



INSTITUTE FOR INTERNATIONAL LAW AND JUSTICE

NYU Law School
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Project on Global Administrative Law

POSSIBLE RESEARCH TOPICS

(July 20, 2006)

1. Research Already Initiated

Research already initiated in this project includes detailed studies of mechanisms of accountability and participation in **specific global regulatory regimes** (ISO standardization, Codex Alimentarius food safety; OECD regulation of environment, business and laboratory standards; transnational water regulation; global accounting standards; transnational networks; Security Council sanctions regimes (esp listing of suspected terrorist financiers); the Clean Development Mechanism under the Kyoto Protocol; the development of coffee and cocoa standards; the Fair Labor Association's approach to apparel production standards; the International Olympic Committee's anti-doping code; governance and accountability of private military firms; UNHCR administration of refugee camps and refugee status determinations; WTO government procurement administrative rules; aid agency procurement rules). It also includes studies of the uses of **domestic administrative law** thinking for global regulatory regimes, and the **impact of global regulation on domestic administrative law** (international standards of domestic administration; the impact of GATS on domestic regulation of services). Finally, a set of papers addresses **broader conceptual and normative issues** (accountability and the idea of an international legal order; public choice and global administrative law; accountability and abuse of power; the respective roles of technocratic and democratic approaches in global administrative law; national public law theory and its integration with global administrative law).

2. Further Specific Topics

- 1) WHO accountability in the SARS Crisis
- 2) Participation and accountability in the G-8 (Martina Conticelli's 2007 book, in Italian)

- 3) The development of international or global administrative law through the Oil-for-Food investigation and other norm-establishing practices
- 4) Administrative law in criminal law areas: Interpol, the ICC as an administrative agency
- 5) Domestic civil society and interested actor participation in the international cooperation strategies pursued by national (eg. US) agencies, including challenges to these strategies in national courts
- 6) Dialogues between different courts and tribunals on administrative questions of international significance: e.g. between domestic courts and international investment arbitral bodies (ICSID, NAFTA)
- 7) The accountability of private authority (to give one of many examples, the accountability of credit ratings agencies such as Standard & Poor)
- 8) The accountability of NGOs assuming public functions (in administration of aid etc.)
- 9) Relations between foreign affairs and administrative law action (including, in the US, a presidential action that involves both administrative powers and foreign affairs issues) (a research template for the US is available to apply to other countries)
- 10) Responsibility of international humanitarian organizations: e.g. UNICEF in India
- 11) Accountability mechanisms in International Organizations: the World Bank Inspection Panel and possible equivalents in other agencies
- 12) Reforming international economic governance to diversify effective participation
- 13) Critiques of governance: alternative paradigms for regulation
- 14) Global regulatory structures and the rights of poor and socially excluded groups
- 15) A new look at international administrative tribunals
- 16) Case studies of subject areas, e.g.:
 - a) Food safety, health, and product standards
 - b) Competition / antitrust (nb EU Regulation 1/2003 organizes a triangular system of cooperation and dialogue between the European Commission, the National Competition Authorities and the national courts in the enforcement of European Competition Law; also US-EU antitrust cooperation arrangements; and the ICN)
 - c) Internet governance
 - d) Pharmaceuticals / chemicals regulation
 - e) Aircraft and air traffic regulation
 - f) Maritime regulation, including Classification Societies and insurers

- g) Administrative cooperation on intellectual property issues
- h) Environmental regulation: multiple areas
- i) Telecommunications regulation.

3. Categories to Explore in Generating Research Agendas:

Structures. Moving away from the traditional international law approach which sharply separates the inter-state from the intra-state, we propose that some research might explore patterns in three distinct relationships that also underlie structures of domestic administrative law:

- relationships between transnational regulatory institutions and regulated actors as well as regulatory beneficiaries and other private actors and interests affected by regulatory measures and policies.
- intra-institutional relationships: relationships between different bodies within the same transnational regulatory institution, such as the COP, subsidiary administrative bodies, advisory committee, and regime tribunals.
- relationships between regulatory institutions, including both horizontally between different international institutions or institutions of different countries and vertically between international and domestic institutions.

Institutional functions and evaluative criteria. By loose analogy to domestic regulatory and legal institutions, we propose that administrative law arrangements applicable to global regulatory institutions be analyzed from the perspective of several distinct functions and evaluative criteria, such as protection of individual rights; promoting accountability, including legal accountability and accountability to domestic political systems and constituencies or transnational constituencies; regulatory efficacy and administrative efficiency; regulatory equity and justice; and securing and promoting appropriate forms of democracy.

Administrative law tools. An administrative law conceptualization of transnational regulation would consider and evaluate the potential application to transnational regulatory regimes of tools that domestic administrative law has developed to serve the functions outlined above. These include: independent tribunal review of administrative decisions; different forms of participation (notice and comment, structured representation of interests, etc.); transparency of proceedings and public availability of records; requirements of reasoned justification; peer review procedures; tort law; and mechanisms like the Open Method of Coordination or the Comitology system in the European Union. It could also encourage the development of new types of administrative law tools specifically adapted for transnational regulation.

