

International Legal Studies Colloquium Series
Reports on the 2nd (March 26th, 2009) and 3rd (April 16th 2009) sessions

(1) The Second Session: "Accountability of International Organizations"
Thursday March 26th 2009, 7:30-10:30

The ILS Colloquium Series returned for a second session on the 26th March 2009 to offer three more students the chance to present their papers around the theme of the accountability of International Organizations. The event was chaired by Professor Philip G. Alston, John Norton Pomeroy Professor of Law at NYU.

The three papers being presented were (1) "Privileges and Immunities of Global Public-Private Partnerships: A Case Study of the Global Fund to Fight AIDS, Tuberculosis and Malaria" by Davinia Abdul Aziz (2) "Catch-22 in Post-Conflict Pluralist Africa: The Role of Development Institutions in Persuading Local Authorities to Apply and Enforce Gender Equality in Land Law" by Amrita Kapur and (3) "Everything under control? The "way forward" for European agencies in the footsteps of the Meroni doctrine" by Andreas Orator

In the first paper, Ms. Aziz presented a paper that she had recently given at the IILJ's conference entitled "Practical Legal Problems of International Organizations - A Global Administrative Law Perspective on Public/Private Partnerships, Accountability, and Human Rights" in GENEVA, March 20-21, 2009. Her paper isolated the conceptual difficulties in applying the model of Privileges and Immunities ("P&Is") to hybrid public-private entities such as the Global Fund to Fight AIDS, TB and Malaria, given both the functional and institutional differences between such entities and traditional intergovernmental organizations. Through an analysis of the historical background, the institutional structure and the purpose of the Fund, she suggested that there might be some basis to rethink the automatic extension of the model of "P&Is" to hybrid public-private entities. The discussion highlighted the need to isolate the concrete shortcomings of the application of P&Is in this context, and the possibility for analogies with other models, such as the investment treaty context, etc. This also raised the issue of addressing legitimacy and accountability concerns in the context of public-private partnerships - an issue which, as Professor Alston pointed out, had been raised in the context of the International Labour Organization. The conclusion of the discussion was that it was important to assess the viability of a tailored approach to the issue, context-specific to projects such as the Fund.

In the Second Paper, Ms. Kapur turned the attention of the Colloquium to development policies put in place by the World Bank and other international organizations, and what she perceives to be a lack of a gender-sensitive focus. In the context of Post-Conflict societies in Africa, she noted that there was a particular need to address gender imbalances since almost paradoxically there was an opportunity given by the transitional context to fundamentally change rules in place. She offered a critique of the policy which centered on broadening title to land, as not having effectively addressed the problem of

gender imbalance, and therefore not having tapped into the great development potential of women in those societies. This thesis sparked a wide debate about the tension between universality claims in gender rights and cultural relativism, particularly in light of the varied experience of African countries with regard to titling. The appropriate role of development policies and their potential to institute change was challenged and demanded scrutiny of the legitimacy of the titling focus of extant policies. Moreover, several students also challenged the propriety of zeroing in on post-conflict societies, and examined the factors which might or might not lead to more sensitivity to external intervention.

Finally, in the third paper Mr. Orator offered an analysis of the current approach to agencies in the law of the EU in light of the "Meroni doctrine" - a rule from case-law restricting the potential delegation of Community law competences to agency structures. Challenging the academic paradigm that the last forty years had drastically altered the relevance of the case, Mr. Orator argued that in fact it was still "good law" and went to question whether this was justifiable in light of issues of democratic legitimacy and efficiency-oriented concerns. He offered a four-point plan to address legitimacy concerns by requiring a clear division between legislative and executive decision-making powers, accountability and review mechanisms, and the preservation of discretion at the highest institutional level. The discussion highlighted the fact that this debate reflected broader debates about democratic legitimacy in the EU/EC, and whether the institutional changes to EU institutions over the past fifty years had actually undermined the rationale behind Meroni.

(3) The Third Session: Thursday April 16th 2009, 7:30-10:30

The final session of the ILS Colloquium Series adopted a slightly different model as a roundtable discussion without a chair. Three papers were presented on a range of different issues: (1) "The Concept of Human Dignity in European Human Rights Law" by Matthildi Chatzipanagiotou (2) "Linking a US Greenhouse Gas Cap-and-trade system to the EU Emissions Trading Scheme" by James Chapman and (3) "The compatibility of tactical nuclear weapons with International Humanitarian Law" by Christopher Oxtoby.

In the first paper, Ms. Chatzipanagiotou presented her inquiry as to the nature of the notion of human dignity in European Human Rights law with a focus on German law, EU law, and the European Convention of Human Rights. Her paper asked three questions about human dignity: (i) was it a general principle or a specific legal concern (ii) was it an absolute value or subject to proportionality analysis and (iii) was it a substitute for liberty/autonomy as the foundation of human rights. She proceeded to examine the uses of the notion in the three legal systems and sought to draw some common strands from the survey. The discussion highlighted that the notion was so vast that inquiries should be narrow to isolate its specific characteristics. The paper was oriented towards answering multiple questions, although its larger theme was a search for a common consensus regarding the concept from a philosophical and positivistic perspective.

This was followed by a paper by Mr. Chapman examining the possibilities of linking the US and EU Emissions Trading Systems which are set to be instated in the next few years. The purpose of the paper was to highlight both the challenges and advantages that "linking" could bring, and to question the critiques which believed there were normative reasons for blocking such a possibility. Instead, Mr. Chapman identified political and market-based motivations which would likely be the cause of a failure to link and thereby take advantage of the larger market structure that linking could achieve. This led to debate as to whether the thesis should more explicitly isolate the positive aspects of linking, and whether its purpose was descriptive or prescriptive in nature. Students questioned whether given the imbalance between "standards" of emissions cuts between the EU and the US there would be any incentive for the EU to link at all, and whether there would be any benefits for the EU market from that process. A further discussion led to highlighting the role that technological advances might play in regulating the imbalances between the markets and producing a homogenous goal-driven system.

The final paper by Mr. Oxtoby queried whether the use of Tactical Nuclear Weapons (TNWs) was lawful under existing rules of International Humanitarian Law. After examining the characteristics of TNWs, Mr. Oxtoby proceeded to scrutinize the reasoning of the International Court of Justice in its Opinion on the Legality of the Use of Nuclear Weapons in light of the fundamental precepts of International Humanitarian Law. Certain opinions indicated that such weapons might be lawful despite the general presumption of unlawfulness the judgment suggested, and thus Mr. Oxtoby challenged that claim from two perspectives. On the one hand he challenged the premises on which the hypotheticals the Court relied upon were based, notably isolating the artificial nature of the 'acceptable' circumstances, and also the futility of such weapons if such circumstances were so extreme as opposed to conventional weapons. Secondly, he queried whether a rule permitting such a 'limited' use would not in itself pervert the role of the law, and whether like in the case of torture there should be a general prohibition on the use of certain weapons as a matter of policy. The debate cross-examined the flaws of the hypotheticals and challenged their viability in light of the principles of humanitarian law. The discussion then focused on the role of law in society and what policy reasons should inform the framing of prohibitions and permissive uses of weapons.