

**THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs) IN THE NORM  
CREATION PROCESS IN THE FIELD OF HUMAN RIGHTS**

**Cenap akmak\***

In this paper, the role and the impact of human rights non-governmental organizations (NGOS) in the process of human rights norms creation will be evaluated. It will be shown that NGOs (domestic or international) have had a significant impact on the emergence of international treaties on human rights.

A brief introduction about what human rights are, and who exercises them will be presented. Then, the evolution of the human rights concept and its emergence as an issue of global politics will be discussed. In this context, the reasons for why states have become more concerned about human rights violations will be explored. Although a relatively new phenomenon, “human rights” is playing a crucial role in the contemporary world politics. As a consequence, today, “the issue of human rights.....is one that has inspired not only politicians, religious organizations, and trade unions, but also private individuals and non-governmental organizations that strive to secure conformity with the international standards set up to protect those rights” (Cassese, 1990: 3-4).

The period to be reviewed is confined to 1945 to date. Even though there have existed numerous NGOs before 1945, it is not quite possible to assess their effectiveness on either

changing the states' practices of human rights, or creating internationally binding human rights treaties; as human rights issues have been viewed as a part of nation-state's internal affairs. As a consequence, no international agreement of human rights was created until the end of the Second World War. Therefore, it does not seem meaningful to try to determine whether NGOs have influenced the norm creation process during that period. However, with the end of Second World War, a new order was established. In the new era, protection of human rights took place on the agenda of global policy-makers. NGOs have been involved in the creation of Universal Human Rights Declaration, the most comprehensive document on human rights. In the following decades, the involvement of NGOs in the development of new agreements has gradually increased. In the 1970s, the world witnessed the emergence of several international treaties regarding human rights. It is worth noting that in the same period the number of NGOs has considerably increased. What this implies is that there is a correlation between NGOs' activities and norm creation.

It might seem plausible that NGOs have influence over the states' practices to alter their behaviors against the individuals. There may be many cases that would prove this argument. However, it should be noted that this impact is temporary and does not prevent states from engaging in future violations. Therefore, this kind of influence, in fact, does not generate an effective and long-standing solution. In order for states to respect the fundamental rights of individuals, international treaties containing strict provisions on protection of human rights need to be created on the one hand and as many as possible states' accession to these treaties needs to be ensured on the other. Once a legally binding treaty is created and state's accession to the treaty is ensured, monitoring the violations of human rights within the boundaries of contracting states, and taking measures against those who committed the human rights abuses become easier. Then, if NGOs had affected the creation of such agreements, it should be acknowledged that they have played a significant role in the protection of human rights worldwide.

The 1980s but especially the 1990s are worth being examined in terms of NGOs' involvement in the process of law making. The role of NGOs has increased so much that it has become to be discussed that whether NGOs started exercising a sort of "sovereign" right, which has long been considered to exclusively belong to territorial state. In that sense, they have been challenging the dominant position of states in global politics. This is surely an evidence for how NGOs are enormously influential in international arena.

For practical reasons, no differentiation is made between NGOs, transnational social movement organizations and the like. The term of "non-governmental organization" represents all kind of global and local counter-movement entities.

## **I. CONCEPTS, DEFINITIONS AND EMERGENCE OF HUMAN RIGHTS AS A GLOBAL POLICY CONCERN:**

It is commonly believed that all human beings have some basic rights. However, there is no widely accepted definition of rights. Thus, the problem of what the rights are and of who exercises them has always been underway throughout the history. Culture, custom, religion and lifestyle, along with many other variables, have affected the perception and definition of rights. Therefore, the rights to be recognized and the way in determining the possessors of these rights have varied significantly from one society to another one. The term of right still cannot be clearly defined. Due to this lack, political discussions concerning rights are generally made with almost no attempt to define them (Tansey, 1995: 60).

Concerns about human rights were first raised in the West, where related treaties and conventions were drafted as well. Since the focus of Western approach was individual-based, which was quite different from those of the other cultures, many cultural identities were left out of the norm creation process.

The idea that human beings have natural rights, the rights that people possess simply because they are human beings, was articulated by Hobbes and Locke in the seventeenth century. This idea came into existence in the American and French Revolutions. Modern history has witnessed the evolution of rights, from the level that “civilized” white man has rights, to a broader one that women, non-whites and children are also eligible to exercise those rights (Tansey, 1995: 61). But this evolution has not culminated in creating an effective worldwide mechanism to protect human rights and to enable their violations to be traced within internationally recognized legal bodies. Attempts to establish such a mechanism were first seen shortly after the Second World War.

