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A. General Features

1 Global administrative law can be understood as comprising the legal rules, principles, and institutional norms applicable to processes of 'administration' undertaken in ways that implicate more than purely intra-State structures of legal and political authority. The term 'global administrative law' came into use during the first decade of the 21st century. It encompasses most of the subject-matter addressed by jurists in the 19th and 20th centuries under the rubric of 'international administrative law' and, like this early work, it proceeds from a view of what constitutes 'administration' beyond a purely domestic context, including some activities of national administrative agencies, and many activities of international organizations. But this newer term is preferred to avoid the misleading implication that the field is simply a branch of general international law and thus can be structured in terms of traditional (and now much-contested) criteria for → *sources of international law* and → *subjects of international law*. The variety of actors involved, the fact that many of these actors are primordial rather than exercising authority delegated by States, and the range of persons and processes affected by global administrative actors, make sharp distinctions between spheres of national and international administration increasingly difficult to maintain (Cassese [2005]). Instead, much administration is taking place in what might be thought of as a global administrative space, involving blurring of national and international, and public and private, dimensions.

2 Global administration (*lato sensu*) is of growing significance as both a result and a shaping feature of global ordering. Global administration can have serious effects on individuals and their rights, and on possibilities of national or local democracy or autonomy, as well as other deeply held values. Understanding the processes and trajectories of global administration thus has substantial practical and normative importance. Such an undertaking is rendered challenging by the massive volume, polycentricity, and obscurity of the interactions which constitute this administration. The patterns of power and authority in global administration are much less structured than those underpinning major parts of many domestic administrative systems. Institutional differentiation is less complete, roles are not clearly assigned, hierarchies are not highly specified, and bright lines do not exist between the spheres of administration and legislation or between administrative and constitutional principles and review authorities.

3 Law and law-like structures play an increasingly significant role in global administration. Law has a dual effect, both channelling and magnifying administrative power, and constraining this power. Thus, adherence to legal standards and patterns can normalize and legitimize the use of power, but law can also provide a basis for contestation, critique, and change in power and its exercise. However, global administrative law principles and mechanisms primarily address process values, rather than substantive values (such as distributive justice, political democracy, sustainability, non-domination, or individual autonomy and capabilities), which are extremely difficult to ground as generally-accepted bases for most global administrative structures. The focus on process limits the ambit and ambition of global administrative law, and attracts the criticism that it embraces current power structures and inequalities by militating for incremental reforms rather than radical revision (Chimni [2005]; Marks; Harlow; Corder).

B. Historical Development of the Theory of International Administrative Law

4 Industrialization, standardization (eg of weights and measures), social legislation, cross-border economic activity including transport by railway and ships, and growing understanding of the transnational spread of infectious diseases, all contributed in the second half of the 19th century to intensification in the scope and importance of national administrative agencies, and awareness among them of mutual impact with their counterpart agencies in other countries (Vec). National administrative agencies began to develop practices and understandings concerning diffusion of

new regulatory approaches and expertise, and the regulation of transborder issues. Many of them engaged in new forms of co-operation *inter se*. The multiplication in the late 19th and 20th centuries of what were called → *international administrative unions*, with varying roles and powers, from systematizing national approaches to matters such as postal services, telecommunications and weights and measures, to more direct management of rivers and natural resources, triggered reflections about the international dimensions of public administration. Pioneering legal writers such as Lorenz von Stein began to argue for an international administrative law, and his successors came to identify a field of 'international administration' that included both international actors and domestic actors affecting international interests. Thus by 1902 Pierre Kazansky discerned a growing 'international administration' in the activity of States, international societies and their organs, and international organs such as the various congresses, bureaux, commissions, and international arbitral tribunals, aimed at protecting international social interests, namely the interests of individuals rather than merely those of States narrowly construed. He identified international administrative law as the body of law that creates and governs this administration, having as its principal sources treaties and custom, including informal agreements between States (Kazansky 358, 361).

5 The work of Paul S Reinsch, an American lawyer and political scientist, on international institutions previous to the → *League of Nations*, accorded to them the benign epithet of administrative unions, and provided one of the foundations for functionalism as the dominant approach to international institutions over the following decades (Klabbers). He portrayed these unions as instruments of, rather than challenges to, State → *sovereignty*, with legal powers innocuously entailed by the need to perform their topic-specific functions (Reinsch [1907]). Variations among the organizations notwithstanding, there was enough unity for elements of a common law of international unions to be discerned. Reinsch identified a body of international administrative law that was distinct from general public → *international law* because it not only regulated relations between States but 'undertakes to establish positive norms for universal action' (Reinsch [1909] 5). In Reinsch's view, international administrative law encompassed the body of laws and regulations created by international conferences or commissions which regulates relations and activities of national and international agencies in fields already subject to international organization. Expertise in technical fields is central; international administration and administrative law appear as technical and ideally not macro-political.

