

## Prospect of Non-governmental Organizations for the Greater Institutional Avenue in the International Human Rights Regime: A Critical Analysis

S. M. Atia Naznin \*

### Abstract

*Notwithstanding the dominance of non-governmental organizations (NGOs) to uphold human rights in recent years, skeptics constantly allege that NGOs' involvement in global politics and human rights is a threat to the Westphalian paradigm of state sovereignty. However, in this era of mutual collaboration and peaceful coexistence undoubtedly, we are in the midst of 'associational revolution' that requires active presence of NGOs. Therefore, other related thoughts should be analyzed which advocate for the greater institutional role of NGOs in framing the circle of international human rights. Following these two opposite directions, present paper focuses on the international human rights system as centered in the United Nations (UN) as opposed to the three regional human rights arrangements, e.g., European, Inter-American and African, although they are complementary to the UN human rights mechanisms and prominent in international human rights regime. The aim of the article is to explore the scope of NGOs in involving in greater institutional role within the UN as well as the challenges before the UN in accommodating NGOs. By analyzing the potentials of NGOs in editing the grammar of human rights, this paper concludes by contending that world would possibly not be a better place if NGOs are not given a wider institutional platform within the UN.*

**Keywords:** global governance, institutionalization, international human rights regime, non-governmental organization, sovereignty.

### Introduction

Let us start with confusions...

Amnesty International (hereinafter, AI), the winner of Nobel Peace Prize 1977 is a worldwide recognized non-governmental organization

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\* Lecturer, School of Law, BRAC University, Dhaka, Bangladesh.

(hereinafter, NGO) in human rights arena. This organization has been supplementing the functions of the UN since its journey began in 1961. AI now claims to have a million or more members in 150 countries and national sections in 54 countries. Its presence, however, in the global south stands on a very low profile, whereas it is mostly visible in north, especially, in Western Europe and North America. Some critics allege that national sections of AI in developing countries consist only of a few hundred members and small local representatives. In addition, since inception, the organization has been seen actively operating only in propagating the selected aspects of human rights, e.g., civil and political rights.<sup>1</sup>

The above observation to some extent reflects the tension on the issue of ‘representation’, as to whom does AI represent actually or for which category of right/s it stands? Among others, these two confusions that are also to a large extent true for other NGOs mark a shadow on the hope for their greater institutional role in the international human rights system. For example, regarding the accountability issue, ‘NGOs are found vulnerable as they are often found to be fierce competitors not only in terms of ideology but also for market shares, donor funds and clients’<sup>2</sup>.

However, in this era of mutual collaboration and peaceful co-existence, undoubtedly, we are in the midst of ‘associational revolution’<sup>3</sup>. United Nations, the main global policy making body is a glaring example which has been unusually depending on NGOs’ input over the years.<sup>4</sup> As a result, starting from the number of forty-one in 1948, the NGOs to have a consultative status at the UN, the number in 1998 increased to fifteen-hundred organizations that have the right to participate and access in numerous capacities.<sup>5</sup> In the words of the former UN Secretary

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<sup>1</sup> Winston, Morton E., “Assessing the Effectiveness of International Human Rights NGOs: Amnesty International”, in *NGOs and Human Rights: Promise and Performance*, Welch, Claude W. (ed.), University of Pennsylvania Press, 2001, pp. 32, 33.

<sup>2</sup> Clifford, Bob, ‘Marketing Rebellion: Insurgent Groups, International Media, and NGO Support’, *International Politics*, Volume 38, No. 3, 2001, pp. 311–33.

<sup>3</sup> Lester M. Salamon, “The Rise of Non-profit Sector”, *Foreign Affairs*, Vol. 73, No. 4, July/August 1994, pp. 109-122, cited in Duner, B., “The Fight for Greater NGO Participation in UN”, *Security Dialogue*, Volume 28, 1997, p. 302.

<sup>4</sup> Paul, J.A, *NGO Access at the UN*, Global Policy Forum, July, 1996, retrieved from <http://www.globalpolicy.org/ngos/analysis/jap-accs.htm>, on 12.10.2012.

<sup>5</sup> Simmons, P. J. 1998. “Learning to Live with NGOs.” *Foreign Policy*, Fall 1998: 82-96. Available from <http://www.globalpolicy.org/ngos/issues/simmons.htm>, cited in Genmill, Barbara and Bamidele-Izu, Abimbola, *The role of NGOs and*

General Kofi Anan, ‘NGOs are the conscience of humanity’<sup>6</sup>. This statement gives an indication to the increasing visibility of NGOs in the global governance process. As an obvious result, presently, NGOs are claiming the right to take part in the formal decision making process of the intergovernmental organizations as delegates.<sup>7</sup> Besides, numerous recent literatures on NGOs are exceedingly optimistic in the officialization of NGOs at the international forum.<sup>8</sup>

Following these observations, this paper focuses on the international human rights system as centered in the United Nations (hereinafter, UN) as opposed to the three (3) regional arrangements for the protection of human rights, e.g., European, Inter-American and African, although they are complementary to the human rights efforts of the UN. Within the UN, scope of international human rights system is circumscribed by the core human rights instruments, such as, the UN Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, etc. and monitoring bodies, like, Human Rights Council, Office of the High Commissioner for Human Rights, etc. that have been spawned by the UN.<sup>9</sup> The numerous dynamics, through which this system operates, in broad terms, include norm innovation, information gathering, monitoring, and implementation of human rights.<sup>10</sup>

### **Evolution of NGOs**

NGOs being the significant part of civil society are defined as the collection of individuals who are associated to accomplish a number of

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*Civil Society in Global Environmental Governance*, p. 5, retrieved from <http://www.env-net.org/wp-content/uploads/2013/09/gemmill.pdf> on 23 January, 2015.

