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GLOBAL INSIGHTS

The John Holmes Memorial Lecture: International Organizations at the Moving Public-Private Borderline

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THE DISTINCTION BETWEEN A PUBLIC AND A PRIVATE SPHERE IS ESSENTIAL TO politics. The public sphere is commonly associated with the state and politics whereas the private sphere encompasses markets and civil society. Political power and state sovereignty rest on "a set of institutionalized authority claims."[1] The sovereign state's authority claim over its population imparts it with metapolitical authority. That is, the governing bodies of states claim to have, and are recognized as having, the authority to define what is public (and thus political) and what is private (and thus beyond political authority).[2] The range of activities over which political bodies can legitimately exercise authority may vary over time and between states. For instance, the authority claims of modern welfare states are far more extensive than those of medieval or nineteenth-century states, as formerly private aspects of people's lives have become included in the public realm.

The public-private distinction can be seen as one of the "grand dichotomies" of Western thought, subsuming a wide range of other distinctions that shape our understanding and organization of social life.[3] Rather than essential and categorically separable, the terms of this formative distinction are relational and their interpretation has varied over time. The establishment of a distinction between a public and a private sphere is the result of a prolonged and often conflictual historical process.[4] For example, warfare and diplomacy—which we today unquestionably include in the public sphere—were marketized and internationalized well into the nineteenth century. For several centuries, mercenaries were the foundation of European military power.[5] And until the early nineteenth century, diplomacy was an aristocratic pursuit; diplomats who had a sense of belonging to a single "cosmopolitan fraternity" or "aristocratic international" could easily change from one monarchic employer to another.[6]

Conversely, there are activities that today are considered primarily commercial, but not long ago were seen to belong to the public sphere. For example, from its inception in the late 1920s through the immediate post–World War II period, international civil air transport was essentially a government enterprise. The value of aviation was first demonstrated in World War I. Born in an era of war and rampant nationalism, air transportation received much more attention by its parents (state governments) than its older siblings such as shipping and railways. The relative lack of multinational enterprises that remains today in civil air transport is a vestige of its birth in the public sphere.[7]

Simplified understandings of the distinction between public and private neglect the range of variable interpretations and alternative implications of these concepts. And in today's globalized world, the borderline between the public and the private sphere is becoming increasingly diffuse. Domestically as well as internationally, private actors become politicized and public actors become marketized—"the public goes private and the private goes public."[8] What are the consequences for international organizations in general, and the UN system in particular, of this diffuse and moving public-private borderline?

While the United Nations and other intergovernmental organizations (IGOs) are traditionally firmly grounded in the public sphere, the global private sphere comprises business (for-profit) actors as well as civil society (nonprofit) actors. The interface and interplay between these types of actors have changed in recent decades. UN attitudes toward the business community have shifted dramatically. The private sector has traditionally been held at arm's length by virtually all parts of the UN system.[9] The UN Centre on Transnational Corporations (UNCTC) was inaugurated in 1974, at a time when giant transnational corporations (TNCs) were seen as a threat to state authority. It was organized as a permanent intergovernmental forum to keep a check on TNC activity, especially in the developing world. In 1993, the UNCTC was abolished as an independent organization and its activities were transferred to the UN Conference on Trade and Development (UNCTAD). The UN Global Compact signifies a profound change insofar as businesses are now seen as partners rather than threats. The first important step in that direction was taken at the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro when Maurice Strong, in his capacity as the conference's secretary-general, invited the newly formed World Business Council for Sustainable Development (WBCSD) to write the recommendations on industry and sustainable development to replace recommendations provided earlier by the UNCTC.[10]

This new trend was reinforced at various subsequent summits. Soon after assuming office in 1997, UN Secretary-General Kofi Annan spoke to the World Economic Forum in Davos about "a new universal understanding that market forces are essential for sustainable development."[11] In a series of speeches in the following years, he repeatedly emphasized that the challenges faced by the UN could not be tackled without close cooperation with the private sector. Ted Turner's historic $1 billion gift to the UN in 1998 was another important stepping-stone in the reconfiguration of UN-corporate relations.