6 This functionalist orientation was preponderant until stark political divisions and rising violence in the 1930s rendered it (temporarily) untenable. As late as 1935, Paul Négulesco described international administration as including the activities of a wide variety of organs charged with protecting interests that existed independently of nationality or territorial jurisdiction, including national public agencies working in co-operation with equivalent agencies in other States, international administrative unions fostering uniformity of action by different national public agencies, international organizations themselves exercising public power, and even private organs serving the needs of multiple States or the international community as a whole, such as the → *Hague Academy of International Law* and the → *Carnegie Endowment for International Peace*. He regarded international administrative law as a branch of public law focused on articulating and systematizing the norms that govern international administration (Négulesco 589–605).

7 These particular authors approached international administrative law in two stages, looking first to define a phenomenon of international administration and then a law corresponding with and applicable to it. This bifurcation is also reflected in the structure of the *Wörterbuch des Völkerrechts und der Diplomatie*, with the entry by Karl Strupp on *Internationale Verwaltungsgemeinschaften* followed by Karl Neumeyer's entry on *Internationales Verwaltungsrecht: Völkerrechtliche Grundlagen* (Strupp 573–581), and in the first and second editions of the *Max Planck Encyclopedia of Public International Law*. Jurists more broadly were divided as to whether international administrative law was a branch of domestic law or international law; whether it was part of private or public law; and how it related to each of these fields (Gascon

y Marin 5–24). The fundamental division about the administrative law relevant to international administration, however, was between those who saw it as being primarily national administrative law, and those whose starting point was a liberal individual-oriented conception of international society (Yamamoto).

8 Works of German-influenced public lawyers were of particular importance in integrating transnational administration into a general (but mainly national) political and legal theory of public law and administration. Representative of a group of scholars who focused on addressing transnational governance through the administrative law structures of the various States was Karl Neumeyer. He argued that international administrative law includes rules limiting the administrative activities of States and other autonomous entities vis-à-vis other such entities, and rules of a domestic legal system on the extraterritorial effect to be given to administrative law and decisions of another State. He argued that international administrative law operated as a ‘conflict of laws’ arrangement to manage relations between these national systems. He recognized, however, that autonomous administrative entities other than States might also exist, and he applied the conflict of laws model to them also (Neumeyer [1924] 577; Neumeyer [1910–36]).

9 Representative of another group of scholars, influenced by a commitment to the individual as moral subject and in some cases by French solidarism, was Georges Scelle. He focused on the possibilities of administrative law in regulating the work of State institutions as agents for international society (as part of a broader theory of *dédoublement fonctionnel* or role splitting), as well as regulating the administrative structures of international society that were produced by inter-State relations (Scelle [1935] ; see also Scelle [1932] and [1934]). This group carried forward the ideas of 19th century liberal public lawyers such as Robert von Mohl on the integration of individuals and groups into an understanding of the reasons and obligations of States (von Mohl 579–636).

C. Elements of Global Administrative Law

10 The contemporary concept of global administrative law builds upon at least three ideas advanced in the flourishing literature in the field over the period from approximately 1860 until 1940. The first is the key insight that transnational governance might usefully be analysed as administration, and that distinctive legal principles of administration might be applied to it. Second is the bifurcated approach to definition that tracks this insight: the first task is to define international administration, with international administrative law then defined as the law applicable to such administration. Third is the idea that ‘administration’ includes the making of specific decisions and of general but subsidiary rules. In many national legal systems, the process of administration is distinguished sharply from the process of legislating, and rule-making is understood as part of legislation and therefore outside the scope of administrative law. However, the increasing importance of the subsidiary rule-making activities of national and transnational administrative bodies (bodies other than national legislatures and inter-State treaty-making bodies), the desirability of addressing these activities in rules on participation, transparency, review, and accountability, and the long experience of addressing such activities by administrative law methods in the US and other legal systems, now warrant the inclusion of these subsidiary rule-making activities in the purview of global administrative law.

1. Global Administration

11 ‘Administration’ can be defined by reference to the *nature* of the activity performed (including, as part of its nature, its perceived or felt effects), the overall *purpose* of the activity, or the nature or type of *entity* performing the activity. Blends of such criteria are usually employed.

12 Defining administration by reference to the *purpose* of the activity raises the greatest problems. Many systems of national administrative law designate particular activities as being ones that ought

to serve public or communal interests, and subject them to administrative law controls to help achieve those ends, applying, for example, the legal principle of *service public*. In a similar vein, Soji Yamamoto sought to clarify the positive basis of international administrative law as comprising legal norms giving effect to a *service public international* established by multilateral administrative treaties and influencing domestic administrative agencies through the administrative actions of international institutions. However, the problem of defining a public extra-nationally, and the essentially contested nature of public interests, make it very difficult to determine which extra-State activities do or do not have public purposes bringing them within the ambit of global administrative law.

13 Defining administration by reference to the *nature* of activity has also become difficult even in national systems, as governments engage in new and different forms of activity to achieve their ends. However, a domain of administration can to some extent be delimited negatively, as the routinized activities that are neither the making of general laws through high-level textual enactments (akin to legislation or treaties), nor episodic dispute settlement (akin to formal legal adjudication). Within those parameters, administration includes the making of general non-treaty rules by administrative bodies (administrative rule-making), decision-making by certain entities that affects identifiable actors or interests, and administrative adjudication of the situation of other actors or the weight to accord to a specific interest. Those affected by such administration include not only States but individuals, corporations, → *non-governmental organizations*, other collectivities, and other global administrative actors.

