Nearly forty thousand INGOs are active in the world today. The remarkable flourishing of these organizations has given the impression that they constitute a sort of “global civil society” that ostensibly advances democratization processes, protects human rights, and assists peacemaking efforts in regions of conflict. Unfortunately, in some cases, this image has little to do with reality.

INGOs are not elected bodies, are not founded on the principle of representation, and are not accountable to the public. In recent years, these facts raise serious concerns regarding the legality and legitimacy of INGOs’ activity.

Experts point to the possibility that some INGOs are being widely exploited by terrorist networks as easy points of infiltration into the civic space.

Without any international mechanism of accreditation and regulation of INGOs under international law, these organizations enjoy complete freedom of action. As a result, anyone, anywhere can establish an INGO and start issuing reports that would then be relied on by the media, or by national courts and international tribunals and institutions.

By and large, INGOs should be evaluated as very powerful, political, self-interested actors. Some leading INGOs, that initially based their activities on the provision of expertise and proficiency, repeatedly prioritize campaigning and advocacy instead of relief and charity. Some are accused of not denouncing violence, or even of supporting terrorism. It must therefore be realized that INGOs can potentially facilitate international cooperation and the rule of law, but they can also obstruct them.
In the future, the extensive involvement of INGOs in the local arena will be greatly influenced by the understandings and perceptions that will characterize the general debate on their status and cross-border activities.

In his recent memoirs,¹ former British Prime Minister Tony Blair admits that, over time, he came to dislike parts of what he calls the “INGO culture.” The trouble with some of them, he explains, is that while they are treated by the media as concerned citizens, they are also organizations, raising money, marketing themselves, and competing with other international nongovernmental organizations (INGOs) in similar fields. Blair, who recognizes that INGOs have learned to play the modern media game perfectly, suggests that, as it is all about impact, INGOs shout louder and louder to get heard, and that balance is not part of the vocabulary; it is all “outrage,” “betrayal,” and “crisis.” Furthermore, they have their own conventional wisdom and tightly defined dogmas, which they defend fiercely when challenged – not usually on their merits but by abusing the motives for challenging them.

Blair’s convictions may surprise the layman, and even some learned observers and academics. In any case, they demand serious attention and consideration regarding the objectives and influence of some of the leading players in today’s global arena – the INGOs.

Countless INGOs are active in the world today. Their number has grown from six thousand in 1990 to twenty-six thousand in 1999 – and over the past decade, has swelled to reach an astonishing forty thousand.² A majority of these INGOs presume to represent broad public interests, and seek to establish international coalitions committed to their promotion. Many are funded by intergovernmental institutions (such as the United Nations and the World Bank), European agencies (particularly the European Union, and Western European countries), and individuals who identify with their positions.³ The remarkable flourishing of these organizations, and the constant pressure they apply to governments and international bodies in the name of humanitarian goals, have given both observers and activists the impression that they constitute a sort of “global civil society” (GCS) – an amorphous, supranational, all-embracing, sociopolitical entity that ostensibly advances democratization processes, protects human rights, and assists peacemaking efforts in regions of conflict.⁴ Unfortunately, in some cases (some would say too many) this image has little to do with reality.

To be sure, the vigorous activism of INGOs contributes to the decentralization of power and hinders the oppressive conduct of states. Many of them take great pains to serve the human cause. Their positive – indeed crucial – contribution to protecting human rights and improving the lives of the poor and destitute around the world cannot, and should not, be denied. The commendable activity of Doctors without Borders (Médecins Sans Frontières) and the coalition of organizations behind the International Campaign to Ban Landmines (ICBL) even won these groups the Nobel Peace Prize. Movements such as these help populations that have been abandoned by the nation-state; they enter a space where law and order do not apply, in which people’s lives are exposed to arbitrary violence or forces of nature; and they provide irreplaceable humanitarian aid. Furthermore, the active participation of INGOs in international
diplomatic conferences has facilitated the adoption of historic documents and milestone conventions. Such was the case with the Ottawa Landmines Convention in 1997, and the Rome Statute of the International Criminal Court (ICC) in 1998 – major achievements in the fields of international criminal and humanitarian law – which were adopted, in large part, because of the drafting efforts of INGOs and their extensive lobbying of states.