Institutional design and change. This shift in perspective would also encourage and facilitate use of bodies of positive theories of institutional design and change, including factors driving legalization or informality, the incentives of the relevant actors, path dependency, and functionalism.

General questions. Can the federal models of the US or the EU be used in order to analyze the interactions on the global level (horizontal and vertical relations)? What is the importance of procedural norms for ensuring good governance? How could public participation be organized? What is the status of GAL: is it administrative law, international law, sui generis, or a combination?

List of topics in **IILJ'S ORIGINAL GLOBAL ADMINISTRATIVE LAW PROJECT OUTLINE (AUGUST 2004)**

- The many traditions of national administrative law.
- Global, international or domestic? What are the different constituencies of GAL?
- Stakeholders vs. general public: organizing public accountability.
- Centralization vs. decentralization: organizing accountability in multi-level systems.
- Accountability in international security administration: the review of Security Council decisions
- The review of international governance through aid: the WB Inspection Panel.
- Ensuring accountability to the broader public: the involvement of NGOs
- Process of rule-making in international organizations.
- Bringing domestic accountability back in: EU comitology as a model?
- Regaining effectiveness: the role of domestic administrative law in global governance.
- Making domestic administrative law more responsive: organizing accountability to a broader constituency.
- The international perspective: international standards for domestic administration.
- The OECD: cooperation and accountability within an international organization.
- Transatlantic regulatory cooperation: unstructured, opaque, unaccountable?
- Mutual recognition: the emergence of a transnational administrative law?
- Domestic parallels: administrative law and the challenge of informality and cooperation.
- Between private freedom and public accountability: self-regulatory standard-setting and enforcement in international markets.
- Delegated governance by private actors: the case of ICANN.
- The domestic contrast: privatization and public responsibility in national settings.

- A public bias? Administrative law and the focus on public authorities.
- An idealized picture? Power and geography in global governance:
- Administrative law and hierarchy: the challenge of “new constitutionalism”.

Below are more detailed notes on some possible topics, prepared 2005-06 (thanks to Benjamin Dalle for writing up these notes).

1. JULY 2005 INABILITY OF UN WORKING GROUP TO AGREE ON HOW TO GOVERN INTERNET

- Working Group on Internet Governance set up by the UN to construe a global plan for the management of the internet.
- No agreement on how the job should be done; four conflicting models exist.
- The future regime would involve important GAL-questions: institution of a global administrative agency; regulation; adjudication; etc.
- It also relates to important questions concerning the inclusion of poor countries.
- Current situation: various groups manage the internet, e.g. the ICANN, a private organization under the control of the US government.

2. VACCINE SUPPLY AND INTERNATIONAL LAW (SEE E.G. ASIL INSIGHT – OCTOBER 20, 2004 BY DAVID P. FIDLER; AND AVIAN FLU MATERIALS)

- Supplies of influenza vaccines: links with international law.
- Main international legal framework for infectious disease control: International Health Regulations (IHR - 1951), promulgated by the WHO: doesn't include influenza.
- Establishment of the Influenza Surveillance Network by the WHO (1952): task is to identify influenza strains, which then become the basis for the production of vaccines by private companies.

- Inadequacy of production capacities for seasonal epidemics or a pandemic have led to proposals for the construction of a global regime that guarantees sufficient supplies.
- Global administrative bodies and their cooperation with private companies. How can private companies be influenced in their behavior (e.g. through financial incentives)?
- Creation of a global legal framework (e.g. harmonization of biosafety requirements).

3. INTERNATIONAL SPORTS GOVERNANCE (BRUNO CAROTI IS WORKING IN THIS AREA) (E.G. A REPORT ON CRICKET IN THE SYDNEY MORNING HERALD – FEBRUARY 16, 2004: PAKISTAN, INDIA IN BETTING ROW)

- This story is about investigations of the ICC – the International Cricket Council, in practices of corruption and match-fixing.
- The ICC is the governing body for Test Match and One-Day International. It is also responsible for the global expansion of the game through its Associate and Affiliate Members and a major international Development Program. Full Members are the governing bodies for cricket of a country recognized by the ICC, or nations associated for cricket purposes, or a geographical area, from which representative teams are qualified to play official Test matches (10 countries).
- The interest seems to lie in the fact that private organizations, such as sports associations, have extensive disciplinary powers and almost behave like private prosecution services. In the ICC, e.g., there exists a special Anti-Corruption and Security Unit.
- This phenomenon of private discipline is widespread in sports. Cf. e.g. the competences of the FIFA.

4. CONSTITUTING PRIVATE GOVERNANCE REGIMES: STANDARDS BODIES IN AMERICAN LAW (HARM SCHEPEL)

- Can private bodies promulgate binding law? In 1919, the Kansas Supreme Court gave a negative answer to this question (*State v. Crawford*); law should be made according to the procedures and passed through the institutions prescribed by law.

