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Global Law: A Legal Phenomenon Emerging from the Process of Globalization

PIERRICK LE GOFF*

ABSTRACT

This article addresses the following question: Is Global Law merely a trendy theory, or are there concrete and factual elements allowing submission of irrefutable evidence of a movement toward the creation of a stand-alone international legal system? In this piece, Le Goff explores the idea of global law, and whether a harmonized scheme based on converging national laws and practices, international custom and values, among others, is emerging in the global economy. The first part of the article attempts to define the notion of global law, and to distinguish global law from other disciplines claiming a direct link to or regulatory effect over international matters, such as the lex mercatoria. The second part of the article looks at the process of creating global law through an analysis of the role played by international institutions and law practitioners in shaping its contents. Included is discussion concerning whether global law meets the formality criteria required to qualify as a self-standing legal field.

INTRODUCTION

In connection with the process of globalization and its impact on international trade, the question has arisen as to whether a notion of global law, converging around common international practices and values, is emerging for the benefit of multinational economic players and the international community at large.¹ In

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1. This question was one of the topics debated during the Globalization of the Legal Profession Symposium at the Indiana University School of Law, on April 6, 2006. This article sets out in greater detail the views expressed by the author during his presentation at the Symposium.

2004, one of the most reputable European international and comparative law specialists made the point that “[t]he growing globalisation requires a harmonisation and unification of the rules of law governing world trade.”² Not surprisingly, this statement was made when advocating the need for a “Global Commercial Code.”³ Writing on the challenges faced by international lawyers in a globalized economy, H. van Houtte and P. Wautelet have rightfully highlighted the extent to which diverging national laws create significant obstacles to cross-border transactions, such that efforts toward the harmonization of national legal principles through the production of a “set of global substantive rules” are more than welcome.⁴

The expression of these views by highly qualified scholars clearly show that international academic circles take the issue very seriously. But are we concerned here about a trendy theory for researchers attracted by a new source of inspiration and legal exploration, or are there really concrete and factual elements allowing submission of irrefutable evidence of a movement toward the creation of a stand-alone international legal system? This is precisely the question that we will endeavor to address in this article.

The analysis of the concept of global law is *per se* controversial, like many questions related to international relations and legal theory.⁵ As Professor Ribstein understandably pointed out during the Indiana University School of Law symposium, *Globalization of the Legal Profession*, it appears that the concept of global law is rather lacking the precision and formality one would normally expect from a classical legal system.⁶ Where does one access the information on the rules and regulations forming the global law? Who determines the contents of global law? Where are the

2. Ole Lando, *A Global Commercial Code*, 50 RECHT DER INTERNATIONALEN WIRTSCHAFT [R.I.W.] 161, 161 (2004) (F.R.G.).

3. *Id.* Professor Lando takes the view in his article that existing international conventions as well as other internationally recognized legal principles should be collected to form the substance of this “Global Commercial Code.” *Id.*

4. Hans van Houtte & Patrick Wautelet, *International Lawyers and Uniform Law*, in THE INTERNATIONALIZATION OF THE PRACTICE OF LAW 89, 89–92 (Jens Drolshammer & Michael Pfeifer eds., 2001).

5. A good example of such controversial issues is the debate over the years on the existence of the *lex mercatoria* (law of merchants) as a self-proclaimed set of rules and principles specifically developed for the needs of international commercial transactions. For a comprehensive analysis of this debate, see URSULA STEIN, LEX MERCATORIA—REALITÄT UND THEORIE 179–252 (Verlag Vittorio Klostermann 1995); KLAUS PETER BERGER, FORMALISIERTE ODER “SCHLEICHENDE” KODIFIZIERUNG DES TRANSNATIONALEN WIRTSCHAFTSRECHTS: ZU DEN METHODISCHEN UND PRAKTIKSEN GRUNDLAGEN DER LEX MERCATORIA 29–108 (1996).

6. Larry E. Ribstein, Professor, University of Illinois College of Law, Remarks at the Indiana University School of Law Globalization of the Legal Profession Symposium (Apr. 6, 2006).

courts sanctioning violations of global law? On what fundamental basis is global law supposed to represent a binding set of international rules? What makes global law an independent legal system? True, all of these questions raise valid points, which to a large extent remind one of similar criticism expressed by skeptical scholars challenging the emergence of the *lex mercatoria* as a valid and recognized collection of international commercial principles.⁷ However, should these interrogations not be viewed as the best demonstration of the factual existence of global law? After all, one can hardly criticize something that does not exist.

