

ABSTRACTS

Brigitte Hamm/Christian Scheper: Politische Steuerung in Zeiten der Globalisierung: Perspektiven für den Menschenrechtsschutz (S. 8-25)

Protection against human rights violations caused by private enterprises is increasingly challenged under conditions of economic globalization. Private forms of regulation increasingly complement and replace state regulation and lead to legitimacy concerns. At the same time, protection against violations by private companies so far has been insufficient and dissatisfactory. UN special representative for business and human rights, John G. Ruggie, has taken up these new conditions and forms of governance and suggests a policy framework that aims at effectively protecting against human rights violations by private enterprises while being realizable.

Ruggie includes state, civil society and economic actors and builds on the idea of complementarity between public and private forms of regulation. The article discusses this pragmatic approach with regard to its potential for effective human rights protection.

Amol Mehra/Connie de la Vega: Corporate Accountability (S. 26-40)

This article evidences the need for strong accountability mechanisms to be created to hold corporations accountable for human rights violations. It builds upon the concerns raised by human rights organizations, consumers, investor groups and national legislators that led to the creation of the mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises at the urging of the UN Commission on Human Rights in 2005.

By discussing examples of human rights abuses

in the contexts of the private military and security industry, the private detention industry, and from corporate involvement in the illicit dumping of toxic wastes, this article showcases the lacking international standards over corporate actors that have resulted in a proliferation of human rights and environmental abuses. Further, the report considers the strong conceptual and policy framework entitled "Protect, Respect and Remedy: a Framework for Business and Human Rights" created by the Special Representative, noting the persisting concerns that the Special Representative should consider including the need for consensus around the issue of accountability of corporations which should include a set of binding guiding principles and an enforcement mechanism.

Jens Martens: Prekärer Pragmatismus: Die Arbeit des UN-Sonderbeauftragten für Wirtschaft und Menschenrechte (S. 41-63)

In June 2008, John Ruggie, Special Representative of the UN Secretary-General for business and human rights, presented his "Protect, Respect and Remedy: a Framework for Business and Human Rights" report to the UN Human Rights Council. The report marks an important step in the debate on the responsibility and accountability of transnational corporations.

It identifies grave deficits in the current human rights regime that undermine the protection of individuals and communities against corporate-related human rights violations. However, his proposed policy framework of "protect, respect and remedy" does not respond adequately to the identified global governance gaps and categorically rejects any legally binding global instrument. With his "principled pragmatism" approach, the Special Representative formulates what he deems politically

feasible given the forces that be in society but does not state what would be desirable and necessary to protect human rights.

Nevertheless, the report refers to important reform areas at national and international level, which, if developed consistently, could bring about some progress. As the Human Rights Council has extended the mandate of the Special Representative, Ruggie has now another three years to provide "practical recommendations" and "concrete guidance".

Katharina Spieß: Anmerkungen zur menschenrechtlichen Verantwortung des Staates im Rahmen der staatlichen Außenwirtschaftsförderung (S. 64-81)

The article gives an overview about the practise of the German export credit agency (ECA). It argues that the current practice does not take into account human rights adequately. This is due to three main reasons: a coherent human rights risk assessment is not carried out, there is a lack of transparency and finally, there is a lack of accountability. In order to improve the situation, the German ECA should publish projects that are under consideration as early as possible. Furthermore, it should require that companies carry out compulsory and meaningful human rights risk assessments. Thirdly, the parliamentary control should be increased. And finally, there should be a complaint mechanism which those people can address who feel infringed in their rights.

Achim Seifert: Globalisierung und Schutz von Arbeitnehmerrechten durch die Internationale Arbeitsorganisation (IAO) (S. 82-99)

The paper analyzes how the International Labor Organization (ILO) as the most important actor on the global level charged with the elaboration and implementation of international labor standards reconciles the permanent tension between

a globalizing economy based on free trade and the protection of workers' human rights. It gives a short overview of the different functions of international labor standards, the legislative procedure within the ILO and the human rights ensured in the different ILO instruments. Special emphasis is placed on the implementation of international labor standards. It shall be shown that the implementation of the ILO standards increasingly relies on transnational enterprises and civil society actors such as human rights organizations etc. Institutional implementation by the ILO and private mechanisms of implementation are becoming increasingly interdependent. The success of international labor standards in the future will essentially depend on the functioning of this interdependency.

