ble administrative law). Moreover, they make decisions backed up by a system of sanctions, like the retaliation and cross-retaliation authorized by WTO panels.[128]

In conclusion, the large number of norms, the development of rules and principles, and the rise of courts all confirm the high degree of institutionalization (or legalization, as American scholars like to say) of the global administrative system. This stands in direct relation to the greater efficacy of global decisions in targeting national citizens, organizations, and corporations.

The more that global organizations widen their scope of action beyond States and domestic public organizations, the more that it becomes important to ensure respect for the rule of law, the principle of participation, and the duty to give a reasoned decision. These procedures are important in order to ensure the protection of citizens, organizations, and corporations, not only in their relations with States and other national public powers, but also in their relations with the new global public powers.

II. IS THERE A GLOBAL ADMINISTRATIVE LAW?*

1. AN IMPORTANT INTELLECTUAL EXERCISE

We are currently engaged in a very important intellectual exercise - no less important, indeed, than that undertaken by the nineteenth-century "founding fathers" of public law, such as Laferrière in France, Gerber, Laband and Mayer in Germany, and Orlando and Romano in Italy. Scholars in New York, Rome, Heidelberg and elsewhere are working on a new area of legal theory and practice: that of global law.

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[128] *The Future of the WTO: Addressing institutional challenges in the new millennium*, cit., p. 53.

* This section offers some reflections on Armin von Bogdandy's piece, "General Principle of International Public Authority: Sketching a Research Field", in *The Exercise of Public Authority by International Institutions*, Heidelberg, Springer, 2010. Thanks are due to Euan MacDonald, Mariangela Benedetti, Lorenzo Casini, Elisabetta Morlino, and Gianluca Sgueo for their comments.

This scholarly work[129] has three main features. It is, firstly, a truly global effort. Jurists from all over the world are engaged in such research, some providing in-depth analyses of individual global regimes, while others seek to deduce from the many and varied governance experiences a body of common principles and rules.

It is worth noting that a scholarly endeavor of this sort has not been undertaken since the seventeenth-century Indeed, ever since the attack from legal positivism led to the collapse of natural law approaches to the discipline, law has been conceived of as exclusively the product of nation-States, with international law conceptualized mainly on the basis of "contractual" relations between them. As a consequence, the study of each national system of law has become for the most part limited to national "schools" of lawyers, with occasional raids into foreign legal systems permitted to scholars of a more comparative bent.

Secondly, this endeavor deals with an entirely new subject-matter; one that has developed only relatively recently, chiefly in the last twenty years. It encompasses a vast array of different treaties, rules, standards, institutions, and procedural arrangements established beyond national frontiers either by States themselves, or by other global institutions, in order to deliver services, establish further standards, monitor compliance, or act as "clearing houses" more generally.

This body of law is confusing, at least when viewed through the lens of traditional conceptual criteria. It is law, but in most cases non-binding. It does have established institutions, but these can most often proceed only tentatively at best, because their authority is not yet widely recognized.

Thirdly, in the study of this field one cannot rely upon the usual paradigms of public law. These have been developed in national contexts as a set of values, principles, and rules necessary to the proper functioning of domestic institutions. For example, regular elections at the national and local levels serve the purpose of democracy; and the due process of

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[129] See the Global Administrative Project launched by New York University in 2005 (http://www.iilj.org/GAL/default.asp), the research on Global Administrative Law led by the Institute for Research on Public Administration (IRPA) in Rome (http://www.irpa.eu/index.asp?idA=161), and the Project on The Exercise of Public Authority by International Institutions at the Max-Planck Institut für ausländisches öffentliches Recht und Völkerrecht at Heidelberg (http://www.mpil.de).

law is instrumental to the protection of fundamental rights. But can they be transposed mechanically to an entirely new environment, beyond the State? Can new wine be poured into old wineskins?

2. BOGDANDY ON THE LEGAL NATURE AND PRINCIPLES OF THE GLOBAL ARENA

Armin von Bogdandy's paper on "Principles of International Public Authority" is a very rich and complex contribution to this new field. It examines not only the principles of international public authority, but also the legal nature of the global arena more generally.

