

## Actors In World Politics: A Taxonomy and The Legal Personality of NGOs

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### Abstract

*As the role of non-state actors continues to rise on the agenda of global politics, the engagement of non-governmental organisations (NGOs) in various issue areas is taking on new relevance. The presence of a sizeable voluntary sector that interacts transnationally has brought forward new questions about the bewildering complexity of world politics, which consists of interactions among similar units known as nation-states. Within this complexity, the exceptional position of the state has largely dominated at the expense of other entities such as NGOs, transnational corporations, and intergovernmental organisations, which have been attributed secondary status. This two-tiered approach, however, has been gradually changed by the effect of global developments, unprecedented growth in technology, and dramatic changes in the scope of international connectivity. These developments have fundamentally influenced the traditional world system paradigm established on the basis of the sole authority of the nation-state, with due credit now being given to NGOs. This paper primarily focuses on these latter actors, following an interpretive and descriptive qualitative social research methodology. In particular, it takes NGOs for the core analysis, uncovering their legal personality within the broad generalisation of non-state actor taxonomy. This paper claims that although NGOs are not deemed to enjoy international legal personality, their relative power has been exercised considerably in various policy areas.*

**Keywords:** Non-governmental Organisations, Nation-state, World politics, Legal Personality

## Dünya Siyasetinde Aktörler: Sivil Toplum Kuruluşlarının (STK) Yasal Kişiliği ve Sınıflandırması

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### Öz

Devlet-dışı aktörlerin küresel siyasetteki rolü artmaya devam ederken, sivil toplum kuruluşları (STK) gibi aktörlerin çeşitli politika alanlarına katılımdaki ağırlıkları önem kazanmaya başlamıştır. Öte yandan, devlet sınırları aşarak küresel etkileşime girebilen bu yapıların varlığı, ulus devlet merkezli karmaşık dünya yapısını tartışmaya açmıştır. Bu karmaşık yapı içerisinde, devletlerin istisnai konumu, çok-uluslu şirketler, hükümetler arası kuruluşlar ve STK'lar gibi kendilerine ikincil statü atfedilen aktörler tarafından sınırlandırılmaya başlanmıştır. Küresel gelişmelerin ve teknolojiadaki eşi görülmemiş büyümenin karşı konulmaz etkisiyle bu dönüşüm akademik çevrelerce de sıkça ele alınmıştır. Ortaya çıkan yeni durum, devlet merkezci geleneksel dünya sistemi paradigmasını temelden etkilemekle kalmamış, devlet dışı aktörlerin bizatihi sistemi dönüştürücü ve değiştirici potansiyelinin hak ettiği ilgiliyi görmesine imkân tanımıştır. Mevcut arka plan çerçevesinde, bu çalışma yorumlayıcı ve tanımlayıcı niteliksel bir sosyal araştırma metodolojisini izleyerek devlet-dışı aktörlerin ontolojik yapısına odaklanmaktadır. Özellikle, devlet dışı aktörler üzerine bir sınıflandırma yaparak, STK'ların tüzel kişiliklerini ortaya çıkarmayı temel almaktadır. Çalışmanın temel argümanı ise, STK'ların uluslararası tüzel kişiliğe sahip olmadıkları gerçeğini kabul ederek, devlet-dışı aktörlerin çeşitli politika alanlarında önemli ölçüde etkilerinin arttığını savunmaktadır.

**Anahtar Kelimeler:** Sivil Toplum Kuruluşları, Ulus devlet, Dünya siyaseti, Yasal Kimlik

## Introduction

The concept of non-state actors in general and non-governmental organisations (NGOs) in particular is undergoing remarkable expansion. In the field of global politics, NGOs are seen as the forerunners of an emerging global civil society in recognition of their potential to overcome some of the basic political and theoretical stalemates. This significant surge in the importance and numbers of NGOs has opened avenues in turn for other non-state actors at the expense of the idea of the state as the universally acknowledged actor<sup>1</sup> that is a political unit with full sovereignty over a territory and the population in it. As a result, state boundaries have become more permeable and students of international relations can no longer understand world politics simply by studying the inter-relations among states (Little, 1996, p. 66). Considering the common quests of both states and NGOs to address global concerns like environmental degradation and human rights, NGOs act as “gap fillers” in responding to the deficiencies of global governance left by states (Benedek, 2008, p. 170).

The importance of NGOs, transnational interplay in international affairs, and their accelerating impacts on politics were largely ignored in policy-oriented studies up to the 1960s (Nye and Keohane, 1971, p. 330). This lack of attention to the power of non-state actors does not lie wholly within the aura of the “international environment” where states’ relations have only been analysed by positivist paradigms. It was an expected reality, since, in the anarchic world system throughout World War I, World War II, and the Cold War, the transnational interplay of nation-states was framed based on a security-oriented perspective. The balance of power, fear, threats, alliances, interests, foes, and security were major concepts in defining international relations during these periods, so realist-oriented foreign policy was not optional; rather, it arose from external circumstances. Since non-state actors do not have military capability, known as hard power, the state’s exceptional role was not questioned.