Before the Second World War, human rights were viewed as an internal issue of modern nation state, of which the most salient characteristic is sovereignty. This concept is closely associated with another concept: non-intervention, “the principle that other states are obliged not to interfere in matters that are essentially within the domestic jurisdiction of sovereign states” (Donnelly, 1998: 5). As a consequence, “[a]part from [a] few examples, policymakers and intellectuals paid almost no attention to the concept of human rights before the Second World War” (Keck and Sikkink, 1998: 83).

After the Second World War, protection of human rights has started to take place in the agenda of world politics. The leading factor in the movement for the international protection of human rights is the atrocities of Nazis against the Jews and against other races during the Second World War. The notorious Holocaust and mass slaughters obviously horrified all the humanity and accelerated the evolution of promotion of human rights all around the world.

The first collaborative initiative to protect human rights in international basis is the United Nations Charter. It contains numerous references to fundamental human rights, however,

does not define what they exactly are, and not mention of a machinery to secure their monitoring. Apparently, the lack of definition weakened the legal power of the Charter. In order to fill out this void, an attempt was made by having adopted the Universal Declaration of Human Rights and Fundamental Freedoms in 1948 (Brierly, 1963: 293-4). But it did not provide explicit protection of human rights, since it was a resolution, not a treaty, thus, did not bind the nation states to obey its content (Donnelly, 1998: 10). Due to the shortage of “universal” legal body ensuring the protection of human rights and enforcement of laws in case they are violated, regional regimes have begun to emerge in 1950s. Currently, three remarkable regional regimes are operating: The European System, Inter-American system and the African System.

As seen above, human rights issues have been addressed in global level for only about half a century. In addition, the full commitment of states in all regions of the world came after the end of so-called Cold War (Donnelly, 2003a). Therefore, the concept of human rights is quite recent.

## **II. NON-GOVERNMENTAL ORGANIZATIONS (NGOs) IN GLOBAL POLITICS:**

Non-governmental organizations (NGOs) are increasingly involved in the processes of global politics. As such, “nongovernmental organizations and advocates have become a significant part of political landscape in a growing number of countries in the Third World and former Soviet bloc” (Donnelly, 1998:15). In particular, the end of Cold War created great opportunities for NGO activity on the global level (Martens, 2000: 115). The increasing role of NGOs, thus, made it necessary to evaluate their nature, types and procedures in details.

The number of NGOs has risen dramatically since the end of Second World War (Welch, 1995: 47). Over the last three decades, that figure increased more rapidly and they became more diversified (Tuijl, 1999:494, Keck and Sikkink, 1998: 89). “Between 1983 and 1993 the total number of international human rights NGOs doubled, and their budgets and staffs grew

dramatically” (Keck and Sikkink, 1998: 90). However, notwithstanding their growing salience, their status in international law is not clearly defined yet (Martens, 2003).

The term, non-governmental organization came into existence in 1945 because of the need for the UN to make distinction in the Charter between the participation procedures of intergovernmental specialized agencies and those of international private organizations (Willetts, 2003). Like many terms related to social sciences, the concept of NGO is not clearly defined. Moreover, those who are curious about what NGO is might confront with a great difficulty, which is the plethora of NGO definition. “There is no generally accepted definition of an NGO and the term carries different connotations in different circumstances” (Willetts, 2003). In one definition, NGOs are defined as “self-governing, private, not-for-profit organizations that are geared toward improving the quality of life of disadvantaged people. They are neither part of government nor controlled by a public body. As such, they are elements of civil society, which is a space arena between households and the state which affords possibilities of concerted action and social self-organization” (Tuijl, 1999: 495). In another one, it is “an independent voluntary association of people acting together on a continuous basis, for some common purpose, other than achieving government office, making money or illegal activities” (Willetts, 2003). NGOs are not primarily interest or pressure groups, however. Their function is often to “link the complex, unfamiliar world of government to the familiar terrain of existing or nascent social and economic groups” (Welch, 1995: 44). Despite the vagueness of the term and the difficulty to reach a common definition, it is possible to mention of some basic features of an NGO: “An NGO will not be constituted as a political party; it will be non-profit-making and it will be not a criminal group, in particular it will be non-violent” (Willetts, 2003).

NGOs may also differ in their area of functions and mandates. Some may have very narrow focus, and some other may operate on a broad level, having more inclusive mandates. In

addition, some NGOs limit their activities to their own country, while some others extend their activities to several countries and known as international NGOs. “The main difference between these two types of NGOs is that international NGOs base their advocacy more consistently on international law” (Wouters and Rossi, 2001: 6). They may also differ in terms of structure and configuration. For example, Third World NGOs employ domestic governmental officials. However, First World NGOs are very decisive not to admit members with government connections (Wouters and Rossi, 2001: 7). Furthermore, those so-called First World NGOs are more concentrated on “civil and political rights”, committed to “fair (due) process”, “individualistic rather than group or community” oriented, and believe “in a pluralist society functioning within a framework of rules impartially applied to protect individuals against state interference” (Steiner, 1991: 15-16).