Von Bogdandy's argument rests upon the following five basic assumptions:

1. to exercise public authority means to unilaterally govern the conduct of third parties, even without their consent;

2. there exists no one single and unitary body of law, nor a proto- federal legal order, nor a legal space, that can be called "global";

3. the direct exercise of authority by international institutions over individuals is extremely rare, and in the global arena there is thus, for the most part, neither direct effect nor supremacy of global norms; as a rule, the decisions of international institutions do not unilaterally affect private parties, but are addressed to national administrations;

4. the relationship between international institutions and national legal systems can be understood as based on two principles: the principle of autonomy (or independence) and the principle of delegation;

5. international institutions are subject to the principle of attributed competence: they cannot acquire powers on their own initiative; rather, their competences are attributed to them by national governments.

Von Bogdandy ends with five main conclusions:

1. while there is little evidence of the development of overarching principles at the international level, some principles regulating international public authority are emerging;

2. a hierarchy of sources of law is establishing itself in the operation of international institutions; in each regulatory regime, the founding treaty of each institution operates as the framework for the law that it produces;

3. international institutions are subject to the principle of cooperation in their relations both with national governments and with other global bodies, and to specific procedural duties (the duty to inform affected parties, their right to be heard, etc.);

4. the protection afforded to individuals against action taken in violation of their rights by international institutions is at present unsatisfactory, although this is beginning to change;

5. the relevant global legal principles remain under-developed, due to the fact that only a few international institutions are subject to direct judicial review.

3. WHAT IS LAW IN THE GLOBAL ARENA?

The first point that I want to discuss here concerns the very concept of law in the global arena, and the related concepts of binding force and authority.

In domestic legal orders there is a clear-cut dichotomy between legal and non-legal prescriptions; and this is because there is a higher authority that establishes the dividing line between what is and what is not law. This picture, however, changes as we move into the global arena. There, we are confronted by a world that is highly formalized, but not in strictly legal terms.

For example, many World Bank "legal" instruments are simply referred to as "policy" documents; yet in many cases these can scarcely be considered less important than statutes passed by national parliaments. They regulate important aspects of the Bank's activity, such as the duty

to perform an environmental impact assessment and all of the procedural requirements related to this.[130] Private parties in India or South Africa can appeal to these standards, and ask that global and national governance bodies comply with them. Must we concede that anything that is not binding is, *ipso facto*, not law? If there is an area of law in which the Latin motto "*ubi societas, ibi ius*" holds true, then surely it must be the global arena.

At this point, a second dichotomy emerges, related to the first: that between binding ("hard") and non-binding ("soft") law. The basic question that we might pose in this regard is as follows: is a formally binding commitment to obey a rule the only means of producing rule-conforming behavior?

Even in domestic legal orders, not all rules are binding or compulsory. National legislation also establishes incentives and issues guidelines; it seeks not only to compel, but also to promote, to correct, to educate, and so on.

An example from the global arena is provided by the standards generated by the *Codex Alimentarius* Commission. These are not, in and of themselves, compulsory; they are, however, in effect given binding force by the World Trade Organization.[131] One authority produces rules;

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[130] Elsewhere, I have defined the World Bank's operative policies as «ad hoc international administrative norms»: see S. Cassese, "Global Standards for National Administrative Procedures", in *Law & Contemporary Problems*, vol. 68, 2005, p. 109. Moreover, NGOs and local communities have increasingly been addressing the World Bank's policies within the context of global compliance mechanisms; see, for instance, M. Circi, "The World Bank Inspection Panel: The Indian Mumbai Urban Transport Project Case", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases, Materials, Issues*, 2008, p. 55 ff.; a broader analysis of the World Bank social policies can be found in A. Vetterlein, "Economic Growth, Poverty Reduction, and the Role of Social Policies: The Evolution of the World Bank's Social Development Approach", in *Global Governance*, 2007, vol. 13, p. 513. See also K. Tomasevski, "The Influence of the World Bank and IMF on Economic and Social Rights", in *Nordic Journal of International Law*, 1995, vol. 64, p. 385; M. Nesbitt, "The World Bank and de facto Governments: A Call for Transparency in the Bank's Operational Policy", in *Queens Law Journal*, 2006-2007, vol. 32, p. 641; K.W. Simon, "World Bank Wants a New Approach to Consultations with Civil Society", in *International Journal of Civil Society*, 2003, vol. 1, p. 41.

