International Organizations as Law-Makers

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- Description
- Theory
- Prescription
Thesis:
- Change in Sources of International Law
- Change in Content of International Law
- Change in Legally Relevant Actors

Producing:
- Changing Conceptions of Compliance / Enforcement
- New Forms of Challenges to Legitimacy of Both IOs and International Law
  - Vertical
  - Horizontal
  - Ideological
Examples of New IO-Sources of Law

- Changes in Treaty Making
  - UN Treaty Making Conferences
  - Treaty Making by Experts
  - Managerial Treaty Making
  - Treaty Making with Strings Attached
Other Kinds of IO Law

- Security Council Resolutions
- The Codex Alimentarius
- ICAO Standards & Recommended Practices
- IO Codes of ‘Best Practices’
- ILO Recommendations
- IAEA Standards
- The FAO’s Food Additives Regime
- UNEP’s Prior Consent Regime for Pesticides
- WTO Soft Law
- WHO’s Code on Marketing Breastmilk Substitutes
- World Bank Guidelines
- IMF Conditionality

- One result: Emerging Global Administrative Law
Intellectual History

- Functionalism (example: Mitrany)
- Realism (example: Morgenthau)
- Disaggregationalists (example: Slaughter / Moravcsik)
- Crits (examples: Kennedy / Koskenniemi / Anand / Mutua)
- Constructivism (examples: Wendt / Chayes)
  - Crucial idea: states ↔ IOs
Traditional Regulation

- **Nature of Law**
  - Centralized
  - Command & control
  - Rigid & fixed
  - Uniform rules
  - Generalized

- **Organization**
  - Top-down hierarchy
  - Formal

- **Central Actors**
  - State / public

IO Governance

- **Nature of Law**
  - Decentralized
  - Coordination / orchestration
  - Flexible & adaptable
  - Diversity
  - Contextualized variances

- **Organization**
  - Horizontal network
  - Informal

- **Central Actors**
  - Multiple levels of government
  - Multiple public and private participation
  - Decentralization and principle of subsidiarity

Based on Orly Lobel, The Renew Deal, 89 Minn. L. Rev. 342 (2005)
Traditional Regulation

- **Law-making Process**
  - Static
  - One-shot
  - Rigid & fixed

- **Adjudicative Approach**
  - Reactive
  - After-the-fact judgment

IO Governance

- **Law-making Process**
  - Dynamic
  - Iterative / repeat learning
  - Experimental
  - Promotes innovation

- **Adjudicative Approach**
  - Ongoing benchmarking

Based on Orly Lobel, The Renew Deal, 89 Minn. L. Rev. 342 (2005)
Global Administrative Law


- **Definition:** Global administrative action is rulemaking, adjudications, and other decisions that are neither treaty-making nor simple dispute settlements between parties.
Global Administrative Law

- **Categories:**
  - Administration by formal IOs
  - Administration based on collective action by transnational networks of national regulatory officials
  - Distributed administration conducted by national regulators under treaty, network, or other cooperative regimes
  - Administration by hybrid intergovernmental-private arrangements
  - Administration by private institutions with regulatory functions
Subjects of Global Administration

- States
- Individuals
- Corporations
- NGOs and Other Collectivities
Emerging Principles

- Procedural participation and transparency
- Reasoned decisions
- Review
- Substantive standards:
  - Proportionality
  - Means-ends rationality
  - Avoidance of unnecessarily restrictive means
  - Legitimate expectations
- Restricting immunities of IOs and their officials
A Taxonomy of Ways to Apply the Principles

- Domestic institutions as checks on global administration
- Internal global mechanisms for participation and accountability
- Global disciplines on distributed administration