

Domenico Carolei (2023)

*Non-governmental Organisations and the Law: Self-regulation and Accountability*

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While many charities are nationally focused, a crop of the largest and most significant brands – e.g., Oxfam, Amnesty International, Médecins Sans Frontières – operate flexibly across multiple jurisdictions. For these globally significant NGOs, international legal frameworks, as well as voluntary systems of self-regulation, are often more important than national laws. In *Non-governmental Organisations and the Law: Self-regulation and Accountability*, Domenico Carolei pulls together the varying legal strands creating, for the first time, a critical international map of ‘NGO Law’.

In order to explore the limits of NGO self-regulation, Chapter I deploys a case study on the Oxfam prostitution scandal, and Chapter II a case study on the *Mafia Capitale* scandal in Rome. For researchers outside of Italy, the *Mafia Capitale* study is of particular interest as it caused public confidence in Italian civil society to take a significant knock. A scandal broke when it emerged that Salvatore Buzzi, the head of a social co-operative running Roma camps and refugee centres had, in league with corrupt politicians and the criminal underworld, been involved in skimming money from the delivery of public contracts. The corruption was on a large scale, and the release of wire tapped phone recordings in which Buzzi claimed that it was more profitable to make money on immigrants than drugs shocked the Italian public.

A key regulatory response to the *Mafia Capitale* scandal came from within the domestic NGO and charity sector itself. It established a transparency-based code for self-regulation, the *Carta dei Valori*. Member organisations within the scheme must publish items online, such as director CVs, budgets, and evidence of meetings with stakeholders. Carolei notes that compliance is low. This is, in part, because sanctions against participating organisations are not enforced. It is also for the plainer reason that organisations prioritise other, more salient, forms of accountability, such as tax reporting. The author’s key point, made through the case studies, is that while self-regulation certainly has its place in the regulatory toolkit, it is not sufficient by itself to deliver public trust and confidence.

In the light of the inherent limits of self-regulation, it is necessary to expand analysis outwards in search of more robust methods. This is done in Chapter IV which assesses international regulatory approaches. One promising, and relatively informal, method might be to establish an international ombudsman (‘grievance person’). In that system, complainants will bring their case to the ombudsman who will investigate, publish reports, and often bring the parties to together so as to work out a remedy. Carolei takes the view that long-languishing schemes, proposed separately by the UK and the Netherlands, for the establishment of an international ombudsman are not a silver bullet. Ombudsmen are normally most appropriate in

circumstances of organisational maladministration. Yet as the case studies show, problems in the NGO sector might be both substantive, and criminal.

Turning to more robust international systems, Carolei critically details ‘business and human rights’ schemes. The best known is based on the OECD Guidelines for Multinational Enterprises. In that system, signatory states, through a network of ‘National Contact Points’, provide local centres for judging, mediating and reconciling complaints against NGOs. Ordinarily, cases heard at National Contact Points are made against commercial corporations. Initially this business paradigm caused problems in the context of complaints against non-profit NGOs. So, a complaint against Norwegian Church Aid in relation to conditions in its camps was not heard on the basis that there was no ‘business nexus’.

Yet more recently, as Carolei notes in a helpful review, there have been a series of clarificatory decisions to the effect that, so long as a NGO is involved in commercial activities, a complaint might be heard in a National Contact Point. The best known relates to a complaint brought against the WWF, after it facilitated human rights abuses against Baka peoples in Cameroon. A hearing at the Swiss National Contact Point was permitted. This was because the WWF’s approach to conservation was, to an extent, market-based – e.g., the use of the panda emblem for the sale of environmentally friendly products.

A final method to regulate international NGOs, critically detailed by Carolei in Chapter IV, is extraterritorial jurisdiction. Domestic courts might expand their jurisdiction to cover crimes and torts committed abroad. This is a powerful legal process carrying the threat of state sanction, but Carolei takes the view that, while there are few theoretical legal difficulties, there are many practical problems with extraterritorial jurisdiction. So for example, the process of evidence gathering might be difficult, and litigation might be very expensive for the victims.

Ultimately, for Carolei, accountability is best delivered through a flexible combination of the different approaches. He takes the view that the international routes should also operate hand-in-hand with effective frameworks for self-regulation. And so, the book concludes by proposing a set of principles in order to develop those effective self-regulatory frameworks. His principles include simplification – i.e., managing and reducing the number of civil society codes for self-regulation as they tend to duplicate each other. He also includes diversification – i.e., flexibility in the standards adopted, and awareness that there is no ‘one size fits all’ approach to self-regulation. Finally, he includes participation – i.e., the process of setting self-regulation standards should involve a diverse range of stakeholders.

If there is a criticism of the book, it is that national laws are not included in the scope of the analysis. This is understandable – the project is already a large one. However, in order to create a full critical map of ‘NGO Law’, it will be necessary for later scholars to assess the interaction of international frameworks, self-regulation, and also domestic legal rules. Yet the book is an important one. Despite their enormous international significance, the regulation of NGOs, as they work and operate internationally, has not before been the subject of an extended legal study. Carolei’s analysis corrects that omission.