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FOREWORD:

GLOBAL GOVERNANCE AS ADMINISTRATION—NATIONAL AND TRANSNATIONAL APPROACHES TO GLOBAL ADMINISTRATIVE LAW

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I

INTRODUCTION

This symposium addresses an emerging but little-studied field of legal theory and practice: Global Administrative Law. It is the first in a series of journal symposia produced by the ongoing Global Administrative Law Research Project, based at NYU Law School.[1] By way of overview, we set out in this Foreword some core elements of the concept of Global Administrative Law

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1. This is a project of the Institute for International Law and Justice at NYU Law School. For numerous working papers, workshop reports, bibliographies, and links to other organizations working in this field, see http://www.iilj.org/global_adlaw/index.htm. A second collection of articles will be published in 2006 in the *NYU Journal of International Law and Politics*.

that animates this symposium; these ideas are developed in greater detail in the framing paper by Kingsbury, Krisch and Stewart.[2] We then note briefly some of the many elements that are developed in the other nine papers in the symposium.

II
CORE CONCEPTS

The concept of Global Administrative Law begins from the twin ideas that much global governance can be understood as administration, and that such administration is often organized and shaped by principles of an administrative law character. The contemporary starting point is thus the rapidly changing pattern of transnational regulation and its administration, a pattern that now ranges from regulation-by-non-regulation (laissez faire), through formal self-regulation (such as by some industry associations), hybrid private-private regulation (for example, business–NGO partnerships in the Fair Labor Association), hybrid public–private regulation (for instance, in mutual recognition arrangements where a private agency in one country tests products to certify compliance with governmental standards of another country), network governance by state officials (as in the work of the Organization for Economic Cooperation and Development (OECD) on environmental policies to be followed by national export credit agencies), inter-governmental organizations with significant but indirect regulatory powers (for example, regulation of ozone depleting substances under the Montreal Protocol), and inter-governmental organizations with direct governance powers (as with determinations by the Office of the U.N. High Commissioner for Refugees of individuals' refugee status, or the WTO dispute resolution system for trade conflicts). Bodies that were not originally envisaged as regulators have increasingly become so. The U.N. Security Council now regulates movements of arms, food and money in areas subject to sanctions, and lists specific individuals whose assets are to be frozen by states under anti-terrorism rules. The World Bank supervises developing countries in their adoption and implementation of very detailed externally-devised standards for matters ranging from the structure of insurance markets to the conduct of environmental assessments. The Forest Stewardship Council, a private entity, has developed detailed sets of criteria for sustainable forest use, and for certification of products from such forests. These evolving regulatory structures are each confronted with demands for transparency, consultation, participation, reasoned decisions, and review mechanisms to promote accountability. These demands, and responses to them, are increasingly framed in terms that have an administrative law character. The growing commonality of these administrative law-type principles and practices is building a unity between otherwise disparate areas of governance. The sense that there is some unity of proper princi-

2. Benedict Kingsbury, Nico Krisch & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 L. & CONTEMP. PROBS. 15 (Summer/Autumn 2005).

ples and practices across these issue areas is of growing importance to the strengthening, or eroding, of legitimacy and effectiveness in these different governance regimes.

Instead of neatly separated levels of regulation, a congeries of different actors and different layers together form a variegated "global administrative space" that includes international institutions and transnational networks involving both governmental and non-governmental actors, as well as domestic administrative bodies that operate within international regimes or cause transboundary regulatory effects. And, while norms of a regulatory character have been adopted by international treaties or intergovernmental agencies with great frequency since at least the nineteenth century, international administrative roles and capacities until recently evolved slowly (some important early cases excepted). The impact of global regulatory norms on sophisticated domestic legal and administrative systems was initially limited, because states retained the freedom to refuse ratification, and governments had considerable scope to shape the content and operation of the norms when implementing them through their own legislative and administrative structures. Thus, while constitutional and administrative checks operated within well-functioning national systems, only gradually were checks of comparable effectiveness considered as serious objectives in the structuring of transnational arrangements. However, the separation between prevailing models of domestic and international regulation has been eroding faster in practice than it has in the theory of administration. Some international bodies, such as the Clean Development Mechanism under the Kyoto Protocol, now directly create and implement rights of individuals; other international bodies, especially regulatory networks such as the Basle Committee of central bankers or the OECD, are composed of domestic administrative officials whose duties now necessitate acting in global concert. Global rules and standards effectively determine the content of much domestic regulation, and thus significantly limit the freedom of domestic actors, in ways that may enhance or impair the success of domestic constitutional and administrative checks. These impacts might be especially acute for developing countries and for prosperous small states.

