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AN INTRODUCTION TO GLOBAL ADMINISTRATIVE LAW

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ABSTRACT

Globalisation has brought the globe together under various regulatory regimes and formed a global state via international organisations. Administrative law has evolved beyond its original local scope to become a worldwide framework for governing global government. The term 'global administrative law' became popular in the twenty-first century's first decade. It covers the majority of the subject matter addressed by jurists in the nineteenth and twentieth centuries under the rubric of 'international administrative law,' and, like this early work, it begins with a view of what constitutes "administration" outside of a purely domestic context, including some activities of national administrative agencies and many activities of international organisations. Global regulatory regimes encompass a wide range of subjects, such as forest preservation, fishing control, water regulation, environmental protection, food safety, financial and accounting standards, internet governance, pharmaceutical regulation, intellectual property protection, refugee protection, coffee and cocoa standards, and labour standards, among others. For example, the United Nations Forum on Forests Secretariat in the Department of Economic and Social Affairs offers substantive assistance to the United Nations Forum on Forests (UNFF), conducts analytical research, and promotes discourse to improve collaboration and coordination on forest issues. The Secretariat provides technical assistance to Member States to help them enhance national capacity in forest finance, monitoring, evaluation, and reporting. The Forum monitors and reviews the implementation of the United Nations' Strategic Plan for Forests 2030. The Secretariat aids the Forum in measuring progress towards implementing the Strategic Plan and disseminates this information via the Forum website. This paper is an overview of Global Administrative Law (GAL), emphasising its importance in contemporary global governance. It addresses critical issues such as the absence of accountability mechanisms for international bodies, the uneven application of administrative norms across jurisdictions, and the increasing complexity of transnational regulation. As global concerns such as climate change, commerce, and human rights necessitate

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more coordinated solutions, GAL provides a vital perspective for assessing the legitimacy and efficacy of the global regulatory environment.

INTRODUCTION

In an era of globalisation, the convergent ideology of administrative law has been given many options to serve as an instrument for regulating administration worldwide. Global administrative law, which takes a more personalised approach to government, influences peoples' perceptions of local and international laws and accompanying politics. Globalisation introduces three concepts: privatisation of the nation, deregulation, and disinvestment. While the first notion entails restructuring the current state ownership, deregulation, as the name implies, entails a change in the nation's existing norms and regulations, followed by disinvestment, which denotes the entire elimination of the public sector to make room for the private sector. This transition begins the growth of both victims and beneficiaries. As a result, this necessitates establishing a well-developed administrative law system that will combine economic and human development. Global administrative law has created opportunities for openness, public engagement, accountability, and socioeconomic growth in the governance system. Global administrative law, a burgeoning discipline, is bringing a new governing method based on comprehensiveness and equality.[3] Only in the twenty-first century has global administrative law acquired relevance. This field of law distinguishes itself by substituting the term "world" with "globe." This, in turn, eliminates the deceptive tendency of idealising the area of law only from an international perspective and allows for varied thoughts on administrative law. Increased development of global administrative law has led to a prototype trans governmental form of administration to address the effects of global interdependence in areas such as security, economic assistance, population migration across borders, trade practices, and many others.

A global state is established through international institutions that govern sovereign states' social, economic, and political dimensions. This phenomenon has also necessitated that states relinquish aspects of their sovereign economic, social, and cultural domains to these international institutions. For instance, the United Nations Forum on Forests Secretariat within the Department of Economic and Social Affairs substantially supports the United Nations Forum on Forests (UNFF), engages in analytical research, and fosters dialogue to enhance cooperation and

[3] Oishika Banerji, An analysis of the emergence of global administrative law, iPleaders (May 29, 2023, 09:33 AM) https://blog.ipleaders.in/analysis-emergence-global-administrative-law/

coordination regarding forest-related issues. The Secretariat extends technical assistance to Member States to bolster their national capacities in forest finance, monitoring, evaluation, and reporting. The Forum plays a critical role in overseeing and assessing the execution of the United Nations' Strategic Plan for Forests 2030. The Secretariat assists the Forum in quantifying advancements towards realising the Strategic Plan and disseminates this information through the Forum's official website. In this context, a Global Administrative Law (GAL) framework is beginning to take form. Under this global governance structure, states are evolving into administrative units accountable to international institutions. The international organisation is assuming administrative responsibilities concerning the states. These developments inherently necessitate compliance with certain foundational principles and protocols of administrative law aimed at establishing consistent global standards.[4]

Global administrative law examines transformations within the global context through a specific lens. It commences with the premise that a significant portion of global governance can be conceptualised as regulation and administration and that we are currently observing the evolution of a 'global administrative space': a domain wherein the stringent separation between domestic and international spheres has predominantly eroded, wherein administrative functions are executed through often intricate interactions among officials and institutions across various tiers, and wherein regulation may exhibit considerable efficacy despite its largely non-binding characteristics. In practice, the escalating exercise of public authority within these frameworks has engendered substantial apprehensions regarding legitimacy and accountability, leading to diverse patterns of responses aimed at addressing these issues across numerous facets of global governance. Challenges related to accountability are approached through enhanced transparency, via notice-and-comment procedures in rule-making, and through novel pathways for judicial and administrative scrutiny, spanning a broad spectrum of disparate fields, including global banking regulation, the administration of Security Council sanctions, the international governance of refugees, or the domestic oversight of transboundary environmental matters. Global administrative law advocates for the synthesis of these fragmented practices and seeks to comprehend them as components of a collective, burgeoning trend towards administrative-law-inspired mechanisms for ensuring accountability in global regulatory governance and to explore

