

## ARTICLES

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# The NGOs' Participation in the Proceedings of the International Court of Justice

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*Many international judicial bodies have prescribed the procedures allowing NGOs to participate in the proceedings generally as non-parties as amicus curiae, expert or witness for the purpose of the good administration of justice. These possibilities are well developed in judicial bodies where the nature of proceedings concerns the issues that international law recognizes as the collective interests of the international community. In the International Court of Justice, on the contrary, NGOs do not have such possibility to make contributions as they have done in other international judicial bodies. The development of the elaboration of the texts on the Court proceedings and the restrictive interpretation of these texts reflect the restrictive approach of the Court towards NGOs' participation. The Court should offer the scope to access NGOs since they have legitimate right to represent the views of international civil society in an international democratic process and can contribute to assist the Court to protect the collective interest of the international community.*

### Keywords

Non-Governmental Organizations, International Judicial Proceedings, International Court of Justice, Amicus Curiae, Administration of Justice

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## I. Introduction

Non-governmental organizations (“NGOs”) are legal persons established under domestic private law and as such have no international personality. Nonetheless, they play important roles in international law and have certain rights, although they cannot be treated equal to States or intergovernmental organizations. While their status is limited to being actors or even observers in international forums, their contribution to the development of international law is undeniably remarkable. Over the past decades, international NGOs are increasingly taking part in various steps of the international legal order such as elaboration of rules, law enforcement and litigation.<sup>1</sup> However, NGOs have not yet been recognized as a legal person under international law<sup>2</sup> as well as domestic law.<sup>3</sup>

Despite the lack of international legal personality, NGOs have established regular collaboration with inter-governmental organizations. In the last decade, some NGOs have achieved informal and formal access to the international decision-making process and have become non-negligible partners of States and inter-governmental organizations on various issues, particularly when it happens to be in the common interest of the international community. They are actively involved in the international treaty making-process and significantly engaged in the enforcement of international law by monitoring State compliance with international obligation.

In principle, the only subject under international law that can generally initiate cases

<sup>1</sup> A.-K. LINDBLOM, *NON-GOVERNMENTAL ORGANIZATIONS IN INTERNATIONAL LAW passim* (2005). See also A. BIANCHI, *NON-STATE ACTORS AND INTERNATIONAL LAW passim* (2009); I. ROSSI, *LEGAL STATUS OF NON-GOVERNMENTAL ORGANIZATIONS IN INTERNATIONAL LAW passim* (2010).

<sup>2</sup> A legal personality in international law has been recognized in case of the International Committee of Red Cross (“ICRC”). The ICRC has rights under not only international law, but also international obligations. This international legal personality has been clearly recognized by the 1966 Agreement concluded between Switzerland and International Federation of the Red-Cross and the Red Crescent Societies. This international legal personality has been reflected by the fact that the ICRC has capacity to conclude the international agreements with States and rights to legation in international relations. Moreover, the ICRC has capacity to assert its claims directly against others subjects of international law. See A. Escorihuela, *Le Comité International de la Croix Rouge comme Organization sui generis? Remarques sur la Personnalité Juridique Internationale du CICR*, 105 *REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC* (“RGDIP”) 598-602(2001). P.-M. Dupuy, *L’Unité de l’Ordre Juridique International*, 297 *Recueil des Cours de l’Académie de Droit International de la Haye/Collected Courses of the Hague Academy of International Law* (“RCADI”) 118(2002). See also C. Dominicé, *Accord de Siège Conclu par le Comité International de la Croix Rouge avec la Suisse*, 99 *RGDIP* 5-36 (1995).

<sup>3</sup> Special Rapporteur Giorigo Gaja, when defending the scope of the ILC study on the responsibility of international organization, explained that NGOs were not included in the study because it considers the organizations that were already subjects of international law and as such bound by obligations imposed on them by international law. See G. Gaja, *First Rapporteur on Responsibility of International Organizations*, U.N. Doc. A/CN.4/532, Mar. 26, 2003.