- This question of the law's recognition of private governance is indissolubly connected with the fundamental normative question of democratic theory: can law recognize legal validity and democratic legitimacy outside the constitution, without constitutional political institutions and beyond the nation state? Can political theory support the existence of those private rules?
- This question is extremely relevant for global governance, since rulemaking on the global level per definition moves beyond the nation state, while there is no effective legislature that can intervene when private standards seem inadequate.
- On the global level, private bodies are increasingly setting standards, e.g. in the field of product safety.
- The question is how the accountability of those bodies could be enhanced. One way to think about this issue, is by considering the development of a "private administrative law", i.e. administrative law procedures that should be respected by private bodies when regulating (e.g. notice and comment, review procedures, etc.).

5. STANDARDISING AS GOVERNANCE: THE CASE OF CREDIT RATING AGENCIES (DIETER KERWER, 2001)

- What are the regulatory responses to financial globalization?
- Like in other areas, global governance can be based on "private authorities", i.e. co-operating firms that can set binding rules for themselves or for others.
- Credit rating agencies are an example of such a "private authority involved in the governance of financial markets. These are private financial service firms that estimate the credit-worthiness of borrowers or financial instruments. These risk assessments have become an important standard for credit risk and are now widely used for making investment decisions. Moreover, they have been used to make the regulation of the financial market risk sensitive, e.g. by restricting the investment activities of banks to instruments of low credit risk.
- Negative credit ratings can have devastating effects on the financial situation of States. It therefore is an important element of financial governance.

- Despite the fact that these private agencies have become increasingly influential, it is very hard to hold them accountable.
- The author claims that this “accountability gap” results from using credit ratings as risk measures in regulation designed to limit the risk taking of investors. It is therefore argued that regulatory enforcement is the key to the rating agencies’ power, and not their pivotal role in financial markets. In other words, their private non-binding rules are enforced by government regulation.
- This mode of governance has some important advantages: it is based on expertise and enhances flexibility. However, the accountability gap is a very important drawback. Research should therefore focus on the possible ways of holding these private regulators accountable.

6. CODE OF CONDUCT. RATINGS AGENCIES WIN RULE VICTORY (FT, 28 DECEMBER 2004)

- *See also*, article on credit ratings.
- Approach of the International Organization of Securities Commissions: credit rating agencies are largely left to police themselves under the terms of a code of conduct published by international securities regulators.
- Should there be stronger rules applicable to those agencies? Should there be enforcement mechanisms (e.g. a license system, penalties, etc.)?

7. UK INSURERS URGE IASB TO PRESERVE FAIR VALUE OPTION (FT, 28 DECEMBER 2004)

- IASB: International Accounting Standards Board: *see* <http://www.iasb.org/>
- The Association of British Insurers has urged the IASB to preserve the fair value option, a controversial accounting rule that measures financial liabilities.
- The IASB proposed restricting the use of this option.
- GAL: private rulemaking on the international level; relations between international private bodies and domestic public and private organizations.

8. LARGE MULTI-COUNTRY RESEARCH PROJECTS, E.G. INTERNATIONAL SPACE STATION, CERN, OR THE ITER NUCLEAR FUSION PLANT (WHICH WAS AWARDED TO FRANCE IN JUNE 2005)

- See generally <http://www.iter.org/>
- France hosts a project to build a nuclear fusion reactor; this “Iter” or International Thermonuclear Experimental Reactor is a joint scientific project (cf. the International Space Station).
- The parties to this consortium are The People's Republic of China, the European Union and Switzerland (represented by Euratom), Japan, the Republic of Korea, the Russian Federation, and the United States of America, under the auspices of the IAEA.
- ITER is a multinational collaboration between all the countries involved in fusion research worldwide. It operates by consensus among the participants. The collaboration involves primarily scientists, who establish the requirements of the experiment and eventually will measure its success, and engineers, who find ways to produce these required conditions safely, reliably and as cheaply as possible, and who in its operation will also gain design information for future fusion power plants.
- This project is a good example of how global governance can be engaged in very concrete local projects. It raises a multitude of GAL-related questions, e.g.: what is the nature of this organization (intergovernmental, public-private, etc)? How do the different parties interrelate and take decisions (private actors, States, regional and global international organizations, etc.)? To what extent is this a normal example of project finance? How is this international project affected by local laws, e.g. the French public procurement rules? Or should there be a *sui generis* regime because of the special nature of the project?

9. U.S. DISCOVERY PROCEDURES MAY BE USED FOR FOREIGN ADMINISTRATIVE AND COURT PROCEEDINGS (MOFO – NEWS)

- Section 1782 permits federal courts of the US to order document discovery and deposition testimony “for use in a proceeding in a foreign or international tribunal” upon the request of any “interested person”.
- In *Intel Corporation v. Advanced Micro Devices* (2004), The Supreme Court applied this provision to a European Commission proceeding concerning anticompetitive behavior by Intel.
- This case relates to the question how domestic administrative or judicial procedures can support the activities of international courts or courts of another country or region.