This being said, before even reaching the phase of debating whether global law meets the formality criteria required to qualify as a self-standing legal field, the first challenge is to distinguish global law from other disciplines claiming a direct link to or regulatory effect over international matters. This will be the subject of the first part of this article attempting to define the notion of global law. The second part will then look at the process of creating global law through an analysis of the role played by international institutions and law practitioners in shaping its contents.

I. THE NOTION OF GLOBAL LAW

When dealing with a relatively new notion that interfaces and possibly overlaps with existing fields, a preliminary strategy is to approach the concept by applying the negative definition system. This implies attempting to define global law by way of exclusion, i.e., by what it is not. Once this is done, we will be in a position, through a more positive approach, to suggest a comprehensive definition of the notion of global law.

A. *Global Law and Related Legal Notions*

The notion of global law entertains some relations at least with the fields of international public law, international private law, comparative law, international trade law and, last but not least, the *lex mercatoria*. It will be necessary to review these various categories in order to demonstrate why none of them can be fully assimilated with the notion of global law, even if all of them cover issues relevant from a global legal perspective.

7. BERGER, *supra* note 5, at 38.

1. Global Law and International Public Law

International public law is traditionally defined as the set of norms and rules governing the relations between governments or state entities.⁸ As a result, international treaties entered into by state representatives at the bilateral or multilateral level constitute the body of international public law. Among traditional topics falling within this field of law are the laws of war, international human rights, world intellectual property, and world health.⁹

While international public law is certainly quite relevant to global law, the fact that it deals mainly with relations between governments makes it too narrow to cover the full regulatory needs of a global economy and its multitude of private economic players. Global law, by nature, is therefore different from international public law.

2. Global Law and International Private Law

While the concept and extent of international private law may vary from one legal system to another, it can generally be said that this field of law serves the purpose of establishing i) rules for the selection of the law applicable to an international situation or contract and ii) rules for the selection of the court competent to rule over an international dispute.¹⁰ In a nutshell, international private law covers both the areas of conflict of laws and conflict of jurisdictions.

Obviously, having a set of rules facilitating the selection of the law governing an international contract or the court competent to settle a dispute between foreign commercial companies, to take just two traditional examples, is highly relevant to a global economy. However, the concept of global law cannot be reduced to a collection of binding norms enabling governing law or forum selection. The main reason for this is that, in the end, international private law leads to national law and national courts; once a governing law is designated by applying the relevant choice of law rule, such governing law is the national law of a specific country. Similarly, once selected by applying the relevant forum selection rule, the court designated by applying this rule is the national court of a specific country. From that angle and al-

8. See MICHAEL SCHWEITZER, *STAATSRECHT III: STAATSRECHT, VÖLKERRECHT, EUROPARECHT* 3, ¶ 7 (1986).

9. For a comprehensive list of typical public international law topics, see Wikipedia.org, List of International Public Law Topics (June 16, 2006), http://wikipedia.org/wiki/list_of_international_public_law_topics.

10. See BERNARD AUDIT, *DROIT INTERNATIONAL PRIVÉ* 4-19 (2^e éd.1997); PIERRE MAYER, *DROIT INTERNATIONAL PRIVÉ* 3-4 (3^e éd. 1987); YVON LOUSSOUARN & PIERRE BOUREL, *DROIT INTERNATIONAL PRIVÉ* 5-23 (3ème éd. 1988).

though it may sound paradoxical, international private law is actually not a very international legal field. A few international conventions have enabled progress toward harmonizing at the international level the conflict of laws or conflict of jurisdiction rules applicable in national laws, but much remains to be done to make international private law more international.¹¹ Since global law is supposed to find its roots in the emergence of internationally recognized legal rules and principles of interest for the world economy at large, its basis is very international compared to international private law and its ambition is to cover much more ground than just choice of law or competent court selection.

