Winter 2009

Introduction: Operationalizing Global Governance

Hannah Buxbaum

Indiana University Maurer School of Law, hbuxbaum@indiana.edu

Follow this and additional works at: <https://www.repository.law.indiana.edu/ijgls>

Part of the [International Law Commons](#), and the [Law and Politics Commons](#)

Recommended Citation

Buxbaum, Hannah (2009) "Introduction: Operationalizing Global Governance," *Indiana Journal of Global Legal Studies*: Vol. 16 : Iss. 1 , Article 1.

Available at: <https://www.repository.law.indiana.edu/ijgls/vol16/iss1/1>

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Global Legal Studies* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.

JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Introduction—Operationalizing Global Governance

HANNAH L. BUXBAUM*

In past symposia sponsored by the *Indiana Journal of Global Legal Studies*, participants have worked to identify various developments grouped under the rubric of globalization, examining the increasing interconnectedness across borders in technology, politics, culture, and markets of all kinds. They have analyzed the ways in which these forces have disrupted traditional boundaries between domestic and international and spurred the involvement of a range of actors on the global stage, from supranational institutions to corporations to non-governmental organizations. Through a focus on discrete topics, including administrative law,¹ labor,² intellectual property,³ and even baseball,⁴ this work has helped scholars theorize the shift from government to governance.

The *Journal's* founders, however, in setting out its long range goals, turned their attention not only to the theoretical but also to the immediate. In the introduction to the *Journal's* first issue, Fred Aman spoke of the need to develop new international and global institutions, and, at the same time, to focus on the specific domestic legal reforms required to respond to global developments in economic and political life.⁵ The goal of this conference, the fourteenth annual symposium of the *Journal*, is to apply what we have learned about global governance to that project. How does governance really work on the ground as we seek to solve global problems? Conference participants sought to conceptualize global governance not as a theory but as a pat-

* Professor of Law and Associate Dean for Research, Indiana University Maurer School of Law — Bloomington.

1. Symposium: Globalization, Accountability, and the Future of Administrative Law, 8 IND. J. GLOBAL LEGAL STUD. 1 (2001).

2. Symposium: Globalization and the New Politics of Labor, 13 IND. J. GLOBAL LEGAL STUD. 77 (2006).

3. Symposium: Sovereignty and the Globalization of Intellectual Property, 6 IND. J. GLOBAL LEGAL STUD. 1 (1998).

4. Symposium: Baseball in the Global Era: Economic, Legal, and Cultural Perspectives, 8 IND. J. GLOBAL LEGAL STUD. 1 (2000).

5. Alfred C. Aman, Jr., *Indiana Journal of Global Legal Studies: An Introduction*, 1 IND. J. GLOBAL LEGAL STUD. 1, 2 (1993).

tern of practices in operation. Without losing sight of the specificity of particular issues, they attempted to identify common principles or practices emerging across areas of operation as actors involved in global issues sought to promote the common good.

The participants in the Symposium included scholars and practitioners from the United States and abroad. They were: Adeno Addis, Tulane University Law School; Sarah Altschuller, Foley Hoag LLP, Washington D.C.; Larry Catá Backer, Pennsylvania State University Dickinson School of Law; Tim Baines, Dewey & LeBoeuf LLP, London; Michael Ewing-Chow, Faculty of Law, National University of Singapore; Faina Milman-Sivan, Professor of Law, University of Haifa; Muna Ndulo, Cornell Law School; Sarah Phillips, Professor of Anthropology, Indiana University; Blake Puckett, Ph.D. candidate, Indiana University Maurer School of Law — Bloomington; Gustavo Ribeiro, S.J.D. candidate, Indiana University Maurer School of Law — Bloomington; Miguel Schor, Suffolk University Law School; Michael Szporluk, Mercy Corps; Robert Wai, Osgoode Hall Law School; and Timothy Waters, Indiana University Maurer School of Law — Bloomington.