[4] Rajeshwar Tripathi, Concept of Global Administrative Law: An Overview, Vol. 67, No. 4, India Quarterly, 355 (2011) https://www.jstor.org/stable/45073012

the complexities this constellation of issues presents for both domestic administrative law and international law.[5]

HISTORICAL DEVELOPMENT OF THE THEORY OF INTERNATIONAL ADMINISTRATIVE LAW

Industrialisation, standardisation (for instance, in weights and measures), social legislation, and cross-border economic activities encompassing transport via railway and maritime vessels, alongside an increasing comprehension of the transnational dissemination of infectious diseases, collectively contributed to the latter half of the 19th century to the augmentation of both the scope and significance of national administrative agencies, as well as an enhanced awareness among these agencies of their reciprocal influence with analogous organisations in other nations. National administrative agencies commenced cultivating practices and conceptual frameworks on the diffusion of innovative regulatory methodologies and expertise, in addition to the governance of transborder matters. Many of these agencies engaged in novel modalities of cooperation amongst themselves. The proliferation of what were termed international administrative unions during the late 19th and 20th centuries, each endowed with diverse roles and authorities—ranging from the systematisation of national policies regarding postal services, telecommunications, and weights and measures to the more direct administration of rivers and natural resources—prompted contemplation regarding the international dimensions of public administration. Visionary legal scholars such as Lorenz von Stein advocated for establishing an international administrative law, with his successors subsequently delineating a domain of 'international administration' encompassing both international entities and domestic factors influencing international interests. Consequently, by the year 1902, Pierre Kazansky recognised an emergent form of 'international administration' manifesting in the endeavours of states, international societies, and their associated organs, as well as international entities such as various congresses, bureaux, commissions, and international arbitral tribunals, all aimed at safeguarding international social interests, which pertain to the welfare of individuals rather than solely the narrowly defined interests of states. He characterised international administrative law as the corpus of legal frameworks that establishes

[5] Nico Krisch and Benedict Kingsbury, Introduction: Global Governance and Global Administrative Law in the International Legal Order, Vol. 17 no.1, TEJIL, 1, 1-2 (2006) https://www.iilj.org/publications/introduction-global-governance-global-administrative-law-international-legal-order/

and regulates this administration, deriving its primary sources from treaties and customary law, including informal agreements among states.[6]

The scholarly contributions of Paul S. Reinsch, an eminent American jurist and political scientist, concerning international institutions before the establishment of the League of Nations conferred upon them the favourable designation of administrative unions, thereby laying one of the foundational stones for the functionalist paradigm that would prevail in the study of international institutions for subsequent decades. He characterised these unions as mechanisms that served the interests of State sovereignty rather than undermining it, with their legal authorities being innocuously derived from the necessity to execute their specialised functions. Despite variations among the organisations, a sufficient degree of coherence existed to allow for the identification of components indicative of a common law governing international unions. Reinsch delineated a corpus of international administrative law separate from the broader category of public international law, as it managed interactions between States and endeavours to establish positive norms for universal action. In Reinsch's perspective, international administrative law comprises the statutes and regulations formulated by international conferences or commissions that govern the relations and operations of national and international entities within domains already subject to international organisational oversight. Proficiency in specialised fields is paramount; international administration and administrative law are framed as technical disciplines that ideally eschew macro-political considerations.

This functionalist paradigm maintained its predominance until the emergence of pronounced political schisms and escalating violence during the 1930s rendered it (temporarily) impractical. As late as 1935, Paul Négulesco characterised international administration as encompassing the endeavours of a diverse range of entities tasked with safeguarding interests that existed independently of national identity or territorial jurisdiction, including national public agencies collaborating with analogous agencies in other States, international administrative unions promoting uniformity of action among disparate national public agencies, international organisations themselves wielding public authority, and even private entities addressing the needs of multiple States or the international community at large, exemplified by institutions such as the Hague Academy of International Law and the Carnegie Endowment for International Peace. He

[6] Benedict Kingsbury & Megan Donaldson, Global Administrative Law, Max Planck Encyclopedia of Public International Law (August 10, 2023, 02:46 PM) https://www.iilj.org/wp-content/uploads/2016/08/EPIL_Global_Administrative_Law.pdf

perceived international administrative law as a subdivision of public law concentrated on elucidating and systematising the norms that govern international administration.

