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THE ROLE OF HUMAN RIGHTS NGO'S: HUMAN RIGHTS DEFENDERS OR STATE SOVEREIGNTY DESTROYERS?

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ABSTRACT

Globalization has given opportunities to non-governmental organizations (NGOs) to emerge on the world stage as one of the central players in the processes of promotion and protection of human rights around the world. The emergence of new actors in the human rights field raises questions not only about their impact on the protection of human rights, but also their impact on the state, which for a long time has had a monopoly on deciding how to treat its citizens. The article aims to analyze the role of human rights NGOs from the perspective of state sovereignty versus/and human rights, and provide answers to the following questions: what is the input of NGOs in protecting human rights? Do their activities lead to real improvements in human rights practices within a state? What is their impact on state sovereignty? How do the activities of NGOs influence the state's authority and legitimacy? Analysis has shown that the impact of human rights NGOs on state sovereignty and human rights protection depends on many factors, such as the country's level of development, political regime, the size of human rights NGOs, etc. This leads to the tentative conclusion that human rights NGOs may be both human rights defenders and state sovereignty destroyers.

KEYWORDS

Non-governmental organizations (NGOs), human rights, responsibility to protect, state sovereignty, erosion of state authority

INTRODUCTION

The existing gap between human rights norms and the enforcement of those norms provides space for human rights non-governmental organizations (NGOs[1]) to operate for the protection of human rights. Changes associated with globalization have strengthened the role of human rights NGOs and today, as never before, they are one of the most influential players in ensuring human rights. The increased role of NGOs in the field of human rights raises many questions about their effect on the efficient protection of human rights and on the state, which, in terms of sovereignty, maintains an essential monopoly on the decision as to how to treat its citizens. Nevertheless, the impact of these non-state actors on the overall process of the protection of human rights and on the state's behaviour has not been fully assessed. Questions still linger, and the need to further explore the effect of NGOs activities is crucial. This article analyzes a dual role played by human rights NGOs, which promote and protect human rights[2] and which rely in whole or in part on the language, institutions, and norms of international human rights law[3] to achieve this goal.

1. HUMAN RIGHTS NGOs' IMPACT ON THE PROTECTION OF HUMAN RIGHTS

There is a widespread attitude that human rights NGOs[4] are altruistic organizations that work in preventing the abuses of human rights and freedoms. In

[1] There is no universal agreed definition of the term "NGO" and, as notes Peter Willetts, the term *"carries different connotations in different circumstances"* (Peter Willetts, "What is a Non-Governmental Organization?" (January 2002) // http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM (accessed October 4, 2010)). Quite often the NGO is defined by what it is not, rather than what it is. In its broadest sense and understanding the term by literally, the NGO is the one that is not directly the part of the government's structure. United Nation's Economic and Social Council (ECOSOC) Resolution 1996/31 asserts that NGO should be considered *"any organization that is not established by a governmental entity or intergovernmental agreement".* Despite the fact that definitions of NGO vary generally, traditionally the term "NGO" includes the following elements: *private; non-profit; non-political; non-violent purpose; voluntary-based; and independent from the direct control of any government* (*United Nation's Economic and Social Council (ECOSOC) Resolution 1996/31* // http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm (accessed November 17, 2010)).

[2] Richard Pierre Claude, "What Do Human Rights NGOs Do?": 424; in: Richard Pierre Claude and Burns H. Weston, eds., *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press, 2006).

[3] Molly Beutz Land, "Networked Activism," *Harward Human Rights Journal* Vol. 22 (2009): 206 // http://harvardhrj.com/wp-content/uploads/2009/09/land.pdf (accessed September 15, 2010).

[4] The human rights NGOs differ in their nature. They could be classified by different criteria: *level of operations* (local, national, regional, international); *size* (small – one or two person operations, large – many international human rights that have million members); *mandate, concern area* (focused on a single, specific issue of human rights (for example, women rights, children rights and etc.), broad and inclusive mandate cover different types of human rights (like Amnesty International, Human Rights Watch and etc.)); *type* (advocacy – seek to change the status qua, service-delivering – seek to meet peoples immediate material needs; provide food, medical aid and etc.); *financing* (membership-driven, private individuals, foundations, corporate support, programs, services rendered or sale of goods sales and etc.); *power* (powerful – have influence in international, national and local communities, visible in

defending human rights many NGOs are guided by international human rights law norms that are incorporated in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and many other international human rights treaties. The national and regional human rights law (for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms and others) are of great importance as well. In the hands of NGOs these human rights norms (national, regional, international) become a tool to achieve their goal – to ensure the human rights and freedoms for everyone across the globe. The NGOs try to prevent human rights abuses and safeguard human rights against governments' and other actors' infringements by acting in many different ways, which are described below.

From the end of the Second World War and beginning of the United Nations, NGOs were actively involved in developing human rights standards. As William Korey notes, "the establishment of international norms by which the conduct of states can be measured or judged – was the primary preoccupation of NGOs".[5] In many cases, human rights NGOs were the initiators of new human rights documents, i.e. those who want to set-up some rules aiming to protect the human rights. They participated in drafting the main human rights documents: Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989) and a variety of other important international and regional human rights treaties. In setting-up the human rights standards NGOs play the role of contributors as well. In the drafting processes they help to write laws and treaties and largely act as experts of particular field of human rights, rather than politicians. As Claude Emerson Welch notes, "this role increased and become political as NGOs gained legitimacy, shaped international public opinion, and formed coalitions with sympathetic governments".[6] NGOs also significantly contribute to the formulation and development of international human rights law through the submissions of complaints and through international litigation, instituting or intervening in cases as parties, serving as experts, testifying as witnesses, etc.[7] Moreover, "in many

the media, policy-making arena, powerless – possess little power, are financially unstable, oppressed by their national governments); *activeness* (active – permanently act in many different ways, "paper one" – do not work actively and usually only occasionally; *personnel* (volunteers, paid staff members, professionals (experts, lawyers and etc.); *reputation* (reliable – provide valuable, reliable information and expertise; unreliable – provide simplistic, poorly and not credible researched positions); *geo-political, geographic origins* ("Northern" – NGOs based in the developed countries, more concentrated on civil and political rights, "Southern" – NGOs from the developing countries, more concentrated on social, economical and cultural rights).

[5] William Korey, *NGOs and the Universal Declaration of Human Rights. A Curious Grapevine* (Palgrave Macmillan, 2001), p. 3.