[131] See, for a general overview of the *Codex Alimentarius* Commission within the World Trade Organization, J. Vapnek, "Legislative Implementation of the Food Chain Approach", in *Vanderbilt Journal of Transnational Law*, 2007, vol. 40, p. 987; J. Kurtz, "A Look behind the Mirror: Standardisation, Institutions and the WTO SPS and TBT Agreements", in *University*

another endows them with binding force. The rule is not binding from its inception, only becoming so because another authority imposes conformity upon those under its jurisdiction. Therefore, in this case the rule is binding in the field of global trade, but not in other areas, creating a "dédoublement".

A third point, again related, concerns the concept of authority. Power, not authority, is central in the global arena. Power can be exercised through authoritative means (such as the «command and control» models familiar from domestic administrative systems), but also through agreements, contracts, incentives, standards and guidelines.

4. THE GLOBAL LEGAL SPACE

The area beyond the State is not only "global" from an economic point of view; rather, there also exists a global legal space, encompassing a vast number of different regulatory bodies, a mass of rules, a great quantity of procedures, and a complex array of links both to national bureaucracies and civil society.

What is missing is one general and unitary body of global law. Instead, there are numerous (at least two thousand) global regimes.

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of New South Wales Law Journal, 2007, vol. 30, p. 504; T.P. Stewart and D.S. Johanson, "The SPS Agreement of the World Trade Organization and International Organizations. The Roles of the Codex Alimentarius Commission, the International Plant Protection Convention, and the International Office of Epizootics", in *Syracuse Journal of International Law & Commerce*, 1998-1999, vol. 26, p. 27. An analysis of the complex relationship between the global standards of the *Codex Alimentarius* Commission and domestic States is provided by D. Livshiz, "Updating American Administrative Law: WTO, International Standards, Domestic Implementation and Public Participation", in *Wisconsin International Law Journal*, 2006-2007, vol. 24, p. 961. A more general overview is provided by K. Claire, "Power, Linkage and Accommodation: The WTO as an International Actor and Its Influence on Other Actors and Regimes", in *Berkeley Journal of International Law*, 2006, vol. 24, p. 79. A further analysis of the *Codex Alimentarius* standards and their connection to the FAO and WTO is given by M.D. Masson-Matthee, *The Codex Alimentarius Commission and Its Standards*, The Hague, T.M.C. Asser Press, 2007. It is worth noting that the standards can also diverge. See, for instance, E. D'Alterio, *Relations between Global Law and EU Law*, in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases, Materials, Issues*, cit., p. 105; H.S. Shapiro, "The Rules That Swallowed Exceptions: The WTO SPS Agreement and Its Relationship to CATT Articles XX and XXI - The Threat of the EU-GMO Dispute", in *Arizona Journal of International & Comparative Law*, 2007, vol. 24, p. 199.

However, both the administrative actors and the judicial bodies (where these exist) within each individual regime establish links to, and rules of engagement with, other regimes. Cooperation, division of labor and dialogue are common among global regimes and their constituent institutions. This law is generated through a process of accretion and accumulation, and the cooperative dialogue between regimes means that the principles of each should not be interpreted and applied in a vacuum. It is in this process that some have recognized the emergence of a general body of law at the global level.[132]

Moreover, each national legal order has developed a certain number of common rules, and these now provide core standards that can be shared and even codified at a supranational level (take, for example, the Council of Europe's codification of rules on administrative procedure).[133]

Given that the global legal order is fragmented (or, perhaps more accurately, that there is not one unitary legal order at the global level, but rather many different and self-contained legal regimes), there are no general legal principles common to all. But some common understandings are developing: the duty to respect human rights and the rule of law; the obligation to inform and to hear interested parties before a decision is taken (as held, for example, in the *Juno Trader* case before the International Tribunal of the Law of the Sea);[134] and substantive

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[132] «The current range of international legal obligations benefits from a process of accretion and cumulation» (Arbitral Tribunal, *Southern Bluefin Tuna* case, n. 52, 14 August 2000). "[...] the principles underlying the Convention [on Human Rights] cannot be interpreted and applied in a vacuum" (European Court of Human Rights, *Bankovic v. Belgium and others*, 12 December 2001). "The scope of special laws is by definition narrower than that of general laws. It will thus frequently be the case that a matter not regulated by special law will arise in the institutions charged to administer it. In such cases, the relevant general law will apply." (UN Study Group on the Fragmentation of International Law, *Conclusions*, 2006).

