

[Erik Nielsen](#)

Erik Nielsen Soft Law Presentation

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Rather than specifically reviewing or commenting on each reading this week I will attempt to synthesize the common thread I believe emerged from all the readings. In addition, I have four questions at the bottom of this commentary for the class.

Governance is an elusive concept. The nation state and associated sovereign models of absolute power have dominated inter-state relations since the creation of Westphalia; however, a gradual and increasingly noticeable shift toward a governance framework has emerged. The readings argue the nation-state is in decline and the role of (global) civil society is an increasingly important component of the global system of governance.

The world today has become increasingly inter-connected and inter-dependent, a process commonly referred to as globalization. The concept of 'governance' has emerged; where governance is not synonymous with 'government'. This premise is based on the assumption that key components of a governance framework are rooted in a new 'globalized' society that incorporates not only a changed and reformed State, but also a new understanding of sovereignty models (or at least more conditional forms of sovereignty), the influence of private interests, and particularly the growing importance of civil society. [Civil society itself can be an elusive concept, but the editors of The Nation utilized a sound definition: A broad term denoting the wide range of organizations operating outside the governmental and business sectors.]

The readings argue the shift from governmental and sovereign conceptualizations of state toward a more fully integrated global construct of governance has become a growing and powerful discourse, particularly during the last decade. The growing inter-connectedness, through the emergence of movements, groups, networks and organizations, have all "called into question the primacy of states." Emerging forms of alternative governance strategies (nationally, regionally and internationally), particularly local/national civil society and increasingly transnational civil society advocacy efforts, are growing in prominence and effectiveness.

The Westphalia system is not yet dead, but evolving. In the meantime, states will continue to yield power and set rules (Exhibit A: America and the war in Iraq), but increasingly non-state actors (including the private sector) will be able to exert pressure on a variety of traditional sources of decision-making authority in order to achieve their goals. Modern systems of governance and associated institutions will continue to evolve (and must continue to do so), although no one knows for sure where this will ultimately lead.

My Questions for Class based on Readings:

1. Within the context of regional and international governance, perhaps the most unique aspect of a civil society governance 'strategy' is the lack of a sovereign approach to management; civil society is not constrained by a 'state' lens, framed by political boundaries. Do you believe this to be true? Do non-state civil society actors lack a sovereign approach?

2. How can civil society (or transnational civil society) be effective in non-democratic states such as China, Burma, or many countries located in the Middle East? Could transnational efforts in/with these countries actually serve to slow 'domestic' civil society growth and development?

3. How problematic is it that most civil society organizations are not based upon democratically elected leaders? Most private companies must be responsive to a narrow group of shareholders and many countries around the world today are not

yet democratic themselves.

4. Mathews states that soft law in the form of guidelines, recommended practices, non-binding resolutions, etc are rapidly expanding. Civil society, by virtue of not being 'official' or 'governmental', is a key component to promote new norms without using 'hard' law (since officially on the State can make laws), therefore can civil society be considered a form of soft law itself?