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ROLE OF PRIVATE ENTITIES  
AND NON-GOVERNMENTAL ORGANISATIONS  
IN OCEAN GOVERNANCE:  
REMARKS ON THE BALTIC SEA PERSPECTIVE

**Abstract**

The European Commission, continuing its efforts to contribute to the integrated governance of global oceans, promotes harmonization of respective regimes in its Member States. In its assessment of this process in 2019, the Commission stressed in its joint report to the European Parliament and the Council that healthy oceans can exist only if responsibility for this dynamic natural ecosystem is shared not only between states, but also between different kinds of cross-border operating actors and stakeholders. The dynamics of the marine environment shall be reflected in an elastic legal regime based not only on classic legal instruments like conventions and their national implementations, but also on different kinds of soft laws, standards and formal specifications created by representatives of these stakeholders. However, admitting that integrated governance is the long-term goal, the European Union also accepts solutions based on a sectoral approach, as long as they effectively fulfill the duty to protect the marine environment enabling use of the sea for mankind and economical use of the ocean. Such a comprehensive view on the ocean is also the background of the UNCLOS co-operation.

Integrated ocean governance and its mechanisms must then be created and developed by very diverse organisations and institutions, from classical international organizations, through to intergovernmental cooperations at different levels and private organizations. This article summarizes the achievements of practical cooperation of EU mechanisms of

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ocean governance with non-governmental private organisations, representing the *de facto* decentralised management of the world oceans. Extended analysis will reveal how climate change is becoming a major long-term driver of ecosystems, bringing together different actors in an integrated, ecosystem-based oceans management approach which highlights the interplay between environmental and economic conditions, and legal mechanisms and their reflections in documents prepared by private organisations.

**Keywords:** integrated ocean governance, NGOs, marine environment, Baltic Sea, HELCOM

## INTRODUCTION

There is no doubt that non-governmental organisations (NGOs)<sup>1</sup> of different kinds are present in practically all kinds of activities connected with the protection and sustainable development of the marine environment. Both on a local and national, as well as on a regional and international level, and no matter whether we discuss the protection of fauna or the protection of the marine environment as such, NGOs are in fact one of the main actors in the ecosystem. Actually, in many circumstances we can say they guide the public administration and political institutions as well as states and international organisations. An informal group of NGOs, experts and policy-makers formed in 1971 prepared the so-called Founex Report on Environment and Development<sup>2</sup>, now regarded as the first tangible result of regional cooperation on environmental issues. Since then, we can speak of a steadily growing role of NGOs which had a particular period of activity in the 1990s. In the last decade of the last century, NGOs became a permanent participant in international negotiations and policy processes, increasingly showing their ability to lead these processes. The number of NGOs that have managed to obtain consultative status with the UN Economic and Social Council (ECOSOC) has increased from 712 in 1984 to 4,045 in 2022<sup>3</sup>.

Taking a certain simplification into account, we can say that NGO activities tend to follow a five-step-path: (i) the acclamation of values widely accepted in international society, such as human rights (or in the European Union model

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<sup>1</sup> The notion 'NGO' should be understood in its broad sense as a legal person, established by an organised group of persons or by a single person, without profit-making aiming at common objectives, excluding associations of undertakings whose purpose is to promote their activities.

<sup>2</sup> *Development and Environment: The Founex Report*, Founex, Switzerland, 2 June 1971 [in:] *In the Defence of the Earth: Founex - Stockholm - Cocoyoc*; UNEP; Nairobi 1981, pp. 2-39.

<sup>3</sup> Numbers according to the United Nations web services at <https://www.un.org/development/dspd/civil-society/ecosoc-status.html> (accessed: 14 June 2022).

- fundamental rights) (ii) which creates at the same time support for their actions amongst their members or donators of funds; (iii) based on their technical excellence and knowledge of how to solve certain situations; (iv) the breadth of their actions, NGOs fill spaces where states would fail to intervene; (v) because of embodying concepts such as trust, integrity and reputation<sup>4</sup>.

Civic society uses a variety of strategies to contribute to international policy processes. These strategies include direct participation in international fora and meetings, providing information and expertise, promoting their views through coalitions or direct and indirect lobbying, and using the media to mobilise public opinion. Comparing their influence on the outcome of different disputes and negotiations, we can assume that NGO associations are in general stronger than corporate associations. Trying to build and to manage a lobby towards international organisations, it is also easier for NGOs to identify their common interests than it is for companies. In general, large transnational companies tend to act individually, to secure all their interests at stake. Current networks such as Consumers International or the Climate Action Network, each consisting of more than 250 NGOs, demonstrate their strength by bringing together the common interests of several national actors on an issue. The best example of such a network in the EU is indeed BEUC<sup>5</sup>.