[6] Claude Emerson Welch, "Introduction": 5; in: Claude Emerson Welch, ed., *NGOs and Human Rights: Promise and Performance* (University of Pennsylvania Press, 2001).

[7] Julie Mertus, "From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society," *American University Journal of International Law* 1335 (1999): 1369 //

instances NGOs have been involved not only in articulating and building consensus for relevant norms, but also in helping to establish the institutions designed to enforce those norms".[8]

The effective protection of human rights always requires a good knowledge of the human rights conditions and applicable legal principles.[9] NGOs consistently monitor human rights situations in particular countries all over the world (the latter is applied to transnational NGOs, such as Human Rights Watch, Amnesty International). They also monitor whether states comply with their obligations under human rights law. In other words, they act as "watchdogs" and provide an independent overview and assessment of whether and how human rights are ensured. Such monitoring helps to collect data about human rights situations at the national and international level and highlight any problems.

NGOs are well known for their role in gathering information with respect to the abuse of human rights and freedoms. They gather information from various sources: for example, from human rights victims, witnesses, other human rights NGOs, newspapers, in examining injuries and physical evidence, observing trials, and demonstrations. By gathering and disseminating information about human rights issues NGOs try to draw the attention of the public, governments, and other actors to the problems that exist in the human rights field and raise the concerns of usually unheard voices. Thus investigation, documentation and dissemination of the information by human rights NGOs play a vital role in bringing human rights abuses to the attention of public and international community. As Claude Emerson Welch notes, "without [the flow of information, documentation, and data from] NGOs the entire human rights implementation system and the UN would come to a halt".[10] The important role of NGOs in gathering the information is recognized by Theo van Boven as well. According to the former director of the United Nations Human Rights Centre in Geneva, NGOs provide 85 percent of the information provided to the Centre[11] and thus prove that the United Nations are greatly dependent on NGOs for information. Indeed, NGOs serve as a key source of information to governments, intergovernmental organizations, politicians, human rights tribunals. Furthermore, NGOs provide reliable and credible information that sometimes contradicts the information provided by states, and thus proves that some countries may lie about the real human rights situation(s) in their country.

http://www.aupeace.org/files/FromLegalTransplants.pdf (accessed November 6, 2010).
[8] Molly Beutz Land, *supra* note 3: 208.
[9] David S. Weissbrodt and Connie de la Vega, *International Human Rights Law: an Introduction (*University of Pennsylvania Press, 2007), p. 359.
[10] Claude Emerson Welch, *supra* note 6: 5.
[11] Peter Baehr, "Human Rights NGOs and Globalization": 39; in: Karin Arts and Paschal Mihyo, eds., *Responding to the Human Rights Deficit: Essays in Honour of Bas de Gaay Fortman (*Kluwer Law Press, 2003).

The information that NGOs "gather, verify, and disseminate is their major weapon in lobbying governments to change the policy"[12] regarding the human rights. In playing the role of "advocates", NGOs try to influence the politicians to make decisions in favour of better and more efficient human rights protection. In large part the lobbying takes through the NGOs participation in the negotiations or consultations processes on the new human rights standards. NGOs also lobby regional, international governmental bodies to take some actions with respect to human rights violator states.[13] Thus the NGOs lobbying has an internal, as well as external dimension. It is noteworthy that traditionally in the work of human rights NGOs, the gathering of information is concentrated on governments' violations of human rights rather than exploring the reasons (for example, traditional, cultural, socioeconomic development and etc.) that underlie them. A fear exists that explaining why human rights violations occur may justify the governments or give credence to the claims that human rights violations take place because of underdevelopment.[14] This could allow some governments to continue the human rights violations and ignore their obligations under human rights law.

Aiming to improve the human rights situation, the NGOs quite often directly assist human rights victims by providing them legal assistance (for example, handle individual complaints), humanitarian assistance (for example, providing emergency aid, food, water, shelter, medicine, and health care for the rehabilitation of torture victims[15]) and other kinds of direct assistance.

Because of NGOs' knowledge of human rights situations and reputation for impartiality, in some cases the NGOs are involved in the reconciliation and mediation process.[16] Usually they act as politically neutral intermediaries, working with opposing parties, facilitating negotiations, and helping to find an accepted solution for both parties.[17] This is especially the case in solving conflicts where the ethnic minorities are involved.

The education on human rights issues contributes to the improvement of human rights situations themselves, because people learn about their rights and thus increase the possibility of claiming them. NGOs disseminate information about human rights in general, as well as on specific topics; they organize courses, release publications, and organize events (seminars, round tables and etc.) on

[12] Claude Emerson Welch, *supra* note 6: 6.
[13] Molly Beutz Land, *supra* note 3: 209.
[14] Makau Mutua, "Human Rights International NGOs: A Critical Evaluation":157; in: Claude Emerson Welch, ed., *NGOs and Human Rights: Promise and Performance* (University of Pennsylvania Press, 2001).
[15] David S. Weissbrodt and Connie de la Vega, *supra* note 9, p. 360.
[16] *Ibid*.
[17] Robert M. Perito, ed., *Guide for Participants in Peace, Stability, and Relief Operations* (US Institute of Peace Press, 2007), p. 173.

various topics of human rights; and thereby NGOs increase public awareness of human rights.

Still the most effective weapon of human rights NGOs in protecting human rights is the "mobilization of shame" or the use of so-called "naming and shaming" strategy. This strategy holds that the gathering and publishing of information about a country's human rights records/abuses within their own borders will shame the government into changing its behavior, increasing the government's compliance with international human rights standards. This strategy depends on the idea that all governments, all countries in the world would like to be known as civilized ones, which observe the international human rights standards which they themselves have helped to devise.[18] No government will easily admit that it allows the violation of these standards.[19] Thus, the effectiveness of this strategy greatly depends on the credibility and reliability of the information provided by NGOs.