[133] Council of Europe, *The Administration and You. Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons*, Strasbourg, 1996.

[134] International Tribunal of the Law of the Sea, The "*Juno Trader*" *Case* (*Saint Vincent and the Grenadines v. Guinea-Bissau*), case no. 13, December 18, 2004 (www.itlos.org/cgi-bin/cases/case_detail.pl?id=13&lang=en); see D. Agus and M. Conticelli, "The International Tribunal for the Law of the Sea (JTLOS): The Juno Trader Case", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases, Materials, Issues*, cit.

duties relating to principles of fairness and reasonableness, amongst others.

5. THE GLOBAL LEGAL SPACE AS A "MARBLE CAKE": SHARED POWERS

The widely-used expression "multilevel governance" is misleading, insofar as there is no clear-cut separation of competences between national governments and global institutions, structured within a definite hierarchy, of the type that this expression seems to suggest. Rather, the global arena is characterized by the spread of powers between the global and the national levels of government. For instance, environmental protection is at once a global and a national task, and competencies in this field are not merely shared by global and national bodies; rather, areas of jurisdiction overlap and compete with each other. The line between the national and the international is becoming increasingly blurred (see, for example, the Cybersquatting cases before the dispute resolution panels of the World Intellectual Property Organization).[135] In the case of shared powers of this sort, the rule is not strict separation and rigid hierarchy, but rather permeability, intermingling, interpenetration.

Global institutions derive their jurisdiction and their powers from national governments. It does not necessarily follow, however, that of all their powers originate in a direct delegation by States. For example, there are international institutions that were not established by national governments, but by other international bodies (for example, the *Codex Alimentarius* Commission).[136]

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[135] See, for example, World Intellectual Property Organization, Arbitration and Mediation Center, Administrative Panel Decision, decision of 22 July 2003 *Keisanki Kabushki Kaisha, dba Casio Computer Co., Ltd v. Fulviu Mihai Fodoreanu*, Case No. DRO2003-0002 ("Casio"); decision of 4 August 2000*; Excelentisimo Ayuntamiento de Barcelona v. Barcelona.com Inc.*, Case No. D2000-0505. Decisions are available at: http://arbiter.wipo.int/domains/ decisions/index-cctld.html.

[136] See M.D. Masson-Matthee, *The Codex Alimentarius Commission and Its Standards*, cit. Further information is available in J.A. Bobo, "The Role of International Agreements in Achieving Food Security: How Many Lawyers Does It Take to Feed a Village?", in *Vanderbilt Journal of Transnational Law*, 2007, vol. 40, p. 937.

Moreover, cooperation in the global arena does not occur only between international institutions and national governments, but also among international institutions themselves. The global order can be illustrated by the well-known metaphor of the marble cake, as there are no clear dividing lines between layers (national and global) and (global) sectoral regimes; rather, the two worlds are linked both vertically and horizontally through a complex array of relations and networks.

6. LEGITIMACY THROUGH THE LAW

There exists no cosmopolitan democracy, no planetary constitution, no global parliament. Is this cause for concern?

Here again it is necessary to return to certain basic questions. Why do we want national governments to be legitimate? Simply put, the answer might run as follows. National governments exercise their power through authority: they oblige and impose. Therefore, they must be run on the basis of the consent of the governed. Through recurrent elections, politicians are chosen and kept under control by the people.

A number of differences emerge, however, when we move from the national to the global context. Firstly, global bodies do not normally exercise power through authority: they do not seek to simply impose their will, but rather to influence the behavior of national bureaucracies and private parties through a variety of different mechanisms.