ELEMENTS OF GLOBAL ADMINISTRATIVE LAW

The modern conceptualisation of Global Administrative Law builds upon at least three notions articulated in the burgeoning literature within this domain from approximately 1860 to 1940. The initial idea pertains to foundational knowledge. The second notion involves a bifurcated approach to a definition that aligns with this understanding: the primary objective of this discourse is to delineate the global organisation, with global administrative law being characterised as the legal framework governing such organisation. The third notion posits that 'organisation' encompasses decisions and general, albeit subordinate, principles. In numerous domestic legal systems, the organisation process is distinctly differentiated from the governance process, the latter being viewed as a component of legislation and thus falling outside the purview of administrative law. Nevertheless, the increasing significance of subordinate rule-making activities conducted by public and transnational governance entities (distinct from public councils and inter-state negotiating bodies), the pressing need to address these activities within regulations about participation, transparency, review, and accountability, and the historical precedent of such actions being subjected to legislative law methodologies in both customary and other legal systems, now necessitate the incorporation of these subordinate rule-making activities within the framework of global administrative law.[7]

CONCEPT OF GLOBAL ADMINISTRATIVE LAW

Global administrative law is predicated on the dual propositions that a significant portion of global governance can be conceptualised as administration and that such administration is frequently organised and influenced by principles of a character akin to administrative law. With the proliferation of global governance, numerous administrative and regulatory functions are presently executed within a global context rather than a national one; however, these functions manifest through a myriad of disparate forms, which span from binding resolutions of international organisations to non-binding accords within intergovernmental networks, as well as to domestic administrative actions within the framework of global regimes. Illustrative instances encompass

[7] Shah Mohammad, Omer Faruqe Jubaer & Aditi Singha Moumi, The Global Administrative Law: A Comparative Study, Volume 21 Issue 3 Version 1.0, GJHSS: F Political Science, 35, 36 (2021) https://www.researchgate.net/publication/353143470_The_Global_Administrative_Law_A_Comparative_Study

decisions made by the UN Security Council concerning individual sanctions, regulatory frameworks established by the World Bank for developing nations, the establishment of standards addressing money laundering by the Financial Action Task Force, or domestic administrative determinations regarding the market access of foreign commodities as part of the WTO framework. A considerable number of regulatory functions within global governance are also administered outside of formally recognised public governmental structures, specifically by hybrid public-private entities or entirely private organisations, such as the Internet Corporation for Assigned Names and Numbers (ICANN) or the International Organization for Standardization (ISO).

Even with these diverse forms and institutions, it is discernible in all these instances the enactment of distinctly administrative and regulatory functions: the formulation and enforcement of rules by entities that are neither legislative nor predominantly adjudicative. Should analogous actions be undertaken by a state entity, there would be scant ambiguity regarding their administrative nature (with the possible exception of instances of private regulation).[8] Traditionally, however, categorising them as administrative entities would have posed challenges due to their international characteristics; the designation 'administration' was intimately associated with the state apparatus and could, at best, refer to the domestic execution of international norms.[9] This categorical differentiation, however, has recently become contentious: the domestic and international components are too intricately interwoven within these regulatory processes. This is particularly evident in governmental networks where domestic officials are engaged in global rule-making and domestic implementation, often without any mediating action. Similarly, when the UNHCR undertakes status determination for individual refugees, the asserted distinction between international-level governing relations between states and a domestic level concerning ties between states and individuals collapses. Furthermore, WTO dispute resolution can frequently be perceived as an additional layer of judicial scrutiny over domestic administrative actions.[10] This intricate

[8] C. Tietje, Internationalisiertes Verwaltungshandeln (2001); S. Battini,

Amministrazione senza stato (2003); J. E. Alvarez, International Organizations as Law-makers (2005), at

244–245; D. Sarooshi, International Organizations and Their Exercise of Sovereign Powers (2005), at 14–17. 4 See Cassese, 'Global Standards for National Administrative Procedure', 68:3 Law & Contemporary Problems (2005) 109, at 112–113

[9] Pallis, 'The Operation of UNHCR's Accountability Mechanisms', IILJ Working Paper 2005/12, available at www.iilj.org/papers/IILJ2005_12Pallis.htm.

[10] Cassese, 'Global Standards for National Administrative Procedure', 68:3 Law & Contemporary Problems (2005) 109, at 112–113.

interconnection of the various spheres compels us to perceive the amalgamation of regulatory forms as constituting one highly diverse yet distinctly 'global' administrative domain.

The intertwining of domestic and international spheres within governance yields significant implications for the frameworks through which administrative actions may be scrutinised and accountable. Under the traditional differentiation between the domestic and international domains, international standards were established globally; however, the sovereign state retained the autonomy to adopt these standards, as their mandatory nature and impact were contingent upon domestic ratification and execution. This autonomy led to the perception that domestic accountability frameworks were deemed reasonably effective: legislative processes and administrative protocols could exert substantial influence.[11] However, as the domestic and international processes become increasingly interconnected, this autonomy erodes, diminishing the efficacy of traditional accountability mechanisms. While not formally enforceable, decisions made within intergovernmental frameworks, such as the Basel Committee for Banking Supervision, obligate the domestic officials involved to adhere to implementation, thereby exerting considerable influence on subsequent domestic administrative procedures. Findings from the UNHCR regarding refugee status directly influence the circumstances of individual refugees. Moreover, rulings from WTO dispute resolution mechanisms are frequently determinative for domestic administrative actions; the repercussions of noncompliance are excessively burdensome, thereby precluding genuine autonomy for domestic administrative processes from diverging from WTO determinations. Within the global administrative landscape, the classical division of responsibilities among various levels has predominantly diminished concerning the facilitation of regulatory engagement and accountability.