The use of the "naming and shaming" strategy can not only bring positive changes within the country, but it can also mobilize international public opinion against the offending regime, leading other states or intergovernmental organizations to take action, such as open criticism or diplomatic and economic sanctions against the violating nation in order to change "the bad practice". In other words, human rights NGOs' work has an external dimension as well. For example, active NGOs advocacy in the international arena has resulted in some sanctions having been taken against the People's Republic of China after the Tiananmen Square massacres in 1989. More than twenty years after this event, "many of the U.S sanctions against the People Republic of China created in response to the Tiananmen military crackdown in 1989 remain in effect, including some foreign aid-related restrictions, such as required "no" votes or abstentions by U.S. representatives to international financial institutions regarding loans to China (except those that meet basic human needs)".[20]

Nevertheless, the human-based sanctions, which have begun applied only in the 1960s, and then expanded dramatically in the 1970s and 1980s to over one-third of all sanctions episodes,[21] are most effective:

[18] Peter R. Baehr, "Mobilization of the Conscience of Mankind: Conditions of Effectiveness of Human Rights NGOs": 153; in: Erik Denters and Nico Schrijver, eds., *Reflections on International Law from the Low Countries in Honour of Paul de Waart* (Martinus Nijhoff Publisher, 1998).
[19] *Ibid*.
[20] Thomas Lum and Hannah Fischer, "Human Rights in China: Trends and Policy Implications," *Congressional Research Service* (January 2010): 30 // http://www.fas.org/sgp/crs/row/RL34729.pdf (accessed November 27, 2010).
[21] David A. Lake and Wendy H. Wong, "The Politics of Networks: Interests, Power, and Human Rights Norms": 147; in: Miles Kahler, ed., *Networked Politics: Agency, Power, and Governance* (Cornell University Press, 2005).

- if applied against relatively weak states, that are vulnerable to outside pressure (for example, depends on imports of products which are not, or not sufficiently, produced at home);[22]
- if a critical mass of countries, especially large countries, join in;[23]
- if applied consistently and with a long-term commitments.[24]

It is obvious that by acting in many different ways the human rights NGOs strive for some positive changes in protecting human rights. They attempt to convince some actors – the local and national governments, inter-governmental bodies, international community or other non-state actors – to take some or refrain from some actions in protecting human rights or to change their policy in the human rights field towards the greater protection of human rights and to create a human rights friendly environment. In this case the NGOs are the catalyst for human rights policy changes.

To measure precisely the effectiveness of NGOs is difficult, but "nearly everyone familiar with human rights politics acknowledges their influence, including many governments whom they have criticized, and this suggests that the influence is significant".[25] NGOs help to identify and prioritize key human rights issues, highlight the imperfections of human rights implementation process, draw attention to human rights abuses, notify the emergency situations and address a wide range of previously unrecognized problems, like violence against women. The active work of NGOs has led to the situation that most human rights questions are included in national and international agendas and the new human rights documents (national, regional and international) are initiated. The active advocacy of human rights NGOs provides the opportunities to develop a culture of human rights protection. They also contribute to creating a better society, raising the world consciousness about human rights and, most importantly, they help to translate the formal promises of governments for better human rights protection into actual reality and thus give opportunities for individuals to fully enjoy their internationally recognized human rights standards. From this perspective, NGOs are certainly defenders of human rights. Moreover, if not for the pressure of NGOs, "the diplomatic taboo that long prevented states from directly criticizing each other's internal behaviors might still be in place".[26] The importance of NGOs in ensuring the full enjoyment of human rights is recognized in the 1993 Vienna Declaration, which stresses "the important

[22] Filip Spagnoli, *Democratic Imperialism: A Practical Guide* (Cambridge Scholars Press, 2004), p. 66.
[23] *Ibid*., p. 66.
[24] Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution* 49 (2005): 931 // http://jcr.sagepub.com/content/49/6/925 (September 1, 2010).
[25] Michael A. Freeman, "The Politics of Human Rights": 170; in: Michael A. Freeman, ed., *Human Rights: An Interdisciplinary Approach* (Polity, 2011).
[26] Daniel C. Thomas, "International NGOs, State Sovereignty, and Democratic Values," *Chicago Journal of International Law* 389 (October 2001) // http://www.allbusiness.com/legal/international-law/1110447-1.html (accessed October 5, 2010).

role of NGOs in the promotion of all human rights and in humanitarian activities at national, regional and international levels [….] to the promotion and protection of all human rights and fundamental freedoms".[27]

Not in all cases has the work of human rights NGOs and the consequences of their activities been treated as positive. There is always a risk that in some cases the activities of NGOs will have a negative effect on human rights, or sometimes will even be associated with more rights violations. As in the previous case there are external and internal dimensions. Regarding the latter, in some cases, pressuring the governments to ratify the international human rights treaties may lead to an effect contrary to what is expected. Some countries, especially the authoritarian regimes, can ratify human rights treaties, but they "can not only get away with continued human rights violations, but may at times even step up violations in the belief that the nominal gesture of treaty ratification will shield them somewhat from pressure".[28] Also there is a threat that political opponents of the government may try to use human rights NGOs for their purposes "by feeding the NGOs news about alleged atrocities on the part of the government which may actually never have taken place".[29] Still, in both of the above-mentioned cases, NGOs are only a tool of speculation in achieving the goals of political players.

The other threat (more external in its nature) is seen by less economically developed, non-western countries which lack a democratic character and usually become subject to criticism regarding human rights situations. In such contexts the attitude dominates that human rights NGOs are enemies, the agents of western countries that use the attractive excuses such as protecting the human rights with the aim to attack the non-western countries. The NGOs are not seen as altruistic organizations aiming to improve the human rights situation in the country, but rather as tools of powerful western countries in increasing their influence and power in more vulnerable and weak non-western states. "Some large countries frequently use the pretext of "freedom", "democracy" or "human rights" to encroach upon the sovereignty of other states, interfering in their internal affairs, damaging the unity of other countries or the solidarity of their nationalities"[30] – asserted China's state chairman Jiang Zemin in his 1995 speech to the United Nations. Similar rhetoric was employed by Bahraini lawmaker Hassan Al Dossari. In his speech about the role of the National Democratic Institute (NDI), a Washington-based organization operating in Bahrain, he maintained: "The interference of NGOs is no less dangerous than military action. Both are tools used by some countries to achieve

[27] *Vienna Declaration and Programme of Action (1993)* // http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en (accessed October 23, 2010).
[28] Eric Neumayer, *supra* note 24.
[29] Peter R. Baehr, *supra* note 18: 153.
[30] Peter R. Moody, "Asian Values," *Journal of International Affairs* 50 (1996): 166.

self-serving political goals. […] This is a soft force that is at times even more dangerous than direct military action or economic sanction because it target mindsets, the culture and the national identity of societies and people".[31] Considering the fact that most NGOs (including the most influential ones) are located in the Western hemisphere and that usually the human-based sanctions are applied by powerful western countries, like the U.S., such a threat seen by non-western countries is not groundless. Moreover, as Rachel Brett notes, "governments do not tend to act when they are forced to take some actions towards protecting the human rights in other countries, if they don't have political motivation or some other political interests".[32]

As countries differ in many aspects (different political, social, economic, culture values and etc.) it is crucial that in trying to achieve some positive changes on human rights the NGOs would be very sensitive to the local conditions that give rise to human rights abuses and ways in which local societies adapt and apply human rights norms.[33] In this case the principle "one-size fits all" is not a solution; there are no universal tools and ways which could be applied to the same situations in different countries, because it could have negative reflections on human rights situations.