<sup>6</sup> Paul, J.A., *NGOs and Global Policy-making*. Global Policy Forum, June, 2000, retrieved from <http://www.globalpolicy.org/ngos/analysis/anal100.htm>, on 12.10.2012.

<sup>7</sup> Holmen, H.; Jirstrom, M., “Look Who’s Talking: Second Thoughts about NGOs as Representing Civil Society”, *Journal of Asian and African Studies*, No. 44, p. 431.

<sup>8</sup> Jordan, L. and P. van Tuijl (2000) ‘Political Responsibility in Transnational NGO Advocacy’, *World Development*, Volume 28, Number 12, 2000, p. 2051, cited in *Ibid*.

<sup>9</sup> Meron, Theodor, “The Humanization of Human Rights”, 2006, 510-517, cited in Buergethal, Thomas, “The Evolving International Human Rights System”, *The American Journal of International Law*, Vol. 100, No. 4, October, 2006, at p. 801.

<sup>10</sup> Thakur, Ramesh, “Human Rights: Amnesty International and the United Nations”, *Journal of Peace Research*, Volume 31, No. 2, 1994, pp. 143-160.

purposes which may range from carrying out the programmes on ground, e.g., disaster relief to promoting human rights in wider aspect, either locally or globally.<sup>11</sup> Since the end of the World War II, a number of NGOs has risen dramatically. Especially, in the past two decades, both national and international NGOs have flourished as the operational arms of the civil society by providing a backbone to the international human rights movement.<sup>12</sup> Another observation shows that the end of the Cold War has created immense opportunities for NGOs to become a significant part of the political landscape in a growing number of third world countries and former Soviet bloc.<sup>13</sup> A number of factors, from the development of information technology to the increasing influence of the democratization process worldwide have been identified as the catalysts behind this proliferation of NGOs.<sup>14</sup> William De Mars explained this current NGO bloom from three dimensions, e.g., *firstly*, NGOs are proliferating quantitatively in establishing the issue areas that largely include the aspects of human rights. *Secondly*, the increase of NGOs is a global phenomenon affecting all regions from Asia to Middle East where many governments have maintained relatively tight control over civil society for decades. *Thirdly*, NGOs are also proliferating qualitatively, by taking the initiatives to create new issues where hitherto they have exerted limited influence.<sup>15</sup> Such a proliferation in number and influence, in effect, demonstrates a significant power shift in the world politics in all its dimensions as ‘the very presence of NGOs represents an alarm to the

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<sup>11</sup> Charnovitz, “Two Centuries of Participation: NGOs and International Governance”, *Michigan Journal of International Law*, Volume 18, Number 2, 1997, pp. 183-286, cited in Genmill, Barbara and Bamidele-Izu, Abimbola, *The role of NGOs and Civil Society in Global Environmental Governance*, p. 3, retrieved from <http://www.env-net.org/wp-content/uploads/2013/09/gemmill.pdf> on 23 January, 2015.

<sup>12</sup> According to the 2002 UNDP Human Development Report nearly one-fifth of the world’s thirty seven thousand INGOs, retrieved from <http://hdr.undp.org/en/reports/on> 15/03/2013; See also, “Between 1983 and 1993 the total number of international human rights NGOs doubled, and their budgets and staffs grew dramatically”, Keck, Margaret E. and Sikkink, Kathryn, *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, Ithaca, NY, 1998, p. 90.

<sup>13</sup> Donnelly, Jack, *What are Human Rights?*, retrieved from <http://usinfo.state.gov/products/pubs/hrintro/donnelly.htm> on 28.03.2013.

<sup>14</sup> Genmill, Barbara and Bamidele-Izu, Abimbola, *The role of NGOs and Civil Society in Global Environmental Governance*, p. 5, retrieved from <http://www.env-net.org/wp-content/uploads/2013/09/gemmill.pdf> on 23 January, 2015.

<sup>15</sup> Mars, William De, *NGOs and Transnational Networks*, Pluto Press, London, 2005, p. 37.

policy making power of any government'<sup>16</sup>. However, could this line of thought be used to justify the claim for increasing the institutionalized power sharing in the UN in favour of NGOs, as much as Boutros Boutros-Ghali, the former UN Secretary General implied an agenda for development?<sup>17</sup> According to his assertion, “over the past decades, the growth of NGOs in number and influence has been phenomenal. They are creating new global networks and providing to be a vital component of the great international conferences in this decade. Thus time has arrived to bring the activities of NGOs and the UN into an increasingly productive relationship and cooperation”<sup>18</sup>.