3. Global Law and Comparative Law

As its name indicates, comparative law is about comparing, and the comparison is generally between i) national laws of different countries (e.g., comparing German law and English law) or ii) groups of legal systems (e.g., comparing common law and civil law systems).¹² Comparative law is important for lawyers involved in cross-border transactions, since they are required to understand the impact of relevant national laws on such transactions and assess the differences with their own legal system.¹³ Comparative law is also fundamental to the process of international harmonization, since it enables the identification of diverging views between national laws and the submission of proposals to make such laws converge toward a unified solution.¹⁴

11. A typical example of an international convention aimed at harmonizing international private law is the Rome Convention of June 19, 1980, on the law governing contractual obligations. See Hélène Gaudemet-Tallon, *Le nouveau droit international privé européen des contrats*, REVUE TRIMESTRIELLE DE DROIT EUROPÉEN 9, 215 (1981) (Fr.); Paul Lagarde, *Le nouveau droit international privé des contrats après l'entrée en vigueur de la Convention de Rome du 19 juin 1980*, REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 287 (1991) (Fr.).

12. See, for example, the excellent contract law analysis performed by P.D.V. Marsh on the English, French and German legal systems, which leads to a comparison between civil law and common law. P.D.V. MARSH, *COMPARATIVE CONTRACT LAW: ENGLAND, FRANCE & GERMANY* (1994).

13. Van Houtte & Wautelet, *supra* note 4, at 90.

14. The drafting of an international convention typically involves, as a preliminary step, a comparative law analysis for the purpose of i) assessing the differences between legal systems and ii) developing a consensus solution that will facilitate the signature and ratification of the convention. In order to perform this analysis, working groups in charge of drafting international conventions systematically include scholars coming from different jurisdictions. A perfect example of the process leading to an international convention is the detailed analysis made by von Caemmerer and Schlechtriem of the development and contents of the 1980 United Nations Convention on Contracts for the International Sale of Goods. ERNST VON CAEMMERER & PETER SCHLECHTRIEM, *KOMMENTAR ZUM EINHEITLICHEN UN-KAUFRECHT* (1995).

Since the essence of comparative law is to compare national laws, it can only represent one aspect of the notion of global law. To a large extent, and due to its harmonizing effect, comparative law can be viewed as a useful tool toward the formation of the contents of global law, since it participates in the effort to create unified legal concepts with widespread application at the global level. However, one cannot confuse a tool and the end product, hence one cannot consider comparative law and global law as equal notions.

4. Global Law and International Economic Law

The broad field of international economic law certainly covers many areas that global law is meant to cover.¹⁵ It can be defined as the collection of norms regulating the organization of international economic relations, mainly at macroeconomic level.¹⁶ The rules governing the World Trade Organization constitute the backbone of international trade law, which is one of the components of international economic law.¹⁷ Other important areas, such as the rules governing international investments, to give just one key example, expand the field of international economic law beyond international trade *stricto sensu*.¹⁸

To the extent that it regroups the rules and regulations applicable to trade and economic relations between countries or foreign companies, international economic law plays a key role in providing appropriate regulatory norms in a globalization process. However, we are of the view that the multidisciplinary nature of the notion of global law requires extending the frontier of global law beyond mere trade rela-

15. For a list of the various fields included within the area of international economic law, see Wikipedia.org, International Trade Law (Sept. 23, 2006), http://en.wikipedia.org/wiki/International_trade_law.

16. See DOMINIQUE CARREAU & PATRICK JUILLARD, DROIT INTERNATIONAL ÉCONOMIQUE 2–3 (2^e éd. 2005).

17. For a comprehensive description of the legal framework governing the WTO, see JACQUES BÉGUIN & MICHEL MENJUCQ, DROIT DU COMMERCE INTERNATIONAL 87–116 (2005). For a historical analysis of the foundations behind the emergence of the regulation of international trade, see JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS (2d ed. 1997); JOHN H. BARTON & BART S. FISHER, INTERNATIONAL TRADE AND INVESTMENT: REGULATING INTERNATIONAL BUSINESS (1986).