A strong capacity for networking, and involving local, regional and international organisations, seems to be crucial for the complex activity of NGOs. At the same time, it makes international NGOs strongly dependent on regional and local international organisations and *vice versa*. The 'representation of NGOs from several countries' and the 'consultative status with an intergovernmental organisation', the main elements of definitions in use, are aspects that are not present in most NGOs, especially those from the Southern hemisphere.<sup>6</sup>

## 1. GROWING STRENGTH OF NGOs

For many years, the term NGO was considered to be a typical example of newspeak used in the work of international organisations in order to easily distinguish activities undertaken by governments from those undertaken by

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<sup>4</sup> H. Slim, *By what authority? The Legitimacy and accountability of non-governmental organizations*, The International Council on Human Rights Policy: International Meeting on Global Trends and Human Rights - Before and After September 11, Geneva, 10-12 January 2002. Digital version accessible in the web service of the Global Development Research Center: <https://www.gdrc.org/ngo/accountability/by-what-authority.html> (accessed: 14 June 2022).

<sup>5</sup> BEUC: 60 years young, 60 years strong 1962-2022, BEUC, Brussels, 2022.

<sup>6</sup> M. Dias Varella, *Le rôle des organisations non-gouvernementales dans le développement du droit international de l'environnement*, *Journal de droit international* 1/2005, pp. 41-76.

civic society organisations. The very concept of NGO derives from the United Nations and is recognised in Article 71<sup>7</sup>. The United Nations has supported the activities of non-governmental organisations as a complement to the work of the international community worldwide<sup>8</sup>.

The dichotomy between the notions of ‘intergovernmental’ and ‘non-governmental’ organisations leads, however, to the lumping together of organisations as diverse as chambers of commerce, professional associations, artists’ organisations, international organisations pursuing social objectives, and small groups often treated as so-called urban activism. Of course, not all of these groups can be as influential as having 100 participants in the political and legal game on a local, national or international level. It can even be argued that non-governmental organisations as a rule do not engage in this type of activity to influence the creation or amendment of legislation in a given area or field.

A particular role in the development of plots and the influence of international NGOs was well-visible in the 1990s of the 20<sup>th</sup> century. The golden decade of NGOs started with the United Nations Conference on Environment and Development (UNCED), which was popularly called ‘the Rio Earth Summit’, and it ended with the Seattle Ministerial Conference at the World Trade Organisation (WTO) in 1999. At the Rio Summit, NGOs were treated as one of the main players for the first time, while at the same time being given the challenge of creating solutions for the future. The activities of NGOs were considered to be *conditio sine qua non* for the creation of an optimum environment for sustainable development. Such an open approach applied not only to classic environmentalist organisations, but also to farmers’ organisations and trade unions. The ministerial conference in Japan is regarded as the first case of fierce resistance put up by NGOs to intergovernmental agreements. It is widely believed that the NGO process led to what we consider the beginning of the turn of the century for many garden people<sup>9</sup>.

Assessing the influence of NGOs in the management of the marine environment, protection of the marine environment and scientific and

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<sup>7</sup> Article 71 of the Charter of the United Nations: The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned, <https://legal.un.org/repertory/art71.shtml> (accessed: 14 July 2022).

<sup>8</sup> S. Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, Michigan Journal of International Law, vol. 18.2, 1997, pp. 183-286; available at: <https://repository.law.umich.edu/mjil/vol18/iss2/1f1972> (accessed: 14 June 2022).

<sup>9</sup> R. Parmentier, *Role and Impact of International NGOs in Global Ocean Governance* [in:] A. Chircop, S. Coffen-Smout, M. McConnell (eds.), *Ocean Yearbook 26*, Martinus Nijhoff Leiden-Boston, 2012, p. 210.

economic study of the sea as an ecosystem requires some initial comments as far as the diversity of NGOs is considered. The ocean as an ecosystem and habitat to be protected - but also as an environment for commercial activities - makes such influence as diverse in nature as the diversity of NGOs themselves. At the same time, many activities of all NGOs involved use synergies between individuals and organisations, built by different kinds of coalitions that can never be considered as one group. We cannot neglect the differences existing between associations of groups and associations of associations that make up the general concept of NGOs. We also have to bear in mind differences of the political and strategic goals they want to achieve and the methods they consider appropriate for achieving them. Finally, the trust between organisations, which have a long history, can also play an important role. Their activities are also influenced by the political and economic situation in which they direct their actions or from which their governing bodies or most active members come. Sometimes additional problems arise in the end from disputes between the organisations themselves and their leaders. Considering the question of the influence of NGOs on the lawmaking process, it is also necessary to bear in mind the openness of individual systems to the introduction of any legal changes as such. A huge role is also played by the flexibility of a given legal instrument, which sometimes encourages changes and sometimes even prevents them.

## 2. 'LEGISLATIVE' ROLE OF CIVIC SOCIETY REPRESENTATIVES

The participation of non-governmental organisations in the international standard-setting process is provided for by several international organisations that coordinate the work on international law instruments. However, as different as the modalities of such participation may be, subjects of international law are nevertheless only states (sometimes also supranational organisations such as the European Union) and only states can vote on provisions of an international convention. The influence of an NGO on a state's vote is difficult to describe and assess unequivocally. Given the still closed nature of international negotiations, any information coming from participants in the process must be considered as subjective and unverifiable. It is difficult for most diplomats to admit that NGOs have a real influence on the outcome of a vote, which is, after all, supposed in theory to represent the 'will of the people'<sup>10</sup>.