Speaking about the NGOs impact in protecting human rights and freedoms in the role of media, good relations with officials and "flexibility" of the government should not be devaluated. In fact, in ensuring the real enjoyment of the human rights the cooperation among the NGOs and media is crucial. Publicity is a powerful tool in defending human rights. In many cases the NGOs efforts would be meaningless if they would not be published. I agree with Peter R. Baehr, who says that "human rights NGOs would be hard put to have any impact, if the media would not pay attention to their activities".[34] It is true that governments are more likely to be persuaded to act on behalf of human rights in the face of media attention or the threat of it.[35] Once a particular human rights problem gains public attention, it becomes more difficult for state authority to ignore it. Chances of success are greater if the government respects the freedom of speech and the expression of public opinion. Thus, it might be claimed that NGOs are not almighty and largely the successes of their activities depends of power of publicity.

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[31] Habib Toumi, "Lawmaker Says NGOs More Dangerous than Military Interference or Economic Sanctions," (March 2010) // http://www.habibtoumi.com/2010/03/11/lawmaker-says-ngos-more-dangerous-than-military-interference-or-economic-sanctions/ (accessed September 15, 2010).
[32] Rachel Brett, "Non-governmental Actors in the Field of Human Rights": 350; in: Raija Hanski and Markku Suksi, eds., *An Introduction to the International Protection of Human Rights: A Textbook* (Institute for Human Rights, Åbo Akademi University, 1997).
[33] Julie Mertus, *supra* note 7.
[34] Peter R. Baehr, *supra* note 18: 150.
[35] *Ibid*.: 151.

The relations with officials and "flexibility" of the government are crucial as well. Effective advocacy always requires an ongoing positive relationship with government and the use every chance to get access to decision and policy-making as well as to educate or socialize decision-makers and actors within government into human rights ideas.[36] "If governmental actors are not receptive to, or aware of, NGOs policy recommendations, then there is little hope for policy change".[37] Indeed, it is very important how government is eager to be "flexible". The NGOs may try to influence the government, but if there is a "strong hand" it will be very difficult for NGOs to achieve their goals. Still if, the relations between the NGOs and the governments are too friendly it might be said that NGOs do not work efficiently.

Finally, speaking about the effective protection of human rights the nature of NGOs should not be forgotten as well. Basically the success of NGOs in protecting the human rights relies on their nature. NGOs as being the grassroots organizations are close to ordinary people and hence their closeness, better knowledge (human rights NGOs are often among the first to reach the scene of massive violations of human rights), understanding of their needs and problems helps better represent their interests. They are more efficient because they involve less bureaucratic red tape and overhead,[38] are independent and non-political as well, and their activities, unlike states, are not restricted by rule of law, international agreements, etc. They can be more flexible and have more freedom to act compared to the state and thus can "be much more vocal, outspoken and fiercely critical of violations that occur".[39] Moreover, the NGOs concentrate all their efforts and energy on one topic – protection of human rights. Meanwhile, the state must concern itself with a wide range of interests and is not able to concentrate only on human rights issues. Finally, NGOs can act effectively only when their objectives coincide with those (state's or) powerful states' interests. The effectiveness of NGOs also greatly depends of the NGO itself: large, powerful, transnational and active NGOs which have resources and power in their hands have more chances to make positive changes regarding the protection of human rights, rather than their weak and powerless counterparts.

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[36] Elena Klitsounova, *Promoting Human Rights in Russia by Supporting NGOs: How to Improve EU Strategies*, *Foreign and Security Policy CEPS Working Documents* No. 287 (April 2008): 6 // http://www.ceps.eu/files/book/1637.pdf (accessed October 15, 2010).
[37] *Ibid*.
[38] Maryaan Cusimano Love, *Beyond Sovereignty: Issues for a Global Agenda*, 4th edition (Cengage Learning, 2010), p. 86.
[39] Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 2003), p. 291.

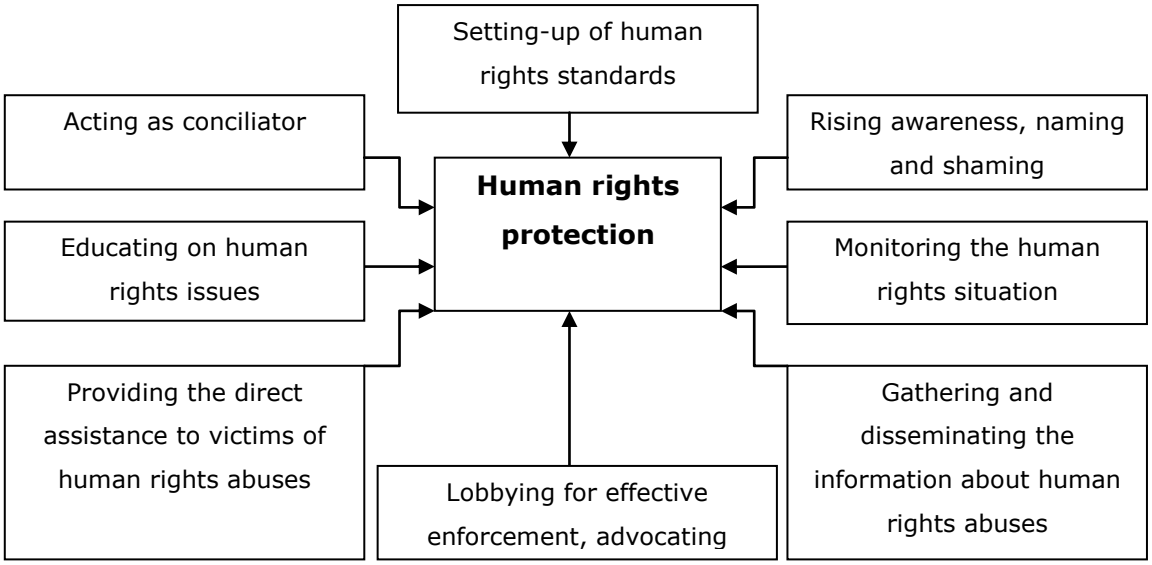


Fig. 1. The main human rights NGOs activities in improving the human rights protection