The other factor that led the role of NGOs to be overlooked was the lack of academic studies focusing on the potential influence of non-state actors. Accordingly, the failure to advance alternative theories in world politics has

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<sup>1</sup> Hereinafter, “actor” means a “transnational actor” which operates across national boundaries.

prevented the acceptance of both non-state entities as international actors and their influence on the contemporary world system. In addition to these factors, insufficient development in global technology hindered the potential power and influence of non-state actors in world politics. In other words, the subsequent rapid development in technology and communications allowed for direct intersections between actors and sectors, increasing the economic power of non-state actors parallel to the increasing levels of political, cultural, and economic transactions between individuals, societies, and states; this has weakened the state-centric approach of international relations.

The post-Cold War era—or the end of history for some—was a turning point as international relations acquired a more pluralist dimension than was the case 30 years before (Dunne et al., 2010, p. 10). This evolution has led to renewed interest in the study of actors in world politics, including NGOs (Carlsnaes et al., 2002, p. 251; Munck, 2006, p. 325). From that time onward, there has been an accompanying proliferation of new theoretical studies presenting alternatives to the conventional positivist approaches. As a result, the absolutes of the Westphalian system, which structured “territorially fixed states where everything of value lies within some state’s borders; a single, secular authority governing each territory and representing it outside its borders; and no authority above states”, all started to dissolve (Mathews, 1997, p. 50). In other words, although states still remain the main actors and main units, cross-national interactions, the globalisation of civil society, economic interdependence, internationalisation of domestic politics, and privatisation of governance have become predominant external arrangements among non-state entities that have obtained the power of setting principles, rules, norms, and decision-making procedures in world affairs.

In addition, a realistic but also far more complex model has been proposed, because the inter-state model was inadequate to grasp world affairs for two reasons (Skjelsbaek, 1971, p. 87). First, some non-state actors such as NGOs have gained considerable autonomy and power in several political arenas compared to nation-states. Second, states cannot be compared to ships with unified structures that can pursue only one course of action at a time. Since states are not unified, various entities within a state may involve

in global courses and organisations to thwart the actions of other groups.<sup>2</sup> Therefore, an alternative model of the world system has gradually come to include other actors such as intergovernmental organisations, NGOs, and multinational business enterprises.

Among these actors, some envisage multinational corporations as the main agents to engender fundamental changes in world politics and its ascending entities,<sup>3</sup> while others put forth the global structure of world politics on the basis of state-to-state relations. Somewhat more implicitly, a group of scholars have underlined greater power for new actors of international governance (Rosenau et al., 1992), while some others emphasise preliminary global social movements resembling “global civil society” or bringing into existence a “world polity” (Klotz, 2001). Others see such actors in world politics as “transnational activist networks”, representing the interests of resource-poor actors or combinations of intersecting governmental, non-governmental, and international actors. Since the challenging complexity of world politics cannot be reduced to state-to-state interactions, the currency of international relations has turned into transnational relations, rather than a solely inter-national context. Huntington’s familiar phrase of half a century ago has come to be reality as he stressed the significant relationship between state and non-state actors, predicting that “a central focus of world politics will be on the coexistence of and interaction between transnational organizations and the nation-state” (Huntington, 1973, p. 368).

Based on this background, this paper comprehensively aims to draw the line distinguishing the border of state and non-state more clearly. Preserving the analytical strength of both terms without rejecting the “states as unitary actors” parsimony in the international realm, this paper includes other actors within power-sharing and policy-making processes. Non-state actors, in the end, have emerged because of the acceptance of their utility by nation-states.

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<sup>2</sup> *The crucial argument is whether these organisations are dependent on governments or independent of government control. Skjelsbaek uses the term “extranationalism”, assigning a different meaning than that of transnationalism. According to him, all activities run by non-governmental actors across state borders are defined as extranationalism. In contrast, non-governmental actors’ influence on high politics (e.g., security, foreign policy) is mostly indirect but not, a priori, negligible (Skjelsbaek, 1971, p. 86).*

<sup>3</sup> *Critical scholars such as Frank (1967), Emmanuel (1972), Amin (1977), and Cardoso and Faletto (1969) pointed out the importance of transnational economic relations in limiting the state’s unilateral actions.*

This paper has two basic aims. The first is to identify which actors are present in world politics. A definitional discussion is conducted without thorough contextualisation. Among these actors, state and non-state actors are discussed separately, together with mixed actors that are rather different from the “state” and “non-state” types that have lately inspired fresh debate in the literature. The second aim is to clarify the types, ranges, and numbers of non-state actors and NGOs. In these clarifications, intergovernmental organisations, multinational corporations, and NGOs are addressed separately. Their historical traces, characteristics, and places in international law are identified in this part. A taxonomic approach to non-state actors and to NGOs is then developed within the framework of the information presented here. In this taxonomy, a scheme for cataloguing is proposed, which is in line with recent developments underlying several more complex structures, including organisations that are neither private nor governmental in nature. Overall, this paper identifies the legal personality of NGOs by examining their ontological position at the expense of the state and other non-state actors. In that sense, this study contributes to international relations in terms of offering a better understanding of the rise of NGOs, which has become an important paradigm in global politics.

