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# A Framework for Non-Governmental Organisations in International Diplomacy

Frank Vibert\*

This comment on the role of Non-Governmental Organisations (“NGOs”) in international relations is divided into two parts. First, it addresses the main theme of Kenneth Anderson’s paper, and second, it looks at European attitudes on the subject.

## I. THE NEED FOR AN ANALYTIC FRAMEWORK

The main message of Professor Anderson’s paper is that international NGOs grossly exaggerate their claims of being representative of and providing a legitimate expression of international civil society. On the contrary, Professor Anderson argues, they threaten legitimate democratic expression. Thus, Professor Anderson concludes that the Bush administration should take a much stronger line in asserting the voice of democratic sovereign states, notably its own.

I agree with this message. What Professor Anderson’s paper does not provide, however, is a framework for dealing with NGOs. International NGOs are here to stay, and a framework for understanding their activities is necessary. Similarly, international rules of behaviour are here to stay, and it is inherent in such rules that they constrain the role of sovereign states, particularly large states such as the United States. For example, the rules for international “freer” trade have allowed small countries to flourish, suggesting a more complicated relationship between international rules, institutions, and sovereign states than Professor Anderson concedes.<sup>1</sup> Thus, the aim of US policy should not be against rule-making as such, but should insist on the right rules—rules that are consistent or compatible with the

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1. See Alberto Alesina and Enrico Spolaore, *On the Number and Size of Nations*, 112(4) *Q J Econ* 1027 (1997).

values to which the United States itself subscribes. Rather than opposing NGOs, the United States should develop a framework within which they can be treated.

#### A. A TRANSACTION-COST APPROACH

One approach to constructing such a framework is to look at the subject in terms of transaction costs. Some NGO activities raise the costs of international action, and others lower them. For example, when NGOs perform as service-deliverers by providing vaccination services, or as doers in the field by helping to dig wells, they lower the cost of international action because they perform these services more effectively than governments or official international organisations. Similarly, some NGOs help inform international debate (as the American Enterprise Institute is doing in this conference). This kind of activity can also reduce the cost of international transactions because people gain a better idea of why something is or is not being done, thereby reducing uncertainty. On the other hand, when NGOs advocate unreasoned views (as Greenpeace sometimes does), or act as lobbyists for international resource reallocation, they raise the costs of international transactions. Someone, somewhere incurs the costs of rebutting unsubstantiated claims and examining the case for resource reallocation.

Following this approach, an appropriate theoretical framework would encourage those NGO actors and actions that lower the costs of international transactions, including the costs of obtaining and enforcing the "right" rules of international behaviour, and discourage those NGO actors and actions that raise the costs of international transactions, including the costs of rule-making.

#### B. INCENTIVE MECHANISMS

There are a number of mechanisms that might provide the necessary mix of incentives and disincentives. First, greater room to operate and additional encouragement could be given to the NGO deliverers and doers, particularly in bilateral and multilateral aid programmes. Second, a more selective approach could be taken towards international meetings in order to facilitate reasoned and responsible dialogue. Large international jamborees of the sort espoused by UN organisations should be discouraged (for example through budget control), while more cost-effective ways of engaging reasoned NGO contributions should be encouraged. For example, the World Bank has held meetings with private think-tanks involved with development issues, and the European Council has set up an interactive web site for debate ahead of the next Inter-Governmental Conference ("IGC") scheduled for 2004. This is a way of having reasoned debate with those interested. Third, NGOs should be under an obligation to observe standards of corporate governance, making it clear whom and what they represent, and how they are funded and organised. In this context, a number of countries would need to review their laws governing non-profit

organisations and charities, so as to ensure the same kind of transparency and disclosure from NGOs as is expected of profit-oriented public companies.

This transaction-cost framework for treating NGOs is not something that needs to be unique to the NGO world. On the contrary, a transaction-cost approach can provide a more general guide to the world of international regimes. There is a need to avoid the proliferation of international rules and rule-makers, and to cut down on the number of international organisations and poorly conceived rules. The policy focus should instead be on preparing better rules that will be better enforced in the limited areas where rule-making makes sense on a global basis. This cost-reduction approach may also suggest the need for a greater investment in dispute resolution mechanisms, including informal mechanisms which can be effective before disputes become formalised, politicised, and expensive to clear up. For example, closer consultation between the competition and trade regulation authorities of the EU and the United States should head off the kind of inconsistencies which arose with the proposed GE/Honeywell merger. Experience has shown that this kind of transboundary communication is often successful in averting political disputes.<sup>2</sup>

## II. EUROPEAN ATTITUDES

A tougher US approach to international NGOs, rules, and organisations along the lines outlined above is unlikely to be fully supported by European countries, however. For a number of reasons, the role of international NGOs is likely to be regarded in a more favourable light in Europe.

