

# **PARTNERSHIPS IN INTERNATIONAL POLICY-MAKING**

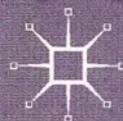
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CIVIL SOCIETY AND PUBLIC INSTITUTIONS  
IN EUROPEAN AND GLOBAL AFFAIRS

EDITED BY

**RAFFAELE MARCHETTI**

INTERNATIONAL SERIES ON PUBLIC POLICY



Raffaele Marchetti  
Editor

# Partnerships in International Policy-Making

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in European and Global Affairs

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Raffaele Marchetti  
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## CONTENTS

<b>Part I</b>	<b>Context</b>	<b>1</b>
<b>1</b>	<b>International Policy Partnerships with Civil Society: Risks and Opportunities</b> Raffaele Marchetti	<b>3</b>
<b>2</b>	<b>The Limits of Global Governance: Transnational Neopluralism in a Complex World</b> Philip G. Cerny	<b>31</b>
<b>Part II</b>	<b>Global</b>	<b>49</b>
<b>3</b>	<b>How Participatory is Global Governance of Trade and Environment? The Cases of WTO and UN Climate Summits</b> Marcel Hanegraaff and Arlo Poletti	<b>51</b>
<b>4</b>	<b>Civil Society-Public Institution Relations in Global Food Policy: The Case of FAO and the CFS</b> Nora McKeon	<b>71</b>

5	<b>Policy Engagement and Civil Society: The Case of IFAD</b> Lauren M. Phillips	89
6	<b>Can Human Rights NGOs Be Trusted in the Corridors of the United Nations and International Criminal Justice Institutions?</b> Lyal S. Sunga	107
7	<b>Civil Society and the UN Security Council: Advocacy on the Rwandan Genocide</b> Kseniya Oksamytna	131
<b>Part III EU</b>		147
8	<b>Asymmetric Patterns in the Civil Society's Access to the European Commission: The Cases of DG FISMA and DG TRADE</b> Giuseppe Montalbano	149
9	<b>European Commission's Sing-along: Civil Society as a Last Resort in the European Union Emissions Trading Scheme Debate—The Case DG CLIMA</b> Pawel Pustelnik	175
10	<b>Civil Society in the EU Development and Human Rights Agenda: The Case of DG DEVCO-EIDHR</b> Chiara Pierobon	195
11	<b>From Window-dressing to Windows of Opportunity: Civil Society Actors in the EU Security Regime—The Case of DG HOME</b> Georgios Kolliarakis	215

12	<b>NGOs and the EU's Responses to Emergencies and Crises. An Analysis of ECHO's and Member States' Support</b> Daniela Irrera	237
<b>Part IV Controversies</b>		255
13	<b>Foreign Government Support for Threatened Civil Societies: Helpful or Harmful?</b> Clifford Bob	257
14	<b>Foreign Policy by Proxy: Democracy and Human Rights Promotion through an Engagement with Civil Society</b> Raffaele Marchetti	275
15	<b>Feeding the Trojan Horse: International Aid Policies in support to NGOs (1990–2015)</b> Igor Pellicciari	293
<b>Erratum</b>		E1
<b>Index</b>		311

Can Human Rights NGOs Be Trusted  
in the Corridors of the United Nations  
and International Criminal Justice  
Institutions?

*Lyal S. Sunga*

THE GOVERNMENT BACKLASH AGAINST HUMAN RIGHTS  
NGOs

Governments around the world have been shortening the leash on human rights non-governmental organization (NGO) watchdogs.

Algeria,<sup>1</sup> Egypt,<sup>2</sup> Bahrain,<sup>3</sup> Israel,<sup>4</sup> and many other countries in the Middle East and North Africa have made it more difficult for NGOs to become established and to operate, squeezing the freedoms of assembly, association, speech, thought, opinion, and expression at the same time.<sup>5</sup> Angola, Burundi, Democratic Republic of Congo, Ethiopia, Mozambique, Nigeria, Sierra Leone, Uganda, Zambia, and Zimbabwe enforce onerous mandatory NGO registration requirements and give government officials overly broad discretionary powers to decide upon applications. Senegal and Uganda require NGOs to apply for permits to carry out many of their

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L.S. Sunga (✉)

Visiting Professor, Raoul Wallenberg Institute of Human Rights and  
Humanitarian Law, Lund, Sweden

e-mail: [lyal.sunga@rwi.lu.se](mailto:lyal.sunga@rwi.lu.se)

normal functions. Others, such as Angola, Equatorial Guinea, Sudan, and Tanzania, severely restrict or even prohibit international NGOs from operating in their territories or bar local NGOs from receiving foreign support.<sup>6</sup>