### **The Range Of Actors In World Politics**

Identifying transnational actors in global politics is a major theoretical and practical challenge. Putting into a single category of the range of the actors in world politics is perplexing that each actor “have very different structures, different resources and different ways of influencing politics” (Willets, 2013). It also confusing what the actors are, since answers change in accordance with the place of actors on a regulatory continuum between purely public and private forms of regulation or among actor constellations that can be distinguished along two dimensions (Peters et al., 2009, p. 14). The first dimension considers their internal structure and the second pertains to the motivations of various types of transnational actors. There are actors motivated by economic and material gains, and there are actors promoting principled ideas as well as knowledge. The former category includes multinational corporations, while the latter organisations range from

NGOs to peace movements, arms control experts, and trans-governmental networks among state officials.

In the broadest sense, there are three fundamental types of transnational actors in world politics. These are defined in accordance with their identifiable role in international relations performed on the international stage as “state”, “non-state”, and “mixed” (or, in Archer’s terminology, “hybrid”) actors, the third of which is based on the coexistence of state and non-state actors. Each of these has peculiar features in terms of membership, scope, objectives, activities, and roles. Apart from state and non-state actors, one can easily theorise other actors, as well.<sup>4</sup> In this regard, in the most inspiring effort to re-conceptualise world politics and break away from what he refers to as “the conceptual jails” (Rosenau, 1990, p. 6) of the state-centric paradigm, James Rosenau played a leading role with his seminal book *Turbulence in World Politics*. Stepping outside of the state-system paradigm, he further develops “two worlds of world politics”, offering a global system where non-state and state actors coexist. In the self-governing multi-centric world, sovereignty-free actors can pursue cooperation, co-optation, conflict, and/or competition with each other, leading to the bifurcation of global politics. Although Rosenau sets forth the significance of sovereignty-free actors in the multi-centric world, he does not differentiate among dissimilar groupings of non-state actors, so there is no clear elaboration of the typology of international actors (Geeraerts & Mellentin, 1994, p. 14). However, he elaborates an integrated paradigm for defining a global system in which both non-state and state actors are unswerving participants.

Political scientist Arnold Wolfers offers three types of actors: the state, corporate actors, and the individual. In particular, he signifies the position of the individual in international politics as an actor. He claims that a reaction that arose against the traditional state-as-actor approach after World War II has taken on two forms: the first is the “individual as actor approach”, or “minds-of-men approach”, while the second emphasises the existence of other corporate actors and especially international organisations, side by side with the state (Wolfers, 1962, p. 4). The consideration of individual human beings as actors, a role previously reserved for the nation-

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<sup>4</sup> For instance, Dieter Neubert maps out “marginal actors” to consider entities that promote criminality (Peters et al., 2009, p. 36).

state which objects to “replace the abstract notion of the state with the living realities of human minds”. According to Wolfers, state interests are indeed human interests; moreover, decisions or actions taken on behalf of the state need to be analysed together with the people from which they emanate. For this reason, it would be mistaken to ignore the impact of individuals on the behaviour of the state, and the state-as-actor approach truly neglects individuals as actors according to Wolfers (ibid., 11). Finally, Willetts provides a taxonomic approach to all actors in global politics from a country on three bases: first, government departments; second, non-legitimate transnational actors, which are divided into two sub-categories as criminal and guerilla/liberation movements; and third, legitimate transnational actors, which are categorised within three sub-categories as transnational companies, political parties, and single-country NGOs (Willetts, 2013). In light of the information provided so far, the basic classification of actors in world politics can be illustrated as follows:

