



## Transnational Law and Third Sector Organizations: Legal Challenges in Practice Binational

Transnational Law and Third Sector Organizations: Legal Challenges in Binational Activities

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### Summary

This article analyzes the legal challenges faced by third-sector organizations operating in more than one country, especially in social, cultural, and religious initiatives. The research addresses issues such as international taxation, legal cooperation between states, civil liability, and institutional ethics, highlighting the impacts of globalization on binational operations. The analysis considers the need for regulatory harmonization, the role of international conventions, and the adaptation of entities to different legal systems, proposing paths to greater legal certainty and strengthening transnational operations.

**Keywords:** Transnational Law; Third Sector; International Taxation; Legal Cooperation; Civil Liability; Ethics.

### Abstract

This article analyzes the legal challenges faced by third sector organizations operating in more than one country, especially in social, cultural, and religious initiatives. It addresses issues such as international taxation, legal cooperation between States, civil liability, and institutional ethics, highlighting the impact of globalization on binational activities. The analysis considers the need for regulatory harmonization, the role of international conventions, and the adaptation of entities to different legal systems, proposing paths for greater legal certainty and strengthening transnational operations.

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## 1. Introduction to Transnational Law and the Third Sector

The phenomenon of globalization has brought about a profound transformation in social, political, and economic organization, also creating new challenges for the law. Among the various areas impacted, transnational law emerges as a key field for understanding interactions that transcend state borders and require innovative legal solutions. The term designates the set of norms, practices, and principles that regulate activities that are not limited to a single territory, encompassing everything from international treaties to private self-regulation mechanisms. In this context, third-sector organizations gain prominence, as many of them develop simultaneous activities in different countries, promoting social, cultural, and religious initiatives with a global reach.

The third sector is understood as the space occupied by private entities of public interest, such as associations, foundations, non-governmental organizations (NGOs) and religious institutions, which do not aim for profit, but to meet social and collective demands. They differ from the public sector in that they are not part of the state structure, and from the private sector in that they do not have a commercial objective. The activities of these entities gained prominence in the second half of the 20th century, accompanying the strengthening of human rights, sustainable development, and the fight against social inequalities. Internationally, they have become important non-state actors, frequently participating in multilateral conferences, global forums, and partnerships with international organizations.

Unlike transnational corporations, which rely on established rules of private international law and bilateral trade treaties, third-sector organizations face significant regulatory gaps. The lack of a uniform legal framework for their transnational operations creates legal uncertainty, especially in areas such as taxation, civil liability, and legal recognition of legal personality. This uncertainty can compromise the effectiveness of social, cultural, and religious projects, reducing their ability to have a global impact. Authors such as Bobbio (1992) have already warned that international society requires new forms of regulation capable of including non-state actors in the legal system.

The complexity of transnational law in the nonprofit sector lies in the multiplicity of legal systems involved. An organization operating simultaneously in Brazil and the United States, for example, will need to adapt to two distinct legal systems in areas such as incorporation, taxation, accounting records, directors' liability, and accountability. This need for continuous adaptation demands technical and legal resources that many entities lack, creating barriers to their international expansion. It is in this context that the study of transnational law becomes crucial, as it proposes tools for normative harmonization and cooperation between states.

Binational action also highlights the tension between state sovereignty and the universalization of values. On the one hand, each state has the autonomy to define its own

rules for recognizing, taxing, and monitoring organizations. On the other hand, growing global interdependence requires these entities to operate across borders, especially in sensitive areas such as health, education, and humanitarian assistance. This tension reveals the central role of transnational law: finding legal solutions that respect sovereignty but also enable joint action on an international scale. As Held (2003) states, globalization creates new normative spaces that cannot be ignored by contemporary law.

Another relevant element is the ethical dimension of binational operations. Nonprofit organizations often work with vulnerable populations and receive financial resources from international donations. This requires transparency, responsibility, and accountability across two or more legal systems. The lack of clear oversight mechanisms can open the door to illicit practices such as tax evasion, money laundering, or misappropriation of funds. Therefore, an introduction to the topic cannot be limited to the formal aspects of law, but must also include an analysis of ethics and governance as foundations of the organizations' transnational legitimacy.

Furthermore, technological transformations have increased the complexity of international operations. Digital platforms allow religious, cultural, or social organizations to conduct global fundraising campaigns, broadcast live events to multiple countries, and establish international volunteer networks. These practices, while beneficial for the dissemination of ideas and values, challenge traditional legal regulation, which is still structured based on national borders. Transnational law, therefore, must keep pace with these innovations, creating parameters to protect donors, beneficiaries, and society itself.

Third sector organizations, therefore, assume a mediating role between states and global society. They fill gaps left by the public sector, operating in areas where state presence is insufficient, such as vulnerable communities or regions affected by humanitarian crises. Their transnational operations, however, require not only technical capacity but also constant legal adaptation. The introduction to this topic demonstrates that globalization has brought unprecedented opportunities for cooperation and solidarity, but also imposed regulatory challenges that must be addressed systematically.

