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INSTITUTE FOR INTERNATIONAL LAW AND JUSTICE
NEW YORK UNIVERSITY SCHOOL OF LAW

WORKSHOP ON GLOBAL REGULATORY GOVERNANCE

INDIA, THE SOUTH AND THE SHAPING OF GLOBAL ADMINISTRATIVE LAW

Centre for Policy Research

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Introduction and Overview of Workshop Objectives

Globalization has a pervasive impact on government decisions and policies in South Asian countries. South Asian countries are affected by the decisions of treaty-based global regulatory bodies in areas such as trade, banking and finance, monetary policy, environment, health and safety, human rights, and others. They are also subject to regulatory requirements imposed through conditions on financial assistance and through treaty provisions such as the provisions in investment treaties prohibiting expropriation of foreign investor's investments. In many cases these requirements and conditions regulate decision making procedures and other governance practices that countries must follow in given areas, for example in adopting and enforcing regulatory measures that affect internationally traded products or services and international investment.

Other types of global regulatory bodies, including transnational networks of national regulators, private standard setting bodies, and hybrid public/private bodies, often have a more indirect but nonetheless powerful influence on domestic policies and decision making procedures. These impacts are often especially powerful in the case of developing countries, which may lack the institutional resources and expertise to influence, deflect, or otherwise deal with them and are particularly dependent on foreign investment and assistance.

In this context, 'global administrative law' is an important new area of practice and theory with important implications for both global and national regulatory governance. At the global level, it addresses the use of administrative law techniques (such as transparency, participation, reasoned decision, and judicial review) to promote greater accountability and responsiveness by the growing variety of global regulatory bodies, including accountability and responsiveness to developing countries and civil society interests. At the domestic level, global administrative law addresses the impact of global regulatory authorities and procedural and institutional practices and norms on domestic systems of decision making, including domestic administrative law and the role of courts and other tribunals.

This field of law is described as “global” rather than “international” to reflect the complexity of national and intergovernmental regulation, the increasing role of private regulators and public-private hybrid bodies, the wide array of informal institutional arrangements that operate alongside formal institutions, and the foundations of the field in a wide variety of transnational as well as international normative sources and practices.

As conceived by the New York University’s Global Administrative Law Project,* global administrative law encompasses the legal mechanisms, principles, and practices, along with supporting social understandings, that promote or otherwise affect the accountability and responsiveness to affected states (especially developing countries) and societal interests of bodies such as the World Bank, IMF, WTO, International Standards Organization (ISO), the Basel Committee of bank regulators, etc. It also considers the influence of global and regional regulatory and decision making norms and practices on domestic administrative agencies, including authorities whose decisions impact international trade, investment, the rights of indigenous peoples, and so on. The aim is to that ensure that these global, regional and domestic bodies meet adequate standards of transparency, consultation, participation, rationality, and legality, and to provide effective independent review of the rules and decisions that these bodies make. For a detailed exposition, see Benedict Kingsbury, Nico Krisch and Richard Stewart, ‘The Emergence of Global Administrative Law’, Volume 68 (3-4) of *Law and Contemporary Problems* (2005) (available at www.iilj.org).

A broader conception, embraced by some other scholars, may also include assessment of the substantive laws applicable to these global and regional administrative bodies – laws that decide the powers and limits of these bodies, such as, for instance, human rights treaties. For instance, Professor Chimni argues that a purely procedural conception of global administrative law is not adequate to further the cause of democracy or justice; in fact a focus on a procedural Global Administrative Law may give rise to a false impression that existing international institutions are becoming more participatory and responsive to the concerns of developing countries and their peoples. See BS Chimni, ‘Co-option and Resistance: The Two Faces of Global Administrative Law’, Volume 37 (4) of the New York University’s *Journal of International Law and Politics* (2005) (available at www.iilj.org).

There may be a serious risk that the emerging practice of global administrative law – and academic discussion built around the same - will be too strongly influenced by developed countries; states with strong institutions, global power and largely consolidated systems of administrative law. Mechanisms of accountability and participation may operate primarily to benefits powerful states and well organized economic interests, including multinational corporations. Accordingly, it is essential that the needs and priorities of developing countries and of disadvantaged groups and societal interests be considered and protected in the development of global administrative law norms and practices. The perspectives, experiences, ideas and contributions of developing countries and their citizens must play a strong role in shaping the conceptual development and application of global administrative law. The leadership of the NYU Global Administrative Law Project firmly believes that developing country perspectives must play a central role in thought and research in this important new field of theory and practice. To this end, it is working with regional developing country partners to co-sponsor a series of workshops on global administrative law to stimulate interest in the field and engage scholars, government officials, NGOs, and private lawyers. In addition to the New Delhi workshop, a workshop was held in Buenos Aires at the University of San Andres in March 2007 for participants from around South America, and a workshop will be held for Southern African participants at the University of Cape Town in March 2008. Additional workshops in

Asia are contemplated.

The objective of the New Delhi workshop is to discuss the different conceptions of global administrative law, and the role it plays in global governance. In particular, three sets of questions are important:

Foundational questions, relating to the definition and scope of global administrative law; its doctrinal features; its conception – purely procedural, or dealing with substantive law; its normative aim - international administrative accountability, protection of private rights/ rights of states, promotion of democracy, or something else? This also includes the debate on who is presently shaping global administrative law, what are the intellectual, institutional and political biases that result from its current domination by Euro-American scholars and models, and other drivers for its development.

Questions related to the impact of global regulatory practices and institutions on government decision-making and policies in India (and South Asia); in particular, regulatory policies and procedures, and functioning of administrative law, including the role of domestic courts. In what ways do global influences manifest themselves in domestic practices and policies? Is the impact beneficial? Are global administrative bodies truly responsive and accountable to domestic institutions, the state and its citizens, or does global administrative law primarily serve the interests of rich countries and multinational firms and investors? Can the development of new administrative law mechanisms and techniques at the global and domestic levels help address problems of disregard for the needs and interests of developing countries?

Questions about how domestic practices and bodies can contribute to the development of global administrative law: In what ways are South Asian countries and their civil society organizations, knowledgeable and effective players in global regulatory governance, and how might these be enhanced and integrated with better management of the domestic implications and influences of global regulatory standards and practices? Are there domestic government policies, strategies adopted by civil society groups to enhance responsiveness of the domestic administration, lessons from the role played by Indian courts, etc., that may provide a model for shaping approaches in other states and at the global level? What is the influence of Indian institutions, and administrative policies on the other countries in South Asia?

The Global Administrative Law Project

In 2004, the Institute for International Law and Justice (IILJ) at the New York University School of Law launched a Project on Global Administrative Law to foster research, publications, conferences and workshops, and international exchange and discussion on the emergence of administrative law techniques in global governance, and the impact of global and other transnational regimes, norms and practices on domestic decision making and administrative law. The Project led by NYU Professors Benedict Kingsbury and Richard Stewart, involves a large group of scholars, and has so far produced more than 50 published articles and many other research papers.

For more information, including information of project conferences and activities, a global administrative law bibliography, and teaching materials, and electronic copies of the papers cited above please visit the IILJ website at http://www.iilj.org/global_adlaw/index.htm