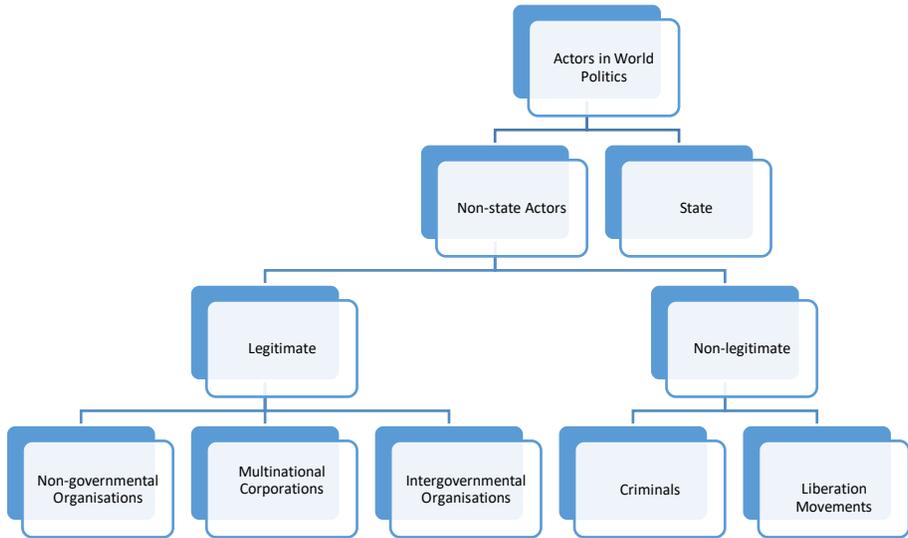


Figure 1. Typology of Actors in World Politics

Based on various mainstream studies, a taxonomy on actors in world politics excludes individuals and mixed actors. As this paper questions the single-actor model of state-centric point of view, millennium era world politics retreat state which is by no means a fundamental unit in global arena.

Given the fact that actors are entities that engage in or promote international relations, state, non-state and mixed actors needs to be taken into consideration, since they become way more involved in the process of international politics. Due to this, pluralist theories have advocated a mixed actor model of world politics which gained currency during the late 1980s (Geeraerts & Mellentin, 1994). Even before this date, Oran Young underlined the role of mixed actors' dynamism and complexity of global politics in 1970s, stating that: "Given the diversity of the component units, the qualitatively different types of political relationships, and the prospects for extensive interpenetrations among actors in systems of mixed actors, it is to be expected that such systems will be highly dynamic ones...In this sense, also, the mixed-actor world view tends to involve greater complexity than the state-centric view"(Young, 1972, p. 136).

According to mixed-actor model, as similar to Oran's perspective, international politics is being shaped by a much broader range of groups, power-hub, and interest rather than only state-based actors, which, however, not ignoring the role of nation-state's authority. In other words, it urges to wander away from the assumption of homogeneity with respect to types of actors, viewing the world politics where "several quantitatively different types of actor interact in the absence of any settled pattern of dominance-submission or hierarchical relationships"(Geeraerts & Mellentin, 1994). That's to say, an exclusion of mixed actors in world politics would be less plausible in contemporary international relations where individuals and other actors have gained leverage to influence world politics, but this is still under discussion. Theoretically more elaborate attempts are needed to synthesise those entities' relative inclusion in world politics as actors. The present article only focuses on legitimate non-state actors and the debate on their relative actorness in world politics.

### **Intergovernmental Organisations (IGOs)**

The first category of non-state actors is that of IGOs, which perform such a key role in global politics. Their influence in world affairs can be traced within various phases of the international policy cycle. In terms of academic and theoretical studies on IGOs, the end of the Cold War can be taken as a

particular milestone, which however, did not immediately result in comparable efforts to launch a “third generation” of world organisations, but a number of qualitative changes constituted a reasonable equivalent (*ibid.*, p. 7). As a result, in the first quarter of the 21st century, the number of IGOs had reached 262, plus more than 2,500 regular autonomous conferences and treaty review bodies (Willetts et al., 2013, p. 231).

The definition of an IGO is simply an association of more than two member states, established by an agreement among its members (Koch, 2016, p. 200), , regardless of the characters of their membership. A similar definition is offered by Jacobson, who remarks that an IGO “is an institutional structure created by agreement among two or more sovereign states for the conduct of regular political interactions” (Jacobson, 1979, p. 8). According to Aall et al., IGOs are “international entities which are created by state and have offices, personnel, budgets, equipment that possess international legal personality in international law; eligibility to enter into agreement, conventions, treaties; can sue or can be sued, can possess prosperity and their staff holds diplomatic status” (Aall et al., 2000, p. 5). However, most of these definitions of IGOs primarily focus on the formal relations between states and pay less attention to organisational character, which leads to the idea that IGOs are only the accumulation of member states’ interests.<sup>5</sup>

The technical dimension of IGOs is much less complex than the conceptual account. The basic members of IGOs are unquestionably nation-states and their representatives are governmental agents. IGOs have permanent secretariats, maintain specific decision-making procedures, and have regularly scheduled meetings. They are also viewed as permanent networks linking states due to the fact that “they are usually dependent on the voluntary actions of the members for the implementation of their decisions” (Jacobson, 1979, p. 8). By and large, decisions are made through negotiations, which take place within the governmental representatives given to them. Therefore, members of IGOs tend to make decisions by consensus rather than by majority or plurality votes. Nonetheless, some decisions are made despite reservations, abstentions, or the negative votes of members. Besides, not all decisions are binding; hence, members can and do selectively ignore

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<sup>5</sup> *In this regard, Koch points out how global governance theory overcomes this state-centric perspective by underlining the different roles of IGOs within the policy cycle and beyond it (Koch, 2016, p. 200).*

those that are not. However, some IGOs have sanctioning powers, such as the European Union (EU),<sup>6</sup> which imposes sanctions when states disobey EU treaties or fail to implement certain requirements. In a general sense, IGOs have a legitimising function for member states. The best-known examples of IGOs are the UN<sup>7</sup> and the North Atlantic Treaty Organization (NATO).