The problems of legitimacy raised by this shift of power and authority to extra-state processes and norms are graphic and unresolved. So too are the problems of configuring suitable democracy-respecting but functionally effective relationships between national institutions (including national and sub-national administrative agencies and courts) and extra-national or private institutions of global governance. The Global Administrative Law Research Project seeks to tackle such problems from new angles, through its analysis of global governance as administrative action. These angles include investigation of the applicability in global governance, whether through national or extra-national institutions, of tools and approaches developed in domestic administrative law to deal with problems of participation, transparency, accountability, and review. They include also the construction of adapted or wholly new techniques and approaches that utilize basic administrative law ideas and values. The contribu-

tions to this symposium take up these problems from a variety of theoretical perspectives, and examine the practical issues arising in different types of global regulatory institutions and regulatory subject areas that have usually been studied in relative isolation from each other.

The mechanisms of national administrative law vary significantly from country to country, but some general elements are discernible, particularly with regard to transparency and accountability in decisionmaking. These include requirements for notice, consultation, and open procedures that allow directly affected actors and a broader public to participate; requirements of reasoned decision in accordance with basic principles of administrative fairness and rationality; and review mechanisms, often of a judicial nature. Administrative law can both check and steer the exercise of government power: by both protecting individuals against unauthorized or arbitrary exercises of official power, and also promoting administrative responsiveness to broader public interests, these elements form an integral part of democratic systems and, more generally, ensure a basic form of accountability of public power. In an appropriately modified form, they may perform a similar function for global administrative structures. The impetus for adopting measures of this sort usually comes from efforts by leading actors in global administrative regimes to improve internal accountability and bolster external legitimacy. Such efforts are often stimulated by external criticism, and in some cases also by pressures exerted by domestic courts, which may threaten to review the decisions of global regulatory bodies or of national agencies implementing such global decisions.

Administrative law mechanisms are indeed emerging in many different areas of global governance. They are seen in U.N. responses to the hesitant engagement of domestic courts in reviewing Security Council sanctions against individuals; in the Inspection Panel set up by the World Bank to ensure its own compliance with its internal policies; in notice-and-comment procedures adopted by international standard-setters such as the Basle Committee or the OECD; in the inclusion of NGOs in regulatory bodies like the Codex Alimentarius Commission; in rules about foreign participation in domestic administrative procedures as set out in the Aarhus Convention; or in the review of domestic administrative procedures and decisions by international panels in the WTO context. The pattern that emerges from these and other, often embryonic mechanisms is not yet coherent: such mechanisms and principles operate in some areas and not in others, and diverge widely in their forms. Yet the overall picture is of widespread, and growing, commitment both to principles of transparency, participation, reasoned decision and review in global governance, and to tempered but reasoned principles related to protecting security information, commercial confidentiality, and negotiating effectiveness. A certain lack of coherence in these developments reflects experimentation, adaptation, and eclecticism across the heterogeneous terrain of global administrative space. This is beginning to give rise to exchanges and mutual learning among practitioners and scholars of the different fields. We argue that this is a general trend of practice toward a Global Administrative Law.

In short, Global Administrative Law encompasses the legal mechanisms, principles, and practices, along with supporting social understandings, that promote or otherwise affect the *accountability* of global administrative bodies, in particular by ensuring these bodies meet adequate standards of transparency, consultation, participation, rationality, and legality, and by providing effective review of the rules and decisions these bodies make. These global administrative bodies include intergovernmental institutions, informal inter-governmental networks, national governmental agencies acting pursuant to global norms, hybrid public–private bodies engaged in transnational administration, and purely private bodies performing public roles in transnational administration. This field of law is described as "global" rather than "international" to reflect both the inclusion in it of a large array of informal institutional arrangements (many involving prominent roles for non-state actors), and its foundation in normative practices, and normative sources, that are not encompassed within standard conceptions of "international law."

