FIRST NGOS IN THE LEAGUE OF NATIONS: LESSONS TO BE LEARNED

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Abstract: Although international law was originally conceived as a law created by and for states, individuals have struggled since its inception to make their voices heard and influence its rules, using their ability to associate with others and their position as members of public opinion. This article analyses the formation of the first private associations and focuses on the regulation of their status before the League of Nations, concluding that both their way of acting and the obstacles they faced are still relevant today. In doing so, it invites reflection on how best to address a longstanding dilemma: whether or not to formally regulate their status.

Keywords: NGOs, International Law, Associationism, Anti-Slavery Movement, Peace Movement, League of Nations, NGO subjectivity.

1. Introduction

The revolutions that marked the 18th century consolidated the idea of individual rights, and gradually, rights such as equality, freedom of religion, and freedom of expression were incorporated into constitutional documents. Individuals thus began to become aware of their rights and the need to fight for their defence. Reinforced by the historical context, they then sought association with others, inside or outside their borders, as a way to meet their own needs. Associations began to proliferate that either sought to defend the economic and professional interests of their members or to propagate and fight for their ideologies.

The evolution of the very concept of international law, as well as the process of humanisation that has taken place within it, has resulted in a greater acceptance and development of this interest in individuals, who have been able to harness the resources at their disposal and enhance their importance. Similarly, the increasing importance of public opinion has been a significant factor in improving the effectiveness of actions by associations of individuals and non-governmental organisations. Their influence on the development of international norms has grown stronger over the years, to such an extent that it is possible to say that international law as we know it today would be substantially different without their intervention (García Ruiz, 2007). This process began in the late eighteen century, and it is particularly instructive to study it to understand their current reality, their position, in many cases, as necessary collaborators with the system, and the obstacles posed by their unique status.

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2. The creation of the first associations of individuals: The fight against slavery and the peace movement

It can be argued that the will of the individual has been consistently disregarded and undervalued for centuries. At the domestic level, they were, in many respects, subject to the ruling authorities, without the ability to determine fundamental aspects of their personhood, while the limited regulation in effect at the international level was primarily concerned with states. It was not until the nineteenth century that a combination of different factors gave individuals a greater ability to act. Until then, they only sporadically came together to fight for a cause.

Industrial revolutions, the development of transport and communications, the movements of populations, capital and goods, and the pursuit of new markets all contributed to creating an economic system that transcended national units (Lyons, 1963, p. 9). This new phenomenon of internationalism, initially economic in nature, gradually expanded to different spheres and made states aware that it was necessary for them to coordinate and cooperate with one another in order to improve those sectors. This led to the emergence of the first associations between states, known as international organisations.

Additionally, the revolutions that characterised the eighteenth century consolidated the idea of individual rights, and rights such as equality, freedom of religion, freedom of expression, etc., were gradually incorporated into constitutional documents. Individuals thus began to become aware of their rights and the need to fight to protect them. While states concentrated on purely political exchanges (Stosic, 1964, p. 10), relegating cultural, scientific and social needs to the background, individuals—fortified by the historical context—began to pursue associations with others, inside or outside their borders, as a way to mitigate this shortcoming and meet their own needs. Associations thus began to proliferate in trade, finance, science, education, culture, etc. Basically, these first associations had two primary objectives: to protect the economic and professional interests of their members or to advocate and fight for their ideologies (Stosic, 1964, p. 11). Within this latter group, our analysis focuses on those that sought to protect the rights of individuals, regardless of whether or not they were a member of the association. It was understood that the fight for this protection should not end once it had been guaranteed to the members of the association but should instead continue as long as it was not a reality for all people. As such, we will analyse organisations engaged in a two-fold fight, i.e., against slavery and for peace, setting aside the trade union movement that flourished beginning in the nineteenth century, given that the interests of an association's members decisively—albeit not exclusively—determined its action. As Davies points out, the growth and influence of Non Governmental Organisations (NGOs) has not been linear, but has been influenced by political, economic and social factors (Davies, 2013).

2.1. The fight against slavery

It is estimated that over the course of five centuries—from the fourteenth to the nineteenth century—some ten million men, women and children were transported from their place of origin and used as commodities in the slave trade (Aga Khan et al,

1986, p. 1). This practice was a blatant violation of the most basic human rights and elicited a reaction from those who were beginning to be concerned with their protection (Truyol y Serra, 1998, p. 77). In 1783, a group of Quakers created the "Anti-Slavery Society", which would be responsible for a body of literature attacking slavery and, in particular, the conditions of those enslaved by the British trade. Prior to the founding of this organisation, there had been cases where groups of citizens mobilised against slavery. For example, in 1641, it was the efforts of a group of individuals in the English colony of Massachusetts that led to the creation of the "Body of Liberties", which prohibited slavery in that colony with two exceptions: slaves who had been enslaved for a just cause and foreigners who had sold themselves for economic reasons. Similarly, in Rhode Island, other groups of citizens pushed for a law banning lifelong slavery and mandating that the children of slaves would be freed at the age of 24. (Nchama, 1991, p. 54). Some authors refer to "The Pennsylvania Society for Promoting the Abolition of the Slavery", founded in 1775 in Pennsylvania, as the first anti-slavery society. (Charnovitz,1997, p. 193).

In 1787, the society joined with other individuals and together they established the "Society for the Abolition of the Slave Trade", which began a campaign to outlaw the slave trade in British territories, particularly those of the East India Company. The presence of this association in the British Parliament was embodied in the figure of William Wilberforce, a member of Parliament who acted as a representative of the organisation's demands (Nchama, 1991, p. 56). Thanks to his efforts, a motion for the abolition of the slave trade was tabled in the House of Commons in 1796, and the British slave trade was abolished in 1807.

Once this had been achieved, the attention of the abolitionist movement turned in two directions: First, it focused on the situation in the United States, where organisations with this aim began to appear; and at the international level, the Society wanted to be present at the Congress of Vienna in 1815, which debated a range of issues and considered submissions from private organisations (Thepchatree Prapat, 1985, p.36). The issue of slavery was so debated at length and, on 8 February 1815, culminated in the adoption of a declaration by the powers involved—Austria, Spain, France, Great Britain, Portugal, Prussia, Russia and Sweden—which considered the slave trade to be contrary to the principles of humanity and general morals (Truyol y Serra, 1998, p. 100). This international prohibition was reiterated at the Congress of Aix-la-Chapelle in 1818 and the Congress of Verona in 1822.

The first step had been taken in the fight against slavery: the prohibition of the trade. This proved insufficient, however, and there continued to be slaves, particularly in the colonies, whose leaders denied them the ability to be citizens with the acquiescence of the British government, which was reluctant to intervene in their internal affairs (Archer, 1967, p. 163). The movement, which began by focusing on the fight against the slave trade, had to be gradually transformed to adapt to this reality, until it became an anti-slavery movement in its own right. According to certain authors, it was a genuine human rights movement, in that it addressed abuses in different parts of the world, under different rulers, and was motivated by a sincere concern for the rights of individuals.

In 1823, an important new organisation was established: "The British and Foreign Anti-Slavery Society". At the same time, a campaign was undertaken at different levels, with the circulation of pamphlets, weak calls for action by some newspapers and frequent lobbying in Parliament by a delegation from the society[2]. In parallel, action between local, regional and national organisations in the United States and Great Britain began to be coordinated through the exchange of letters, publications and visits, and the creation of common fora where they discussed actions to be taken. In 1833, the Prime Minister would agree to enact a law for the abolition of slavery in the British Empire, which would come into effect on 31 July 1834 (Keck et al., 1998, p. 44). The abolitionist movement was growing stronger; in 1838, in the United States alone, there were some 1,350 societies and 120,000 to 250,000 members. One of the strategies resulting from the connection between the British and American societies was known as information politics, the aim of which was to promote change through factual information. Different publications appeared, the most important of which were "American Slavery as it is: Testimony of a thousand witness", which sold one hundred thousand copies in its first year, and "Uncle Tom's Cabin", which in 1852 sold one million copies in Great Britain alone (Keck et al., 1998, p. 47).

In 1839, the "Anti-Slavery Society" was formally established, and seven years later, it consolidated with "The Aborigines Protection Society", becoming the leading voice of the cause. But the abolitionist movement did not stop with these domestic actions; as early as 1815, with the Congress of Vienna, it sensed its importance as a means of putting pressure on governments. Accordingly, not only was it present with delegates at various international conferences, but in 1840 and 1843, it organised and held conventions in London, which were attended by delegates from numerous countries. The Convention of 1840 was intended to strengthen the ties between the British and American societies, but in reality, it also revealed the differences between them[3]. Nevertheless, most of the literature agrees that this convention paved the way for the agreement between the great European powers a year later, when they signed the Treaty of London, under which Austria, France, Great Britain, Prussia and Russia recognised a reciprocal right of access to ships suspected of being involved in the slave trade.