The same diplomats, on the other hand, accept the influence exerted by NGOs in defining political areas of interest and setting the agenda for states. The role of civic social movements in educating and raising public awareness of

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<sup>10</sup> M. Dias Varella, *Le rôle ...*, p. 71.

marine and coastal sustainability, including expanding the range of stakeholders and publicising the need for regulation, is evident to all. Government representatives also admit to using NGOs to conduct research of a scientific nature related to planned regulation (e.g. social science research) and to using the experience of some of the organisations in environmental management in coastal areas.

However, public authorities value above all the role played by non-governmental organisations in overseeing the implementation of protection policies and the application of public international law standards and responding promptly to new developments.<sup>11</sup> While not all ways of fulfilling the role often referred to as 'watchdogging' are accepted by governments,<sup>12</sup> governments acknowledge that the watchful eye of public representatives on the actions of public authorities generally has a very positive and cheering effect.

Traditionally, when we discuss the role of non-governmental organisations in the process of negotiating acts of international law and their subsequent implementation, we draw attention to the need for legitimacy of the actions of subjects of international law and, at the same time, to the specific feedback that occurs between the inclusion of the obligation of public consultation in the acts of international law themselves or in the procedures related to the creation of tools used by public international law and the use by non-governmental organisations of their rights<sup>13</sup>.

There is also a growing acceptance of the tendency for actors in international law - both states and international organisations - to use experts who are not associated with traditional academic circles and professional organisations. Such independent experts are often sought by negotiating participants precisely through social organisations. In today's networked society, such a gathering of experts around the activities of NGOs is extremely easy, and social organisations become a kind of filter for governments when contacting experts dealing with a particular issue. Since in maritime law, Poland must be interdisciplinary in nature, NGOs are often the only or one of the few entities that have regular contact with people working at the interface of different fields of scientific knowledge and practical experience.

The growing role of supranational organisations such as the European Union has also had a particular impact on the role of non-governmental organisations which at the same time represent countries with interests as different as those of the EU Member States and simultaneously have the right

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<sup>11</sup> R. Parmentier, *The Role ...*, p. 209.

<sup>12</sup> S. Guggisberg, *The roles of nongovernmental actors in improving compliance with fisheries regulations*, Review of European Community and International Environmental Law: New Frontiers in Ocean Environmental Governance, vol. 28.3, 2019, pp. 314-327.

<sup>13</sup> O. Sending, I. Neumann, *Governance to Governmentality: Analyzing NGOs, States, and Power*, International Studies Quarterly, vol. 50, no. 3, 2006, p. 669.

and sometimes the duty to negotiate international treaties on their behalf or coordinate their activities, naturally trying to find a relative source of knowledge that would not be susceptible to the political interests of individual Member States. European Union international organisations are by definition technocratic in nature, which means that their actions are much more influenced by officials than by politicians in EU institutions and other bodies, representing the community's benefit from the knowledge of international non-governmental organisations. These early on legitimise EU views as sometimes differing from the views of some Member States.

An international non-governmental organisation which is focused on achieving an objective which is in line with the European Union's overall political objective, is in a position to contribute significantly to the preparation of the negotiating position of the Union as a whole and thus to participate in the creation of international law, not only by virtue of its own legitimacy as a participant in the negotiating procedure, but also by virtue of its influence on the actions of the European Union as an international organisation officially participating in the law-making process.

At the same time, cross-border cooperation of NGOs within European border regions plays an increasingly important role. It is built by combining local initiatives from different countries, which count on support not only from the resources available from the individual Member States but also on those directly accessible from EU funds. The EU provides significant grant funding to various policy makers in the area of regional integration and civil society involvement, and supports cross-border cooperation networks. To emphasise the importance of civil society, the European Commission Vice-President Valdis Dombrovskis said, revealing plans for a new Justice, Rights and Values Fund for 2021-2027, that 'NGOs have great potential to promote European values, they work close to citizens'. Thus, NGOs are seen by the European Commission as partners in various areas of public policy implementation<sup>14</sup>.

### 3. WHO IS REPRESENTING WHOM?

It has to be admitted that organisations such as international chambers of commerce, or professional or trade associations may feel similarly to NGOs as classic civic society organisations. Taking the traditional definition of an NGO into account, IEEE<sup>15</sup> and Greenpeace fall into the same grouping. Finding

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<sup>14</sup> M. Säre, *Non-Governmental Organisations and Cross-Border Environmental Cooperation: Salish Sea and Baltic Sea Regions*, Western Washington University 2020, [https://cedar.wvu.edu/bpri\\_publications/118](https://cedar.wvu.edu/bpri_publications/118) (accessed: 14 June 2022).



a theoretical difference between all possible NGOs taking part in negotiations is certainly not an easy task. The more multi-dimensional international cooperation is needed to solve a given marine environmental problem, and the more interdisciplinary the knowledge of the participants is in the process, the more difficult it is to distinguish a businessman from a scientist and a social activist from a politician. Therefore, it is sometimes easier to treat everyone as if they were one group. Thus, it is crucial to understand the influence of NGOs on the content of international law and its practical implementation through the lens of their relationship with states and supranational organisations such as the European Union. It should, however, be clear that the mere fact of being subsidised by EU funds does not equate to promoting EU ideas or - even more obviously - the policy driven by the European Commission.