Government restrictions on NGOs have become more common on other continents too. Notwithstanding the Russian Federation's constitutional human rights guarantees, in June 2012 President Vladimir Putin ushered through Parliament a new law that branded certain NGOs from engaging in political activity and receiving funding from abroad as 'foreign agents.'<sup>7</sup> By the end of 2015, Russia had used the law to list Memorial—a group that documents Soviet-era abuses—along with 100 other human rights NGOs, as foreign agents.<sup>8</sup> In January 2016, the Supreme Court rejected the Kremlin's application to shut Memorial down entirely,<sup>9</sup> but the government continued to interfere in its activities and in those of hundreds of other Russian-based human rights NGOs.<sup>10</sup> In Belarus, in March 2015, the government moved to shut down the Mahiliou Human Rights Center, the only registered regional human rights organization in the country,<sup>11</sup> on flimsy technical grounds relating to its office address. After concerns were raised by Miklós Haraszti, UN Human Rights Council's Special Rapporteur on the human rights situation in Belarus,<sup>12</sup> and Human Rights House Network, a coalition of more than 100 NGOs active in 13 countries,<sup>13</sup> the government dropped its lawsuit the following month.<sup>14</sup>

Many Asian governments have also increased their control over NGOs over the last few years. Central Asian governments targeted human rights, democracy, and development NGOs, as Article 19, a leading NGO that champions freedom of the press, highlighted in its June 2015 statement to the UN Human Rights Council.<sup>15</sup> India's government, led by Prime Minister Narendra Modi, shut down some 13,000 human rights and environmental NGOs in two months in June 2015, including Amnesty International, ActionAid, Ford Foundation and Greenpeace.<sup>16</sup> The People's Republic of China, which has long restricted the establishment of NGOs while allowing some to operate in a legal grey zone,<sup>17</sup> launched fresh campaigns against NGOs in 2015, calling many of them threats to national security.<sup>18</sup>

A 2015 Carnegie Endowment for International Peace report titled 'Closing Space: Democracy and Human Rights Support under Fire' uncovered a clear worldwide trend of government restrictions on human rights and democracy NGOs, particularly in countries with weak democratic traditions and authoritarian tendencies:

more than 50 countries have engaged in some form of pushback against external democracy and rights support. Nor is pushback leveled against only a select number of high-profile US democracy groups. It is affecting an ever widening range of US, European, and multilateral organizations involved in various types of politically related as well as developmental assistance. And nor is it the work of only authoritarian or semi authoritarian regimes. A growing number of democratic governments are restricting space for externally sponsored democracy and rights activities.<sup>19</sup>

Carnegie's report linked this trend to US President George W. Bush Administration's regime change policies in Iraq and the War on Terror which tried to coopt human rights and democracy work by NGOs into US military and counter-insurgency strategy.<sup>20</sup> Conflation of US military objectives with international human rights and humanitarian NGO activity prompted many people around the world, especially those opposing the illegal invasion of Iraq in the first place, increasingly to view the NGO sector as an arm of American interventionism in their internal affairs.<sup>21</sup>

Reports from the International Center for Non-Profit Law, which publishes the online journal *Global Trends in NGO Law*,<sup>22</sup> certain influential human rights NGOs such as Amnesty International,<sup>23</sup> Human Rights Watch,<sup>24</sup> International Commission of Jurists,<sup>25</sup> intergovernmental organizations including the United Nations, Council of Europe, European Union and others,<sup>26</sup> as well as academics,<sup>27</sup> document how governments around the world have been clamping down on civil society and human rights NGOs and the chilling impact this has had on good governance, the rule of law and human rights.

In April 2012, Ms Navi Pillay, the then UN High Commissioner for Human Rights, warned that governments were placing far-reaching restrictions on human rights NGOs. She underlined that civil society, including NGOs, trade unions, human rights defenders, academics, journalists, bloggers, and others were essential to ensure that governments implemented their human rights obligations. She underlined their role in checking the power of government and serving as bridges between government and their people,<sup>28</sup> citing Egypt, Zimbabwe, Cambodia, Algeria, Ethiopia, Belarus, Israel, Venezuela, and most of the countries in the Middle East and North Africa, as places where government severely curtailed NGO activity in one way or another.

Certain governments see NGOs working in the field of human rights, and more recently, those working to fight impunity for serious violations, as Trojan Horses for foreign intervention in their internal affairs, as if

human rights were something that fell exclusively within domestic jurisdiction, which it does not. With regard to international criminal justice, over the last few years, some governments have joined a chorus denouncing the International Criminal Court (ICC) as a tool of Western neo-colonial domination.<sup>29</sup>

Do NGOs dictate UN human rights and international criminal justice policy, force a Western agenda on countries of the Global South and undermine their national security and sovereignty? Have NGOs become too numerous and too powerful? Are they accountable to anyone?

To consider these kinds of question, it is important to explore beyond rhetoric and reaction. It is useful first to trace how and why human rights NGOs came to acquire the influence they currently wield and to place this development into historical perspective. Second, it is valuable to note how the UN accreditation process for human rights NGOs works and the kinds of issue that have given rise to serious disagreement among states over NGO applications to gain UN consultative status. Third, it is essential to recall the many ways in which NGOs interact with the UN human rights system and international criminal justice institutions. Finally, the question as to whether human rights NGOs should be trusted in the corridors of the UN and international criminal justice institutions is considered.