[2] In this regard, it is necessary to mention the role played by prominent individuals in official positions, forced to balance their moral principles against slavery with the political and economic realities of the empire: Officials in the Slave Trade Department of the Foreign Office: Their job was to negotiate treaties, oversee their implementation and coordinate international efforts to combat the slave trade. Their commitment and diligence were instrumental in advancing the abolitionist agenda at the diplomatic level. Judges and Commissioners of the Joint Commission Tribunals: Established by bilateral treaties, these tribunals were composed of judges and commissioners from different nations. Their function was to try cases of captured ships involved in the slave trade. The integrity and determination of these individuals were essential to ensure that slave traders were prosecuted and that freed slaves received protection. (Hamilton et al., 2009).

[3] The decision of the British majority not to accept women as American delegates and to treat them as mere spectators sparked outrage from the American delegation. (Keck et al., 1998, p. 46). The suffragette movement would later consider this to be a decisive event in the origin of their fight.

The influence of the "Anti-Slavery Society" extended to the push for the ratification of different conventions that abolished slavery in Africa in the 1880s. The General Act of the Berlin Conference on West Africa of 26 February 1885 and the General Act of the First Brussels Conference of 1889 can be mentioned in this regard. Both, however, are characterised as mere declarations of intent. As such, the Second Brussels Anti-Slavery Conference on 2 July 1890, held at the behest of the "Anti-Slavery Society", is particularly significant, as its General Act establishes—for the first time—means for effectively enforcing its provisions by creating a permanent body, "The International Slavery Bureau", responsible for the control and surveillance of the Red Sea and Indian Ocean area (Korey, 1998, p. 118)[4]. As Peter Archer has observed: "*This was a classic case of a reform instituted by governments through the pressure of unofficial organizations*" (Archer, 1967, p. 164).

2.2. The fight for peace

Prior to the 18th century, a fatalistic view prevailed that regarded war as an inevitable phenomenon beyond human control. From the 1730s onwards, however, this perspective began to be challenged, leading to a debate about the possibility of preventing war (Ceadel, 1996). In the wake of the Napoleonic Wars, citizens in different parts of the world began to question and debate the very existence of war, becoming convinced of the need to fight for peace. These citizens gradually came together and created organisations with this aim. America and England were the stage for their creation, nearly simultaneously and independently in 1815 and 1816. The first three organisations were created in the United States in 1815, within a period of five months and without any coordination between them: the first, the "New York Peace Society", was founded on 16 August in New York by some twenty men led by David Dodge, with the aim of promoting peace; on 2 December, two friends formed the "Society for the Promotion Peace" in Ohio; and on 28 December, Noah Worcester established the "Massachusetts Peace Society" in Boston. Those same aims—but once again without any awareness of the others' existence—were the driving force behind the creation of the "Society for the Promotion of Permanent and Universal Peace" in 1816 in England by a group of Quakers (Whitney, 1972, p. 10). In 1828, in the interest of greater effectiveness, the three American societies mentioned above decided to consolidate, resulting in the "American Peace Society" (Lange, 1926, p. 366).

All of them, established independently in two countries, shared common problems and characteristics:

I.- Religious origin: As in the case of the fight against slavery, Quakers were at the forefront of this peace movement. Two of the American societies and the English

[4] Despite these efforts, Miers notes that slavery and similar practices continued in various parts of the world, adapting to new forms and contexts. His analysis underlines the complexity of completely eradicating these practices and the need for continued and adaptive vigilance on the part of the international community (Miers, 2003).

society were founded by members of this ideology, influencing the characteristics and expansion of these first organisations. Although they claimed to be non-sectarian and open to all Christians, there is no question that their beliefs shaped these first organisations, embroiling them in a dilemma that sparked numerous debates and conflicts. Quaker doctrine is characterised by a line of thought based on non-resistance, i.e., they believe that all war is incompatible with Christian thought, including defensive warfare. Christians, however, although they maintain this opposition to war, believe that it is justified in certain circumstances (Lyons, 1963, p. 310). This divergence limited the growth of these first organisations, caused serious disagreements within the "American Peace Society" and led to the creation of new organisations with the same aim but a different starting point.

II.- Methods of action: The primary instrument available to these organisations was publicity. They held meetings, usually on an annual basis, at which they examined their objectives and designed the strategy to be followed, a strategy that basically consisted of intensive propaganda and publicity campaigns. The central idea was to fight for the development of a general feeling in favour of peace, and it was therefore essential to expand the movement by creating new organisations and making it more widely known to the general public. With regard to the former, it is estimated that in 1820, there were some one hundred organisations in England and thirty-three in the United States. The activity carried out by these organisations led to the creation of the "Société des Amis de la Morale Chrétien et de la Paix" in France in 1821 and the "Geneva Peace Society" in Switzerland in 1830.

As for their attempts at outreach, different methods were put into practice. The distribution of pamphlets became one of their hallmarks, but as the movement grew, there was a need for greater sophistication, and thus, two newspapers were born: the British "Herald of Peace" in 1818 and the American "Harbinger of Peace" (later "Advocate of Peace"), which became the main propaganda vehicles of the peace movement during the nineteenth and early twentieth centuries (Lyons, 1963, p. 311).

III.- Objectives: It can be argued that the fight for peace waged by these societies has two aspects: in a negative sense, a not-doing, the rejection of participation in war; and in a positive sense, the pursuit of alternatives to confrontation (Lyons, 1963, p. 310). The idea of bringing disputes between states to the courts rather than settling them on the battlefield began to tentatively emerge in the late eighteenth century and was present in the pamphlets and actions of the American peace societies, one of the principal objectives of which was "*to increase and promote the practice already begun of submitting national differences to amicable discussion and arbitration*", as was stated by William Lad, one of the architects of the consolidation of the three American organisations into the American Peace Society (Lyons, 1963, p. 310). As a precedent for the implementation of this idea, they invoked the Jay Treaty of 1794, by which the United States and Great Britain agreed to have their disputes settled by the binding decisions of an arbitration commission. Over time, advocating for the use of arbitration in the event of disputes between states became one of the primary rallying points of the movement.

Apart from independent and individual actions[5], the organisations began to see the need for dialogue among themselves in order to improve the functioning of the cause, which led to the need to hold congresses involving members of the movement: what became known as peace congresses. We are referring to the Congress of London, 1843; Congress of Brussels, 1848; Congress of Paris, 1849; Congress of Frankfurt, 1850 and Congress of London of 1851; and in 1853, two congresses were held in Manchester and Edinburgh following the same approach as the one held in London in 1851, highlighting the crisis that was being experienced by the movement. All this was set against the historical backdrop of the Crimean War, the end of which was determined by the Paris Peace Congress in 1856. Two of the English members of Parliament who had led and acted as spokesmen for the peace movement in the British Parliament, Bright and Cobden, pressed for including a clause in the peace treaty that provided for recourse to arbitration. As a result, the British representative, backed by the work that a committee of the society had been carrying out in Paris, presented the issue to the Conference, leading to Protocol 23, which established "*that states between which any serious misunderstandings may arise, should, before appealing to arms, have recourse, so far as circumstances might allow, to the good offices of a friendly power*" (Lyons, 1963, p. 320).

It can be argued that the Paris Peace Congress closes a first cycle in the evolution of these peace societies, known as the first peace crusade (Beales, 1931, p. 85), full of successes and mistakes. The movement's weaknesses were many and decisively determined its evolution.

The first of them is based on their conception of international relations. The state was seen as a mere extension of the individual, and they therefore claimed that "*the intercourse between countries is nothing but the intercourse between individuals in the aggregate*", As stated by Cobden in 1849 (Beales, 1931, p. 85). This lack of understanding of the complexity of international life and the characteristics of the state deprived the movement of a vision of reality undistorted by excessively utopian pretensions.

It was also not possible to overcome the differences arising from their religious origin. First, there was no consensus on the recourse to war, and disagreements persisted over whether the movement should adopt a total opposition to war or whether it should be accepted as a necessary evil in certain circumstances. Second, although the societies claimed to be non-sectarian and open to all religions, they nonetheless ignored other religions and alleged that their own was the sole basis for universal peace.