Similarly, the UN was initially restrictive in allowing nongovernmental organizations (NGOs)—or civil society organizations (CSOs) as they are commonly labeled today—into the organization. In 1948, only forty-one NGOs had consultative status with the UN Economic and Social Council (ECOSOC); today they number some 3,000, including the Academic Council on the United Nations System (ACUNS).[12] In an ironic twist of history, the appearance of the term "nongovernmental organizations" in Article 71 of the UN Charter was the result of a compromise at the San Francisco conference in 1945 to a dispute concerning the accreditation of the World Trade Union Conference (WTUC) to the conference, which was supported by the Soviet Union and resisted by the United States.[13] Sixty years later, the Report of the Panel of Eminent Persons on United Nations–Civil Society Relations (Cardoso Report) strongly endorsed the case for wider participation of civil society in all aspects of the UN's work, both at the headquarters and the country level.[14]

The embrace of private actors, for-profit as well as nonprofit, is a pronounced trend in the UN system, but it also extends to other international organizations. Material factors have contributed to this new positioning along the public-private borderline. International organizations are notoriously underfinanced and dependent on voluntary contributions; opening up to and working with the corporate sector is then an attractive option. And the realization has gained ground that the implementation of the ambitious programs in developing countries cannot rely solely on fragile state structures, the traditional and formal IGO counterparts, but needs to involve NGOs active on the ground. In particular, fulfillment of the Millennium Development Goals requires participation by both the business community and NGOs.

Important ideational factors also contributed to the public-private reconfiguration around the turn of the millennium. The new public management (NPM) model of administrative reform, which had gained currency worldwide, blurred the borderline between public and private. It fundamentally made the public sector more dependent on corporate ideas and resources. Market values and norms entered public governance.

At the same time as the state and the public sphere came to focus more on efficiency and market management, private firms became increasingly aware of and active in human rights, environmental issues, and other public policy fields. This implied paying more attention to goals other than profit maximization, focusing more on stakeholders than on shareholders. Corporate social responsibility (CSR) became a new private management trend and emerged as a regulatory framework that placed new demands on corporations. Business firms, especially those acting on a global scale, were held accountable for an ever wider range of issues and came to play more political roles. NPM and CSR point in the same direction of blurred borders between public and private. While originally formulated with a view toward public and corporate management domestically, these ideas have spilled over to global governance.[15]

How, then, does all this affect international organizations? In this article, I discuss four modes of global governance along the moving public-private borderline that have different consequences for international organizations. First, intergovernmental organizations may proactively open up and grant access to private actors. Second, they may become involved in informal networks around specific issues. Third, they may enter into public-private partnerships. And fourth, intergovernmental organizations may be bypassed insofar as private actors take over global regulatory functions.

Access

The opening up of international organizations to private actors is one of the most profound changes in global governance in recent decades. Within a joint Lund-Stockholm research group, based on two partly overlapping programs labeled Transdemos and Transaccess, we built a new dataset that contains information on formal access for transnational actors to 298 organizational bodies of 50 international organizations during the time period 1950–2010.[16] It shows a marked increase in access over time. While the share of organizational bodies with some level of openness to transnational actors was at 20 percent in 1950, this doubled to about 40 percent in 1990, and then almost doubled again over the next twenty years to 70 percent in 2010. A period of dramatic growth in access started around 1990. Since the fall of the communist regimes in Central and Eastern Europe, the degree of formal access for transnational actors—mainly CSOs—has increased continuously in an almost linear way.

This transnational turn in global governance pervades all issue areas, all forms of international organization bodies, all policy functions, and all world regions. International organizations are engaging private actors as policy experts, service providers, compliance watchdogs, and stakeholder representatives. For instance, in the mid-1980s international negotiations on ozone depletion attracted only a handful of NGOs and not a single environmental NGO was present at the signing of the Vienna Convention for the Protection of the Ozone Layer in 1985. In the 1990s and early 2000s, by contrast, NGOs typically outnumbered states at key negotiations dealing with climate change.