#### WHAT ROLE DO HUMAN RIGHTS NGOs PLAY IN UN AND INTERNATIONAL CRIMINAL JUSTICE INSTITUTIONS?

##### *What are NGOs and How Many of Them Are There?*

Logically, the term non-governmental organization (NGO) can denote any kind of organization that is not part of the state apparatus. Such a broad definition, however, sweeps in businesses, voluntary associations, religious institutions not supported by the state, professional associations, social clubs, and any other private or public sort of association not formed by or deriving from state authority. More useful is the US State Department's definition of an NGO that includes independent public policy research organizations, advocacy organizations, organizations that defend human rights and promote democracy, humanitarian organizations, private foundations and funds, charitable trusts, in societies, associations and non-profit corporations, but not political parties.<sup>30</sup> Using that definition, the US Government estimated there were some 1.5 million NGOs in the USA alone. In 2015, India's Central Bureau of Investigation estimated there

were more than 3 million NGOs operating throughout India.<sup>31</sup> *China Daily*, a state-run newspaper based in the People's Republic of China, reported in 2012 that the number of NGOs in China had grown to almost 500,000.<sup>32</sup>

For the present discussion, NGOs that have received UN Economic and Social Council (ECOSOC) accreditation are most pertinent because NGOs need to have that consultative status before they can participate in UN meetings, as discussed in Section 2.2.<sup>33</sup>

##### *When and How Did NGOs Become Involved in the UN Human Rights System and in International Criminal Justice Institutions and How Are They Accredited?*

NGOs enjoyed a certain level of engagement with the League of Nations, predecessor to the United Nations Organization, insofar as they could attend various committees and were recognized as assessors (advisory members).<sup>34</sup> In this capacity, NGOs could initiate discussions, submit reports and propose amendments to draft resolutions, but they could not make oral presentations. This changed in 1932 when NGOs were allowed also to present speeches to a plenary meeting of the Disarmament Conference and to circulate petitions—a landmark development at the time.<sup>35</sup>

Significantly, the United States Government invited 42 NGOs to place consultants within its delegation to the San Francisco Conference, convened from 25 April to 26 June 1945, to draft the UN Charter. The United States considered that involving NGOs could help gain public support for the Charter of the United Nations and the establishment of the United Nations Organization itself. At the San Francisco Conference, NGO representatives assisted informally with the drafting of some UN Charter provisions related to human rights.<sup>36</sup>

The Charter of the United Nations assigns ECOSOC the authority to call, in accordance with the rules prescribed by the UN, international conferences on matters falling within its competence.<sup>37</sup> Article 71 of the UN Charter provides that ECOSOC may make suitable arrangements for consultation with non-governmental 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 1996, ECOSOC adopted resolution 31 on Consultative Relationship between the UN and NGOs to provide the Committee on NGOs with guiding criteria to decide on NGO applications for consultative status.<sup>38</sup> The Committee has 19 member states, 5 from Africa, 4 from Asia, 2 from Eastern Europe, 4 from Latin America and the Caribbean, and 4 from Western European and other states.<sup>39</sup>

To acquire consultative status, NGO applicants have to be concerned with issues within ECOSOCs competence (i.e. economic and social affairs), have aims and purposes that conform to the spirit, purposes and principles of the Charter of the United Nations and undertake to support the UNs work. Resolution 1996/31 also stipulates that an organization established by government or international agreement does not qualify as non-governmental. NGOs have to show that their operations are transparent, democratic, and representative of their members, that they have been established for at least two years, and that they have a headquarters and an executive officer with authority to speak for its members. Moreover, an applicant NGO has to rely mainly on contributions from national affiliates or individual members and must be prepared to disclose or explain to the Committee all sources of voluntary contributions. Thus, to gain consultative status, applicant NGOs have to show that their activities line up with the principles and purposes of the UN and that they are democratic, transparent and representative of their members. In 1946, ECOSOC granted consultative status to 41 NGOs, and by 1992, to more than 700.<sup>40</sup> By February 2016, 4,360 NGOs enjoyed ECOSOC consultative status.<sup>41</sup>

The accreditation process helps ensure that NGOs interacting with UN and international criminal justice institutions do not function as puppets of particular governments or hidden interests. Members of the UN Committee on NGOs can and do raise objections over particular NGO accreditation applications, as discussed next.

Perusal of some of the Committee's recent proceedings reveals both the kinds of contentious issues that have arisen over NGO accreditation and the tenor of the debates. In 2015, the Committee turned down Freedom Now's application. The US representative stated that Freedom Now was a reputable organization, pointed out that Reverend Desmond Tutu served as its honorary chair, and that it worked on individual political prisoner cases. Furthermore, the Committee had refused its applications for the previous five years even though it had answered some 60 questions raised by Committee members. Representatives of the Russian Federation, Cuba, South Africa, and Sudan countered with technical and procedural objec-

tions and requested more time to consult their capital. China's representative declared outright his delegation's intention to vote against Freedom Now on grounds that its website levelled accusations against UN member states, its words and actions were politically motivated, and therefore, that it could not possibly make any contribution to Human Rights Council work.<sup>42</sup> When it was time to vote on Freedom Now's application, Greece, Israel, and Uruguay joined the USA in support of the NGO's application, but Azerbaijan, Burundi, China, Cuba, Iran, Nicaragua, Pakistan, Russian Federation, South Africa, Sudan, and Venezuela all voted against. India abstained, while Guinea, Mauritania and Turkey were absent. Freedom Now's application for accreditation failed for a sixth time.