14 The purpose and especially the nature of the activity can be blended with consideration of the type of entity engaged in the activity, in determining whether and to what extent global administrative law may be applicable. Administration as defined above is currently undertaken not only by States but by a wide variety of other actors. A basic typology of entities engaged in administration to which global administrative law may apply is set out below. However, this five-fold typology should not obscure the reality that in many practical situations, administration involves myriad entities joining together, co-operating, competing, or oblivious to one another (von Bogdandy and Dann; Marschik). The exercise of administrative power is often also shaped by third parties and their behaviour, including the reactions and choices of those subject to administration.

(a) Administration by Formal International Organizations

15 All international organizations engage in administration of their internal affairs, managing matters such as budgets and procurement, employment relationships, internal hierarchies, and processes of decision-making. In many cases this administration has significant practical and material effects beyond the organization (Kingsbury and Stewart). However, many international organizations also engage in administration that more directly affects entities and individuals outside the organization (Boisson de Chazournes Casini and Kingsbury). Perhaps the most prominent examples of administration of this kind are the various activities of the UN Security Council and its committees, taking binding decisions applicable to particular States (for example, the imposition of → *sanctions*), and even to particular individuals (for example, the listing of persons linked to particular terrorist organizations, and thereby rendered subject to asset-freezing and restrictions on movement). The UN High Commissioner for Refugees (→ *Refugees, United Nations High Commissioner for [UNHCR]*) is similarly acting in an administrative capacity when conducting refugee status determinations and administering refugee camps. The → *World Health Organization (WHO)* assesses global health risks and issues warnings, and the World Bank (→ *World Bank Group*) sets standards for → *good governance* for specific → *developing countries* as a condition for financial aid. At least some aspects of all of these activities may be understood as administrative.

(b) Administration by Transnational Networks or Other Informal Co-operative Arrangements of Domestic Regulatory Agencies or Officials

16 Transnational networks of domestic regulatory agencies and officials may also engage in administration, albeit without the formal decision-making structure that would usually attend administration by international organizations. Some such networks develop within a treaty framework; others are not constituted by any formal legal instrument. For example, → *World Trade Organization (WTO)* law provides in various respects for mutual recognition of regulatory rules and decisions among Member States, thus establishing a strong form of horizontal co-operation among regulatory agencies and officials, and bilateral agreements may also provide for mutual recognition of domestic regulatory standards or conformity procedures and other forms of regulatory coordination, such as regulatory equivalence determination (Nicolaidis and Shaffer). On the other hand, the Basel Committee brings together the heads of various central banks, outside any treaty structure, to facilitate co-ordination on policy matters like capital adequacy requirements for banks.

(c) Administration by Hybrid Public-Private Bodies

17 Some important aspects of global administration are performed by hybrid bodies combining private and governmental actors. One example is the → *Codex Alimentarius Commission (CAC)*, which adopts standards on food safety through a decision-making process that now includes significant participation by non-government actors as well as by government representatives, and produces standards that, while not themselves legally binding, have a quasi-mandatory effect as a result of Art. 3.2 Agreement on the Application of Sanitary and Phytosanitary Measures ('SPS Agreement'), providing that national measures which comply with, inter alia, Codex standards, shall be deemed necessary and compliant with the SPS Agreement (Horn and Weiler). Another example is the → *internet* address protocol regulatory body, the Internet Corporation for Assigned Names and Numbers ('ICANN'), which was established as a non-governmental body, but which has come to include government representatives, primarily through service on ICANN's Governmental Advisory Committee.

(d) Purely Private Bodies with Regulatory Functions

18 Some administrative functions are performed by private bodies exercising regulatory or other public functions. The → *International Organization for Standardization (ISO)* has published more than 18,000 standards for a wide range of products and processes. Some non-government organizations have developed standards and certification mechanisms specific to certain internationally traded products, eg fair-trade coffee and sustainably harvested timber. Credit ratings agencies have a formalized role in the Basel II standards used by national bank regulators. Business organizations have set up rules and regulatory regimes in numerous industries, ranging from the Society for Worldwide Interstate Financial Telecommunications ('SWIFT') system for letters of credit, to Fair Labour Association standards for sports apparel production. In national legal systems, private bodies are often treated as voluntary clubs rather than as entities subject to administrative law, though administrative law standards may apply where the entity exercises public power by explicit delegation, or where it receives explicit State recognition, or where it has such a substantial impact on actions and opportunities of individuals that it is assimilated to the regulated status of a public entity. However, in the global sphere, due to the lack of alternative international public institutions to handle many of these matters, private bodies often have greater power and importance; their activities might not be much different in kind from many non-binding intergovernmental public norms, and may often be more effective.