However, the fact that NGOs are highly differentiated and lack governmental support does not necessarily mean they are weak and ineffective. On the quite contrary, the diversity is their advantage in effectively addressing human rights issues. “Decentralized and diverse, they proceed with a speed and decisiveness and range of concerns impossible to imagine for most of the work of bureaucratic and politically cautious intergovernmental organizations” (Steiner and Alston, 1996: 456). Thanks to their independent and private status, they can act free of political control states. Furthermore, since they do not have a variety of foreign policy concerns, they can focus their attention to a particular subject (Donnelly, 2003a). In such a case, the possibility to obtain satisfactory results is quite high. As a matter of fact, their recognition by the UN depends on that they operate free of political effects of governments (Willetts, 2003).

#### ***NGOs in International Organizations:***

Many international organizations have detailed procedures ensuring the involvement and active participation of NGOs into their operations. For example, Amnesty International (AI) actively

participated in the deliberations and discussions of such intergovernmental organizations as the United Nations (UN), the Council of Europe and Organization of American States (OAS) (Cassese, 1990: 204). Perhaps among the international organizations, the UN is the first one having permitted the NGO participation. The first draft of the UN Charter did not make any mention of establishing cooperation with civil and private bodies. However, many groups from the US and other parts of the world pressured to rectify that in San Francisco Conference. As a result, they succeeded to include provisions, which define the procedure of cooperation with NGOs (Willetts, 2003). Article 70 is as follows:

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies (<http://www.un.org>, 2003a).

And article 71 states that

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence (<http://www.un.org>, 2003b).

The arrangements for consultation with NGOs are made in accordance with UN ECOSOC Resolution 1296 (XLIV) (1968).

1. The organization shall be concerned with matters falling within the competence of the Economic and Social Council with respect to..... human rights.

.....

4. The organization shall be of representative character and of recognized international standing; it shall represent a substantial proportion, and express the views of major sections, of the population ..... in different regions of the world (Steiner and Alston, 1996: 489).

The rights that NGOs have as consultative bodies include “to receive the provisional agenda of ECOSOC or its subsidiary bodies and to propose the inclusion of new agenda items”, “to attend

public meetings of ECOSOC”, to “submit statements and have them circulated to ECOSOC” and “to make oral statements before ECOSOC” (Wouters and Rossi, 2001: 8). Their consultative status has permitted NGOs to actively participate in drafting discussions. They have the right to propose ideas for inclusion and why those ideas are worth being incorporated into the text under discussion (Steiner and Alston, 1996: 478). NGO consultative status was extended by ECOSOC in 1946. ECOSOC Resolution 288B adopted in February 1950 classified NGOs as A, B and C. Those under the categories A and B were a kind having the capacity to affect the deliberations in ECOSOC. They were allowed to submit written statements, and make oral presentations, whenever necessary. In that sense, their authority was so extended that they were able to affect decision making (Korey, 1998: 52). In recent years, Article 71 has been interpreted broadly, allowing an increasing number of NGOs to actively get involved in the activities of UN bodies concerned. Such bodies as the Committee on Economic, Social and Cultural Rights (CESR), the Committee on the Rights of the Child, and the Committee Against Torture permit NGOs to make formal interventions concerning human rights matters within those bodies. Women’s human rights groups have taken action for monitoring procedure before the Committee on the Elimination of All Forms of Discrimination against Women, even though no formal permission to do so has ever been granted (Mertus, 2002: 22).

The Council of Europe has established well-detailed procedures ensuring the participation of NGOs in standard setting processes (Donnelly, 1998: 70). The Council is of great importance, as it operates the most influential and effective human rights protection system all around the world. The System for the protection of human rights has well-established institutions and well-defined processes (Steiner and Alston, 1996: 563). The Council of Europe, the intergovernmental organization established by ten Western countries in 1949, is the major constituent of the system (Buerghenthal et al., 2002: 133). The leading goal of the Council is “to defend and reinforce the

principles of human rights, pluralist democracy and the rule of law.” (<http://www.mfa.gov.tr>, 2003). Under the European Social Charter, which is a component of the regime established by the Council of Europe, an important role is given to NGOs. The provision concerned states that NGOs provide input when contracting parties report on the implementation of the Charter. “The 1995 Additional Protocol to the European Social Charter Providing a System of Collective Complaints includes as sources of such complaints those international NGOs in consultative status with the Council of Europe listed for this purpose, as well as national NGOs if the State in question has made a declaration to this effect when becoming a party to the Additional Protocol” (Wouters and Rossi, 2001: 9). NGOs, under the European Convention System for protection of human rights, have the right to be present as *amici curiae* in the hearings of the European Court of Human Rights (Wouters and Rossi, 2001: 10), which is the main component of the system. Individuals under the jurisdiction of the Court are allowed to file petitions against the violator state with the Court. Although not as parties, that NGOs can participate those kinds of cases is worth mentioning; because the verdicts of the Court, over the time, have become a source of international law.

