DEBATES ON LEGITIMACY AND COOPERATION: INTERNATIONAL LAW OF SOCIO-ECONOMIC INSTITUTIONS

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Abstract. International institutions ranging from NGOs to non-profit and charitable foundation play an important role in applying huge financial and human resources and in directing them toward constructive and productive aims. A comparative legal review will indicate that most legal systems specially developing and non-developed countries, lack the proper regulations concerning these structures or if there are any, they would suffer malfunction. It is believed that the legal themes of the structure and function of these institutions must be revolutionized and the governments should undertake a reforming task toward recognizing their legal personality. In this regard, the enforcement measures of international law related to these institutions are needed to facilitate their interaction and cooperation in a global level. International law can provide a constitutional framework for legal publicity of all different activities of these institutions. In this article, we discuss the legitimacy problem from both domestic and international law perspectives. We argue that the challenging debates about legitimacy can prevent non-profit organizations from proper function. There exist three main deteriorating factors for problem-solving role of socio-economic institutions. Reviewing these issues ends to the legal analysis of legitimacy from three different though co-related perspectives of international, domestic and public administrative law.

Keywords: Socio-economic Institutions, International Law, Public Policy, Global Problems.

1. Preface

Countries are not islands or their own planets,(Esty, 2006). So in modern world international policies have to be made in a supranational context. In this new situation different players act competitively to shape social dynamics and capitals as their interests require and to direct them toward shaping a new economic power called by some scholars *"transnational capitalist class"* (TCC). (Chimni, 2004) The debates on legitimacy and credibility of decisions made in international issues have brought about many questions about the place and functions of international institutions. World problems particularly those related to climate changes, pollution and international peace are the subject of technical discussions between states and the role that international organizations play in solving such global problems.

International institutions both those acting upon organizational management of UN and those known as independent socio-economic institutions and NGOs have been founded for the aim of international co-operation. Institutional design is important to reach this aim: there may be robust accountabilitybut to the wrong people or on the wrong topics. (Krisch and Kingsbury, 2006) In the absence of powerful and independent international institutions, and given to the weakness of legal systems and administrative deficits of global order, the two aggressive and strong international actors including International Institutions (IIs) and political players, have reached a point in affecting the process of economic progress that there is no choice before the rest of the world but to accept the dominant culture of global policies and their enforcement. As C. Esty suggests "governments are increasingly working together to address the thinning of ozone layer and other environmental issues. What is contested is how much reliance should be placed on international officials and entities, particularly when exercising political judgment as autonomous decision-

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makers".(2006)

2. Competition and Legitimacy

When normative theorists approach the subject matter of the legitimacy of international institutions, they usually have international organizations in mind. (Schaffer, 2010) Transnational institutions and NGOs are also deprived of a legitimate and regulated mechanism to have an active role in global-driven policies.

A legitimacy/democracy deficit characterizes crucial IIs and is accompanied by a strong resistance from powerful states to put in place a transparent and democratic decision-making process. (Chimni, 2004) Respectively, this is the case with NGOs and institutions in which local and international activists gathered for cooperative purposes. In the legal and economic context concerns about non-cooperative or even the deteriorative role of international institutions are to be stressed. Regardless the states' complain about the attempts to impose the economic standards and political norms a more powerful aspect of these bodies is to lead the global administrative law. An increasing interest of these global regulatory institutions and actors is seen in bolstering their legitimacy in the face of growing political challenges. (Krisch and Kingsbury, 2006) The conduct and approach of the most important international institutions and the first World in general is to make the human and natural resources applicable for programs that are mainly managed by them. The bad news is that globalization contributes to this process. Competition for attracting the effective human resources and directing the social, economic, and political dynamics toward their own interests have become the current function of the great global players. The problem is that the role of non-governmental organizations and institutions in this process is increasingly weakened.

Expanding the range of activities of these organizations along with their effects on the process of decision-making of states and international bodies has created a sphere of harsh debates about the legitimacy and power. The expanding numbers, role and influence have promoted a debate about the legitimacy of transnational NGO participation in global governance. (Collingwood, 2006) Normally, socio-economic institutions are expected to be the representatives of nations' will for establishing legitimate frameworks in policymaking procedures administrated by states within the international entities.