### **Criticism against the Active Presence of NGOs**

Notwithstanding the growing salience of NGOs critics present a number of allegations against their nature and activities. They argue that these organizations are differentiated and lack government support<sup>19</sup>; their status in international law is not clearly defined<sup>20</sup>; their independence has long been a debatable issue as states in many occasions try to utilize or control NGOs by indirectly placing them in the service of national policies<sup>21</sup>; NGOs are unelected and unaccountable special interest groups which may disrupt global governance<sup>22</sup>; they often compete for their own visibility, clients and influence leaving behind the issue of democracy, transparency and representation far behind<sup>23</sup>; the issue of deficiency of accountability in NGOs is well documented<sup>24</sup>. To bolster their positions

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<sup>16</sup> Retrieved from <https://www.globalpolicy.org/empire/31611-ngos-and-global-policy-making.html> on 24 January, 2015.

<sup>17</sup> Duner, B. (1997) “The Fight for Greater NGO Participation in UN”, *Security Dialogue*, Volume 28, p. 302.

<sup>18</sup> Boutros Boutros-Ghali, *An Agenda for Development*, United Nations, New York, 1995, p. 53.

<sup>19</sup> Cakmak, Cenap, “The Role of Non-Governmental Organizations in the Norm Creation Process in the Field of Human Rights”, *Turkish Journal of International Relations*, Volume 3, No. 1, 2004, p. 106.

<sup>20</sup> Martens, Carstin, “Examining the (non) Status of NGOs in International Law”, *Indiana Journal of Global Studies*, Volume 10, Issue 2, 2003, p. 16.

<sup>21</sup> Keynote address by Secretary General Boutros Boutros-Ghali to the 4<sup>th</sup> DPI/NGO Conference, Transnational Associations, No. 6, 1995, p.345-349, at p. 347.

<sup>22</sup> *Supra* note 7, at page 430.

<sup>23</sup> *Ibid*, pp.429, 433.

<sup>24</sup> Edwards, M. and D. Hulme, ‘Too Close for Comfort? The Impact of Official Aid on Non-governmental Organizations’, *World Development*, Volume 24, Number 6, 1996, pp. 961–73; Hudson, A. (2001) *Advocacy Rules? NGO Search for Development Alternatives*, ID21 Society and Economy, retrieved from <http://www.id21.org/society/s8aahlg1.html>, accessed on 13.03.2013.

these critics also portray NGOs as agents of foreign influence who use human rights to attack non-western culture<sup>25</sup> and ‘foster a new type of cultural and economic colonialism’<sup>26</sup>. They find that the tendency of these NGOs is to set the agenda without understanding the society, culture, politics and other issues that actually affect the human rights and development of the people in practice. Thus, in socio-structural terms, the proliferation of NGOs reflects the emergence of a new *petit bourgeois* class who thrive on international gatherings lacking solid organic support even within the country.<sup>27</sup> Regarding the southern NGOs, one critique notes an interesting observation. According to him, while many southern NGOs are serious about their business, quite a few have been established with the primary or even with the sole purpose of gaining access to the flows of foreign financing. Such tendency particularly, after the implementation of the structural adjustment policies have been negatively affecting the third world governments by by-passing their decision making authority.<sup>28</sup> It is therefore, often questionable, whether these NGOs have any progressive purpose? Besides, many southern NGOs are urban based and their members are mostly from the upper and middle classes.<sup>29</sup> Consequently, they tend to display almost no grass-root level connection.<sup>30</sup> Critics also note that NGOs from North and South have failed to prove a homogenous identity among themselves which is particularly evident from their concentration on human rights discourse. For example, unlike, NGOs in South, the first world NGOs concentrate more on civil and political rights, individualistic rather than group rights and believe in a pluralistic society functioning within a framework applicable to individuals against state interference.<sup>31</sup> However, apart from all these, the most serious complain against NGOs is related to their increasing involvement in global politics and human rights poses a threat

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<sup>25</sup> Ibid.

<sup>26</sup> Petras, James, “NGOs: In the Service of Imperialism”, *Journal of Contemporary Asia*, Volume 29, Number 4, 1999, p. 434.

<sup>27</sup> Ibid., at pp. 439, 440.

<sup>28</sup> *Supra* note 7, at page 433.

<sup>29</sup> Destremau, B. (2001) ‘Poverty, Discourse and State Power: A Case Study of Morocco’, in F. Wilson, N. Kanji and E. Braathen (eds), *Poverty Reduction: What Role for the State in Today’s Globalized Economy?*, p., 156, pp. 129–63. London: CROP/NAEP/Zed Books, cited in Ibid, at page 433.

<sup>30</sup> Arnesen, O., V. Kapelrud and R. Øygard (2002) Support for Organising Producers in Southern and Eastern Africa: Status and Possibilities for Norwegian Assistance. Final draft. Oslo: NORAD, p. 14, cited in Ibid., at p. 433.

<sup>31</sup> Ibid.

to the *Westphalian* state-centric paradigm of sovereignty<sup>32</sup> or the traditional concept of nation state. To support their view, critics argue that whereas once the sovereign states only had a say in world affairs, non-governmental organizations as well as individuals now have a right to be heard.<sup>33</sup> As state's own policy making by itself is a dynamic of state's sovereignty, hence undoubtedly, it is a clear sign of interference.