18. An important regulatory framework in this regard is the famous International Centre for Settlement of Investment Disputes (ICSID) Convention, which sets up an international centre for the settlement of investment disputes between States and nationals of other States. For more on the ICSID Convention, see Stephen Jagusch & Matthew Gearing, *International Centre for Settlement of Investment Disputes (ICSID)*, in ARBITRATION WORLD: JURISDICTIONAL COMPARISONS lxv, lxv–lxxx–viii (J. William Rowley QC ed., 2d ed. 2006); PH. FOUCHARD, E. GAILLARD & B. GOLDMAN, TRAITÉ DE L'ARBITRAGE COMMERCIAL INTERNATIONAL 168–69 (1996).

tions. There are major aspects resulting from or accompanying the irreversible process of creating a global economy, which cannot be reduced to trade or investment issues. A topical example here is the field of international environmental law, which, mainly through international conventions, aims at regulating, among others, liability issues and damage compensation arising from cross-border pollution.¹⁹ Admittedly, the emergence of internationally recognized legal principles for the protection of our planet goes beyond the classical field of international economic law, but surely forms part of the notion of global law. The reason for this is that the development of a global economy has some impact on the environment. If we work on the premise that global law is a notion converging around common international practices and values in a global economy, we therefore need to integrate international environmental rules and regulations within the wider concept of global law. This leads us to conclude that global law is broader than international economic law.

5. Global Law and the *Lex Mercatoria*

The *lex mercatoria* can be defined as a collection of transnational legal principles, which derive from international contract practice and are especially suited to meet the needs of international commercial transactions.²⁰ A scholarly debate over the existence of the *lex mercatoria* has been ongoing for decades and has been very well summarized by U. Stein: "There are doubts about the nature and scope of the *lex mercatoria*, about its legal basis, its field of application, its sources, its state of development and its relation to national and international law."²¹

Nevertheless, several prominent scholars, especially Professor Berger at the Center for Transnational Law of the University of Cologne in Germany, clearly acknowledge the existence of the *lex mercatoria* as the expression of global economic reality.²² The fact that certain national courts and international arbitration tribunals

19. For a discussion on the need for harmonization of the rules of liability for damage to the environment, see Pierrick Le Goff, *The French Approach to Corporate Liability for Damage to the Environment*, 12 TUL. EUR. & CIV. L.F. 39, 50–53 (1997). For an analysis of conflict of laws issues surrounding cross-border pollution, see Pierrick Le Goff, *Faut-il supprimer les sociétés à risque limité ? Apport et critique de l'analyse économique américaine du droit des sociétés*, 51 REVUE INTERNATIONALE DE DROIT COMPARÉ [R.I.D.C.] 593, 605–08 (1999) (Fr.).

20. See Bertold Goldman, *La lex mercatoria dans les contrats et l'arbitrage internationaux: réalité et perspectives*, 106 JOURNAL DU DROIT INTERNATIONAL [J.D.I.] 475, 475 (1979) (Fr.).

21. STEIN, *supra* note 5, at 5.

22. BERGER, *supra* note 5, at 211; see also Lord Justice Mustill, *The New Lex Mercatoria: The First Twenty-Five Years*, in LIBER AMICORUM FOR THE RT. HON. LORD WILBERFORCE 149 (Maarten Bos & Ian Brownlie eds., 1987) (discussing the concept of the *lex mercatoria* from an English lawyer's perspective); Goldman, *supra* note 20 (discussing the present state of the *lex mercatoria* and its fu-

expressly refer to principles of the *lex mercatoria* when rendering their awards is a good proof of such reality.²³ It has also been underlined that, currently, arbitral awards applying the *lex mercatoria* are enforceable in most national jurisdictions.²⁴ Furthermore, it is worth noting that most model contracts released by the International Chamber of Commerce rely expressly on the *lex mercatoria* as a body of governing legal principles applicable to the contract. To facilitate the flow of information on the *lex mercatoria*, the list and contents of the legal principles forming part of this emerging international commercial law can now be accessed on-line.²⁵

If we were to consider global law solely as the emanation of rules and principles converging around common practices in the field of international commercial transactions, it would be tempting to treat the notions of *lex mercatoria* and global law as basically identical. The difference would then be of a mere terminological nature. We believe, however, that the notion and scope of global law is much wider than the *lex mercatoria*, since global law is not meant to be restricted to the development of legal principles exclusively applicable to international commercial contracts. Obviously, the *lex mercatoria* plays an important role as a body of norms evolving in a globalizing economy. The *lex mercatoria* should not be treated, though, as being similar to the notion of global law, but as constituting one of its key elements.