The movement focused on raising public awareness, an objective that both positively and negatively determined its importance, negatively insofar as it did not consider governments among the targets of its pressure, which made it impossible for

[5] In 1841, in Manchester, fearful of an imminent war, citizens sent numerous resolutions and letters to the French government calling for an amicable solution.

it to have a greater presence in international life. However, this obstinate focus on the public succeeded in creating a state of opinion in favour of peace as well as a greater awareness than had hitherto been achieved by the religious minorities that monopolised pacifism (Lyons, 1963, p. 318). On the positive side, the movement created a substantial body of literature on a range of issues in an attempt to promote its programme of action, advocating for the reduction in armaments, the codification of international law as the basis for decisions made by an international tribunal, and in particular the need for alternative means of settling disputes, with an emphasis on the viability of recourse to arbitration as an alternative to war. This idea had a broad impact, and from 1794 to 1854, fifty states settled their disputes in this manner (Beales, 1931, p. 93). As Lyons has observed, "*It would of course be too much to attribute this solely, or even mainly, to the activities of the peace enthusiasts, but it cannot be denied that they had done much to make the idea familiar and palatable*" (Lyons, 1963, p. 318).

It was not until 1867 that there was a revitalisation of the movement, or a second peace crusade, characterised by the creation of new peace societies. Paris, London and Geneva were at the centre of this new wave. In Paris, the "Ligue de la paix" and the "Societé francaise de l´arbitrage entre nations" were created, while in Geneva, Charles Lemonnier founded the "Ligue internationale de la paix et de la liberté", which focused on finding ways to implement and enforce international law. One of its branches was established in London by Randal Cremer, who introduced the movement to the working classes—from which he himself had come—when he founded the "Workmen's Peace Committee" three years later (subsequently transformed into "The International Arbitration League"). The action of Randal Cremer and Fréderic Passy was crucial to the evolution of the movement; aware of their privileged position as members of Parliament, they decided to revisit an idea that had previously been discussed and jointly organise a meeting of French and English members of Parliament, which took place in Paris on 31 October 1888 and was the spark for the First Interparliamentary Conference, held in Paris in 1889. The main objective of the meeting was to make the members of Parliament in attendance aware of the need to pressure their respective governments to sign binding arbitration treaties, as well as launch a campaign for the inclusion of an arbitration clause in all trade treaties[6].

This coming together of members of Parliament can be understood as a new aspect of the movement. While the first phase had been hampered by the scant attention given to governments, this second crusade was characterised by a more practical vision of the international reality, focused on making the ideas that had previously been developed more concrete and putting them into practice, for which it was necessary to place pressure on governments, the ultimate architects of international law. This pressure could be applied at two levels: from the inside, through the presence of members of Parliament involved in the movement in decision-making bodies; and from the outside, through the peace congresses that characterised the first stage of the movement and helped to raise public awareness.

[6] It was attended by 96 delegates from France (55), Great Britain (30), Italy (5), Belgium (1), Denmark (1), the United States (1), Spain (1), Hungary (1) and Liberia (1). (Lyons, 1963, p. 318).

We therefore prefer to speak of two complementary approaches that contributed to giving the movement a greater and more effective presence in international life. The reason for this is that while the peace congresses were concerned with discussing and developing abstract ideas on international justice, the interparliamentary conferences sought to avoid utopian excesses and debated how to put less pretentious ideas into practice, as well as how to embark, step by step, on the path towards achieving those general objectives. Thus, as Lyons observed, "*one was essentially political, the other essentially propagandist; one practical, the other idealistic; one limited in scope, the other wide ranging*" (Lyons, 1963, p. 329).

Almost simultaneously with the Interparliamentary Conference, the first of a series of congresses that would shape the end of the nineteenth century and the beginning of the twentieth century was held in Paris[7]. All of them have common characteristics that could be grouped as follows:

A.- Attendees: Delegates were appointed by religious societies and organisations, engaged in working towards peace or arbitration, as well as individuals who, without belonging to the societies sending delegates, were particularly interested in this subject.

B.- Procedure: The congresses usually lasted about three days and involved the convening of thematic sections and committees and discussions of the presentations made. These discussions resulted in the adoption of resolutions on the issues for which there was a final consensus. Typically, the issues that were the focus of both debate and agreement were the insertion of arbitration clauses in international treaties, the establishment of a permanent international tribunal and disarmament (Whitney, 1972, p. 170). As early as 1889, the connection between the interparliamentary conferences and the peace congresses—held simultaneously, in both time and place—became apparent. Notably, in 1892, the movement became a permanent organisation, through the creation of the "International Peace Bureau". With both types of congresses being held almost annually, the nineteenth century came to a close[8].

Both those first anti-slavery associations and this peace movement naturally laid the foundations for their actions on pillars that have stood the test of time: the need for coordination between them, promotion of their actions in order to engage the general public, presence at international conferences and the pursuit of effective methods to put pressure on governments.

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[7] A total of twenty-four congresses were held between that date and 1926. The one in Paris was followed by congresses in London, 1890; Rome, 1891; Bern 1892; Chicago, 1893; Antwerp, 1894; Budapest, 1896; Hamburg, 1897; Paris, 1900; Glasgow, 1901; Monaco, 1902; Rouen, 1903; Boston, 1904; Lucerne, 1905; Milan, 1906; Munich, 1907; London, 1908; Stockholm, 1910; Geneva, 1912; The Hague, 1913; Luxembourg, 1921; London, 1922; Berlin, 1924; and Paris, 1926.

[8] By the end of the nineteenth century, both peace congresses and interparliamentary conferences were beginning to be institutionalised, establishing permanent bodies. Additionally, there were some 425 organisations worldwide. According to Beales, these organisations tended to consolidate in Germanic countries and to multiply and become independent in Latin countries, while Anglo-Saxon countries opted for the federation of their local organisations. (Beales, 1931, p. 242).

3. Relationship of non-governmental organisations with the League of Nations

In the early twentieth century, private organisations continued to grow not only in number but also in terms of their objectives, broadening their field of action. Accordingly, while some 132 organisations were founded during the course of the nineteenth century, within just twenty years—in the period from 1900 to 1919—some 140 private organisations were created (Chavez-Pirson, 1991, p. 6). Furthermore, a wide range of factors contributed to a gradual transcending of borders and to an awareness of the need to establish connections between states in order to achieve objectives of a primarily economic, scientific or technical nature. It is in these spheres that the role of non-governmental organisations and their relationship with international organisations can clearly be observed.

This is because non-governmental organisations were often instrumental in the creation of certain international organisations. This influence was exerted in two primary ways:

I.- Non-governmental organisations taking the initiative to launch campaigns calling for the creation of an international organisation in a given sphere, as was the case with the establishment of "The International Union for the Protection of Industrial Property", "The Union for the Protection of Literary and Artistic Work", "The International Relief Union", and "The International Institute of Agriculture".

II.- Transforming what had started out as a non-governmental organisation into an international organisation, as was the case with "The International Bureau of Education", "The International Sugar Office" and "The International Tin Committee" (Cromwell-White, 1968, p. 245).

The relationship between international organisations and private organisations was decisively established with the creation of the League of Nations, which was intended to be a decision-making centre and a forum for discussion between states on issues of international importance; private organisations were well aware of its importance and, as we shall see, endeavoured to play a role in its functioning.

3.1. Birth of the organisation: the contribution of non-governmental organisations

Following the Second Hague Conference, the efforts of the peace movement focused on preparing for the upcoming third conference and developing the provisions established. Along these lines, it is important to mention the work done by the Universal Peace Congress held in London in 1908, which laid the foundations for a "League of Nations", which they understood required the creation of a Legislative Council to draft a Code of International Law, a judicial authority to supervise it, an Executive Council to oversee common interests and a reduction in armaments (Beales, 1931, p. 274).

All the good intentions of the peace movement lacked any effective implementation. Thus, although numerous arbitration treaties were reached between states, they were

essentially bilateral in nature and failed to institutionalise arbitration as a compulsory means of settling disputes, which made it very difficult to maintain peace in a political situation beset by confrontations. Nor had the idea of disarmament become a reality, which meant that states had not only the will, but also the ability to move towards war. This inevitably erupted in 1914, and like all the other sectors of reality, the peace movement was engulfed in its dynamics. The small steps taken earlier, the pressure it had begun to exert and its excessive triumphalism were silenced by the demands of the new world war, the ultimate expression of its defeat. Many of the objectives that had inspired the movement's actions in the preceding years were rendered meaningless, and it shifted from seeking to exert as much influence as possible on states to essentially fighting for its own survival. Some of the foundations of the movement's strength, such as cooperation between countries or the belief in the achievement of certain ideals, were superseded by the reality and the frustration it caused. As a result, there was a change in the way the movement acted as well as in its objectives. With regard to the former, it was particularly difficult to maintain the level of coordination between organisations in different countries that had previously been achieved, as it was practically impossible for the organisations to continue their activities[9]. International congresses were no longer the rule but the exception. Hence the merit of the one held in 1915 in The Hague, which brought together pacifists from many countries and drafted what is known as the "Minimum Programme for a Lasting Peace", which included arbitration as a means of settling disputes, the creation of a Permanent Court of International Justice, a reduction in armaments and work by peace conferences towards the peaceful organisation of the League of Nations.