10. DECISION OF THE TRIBUNAL OF THE ANDEAN COMMUNITY IN CASE 38-IP-2004

- The Andean Community is a regional organization endowed with an international legal status, which is made up of Bolivia, Colombia, Ecuador, Peru and Venezuela and the bodies and institutions comprising the Andean Integration System (AIS). It can be considered to be an embryonic form of an integrated system like the EU.
- Case 38-IP-2004 is an IP case that has been referred to the Andean Tribunal via a prejudicial question by an administrative tribunal of Ecuador (*lo Contencioso Administrativo de la República del Ecuador*).
- It deals with the interpretation of Decision 344 of the Andean Commission (*la Comisión del Acuerdo de Cartagena*). This Decision has the objective of protecting IP rights within the Andean region.
- Article 113 states that the competent national authority can decree the nullity of registrations of brand-names.
- The Tribunal held *inter alia* that the claimant should be able to present its views on the case in a nullity procedure. The national authority has a discretionary competence to decide the case, but can’t take arbitrary decisions.
- The case is an important example of how regional integration can imply the internationalization of domestic norms, both substantially and procedurally. In this case the regional legal framework implies the reform of domestic administrative

procedures. In particular, it obliges the member states to institute procedures that ensure that national administrative bodies entertain claims by private actors. Moreover, those procedures have to guarantee some due process norms, such as the right of the claimant to be heard.

11. NEPAD AND OTHER REVIEW MECHANISMS ON CORRUPTION (E.G REPORTS IN 2005 THAT A KENYA CORRUPTION REVIEW WAS ‘BLOCKED’)

- African Union: NEPAD African Peer Review Mechanism: monitors good governance.
- Peer review has been set up to improve governance in Africa, in exchange for more foreign aid.
- The Kenya branch has stopped its work because it was barred from the offices of the Kenyan government.
- GAL: can regional or global institutions impose guidelines on national governance? Are there mechanisms to control domestic governance? Are they binding? What is the advantage of international monitoring (independence)?

12. THE NEW ANTI-CORRUPTION PLAN FOR LIBERIA (SEE GENERALLY SCOTT R. LYONS, ASIL INSIGHTS, DECEMBER 2005)

- Agreement between the government of Liberia and the international donor community: GEMAP (Government and Economic Management Assistance Program): an anti-corruption plan that establishes international financial oversight over the administration.
- Foreign experts are positioned in the key State financial and revenue-producing sectors with co-signature authority on government spending.
- Opponents complain about the intrusion in national sovereignty.
- It creates a very innovative scheme that allows foreign officials to cooperate with and to participate in domestic administrative processes. It can be seen as a very far-reaching example of distributed administration.

13. BBC NEWS – MAY 3, 2005: SUDAN OUTRAGED AT NAMESAKE DYE

- The Food Standards Agency named a cancer-causing dye after Sudan.
- This allegedly caused harm to the reputation of the country.
- The Food Standards Agency is an independent U.K. Government department set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food.
- This story relates to the huge impact national agency's decisions can have on other countries.

14. COMPLIANCE AND CONTROL IN EU (FOR BACKGROUND, SEE BBC NEWS – JULY 14, 2005: A BREAKDOWN IN EU DISCIPLINE?)

- There is a generalized trend in European Countries to break EU rules.
- Important example: France's catching of undersize fish; condemned by the ECJ in 1991; France defied the Court's decision.
- Idem in the case of Germany vis-à-vis the Eurozone Stability and Growth Pact.
- Now France was fined by the ECJ (like several other countries).
- This case raises important questions concerning the relations between supra- and international courts and tribunals and national administrative authorities, and concerning the ability of the former to enforce their decisions.

15. NAFTA CHAPTER 19 AND THE DEVELOPMENT OF INTERNATIONAL ADMINISTRATIVE LAW. APPLICATIONS IN ANTIDUMPING AND COMPETITION LAW (GILBERT R. WHINHAM, JOURNAL OF WORLD TRADE, FEBRUARY 1998)

An important aspect of GAL is the analysis of the procedural mechanisms that work in the GAL area: domestic, regional, global; political, quasi-judicial, arbitral, judicial; etc. What are the best solutions, and what is the best institution design?

NAFTA Ch 19 is one of many areas of examples:

- Private actors in international trade law: e.g. in the field of dumping.
- There are global (and regional) rules on aspects of international trade (e.g. antidumping).
- But the enforcement happens at the domestic level, by national governments:
 - Are their decisions and practices fair and adequate?
 - Judicial review of administrative agencies
- Bilateral trade agreement (Fta) between Canada and the United States: Chapter 19: dispute settlement procedure for antidumping and countervailing measures; continued in NAFTA.
- Binational judicial-like review of antidumping and countervailing duty determinations of domestic administrative agencies.
- This is an internationalized form of judicial review of domestic agencies, which is unique in international law
- The article examines the origin and implications of Chapter 19, and its relevance in other areas, e.g. in competition law
- Chapter 19 tries to find adequate solutions for dealing with domestic administrative decisions with transnational implications. Nationals of other countries should be able to challenge those decisions. This relates to what sometimes is described as “horizontal accountability”, and what I called “transnational vertical accountability” in my paper on the Aarhus Convention.
- Important GAL question: what is the appropriate response to transnational administrative decisions? Domestic administrative action or action on the regional or global level? Diplomatic and political responses or (quasi-) judicial solutions?