III

KEY QUESTIONS

We delineate five sets of questions that are essential to the study of Global Administrative Law. The first set is primarily *empirical and analytical*: it asks what administrative law mechanisms are actually emerging in global governance, how they differ from one area to another, and how they relate to the different structures of global regulatory regimes.

A second set relates to *doctrinal* issues: it seeks to explore whether and to what extent the mechanisms of global administrative governance reflect legal rules or principles of participation, transparency or review, and how far they reach. Further, what are the sources of any such rules and principles? Can they be accounted for by received doctrines of the sources of international law? Can global administrative law emerge and attain effective status without a global judiciary to adopt, interpret and apply such doctrine; or will a global network of tribunals, domestic and international, emerge to play just this role?

Thirdly, we emphasize the importance of *normative* questions about Global Administrative Law, which may challenge the general merits or specific framing of this concept, and may raise critical objections to the potential impact of such an approach. This calls for debate on the contending normative bases for Global Administrative Law, including on its effects on social welfare, and especially on its relationship to democracy and to justice. Should Global Administrative Law embody a commitment to substantive reasonableness, encouraging rejection or rethinking or justification on other grounds of policies that reduce social welfare, and promoting policies that increase social welfare? Is Global Administrative Law dependent on a democratic framework, or can it operate (with perhaps more limited functions) outside democratic contexts? (Does this question depend on the level of governance, because majoritarian democracy is more pertinent at the national level? And does it depend on the type of democ-

racy envisioned—direct, representative, participatory, majoritarian, qualified majoritarian, subject to countermajoritarian rights, or otherwise?) Will the spread of global administrative law, particularly its aspirations to accountability and participation, itself help promote democracy around the world? Or, is it feasible or useful to bracket questions about democracy in the further development of the field, at least for the moment, given that there is not a strong international consensus about democratic norms and institutional arrangements for global governance? Questions about power and bias are also central: are administrative law tools mostly Western concepts and thus reflections of very particular ideas about political orders that are currently being imposed on the less powerful, or do they bear a more universal promise? Who will be the winners and losers from greater application of global administrative law?

A fourth set of questions concerns the *institutional design* of administrative law mechanisms in global regimes. Different models are competing: how should bottom-up mechanisms, centered on checks on global regulation by domestic institutions, be balanced with top-down mechanisms in which the checks are institutionalized in or by global bodies? To what extent is it feasible to transplant domestic models of administrative law to global regimes that are often characterized by strong informality, diffuse responsibilities, decisions based on consent or consensus, plural authority structures, powerful private actors, minimal centralized legislative or executive power, and the absence of strong independent courts? Can Global Administrative Law prosper in global regimes that generally lack the conventional binding features of national legal institutions, including majority rule and compulsory dispute resolution before an independent judiciary? Given these features, is it more promising to look to elements of domestic administrative law that have emerged outside traditional command administration, such as systems based on voluntary opt-in or network negotiation and cooperation?[3]

Fifth and finally, it is essential to ask questions of *positive political theory*. What are the factors that lead to (or hinder) the development of administrative law mechanisms in global regulation, and under what conditions are such mechanisms likely or unlikely to be successful? For example, are forms of review most likely to emerge and to be successful in situations where power is delegated by a principal to an agent? Will Global Administrative Law be more likely to emerge as a response to the accretion of rules and adjudicative systems at the international level that bind those who have not consented to particular norms or decision (just as national administrative law has emerged in response to the expansion of the regulatory state), and less likely to emerge where global institutions adhere to traditional international rules of treaty-making and adju-

3. On legal borrowing or transplantation from national to international law and attendant issues of institutional design, see Jonathan B. Wiener, *Something Borrowed for Something Blue: Legal Transplants and the Evolution of Global Environmental Law*, 27 ECOL. L.Q. 1295 (2001).

dication only by consent?[4] Who anticipates benefiting from such mechanisms and so has incentives to promote them? Will such mechanisms be venues for social movements, such as those seeking change or seeking to resist elements of globalization, or will they favor corporate or other groups that can afford to take part in complicated administrative proceedings all over the world?