(e) Administration by Domestic Regulatory Agencies or Officials Acting Pursuant to Treaty Arrangements, or under the Auspices of International Organizations, Transnational Networks or Informal Co-operative Arrangements

19 The acts of domestic regulatory agencies or officials may be part of global administration in certain circumstances. First, processes that national regulatory agencies must follow in dealing with specified issues or interests, setting rules or taking decisions may be regulated by international law

or subjected to the supervision of international institutions. For example, WTO agreements specify obligations of transparency and reason-giving for national regulatory decision-making, and national action may be reviewed by WTO supervisory bodies. Second, domestic regulatory agencies or officials may be charged by treaties and other international governance arrangements to take regulatory decisions in pursuance of an internationally-agreed objective. Third, domestic regulatory decisions may receive recognition and have legal effects within another State, or within an international legal regime, if they meet certain conditions, including conditions relating to regulatory processes followed. By agreement such conditions may include provision for inspection of laboratories by the foreign State's officials, or 'peer review' by foreign regulators of each State's regulatory supervision arrangements. With regard to food safety and product safety, for example, foreign government inspectors may be stationed in the exporting State to inspect products and production facilities. Fourth, regulators from one State or one group of States may in effect act as the enforcing regulatory agency of a global regime. For example, the United States State Department has since 2000 issued an annual report on trafficking in persons (→ *Human Trafficking*), which evaluates almost every country's legislative regime and governmental action, and may impose unilateral sanctions based on this evaluation. The evaluation refers to standards that broadly track the Protocol to Prevent, Suppress and Punish Trafficking in Persons (which entered into force in 2003, having been adopted by the UN General Assembly in 2000 as a Protocol to the United Nations Convention against Transnational Organized Crime), but that Protocol does not specifically authorize the US supervisory actions, which are indeed applied also to non-parties.

2. Possible Sources of Global Administrative Law

20 Global administration is diverse and fragmented. It takes place in a global administrative space in which clear separations between national and international administration are not easily maintained. Accordingly, it is to be expected that global administrative law includes some broad normative principles, and numerous specific rules and mechanisms that apply formally to some set of institutions and processes but not to all global administration. Global administrative law can thus be approached from several different legal perspectives.

(a) Public International Law

21 Some global administrative law is part of, or derives from, standard sources of public international law, most obviously → *treaties*. However, many of the features of global administration are not required or specified by treaty provisions, and have instead evolved as part of the practice of international organizations, networks, or other bodies involved in global administration. Some of this institutional practice, including, for example, some measure of transparency about administration, and some measure of procedural participation, might be thought to have a normative dimension or effect, either because institutions establish these arrangements out of some sense that they are required or highly desirable, or because the practice of some institutions with these arrangements is then taken by others as a model. However, institutional practice fits only imperfectly into the traditional catalogue of sources of public international law. → *Customary international law* is still generally understood as being formed primarily by → *State practice*, and does not fully incorporate the relevant practice of → *non-State actors* involved in global administration. Recourse to → *general principles of law* as a source of law in general international law has been quite limited, and the general principles relied upon have typically included only principles on which there is a high degree of convergence; the diverse and fragmented practices associated with global administration are unlikely to qualify, at least at this stage, as general principles.

(b) Ius Gentium

22 Bearing in mind the significance of institutional practice, global administrative law might be thought to consist in part of elements of a *ius gentium* encompassing norms emerging among a

wide variety of actors in diverse settings, mirroring to some extent law-making procedures in fields such as the → *lex mercatoria*. However, the foundations of a *ius gentium* of global administration are uncertain, and its modes of development would confront empirical and normative questions about what practices count in the ascertaining of legal norms, and why.

(c) International Public Law

23 One important approach seeks to identify, develop, and apply general principles of public law to any exercise of international public authority. Acts of public authority, including use of specific administrative instruments such as national policy assessments, attract the application of these regulative public law principles where significant effects on individual autonomy are felt (von Bogdandy and others). Where the authority is exercised by States or organizations empowered by States, it is argued that application of public law principles flows with the source of the authority. The basis for applying such principles to acts of private entities not exercising powers in some way delegated by States is less clear in this framework.

(d) National Administrative or Public Law

24 An increasing body of work considers the extension or adaptation of national administrative law (or → *European Administrative Law*) to deal with effects of global regulatory governance or other external acts. Moreover, the increasing implication of domestic agencies in global administration, and the fact that global administration may affect the rights of individuals, means that national legal orders and jurisprudence may have a significant practical effect on the development of global administration. For example, the peremptory procedure of the Security Council 1267 Committee for listing individuals was such that, in implementing the relevant resolutions, the European Union and EU Member States breached fundamental rights (see Kadi Case). The 1267 Committee's procedures were subsequently altered and rendered subject to some minimal procedural requirements. National rules and mechanisms have been significant models for extra-national administrative institutions on matters ranging from public contracting and procurement to → *public private partnership[s]*, → *ombudsperson[s]*, and information disclosure regimes. This 'bottom-up' approach is of great practical significance, as rulings of national courts of other national agencies may both shape national governmental responses to global administration, and shape the conduct of private actors in the global administrative space.