Another point to consider is that many of these entities have a religious and cultural character, which makes their international operations even more sensitive. Issues involving religious freedom, protection of cultural heritage, and respect for diversity of beliefs can generate conflicts between national laws. Transnational law must offer ways to reconcile these values, preventing cultural differences from becoming insurmountable legal barriers. International cooperation on religious and cultural issues is already supported by UNESCO conventions and human rights treaties, but its practical application remains limited.

In short, the introduction to transnational law and the third sector highlights that the topic is not only legal, but also political, ethical, and cultural. The binational activities of these organizations require an interdisciplinary approach, capable of articulating constitutional principles, norms, and

international relations and global governance practices. More than ever, transnational law must be understood as a growing field, seeking to provide legal certainty to entities whose mission is to promote solidarity and development on a global scale. This is the starting point for analyzing the challenges that will be discussed throughout this article.

## 2. The Legal Framework for Third Sector Organizations

The legal framework for third-sector organizations varies widely from country to country, representing one of the main obstacles to their binational operations. In Brazil, the 1988 Federal Constitution guarantees freedom of association for lawful purposes, prohibiting only those of a paramilitary nature. Subconstitutional legislation complements this provision through the Civil Code, which regulates associations and foundations, and through specific regulations such as Law No. 9,790/1999, which established Civil Society Organizations of Public Interest (OSCIPs). Furthermore, the Regulatory Framework for Civil Society Organizations (Law No. 13,019/2014) introduced clearer rules for partnerships between third-sector entities and the government, reinforcing the need for transparency and accountability.

In the United States, on the other hand, nonprofit organizations are primarily regulated by the Internal Revenue Code, which provides for specific tax-exempt categories, such as 501(c)(3) organizations. This model is highly attractive to entities seeking to raise private donations, as it provides significant tax benefits to donors. However, it imposes strict limits, such as a ban on participation in partisan political activities. A comparison between the two systems already highlights the diverse legal regimes that a binational organization must navigate, adapting to distinct incorporation, oversight, and taxation requirements.

European law, particularly within the European Union, seeks to partially harmonize third sector regulation through directives and recommendations that encourage cooperation between member states. Despite this, each country maintains its own legislation on registration, tax benefits, and oversight of entities. This fragmentation hinders the transnational operation of NGOs, forcing them to establish branches in different countries or seek mutual recognition of legal personality. This process is costly and bureaucratic, representing a significant barrier for small and medium-sized entities wishing to expand their activities.

Another central aspect of the legal framework is the issue of legal personality. In some countries, such as Brazil, the formation of an association requires registration with a notary public, while in others, the filing of statutes with administrative bodies is sufficient. This difference creates obstacles to the reciprocal recognition of organizations. The 1956 Hague Convention on the Recognition of the Legal Personality of Legal Persons sought to offer solutions in this area, but

Their membership was limited, and their practical effects were limited. This highlights the need for new international treaties to facilitate the legal circulation of third-sector organizations.

Taxation is another point that illustrates the divergences in the legal framework. While in Brazil, nonprofits can obtain tax immunity or exemptions if they meet specific requirements, in other countries, the granting of tax benefits is broader or more restricted, depending on local political priorities. This diversity creates uncertainty for organizations seeking to raise international funds, as the incentives offered to donors may vary according to each country's legislation. Furthermore, the absence of specific double taxation treaties for the nonprofit sector creates the risk of double taxation in cross-border transactions.

The legal framework also encompasses civil and labor liability regulations. Entities operating in more than one country must adapt to different laws on labor rights, social security, and management liability. In some legal systems, managers can be held personally liable for mismanagement or misuse of purpose, while in others, liability is more limited to the legal entity. This disparity increases the complexity of binational operations and requires organizations to have a solid compliance structure to mitigate risks.

Another regulatory challenge concerns oversight and accountability. Many countries require periodic reporting, independent audits, and transparency mechanisms as a condition for maintaining nonprofit status. In Brazil, for example, the Court of Auditors and the Public Prosecutor's Office play a key role in oversight, while in the United States, the Internal Revenue Service (IRS) is the primary authority responsible. This diversity of oversight mechanisms can overwhelm organizations, which must meet different auditing and governance standards.

The legal framework also encompasses the relationship between third sector organizations and international organizations. In many cases, recognition of consultative status with entities such as the UN and UNESCO depends on meeting specific criteria, including transparency, democratic legitimacy, and social representation. This interaction reinforces the transnational nature of organizations, but also increases their accountability in terms of governance and ethics. As Held (2003) points out, non-state actors have become an integral part of global governance, which requires higher regulatory standards.

The diversity of legal frameworks can sometimes lead to conflicts of law. An organization registered in one country may be considered illegal in another due to differences in its incorporation criteria or statutory objectives. This is particularly common among religious entities, which face restrictions in countries where certain practices are not legally recognized. This conflict requires international mediation mechanisms and reinforces the importance of transnational law as a field capable of offering dialogued solutions across different legal systems.