IV

SYMPOSIUM CONTRIBUTIONS

These different questions are taken up in greater detail in the contributions to this volume. As previously noted, the framework essay by Kingsbury, Krisch, and Stewart, *The Emergence of Global Administrative Law*,[5] develops the issues and themes outlined above in greater detail, drawing on a range of historical and contemporary sources and illustrations from different global administrative regimes. It provides a more extensive overview of the emerging phenomena of Global Administrative Law, explains the different types of global administration that have emerged, examines in some detail the principal analytical, doctrinal, normative, institutional and positive political theoretical issues that they present, and thereby indicates a possible agenda for future research of the field. The essay is complemented by a substantial Global Administrative Law Bibliography.[6]

Following that framing paper, the next four papers address the development of global administrative law from the perspective of experts in national administrative law—in the United States, Europe, and common law Commonwealth systems such as Australia, Canada, New Zealand. The remaining five papers focus on administrative law approaches in a variety of transborder or global governance regimes.

Richard Stewart's essay, *U.S. Administrative Law: A Model for Global Administrative Law?*,[7] considers two means by which U.S. administrative law conceptions and tools might be applied to global regulatory regimes. Under a "bottom up" approach, he examines the difficulties faced by domestic political actors, litigants, and courts in dealing with the global elements in domestic administrative decisions that implement or are shaped by regulatory norms adopted by global regulatory regimes. He outlines three basic approaches that domestic courts might take when asked to review the global elements of such decisions: They might treat them on a par with purely domestic decisions; or, they might impose less demanding administrative law disciplines out of deference to the need for executive flexibility in foreign affairs; finally, they might impose more demanding disciplines on such decisions because of accountability

4. *See* Jonathan B. Wiener, *On the Political Economy of Global Environmental Regulation*, 87 GEO. L.J. 749 (1999).

5. 68 L. & CONTEMP. PROBS. 15 (Summer/Autumn 2005).

6. 68 L. & CONTEMP. PROBS. 357 (Summer/Autumn 2005). The bibliography is regularly updated at http://www.iilj.org/global_adlaw/index.htm.

7. 68 L. & CONTEMP. PROBS. 63 (Summer/Autumn 2005).

gaps with regard to the global elements. Stewart also considers how, under a "top down" approach, elements of U.S. administrative law might provide one set of approaches adaptable for use within global regimes. In doing so, he provides a detailed analytical typology of global regulatory regimes and their administrative components and comments on the different functions of administrative law in these different institutional contexts. He concludes that Global Administrative Law will likely develop further through an iterative and sometimes confrontational interaction between "top down" and "bottom up" approaches.

Sabino Cassese's paper, *Global Standards for National Administrative Procedure*,[8] provides a detailed analysis of some "top down" approaches, examining the influence of global norms of regulatory due process on domestic administrations. He examines ways in which global law operates in national legal systems through procedural principles and criteria as well as substantive standards. He takes as examples procedural norms of transparency, harmonization, equivalence, and notification, and disciplines on national regulatory certification and control to prevent delay, discrimination, and arbitrary decisions. Cassese traces these rules not only to international treaties such as the SPS, TBT, and GATS Agreements, but also to the work of subsidiary administrative bodies such as the WTO committees under those agreements and the Codex Alementarius Commission and its committees. He emphasizes that although these procedural norms are often not formally binding in the national legal order, trade agreements give states substantial incentives to follow them. Many of these procedural norms have a strongly horizontal aspect; they encourage states to open their domestic regulatory regimes reciprocally by adoption of procedural rules to promote various forms of transnational regulatory dialogue and coordination. Harmonization is encouraged, not imposed from on high (the WTO model thus differs from that of the E.U.). Private actors are increasingly interested in these procedural rules and seek to use them to advance their interests. Cassese highlights the unsustainability of the traditional dichotomy between regulation of international administration by international law on the one hand and regulation of domestic administration by domestic administrative law on the other. He warns, however, against uncritically transposing conceptions of domestic administrative law to the very different international institutional context. At the global level, administrative law is multipolar rather than hierarchical, enforcement capacity is weak, and the functions of administrative law are often very different than in domestic settings. His analysis suggests that while many of the principles of administrative law developed in the domestic context may have relevance for global governance, their institutionalization and their regulative role must necessarily be very different across different global contexts.

