

States as Gatekeepers in Global Governance

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I. INTRODUCTION

Over the last several decades, private actors—corporations, philanthropic foundations, and non-governmental organizations—have increasingly contributed to the development and implementation of public international law. In some cases, private actors are developing standards that serve as substitutes for public regulation. In other cases, private actors have been “invited in” to public international organizations as funders, accredited observers and consultants, and even representatives of member states.¹ According to one estimate, 56 percent of international organizations offered some form of access to private actors in 1990; two decades later, more than 90 percent did.²

What we are witnessing, in other words, is the growing privatization of international organizations. Recent developments in technology and artificial intelligence seem poised to accelerate this trend, generating doubts about the capacity of governments to keep up at the national and international levels alike. Looking ahead, this symposium posed the question: are corporations and algorithms the new “sovereigns?”

The short answer, I will venture, is no. Non-state actors will remain important and influential players. But they have not and will not displace states as the primary actors on the international stage. Importantly, this claim is descriptive and not normative. It may well be that states *ought* to be displaced (though that is not my view). My claim is not simply that states will just retain formal sovereignty and the appearance of control within international institutions. The claim is about who’s really calling the shots.

The key to understanding this claim is that states serve as gatekeepers who can both open and close doors to private actors. When it comes to global governance, private actors can participate only when states say they can—and, as I will show, there are large coalitions of states that are skeptical. The global south has consistently been more reticent than states of the global north with respect to the inclusion and empowerment of private actors. There is also a split between more democratic and more authoritarian states—and globally, authoritarianism is on the rise. Even in the global north, the picture is more dynamic and more equivocal than it may initially appear.

What is more, even once private actors have been invited in, there is no guarantee that they will be allowed to stay. The last few decades in global governance have not been a simple story of an ascendant private sector. As demonstrated below, both individually and collectively, states have taken

¹ M.J. Durkee, *Privatizing International (Organizations) Law*, 22 INT’L ORGS. L. REV. 379, 381-82 (2026).

² Jonas Tallberg, Thomas Sommerer & Theresa Squatrito, *Democratic Memberships in International Organizations: Sources of Institutional Design*, 11 REV. INT’L ORGS. 59, 60 (2015).

steps to rein in private actors and there is reason to think that the trend might accelerate. The expansion of the role of private actors in global governance is often followed by reassertions of state authority.

II. THE GLOBAL SOUTH

States that emerged from decolonization have consistently prioritized their sovereignty—and to guard against their sovereignty becoming an empty shell.³ Especially during the 1970s and into the 1980s, states in the global south used the United Nations General Assembly and other international fora to try to strengthen their hands in regulating multinational corporations.⁴ Although those efforts largely fizzled by the mid-1980s, the perception of a zero-sum game between corporations and the global south has persisted. Post-colonial states have not been keen to empower corporations at the international level because they perceive such participation and influence comes at their expense. The Indian legal scholar B.S. Chimni, for example, warned against the growth in participation by private corporations at the United Nations: “What may thus be called the process of privatization of the UN system reduces the possibility of UN forums being at the centre of collective action by third world states to constrain these giant private actors.”⁵

Importantly, this concern about diminishing the influence of developing states is not limited to corporations but extends to other categories of nonstate actors. In the early 2000s, a North-South divide emerged at the IMF and World Bank with respect to enhanced participation by NGOs. Developing states complained that some NGOs—especially those from the Global North— “end up with a stronger voice in the Fund and Bank than many smaller, developing countries.”⁶

At the World Health Organization (WHO), developing states led the charge to adopt the Framework for Engagement with Non-State Actors (FENSA), which reflects an innovative and comprehensive effort to regulate how the WHO interacts with various categories of private actors.⁷ By 2012, the Bill and Melinda Gates Foundation had become the organization’s

³ ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW* (2004).

⁴ See, e.g., Karl P. Sauvant, *The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned*, 16 J. WORLD INVS. & TRADE 11 (2015).

⁵ B.S. Chimni, *International Institutions Today: A Imperial Global State in the Making*, 15 EUR. J. INT’L L. 1, 15 (2004).