The first three panels of the Symposium investigated governance practices in particular settings. The opening panel addressed constitution-making in complex local contexts, examining the practices of local cultural engagement that affect the drafting and implementation of constitutions and investigating the ways in which global networking can promote democracy in local contexts. The second turned to the relationship between corporate regulation and private law networks. It investigated voluntary codes of conduct and other tools that multinational corporations and local businesses adopt in order to promote good governance practices. In addition, it sought to uncover some of the connections between the trade regulatory regime and private corporate social responsibility. The third panel addressed the role of civil society and non-governmental organizations as partners in solving problems of global import, examining the inherent problems of accountability that attend their work. The Symposium's final panel then sought to bridge these topics, considering the general question of how global governance is "operationalized" on the ground.

* * *

The first pair of articles in this symposium issue sets the stage for the analysis of governance practices in particular contexts. Brian Winchester addresses one of the most intuitive areas for identifying global problems and their possible solu-

tions, outlining the history and evolution of environmentalism.⁶ He describes the explosion in international environmental agreements, and also the increasing involvement of non-state actors, concluding that their involvement suggests movement toward a more complex form of governance in that arena—a form of governance in which states and intergovernmental organizations are not the only relevant actors. In the second article, Timothy Waters, striking a cautionary note, expresses his concern that discussions about globalization, global governance and the operational aspects of global governance fail in their descriptive task as well as in their analytical purpose.⁷ He asserts that the state retains its preeminent position and that any discussions of global governance should be mindful of evidence of state continuity and the state's "dynamic reconstitution."⁸

The next three contributions examine issues of constitutional law and constitution-making. In the first, Adeno Addis discusses the challenges of constitutionalizing democracy in states that are fractured along ethnic lines.⁹ He argues that the stability of such societies depends on the establishment of institutions that can lay the foundation both for the inclusion of multiple ethnic groups and for the cultivation of interethnic dialogue. His paper outlines a process for achieving such a deliberative democracy, arguing that it carries greater promise of creating sustainable solidarity in fractured societies than competing models based on consociation or integration. Larry Catá Backer's article addresses the intersection between constitutionalism and religion.¹⁰ He explores the efforts of certain religious communities to displace secular, universalist, normative constitutional frameworks with transcendent religious frameworks that are no less universal. The article focuses particularly on Islamic theocratic constitutionalism in examining such movements. In the third article, Miguel Schor turns to the relationship between democracy and judicial review with a comparative study of the Mexican Supreme Court and the Colombian Constitutional Court.¹¹ He argues that the Mexican court seeks primarily to police

6. N. Brian Winchester, *Emerging Global Environmental Governance*, 16 IND. J. GLOBAL LEGAL STUD. 7 (2009).

7. Timothy William Waters, "The Momentous Gravity of the State of Things Now Obtaining": Annoying Westphalian Objections to the Idea of Global Governance, 16 IND. J. GLOBAL LEGAL STUD. 25 (2009).

8. *Id.* at 47.

9. Adeno Addis, *Deliberative Democracy in Severely Fractured Societies*, 16 IND. J. GLOBAL LEGAL STUD. 59 (2009).

10. Larry Catá Backer, *Theocratic Constitutionalism: An Introduction to a New Global Legal Ordering*, 16 IND. J. GLOBAL LEGAL STUD. 85 (2009).

11. Miguel Schor, *An Essay on the Emergence of Constitutional Courts: The Cases of Mexico and Colombia*, 16 IND. J. GLOBAL LEGAL STUD. 173 (2009).

the separation of powers, whereas the primary aim of the Colombian court is to deepen the social bases of democracy. Exploring the reasons for this difference, he suggests that courts in transitional democracies should be seen as strategic actors that sometimes fill gaps in the democratic order.

The third group of articles takes up issues relating to the role of multinational corporations as actors in, and objects of, global governance. Michael Ewing-Chow and his coauthor Darryl Soh discuss the shift in international environmental regulation from a focus on the development of frameworks of cooperation and coordination to a focus on compliance.¹² That shift, they argue, highlights corporations as the primary actor in the area of environmental governance—a development that has affected both environmental law and the structure of incentives used to encourage certain behavior by corporations. Tim Baines' article turns to the issue of voluntary implementation by multinational enterprises of social responsibility initiatives.¹³ In particular, he analyzes the Equator Principles, adopted by financial institutions to promote corporate responsibility in connection with financed projects, and the Organization for Economic Cooperation and Development's Guidelines. A third article by Gustavo Ribeiro then examines possible points of intersection between evolving standards of corporate social responsibility and the WTO's regulation of international trade, assessing the possible consequences of this linkage.¹⁴