8. 68 L. & CONTEMP. PROBS. 109 (Summer/Autumn 2005).

In his paper, *The Rule of (Administrative) Law in International Law*,[9] David Dyzenhaus draws on experience in several Commonwealth countries (Australia, Canada, England, and New Zealand) to present a natural law conception of the role of national judges in common law systems when dealing with global governance issues. He finds that these judges review official acts of a traditionally prerogative character for compliance with rule of law principles and international human rights norms that lack an explicit basis in positive law, taking as examples cases in which courts have overturned deportation decisions as contrary to international human rights norms even when these norms are not binding within the national legal system. Dyzenhaus argues that these common law judges have been amenable to the influence of international law because they reject positivist assumptions that have led to the marginalization of international law within domestic legal orders, and have accordingly been able to recognize international law norms as a component of the rule of law conceptions that they apply. Dyzenhaus considers the current system by which states automatically freeze the assets of persons listed—without notice or opportunity for hearing—by the Security Council's 1267 Committee as terrorist financiers, and argues that this practice is contrary to rule-of-law principles as well as to precedents established by Commonwealth courts in analogous cases. He concludes that the natural law conceptions of the rule of law and international human rights reflected in these decisions apply fully to the international order itself, including global regulatory regimes, as well as to domestic officials, and that international law must become more institutionally mature by developing more adequate mechanisms to secure these rule of law and human rights norms.

Janet McLean's paper, *Divergent Legal Conceptions of the State: Implications for Global Administrative Law*,[10] also looks at Canada, New Zealand, and the United States, but focuses attention on the implications of radical differences between the unified and eternal conception of the state in international law and the disaggregated and temporally contingent conception of the government prevalent in the national administrative law of these common law countries. Whereas this disaggregated common law approach has facilitated judicial review of administrative action as a means to uphold a variety of court-driven legal values (while also accommodating distinctive features of the particular polity), the unified approach of international law has led to individual states being treated as abstract units devoid of any special histories or distinctive contemporary features. She suggests that if this unified approach to the state is taken in the developing global administrative law, it will be difficult for useful substantive values and outcomes to be realized through global administrative law. The opposition between the common law and international law approaches is perhaps being dissipated, as both national courts and global bodies confront the difficulties of applying administrative law to the proliferating range

9. 68 L. & CONTEMP. PROBS. 127 (Summer/Autumn 2005).
10. 68 L. & CONTEMP. PROBS. 167 (Summer/Autumn 2005).

of privatized entities, public–private partnerships, and private governance institutions within states and in global governance. Although this proliferation makes for more seamless integration between these forms of national governance and global governance, the increasingly prevalent pattern of private or hybrid bodies in global governance paradoxically makes the effective pursuit of substantive values through global administrative law even more improbable.