### **What if- Look at the Other Side of the Spectrum?**

At the end of the twentieth century, alongside states, world politics has postulated the active presence of NGOs in human rights sphere.<sup>34</sup> The issue of human rights is described as one that 'inspires not only politicians, religious organizations, and trade unions, but also private individuals and non-governmental organizations that strive to secure conformity with the international standards to protect human rights'<sup>35</sup>.

The term 'NGO' first came into being in 1945 as a consequence of the need for the UN to differentiate in its Charter between the right of participation of the intergovernmental specialized agencies and the international private organizations.<sup>36</sup> However, the foundation of UN-NGO relationship is embedded in Article 70 and 71 of the UN Charter that extend consultative status and the right to participate in the UN deliberations to NGOs within the domain of Economic and Social Council (ECOSOC).<sup>37</sup> By providing a secondary role to NGOs this status

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<sup>32</sup> "Since the treaties of Westphalia in 1648, the doctrine of unconditional Sovereignty has been a central pillar in international law-states were not to interfere with each other's handling of matters within their jurisdiction, including their treatment of individuals within their borders." On the contradictions and violations of this principle see, Krasner, Stephen D., *Sovereignty: Organized Hypocrisy*, Princeton, 1999 cited in Volume 2, Number 2, p.392.

<sup>33</sup> Cassese, Antonio, *Human Rights in a Changing World*, Temple University Press, Philadelphia, 1990, p. 174.

<sup>34</sup> *Supra* note 14, at p. 4.

<sup>35</sup> *Supra* note 9, at page 801.

<sup>36</sup> Willetts, Peter, *What is a non-governmental organizations, Advance reading for participants of Human Rights NGO capacity-Building Programme-Iraq*, available at <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM>., accessed on 12.11.2012.

<sup>37</sup> See, "The Economic and Social Council may make arrangements of the specialized agencies to participate, without vote in its deliberations and those of the commissions established by it and for its representatives to participate in the deliberations of the specialized agencies." , Article 70, Chapter 10, UN Charter, 1945; "The Economic and Social Council may make suitable arrangements for the consultation with non-governmental organizations which are concerned with

has enabled them only to attend public sessions, make oral statements under different agenda items and present written submission in the UN.<sup>38</sup> Although over the past years, as already mentioned, NGOs have shifted their bonding with the UN more intensely and the scope of consultative status has been extended to national NGOs<sup>39</sup>, still now they are devoid of the formal legal stand to participate in the deliberation of the principal organs of the UN, such as, General Assembly or Security Council. In addition, NGOs with consultative status are largely from the North that extremely indicates an uneven access of the South.<sup>40</sup> In this backdrop, especially after the end of the Cold War considerable demands have gathered momentum for structural reform of the UN by institutionalizing NGOs within its domain.<sup>41</sup> Institutionalization in this context, may occur by shaping structural access of NGOs, by enhancing their legal status or engaging them in decision making process. But, what are the justifications behind the demand?

From theoretical perspective, following are the strengths of NGOs that rationalize their more visible presence in international human rights regime<sup>42</sup>, e.g., *firstly*, ‘their small size and flexible administration and focused plan allow them to avoid complex administrative and bureaucratic procedures’<sup>43</sup>. *Secondly*, diversity is one of the major strengths of NGOs in effectively addressing human rights issues. Being decentralized they are capable to proceed with a speed and can curb a range of concerns that exist in most of the works of bureaucratic and politically cautious organizations.<sup>44</sup> *Thirdly*, their inherent neutrality and independence guarantee their credibility and sharply distinguish them

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matters within its competence. Such arrangements may be made with international organizations and where appropriate, with national organizations after consultation with members of United Nations.”, Article 71, Chapter 10, UN Charter, 1945.

<sup>38</sup> Almost two decades ago *Jerome J. Shestack* reiterated that the consultative function of NGOs was largely an empty ritual. *See, Supra* note, at page 308.

<sup>39</sup> *See, ECOSOC Res. 1996/31, 25<sup>th</sup> of July, 1996, Security Council Resolution (Consultative relations between United Nations and non-governmental organizations).*

<sup>40</sup> “NGOs in Consultative Status by ECOSOC in Region”, Global Policy Forum, 2009, retrieved from <http://www.globalpolicy.org/tables-and-chart-ql/ngos-tcql/32120.html> on 28.08.2012.

<sup>41</sup> *Supra* note 19, at page 117.

<sup>42</sup> *Ibid*, at p.106.

<sup>43</sup> Hirata, Keiko, *Civil society in Japan: The Growing Role of NGOs in Tokyo's aid and Development Policy*, New York: St. Martin's Press, 2002, p.61, retrieved from [http://www.csun.edu/~kh246690/civil\\_society\\_ch1.pdf](http://www.csun.edu/~kh246690/civil_society_ch1.pdf), on 15 February, 2015.