16. THE FAILURE OF CHAPTER 19 IN DESIGN AND PRACTICE: AN OPPORTUNITY FOR REFORM (JENNIFER DANNER RICCARDI, OHIO NORTHERN UNIVERSITY LAW REVIEW, 2002)

- *See also* Winham article

- According to this author, the system of Chapter 19 is fundamentally flawed and undemocratic, because it places an enormous power in the hands of private individuals who do not have judicial experience and who are not accountable for their performance, without there being constitutional safeguards (like in US domestic courts).
- The article puts emphasis on some difficult problems that may come up when developing international tribunals. Chapter 19 is basically an accountability mechanism, but does it guarantee the accountability of the mechanism itself? Or in other words, who guards the guardians?

17. MINI SYMPOSIUM: WTO NEGOTIATORS MET THE ACADEMICS – CHALLENGES TO THE LEGITIMACY AND EFFICIENCY OF THE WORLD TRADING SYSTEM (JOURNAL OF INT. ECON. LAW, 2004)

- Democratic accountability of the WTO?
- Relevance of human rights in the WTO? Relation accountability/human rights?
- Is there a possibility of parliamentary oversight over the WTO?
- How can public participation by NGOs enhance accountability?

18. INTERNATIONAL ARBITRATION IS A FORM OF GOVERNANCE. MANY TOPICS MAY BE ADDRESSED (THE IILJ IS CONSIDERING LAUNCHING A MAJOR PROJECT IN THIS AREA). A RANDOM SAMPLE OF MANY CURRENT ISSUES IS PROVIDED BY CONSULTING ONE ISSUE OF KLUWER LAW INTERNATIONAL: ARBITRATION MATERIALS:

- [Hanna, Jr] Is Transparency of Governmental Administration Customary International Law in Investor-Sovereign Arbitrations? - Courts and Arbitrators May Differ (2005)
- [Rubins] Loewen v. United States: The Burial of an Investor-State Arbitration Claim (2005)
- [Bernardini] The Role of the International Arbitrator (2004)

- Arb.Int'l.: [Hanotiau] A New Development in Complex Multiparty-Multicontract Proceedings: Classwide Arbitration (2004)
- [Spiermann] Individual Rights, State Interests and the Power to Waive ICSID Jurisdiction under Bilateral Investment Treaties (2004)
- [Van Houtte] Ten Reasons Against a Proposal for Ex Parte Interim Measures of Protection in Arbitration (2004)

19. CIEL AND OTHER CIVIL SOCIETY ORGANIZATIONS EXPRESS CONCERNS OVER USTR'S PROPOSED APPELLATE MECHANISM IN THE INVESTMENT CHAPTER OF THE DOMINICAN REPUBLIC / CENTRAL AMERICAN - U.S. FREE TRADE AGREEMENT (DECEMBER 7, 2004)

- Ciel: The Center for International Environmental Law (<http://www.ciel.org/>)
- The Ciel criticizes the proposed appellate mechanism of the investment chapter in the Dominican Republic and Central America Free Trade Agreement (CAFTA).
- Their critique relates to important questions concerning international tribunals.
- The Ciel emphasizes the importance of domestic judicial control of arbitral decisions: this is the best guarantee for the respect for US public policy.
- Ciel refers to NAFTA and other investment agreements to state that investment claims often threaten environmental, health and safety laws in the U.S. and abroad.
- Ciel believes a standing tribunal is better than an *ad hoc* institution (continuity, coherence, etc.).
- The standard of review is also vital for CIEL: they prefer a *de novo* review in stead of the "clearly erroneous" standard.
- Ciel also finds that an appellate mechanism must assure that cost and other requirements do not prevent the Central American Parties to CAFTA - and potentially other developing countries - from participating in appellate proceedings.
- GAL questions: the logic of a real GAL implies that there are also real global courts. Substantive laws without procedural mechanisms to enforce those rules simply cannot work properly. However, it is highly debatable whether the development of global

courts is suitable from a normative point of view: does it respect sovereignty, popular democracy, etc. Does it legalize a process that is and should be political?

- If one decides to develop global or regional tribunals, how should this be organized *in concreto*: standing or *ad hoc*? Which competences? Relation with domestic courts and administrations?

20. PRIVATE COMPLAINANTS AND INTERNATIONAL ORGANIZATIONS: A COMPARATIVE STUDY OF THE INDEPENDENT INSPECTION MECHANISM IN INTERNATIONAL FINANCIAL INSTITUTIONS (DANIEL D. BRADLOW, GEORGETOWN JOURNAL OF INTERNATIONAL LAW, WINTER 2005).