The aims of the movement therefore evolved in an attempt to respond to the needs of the time, whereby emphasis was placed on two main points: first, to raise public awareness that the peace treaty to end the conflict should be dictated by reason rather than rancour; and second, the need to create a League of Nations as a way to prevent a new conflict (Beales, 1931, p. 279). Of particular importance in this regard was the work carried out by the "International League of Women for Peace and Liberty", created in 1915 by a Congress that brought together some eleven hundred women from twelve countries, focusing its debates on the pursuit of solutions for the establishment of a lasting peace[10]. Its resolutions were communicated to governments and had a particular impact on

[9] Despite these difficulties, a number of organisations were created in 1914, such as "The Union of Democratic Control", in Great Britain, which was predominantly national in character, the "League to Enforce Peace" in the United States, and "L´Anti-Oorlog-Raad" in the Netherlands. (Lange, 1926, p. 414). The organisations based in neutral countries found it easier to continue their activities.

[10] This organisation was part of the international suffragette movement, which had its origins in women's involvement in the anti-slavery movement in the United States and Great Britain. The British refusal to allow women to participate in the World Conference of 1840 prompted the convening of the meeting held in 1848 in Seneca Falls, New York, which passed a resolution in favour of universal suffrage. "The International Women Suffrage Association" (IWSA) was founded in 1904 and launched a campaign with this aim. Different trends shaped the international suffragette movement, developed within the "World's Women's Christian Temperance Union", the Second Socialist International, the "International Council of Women" and the "Suffragettes", which advocated for civil disobedience. International connections between the different branches of the suffragette movement contributed to the exchange of ideas, tactics and strategies. (Keck et al., 1998, p. 51-58).

some of them, such as the American, with the approval of its president, Wilson, who went so far as to state "*I have studied these resolutions and I consider them the best proposals that have been formulated by any association*". Many of these resolutions inspired Wilson's 14-point programme, which envisaged the creation of a League of Nations, as stated in its final point: "*A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike*". (Beales,1931, p. 281). One of the most significant legacies of women's involvement in the League of Nations was the solidification of transnational feminist networks within global politics. Although women were largely confined to humanitarian and social roles, their participation helped establish feminist internationalism as a political force on the world stage. Women's participation in the League set a precedent for cooperation across national borders, enabling a more organized feminist movement in the post-war period. Although the League of Nations did not grant women prominent roles in high-level diplomacy, their contributions had a lasting impact on how humanitarian and social issues were addressed in international politics such as Creation of structures to address social and gender issues: Women's involvement in areas such as human trafficking, labour rights, and public health laid the foundation for institutional mechanisms within future international organizations to tackle these issues or the Redefinition of Internationalism (Sluga, 2013).

As early as the outbreak of the First World War, it became clear that measures needed to be taken to prevent its repetition. In 1916, the "League to enforce peace" organised a conference in Washington, at which President Wilson first presented his proposal to create an organisation for relations between states, emphasising its universal character, as a true League of Nations (Lange, 1926, p. 418). It can be argued that this proposal was a serious one and that it forced other political leaders to take a position on it. At the end of the conflict, the Paris Peace Conference held in 1919 and 1920 focused on drawing up treaties to end the war with the different adversaries (Truyol y Serra, 1998, p. 128). It was attended by representatives of a number of private organisations involved in the fight for peace, the protection of minorities and universal suffrage. However, the area in which it had the greatest impact was the protection of workers' rights (Charnovitz, 1997, p. 216).

On 28 April 1919, the Covenant of the League of Nations was drafted. People were convinced that the first and last global war—known as "the war to end all wars"—had taken place, and hopes for a better world rested, as Ferencz indicates, on two pillars: the League of Nations and legal norms (Ferencz, 1980, p. 25). The most basic objectives established by the organisations that were part of the peace movement were to some extent satisfied by the Covenant. Arbitration was regulated, a judicial authority—the Permanent Court of International Justice—was established, and arrangements were envisaged for carrying out the reduction in armaments (Articles 8, 12 and 13 of the Covenant of the League of Nations).

As history has unfortunately shown, the Covenant was nothing more than a humble step that proved to be useless in averting a new war with devastating consequences. The euphoria, however, affected some of the movement's organisations, which saw their aspirations as

having been fulfilled and eventually disappeared[11]. Those that remained exhibited a critical and non-conformist attitude and took up a new struggle to improve the regulation of the issues addressed in the covenant and to be present in the implementation of its provisions.

3.2. Functioning of the organisation: presence of non-governmental organisations in the League of Nations system

The League of Nations uses the term "unofficial" or "non official organizations" to refer to the non-state actors with which it came into contact[12]. The Covenant of the League of Nations did not go so far as to expressly provide for how non-governmental organisations in general should be treated. With the exception of an explicit mention of the Red Cross in Art. 25[13], the only similar reference can be found in Article 24, which established the following: "*1.- There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League. 3.- The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League*".

Article 24 thus refers to "International Bureaux" previously created by a treaty, as well as those created subsequently. Initially, it appears that the drafters were thinking of intergovernmental bureaux or organisations. Because the role of NGOs is not expressly mentioned, it was left up to the Council's interpretation of the article. Consequently, it is not possible to speak of a single approach to NGOs, and two basic phases can be identified in the regulation of their presence in the League of Nations.

3.2.1. Until 1936: Non-governmental organisations as "advisory members"

There was no formal regulation regarding the role of NGOs, making it necessary for the Council to make a pronouncement in this regard. When speaking of the importance of NGOs in this first phase, it is necessary to differentiate between two levels of action. This is because while the bodies of the League, in particular the Council, debated and issued resolutions on the place of private organisations in the system, they were able to make *de facto* inroads and become present in its functioning.

With regard to the formal approach, the Council's interpretation of Article 24 can be divided into three distinct stages:

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[11] This was the case with the "Anti-Oorlog Raad", which kept the movement alive during the war but did not survive its end (Beales, 1931, p. 318).

[12] The term includes for-profit and not-for-profit organisations as well as domestic and international organisations (Chavez-Pirson, 1991, p. 2).

[13] This article establishes that "*The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world*".

I.- First Phase or *stage of enthusiasm* of the League of Nations towards NGOs. The attitude of the League of Nations towards NGOs is very positive, and there is confidence in the need for cooperation with them, in order to improve the functioning of the organisation. In 1919, under the terms of this article, "The International Bureaux Section" was created within the Secretariat of the League of Nations, responsible for implementing the decisions of the Council, which placed certain international bureaux under the control of the League and which, from 1921 to 1938, published the "Handbook of International Organizations", which would become one of the clearest manifestations of cooperation between the League and non-governmental organisations[14].

The League's intentions towards private organisations were thus shown to be excessive and difficult to achieve, as they were based on a complete lack of knowledge of their reality. This shortcoming led "The International Bureaux Section" to undertake the task of compiling information and documents concerning the sphere of which it was ignorant, consisting of private organisations that were not under the League's control, which comprised the vast majority. "The Union of International Associations" (UIA) took on a special role as a source of information on private organisations[15]. In 1919, the Section carried out a mission at its Central Bureau, and its final report emphasised the need to classify the different existing international associations and bureaux, making special reference to their ability to influence. It was at this moment that the UIA became aware of its importance and asked the League of Nations for financial assistance and official recognition. Its demands for recognition included being considered as the main bureau of private organisations, as well as the granting of a legal status to international private associations (Chavez-Pirson, 1991, p. 11). The report also advised the creation of a committee to establish the general principles according to which private international organisations would be recognised.

The League of Nations initially followed these recommendations; at the Council meeting held in San Sebastian, a resolution was adopted that gave financial assistance to the UIA for the publication of the "Code des vouex" and entrusted "The Institute of Intellectual Cooperation" with examining the general principles relating to their recognition[16]. The

[14] This publication included an Appendix in which the International Bureaux Section of the Secretariat of the League of Nations published a quarterly bulletin with extracts concerning the different activities carried out by non-governmental organisations, such as their conferences and meetings. (Stosic, 1964, p.160). The reality limited its activity, as it was not until two years later that an international bureau, "The International Bureau for Assistance", was placed under the control of the League.