(e) Autonomous Systems Generating Internal Norms

25 Scholars influenced in particular by the systems theory of Niklas Luhmann have explored the creation of norms within autonomous systems, which may include not only separate economic units (such as a factory) but also separate functional communities engaged in repeated practice. Administrative norms may be identified as 'law' in such contexts where secondary rules (in the sense proposed by HLA Hart) of review or adjudication, change, and recognition are institutionalized within the autonomous system and the norms are regarded as obligatory by participants (Teubner). This set of ideas has been extended to argue that administrative law is produced through autonomous rational approaches within all kinds of administrative systems (through administrative agents themselves rather than depending on courts or other special institutions), and that these administrative law structures are likely increasingly to correspond with one another in specialist contexts, where largely common conditions prevail and possible approaches are rapidly transmitted and reinforced through networks (Ladeur).

3. The Emergent Content of Global Administrative Law

26 The range of possible sources of global administrative law necessitates that the content of this body of law be explicated from detailed examination of a wide range of different instances of global administration. This work is only now beginning. However, it is possible to identify basic elements. In certain situations, some elements are clearly legally binding as part of public international law or of

other legal orders. In other situations, institutional practice has law-like normative effects for actors within the system (who must follow rules of their own institution), and where institutions interlock and apply their own administrative norms. This practice may also provide a model which other actors in global administration find persuasive to follow or cost-effective to emulate. Across these contexts it is possible to discern broad but uneven trends toward greater transparency of administrative processes, provision of opportunities to participate and be heard by those administered, the giving of reasons for particular decisions, and the availability of some mechanism for review of administrative action.

27 The interactions and relationships among different administrative actors and their activities in global governance also increasingly attract demands for application of global administrative law standards. This can occur where one actor takes a course that might alter, as a practical matter, processes of administration by another (such as the WTO Agreements adopting Codex standards as a kind of 'safe harbour' for States, and thus giving them a legal significance which might affect the ability of the Codex Alimentarius Commission to continue producing standards on a consensus basis [Horn and Weiler 255]). It may occur also where one institution has to decide on the significance to accord to an administrative act of a different institution or system, and takes into account in that decision the latter's adherence or not to relevant global administrative law standards (Kingsbury, 'Weighing Global Regulatory Rules' [2009]).

(a) Transparency and Procedural Participation

28 The rules defining decision-making processes in any institution are of necessity rules about participation. In some cases, externally prescribed rules may influence internal rules as to whose participation must be permitted, and what form this participation should take. Internal or external rules or policies may also cover non-decisional participation, such as in requirements for a 'notice and comment' process in the making of administrative rules or decisions. Some transparency to participants is entailed by the requirements for participation. Wider transparency rules or policies may require making existing information available to external bodies or to the public, or the preparation and dissemination of specific new information. Examples of treaty provisions requiring transparency and participation within states or in global governance institutions are set out immediately below, followed by examples of comparable non-treaty practices and mechanisms affecting global governance. As these examples show, a high level of variability is found in participation and transparency requirements and practices. Efforts to explain the causes, consequences, and trends in such variability are only at an early stage.

29 The WTO agreements impose certain procedural requirements on Member States' administration in a wide range of areas affecting trade. Laws, regulations, judicial decisions, administrative rulings, and measures of various kinds affecting the areas covered by the agreements are required to be published (see General Agreement on Tariffs and Trade ['GATT'] Art. X: 1, 2; General Agreement on Trade in Services ['GATS'] Art. III: 1, 2; SPS Agreement Art. 7 and Annex B [1]; Agreement on Technical Barriers to Trade ['TBT Agreement'] Art. 2.11). Member States must establish enquiry points and reply promptly to requests for information about relevant measures (GATS Art. III: 4; SPS Agreement Art. 7 and Annex B [3]; TBT Agreement Arts 10.1, 10.3). In various contexts, where authorization is required by a provider of a service or procedures are required to check compliance with a measure, there are requirements for authorities in Member States to provide information about the status of the application for authorization, or progress on the procedure (GATS Art. VI: 3; SPS Agreement Annex C; TBT Agreement Art. 5.2.2). Other requirements seek to facilitate a limited participation in administration by those whose interests may be affected. When a Member State is contemplating introducing new measures, at least measures not substantially similar to an international standard, they must notify their intention to do so and allow an opportunity for interested parties to provide comments (SPS Agreement Art. 7 and Annex B [5]; TBT Agreement Arts 2.9 and 4.1, with Annex C).

30 Bilateral investment treaties typically require that host States provide ‘fair and equitable treatment’ to foreign investors. Arbitral tribunals have interpreted this provision as requiring, among other things, administrative due process and, in some cases, transparency in administrative decision-making (→ *Investments, International Protection*).

31 In the area of environmental law, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (‘Aarhus Convention’), developed under the auspices of the United Nations Economic Commission for Europe and now ratified by some 40 States, contains requirements for public authorities to provide environmental information to the public on request, and certain types of information on a routine and proactive basis; as well as for public participation in various stages of environmental decision-making (→ *Access to Information on Environmental Matters*; → *Access to Justice in Environmental Matters*; → *Public Participation in Environmental Matters*). The ILC’s Articles on International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law (Prevention of Transboundary Harm from Hazardous Activities) provide that States concerned must provide the public likely to be affected by activities covered by the Articles with relevant information relating to that activity, the risk involved and the harm which might result, and ascertain their views (Art. 13).