As far as the status of NGOs within the European Union (EU) is concerned, the Union stresses the salience of NGOs in promoting human rights. Its Third Annual Report reflects the attitude of the European Union toward NGOs. According to the Report, the EU commits itself:

to strengthening the position of NGOs in international organizations, where the Union defends established NGO access rights, and in third countries, where the Union makes efforts to enhance the role of civil society and NGOs as participants, promoters and beneficiaries in democratization and development processes. The Union is convinced that Government action greatly benefits from dialogue and cooperation with civil society. Therefore, it will continue its own valuable dialogues with NGOs and also continue to provide extensive support to NGOs and to the strengthening of civil society in different parts of the world” (<http://www.europa.eu.int>, 2003).

In accordance with the commitments spelled out in the official document mentioned above, the European Union made efforts to promote the involvement of NGOs in the activities concerning human rights. Those include “efforts to foster the role played by NGOs in human dimension activities of the OSCE and in the Stability Pact for South-Eastern Europe, and the EU’s not negligible financial support for the participation of NGOs in regional preparatory conferences to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, and the Conference itself” (Wouters and Rossi, 2001: 3-4). Chapter B7-70 of the EU budget is specifically allocated to a range of human rights NGO activities. Despite the financial constraints in 1998, “a sum of 98 million Euro is allocated to finance activities in support of human rights and democracy for 1999” (<http://ue.eu.int>, 2003).

#### ***NGOs in International Conferences:***

Since their emergence as global actors, NGOs have been strikingly influential in placing human rights issues on the regional and global agendas (Aviel, 2000: 17). Most non-governmental organizations promoted the international standards on protection of human rights. They created appropriate conditions, in which those standards were developed, and came up with new ideas and proposals for implementing those rules (Cassese, 1990: 173). After the Second World War, human rights NGOs took place in the creation of regional and international human rights regimes (Keck and Sikkink, 1998: 79). “A high proportion of the most significant initiatives to draft new international instruments to establish new procedures and machinery, and to identify specific governments as violators have come as a result of concerted NGO campaigns designed to mobilize public opinion and lobby governmental support” (Steiner and Alston, 1996: 456-7). As a logical consequence, all human rights regimes involved NGOs (Welch, 1995: 48). They have been very influential on the development of international human rights laws through their either consultative or observer status in treaty bodies, formal international conferences, where treaties

concerned were created, and international meetings such as preparatory conferences for formal international ones (Mertus, 2002: 21). Besides norm creation, they also assume responsibilities for implementing those norms by pressuring target actors to adopt new policies and by monitoring if they comply with the standards concerned (Keck and Sikkink, 1998: 3). The first success that is worth mentioning is the inclusion of human rights language in the UN Charter (Tuijl, 1999: 496). The Preamble to the Charter of the United Nations makes a mention of fundamental rights: “we the peoples of the United Nations determined....to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small” (<http://www.un.org>, 2003a). As noted earlier, the Charter makes references to fundamental rights, but does not list those rights. Furthermore, the document adopted at San Francisco meeting in 1945 is not legally binding over the states. However, notwithstanding its deficiencies, the success of NGOs should be not understated, given the political conditions of the time when it was drafted. Many states of the time were authoritarian and not in favor of human rights. Moreover, global politics was “in the hands of a political leadership that overwhelmingly embraced a realist or Machiavellian ethos with respect to international law and morality” (Falk, 2000: 189). Realists view the world as a combination of “sovereign” nation-states, almost neglecting other forms of political and economic entities. According to them, global politics is entirely conducted among nation-states. These units, namely states, are operating in global scene, by seeking to maximize their “national interests”. In doing that, the greatest importance is given to strategic concerns, in order to ensure the security of state. Economic and social conditions within the state are less important than the security of nation-state. However, the issues that are believed to have “global” characteristic rather than “national” are less important than economic stability of the state. Therefore, realist theory says that global problems such as human rights violations, environmental issues are to be ignored by nation-states.