In any case, it is important to remember that these organizations are not elected bodies, are not founded on the principle of representation, and are not, in any way, accountable to the public. In recent years, these facts have led many international lawyers, among other sociopolitical scholars and practitioners, to raise serious concerns about the legality and legitimacy of INGOs’ activity, and to call into question their ability – or willingness – to follow the rules of the democratic game.

Up until recently, many organizations tried to ground the legitimacy of their activities in the claim that they were serving a higher cause, and that they were impartially representing broad public interests. Today, it seems that no one takes these pretensions seriously anymore – not even the officials of the INGOs themselves, who openly admit to being political actors. Many organizations do not hesitate to publicly take a one-sided position in various conflicts and confrontations; or as one commentator put it recently, paraphrasing Clausewitz, “humanitarianism, not just war, has now become the continuation of politics by other means.”

What is worse, this stance is not always consistent with the humanitarian agenda that INGOs purport to represent. A prominent recent example is Amnesty International (AI) – whose reports on human rights violations in different places around the globe attract much attention, along with accusations of political bias. In April 2010, it found itself embroiled in an embarrassing scandal arising from its connection to Moazzam Begg, a British activist previously imprisoned in Guantanamo Bay, and considered a staunch supporter of radical Islam and the Taliban. When Gita Sahgal, head of Amnesty’s gender unit, ventured to express reservations about cooperating with Begg, she was suspended from her job. In response to protests against her suspension, the organization’s secretary-general issued a public statement in which he praised Begg and explained that supporting jihad as “self-defense” was not necessarily “antithetical to human rights.”

Human Rights Watch (HRW) has also been accused of systematically embracing the Qaddafi Foundation for International Charities and Development, as well as other Arab dictatorships, while ignoring cases of massive human rights violations, such as that of the Libyan dissident Fathi Eljahmi who was imprisoned in 2004 and died in 2009 after being held in solitary confinement and tortured.

**Providing Cover for Militants**

The cases of AI and HRW are but a symptom of a wider phenomenon. Hostility toward the West is rampant in the GCS. It serves as a common cause for radical leftist organizations and militant
movements – often with the legitimacy of the United Nations and other international institutions. A number of INGOs are not content with simply expressing sympathy for violence and terrorism, and offer their auspices and support to hordes of militant anarchists who do not hesitate to sow violence and destruction. Examples include the violent outbursts directed against the World Trade Organization conference in Seattle in 1999, and the G8 conference in 2001 in Genoa that resulted in extensive property damage and even the loss of lives. The United Nations’ World Conference against Racism held in 2001 in Durban, South Africa, was supposed to be a universal demonstration of tolerance and pluralism but became, under the orchestration of a coalition of INGOs, a violent hatefest against Israel and the Jewish people.

A book issued last year by Médecins Sans Frontières – one of the leading and more respected INGOs – openly admits that one should not fall for the “fantasy that humanitarian action can ever exist in some sort of splendid isolation from the contexts in which it is undertaken”; and that “all effective humanitarian action is based on negotiating compromises with the relevant political actors, including, of course, insurgent groups.” The problem is that this “negotiation of compromises,” involving the daily making of moral judgments under extreme circumstances, is practiced far from the eyes of the public and regulators, and without “parameters or benchmarks against which to judge acceptable from unacceptable compromises.” Or, as was put more bluntly by the Dutch journalist Linda Polman who spent years traveling in war zones, in her controversial book *The Crisis Caravan*, scrutinizing the vast industry that has grown up around humanitarian aid:

> From the proceeds of their negotiations with INGOs, warring factions feed and arm themselves and buy support. Irrespective of the consequences for the length and ferocity of wars, INGOs...are free to make agreements, pacts, contracts, and deals at their own discretion, with wannabe presidents, tribal chiefs, warlords, troublemakers, rebel leaders, headmen, insurgents, terrorist cells, child generals, splinter-group kingpins, militia leaders, bosses of factions, transnational terrorist commanders, regime bigwigs, mercenaries, freedom-fighters, and underworld figures reincarnated as paramilitaries – at village, regional, or national levels. “Humanitarian territories” in war zones are free markets where anyone can set out his aid stall, as long as he can agree to terms with local power brokers. Striking bargains with parties to conflicts is sometimes referred to as “shaking hands with the devil.” There are no rules, no limits, and no requirement to have any understanding of the local balance of power, or to coordinate with other parties involved, humanitarian agencies included.