NGOs are happy to stress their role as representatives of ordinary citizens, presenting themselves as a vehicle for the empowerment of social groups who, for various reasons, may be excluded from the political process. By assuming this role, organisations contribute to strengthening participatory democracy. But again, it is important to note the significant evolution that non-governmental organisations involved in organising the framework for international cooperation on marine environmental protection have undergone. In the traditional - albeit certainly simplistic - model, governments represent the interests of the state as a whole and economic organisations defend the interests of investors seeking to exploit resources economically, while civil society organisations are primarily on the side of 'the environment' and the people associated with it.

This romantic image, however, increasingly has little to do with reality. NGOs are defending a good which is often not so obviously visible from the point of view of the local community, for whom the sustainable use of the environment is linked above all to the restrictions they themselves are subject to when trying to carry out economic activities in the area they live in.

In the case of the marine environment, we most often deal with a dispute between fishermen and other social groups, both of which make economic use of the resources of the sea, and the organisations of an ecological nature which invoke the good of society as a whole or even the protection of nature and the environment itself.

It is, however, clear, that the more international in character a non-governmental organisation is, the less it fulfils the expectations of the groups directly

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<sup>15</sup> The Institute of Electrical and Electronics Engineers (IEEE) is a professional association for electronic engineering and electrical engineering (and associated disciplines) with its corporate office in New York and its operations center in Piscataway, New Jersey. It was formed in 1963 from the amalgamation of the American Institute of Electrical Engineers and the Institute of Radio Engineers.



benefiting from the resources which are the subject of the regulation. However, this does not mean that the development of participatory democracy is impeded.

This problem is reflected in disputes over the issue of representativeness of NGOs<sup>16</sup> at certain negotiation tables. Indeed, it can happen that certain sections of society are 'treated' by a few organisations, while others, equally needy, are left out. This danger is compounded by the fact that most NGOs come from developed countries. As a result, it may be the people from these countries who decide where the funds go, rather than those who will benefit from their activities. Moreover, there may be conflicts of interest between the organisations and the state, or the population that is the object of their policies<sup>17</sup>.

#### 4. OBSERVER STATUS OF NGOS

Non-Governmental Organisations are often given observer status in major governmental and inter-state agencies. In such situations, they must scrutinize decision-making procedures and policy choices, as well as monitor the responsible investment of funds and the progress and results of their implementation. It is also important to note the special role played by NGOs which are not connected to any state, which thanks to this real independence, avoid political obstacles and serve as an entity not entangled in the conflict occurring in a given region. In principle, the only clear example of such activity in the sector we are discussing is the activity of non-governmental organisations dealing with combating a specific threat as an ecological one, for example dealing with the liquidation of the effects of a fuel spill. In such instances, the activity of the NGO may lead to very positive effects, protecting the environment at the moment of a clear dispute between the polluter and the authorities of a given area. However, it is difficult to say whether such activities have had a direct effect on the development or enforcement of public international law.

NGOs indeed play a key role in building political consensus among countries that do not have a strong tradition of cooperation among themselves. This is an important factor in cooperation on environmental protection of reservoirs shared by several states (with the Baltic Sea probably being the best example). The NGO activities can lead to finding common ground among the political agendas of governments of countries who differ when it comes to day-to-day cooperation between political and military movements. NGOs are also in the

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<sup>16</sup> V. Collingwood, L. Logister, *State of the Art: Addressing the INGO 'Legitimacy Deficit'*, *Political Studies Review* 2005, p. 188, <https://journals.sagepub.com/doi/10.1111/j.1478-9299.2005.00022.x> (accessed: 14 June 2022).

<sup>17</sup> V. Collingwood, L. Logister, *State of the Art ...*, p. 179.

privileged position of being able to enable negotiations and reach solutions in cases where traditional conflict resolution mechanisms have proved ineffective.

Finally, in some cases, NGOs manage to raise huge funds that can be allocated to a specific type of policy. In this way, they formulate, finance and implement projects independently of the state seal of approval. From this perspective, such activities can make up for the political shortcomings of the state and overcome delays in bureaucratic procedures.

However, the growing influence of NGOs also comes with risks. A number of important criticisms to these approaches have been made in studies of practical perspectives that discuss the effectiveness of third sector actors. The lack of control and accountability mechanisms, as well as the degree of openness to participation of civil society groups within NGOs themselves, are pointed out as important elements characterising the legitimacy crisis. Some authors even question the idea that NGOs can modify the normative pattern of political governance. There is no connectivity between the third sector and the state sphere in the normative basis. Its emergence would be an extra-systemic factor, emerging alongside other elements (internalisation of international standards, soft law, etc.) in response to the inability of the traditional legal system to meet the challenges posed by the current dynamics of international society. There is also the danger that private interests will exert control over the activities of NGOs<sup>18</sup>. Regulating these situations, however, creates a difficulty in reaching the thin line separating accountability mechanisms from unnecessary bureaucracy.

