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PRACTICAL LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS
A Global Administrative Law Perspective on
Public/Private Partnerships, Accountability, and Human Rights

GENEVA, March 20-21, 2009

OVERVIEW AND PROGRAM

SUMMARY OF CONTENTS:

Introduction and Conference Objectives	2
Format of the Conference and Method of Work	4
I. Public/Private Partnerships Involving IOs	4
II. Legal Process, Participation, and Mandate Issues in IO Activities	5
III. Accountability and Immunity in IOs	7
IV. International Organizations Lawyers Round Table	8
V. Human Rights and GAL in the HQ and Field Operations of IOs	8

PRACTICAL LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS

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Introduction and Conference Objectives

This conference is jointly organized and sponsored by the Department of Public International Law and International Organization at the University of Geneva Law School and the New York University (NYU) Institute for International Law and Justice. The event is also sponsored by the Swiss Federal Department of Foreign Affairs, the Carnegie Corporation of New York, and the Institute for Research on Public Administration of Rome.

The purpose of the meeting is to raise, analyze, and discuss important operational issues that confront major international organizations (IOs) that may not as yet have been sufficiently addressed in systematic fashion. In order to do so, the conference will bring together leading experts – both practitioners and academics – in the field.

IOs are today confronted with new challenges as they operate in new ways, connected to development of “new public management” and other organizational changes. They increasingly use partnerships with private and civil society entities. They produce a growing set of non-treaty standards, guidelines, policies, and many other different kinds of “norms”. They frequently take, or should be able to consider taking, emergency actions that have an important impact on individuals or third parties, giving rise to accountability, liability and immunities issues. They conduct many field operations, involving civil society and million of lives; and the increase of activities has produced huge growth and differentiation in their field offices. All of these have important consequences for the relations between IOs and host-States, and between IOs’ HQ and field offices; and they also have relevant human rights implications, relating both to the growing number of IOs (and their activities) in the field of human rights protection, and the problem of the abuse or violation of human rights law committed by officers of IOs or their contractors.

The idea developed within NYU’s Global Administrative Law (GAL) Project (<http://www.iilj.org/GAL>) may help to address all these questions. GAL is an important new area of legal practice and theory. It addresses the growing demand

for, and problems of, transparency, participation, reasoned decision, judicial review, and other techniques affecting accountability and their operational effects, including impacts on developing countries and civil society interests. GAL also addresses the impact of global regulatory authorities, and their procedural and institutional practices and norms, on domestic decision making, including national administrative law and the role of courts and other tribunals.

In 2004, the Institute for International Law and Justice (IILJ) at NYU School of Law launched a Project on GAL, aiming to foster research, publications, conferences and workshops, and international exchanges and discussion on the emergence of administrative law techniques within global governance. This Project, which is led by NYU professors Benedict Kingsbury and Richard Stewart, involves a large group of scholars, and has so far produced more than 80 published articles and many other research papers, and has led to a number of international conferences, workshops and other initiatives (such as a regularly updated blog on the subject). The Project involves a worldwide network of other universities and research institutes in developing countries and in Europe, including the Institute for Research on Public Administration (IRPA), based in Rome, led by professor Sabino Cassese.

The concept of GAL encompasses the legal mechanisms, principles, and practices of global and regional administrative bodies. This field of law is described as “global” rather than “international” to reflect the complex interplay 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. In particular, the regulatory bodies subject to the new global administrative law fall into two basic categories: international or transnational public and private bodies on the one hand (such as formal intergovernmental organizations established by treaties or hybrid intergovernmental-private bodies composed of both public and private actors), and domestic administrative bodies whose decisions have significant external regulatory impacts on the other.

The objective of this conference is to discuss the contemporary practical legal problems that confront IOs from the GAL perspective. This involves engagements with established fields of international institutional law and public international law. That is why the NYU-IILJ and the Department of Public International Law and International Organization at the University of Geneva Law School, directed by professor Laurence Boisson de Chazournes, have jointly conceived this conference.

Regarding the output of the conference, we intend to gather selected contributions, with any post-discussion additions, into what we hope will be a very valuable publication.

Format of the Conference and Method of Work

The conference will consist of five sessions. Four panels will focus on a set of operational aspects or problems concerning IO activities: Public/Private Partnership involving IOs; Legal Process, Participation, and Mandate Issues in IO Activities; Accountability and Immunities in IOs; and Human Rights and Global Administrative Law in the HQ and Field Operations of IOs. There will be also a Round Table involving several leading lawyers from international organizations in order to discuss practical legal problems of IOs from a GAL perspective in a focused way, including any specific issues the speakers may wish to raise concerning participation, transparency, accountability, and liability.