- This paper gives an overview of the existing inspection mechanisms and establishes a list of principles that should be respected when establishing such procedures.
- It deals generally with the accountability of international organizations vis-à-vis private actors.
- Access to justice is a fundamental right in domestic administrative law. It should be examined how and to what extent this principle can be implemented in the global administrative space.

21. NATIONAL REGULATORS' RELATION TO INTERNATIONAL REGULATORY NETWORKS (HER, A 2004 REPORT ABOUT THE ONTARIO SECURITIES COMMISSION)

- Ontario Securities Commission (OSC).
- Canada has to create a national regulatory agency in order to have a voice in the international securities community, says OSC head, David Brown.
- Creation of the Public Interest Oversight Board: monitors the International Federation of Accountants, which handles issues such as audit standards and ethical behavior for the accounting profession worldwide.

- This new body has representatives from the International Organization of Securities Commission, as well as the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the World Bank and the Financial Stability Forum.
- This relates to the question of private standard setting bodies and their accountability.

22. CONSTITUTIONAL CHANGE AND INTERNATIONAL GOVERNMENT (CHANTAL THOMAS, HASTINGS LAW JOURNAL, 2000)

- The international regulation of our daily lives has a constitutional aspect: it fundamentally changes American government.
- US participation in international economic organizations has generated a *de facto* “international branch” of federal government.
- This branch is incomplete: it has to be construed in a way that guarantees transparency and democratic accountability.
- The article is interesting because it considers that the democratic deficit of international institutions can and should be remedied on the domestic level. In particular, the international wing of the US government should have a more transparent and democratic structure.
- It occurs to me that this approach is based on the classical vision of global governance, i.e. the vision that the States are at the core of global governance. It is true that the “international agencies” of States should be transparent and accountable, but this is by no means a sufficient guarantee for accountability on the global level. It ignores the independent processes that happen through global governance.

23. PARLIAMENTARY OVERSIGHT OF WTO RULE-MAKING: THE POLITICAL, NORMATIVE AND PRACTICAL CONTEXTS (GREGORY SHAFFER, JIEL 2004)

- How can parliaments oversee WTO rule-making at the national and international levels.
- The oversight can be at the national level, the level of the WTO member.

- But oversight can also be organized at the WTO level itself, e.g. through inter-parliamentarian meetings.
- Emphasis should be put on the participation of developing countries.
- An important question is whether international parliamentarism could provide solutions for the current accountability problems of international governance.

24. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING (JARED WESSEL HAS A PAPER ON GAL ISSUES IN FATF, IN WIDENER LAW REVIEW, FALL 2006)

- *See generally:* <http://www.fatf-gafi.org>.
- The FATF is an inter-governmental body, established by the G-7 Summit of Paris in 1989.
- FATF has a mandate for 8 years (2004-2012) of 31 countries to combat money laundering and terrorist financing.
- Its precise task is to set standards to combat money laundering and terrorist financing; to carry out typologies and compliance work in order to ensure global action against money laundering and terrorist financing; to develop closer relationships with the IMF and the World Bank; and to enhance FATF's relationship with FATF-style regional bodies (FSRBs).
- The FATF Standards are comprised of Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing.
- Important issues: what is the status of the FATF recommendations? What mechanisms are available for law enforcement activities? To what extent do these international standards rely on domestic enforcement?
- An obvious, but important observation is that terrorism and finance typically operate on a global scale. For this reason, a global response seems the only adequate way of dealing with this problem. The question is, however, how this global framework should be organized (creation of norms, institutions, etc.).
- A very interesting question deals with the relations between the FATF and the FSRBs. These are regional bodies with similar objectives to the FATF, which exist in all parts of the world. A very important aspect of GAL is the way in which global

governance is often organized as the global coordination of regional governance. Cf. e.g. in the area of the law of the seas, where the UNCLOS regime has built on the experience of regional seas agreements.

25. UN OIL-FOR-FOOD PROGRAM, INQUIRY

- Oil for Food Program (OFFP) Inquiry was set up by a Security Council resolution.
- Lead by the UN Office of International Oversight Services.
- How can these investigations be organized? Should there be due process provisions?
Several national inquiries are addressing aspects of this e.g. Australian Inquiry into Australian Wheat Board payments, political controversy in India, etc.) Should a domestic inquiry (probably US) look directly into the operations of the UN?

26. UN PROBES SUGAR INDUSTRY CLAIMS (BBC NEWS – OCTOBER 10, 2004)

- Some documents have revealed that an Expert Consultation on Carbohydrates in Human Nutrition has been co-funded by organizations controlled by the sugar industry. This consultation was a joint venture between the WHO and the FAO. The involvement of the sugar industry puts into question the objectivity and impartiality of the expert body.
- This story raises two GAL-related questions. First, it concerns the involvement of private enterprises in global governance: to what extent is the cooperation between international organizations and private companies helpful? Are there any dangers (e.g. for bias, corruption, etc.)? Can there be an analogy with public private partnerships on the domestic level? Are political theory principles of national administration also useful in this context (e.g. the theory of agency capture)?
Secondly, it raises questions on the accountability of international organizations. How can an IO combat corruption? Is the solution an internal unit, e.g. the Institutional Integrity Department of the World Bank? Or should there be more formalized quasi-judicial procedures?