B. Global Law: Attempt at a Definition

Defining a relatively new notion such as global law with a definition that reflects, without gaps or surcharge, all the ramifications of the concept is not an easy task. The difficulty increases with the lack of a benchmark. Indeed, while our research does not pretend to be exhaustive, there do not appear to have been many efforts to date in scholarly works to define global law. As a result, there is no alternative other than to create our own definition. This leads us to make a proposal presenting global law primarily as a multicultural, multinational, and multidisciplinary legal phenomenon, which has not yet reached the maturity and formality of a structured legal system.

ture prospects); L. Matray, *Union internationale des avocats: Quelques problèmes de la lex mercatoria*, 69 REVUE DE DROIT INTERNATIONAL ET DE DROIT COMPARÉ 333 (1992) (discussing problems international lawyers face with the *lex mercatoria*).

23. See UGO DRAETTA & RALPH LAKE, CONTRATS INTERNATIONAUX: PATHOLOGIE ET REMÈDES 35 (1996).

24. David W. Rivkin, *Enforceability of Arbitral Awards Based on Lex Mercatoria*, 9 ARB. INT'L 67, 74 (1993).

25. Klaus Peter Berger, *Lex Mercatoria Online: www.tldb.de: Die CENTRAL Transnational Law Database*, 48 R.I.W. 256, 256–57 (2002) (F.R.G.), translated in 18 ARB. INT'L 83, 83–84 (2002).

1. Global Law Is a Multicultural, Multinational and Multidisciplinary Legal Phenomenon.

The foregoing developments on global law and related legal notions²⁶ teach us that global law is broader than legal fields such as comparative law, international private law, or international public law. All these legal fields are relevant to the process of globalization of the world economy, but are too narrow to reflect its overall dimension. Thus, they can only be viewed as forming part of the contents of the notion of global law. The fact that all these fields, without exception, are included in the course offerings of major law schools or institutes focusing on global law confirms this analysis.

In this regard, it is interesting to read on the website of the Institute of Global Law at the University College London that “[t]he setting up of the Institute acknowledges the impact of law across national boundaries and the need to deepen inquiry into comparative approaches to law and legal study.”²⁷ In line with such an approach, the Institute offers classes on topics such as comparative tort law or comparative European law. Similarly, the course offering of the Hauser Global Law School Program at New York University School of Law covers “Global Courses” in the fields of comparative constitutional law, international criminal courts, international and comparative competition policy, international tax policy, European corporate law, international intellectual property law, and administrative law in a supranational context, to name just a few.²⁸ In the description of the Hauser Global Law School Program, a clear indication is given to stress that the academic teaching focuses on “the law and its practice in a global environment.”²⁹ The Global Law Scholars Program at Georgetown University equally encompasses a wide array of topics ranging from global securities markets to international environmental law, and from international civil litigation to international project finance.³⁰

26. See *supra* Part I.A.

27. University College London Online, Faculty of Laws, Institute of Global Law, About the Institute, http://www.ucl.ac.uk/laws/global_law/index.shtml (last visited Nov. 16, 2006).

28. Hauser Global Law School Program, Global Courses, <http://www.nyulawglobal.org/courses/globalcourses.htm> (follow “Fall” and “Spring” hyperlinks to see specific classes offered) (last visited Nov. 16, 2006).

29. Hauser Global Law School Program, Working Papers, Global Law Working Papers, <http://www.nyulawglobal.org/workingpapers/glwpmain.htm> (last visited Nov. 16, 2006) [hereinafter Hauser Global Law Working Papers].

30. Georgetown Law, Academic Programs, Global Law Scholars, <http://www.law.georgetown.edu/gls> (last visited Nov. 16, 2006).

While it may be somewhat presumptuous to use a university course offering to define the contour of global law, it is a fair indication that the concept is meant to encompass a large variety of international and multidisciplinary legal fields. On this particular point, we fully share the views expressed by Professor Weiler, Faculty Director of the Hauser Global Law School Program, who explains that “Global Law School is not only, or even mostly, about ‘International’ or ‘Globalization’ with a capital ‘I’ or ‘G’ but is a reflection of the *internationalization and globalization of all dimensions of law*, be they corporate or environmental.”³¹

Elaborating on this analysis, we would tend to define global law as a multicultural, multinational, and multidisciplinary legal phenomenon finding its roots in international and comparative law and emerging through the international legal practice that was prompted by the globalization of the world economy. What conclusions can be drawn from this definition? This is precisely what we need to address next.

