
By Monica Schurtman

A. The Growing Prominence of NGOs in Developing and Implementing International Norms and the Challenge of Establishing Realistic Measures by which to Assess their Work

In his 1931 lectures “Progress in International Organizations,” Professor Manley O. Hudson emphasized the expanding influence of international governmental organizations (IGOs) on legal regulation and policy in an increasingly interconnected world.1 Hudson scarcely mentioned the potential role non-governmental organizations (NGOs) could play in shaping international law and relationships. At the time few cross-border NGOs existed—much less held significant sway—in international discourse, particularly with respect to the formation of policy or law. Today, by contrast, NGOs routinely act across international borders in major ways.2 As Jose Alvarez comments, “[N]o one questions today the fact that international law—both its content and its impact – has been forever changed by the empowerment of NGOs.”3

1 Manley O. Hudson, Progress in International Organization (1932).
2 For discussions of the historical evolution of cross-border NGOs and the prominent roles they play today in developing, promoting, and monitoring compliance with international legal norms, see generally, Margaret E. Keck & Kathryn Sikkink, Activists Beyond Borders (1998); William Korey, NGOs and the Universal Declaration of Human Rights: “A Curious Grapevine” (2001).
Despite the proliferation of NGOs during the last four decades, no single authoritative definition of “NGO” exists. In general terms, NGOs are “formal influence groups unattached to any state.” Yet as Menno T. Kamminga aptly observes: “NGOs are most easily defined by explaining what they are not.” Kamminga posits that NGOs share five basic characteristics. First, they are “private structures in the sense that they are not established, or controlled by, states.” Second, they do not aim “to overthrow governments by force.” Third, although NGOs often try to change government policies and practices, they do not seek state power. Fourth, while NGOs may fundraise to carry out their activities, “they do not seek financial profit for their own sake.” Fifth, NGOs are typically law-abiding. In sum, NGOs are usually “private citizens’ groups created to further specific common objectives of their members,” such as the promotion of human rights, protection of the environment, or enhancing the rights of workers through advocacy, relief and assistance, or a combination thereof.

One way to understand how NGOs interact with other players in cross-border rights advocacy is through what Harold Koh and others refer to as transnational legal process theory. According to Koh’s model, transnational internalization and implementation of legal norms occurs in four overlapping phases: (1) subject-specific interactions transpire among transnational actors in a law-declaring forum which (2) prompt interpretation and enunciation of a relevant global norm and (3) compel other parties to internalize the new articulation of the norm and finally (4) “bind” parties to obey the norm. This process relies on change agents. The first of these are “transnational norm entrepreneurs”—NGOs or private individuals who draw worldwide attention to a particular issue. Through education and publicity, they mobilize popular opinion and action domestically and abroad to support a particular norm or set of norms, so as to change the way governments act with respect to the specific issue. Second, “governmental norm sponsors” are officials who work proactively with non-governmental actors by operating inside governmental channels to advocate for the changes that non-governmental norm entrepreneurs urge. Governmental norm sponsors become “governmental norm entrepreneurs” when they use their official status to promote normative positions

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6 Id.