Once-closed international organizations have gradually come to open up. The World Bank has undergone significant changes in this respect. Whereas only 21 percent of all World Bank–funded projects involved NGO participation in 1990, this figure rose to 72 percent in 2006. The World Trade Organization (WTO), traditionally hesitant to engage directly with civil society actors, now invites NGOs to be observers at ministerial meetings. Even the International Monetary Fund (IMF), by far the most closed of the three economic organizations, has opened up on the margins, consulting with NGOs in association with IMF summits.

Our research group's analysis of the diachronic dataset indicates that functional demand is a powerful explanation of this pattern. In other words, international organizations see the benefits of engaging transnational actors for functions that they are less well positioned to carry out as efficiently and effectively. This means that access varies with the nature of the governance problem and the resources of international organizations. Maximizing functional advantages of nonstate actor involvement, international organizations offer meaningful access to the limited range of actors whose inputs they consider particularly beneficial. Common measures for restricting access are accreditation procedures requiring nonstate actors to have proven expertise in an area and rules exclusively offering access to select groups such as scientists or producers. This is a pattern that holds for the entire time period 1950–2010.

Our analysis lends support to two measures of the nature of the governance problem as predictors of access: the extent to which the policy of an international organization generates noncompliance incentives and the extent to which the policy of an international organization requires implementation on the ground. The general pattern, in other words, is that nonstate actors provide decisional input in the form of expertise, monitor compliance by member states, and take part in the implementation of programs. Access is less extensive in policy formulation and least extensive in decisionmaking—the politically most consequential stage of international cooperation.

Access also varies across issue areas. International organizations in such policy domains as human rights, development, and trade offer extensive opportunities for nonstate involvement; those dealing with finance and monetary issues and security and defense issues remain more closed. There are also differences as to who gets involved: economically powerful TNCs tend to have most access points and resources for influence. Among civil society actors, well-organized and well-funded NGOs tend to be overrepresented whereas marginalized groups from developing countries tend to be highly underrepresented. These are patterns that appear to hold true irrespective of policy domain.

Civil society involvement in international organizations is often portrayed by NGOs themselves as well as by researchers as contributing to the democratization of these bodies. Such claims to represent and speak on behalf of the people of the world in global governance go far beyond the more modest role of CSOs in domestic democratic societies. They engage in *interest articulation* rather than *interest aggregation,* to use terms that my fellow political scientists and I were taught in the 1960s. Existing patterns of civil society involvement in global governance fall far short of the threshold requirements that would have to be fulfilled for global stakeholder democracy to be realized. The opportunities for civil society actors to take part in global policymaking are on balance unequal, select, circumscribed, and shallow. Moreover, the actors on which we pin these hopes, NGOs, frequently have weak democratic credentials themselves. Yet if we put these patterns in the perspective of democratization as a long-term process and focus on institutions for participation and accountability, there is some scope for cautious optimism. Compared to the situation only three decades ago, international organizations have allowed more voices to be heard and opened up new venues of access.[17]

Networks

Networks are commonly understood as "loosely linked collectives of organizations and individuals that hold common values, exchange information about shared interests, and engage in a common discourse about critical issues."[18] Networks represent a mode of organization that is characterized as informal, nonhierarchical, and nonterritorial. Manuel Castells has characterized the contemporary reconfiguration of social and political space on the macro level as "the rise of the network society."[19]

Networks constitute informal constellations without official status. Informal networks often emerge in the shadow of and tend to be useful complements to formal structures. The European Union (EU) is a case in point. Encouraged by the Treaty of Rome, informal transnational links have been triggered by the extraordinarily complex and cumbersome formal organizational apparatus of the EU. Moreover, the European Commission is known to frequently pursue a deliberate networking strategy, actively encouraging informal sectoral links and empowering or building coalitions with transnational and subnational groups.[20] Similarly, the UN has given rise to informal networks. The notion of the "third UN" is well-known to ACUNS members. Networking in the UN context is facilitated by the fact that many individuals move among UN appointments, jobs within their home governments, and positions in the private sector, universities, and NGOs.[21]