2. Global Law Does Not Yet Constitute a Formal and Structured Legal System

No matter how “global law romantic” one may wish to be, it would seem premature and probably arrogant to claim that global law has reached the status of a formal and structured legal system. This is precisely the reason why our self-made definition prudently uses the words “legal phenomenon” rather than “legal system,” since the notion of global law is clearly in its infancy, and we are still very far from an officially recognized and codified legal field.

For this reason, we can only give full credit to the concerns and interrogations expressed by Professor Ribstein during the Indiana University School of Law symposium, *Globalization of the Legal Profession*.³² It is indeed correct that there is currently no “Global Law Code” or other formal legal instrument or database to access precise information on the rules and regulations forming global law. It is equally correct that there is no “Global Law Court of Justice” sanctioning violations of the global law and setting forth global law judicial precedent. This does not mean, however, that we will not be there at some point in time. The history of the *lex mercatoria* indicates that while this concept underwent similar criticisms when it was first discovered a few decades ago, today it has reached the status of a quasi-legal system and has overcome most of the deficiencies that were originally pointed out to prove its lack of existence. As has already been mentioned, efforts have been made to gather

31. Hauser Global Law Working Papers, *supra* note 29 (emphasis added).

32. See *supra* text accompanying note 1.

the *lex mercatoria* principles in detailed legal databases, and international arbitrators, or even national courts, now apply these principles on a regular basis.³³

A decent indication that global law is moving in this direction is seen in the developments in the field of international criminal law, which is an area of law falling within the notion of global law according to our definition. The summary of the core achievements of the International Criminal Tribunal for the former Yugoslavia, emphasized that the Tribunal

[H]as expanded the boundaries of international humanitarian and international criminal law. . . . It was the first international criminal court to enforce the existing body of international humanitarian law, and in particular judicially determine its *customary law aspects*. . . . It has created an *independent system of law*, comprising elements from adversarial and inquisitorial criminal procedure traditions. . . . The Tribunal has created a *Judicial Database* of all its jurisprudence.³⁴

We see here how a field of law based on, among others, international customs and deriving from comparative law is now presented as a stand-alone legal system with its own database of judicial precedent.

In another area, namely international trade law, H. van Houtte and P. Wautelet remind us that various websites are dedicated to the collection of decisions applying the 1980 United Nations Convention on Contracts for the International Sale of Goods,³⁵ and that arbitral awards applying the Principles of International Commercial Contracts conceived by UNIDROIT³⁶ are now published on the website of this organization.³⁷ Against these developments, the authors conclude: "Globalization, the very phenomenon that called for the creation of uniform

33. See *supra* Part I.A.5.

34. The International Criminal Tribunal for the Former Yugoslavia Core Achievements, <http://www.un.org/icty/cases-e/factsheets/achieve-e.htm> (last visited Sept. 21, 2006).

35. For a general discussion on the Vienna Sales Convention, see BERNARD AUDIT, *LA VENTE INTERNATIONALE DE MARCHANDISES: CONVENTION DES NATIONS-UNIES DU 11 AVRIL 1980* (1990); Philippe Kahn, *La Convention de Vienne du 11 avril 1980 sur les contrats de vente internationale de marchandises*, 33 R.I.D.C. 951 (1981) (Fr.); Jean-Pierre Plantard, *Un nouveau droit uniforme de la vente internationale: La Convention des Nations Unies du 11 avril 1980*, 115 J.D.I. 311 (1988) (Fr.).

36. UNIDROIT is an international organization devoted to the unification of international private law. It is based in Rome, Italy, and about 60 states are represented among its team of scholars and researchers. See, e.g., Jean-Paul Beraudo, *Les principes UNIDROIT relatifs au droit du Commerce International*, 1995 JURISCLASSEUR PÉRIODIQUE 189 (Fr.).

