

## AALS Annual Convention Plenary Panel: Impact of Globalization on Human Rights

*By Dean Anne-Marie Slaughter*

*[Editors' Note: From the plenary panel that presented at this year's Association of American Law Schools Annual Convention on January 4, 2003, in Washington, DC. The remarks of the panelists appear exclusively in German Law Journal with the kind permission of the authors and the AALS.]*

To be both a dean and an international lawyer requires perpetual optimism and great tolerance for dealing with uncertainty. Drawing on those characteristics, I will try to offer one positive account of how globalization can be used to improve human rights. I will say at the outset that there is no panacea here. This is at best a very partial solution, but at least a constructive one.

A major byproduct of globalization has been the growth of networks of national government officials of many different types. This is very evident among regulators – think of the Basel Committee, the G7, the G8, the G20, or the G34. These are networks of finance ministers or central bankers. In the environmental area, the United States Environmental Protection Agency has just launched a network of environmental regulators with the Dutch. Among judges, networks have grown exponentially both through organizations of judges and through informal networks. I have been reliably told of a list-serve where constitutional judges from around the world can check in with one another and exchange information and opinions.

A variety of supporting associations make such networking quite easy, including international organizations themselves. Government networks nested within international organizations are not new, but they have increased with globalization. Think of the Commonwealth. The Commonwealth is essentially a collection of networks of national government officials of all kinds: every minister under the sun, judges, and legislators. The Asian-Pacific Economic Cooperation (APEC) is another example of a collection of networks of national officials that resists very strongly being a more formal international organization. This networking is also

exactly what the OECD does: it convenes networks of national officials, of course limited mostly to OECD member states, but also with observers permitted.

The pioneer of these kinds of networks has been the EU. Indeed, regulation by network is the identifying feature of the EU mode of governance. For all the talk of a democratic deficit, Brussels has fewer officials than any good-sized American city. It is a tiny bureaucracy by the standards of international organizations. Most of the work is carried out by networks of national officials, who have some supranational supervision, as well as supranational information agencies that allow for the pooling and dispensing of common information.

What I want to suggest is that at least on the global scale, we do not recognize these networks as important forms of global governance. When we talk about global governance, we tend to talk much more about international institutions. But, even at their strongest, those institutions can only handle a tiny fraction of the task of global governance. The real work has to be done at a national level. If we want to foster the conduct of that work at the national level in a globalized environment, then we have to avail ourselves of these global government networks. If we recognize the existing networks as mechanisms of global governance, we would then be in a position to strengthen them and shape them in such a way that they could play a much more positive role, particularly in the advancement of human rights. It is true that such trans-governmental structures of regulation raise anti-democratic concerns. That can be a problem, but I am suggesting that what we need to do is bring these networks into the open and actually use them affirmatively.

How can we do that? Here I need to detour for a minute to theories regarding compliance with international law in general and human rights in particular. There are many theories of compliance. The standard one is enforcement. An alternative theory, particularly relevant in the international area, is a "management" theory whereby the problem underlying noncompliance is not lack of will but lack of capacity. I am referring to the work of Abram Chayes and Antonia Handler Chayes, who argue that the history of international regulatory treaties demonstrates that most compliance is the result of two things: building capacity for compliance in member states, what the Chayes call "jawboning" (Abe Chayes was a great talker, and he certainly believed in the power of talk); and creating the desire to be included, the power of wanting to be a member of the club and not wanting to be excluded. Those mechanisms are the ways in which many international treaties have been enforced, including human rights treaties.

Drawing on the management mechanisms identified by the Chayes, imagine taking these networks – again, of judges, soldiers, financial regulators, police officers, prosecutors, any officials you can think of – and making them more formal, and

more attractive, and more difficult to be a member of; not a sort of “anyone can join,” but organizations that really have some prestige in the same way that the EU and NATO have used their power and their prestige to compel very important changes in countries that want to be members? We could use these networks to foster compliance with international standards of behavior as a condition of membership in these government networks. At the same time, members of these networks – again, judges, legislators, national regulators of all kinds – will receive technical assistance, exchange information, and develop codes of best practices. These activities can foster good governance generally; they also have specific potential for improving human rights.

To give a more precise example, consider Robert Mugabe’s government in Zimbabwe. One of his crimes has been his attack on the Supreme Court. And the Chief Justice of the Supreme Court of Zimbabwe has been a judicial hero. He has been supported by other judges around the world, many of whom have met him through these various networks. At the moment, however, the best they can do is to write letters, to urge their own governments to put pressure on the Zimbabwean government. A recognized global network of constitutional judges, or even a regional network of constitutional judges, could formally condemn the Zimbabwean government and focus international attention on the threat to judicial independence in Zimbabwe. Conversely, if the Zimbabwean judges were not politically independent and acquiesced in government policies in violation of international human rights and/or Zimbabwean law, they could be suspended or expelled from this organization. Finally, in a state rebuilding institutions post-conflict or following a government collapse, membership in this organization would be a badge of legitimacy that would help induce individual judges (or legislators and regulators) to meet specified professional standards of government behavior.

This may sound like a very small thing, but I suggest that when we talk about compliance with human rights and globalization, and we talk only about these great monoliths called states, it is very hard to figure out what the levers of change are. If you talk to many in the South African government, with respect to the end of apartheid, one of the factors was the feeling on the part of South African officials across the board that they, they *individually*, were becoming pariahs. I suggest in this country that the same awareness is beginning to percolate into the consciousness of many Americans who are finding that our government’s policies has an impact on us when we travel abroad. Government networks are a way of taking those personal dynamics and using them as a policy instrument in a globalized world.

Once again, in conclusion, this is not a panacea. But, to the degree that globalization includes cognitive and identity integration, it also includes the simple aware-

ness of participation in a common enterprise on the part of individuals, non-governmental organizations, and corporations around the world. That awareness is the foundation of the myriad transnational networks that have come into being. It is equally applicable to public officials. It means U.S. judges meeting foreign judges, and discovering that ours is not the only way to provide justice. It means central bankers, antitrust officials, environmental regulators, and securities commissioners meeting their counterparts around the world and discovering better ways to design regulatory mousetraps. And it could increasingly mean legislators meeting one another and figuring out how best to ensure that the voice of the people is heard, nationally and internationally.

Ultimately, these experiences should foster not only awareness of participation in a common enterprise, but also a deeper sense of our common humanity, on an individual, inter-personal level. If globalization has a human face, it is the face of all these people, from cultures and countries across the globe, coming to know one another directly, without the intermediation of media. That knowledge, and that recognition, of one another as members of a common race, lies at the core of our common human rights.