Prominent examples of networking among states, NGOs, and international organizations include the processes leading to the creation of the International Criminal Court and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction (Ottawa Treaty) as well as the campaign for improving access to HIV/AIDS drugs. Let me concentrate on the last example since it involves public-private boundary drawing.[22]

A major factor contributing to renewed attention to HIV/AIDS around the turn of the millennium was the development in the 1990s of antiretroviral (ARV) drugs, which reduce the viral load and allow HIV-infected people to return to a healthier state. Pharmaceutical companies were subjected to mounting pressures to reduce their prices to make these drugs available in poor countries.

The story begins in the 1980s when a business network lobbied the US government to push for an international agreement on protecting intellectual property rights in the ongoing Uruguay Round of the General Agreement on Tariffs and Trade (GATT). This was a conscious effort to bypass the traditional venue of the World Intellectual Property Organization (WIPO), a UN specialized agency that lacked enforcement powers and was perceived to be dominated by developing countries. Pharmaceutical companies played a decisive role in this lobbying campaign.

In GATT, developing countries were initially adamantly opposed to US proposals on intellectual property rights but, after escalating US economic pressure, they finally agreed to the 1994 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), which provides patent protection for both products and processes. The TRIPs established the WTO, the successor of GATT, as the only international organization in charge of the worldwide protection of patents. The International Federation of Pharmaceutical Manufacturers and Associations (IFPMA) had been a major actor in promoting patent protection as a vital incentive for innovation.

A network of NGOs began to emerge in the late 1990s, organizing protests against the lack of access to ARV treatment for people living with HIV/AIDS in developing countries. Beginning in 1996, Health Action International (HAI) developed a campaign against the effects of TRIPs on limiting access to patented medicines. This campaign was supported by Médecins Sans Frontières (MSF), which in late 1999 launched its Campaign for Access to Essential Medicines, capitalizing on the funds and prestige gained when the organization won the 1999 Nobel Peace Prize. Oxfam joined forces with its Cut the Cost campaign, as did several other NGOs.

The access campaign involved, first, efforts to induce pharmaceutical companies to lower the price of patented medicine. NGOs publicized the huge profits these earn from selling ARV drugs and the fact that the majority of the patented ARV drugs have emanated from research that was largely publicly financed. Second, the NGO network promoted the production and sale of generic drugs entering the market in 2000. This involved support of low-cost access to ARV drugs in developing countries by means of "compulsory licensing"; that is, forcing companies to license patented medicines to generic producers. In short, NGOs used their most effective tool: publicly shaming pharmaceutical firms for their lack of social responsibility.

The NGO network mobilized support from key IGOs, the World Bank, the UN Development Programme (UNDP), and the World Health Organization (WHO). Because of its credentials in supporting the neoliberal agenda where the protection of intellectual property rights figures prominently, the World Bank's support was crucial. The Bank had an instrumental reason in supporting compulsory licensing and parallel importation because it spent large sums on pharmaceuticals transferred to poor countries. The 1998 meeting of the World Health Assembly (WHA), the governing body of the WHO, provided an important opportunity for the NGO network to influence a global audience. WHA unanimously adopted a resolution calling on member states to ensure equitable access to essential drugs. With endorsement from WHA, the NGO campaign sent an open letter to WTO member states, urging them to make public health their highest priority in implementing TRIPs obligations.

The access campaign, in short, engaged a loosely linked network of NGOs and IGOs around a common cause. Eventually, the campaign achieved tangible results. In November 2001, the WTO's ministerial meeting accepted the so-called Doha declaration, stating that "the TRIPs Agreement does not and should not prevent members from taking measures to protect public health."[23]

Informal networks, in sum, are generally associated with flexible and effective problem solving. As in this example, they are often triggered by private initiatives. For NGOs, networking—either among themselves or with other types of actors—is a typical strategy. The flip side of the flexibility and informality associated with networks is a lack of transparency, which sometimes gives rise to conspiracy theories. In networks, agency and power tend to become anonymous and the difficulty of pinning responsibility to individual actors is magnified.