⁶ Ngaire Woods, *Unelected Government: Making the IMF and the World Bank More Accountable* BROOKINGS (Mar. 1, 2003), <https://www.brookings.edu/articles/unelected-government-making-the-imf-and-the-world-bank-more-accountable/> [<https://perma.cc/DU5Q-R98V>].

⁷ K.M. Gopakumar, *Reform and WHO: The Continuing Saga of FENSA*, THIRD WORLD NETWORK RESURGENCE 24-25 (2015), <https://www.twn.my/title2/resurgence/2015/298-299/cover03.htm> [<https://perma.cc/4SY2-F259>];

second-largest overall contributor, exceeding all member states except for the United States.⁸ Nearly all of these funds were earmarked for projects selected by the foundation, not by member states.⁹ Developing states saw FENSA as “an important opportunity to reclaim international health governance from the undue influence of the private sector and corporate philanthropic foundations and NGOs controlled by it.”¹⁰

III. AUTHORITARIAN STATES

Authoritarian states have a distinctive and somewhat suspicious attitude toward private governance. Indeed, the most powerful predictor of patterns in openness to private parties, one study found, was the average level of democracy among an international organization’s member states.¹¹ “[O]penness toward civil society is a constitutive feature of democratic political system” and “extending such democratic features to IOs is therefore not a radical step for democracies.”¹² By contrast, for autocracies, openness toward private actors is both “foreign and dangerous;” and giving private actors access to international organizations “presents a channel whereby domestic opposition groups can bypass the control of the regime and join international allies in criticizing authoritarian policies.”¹³

All else equal, rising authoritarianism across the globe portends more sidelining of private actors. And make no mistake: authoritarianism is on the rise. No matter how you measure it, studies show consistent declines in democracy over the past fifteen to twenty-five years.¹⁴ According to the Varieties of Democracy (V-Dem) Institute, in 2024, the world has 88

8 CHARLES CLIFT, WHAT’S THE WORLD HEALTH ORGANIZATION FOR? 29 (May 2014), https://www.chathamhouse.org/sites/default/files/field/field_document/20140521WHOHealthGovernanceClift.pdf [<https://perma.cc/6WTB-KCJB>].

9 Jonathan Kennedy & Tiddhi Thakrar, *Who’s Leading WHO? A Quantitative Analysis of the Bill and Melinda Gates Foundation’s Grants to WHO, 2000-2024*, 10 *BMJ GLOB. HEALTH* 1 (2025).

10 Gopkaumar, *supra* note 7 (“In short, the secretariat and developed-country [member states] . . . often either seek to maintain the status quo or push for greater engagement, and oppose robust safeguards and firewalls surrounding such engagement.”).

11 Tallberg, Sommerer & Squatrito, *supra* note 2, at 61 (“It is no coincidence that democratic clubs, such as the Council of Europe, were among the first IOs to open up; that the third wave of democratization preceded the growth in openness over the past two decades; and that IOs in world regions where democracy is strong offer most access to TNAs [i.e., transnational actors such as non-governmental organizations, philanthropic foundations, scientific communities, and multinational corporations].”).

12 *Id.* at 62-63.

13 *Id.* at 63-64.

14 V-DEM INSTITUTE, DEMOCRACY REPORT 2025: 25 YEARS OF AUTOCRATIZATION—DEMOCRACY TRUMPED? 10 (2025), <https://v-dem.net/publications/democracy-reports/> [<https://perma.cc/3FY5-RVMV>] (showing deepening decline in global democracy over the past 15-25 years based on country averages, population, territory, and GDP weights); *see also The Global Democracy Index: How Did Countries Perform in 2024?*, *THE ECONOMIST* (Feb. 27, 2025), <https://www.economist.com/interactive/democracy-index-2024> [<https://perma.cc/CE9C-6KF7>] (“[G]lobal democracy is in worse shape than at any point in the nearly two-decade history of the [Economist Intelligence Unit] index.”).

democracies and 91 autocracies; that year marked “the first time since 2002 when there are more autocracies than democracies in the world.”¹⁵ Notably, the states that are driving the global decline in democracy are those that are relatively populous and economically powerful.¹⁶