The socio-economic institutions we are talking about are those dynamic parts which are working on issues which are considered global concerns. Though these institutions are non-governmental and flexible to the enforcements of domestic or international law, but there are some difficulties that jeopardize their activities and even their existence. At present the institutional framework of the UN allows only for limited participation of NGOs. (Aston, 2001) The social actors and legal advisors must propose an adequate mechanism for legal and cultural norms for the structure of these institutions to help them act in a better way to solve the problems. There are some strong dynamics that can have effect on the world economy and the process of globalization. One of the chief goals of the socio-economic institutions is to unify these dynamics and to lead them through global crises that have been caused by intense utilitarian and liberalistic approaches.

3. Approaches to Empowering Socio-economic Institutions

Social institutions and non-governmental organizations are expected to have an effective role in attracting global attention to establish social cooperation along with the aim of resolving serious problems from which the nations and the states are suffering alike. These institutions are created because they provide benefits and enhance collective welfare, helping agents realize common interests and liberal purposes, such as saving the environment, fighting poverty or promoting free trade. (Schaffer, 2010) The problems they are working on are of a wide nature from deficits in international regulations to limited autonomy of independent institutions and the influence of the so-called players and decision-makers of International Organizations.

Since the late 1980s, the number of non-governmental organizations (NGOs) working across borders has risen sharply. Experts estimate that globally, the non-profit sector is now worth over one trillion dollars a year. Not only are there more transnational NGOs, but the kind of activities in which they systematically engage have also multiplied.(Collingwood, 2006) It is very important to ask: can these institutions, if we agree that they are the real representatives of the interests of the majority of nations, act as powerful players in reshaping the economical order of the world? Is it possible for them to survive the cruel competition with

their international rivals and sovereign states or be pushed into the shadow? Traditionally International institutions and the global bodies serve the three basic goals.

3.1. Legitimizing Global Policies

These institutions, whether of political, economical, social, or cultural grounds, are the executive arms of trans-governmental bodies enjoying legal and political foundations and therefore a legitimacy beyond governmental boundaries. Professor B.S. Chimni introduces these institutions as follows: "A network of economic, social, and political IIs has been established or repositioned, at the initiative of the first world, and together they constitute a *nascent global state* whose function is to realize the interests of transnational capital and powerful states in the international system to the disadvantage of third world states and peoples".(Chimni,2004) One important fact that must be considered in these institutions is that they owe their legitimate entity mostly to the public protection. Socio-economic institutions when entering to the global scene as transnational, non-profit organizations they act as part of world wish to solve the human problems.

3.2. A Consultative Role

The consultative role of international institutions specially, those defined in UN charter may be generalized to the NGOs worldwide. Article 71 of the charter is specified by ECOSOC Resolution 1996/31 on the 'consultative relationship between the United Nations and Non-Governmental Organizations', which provide a detailed set of rules guiding the work of NGO committee. (Aston, 2001)

Any Socio-economic institutions neglecting the nationality and the backgrounds which might create them can pretend such a role in decision making processes in international bodies.

Depending on the nature of the organization, its scope of activity and the contribution it can be expected to make to the work of ECOSOC, an NGO can ask for general consultative status or special consultative status, or can be put on what is called the Roster. (Aston, 2001)

But the experience of past decades has shown that these institutions face some serious problems and challenges.

1) As time passes, the interests of the superpowers are increasingly interwoven with the processes of decision-making in these institutions and at the same time they are losing their wide and pluralistic attitude and concentrating on realizing the projects of democratization and liberalization. International Institutions also evaluate the policies of member states from the standpoint of their mandate and concerns. But above all, IIs offer an 'intellectual and moral unity' to a particular vision of world order in the matrix of which their mandate and functions acquire meaning.(Gramsci,1971)

2) There have been many economic, political, and cultural ideas governing these organizations as the doctrines of justice and liberty for humanity. Today these ideas are interpreted according to a certain understanding of justice and liberty that conform to the culture that preoccupies the atmosphere of these organizations. Put it differently, international law and organizations are today institutionalizing polyarchy or formal democracy has been jettisoned by removing the element of choice.(Chimni,2004)

3) These institutions generally shaped according to the rules and norms of International Law, and the obligations and agreements of the International Law govern them but ortunately they haven't been able to release themselves from external influences exerted upon them. As an example the Organization for Economic Co-operation and Development (OECD) at the early stages developed a number of structural and functional elements, notably in the form of influential Boards responsible for the operation of the European Monetary Agreement and the Codes of Liberalization, which applied topical expertise and the provisions of the instruments they were to implement.(Encyclopedia of Public International Law, 1983)