During the same June 2015 Committee session, Vietnam strongly objected to an application from Khmer's Kampuchea-Krom Federation on grounds it was agitating for Khmer territorial secession from Vietnamese territory in violation of UN Charter principles. The US representative noted that in a previous session that the Federation had already been approved by the Committee but had missed out on accreditation at ECOSOC by a single vote.

In June 2014, the Committee split over Allied Rainbow Communities International's application. Morocco asked the NGO whether it believed international human rights law guaranteed sexual orientation and gender identity as universal rights. Russia raised a procedural objection to stall further debate, but the NGO barely garnered sufficient support, with seven votes in favour (Belgium, Bulgaria, Israel, Peru, Turkey, United States, and Venezuela), six against (China, Morocco, Mozambique, Russia, Senegal, and Sudan) with India abstaining and Burundi, Cuba, Kyrgyzstan, Nicaragua, and Pakistan absent. At the same session, Morocco vehemently opposed the application of Bureau international pour le respect des droits de l'homme au Sahara on grounds that it attacked Morocco's sovereignty and territorial integrity. Algeria countered that the Moroccan representative's statements were politicizing the Committee's work. The US representative added that her country's support for civil society and the NGO's application did not imply any particular position on the Western Sahara question. In that case, the Committee deferred further consideration on the application.

Another application under consideration in 2014 came from the Congrès national des arméniens occidentaux, another NGO. Turkey objected that the NGO's website raised a doubt as to whether it respected national sovereignty and territorial integrity. Given this observation, the Committee

decided to defer consideration until a later session. On the application of Youth Coalition for Sexual and Reproductive Rights, Morocco, Pakistan, and Sudan raised procedural objections, while Belgium and Canada offered support for the NGO's bid. The application of Centro para la Apertura y el Desarrollo de América Latina was rejected after Cuba denounced the NGO as a subversive organization led by terrorists and assassins, and only Bulgaria, Israel and the USA ended up voting in favour of accrediting the NGO on that occasion.<sup>43</sup> In June 2012, the US opposed the application of the Islamic African Relief Agency, which it said had provided hundreds of thousands of dollars to Osama bin Laden, Al Qaeda, and certain other terrorist groups. Sudan instead strongly supported this NGO and, once the votes were tallied, the Committee's decision was to take no action either way at that particular session.<sup>44</sup>

Many other examples could be cited to show the Committee's thoroughly political nature. State representatives often raise substantive, technical, or procedural objections to applications from NGOs which they consider to disrespect national sovereignty, advocate particular political or ideological views they disagree with, or because they feel particular NGOs are too critical or too biased for their liking.

To appreciate why governments exercise such vigilance over consultative status, it is necessary to understand how NGOs influence UN human rights and international criminal justice policy making: this is discussed in Section 2.3.

#### *How Have NGOs Influenced the Development of the UN Human Rights System and Establishment of the ICC?*

Since the adoption of the Charter of the United Nations in 1945, NGOs have surfed the international human rights tidal wave, a movement that began slowly at first but ended up altering the world's political landscape. Today, human rights NGOs exert considerable influence in political and judicial decision-making at global, regional, national, and local levels, for several reasons.

First, international human rights law has grown tremendously in breadth and depth since the UN Charter designated respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion among the UN's principles and purposes (Article 1(3)) in 1945. Articles 55 and 56 oblige all UN member states to take joint and separate action in cooperation with the organization to promote

human rights, which imposes a legal obligation upon member states and the organization itself to take positive measures to develop human rights law at the international level. The Universal Declaration of Human Rights, which the General Assembly adopted on 10 December 1948 as a non-binding resolution, set a common standard of achievement for human rights promotion and protection and paved the way for the subsequent elaboration of multilateral human rights conventions, monitoring mechanisms discussed in more detail below, as well as the development of regional human rights systems in Africa, Europe, Latin America, and Asia. The incorporation of human rights guarantees in national constitutions, statutes, and policy, together with the establishment of national human rights commissions, link international human rights law to the domestic implementation of human rights guarantees at local level to improve the daily lives of people in all countries.

Second, NGOs have played important roles in major diplomatic conferences on human rights and international criminal justice. At the World Conference on Human Rights held in Vienna in 1993, some 3,700 NGO representatives from more than 800 NGOs with UN consultative status plus another invited 1,000 human rights NGOs, advocated for the establishment of the Office of the UN High Commissioner for Human Rights and for strengthening human rights throughout the whole UN system.<sup>45</sup> NGOs were also influential in elaborating the 1995 Beijing Conference on Women's Declaration and Platform for Action,<sup>46</sup> and in the deliberations of the Ottawa Conference on Landmines (1997), the Kyoto World Conference on Climate Change (1997),<sup>47</sup> the Durban World Conference on Racism (2001), and in many other conferences with technical expertise and practical perspectives that contributed to more effective international policy and action. At the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, NGOs were remarkably well organized in pushing for a strong Statute of the International Criminal Court (ICC). The Coalition for the International Criminal Court (CICC) comprised of more than 2,000 human rights NGOs from around the world proposed many drafting suggestions that helped the Conference draft a strong and progressive ICC Statute.<sup>48</sup>