Experts today already point to the possibility that some INGOs are being widely exploited by terrorist networks as easy points of infiltration into the civic space. John Keane, long considered one of the leading experts on GCS, admits that there is growing evidence that GCS is currently falling under the shadow of the so-called “unstable triangle of violence.” At one corner of this triangle is the threat caused by nuclear-tipped states; GCS is embedded within a risk-producing system, in which the possibility of a damaging theft or spillage of nuclear materials is chronic. At the second corner is the threat of violence, unleashed in armed conflicts typically fueled by the
global flow of arms, money, and men; GCS, frequently located in the midst of these “uncivil war zones,” is consequently beset with painful moral and political questions. Most troubling, however, is the third threat of global terrorism, which admittedly threatens every corner of GCS, including its more local networked components. As terrorists today operate in small autonomous units within the nearly invisible channels of local civil society, the new form of global terrorism already operates “like a deadly enemy from within the entrails of GCS.” Evidently, the three sides of the triangle of violence have become so tightly linked today that, as Keane observes, “on the outskirts of GCS, and within its nooks and crannies, dastardly things go on.” It provides convenient hideouts for gangsters, war criminals, arms traders, and terrorists. The spaces of freedom within GCS also enable individuals and groups to network, in the form of criminal gangs that run worldwide industries.

In this context, the activity of the IHH, the Turkey-based INGO that organized the violent Gaza Flotilla, constituted an alarming development. For the first time, “peace activists” deliberately and openly cooperated with terrorists, in a calculated provocation leading to a head-on armed collision with a sovereign state. The UN Palmer Report, examining the context of the flotilla incident, “seriously questions” the true nature and objectives of the IHH, finding that to seek deliberately to breach a blockade in a convoy with a large number of passengers is a “dangerous and reckless act” exposing a large number of individuals “to the risk that force will be used and people will be hurt.” The panel consequently determines that it is clear that “reliance cannot be placed upon NGOs.” Before the flotilla incident, evidence gathered by security services and research institutes in Turkey, Europe, and the United States pointed to the IHH’s elaborate connections with a number of radical Islamist organizations such as the Muslim Brotherhood, terrorist organizations such as Hamas and al-Qaeda, and possibly Hizbullah, as well as the assistance it provided to Islamic militias and global jihadists since the 1990s in Afghanistan, Chechnya, and Bosnia.

It is easy to dismiss the IHH as merely one bad apple, but the truth is more complex. As early as 1996, the CIA published a report on the extensive relationship between terrorists and INGOs. The report notes that efforts by governments to counter terrorist groups’ use of INGOs are complicated by domestic and international political concerns, legal constraints, and the size and flexibility of the international extremist network. In 2006, the Danish Institute for International Studies issued a report on the role of Islamic charities in international terrorist recruitment and financing. The report concludes that by clothing their militant activity and support for terrorism with charitable ideals, radical militants discovered that they were able to maintain their level of efficiency while working with very few restrictions in the international arena.

Various studies from the last few years, mostly sponsored by the European Commission’s Directorate-General for Justice, Freedom and Security, or otherwise within the framework of the EU antiterrorism policy, have further exposed the deepening involvement of civil-society organizations in militant activities throughout Europe, involvement that includes funding, recruitment of activists, and ideological backing. In his statement to the UN Security Council on May 10, 2012, the chairman of the council’s Counter-Terrorism Committee noted that the prevention of abuse of NGOs for terrorism purposes is one of the committee’s main concerns.
The 2011 Global Survey of the Implementation of Security Council Resolution 1373 (2001) (dealing with combating international terrorism) also recognized the need to guard more effectively against the misuse of INGOs, particularly in the area of financing.\(^{28}\)

Unfortunately, even organizations not suspected of sympathy toward lawbreaking radicals opt not to participate actively in the effort to curb terrorist violence. Ironically, these groups, which provide massive support for the formulation of international conventions on human rights and the development of humanitarian norms, as well as prohibitions on the use of force, ignore the need to formalize a parallel operational and comprehensive definition of terrorism at the international level. This ultimately impedes the measures taken by those countries that are actually burdened with combating the malignant phenomenon of transnational terrorism.