The roles and functions of IGOs are quite variable, encompassing both regional and global scales. Among these roles and functions, IGOs facilitate international cooperation by offering venues, provide reliable data and information, and act as advisers or consultants, norm entrepreneurs, law-makers, and norm-diffusion agencies. They also play key roles in policy-formation processes and policy implementations, distribute norms, and even act as teachers of norms (Finnemore, 1993, p. 565) ; they act as brokers or mediators in international cooperation and generate patterns for shared expectations about behaviours in world politics (Koch, 2016, p. 201). Regarding the influence of IGOs on world politics, Barnett and Finnemore conceptualise IGOs as bureaucracies in a Weberian sense and put forth four different forms of IGO authority: rational-legal authority (e.g., the UN Secretariat), delegated authority (e.g., the UNHCR), moral authority, and expert authority (e.g., the IMF) (Barnett & Finnemore, 2004, p. 16). Despite these roles, functions, and influences of IGOs, they often face accountability questions from various stakeholders. Additionally, IGOs are inadequately resourced, lack coordination and competence, which “are not vested with the requisite authority, and display incoherence in their policies and philosophies” (Weiss, 2013, p. 17). Broadly speaking, however, the role of IGOs in the international policy cycle is definitely undeniable and they establish a political framework for other non-state actors such as international NGOs.

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<sup>6</sup> *The classification of the EU as an IGO is contested; debates revolve around whether it is sui generis or perhaps a complex of IGOs and international NGOs. According to Archer, three reasons are given for not considering the EU as an IGO. First, its structure is contested in debates on whether it is an IGO, a confederation, or a federation. Second, it does not pursue the common interest of its members but rather the common interests of the Union. Third, it is not a structure but a rather a matrix of structure that provides a new form of governance for the area it covers. For more details, see the explanations of Archer (1992, p. 42).*

<sup>7</sup> *However, the UN itself is not easily characterised. For instance, “depending on the issue and angle, the UN is both a state and a non-state actor” (Weiss, 2013, p. 5).*

### **Multinational Corporations (MNCs)<sup>8</sup>**

Like IGOs, MNCs are another component of non-state actors in world politics. The problem of defining MNCs remains a knotty one; the UN Secretariat lists many proposed definitions for them. For the sake of minimising ambiguity, however, it is possible to categorise MNCs among non-state actors as distinct and autonomous actors alongside IGOs and NGOs. Despite this, several studies have aimed to resolve the position of MNCs within NGO taxonomies as a sub-range of them and exclude them in the analysis of non-state actors. That is to say, the position of MNCs as *sui generis* non-state actors or a sub-range of NGOs is still contested; for example, Krasner envisages MNCs as one of the significant components of international NGOs (Krasner, 1995, p. 263). However, their membership, structure, and organisational aims are rather different from those of other organisations. Transnational private groups such as MNCs are therefore assumed as legitimate actors in global society due to their leverage and transformative power in the world economy, which has turned MNCs into autonomous political actors (Josselin & Wallace, 2001, p. 8; Willetts, 2013; Peters et al., 2009, p. 10).

The source of these contestations about MNCs' position arises from four grounds. First, classifications of non-state actors are based on membership and whether states (or governments) are part of an organisation or not. In other words, on the one hand, there are organisations where states are members or actively participating entities, and on the other hand, there are organisations based on civil society comprising members that are not state or government representatives but are rather drawn from associations, groups, or individuals from within the state. Following this line, two fundamental actors emerge: IGOs and NGOs (Brown, 1995). However, if we consider this in the broader sense, MNCs have very different memberships, structures, scopes, and strength of power,<sup>9</sup> which leads them to be considered as separate actors. Secondly, multinational enterprises have been excluded from both ECOSOC Resolution 288 (X) of 1950 and the Yearbook of International Organizations as international organisations due to their

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<sup>8</sup> Hereinafter I will employ the term MNC in conformity with the texts of the ILO and OECD, while the UN uses "transnational corporations" (TNCs).

<sup>9</sup> The major powers of TNCs come from their economic leverage, financial size, and flexibility in moving goods, money, and people across national borders.

profit-making nature, as well as for the following reason: "MNCs cannot really be described as formal, continuous structures established by agreement between members from two or more states" (Archer, 1992, p. 41). Thirdly, there is still a wide margin of disagreement as to which corporations should be included or excluded, as some argue that wholly state-owned enterprises be excluded from the scope of MNCs while others contend that such enterprises reflect pure characteristics and motivations that make these enterprises identical (Sahgren, 1976, p. 577).