To summarize, realists claim that the sequence of the importance of the issues to be dealt with by states is as follows: security concerns, economic and social welfare of the nation, and global problems that do not affect national interests of the state very much. A realist, Hans Morgenthau never made a mention of human rights in his book, *Politics Among Nations*, a classic highly regarded among realist circles (Korey, 1998: 3). In such an environment, in which realist approach was undeniably dominant, the role that private actors played is, therefore, of significant importance. Especially Jewish organizations spent a remarkable effort and “championed, mainly in the United States, the need to insert a set of rules protecting human rights into the UN Charter. Thanks to their passionate lobbying, these rules were accepted by the States convened in San Francisco” (Cassese, 1990: 173). The inclusion of the article on human rights into the Charter is also important in that the Charter explicitly states that these rights, -even though they are not listed in details-, shall be enjoyed by all irrespective with race, sex, language or religion. Therefore, for the first time, all human beings were equalized in a written and generally accepted document. As a result, the Charter and its content is a salient breakthrough; because, “[t]he Charter concept of human rights...is one of inclusion as opposed to the age-old practices of excluding human beings and even reducing them to the status of non-persons” (van Boven, 1995: 7). In addition, it is a statement of “we, the peoples of the United Nations”, which highlights the emergence of international civil society (Otto, 1996: 127), even though the system it created was a space, in which states were operating. Furthermore, the Charter was the first international treaty that would create the UN Commission on Human Rights, an institution focusing human rights issues (Korey, 1998: 2).

The next step in promoting human rights worldwide after the adoption of the Charter is the adoption and proclamation of the Universal Declaration of Human Rights in 1948. As in the case of UN Charter, NGOs have been very influential in the process, in which the Declaration

was created. The Declaration, for the first time, listed rights and freedoms that all human beings are entitled to exercise. As stated in the Declaration, the General Assembly of the United Nations proclaimed it as “a common standard of achievement for all peoples and all nations”

(<http://www.un.org>, 2003b), which means that it had no binding authority on states’ actions.

However, according to many scholars of international law, because it has been in effect since 1948, the Declaration has gained binding authority, as an international customary law (Malone, 1998: 118), “law that becomes binding on states although it is not written, but rather adhered to out of custom; when enough states have begun to behave as though something is law”

(<http://www1.umn.edu>, 2003). The prominence of the document was expounded by U Thant as the ‘Magna Carta of Mankind’, and by Alexander Solzhenitsyn as ‘the best document’ produced by the UN ever (Korey, 1998: 43). In drafting the Declaration text, various NGOs continued to be involved. As Rapporteur of the Commission of Human Rights Charles Malik stated;

They [the NGOs] were profoundly concerned, especially the religious among them, whether Jewish, Catholic or Protestant, in the fate and dignity of man in the modern world; they kept in close touch with us, and we received them and adopted many a sound counsel from them, and you can trace in the text of the Declaration a word here, a clause there, or a whole article, back to their inspiration (Korey, 1998: 45).

As reported by Joazias van Aartsen at the 58<sup>th</sup> Session of UN Commission of Human Rights in Geneva in 2002, Lebanese delegate Malik also said when introducing the Universal Declaration of Human Rights in 1948 that "Thousands of minds and hands have helped in its formation" (Aartsen, 2003), a statement, which could be regarded as the conformation of civil society’s contribution to the creation of the Declaration.

Both the Charter and the Declaration, notwithstanding their significance and contribution to the case of human rights protection, fell well short behind meeting the expectations. Therefore,

NGOs, along with other like-minded organizations and individuals, continued to spend efforts to ameliorate the international human rights system established under the auspices of the United Nations. Those efforts culminated in the adoption of two significant Covenants: International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, both of which were adopted and opened for signatures of UN member states in 1966, and entered into force in 1976. As opposed to the Charter and the Declaration, those two documents came up with binding power over the contracting states. Because a Convention is a [b]inding agreement between states” and “[w]hen the UN GENERAL ASSEMBLY adopts a convention, it creates international norms and standards” (<http://www1.umn.edu>, 2003). Von Boven points out the significance of the early efforts to establish a worldwide mechanism for protection of human rights:

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, adopted respectively in 1948 and 1966 by the UN General Assembly and forming together the International Bill of Human Rights, are meant to serve as the comprehensive normative framework for human dignity in the world at large and in national societies. Supervisory mechanisms promote compliance by States of the standards enunciated by these instruments, on the basis of the premise that States can be held accountable for the manner in which they implement these instruments (1995: 3).

