

The Role of International Norm-Making and Law in Defining INGOs' Legal Subjectivity

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ABSTRACT

This manuscript analyzes the contemporary position of international non-governmental organizations (INGOs) within the framework of international law by emphasizing the disparity between their growing practical significance and their unsettled legal status. The study aims to examine the role of INGOs in international relations, identify the legal and institutional challenges surrounding their international legal recognition, and advance a reasoned justification for recognizing their international legal personality. To illustrate national perspectives on this issue, the research incorporates selected aspects of Azerbaijan's experience. Using an institutional research method, the study evaluates prevailing doctrinal approaches to the legal subjectivity of INGOs and identifies the core elements of their international legal status. The findings demonstrate that international law does not formally recognize INGOs as subjects in the strict legal sense. However, given their expanding functions, broad operational reach, and increasing influence in international governance, the study argues that the international legal system must develop a normative framework to regulate their status. The principal justification for recognizing the legal subjectivity of INGOs rests on the persistent imbalance between their actual role in international relations and the absence of corresponding legal recognition.



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1. Introduction

In recent decades, international non-governmental organizations (INGOs) have played an increasingly important role in addressing global issues such as climate change, human rights, humanitarian aid and sustainable development. The relevance of the study of the issue of international legal subjectivity of international non-governmental organizations (INGOs) is due to several important factors, including the growth in the number and influence of INGOs, globalization processes and the complication of global challenges, problems associated with the regulation of INGOs at the international level. In addition, INGOs actively influence the formation of international policy and decision-making at the

global level. This requires a clear understanding of their legal status for effective interaction with states and international organizations.¹

The analysis of the international legal subjectivity of INGOs is important for several reasons, including their growing role as an independent actor in international relations, the need to increase the transparency and accountability of their activities, the possibility of legal conflicts and conflict situations involving INGOs, and their growing interaction with states and international organizations.² An international non-governmental organization (INGO) is a non-profit organization that operates at the international level and is not under the control of any government. Such organizations work to address global issues such as human rights, environmental protection, humanitarian aid, health care, education, and civil society development.³ Despite the fact that the legal status of INGOs is determined by the legislation of states individually, they encourage their activities to focus on current issues that concern the international community. Solving the mentioned problems⁴ already means achieving real results⁵. This has led to a further increase in the number and reputation of INGOs in the international community. Compared to intergovernmental organizations, the fact that INGOs have become active participants in the system of international relations, as well as in the sphere of intra-state relations, is one of the positive factors.⁶ For example, the literature shows that INGOs are distinguished by their positive impact on international legal relations in solving the crisis environment.⁷ In these conditions, the issue of the legal capacity of INGOs - the ability, as a legal entity, to have subjective rights and legal obligations that are enshrined in legal norms is becoming increasingly relevant.⁸

¹ Beatriz Gaspar and others, 'The internationalization of nongovernmental organizations: Characteristics and challenges', *Administrative Sciences*, 12.4 (2022), 140 <https://doi.org/10.3390/admsci12040140>; George E. Mitchell, Hans Peter Schmitz, and Tosca Bruno-van Vijfeijken, *Between power and irrelevance: The future of transnational NGOs* (Oxford: Oxford University Press, 2020).

² Susan Appe, and Allison Schnable, 'Don't reinvent the wheel: Possibilities for and limits to building capacity of grassroots international NGOs', in *Citizen Aid and Everyday Humanitarianism*, edited by A. M. Fechter, and A. Schwittay (London: Routledge, 2021), 64-81 <https://doi.org/10.4324/9781003029090-5>; David Lewis, Nazneen Kanji, and Nuno S. Themudo, *Non-governmental organizations and development* (London: Routledge, 2020) <https://doi.org/10.4324/9780429434518>

³ Alexandru Burian, and Vladlena Lisenco, 'INGOs and social economy: International and national legal regulation', *National Law Journal*, 1.247 (2023), 207-20 <https://doi.org/10.52388/1811-0770.2022.118>; Erla Thrandardottir, and Vincent Charles Keating, 'Bridging the legitimacy gap: A proposal for the international legal recognition of INGOs', *International Politics*, 55.2 (2017), 207-20 <https://doi.org/10.1057/s41311-017-0098-9>

⁴ Example: As an example, the International Committee of the Red Cross can provide aid during the terrible earthquake in Haiti and its successful participation in solving the humanitarian crisis (Red Cross UE Office, 'Haiti earthquake: An example of an internationally coordinated response effort', 2021 <https://redcross.eu/latest-news/haiti-earthquake-an-example-of-an-internationally-coordinated-response-effort> (accessed 17 November 2024).)

⁵ As an example, we can show the Bangladeshi government's high appreciation of the role of international non-governmental organizations in fighting poverty and achieving social goals (Sheikh Kabir Uddin Haider, 'Genesis and growth of the NGOs: Issues in Bangladesh perspective', *International NGO Journal*, 6.11 (2011), 240-7 <https://doi.org/10.5897/INGOJ11.025>

⁶ Elena Gerasimova and others, 'History of bar formation and development in USSR (1917-1991)', *Revista Notas Historicas y Geograficas*, 25 (2020), 138-59. <https://revistaschilenas.uchile.cl/handle/2250/240753>

⁷ Linhui Hong, 'Status and role of ngos in international law', *Journal of Education, Humanities and Social Sciences*, 24 (2023), 535-40 <https://doi.org/10.54097/vet75089>

⁸ Rephael Harel Ben-Ari, 'III. International Legal Personality and Status', in *The Normative Position of International Non-Governmental Organizations under International Law*, edited by Rephael Harel Ben-Ari (Boston: Brill, 2012), 306-9 https://doi.org/10.1163/9789004229228_020 ; Andrew Heiss, 'Taking control of

One of the main characteristics of INGOs is that they play an important role in the formation and development of civil society (including international one). As a whole, the formation of civil society is set by the states as the main goal, where human rights and freedoms are ensured by strengthening the principles of the legal state. Thus, a number of factors play an important role in determining the international legal subjectivity of INGOs, and two directions are defined in the article. First, the analysis of the role of INGOs in the creation of international norms. International rule-making is the process of creating international legal norms that regulate the behavior of subjects of international law, including states, international organizations, and, indirectly, INGOs. Although INGOs are traditionally not full-fledged subjects of international law (like states or intergovernmental organizations), international law gradually recognizes their influence and significance.⁹ Currently, it is difficult to imagine the effective results of the adoption of international documents or the international norm-making in general without the activities of INGOs.¹⁰

In addition, INGOs are closely involved in the international supervision process by being represented in all currently operating international universal and regional systems. Thus, the discussion of all the presented international reports is conducted with the participation of INGOs with their respective alternative international reports. A second direction is related to the application of international legal norms. It can be considered that the effectiveness of international legal norms depends to a decisive degree on their implementation, which justifies the relevance of the chosen topic once again. The activity here results in the further improvement of cooperative relations with the states. There is currently more and more evidence that INGOs are becoming an active subject of international lawmaking. Their participation is due to the growth of transnational problems such as climate change, human rights protection, humanitarian crises and sustainable development. Modern research covering the topic of the formation of INGOs as subjects of lawmaking is devoted to such issues as: lawmaking and legitimacy in international humanitarian law,¹¹ international organizations as special subjects of international law,¹² justifying the right to global participation through NGOs in terms of the active dimension of human dignity and self-determination in a philosophical perspective,¹³ delineation of the subject of law to which legal regulation is directed and the subject of law as an

regulations: how international advocacy NGOs shape the regulatory environments of their target countries', *Interest Groups & Advocacy*, 8 (2019), 356-75 <https://doi.org/10.1057/s41309-019-00061-0>

⁹ Alexandre Fontenelle-Weber, 'International human rights law and the accountability of civil society organizations: The case of the INGO accountability charter/accountable now', *Brazilian Journal of International Relations*, 8.1 (2019), 215-35 <https://doi.org/10.36311/2237-7743.2019.v8n1.11.p215>; Erla Thrandardottir, and Vincent Charles Keating, 'Bridging the legitimacy gap: A proposal for the international legal recognition of INGOs', *International Politics*, 55.2 (2017), 207-20 <https://doi.org/10.1057/s41311-017-0098-9>

¹⁰For example, the international non-governmental organizations that carry out important activities from the preparation of the Convention on the Rights of the Child to the adoption of that document, later closely participate in the activities of the Committee on the Rights of the Child established by this Convention, and finally maintain their important influence in the preparation and development of the national legislation of the states.