Third, NGOs with consultative status can participate in the proceedings of the UN Human Rights Council,<sup>49</sup> a subsidiary body of the General Assembly, including the Universal Periodic Review,<sup>50</sup> as well as in ECOSOC's subsidiary bodies including the Expert Mechanism on

the Rights of Indigenous Peoples,<sup>51</sup> the Forum on Minority Issues,<sup>52</sup> the Social Forum,<sup>53</sup> and the Forum on Business and Human Rights.<sup>54</sup> The UN Human Rights Council, consisting of 47 UN member states, is the world's most important intergovernmental forum addressing the full range of human rights issues in all countries and relating to any human rights theme. The Council's Universal Periodic Review examines, on a rolling basis, the human rights situation of each and every of the 193 UN member state every four years. NGOs can submit information as part of the stakeholders' report to be taken into account during the review and any state participating in the interactive discussion can refer to these reports. NGOs can also attend the Universal Periodic Review Working Group sessions and make statements at the Council's regular session. The Universal Periodic Review also affects national policy, law and implementation because it deliberately focuses on the actual human rights situation as viewed by an array of entities including other governments, UN agencies, bodies and programmes, national human rights institutions, professional bodies and associations, and NGOs, and not only on the government's official pronouncements.

Fourth, NGOs have successfully lobbied UN member states to adopt a number of major multilateral human rights conventions. These multilateral conventions constitute a major pillar of the UN human rights system by requiring the parties to them to submit periodic reports on the measures they have taken to implement their legal obligations under the convention and to identify challenges towards further improvement. Currently, there are ten UN human rights treaty bodies in operation.<sup>55</sup> Each state party to the particular convention has to report to the corresponding Committee, for example, a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submits a periodic report to the UN Committee against Torture, and this Committee considers the reports and responds with analysis and non-binding recommendations to guide the state on how to improve its compliance with the convention. In this process, NGOs can submit shadow reports. These attract considerable attention from the international community because they provide their often highly critical and unvarnished perspective on the human rights situation in the state party concerned independent from the government's portrayal. Were it not for NGO shadow reports that identify areas of progress and remaining challenges, UN human rights treaty body proceedings would be little more than polite diplomatic exercises between governments and the UN,

itself made up of member states. Instead, the involvement of NGOs has transformed the UN human rights system into a vibrant and critical process capable of focusing on the plight of victims and potential victims of human rights violations and it can respond quickly to serious situations that arise despite the fact that it remains an intergovernmental forum. The multilateral UN human rights treaties provide every state party with the option to recognize the committee's competence to receive communications from individuals, under the state party's jurisdiction, alleging a violation of the convention. These individual communications procedures allow an NGO to lodge a complaint either where it claims to have been a victim of a violation of the convention itself, or where an alleged victim or victims have explicitly authorized the NGO to act on their behalf.<sup>56</sup>

Finally, NGOs play an important role in UN Human Rights Council's special procedures and investigative mechanisms which involve the appointment of an independent expert, special rapporteur, special representative, or working group, with a mandate to study and report on the human rights situation in a particular country, such as Belarus or Afghanistan, or according to a particular theme, such as the right not to be tortured or the right to food. NGOs are often well placed to provide up-to-date information to Human Rights Council rapporteurs before, during, and following their investigative missions, and even to assist the UN in convening workshops and meetings with a view to hearing from a wide range of stakeholders. NGOs thus remain a crucial component by which UN human rights special procedures can arrive at a more objective, accurate, and balanced panorama of the current situation than if the government concerned was in a position to control completely the theme, colour, and brushstrokes of the picture.

#### *How Do NGOs Influence Human Rights Policy at Regional and National Levels?*

NGOs are also active at the regional level, which is significant because the European, inter-American, and African human rights systems influence considerably member state behaviour on human rights matters.

The European Court of Human Rights can receive petitions addressed to the Secretary-General of the Council of Europe from any person,<sup>57</sup> non-governmental organization, or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the European Convention on Human Rights.<sup>58</sup> The

Committee of Ministers of the Council of Europe adopted the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations which established the legal status of NGOs throughout the Council of Europe.<sup>59</sup>

In the inter-American system, NGOs legally recognized in one or more member state enjoy procedural capacity to appear before the Inter-American Commission on Human Rights as petitioner on behalf of the victim of an alleged violation of the American Declaration or the American Convention on Human Rights.<sup>60</sup> This capacity has been particularly important in cases of enforced or involuntary disappearances where victims' families have not felt secure enough themselves to bring a complaint or be seen to try to trace the whereabouts of family members.

Under the Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights, individuals, NGOs, state parties, the African Commission, as well as intergovernmental organizations, can access the court directly.<sup>61</sup>

The Association of Southeast Asian Nations (ASEAN) Declaration of Human Rights affirms certain basic human rights guarantees, and in paragraph 39,<sup>62</sup> commits member states to promote and protect human rights 'through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organizations, in accordance with ASEAN Charter', which arguably recognizes the right of NGOs to carry out their activities.

NGOs operating at the national level also remain very much involved in the UN human rights system and international criminal justice institutions through their interaction with government, national human rights institutions, and in stimulating policy debate and action through media, workshops, seminars, and public campaigns, in addition advocacy for victims of human rights violations.