It is important not to overgeneralize—authoritarian governments sometimes distinguish between civil society organizations and business enterprises, and they may have fewer objections to participation by the latter. For example, in 2018, China enacted new laws to encourage participation by private companies in international standard-setting organizations, with remarkable results: by 2021, China held more than 30 percent of the leadership positions in the International Telecommunications Union technical committees.¹⁷ At the same time, the position of private actors in China—even those that have amassed tremendous wealth in the tech industry—remains precarious. Also in 2021, the Chinese government cracked down on digital platforms, wiping out a trillion dollars of market value from Chinese tech companies. As Dan Wang explains, “[t]he effort reflected both technocratic regulation and an effort to crush a power center that could threaten the state’s sovereignty.”¹⁸

IV. THE GLOBAL NORTH

Even in the Global North, the policies and legal frameworks that facilitate and empower private actors have shifted over time. Walter Mattli has observed that “private governance rarely seems to stay purely private.”¹⁹ He gives the example of the International Accounting Standards Board (IASB), which was initially established by professional accounting associations in ten countries—Australia, Canada, France, Germany, Ireland, Japan, Mexico, the Netherlands, the United Kingdom, and the United States. The IASB produced a set of financial reporting standards that, by 2010, had been adopted by more than a hundred countries.²⁰ As more and more states made this choice to give legal effect to privately developed standards, the IASB came under increasingly heavy criticism for the absence of noncommercial stakeholders and more broadly for IASB’s lack

15 V-DEM INSTITUTE, *supra* note 14, at 12.

16 *Id.* at 10 (noting that the GDP-weighted level of its democracy is “at its lowest level in over 50 years,” and that this result reflects “a joint effect of both the global decline in democracy and the rising economic power of states, such as China.”).

17 Shane Tews & Luke Hogg, *If the U.S. Doesn’t Set Global Tech Standards, China Will* (editorial), WALL ST. J. (Aug. 12, 2025), <https://www.wsj.com/opinion/if-the-u-s-doesnt-set-global-tech-standards-china-will-035cdb97> [<https://perma.cc/Q4RD-72K8>].

18 DAN WANG, *BREAKNECK: CHINA’S QUEST TO ENGINEER THE FUTURE* (2025).

19 Walter Mattli, *Private Transnational Governance*, in THE OXFORD HANDBOOK OF INTERNATIONAL ORGANIZATIONS 172, 187 (Jacob Katz Cogan, Ian Hurd & Ian Johnstone eds., 2017).

20 *Id.* at 175 - 76.

Mattlprivate organization into a public-private hybrid through the creation of a state-controlled Monitoring Board.²¹

To take another example, consider the rise and fall of litigation pursuant to the Alien Tort Statute (ATS) in the United States. With the ATS supplying jurisdiction, private actors litigated a number of suits in U.S. courts alleging violations of international law—and, along the way, called on courts to adopt particular interpretations of international law. Underscoring the significance of these lawsuits, Paul Stephan wrote in 2011: “Perhaps no development over the last thirty years has contributed more to the privatization of the production of international law in the United States than the emergence of the ATS as a basis for litigation in federal courts.”²² Just a couple of years later, the Supreme Court issued a decision holding that the presumption against extraterritoriality applied to the ATS—and, as a result, international human rights litigation in the United States was effectively killed.²³

When it comes to technology and especially artificial intelligence, the position of private actors appears formidable. Whoever controls the tech, it may seem, has the power. But the opposite is closer to the truth. Already, governments are actively regulating AI. According to the World Trade Organization, the number of economies adopting at least one AI-related IP policy rose from 41 in 2017 to 140 in 2024.²⁴ China has adopted comprehensive rules on AI at the national level.²⁵ At the international level, China is positioning itself as a champion of the global south and actively promoting an approach to global governance that leaves ample room for states to define their own policies, promising to “fully respect . . . [the] differences in national policies and practices”.²⁶

Under the Trump Administration, the United States embraced a deregulatory approach to AI as laid out in its AI Action Plan.²⁷ Even so, the Trump Administration has made clear that it does not intend to cede

21 *Id.* at 179.

22 Paul B. Stephan, *Privatizing International Law*, 97 VA. L. REV. 1573, 1655-56 (2011).

23 Roger P. Alford, *Human Rights After Kiobel: Choice of Law and the Rise of Transnational Tort Litigation*, 63 EMORY L.J. 1089 (2014).