Some scholars also point out that NGOs tend to maintain a more permanent list of subject matter experts than the governmental side. It means that, especially in the case of international agreements that have been under negotiation for a long time, NGOs present more continuity in representation, whereas the change of government representatives is quite frequent. The same study also stressed that governments and intergovernmental organisation representatives remain more anonymous than NGO representatives<sup>19</sup>.

Some specificity also has to be observed when we assess the huge multinational NGOs, as the multiplication of their resources is reflected in the increase in the budgets of several large organisations<sup>20</sup>, which have become genuine international institutions, present in several countries and lending money to countries to implement specific projects<sup>21</sup>.

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<sup>18</sup> R. Parmentier, *The Role ...*, p. 209.

<sup>19</sup> R. Blasiak, C. Durussel, J. Pittmand et al., *The role of NGOs in negotiating the use of biodiversity in marine areas beyond national jurisdiction*, *Marine Policy*, vol. 81, 2017, pp. 1-8.

<sup>20</sup> According to the UNDP, international NGOs represent a sector worth US\$ 1.1 trillion in the 22 countries studied, employing 19 million people. See UNDP, *Human Development Report*, 2001, p. 36.

<sup>21</sup> M. Dias Varella, *Le rôle ...*, pp. 41-76.

## 5. DIGITAL IMPACT

The dynamic development of internet communication caused a major change in the coordination of positions held between the participants of negotiations in order to create acts of international law. While in the case of public institutions and state representatives, we first dealt with digitalization of the standard processes, the changes in cooperation methods of NGOs went significantly beyond a pure shift from paper to computer.

For civic society, we can even talk about a fundamental paradigm shift. We can actually talk about a real transformation of the way that civic society participates in international activities. This applies both to the coordination of activities between experts within a single organisation, and to the coordination of cooperation between organisations.

Before the age of the internet, isolation and sovereignty walked hand in hand. States could restrict the voice of civic society with administrative tools whilst not making it transparent to the world. Today - working in an environment where borders cease to have any major significance for the daily flow of information, there is a significant increase in the effectiveness of organisations of a niche character, even with little funding. Examples include organisations that represent people pursuing a very specific goal, or experts dealing with niche areas of research<sup>22</sup>. In the pre-Internet era, simply finding people with similar interests was much more difficult than it is today. The explosion of interest in social media at the beginning of the 21<sup>st</sup> century also marked a complete change in the ecosystem of civic society organisations.

From an information point of view, networking for the urban movement was not very different from recreating a similar environment on a regional or global scale. All the changes, which the digital transformation brought, should be assessed as positive from the point of view of an individual. Yet the other side of the same coin also brought granularity of groups and polarisation of views.

Nevertheless, positive effects of the digital transformation for the effectiveness of international NGOs in international activities include:

- easy access to information, including the possibility to access machine-readable public information resources,
- accuracy and speed of information transfer,
- freedom to operate across borders – not restricted by technical and organisational obstacles,
- easier access to experts,
- the possibility of a free network assessment of the value of materials,
- easy formation of groups created for a specific task.

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<sup>22</sup> M. Oppenheimer, *Science and Environmental Policy: The Role of Nongovernmental Organizations*, Social Research, vol. 73-3, 2006, p. 884.

Of course, each of these positive effects has its adverse results, which also have to be balanced. The freedom and speed of information transfer between entities led to an exponential growth of information transferred. NGOs had to devote a large part of their work to sifting through received information that was not useful, erroneous or that created confusion. It turned out that the rapidity of information transfer could also have its negative sides, as it meant that the deadlines set for particular activities were shortened. In the case of NGOs with relatively small human capital and no large organisational background, it became a problem to maintain deadlines set for particular activities in the negotiation process.

Moreover, fast and easy borderless contact does not always mean that those who communicated information most quickly or easily were those whose information was most useful. The ease of searching for experts led, on the one hand, to the emergence of young new faces among the specialists influencing negotiations and, on the other hand, started to detach the assessment of skills of individual experts from the patterns established over decades. Non-governmental organisations were more and more willing to use the innovative work of young scientists, leaving aside structured evaluation carried out in scientific circles. The network structure to evaluate such material was one of the most important achievements of the NGOs, but this process did not start immediately when the digital transformation of the network began.

The institutional participants of the process and states themselves had their own specific problems related to the digital transformation. They were not able to take advantage of the positive sides of the transformation on a daily basis. While NGOs were usually flexible enough to take action immediately, the traditional process - often halted by law - was still in place when the position of the government or of the international governmental organisation was under preparation. Although the contact between the participants was much easier, the formal side of the action did not change. At the same time, governments had to keep up with the changes introduced by the participants using less formal structures when preparing their position. Institutions often had to support their own experts who were not able to keep up with the representatives of the social side digitally. The most important problem, however, was how to deal with the granularity of the civic society organisations and the radicalisation of positions.