#### *NGO Involvement in International Criminal Justice Institutions*

NGOs not only monitor and report on human rights violations and provide an essential counterbalancing role to government narratives, but they contribute to the effective enforcement of international criminal justice in several important ways.

First, human rights NGOs have been closely involved with the establishment of the International Criminal Tribunal for the former Yugoslavia,

International Criminal Tribunal for Rwanda, other internationalized criminal tribunals, and as discussed above the ICC, that have been set up to prosecute high level perpetrators for such international crimes as genocide, war crimes, and crimes against humanity. Commissions of inquiry established either under Security Council or Human Rights Council authority (or the latter's predecessor body, the UN Commission on Human Rights) were extensively serviced by the UN Office of the High Commissioner for Human Rights. They applied human rights investigative methodology and relied considerably upon information from human rights and humanitarian NGOs to establish the scale, character, and responsibility for atrocities. Information from NGOs helped investigators to understand the social, political, and legal context in which serious violations were perpetrated, existing patterns of violations, to develop lines of enquiry, and follow situations closely, which proved critical for triggering international action to establish these bodies.<sup>63</sup>

Second, with regard to ICC process, it should be recalled that the prosecutor can initiate investigations on his/her own motion and gather information from any reliable source.<sup>64</sup> Information from human rights NGOs figure significantly at several stages of international criminal prosecution. The Office of the Prosecutor cannot be everywhere at once and has limited resources itself to gather information in the many countries around the globe experiencing serious violence where there is a likelihood that atrocities are being committed. Not only that, but where there are incidents of serious violations, human rights NGOs are usually among the first to bear witness to the events or their aftermath. International criminal investigators may take months or years to appear at the scene, or may not ever be authorized to do so for a variety of political, jurisdictional, or logistical reasons. Human rights NGOs have proven themselves to be essential in gathering background information that could assist international criminal justice efforts, particularly where police, armed forces, other state agencies, or militia or rebel forces directly implicated in Rome Statute crimes cannot be trusted to gather potential evidence and transmit it to competent prosecuting authorities, or because law enforcement or the judiciary no longer functions, which is commonly the case in armed conflict situations.

Finally, to carry out its mandate, the ICC has to scan the world for situations that warrant preliminary investigation on account of their scale and gravity, and that in turn requires the ICC Prosecutor to keep abreast of information coming from UN human rights thematic and country special

procedures much of which comes from international and locally based NGOs. By providing timely and independent monitoring, investigation and reporting on current human rights situations and on the status of the judiciary and domestic political institutions to address crimes under international law, NGOs remain essential to the world's effort to combat impunity.

### CAN HUMAN RIGHTS NGOs BE TRUSTED IN THE CORRIDORS OF THE UN AND INTERNATIONAL CRIMINAL JUSTICE INSTITUTIONS?

Answering the question as to whether or not human rights NGOs can be trusted in the corridors of the UN and international criminal justice institutions necessarily involves other background questions: NGOs trusted by whom, to do what, why, and how?

The UN system and international criminal justice institutions without human rights NGOs would be like human bodies drained of blood. Fully and organically structured these systems could be, but without red corpuscles to oxygenate the system with people's ideas, hope, aspirations, and energetic efforts to strengthen human rights, and without white corpuscles that fight against State corruption and abuse, they could not live and function for long.

NGOs play indispensable roles in human rights promotion and protection and in international criminal justice institutions by bringing imminent or actual violations to the attention of governments, national human rights institutions, media, regional intergovernmental organizations, and various UN system components including the Security Council, General Assembly and Human Rights Council, as well as international tribunals and the ICC. Human rights NGOs remain critical in monitoring, investigating, and reporting on human rights situations the world over and in working constructively with governments and other stakeholders to identify challenges and develop solutions for improvement. They focus not only on immediate or urgent violations but also on issues that require continual structural improvement over the longer term, such as the rights to education, health, food, adequate standard of living, and other economic, social, and cultural rights. Human rights NGOs transform anaemic intergovernmental structures into vibrant, active, and responsive tools for alleviating human distress through full engagement in the UN human rights treaty bodies, the Universal Periodic Review, UN human rights special

procedures, Human Rights Council and Security Council commissions of inquiry, and through assistance to international criminal prosecutions.

Can individual victims, or potential victims of human rights abuse (which includes any of us) trust human rights NGOs? No one suffering from or threatened with torture would argue against a significant role for human rights NGOs in the UN system or the ICC, simply because governments cannot be trusted to stamp out torture, and in fact, have not done so, let alone even admit their responsibility for it in many instances. Anyone conscious of the value of human rights promotion and protection cannot coherently argue against accommodating NGO voices in the UN and international criminal justice institutions, because the NGO role remains critical to the essence of international human rights promotion and protection which is about empowering ordinary people to limit the overwhelming power of government in people's lives and to hold basic rights and freedoms sacrosanct against undue state interference. Decades of human rights activism in all countries since the UN was founded in 1945 proves that not only do individuals and groups trust human rights NGOs in the UN system and international criminal justice institutions, they demand this role for them, knowing that governments cannot be trusted to be the sole and exclusive guardians of humanity's precious dignity and security. Human rights NGOs provide a pulse for the body politic so that attentive decision-makers can listen to and understand the needs, will, and aspirations of ordinary people, rather than to dictate what they shall think and do. The undeniable and essential value of NGOs for democratizing governance makes the paranoid claims of certain governments that NGOs threaten national security generally laughable, until we recall the thousands of human rights defenders who have been tortured or killed at the hands of state officials over the years.