Public-Private Partnerships

The proliferation in recent decades of partnerships spanning the public-private divide in such areas as human rights, public health, environmental protection, and development represents a new and growing mode of global governance. Partnerships are cooperative initiatives that expand the political authority of nonstate actors, whether for-profit businesses or nonprofit foundations and CSOs. While relatively new in the international setting, public-private partnerships (PPPs) have longer historical roots in the domestic context. PPPs combine resources from various sectors of society toward common, collective goals. Collaboration in partnerships is commonly depicted as a win-win situation; it can further both public and private interests. While differing in degree of institutionalization, existing PPPs constitute more formalized cooperation than networks.

The 1990s and early 2000s witnessed an unprecedented willingness among international organizations to enter into PPPs. They were perceived as instrumental in renewing the UN system and contributing to the achievement of ambitious goals. The initiatives that led to the establishment of the Global Compact, referred to initially, had repercussions throughout the UN system. For instance, WHO, under the new director general, Gro Harlem Brundtland, took an active part in organizing PPPs concentrating on specific targets. Within a few years around the turn of the millennium, some seventy "global health partnerships" were established.[24] The UN Environment Programme (UNEP), the Food and Agriculture Organization (FAO), the UN Educational, Scientific and Cultural Organization (UNESCO), UNDP, and the UN Children's Fund (UNICEF) are other UN agencies that have initiated a large number of partnerships.

The Millennium Declaration, adopted by the UN General Assembly in 2000, included a pledge "to develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication."[25] And the World Summit on Sustainable Development in Johannesburg in September 2002 resulted in the launching of more than 200 partnerships. By then, partnership had become the new mantra in UN discourses on global governance.

Why, then, have PPPs become so popular and prevalent in the international arena? No doubt, growing disillusionment with traditional international organizations, including the UN and its agencies, created fertile ground for new organizational forms. Partnerships to deal with specific and limited issues were seen as a way to surmount the overlapping mandates and interagency competition in the UN family. Furthermore, by engaging in partnerships with the private sector, international organizations might regain authority and legitimacy in an increasingly market-oriented environment. Donors, who had imposed a policy of real zero growth in UN budgets, preferred voluntary and earmarked funding through PPPs. Some observers saw PPPs as a move away from the "big plans" of traditional international agencies toward "visible piecemeal steps."[26]

The socioeconomic changes associated with globalization constitute another background factor. For private sector actors, globalization provided incentives to enter into partnerships with international organizations. Whereas the rules of the game for the market economy were previously laid down by national governments, now they had to be applied globally to be effective. Governments, on the other hand, recognized that companies had become important providers of public goods and services and increasingly influenced rule making and acted as standard setters. Business actors had become as dependent on political resources as political actors on corporate ones. Globalization thus urged states and international organizations as well as companies to mobilize all sorts of resources to remain competitive. The notion that partnerships based on mutual enlightened self-interest might remedy inequities produced by globalization processes and contribute to the fulfillment of the Millennium Development Goals gained ground among public and private actors alike.

In short, PPPs can be seen as vehicles for collective action to overcome both political failures and market failures.[27] For international organizations, PPPs solve problems of scarce resources and eroding legitimacy; for international business actors, they identify and legitimize investments and pledges those actors would not venture to make without assurances from the public sector.

Global partnerships have existed long enough now to become objects of critical scholarship. Short of summarizing, let me point to a few general observations emerging from this rich and variegated field of research. First, researchers remind us that, while *partnership* is an endearing term—evoking notions and feelings of cooperation, equality, and reciprocity—it is also an imprecise term. It shrouds elements of power and influence in a discourse of cooperation and shared responsibility.[28]

Second, public-private partnerships are seen to sustain the neoliberal global order.[29] Whether that is considered a good or a bad thing depends on the ideological leaning of the observer.