32 Human rights law also requires some measure of transparency including, potentially, transparency about rule-making and decisions pursuant to global administration. Article 19 (2) → *International Covenant on Civil and Political Rights (1966)* provides that everyone shall have the right to freedom of expression, and that this right shall include freedom to seek, receive, and impart information of all kinds (→ *Opinion and Expression, Freedom of, International Protection*). The → *Inter-American Court of Human Rights (IACtHR)* has stated that a similar provision in the → *American Convention on Human Rights (1969)* ‘protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention ... and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case’ (*Claude Reyes v Chile [Judgment]* IACtHR Series C No 151 [19 September 2006] para. 77). An analogous provision in the → *European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)* has not been interpreted as bestowing a general right of access by individuals but the → *European Court of Human Rights (ECtHR)* has recognized the right of the public to receive information of general interest, and has scrutinized in particular measures that hamper the press, and now other ‘social watchdogs’ in their functions (*Társaság a Szabadságjogokért v Hungary [Judgment]* App No 37374/05 [14 April 2009]).

33 In some cases treaties impose requirements not only on domestic agencies or officials but on international organizations. Some provisions simply provide a general authorization for particular organs to make arrangements for engagement with external parties (eg Agreement Establishing the World Trade Organization Art. V: 2; Convention Establishing the World Intellectual Property Organization Art. 13 (2)). However, in other cases, provisions are more specific. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora permits international bodies, governmental or non-governmental, national governmental bodies, and national non-governmental bodies approved by the relevant government, to be represented by observers in plenary sessions of the Conference of the Parties, and sessions of Committees I and II (responsible for making recommendations to the Conference on all proposals to amend the appendices of the Convention and on any matter of a primarily biological nature; and on any other matter, respectively). The observers may participate but not vote. However, the right to be represented by observers, and for observers to participate, may be withdrawn if 1/3 of the Parties present object (Art. XI: 7).

34 In the absence of treaty or other formal requirements, bodies engaged in global administration

are also developing institutional practices that provide some measure of transparency, and sometimes participation, in administrative activities. Some examples of such requirements are set out below.

35 Many international organizations have developed transparency or information disclosure policies outlining, in differing degrees of detail, the kinds of information that they will make available to the public.

36 The World Bank and other development banks have adopted 'safeguard policies' that specify certain procedural steps to be taken in connection with Bank-funded projects including, for some projects, public consultation in the borrower country.

37 The Council of the → *International Civil Aviation Organization (ICAO)* permits specific non-government organizations in the aviation area to participate in its work, including the → *International Air Transport Association (IATA)*, the Airports Council International, the International Federation of Air Line Pilots' Associations, and the International Council of Aircraft Owner and Pilot Associations.

38 The Basel Committee on Banking Supervision, a transnational network of banking regulators, has moved to open the process of drafting new capital adequacy accords, releasing consultative documents and inviting comments prior to finalizing Basel II and Basel III.

39 ICANN, a hybrid public-private body, provides through its Bylaws for a notice and comment procedure on policy actions. With respect to any policies that substantially affect the operation of the Internet or third parties, ICANN must provide public notice of the proposed policy change and a reasonable opportunity for parties to comment on the adoption of the proposed policies, see the comments of others, and reply to those comments. Where the policy action affects public policy concerns, the opinion of the Governmental Advisory Committee must be requested (Art. III Sec. 6).

40 The International Financial Reporting Standards Foundation (formerly International Accounting Standards Committee Foundation), a private body, provides in its Constitution that the International Accounting Standards Board ('IASB'), as part of the process of preparing standards, must publish an exposure draft on all projects and normally publish a discussion document for public comment on major projects, establish procedures for reviewing comments made within a reasonable period on documents published for comment, and consider holding public hearings to discuss proposed standards (see Art. 37). All meetings of the IASB are held in public, although certain discussions (about matters such as selection, appointment, and other personnel issues) may be held in private, at the IASB's discretion (see Art. 34).

(b) Reasoned Decisions

41 Requirements that decision-makers give reasons may foster better decision-making and more effective participation in iterative processes. Giving good reasons allows interested parties to understand decisions reached, and can make decisions more persuasive and increase support for them. Where direct or indirect review is available, assessment of the adequacy of reasons provides one basis for review. Where requirements or policies of reason-giving exist in global governance, there is considerable variation in their stringency, and in the degree to which extensive normative or scientific discussion is required and politically-oriented reasons excluded. It can be difficult for collective bodies to agree on coherent reasons, and for reviewers to ensure decisions are actually based on the reasons given. Examples of treaty provisions imposing obligations to provide reasons for decisions, and non-treaty practices and requirements that have evolved in global governance, are set out below.

42 There is an increasing emphasis on reason-giving or justification of a wide range of regulatory measures affecting trade. Article 5.8 SPS Agreement, for example, specifically permits interested

parties to request from a Member State the reasons for adopting an SPS measure, and requires reasons to be given. Where measures adopted depart from accepted international standards, some explanation or justification of this is required (SPS Agreement Art. 3 and Annex B [5]; TBT Agreement Art. 2.5).