The final set of contributions examines various aspects of civil society. Sarah Phillips begins with an ethnographic study of participants in the disability rights movement in Ukraine.¹⁵ Drawing on interviews with state actors and members of non-governmental organizations in that movement, she explores what its shifting strategies reveal about democratization, civil society, and the dynamics of global governance, and assesses the ability of non-governmental organizations to empower marginalized citizens in post-socialist states. In the next article, Blake Puckett examines some of the limitations that non-governmental organizations and individual experts confront when they seek to improve conditions in a particular local com-

12. Michael Ewing-Chow & Darryl Soh, *Pain, Gain, or Shame: The Evolution of Environmental Law and the Role of Multinational Corporations*, 16 IND. J. GLOBAL LEGAL STUD. 195 (2009).

13. Tim Baines, *Integration of Corporate Social Responsibility Through International Voluntary Initiatives*, 16 IND. J. GLOBAL LEGAL STUD. 223 (2009).

14. Gustavo Ferreira Ribeiro, *Navigating the Turbulent Waters Connecting the World Trade Organization and Corporate Social Responsibility*, 16 IND. J. GLOBAL LEGAL STUD. 249 (2009).

15. Sarah D. Phillips, *Civil Society and Disability Rights in Post-Soviet Ukraine: NGOs and Prospects for Change*, 16 IND. J. GLOBAL LEGAL STUD. 275 (2009).

munity.¹⁶ He argues that international experts must better understand local power structures, cultural viewpoints and historical contingencies in order to render truly effective assistance. Faina Milman-Sivan's article considers the experience of the International Labor Organization (ILO) in formally incorporating civil society groups in its governance structure.¹⁷ Drawing on the history of the ILO's experience with trade unions and other civil society representatives, she suggests parallels to the debate over the contribution of civil society actors to democratizing European governance systems. Finally, Michael Szporluk addresses the inherent problems of accountability facing international civil society actors in their work on enhancing development and humanitarian assistance.¹⁸ He examines a number of specific initiatives that have been launched in an effort to strengthen the accountability of such organizations, and advocates a focus in particular on accountability to the communities in which they operate.

* * *

The contributions to this year's annual symposium add texture and definition to our developing understanding of the diverse phenomena associated with global governance. By attempting a reorientation in focus—from ideas to reality, from theory to modes of social practice—they seek to enrich our study of the nature and function of global governance within the legal order.

16 Blake K. Puckett, *"We're Very Apolitical": Examining the Role of the International Legal Assistance Expert*, 16 IND. J. GLOBAL LEGAL STUD. 293 (2009).

17 Faina Milman-Sivan, *Representativity, Civil Society, and the EU Social Dialogue: Lessons From the International Labor Organization*, 16 IND. J. GLOBAL LEGAL STUD. 311 (2009).

18. Michael Szporluk, *A Framework for Understanding Accountability of International NGOs and Global Good Governance*, 16 IND. J. GLOBAL LEGAL STUD. 339 (2009).

THE JOURNAL OF

Legal Studies

*... a journal of
interdisciplinary
academic research
into law and legal
institutions.*

Sponsored by the University of Chicago Law School, *The Journal of Legal Studies* features theoretical and empirical research on law and legal institutions. Economists, political scientists, sociologists, historians, and legal scholars contribute to *JLS*, emphasizing a social science approach.

Semiannual

ISSN: 0047-2530

E-ISSN: 1537-5366

Print and Electronic, \$31

Electronic-only, \$26

Print-only, \$26

Student (Electronic-only), \$16

*Individual Subscription Rates
valid through December 31, 2009.
Additional shipping and taxes applied
to international orders.*

THE UNIVERSITY
OF CHICAGO PRESS
JOURNALS DIVISION

Editors

Eric A. Posner,
Thomas J. Miles,
Omri Ben-Shahar
*University of Chicago
Law School*

To Subscribe

Phone: 1.877.705.1878

1.773.753.3347

Fax: 1.877.705.1879

1.773.753.0811

www.journals.uchicago.edu/JLS

WWW.JOURNALS.UCHICAGO.EDU