Third, global partnerships tend to reinforce rather than redress the North-South imbalances in global governance. The most influential partners, whether representing civil society or business, come from the rich North.[30]

Fourth, the vast bulk of funds for PPPs have come from governments, not from the private sector. For example, business contributions to the more than 300 so-called Type II multiple-stakeholder partnerships registered under the UN Commission on Sustainable Development account for less than 1 percent of total funding.[31]

And a fifth problematic aspect of partnerships, noted in existing research, concerns the legitimacy of these hybrid modes of governance. They may derive legitimacy from producing useful results and contributing to the solution of global problems—so-called output legitimacy—but they raise thorny questions of accountability. Both the public and private sector have well-established mechanisms of accountability. In the public sector, civil servants are accountable to governments, which, in turn, are accountable to voters in democracies. In the private sector, management is accountable to shareholders. Internationally, accountability becomes less straightforward. IGOs are formally accountable to member states. But the question of accountable to whom has no unequivocal answer when applied to PPPs.

I now take a brief look at three PPPs in the public health sector, all of which have gone further than most in addressing these general problems: the Global Alliance for Vaccines and Immunization (GAVI); the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund); and UNITAID.

GAVI was established in 2000 with a $750 million donation from the Bill & Melinda Gates Foundation. It was a joint initiative by Bill Gates and the leaders of the WHO, UNICEF, and the World Bank. Its goal was to increase the level of child immunization in poor countries through funding the deployment of vaccines and providing incentives for developing new vaccines. GAVI is governed by a board, where two-thirds of the voting members represent partner institutions and stakeholders and one-third are unaffiliated individuals appointed in their personal capacity. Pharmaceutical companies are represented on the board.

GAVI has been successful in raising the levels of child immunization at an unprecedented rate. By 2009, some 50 million children had been protected with basic vaccines and more than 200 million with new and underused vaccines. By its own estimates, GAVI has contributed to the prevention of 3.4 million future deaths. GAVI has been less successful in encouraging the development of new vaccines and reducing vaccine costs. The Bill & Melinda Gates Foundation has contributed more than $1.5 billion over fifteen years, which makes it the largest single donor, accounting for 28 percent of GAVI's total funding. However, few other private donors have followed the foundation's example and national governments remain the majority of donors.[32]

The Global Fund was established in January 2002 as a grant-making organization with its secretariat in Geneva. It functions in a way similar to research councils or foundations in the academic realm insofar as proposals are subjected to peer review, grants are awarded to a fraction of the applicants for a limited period of time, and renewed grants are contingent on documented performance. At the insistence of some Group of 8 (G8) countries, especially the United States and Japan, the Global Fund was to stand apart from and operate outside of the UN system, which was considered inefficient and bureaucratic. In its ten years of existence, it has disbursed over $9 billion to grant recipients.

The hybrid character of the Global Fund is reflected in the composition of its board. It consists of five types of constituencies: donor states, recipient states, civil society, private sector, and bilateral or multilateral agencies. Three civil society representatives (one North, one South, one affected communities) and two representatives from the private sector (one company, one foundation) sit on the board. The Bill & Melinda Gates Foundation, as a major contributor, has the foundation seat on the board. Interestingly, representatives from the WHO, the UN Joint Programme on AIDS (UNAIDS), and the World Bank belong to the nonvoting group, an unusual position for intergovernmental organizations.[33]

Efforts to develop innovative mechanisms to finance health development have continued. France and Brazil, in particular, have taken initiatives to improve access to medicines for the world's poorest people. Along with Chile, Norway, and the United Kingdom, they created a partnership in 2006 called UNITAID, which is designed to collect funds through levies on airline tickets to finance medicines against HIV/AIDS, tuberculosis, and malaria. As of this writing UNITAID has twenty-nine member countries, nine of which are implementing the airline levy. Norway allocates part of its tax on CO_2 emissions from aviation fuel to UNITAID. In addition, a number of member states make voluntary contributions and the Bill & Melinda Gates Foundation provides financial support. The WHO, UNICEF, and the Global Fund are implementing partners. UNITAID's secretariat is located at the WHO headquarters in Geneva and its governing structure is largely modeled on the Global Fund.