Some authors tend not to give all laurels to NGOs in decreasing the number of human rights abuses. Some argue that the most human rights violations have ended through contextual factors such as political, social or economic changes and not the efforts of human rights NGOs.[40] Moreover, some research has found many factors that influence human right practices: economic development and growth, foreign economic penetration, domestic conflict, interstate conflict, population size and level of democracy.[41]

In sum, the protection of human rights is a multiple process and the success of NGOs activities in protecting human rights greatly depends on a complex set of factors such as the activeness of NGOs, means that have been taken, strong civil society, political form of the government, political, socioeconomic situation in the country and many others.

2. HUMAN RIGHTS NGOs IMPACT ON STATE SOVEREIGNTY

For a long time state sovereignty has been sacred. States have enjoyed the right to act on their own will, to rule free from internal and external pressure. Still the active participation of NGOs in human rights development and in the implementation process breaks this rule and raises questions about their impact on the state, which is a key player in deciding how to treat its own citizens.

[40] Scott Calnan, *The Effectiveness of Domestic Human Rights NGOs: a Comparative Study* (Martinus Nijhoff Publisher, 2008), p. 25.
[41] Amanda Murdie, "The Impact of Human Rights NGO Activity on Human Right Practices," *International NGO Journal* Vol. 4 (10) 2009: 422 // http://www.academicjournals.org/ingoj/PDF/Pdf2009/Oct/Murdie.pdf (accessed April 12, 2011).

Usually states support a traditional notion of state sovereignty[42], which means that the state "is subject to no other state, and has full and exclusive powers within its jurisdiction".[43] In other words, the doctrine of state sovereignty creates barriers to intrusions [for interference] into domestic affairs.[44] Thus traditionally many countries consider human rights issues a part of their internal policy and sovereignty. For example, China's Government's White Paper on human rights (1991) claims that "despite its [human rights] international aspect, the issue of human rights falls by and large within the sovereignty of each country".[45] Governments prefer to keep their human rights violations secret, or, if such efforts are unsuccessful, claim that they are no business of outsiders.[46] Meanwhile NGOs regard sovereignty not only as a right to nonintervention (negative or de jure sovereignty), but also as a responsibility to provide some benefit to citizens (positive or de facto sovereignty).[47] Thus to speak about the human rights NGOs impact on state sovereignty is not easy, as state and NGOs differently perceive state sovereignty. Moreover, different authors, especially belonging to different civilizations, provide different attitudes regarding the relationship between state and NGOs. Still, several dominant attitudes can be identified.

The first and one of the most popular attitudes is that human rights NGOs weaken state sovereignty. The erosion of sovereignty mainly takes place through the NGOs participation in implementing the functions usually performed only by states. The most challenging one is that NGOs actively initiate and participate in setting human rights standards (usually binding), a field, which in traditional terms of sovereignty, exclusively belongs to the governments[48] and which, according to C. E. Welch, "states have long held as centrally important to their sovereign nature".[49] Today this function could be described as a "shared one," as states share jointly with human rights NGOs the right to set-up some rules in treating the citizens.

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[42] Generally there are distinguished two types of state sovereignty: internal and external. Traditionally the internal sovereignty, which usually defines the relationships between state and its citizens, means that state is the highest authority within that territory; "supremacy over all other authorities within that territory and population" (Stephen D. Krasner, *Sovereignty: organized hypocrisy* (Princeton University Press, 1999), p. 47). Meanwhile external sovereignty or international legal sovereignty refers to the relationship between states and "entails the state's status as equal to and independent of other sovereign states" (Patrick S. O'Donnell, "Sovereignty Past & Present" // http://globalization.icaap.org/content/v4.1/odonnell.html (accessed April 23, 2011)).

[43] Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998), p. 36.

[44] Kal Raustiala, "States, NGOs, and International Environmental Institutions," *International Studies Quarterly* 41 (1997): 728.

[45] White Book, *Human Rights in China* (1991) // http://www.china.org.cn/e-white/7/index.htm (accessed April 17, 2011).

[46] Peter R. Baehr, "Foreign Policy Actors and Human Rights": 144; in: Ineke Boerefijn and Jenny Goldschmidt, eds., *Human Rights in the Polder: Human Rights and Security in the Public and Private Sphere* (Antwerp: Intersentia, 2007).

[47] Maryaan Cusimano Love, *supra* note 38: 88.

[48] Claude Emerson Welch, *supra* note 6: 3.

[49] *Ibid*.: 5.

NGOs increasingly perform other roles (which the state is not able or does not want to fulfill) previously assumed only by states: they provide welfare, health services, education, etc., especially in weak states. This proves that human rights NGOs are important players in providing social services and thus have capabilities to influence social processes in society, i.e. social life in the state is not influenced solely by governments anymore. The attendance of NGOs to the problems that states are not addressing may further undermine the capacity and legitimacy of states,[50] because their take control over some issues that traditionally should be controlled only by government. Thus if NGOs fulfill some functions of states there are doubts about the functioning sovereignty. Several closely interrelated reasons can be identified that aim to explain why NGOs carry on the state functions. The first, it is the inability of the governments to sufficiently deliver the state's mission and objectives regarding the protection of human rights, as they have to address a wide range of interests (for example, economic, security and etc.) which are crucial for the survival of the state. As M. C. Love notes, "if states are unable or unwilling to fulfill their responsibilities toward the protection of individuals in need, then NGOs must step in".[51] The second reason why NGOs carry on the state's functions is a rapidly changing environment. The pressure of globalization leads to modern states being less capable of fulfilling their traditional functions. Thus the global changes and state's inability to sufficiently address all the problems determine that NGOs increasingly take control over some earlier state-controlled issues.

