Do transnational collective actors own a chance to foster global social standards?
Perspectives for future research

Outline of a global hybrid labour law
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CSR Corporate Social Responsibility

- 3 Properties:
  - social/societal responsibility of the firm
  - beyond legal obligations
  - voluntarily complied with
Four phases after WW II

According to Hepple 2005: “From Public to private, from external to internal”

1. 1944-1960s: ILO-conventions and recommendations
2. 1960s-1980s: shift to MNCs
3. Late 1980s: growth of private coc’s
4. Late 1990s: Emerging element of public control of private coc’s (ILO, GC, OECD, ISO, IFAs)
CSR – The problem

- The Good, the Bad, and the Ugly:
  - The Good: accountability
  - The Bad: profit accumulation
  - The Ugly: “a relentless public relations campaign converting the bad into good”
  (Banerjee 2007)
Global hybrid norms

- To be tested: „Hybrid norms“
- Hybrid means synthesis of both private and public transnational social norm-building.

Three test criteria/requirements to be fulfilled:

- A Legitimacy of the norms
  - Voice-entitlement-nexus (Mückenberger 2008b)
  - Problems of protectionism and social dumping
- B Effectiveness (out/outcome/impact – Young 2005)
Global hybrid norms

- **ILO-Core labour standards as paradigmatic example:**
  - ILO Declaration 1998, so-called core labour standards (cls)
    - Freedom of coalition and collective bargaining, C.87 und C.98,
    - Prohibition of forced labour, C.29 und C.105,
    - Prohibition of discrimination, C.100 und C.111,
  
- Cls are to be directly valid in all Member States – independantly from national ratification.

Global hybrid norms

- Notwithstanding this legal argument there is a problem of the effectiveness of cls (compliance)
- As a matter of fact, the cls find access in many a legal source of private or mixed public/private nature:
  - Global Compact – global value chains
  - World and/or Euro-WC agreements, IFAs
  - Indl. Ecologic/human rights (GC)?
  - Particular norm-building: ISO, OECD
  - Investment agreements: IIAs, BIAs, MAIs
- „Global hybrid norms“?
The project global hybrid labour law

- The research interest in global hybrid labour law is multifaceted:
  - it focusses on global social norms;
  - it takes as representatives of these hybrid norms the four ILO-cls;
  - within this frame, however, it tries to explore systematically both norm-building (generation) and norm-implementation (enforcement, compliance) with a view to their legitimacy and their effectiveness.

- This is what I regard as innovative within the envisaged project.
The project global hybrid labour law

- From this composition the project has a double disciplinary allocation:
  - It is legal particularly in parts A (norm-emergence) and C (norm-consistency).
    - In which legal sources do the cls appear?
    - Which legal validity do they enjoy therin?
  - It is social and political science-oriented particularly in part B (norm-implementation).
    - what do we know about the effectiveness of the norms so generated?
    - which factors can be identified which render these hybrid norms (in-) effective?
- The approach is synthetic in the assessment of the existence and the perspective of a global hybrid labour law.
Global hybrid norms: generation

- **A Norm-Generation**
- Practical experience of relative ineffectiveness of international labour standards
  - „naming and shaming“, CCAS/CEACR/CFA
  - No linkage of WTO-trade standards with ILO-labour standards
  - „Proposal for Linkage“ (Barry/Reddy 2008) in a deadlock
  - Chances for a new momentum?
Global hybrid norms: generation

Examples:
- Codes of conduct and global value chains
- EWC agreements with a global scope (Zimmer 2008)
- ISO 26000 (Mückenberger/Jastram 2010)
- Bilateral investment agreements (e.g., EU-ACP 2008)(s. UNCTAD WIR 2010)

Research interest: Emergence of global norms in general and their generation in concrete transnational "cases" (MNCs)
Global hybrid norms: generation

- Example ISO 26000 (s. other CRIMT 2011 workshop):

- working group on social responsibility (WGSR) (six groups of stakeholders).

- 426 participating experts and 175 observers from 89 cooperating countries and 41 affiliated organisations involved in WGSR meeting in September 2008.

- So-called “national mirror committee” composed as WGSR.

- ISO process with 1700 stakeholder representatives one of the most inclusive international processes in the CSR-field.
B Norm-implementation (compliance)
Important because of the „voluntary“ character of CSR
Test criterium: **Effectiveness** (according to O. Young)
- „output“: norm-conform behaviour
- „outcome“: acceptance of the norm
- „impact“: factual problem solving
Global hybrid norms: implement.

Can we identify non-legal levers for the implementation of transnationally generated hybrid norms?

- An effective sanction armouring is a prerequisite of a norm – it can be missing in the case of a legally binding norms just as it can be existant in the case of a legally non-binding norm.

- This has to be taken into account particularly in the field of International Relations (s. Katzenstein 1996; Aviram 2003; Popitz 2006)
Global hybrid norms: implement.

- **Pro-Factors** (according to A. Aviram 2003):
  - Repeated game
  - Prestige
  - Network advantages
Global hybrid norms: implement.

- **Con-Factors** (according to N. Ogawa 2009):
  - Price and time pressures on suppliers by lead firms ("double-bind");
  - missing support with respect to coc compliance;
  - ineffective ethical consumerism;
  - weekness of enforcement bodies of international organisations;
  - missing state and legal infrastructure in developing countries.
Global hybrid norms: implement.

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Global hybrid norms: implement.

Probability of effectiveness increased when

- MNCs and corresponding transnational organisational structures profit from compliance;
- MNC are embedded in transnational network structures;
- Coalitions of NGOs and global state organisations exist and act;
- Good media & public relations work is done.
Consistency

- **C Norm-consistency**
- Many concurring and competing theoretical approaches: legal pluralism/“regime collisions“ (Fischer-Lescano/Teubner 2006); transnational collision law (Joerges/Rödl 2009).
- Many an open question:
  - Is consistency required at all?
  - Could it be construed as a “network of networks“ (Pries 2010)
References

References

References