43 Common types of bilateral treaty may also impose requirements to give reasons for certain administrative decisions. In *Djibouti v France* (→ *Case concerning Certain Questions of Mutual Assistance in Criminal Matters [Djibouti v France]*) ([2008] ICJ Rep 37) the International Court of Justice considered a convention on mutual assistance in legal matters between France and Djibouti (one of many such treaties among different states) that required reasons to be given for any refusal of mutual assistance, and held that this provision required a party refusing mutual assistance to give substantive grounds for the refusal (rather than merely referring to a provision of the treaty that would have permitted refusal where the essential interests of the State could be compromised).

44 Arrangements for bilateral or multilateral regulatory co-operation may also contain a requirement to give reasons. The International Organization of Securities Commissioners' Multilateral Memorandum of Understanding concerning Consultation and Co-operation and the Exchange of Information provides that, where a request for assistance from a securities commission or equivalent regulatory authority is denied by another signatory to the Memorandum of Understanding, the authority denying assistance will give reasons for the denial, and consult with the requesting authority (para. 6).

45 In the absence of treaty requirements, bodies engaged in global administration are also developing institutional practices that provide for reasoned decision-making. For example, the ICANN Bylaws require that, after the Board has taken action on a policy that substantially affects the operation of the internet or third parties, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.

(c) Review

46 Review mechanisms allow for further consideration of the substance of a decision or rule, or for assessment of the adequacy of the process used. Review is a much looser concept than appeal or cassation, as the reviewing body may not have power to order a change. In global governance, review is often relatively unstructured, although formality is increasing. Some treaty provisions impose requirements for structured review of certain classes of administrative decisions and prescribe the general grounds for review and who can trigger a review process. Examples of treaties imposing such requirements on States are set out immediately below, followed by examples of provisions for review mechanisms in global institutions.

47 Member States of the WTO are required to administer their measures in a reasonable, objective, and impartial manner, and (subject to various qualifications to preserve some existing arrangements, and domestic constitutional frameworks) to establish judicial, arbitral, or administrative tribunal or procedures which provide, on the request of an affected party, for review of, and correction or remedies for, relevant administrative action or decisions (GATT Art. X: 3; GATS Art. VI: 1, 2).

48 The Aarhus Convention requires signatories to provide mechanisms for review of refusals of information and administrative decisions, acts, or omissions affecting rights of public participation.

49 Human rights instruments impose some basic procedural requirements on administration. Article 13 International Covenant on Civil and Political Rights, for example, provides that an alien lawfully in the territory of a State Party may be expelled only in pursuance of a decision reached in accordance with law (→ *Aliens, Expulsion and Deportation*). Except where compelling reasons of

national security otherwise require, the alien must be allowed to submit reasons against his expulsion, and have his case reviewed by, and be represented before, the competent authority or persons designated by the competent authority (see also Art. 32 (1) Convention relating to the Status of Refugees [signed 28 July 1951, entered into force 22 April 1954] 189 UNTS 150).

50 In the absence of treaty requirements, bodies engaged in global administration are also developing institutional practices that provide for review of decision-making, although in most cases the review is advisory only. Some examples of such requirements are set out below.

51 The Security Council has established a limited administrative procedure for the consideration of requests to be removed from the list of individuals and entities designated by the 1267 Committee of the Security Council as being associated with Al Qaeda and/or the → *Taliban*, and thus subject to asset-freezing and travel bans. Requests for delisting can be submitted to an independent and impartial ombudsperson who investigates the delisting request and submits a comprehensive report to the Security Council.

52 The World Bank Inspection Panel monitors compliance by the → *International Bank for Reconstruction and Development (IBRD)* and the International Development Agency with internal policies. Parties (other than individuals) within the territory of the borrower that can establish that their rights or interests have been or are likely to be materially adversely affected by an action or omission of the World Bank as a result of a failure of the Bank to follow operational policies and procedures with respect to the design, appraisal, or implementation of a Bank-financed project, may seek inspection of the project. If the Panel is satisfied that management of the Bank has failed to demonstrate that it has followed, or is taking adequate steps to follow, the Bank's policies and procedures, and that the alleged violation of policies and procedures is of a serious character, the Panel makes a recommendation to Executive Directors as to whether the matter should be investigated. Reports are then made to Executive Directors. While the Panel cannot itself cancel non-conforming projects, and the review is limited to compliance with internal policies rather than international law more generally, Panel investigations and reports may be influential in changing Bank practices. There are now similar mechanisms in place for → *regional development banks*, and a Compliance Advisor Ombudsman has been established as an independent recourse mechanism for the → *International Finance Corporation (IFC)* and the → *Multilateral Investment Guarantee Agency (MIGA)*.

53 The ICANN Bylaws provide that any person or entity may submit a request for reconsideration or review of an action or inaction to the extent that he, she, or it have been adversely affected by staff actions or inactions that contradict established ICANN policy(ies); or actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information (except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act). Reconsideration requests are considered by the Board Governance Committee (Art. IV Sec. 2). Additionally, any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. Requests for independent review are referred to an Independent Review Panel operated by an arbitration service provider (Art. IV Sec. 3).