24 WORLD TRADE ORG., WORLD TRADE REPORT 2025: MAKING TRADE AND AI WORK TOGETHER TO THE BENEFIT OF ALL 73 (2025).

25 Elizabeth Gibney, *China’s Plan to Lead the World on AI Regulation*, 648 NATURE 503, 504 (2025).

26 *Id.*; see also MINISTRY OF FOREIGN AFFAIRS, PEOPLE’S REPUBLIC OF CHINA, *Global AI Governance Initiative* (Oct. 20, 2023), https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531_11367503.html [<https://perma.cc/WU85-LSJB>] (“We should respect other countries’ national sovereignty and strictly abide by their laws when providing them with AI products and services. We oppose using AI technologies for the purposes of manipulating public opinion, spreading disinformation, intervening in other countries’ internal affairs, social systems and social order, as well as jeopardizing the sovereignty of other states.”).

27 *America’s AI Action Plan 3*, THE WHITE HOUSE (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf> [<https://perma.cc/TR5H-GEQ4>].

policymaking authority to the private sector. The Department of Defense recently designated Anthropic a supply chain risk because the administration objected to the limits Anthropic placed on how its AI could be used.²⁸ The move reflects an astonishing willingness to inflict serious costs on a frontier AI company that plays a leading role in advancing the goals of the AI Action plan.²⁹ In public comments, Emil Michael, the Pentagon's undersecretary for research and engineering, explained the decision as motivated partly by the view that Anthropic had overstepped. Anthropic doesn't get to "make the rules," Michale explained to the press. "Congress makes the rules, the president signed them, we execute them."³⁰

V. CONCLUSION

In short, contestation over the nature and extent of private actors' role in global governance is sure to continue. Compared to the Cold-War era, private actors are much more present in global governance. But it is easier to demonstrate the presence of private actors than to measure their impact.³¹ And that presence obscures the latent power to change course that public actors retain. The fundamental asymmetry between public and private actors persists. Public actors are the gatekeepers: they can open the door to private actors and invite them in, endorse their standards or other outputs, and accept their funds. But private actors do not permanently displace public ones, and the public actors can change their minds about the extent to which they want to invite or empower private actors with respect to global governance.³²

28 Amrith Ramkumar, *Anthropic Says It Will Fight New Pentagon Move as CEO Apologizes for Leaked Memo*, WALL ST. J. (Mar. 5, 2026), <https://www.wsj.com/tech/ai/pentagon-formally-labels-anthropic-supply-chain-risk-escalating-conflict-ebdf0523> [<https://perma.cc/BT5E-LH9H>].

29 Ezra Klein, *Why the Pentagon Wants to Destroy Anthropic*, N.Y. TIMES (Mar. 6, 2026), <https://www.nytimes.com/2026/03/06/opinion/ezra-klein-podcast-dean-ball.html> [<https://perma.cc/XP73-RG9R>] (quoting Dean Ball, one of the authors of the Trump administration's AI Action plan, as "committing this horrible act — committing corporate murder.")

30 Tim Higgins, *What's Really at Stake in the Fight Between Anthropic and the Pentagon*, WALL ST. J. (Mar. 1, 2026), <https://www.wsj.com/tech/ai/whats-really-at-stake-in-the-fight-between-anthropic-and-the-pentagon-d450c1a1> [<https://perma.cc/9RGH-6SDU>]; see also Berber Jin, *Sam Altman Wants Elected Officials, Not OpenAI, to Decide How Military Uses AI*, WALL ST. J. (Mar. 5, 2026), <https://www.wsj.com/tech/ai/sam-altman-wants-elected-officials-not-openai-to-decide-how-military-uses-ai-458910cd> [<https://perma.cc/3ZRG-ZPPM>].

31 Stephan, *supra* note 22, at 1600.

32 See, e.g., Mattli, *supra* note 19, at 188 ("A decision by an IGO, for example, to formally endorse a private sector rulemaking partner can tremendously boost the legitimacy of the rulemaker. However, the rule supporting act of endorsement is a single event. Endorsement can be revoked, of course, as can logistic or financial support.").