<sup>44</sup> Steiner and Alston, 1996, p. 456, cited in *Supra* note 19, at page 106.

from government and enable them to focus on a particular subject.<sup>45</sup> As an obvious result, this makes the possibility to obtain the satisfactory result notably high. *Fourthly*, long term grassroots-level involvement of many international NGOs in a country, particularly developing one, gives them familiarity with the people that donor countries could not match<sup>46</sup>; *lastly*, the major reason why NGOs exist and should exist in the UN is their ability to promote issues that are not currently being undertaken by the government. It is believed that government in most cases pursue narrow and egoistic interests while NGOs are believed to have an outspoken humanitarian focus and to constitute a democratic alternative.<sup>47</sup> Therefore, their most important claim for inclusion within the UN structure rests on norms of democracy and civil participation which historically have been weak at the UN level.<sup>48</sup> NGOs have come to claim that their importance resides in the role as monitors of government because states are perceived as unlikely or unable to resolve global problems effectively without a proper monitoring mechanism. Peter J. Simmons, therefore, rightly observed that ‘where governments have turned a blind eye, groups such as Amnesty International and Committee to Protect Journalists call attention to violations of the UN Declaration of Human Rights’.<sup>49</sup> Therefore, the Vienna NGO forum report rightly concluded that “in the face of government action or duplicity... it was up to NGOs to take a stringer stand”<sup>50</sup>. Implying these inherent potentials in mind, the founders of the UN long before these days, in 1945, enacted positive provisions in the UN Charter on NGOs’ participation within the UN structure.

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<sup>45</sup> Donnelly, Jack, What are Human Rights, retrieved from <http://usinfo.state.gov/products/pubs/hrintro/donnelly.htm> on 28.03.2013.

<sup>46</sup> Sinnar, Shirin, “Mixed Blessings: The Growing Influence of NGOs”, *Harvard International Review*, Vol. 18, Issue 1, 1995/1996, p.56.

<sup>47</sup> Supra note 7, at page 429, 430.

<sup>48</sup> Clark, Marrie Ann, Friedman, Elizabeth J. and Hochstetler, Kathryn, The Sovereign Limits of Global Civil Society: A comparison of NGO Participation in UN World Conference on Environment, Human Rights and Women, World Politics, Volume 51, No.1, October, 1998, p. 6.

<sup>49</sup> Simmons, Peter J., “Learning to Live with NGOs”, *Foreign Policy*, 1998, p. 87, in *NGOs in International Politics*, Ahmed, S; Potter, D., Connecticut: Kumarian Press Inc., 2006, p. 84.

<sup>50</sup> "Addendum 2 to the final report of the NGO-Forum, UN Document A/Con?157/7/Add 2 of 24 June 1993," and "Analytical Report of Working Group A," in Nowak (fn. 37), 1994, p. 105, cited in Friedman, Elisabeth Jay, Hochstetler, Kathryn and Clark, Ann Marie, *Sovereignty, Democracy and the Global Civil Society: State-society relations at UN world conferences*, State University of New York Press, 2005, p. 54.

However, apart from these strengths, practical implication of NGOs' contribution in international human rights system will rationalize the argument for their more institutional engagement in the UN. It is observed that NGOs have tested the boundaries of political system by assuming the right to mobilize, the right to organize, the right to monitor and commenting on the governance process.<sup>51</sup> Based on this observation, numerous efforts of NGOs through which they have been consistently continuing to strengthen the UN human rights system can be demonstrated from three dimensions, *firstly*, norm generation; *secondly*, monitoring; and *thirdly*, enforcement of international human rights.<sup>52</sup>

As to the role of NGOs in norm innovation, history reveals that NGOs played a pivotal role in promoting the international standard of human rights. They have created appropriate conditions to realize human rights and came up with new ideas and proposals of implementation.<sup>53</sup> These efforts include drafting of international instruments, establishment of new procedures and machineries, and identification of specific governments as violators through constant campaigns by mobilizing public opinion and lobbying government support.<sup>54</sup> For example, their effort to secure the inclusion of human rights language in the final draft of the UN Charter is widely recognized.<sup>55</sup> After the Second World War, they involved in the adoption of Universal Declaration of Human Rights (UDHR) which for the first time listed rights and freedoms to which all human beings are entitled.<sup>56</sup> In addition, when both the UN Charter and UDHR felt short behind meeting the expectations, NGOs again came forward to fill up the vacuum. Subsequently, their continued effort has culminated in the adoption of two significant covenants, respectively on civil, political rights and economic, social and cultural rights.<sup>57</sup> During

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<sup>51</sup> Jordan, Lisa and Van Tuijl, Peter (eds.), *NGO Accountability: Politics, Principles & Innovations*, 2006, p. 6.

<sup>52</sup> *Supra* note, 14, at page, 19.

<sup>53</sup> Cassese, Antonio, *Human Rights in a changing world*, Temple University Press, Philadelphia, 1990, p. 173.

<sup>54</sup> Steiner, Henry J. and Alston, Philip, *International Human Rights in context: Law, Politics and Morals*, Clarendon Press, Oxford, pp. 456, 457.

<sup>55</sup> *Supra* note 19, at pages 112-113.

<sup>56</sup> Rapporteur of the Commission of Human Rights stated, "They (NGOs) were profoundly concerned, especially the religious among them, whether Jewish, Catholic or Protestant, in the fate and dignity of man in the modern world; they kept in close touch with us, and we received them and adopted many a sound counsel from them, and you can trace in the text of declaration a word here, a clause there, or a whole article, back to their inspiration.", *Ibid*, p.113.