(d) Inter-Institutional Relations

54 As well as providing certain requirements for the conduct of global administration, global administrative law may increasingly be called on to reconcile, or draw into relation, various aspects of global administration across different institutional sites. Work is only beginning on the use of principles of conflicts of law (or conflicts-law), global administrative law, publicness, inter-public law, and general public law in situations in which a national or international court or tribunal has to decide what weight to give to the administrative act of an agency or tribunal in a different national or transnational system (Joerges; Nickel; Young; Bogdandy Dann and Goldmann; Kingsbury,

D. Assessment and Conceptual Questions

55 Although it has a long (pre-)history, global administrative law is in the early stages of contemporary development. Questions of sources and of the actual content of global administrative law are only now being explored, and analysis of the availability of procedural mechanisms will need to be supplemented with evaluations of how these operate in practice: whether the procedures required are meaningful in the institutional context and whether those concerned are able to make use of them. Important conceptual questions also remain about the definition of administration, the scope of global administrative law, and the normative vision underpinning it. These questions are, at least in part, generated by the way in which global administrative law draws on domestic administrative traditions in order to understand patterns of activity that extend beyond the State.

56 To the extent that global administration implicates domestic agencies that are themselves subject to the public law of States and legal orders, this public law must be an important influence on the conduct of global administration, whether by establishing customary international law or general principles of international law, or by spurring changes in institutional practice which themselves might come to have some normative effect on other actors in global administration. Yet national public law differs significantly across polities and these differences in origins, development, and doctrines may foster divergent perspectives on the global context. A US or Anglo-American style in much contemporary global administrative law scholarship has provoked some opposition from German (and other) national administrative lawyers on grounds of lack of legal-systematicity in theoretical construction (Möllers, Voßkuhle, and Walter), while receiving some endorsement from Italian scholars who have often also been proponents of a European-scale administrative law (Cassese [2005], [2009]). These North Atlantic debates have something of an internecine character. The wider debate is changing with the increasing engagement of scholars from Latin America (Robalino and Rodriguez ; Kingsbury, 'El nuevo derecho' [2009]), and to some extent from the Asia-Pacific and African regions (Chimni [2005] ; Corder), in the assessment of these approaches to global governance and its regulation. Questions of gross inequality of power in global governance and of life-chances globally, protection of very basic rights and minimum welfare within individual societies, and different views about sovereignty and fundamental values are becoming increasingly important as power shifts in the world.

57 National administrative law exists within the context of a larger system of public and constitutional law. Administrative agencies are brought into existence, and have certain powers conferred on them, by legal process or by acts of executive authority which are usually amenable to political oversight and ultimately bounded by a constitutional framework. In the global context, there is no fixed or stable larger system of this kind. Actors in global administration may be brought into being and accorded powers by legal process (by treaty, for example, for most international organizations), or by the agreement of various national executives, but in many other cases they are self-authorized, and may come to exercise administrative activities without there being any formal delegation of power or responsibility. Global administrative law has focused largely on procedural requirements, rather than on the substantive content of norms generated by administrative bodies, or requirements for the constitution and empowerment of actors in global administration. It is thus possible that global administrative law rules may regulate the procedures of an entity, while the authority of that entity and the limits to its powers are not readily traced to any regulative legal foundation. It is doubtful whether such a separation between procedure and institutional foundation is sustainable (Krisch). Some have argued that a global constitution either is, or should be, developing, which might recast questions of institutional design in a more comprehensive structural vision of world order. However, constitutionalism implies a coherence which global legal and institutional arrangements do not currently have and are unlikely soon to

attain. It also implies an allocation of functions between institutions, and there is currently no globally shared consensus or even tradition of understanding about a division of functions that would support this. While constitutive power may be exercised internationally, international constitutionalism is still, at most, in *statu nascendi*.

58 The normative underpinnings and implications of global administrative law are of fundamental importance. On one view global administrative law is compatible with quite different normative visions of global order: with a minimalist vision focused on accountability within specific regimes, a more robust vision of protection of private rights (of individuals, firms, non-government organizations, or even States), or a more demanding vision of something approaching global democracy. This openness to different normative visions needs to be considered in the light of current limits on the scope of global administrative law, in particular its lack of focus on the foundation or authorization of actors in global administration. Some have argued that the institutions most centrally involved in global administration can be seen as imperial, furthering goals and stabilizing dominance of industrialized, developed countries at the expense of developing countries, and even furthering the interests of dominant capitalist classes at the expense of subaltern peoples. If this charge were correct (and it is certainly plausible), global administrative law might offer some prospect of improving current institutions and thus sow the seeds for a future empowerment of those currently underrepresented and excluded. On the other hand, insofar as global administrative law helps to legitimate and stabilize the current order, and to empower experts and shift the possibilities of contestation into highly technical arenas not accessible to many whose interests are affected, it might forestall more radical change (Chimni [2004], [2005]; Marks ; Kennedy ; García-Salmones). Whatever the normative vision adopted and used to give substance to abstract procedural requirements such as transparency and participation in different institutional contexts, there must be great sensitivity to the actual distributive consequences of these requirements (which individuals and interests are protected or advantaged in practice, and which are not), and to the importance of a diversity of perspectives as these norms and structures are built, used, and contested.

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