¹¹ Heike Krieger, and Jonas Püschmann, 'Law-making and legitimacy in international humanitarian law', in *Law-Making and Legitimacy in International Humanitarian Law*, edited by Heike Krieger and Jonas Püschmann (Cheltenham: Edward Elgar Publishing, 2021), 2-14 <https://doi.org/10.4337/9781800883963.00008>

¹² Marko Ačić, 'International organizations as sui generis subjects of international law', *Acta Politica*, 51 (2021), 51-66 <https://doi.org/10.18276/ap.2021.51-04>

¹³ Stephan Kirste, 'The right to global participation through NGOs', *Revista de Direito Brasileira*, 33.12 (2023), 290-308 <https://doi.org/10.26668/indexlawjournals/2358-1352/2022.v33i12.9165>.

independent subject of the formation of legal norms,¹⁴ revision of approaches to determining the status of subjects of international law,¹⁵ exploring the complexities of binding international law for international organizations,¹⁶ the impact of NGOs on environmental law in terms of consequences for the international legal subjectivity of the state.¹⁷

The relevance of the topic under study is related to a number of aspects. The modern era of globalization has led to the complication of international relations and the growth of the number of problems that cannot be solved solely at the state level. INGOs, with their expert potential, independence and flexibility, are becoming important participants in international lawmaking, acting as a source of initiatives for international treaties and agreements, expert consultants to international organizations, and an instrument of public control over the implementation of international obligations. Despite the important role of INGOs in international lawmaking, they continue to face challenges in determining their legitimacy and accountability, opposition from states, as well as financial dependence on grants and donations that influence their policies. Another aspect of the topicality can also be related to the fact that a universal international document has not yet been adopted, which combines important provisions regarding the legal status of INGOs and defines obligations for states. Absence of such an international document leads to completely different attitudes of states towards INGOs and leads to certain uncertainties (for example, non-serious and negative attitude of states to the reports of some INGOs, lack of cooperation, etc.).

It should be unequivocally noted that currently, certain international conventions that would fully officially recognize the international legal subjectivity of INGOs have not been adopted. But at the same time, although not *de jure*, the *de facto* subjectivity of INGOs is accepted by the states. Thus, the tendency of a broader approach to the subject of international law is being formed. Against this background, the need to research the international legal subjectivity of INGOs is of obvious relevance. The study of different aspects of these organizations' activities expands understanding of the possibilities of adapting international law to modern challenges, regulating the activities of INGOs and promoting more effective international cooperation. A broad analysis of the international legal subjectivity of INGOs is a key element for understanding and regulating their activities within the framework of international law. The aim of current research implies to analyze the contemporary state of INGOs as subjects of international law and lawmaking, as well as to determine the existing problems of their international legal institutionalization and development prospects. Certain aspects of this work on the research issue cover the experience of Azerbaijan. The work intends to present a reasoned justification for the need

¹⁴ Irina Viarshok, 'On the subjectivity in lawmaking and law formation', *Herald of Omsk University. Series: Law*, 19.4 (2022), 15-27 [https://doi.org/10.24147/1990-5173.2022.19\(4\).15-27](https://doi.org/10.24147/1990-5173.2022.19(4).15-27)

¹⁵ Adrian Osuagwu, Sylvester Anya, and Obinne Obiefuna, 'Inclusion of individuals as subjects of international law: Individuals as subjects of international law', *The Nigerian Juridical Review*, 18 (2023), 15-38 <https://doi.org/10.56284/2gp61c03>

¹⁶ Samiksha Mathur, and Sonu Agarwal, 'Examining the complexities of binding international law on international organisations', *International Journal of Law and Management*, 66.5 (2024), 537-54 <https://doi.org/10.1108/ijlma-08-2023-0186>

¹⁷ Jelica B. Gordanić, 'The influence of non-governmental organizations on the environmental law: Consequences on the international legal personality of the state', *Zbornik radova Pravnog fakulteta, Novi Sad*, 57 (2023), 259 <https://doi.org/10.5937/zrpfns57-43410>

to recognize the legal justification of INGOs and to approve their status at the international legal level.

2. Research Method

This study adopts a descriptive research design grounded in a normative legal and interdisciplinary approach to examine the role of international norm-making and law in defining the legal subjectivity of international non-governmental organizations (INGOs).¹⁸ The research focuses on how formal legal instruments and informal normative processes contribute to shaping the status, functions, and recognition of INGOs within the international legal system. The normative and documentary basis of the study consists of international legal instruments relevant to the regulation and recognition of INGOs, most notably the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.¹⁹ In addition, the study analyzes a range of international policy and normative documents, including statements of the United Nations Security Council and the United Nations document *An Agenda for Democratization*, which reflect the evolving role of INGOs in global governance and international norm development. The research also incorporates reports and analytical materials produced by international organizations, particularly the Council of Europe's *Manual for Human Rights Education with Young People*, to illustrate how soft law instruments and educational frameworks contribute to the practical shaping of INGOs' legal relevance.²⁰ As an interdisciplinary legal inquiry, the study applies the institutional method to examine INGOs as actors embedded within a complex international legal environment composed of binding norms, soft law mechanisms, and institutional practices.²¹ This method enables a systematic assessment of the interaction between INGOs, states, and international organizations in processes of norm creation, implementation, and diffusion. The data sources include international treaties, legal and policy documents, analytical reports, and peer-reviewed scholarly literature.²² The analysis proceeds by identifying the mechanisms through which international norm-making influences the recognition, scope, and limits of INGOs' legal subjectivity, including their participatory rights, regulatory obligations, and accountability structures. Through this approach, the study explains how law and norm-making processes jointly structure the evolving position of INGOs within the international legal order.²³

¹⁸ Abdul Kadir Jaelani and others, 'The Impact of Tourism Villages Regulations to Achieve Sustainable Villages Tourism', *Contrarius*, 1.3 (2025), 245–61 <https://doi.org/https://doi.org/10.53955/contrarius.v1i3.217>

¹⁹ Resti Dian Luthviati and others, 'Original Article Why Sustainable Development Fails Without Ethical Public Governance Policies?', *Contrarius*, 1.3 (2025), 232–44 <https://doi.org/https://doi.org/10.53955/contrarius.v1i3.216>

²⁰ Muhammad Rustamaji and others, 'Regulations on Criminal Sanctions for Bribery in Corruption Cases', *Contrarius*, 1.3 (2025), 172–90 <https://doi.org/https://doi.org/10.53955/contrarius.v1i3.213>

²¹ Olim Narzullaev and others, 'Integrating Environmental Monitoring Policy on State Control Frameworks for Energy Security', *Journal of Human Rights, Culture and Legal System*, 5.3 (2025), 982–1014 <https://doi.org/https://doi.org/10.53955/jhcls.v5i3.720>

²² Anis Mashdurohatun, 'Combating Digital Defamation: Regulations, Challenges and Protecting Reputation Anis', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3.3 (2025), 486–514 <https://doi.org/https://doi.org/10.53955/jsderi.v3i3.147>

²³ Putu Sekarwangi Saraswati and Olim Narzullayev, 'Integrating Miranda Rights to Promote Human Rights Compliance', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3.3 (2025), 459–85 <https://doi.org/https://doi.org/10.53955/jsderi.v3i3.94>

3. Results and Discussions

3.1 Main Characteristics and Development of the International Legal Subjectivity of INGOs

The emergence of INGOs, as a kind of transnational actors operating at the global level, came from an objective social necessity. The contribution of INGOs is important not only in terms of the results achieved and therefore the optimism that people can feel about the protection of human rights around the world, but also because they are tools that can be used in a very real sense by individuals and groups throughout world. INGOs are managed and coordinated by individuals, but they also derive a large part of their power from other members of society who offer voluntary support for their work.²⁴ The history of INGOs is closely linked to the development of global civil society, humanitarian initiatives and the human rights movement. Their evolution reflects the desire of people and organizations to solve transnational problems that go beyond state borders. The first half of the 20th century was a time of active growth of INGOs associated with world wars, social and economic crises: After the First World War, the League of Nations (1919) recognized the importance of non-governmental organizations in international law-making. In the 1920s and 1930s, humanitarian and charitable organizations developed, such as the Save the Children Fund (1919), focused on protecting children affected by wars.²⁵ The interwar period saw the emergence of international associations of scientists, trade unions and charitable foundations.²⁶

After the Second World War, the activities of INGOs expanded significantly. The establishment of the UN (1945) led to the formation of a system of consultative status for INGOs with the Economic and Social Council (ECOSOC), which allowed non-governmental organizations to participate in the development of international norms. Major international NGOs were founded, such as Amnesty International (1961), Greenpeace (1971), which are engaged in the protection of human rights and the environment²⁷. Since the early 1990s, non-governmental organizations have become a powerful factor in international politics and diplomacy, thanks to globalization and the development of the Internet, the expansion of international cooperation (including interaction with such organizations as the WHO, WTO, International Criminal Court) and the growth of crises of international proportions, such as climate change, humanitarian disasters and pandemics (e.g. COVID-19), where NGOs play an important role in rapid response.²⁸