The final complexity derives from the distinction between MNCs and transnational organisations. Controversy continues regarding which term is more appropriate for the designated entities. For instance, the ECOSOC has focused on "transnational" as opposed to "multinational" corporations for the reason that "transnational" is more descriptive for corporations that operate from their home bases beyond national borders. "Multinational" corporations, in contrast, operate in accordance with prescribed conditions in various parts of the world without a home base, established by the agreement of a number of countries (Archer, 1992, p. 40). However, when characterising transnational organisations as "transnational interactions institutionalized" (Skjelsbaek, 1971, p. 70) or "any movement of tangible or intangible items across state boundaries when at least one actor is not the agent of a government" (Nye & Keohane, 1971, p. 12), then NGOs, MNCs, and other groupings can be included under the definition of transnational organisations due to the fact that they are entities that are non-governmental in character. Briefly, while Huntington and Jacobson underscored transnational organisations on the bases of organisational structure and the scope of the operations, Nye and Keohane focused on membership characteristics such as whether they are private or public in character. In sum, while "TNC" and "MNC" are used interchangeably in some articles, strictly speaking they are rather distinctive. MNCs can become TNCs when they import or export goods or services, but trade involvement is by no means a criterion for being classified as a TNC. If they lobby foreign governments for economic reasons, then they become transnational political actors. However, even in this circumstance, these organisations only gain status as TNCs if they have branches or subsidiaries outside of the home country (Baylis et al., 2013, p. 323).

It is beyond the scope of this research to elaborate all of the complex features of TNCs and MNCs; however, MNCs are considered as a particular type of non-state actor, independently of international NGOs, for the following reason: they are sorts of transnational organisations, as a fourth category (Archer, 1992, p. 40), and while they have much in common with NGOs, especially organisationally, their main objective is to promote the profit-making bulks of their members. To do so, MNCs function from their home bases to the international arena without any form of state control, enjoying direct roles in domestic and international markets through their economic power. From this angle, MNCs are tightly defined as corporations founded among various states and run their activities in accordance with prescribed agreements (Judge, 1978, p. 354). They basically engage in profit-making business transactions and operations beyond the state's border by means of branches and subsidiaries that operate globally and exist in various forms as important actors in the global economy. They do not have direct access to consultative status with the UN, but they can obtain indirect access via international NGOs. They also have a considerable impact on global politics through their influence on the foreign policies of their respective countries. Thanks to this, while MNCs are not defined as international organisations, they are nevertheless significant international actors (Nye & Keohane, 1971, p. 113). It should be noted that MNCs are not generally deemed to enjoy international legal personality,<sup>10</sup> which means that they cannot create internationally binding laws by themselves, but they can function as consultants and lobbyists. By themselves, meanwhile, they can create their own types of norms, which is known as soft law including guidelines or codes of conduct.

### **Non-governmental Organisations (NGOs)**

The term "international non-governmental organisation" (INGO or NGO)<sup>11</sup> entered the political lexicon after World War II, being first used in the UN

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<sup>10</sup> This is a different matter from their legal status under domestic law, which may be formalised. In other words, an MNC may be incorporated, or registered as an association, or may not.

<sup>11</sup> The abbreviation "INGO" is generally used by the academic community, whereas NGO is favoured in the UN literature. While "NGO" is often used to refer to national organisations, this term is used interchangeably here.

Charter in 1946. Despite the late entry into the academic literature, traditions of voluntary organisations devoted to helping others can be seen throughout the 19th century, if not from medieval Europe to ancient Rome. In the most general sense, the historical development of NGOs can be framed in two periods (Ahmed & Potter, 2006, p. 21). The first encompasses the 19th and 20th centuries; the second is the post-Cold War period. This classification is based on NGOs' evolution along the historical timeline and their concomitant diversification in scope and functions. One of the first NGOs to appear was the International Committee of the Red Cross,<sup>12</sup> founded in 1863, followed by the Young Men's Christian Association (YMCA), established in Britain in 1884 (Aall et al., 2000, p. 90). These private relief or charitable organisations established in the 19th century have recently taken on the mantle of NGOs as their activities and self-definitions have evolved (Ahmed & Potter, 2006, p. 21). In the post-Cold War period, the need for humanitarian relief has grown sharply and global political transformations have affected the size and scope of the NGO literature favourably. Measuring the growth of NGOs over the last 150 years is not an easy task and the exact number will depend on which definition of NGOs one prefers, but roughly 8,400 NGOs operate on a global level (Willets, 2013, p. 321). While many NGOs were primarily founded by religious groups at the beginning, NGOs' functions and scopes are now much more extensive as an outcome of international responses to humanitarian emergencies, human rights abuses, relief needs, and other major upheavals.

There is ample evidence that the importance of NGOs in the international arena has fully-fledged meaningfully over the last thirty years and that they have gained a striking position in world politics. In this regard, Lester Salamon put forward three reasons for this rapid increase of NGOs globally (Salamon, 1994, p. 109). The first is the development in global communications revolutions, which eased international travel and communications among voluntary organisations. The second is the retreat of the state worldwide, entailing responsibilities being surrendered by the state and turned over to other actors in society. At this juncture, NGOs stand out for their presumed abilities and incorporate private action and public service.