Secondly, global bodies are usually established in order to keep national governments under control, or to provide services or pursue goals that governments alone are unable to. Therefore, they put limits on the activities of national executives. In this regard, we might suggest, they are on the same "side" as the people, formally speaking at least.

Thirdly, periodic elections are not the only means of legitimizing public power. Global institutions seek to forge their legitimacy through ensuring openness, dialogue and the participation of private parties ("*Legitimation durch Verfahren*")[137] in the decision-making process. Examples of this abound within global regimes: consider, for instance, the

[137] N. Luhmann, *Legitimation durch Verfahren*, Neuwied, Luchterhand, 1969.

International Preliminary Examination procedure for the protection of inventions, established by the Patent Cooperation Treaty; or the complaints procedure before the World Bank Inspection Panel.

Judicial protection is not guaranteed by every global regulatory regime. However, many do establish mechanisms that can act as a surrogate for formal judicial protection, for example granting "ex ante" participation rights to affected private parties or national governments, establishing quasi-judicial procedures and ensuring some degree of independence from decision-making bodies.

Finally, there are now around a hundred and twenty extra-national courts around the world (most of them with jurisdiction in criminal matters).[138] Technical and scientific expertise often play an important role in the controversies brought before these courts (see, for example, the Apples and Fire Blight case before the World Trade Organization Dispute Settlement Body[139] and the Southern Blue Fin Tuna case before the Arbitral Tribunal of the United Nations Convention on the Law of the Sea[140]). There also exist some internationalized forms of administrative review of domestic agencies (for example, the NAFTA Chapter 19 Panels[141]); and

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[138] See the Project on International Courts and Tribunal International (PICT) and the synoptic chart, available at: http://www.pict-pcti.org/publications/synoptic_chart/Synop_C4.pdf.

[139] The relevant decisions in this case are Panel Report, Japan - Measures Affecting the Importation of Apples, WT/DS245/R, 15 July 2003 and Report of Appellate Body, Japan - Measures Affecting the Importation of Apples, WT/DS245/AB/R, AB-2003-4, 26 November 2003: see A. Albanesi, "The WTO 'Science-Fest': Japan Measures Affecting the Importation of Apples", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases*, *Materials*, *Issues*, cit., p. 178 ff.

[140] Arbitral Tribunal established under Annex VII of the United Nations Convention on the Law of the Sea, Australia and New Zealand v. Japan, Award on Jurisdiction and Admissibility, 4 August 2000. See also B. Carotti and M. Conticelli, "Settling Global Disputes: The Southern Bluefin Tuna Case", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases*, *Materials*, *Issues*, cit., p. 145 ff.

[141] NAFTA Article 1904 establishes a mechanism that provides an alternative to judicial review by domestic courts of final determinations in antidumping and countervailing duty cases: the Binational Panel system. This system uses panels consisting of US and Canadian or Mexican panelists to review antidumping and countervailing duty decisions taken by national administrative authorities. The Panel may uphold or remand the national administrative action, and its decisions are binding. The Binational Panel system represents an internationalized form of administrative judicial review of domestic agencies: it reviews decisions of domestic agencies; its decisions are based on domestic law, not international trade rules; and the private parties involved (e.g. firms) have a right to initiate panel review. For an overview on this topic, see

there are many more bodies that provide some sort of judicial review by acting as quasi-independent courts, open to the petitions of the affected citizens, and following adversarial or quasi-adversarial procedures. These are often referred to as, for example, "compliance committees"[142] or "inspection panels".[143] In many regards, these latter bodies resemble

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G.R. Winham and A. Heather, "Antidumping and Countervailing Duties in Regional Trade Agreements: Canada-US. FTA, NAFTA and Beyond", in *Minnesota Journal of Global Trade*, 1994, vol. 3, p. 1; G.R. Winham and G.C. Vega, "The Role of NAFTA Dispute Settlement in the Management of Canadian, Mexican and U.S. Trade and Investment Relations", in *Ohio Northern University Law Review*, 2001-2002, vol. 28, p. 651; E.J. Pan, "Assessing the NAFTA Chapter 19 Binational Panel System: An Experiment in International Adjudication", in *Harvard International Law Journal*, 1999, vol. 40, p. 379. See also M. Macchia, "Reasonableness and Proportionality: The NAFTA Binational Panel and the Extension of Administrative Justice to International Relations", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases, Materials, Issues*, cit., p. 86 ff.