²⁴ Suci Wijayanti and Pujiyono Suwadi, 'Transparent Peace Fines for Economic Crimes Policy', *Journal of Human Rights, Culture and Legal System*, 5.3 (2025), 1042–66 <https://doi.org/https://doi.org/10.53955/jhcls.v5i3.794>

²⁵ Emily Baughan, and Juliano Fiori, 'Save the Children, the humanitarian project, and the politics of solidarity: Reviving Dorothy Buxton's vision', *Disasters*, 39.S2 (2015), 129-45 <https://doi.org/10.1111/disa.1215>; Stephanie Lawson, '7. International organizations in global politics', in *Global Politics* (Oxford: Oxford University Press, 2021), 149 <https://doi.org/10.1093/hepl/9780198844327.003.0007>

²⁶ Pujiyono Suwadi, 'Judges' Role in Suspect Determination and Evolving Legal Concepts', *Jurnal Justice Dialectical*, 3.2 (2025), 176–97 <https://doi.org/https://doi.org/10.70720/jjd.v3i2.98>

²⁷ Jackie Smith, Ron Pagnucco, and Winnie Romeril, 'Transnational social movement organisations in the global political arena', *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 5.2 (1994), 121-54 <https://doi.org/10.1007/BF02353983>

²⁸ Peter Van den Bossche, 'NGO involvement in the WTO: A comparative perspective', *Journal of International Economic Law*, 11.4 (2008), 717-749 <https://doi.org/10.1093/JIEL/JGN032>; Oleksandr Dzhuzha and others, 'Criminological policy in the conditions of spread of acute respiratory disease COVID-

Non-governmental organizations act as a bridge between the government and the public. These groups usually consist of people who do not want others to get into trouble, but want to make the world better for everyone.²⁹ In general, INGOs are defined as private organizations that are not created by intergovernmental agreements, but can play an important role in international affairs due to their activities. The World Bank defines NGOs as “private organizations that pursue activities to relieve the suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development”.³⁰ In all cases, INGOs are often directly involved in policy making and can shape political processes within the official arena. They often actively participate in the activities of intergovernmental organizations. Besides, they often offer valuable guidance to UN and other international organizations, as well as to their commissions, committees and/or another structural divisions, supplying essential information and comprehensive support for the implementation of their projects.³¹ The participation of NGOs is observed in various areas of human activity: from humanitarian issues, the sphere of human rights – to issues of international disarmament, international fight against crime.³² Often the NGOs play irreplaceable role for socio-economic issues of societies, especially in countries with limited resources or weak governance.³³ INGOs are usually international in the sense of attracting members from more than one country, and this aspect is the basis for providing them with an international character.³⁴ Thus, based on the characteristics listed above, we can conclude that non-governmental organizations, as well as any voluntary non-commercial association organized at the local and international level, make fundamental contributions to the development, acceptance, monitoring and promotion of international norms, and currently the activity in this direction is expanding even more.³⁵

The modern legal foundation for international non-governmental organizations (INGOs) emerged in the 1980s, largely through initiatives of the Council of Europe. A central instrument in this development is the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, adopted in 1986 (hereinafter the 1986 Convention), which constitutes a significant international treaty establishing a legal framework for the recognition of INGOs’ legal personality within the member states of the Council of Europe. The Convention affirms the legal personality and legal capacity of INGOs, thereby enabling their recognition and operation across national jurisdictions and facilitating their activities at the international level. It also sets out

19’, *Journal of the National Academy of Legal Sciences of Ukraine*, 27.2 (2020), 142-55. [https://doi.org/10.37635/jnalsu.27\(2\).2020.142-155](https://doi.org/10.37635/jnalsu.27(2).2020.142-155)

²⁹ Dyann Brown, *The Effectiveness of Non-Governmental Organizations (NGOs) within Civil Society* (Thesis, St. John Fisher University, 2009).

³⁰ Christopher JN Gibbs, Thomas Kuby, and Claudia Fumo, *Nongovernmental organizations in World Bank-supported projects: A review* (Washington, DC: World Bank Publications, 1999).

³¹ Maiara Giorgi, ‘The role of non-governmental organizations in the process of international treaty making’, *Anuario Mexicano de Derecho Internacional*, 19 (2019), 153-77 <https://doi.org/10.22201/ij.24487872e.2019.19.13321>

³² Kerstin Martens, ‘Examining the (non-)status of NGOs in international law’, *Indiana Journal of Global Legal Studies*, 10.2 (2003), 1. <https://muse.jhu.edu/article/47107>

³³ Leigh Ann Johnson, *The Contributions of NGOs to Health in the Developing World* (Thesis, The University of Texas at Arlington, 2009).

³⁴ Steve Charnovitz, ‘Non-governmental organizations and international law’, *The American Journal of International Law*, 100.2 (2006), 348-72 <https://doi.org/10.1017/S0002930000016699>

³⁵ Paul Atagamen Aidonjio, ‘Criminal Law Perspectives on Medical Legal Issues in Telemedicine’, *Jurnal Justice Dialectical*, 3.2 (2025), 198–222 <https://doi.org/https://doi.org/10.70720/jjd.v3i2.47>

procedural rules concerning the registration and lawful operation of INGOs in member states, providing legal guarantees for their activities, including the ability to represent their interests, obtain funding, and cooperate with other organizations. In addition, the Convention delineates the rights and obligations of recognized INGOs, granting them access to justice and opportunities to participate in public life, while simultaneously requiring compliance with applicable laws and reporting obligations. Furthermore, the 1986 Convention seeks to promote the harmonization of national regulatory mechanisms governing NGOs, thereby reducing legal fragmentation, simplifying cross-border activities, and fostering more effective cooperation between international organizations and states.³⁶

The perception or approaches to understanding the tasks of INGOs have changed depending on socio-political and economic changes in the world. Thus, in the late 1980s, the main focus of the perception of the tasks of INGOs concerned issues of humanitarian aid, INGOs had the attributes of political neutrality, concentrating on providing aid without interfering in the political processes of recipient countries, while the organizations sought to directly implement projects on the ground, often without deep involvement of local communities or governments.³⁷ In the 1990s, the tasks of INGOs began to expand beyond humanitarian aid. Attention began to be paid to issues such as human rights, democratization, civil society development, and environmental sustainability. INGOs began to actively engage in sustainable development and institution-building projects in countries with economies in transition. The role of NGOs in promoting socio-economic development became more visible. This period also saw an increase in INGO involvement in peacebuilding and conflict resolution processes, including peacekeeping and post-war reconstruction activities.³⁸

Today, the operational toolkit of INGOs has expanded, and the latter are increasingly perceived as a global actor. Thus, INGOs focus on solving global challenges, such as climate change, global health, sustainable development and the fight against inequality. Organizations participate in the implementation of the UN Sustainable Development Goals (SDGs). Modern INGOs actively use technology to mobilize resources, collect and analyze data, as well as communicate and coordinate. This allows them to be more effective and expand their influence. INGOs increasingly work in partnership with government agencies, businesses and other NGOs. This cooperation helps to solve complex problems more effectively and at a broader level. Modern INGOs focus on transparency and accountability, implementing open governance practices and regularly publishing reports on their activities. Among other things, as can be noted, INGOs strive to integrate their global strategies with local needs, ensuring deeper involvement of local communities in projects and decisions.³⁹ These changes reflect the adaptation of INGOs to new realities

³⁶ Council of Europe, 'European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations', 1986 <https://rm.coe.int/168007a67c> (accessed 17 November 2024); Union of International Associations, 'European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations', 2022 <https://uia.org/s/or/en/1100048557> (accessed 17 November 2024).

³⁷ Matthew Eagleton-Pierce, 'The rise of managerialism in international NGOs', *Review of International Political Economy*, 27.4 (2020), 970-94 <https://doi.org/10.1080/09692290.2019.1657478>

³⁸ Patricia Bromley, Evan Schofer, and Wesley Longhofer, 'Contentions over world culture: The rise of legal restrictions on foreign funding to NGOs, 1994–2015', *Social Forces*, 99.1 (2020), 281-304 <https://doi.org/10.1093/sf/soz138>

³⁹ Beatriz Gaspar and others, 'The internationalization of nongovernmental organizations: Characteristics and challenges', *Administrative Sciences*, 12.4 (2022), 140 <https://doi.org/10.3390/admsci12040140>; Rob Van

and challenges, as well as their desire to be more effective in achieving their goals at the global and local levels.