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<sup>12</sup> *This is an international organisation, but it functions like an NGO. The Red Cross has a special position in international law as an entity sui generis (Charnovitz, 1987).*

The third reason is economic growth worldwide, which has led to the formation of a new attitude of citizens towards global issues such as the environment and human rights. In relation to this third point, the impacts of NGOs depend on a country's political, economic, and social history, which affect the growth of the civic sector. It is clearly seen that there is direct parallelism between economic development and NGO involvement in state politics, and it can be assumed that the number of NGOs will continue to increase in near future, since the development of NGOs worldwide is a result of economic and technological development (Skjelsbaek, 1971, p. 84).

Reaching a precise definition of NGOs means taking a political position, be it explicitly or implicitly (Willetts, 2013, p. 6). Following this line of reasoning, one can assume that the category of NGOs does not include all organised groups that are independent of the government and that a common ground of all NGOs is the "desire to make the world a better place" (Aall et al., 2000, p. 89). Instead of using the term "NGO", some scholars prefer "civil association" (Götz, 2008), "international pressure group" (Meynaud, 1961; Willetts, 1982), or "private voluntary organisation" (White, 1993). In the United States, the term "non-profit organisation" is used nearly synonymously with "NGO". Much of the research on the definition of "NGO" has drawn from Article 71 of the UN Charter. The UN formulised NGOs under the provision of intergovernmental organisations and private organisations, to have formal relations with the ECOSOC. In Article 71, a clear distinction is drawn between NGOs and government observers or specialised agencies. However, the first definition of international NGO (INGO) is found in ECOSOC Resolution 288 (X) of 27 February 1950, defining it as "any international organization that is not founded by an international treaty" (Charnovitz, 2006).

Despite descriptive variations in the meaning of "NGO", there are commonly accepted principles among the definitions. A United Nations document of 1994 describes an NGO as follows, quoted by Simmons: "a non-profit entity whose members are citizens or associations of citizens of one or more countries and whose activities are determined by the collective will of its members in response to the needs of the members of one or more communities with which the NGO cooperates" (Simmons, 1998, p. 83). This definition excludes terrorist groups, private profit-making organisations, and

political parties. However, in his analysis of so-called marginal actors, Dieter Neubert maps such actors as potential non-state actors with significant standard-setting authority (Neubert, 2009, p. 35). Peter Willetts asserts that NGOs are “any non-violent, non-profit, organized group of people who are not seeking governmental office” (Willetts, 1996, p. 5). Finally, extensive coverage of its definition is provided by Norbert Götzt, who enriches the scope of NGO definitions by seeking an appropriate praxis-based definition. His definitions are politics-oriented and relational rather than typological and polity-oriented (Götzt, 2008, p. 250). After an all-embracing discussion on the background of NGOs, he concludes with the following definition: an NGO is “a private body in its capacity of being excluded, marginalized, graded, contained, or used by a government, an intergovernmental organization, or an observer” (Götzt, 2008, p. 250). Based on various definitions, an NGO is simply an organised group of people, whom basic objective are neither political such as not seeking governmental office, nor economic, and their founding principles are non-profit, apolitical, and non-violent.

Before preceding NGO and international law context, it is worth mentioning NGO and Civil Society concepts, which are applied primarily in an interchangeable fashion in the analysis of non-state actors despite of their contextual differences. Several common characteristics shared by these two terms have made them largely interchangeable in the literature. Recent studies reveal that the gap between the two could hardly be greater, however. NGOs, like civil society organisations, are important components of civil society, and global civil society does not consist merely of NGOs. Both are generally used to imply “a force for good”, and they primarily refer to the sphere of voluntary and non-profit organisations known as the third sector, following the state and the market (Götzt, 2013, p. 185). However, both terms are ambiguous, with variations in definitions and profound differences in the scopes covered. Reducing civil society to the sum of all the activities of NGOs is not possible, since civil society itself consists of NGOs. It would appear self-evident that NGOs are only a part of civil society, as civil society additionally includes civil society organisations. As such, NGOs are interpreted to be a significant component of civil society, with positive connotations embedded within these two concepts. NGOs, like civil society organisations, are important components of civil society, and

civil society does not consist merely of NGOs. For the UN, “NGO” usually means an organisation that has consultative status, while a “civil society organisation” does not have permanent consultative status (Willetts, 2010, p. 30). In line with the descriptions offered by Willetts, we may also framed global civil society to the sum of all the activities of all NGOs in condition that these NGO should have some form of transnational relations.

### *NGOs and the International Law Context*

The debates on the legal positions of NGOs in international law can be traced back as early as the 1910s. Since that time, NGOs have been assumed to not have independent legal personality under traditional international law compared to states and IGOs. For this reason, many textbooks on international law describe the formal and legal forms of NGOs as limited (Harris, 2004, p. 12; Shaw, 2008, p. 261; Brownlie, 2003, p. 56; Amma-Karin, 2013, p. 147).

