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Global governance and human rights in contemporary time

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Abstract
Global governance and human rights have rarely been considered in relation to each another. Here I explore their connections with special attention to the rhetoric of international justice. The result is an argument that combining these two sets of perspectives can give us a better understanding of global politics. Mainstream treatments of human rights traditionally center on nation-states. This is, perhaps, as it should be. Nation-states are the primary violators of human rights. At the same time, they bear the principal responsibilities under international law for promoting basic rights. Research on human rights has turned recently to an added focus on at least some non-state actors that also violate rights. This important step addresses the impact of economic actors, especially transnational corporations (TNCs), on human rights. It has helped the attention to human rights learn from developments in global relations and advances in theories of international relations (IR). Yet further developments in global politics and IR theories demand still greater expansion for the horizons of human rights. The time has come for them to face global governance. Global governance (GG) is a relatively recent paradigm for policy makers and IR theorists. Early GG work focused on international organizations (IOs), especially the United Nations. The end of the Cold War, combined with the centrality of the UN Security Council for legitimizing the Gulf War of 1991, led to hopes that the UN would become a stronger and more influential body. UN supporters popularized the term "global governance" because they wanted to distinguish between it and "global government." Governance is a broader term. It addresses political management on a global scale but management that stops short of the formal powers and procedures of a government. GG is specifically not about a world state or the creation of some supranational body that would have control or sovereignty above that of the nation-state.

Keywords: Global Governance, Human Rights, International Justice, Nation-State

Introduction

With increasing globalization distinctions between the domestic and the international fade. Numerous regulatory decisions, once decided domestically, are influenced, even shaped, by international institutions and international law. These processes also impact Israel and the entire Middle East region. Israel is particularly exposed to the forces of globalization being open to international trade and subject to scrutiny by external actors for its policies. Israel is also a major contributor to the evolution of international law mainly through the sophisticated and groundbreaking decisions of the Israeli Supreme Court that resonate throughout the world and command attention and respect. Israeli scholarship on international law stands at the cutting edge of the study of international law and is widely respected. The goal of the Global Governance and Human Rights Track is to provide students with tools that will enable them to identify and explore the emerging global regulatory regimes in the fields of human rights and humanitarian law, environmental and cultural heritage protection, trade and investment regulation, and other fields, and to assess the normative challenges that these regime pose to our democratic sensibilities and reflect on the possibilities for shaping these global institutions and their policies through accountability requirements of transparency, participation, reason giving, liability, and judicial review. The track is therefore attractive not only to students interested in international law but also to those whose passion is constitutional law and administrative law and wish to gain tools to address problems of public law and policy in an era of global interdependency.

Interestingly, the issue of human rights has, more than most other issue areas, been regulated through global governance.

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What started with the Universal Declaration of Human Rights (UDHR) in 1949 as a non-binding document has over the last decades evolved into a complex legal human rights regime. The International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol, which entered into force in 1976, established a Human Rights Committee that reviews states' obligations and accepts inter-state and individual complaints concerning the violation of civil and political rights. As of 2011, 2034 individual complaints have been filed against 84 countries. The Committees mandated to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (CAT) are empowered to autonomously initiate investigations against state parties. With the creation of the International Criminal Court in 1998 through the Rome Statute, a supranational court was established, mandated with the prosecution of grave human rights violations such as war crimes, crimes against humanity and genocide. Investigations can be launched against individuals by state parties, the UN Security Council and the court's prosecutor himself. This list of treaties is by no means exhaustive, but illustrates important mechanisms for claiming, monitoring and sanctioning human rights violations on a global. Only the interplay between states, international organizations and non-state actors allowed human rights to become a core component for global governance. The advocacy and mobilization efforts of non-governmental organizations (NGOs) have to a great degree been responsible for the successful institutionalization and legalization of human rights. Transnational NGOs such as Transparency International and Human Rights Watch act as powerful agenda-setters and watchdogs. They brief the United Nations Security Council and the Human Rights Commission in informal and formal consultations on a regular basis. Human rights committees increasingly rely upon their reporting (so-called "shadow reports") as an independent information mechanism additional to the states' reports. NGOs have initiated litigation processes before national, regional and international courts to help individuals to claim their rights. States have, more or less willingly, granted them access to international decision-making and rely upon their independent input and information capacities. This has contributed to global accountability: states can now be held responsible for their human rights obligations before an international community that is shaped by the information and monitoring of a transnational civil society.

This may sound too optimistic a picture to characterize the world of today, in which human rights abuses are reported on a daily basis. As I show below, a lot remains to be done in order to render the global human rights regime more effective. The first and most important challenge concerns the thorough implementation of existing legal agreements. The rights granted on paper need to be effectively implemented in the domestic legal systems and constitutions. States should establish functioning monitoring mechanisms and educate citizens about their rights and possible avenues for complaint. The internalization of human rights norms in domestic societies through law and culture is of utmost significance for the treaties to become globally effective. The reporting instruments and awareness-raising campaigns of NGOs and transnational bureaucracies such as the UN Office of the High Commissioner for Human Rights remain important due to the absence of international enforcement mechanisms. Second, achieving global accountability for human rights violations would mean to establish accountability checks for global governance institutions and non-state actors as well. Decisions and policies of international organization's as well as the actions of transnational private actors increasingly affect the rights of individuals. Some prominent organizations have already established human rights protection provisions. The Security Council's Sanctions Committee, for example, revised its policies in response to the decisions of the European Court of Human Rights that major human rights had been violated by comprehensive sanctions practices. The World Bank responded to criticism from civil society by establishing the Inspection Panel. This panel constitutes a complaint mechanism so far unprecedented in the history of international organizations. It reviews individual and collective complaints concerning the impact of development projects in light of the Bank's environmental and social standards, which in several cases prompted the Executive Committee to revise or withdraw a policy. Despite these efforts, however, effective accountability mechanisms remain absent so far. Especially in cases, where an international organization administers a whole country, such as the UN in East Timor or Kosovo, checks are needed not only to protect individual human rights but also to enhance the legitimacy of the organization. Third, it is important to enhance the sanctioning capacities of the existing legal regime while ensuring that human rights are not used as a pretext for strategic interests. The over-extension of human rights, i.e. applying human rights to all kinds of situations, leads to a revalorization of the concept that threatens existing achievements. Of course, state actions based on altruistic motivation only are very seldom; however we need to avoid an exploitation of human rights for particular interests. Interventions in the name of human rights need to be legitimized and mandated by the international community. Moreover, interventions have to be supervised and monitored by independent organizations with regard to their actual effects on human rights. Similarly, to the World Bank Inspection Panel, an Auditing Board to the UN Security Council could review the Council's decisions with regard to their impact on human rights. Cases of human rights violations should then be brought before international courts. However, some major obstacles need to be overcome in order to realize this vision of an effective human rights regime. The power structures, which dominate the decision-making in contemporary global governance institutions, need to be democratized and adopted to the current system. This concerns both the modes of representation and voting procedures, which in most organizations reflect a world that has long been past. The international community should strive for a balance between effective decision-making and adequate representation. Together with more transparent and accessible working methods, this would prevent human rights being exploited for national strategic interests.

Finally, global governance can help addressing the implementation gap. Countries that are reluctant to implement treaties should be sanctioned, while the presidency over important international human rights bodies should be elected with respect to the candidates' human

rights records. At the same time, countries which simply lack the capacity for implementation need continued international support. Effective internalization of human rights requires legal training for judges, lawyers and human rights monitors, as well as the establishment of functioning litigation procedures and local education programs. This is especially relevant in times of war or in areas of limited statehood, which challenge the achievements of global governance in the area of human rights today.

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