[142] The term «compliance committee» is used in multilateral environmental agreements (MEAs). See Convention on Biological Diversity, COP-MOP 1 Decision BS-I/7, *Establishment of Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety*, Kuala Lumpur, 23-27 February 2004; Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Report of the First Meeting of the Parties, Addendum, *Decision 1/7 Review of Compliance* adopted at the first meeting of the Parties held in Lucca, Italy, on 21-23 October 2002, ECE/MP.PP/2/Add.8, 2 April, 2004; Commission for environmental cooperation, *Adoption of the Revised Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, 28 June 1999, Council resolution 99-06.

[143] The term «inspection panel» is used by the Multilateral Development Banks (MDBs, consisting of the World Bank Group and the four Regional Development Banks: The African Development Bank, The Asian Development Bank, The European Bank for Reconstruction and Development, The Inter American Development Bank Group). See International Bank for Reconstruction and Development, I.B.R.D. Res. 93-10 (Sept. 22, 1993); International Development Association, IDA Res. 93-6, Sept. 22, 1993 (the two Resolutions are identical and are reprinted in World Bank, *World Bank Operational Manual: Bank Procedures*, 17.55, annex A, 1997); Asian Development Bank, *Establishment of an Inspection Function*, ADB Doc. R225-95 (Nov. 10, 1995); IFC/ MIGA's Office of the Compliance Advisor/Ombudsman, (see also Compliance Advisor/Ombudsman – CAO, *Operational Guidelines*, April 2004); European Bank for Reconstruction and Development – EBRD, *Independent Recourse Mechanism: As Approved by the Board of Directors on 29 April 2003* (2003), (see also *Independent Recourse Mechanism Rules of Procedure: As Approved by the Board on 6 April 2004*); Inter-American Development Bank (IDB), *IDB's Independent Investigation Mechanism (IIM)*, (see also the rules and procedures of IDB's IIM); African Development Bank, Board of Director, *Enabling Resolution* B/BD/2004/9-F/BD/2004/7-B/BD/2004/10, June 30, 2004. Asian Development Bank, *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*, May 2003. For an overview, see E. Suzuki and S. Nanwani, "Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks", in *Michigan Journal of Inter-*

the French *Conseil d'État* in the period between 1800 and 1872, when the Council was not legally recognized as a judicial body despite the fact that it was exercising de facto judicial review.

7. IS THERE A GLOBAL ADMINISTRATIVE LAW?

Finally, let me return to the question contained in the title of this contribution: is there a global administrative law?

This question must, in my view, be answered in the affirmative. This law has the following features.

1. Notwithstanding some areas of overlap, global administrative law should be distinguished from traditional international law. "*Ius gentium*", "*Ius inter gentes*" and "the law of the nations" refer to the law established between the governments of States to regulate relations between States as legal entities. Despite displaying some features to the contrary, this law is still largely non-hierarchical, voluntaristic and contractual in nature. Global law, on the other hand, consists in large part of the rules produced by international organizations of various different kinds.

2. International law is mainly based on transactions, while global law has developed a more robust hierarchy of norms. This hierarchy has developed within each individual regulatory regime; it is now emerging among the different regulatory regimes as well (for example, the European Court of Justice, in the *Kadi* case,[144] has recognized the primacy of United Nations law over European law).

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national Law, 2006, vol. 27, p. 177; N. Wahi, "Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability", in *University of California Davis Journal of International Law & Policy*, 2005-2006, vol. 12, p. 331.

[144] Judgment of the Court (Grand Chamber) 3 September 2008, joined cases C-402/05 P and C-415/05 P. See also A. Sandulli, "Caso Kadi: tre percorsi a confronto"; S. Cassese, "Ordine comunitario e ordine globale"; E. Chiti, "I diritti di difesa e di proprietà nell'ordinamento europeo"; M. Savino, "Libertà e sicurezza nella lotta al terrorismo: quale bilanciamento?"; G. Vesperini, "Il principio del contraddittorio e le fasi comunitarie di procedimenti globali"; and G. della Cananea, "Un nuovo nomos per l'ordine globale", in *Giornale di diritto amministrativo*, 2008, p. 1088-1104.

