 5 of ARSIWA, also known as the Articles for Responsibility of States for Internationally Wrongful Acts, states that the actions of private entities such as NGOs should be the responsibility of their respective countries. When they exercise national sovereignty, this should be even more so. But there was no detailed explanation of how to handle situations where private actors exercise state functions without consent. Moreover, logically speaking, no country can always be responsible for private entities in its extent of jurisdiction. For example, it is almost impossible for them to know all the actions taken by these entities. There is also the Regulations on the Articles on the Responsibility of International Organizations (ARIO), which stipulates in Article 6(1) that the conduct of an organ or agent of an international organization in the performance of its functions shall be considered an act of the organization under international law. No matter what status the agency or agent holds towards the organization. The general view is that ARIO is not only a novel legal provision in international law, but also an important manifestation of development. It shows a more important position in achieving humanitarian and rational management of development projects [9].

4. Conclusion

The original intention of NGO was to maintain fairness and justice in the world, resist power, and protect the weak. But it itself has insurmountable weaknesses and is easily manipulated through funds. So much so that while maintaining legitimacy and representing public interests, it also loses legitimacy and public trust. But overall, losing NGOs internationally is undoubtedly more harmful than beneficial. This article argues that NGOs are almost impossible to have pure public welfare. Corruption in NGOs is expected. Almost any country, organization, or institution will experience corruption, and there will always be people who try to take advantage of it. Fortunately, people are aware of the root cause of the problem, which is the imbalance of power and obligations, the opacity of capital inflows and their purposes, and appropriate supervision and accountability mechanisms.

By publicly disclosing financial statements and other means, everyone can have the opportunity to supervise. Although, the transparency of FENSA still needs to be strengthened at present. The convenience of donors is a factor worth considering, but rather than ensuring fairness and justice, it can be given way or explored in other ways to improve. Moreover, donations/investments should be based on the recognized spirit of the United Nations. Based on this, it is necessary to assume that investors/donors are the ones who truly recognize the concept of charity. False and selfish funds should not be accepted as necessary. On the contrary, they will also waste the energy of non-governmental organizations in vain.

According to MoU regulations, WHO does not have to fulfill any wishes of donors but can prioritize the achievement of its predetermined goals. This is highly valuable for other NGOs and foundations to learn from and develop. The pioneers of achieving the primary premise have also emerged, such as ARIIO, where an organization's agent cannot use "personal actions" as a shield to evade responsibility under international law. Presumably, more unequal rights and obligations will be filled in one after another.

At present, there is a symbiotic relationship between NGOs and international law. This means that the two are interdependent. But relying too much on something has never been a good thing. In the future, international law may not rely solely on the help of NGOs, and there may be new models to increase public participation in the future. For example, advances in technology, artificial intelligence, and internet technology can make it easier for individuals to have opportunities to participate in international affairs. At the same time, promoting people's awareness is also necessary, so the popularization of education and respect for the right to education are important agendas. Let more people realize that the world belongs to all humanity, and the international community is the stage for all.

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