Although the airline levy is quite small and the number of participating countries are limited, UNITAID was able to purchase medicines with almost $600 million from 2007 to 2010. Through its strategic market intervention, UNITAID has been successful in decreasing the price of medicines for HIV/AIDS, tuberculosis, and malaria by 50 percent to 70 percent depending on products and market niches. Thus, it has contributed to increasing the supply of drugs and diagnostics in developing countries.[34]

These three partnerships are indicative of the ongoing search for innovative financial mechanisms for development. They also illustrate a gradual downgrading of the role of traditional IGOs. They were among the initiators of GAVI, were reduced to nonvoting status on the board of the Global Fund, and play a marginal role in UNITAID. At the same time, the Bill & Melinda Gates Foundation has emerged as a major player in global health governance. This brings me to the fourth and final mode of global governance where IGOs become bypassed altogether.

Private Regulation

The private sector has increasingly become involved in regulatory activity in global governance. Nonstate actors cooperate across borders in order to establish rules and standards of behavior accepted as legitimate beyond their own circles. Nonstate actors not only formulate norms, but also often have a key role in their enforcement. In the literature, this is treated under different labels such as "transnational private governance," "regulatory standard setting," or "private-private partnerships."[35] They all point to the tendency that soft law, in the form of standards or codes of conduct, is being produced by actors outside the public realm.

The major bond rating agencies, Moody's Investors Service and Standard & Poor's, are prominent examples of private authority trespassing into the public sphere. Emerging from relative obscurity in the 1990s, they have acquired a global reach from their US home base. They assess the creditworthiness not only of corporations, but of sovereign governments as well. Yet they remain anonymous, faceless institutions, left alone by governments to do their work.[36]

It is also significant that the International Organization for Standardization (ISO), which was formerly regarded as the UN's standards organization, now labels itself an NGO. Moreover, ISO no longer restricts itself to standardizing physical things, but also works on business practices, environmental standards, and even social issues.[37] In 2002, the International Social and Environmental Accreditation and Labelling Alliance (ISEAL) was founded. It is an association of transnational organizations designed to develop codes of good practice that emphasize social justice and environmental sustainability in agriculture, fishing, and several other sectors. Among the members of ISEAL are such well-known private standard-setting organizations as the Forest Stewardship Council (FSC), Fairtrade International, the Marine Stewardship Council (MSC), and the Rainforest Alliance.[38]

The FSC was established in 1994 as a civil society initiative in response to the failure of intergovernmental processes to define and implement appropriate standards for sustainable forest management. It aims to improve the sustainability of forest management through the creation of a certification system for businesses along the timber product chain on the basis of environmental, social, and economic criteria. It has achieved much acclaim for its stringent standards. At the same time, timber industries in several countries have perceived the FSC standards as too restrictive and created weaker, competing labels.[39]

The MSC, the FSC counterpart in fishing, was created in 1997 as a response to the worldwide decline in fish stocks. It originated as an agreement between Unilever, at that time the world's largest buyer of frozen fish, and the World Wide Fund for Nature. Its fishery certification program and seafood ecolabel recognize and reward sustainable fishing. More than 60 percent of fish from US fisheries, 75 percent of Norwegian fish exports, and roughly one-third of fish from New Zealand fisheries are today either certified or in assessment by the MSC. However, less than 9 percent of all fisheries certified by the MSC are situated in developing countries. About two-thirds of the world's seafood is consumed in Asia where few consumers discriminate between certified and noncertified products. While having a positive environmental impact in developed countries, the certification program may result in higher depletion rates in noncertified areas where the price of fish is cheaper.[40]

These examples show that regulatory standard setting and social and environmental reporting by firms are often the result of a dynamic interplay between CSOs and transnational firms, without the involvement of states and IGOs. CSOs have put pressure on firms to take greater social and environmental responsibilities; firms have taken steps to avoid blaming and shaming or to turn their own good behavior into a brand advantage.