People who dare demand respect for their human rights, and have the courage to organize with others to resist the state's power, will always unnerve governments which habitually fail to serve their people, rule mainly by force and use law to stifle dissent and subjugate citizens. Limiting NGO activity is just one more way authoritarian governments use to divide civil society, intimidate the general public, and marginalize the political opposition.

This is not to deny or ignore the fact that some NGOs, just like some people, have ulterior motives, are dishonest, may really be GONGOs instead (i.e. fronts for governments, sardonically termed government-organized non-government organizations or GONGOs for short),<sup>65</sup> or

engage in criminal, terrorist or subversive activities. However, just as the answer to wayward individual behaviour is not to lock everybody up, but rather to expose and sanction individual offenders that exceptionally arise, neither is it defensible for governments to launch broad campaigns against NGOs because a few here or there may not be genuinely non-governmental, or because they pursue highly political agendas or even commit crimes. The international community is fully capable of distinguishing human rights NGOs that can be trusted to work for victims and potential victims of human rights abuse in line with the principles and purposes of the UN, from NGOs that have baser aims at heart. Practically speaking, the UN accreditation system provides more than ample opportunity for UN member states to express their views on the trustworthiness of particular NGOs, and to suspend or cancel their accreditation if a majority feels the same way.

Fear of the freedom of NGOs boils down to government preoccupation to control discourse and stamp out criticism, and to some governments imagining foreign-instigated conspiracy where it does not exist. Why else would some governments go so far as to set up their own GONGOS? Such dishonest entities pose as independent, objective, non-governmental voices, while clandestinely pushing hidden state-sponsored agenda, pretending to represent citizens, and working instead to keep real NGOs from carrying out their activities and expressing themselves freely and independently.

Ultimately, human rights NGOs have responsibilities to represent facts and advocate positions accurately, fairly and in a balanced manner, and these are the same responsibilities citizens, governments and inter-governmental organizations share. A world where NGOs are controlled, or subject to unnecessary restrictions translates into a world where dull government monologue is the norm, intellectual thought and debate are stifled and repressed, and the body politic suffers from chronic anaemia. NGOs are no more perfect or imperfect than the people who run them, and in a marketplace of ideas, ordinary people rather than governments have to exercise their own judgement which NGOs are the more credible and reliable, rather than to rely on official narratives and dictates. That remains a vital part of democratic governance, human rights and the rule of law.

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## NOTES

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  33. The Economic and Social Council is made up of 54 member states which the General Assembly elects for overlapping three-year terms based on the following geographical representation: Africa (14 seats), Asian States (11 seats), Eastern European states (6 seats), Latin American and Caribbean States (10 seats), and Western European, and other states (13 seats).
  34. Chiang, Pei-heng. *Non-Governmental Organizations at the United Nations: Identity, Role and Function*. New York: Praeger (1981) at 35.
  35. Ibid.
  36. Op. cit. Chiang at 250–251.
  37. Article 62(4) of the Charter of the United Nations on the Functions and Powers of ECOSOC.
  38. Economic and Social Council resolution 1996/31 entitled Consultative Relationship between the United Nations and Non-Governmental Organizations, *adopted* on 25 July 1996 at ECOSOC's 49th plenary meeting, updated ECOSOC resolution 1296 (XLIV) of 23 May 1968 to guide which NGOs could participate in UN conferences and how.
  39. At the time of writing, the Committees membership from 2015 until 2019 comprised Azerbaijan, Burundi, China, Cuba, Greece, Guinea, India, Iran, Israel, Mauritania, Nicaragua, Pakistan, Russian Federation, South Africa, Sudan, Turkey, United States, Uruguay, and Venezuela. The Committee make recommendations in the form of draft decisions to ECOSOC on whether or not to grant consultative status, suspend or withdraw a particular NGO. NGOs applying for consultative status have the right to respond

