

Proposal to establish a ILA Committee for the study of the rights and obligations of non-state actors under international law.

Relevance and rationale

The manifestation of non-state actors at the international plane is widely recognized by international legal scholars. The increased number of studies on non-state actors indicates a societal and academic need. However, these studies also indicate that (1) there is considerable disagreement as to what the position of these non-state actors is or should be under international law and (2) that research is seriously fragmented in terms of approaches and focus; an integrated and comprehensive assessment is clearly lacking.

Studies on non state-actors tend to focus either on one particular institutional arrangement, or a specific subject (environment, human rights, or humanitarian aid) or a specific non-state actor (for example NGOs. MNCs armed opposition groups).

Numerous institutional arrangements with international organizations, concerns about the transparency of and democracy within NGO's, 'agreements' between states and armed opposition groups and the establishment of conflict resolution mechanisms between states and non-state actors are indicators of a growing relevance. Security Council Resolution 1540 (2004) in which the possible impact of non-state actors on international peace and security is recognized is a clear example in this respect.

Purpose of the proposed Committee

The Committee will examine the position of non-state actors in international law in terms of their rights and obligations. The results are likely to contribute to the larger academic debate on non-state actors under international law as well as the identification of the LEGAL problems in the relationship between states and non-state actors as well as international governmental organizations and non-state actors at the international level.

The Committee's work

This proposal is based on the presumption that non-state actors have both a specific set of rights and obligations within the framework of accreditation to particular bodies (ECOSOC, COPS, etc) as well as a more general set of rights and obligations under general international law. The specific 'institutional' rights and duties can be assessed on the basis of an analysis of a variety of institutional arrangements within the political and functional international organizations. From this starting point analysis, the rights

and obligations of non-state actors under general international law could be undertaken. The assessment of the general rights and duties of non-state actors must however in the absence of conventional rules be based on the practice and opinion of states, IGOS and non-state actors.

The Committee would first undertake an initial assessment of the rights and duties of NGOs, MNCs and armed opposition groups within the context of international institutions. This would be used as a basis to determine a set of general rights and obligations, which then can be verified and elaborated upon under general international law. The outcome of the first assessment of the rights and obligations within institutional arrangements would be the subject of the first report and would serve as the necessary basis of the second report.

In order to achieve a coherent outcome of the study of institutional arrangements, it is necessary to compare the arrangements between a representative number of international organizations and the most significant non-state actors. As to the choice of international organizations, the study focuses on the arrangements for non-state actor accreditation and participation before the UN (and specialized agencies such as the WHO, ILO and the OHCHR) WTO, Worldbank and representative regional organizations such as the Council of Europe, ASEAN, African Union and OAS. The assessment will be based on official documents, doctrine and practice. One of the questions to be answered is whether and why these organizations differentiate between TYPES OF non-state actors and their respective obligations and rights. What are the legal consequences of such differentiations? Can such differences be characterized in terms of legal personality?

The second Part of the Committee's work starts from these findings, but builds on a separate analysis of the practice of states and non-state actors. The latter part will be controversial as it departs from the idea that the practice and legal opinions of non-state actors are (equally) relevant in the assessment of international law. One of the main questions therefore will be how to assess and classify the practice and opinions of non-state actors as to their own rights, duties and position under international law.

Such an approach would support the idea of a more coherent approach and might be appropriate for the work by an ILA Committee because:

1. It links institutional arrangements and general international law
2. It is of a comparative nature as it focuses on several institutional arrangements and three of the most significant non-state actors
3. The proposal aims at finding or proposing a set of general rules rather than an unrelated set of specific rules, which apply to different actors and in different situations.