[15] This is a non-governmental organisation with the objective of promoting non-governmental organisations, created in 1910 by the World Congress of International Associations held in Brussels, which included the participation of 132 international associations and 13 governments. (Charnovitz, 1997, p. 194).

[16] In this regard, there was a proposal that the Director of the UIA presented to the Sub-Committee on Intellectual Property, which proceeded to request information from governments concerning the legal status they possessed in their respective legislations. A questionnaire was also sent to private organisations requesting their opinion on the issue. The results of these actions were communicated to the Committee of Experts for the Codification of International Law, which decided to withdraw the issue from its agenda. It was argued that it was difficult to reach any conclusion on a subject that required in-depth analysis and that it was not a priority at the time. (Chavez-Pirson, 1991, p 13).

final report presented to the Council Session on 1 March 1921 paid special attention to this issue, stating the following: "*...efforts of the Council to encourage the activities of private international organizations are entirely approved by the Assembly.... The Covenant is silent on the relations of the League as to what it may be called voluntary associations of a private character, except the Red Cross organizations. But from the general tone of the Covenant, we infer that the League should exercise its good offices in the interest of all international undertakings that will contribute to the advancement of good will and mutual understandings among nations…*" (Chavez-Pirson, 1991, p. 14).

On 21 May 1921, the Secretary General issued a memorandum entitled "The application of Art. 24 of the Covenant to International Bureaux", in which it broadly interpreted the concept of an "International Bureau" as encompassing the following:

a.- Public International Bureaux, established independently of the League by international conventions or governmental agreements;
b.- Quasi Public International Bureaux, not established by international conventions but with an international character insofar as governmental representatives attended their conferences; and
b.- Private International Bureaux, in the narrow sense.

About the scope of application of Art. 24 and as there were no doubts regarding its applicability to the first category, it establishes that "*...the League may... take under the direction bureaux belonging to the second category which might receive the same privileges as the public bureaux. Bureaux in the third category can hardly be regarded as within the scope of this Article*" (Chavez-Pirson, 1991, p. 15). However, at its thirteenth session, the Council opted for a broad interpretation of Art. 24 when it adopted the Report of 27 June 1921, which stated the following: "*In view of the fact that the Covenant makes no mention of those international bureaux which are not created by a treaty or by a general agreement, the Council decided to allow a wider interpretation of article 24 and to make it possible for the patronage of the League to be given to all international bureaux; at the same time it defined the conditions to be fulfilled by the non-public bureaux; and the extent of the direction to be exercised by the League over them*" (Pei-Heng, 1981, p. 36).

These good intentions, however, failed to materialise in practice, as no private organisation would ever be placed under the control of the League of Nations. Nonetheless, this open formula for cooperation was reflected in the establishment of permanent relations between the Secretariat, committees and commissions of the League of Nations and private organisations.

II.- Second Phase, July 1923: In response to requests for recognition addressed to the League of Nations by private organisations (such as "The International Cooperative Alliance" and numerous women's organisations), it became necessary to submit a report to the Council on the interpretation of Article 24 and its application to private voluntary organisations or "unofficial organizations". Ultimately, the Council understood that Art. 24 could only be applied to official intergovernmental bodies, stating the following: "*The Council, while emphasizing the value which it sets on the collaboration of unofficial*

organizations in the study of specific questions, and on its freedom to solicit the opinions of these organizations, without prejudicing their autonomy, Is of the opinion, 1.- That it is not desirable to risk diminishing the activity of these voluntary international organizations, the number of which is fortunately increasing, by even the appearance of an official supervision; 2.- that Article 24 of the Covenant refers solely to international bureaux which have been actually established by general conventions" (Pei-Heng, 1981, p. 37).

At the same session, the Secretary General requested instructions on how to deal with communications sent by "unofficial organizations", as until that point, he had been responsible for forwarding communications sent by international associations to the Assembly or the Council. In the end, the Council decided that organisations should send those communications directly to governments and considered it inappropriate and constitutionally incorrect for the Secretary General to act as an intermediary. This decision provoked an immediate reaction from the UIA, and in December 1923, the Council decided the following: "*The Council of the League, while confirming the principles laid down in July last in its decision that the documents of non-official associations should not be forwarded to governments by the Secretary General (...) in order that Members of the Council might be informed of the nature of any communications addressed to the League by non-official international associations (...) Instructs the Secretary General to prepare and present to the Council at the beginning of each of its sessions a list of any such communications which he may have received, stating the international organization from which they emanate and the subject to which they refer*" (Chavez-Pirson, 1991, p. 17-19).

This allowed organisations to submit documents directly to governments, thereby reducing the work of the Secretary General to merely coordinating their processing.

III.- Third Phase, 1928: The Council reaffirmed its earlier decision excluding private organisations from the scope of Article 24, stating the following: "*... The institutions covered by Article 24 falls into three categories, namely: 1.- international bureaux established by collective treaties before entry into force of the Covenant, 2.- international bureaux established by collective treaties since its entry into force or which may in future be so established, 3.- all Commissions for the settlement of questions of international interest created since the entry into force of the Covenant, which may in future be created. Hence, the institutions in question must be official and not private institutions...*" (Chavez-Pirson, 1991, p. 19).

As a result of this final decision, NGOs were never able to address the Assembly or the Council orally and were only rarely received by the President of the Assembly.

Nonetheless, this evolutionary process aimed at gradually reducing the formal importance of private organisations within the League of Nations did not materialise in practice until the final years of the organisation's existence, and it is through informal relations that private organisations found their place in the League of Nations and comfortably developed their ability to act. In practice and during those years, representatives of private organisations were considered to be advisers and called "advisory members":

a.- They were allowed to send their representatives to the League's commissions, committees and sub-committees, which meant that although they were not allowed to intervene; they were able to present reports, initiate discussions or propose resolutions. The presence of private organisations on the Communications and Transit Committee, the Advisory Committee on Social Questions, the Advisory Committee for the Protection of Children and Young People, and the Committee for the Suppression of the Trafficking of Women and Children was particularly successful (Stosic, 1964, p. 157).

A type of interconnection thus developed between the League and organisations, in the sense that just as private organisations sent their representatives to the bodies of the League, the latter was present at the international conferences held by those organisations. The extent of this reciprocal relationship was described by the League in one of its publications as follows: "*Members of the Secretariat attend conferences in all parts of the world for the purpose of giving and gaining information. They are not able to express opinions or to take part in decisions but they can often usefully draw attention to facts bearing on the subjects of discussion and can acquaint themselves with facts and trends of opinion of which the League should be aware. Secretariat officials have attending meetings of the Interparliamentary Union, international women´s organizations, the Institute of Pacific Relations…*" (Cromwell White, 1968, p. 248). This interconnection was facilitated by the exchange of information that materialised with the publication of the "Handbook of International Organizations" and the "Quarterly Bulletin of Information on the Work of International Organizations".

b.- On numerous occasions, the League received reports from private organisations. In addition to those sent by these organisations *motu proprio*, there were also cases where the League asked them to prepare reports on very specific topics. The League therefore asked different private organisations to produce reports on issues such as peace and disarmament, drug trafficking and the status of women in the world. These reports were eventually published by the League (Cromwell White, 1968, p. 250).

c.- They were represented at certain international conferences sponsored by the League, regarded by authors such as Pickard as a revolutionary phenomenon (Pickard, 1956, p. 45). Indeed, this represents a break with the trend in how private organisations had previously been treated. Of particular significance is the image described by Blaisdell, alluding to the practice of the League of Nations: "*where representatives of non-governmental organizations competed for seats each day with the tourists*" (Pei-Heng, 1981, p. 34). This practice continued at the first conferences to which private organisations were invited, provided they were in a position to contribute information or expertise to the League. This was the case, for example, at the World Economic Conference held in 1927, which was attended by 194 delegates and 157 experts, eleven of whom were appointed by the Council, including members of private organisations. It was not until 1931, with the Conference on Limiting the Production of Narcotic Drugs, that discussions began regarding the need to give special consideration to the private organisations in attendance. It was at this conference that the right of private organisations to reserved seating and access to documents was established for the first time (Chavez Pirson, 1991, p. 32).

In 1932, the Conference on Disarmament was held, which attracted a great deal of interest from private organisations, given the peace movement's tradition of fighting for its achievement. For this reason, in 1931, many private organisations approached the Secretariat and other bodies of the League in order to make their position known. This was because, for the first time, their representatives were allowed to address governments at the Plenary Session for the Public Hearing of Public Organisations and a procedure was established for handling submissions from organisations to governments.