## 6. FROM NGOs TO CLASSIC POLICY MAKING

We witnessed a clear increase in the importance of interests in the environmental community over the political interests of governments in parallel to the process of digital transformation since the 1990s. Large groups of participants taking part in the negotiation processes represented rather social or legal tendencies rather than what we could define as 'the sovereign interests' of

a given state. It was largely due to the fact that the EU institutions were more often directly represented by experts, which for the EU meant the people who until recently had represented the social side in this type of negotiation. The most characteristic transition turned green party politicians from representing the position of a social movement to representing the position of participants in political processes and representatives of governments. Sometimes, as in the case of Germany, green party representatives occupied leading positions in the diplomacy of a given country. This situation caused tensions between the proponents of 'sovereign interests of state' and those claiming that existential problems of the environment should prevail. Such hierarchy in normative production resulted in a predominance of community interests, such as environmental protection, but also an appreciation of the individual, mainly in human rights and humanitarian law.

A special role is played by NGOs, bodies and organisations of a tripartite nature which aim to create a common table of permanent agreement between the representatives of two fundamentally opposed groups and the governmental side. The most characteristic examples of such organisations always appear at the interface of representatives of employers and employees. In the case of maritime law, such a role is played by the Joint Maritime Committee of the International Labour Organisation<sup>23</sup>.

## 7. THE BALTIC SEA PERSPECTIVE

Taking this new pro-community approach may water down the classical conception of the international legal system based on formal legality as a mere consequence of governmental consent. Even if this was not so clearly visible when negotiating the content of an international agreement, it was very clearly visible in the implementation of provisions of such an agreement. The Helsinki

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<sup>23</sup> The Joint Maritime Commission (JMC) is a bilateral standing body that advises the Governing Body on maritime matters, including setting standards for the shipping industry. Its composition is as follows: Chairman of the Governing Body; two members of the Governing Body (one Employee, one Employer); twenty permanent members of shipowners; twenty permanent members of seafarers; four alternate members of shipowners; and four alternate members of seafarers. The Standing Rules of the JMC provide guidance on how to deal with various procedural issues that may arise during the work of the Commission. The specific tasks of the Joint Maritime Commission (JMC) include updating the minimum basic wage for able seafarers in accordance with the 1996 Recommendation on Seafarers' Wages, Hours of Work and Manning of Ships (no. 187). This is the only statutory international wage-setting mechanism. The Seafarers' Wages Sub-Committee of the Joint Maritime Commission was established to provide regular updates on wages.

Conventions for the Protection of the Marine Environment of the Baltic Sea<sup>24</sup> may serve as the best example of such evolution.

The Baltic Sea, while relatively small, is surrounded by multiple states belonging to different cultural, legal, economic and political zones. The Baltic Sea is also one of the most polluted bodies of water in Europe and the world. The degree of environmental degradation is influenced by the unfavourable physical characteristics of the Baltic Sea. The Baltic Sea covers 420 000 km<sup>2</sup> and is a shallow sea.<sup>25</sup> The Baltic Sea is a low-salinity sea, fed only episodically by strongly saline and oxygenated waters from the North Sea, which have a beneficial effect on the marine ecology. The frequency of large barotropic inflows is decreasing and measurements carried out in January 2015 in the deep layers of the Baltic Proper by the Institute of Oceanology of the Polish Academy of Sciences (IO PAN) indicated an interval of more than 11 years.<sup>26</sup> Hydrological conditions (narrow connection to the North Sea through the Danish straits, large freshwater inflow from rivers) influence the high salinity variability of the Baltic Sea. Slow exchange of water, river waters inflow containing both pollutants and nutrients, as well as low biodiversity, make the Baltic Sea a particularly environmentally sensitive area. The ability of the Baltic Sea to naturally decompose pollutants and wastes is limited by low water temperatures which slow down the process.<sup>27</sup>

The sea is surrounded by highly populated and industrialised areas. This makes the Baltic Sea exposed to the pollution from coastal states.<sup>28</sup> Eutrophication of the Baltic Sea waters is a serious challenge. Excessive inputs of nitrogen and phosphorus compounds in particular, caused by human activity - industrial, agricultural and livestock activities, the operation of power plants,

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<sup>24</sup> D. Pyć, *Konwencja o ochronie środowiska obszaru Morza Bałtyckiego – 40 lat współpracy w budowaniu reżimu prawnego ochrony środowiska Morza Bałtyckiego*, Prawo Morskie, vol. XXXIX, 2020, pp. 71-88, <https://journals.pan.pl/dlibra/publication/136458/edition/119357/content> (accessed: 18 July 2022).

<sup>25</sup> According to the Baltic Marine Environment Protection Commission - HELCOM more than one third of the Baltic Sea is less than 30 m deep (HELCOM (2018): State of the Baltic Sea - Second HELCOM holistic assessment 2011-2016. Baltic Sea Environment Proceedings 155).

<sup>26</sup> D. Rak, *The inflow in the Baltic Proper as recorded in January-February 2015*, Oceanologia 58, 2016, pp. 241-247.

<sup>27</sup> J. Ciechanowicz-McLean, P. Bielawska-Srock, *The Ecological Security of the Baltic Sea from the Polish Perspective*, Maritime Law, vol. XXXIII, 2017, p. 15.