Another relevant point is that, in many countries, third-sector organizations perform functions traditionally attributed to the state, such as social assistance and health promotion. This delegation of functions creates a legal paradox: although private, these entities assume highly relevant public responsibilities. This demands more precise regulation that guarantees the quality of services provided without compromising the organizations' autonomy. The legal framework must, therefore, balance freedom of association with protection of the public interest.

In short, the legal framework for third sector organizations is fragmented and heterogeneous, posing significant challenges for their binational operations. Although international efforts toward harmonization exist, the reality is that each country maintains its own rules, which creates legal uncertainty and increases adaptation costs. Understanding these differences is essential for organizations to plan their international expansion and for transnational law to offer solutions that strengthen cooperation between states and entities. This context prepares the analysis of tax and fiscal challenges, the topic of the next section.

### **3. International Taxation and the Tax Challenges of Binational NGOs**

Taxation is one of the biggest obstacles faced by third-sector organizations operating in more than one country. Unlike transnational corporations, which rely on consolidated double taxation treaties and specific international trade regimes, NGOs often lack clear legal instruments to avoid double taxation on their activities. Thus, the same transaction may be taxed in both the country of origin and the destination country, significantly reducing the resources available for social, cultural, or religious projects. This situation compromises the financial sustainability of these organizations and limits their ability to operate globally.

In Brazil, the 1988 Federal Constitution guarantees tax immunity to nonprofit organizations operating in areas such as education and social assistance, provided they comply with legal requirements and do not distribute profits (art. 150, VI, "c"). Furthermore, complementary legislation, such as Law No. 9,532/1997, details the conditions for enjoying tax exemptions. However, these benefits do not automatically extend to international operations, meaning that a Brazilian NGO receiving funds from another country may be subject to taxation at both the source and destination. This regulatory gap creates an environment of uncertainty, which often deters potential international donors.

In the United States, 501(c)(3) entities also enjoy tax exemptions, but their international operations are subject to additional requirements. The Internal Revenue Service (IRS) requires proof that funds sent abroad will be used exclusively for purposes compatible with the organization's bylaws, under penalty of losing the tax benefit. Furthermore, U.S. donors who donate funds to foreign NGOs may not be eligible for tax deductions, except in cases of specific recognition. This limitation reduces their attractiveness.

of international donations and reinforces the importance of bilateral tax cooperation mechanisms.

The problem of double taxation is exacerbated by the lack of specific international treaties for the nonprofit sector. While companies rely on bilateral agreements that prevent double taxation of profits and dividends, NGOs are rarely included in these instruments. Martins (2017) notes that the omission of civil society organizations reveals the primacy of commercial logic in the formulation of tax treaties, relegating the nonprofit sector to a secondary role. This gap compromises the efficiency of binational initiatives and requires an international agenda focused on the inclusion of nonprofits in tax agreements.

Financial transparency is another key issue in tax challenges. Many countries require detailed accounting reports from foreign organizations receiving funds in their territory, as a way to prevent money laundering and illicit financing. While such requirements are legitimate, their multiple nature generates additional costs for NGOs, which must maintain accounting offices adapted to different legislation. Soares (2019) highlights that small and medium-sized organizations are particularly disadvantaged, as they lack the necessary infrastructure to meet so many simultaneous requirements, which limits their ability to internationalize.

Another recurring problem is the difficulty of transferring financial resources between countries. In many situations, NGOs face banking barriers, high exchange rates, and restrictions imposed by financial authorities. After the September 11, 2001, attacks, the United States and other countries tightened controls on international transactions, under the guise of preventing terrorism and money laundering. This regulation directly affected humanitarian organizations, which faced obstacles in sending resources to crisis-hit regions. Although legitimate from a security perspective, these measures generated side effects that hindered the organizations' operations.

The lack of tax uniformity also creates distortions in access to tax incentives.

While in some countries international donations are fully deductible, in others they are treated as simple financial transfers, without any tax benefits. This asymmetry reduces the competitiveness of NGOs that depend on global fundraising, as it makes it more difficult to attract donors in countries that do not recognize tax benefits. Barbosa (2012) argues that the creation of a multilateral convention on donation taxation could mitigate this problem by establishing minimum parameters to encourage international cooperation.

Religious organizations also face unique tax challenges. In some countries, churches and faith-based institutions enjoy near-absolute immunity, while in others, their activities are strictly controlled and taxed. When these entities attempt to expand their activities beyond national borders, they must navigate radically different legal regimes, creating uncertainty and limitations. Silva (2020) points out that minimum harmonization

on the taxation of religious entities would be essential to avoid discrimination and promote international cooperation in social initiatives linked to faith.