The development of international norms and laws regulating the activities of INGOs occurred gradually in response to the growing role of these organizations in global processes. At this stage, international norms regarding INGOs were virtually absent. Their activities were regulated exclusively by the national legislation of the countries in which they operated. However, several events and international agreements laid the foundation for future regulation. The First Geneva Convention of 1864 secured international legal recognition of humanitarian organizations such as the International Committee of the Red Cross (ICRC), which was the first step towards international recognition of NGOs. The creation of the League of Nations (1919) recognized the possibility of NGOs participating in international discussions, but did not grant them formal status.⁴⁰ The League of Nations collaborated with charitable and scientific organizations on health and refugee issues. After World War II, international law gradually began to take into account the role of INGOs, especially in the context of human rights and humanitarian aid. Article 71 of Chapter X of the UN Charter secured the possibility of NGO participation in the activities of the Economic and Social Council (ECOSOC), which was the first official recognition of non-governmental organizations in international law. NGOs received the right to consultative status with the UN, participating in the development of international norms. The participation of many non-governmental organizations was noted in the adoption of the Universal Declaration of Human Rights, 1948, the Convention relating to the Status of Refugees, 1951 (Geneva Convention): INGOs contributed to the adoption of documents and monitoring their observance. The UN Stockholm Conference on the Environment in 1972 secured the importance of NGO participation in environmental law-making, which became a precedent for their further involvement in international processes.⁴¹

Since the end of the 20th century, international NGOs have been institutionalized at the global level and recognized in various international agreements. The Council of Europe Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations of 1994 for the first time legally enshrined the recognition of the legal personality of NGOs at the international level. The aforementioned Convention established the principles of activity, registration and transparency of INGOs in the participating countries. The UN Declaration on Human Rights Defenders of 1998 (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms) recognized the important role of NGOs in the promotion of human rights and enshrines their status as the authorized subject for the implementation of such protection.⁴²

In recent years, international law has continued to adapt to the growing role of INGOs. Agenda 2030 recognizes the significant role of NGOs in achieving 17 global goals,

Tulder and others, 'The UN's sustainable development goals: Can multinational enterprises lead the decade of action?', *Journal of International Business Policy*, 4.1 (2021), 1-21 <https://doi.org/10.1057%2Fs42214-020-00095-1>

⁴⁰ Laura A. Henry and others, 'NGO participation in global governance institutions: International and domestic drivers of engagement', *Interest Groups & Advocacy*, 8 (2019), 291-332 <https://doi.org/10.1057/s41309-019-00066-9>

⁴¹ Rebecca J. Garfinkel, 'Dignity deployed: An examination of refugee rights through domestic dignity jurisprudence', *International Journal of Refugee Law*, 35.1 (2023), 101-18. <https://doi.org/10.1093/ijrl/cead003>

⁴² Bertrand Ramcharan and others, *The Protection Roles of Human Rights NGOs: Essays in Honour of Adrien-Claude Zoller (Vol. 140)* (Boston: Brill, 2022).

including ending poverty, climate protection and gender equality. The role of NGOs in stopping and countering international conflicts and in humanitarian aid is growing. The Geneva Conventions and their protocols enshrine the participation of humanitarian NGOs, such as Doctors Without Borders, in conflict zones. At the same time, increasing globalization poses unique challenges for INGOs related to countering the use of INGOs for illicit purposes and cybercrime. International laws (e.g. FATF – Financial Action Task Force on Money Laundering) set requirements for financial transparency of NGOs to prevent their use for illicit purposes. Issues of cybersecurity and personal data protection (e.g. GDPR in the EU) create new legal frameworks for the online activities of NGOs.⁴³

3.2 The Problem and Main Elements of Determining the International Legal Subjectivity of INGOs

International legal subjectivity is usually understood as the ability of a subject of international law to be a bearer of rights and obligations, to act in international relations and to participate in legal actions in the international arena. This concept refers to subjects that can be recognized by the international community and possess the necessary attributes for interaction with other subjects of international law. From the doctrinal standpoints, international legal subjectivity, which has sparked controversy over its content and scope at various times, to date continues to draw the attention of international law experts and scholars.⁴⁴ The conducted studies show that according to the traditional theory, the subject of law is the person who is the subject of rights and duties, and at this time, regardless of whether they are legal or physical, those persons act as carriers of certain rights and duties.⁴⁵ In addition, it is noted in the literature that legal subjectivity is a legal fiction that ensures the connection between different subjects, while international legal subjectivity has a more political content.⁴⁶

Even in the classification of international law subjects carried out in different directions, for example, primary and subsidiary, sovereign and non-sovereign, direct and indirect, active and passive, typical and non-typical, etc. States act in the arena of international law as primary, sovereign, direct, typical and active subjects as the main actors of the international legal subjectivity.⁴⁷ In the report "Agenda on Democratization" published on December 20, 1996, The former UN Secretary-General highlighted that he observed the growing influence not only of states but also of non-state actors, which are becoming more prominent on the international stage in shaping and advancing international relations.⁴⁸ In addition, in the statement of the UN Security Council on the situation in Sierra Leone dated

⁴³ Inbar Mizarhi-Borohovich, Abraham Newman, and Ido Sivan-Sevilla, 'The civic transformation of data privacy implementation in Europe', *West European Politics*, 47.3 (2024), 671-700 <https://doi.org/10.1080/01402382.2023.2184108>; Beata Paragi, 'Screening and/or surveillance?', in *Screening by International Aid Organizations Operating in the Global South: Mitigating Risks of Generosity* (Cham: Springer Nature Switzerland, 2024), 99-131 <https://doi.org/10.1007/978-3-031-54165-0>

⁴⁴ Merja Pentikäinen, 'Changing international 'subjectivity' and rights and obligations under international law - Status of corporations', *Utrecht Law Review*, 8.1 (2012), 145-54 <https://doi.org/10.18352/ulr.185>

⁴⁵ H. Kelsen, *Pure Theory of Law* (Clark, New Cerey: The Lawbook Exchange Ltd., 2005).

⁴⁶ Math Noortmann, 'NGOs in international law: Reconsidering personality and participation (again)', in *Routledge Handbook of NGOs and International Relations*, edited by T. Davies (London: Routledge, 2019), 179-92, <https://doi.org/10.4324/9781315268927-14>

⁴⁷ Gerasimos Fournalos, 'Subjectivity in international law and the position of the individual', *Nordisk Tidsskrift for International Ret*, 53.3-4 (1984), 11.

⁴⁸ Boutros Boutros-Ghali, *An Agenda for Democratization* (New York: United Nations Department of Public Information, 1996).

May 20, 1998, it was unequivocally stated that INGOs have an important role in the monitoring and peace process in this country.⁴⁹

In every branch of law, specific legal norms serve to define the categories of persons or entities subject to its regulation. The characteristics established by such norms determine whether an entity may qualify as a legal subject capable of holding rights and bearing obligations. In international legal doctrine, several criteria are commonly identified to characterize a subject of international law, including the capacity to bear all or part of the obligations arising from international law, the right to initiate legal proceedings before international or domestic courts for the protection of rights derived from international law, the ability to participate in the creation of international legal norms, and the entitlement to full or partial immunity from the jurisdiction of foreign courts. Traditionally, these attributes are fully vested only in states as the primary subjects of international law, while international intergovernmental organizations are recognized as subsidiary subjects. Although other participants in international relations may possess some of these elements to a limited extent, they do not acquire them in their entirety. The principal obstacle to the recognition of international non-governmental organizations as subjects of international law lies in the absence of a clear basis of consent or consensus among states, which continues to hinder the formal acknowledgment of their international legal subjectivity.⁵⁰

For this reason, the subject of international law, according to scholars, should include the characteristics of the state. In accordance with the concept reflected in the 1933 Montevideo Convention on the Rights and Duties of States, the qualifications of a state acting as a subject (person) of international law such as defined territory, a permanent population and a government, and the capacity to enter into relations with the other states were considered part of customary international law.⁵¹ Proceeding from this, the international legal subjectivity of states has never been questioned and they have always been accepted as the traditional and most important subjects of international law.⁵² It is this approach that is currently being criticized. Among the foreign authors, Ben-Ari believes that the international legal subjectivity of INGOs will bring more benefits now than in the past, but for this, their legal regulation is needed.⁵³ In order to achieve this, the approach specific to the theory of international law based on the tradition of the past should be abandoned, instead of the model of spontaneous INGOs, their solid (settled) international legal status should be determined.⁵⁴

According to some scholars, INGOs are quite active in international relations and have become influential participants in the international arena, but they are not subjects of

⁴⁹ Karsten Nowrot, 'Legal consequences of globalization: The status of non-governmental organizations under international law', *Indiana Journal of Global Legal Studies*, 6.2 (1999), 579.

⁵⁰ Uche Iloka, *International law reconceptualised: The role of NGOs* (Thesis, Robert Gordon University, 2020).

⁵¹ Guido Acquaviva, 'Subjects of international law: A power-based analysis', *Vanderbilt Journal of Transnational Law*, 38.2 (2005), 348; United Nations Office of Legal Affairs, 'Convention on Rights and Duties of States adopted by the Seventh International Conference of American States. Signed at Montevideo, December 26th, 1933', 1999 <https://www.un-ilibrary.org/content/books/9789210596800s003-c002>

⁵² Christian Walter, *Subjects of International Law* (Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2013).