**Regulation and Accreditation**

Regulation of INGOs’ cross-border activities – including humanitarian aid and human rights fact-finding and reporting – and the monitoring of the groups and institutions that fund them, might provide a partial solution to the problem. Attempts to provide INGOs with formal legal status under international law, allowing scrutiny of their cross-border activities, are not new. In fact, since 1912, and throughout the last century, various academic and professional forums continued to put forth drafts of international conventions and reports, examining the complex issues involved in such an endeavor. However, these attempts failed to attract any substantive attention. Representatives of the organizations themselves were never particularly enthusiastic about the idea – an understandable response, given that formal legal status would force them to maintain transparency and meet other restrictive standards; moreover, it would allow for regulation of their activities, and liability for their actions. Most governments, too, expressed reservations, primarily because of their fear of strengthening groups suspected of political disloyalty and in support for terrorism.

Consequently, without any widely accepted international mechanism of accreditation and regulation, the loophole in international law has remained, giving INGOs virtually complete freedom of action. Generally, it was acknowledged that the complex issues involved in the regulation of INGOs’ cross-border activities at the international level had to be examined in terms of reshaping the structure and organization of the international community, and that the rise of the so-called “transnational private sector,” characterized by spontaneity and variety, constituted a genuine challenge to the association of nation-states. Prominent among the difficult questions that have arisen in the past – and remain unresolved until this very day – were those of registration, selection, and supervision of organizations that could be eligible for formal international recognition. In later years, they reappeared in the form of issues regarding the definition of INGOs, and more recently, their responsibility and accountability.\(^{29}\) Proven to be politically and legally insoluble hurdles, we still do not even have an agreed-upon definition of the international nongovernmental entity under international law. As a result, *anyone, anywhere* can establish an INGO, and start issuing human rights fact-finding reports that would then be relied on by the media, or worse – by national courts and international tribunals.
The most distinguished formal position an INGO can obtain under present international arrangements is that of a “consultative status,” acquired within intergovernmental organizations – the UN ECOSOC (Economic and Social Council) in particular. Although such status does not provide any international legal standing or immunities, it reflects international legitimization of an INGO’s objectives, and allows it to actively participate in the work of the international organization that recognizes the status (without voting rights). An ECOSOC consultative status is held today by more than 3,500 INGOs worldwide – including the IHH.

Throughout the years, decisions on INGOs’ accreditation taken by the ECOSOC Committee on NGOs – a body consisting of nineteen UN member states designated by the United Nations to decide on INGOs’ applications – have been criticized for being highly motivated by political considerations. In recent years there have been a few fierce debates in the committee regarding cases of INGOs and their support of terrorist groups, or even direct involvement in terrorist activity. However, a quick look into the committee’s protocols reveals that these debates were poorly informed and were conducted by diplomats, not by experts, largely giving certain states the opportunity to discredit a number of INGOs based on narrow political interests. Thus, even the main UN body designated to deal with INGO-related issues has failed to evolve into a focal point for empirical and systematic evaluation, as well as policy formulation, which it could have, and should have, become – particularly with regard to complex issues of INGO support for, and involvement in, terrorist activity.

Legitimacy Must Be Earned

Despite all the above, there are still forums that aim to propose a normative framework to facilitate the acquisition of international legal status by INGOs, so that they can become genuine subjects of international law and de jure participants in international-law processes, side-by-side with nation-states – the original members of the international legal order. Indeed, against the background of heated discussions about the future of “international governance,” there is today renewed interest in examining INGOs’ legal position. In this context, legal status is seemingly required to facilitate INGOs’ cross-border activities by the provision of rights, privileges, and immunities.