3. As already noted, there currently exist around two thousand international organizations,[145] which are often capable of reproducing other such organizations (in fact, many of them were themselves established by other global bodies). They conclude treaties and make rules, and can no longer be considered as the mere agents of States. Indeed, they can even create standards that are aimed at transforming the internal structure of national governments.

4. Perhaps the most important global bodies are those that carry out a standard-setting function. These standards are generally addressed to national governments; but this does not mean that private parties are not affected by them. For example, the food that we eat is subject worldwide to the standards of the *Codex Alimentarius* Commission.[146] The standards established by the Forced Labour Convention (1930) are addressed to national governments, but affect private individuals (see, for example, the case of Myanmar and the International Labour Organization[147]).

5. Such bodies are at the top of many sectoral regimes. These regimes do not, however, exist entirely independent of each other, but rather are linked in myriad different ways – either in relatively structured "regime complexes" –[148] or simply through the significant areas of

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[145] Union of International Associations, *Yearbook of International Organizations*, München, Saur, 2005.

[146] See J. Kurtz, *A Look behind the Mirror*, cit.; D. Livshiz, *Updating American Administrative Law*, cit. See, with particular reference to the interactions with the US system, D.M. Strauss, "International Regulation of Genetically Modified Organism: Importing Caution into the U.S. Food Supply", in *Food and Drug Law Journal*, 2006, vol. 61, p. 167; also, S. Keane, "Can a Consumer's Right to Know Survive the WTO: The Case of Food Labeling", in *Transnational Law & Contemporary Problems*, 2006-2007, vol. 16, p. 291.

[147] Commission of Inquiry, ILO, *Forced Labor in Myanmar (Burma), Report of the Commission of Inquiry Appointed Under Article 26 of the Constitution of the International Labor Organization to Examine the Observance by Myanmar of the Forced Labor Convention, 1930* (No. 29), Geneva, 2 July 1998. See also E. Morlino, "Labor Standards: Forced Labor in Myanmar", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases, Materials, Issues*, cit., p. 1 ff.

[148] A regime complex can be defined as «an array of partially overlapping and non hierarchical institutions governing a particular issue-area ... [R]egime complexes, are marked by the existence of several legal agreements that are created and maintained in distinct fora with participation of

overlap in their respective fields of jurisdiction (e.g. trade and labor; trade and human rights; environmental protection and human rights; etc.).[149]

6. The global and the national levels interact in a number of different ways: for example, national governments act as law-makers at the global level, but are also the addressees of global substantive and procedural standards.

7. A global administrative law has thus developed, in terms of which global regimes are encouraged, and sometimes compelled, to ensure and promote the rule of law and procedural fairness, transparency, participation, and the duty to give reasons throughout all areas of their activity.

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different sets of actors. The rules in these elemental regimes functionally overlap, yet there is no agreed upon hierarchy for resolving conflicts between rules. Disaggregated decisionmaking in the international legal system means that agreements reached in one forum do not automatically extend to, or clearly trump, agreements developed in other forums.»; see K. Raustiala and V. David, "The Regime Complex for Plant Genetic Resources", in *International Organization*, 2004, vol. 2, p. 279.

[149] The many linkages between protection of human rights and protection of the environment have long been recognized. Principle 1 of the 1972 United Nations Conference on the Human Environment (Stockholm Declaration) declared that man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. It also recognized the responsibility of each person to protect and improve the environment for present and future generations. Almost twenty years later, in Resolution 45/94, the UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment. In contrast to the earlier documents, the 1992 Rio de Janeiro Conference on Environment and Development formulated the link between human rights and environmental protection largely in procedural terms (see Principle 10). This angle was further developed in 1998, with the conclusion of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The Convention focused on the same issues as Principle 10 of the Rio Declaration and Principle 1 of the Stockholm Declaration, but in a more concrete manner, which strengthens the areas of overlap between human rights and environmental issues. For a comment on the Aarhus Convention, see M. Macchia, "Legality: The Aarhus Convention and the Compliance Committee", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases, Materials, Issues*, cit., p. 71 ff.