<sup>57</sup> *Ibid.*, p. 114.

1970s and 1980s, constant campaigns of Amnesty International at national and international level crucially influenced the UN initiatives to adopt the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment. NGOs' participation in drafting of United Nations Conventions of the Rights of the Child (UNCRC), the '*Magna Carta for children*' denotes another glaring instance. In the Vienna conference, numerous human rights NGOs defended the principle of universality, interdependence and indivisibility from possible retrograde movement while pushing concrete proposals for better implementation of human rights measures. Consequent to their effort, the principle of "*one set of rights cannot be used to bargain for another*" was included to the text of Vienna Declaration and Programme of Action 1993. Besides, evidence abounds to demonstrate that active pursuit by NGOs has placed fundamental human rights issues in the UN policymaking agenda. Through information dissemination, media attention, mobilization and lobbying NGOs routinely bring issues to agenda setting process. It is now widely recognized that issues like human rights, women's rights and environmental protection that have dominated the UN human rights norms are the outcome of vigorous role of influential NGOs.<sup>58</sup> For example, the Vienna Conference witnessed a great advancement in the recognition of women's human rights as a culmination of strong lobbying from the global NGOs. Particularly, the women NGOs directly lobbied the participants of the Conference to include their concern that had borne to the conference agenda.<sup>59</sup> The concern was to make it clear that discrimination against women or violations against women are not different or less important than any other human rights violations.<sup>60</sup>

Secondly, besides norm innovation by influencing the legislative process, NGOs also assume significance in monitoring and implementing those norms by creating pressures on target groups to adopt new policies. In fact, their extensive monitoring functions lead to the implementation of government compliance to its national and international human rights obligations. The supervisory organs established in connection with the UN human rights treaties have a great need for independent information

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<sup>58</sup> Retrieved from <http://www.wwnorton.com/college/polisci/essentials-of-international-relations5/ch/07/summary.aspx>, on 23 January, 2015.

<sup>59</sup> Keck, Margaret E. and Sikkink, Kathryn, *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, Ithaca, NY, 1998, p. 186.

<sup>60</sup> Martenas, Kerstin, *NGO Participation in International Conference: Assessing Theoretical Accounts*, Transnational Associations, No.3, 2000, p. 124.

when they evaluate the periodic reports submitted by the treaty ratifying states.<sup>61</sup> Any ‘information vacuum’ after this process is substantially supplemented by NGOs through their in-depth investigations. For example, the UN Human Rights Committee which is the implementing organ of the ICCPR is almost totally dependent on NGO briefings, documentation and advice.<sup>62</sup> It was observed that virtually, in every instance, before the UN decided to appoint rapporteurs on Guatemala, Bolivia, El Salvador, Poland, Afganistan, Iran, Cuba, Myanmar, Sweden, Ziare and following emergency sessions in 1992, 1993, former Yugoslavia and Rwanda, NGOs stepped forward with detailed documentary evidence of abuses.<sup>63</sup> They are also entitled to participate to a certain extent, in the implementation of some conventions, e.g., provision enabling NGOs to monitor the implementation of the UNCRC is a significant breakthrough in this regard which in other way recognizes their immense contribution.<sup>64</sup> As the ‘UN monitoring machinery is little more than a system of international information exchange’<sup>65</sup> and is bound by the sovereignty of state parties, hence, NGOs can supplement the UN monitoring process by presenting the human rights violations as complaints.<sup>66</sup> Due to their increasing visibility and credibility in the field of monitoring ‘today few criticize the outcome of Amnesty International or Human Rights Watch when they document and highlight human rights violations around the world’<sup>67</sup>. Former Secretary General of the UN, therefore, rightly reiterates that NGOs are an indispensable part of legitimacy. NGOs thus have proven adept in developing a monitoring system of their own which is professional, comprehensive and mostly

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<sup>61</sup> *Supra* note 17, at page 306.

<sup>62</sup> See, “Israel: Submission to the Human Rights Committee”, Amnesty International, 99<sup>th</sup> Session, July, 2010, AI Doc. MDE 15/010/2010.

<sup>63</sup> Gaer, Felice D., “Reality Check: Human Rights NGOs Confront Governments in UN”, in Weiss, Thomas G. and Gordenker, Leon, Boulder, *NGOs, the UN, and Global Governance*, CO: Lynne Rienner, 1996, p.3.

<sup>64</sup> “In order to foster the effective implementation of the convention and to encourage international co-operation in the field covered by the convention: (a)... [T]he Committee may invite the specialized agencies, the United Nations Children’s Fund and *other competent bodies* as it may consider appropriate to provide expert advice on the implementation of the convention in areas falling within the scope of their respective mandates.” Article 45, United Nations Convention on the Rights of the Child 1989.

<sup>65</sup> *Supra* note 42, at page 148.

<sup>66</sup> Taylor, Paul and A. John R. Groom (eds.) *Global Issues in the United Nations Framework*, London: Macmillan, 1989, p. 295.