⁵³ Rephael Harel Ben-Ari, *The Legal Status of International Non-Governmental Organizations: Analysis of Past and Present Initiatives (1912-2012)* (Leiden-Boston: Martinus Nijhoff Publishers, 2013).

⁵⁴ Rephael Harel Ben-Ari, *The Legal Status of International Non-Governmental Organizations: Analysis of Past and Present Initiatives (1912-2012)* (Leiden-Boston: Martinus Nijhoff Publishers, 2013).

international law.⁵⁵ In this regard, a similar position is defended in other studies.⁵⁶ Thus, it is considered unequivocally that, unlike international intergovernmental organizations, international non-governmental organizations should not be recognized unequivocally as subjects of international law.⁵⁷ However, real practice and effectively regulated international relations do not support the above, because the international legal status of a number of INGOs is still in question. Unlike states, they are not recognized as subjects of international law, rather they are considered as state-dependent institutions. However, the possibilities of formal cooperation of INGOs with the UN Security Council are seriously studied in the literature.⁵⁸

In general, there are quite a lot of theories about the international legal subjectivity of INGOs. According to the "Legal expectation" theory, although INGOs do not currently have international legal status, they may have a legal expectation to obtain international legal status based on their existing integration and legitimacy as de facto actors in many intergovernmental institutions.⁵⁹ Another theory, the "Capacity to act" theory, believes that having an international legal subjectivity can create opportunities for INGOs to act, but acting as an independent entity is very important to determine the legal order. The theory of "Registration and accountability" emphasizes that INGOs must fulfill certain requirements such as meeting the requirements of registration, management, accountability and physical presence as official organizations in order to obtain the status of legal subject. The mentioned theories emphasize the relationship between the legitimacy of INGOs, their integration within intergovernmental institutions, their ability to operate and their compliance with international law, and look at the issue of their subjectivity under international law from different perspectives.⁶⁰

The issue concerning the recognition of international legal subjectivity of international organizations was reflected for the first time in the Advisory Opinion of the UN International Court of Justice Concerning Reparation for Injuries Suffered in the Service in 1949, but the solution to the problem of legal responsibility as a subject of international law has passed a long stage. Therefore, the recognition of INGOs as subjects of international law is a highly complex and debated issue. While they do not fully meet the criteria of traditional international law subjects, their recognition as full-fledged international law actors with specific roles is undeniable. However, a number of specific characteristics of INGOs make their subjectivity under international law controversial. Thus, since INGOs are not sovereign institutions, their legal status is usually based on domestic legislation, which causes them to have different legal subjectivity from states and international organizations. At the same time, having characteristics such as participation

⁵⁵ Anthony Aust, *Handbook of International Law* (Cambridge: Cambridge University Press, 2010).

⁵⁶ James Crawford, Alain Pellet, and Simon Olleson, *The Law of International Responsibility* (New York: Oxford University Press, 2010).

⁵⁷ James Crawford, Alain Pellet, and Simon Olleson, *The Law of International Responsibility* (New York: Oxford University Press, 2010); Ingrid Rossi, *Should NGO Be More Accountable At the International Level?* (Bruxelles, Belgium: K.U. Leuven, 2008).

⁵⁸ Jelica Gordanić, *Non-Governmental Organizations (NGOs) – New World Actors of Contemporary International Relations* (International Organizations: Serbia and Contemporary World, 2022).

⁵⁹ Oliver Edward Walton and others, 'Understanding contemporary challenges to INGOs' legitimacy: integrating top-down and bottom-up perspectives', *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*, 27.6 (2016), 2764-86 <https://doi.org/10.1007/s11266-016-9768-2>

⁶⁰ Erla Thrandardottir, and Vincent Charles Keating, 'Bridging the legitimacy gap: A proposal for the international legal recognition of INGOs', *International Politics*, 55.2 (2017), 207-20 <https://doi.org/10.1057/s41311-017-0098-9>

in meetings, discussions, cooperation with member states and international organizations on various issues, usually by obtaining the status of a consultant in international organizations, shows that international NGOs have a more functional role in international law. Although their functional role contributes to the creation of international legal norms, this only includes "soft law" norms. Moreover, although international non-governmental organizations participate in the preparation of international projects and negotiations, they are not party to the contract like states, but only have an auxiliary function. At the same time, INGOs can undertake specific international obligations in areas such as human rights monitoring, environmental protection, humanitarian assistance, and other related issues. In this regard, most authors agree that INGOs actively engage in international relations and, as a result, possess certain international powers and legal status in this domain.

When examining other characteristics of INGOs, including their involvement in international legal relations, it is important to note that they do not possess absolute independence but are instead partially independent. Thus, INGOs, which are usually created and recognized on the basis of domestic laws and regulations, participate in the circulation of relevant documents and information, go through the official registration or incorporation process and have the status of a legal entity,⁶¹ which gives them a status causing them to be treated as distinct entities with a range of capabilities. The recognition process should be distinguished from the process of states' recognition, as once recognized, INGOs attain the same status as other subjects of international law, making them subject to legal proceedings and granting them other corresponding characteristics. Despite the difference in recognition, we believe that here, as in the registration process, there should be an appropriate phased acceptance and the criteria to be met. INGOs, which are obliged to comply with the laws and regulations of the country where they operate, must also fulfill some of the obligations arising from it. In international affairs, INGOs that have an important operational or functional role can also benefit from international recognition by receiving advisory status.

The legal subjectivity of INGOs can be assessed from two different perspectives. According to the first viewpoint, certain characteristics of INGOs make their international legal subjectivity inevitable, enabling them to be recognized as subjects of international law. Among these features – their growing role in solving global problems such as human rights, humanitarian aid, environmental protection, and the like, their contribution to the formation of global standards and the elaboration of international legal regulations, the development of international cooperation and having a significant position in the positive consequences of this for global governance, and other features should be emphasized. On the other hand, there is the second viewpoint, which rejects the international legal subjectivity of INGOs, argues that their characteristics do not fully satisfy the requirements for legal subjectivity, and therefore, they should not be recognized as legal subjects. Among the arguments supporting this view, there is an argument that INGOs should not be considered as sovereign institutions like states, that are traditional subjects of international law, they should have a supporting role in matters of accountability and representation. And if they are given legal subjectivity, they may create problems in terms of legitimacy and democratic governance, the criteria and conditions of legal recognition are displayed which is quite difficult to determine. The fact that INGOs participate in international legal relations does not provide grounds to recognize them as subjects of international law on

⁶¹ David Lewis, 'Nongovernmental organizations, definition and history', in *International Encyclopedia of Civil Society*, edited by H. K. Anheier, and S. Toepler (New York: Springer, 2010), 1056-62 https://doi.org/10.1007/978-0-387-93996-4_3

par with states or intergovernmental organizations. Furthermore, experience demonstrates that INGOs, as subjects of international law, are governed by international legal norms only upon their recognition and, consequently, their grant of international legal status.

Thus, INGOs have specific legal subjectivity. Such a feature is related to the fact that INGOs have some distinguishing elements in their relations with intergovernmental organizations (freer and more operative, wider range of activities, etc.). At the same time, despite its complexity, it is feasible to propose that INGOs are subjects of private international law. Since the legal status of INGOs as independent participants in international legal relations is not fully defined at present, they currently act on the basis of the resolutions of INGOs have a consultative status that determines the scope of international rights and obligations and continues to be a participant in international relations.

3.3 The Role of International Non-Governmental Organizations in the International Norm-Making Process

The idea mentioned in the legal literature that only the subjects of international law should be mentioned in the process of norm-making⁶² is quite controversial. So, with the detailed analysis in our research, it can be concluded that INGOs closely assist the subjects of international law in regulating international relations, preparing drafts of international documents (resolution, convention, etc.) and eliminating relevant gaps with their respective support or potential. We believe that the process of norm-making is quite a step-by-step process, and INGOs play a large role here. For example, preparation of a draft of a certain international act, conducting expertise, extensive discussion, etc. By shaping global public opinion, INGOs establish the moral-political and legal conditions necessary for the preparation, negotiation, signing, and ratification of international legal documents. They also develop and support international legal thinking that is crucial for the future application of specific norms of international law, thereby laying the foundational groundwork for international lawmaking.⁶³

The experience of recent decades shows that INGOs, using their developments, resources, and existing networks in the direction of achieving development and peace on human rights, environmental protection, and other issues related to international norms and they make their important contribution to the formation and adoption of standards.⁶⁴ At the same time, they seriously influence the discussion and decision-making processes by informing international organizations, states, other subjects of international law and giving recommendations and proposals in different directions.⁶⁵ Additionally, INGOs push various subjects of the international arena to global challenges in solving international problems by helping to adopt international norms and make certain amendments, and thus make a substantial contribution to the further development of international cooperation and

⁶² Giuliana Ziccardi Capaldo, *The Pillars of Global Law* (New York: Routledge, 2016).

