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Recognition and Protection of NGOs in International Law

by

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Historical Background

There is no denying the ever growing importance of NGOs. The award of the Nobel Prize 1999 to « *Médecins sans frontières* » is a striking example. Hundreds of NGOs were present at the forum organised in the margin of the WTO conference in Seattle and thousands more are lobbying , for or against WTO, on the Internet. NGOs are on voluntary duty in areas torn by human conflict such as Eastern Timor, Kosovo and Chechnya or by natural disasters such as Turkey or Central America.

Still, the legal status of NGOs is uncertain and imperfect. The quest of NGOs for recognition of their status under international law is almost a century old. The first demand to that effect was voiced in a resolution in Brussels 1910 at the world congress of international associations. Forty years and 2 World Wars later , the international community gave the beginning of a reply, by adopting the 1956 Hague Convention on recognition of the legal personality of foreign companies, associations and foundations. However, governments were more than hesitant to give effect to this private international law instrument. It never entered into force.

A fresh initiative was taken in 1959 by the Union of International Associations, which campaigned on behalf of *international* (not just foreign) associations and circulated proposals to various worldwide organisations. One of these, FAO, which is surrounded by a nebula of NGOs, reacted positively. Given the fact that many worldwide IGOs and NGOs are headquartered in Europe, FAO suggested that the oldest and broadest European organisation, the Council of Europe, should lead the way. The Council accepted.

The NGOs' original shopping list was very ambitious and included a demand for tax privileges. However, the Council of Europe, conscious of the saying « *qui trop embrasse mal étreint* », reduced the proposal to one single item : international legal recognition, the alpha and omega of NGOs. The tax question was not forgotten however but taken up by another organisation, Interphil and by the latter's European branch, Europhil, which is still working on the matter. It is preparing a round table on taxation of NGOs in Barbados summer 2000).

Convention N° 124

On 24 April 1986, more than 75 years after the Brussels resolution, the Convention on the recognition of the legal personality of international non-governmental organisations, registered in the European Treaty Series under N° 124, was signed at a ceremony in Strasbourg. It entered into force on 1 January 1991. It consists of 11 short articles. Under it, an international NGO duly incorporated in country A is automatically recognised as such in countries B, C and D. Convention N° 124 is the world's first and only international legal instrument on NGOs.

Nine countries have ratified or signed the Convention, and it is expected that others will follow, especially in Central and Eastern Europe. Four countries having a large NGO population : United Kingdom, Belgium, France and Switzerland, have ratified it. Two parties in central Europe, Austria and Slovenia, occupy a bridge function between East and West. Two others have very special links with foreign NGOs : Greece, where so many foreign archeological institutes are active and

Portugal which houses the Council of Europe's North-South Centre for interdependence and solidarity which assigns a special role to NGOs. Moreover, Cyprus is also in the process of becoming a party. Its signature is motivated by its strong attachment to Europe.

NGOs for Democracy and Human Rights

Convention N° 124 was prepared before the breakdown of communism. It was geared to cooperation between NGOs within the Western world and between these and third World countries. Nobody had anticipated the formidable rôle of NGOs, such as Solidaność or Neues Forum, were soon to play in the process leading to the collapse of communism and the return of Central and Eastern Europe to democracy, human rights and the rule of law. Also after the fall of the Berlin wall NGOs in Central and Eastern Europe have remained in the forefront, to fill the gap left by the retreating State and also as critical partners of government and intergovernmental organisations. The Council of Europe had developed an important programme of assistance and cooperation with Central and Eastern Europe to help enhance the new legal and political framework of NGOs. As well as bilateral programmes in all States of the region— and it should be emphasised here that the Council of Europe has these states as full members, ranging from Lithuania to Georgia and from Albania to Russia— the Council organises major multilateral meetings in Strasbourg, such as « Associations and foundations » (November 1996) and « Legal status of non-governmental organisations and their rôle in a pluralist democracy » (March 1998).