NGOs, again, played a crucial role in the process, where the Covenants were created. They “played an important role in pushing governments to support and approve the Covenants” (Korey, 1998: 72). Some major international NGOs, including the International League for the Rights of Man and the International Commission of Jurists, have been involved in promoting them (Korey, 1998: 72-73).

After a relatively slow progress with regard to human rights matters during the course of 1950s and 1960s, “by the mid-1970s monitoring of human rights through UN bodies started to

take off. Several treaties were negotiated, then ratified by individual states” (Welch, 1995: 57). This shift can be mostly attributed to the détente in global politics. The tension between two major blocs was eased, and a platform of partially mutual understanding was established. However, there were other factors having contributed to the process as well. Many of the achievements in the field of human rights have been the direct consequence of NGO monitoring and pressure (Welch, 1995: 57). For example, “in the 1970s and 1980s many states decided for the first time that promotion of human rights in other countries was a legitimate foreign policy goal and an authentic expression of national interest. This decision came in part from interaction with an emerging global human rights network” (Keck and Sikkink, 1998: 17-18). The 1970s is of great importance in that during that period both the number and activities of human rights non-governmental organizations have substantially grown (Donnelly, 1998: 10). As they were growing in number and increasingly becoming more organized, NGOs have increased their impact on standard setting in the field of human rights. Amnesty International’s campaigns, -both in national and international level-, have been very influential over the UN initiatives on torture in the 1970s and 1980s (Donnelly, 1998: 11). The International Commission of Jurists, a non-governmental organization, of which most important activity is make contributions to the process of treaty making, played remarkable roles in preparatory stages of African Charter of Human and Peoples’ Rights of 1981, and in the adoption of the European Convention for the Prevention of Torture in 1987 (Cassese, 1990: 204). Tuijl explains some of the successes of NGOs in that particular period of time:

NGOs have consistently continued their efforts to strengthen the UN human rights system and have succeeded in influencing the formulation of different UN treaties and conventions, such as the 1979 Convention on the Elimination of All Forms of Discrimination against Women and 1989 Convention on the Rights of the Child. Often, NGOs led the way in proposing new institutional

arrangements in order to embody UN responses to human rights abuses. Their influence is visible in the creation of such mechanisms as the UN expert body to examine disappearances, the working group on arbitrary detention, the establishment of Special Rapporteurs,.....and,...the creation of the position of UN High Commissioner for Human Rights (1999: 496).

Efforts of the NGOs have also contributed to the adoption of the convention on torture. Amnesty International greatly affected the process, in which the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was generated in 1984 (Donnelly, 2003b: 148). NGOs have also made substantial contributions to the creation of the Convention on the Rights of the Child adopted in 1989. The Ad Hoc NGO Group on the Drafting of the Convention on the Rights of the Child was formed in 1983. The aim of the group was to participate in drafting process of the Convention. The Group contributed to the substantive articles of the Convention (Breen, 2003: 457). Under the Convention, NGOs have a role in monitoring the implementation of the Convention. Article 45 of the Convention reads as follows:

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a)...[T]he Committee may invite the specialized agencies, the United Nations Children's Fund and *other competent bodies* as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates (Breen, 2003: 458).

As stated above, NGOs not only contributed the formation of the Convention on Children's Rights, but also acquired a strong position to monitor its implementation.

NGOs have also started becoming more effective in regional level. In early 1970s, African human rights NGOs became the aid receivers from external governments and other aid suppliers. The reason was that African governments were ineffective in providing even the basic services. Therefore, NGOs simply replaced with those governments. As a consequence of the

diminished efficiency of African governments, regional and international NGOs started to play more eminent roles throughout the Continent (Welch, 1995: 45).

The end of Cold War created new opportunities for effectively addressing human rights violations, and creating more productive protection mechanisms than existing ones. “The end of the Cold War represented a seminal moment for the human rights movement. In less than three decades of active campaigning, non-governmental advocates had made human rights a common and powerful language and could claim no small part in the widespread attention to civil liberties and democratic reforms in countries throughout Latin America, Africa, Asia, and Eastern Europe” (Jochnick, 1999: 56). The collapse of Soviet Union and the Communist system it had created led the elimination of barriers between the Western World and former Soviet allies. This helped the establishment cooperation between the former poles on a range of global issues, including human rights. Over several decades, Communist bloc, under the lead of Soviet Union, has advocated mostly the economic, collective and community rights in the forums, in which human rights matters have been discussed, while Western countries have paid much attention on civil, political and individual rights. With the removal of the distinction between the West and the Communist World, human rights concerns started taking more place in global agenda.