⁶³ Joseph Grieco, G. John Ikenberry, and Michael Mastanduno, *Introduction to International Relations: Perspectives, Connections, and Enduring Questions* (London: Bloomsbury Publishing, 2022).

⁶⁴ Ann Florini, 'The evolution of international norms', *International Studies Quarterly*, 40.3 (1996), 363-89 <https://doi.org/10.2307/2600716>

⁶⁵ Kennedy M. Maranga, *The Evolving Role of NGOs in Governance* (2010), available at SSRN 1650163. <https://dx.doi.org/10.2139/ssrn.1650163>

support.⁶⁶ One key aspect to highlight is that INGOs act as intermediaries, conveying the voices and concerns of communities to the broader international community regarding global issues. By serving this mediating role, INGOs fulfill corresponding tasks.

At the same time, international norm-setting itself has a significant impact on the legal status of INGOs, gradually expanding their rights, obligations and degree of participation in international processes. Despite the fact that INGOs are traditionally not considered as full-fledged subjects of international law, the development of international norms has contributed to their institutionalization and recognition of their role in global governance. International norm-setting shapes the legal status of INGOs through the recognition of their role in international documents, the formation of a special status for INGOs in international institutions, as well as through the consolidation of their rights and obligations within the framework of international treaties. Speaking about the first aspect, it should be noted that the UN, the Council of Europe and other international organizations are increasingly including NGOs in the process of developing international treaties and agreements. Examples include the UN Charter (1945), which formally recognizes the advisory role of NGOs in the activities of ECOSOC (Article 71), as well as the Council of Europe Convention on the Recognition of the Legal Personality of International NGOs (1986), which secures the rights to their legal activities in member states. With regard to the second aspect, it is worth mentioning that INGOs have received consultative and observer status with such organizations as the UN, WHO, WTO, and the International Criminal Court. This status allows them to participate in discussions, propose draft norms, and monitor their implementation. As for the third aspect, international agreements increasingly explicitly provide for the participation of NGOs in monitoring compliance with norms and their implementation, for example, the Aarhus Convention (1998), which ensures public participation (including NGOs) in environmental decision-making, or the UN Global Compact (2000), which encourages companies and NGOs to comply with principles in the field of human rights and sustainable development.

International law-making has influenced the recognition of the limited international legal personality of INGOs, participation in international law-making, and the right to legal recognition and operation. Although INGOs do not have the same level of legal personality as states or international organizations (e.g. the UN), international norms enshrine their ability to act as parties to international treaties (e.g. agreements with states and intergovernmental organizations) or to support litigation in international courts (e.g. representing victims before the European Court of Human Rights). INGOs can initiate discussions on international norms (for example, Amnesty International's campaigns against torture led to the development of the UN Convention against Torture), provide expert influence on the formulation of international treaties (for example, Greenpeace in the framework of international environmental negotiations), and monitor the implementation of international obligations by states. Thanks to the Council of Europe Convention on the Legal Personality of NGOs (1986), INGOs have been able to operate at the international level with recognition of their legal status in various countries.

⁶⁶ Martha L. Schweitz, 'NGO participation in international governance: The question of legitimacy', in *Proceedings of the ASIL Annual Meeting* (Vol. 89), edited by E. Lovall (Cambridge: Cambridge University Press, 1995), 415-20 <https://doi.org/10.1017/S0272503700084846>

However, the legal status of INGOs in international law faces limitations and challenges. The main one is the lack of uniform universal standards. Unlike states, the activities of NGOs are regulated primarily by national laws, which creates legal uncertainty in cross-border activities. Other challenges include political pressure and restrictions, issues of financial transparency and reporting, and a limited role in decision-making. Despite the recognition of consultative status, INGOs do not have voting rights in international organizations, which limits their influence.⁶⁷

The role of international non-governmental organizations (INGOs) in the creation and development of international norms is multifaceted and operates through several interconnected mechanisms. INGOs conduct empirical and normative research on a wide range of issues, collect and systematize relevant data, and disseminate their findings through reports, policy papers, and academic publications, thereby informing agenda-setting processes and contributing to the development of normative frameworks. They also enrich normative deliberations by offering recommendations and policy proposals during consultations, expert meetings, and deliberative forums, which frequently serve as substantive inputs into international norm-making processes. Furthermore, INGOs actively participate in international conferences, negotiations, and forums, where they cooperate with state representatives, the United Nations, and other international organizations, and contribute to the formulation and defense of proposed norms through their involvement in working groups and expert panels. In addition, INGOs play a significant role in the drafting and review of legal instruments, including treaties, agreements, and soft law documents, by providing specialized legal expertise. Beyond norm formulation, INGOs engage in ongoing legal activities by monitoring the implementation of existing international norms, identifying regulatory gaps, and producing evaluative reports that advocate for normative reform, thereby exerting sustained influence on the evolution of international norm-making.

INGOs are also directly involved in codification, which is characterized as the formal systematization of international legal norms for the purpose of creating internally harmonized legal acts in the legal literature. By analyzing a number of stages of codification of international law (adjustment of existing international law to the requirements of that period of development of international relations, addition of required new legal norms, elimination of outdated norms and removal of contradictions, transformation of the existing system into a normative complex), it is clear that in each of these stages international non-governmental organizations can make significant contributions. In general, there are many examples of INGOs being invited as experts to participate in the negotiation process related to the adoption of international legal documents in the world. For example, INGOs involved in the negotiation process of the 1992 Convention on Biological Diversity have closely assisted in formulating the goals of the treaty, including the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of its benefits. In addition, the UN

⁶⁷ Vinesha Anindita Anindita, 'Break the limits: INGOs limitation and learning from Amnesty International', *WIMAYA*, 1.1 (2020), 15-21 <https://doi.org/10.33005/wimaya.v1i1.12>; Daniel A. Bell, and Jean-Marc Coicaud, *Ethics in action: The ethical challenges of international human rights nongovernmental organizations* (Cambridge: Cambridge University Press, 2006) <https://doi.org/10.1017/CBO9780511511233>; Kelbesa Megersa, *Strengths and Weaknesses of INGOs in Delivering Development Outcomes* (Brighton, UK: Institute of Development Studies, 2022) <https://doi.org/10.19088/k4d.2022.090>.

Framework Convention on Climate Change of 1992, the Convention on the Rights of Persons with Disabilities of 2006, the International Arms Trade Treaty of 2013, the Paris Agreement on Climate Change of 2015 and other international documents were prepared and adopted with the direct close participation of INGOs.

INGOs were the initiators and authors of the Convention on the Rights of the Child, which was called the children's constitution and adopted in 1989. In general, the preparation and adoption of the mentioned Convention included a very multifaceted cooperation process with the close participation of INGOs. Thus, in the 1970s and 1980s, the increase in awareness about children's rights was the main issue that necessitated the preparation of an international document in this field. Proceeding from this, INGOs also emphasized the importance of creating a legal framework for the protection of children's rights and mobilized globally together with INGOs such as UNICEF, Children's Rights Information Network (CRIN), *Save The Children International*. In addition, they actively participated in the sessions and working groups organized by the UN, including the separately organized group of non-governmental organizations, further increasing cooperation and information exchange, and presented opinions, recommendations and suggestions regarding the formulation of the text of the Convention. At the same time, INGOs specialized in various fields related to children's rights, such as education, health, violence and child labor, have made special contributions by advocating the inclusion of the mentioned issues in the Convention. Their proposals regarding the establishment of the Committee for monitoring, reporting and control of the implementation of the Convention, as well as the five main principles of great importance for the protection of children's rights, should be emphasized.⁶⁸

One of the main successes achieved by international non-governmental organizations in this direction was the Rome Statute of the International Criminal Court adopted in 1998. Thus, the main factor here was the International Committee of the Red Cross, an important INGO, which has played a role in creating norms on international humanitarian law for a long time. In addition, INGOs play a special role in the formation of international customary norms, which act as one of the main sources to be considered in Article 38 of the Statute of the UN International Court of Justice. This includes international customs on the law of the sea, human rights and other areas. In addition, calls and justifications to the international community regarding the international customary character of a number of documents, especially the Universal Declaration of Human Rights of 1948, constantly come from INGOs in the field of human rights (Human Rights Watch, Amnesty International, etc.), for example, Human Rights Watch prepared a report on the rights of migrants waiting to cross the US-Mexico border and presented it to the public.⁶⁹

Other important practices in this field can be mentioned. Thus, in 1949, the experts of the International Committee of the Red Cross, who actively participated in the diplomatic conferences organized in connection with the preparation and adoption of the four Geneva Conventions and Additional Protocols, gave legal assistance and played an important role in the reflection of the humanitarian principles and practices arising from the Second

⁶⁸ Cynthia Price Cohen, 'The role of nongovernmental organizations in the drafting of the convention on the rights of the child', *Human Rights Quarterly*, 12.1 (1990), 137-47. <https://doi.org/10.2307/762172>

⁶⁹ Human Rights Watch, "'We Couldn't Wait' Digital Metering at the US-Mexico Border', 2024 <https://www.hrw.org/report/2024/05/01/we-couldnt-wait/digital-metering-us-mexico-border> (accessed 17 November 2024).