<sup>28</sup> For example, one of the sources of complex pollution of the Baltic Sea waters from the territory of the Russian Federation is the mining activity of the amber-sucinite deposit in the Kaliningrad region, A.V. Strizhenok, D.S. Korelskiy, V.S. Kuznetsov, *The Wastewater Disposal System Modernization during Processing of Amber Deposit as a Way to Reduce the Anthropogenic Load on the Baltic Sea Ecosystem*, Journal of Ecological Engineering, vol. 20, Issue 3, March 2019, pp. 30-35.

heating plants, sewage treatment plants, inputs from municipal sewage systems, etc. - contribute to the loss of oxygen in waters and bottom sediments and have a negative impact on marine biodiversity. In many areas, concentrations of metals (especially cadmium and mercury) in water, sediment and biota that are too high persist<sup>29</sup>. The continuous threat is also caused by a proliferation of toxic chemicals which leak from corroding chemical munitions containers (CW agents) dumped in the Baltic Sea after World War II. In addition, the Baltic Sea ecosystems are adversely affected by the introduction of non-indigenous species (NIS).

The prevailing community interests being sometimes much ahead of state oriented policy is especially evident from the 1990s onwards. Then the role of HELCOM<sup>30</sup> changed from a purely technocratic institution as it was planned in first convention from 1974, into an actual rule-maker. While HELCOM was provided only with duties to set some technical solutions - not more than typical soft law - it started to induce Member States of the convention to introduce hard solutions into national law. Increasingly often, the creators of these technological solutions felt more connected with their partners representing other countries, than with their own governments. In extreme cases, if the government was not able to impose real political coordination of the activities of its delegates, it was difficult to distinguish the cooperation of government specialists oriented towards the realisation of a specific community goal, from the activities of the representatives of an international organisation to the government or outside the government.

We can say that NGOs have somehow felt their power. They have understood that they can actively influence international law solutions in order to realise their own projects, often independent of any political affiliation.<sup>31</sup>

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<sup>29</sup> M. Lodenius, *Factors Affecting Metal and Radionuclide Pollution in the Baltic Sea*, European Journal of Environmental Sciences, vol. 6, no. 2, 2016, pp. 90-97.

<sup>30</sup> HELCOM - Baltic Marine Environment Protection Commission (Helsinki Commission) - an international organisation being a de facto executive body established by the states parties to the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention 1974), which came into force in 1990; since 17.1.2000. HELCOM operates on the basis of the new 1992 Helsinki Convention; the task of HELCOM is to monitor and protect the Baltic Sea environment, which is achieved primarily through the operation of permanent and ad hoc working groups: a) HELCOM MONAS (Monitoring and Assessment Group), b) HELCOM LAND (Land Pollution Group), c) HELCOM HABITAT (Nature Conservation and Biodiversity Group), d) HELCOM MARITIME (Marine Group) and e) HELCOM RESPONSE (Response Group). The Commission shall meet at least once a year. It issues unanimously recommendations that should be implemented or implemented into national law by the States Parties to the Convention.

<sup>31</sup> R. Lencucha et al., *Beyond Idealism and Realism: Canadian NGO/Government Relations during the Negotiation of the FCTC*, Journal of Public Health Policy, vol. 31-1, 2010, pp. 74-87, <http://www.jstor.org/stable/40542251> (accessed: 14 June 2022).



For many years the issue of how far we can go with such a scenario has posed critical challenges for contemporary international law. It called for determination of proper law-making procedures setting out when, why and to what extent sub-state contractors can influence the behaviour of states. As far as Helsinki conventions can serve as a good example of cooperation across geo-political borders, it has also been underlined by academics that for NGOs, this is both an opportunity and a threat. An opportunity because often government representatives, in particular politicians who are not specialists in maritime law and the law of the sea, are susceptible to influence from NGOs, and a properly introduced and well-prepared NGO can gain influence on the actions of politicians by giving actual orders to diplomats even against the existing positions of their countries. The obvious negative effect of such an action is that the NGO moves from the position of a neutral observer to having more of a political role.

Once again the Baltic Sea area can serve as an example that the neutral role can be kept even if NGOs propose legal changes on the level of an international treaty. In 2020, the World Wide Fund (WWF) and the international NGOs network Coalition Clean Baltic prepared a document entitled: *The Baltic Shadow Plan: For the Future of the Baltic Sea. NGO's key asks for the revised Baltic Sea Action Plan (BSAP)*<sup>32</sup>. The network is the basis of cooperation for a large group of ecological organisations, both international and, above all, national and local. The authors of the report evaluated the Baltic-oriented actions after the 2007 adoption and proposed a series of practical changes to be taken from 2021 onwards. The majority of the document is devoted to projects leading to the practical protection of the environment and the harmonisation of actions taken in individual countries both at governmental and non-governmental level. Nevertheless the authors of the report clearly indicate that these actions will remain superficial if they are not carried out on the basis of the amended legislation. Therefore, they indicate that the revision of the 1992 Convention is necessary in its 30<sup>th</sup> anniversary. It should introduce new mechanisms for the implementation of existing regulations. Their proposal to update the plan calls for organisational actions, such as setting a new HELCOM monitoring and evaluation system with measurable targets and repercussions for not meeting agreed set commitment deadlines. They also call for the establishment of relevant financial means to ensure that purposes of these actions can be met, e.g. setting up targeted funding schemes for BSAP implementation.