The emerging issues of accountability and participation are progressively being tackled, partly due to the vested interest of global regulatory institutions and stakeholders in enhancing their legitimacy amidst escalating political adversities. In numerous domains of global governance and manifested in various intricate forms, some mechanisms are surfacing to augment the accountability of global regulatory decision-making processes. The structural resemblances among many of these diverse phenomena are remarkable: they indicate a burgeoning trend towards establishing mechanisms comparable to domestic administrative law frameworks at the global level; central to these mechanisms are transparency, participation, and review. This trend is exemplified, for instance, by the Inspection Panel instituted by the World Bank to ascertain its

[11] Benvenisti, 'Exit and Voice in the Age of Globalization', 98 Michigan Law Review (1999) 167

adherence to internal policies, in the notice-and-comment procedures embraced by international standard-setting entities such as the OECD;[12] in the integration of NGOs into regulatory bodies like the Codex Alimentarius Commission; or the stipulations regarding foreign participation in domestic administrative processes as articulated in the Aarhus Convention. This represents a widespread trend towards formulating a global administrative law. The desirability of pursuing accountability, participation, and transparency in specific instances raises profound considerations. Accountability may undermine effectiveness, participation could lead to capture by vested interests, and openness might facilitate the ascendancy of populism over justice. The institution's design is crucial: robust accountability may exist for inappropriate individuals or concerning irrelevant topics. In descriptive terms, setting aside such complexities, global administrative law, as we conceptualise it, encompasses the legal mechanisms, principles, and practices, along with the supporting social understandings, that foster or otherwise influence the accountability of global administrative bodies, particularly by ensuring that these entities adhere to adequate standards of transparency, consultation, participation, rationality, and legality, and by providing effective oversight of the regulations and decisions these entities produce. We characterise this domain of law as 'global' rather than 'international' to capture the intertwining of domestic and international regulatory frameworks, the involvement of a wide range of informal institutional arrangements (many of which feature significant roles for non-state actors), and the foundational aspects of the field rooted in normative practices and sources that are not entirely encompassed within conventional interpretations of international law.

THE EMERGING GLOBAL ADMINISTRATIVE LAW

SCOPE

Global administrative law can be conceptualised as the examination of various principles, frameworks, and implementations designed to enhance comprehension from a societal standpoint, which holds responsibility for influencing the compliance of global administrative entities. This endeavour aims to regulate the parameters of clarity, reasoned decision-making, and legality while executing the authority of rule-making. In a certain sense, global administrative law integrates diverse domains of law that pertain to rule-making activities or possess administrative characteristics, which have previously been regarded in isolation and specificity. The true essence

[12] Salzman, 'Decentralized Administrative Law in the Organization for Economic Cooperation and Development', 68:3 Law & Contemporary Problems (2005) 189.

of global administrative law lies in its amalgamation of international administrative law and public law through an international lens. This domain of law has afforded a sociological perspective to legal practice, thereby suggesting that the practice is fundamentally about incorporating various methods to preserve multiple laws to establish a transnational governance framework that resembles the functions of administrative bodies operating at the domestic level. Consequently, the emphasis of global administrative law is a synthesis of both substantive and procedural legal frameworks aimed at facilitating an effective governance mechanism on a global scale.[13]

DEVELOPMENT

Although the initiatives associated with establishing global administrative law commenced in the mid-19th century, the comprehensive framework materialised only in recent years. This domain garnered significant attention during the 1920s and 1930s. This branch is in a nascent development phase and has already been referenced in the works of various social reformers, although such references have remained mainly strong. The emergence of this legal field has reinstated a noteworthy historical narrative. By deconstructing conventional perceptions of administration, global administrative law is progressing towards realising welfare and efficiency within a global administrative framework. Regulatory measures across sectors such as environmental protection, public health, finance, and economic governance are increasingly adapting to an international context. Prominent entities within the realm of global governance comprise:

- An international organisation possessing a formal structure includes the World Trade Organization (WTO), International Monetary Fund (IMF), World Health Organization (WHO), United Nations Organization (UNO), and UNICEF.
- Natural regulators engaged in administrative functions.
- Private entities performing regulatory functions.
- Multinational networks of collaborative arrangements.

A diminution in the authority of domestic administrative agencies is indicative of the advancement of global administrative law. What remains is the thorough reconfiguration of administrative practices through the judicious application of principles such as clarity, equitable procedures, the review of established regulations and decisions, and the enforcement of these principles as deemed necessary.