NGOs also erode the state's autonomy and legitimacy through the preparation and publication of reports and other kinds of information about human rights abuses. By doing this they demonstrate the state's failures in protecting human rights and send a message to the society and international community about the state's inability to properly fulfill its functions and obligations under human rights law. Thus the publication of human rights records limit the state power in some ways, as it requires changing the human rights policy. Human rights NGOs, such as Amnesty International, for instance, have publicized what they have regarded as the illicit practices of some regimes, and this in turn has increased pressure from other governments[52] against violators towards a greater respect for human rights. The provision of information to the intergovernmental bodies contradicts the information provided by the state attenuate to the state's legitimacy and authority as well, because it demonstrates state as non-reliable actor falsifying the data.

[50] Maryaan Cusimano Love, *supra* note 38: 87.
[51] *Ibid*.
[52] Stephen D. Krasner, "Abiding Sovereignty," *International Political Science Review* Vol. 22, No. 3 (2001): 237.

At other times, the information provided by NGOs serves to prompt other states to apply diplomatic pressure, and economic sanctions[53] against the violator. Indeed, the demonstration of the state as not observing the internationally recognized human rights standards may damage the country's image in the international arena and thus have impact on violating country's bilateral or multilateral relations with other countries and international/regional organizations. In many cases the democratic countries may refuse to develop bilateral relations with the violator, or to act with it on partner initiatives. This is especially the case, if the government emphasizes human rights in their foreign policy.[54] For example, Belarus, a country known as Europe's last dictatorship, which has high rates of human rights abuses, faces challenges in developing friendly international relations with other countries and regional governmental bodies, like the European Union. States do not like to be criticized for failing to fulfil their functions as it usually has negative impact on its reputation, both internally (in relations with citizens) and externally (in relations with other states). NGOs could ally with an individual state or group of states in order to criticize a particular state that failed to meet its obligations and violated international human rights law. "Coalitions of this kind have become a recognized part of international politics, although they attenuate and violate the traditional notion of state sovereignty and the principle of non-interference in the internal affairs of states"[55] as this criticism is treated as the external threat to the state's authority.

The voluntary acceptance of international human rights conventions makes governments more vulnerable to the pressures for political change regarding the issues of human rights. The consistent monitoring helps to reveal how states comply with its obligations under the international human rights law and in some extent limit the state's authority and freedom to act. Thus the monitoring policy implemented by NGOs is their instrument to control the state in guaranteeing and realizing human rights, i.e. their act as "controller", hold states accountable to their obligations under the international human rights norms/instruments. Under international law, the national governments that sign and ratify the binding human rights conventions/declarations are obliged to adopt and implement the domestic policies in accordance with accepted obligations. NGOs monitor this (in) compliance, the application of human right theory in practice. In this case the active and powerful NGOs attenuate state sovereignty, pressuring states to adhere to human rights standards in conducting their internal and international affairs and to move

[53] Eric Brahm, "Sovereignty" // http://www.beyondintractability.org/essay/sovereignty/ (accessed April 17, 2011).
[54] Peter R. Baehr, *supra* note 46: 144.
[55] Michael R. Lucas, "Nationalism, Sovereignty, and Supranational Organizations," *Heft* 114: 11 // http://www.ifsh.de/pdf/publikationen/hb/hb114.pdf (accessed 24 April, 2011).

de jure protection of human rights to a higher level – de facto protection of human rights. Ironically, but it might be said that among other roles the human rights NGOs play the role of government's "voice of conscience" as well. Indeed, they constantly remind governments of their obligations (that country accept voluntary) under the international human rights law, which governments sometimes tend to "forget". "NGOs seek to enforce the application of human rights norms internationally, particularly toward repressive states in the South, in areas formerly colonized by the West,"[56] where the rates of human rights violations are usually relatively high.

Raising awareness, especially as regards the issues that the government prefers to ignore, can abate sovereignty as well, because it may lead the government to address issues that are not otherwise a priority. Still, the affect on state sovereignty greatly depends on the type of issue that NGOs address. Usually more politically sensitive issues (more related with civil and political rights) attenuate state sovereignty.

It is clear that all NGOs efforts target changing the government's human rights policy. The availability of inexpensive and fast communication technologies have made it easier to make an impact on government's policy. Advocacy, which is closely linked with lobbying and targeting of decision makers, is the key tool to pressure the governments to change policies and to support the issues that NGOs are addressing. Usually NGOs seek to influence the governments by appealing to international human rights law. As states are eager/tend to formulate the policy without the interference of other state and non-state actors, the pressure to change the human rights policy, the domestic practice under the international human rights standards erodes the absolute state sovereignty. However, the effect on state's decisions could have only those NGOs which have significant resources at their disposal and close relations with the officials. Moreover, NGOs are not a static phenomenon, and their impact on state policies has changed and is changing with time.

However, none of the above mentioned activities of NGOs presents a serious challenge to legal sovereignty. Officially the state is still the highest authority in its territory, but in reality there are now ways to circumvent the state's authority. Moreover, as Stephen D. Krasner notes, "the right of public authorities to establish their own rules about the treatment of individuals within their national borders has never gone unchallenged by either other states or transnational NGOs".[57]

[56] Makau Mutua, *supra* note 14: 151.
[57] Stephen D. Krasner, *supra* note 52: 238.

As one would expect, all the above mentioned means have a different impact on a state's authority and legitimacy. The degrees of intensity of impact differ from low to high. Speaking in terms of sovereignty, the lobbying, advocacy, enforcement or pressure to act in compliance the with human rights law (i.e. change the human rights policy) place the biggest limits on state authority and erodes state sovereignty the most. States do not like to be pressured to act in accordance with norms that they would prefer to ignore, because they have always had the freedom to decide "what to do or not do", and to develop the policy and make the decisions by its own, without interference of other internal or external actors. Thus the active NGOs participation in decision-making process erodes state's authority and legitimacy as a decision-making unit and means that government has less availability to choose the directions of human rights policy. Meanwhile, such activities like educating the society threatens to state sovereignty less.