8. Dispute settlement by mandatory adjudication remains, as yet, the exception rather than the rule within the global legal order. Traditional diplomatic relationships and negotiations survive and operate side by side with compulsory and binding adjudication by supranational courts and the non-binding decisions of different *quasi-judicial* bodies.

9. Global regulatory regimes become effective through various means. For example, within the WTO, a number of different mechanisms are used to ensure that the rules of the regime are enforced: mutual support, dumping/antidumping, subsidies/countervailing measures, non-implementation of WTO judicial decisions/retaliation, etc.[150]

10. As there are no periodic elections at the global level, procedural accountability plays a dominant role in making global bodies responsible to global society.

11. Membership in multicultural institutions can also enhance democracy at the national level: "as international bodies come into interaction with national centers of power, they can check abuses by those national centers […] and force them into a better level of democratic

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[150] On the retaliation principle and on countervailing measures, see K. Anderson, "Peculiarities of Retaliation in WTO Dispute Settlement", in *World Trade Review*, 2002, vol. 2, p. 123; T. Giannakopoulos, "Safeguarding Companies' Rights in Competition and Antidumping/Antisubsidies Proceedings", in *Common Market Law Review*, 2006, vol. 43, p. 268; T. Jurgensen, "Crime and Punishment: Retaliation under the World Trade Organization Dispute Settlement System", in *Journal of World Trade*, 2005, vol. 39, p. 327; Y.H. Ngangjoh and R.R. Herran, "WTO Dispute Settlement system and the Issue of Compliance: Multilateralizing the Enforcement Mechanism", in *Manchester Journal of International Economic Law*, 2004, vol. 1, p. 15; J. Pauwelin, "Enforcement and Countermeasures in the WTO: Rules are Rules –Toward a More Collective Approach", in *The American Journal of International Law*, 2000, vol. 94, p. 335. In this regard, an important case arose before the WTO Appellate Body with reference to the reactions of WTO Member States against the Continued Dumping and Subsidy Offset Act of 2000 (also known as the "Byrd Amendment") approved by the US Senate. See WTO Appellate Body Report, *United States - Continued Dumping and Subsidy Offset Act of 2000 ("Byrd amendment")*, WT/DS217, 234/AB/R, 27 January 2003 and Panel Report, *United States - Continued Dumping and Subsidy Offset Act of 2000*, WT/217/R, WTDS234/R, 16 September 2002. For an analysis of the case, see M. Benedetti, "EU Countermeasures against the U.S. Byrd Amendment", in S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald and M. Savino (eds), *Global Administrative Law: Cases, Materials, Issues*, cit., p. 185 ff.

performance".[151] Perhaps the clearest example of this phenomenon in practice is provided by the European Convention on Human Rights, which provides for individual complaints to be brought before the European Court of Human Rights, which in turn has compulsory jurisdiction over its Member States.[152] These two features "give rise to a potentially expansive process of transnational dispute resolution".[153]

III. GLOBAL STANDARDS FOR NATIONAL ADMINISTRATIVE PROCEDURE*

1. INTRODUCTION

In 1989, the United States imposed an embargo on the importation of shrimp from countries that used fishing methods harmful to marine turtles. The shrimp were not a protected endangered species, but the marine turtles were. The embargo was thus motivated by the rightful concern to protect an animal species from extinction. Claiming this embargo to be a violation of Article XI of the General Agreement on Tariffs and Trade 1994 (GATT 1994), which provided for the general

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[151] R.O. Keohane, S. Macedo and A. Moravcsik, *Democracy-Enhancing Multilateralism*, IILJ Working Papers, Global Administrative Law Series, 2007/4, available at: http://iilj.org/publications/documents/2007-4.GAL.KMM.web. pdf.

[152] Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, Art. 34.

[153] R. Keohane et al., *Democracy-Enhancing Multilateralism*, cit., p. 27.

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