[13] Oishika Banerji, Supra Note 3

SOURCES

The principles previously delineated originate from three prominent branches of law, specifically:

1. International law
2. Administrative law
3. Public law

The rationale for the inclusion of international law as a foundational source for the development of global administrative law is predicated upon the fact that the establishment of rules, regulations, and policies is undertaken with due consideration of the ideologies emanating from regions that possess specialised knowledge and have historically engaged in this domain. Additionally, global administrative law endeavours to remedy the acknowledged complexities within international law. Given that legitimacy and accountability are fundamental tenets of decision-making processes, a requisite exists for evaluating administrative actions undertaken by international entities. This evaluation constitutes a vital function of global administrative law.

Administrative law represents a domain of jurisprudence that encapsulates the practical application of established legal principles. It pertains to the procedural implementation of existing norms. The significance of this discipline within the framework of global administrative law is profound, as the foundation upon which global administrative law is constructed is inherently derived from administrative law itself. This field necessitates a global perspective to facilitate a robust regulatory framework for governance. Public law is the third and arguably most critical branch in formulating global administrative law. Public law encompasses not only public policies and welfare considerations but also principles of natural justice, human rights, equitable distribution of resources, and productivity, among other pertinent elements within its purview. These components are imperative for incorporation when global administrative law is enacted. Consequently, these three legal fields can be collectively acknowledged as the constituents of global administrative law.

FEATURES

What can be deduced from the origins of global administrative law is that this discipline aspires to emulate the trajectory of public law, stipulating that it undergoes scrutiny before establishing definitive guidelines. Consequently, it may be articulated that global administrative law possesses several salient characteristics, namely:

A sector-based legal domain: The classification of global administrative law as a sector-specific legal framework indicates a need for uniformity in applying legal principles across various domains in policy formulation. This attribute of international administrative law favours a case study methodology, which may be employed across academic institutions as a vehicle for instruction and practice, thereby facilitating the adoption of this discipline as a focus of scholarly inquiry and research.

An interrelationship of homogeneity and heterogeneity: Global administrative law emerges from synthesising both public and private legal frameworks, catalysing the establishment of regulatory regimes intended for global applicability. The involvement of both public and private components is imperative for effectively operating these regulations. This engenders a hybrid character within global administrative law, essential for addressing public health.

A manifestation of interconnectedness between two opposing sectors: Global administrative law serves as a conduit for the convergence of disparate sectors, facilitating the exchange of rules, regulations, policies, and procedures, thereby introducing variability that aids in formulating global legal frameworks. Thus, through discussions, debates, and conflicts among various administrative entities, the creation and evolution of laws and policies emerge, which can be universally applied to enhance global governance.

State influence: Any sovereign state globally constitutes a critical element in fostering the development of global administrative law. However, a state is insufficient in isolation to facilitate the formation of global administrative law; thus, intrinsic mechanisms within global administrative law itself can complete the process. The state operates as a testing ground for implementing global administrative law, and the resultant effects subsequently inform modifications to the established rules and regulations as necessary.

Thus, these characteristics delineate the framework of global administrative law. The enumeration of features remains subject to experimentation and augmentation as this field of law is continuously evolving.

STRATEGIES FOR DEVELOPMENT

Global administrative law is characterised by an inherently positive objective, multiple perspectives, and an intricate and robust framework. The advancement and evolution of this domain occur daily. However, such development necessitates careful formulation, with a keen

awareness of the global repercussions of these advancements. This context establishes the requisite strategies essential for the evolution of global administrative law. Below are several methods that warrant consideration to ensure a more favourable future for this legal discipline:

(a) The procedural due process component of global administrative law must integrate the tenets of natural justice, clarity, and consensus derived from mechanisms for dispute resolution to facilitate the adjudicative processes worldwide.
(b) In substantive due process law-making, particular attention must be directed towards contemporary global developments, encompassing the public administration of resources and services, environmental issues, agricultural practices, labour standards, human rights, pharmaceutical trade, material progress, and other pertinent concerns.
(c) Additional focus areas for global administrative law include the principles of responsibility and accountability, particularly regarding administrative foundations essential to achieving efficiency and equity.
(d) The principle of accountability should be rigorously implemented across various tiers of administrative effectiveness.
(e) The six dimensions of accountability infusion include Examination of the concepts, regulations, or policies at both external and internal levels.
(f) Analysis of the relationship between these policies and the states involved.
(g) Evaluation of the preventive measures that have been implemented and adopted.
(h) Compensation for losses or damages incurred by individuals due to the measures mentioned earlier.
(i) Consideration of humanitarian rights on a global scale.
(j) Clarification of state responsibilities and the specific issues for which a state may be held accountable.

Formulating strategies for advancing an entirely novel concept on a global scale poses considerable challenges. Historical events and circumstances have highlighted the persistent inequalities that exist worldwide. Thus, while the strategies above may be employed to address these disparities, it is imperative to acknowledge that the most effective solutions regarding the evolution of global administrative law can only be discerned through practical application and experiential learning in this domain.