4. Legitimacy from International Law Perspective

Past decades have witnessed the emergence of a very wide network of non-governmental organizations that tried to make their way through the different historical events. As their number grew, the UN redefined and clarified the relationship in regulation 1966/31 which defined NGOs "as any international organization

which is not established by a governmental entity or international agreement".(McLean & McMillan, 2003) There are now about two thousand NGOs recognized by the UN including international, national, or sub-national bodies. The UN definition covers sectional groups such as business organizations. This term has acquired a much wider application and is generally used to refer to various cause groups concerned with such issues as the environment, poverty, women's rights, racism, sexual minorities, and Third World debt. In this way, the basic functions of socio-economic institutions and NGOs may be forgotten when there are serious questions about their secondary works such as having consultative one. An NGO may request accreditation for a special UN conference, establish working relations with special bodies of the UN, associate itself with the UN Department of Information (DPI), or ask for consultative status with the Economic and Social Council of the UN.(Aston, 2001)

Levels of public trust in NGOs and their campaigning has been shown to be high in a number of surveys. Their popularity and acceptability has reached a point that global governance agencies such as the International Monetary Fund, and the World Trade Organization have sought to derive greater legitimacy by developing a relationship with them. (McLean & McMillan, 2003) Questions have been increasingly raised about their lack of internal democracy, their governance arrangements, and the credibility and accountability of some of their statements. This may lead to the introduction of codes of conduct and replication of the insider-outsider distinction found in relation to more traditional pressure groups. Moreover, some aspects of the nature of these institutions such as their legitimacy and accountability have been questioned occasionally. In the political scene there are many concerns about participating NGOs in the process of global decision making, particularly about their entering to the UN forum even requesting for a consultative status. As Aston suggests, even those states that are generally more open toward the idea of permitting NGOs to the UN forum have a number of legitimate concerns.(2001)

Therefore, as Prof. Chimni says, the intellectual, political and social atmosphere, including both traditional and modern trends, assumes three critical roles for NGOs and socio-economic institutions. Firstly, they lift the veil from states and take cognizance of the role and influence of certain social classes and forces in shaping the policy of states and IIs at different points in history. Secondly, they do not neglect the ideological role of IIs in legitimizing particular policies and accompanying practices. Thirdly, they take into account the role that internal organizational culture and process plays in shaping the thinking of the institution.(Chimni, 2004) From a practical viewpoint, NGOs and social institutions that are known as non-profit organizations and are defined as the patrons of cooperation in social and economic affairs, have been subjects of debate regarding their two salient characteristics. This is particularly true for what concerns donative entrepreneurial non-profits, for example the Red Cross or WWF, which normally provide services for third parties.(Tamburrini, 2009)

5. Conclusion

Basically, socio-economic institutions must enjoy a firm legal, social, and economical foundation that enables them to deal with and participate in solving the global issues without any influence or pressure from outside. They won't be new decision makers or new players in political games nor the symbols of new global sovereignty. They generally enjoy a kind of political independent existence and uninfluenced process of decision making. It is obviously imperative there be a democratization of decision-making within IIs such as the WTO'.(Chimni, 2004) With regard to the institutional changes, there is, first, an urgent need for 'the extension of democracy beyond the nation-state to bring to account those global and transnational forces which presently escape effective democratic control'.(Held, 1995)

Legal reforms in international law and entities would include the empowering of socio-economic institutions and NGOs through assuming influential roles for them in global issues. This purpose will be achievable if there is an obligatory recognition of these institutions at the state and international level.

Falk and Strauss have thus called for the creation of an elected global parliamentary assembly (GPA), modeled on the European Parliament.(Falk and Strauss, 2002) According to them the eventual goal is a world body with limited but important legislative powers that would enfranchise adult citizens everywhere.(Ibid.) There is in this regard a need to develop the law of international responsibility of IIs. Surely a correlative of IIs processing legal personality and rights is responsibility. Given the current state of

organized global civil society dissent, and the problems that mark the world of NGOs, it is not possible to envisage radical reform in the world of IIs. Moreover, the neo-colonial state, despite its collaboration with the TCC, is the subject of complex and contradictory pressures. The resistance of ordinary people compels it to oppose hegemonic states from time to time.

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