3.2.2. After 1936: NGOs as "correspondents"

The attitude of the League of Nations towards private organisations becomes much more reserved and restrictive, not only in theory, but also, for the first time, in practice. The practice of using NGOs as advisers was abandoned; they were instead described as "correspondents", significantly reducing their privileges because they only participated in the work of the committees when they had a special expertise in the subject and only if they were invited to do so.

The situation of private organisations presents unique characteristics if we are speaking of specialised agencies of the League, such as the Nansen International Office for Refugees or the International Labour Organisation (ILO). The latter exhibits a clear dependence on private organisations (Cromwell White, 1968, p. 75-93). Since its creation in the aftermath of the First World War, that ILO has given a significant role to private organisations. Its constitution placed the representatives of governments, business owners and workers on an equal footing. Consequently, while the latter pushed for changes to the regulation of certain issues and business owners advocated for the status quo, it was government representatives who maintained the balance of the system. Each and every one of these subjects was therefore essential to the functioning of the organisation, to the extent that authors such as White understand that without the presence of workers, who are represented primarily by the "International Federation of Trade Unions", the ILO would not have been able to function effectively, arguing the following: "*It is no exaggeration to state that if the International Federation of Trade Unions had decided to cease cooperation with the ILO, that Organization would have become a lifeless shell, if indeed it had been able to exist at all*"[17].

[17] White specifically singles out the "International Federation of Trade Unions", which in the period prior to the Second World War acquired particular significance. It was an organisation that accepted workers of all nations, faiths and political opinions and was therefore entitled to represent workers as a whole. From the earliest days of the ILO, it exerted a decisive influence. It is credited with the acceptance of Germany and Austria by the ILO and the convening of the Washington Conference, the first ever held by the ILO, as well as with exerting the necessary pressure for the national ratification of the agreements drawn up within the ILO. (Cromwell White, 1968, p. 81). The way it acted was to discuss issues that were on the agenda of the Organisation. Its influence was not limited to the purely labour-related sphere, and its intervention is considered by some authors to have been crucial to the creation of the High Commissioner for Refugees in 1933. (Stosic, 1964, p. 160).

Indeed, as we have seen, the position of private organisations in the system experienced many upheavals; until 1936 they had a practical importance that was not reflected in the restrictive legal regulations, which tended to ignore them. Despite a positive attitude towards those organisations, they were eventually eliminated from the functioning of the system, both in theory and in practice. The factors behind this change in the League of Nations' attitude are diverse. White sees two main reasons for this development:

a.- The League's desire to refrain from addressing political issues, which were at the heart of the private organisations' demands; and
b.- As a certain way of proceeding became established, officials were reluctant to accept proposals that implied a change in this way of proceeding or that simply involved additional work (Cromwell White, 1968, p. 254).

Bertram Pickard believes that this change could be due to, among other reasons, the gradual increase in the number of non-governmental organisations and their great experience and technical knowledge, sometimes superior to that of government delegates. This, together with a growing bureaucratisation of the League and the tensions that existed at the time, contributed to a more reserved attitude towards private organisations (Pickard, 1956, p. 54).

Be that as it may; by analysing the role of organisations in the League of Nations, it is possible to draw a conclusion that is particularly important when considering the position of non-governmental organisations in other international organisations. Until 1936, with the exception of the first two years, there were restrictive legal regulations on the status of non-governmental organisations, which were not considered to fall within the scope of application of Article 24. Nonetheless, that was the period when they were most important in practice, in the day-to-day functioning of the League. As Pickard observes, "*the restrictive interpretation finally given to article 24, while having an important bearing perhaps on the question of the juridical status of NGOs had little or nothing to do surely with the form of consultation between the League and NGOs*" (Pickard, 1956, p. 25).

This sparked a debate that is still hotly contested today: to what extent do non-governmental organisations need to have their ability to act legally regulated? Would this regulation be a restriction on their scope of action?

4. The role of NGOs in modern International law

4.1. Influence of NGOs on international reality

The term "non-governmental organization" came into general use in 1945, when it was included in Article 71 of the United Nations Charter, even though the Charter did not provide a definition. Prior to this, various terminologies proliferated: "international associations" (as used by the UIA, founded in 1910) and "private organisations", a term widely adopted in the context of the League of Nations. Presently, there is no universally agreed definition of NGOs, despite the term being widely used. However, the fundamental

criteria characterising these organisations can be delineated as follows: their private or non-governmental nature, their non-profit character and their international impact (García Ruiz, 2007). In this regard, article 1 of the 1986 European Convention on the Recognition of the Legal Personality of International NGOs established the following conditions: have a non-profit-making aim of international utility; have been established by an instrument governed by the internal law of a Party; carry on their activities with effect in at least two States; and have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party. In line with this lays the Recommendation of the Ministers to Member States on the Legal Status of Non-Governmental Organizations in Europe, which outlines the Fundamental Principles of the Status of Non-Governmental Organizations[18].

According to data provided by the Union of International Associations in its Yearbook of International Organisations, it can be estimated that in 2024 there were about 10,000 non-governmental organisations. This figure remains a subject of debate due to the methodology used in counting NGOs, as some scholars consider that the Yearbook is more likely to include INGOs headquartered in wealthy and democratic countries as well as organisations that are integrated into the United Nations system (Hadden et al, 2024, p. 23). Nevertheless, these data illustrate the exponential growth experienced by NGOs over the last century, considering that in 1909 there were 176 accredited organisations and in 2002 there were an estimated 5,376. In addition to their numeric growth, NGOs have become increasingly transnational over the years. Many organizations that initially operated solely in a domestic frame have gradually extended their activities beyond national borders or have started interacting with intergovernmental organizations (Martens, 2003, p. 62).

Despite a common tendency to perceive NGOs as a monolithic entity, they exhibit substantial diversity. The interests of NGOs vary widely. For instance, NGOs may provide direct basic services, organize communities to formulate solutions to problems, or advocate the implementation of policies. They focus on a wide range of activities and differ both in their organizational structures and in their sources of support. Most NGOs receive funding from one or more sources, including donations, grants, contracts, fees for services, product sales, and membership dues. They may be centrally organized or loosely affiliated through federation structures. In general, this large and diverse universe of organizations operates at local, national, and international levels (Jenkins, 2012, p. 466).

The increasing prominence of NGOs has led to a substantial influence on key aspects of international law, particularly in the following areas:

- Law making process: NGOs now participate at all stages of the legislative process: *Ex ante*, they identify subjects requiring legislation, highlight situations necessitating regulation, and develop proposals to address them.

[18] Recommendation CM/Rec(2007)14 of the Committee of Ministers to Member States on the Legal Status Non-Governmental in Organizations in Europe (10 October 2007), https://rm.coe.int/16807096b7; Fundamental Principles on the Status of Non-governmental Organisations Europe and Explanatory Memorandum

During the drafting and adoption stages, they influence states' positions in negotiations. *Ex post*, once a law is enacted, NGOs play a crucial role in monitoring its implementation and ensuring compliance (García Ruiz, 2007).

- Cooperation between NGOs and International Tribunals or quasi-judicial compliance mechanisms: In this sense, NGOs are present in the monitoring bodies created by the so-called Treaty based bodies, highlighting the regulation of their action carried out by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. Their action before these bodies ranges from ensuring that States parties comply with their reporting obligations; or submitting reports and materials to the human rights treaty bodies, including written reports; or participating, in accordance with the rules of the treaty body, in their sessions as observers or through oral statements to Submitting an individual complaint to the treaty bodies (A/RES/60/51). Equally significant is their interaction with the Human Rights Council and their active participation in the special procedures established within it. Its participation as *amicus curiae* and, in certain circumstances, its *locus standi* before judicial bodies such as the European Court of Human Rights, the African Court of Human Rights and the International Criminal Court is particularly noteworthy.

- Interaction with IGOs: As Reinalda points out, Governments and IGOs engage private actors because of their expertise they themselves do not have available, or have only to a lesser extent (Reinalda, 2013). The relationship between NGOs and IGOs may assume a variety of forms ranging from full membership in IGO organs, to mere administrative links, such as the ones established with the various "NGO Liaison Services" set up by IGOs' Secretariats. However, leaving aside the exceptional cases in which NGOs participate in IGO organs on equal footing with State representatives, consultative relationship has been considered for long time the more advanced and formalized tool for non-governmental participation in the activities of IGOs (Rebasti et al., 2002, p.3). As demonstrated with the League of Nations, interaction with international organizations represents a fundamental activity of NGOs that are aware of their capacity to make their voice be heard beyond the boundaries of the nation State and with a political target for the exercise of their non-governmental diplomacy. Since then, not only has the number of NGOs present in the Organizations increased (as of 31 December 2022, 6,343 NGOs enjoy active consultative status with ECOSOC), leading to a massification that prevents them from participating properly in their activity, but they also demand a greater capacity to act, without there being agreement as to whether this should imply promoting the regulation of their situation in the Organizations (Rebasti et al., 2002, p.3). According to Grigorescu, NGOs have been fundamental in democratizing IGOs by demanding greater accountability, transparency, and participation. However, their impact varies depending on the organization and political context, and there are still challenges in institutionalizing effective oversight mechanisms (Grigorescu, 2015).