GLOBAL CONSTITUTIONALISM

In their distinct methodologies, global constitutionalism and global administrative law represent endeavours to address the perceived legitimacy shortfall within global governance. With the transference of public authority to the global domain, the criteria for legitimacy concerning transnational institutions have begun to align more closely with those standards typically applied to domestic governments; viewed from this perspective, the majority of transnational entities exhibit significant deficiencies – whether it be the UN Security Council, characterised by its unrepresentative membership and opaque decision-making processes, the World Bank, which operates under disproportionately weighted voting mechanisms, or the Codex Alimentarius Commission, which employs biased procedures for arriving at decisions. None of these institutions appears to adhere to democratic principles meaningfully; legality is, at best, a minimal consideration in the decision-making process, and rights are afforded a peripheral status. Nonetheless, some scholars contend that the comprehensive application of domestic legitimacy standards may be misguided, or at the very least, premature, given that the challenges posed by global institutions differ fundamentally from those encountered in domestic political contexts and that these issues can predominantly be resolved through the frameworks of domestic constitutional orders, thereby diminishing (or at least mitigating) the necessity to establish novel global structures. Before evaluating the respective capabilities of global constitutionalism and global administrative law, it is imperative to acquire a more nuanced understanding of the scope and nature of the challenges presented by global governance.[14]

The definition of 'constitutionalism' in the global context is debatable, with various interpretations ranging from focussing on human rights and judicial review in international institutions to advocating for legalising post national politics and establishing a global order based on a specific constitution. In a manner befitting a rigorous constitutionalist framework, such a moral interpretation of the international institutional schema is consequently perceived as a rational countermeasure to the mere vicissitudes of historical development. Establishing this linkage to domestic foundational constitutionalism necessitates the adoption of a comprehensive ambition, an ambition aimed at constructing a coherent, justified political framework that encapsulates both its allure and the origin of significant challenges. Numerous challenges are intrinsically associated with the reality that such an all-encompassing reconstruction would necessitate extensive

[14] Nico Krisch, Global Administrative Law and the Constitutional Ambition, 10/2009, LSEWP, 1, 3 (2009) https://eprints.lse.ac.uk/24563/1/WPS2009-10_Krisch.pdf

institutional transformation and a profound alteration of the societal foundations upon which the global order is predicated. The difficulties inherent in the holistic approach are exacerbated within a polity that, more so than even the most multicultural domestic environments, is characterised by pronounced – potentially radical – social and cultural heterogeneity. Even at the national level, the suitability of foundational constitutionalism as a vision for diverse societies has been called into question, particularly in contexts where consensus remains elusive, even regarding the most fundamental procedural aspects. Specifically, the assertion that the political system should be established upon impartial regulations that direct and delineate everyday political engagement has faced critiques for obscuring the contentious nature of fundamental issues and legitimising the pre-eminence of certain social positions (and the groups that support them) over others. The greater the diversity and contention within the social milieu, the less appealing the notion of solidifying the political framework within a seemingly neutral consensus becomes, thereby enhancing the attractiveness of either temporary, contractual agreements among groups or institutional mechanisms that maintain fundamental issues open to ongoing debate and revision.[15]

This issue becomes especially pronounced within the global milieu where consensus regarding the extent of the ultimately authoritative polity remains elusive, as does any form of hierarchical organisation among disparate levels of the global polity—namely subnational, national, regional, or global. Each of these distinct levels grapples with legitimacy challenges that obstruct their assertions of supremacy over others: the global polity is unable to establish any robust, democratic mechanisms for participation to legitimise its decisions, while regional, national, and subnational entities also encounter legitimacy shortfalls due to their inherent under inclusiveness; for matters that significantly impact external stakeholders, their authority to make decisions can only ever be circumscribed and provisional. Under such conditions, the exhaustive delineation of decision-making responsibilities that holistic constitutionalist frameworks invariably necessitate—typically manifesting in a quasi-federal structure—will likely prove inadequate; granting any particular level the ultimate authority on a matter of global significance will perpetually appear contentious. Moreover, the holistic objective raises challenges of a more pragmatic nature. On the one hand, it will invariably seem somewhat impractical within a global political landscape that remains starkly distanced from idealised models. However, this disconnect may not inherently constitute a problem—considering that much of contemporary political theory may have initially appeared unrealistic or utopian—it serves as a cautionary note to dissociate the constitutionalist endeavour from prevailing reform initiatives. For if the disparity with actual conditions is excessively

[15] Ibid

pronounced, efforts to engage in dialogue concerning reforms in the present context may likely result in a dilution of aspirations—shifting towards a considerably more circumscribed form of 'constitutionalism' that, instead of fulfilling the promise of the domestic ideal, merely legitimises substandard structures. Even more concerning, the endeavour to re-establish global governance on an extensive scale under current political conditions may inadvertently favour those actors who currently wield dominance in international relations: in a context as unequal as that of global politics, initiatives aimed at establishing a stable framework of rules and institutions—effectively 'constituting' international society—are destined to endorse structures that predominantly benefit the powerful. The attempt by certain parties to interpret the UN Charter as a constitution can be viewed as precisely this: employing constitutional rhetoric in this context is far more likely to legitimise an institution that perpetuates the post-World War II distribution of power than to facilitate critiques adequate to fulfil the promise of political self-governance that constitutionalism suggests.