### A. BRIDGING THE DEMOCRATIC DEFICIT

First, NGOs are seen to play a role within Europe which helps make up for what is widely viewed to be a missing European public opinion. Information flows and public opinion in Europe remain largely segmented along national divides. It is only rarely, such as in the case of Bovine Spongiform Encephalopathy ("mad cow disease"), or after a sudden hike of prices at the fuel pump, that public opinion crosses national borders. Thus, NGOs tend to be seen as a desirable integrating force and as contributors to building a demos.<sup>3</sup> In this way, they are seen as closely linked to the task of creating civil society. Furthermore, in the same way that NGOs are seen as part of the answer to a democratic deficit inside the EU, NGOs are seen by extension as part of the answer to the democratic deficit which exists alongside international organisations and rule-making regimes.

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2. See Mark A. Pollack and Gregory C. Shaffer, eds, *Transatlantic Governance in the Global Economy* (Rowman & Littlefield 2001).

3. See Helen Wallace and Alasdair R. Young, eds, *Participation and Policy Making in the European Union* (Clarendon 1997).

## B. PRIVATE DIPLOMACY

Second, Europe perceives the disjunction between sovereign nation-states and the world of international regimes in a more pronounced way than does the United States. This is because most European states are small and feel powerless. When organised politics do not connect domestic democratic sentiment with the world of international regimes, NGOs have a greater opportunity to fill the gap, thereby garnering greater sympathy for their efforts. The formation of the EU is itself a reflection of the desire of European countries to play a larger role in international affairs. Nevertheless, the EU is still in the process of development and does not yet provide the kinds of democratic interconnections that are needed.

Unfortunately, it is also the case that the EU is defining for itself a more assertive official role in terms of what is *not* the US position, rather than what the content should be by normative standards. This creates a space for two diametrically opposed types of NGOs—those with an anti-US agenda and those apprehensive about the weakening of transatlantic ties. In either case, a valid space exists for NGOs to practice private diplomacy or private lobbying and advocacy.

## C. THE "ECO-SOCIAL MARKET"

Third, the prevailing view of the market in Europe is not that of the "free" market but of the "eco-social market." Thus globalisation is usually presented as a threat to the welfare capitalism of the EU. This means that Europeans have less concern than Americans about the anti-market behaviour or green extremism of some international NGOs.

## D. TREATIES AND CONSTITUTIONS

Fourth, the distinction, accepted by Professor Anderson, between international treaty power and the powers conferred by domestic constitutions is not a distinction that translates easily to the European context. The EU itself is founded upon a series of treaties which have been—and still are—used to redefine the *domestic* constitutional orders of democratic EU states. Moreover, the European Court of Justice has interpreted the treaties as having constitutional significance.<sup>4</sup> The treaty route to obtaining constitutional changes has been preferred by Europe's political leaders to the risks perceived in holding an overt constitutional debate. In addition, the European Convention on Human Rights of the Council of Europe has been incorporated into the law of all European countries, arguably blurring any distinction between treaties and domestic constitutions. Indeed, the upcoming 2004 IGC will be

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4. See Opinion 2/94, *Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1996 ECR I-1763, 1789 (Mar 28, 1996).

the first occasion when EU leaders will address an explicitly constitutional agenda. Although the full scope of the agenda is not yet decided, governments have already agreed to consider issues such as the role of national parliaments and the division of powers between the EU, the member states, and their regions.

Europe's leaders have recently been shocked by the violence of demonstrations in Gothenburg and Genoa. Nevertheless, these differences in perspective mean that the United States will have only weak support from Europe in creating a much more robust framework for dealing with international NGOs. As in so many other areas of international law, the United States will have to take the lead if it wants to place NGOs within a more cost-effective system of global governance.



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