The group of papers dealing with administrative law regimes in specific transnational governance arrangements begins with James Salzman's paper, *Decentralized Administrative Law in the Organization for Economic Cooperation and Development*.[11] In four cases studies, he documents some striking divergences in approaches to participation, transparency, and accountability in different substantive areas of the work of a single organization. These divergences, which are made possible by the network governance character of the OECD and by decentralization of operational control within the OECD to issue-based networks usually built by national government officials, are evident both in rulemaking and supervision. As to rulemaking, whereas negotiations in the OECD on a Multilateral Agreement on Investment (MAI) failed in 1998, in part because the OECD was denounced for limiting the negotiations to states and keeping them confidential, the OECD succeeded in 2003 in adopting a Recommendation on environmental policies to be followed by national export credit agencies. This process resembled the MAI process in not involving NGOs or business much at the OECD level, but in this case member states consulted such groups extensively and publicly in their own polities, and the final text was quite widely supported. A third approach is the OECD system for mutual acceptance of data (MAD) on product testing, with its related test guidelines and principles of good laboratory practice. This system is not highly publicized, but involves large numbers of experts and specialist NGOs as well as national regulators in a process of continual information exchange and adjustment. As to supervision, the MAD rules are supervised primarily by the national authorities where a laboratory is located, but this is buttressed by queries from foreign regulators, and an informal system of mutual joint visits by foreign authorities. Supervision of the Guidelines on Multinational Enterprises, which in prior decades was by an ineffective complaints process within the OECD, has since 2000 been decentralized with some success, each state being required to designate a national contact point to investigate alleged violations by corporations legally based in that state even if committed elsewhere.

Walter Mattli and Tim Büthe, in their paper *Global Private Governance: Lessons from a National Model of Setting Standards in Accounting*,[12] explain current and possible future administrative law-type principles in the work of the International Accounting Standards Board (IASB). The IASB and its supporting (private) transnational governance structure were established in 2001,

11. 68 L. & CONTEMP. PROBS. 189 (Summer/Autumn 2005).
12. 68 L. & CONTEMP. PROBS. 225 (Summer/Autumn 2005).

largely by reference to a long-existing U.S. model. Mattli and Büthe therefore present a detailed study of the U.S. Financial Accounting Standards Board (FASB) and its private governance structure, which since 1972 has exercised powers delegated by the federal Securities and Exchange Commission (SEC) to establish "generally accepted accounting principles" for businesses in the U.S. Governments delegate such standard-setting powers to private bodies for several reasons, which include benefiting from their existing expertise, the comparative advantage of such bodies in future maintenance of the expertise necessary to produce operable and efficient standards for fast-evolving industry practices, and the attractiveness to government politicians of being able to attribute responsibilities for failures to an independent body. Mattli and Büthe hypothesize that because the political costs of accounting standards failures (such as the collapse of Enron) usually outweigh the political benefits that come from the success of those standards, politicians might not want tight administrative controls to ensure close accountability for the effectiveness of FASB regulation of private entities: such strict accountability will make it more difficult to avoid political responsibility. At a structural level, they focus particularly on a central problem: the FASB as an agent has multiple principals. Those principals include both the private entities that established it and appoint its members, and the SEC. This problem is more acute in relation to the IASB, because the public principal is not a single entity but a multiplicity of national government and E.U. agencies. Mattli and Büthe note that shifts in the Zeitgeist, such as the spur that both the Enron failure and comparable scandals provided to reduce the dominance of big corporations in the FASB process, often lead to symbolic changes; but changes that truly affect later outcomes are likely to be much rarer given current structures and incentives.

Kalypso Nicolaidis and Gregory Shaffer, in their paper *Transnational Mutual Recognition Regimes: Governance without Global Government*,[13] describe and advocate the existing horizontal systems in which one state recognizes (usually on a reciprocal basis) the applicability and adequacy of the standards or conformity and certification arrangements used in another state in order to trade in goods and services. Their normative view is that, while democracy is likely to remain largely a national phenomenon, transnational governance can and should encompass some democratic elements, such as accountability. They therefore focus on means that mutual recognition structures employ to achieve accountability horizontally between regulators of different states, and diagonally between regulators and foreign private actors—including through procedural participation of non-citizens, requirements to issue reasoned decisions, and review mechanisms. Their study highlights challenges for global administrative law arising from tensions between two different patterns of cooperation: a trust-based global governance emphasizing balances between market liberalization and social regulation, and a harder-edged security orientation that has

13. 68 L. & CONTEMP. PROBS. 263 (Summer/Autumn 2005).

intensified in the United States and in other states since September 2001. They note, too, the inequities that vast power asymmetries produce in all forms of global governance, but defend mutual recognition as potentially more tolerant and less inequitable than some other governance models.