The idea that NGOs pose a threat to state sovereignty and limit states' capabilities is popular in non-western, less democratic and repressive countries like China, where the NGOs, especially dealing with politically sensitive subjects such as the human rights, are seen as a part of political strategy of some powerful western countries and the potential threat to country's sovereignty and national interests. According to Chinese professor Liqing Zhao, foreign NGOs "undermine national security," "destroy political stability," "foster corruption," as well as "propagate foreign practices".[58] Many non-western countries treat the criticisms regarding the human rights abuses that occur in their country as the violation of their sovereignty. "Repressive countries feel the most threatened by human rights advocacy NGOs, taking extreme steps to limit their capabilities".[59] This touches especially the powerful western-based or western financed NGOs. In this case state sovereignty is understood as the government's right to do anything that it wants within its territory without the interference of "outsiders". Meanwhile human rights are treated as the part of the country's internal affairs. Thus the NGOs are the internal and external pressure that may have impact on government's decisions. From the Chinese perspective sovereignty is the precondition and guarantor to people enjoying human rights. "When a country's sovereignty is violated then it is impossible for its people to enjoy real human rights. Only when state sovereignty – the highest and most important embodiment of collective human rights – is

[58] Deyong Yin, "China's Attitude toward Foreign NGOs," *Washington University Global Studies Law Review* Vol. 8:521 (2009): 534 // http://law.wustl.edu/WUGSLR/Issues/Volume8_3/Yin.pdf (accessed December 7, 2010).
[59] Kimberly A. Weir, "The Paradox of NGO-State Relations" [Chapter from Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy at the University of Connecticut, 2003] // http://www.cchs.ccsd.k12.co.us/academics/class_projects/APCompGov/weir%20Chapter%201%20paper.pdf (October 23, 2010).

maintained and is in their own hands, can individual human rights be ensured."[60] As Ian Taylor summarizes, "there would be no human rights to speak of in the absence of sovereignty".[61]

As human rights NGOs range from one-person local organizations to large international bodies, their impact on state sovereignty differs as well. It is commonly believed that international western-based organizations have more impact on state's sovereignty. Nevertheless, the unification of efforts of international and national/local NGOs could have impact on state sovereignty even more, as national organizations have good knowledge about the situation in their country, whereas, international organizations have excellent expertise, are powerful, experienced and have resources at their disposal to influence. The need for cooperation between the two levels of grassroots organizations aiming to impact the state's decisions encourages the fact that the impact of transnational NGOs is limited by internal politics of target states. Thus national/local NGOs erode sovereignty from inside; meanwhile the international NGOs are seen as external to state sovereignty. Usually advocacy NGOs (like Amnesty International) threaten and weaken state sovereignty rather than service-delivering NGOs. The latter's aim is to change the status qua in favor of the interests of the people that they are representing and pressuring the governments to support the issues that are addressed by NGOs.

Moreover, the activities of human rights NGOs do not affect all states in the same way. Usually NGOs challenge the legitimacy of states violating human rights, while the states that have low rates of human rights abuses do not feel threatened by NGOs. The weaker effect on state's authority is in countries with authoritarian character, where NGOs have less capabilities and power to influence, because there are created some legal barrier for human rights NGOs. For example, in 2006 Russia's government amended the NGOs law towards the stricter control of these organizations and allowed the government to intervene in the internal operations of NGOs. Meanwhile in democratic countries it is easier to achieve some positive changes, mainly because of the existence of strong civil society.

Lastly, it is clear that human rights NGOs erode state sovereignty when state interests and targets are incompatible with NGOs. From this point of view NGO-state relations are often adversarial, and the NGOs and state are usually seen as playing contrasting roles and standing in different sides of barricades. However,

[60] Majie Zhu, "Deng Xiaoping's Human Rights Theory": 82; in: Yu Xintian, ed., *Cultural Impact on International Relations* (Chinese Philosophical Studies, XX, 2002).
[61] Ian Taylor, "The People's Republic of China": 187; in: David Ross Black and Paul Williams, eds., *The International Politics of Mass Atrocities: the Case of Darfur* (Taylor & Francis, 2010).

both – NGOs and the state – aim to ensure a good life for people; it is just that the perception of what is good for people is differently understood by each side.

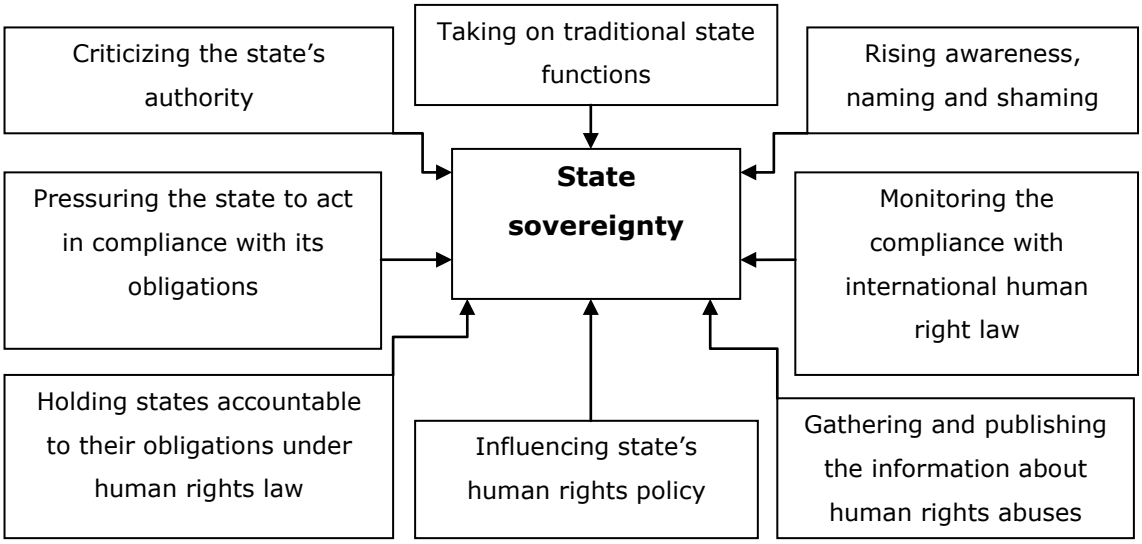


Fig. 2. The main means of human rights NGOs eroding the state sovereignty

In sum, the evaluation of impact on state sovereignty depends on many factors such as the nature of NGOs, perception of state sovereignty and human rights, political system, development level of country and etc. As in the case of protection of human rights, NGOs activities are not the sole factor in influencing the state sovereignty.