27. ABUSE BY UN PERSONNEL: UN TO REPLACE CONGO MISSION HEAD (2005)

- Mission head was fired, because of problems with sexual exploitation of refugees.
- GAL: The status of UN personnel is a traditional theme of international administrative law: they have a special status as an “international functionary”. When someone is fired, the correct procedures have to be respected.

A local UN Mission can also be seen as an administrative agency, with obligations vis-à-vis the local population.

28. UNITED NATIONS: VOLUNTARY CONTRIBUTIONS ISSUES (E.G. G.W. INT. LAW REVIEW, 2003)

- Voluntary contributions to the UN by the member States (James Archibald): are used more and more. Principles of domestic contract law could be used to make those contributions legally binding.
- Voluntary frameworks in multinational cooperation of merger control (Ariel Ezrachi): superiority of voluntary schemes
- GAL questions: how can domestic principles be used on the global level (bottom up approach). Which domestic systems are relevant for this operation? What is the position of voluntary action under domestic laws, and how can it be transposed to an international administrative space? Is voluntary action an alternative for enforcement, or just a complementary mechanism?

29. ‘A WORLD FREE FROM HUNGER’: GLOBAL IMAGINATION AND GOVERNANCE IN THE AGE OF SCIENTIFIC MANAGEMENT (LYNNE PHILLIPS & SUZAN ILCAN)

- Historical analysis of the FAO as an organization active in the global governance of food.
- Emphasis of the “public” character of the FAO: driven by the member States, and possibility of civic participation.

- The governance by the FAO is called “global food governance” and is tied to science and scientific management.
- The analysis is interesting, since it describes the FAO as a global management institution that bases its decision on scientific data. It is almost as if the article deals with a domestic administrative agency, such as the FDA. It clearly shows how global governance has been working since WWI, in a specific area.
- Interesting GAL-related research could focus on descriptive analyses of international institutions as global administrative agencies.
- Such a research should focus on the instruments that those agencies use to achieve their objectives, and on the legal status and practical implications of those instruments.
- The paper also shows that the research should not be restricted to legal analyses. In particular, there should be research by political scientist, sociologists, economists and even historians. This aggregated work should amount to a more multi-disciplinary approach of global governance and GAL.

30. LIABILITY OF IOS AND THEIR MEMBERS (AUSTRALIAN GOVERNMENT SOLICITOR, 2002 MEMO ON IHO)

- The International Hydrographic Organization (IHO): <http://www.iho.shom.fr/>
- The IHO is an intergovernmental consultative and technical organization that was established in 1921 to support the safety in navigation and the protection of the marine environment.
- The memo is about the liability of IHO and comes to the conclusion that the IHO most probably cannot be sued.
- It raises interesting questions concerning the legal status, the standing, and the liability of international bodies. If there really is a GAL and the administrative bodies behave like administrative agencies, there needs to be a possibility of challenging the decisions and practice of those bodies. The memo’s interest is in the fact that it explains the reasons why the IHO cannot be held liable. It can be used to assess the

liability of other international bodies, and to find solutions for the absence of effective legal remedies.

31. REVIEW OF SECURITY COUNCIL DECISIONS BY NATIONAL COURTS (SEE E.G. ERIKA DE WET & ANDRE NOLLKAEMPER, GERMAN YB OF INT. L., 2002)

- Security Council Sanctions Committee: economic sanctions against individuals suspected of maintaining links with terrorists.
- There is no possibility to challenge those decisions. Affected individuals can only submit requests to be removed from the list to the Sanctions Committee via their respective Permanent Missions to the UN. These requests are examined by the Committee itself.
- The paper focuses on two elements
 - When the Security Council authorizes binding decisions of a (quasi-)judicial nature, it is bound by due process norms (fair hearing).
 - Discussion of the authority of member States to review the decisions of the Security Council.
- The paper relates to two GAL issues. First, some procedural norms should always be respected in the global administrative area and can therefore be characterized as principles of GAL. Some due process norms, such as the right of a fair hearing, certainly belong to that category and should also be respected by the Security Council when sanctioning individuals.

Secondly, the paper analyses what mechanisms are available to individuals whose rights are violated by international bodies. In the case of the Security Council, there was only an administrative review, i.e. an appeal to an administrative body (in this case the body itself). Real judicial review is, however, also necessary in order to enforce the rule of law. GAL research should examine the possibilities of judicial review and propose reforms.