SYSTEM & PRINCIPLES OF GLOBAL ADMINISTRATIVE LAW

The presence of a plethora of rule-making entities, coupled with a notable heterogeneity of legal frameworks that govern various aspects of global administration, significantly exacerbates the challenge associated with the systematisation of Global Administrative Law (GAL). Concurrently, the normative dimension inherent in GAL largely shapes the particular characteristics of the established legal regimes, thereby providing a basis for its characterisation as a form of global law rather than merely international law. The methodologies employed in the conceptualisation and sources of GAL exhibit distinct variations, both with the composition of such sources and the criteria utilised for their classification. Thus, revisiting the foundational perspectives of the New York school, GAL is constituted by:

- The principles of international public law, whose primary sources encompass international treaties and, in certain instances, customary international law.
- The provisions of national administrative law encompass the application of these principles for the execution of specific transnational rules or standards, alongside the reciprocal influence exerted by national legal norms on the operations of global institutions.
- The internal procedural regulations of international intergovernmental organisations.

➢ The internal norms produced by autonomous frameworks are embodied in interstate, hybrid, and private entities, frequently referred to as soft law, alongside various policies or guidelines.

Simultaneously, the framework of GAL may also be examined through the lens of the operational characteristics of the constituent legal regimes (a variation on the traditional classification of international law instruments into self-executing and non-self-executing). Specifically, it is upon these foundations that R. Stewart advocates for the categorisation of Global Administrative Law into three distinct types of legal regimes:

- ❖ International Treaty-Based Regimes that Directly Govern Non-State Actors.
- ❖ International Treaty-Based Regimes that Regulate through Member States (in this scenario, the State or its public administration may function either as a regulated entity or as an administrative subject accountable for implementing global norms in overseeing the activities of non-state actors).
- ❖ Complex Regimes that encompass subsidiary norms adopted by Member States (often through majority consensus) or administrative bodies established within the legal regime, which simultaneously govern state conduct and are employed by States to regulate the operations of entities within the private sector.

Revisiting the fundamental definition of Global Administrative Law (GAL), it is imperative to emphasise the critical importance attributed to the articulation of its distinct principles. Primarily, this matter is influenced by the prevalent challenges associated with the assurance of legitimisation, accountability, and democratic governance in the operations of various transnational entities involved in global administration. In contrast to the public administration frameworks of sovereign states, which are constrained by binding constitutional provisions, accompanied by a robust system of checks and balances, and mechanisms for public oversight, the instruments available for regulating the actions of global administration remain considerably restricted. Consequently, the establishment and steadfast adherence to certain universal principles engender an adequate degree of trust and accountability among the participants in global administration. The multi-polar nature of GAL introduces complexities in articulating the overarching tenets of legal regulation. The Italian scholar S. Cassese has proposed a noteworthy approach to this dilemma. Through an examination of the stipulations within the WTO agreements and the procedural rules of the Codex Alimentarius Commission, he has derived a set of norms that are prevalent across these

frameworks and govern aspects such as transparency, harmonisation, equivalence, consultation, and control procedures.[16]

In this context, transparency is analysed from two perspectives. Firstly, it necessitates those decisions made by public administration be promptly published or communicated to relevant stakeholders; secondly, it imposes an obligation upon public administration to elucidate the rationale behind its decision-making. Harmonisation encourages national public administrations to align their actions and decisions with international standards, guidelines, and recommendations, not solely those established explicitly by international treaties but also those articulated by pertinent international organisations and their respective bodies. Equivalence is regarded as a normative category for evaluating public administration measures of individual national states, such that these measures are considered equivalent if they provide a level of protection or impose restrictions comparable to those of other concerned parties. Consultations serve as a mechanism for the interaction among public administrations of various nations concerning the coordination of interests. Essentially, consultations may be distinctly considered for the resolution of conflicting interests and for the harmonisation of collective public interests (for instance, international trade, environmental protection, labour development, etc.). Ultimately, the stipulations regarding control procedures delineate the requirements for the accessibility and characteristics of national guidelines that ensure compliance with international obligations (such as certification, licensing, and pre-shipment inspection, among others).[17]

CHALLENGES TO GLOBAL ADMINISTRATIVE LAW

GAL was developed as an inclusive framework that does not exclude other methodologies, as it emerges directly from the intricate realities of global governance. This characteristic constitutes its principal strength; however, concurrently, it may also signify its principal theoretical vulnerability. GAL, through its academic contributions, has persistently endeavoured to strike a balance between normative considerations and pragmatic realities, between specific case studies and overarching theories, and between its legal foundations and insights from various other disciplines. Indeed, GAL serves as a descriptive account of an empirical phenomenon manifesting within global

[16] Borys Kormych, Global administrative law: the key aspects of conceptualising, ResearchGate (September 24, 2023, 06:10 PM) https://www.researchgate.net/publication/332548322_Global_administrative_law_the_key_aspects_of_conceptualizing