Eyal Benvenisti's essay, *The Interplay Between Actors as a Determinant of the Evolution of Administrative Law in International Institutions*,[14] uses a public choice perspective to examine how global administrative law may be shaped by the interests of different actors—national governments, domestic economic and political interests, and global regime officials and institutions—and the interactions among them in different institutional settings. Benvenisti draws on the public choice literature in the United States, which explains administrative law arrangements primarily in terms of the political incentives of legislators to control executive decisions in order to deliver benefits to their political supporters, the pursuit of competition among domestic political interests, and the opportunities of relatively insulated judges to play substantive roles in the context of stalemates among political forces. He hypothesizes that the evolution of global administrative law will be influenced by the extent and nature of power disparities among states in different contexts; by competition between national governments (who seek to exploit global decisionmaking to escape domestic political constraints) and other domestic political actors; and by internal competition among actors, including tribunals, within global regimes. Benvenisti draws on these factors in a schematic way to point to possible explanations of the development (or lack of development) of administrative law in four settings: in the E.U., where the European Court of Justice and Court of First Instance have exploited legislative impasse and seized the initiative; in the WTO, where North and South have divided over increasing transparency and participation in Dispute Settlement Body proceedings; in the U.N., with regard to judicial review of the legality of Security Council decisions; and in the International Court of Justice, with regard to its role in the evolution of international administrative law. He concludes that both the content of administrative law norms and the roles of the institutional actors who create them will reflect the balance of power within international institutions, in much the same way as comparable balances of power operate in domestic settings. But he emphasizes that a comparative study must be wary of easy generalizations, and must be highly sensitive to the particular institutional and political context.

Martin Shapiro's concluding essay, *"Deliberative," "Independent" Technocracy v. Democratic Politics: Will the Globe Echo the E.U.?*,[15] draws on experience with transnational regulation in the E.U. as an instructive example for considering similar global regulatory and governance issues. Shapiro emphasizes the inherent conflict between democratic political conceptions of administration and technocratic conceptions based on specialized expertise, noting prior efforts

14. 68 L. & CONTEMP. PROBS. 319 (Summer/Autumn 2005).
15. 68 L. & CONTEMP. PROBS. 341 (Summer/Autumn 2005).

to resolve or manage this dilemma, including, in the United States, New Deal innovations and a tradition of elite generalist civil servants. He then considers whether developments in regulatory governance in the E.U., including the comitology process of decision by experts from national governments, the embrace of deliberative democracy, and the development of independent agencies, represent a solution to this dilemma in the global context that is superior to direct bargaining among states and might provide a desirable model for transnational administrative governance generally. His answer is broadly negative. In particular, he argues that in the E.U. concepts of deliberative democracy are being hijacked to legitimate non-democratic decision-making by technocrats with strong policy preferences of their own, and thereby potentially also to enhance the policy leverage of powerful private interests. Shapiro concludes that the development of U.S.-style interest-representation models of administrative law implemented by courts can be a useful corrective to these tendencies, thereby giving a qualified endorsement to this strategy of global administrative law; but warns that this strategy can generate its own excesses as well.

V

TOWARD GLOBAL ADMINISTRATIVE LAW

Taken together, these symposium contributions provide substantial evidence that a Global Administrative Law is emerging within a global administrative space, and that this field of law and practice is worthy of study, theorizing, and more systematic and reflective development. The contributions also confirm that this emerging field is highly variegated: Global Administrative Law is emerging in different ways in different settings involving different types of regimes and subjects of regulation, building different structures and procedures of accountability, to suit different needs, in response to different actors and incentives. Global Administrative Law is evolving through observation, critique, and borrowing across national legal systems that are increasingly interdependent. Different systems of national administrative law are also furnishing concepts for global regimes to borrow.[16] Those regimes are also developing independent and novel responses to their specific institutional setting and accountability issues. This symposium represents a first effort to survey the different elements of these important trends and pose questions for further analysis and development of the field of Global Administrative Law.

16. *See* Wiener, *Something Borrowed*, *supra* note 3.