Papers for the panels will be written and distributed in advance of the conference. Papers do not necessarily have to be finalized because they will provide the “raw” materials for discussion. Each panel, in fact, will begin not with presentations by authors of the papers, but with remarks by one or more commentators who will highlight the points that they raise, and frame the issues for further discussion. Thereafter, authors will reply and the floor will be open for general discussion by all conference participants. Each session will be chaired by a Moderator.

Panel One

Public/Private Partnerships Involving IOs

Friday, March 20th, 9 a.m. – 10.50 a.m.

This panel will focus on the increasing use of public/private mechanisms by international organizations (IOs) in carrying out their respective tasks. In many regimes, the organizational framework for addressing global issues has been enriched with public/private partnership (PPP) institutions and mechanisms: this development can be observed in the areas of health, sport and environment, for example. Moreover, there are also cases in which fully private bodies play a dominant role in regulating global issues (such as credit-rating agencies in standard-setting, for instance). In addition, the expansion of tasks carried out by IOs has led to an increase in the number and types of private law instruments of which they make use, such as agreements or contracts (a phenomenon that has already become familiar in the context of national administrations).

The discussions will consider the development and design of both organizational and procedural PPP instruments used by IOs. The term PPPs is

here used to signal the phenomenon of privatization in a broad sense. It implies that some of the issues concerning PPPs discussed in this panel are simply reflections of problems that arise when IOs contract activities out to private actors (a typical feature of the “new public management”); this also raises complex issues concerning the relationship of the IO to headquarter states and to states where private actors operate.

In discussing the practical problems confronting IOs created by these public/private mechanisms, a wide range of topics will be covered, including the coordination between public law and private law regimes (such as in the case of the WHO or the financing mechanisms used by the Global Fund); what legal framework IOs use for entering into PPPs (discussing when and how IOs adopt public international agreements, private international agreements, Memoranda of Understanding and/or practical arrangements: the IAEA offers a prime example); the control of private bodies (such as foundations); and the increasing use of outsourcing, particularly by the human resources departments of IOs.

From the GAL perspective, several different questions might be raised:

- *To what extent do IOs make use of private law instruments?*
- *What is the legal framework regulating PPP mechanisms?*
- *How do PPPs affect transparency and accountability mechanisms?*
- *What kind of oversight mechanisms are provided?*
- *In what kinds of activity (rulemaking, adjudication, dispute resolution) are PPPs most often resorted to?*
- *Which operational issues create most difficulties in the relationships between public and private actors?*

Panel Two

Legal Process, Participation, and Mandate Issues in IO Activities

Friday, March 20th, 11.15 a.m. – 1 p.m.

The increasing spread of IOs and their activities gives rise to many legal problems with respect to the normative framework within which they operate. In particular, relevant issues include the production and implementation of legal-type norms, recommendations and decisions (usually labeled as “soft law”). This panel will focus on these “norms”; however, it will not consider their sources and legal status, but rather the legal process used for their formation and the operational issues connected to their implementation: a prime example is provided by the WTO’s own production of guidelines, recommendations, best practices, informal committee or

secretariat interpretations; an other relevant case is the international nuclear agency order developed by the IAEA through a system of standards, conventions and recommendations (such as regarding the protection of nuclear materials).

These aspects are even more significant whenever IOs have to face emergency situations and take urgent actions; this sometimes compels IOs to act beyond their mandate (as happened, for instance, when the WHO adopted measures against SARS, or as it occurs with the humanitarian actions of the UNHCR, OCHA, and other agencies). More generally, all of these problems can be related back to the topic of IO mandate issues, especially when IOs contribute to normative development or when they issue authoritative interpretations or statements of international law (as happens, for instance, for the protection of human rights or in the public health, food and agriculture sectors). Furthermore, mandate issues become even more complex whenever financing instruments or coordination mechanisms between IOs and States, namely developing countries, are at stake (such as for the IFAD).

A major example of all of these topics comes from the standard setting activity carried out either by traditional IOs, or hybrid bodies. Public health, for instance, provides many interesting examples of cooperation and coordination between different IOs. In many circumstances, IOs rely on committees of experts that operate almost secretly, without wide participation from states, corporations, or civil society more generally (as with WHO or UNCTAD); in other cases, however, technical standard setting activities are much more open to state representatives (as with the nuclear energy sector and the IAEA).