<sup>67</sup> *Ibid.*

accurate. To cite another example, incredibly detailed reports of Human Rights Watch on human rights situation of the world, while describing the way in which a government may breach its international human rights obligations, supply the evidence of violation to the international community. As a result, states often work with these organizations to demonstrate good faith and to make sure that their actions are properly reflected.<sup>68</sup> Due to the immense efforts and contribution of NGOs and INGOs, states have come to realize that ‘partnership with NGOs contribute to some more efficient project implementation and a lower rate of failure, a better public image and more political support’<sup>69</sup>. Irene Khan, former Secretary General of Amnesty International rightly argues that “the legitimacy of international NGOs to act is based on universally recognized freedom of speech, assembly and association, on the trust people place upon us and on the values we seek to promote. NGOs are playing an increasingly prominent role in setting the agenda in today’s globalised world”<sup>70</sup>. Considering this contribution of NGOs through monitoring, it would not be an overstatement to say that if the UN treaties and their enforcement mechanisms are the cornerstones of future international human rights then NGOs stood and still stand at the cutting edge of early initiatives that would make that future possible.<sup>71</sup>

Lastly, NGOs also immensely contribute to the enforcement of human rights either directly or indirectly. The Vienna Declaration and Programme of Action recognized this role of NGOs in promoting and protecting human rights at national, regional and international levels.<sup>72</sup> NGOs use several techniques in this regard, such as, diplomatic initiatives, fact finding missions, reports, public statements and mobilization of public opinion and public awareness.<sup>73</sup> Being relatively

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<sup>68</sup> *Supra* note 60, at page 125.

<sup>69</sup> Michael, Edwards, *NGO Rights and Responsibilities, A New Deal for Global Governance*, London: The Foreign Policy Centre, 2000, p. 11.

<sup>70</sup> Khan, Irene, Secretary General of the Amnesty International on the launching of international NGO accountability charter, June 6, 2006, Press Release, Amnesty International, NGOs Lead By Example: World’s International NGOs Endorse Accountability Charter (June 6, 2006), <http://www.amnesty.org/en/library>.

<sup>71</sup> Korey, William, *NGOs and the Universal Declaration of Human Rights: a curious grapevine*, Palgrave, New York, 2001, p.5

<sup>72</sup> See, article 38 of the Vienna Declaration and Programme of Action 1993, retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>, on 24 January, 2015.

<sup>73</sup> Wouters, Jan and Rossi, Ingrid, *Human Rights NGOs: Role, Structure and Legal Status*, Institute for International Law, Working Paper No. 14, November 2001, p.

more independent than the state organs NGOs are capable to locate the cause of alleged violations and identify the violators by using these techniques. Besides, through their research and reporting activities, NGOs can effectively help the effort of the UN, state or other national delegations to enforce and protect human rights.<sup>74</sup> For example, the International Service for Human Rights (ISHR) in Geneva provides information that includes summaries and analysis of the UN human rights meetings. The collective efforts of the ISHR and AI in the sourcebook titled '*The UN and Refugees' Human Rights: A Manual on How UN Human Rights Mechanisms can Protect the rights of Refugees*' is an invaluable source of information. As of 2007, over 1500 NGOs were listed in the UN Department of Public information based on their collection and dissemination of information as part of their activities.<sup>75</sup> However, apart from this somewhat indirect enforcement of Human Rights NGOs are now enforcing human rights in a more direct manner. One of the examples of this is the public interest litigations (PIL) as initiated by the NGOs mostly in some South Asian countries, e.g., Bangladesh, India, Pakistan, Nepal and Sri Lanka.<sup>76</sup> National and regional level experience of PIL may help the UN in forming a universal mechanism and strategy to enforce human rights.

### **Value Addition through the Greater Institutional Role of NGOs**

From the above discussion, question may come, by proving greater institutional role to NGOs in the UN what line of difference would be drawn? Obviously, the answer to this question will add to the answer to the core question of this paper, why NGOs should be given a larger institutional part to play? To begin with, the statement of the former UN Secretary General can be reiterated who expressed faith in NGOs by stating that "I am convinced that NGOs have an important role to play in the achievement of the ideal established by the Charter of the United

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5, retrieved from <https://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP14e.pdf>, on 24 January, 2015.

<sup>74</sup>Eriksson, Maja kirilova, *Manual on Human Rights Monitoring: An Introduction for Human Rights Field Officers*, Norwegian Centre for Human Rights, p. 6, retrieved from <http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/current/kap4.pdf> on 6 February, 2015.

<sup>75</sup> Ibid, p.6.

<sup>76</sup> M. Amir-ul Islam, A review of Public Interest Litigation experience in south Asia, in Hossain, Sara, Malik, Shahdeen and Musa, Bushra (eds), *Public Interest Litigation in South Asia: rights in search of remedies*, The University press Limited, 1997, pp. 55-75.