Another significant tax challenge is reporting in a digital environment. With the growth of crowdfunding and online donation platforms, NGOs have begun raising funds from multiple countries simultaneously. While this practice expands the reach of fundraising, it also raises questions about applicable taxation. Many countries still lack clear rules for donations made digitally, creating gray areas for interpretation. This reality reinforces the need for regulatory updates to keep pace with digital transformation and ensure the legality of international operations.

Tax ethics also need to be considered. Even though they benefit from exemptions and immunities, third-sector organizations are not exempt from the obligation to act responsibly with taxes. Tax evasion and the misuse of benefits erode the credibility of these organizations and harm the entire sector. Held (2003) argues that the transnational legitimacy of NGOs depends on their ability to act with transparency and ethical commitment, even in the face of complex and divergent tax systems. Thus, international taxation must be addressed not only as a technical challenge but also as an ethical dimension of binational operations.

In short, international taxation represents one of the biggest obstacles to the transnational expansion of third-sector organizations. The lack of specific treaties, double taxation, banking barriers, and the diversity of tax incentives compromise the financial sustainability of these entities. To overcome these challenges, it will be necessary to strengthen international cooperation, update legislation, and create multilateral mechanisms that offer legal certainty and predictability. The next section will analyze how international legal cooperation can help address these obstacles and facilitate the binational operations of organizations.

#### **4. International Legal Cooperation and Recognition of Legal Personality**

International legal cooperation plays an essential role in enabling the binational operations of third sector organizations. This is because, for an entity to legally operate in more than one country, its legal status must be recognized and respected by different legal systems. This seemingly technical issue has profound implications for the legitimacy, transparency, and effectiveness of transnational activities. Without this mutual recognition, many organizations are restricted to specific actions, unable to develop sustainable, long-term projects.

Recognition of legal personality is one of the most challenging aspects of transnational law. In countries with centralized registration systems, such as the United States, establishing an NGO involves registering with specific government agencies, with widespread publicity.

public. In Brazil, the process is carried out in notary offices, which hinders standardization and international consultation. When an entity registered in one country seeks to operate in another, it faces the challenge of proving its legitimacy under a different legal system. This situation creates uncertainty for both the entity and its local partners, who may hesitate to establish formal cooperation.

International conventions have attempted to offer solutions to this issue. The 1956 Hague Convention on the Recognition of the Legal Personality of Legal Persons is one example, but its adherence has been restricted and its practical effects limited. Other instruments, such as bilateral cooperation treaties, are more effective but have limited scope. Martins (2017) emphasizes that the absence of a robust multilateral regime on the recognition of NGOs is a serious gap in contemporary international law, especially given the growing prominence of these entities in global issues such as the environment, human rights, and sustainable development.

Legal cooperation also manifests itself through the recognition of immunities and privileges for certain international organizations. UN-affiliated entities, for example, enjoy special legal status, with guarantees of tax exemption and jurisdictional immunity in some countries. However, this privilege does not extend to ordinary non-governmental organizations, which must negotiate their recognition on a case-by-case basis. This disparity reinforces the need for universal mechanisms that guarantee at least a minimum level of legal certainty for third-sector entities operating transnationally.

Another relevant aspect of international cooperation is the possibility of establishing reciprocity agreements. In some cases, countries sign specific treaties to mutually recognize non-profit entities registered in their territories, facilitating their operations. Although effective, such treaties are still rare and generally linked to favorable political and diplomatic relations. This limitation leaves many organizations without legal support to operate in countries where there are no specific agreements, compromising their ability to expand activities and attract funding.

resources.

International legal cooperation also involves harmonizing rules on civil liability. An NGO that causes damage in one country may be sued both at the site of the event and at its home headquarters, creating the risk of multiple and contradictory litigation. This problem is exacerbated by the lack of uniform criteria for determining competent jurisdiction in transnational cases. Ramos (2010) notes that the lack of clarity regarding applicable jurisdiction compromises predictability and increases legal costs for entities, requiring greater cooperation between legal systems to avoid conflicts of jurisdiction.

Another challenge is the recognition of foreign court and arbitration decisions. Many third-sector organizations rely on international contracts with partners, suppliers, and donors, which often include arbitration clauses or foreign jurisdictions. For such decisions to be effective in another country, there must be mechanisms for their recognition and enforcement.



Recognition. In Brazil, for example, this process is carried out by the Superior Court of Justice, which can be time-consuming and costly. International cooperation, in this sense, is essential to expedite and simplify the recognition of decisions involving binational NGOs.

Furthermore, legal cooperation must include mechanisms to prevent the misuse of third-sector organizations. Transnational operations can be exploited for illicit purposes, such as tax evasion or financing criminal activities. Therefore, many countries have adopted due diligence and financial monitoring mechanisms, especially after the 2001 terrorist attacks. While legitimate, such measures can create disproportionate barriers to the activities of reputable entities. Silva (2020) emphasizes that the challenge is to find a balance between protecting international security and promoting legitimate cooperation.