Among the occasions concerning human rights issues, probably the Second World Conference on Human Rights, held in Vienna in 1993, is the first and the most prominent to be mentioned. The Conference saw the largest gathering on human rights issues with the participation of not only state representatives and international organizations, but also members of non-governmental organizations (Martens, 2000: 121). Over 1500 non-governmental organizations were represented in the Conference (Steiner and Alston, 1996: 492). 2100 officials from 171 countries and 3600 representatives from various non-governmental organizations attended the sessions (Martens, 2000: 121). Those NGOs represented at the conference made

contributions to the final product of the Conference in many respects. The principle of “one set of rights cannot be used to bargain for another” was included to the text as a result of NGOs’ efforts (Tuijl, 1999: 496). The Vienna Conference also witnessed a great advancement on the recognition of women’s human rights, which was culminated in another major contribution of non-governmental organizations. Women’s rights network directly lobbied the participants of the Conference to include the concerns the network had borne into the Conference agenda (Keck and Sikkink, 1998: 186). However, the intention of the advocates of women’s rights was not to claim different rights for women but to make clear that discrimination against women or violation of women’s rights are not different or less important than any other human rights violations (Martens, 2000: 124). NGOs have been largely involved in not only the general meeting held in Vienna, but also in regional preparatory meetings for the Conference. Even after the Conference ended in June, NGOs that have regional focus continued to influence the proceedings. As a result of NGO pressure, at the end of ASEAN’s ministerial meeting in July 1993, the ministers declared that “ASEAN should also consider the establishment of an appropriate regional mechanism on human rights” Aviel, 2000: 23). Even though those efforts have not resulted in a mechanism as proposed in the text of declaration up until now, the fact that the statement above took place in the document should be regarded as a great breakthrough; as Asian nations have long been known for their reluctance to make strong commitments on human rights issues, with the pretext that the existing mechanisms on human rights are of Western origin, and thus, contradictory to Asian values, which emphasize the importance of society, rather than individuals.

Two years after the Vienna Conference, another major meeting, -but specifically on women’s rights this time-, was held in Beijing in 1995. NGOs, as usual, played significant roles at different stages of the Conference. The proliferation of NGOs from non-Western world is one thing to be indicated about the meeting (Donnelly, 2003b: 149). The initial document of the

Conference had many ambiguities in many fields. International Women Movement developed complex strategies to effectively deal with the problems derived from these ambiguities. At the end, the movement succeeded to make direct contributions to final document of the meeting. In many cases, government representatives included the proposals of NGOs into the documents (Keck and Sikkink, 1998: 188).

### **III. NON-GOVERNMENTAL ORGANIZATIONS: CHALLENGE TO SOVEREIGNTY OF NATION-STATE:**

The issue of whether contemporary NGOs, given the extent they are involved in global politics with respect to human rights matters, are challenging the nation-state is controversial. It could be both argued that states are still dominant in global arena, and allow other actors to involve into the matters to the extent they wish, and that their supremacy is being undermined by non-state actors, including non-governmental organizations. It is true that NGOs can get involved in international meetings and treaty making procedures provided that states' consent on that participation is clearly stated and arranged. In that sense, states are still holding the sovereign right that they have long been believed to have. Even the international organizations can be regarded as the products of states and their willingness to form these organizations.

On the other hand, it is equally undeniable that non-state actors are increasingly becoming involved in global matters. This involvement is especially visible in the issues of human rights. Because global civil society expressed its intentions and wishes concerning human rights issues so clearly and strongly that states could not resist and let non-states actors to be involved to their traditional spheres of activities. "Whereas once only sovereign states had a say in world affairs, non-governmental organizations –as well as individuals and peoples- now have a right to be heard" (Cassese, 1990: 174). Unavoidably, non-states actors, including non-governmental organizations became leading actors in global politics. The time period reviewed above

demonstrates that non-governmental organizations have many times been involved in the processes of norm creation, which has long been believed to be a space in which only states had the right to operate. Although indirectly, the state of involvement means non-governmental organizations is a part of law making, the primary sign for being sovereign.

Furthermore, the question of whether states could have resisted against the involvement of NGOs into law making procedures is of great interest, in order to be able to the contemporary nature of global politics with regard to sovereignty. In theory, there is no discussion about whether states are the sole authorities, as the participation and involvement of NGOs into their sphere of activities depend on the explicit consent of states. However, the fact that states could not have behaved otherwise would imply that they are not the sole authorities in global politics anymore. In practice, states cannot resist against the demands of masses. Over the half century, civil society, having organized as various types of organizations, including non-governmental organizations, has pressured the conventional actors of global politics, namely states, to meet their demands.