World War in international documents. After the adoption of the mentioned documents, the ICRC, which monitors their implementation, made important and important steps in terms of the development of international customary law, as well as making an important contribution to the development of international humanitarian law with its monitoring function.

Additionally, the Association for the Prevention of Torture and the International Commission of Jurists gathered and analyzed information on the prevalence of torture in various countries and the lack of an international legal instrument prohibiting it. They subsequently presented proposals and recommendations at various sessions and conferences. The later endorsement and adoption of a convention against torture by the Council of Europe further underscored the significant role of international non-governmental organizations in identifying and addressing gaps in international law. The intensive involvement of the International Commission of Jurists, the Association for the Prevention of Torture and the Amnesty International Organization in the process of drafting the 1987 European Convention on the Prevention of Torture was remembered with effective suggestions. The moral principles reflected in the Preamble of the 1970 Convention directed to measures for the protection of cultural property were also developed as a Code of Ethics by the experts of the International Council of Museums, an international non-governmental organization.⁷⁰ Thus, the role of INGOs in the development and adoption of international legal documents has given very positive results. As a result of their rich experience, research and awareness and as defenders of internationally important issues such as the enrichment of legal documents, social justice, human rights, etc., and as representatives of civil society and by promoting transparency, accountability and taking steps towards solving international problems in the global world, international control over the implementation of accepted international documents, their role in effective application is an undeniable fact.

However, the presence of a number of problems has a serious negative impact on international norm-making as a whole, where either the relevant international documents are not adopted at all, or the process drags on for decades. Experiments also confirm this. Thus, the Draft Articles on the Responsibility of States approved by the UN General Assembly in 2000 have not yet been adopted. Considering that the creation of international norms is purposeful, it means that the definition of the goals can belong to INGOs as well as international intergovernmental organizations. As the last stage in the formulation of international norms, the real effective outcome of expectations depends on serious international cooperation, where the unity of states - international intergovernmental organizations - INGOs must be ensured. Achieving real results is the study of practical cases on the ground and provision of guarantees for application, in which INGOs should take an important place. Ultimately, by ensuring the active involvement of INGOs in international oversight matters, confidence in international law can be reinforced, and any indifference towards INGOs, which have made significant efforts to gain recognition, can be effectively mitigated. The mentioned are among the most important factors in the development and integration of civil society.

⁷⁰ Alper Tashdelen, *The Return of Cultural Artefacts: Hard and Soft Law Approaches* (Cham: Springer, 2016).

3.4 Participation of INGOs in the Application of International Legal Norms

One of the important directions of international law is the application of international law norms. It is through application that international law is fulfilled. Control mechanisms used by INGOs to influence the application of international legal norms are multifaceted and can be defined in several directions. Thus, INGOs are very closely involved in the process of adoption and implementation of international documents by influencing states, international organizations, and other interested parties through lobbying efforts.⁷¹ At the same time, after the adoption of international documents, INGOs organize various events - seminars, trainings, round tables, etc. and by organizing them, they play an important role in increasing the exchange of ideas and resources related to the difficulties that may arise in the understanding and application of international legal norms. The influence of INGOs on the government and international organizations, which inform the public about the importance of applying international documents through educational initiatives, is also very important⁷² and creates a strong pressure to comply with international obligations arising from legal documents. In addition, INGOs conducting research on the application of international legal norms present the results of these studies in the form of reports and analyses, clarifying the non-applicable legal norms and unfulfilled obligations.

The ICRC, operating as a neutral and independent humanitarian organization with a long-term humanitarian history, engages in various activities for the effective implementation of international humanitarian law norms. By raising the awareness of government officials, military personnel, humanitarian workers and other subjects of humanitarian law through educational events, it encourages the proper application of the norms specified in international humanitarian law acts.⁷³ By engaging in negotiations with the parties involved in an armed conflict, it addresses the protection of civilians, the humane treatment of prisoners, the safeguarding of protected sites, other norms of humanitarian law, and tries to prevent violations of humanitarian law norms in advance. In addition, the organization regularly visits prisoners and other victims of armed conflicts, provides medical services and other assistance to the victims, and makes serious efforts to strengthen the protection mechanisms arising from international humanitarian law, which is the main focus of the international community on the protection of human rights. At the same time, the ICRC strives to integrate the norms of international humanitarian law into the current experience of governments and international organizations, and works with great effort in the direction of their application. In this direction, the experience of the Republic of Azerbaijan of the International Committee of the Red Cross is also very important⁷⁴.

INGOs play an important role in the development of civil society and the promotion of democratic values in Azerbaijan. At the level of national jurisdiction, their legal

⁷¹ Wiebke Marie Junk, 'Two logics of NGO advocacy: Understanding inside and outside lobbying on EU environmental policies', *Journal of European Public Policy*, 23.2 (2015), 1-19 <https://doi.org/10.1080/13501763.2015.1041416>

⁷² Cecilia Tortajada, 'Nongovernmental organizations and influence on global public policy', *Asia & the Pacific Policy Studies*, 3.2 (2016), 266-74 <https://doi.org/10.1002/app5.134>

⁷³ Dennis Dijkzeul, and Markus Moke, 'Public communication strategies of international humanitarian organizations', *International review of the Red Cross*, 87.860 (2005), 673-91 <https://doi.org/10.1017/S1816383100184504>

⁷⁴ Note: The activities of the International Committee of the Red Cross in the Republic of Azerbaijan can be considered very important in terms of the results obtained through the events held with various institutions. As an example of one of them, on April 30, 2024, the International Committee of the Red Cross held a seminar on "The status of persons detained in the context of armed conflict"

personality is determined by both the country's international obligations and national legislation. Azerbaijan is a party to the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of association. Article 22 of the Covenant states: "Everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." This provision obliges the state to respect and protect the activities of INGOs. In 2013, the Venice Commission issued recommendations regarding NGO legislation in Azerbaijan. The document emphasizes the importance of ensuring a favorable environment for the activities of NGOs and compliance with international standards on freedom of association.

In Azerbaijan, the legal status of international non-governmental organizations (INGOs) is regulated through a combination of statutory laws and subordinate regulations. The primary legislative instruments include the Law on Non-Governmental Organizations (Public Associations and Foundations), which governs the establishment, registration, and activities of non-governmental organizations by setting requirements concerning founders, governance structures, and financial reporting, and the Law on State Registration of Legal Entities and the State Register, which regulates the procedures for registering legal entities, including NGOs, and specifies the documentation and time limits for the consideration of registration applications. While Azerbaijan's international legal commitments formally require the creation of a favorable environment for the operation of INGOs, the domestic implementation of these obligations encounters a number of practical and regulatory challenges. These challenges include complex and burdensome registration procedures, financial restrictions, and limitations on organizational activities. In particular, procedural obstacles to registration often hinder INGOs from obtaining official legal recognition, while restrictions on the receipt of foreign funding undermine their financial sustainability and constrain their effective participation in international and domestic activities.⁷⁵

In general, legal regulation of NGO activities in Azerbaijan is often considered quite strict by many estimates. It is regulated at the legislative level, with numerous restrictions regarding registration, reporting and financing. The state exercises strict control over the activities of NGOs, especially those dealing with human rights and democracy. Speaking about other countries in the region, the situation varies: if Georgia is considered one of the most favorable countries in the region for NGO activities, then, for example, in Turkey the situation is similar to Azerbaijan. In Georgia, the state supports civil society and adheres to a pro-European course, providing relatively free working conditions for NGOs, including international organizations. The main legal acts are the Law on Civil Associations of 1997 and the Law on State Registration of 2008. The registration procedure is assessed as simple and transparent with the possibility of online registration through the national registry. NGOs can operate without mandatory registration if their activities are not related to commercial activities. In terms of funding, there are no restrictions on receiving foreign funding, there are state funding programs for NGOs, as well as tax breaks for socially significant projects. State control is characterized by a minimal level of state intervention. The state actively cooperates with NGOs in the field of democratic reforms and monitoring.⁷⁶

⁷⁵ Margarita G. Shukurova, and Irina A. Zeynalova, 'Formation and development of non-governmental organizations in Azerbaijan', *Bulletin of the Expert Council*, 1.24 (2021), 27-32. <https://doi.org/10.14207/ejsd.2024.v13n1p356>