Another sensitive issue is the recognition of religious entities. In secular countries, legislation tends to treat religious organizations as ordinary associations, while in confessional states or those with restrictions on religious freedom, the situation can be more complex. This diversity of legal regimes makes the binational operation of religious institutions particularly challenging. Barbosa (2012) argues that international cooperation must include mechanisms to protect religious freedom to ensure that faith-based entities can develop social and cultural activities across borders.

The role of international organizations, such as the UN and UNESCO, is crucial in promoting legal cooperation. By granting consultative status to NGOs, these organizations encourage states to recognize the legitimacy of these entities. However, there is still a lack of a binding instrument that would oblige countries to harmonize their legislation and automatically accept the activities of organizations registered in other territories. This absence reveals the fragmented nature of transnational law and reinforces the need for multilateral progress.

In short, international legal cooperation and the recognition of legal personality are essential elements to enable the binational operations of third sector organizations. The lack of universal harmonization mechanisms creates uncertainty and limits the expansion of these entities. Strengthening multilateral treaties, reciprocity agreements, and automatic recognition mechanisms is essential to ensure greater predictability and security. Thus, international cooperation should not be seen merely as a technical tool, but as an essential requirement for consolidating the transnational activities of social, cultural, and religious organizations.

## 5. Civil Liability and Transnational Compliance

The civil liability of third sector organizations operating in more than one country is one of the most complex issues in transnational law, as it involves the possibility of damages occurring in a territory other than the one where the entity is formally incorporated. In such situations, questions arise regarding the applicable legislation, the competent jurisdiction, and the scope of the liability.

the responsibility of both the directors and the institution itself. This multiplicity of factors makes legal analysis challenging and requires organizations to adopt preventive compliance mechanisms to mitigate legal risks and preserve their international credibility.

In Brazil, civil liability is governed by the 2002 Civil Code, which provides for both the liability of legal entities and, in certain cases, the personal liability of directors for acts committed intentionally or through negligence. In the United States, the liability of directors of nonprofit organizations is subject to business judgment rules, which offer protection against personal liability as long as decisions were made in good faith. This difference illustrates how the same fact can generate distinct consequences in different legal systems, increasing the need for caution in binational actions.

The issue is even more sensitive when it comes to humanitarian or religious projects in high-risk territories. In contexts of armed conflict or natural disasters, organizations often take on essential functions, such as food distribution or emergency medical care. If logistical failures or damage to third parties occur, the NGO may be held legally liable. Ramos (2010) notes that the lack of clear international rules on the liability of NGOs in crisis areas creates uncertainty for both the organizations and the states that depend on them, opening the door to complex litigation.

Another relevant point is environmental responsibility. Many cultural or social organizations operate in environmentally sensitive regions, such as riverside communities or conservation areas. If environmental damage occurs, the organization may be held liable even in countries where it does not have a formal headquarters. In this context, Silva (2020) emphasizes that adopting international environmental compliance standards is essential to reduce risks. Transnational environmental responsibility, although less discussed, tends to intensify with the strengthening of global conventions on sustainability.

Transnational compliance, in turn, emerges as a preventive response to these risks. It is a set of internal practices aimed at ensuring that the entity's operations comply with local and international laws, as well as globally recognized ethical standards. Common compliance measures include independent audits, the creation of codes of conduct, employee training, and the adoption of corruption prevention policies. For binational organizations, these mechanisms are crucial, as they increase the trust of donors, partners, and beneficiaries.

Corruption and money laundering pose significant risks to transnational NGOs. Beginning in the 2000s, international organizations such as the OECD and the UN reinforced the need for rigorous monitoring of financial flows in civil society organizations, precisely to prevent them from being used as a front for illicit activities. Soares (2019) emphasizes that the credibility of NGOs depends directly on their ability to demonstrate that they act with integrity and financial responsibility, especially in countries with greater

institutional fragility. Compliance, in this case, is not only a measure of legal protection, but also of social legitimacy.

Civil liability also relates to personal data protection. With the digitalization of campaigns and the collection of information on donors and beneficiaries in different countries, NGOs must comply with legislation such as the General Data Protection Law (Law No. 13,709/2018) in Brazil and the General Data Protection Regulation (GDPR) in the European Union. Failure to comply with these regulations can result in heavy financial penalties and damage to the organization's reputation. Martins (2017) argues that data protection must be incorporated into NGOs' transnational compliance, otherwise it will compromise their ability to operate internationally.

Another important aspect is the civil liability of directors. In many jurisdictions, directors can be held personally liable for acts of mismanagement or gross negligence. This risk is heightened when the entity operates in more than one country, as it increases the complexity of management and the likelihood of failure. Barbosa (2012) suggests that purchasing specific insurance for directors—known as Directors and Officers (D&O)—is a recommended practice to reduce exposure to cross-border litigation, ensuring greater peace of mind for nonprofit leaders.

Compliance with labor standards also poses a significant challenge. NGOs that employ workers or volunteers in different countries must comply with diverse labor laws, which vary in terms of rights, duties, and accountability.