\* Center for Global Change and Governance, Rutgers University

## REFERENCES:

- Aartsen, Joazias van (2003), "UN Commission on Human Rights, 58<sup>th</sup> Session", <http://www.xs4all.nl/~endi/Aartsen-Geneva2002.htm> (26.10.2003).
- Aviel, JoAnn F. (2000), "Placing Human Rights and Environmental Issues on ASEAN's Agenda: The Role of Non-Governmental Organizations", *Asian Journal of Political Science*, Vol. 8, No: 2, December, pp. 17-34.
- Boven, Theo van (1995), "Human Rights and Rights of Peoples", *European Journal of International Law*, Vol. 6, No: 3, pp. 1-17.
- Breen, Claire (2003), "The Role of NGOs in the Formulation of and Compliance with the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict", *Human Rights Quarterly*, Vol. 25, No: 2, pp. 453-481.

- Brierly, J. L. (1963), *The Law of Nations* (6<sup>th</sup> ed), Sir Humphrey Waldock (ed.), Oxford University Press, New York.
- Buergenthal, Thomas, Shelton, Dinah L. and Stewart, David P. (2002), *International Human Rights* (3<sup>rd</sup> ed.), West Group, St. Paul, MN.
- Cassese, Antonio (1990), *Human Rights in a Changing World*, Temple U. Press, Philadelphia.
- Donnelly, Jack (1998), *International Human Rights*, Westview Press, Boulder, CO.
- Donnelly, Jack (2003a), "What are Human Rights?", <http://usinfo.state.gov/products/pubs/hrintro/donnelly.htm> (23.10.2003).
- Donnelly, Jack (2003b), *Universal Human Rights in Theory and Practice*, Cornell U. Press, Ithaca, NY.
- Falk, Richard A. (2000), *Human Rights Horizons: The Pursuit of Justice in a Globalized World*, Routledge: New York.
- Jochnick, Chris (1999), "Confronting the Impunity on Non-State Actors: New Fields for the Promotion of Human Rights", *Human Rights Quarterly*, Vol. 21, No: 1, pp. 56-79.  
([http://ue.eu.int/pesc/human\\_rights/en/99/main4.htm](http://ue.eu.int/pesc/human_rights/en/99/main4.htm), 03.11.2003)
- (<http://www1.umn.edu/humanrts/edumat/hreduseries/tb1b/Section3/hrglossary.html>, 09.11.2003)
- ([http://www.europa.eu.int/comm/external\\_relations/human\\_rights/doc/report01\\_en.pdf](http://www.europa.eu.int/comm/external_relations/human_rights/doc/report01_en.pdf), 24.10.2003)
- (<http://www.un.org/aboutun/charter/preamble.htm>, 01.11.2003a)
- (<http://www.un.org/esa/coordination/ecosoc/charter.htm>, 18.10.2003b)
- (<http://www.un.org/Overview/rights.html>, 08.11.2003c)
- Keck, Margaret E. and Sikkink, Kathryn (1998), *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell U. Press, Ithaca, NY.
- Korey, William (1998), *NGOs and the Universal Declaration of Human Rights*. Palgrave, New York.
- Malone, Linda A. (1998), *International Law* (2<sup>nd</sup> ed.), Emanuel, Larchmont, NY.
- Martens, Kerstin (2000), "NGO Participation at International Conferences: Assessing Theoretical Accounts", *Transnational Associations*, No: 3, pp. 115-127.

- Martens, Kerstin (2003), "Examining the (Non-)Status of NGOs in International Law", *Indiana Journal of Global Studies*, Vol. 10, No: 2, Summer, pp. 1-24.
- Mertus, Julie (2002), "From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society", Occasional Paper, Halle Institute, Emory University.
- Steiner, Henry J. and Alston, Philip (1996), *International Human Rights in Context: Law, Politics, Morals*. Clarendon Press, Oxford.
- Steiner, Henry J. (1981), *Diverse Partners: Non-governmental Organizations in the Human Rights Movement*, Human Rights Internet, Cambridge, MA.
- Tansey, Stephen D. (1995), *Politics: The Basics*, Routledge, London.
- Tuijl, Peter van (1999), "NGOs and Human Rights: Sources of Justice and Democracy", *Journal of International Affairs*, Vol. 52, No: 2, Spring, pp. 493-512.
- Welch, Claude E. (1995), *Protecting Human Rights in Africa: Roles and Strategies of Non-governmental Organizations*, U. of Pennsylvania Press, Philadelphia.
- Willetts, Peter (2003), "What is a Non-Governmental Organization?", <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM> (24.10.2003).
- Wouters, Jan and Rossi, Ingrid (2001), "Human Rights NGOs: Role, Structure and Legal Studies", Working Paper No. 14, Institute for International Law, K. U. Louven, November.