As highlighted, the number of NGOs has grown exponentially, which makes them difficult to understand, together with a greater capacity for action, which, in areas such as the protection of human rights, often makes the very functioning of the system dependent on their intervention. This adds a novel element that was not so present in the beginnings of these associations, forged on the basis of ideals and goodwill as part of the struggle for a cause. In today's reality, not all NGOs follow this path; there is an increasing proliferation of so-called government-oriented NGOs (GONGOs), created by authoritarian governments in order to enhance their reputation and gain access to the resources offered to genuine NGOs (Gordenker et al., 1995, p. 361). They represent what Frouville calls a "servile society", namely NGOs which serve a state rather than public interest and claim to represent the civil society of their country independently, while in reality maintaining close links with the national government and pursuing the interests and policies of the latter. Some examples of GONGOs are represented by Chinese 'mass'-organizations, which openly admit a link with the government, but also by civil society organizations pursuing a certain goal which at the same time constitutes a foreign following the situation of Kashmir and pursuing the same objective as the Pakistani government (Dupuy et al., 2008).

4.2. Analysis of the Legal personality of NGOs

All NGOs are established and regulated under domestic laws. When NGOs operate transnationally, they are subject to the regulation of the home country (where the NGO is legally headquartered to operate overseas) as well as to the regulation of the host countries (where the NGO operates on the field, for example providing services to the local communities). Although there are differences in their regulatory approaches towards NGOs across countries, governments typically regulate three core aspects: first, NGO registration and dissolution; second, NGO ability to engage in advocacy and political activities; and, third, the scope and the extent to which an NGO can engage in economic activities (Bloodgood et al., 2014).

This implies that NGOs' capacity to act depends on the internal regulations of states. In this sense, it can be said that present times are not favourable for such organisations. As Carolei points out, restrictions on NGOs' activities are on the rise worldwide and this trend is not limited only to authoritarian or illiberal nations. According to the International Centre for Not-for-Profit Law, since 2012, 161 restricting laws have been introduced worldwide, preventing NGOs from raising donations, providing services to those in need, and operate as watchdogs over governments. In December 2019, the Council of Europe reported that restrictions cover different kinds of NGO activities ranging from strict disclosure requirements about NGO funding to the criminalisation of NGO boats rescuing migrants in the Mediterranean Sea. For CIVICUS (a global network of civil society organizations), the regulatory environment for NGOs has worsened as a result of the restrictions on freedom of assembly, freedom of thought and speech introduced worldwide, through emergency legislation, to tackle the Covid-19 pandemic (Carolei, 2022). NGOs from restrictive domestic contexts may be more inclined to engage in global governance as a strategy to circumvent national constraints and influence international policies that could impact their local contexts (Henry et al, 2019).

The question of whether or not to regulate the status of NGOs in international law has been the subject of debate for centuries. As Chanovitz notes *"on the other hand, states have worried that granting international recognition to NGOs may reduce governmental control over them, and NGOs have worried that such recognition might entail a loss of autonomy*" (Charnovitz, 2006). As Dupuy puts it, they want to retain a power to contest, propose and intervene, in short, a liberty of style that protects their status as an effective 'counter-power' against the cumbersome red tape of bureaucracies and sovereignties. What matters for most of them is to preserve, expand and promote, depending on the situation, a power of pressure, influence and control over the acts of states, even if, in the case of compliance review mechanisms, it must accommodate itself to the respecting of certain procedures in exchange for its effectiveness (Dupuy et al., 2008, p. 211).

Can NGOs be considered subjects of international law? There is no doctrinal consensus on this matter. Therefore, it is necessary to analyse the criteria for being recognised as a subject of international law and assess the extent to which NGOs fulfil these criteria.

The international legal landscape has changed radically since Oppenheim stated in the first edition of his treatise that international law governed relations solely between states and the Permanent Court of International Justice affirmed in 1927, in the Lotus Case (France-Turkey): *'international law governs the relations between independent States.... The legal rules which bind States derive from their will, a will expressed in treaties or in usages generally accepted as enshrining principles of law'.*

As Remiro Brotons has pointed out: '*To the extent that international subjectivity is no longer regarded as an exclusive attribute of sovereignty but rather as a mechanism for assigning rights and obligations within a given legal system, international society has opened itself to other subjects."* (Remiro Brotons, 1997, p. 42). This perspective allows him to discuss what he terms the "polymorphism of international subjectivity", a concept reflected in its Opinion of 11 April 1949, Case of reparation for damages suffered in the service of the United Nations: *"The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States'* In the mentioned Opinion, the ICJ stated: *"What it does mean is that it is a subject of International law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims"* (ICJ Recueil, 1949).

As Carrillo Salcedo noted: '*Alongside states, the original or primary subjects of international law, there are other derived subjects, created by sovereign states (international organisations) and other non-state entities which, in specific cases, are the addressees of international legal norms and to which international law recognises certain rights and imposes certain obligations, so that they have a certain international subjectivity'* (Carrillo Salcedo, 1991, p. 25). Several factors have contributed to strengthening this

trend, primarily the humanisation of international law and the inherent incapacity of states to address contemporary challenges posed by international affairs. Consequently, the subjectivity of international organisations has been acknowledged alongside that of states, and—albeit contentiously—that of individuals and peoples.

In legal doctrine, an entity with international legal personality is usually described as an entity endowed with legal rights and/or obligations and legal capacities directly conferred on it under international law. Sometimes the legal capacities are specified as including procedural capacity and/or treaty making capacity (Dupuy, 2008, p. 1). As Carrillo Salcedo summarized (1991, p. 25), subjects of International Law must be understood as those which:

i.- are the addressees of international legal norms;
ii.- participate in the process of elaborating such norms;
iii.- have standing to claim non-compliance with these norms;
iv.- incur liability when violating them;

Do NGOs fulfil each of these criteria?

i.- NGOs can arguably be considered the addressees of international norms, such as the 1994 Convention on the Safety of United Nations and Associated Personnel, which defines associated personnel as those designated by a non-governmental organisation under an agreement with the United Nations Secretary-General to carry out activities in support of the fulfilment of the mandate of a United Nations operation; or General Assembly Resolution 53/144 of 9 December 1998, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms'. In this sense, the UN Human Rights Committee affirmed in 2000 the binding nature of the core human rights obligations for all members of society, including NGOs (UN Doc/c.12/2000/4).

Alongside these examples, in which international law has regulated the actions of NGOs in very specific cases, recognising certain rights and imposing obligations upon them, there are many other norms aimed at regulating the actions of NGOs in particular areas. These include consultative status within the United Nations or the Council of Europe, their participation in bodies monitoring compliance with human rights treaties, or their participation in international judicial proceedings such as before the International Criminal Court and other Tribunals.

ii.- Regarding the legal status of NGOs and their participation in the international norm-making process, it can be stated that this participation is not governed by a set of general rules but rather depends on the specific conditions of the standard being negotiated and the goodwill of the leading bodies overseeing the drafting process. Despite this, the role of NGOs has been firmly established, and it cannot be denied that contemporary international law, to a certain extent, relies on their engagement for the effective elaboration of its norms.

Today, NGOs are present at all stages of the legislative process:

- *Ex ante*, by identifying the subject matter to be legislated, denouncing situations that require regulation, and developing proposals for legislative initiatives;
- During the adoption of the text, by influencing the positions of states in negotiations; and
- *Ex post*, as they play a crucial role in monitoring compliance with established norms (García Ruiz, 2007).

Additionally, scholars argue that NGOs directly contribute to the formation of so-called "media law," which develops alongside "state law," the latter being constructed through traditional legal channels (Reinisch, 2023, pp. 37-89).

iii.- Do NGOs have standing to complain about non-compliance with international norms? Only in very limited cases, and primarily at the regional level, have NGOs been recognised as having standing before international tribunals concerning violations of international law. In this respect, the position of the African Court of Human Rights is particularly noteworthy. Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (ACHPR), granted NGOs legal rights and remedies, and the court jurisdiction to hear complaints from NGOs. The ACHPR confers observer status upon NGOs following an application process before a commission, which takes place prior to and separate from any filings with the Court. Furthermore, Article 6(1) stipulates that NGOs may bring cases only against those states that have signed on to the Protocol (African Court on Human and Peoples' Rights). As Feinberg points out, this process has been fundamental to the evolution of international law, as it has facilitated the incorporation of civil society concerns into the international agenda and contributed to the creation of more effective monitoring and compliance mechanisms (Feinberg, 1932).

iv.- Do NGOs face liability for violating international norms? While NGOs' compliance with the aforementioned requirements is largely defensible, it must be acknowledged that a significant shortcoming remains: the absence of an international accountability mechanism to address cases of NGO non-compliance with international law.