From the GAL perspective, these topics highlight a very important area: participation and due process in decision-making, particularly in producing guidelines, recommendations, or certification. This gives rise to a number of questions:

- *Who can take part in these processes?*
- *How are the hearings of committees and experts regulated? And who appoints the experts?*
- *Is there any form of scrutiny or transparency within the decision-making process?*
- *How does, and how should, the process change with respect to the different subject it is intended to address?*
- *When can IOs act beyond their mandate? Who decides, and how do they do so?*
- *What kind of oversight mechanisms are provided when IOs adopt emergency measures?*

Panel Three

Accountability and Immunity in IOs

Friday, March 20th, 2 – 3.50 p.m.

Another crucial issue related to the spread of IOs and their functions is the demand for accountability within the context of global governance. This panel will focus on this demand, and on the related issue of immunity in the activities of IOs. The oversight and control instruments used by States with regard to global institutions will be discussed, and the more general issues of IO misconduct and the fight against corruption will also be raised (such as the challenges posed by the UN Convention on corruption for international organizations).

One of the most important topics here concerns the immunities accorded to IO officers both at Headquarters and in field operations, and this in turn is connected to the question of which accountability mechanisms could or should be adopted. Moreover, the emergence of hybrid public-private and/or fully private bodies acting in concert with IOs complicates this issue further: to what extent, if at all, should such bodies and their staff also enjoy immunity from suit in domestic fora for activities undertaken in partnership with IOs? In addition, the widespread use of PPPs raises significant accountability concerns in relation to contractors.

In this context, some important examples can be drawn from the field operations of IOs. In particular, the relationship between IO headquarters and their field presence can shed light on important accountability issues. One key example is that of UN peace-keeping operations. Additionally, the refugee-related activities of the UNHCR, and human rights operations more generally, provide many relevant case studies.

The practical and legal problems raised in the discussions can range from the traditional accountability mechanisms applicable to IOs to the other oversight powers available for monitoring them, and will give rise to many questions, including the following:

- *How can the accountability of IOs be ensured as they carry out their respective activities?*
- *To what extent are immunities regimes appropriate and what problems can they create?*
- *Does the use of PPPs strengthen or weaken the accountability of IOs?*
- *Are the field offices genuinely accountable to headquarters, to States, and finally to civil society?*

Panel Four

International Organizations Lawyers Round Table

Friday, March 20th, 4.15 – 6.15 p.m.

The growth in the use of PPPs, the increasing importance of norms, recommendations and decisions issued by IOs, and the demand for accountability raise many significant legal issues.

This round table will involve both academics and leading practitioners in order to discuss the practical legal problems facing IOs, such as:

- *the right to participation and its pathologies;*
- *balancing between transparency, openness, and effectiveness;*
- *the mechanisms for coordination and cooperation between IOs in legal matters;*
- *the cases in which IOs act beyond their mandate;*
- *the different problems raised by regulation and adjudication carried out by IOs;*
- *matters relating to the liability and credibility of IOs and their field offices, and particularly the liability issues arising from production of non-treaty normative standards, norms and decisions, certifications, guidelines and recommendations.*

Panel Five

Human Rights and Global Administrative Law in the Headquarters and Field Operations of IOs

Saturday, March 21st, 9.30 a.m. – 1 p.m.

Amongst the numerous functions carried out by IOs, human rights-related activities represent probably one of the most challenging and perhaps the broadest in scope. This panel will focus on problems that IOs deal with while seeking to strengthen human rights protection, such as the attempt to develop universal standards through adopting specific indicators; problems of monitoring (as often conducted, for example, by the OSCE during elections); and undertaking operations on the field.

These issues highlight some of the complications involved in the relationship between IOs, their field offices, and host-States: in particular, the problem of the centre-periphery relationship becomes crucial in this context. How can this relationship be described within the organizational framework of IOs? Is it a hierarchy, a network, or both? And what are the relations between the field offices of IOs and domestic administrations?

Practical and legal problems to be dealt with in the discussions will concern the applicability of human rights law and issues of coordination between different actors (both governmental and non-governmental). Many questions, then, might be raised:

- *What is the legal nature of IO field offices? And what mechanisms and instruments of oversight do the Headquarters have?*
- *What are the coordination mechanisms between field offices and other IOs?*
- *How are the relationships between IO field offices and host-States regulated?*
- *Are there relevant relationships between IO field offices and other important local public actors?*
- *How are NGOs involved? What is the actual role of civil society in the field activity concerning the protection of human rights?*