Noncompliance can lead to lawsuits in multiple jurisdictions, increasing costs and damaging the institution's image. In this scenario, labor compliance must be integrated into organizations' governance strategies to prevent liabilities and ensure adequate working conditions.

Ultimately, reputation is one of the most valuable assets of third sector organizations and is directly linked to their civil liability and the effectiveness of their compliance mechanisms. An accusation of mismanagement or rights violations can destroy years of credibility-building, jeopardizing fundraising and derailing partnerships. Held (2003) argues that public trust is the main currency of transnational NGOs and, therefore, must be preserved through transparent, ethical, and legally sound practices. Civil liability, in this sense, is not only a legal obligation but also a strategic imperative.

In short, civil liability and transnational compliance form an indispensable pairing for the binational operations of third sector organizations. While civil liability defines the risks and legal consequences of potential failures, compliance offers tools to prevent and mitigate these risks. Strengthening governance practices and harmonizing regulations between countries are essential conditions for ensuring that these entities can fulfill their social, cultural, and religious mission in a sustainable and legitimate manner on a global scale.

## 6. Ethics, Transparency and Accountability in a Binational Context

Ethics is a central element in the work of third sector organizations and becomes even more important when it comes to binational activities. When operating in more than one country, the entity not only faces different legal requirements but also must deal with different cultural and social expectations regarding transparency and accountability. This ethical dimension is what legitimizes the organizations' actions, especially when they involve resources from international donations or activities aimed at vulnerable populations.

Financial transparency is one of the pillars of NGOs' ethical legitimacy. In developed countries, such as the United States and members of the European Union, there is a strong tradition of requiring detailed annual reports, often made publicly available. In Brazil, more recent legislation—especially Law No. 13,019/2014—has also reinforced the need for accountability in partnerships with public authorities. However, there is still a lack of a culture of transparency in many organizations, which view such requirements as bureaucracy rather than a condition of legitimacy. This difference in practices creates additional challenges for organizations that need to comply with more rigorous international standards.

Another essential aspect is social accountability, which goes beyond legal obligations and involves a commitment to be accountable to society itself, beneficiaries, and donors. Soares (2019) argues that transparency should be understood as an intrinsic value of the third sector's activities, not merely a legal requirement. In the binational context, this ethical commitment takes on even greater importance, as the entity must ensure that its resources are used clearly and efficiently, regardless of the jurisdiction in which it operates. A lack of accountability compromises not only the organization's image but also the credibility of the entire sector.

Ethics also manifests itself in respect for cultural and religious diversity. Many binational organizations operate in multicultural contexts, where practices accepted in one country may be seen as problematic in another. A lack of cultural sensitivity can generate conflicts and even derail social projects. In this sense, Barbosa (2012) emphasizes that transnational ethics requires not only legal compliance but also intercultural dialogue, capable of ensuring that the entity's actions respect local values without compromising universal human rights principles.

Another ethical challenge is preventing conflicts of interest. In binational entities, especially those that receive large amounts of international donations, there may be pressure to direct resources according to the interests of certain groups or funders. This practice compromises the organization's independence and undermines its legitimacy.

Silva (2020) notes that the adoption of clear codes of ethics and supervisory boards

Independent audits are essential to prevent such deviations. Ethical governance, in this case, is an indispensable condition for maintaining public trust.

Accountability in a digital environment represents a new frontier for ethics in the third sector. With the popularity of online fundraising campaigns, expectations are growing that organizations will disclose the allocation of funds raised in real time. This practice, while positive, requires investment in technology and digital auditing systems, which can be costly for small organizations. Martins (2017) emphasizes that digital transparency should be incorporated as an irreversible trend, capable of strengthening trust and social participation in NGO governance.

Ethics in communication is also a key aspect. Many organizations use images of beneficiaries in their fundraising campaigns, but this practice must respect the dignity and privacy of the individuals portrayed. The inappropriate use of images can generate not only ethical questions but also legal liability, especially in countries with strict data protection laws. Ramos (2010) points out that communication ethics should be understood as part of organizations' social responsibility, integrating their codes of conduct and governance practices.

Another point to be considered is independent auditing as a tool for ethical legitimization. Hiring external auditors strengthens the entity's credibility with international donors and institutional partners. Although this process involves additional costs, it is seen as an investment in legitimacy. Soares (2019) argues that auditing should not be seen simply as a legal requirement, but as a mechanism for strengthening ethical governance and public trust.

Religious organizations face specific ethical challenges. In many cases, they are accused of confusing spiritual goals with financial interests, especially when they expand their activities beyond national borders. Ethics, in this context, require a clear separation between religious and social or cultural purposes, ensuring that resources allocated to community projects are truly used for the collective benefit. Held (2003) argues that the legitimacy of religious institutions internationally depends on their ability to demonstrate transparency and commitment to universal values of solidarity.