32. UN ATOMIC WATCHDOG CALLS FOR GLOBAL COOPERATION ON ALL NUCLEAR ISSUES (JULY 28, 2005, UN NEWS)

- International Atomic Energy Agency (IAEA): <http://www.iaea.org/>
- The IAEA sees the solution for nuclear problems in a continued global cooperation. It also tries to build regional and global networks for combating transnational threats.
- Cooperation between domestic administrations, both on the regional and the global level, is often the only adequate response to global problems. It is, however, questionable whether the traditional consensus-based model can provide effective solutions. Research should investigate how cooperation can be organized in an efficient way, while still respecting national sovereignty.

33. INTERNATIONAL COOPERATION ON BUILDING, SUPPLY, AND MONITORING OF CIVILIAN NUCLEAR FACILITIES

- A project to give North Korea nuclear reactors was suspended, because the North did not fulfill the requirements (ending the nuclear weapons program).
- South-Korean minister calls for scrapping up this project, in order to draw a line between that and any new deal.
- The old program was based on an international consortium, run by KEDO (Korean Peninsula Energy Development Organization, <http://www.kedo.org/>).
- This program is an example of the cooperation between a State and an international organization (KEDO) in the realization of a specific project.

34. TREATY ENFORCEMENT AND INTERNATIONAL COOPERATION IN CRIMINAL MATTERS. WITH SPECIAL REFERENCE TO THE CHEMICAL WEAPONS CONVENTION (RODRIGO YEPES-ENRÍQUEZ AND LISA TABASSI, EDS., 2002)

- Rapid, progressive development of international criminal law;
- Important aspects are the interaction between States and international courts and the harmonization and coordination between all enforcement agencies internationally.
- GAL-related issues: the involvement of national administrations and enforcement agencies in the execution of a global legal regime; the cooperation between those

national bodies; national legislation to implement global regimes of cooperation; the relationship between prosecution services and international courts; the role of customs services.

35. SANCTIONS AGAINST INDIVIDUALS: GAL – LISTING AND DELISTING PROCEDURES

- UN Security Council Resolution 1636, *The Situation in the Middle East* (October 31, 2005): individuals designated by the UN International Independent Investigation Commission (Syria & Lebanon) shall be subject to restrictive entry and transit rules and to asset-freezing.
- Cf. *supra*, article 36: what procedures should the SC respect when adopting these decisions? How can individuals file complaints?

36. GLOBAL TOBACCO TREATY TAKES FORCE (FEB 2005)

- The Framework Convention on Tobacco Control has come into force.
- This is the first global health treaty, signed by 168 countries, which contains an anti-smoking pact. It was created by the WHO and it imposes important obligations to discourage smoking (e.g. health warnings, advertising bans, etc.).
- The regime is global, but the implementation is local and will happen by national legislation and administrative action; it therefore is a good example of distributed administration.

37. POLICING WORLD SOCIETY. HISTORICAL FOUNDATIONS OF INTERNATIONAL POLICE COOPERATION (MATHIEU DEFLEM, 2004)

- History of international police cooperation.
- The book develops a theory that international police cooperation is enabled through a historical process of police agencies gradually claiming and gaining a position of relative independence from the governments of their respective states.

- GAL: the question how cooperation between domestic administrative agencies can contribute to the solution of global problems like organized crime. It is also interesting to examine to what extent administrative agencies act independently of their government, when dealing with foreign colleagues

38. DUTCH COURT FIGHT LAYS BARE REALITY OF KIDNAP INDUSTRY (SEE WALL STREET JOURNAL – SEPTEMBER 22, 2005):

- The Dutch government paid a ransom for a Dutch aid worker, held captive by Islamists militants in the mountains of Dagestan. Apparently this kind of practice happens very often.
- The aid worker was employed by Medecins Sans Frontieres. The Swiss branch of this organization was sued by the Dutch government in Geneva, to pay back the money.
- GAL questions: the relations between administrations and foreign terrorist groups (a new kind of diplomacy?); the relations between administrations and foreign NGOs (including litigation).

39. CLASSIFYING PARTICULAR FOREIGN AIRPORTS AS ‘SECURITY RISK’

- The US issues security risk warnings about foreign airports e.g. on the Denpasar Airport of Bali, Indonesia in 2005.
- This was the result of action taken by the US Transportation Security Administration. This US administrative agency had declared that the said airport did not comply with the International Civil Aviation Organization (ICAO) standards on aviation security.
- This is very remarkable: a national administrative agency interprets and applies the rules of a global organization, and several other countries accept this particular interpretation.
- It is questionable whether a global regime can work coherently when every single country has the power to interpret it. Research should analyze how a global regime can guarantee a uniform interpretation of its own rules.

40. COMMERCIAL SALE OF INFORMATION AFFECTING OTHER COUNTRIES' SECURITY

- Google Earth has made high-resolution satellite images readily available for everyone.
- Governments complain that this also applies to government buildings, military sites and disputed borders.
- Several States have asked for stronger laws to govern the release of such sensitive materials.
- Those countries could address the US to crack down on Google. However, there is no legal basis for doing so.
- In this setting, the behavior of a company affects the interests of another country. Research could focus on this transnational relationship and search for possible remedies.