But these examples also illustrate two problematic aspects of contemporary private regulatory initiatives. First, they are characterized by fragmentation and overlap. For example, there are today more than 400 ecocertificates or ecolabels operating worldwide.[41] Second, they tend to reinforce existing global inequalities. Stringent standards hit operators in the poor South much harder than those in the rich North.

Conclusion

What, then, can we conclude from this quick journey along the public-private borderline? First, we need to reassess ingrained understandings of public and private. We are witnessing an emerging "global public domain," to use John Ruggie's expression.[42] It is a domain no longer coterminous with the system of states, but one where nonstate actors play a global public role.

In other words, the growing role of private actors—for-profit as well as nonprofit—in global governance must be taken seriously. For the UN system and other intergovernmental organizations, this entails opportunities as well as dangers. Openness toward and cooperation with private actors hold the promise of strengthening the resource base and enhancing the legitimacy of UN agencies. The other side of the coin is that they run the risk of pursuing the agenda of private actors rather than that of their member states. Moreover, some critics argue that the association with the powerful UN brand confers spurious legitimacy to private actors. Corporate engagement, in particular, has been accused of involving *bluewashing,* whereby firms gain reputational advantages by associating themselves with the UN without doing much in return.

A second conclusion is that the growing role of private actors and the blurring of the public-private borderline have contributed to a fragmentation and duplication of global governance arrangements. Multiplicity and competition may have certain benefits; for example, encouraging experimentation, enabling multifaceted approaches to complex problems, and allowing for fine-tuning in specific situations. But multiplicity and competition can be costly and may reduce the effectiveness of regulatory schemes. There is an obvious need for "orchestration."[43] This is where UN agencies and other intergovernmental organizations could play a role in the future by engaging directly with private actors, offering support in various ways, and attempting to steer their regulatory activity.

For instance, international organizations can make sure that established international normative templates, such as the Universal Declaration of Human Rights and International Labour Organization (ILO) conventions, serve as focal points to ameliorate problems of decentralized regulation. They may endorse selected private regulatory schemes and even offer financial support. For example, UNEP endorsed the creation of the Global Reporting Initiative (GRI), which aspired to provide standardized social and environmental reporting systems and to make them as routine as financial reporting. The UN gave its official approval by hosting GRI's launch ceremony and GRI receives financial contributions from UNEP, the World Bank, and the Global Compact. On the other hand, the World Bank worked with the World Wide Fund for Nature to develop criteria for sustainable forestry certification, but stopped short of endorsing any specific scheme. Similarly, the FAO established guidelines for ecolabeling of fishery products without providing formal recognition of any particular scheme. Overall, as Kenneth Abbott and Duncan Snidal conclude, there remains a significant "orchestration deficit" that represents a challenge and an opportunity for international organizations.[44]

Finally, the moving public-private borderline implies that global political authority is increasingly differentiated along functional rather than territorial lines. Whereas the UN system is based on territorial member states, nonstate actors do not claim authority over portions of space but over distinct functional domains or issue areas. As functional differentiation becomes more significant, the traditional distinction between an internal and an external political domain, between inside and outside, loses some of its significance and transnational political space gains importance. Also, if we are moving from a world society divided into states to a world society divided into sectors, the question arises as to what legitimate authority may mean in a functionally differentiated world.

In sum, international organizations find themselves in a political landscape that differs in many respects from that prevailing twenty-five years ago when ACUNS was founded. As I have tried to demonstrate in this Holmes lecture, the moving public-private borderline raises important questions to be pondered in the future by practitioners and students of international organization alike. 🌐

Notes

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1. Janice E. Thomson, *Mercenaries, Pirates and Sovereigns: State-building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1994), p. 14.

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