Another relevant aspect is ethical responsibility in the selection and management of volunteers. In binational contexts, the use of volunteers can lead to exploitation or violations of labor rights if legal and ethical limits are not observed. The ethics of volunteer management require organizations to provide adequate working conditions, training, and recognition, preventing volunteers from becoming disguised cheap labor. Silva (2020) argues that the dignity of volunteers must be recognized as part of organizations' ethical responsibility.

Finally, ethics, transparency, and accountability should not be understood as mere ancillary requirements, but as structuring elements of binational operations. In an increasingly interconnected world, public trust is the most valuable asset of third sector organizations. Without ethics, legitimacy fades; without transparency, fundraising is compromised; without accountability, international cooperation is weakened. Therefore, ethics must be understood as a cross-cutting principle that permeates all aspects of binational operations and ensures that the third sector fulfills its mission legitimately and sustainably.

## 7. Case Studies and Comparative Models

Studying concrete cases is essential to understanding how the legal challenges of the third sector in a binational context manifest themselves in practice. One of the most emblematic examples is that of international humanitarian organizations, such as the Red Cross, whose operations in more than 190 countries highlight the need for legal harmonization. The Red Cross operates under the protection of the Geneva Conventions, which grant it special legal status in conflict scenarios, but it still faces regulatory obstacles when it needs to reconcile local rules of taxation, civil liability, and accountability. This case demonstrates that even globally recognized entities must constantly adapt to national legislation.

Another relevant example is that of religious organizations with transnational operations, such as Cáritas Internationalis. Present in over 160 countries, the organization faces unique challenges related to the taxation of international donations and the recognition of its legal personality in different jurisdictions. In some countries, it is treated as a common association; in others, as a faith institution with specific immunities. This diversity of legal treatment creates uncertainty and requires the organization to develop a sophisticated compliance and legal advisory network. The case of Cáritas illustrates how the religious dimension adds complexity to the binational operations of the third sector.

In Brazil, an interesting example is environmental NGOs that work in cooperation with foreign partners. Organizations like the Socio-Environmental Institute (ISA) frequently establish partnerships with international institutions to protect the Amazon and indigenous peoples. However, they face regulatory distrust, especially regarding the origin of foreign funds, and must report to multiple national agencies. This scenario highlights how a lack of regulatory clarity can hinder international cooperation, even in causes of global interest such as environmental preservation.

In the United States, cases involving philanthropic foundations also offer important lessons. Institutions like the Bill & Melinda Gates Foundation invest billions in public health projects in several countries, including Brazil. Although

with sophisticated governance structures, face questions about transparency, legitimacy, and political influence. These cases reveal that the larger the financial and global size of the entity, the greater the need for accountability mechanisms that ensure that its social objectives are not confused with private or geopolitical interests.

The European Union provides another interesting comparative model, attempting to harmonize NGO activities through common policies. Although each member state maintains its own legislation, there are guidelines that encourage cooperation and funding for transnational projects. This model demonstrates how regional blocs can reduce legal barriers and encourage the integration of third-sector organizations in causes of common interest, such as human rights, culture, and the environment. The challenge, however, is to balance national sovereignty with the standardization of standards at the supranational level.

An emblematic case of legal obstacles occurred with NGOs operating in Haiti after the 2010 earthquake. Many international organizations sent resources and volunteers, but encountered difficulties registering legally in the country and obtaining tax exemptions. The lack of a clear regulatory framework delayed the delivery of humanitarian aid and exposed flaws in international cooperation. This example reinforces the importance of creating mechanisms for automatic and provisional recognition of entities in emergency contexts, preventing bureaucratic obstacles from compromising the effectiveness of their actions.

Another interesting example is that of organizations working to defend refugees. Entities like UNHCR enjoy international legal status, but partner non-governmental organizations often face difficulties operating in countries with restrictive immigration policies. Recognition of legal personality and authorization to receive foreign donations are recurring barriers that limit the activities of these organizations. This case demonstrates how legal issues cannot be analyzed in isolation, but must always be interconnected with political and social factors.

The experience of educational NGOs is also noteworthy. Institutions that promote international scholarships or exchange programs face tax challenges related to sending and receiving funds. In many cases, scholarships granted by foreign organizations may be taxed in the student's home country, creating double taxation. This obstacle highlights the need for specific international agreements to exempt educational donations, ensuring greater effectiveness for social and academic inclusion projects.

An innovative model of transnational cooperation can be observed in global NGO networks, such as Transparency International. This organization operates as a network, with national chapters in dozens of countries, each established according to local laws. This structure allows for respect for the legal specificities of each country while preserving the global unity of the brand and institutional mission. This case demonstrates that networked cooperation can be an effective solution to circumvent the normative fragmentation of transnational law.

The role of binational cultural organizations also stands out. Institutes such as the Alliance Française and the Goethe-Institut act simultaneously as cultural and educational promoters, and face challenges of legal recognition and taxation in different countries. Despite this, they have managed to establish themselves as actors of global relevance thanks to the institutional support of their home countries. This model demonstrates that state partnerships can strengthen the role of the third sector, creating positive synergies between public policies and cultural initiatives.