In response to the desire voiced by NGOs at these meetings, the Council is now drafting a Charter for the development of a legal framework for NGOs in Europe. This will apply not only to international, but also to national and local NGOs, for the success of international NGOs depends to a large degree on their national infrastructure. The Council carries out this work in cooperation with other intergovernmental and non-governmental organisations: the European Commission, OECD, OSCE, the Royaumont Process, etc..

Recognition

For all international NGOs recognition of their legal status is a crucial question. Many of them work closely together with intergovernmental bodies: Unesco in Paris, WHO in Geneva, the Council of Europe in Strasbourg, the European Commission in Brussels, etc. NGOs often view with a certain degree of envy the legal, financial, fiscal and security safeguards of IGOs, their privileges and immunities. 'Why they and not us?' Whether an organisation is intergovernmental or non-governmental, *ie* private and voluntary, is a fundamental choice. And there is no alternative for an NGO but to obtain the status of a private body under the law of a given country. There is no international status for NGOs. Some countries, such as Belgium, offer a special status under their law to foreign NGOs but these are and remain Belgian.

An international NGO may of course prefer to remain unattached to a given country. For 50 years the Bureau International du Scoutisme had no given national status. It was suspended in the air. But sooner or later, an international NGO is simply obliged to acquire status somewhere: it employs staff, rents offices, opens bank accounts. All this can only be done if it exists legally under the laws of a given country.

Once that status is assured, an NGO wishes to see its legal status in country A recognised in countries B, C and D. This can be achieved by bilateral treaties A>B, A>C, B>C etc.

It is much however more practical to arrange this by multilateral treaty. A mathematical formula shows that if ten countries have the choice between bilateral treaties or a multilateral one, the choice is between 45 treaties or one. The advantage of the multilateral treaty is not only the single text and one contents, but also that there is one organisation which drafts it and helps to implement it.

For any international NGO recognition means being able to do its work in different countries without being encumbered by additional formalities in every single country.

Some countries which are not yet party to Convention N° 124 have argued that there is no need : our internal law is fully in harmony with Convention N° 124, our courts and our administration recognise foreign NGOs no matter their legal form. These arguments miss the crucial point. Even if a country's internal law prohibits torture, that should not stop it from joining a treaty against torture. On the contrary, no country can be party to an international treaty if its internal law is not in order. But there is more : first , the fact that a country's law fully respects the status of foreign NGOs does not guarantee full respect for its own NGOs in other countries. Above all, there is an ocean of difference between granting something to NGOs under domestic law or accepting a solemn undertaking before the world community to respect the identity of international NGOs.

NGOS Are Entitled to Protection

The freedoms of NGOs set out in articles 9 ,10 and 11 of the European Human Rights Convention (freedom of conscience, expression and association) are fundamental freedoms which States are bound to respect and protect. In return, many NGOs help to maintain the international human rights protection system. The International Criminal Court, whose statute was adopted in 1998 by governments in Rome, would never have come about in that form if it were not for the relentless campaigning and advocacy by NGOs.

NGOs are entitled to recognition as well as protection. An international study on security problems of humanitarian NGOs conducted last year by Professor Mario Bettati (Paris) under the aegis of the Brussels based Union of International Associations has produced a grisly catalogue of aggression committed against NGOs and their staffs, ranging from robbery and confiscation to violence and murder, 45% of these crimes being committed by government people. It comes as no surprise that many of the organisations interviewed have indicated that they expect a reinforcement of their protection by governments. Accession to Convention N° 124 is a first but essential step by governments in the direction of improved legal status and protection

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The author is former Deputy Director of Human Rights and Legal Affairs of the Council of Europe. In 1990 he was in attendance as Depositary at the ceremony of ratification of Convention N° 124 by Belgium which led to its entry into force. He is former President of Interphil and member of the Council of the Union of International Associations, the two NGOs which took part as observers in the drafting of the Convention. He is at present Chief Trustee, The Europhil Trust, which conducts work on the tax treatment of NGOs .