This quest is occasionally based on a call for the establishment of a fairer international legal order that would reflect the position and relevance of all significant international actors, including INGOs, thereby legitimizing their voice and ensuring their participation. In most cases, this quest reflects an optimistic view of a worldwide community of INGOs – indeed, a so-called GCS – collegially networking to achieve laudable goals and rendering morally merited services for the global public good. This view rests on the assumptions that INGOs’ involvement makes international decision-making more effective; that INGOs provide significant democratic alternatives to the existing channels of political representation; that they do not act out of self-interest; and that – unlike governments, international institutions, and their officials – they are
civilized, in agreement, and immune to corruption.\textsuperscript{32} However, these assumptions are far from being empirically verified, and are still based more on belief than on knowledge.

INGOs’ legitimacy must therefore be earned on an individual, case-by-case basis. It cannot be assumed because of the existence of a networking, representative “global civil society,” which, beyond an intellectual construct for conveying legitimacy, does not exist in the form of a cross-border, cross-sectoral, overarching unity that promotes international relations and the rule of law. Furthermore, as has become more and more apparent during the last few decades, by and large, INGOs should be valued as sometimes very powerful, political, self-interested actors. Some leading INGOs, that initially based their activities on the provision of expertise and proficiency, repeatedly prioritize issues such as campaigning and advocacy instead of relief and charity.\textsuperscript{33} Some are accused of not denouncing violence, or even of supporting terrorism. It must therefore be realized that INGOs can be either good or bad; they can potentially facilitate international cooperation and the rule of law, but they can also obstruct them.

The Middle Eastern Arena

The regional arena is greatly influenced by the activity of INGOs. From time to time, such activity captures the attention of Israeli public opinion because of the extensive involvement of INGOs in the Middle Eastern conflict. Such was the case following the Durban UN Conference; the false reports of INGOs regarding the “massacre” in Jenin; the violent Gaza Flotilla; the death of International Solidarity Movement (ISM) activist Rachel Corrie;\textsuperscript{34} the many fact-finding reports issued occasionally by INGOs nominated by rapporteurs of the UN Human Rights Council and other international organizations; and the submission of independent reports and complaints to international tribunals, such as the ICC, as well as national courts (in Britain, Spain, Belgium, etc.) under the doctrine of universal jurisdiction; in recent years, a public debate was initiated in Israel regarding the funding of local NGOs by foreign entities.\textsuperscript{35} Undoubtedly, many of the Israeli NGOs are morally backed, and practically supported, by their international counterparts; to a large extent, some of them can be considered satellites of leading INGOs in the local arena. Needless to say, the activity of INGOs has greatly contributed to the “legalization” of the conflict in the Middle East (the so-called “lawfare” phenomenon), and the growing use of legal means and international tribunals for the promotion of political agendas.

Clearly, in the future, the increasing involvement of INGOs in the local arena will be greatly influenced by the understandings and perceptions that will characterize the general debate on the status and activities of INGOs. While there is growing recognition of the significance of INGOs’ contribution to the conduct of global affairs, there is also growing awareness of INGOs’ misconduct and criticism of their unconstrained methods. Accordingly, in the current “age of INGOs” and “globalization,” the activities and impact of INGOs in various contexts (foreign political lobbying; lawfare; involvement in, and support for, terrorism; shaping international public opinion, etc.) demand, first and foremost, the attention and awareness of Israeli legislators and decision-makers; it further requires the formulation of relevant perceptions
within the framework of planning national-security strategies (also by security and intelligence agencies) as well as the design of foreign policy.

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Notes

18. Ibid., 97.
21. Ibid., paras. 92-95, p. 48.
22. Ibid., para. 159, p. 71.

24. See the January 1996 CIA report on “International Islamic NGOs and Links to Terrorism.”


33. See, e.g., discussion in ibid.

34. See Judgment of the Haifa District Court in the Case of Rachel Aliene Corrie, Civil Case 371/05 (decision of 28 August 2012).

35. For a recent echo of this debate, which followed the legislation of the NGO Funding Transparency Law in 2011, see N. Balanson, “Israeli Political NGOs and the Transparency Law,” Jerusalem Post, February 14, 2013.


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