[17] Ibid

governance and as a corpus of scholarship and theory aimed at comprehending that phenomenon. This distinctive attribute sets GAL apart from other international law theories, representing either a theoretical construct devoid of further implications or embodying a theoretical framework coupled with an activist community. From this vantage point, GAL resembles national administrative law and analogous legal domains, where the term encompasses both the academic discipline and the associated body of rules and practices.[18]

Nevertheless, GAL should be regarded as something other than self-sufficient or as the exclusive analytical framework. In numerous instances, identical issues can be elucidated by applying tools derived from administrative law or through principles of private law. For example, in scenarios involving dispute resolution via arbitration, one may scrutinise the phenomenon through the lenses of private law, civil procedure, and private international law without necessitating recourse to public law: moreover, the concepts of participation and transparency within decision-making processes may be interpreted as manifestations of fiduciary duties; furthermore, a variety of legal challenges may be addressed through mechanisms rooted in private law—such as tort claims or liability actions—rather than relying solely on administrative law-type review mechanisms.

Moreover, in addition to a notable success regarding the works produced, throughout its fifteen-year existence, GAL and its associated scholarship have manifested two predominant deficiencies: the mislabeling of GAL and an underappreciation of its inherent complexity. The initial deficiency pertains to GAL's academic dimension; the latter primarily addresses GAL as a sophisticated assemblage of prevailing practices, regulations, and procedures and how this assemblage has frequently been perceived. The mislabeling of GAL denotes the prevalent inclination, particularly among emerging scholars, to invoke GAL either as a means to elucidate historical phenomena that do not necessitate GAL for comprehension or due to the belief that merely referencing GAL serves as a "panacea" capable of resolving all conceptual legal dilemmas. In essence, GAL is often invoked superficially, lacking adequate justification for its necessity and the reasons why international law may not readily provide an appropriate framework. At times, GAL principles such as participation and transparency are endorsed uncritically, without thoroughly examining their comprehensive implications and effects on the decision-making process. It has indeed been observed that "*GAL has evolved into an appealing brand that attracts attention to one's scholarship, thereby being utilised whether suitable or not. When all matters concerning transnational or international governance are*

[18] Casini, Lorenzo, Global Administrative Law (January 31, 2019). Jeffrey L Dunoff and Mark A Pollack (eds), International Legal Theory: Foundations and Frontiers (Cambridge University Press, 2019, Forthcoming), Available at SSRN: https://ssrn.com/abstract=3328120 or http://dx.doi.org/10.2139/ssrn.3328120

subsumed under GAL, it eerily resembles the destiny of Multi-Level Governance. It thereby forfeits its explanatory efficacy and methodological rigour."

Furthermore, scholarly discourse occasionally undervalues the intricacy of GAL as a legal domain, necessitating a multidisciplinary approach encompassing both legal fields—namely international and comparative law, as well as domestic administrative law—and ancillary disciplines, including political science and sociology. Specifically, GAL scholarship does not consistently acknowledge that GAL is predicated on three principal sources: international law, administrative law, and international administrative law. Should this consideration be disregarded, there exists a considerable risk that phenomena attributed to GAL as a "novel" legal occurrence may, in actuality, be well-established and relatively antiquated within other domains. For instance, international law has historically examined how international norms have directly influenced individuals; when instances of this influence surged markedly over the preceding decade, and international law was insufficiently regarded in their examination, it would be erroneous to assert that the topic was "uncovered" by GAL and its scholarly contributions.[19] GAL scholarship has not always fully integrated other viewpoints and areas to promote inclusivity. Shortcuts have been developed using self-referential case studies that assume the "holy" GAL will rescue the world. This led to several misconceptions within GAL scholarship and among other academics. GAL and its literature, for example, are considered wholly and primarily in the normative dimension, even though it also has many positive or empirical aims.

CONCLUSION

Introducing a world without bias, deception, or anarchy is always welcome. As a result, the creation of global administrative law provides hope in a divided globe. The dynamic nature of this sector generates both solutions and questions, which are required for any administrative system to work. The ideals of diversity, equality, and justice are resurfacing, and this time, their efficacy is far more remarkable for administrative organisations worldwide.

GAL is an essential framework for understanding and resolving the problems of global governance in an increasingly linked society. By emphasising values such as openness, accountability, and procedural fairness, GAL tries to address regulatory gaps left by traditional international law, which frequently fails to handle international and transnational players' complex and powerful impact.

[19] Ibid at 23

Creating GAL is a crucial step towards legitimising administrative authority on a global scale, fostering more equal and just governance arrangements. It promotes international institutions, businesses, and other transnational organisations to set standards that guarantee their activities are successful and consistent with basic legal rules.

However, GAL is still emerging, and its implementation is unequal, reflecting greater issues in global governance, such as power asymmetries between states and non-state actors and varied levels of commitment to these principles between jurisdictions. Despite these obstacles, GAL is vital in creating a more responsible and participatory global administrative system. As the international community confronts grave concerns such as climate change, global health crises, and economic insecurity, GAL principles and methods will be critical in creating a more transparent, responsive, and legitimate global order.