Nations: the maintenance and establishment of peace... I believe, NGOs can pursue their activities on three fronts. In the search for peace, they must obtain the means—and we must help them to do so—to engage in assistance, mobilization, and democratization activities, all at the same time.”<sup>77</sup>

For NGOs, provision for greater institutional role undoubtedly will enhance their political legitimacy and capacity to engage efficiently with the UN<sup>78</sup>, e.g., recognition of voting right of NGOs in final decision making within the UN will open the door to insert their ideas more successfully. Conversely, for the UN, more NGO engagement will broaden its effectiveness in holding state parties accountable to international human rights standards. NGOs will provide additional channels of popular representation to the UN by creating a fairer distribution of power in international human rights spectrum. So, the consequent relationship between them is not a linear, rather circular, both the UN and NGOs have to gain from one another.

Lastly, to answer the critics on their argument that greater institutional role of NGOs in international human rights system will enhance the current degree of threat to state sovereignty’, it is worthy to mention that the roots of NGOs are founded more or less in the deficiencies of states. Although ‘since 1980s, especially in 1990s NGO have been increasingly involved in the law making’<sup>79</sup> and shaping the global policy, however, states are still dominant in global arena. It is not the UN or NGOs, but the states that ultimately sign and ratify human rights instruments. NGOs in this context closely resemble with domestic and international lobbies or ‘pressure groups that are commonplace and provide expertise and informal policy advice to governments’.<sup>80</sup> Furthermore, the evolving NGO repertoire reflects the changes in state expectation about the NGO role.<sup>81</sup> In fact, states have an incentive to respond positively to NGOs efforts to participate in the institutional

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<sup>77</sup> Boutros Boutros-Ghali, Foreword in NGOS, cited in Thomas G. Weiss, Thomas G. and Gordonker, Leon (eds.), *NGOs, The UN and Global Governance*, , 1996, p. 104.

<sup>78</sup> Keynote address by Secretary General Boutros Boutros-Ghali to the 47 DPI/NGO Conference, *Transnational Associations*, No. 6, 1995, p. 347.

<sup>79</sup> *Supra* note 19, at page 107.

<sup>80</sup> Willietts, Peter, *Pressure Groups in Global System: The Transnational Relations of Issue Oriented Non-Governmental Organizations*, Sent Martin’s Press, New York, 1982, cited in Warkentin, Craig; Mingst, Karen “International institutions, the State and Global Civil Society”, *Global Governance*, 2000, Volume 6, No. 2, p. 238.

<sup>81</sup> *Supra* note 38, at page 4.

forum of the UN because they can act as representatives of popular opinion or as informed observers on governance issues at international level as well as helping governments in the implementation of international agreements.<sup>82</sup> Therefore, it is purely legitimate to say, NGOs are not the counterparts, rather, in contemporary world, they are indispensable and supplementary to states to work in the field of human rights. That is why established democracies that respect human rights and rule of law are relatively in favour of NGO campaigns.<sup>83</sup> This practice is also underlined by the realization that NGOs have made society more conducive to the spread of democracy and respect for human rights.<sup>84</sup> Most strikingly, the proclamation of the UDHR as to “we, the peoples of the United Nations” not only highlights the emergence of a global civil society<sup>85</sup> but also rebuts the states’ unilateral claim of prevalence in the UN on their emphasis on the principle of non-intervention.

Furthermore, NGOs’ increasing number, their commitment and contribution to human rights immensely outweigh all the other tensions as mentioned in the first part of the article. Obviously, backdrops surrounding the internal and external structure of NGOs are not out of modification or change. Their loopholes, thereby, would not be a weapon in depriving them of attaining erected institutional status in the UN.

## **Conclusion**

Today’s world is totally different from the days when NGOs were given consultative status in the UN. Over the last few decades the effortless journey of NGOs in the flourishing of human rights justifies their stand to raise voice for a strong institutional platform in the UN. Therefore, undoubtedly, NGOs are on the world stage to stay. By transforming the prevailing top-down approach of the UN on human rights to a bottom-up direction, NGOs imply the potentials to edit the grammar of international human rights system. Hence, it is appropriate to mention the former UN Secretary General Kofi Annan’s statement who envisioned a greater role for NGOs at the UN by saying, “we aspire to a United Nations that recognizes and joins in a partnership with, an even more robust global civil society...”<sup>86</sup> “...peace and prosperity cannot be achieved without

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<sup>82</sup> Ibid.

<sup>83</sup> *Supra* note 63, at page 238.

<sup>84</sup> Ibid

<sup>85</sup> *Supra* note 59, at page 6.

<sup>86</sup> UN Secretary-General Kofi Annan, address to the 52nd Session of the General Assembly (Sept. 22, 1997).

partnerships involving government, international organizations, the business community and the civil society”<sup>87</sup>. However, NGOs should be held to a higher standard of representation, efficiency, transparency, accountability and other related issues to qualify themselves in the way of the long-desired stand for institutional corridor. However, ‘north-south differences and concomitant differences in philosophy, remain a significant source of unequal social division in NGO frames which suggest that the globality of NGOs is still somehow tentative, even when states are left out of the equation’<sup>88</sup>. In addition, institutional reform must be implemented by maintaining a balance between the NGOs of South and North poles. This paper thus concludes by contending that world would possibly not be a better place if we fail to articulate the new language of institutionalization to NGOs within the UN.

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<sup>87</sup> UN Secretary-General Kofi Annan, address to the World Economic Forum (Davos, Switzerland, Jan. 31, 1998).

<sup>88</sup> *Supra* note 38, at page 23.

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