37. Van Houtte & Wautelet, *supra* note 4, at 101.

rules, lends a helping hand in securing an international reading of uniform rules.”³⁸

As we can see, there is hope for more formalism and more precision in the development of global law and in the definition of its parameters. Obviously, this development will be slow since it concerns an extremely large field of law. In addition, we are of the view that this development will be around what could be referred to as “hubs of global law.” By comparison, when referring to the notion of global law, Professor Paliwala distinguishes between the “regional global” and the “universal global” approach.³⁹ This is an indication that global law will not emerge simultaneously on a worldwide basis. The examples described above, namely the evolution in international criminal law or international trade law, show that the process of global law formation starts with sub-categories. Once the efforts toward shaping these sub-categories reach a more advanced stage, an overarching vision of the concept and contents of global law will emerge more clearly. This will be better understood by moving to the next phase of our analysis, namely the process of creating of global law.

II. THE CREATION OF GLOBAL LAW

Global law is made for and by global players. The emergence of what we have prudently qualified as a legal phenomenon is the result of actions undertaken and efforts deployed by a multitude of institutions and individuals impacting, directly or indirectly, the international scene. It would be too burdensome to review in an exhaustive manner all institutions and groups of legal professions influencing or taking a leading role in shaping the contents of global law. We will therefore focus on a few selected examples enabling us to outline in a clear manner the process of developing norms, principles, and regulations specifically adapted to the needs of a global economy. For didactic purposes, the analysis will be carried out around three main categories, namely international organizations, international law practitioners, and universities.

A. *The Role of International Organizations*

A brief explanation of the role of several leading organizations will enable us to give evidence of their substantial contribution to the shaping of global law. To

38. *Id.*

39. Abdul Paliwala, *Irresolutions of Modernity, Law, Nation and Empire: A Reading of Fitzpatrick's Modernism and the Grounds of Law in Conjunction with Hardt and Negri's Empire*, LAW SOC. JUST. & GLOBAL DEV., Apr. 30, 2003, http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2003_1/paliwala/paliwala.rtf.

that end, the organizations discussed are the United Nations, the European Union, the International Chamber of Commerce, international arbitration centers, and international professional associations.

1. The United Nations

The impact of the United Nations is tremendous. A book would not be sufficient to expose it in detail. Within the frame of this article, we can therefore address only very superficially the role played by this major institution, but it should suffice to show some of its input into the formation of global law.

Looking at the U.N. system at large, one quickly concludes that through their activities, institutions such as the World Bank, the International Monetary Fund, the World Intellectual Property Organization, the World Health Organization, or the United Nations Industrial Development Organization contribute to the emergence of norms, rules, or practices of direct relevance to the development of global law.⁴⁰ If we take the World Bank as a concrete example, it may usefully be underlined that this organization has developed a series of standard contract conditions to be applied to international projects financed through its funds. Among these standard documents, one can find the "Standard Bidding Documents for the Procurement of Works,"⁴¹ the "Standard Bidding Documents for the Procurement of Goods,"⁴² and the "Standard Bidding Documents for the Supply and Installation of Plant and Equipment."⁴³ The recurrent use of these standard documents on international infrastructure projects slowly but surely creates a set of global references, even for private projects not funded by the World Bank. In this regard, the author recalls having been able in many instances successfully to obtain the introduction of clauses limiting or excluding liability in international power plant construction projects, on the ground that such clauses are part of the World Bank standard conditions and therefore constitute a compelling "global reference."⁴⁴

Before closing the U.N. chapter, the role played by the United Nations Commission on International Trade Law (UNCITRAL) in the process of modernization,

40. For a chart of the principal organs in the U.N. system, see <http://www.un.org/aboutun/chartpdf/unsyschart.pdf> (last visited Nov. 16, 2006).

41. THE WORLD BANK, STANDARD BIDDING DOCUMENTS: PROCUREMENT OF WORKS (2000).

42. THE WORLD BANK, STANDARD BIDDING DOCUMENTS: PROCUREMENT OF GOODS (2001).

43. THE WORLD BANK, STANDARD BIDDING DOCUMENTS: SUPPLY AND INSTALLATION OF PLANT AND EQUIPMENT (1999).

44. The author has in mind especially provisions limiting the constructor's overall liability to the contract price or excluding liability for consequential losses such as loss of production or loss of profit.

