CHAPTER 1

Concepts: NGOs, Armed Conflicts and Customary Law

This introductory chapter addresses the theory relevant to the arguments made throughout the book. The doctrine is not unanimous on the definition of an NGO in International Law, the body of law applicable in times of armed conflicts, the distinction between international and non-international armed conflicts, or the definition and sources of Customary International Law. These concepts are however necessary to an understanding of the legal status of NGOs operating in armed conflicts and are therefore examined below.

1 What is an NGO?

There is no accepted definition of the term, ‘non-governmental organisation’, in International Law.¹ A frequently quoted article in the Encyclopaedia of Public International Law even suggested that NGOs might encompass multinational corporations and national liberation movements.² Consequently, each institution has its own definition of its relations with NGOs³ and international

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law recognises the existence of NGOs through several functional categories.\textsuperscript{4} However, for an NGO to exist, legal scholars generally admit that there are several elements that must all be present.

The first element is the requirement of autonomy from the State, that is, the ‘non-governmental’ quality.\textsuperscript{5} NGOs are not established by States through governmental agreement under international law\textsuperscript{6} and are not empowered with governmental powers.\textsuperscript{7} Rather, they are formed on the initiative of private, natural, or juridical persons based upon a contract governed by domestic civil law.\textsuperscript{8} Moreover, although they can depend upon governmental funding, NGOs

\textsuperscript{4} “Le droit international reconnaît l'existence d'entités qu'il nomme ONG mais il ne crée que des catégories fonctionnelles, sans cesse différentes, dans le but, not pas d'isoler une catégories juridique unique mais d'octroyer à certaines seulement de ces ONG une capacité à intervenir sur la scène internationale (statut consultatif, partenariat, observateur ...). Pour ce faire, il renvoie à des entités crées en vertu des droits internes, et qui relèvent donc de catégories juridiques propres à ces derniers (associations, fondations, syndicats, partis politiques ...).” Dorothée Meyer, “ONG: une catégorie juridique introuvable, une définition utilitaire,” dans Johanna Siméant et Pascal Dauvin (eds.), O.N.G. et Humanitaire, L'Harmattan, Paris, 2004, p. 141.


\textsuperscript{6} In 1950, the ECOSOC established the following definition of a NGO: “Any international organization which is not created by inter-governmental agreement:” see E/RES/288(X), \textit{Review of consultative arrangements with non-governmental organizations}, 27 February 1950, para. 8. The present provisions of the ECOSOC consultative arrangements include the following definition: “Any such organization that is not established by a governmental entity or intergovernmental agreement . . ., including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization:” see E/RES/1996/31, \textit{Consultative relationship between the United Nations and non-governmental organizations}, 25 July 1996, para. 12.