In the international legal system, very few entities are recognised that may bear rights and duties under international law. The question of “who is the subject?” in international law is directly attributed to the state-centric system, in which states freely enjoy the monopoly of law-making, law adjudication, and law enforcement processes. NGOs, therefore, are not deemed to enjoy international legal personality because of several factors. First, NGOs do not have the power to create internationally binding law themselves; in other words, they do not have the power of law-making, law adjudication, and law enforcement. However, NGOs may participate in the process of law-making, a right obtained through two treaties: the Rome Statute of the International Criminal Court and the Ottawa Convention on the banning of landmines. In other words, these formal international law-making mechanisms have favoured the participation of NGOs in the policy-making process (Bianchi, 2017, p. 21), but the process nevertheless remains within the state’s system of power. Involving NGOs in the law-making process for normative outcomes does not make them formal law-makers. Another aspect in the participation of NGOs in law adjudication processes is their submission of *amicus curiae* briefs before international courts. The increasing practice of submitting *amicus curiae* briefs has led to a momentum

that has attracted scholarly attention (Shelton, 1994, p. 611). Despite providing legal expertise and/or factual information, as well as acting on the basis of public interest considerations as trustees of sorts for preserving interests, overall NGOs' juridical nature and the status of *amicus curiae* remains uncertain, because they are not the same as witnesses or experts (Bianchi, 2017, p. 22). The other relevant aspect here is the enforcement role of NGOs in international law. By and large, NGOs effectively participate in environmental and human rights agreements through monitoring activities and providing a trigger mechanism for compliance (ibid., 21). Once again, NGOs' potential capacity to gather information, mobilise public opinion, and provide expertise make them powerful non-state actors in the maintenance of international law. In addition, NGOs have functions as lobbyists and consultants, allowing them to generate other types of norms such as guidelines or codes of conduct, known as soft law (Peters et al., 2009, p. 17). These non-state norms inevitably interact with inter-state law by offering interpretations and inspirations.

Another factor is the state-centric point of view in international law. Doctrinally, international law, which has long been interpreted to be a product of state positivism, is based on the principle of state sovereignty and its "golden arches" characteristics. This traditional state-centric understanding considers only those entities that have fixed-territory areas in which the jurisdiction is also under their control. This understanding describes international law as a system for regulating the rights and responsibilities of states only, which is a simplification (Lindblom, 2016, p. 147). Since World War II, developments in political processes such as globalisation and the internationalisation of decision making has weakened state positions in the international legal system; hence, NGOs have respectively gained more power in various issue areas including woman rights, child-labor's right, humanitarian law, environmental law, and international human rights law. The other factor is authority. While both states and NGOs are composed of individuals, NGOs enjoy a relationship with individuals that is voluntary, which is not the case for states. This means that "individuals [will] be part of and even support an NGO out of commitment to its purpose and that purpose plus organization gives NGOs whatever 'authority' they have, and it will be moral authority rather than legal authority" (Charnovitz, 2017, p. 147).

To summarise, the status of NGOs is rather changeable in regard to their places within different states, because they are obliged to comply with national legislations. In other words, NGOs have to accept the respective jurisdictions of the countries in which their branches are located (Martens, 2002, p. 274). Thus, their national legal situations are very much related to the national law context. In terms of the international sphere, the codifications of the personality of NGOs in international law has achieved limited progress in the last three decades. In that regard, The European Convention on the Recognition of the Legal Personality of International Non-governmental Organisations has favoured a universal acknowledgement of the legal personality of NGOs.

### **Conclusion**

A review of the literature has disclosed an abundance of articles on the power of NGOs, most of which highlight the normative aspects of NGOs and their influencing mechanisms employed in policy-making processes. The contemporary rapport between state and civil society actors seems to have opened the way for new types of relationships between various actors. Despite this, there is little systematic evidence to support claims that the bifurcations of non-state actors and the world of society have somehow overtaken the world of the state (Carlsnaes et al., 2002, p. 251). In other words, though non-state actors have facilitated the rise of transnational relations, which hold influence relative to the declining authority and power of the nation-state in the global system, it is hard to proclaim that the state-centred international system has been changed, or that the position of the state within world politics has been infringed upon. Scholars of international relations did not alter the patterns of the *modus operandi* dramatically, since power, coercion, and threats thereof, as well as high politics (security, peace, military) are still at the centre of state-to-state interplay. The struggle to obtain power in world politics, either as an end or a necessary means, is still a distinguishing mark of politics among states. Accepting the merit of this commonly-held principles, nonetheless global politics cannot be limited within the framework of a single actor, as other actors now share the stage and inevitably contribute different types of politics. Therefore, instead of analysing actors in world politics in zero-sum terms, current students of

international relations need to study all actors' interactions and inter-penetration within a broader frame.

In short, NGOs are still not deemed to enjoy international legal personality; their legal status is very much related to the specific countries in which they operate. They do not have power to create binding law themselves; the extent of their powers in the international legal context includes catalysing the formation of hard law, collaborating in civil regulations, lobbying, consulting, undertaking monitoring and compliance activities, and providing legal expertise or factual information.

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