Above all, however, all NGOs are proposing two important changes of a legal nature. They believe that it is high time to replace HELCOM recommendations

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<sup>32</sup> The copy of the document from March 2020 can be found at: [https://www.bund.net/fileadmin/user\\_upload\\_bund/publikationen/meere/meere\\_shadow\\_plan.pdf](https://www.bund.net/fileadmin/user_upload_bund/publikationen/meere/meere_shadow_plan.pdf) (accessed: 10 May 2022).

with targeted actions that set deadlines to monitor and evaluate progress made over time. They also believe that Article 20(2) of the 1992 Convention already provides an opportunity to create a more effective implementation mechanism, for example in the form of implementing recommendations.

## CONCLUSIONS

International non-governmental organisations - usually working as networks of national NGOs - have experienced an enormous growth of influence on both global and regional legislative initiatives mainly in last decade of 20<sup>th</sup> century. This process was well observed both in maritime and environmental protection law. It led to the recognition of NGOs as almost equal partners in the discussion with sovereign states. But it also caused some concerns in academia as far as the roles at the negotiation table are concerned, and it even triggered some pushback from some governments.

While the remains of this process can be observed on one hand in the role played by huge NGO players like Greenpeace and in the political transformations of some NGOs towards 'Greens', the new growth of NGOs' power emerged few years later, caused partly by more flexible approach to new electronic communication tools by the representatives of the civic society. The governments became more open to assign to technocrats (or meritocrats) roles reserved so far to diplomats - both in drafting the rules or standards as well as in their implementation and governance.

The Baltic Sea region may serve as the showroom for this tendency. The governments of very diverse states do not recognise the role of increasingly technocratic HELCOM in setting the standards already for four decades. At the same time HELCOM cooperates better and better with relatively broad but also very granular ecosystem of the NGOs dealing with the subject. The European Union institutions find their role in the process supporting the NGOs and their actions (especially when cross-border aspects are imminent) and promoting good practices in that field.

## ROLA PODMIOTÓW PRYWATNYCH I ORGANIZACJI POZARZĄDOWYCH W ZARZĄDZANIU OCEANEM: Z PERSPEKTYWY MORZA BAŁTYCKIEGO

**Słowa kluczowe:** zintegrowane zarządzanie oceanami, organizacje pozarządowe, środowisko morskie, Morze Bałtyckie, HELCOM

### Abstrakt

Komisja Europejska, kontynuując wysiłki na rzecz zintegrowanego zarządzania globalnymi oceanami, promuje harmonizację odpowiednich systemów w państwach członkowskich Unii Europejskiej. W swojej ocenie tego procesu w 2019 r. Komisja podkreśliła we wspólnym sprawozdaniu dla Parlamentu Europejskiego i Rady, że zdrowe oceany mogą istnieć tylko wtedy, gdy odpowiedzialność za ten dynamiczny naturalny ekosystem jest dzielona nie tylko pomiędzy państwami, ale także pomiędzy różnymi rodzajami podmiotów i zainteresowanymi stronami. Dynamika środowiska morskiego będzie odzwierciedlona w elastycznym reżimie prawnym opartym nie tylko na klasycznych instrumentach prawnych, takich jak konwencje i ich krajowe implementacje, ale także na różnego rodzaju *soft law*, normach i specyfikacjach formalnych tworzonych przez przedstawicieli tych zainteresowanych stron. Przyznając jednak, że zintegrowane zarządzanie jest celem długofalowym, Unia Europejska akceptuje również rozwiązania oparte na podejściu sektorowym, o ile skutecznie wypełniają one obowiązek ochrony środowiska morskiego umożliwiającego korzystanie z morza dla ludzkości i ekonomiczne wykorzystanie ocean. Takie całościowe spojrzenie na ocean jest również tłem współpracy UNCLOS. Zintegrowane zarządzanie oceanami i jego mechanizmy muszą być następnie tworzone i rozwijane przez różnorodne organizacje i instytucje, od klasycznych organizacji międzynarodowych po współpracę międzyrządową na różnych szczeblach i organizacje prywatne.

W artykule podsumowano dorobek praktycznej współpracy unijnych mechanizmów zarządzania oceanami z pozarządowymi organizacjami prywatnymi, reprezentującymi *de facto* zdecentralizowane zarządzanie oceanami. Rozszerzona analiza pokazuje, w jaki sposób zmiany klimatu stają się głównym długoterminowym czynnikiem wpływającym na ekosystemy, skupiając różne podmioty w zintegrowanym, opartym na ekosystemie podejściu do zarządzania oceanami, które podkreśla współzależność między warunkami środowiskowymi i ekonomicznymi oraz mechanizmami prawnymi i ich odzwierciedleniem w dokumentach przygotowanych przez organizacje prywatne.

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