

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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Entreprises multinationales, chaînes de valeur mondiales et régulation sociale

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 sythesis 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)
 - C Consistency (legal pluralism/“regime collisions“ – Fischer-Lescano/Teubner 2006)

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,
 - Minimum age for employment, C.138, and – since 1999 – prohibition of exploiting child labour, C.182
- Cls are to be directly valid in all Member States – independantly from national ratification.
- According to tradtional international law this is a legally not binding public act of norm-building (disputed – arguments of direct effect of the Constitution and of customs & practices – cf. Zimmer 2008: 67-83).

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
 - Intl. 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:**
- **- norms 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 therein?
- **- 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.

Global hybrid norms: implement.

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 a 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;
- ❑ - weakness of enforcement bodies of international organisations;
- ❑ - missing state and legal infrastructure in developing countries.

Global hybrid norms: implement.

Factor	Con	Pro	T.u./NGO mobil.	Experiences	Perspect. 1 to 5
MNC pressure	Power Competit. no outcome	Prestige Repeated game	Part. in leadf Publ. Rel.s I. t.u.soli.	Sometimes case- specific	~3
Missing support	Power no impact	Repeated game	ILO I. t.u.soli.	Cambodia textile	~5
Eth. cons.	no outcome	Prestige Missing power leadfirm	Publ. Rel.s Coalitions w. NGOs		~4
Int.org.s	Power Nat.states no output	Prestige	ILO I. t.u.soli.		~5
Infrastr.	Power leadfirm no	Prestige Upgrading	Cotonou	Cambodia textile upgrading	~3

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)

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