In summary, the case studies and comparative models show that the binational activity of the third sector is marked by recurring legal challenges, but also by innovative solutions.

Experiences such as those of the Red Cross, Caritas, UNHCR, and Transparency International show that, although the diversity of legal systems poses obstacles, international cooperation and strengthened compliance can ensure greater predictability and effectiveness. These examples provide valuable lessons for formulating policies and treaties that strengthen the transnational role of the third sector in the future.

## 8. Future Perspectives and Conclusion

Future prospects for transnational law applied to third sector organizations point to a scenario of increasing complexity, but also of ample opportunities for institutional strengthening. Globalization, technological transformations, and global crises—

such as climate change and migration flows—make the presence of social, cultural, and religious entities capable of operating across borders increasingly necessary. However, for this presence to be effective, it will be essential to address regulatory gaps and create more robust mechanisms for international legal cooperation.

One of the main paths for the future is the development of multilateral treaties specifically for the third sector. Currently, most international treaties focus on trade and business relations, relegating non-profit organizations to the background. This omission compromises the effectiveness of humanitarian and cultural actions, especially in emergency situations. The creation of an international convention aimed at automatically recognizing the legal status of NGOs and protecting their activities in different countries would be a decisive step toward reducing barriers and strengthening global cooperation.

Another key point is the need to standardize rules on international taxation of donations. As seen, the absence of specific treaties creates double taxation risks and reduces the attractiveness of international donors. The future of the nonprofit sector depends on a more predictable tax regime that guarantees exemptions or incentives for donations to social causes.

Regional experiences, such as those of the European Union, can serve as a model for broader initiatives. In Brazil, tax diplomacy could be used to include third-sector organizations in bilateral tax treaty negotiations.

The strengthening of transnational compliance also appears to be an irreversible trend. In a world marked by misinformation, corruption, and illicit practices, NGOs must demonstrate transparency and accountability in all countries where they operate. The future demands that codes of conduct, independent audits, and digital accountability systems become standards, not just recommendations. This standardization of best practices can reduce state distrust and increase the trust of donors and beneficiaries. Ethics, therefore, must remain at the heart of global nonprofit governance.

International cooperation also needs to be strengthened in crisis situations. Environmental disasters, humanitarian emergencies, and pandemics highlight the importance of NGOs as strategic actors. However, the bureaucracy involved in registering and recognizing NGOs in different countries often delays the delivery of aid. The future should include mechanisms for provisional or automatic recognition in emergency situations, ensuring that legal barriers do not compromise human lives. This measure depends on the political will of states, but it represents a necessary step forward to address global challenges.

Another promising aspect is the integration between third sector organizations and international organizations such as the UN, UNESCO, and the OECD. Strengthening consultative status and expanding participation in multilateral forums will allow NGOs to more directly influence the formulation of global norms. This integration is essential for transnational law to be constructed not only by states and companies, but also by social actors representing collective interests. Thus, the future of the third sector depends on a greater role in the international decision-making process.

Technology will also play a central role in future prospects. Digital fundraising platforms, blockchain-based reporting, and real-time auditing systems can increase transparency and reduce governance costs. However, these innovations require clear regulatory frameworks that ensure data security and user protection. The convergence between digital law and transnational law will be crucial for the evolution of governance practices in the third sector. The future will require a balance between technological innovation and protective regulation.

Cultural and religious diversity will continue to be one of the greatest challenges for binational operations. Respect for different values and traditions must be reconciled with the defense of universal human rights principles. This delicate balance will require greater ethical and legal sensitivity from organizations, which will need to adapt their strategies without losing sight of their institutional mission. At this point, international cooperation in cultural and religious forums can provide important guidelines for harmonizing practices and values.

Social participation must also gain more space in the future of transnational law. Global governance councils, with representation from civil society organizations, could strengthen the legitimacy of international norms and bring citizens closer to decision-making processes. The democratization of transnational law, with greater inclusion of non-state actors, represents a fundamental step in ensuring that global regulation is not dominated solely by

economic and state interests. This perspective aligns with the idea of global citizenship defended by authors such as Held (2003).

Another crucial point for the future is the strengthening of legal education aimed at the third sector. Academic programs that prepare professionals specialized in transnational law applied to NGOs are still scarce. Training qualified technical staff is essential for organizations to address regulatory complexity and implement good governance practices. Therefore, the future also depends on integration between universities, research centers, and civil society organizations.

In summary, future prospects point to the need for greater regulatory harmonization, stronger compliance, expanded international cooperation, and integration with new technologies. The binational third sector will be increasingly decisive in solving global problems, but its effectiveness will depend on clearer and more predictable legal frameworks. The conclusion is that transnational law needs to evolve to fully recognize social, cultural, and religious organizations as legitimate and indispensable actors in global governance. Only then will it be possible to build a more just, inclusive, and democratic international system.

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