Miriam Saage-Maaß: Transnationale Unternehmen im nationalen und internationalen Recht (S. 100-120)

Private corporations are violating human rights on a large scale and destroying the economic and social basis for living in dignity, especially in countries in Latin America, Southeast Asia and Africa. Although the negative human rights impact of businesses cannot be limited to certain industries or situations, this article aims at showing the complexity of corporate involvement in human rights violations by giving an overview over typical constellations in which transnational corporations pose a risk to human rights. In addition to this factual complexity a number of legal questions arise in any effort of holding corporations legally accountable for their misconduct. After giving an overview over existing legal and quasi legal accountability mechanisms on the national as well as the international level, this article comes to the conclusion that the existing (quasi-) legal framework for holding corporations accountable for human rights violations is all but adequate and sufficient.

Despite those problems the importance of human rights litigation against corporations should

be understood and used as a strategic instrument for the protection of human rights. Litigation has a unique importance as it emphasizes that human rights violations committed by or with the help of corporations are not only political and moral scandals. Litigation provides an opportunity to demonstrate that a corporation has crossed the line between negotiable social commitment and legal obligation. Furthermore, the consequences of litigation transcend a specific case, potentially initiating political and social discourse and reform. Legal proceedings are forums for social and political dialogue, and can trigger widespread learning and mobilization.

Thomas Pogge: A Moral Argument for Creating the Health Impact Fund (S. 121-156)

Is it morally permissible to impose strong patent protections where doing so prices important new medicines out of the reach of many poor people? We argue that doing so is not permissible and in fact a human rights violation. To become human rights compliant, the global patent regime must be complemented by an enduring institutional mechanism that effectively incentivises the development and distribution of high-impact medicines that meet the health needs of poor people and are accessible to them. The Health Impact Fund is designed to be such a complement. At the end of the chapter, we discuss and refute three popular arguments claiming that no such complement is needed because high prices for vital patented medicines, backed by the legal suppression of cheaper generic substitutes, does no injustice to poor people.

Anna Kristin Müller-Debus/Christian R. Thauer/Tanja A. Boerzel: Firms, Associations and the Governance of HIV/AIDS in South Africa (S. 157-189)

Firms relocating production to countries with lower social standards are regarded as driving force behind a regulatory 'race to the bottom'. However, there are

numerous instances in which the behavior of firms reveals just the opposite: They adhere to corporate social responsibility (CSR) standards and even pressure governments to issue stricter public regulations. This paper explores the role associations play thereby and analyzes to what extent the strength of associational structures shapes the preferences of companies for self- and state regulation. Empirically we compare the behavior of the textile and automotive industries in South Africa and their contribution to the fight against HIV/AIDS.

Ingrid Spiller: Das Menschenrecht auf Wasser (S. 178-189)

The acceptance of a right to water and sanitation is an important step towards the protection of water as a resource and the enforcement of a human right to water. This is because this acceptance provides a framework that allows holding national governments and the international community responsible for safeguarding water supply and sanitation. The UN Human Rights Council has strengthened these human rights via Legal Commentary No. 15 and the appointment of an Independent Expert on human rights obligations related to access to safe drinking water and sanitation. The Council hereby takes a stance in a controversial debate on the question whether water is a "Common Good" or may be privatized. Public Goods have come under pressure since the 1980s because of a worldwide paradigm shift towards privatization: Ever since, it has been debated whether water as an increasingly scarce resource needs to have a price that reflects its economical and ecological costs. Also, it has been questioned if the decision on where and how drinking water is supplied, in which quantity and quality and to which price should be left to democratically legitimated institutions or private shareholders.