- to any objections the Committee raises before it makes its recommendations to ECOSOC. In its June 2015 session, the Committee considered 388 applications before it, some of which had been deferred from earlier sessions, recommending 160 for consultative status, deferring another 200 for later consideration, and closing consideration without prejudice of 27 others. See Report of the Committee on Non-Governmental Organizations on its 2015 resumed session (New York, 26 May–3 June and 12 June 2015); E/2015/32 (Part II) of 17 June 2015, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2015/32%28PartII%29](http://www.un.org/ga/search/view_doc.asp?symbol=E/2015/32%28PartII%29).
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  41. The full list can be easily found on the UNs website. See <https://esango.un.org/civilsociety/getByAllHavingStatus.do?method=getByAllHavingStatus&searchType=csSearch>.
  42. See Report of the Committee on Non-Governmental Organizations on its 2015 resumed session (New York, 26 May–3 June and 12 June 2015); E/2015/32 (Part II) of 17 June 2015 at paras. 23–29.
  43. Report of the Committee on Non-Governmental Organizations on its 2014 resumed session; E/2014/32 (Part II) of 12 June 2014.
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  45. See William Korey, NGOs and the Universal Declaration of Human Rights: A Curious Grapevine (1998) at 288.
  46. *Adopted* by the Fourth World Conference on Women (Report of the Fourth World Conference on Women), Beijing, 4–15 September 1995; UN Sales No. E.96.IV.13.
  47. Tamlyn Hunt, 'People or Power: A Comparison of Realist and Social Constructivist Approaches to Climate Change Remediation Negotiations', 6 (Spring/Summer) *UCLA Journal of International Law and Foreign Affairs* (2001) 265. Already in 1984, Weissbrodt noted the activities of NGOs at the Stockholm Conference on the environment: The Stockholm environmental conference is often viewed as a watershed of NGO involvement. There were 113 governments and at least 225 accredited NGOs. NGOs were permitted to make a formal statement to the conference. NGOs also distributed a daily newspaper, a practice regularized at subsequent global conferences. See David Weissbrodt, 'The Contribution of International Nongovernmental Organizations to the Protection of Human Rights', in 2 *Human Rights in International Law: Legal and Policy Issues*, ed. Meron (1984), at 403.
  48. See Pace and Thieroff (1999).
  49. See Sunga (2009).

50. Established by General Assembly resolution A/RES/60/251 of 3 April 2006.
51. Established under Human Rights Council resolution 6/36 of 14 December 2007 as a subsidiary body of the Council.
52. Established by General Assembly resolution A/HRC/RES/19/23 of 10 April 2012.
53. Established by Human Rights Council resolution 6/13 of 28 September 2007.
54. Established by Human Rights Council resolution A/HRC/RES/17/4 of 6 July 2011.
55. These are the: Committee on the Elimination of Racial Discrimination (CERD) monitoring implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Human Rights Committee (CCPR) monitoring implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols; Committee on Economic, Social and Cultural Rights (CESCR) monitoring implementation of the International Covenant on Economic, Social and Cultural Rights (1966); Committee on the Elimination of Discrimination against Women (CEDAW) monitoring implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999); Committee against Torture (CAT) monitoring implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984); Committee on the Rights of the Child (CRC) monitoring implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000); Committee on Migrant Workers (CMW) monitoring implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); Committee on the Rights of Persons with Disabilities (CRPD) monitoring implementation of the International Convention on the Rights of Persons with Disabilities (2006); Committee on Enforced Disappearances (CED) monitoring implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (2006); and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) established under the Optional Protocol of the Convention against Torture (OPCAT) (2002) visits places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
56. In any case, a communication concerning a violation of one of the rights set out in the relevant convention can be brought only where all the admissibility requirements have been fulfilled, namely, that all domestic remedies have been exhausted, the communication is not anonymous, the commu-

57. A new European Court of Human Rights system came into operation on 1 November 1998 with the entry into force of Protocol No. 11 which terminated the European Commission of Human Rights on 31 October 1999. Protocol 11 establishes that NGOs enjoy *locus standi* directly before the Court.
58. As per Article 25 of the European Convention on Human Rights European Convention on Human Rights, *adopted* 4 November 1950 in Rome, *entered into force* 3 September 1953 as revised.
59. *Adopted* on 24 April 1986, *entered into force* on 1 January 1991. The Convention had been ratified by 9 States as of 2 November 2003.
60. See generally Mayer (2011).
61. Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human Rights and Peoples Rights, *adopted* 9 June 1998, *entered into force*, 25 January 2004.
62. ASEAN has the following members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.
63. See Sunga (2011).
64. Article 15(2) of the Rome Statute explicitly provides that the Prosecutor can seek information from NGOs: The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the UN, intergovernmental, or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court. Finally, Article 44(4) of the Rome Statute provides that: 'The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court'.
65. See Naim 2009.

This book analyzes how international organizations and the European Union engage with civil society to pursue their policy goals. Multi-stakeholder initiatives, private-public partnership, sub-contracting, political alliances, hybrid coalitions, multi-sectoral networks, pluralist co-governance, and indeed foreign policy by proxy are all considered. Bringing together the most advanced scholarship, the book examines trade, environment, development, security, and human rights with reference to both EU and global institutional settings such as the WTO, UN Climate Summits, FAO, IFAD, ICC, UNHRC, UNSC, and at the EU level the DG FISMA, TRADE, CLIMA, DEVCO, HOME and ECHO. The book also studies the use of NGOs in the foreign policy of the EU, USA, and Russia. This changing politics and the polarized debate it has generated are explored in detail.

**Raffaele Marchetti** is Senior Assistant Professor in International Relations at LUISS, Rome, Italy, and is an expert on global governance, international public policies, NGOs, and peacebuilding. Among his publications are *The Rules of the Global Political Game*; *Cooperation and Competition between Governments and NGOs*; *Global Democracy*; *Civil Society, Ethnic Conflicts*, and *the Politicization of Human Rights*; *Conflict Society and Peacebuilding*.

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