⁷⁶ Huseyn Aliyev, 'Examining the use of informal networks by NGOs in Azerbaijan and Georgia', *Journal of Civil Society*, 11.3 (2015), 317-32 <https://doi.org/10.1080/17448689.2015.1069524>; Marina Chichua, and

Turkey, contrary, is known for its tight control over NGO activities, especially after the events of 2016 (coup attempt), which led to increased regulation and oversight of civil society. Turkish law has a complex process requiring approval from the Interior Ministry, tight controls on foreign finances, a requirement for transparency of sources, and possible freezing of accounts and bans on activities. In addition, there is a high level of interference in the work of NGOs, with human rights and political activities being particularly monitored.⁷⁷ At present, INGOs are considered to be the main participants in the process of applying international legal norms, closely participating in the activities of all UN committees. For example, the Human Rights Committee, which oversees the fulfillment of obligations under the International Covenant on Civil and Political Rights, has repeatedly noted the sending of necessary data and information by INGOs or their representatives and evaluated it as a positive thing.⁷⁸ At the same time, the fact that, under the Rules of Procedure, the notification can be submitted either by the victim of the violation in person or through his representative, international non-governmental organizations take advantage of this opportunity, and in this regard, they are very active in providing their services to victims of violations of the Covenant.⁷⁹ INGOs specializing in the protection of human rights can request an immediate resolution of the issue by drawing the attention of the Committee to specific human rights violations by directly assisting the applicants in preparing notifications and applications and submitting them to the Committee. Later, according to the Rules of Procedure of the Committee against Torture, sending information on behalf of the victim was either a close relative or a written authorized representative, which led non-governmental organizations to play a key role in this matter. Proceeding from this, although INGOs acted as representatives in some of the cases considered by the Committee, in others they were authorized representatives in presenting various types of information on behalf of the victims.⁸⁰

Thus, INGOs actively participate in the protection and representation of persons whose rights are allegedly violated by states within the framework of the activities of international treaty bodies created for the purpose of protecting various categories of human rights and monitoring the fulfillment of states' obligations under universal international treaties, and the effective implementation of the bodies' activities, and contribute significantly to the application of the international legal instruments on which they are based in accordance with the purpose for which they were adopted. The role of INGOs in international courts usually manifests itself in the formation of a specific legal point of view by giving opinions

Lia Matchavariani, 'Public voices in the environmental decision-making in Georgia', *European Journal of Sustainable Development*, 13.1 (2024), 356 <https://doi.org/10.14207/ejsd.2024.v13n1p356>

⁷⁷ Şerif Onur Bahçecik, and Yunus Turhan, 'Mapping relations between state and humanitarian NGOs: The case of Turkey', *Third World Quarterly*, 43.5 (2022), 979-96 <https://doi.org/10.1080/01436597.2022.2040978>; Burak Özçetin, and Perrin Öğün Emre, 'International migration and the NGOs working in the field of migration in Turkey', *International Migration*, 62.1 (2024), 269-84 <https://doi.org/10.1111/imig.13226>

⁷⁸ United Nations, 'A group of associations for the defence of the rights of disabled and handicapped persons in Italy and Persons signing the communication (on behalf of Disabled and handicapped persons in Italy) v Italy, Admissibility, UN Doc CCPR/C/21/D/163/1984, Communication No 163/1984, IHRL 2531 (UNHRC 1984), 10th April 1984, United Nations [UN]; Human Rights Committee [CCPR]', 1984 <https://opil.ouplaw.com/display/10.1093/law:ihrl/2531unhrc84.case.1/law-ihrl-2531unhrc84?prd=OPIL> (accessed 17 November 2024).

⁷⁹ Christina Binder and others, *Research Handbook on International Law and Social Rights* (Cheltenham: Edward Elgar Publishing, 2020).

⁸⁰ Manfred Nowak, *The United Nations Convention against Torture and Its Optional Protocol: A Commentary* (Oxford: Oxford University Press, 2019).

and suggestions on a specific issue to the judge based on the experience and information they have, and thus in making a decision on a transparent and objective basis. As can be seen, the participation of international NGOs in international courts involves various actions, usually *locus standi* (a Latin word referring to the right to be heard by a court on a particular issue by a party who has a direct or reasonable connection to the case or who has a legal right to be heard) and *amicus curiae* (a Latin word, a person or organization that is not a party to the case, but is allowed to assist the court by providing information, experience or opinion relevant to the issues in the case) exists primarily and is reflected in the statutes and rules of international judicial bodies.⁸¹

Currently, the growing number of cases in international courts, particularly those related to human rights in both specialized and general courts, has expanded the role of INGOs in these judicial processes. For instance, the European Court of Human Rights increasingly permits INGOs to participate as third parties in court hearings and submit information on human rights violations, a practice further supported by INGOs' extensive positive experience.⁸² Thus, the analysis of the issues related to the participation of INGOs in the application of international legal norms confirms once again that their activity in this sphere is multifaceted, comprehensive and wide, and quite important. Moreover, the increase of spheres of international control in modern times, as well as the fact that issues that have long been under the influence of domestic law are now included in the regulatory object of international law, have actualized the role of INGOs in this field from a new perspective and to be analyzed more broadly.

International norm-setting and law have a positive impact on the legal subjectivity of INGOs, facilitating their recognition in international relations and creating the legal conditions for their activities. However, the lack of a uniform international legal status and dependence on national regulation remain significant challenges to their effective operation. Strengthening the position of INGOs in international law requires further development of treaty mechanisms and strengthening their role in global governance. International legal acts serve as a guide for national legal systems, encouraging states to adapt their legislation to international standards, for example, in matters of registration, transparency of funding and interaction with government bodies. At the same time, in a number of countries there is a tendency to limit the activities of INGOs, which may contradict international obligations. Despite progress in recognizing the role of INGOs, the lack of uniform international treaties regulating their status creates uncertainty. INGOs depend on national legislation and face legal barriers, such as restrictions on foreign funding or stricter control over their activities.

To ensure sustainable development and strengthen the legal personality of INGOs, comprehensive measures are needed, including the development of international standards, strengthening of protection mechanisms and creation of favorable conditions for the work of organizations at the national level. In particular, it will be necessary to initiate the development of a universal convention under the auspices of the UN, which would enshrine the legal personality of INGOs, guarantee their rights and obligations, and establish standards for their activities, including financial transparency and accountability, as well as expand the mandate of international courts (for example, the European Court of Human Rights and the International Criminal Court) and human rights bodies (the UN

⁸¹ Saratoon Santivasa, 'The NGOs' participation in the proceedings of the international court of justice', *Journal of East Asia and International Law*, 5.2 (2012), 377-406.

⁸² Philip Leach, *Taking a Case to the European Court of Human Rights* (Oxford: Oxford University Press, 2011).

Human Rights Committee) to consider complaints from INGOs about violations of their rights. Further research and initiatives in the field of INGO regulation should take into account modern challenges, such as digitalization, increased state control and changes in international political relations.

4. Conclusion

This study concludes that the principal challenge surrounding the international legal subjectivity of international non-governmental organizations (INGOs) derives from their complex and hybrid legal nature. INGOs exhibit several characteristics traditionally associated with subjects of international law, including the capacity to assume certain international obligations, participate in international processes, attain international recognition and legitimacy, and engage in representation before international and quasi-judicial bodies. In addition, INGOs play an increasingly influential role in the creation, promotion, and dissemination of international norms and standards through consultations, expert advocacy, and proposals aimed at improving international legal regulation, thereby positioning themselves as active participants in international norm-making. Although they are not formally recognized as subjects of international law in the strict doctrinal sense, INGOs function as essential and dynamically evolving actors within international relations. The study further demonstrates that INGOs contribute significantly not only to the formulation of international legal norms but also to their implementation, monitoring, and enforcement, particularly through close cooperation with states and universal and regional intergovernmental organizations. This functional involvement brings INGOs closer to states and state institutions in terms of their practical legal relevance and underscores the need for more coherent regulatory approaches. Enhancing the effectiveness of international law requires integrated implementation mechanisms, including effective state enforcement, the use of modern regulatory tools, the adoption of model national legislation, and the continuous strengthening of domestic legal frameworks. To address existing regulatory fragmentation and prevent institutional inconsistency, the study argues for the establishment of an international mechanism for the registration and oversight of INGOs under the auspices of the United Nations, which would enhance legal certainty, accountability, and legitimacy and necessitate corresponding developments in the sources and application of international law, including issues of jurisdiction and responsibility. Despite extensive academic debate, the absence of a comprehensive binding international instrument governing the legal status of INGOs remains a significant gap, making the adoption of an international hard-law instrument both necessary and timely. In the context of the Republic of Azerbaijan, the non-ratification of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations continues to limit the formalization of INGOs' rights and obligations and constrains their contribution to civil society development, highlighting the need for ratification, targeted state programs, and ongoing legislative reform aligned with international standards.

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