NGO accountability has predominantly been addressed through self-regulation: voluntary standards defined by NGOs, for NGOs (e.g., codes of conduct, accreditations schemes, peer assessment tools etc.). Over the past two decades, self-regulatory initiatives have proliferated globally. Notable examples include: The Sphere Standards (Humanitarian Charter and Minimum Standards), Accountable Now, INGO Accountability Charter and the Red Cross Code of Conduct. However, self-regulation has been widely criticised for its lack of enforcement mechanisms, its voluntary nature, and its failure to ensure meaningful beneficiary participation and peer accountability (Carolei, 2022). Among these initiatives, the INGO Accountability Charter stands out for its inclusion of a complaints mechanism, an independent vetting process, and a sanctions clause that allows

for the expulsion of non-compliant members. The Charter comprises ten commitments, aimed at fostering transparency, accountability, and effectiveness, including: respect for human rights; independence; transparency; good governance; responsible advocacy; participation; diversity/inclusion; environmental responsibility; ethical fundraising; and professional management (Crack, 2018). In 2018, the Dutch Government proposed the establishment of an independent international ombudsman, the International Ombuds for Humanitarian and Development Aid (IOHDA), to enhance NGO accountability, particularly in response to safeguarding failures. The proposal was largely motivated by scandals such as the Oxfam GB sexual abuse allegations in Haiti, March 2018, and the Democratic Republic of Congo, April 2021 (Carolei, 2022).

Assessing the status of NGOs in international law requires acknowledging the diversity within this category. NGOs differ significantly in their capacity to act at the international level—some possess limited operational reach, while others hold an enhanced legal status under international law.

One notable example is the International Committee of the Red Cross (ICRC), whose unique position has led some scholars to classify it as a sui generis subject of international law. This distinction arises from the recognition accorded to the ICRC under international law, particularly in relation to the Geneva Conventions of 1949 and their Additional Protocols, which establish rights and duties specific to the organisation. The ICRC has played a decisive role not only in drafting these instruments but also in ensuring their effective implementation. Furthermore, the headquarters agreements signed between the ICRC and various states suggest that the organisation possesses the capacity to conclude international treaties. Many such agreements explicitly grant privileges and immunities to the ICRC, similar to those afforded to international organisations. The 1993 headquarters agreement with Switzerland, for instance, formally recognises these immunities. Similarly, cooperation agreements between the ICRC and other international organisations often resemble international treaties. The ICRC also possesses standing to bring international claims, as demonstrated in the Olivet case, which resulted in the recognition of United Nations liability. This has led several scholars to argue that the ICRC should be regarded as a subject of international law.

However, while some scholars acknowledge the international subjectivity of the ICRC, they argue that its peculiar nature and historical evolution prevent it from being classified alongside other NGOs. Nevertheless, it is crucial to recognise that the ICRC is, at its core, a Swiss-based non-governmental association, albeit one with an exceptional level of influence in international affairs. Why, then, should an organisation like the ICRC be separated from its rightful category? Why not move beyond its classification as a *sui generis* entity and acknowledge that it is a non-governmental organisation that has advanced further than others? In my opinion, the ICRC represents the most compelling example of what certain non-governmental organisations within international law may evolve into in the future.

The recognition of NGOs as subjects of international law is increasingly regarded as a necessary step in the evolution of the international legal order. As Professor Ben-

Ari argues, granting NGOs legal personality would serve two key interests: First, legal personality would assist in confining the number of NGOs and would allow institutions to "*monitor and scrutinize their activity, thereby improving their proficiency and responsible advocacy*." Proponents of confining the growth of NGOs argue that the proliferation of NGOs has created inefficiency as well as threatened their legitimacy. Second, legal personality would facilitate NGO activities through the provision of rights, privileges, and immunities that they can use to protect their operations. Under this line of reasoning, legal personality for NGOs would create a *"fairer international legal order that would reflect the position and relevance of all significant international actors, including NGOs, thereby legitimizing their voice and ensuring their participation."* (Ben Ari, 2014).

As Higgins has stated out: *"NGO demands on the international legal system represent one phenomenon in the reformation in international law... An aspect of that reformation is a change in the concept of international law, and in particular, in our notions of the identity of the users and beneficiaries of international law"* (Jedele, 2020, p. 134).

5. Conclusions

Two centuries ago, diverse groups of individuals had the opportunity to come together in the common pursuit of a set of ideals. They gradually became aware of the power of coordinated and/or joint action at the international level, and thus, the first organisations that we know today as non-governmental organisations were born. Nearly two centuries later, their way of acting and the obstacles they faced are still relevant today. What lessons can be learned from their experience?

I.- From their earliest steps, first organisations were aware of *the need to combine two types of action*. The first, *ad intra*, consisted of dialogue between them, in order to discuss and share their projects and demands. The so-called peace congresses and the interparliamentary conferences were important not only to improving their mutual knowledge but also to refining more effective methods of action over time. The second, *ad extra*, based on the dissemination of their proposals, had a two-fold objective: to make them known to the general public and influence in the public opinion as well as to pressure governments to address their proposals and incorporate them into their priorities.

II.- Have new methods of action been created or have they just evolved? It could be said that *NGOs currently use the same methods of action as a century ago*: From the need for coordination identified at the very beginning came the current coalitions; from "information politics", the publication of pamphlets and periodicals, came the use of the Internet as a tool for dissemination and campaigns in support of a specific cause; from the interaction with members of Parliament and their presence in International Conferences came the parallel fora at international conferences, their interrelationship with government delegations, etc. As a result, without any major innovations, but rather adaptations to new technologies and the international reality, improving their methods of action, NGOs have played a prominent role in the international context.

III.- *There is an "agreed" paradox between the great capacity of action for NGOs and their poor international regulation*.

The restrictive regulation of their status in the context of the League of Nations did not succeed in curbing the action of non-governmental organisations but, on the contrary, drove them to develop their greatest skill: their ability to act informally and carry out *de facto* what they had been denied *de jure*. The reasons for this inadequate legal regulation remain nowadays and are rooted in the fear of states, their misgivings about uncontrolled organisations of individuals interfering with the exercise of their sovereignty. Many NGOs also prefer this situation that offers them a broad ability to act, which they fear would be limited by the establishment of restrictive regulations.

IV.- Over the years, the absence of legal regulation of the role of NGOs has been maintained. This *status quo* goes back to the experience described in the League of Nations. However, is this response initiated a century ago valid for today's reality? Is it convenient to keep the same situation as in the League system or the current reality demands to promote the establishment of a regulation?

In my opinion, *although the dilemma remains the same, the reality has changed substantially.* The number of NGOs has grown exponentially, making it difficult to understand them, coupled with a greater ability to act, which in areas such as the protection of human rights, often means that the very functioning of the system relies on their intervention. This adds a novel element that was not as present in the early days of these associations, forged based on ideals and goodwill as part of the fight for a cause. In today's reality, not all NGOs follow this path; there is an increasing proliferation of what are known as governmental oriented NGOs (GONGOs), servile organisations that, taking advantage of the channels opened up by other NGOs with recognised prestige and independence, ultimately undermine the system through their presence and activities. Secondly, in the context of an upward trend, NGOs are threatened by internal state regulations that restrict their ability to act.

The need to address their regulation is more important than ever and should be the subject of a serious and careful analysis. The heterogeneity of these organisations cannot justify the existence of such a *mixed bag*. It is necessary to assume and minimise the costs of regulation and to advocate for a flexible and realistic regulatory framework, one that establishes basic rights and obligations for non-governmental organisations, without restricting their scope of action.

This would serve two key objectives: first, to ensure compliance with minimum standards that were once taken for granted within the League of Nations but can no longer be presumed, given the diverse nature of NGOs operating in the international sphere; and second, to safeguard NGOs from the constraints imposed by domestic regulations. This is a reality that can no longer be overlooked, either by states or by NGOs themselves. The time has come to collaboratively develop the appropriate mechanisms for effective cooperation in the pursuit of a more efficient International Law.

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