The proponents of the second position believe that activities of human rights NGOs reinforce state's sovereignty. They claim that NGOs enhance the sovereignty in assisting the state to sufficiently fulfil its functions and obligations under the internal human rights law. NGOs help to prioritize the key human rights issues, monitor the state's commitments, highlight the existing problems in human rights field, and in other ways help to ensure the real enjoyment of human rights. NGOs act as a permanent adviser of the state on human rights issues; provide the proposals for improvements in implementing the human rights. NGOs also assist governments and governmental bodies' in implementing various human rights programmes, in providing the "aid to people in weak or failing states, as relief and development organizations such as Catholic Relief Services are doing with the Afghan and Pakistan governments in ministering to the needs of Afghan refugees".[62] Usually this role belongs to service-delivering human rights NGOs, like World Food Programme, the Red Cross and others. Furthermore, NGOs brief

[62] Maryaan Cusimano Love, *supra* note 38: 86.

governments on important matters involving human rights domestically and globally,[63] i.e. they are a key source of information for the governments.

In this case the state has an interest to use the professionalism, experience and knowledge of NGOs (both service-delivering and advocacy) in order to sufficiently deliver its mission in protecting human rights. There is a mutual recognition and understanding that by aiming to ensure the human rights and freedoms, NGOs must work together with state; that only in combining the efforts of two differently based, regulated and acting "systems" there could be achieved more efficient and significant results in ensuring the human rights. Thus NGOs are treated as friends of the state who may help to fulfil its functions, rather than enemies. They are not oppressed by the state and their representatives are invited to join the official delegations of governments and the governments are eager to maintain permanent contacts with human rights NGOs. For example, once a year the Canadian Ministry of Foreign Affairs organises a two-day consultation with NGOs.[64]

As Anja Mihr notes, a tendency that hostility and confrontation of NGOs and governments should be replaced by constructive cooperation in protecting the human rights has been observed since the early 1990s, after the Vienna World Conference on Human Rights in 1993. Since then the NGOs were no longer perceived as a "watchdog" that might be a threat to state actions, but rather as collaborators in the work to protect and promote human rights.[65]

The core of the third position is that NGOs do not have any effect on state sovereignty. Arguments in this case differ. The first is that "international law has long held that constraints on a state's domestic behavior are consistent with state sovereignty if voluntarily accepted by a legitimate government, as is the case for human rights conventions".[66] In this case states obligations under human rights law are consistent with state sovereignty and thus do not have any effect on it. The second argument is that NGOs do not effect sovereignty, if the activities of NGOs are treated as one of the factors (such as globalization) that transform the conditions under which the power of state is implemented. The active operation of NGOs does not mean that the power of state either weakening, or strengthening; there are only changes of the environment in which the government operates. Moreover, it should not be forgotten that the state is free to be "deaf" and "blind" to the activities and influence of NGOs. Today, as before, the final decision is taken

[63] George E. Edwards, "Attributes of Successful Human Rights Non-Governmental Organizations (NGOs) – Sixty Years After the 1948 Universal Declaration of Human Rights": 26 // http://works.bepress.com/george_edwards/2/ (accessed April 23, 2011).
[64] Peter R. Baehr, *supra* note 18: 142.
[65] Anja Mihr, "The Role of Human Rights NGOs since 9/11: New Policies or Just Necessary Changes?" // http://www.ucis.pitt.edu/euce/events/conferences/HR-PDF/Mihr.pdf (accessed 23 April, 2011).
[66] Daniel C. Thomas, *supra* note 26.

by states. State still is the highest authority within its territory and retains the ability to respond selectively to NGO proposals, to adopt or reject them. Finally, the effectiveness and activeness of NGOs should not be forgotten. If the NGO is a more "paper" one, does not work actively and lacks resources and capabilities to influence, then it is difficult to speak about its positive or negative effect on state sovereignty; there is little hope for change. Moreover, as Stephen D. Krasner notes, "for all of the talk of growing NGOs influence, their power to affect a country's domestic affairs has been limited when compared to governments, international organizations, and multinational corporations".[67]

Finally, some argue that human rights NGOs neither erode, nor enhance, but transform state sovereignty, i.e. the activities of NGOs transform a tradition perception of state sovereignty and, as a consequence, raise questions about whether the state is a necessary entity for effecting progress.[68] Still, as Jack Donnelly notes, "state sovereignty is always changing, and is transformed over the time, as states, individually and collectively, grapple with new problems and opportunities, pursue new interests, elaborate new norms, and learn from their past practices".[69] Thus the current transformation of state sovereignty in the context of human rights NGOs is the natural one in the evolution of the concept of state sovereignty. Still, despite the transformation of the state sovereignty, it remains strong enough, and still many countries consider human rights issues a part of their internal affairs.

CONCLUSIONS

Who are the human rights NGOs: the main defenders of human rights or groups that destroy state sovereignty? The answer is more complex than a simple yes or no, and depends on many different factors such as the country's levels of economic and social development, political regime, traditions, culture and as well as the government's attitude on human rights NGOs and even how state sovereignty is perceived. The answer also greatly depends on the size, type, power and activeness of NGOs. Powerful, active and credible NGOs have a much greater chance to influence the general human rights situation and state's human rights policy. Meanwhile, smaller and more powerless NGOs have little or no chance to improve human rights de facto or to change the state's policy. This means that at the same time the human rights NGOs might be the defenders of human rights and the

[67] Stephen D. Krasner, "Sovereignty," *Foreign Policy* (January/February, 2001): 26.
[68] Marissa A. Pagnani, "Environmental NGOs and the fate of the traditional nation-state" // http://www.allbusiness.com/legal/laws-government-regulations-environmental/1011850-1.html (accessed April 17, 2011).
[69] Jack Donnelly, "State Sovereignty and Human Rights" // http://mysite.du.edu/~jdonnell/papers/hrsov%20v4a.htm (accessed April 23, 2011).

destroyers of state sovereignty. Everything depends on the attitude that is simultaneously shaped by many different factors. Traditionally in the democratic Western countries, where respect for human rights dominates, the human rights NGOs are treated as defenders of human rights who try to stop or prevent the human rights abuses. Meanwhile in non-western countries, especially in authoritarian regimes, where are relatively low social-economic developments, weak civil society and where sometimes there is a lack of democracy, usually the human rights NGOs are seen as the threat to state sovereignty and state's authority. These activities may have a negative impact on the human rights situation in the country. However, as both human rights NGOs and state– in principle have the same aim – namely, to ensure the human rights – the further research on the preconditions for effective cooperation among NGOs and state/government in ensuring the human rights is relevant. Finally it seems that the terms "state sovereignty" and "human rights" quite often are only tools of speculation in achieving some further interests (for example, to spread the power or to prevent from foreign interference). Thus NGOs' activities sensitize the issue of state sovereignty and sharpen the discussion about the relations between state sovereignty and human rights.

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