harmonization, and codification of international trade law deserves mentioning. Again, if we take the field of international construction projects, UNCITRAL has developed very useful tools for international practitioners, such as the UNCITRAL legal guide on drawing up international contracts for the construction of industrial works⁴⁵ or the more recent model legislative provisions on privately financed infrastructure projects.⁴⁶ In their excellent presentation of these legislative provisions, Professor Gross and Dean Cachard emphasize that they constitute some form of “soft law” developed by UNCITRAL after a thorough analysis of the contractual practice in relation to BOO (Build-Own-Operate) projects.⁴⁷ This is certainly a fair indication of the strong interaction between international law practitioners and international organizations, which leads to a quasi-legislative instrument in response to the needs of a globalizing economy. Since international construction disputes are often submitted for resolution by arbitration, the well-known and widely used UNCITRAL Model Law on International Commercial Arbitration is one of the main forces driving the emergence of a global and uniform approach to arbitration proceedings.⁴⁸

2. The European Union

The European Union⁴⁹ is a live example of a regional effort toward harmonizing legal systems. Over the years, these efforts have been in specific areas only⁵⁰

45. See U.N. COMM'N ON INT'L TRADE LAW, UNCITRAL: LEGAL GUIDE ON DRAWING UP INTERNATIONAL CONTRACTS FOR THE CONSTRUCTION OF INDUSTRIAL WORKS at iii–iv, U.N. Doc. A/CN.9/SER.B/2, U.N. Sales No. E.87.V.10 (1988).

46. For more information about these model legislative provisions, see Bernard Gross & Olivier Cachard, *Les dispositions législatives types de la CNUDCI sur les projets d'infrastructures à financement privé*, 133 J.D.I. 459 (2006) (Fr.); Bruno de Cazalet & John Crothers, *Présentation des dispositions législatives type sur les projets d'infrastructures à financement privé. Additif du guide législatif de la CNUDCI [Presentation of the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects. Addendum to the UNCITRAL Legislative Guide]*, 2004 REVUE DE DROIT DES AFFAIRES INTERNATIONALES [R.D.A.I.] [INT'L BUS. L.J.] 33 (Fr.); U.N. COMM'N ON INT'L TRADE LAW, UNCITRAL: LEGAL GUIDE ON DRAWING UP INTERNATIONAL CONTRACTS FOR THE CONSTRUCTION OF INDUSTRIAL WORKS at iii–iv, U.N. Doc. A/CN.9/SER.B/2, U.N. Sales No. E.87.V.10 (1988).

47. Gross & Cachard, *supra* note 46, at 459.

48. For a general discussion of the UNCITRAL Model Law, see FOUCHARD, GAILLARD & GOLDMAN, *supra* note 18, at 118–21 (1996); Juliet Blanch, John Reynolds & Andy Moody, *Arbitration Instruments of the United Nations: (1) the New York Convention, (2) the UNCITRAL Arbitration Rules and (3) the UNCITRAL Model Law*, in ARBITRATION WORLD: JURISDICTIONAL COMPARISONS cxliii–civiii (2006).

49. For general information on the European Union, see Europa, Gateway to the European Union, <http://europa.eu> (last visited Nov. 16, 2006).

50. A few examples include consumer protection, competition law, environment and customs.

and have generally taken the form of directives⁵¹ giving only a frame for the Member States to introduce EU derived legislation into their national law. However, a major advantage of the European Union is the existence of the European Court of Justice, which enables judicial precedents to be consistent throughout the Member States. In addition, the European Union has embarked more recently on wider legislative efforts with a view to accelerate the process of harmonization. The best example is probably the initiative of the European Commission to solve the divergence of national contract law by searching for more aggressive and broader unification in this field.⁵² This initiative started in 2001 when the Commission issued a communication to trigger public consultation on the difficulties linked to the divergence of national laws and the need for the European Union to promote solutions in this area.⁵³

More recently, the Commission issued a new communication setting forth a full action plan for the promotion of more coherence between the national contract laws of the Member States.⁵⁴ True, the creation of a European Civil Code is not expressly mentioned as one of the measures to be implemented within this action plan, but this can only be the next step in the harmonization process.⁵⁵ All of this goes in the direction of establishing a “hub”⁵⁶ of global contract law within the wider notion of global law.

51. As opposed to regulations, which are of direct application, directives mainly give guidelines and principles to be subsequently introduced into national law. For more on the distinction between directives and regulations as the source of EU law, see DICTIONNAIRE PERMANENT DROIT EUROPÉEN DES AFFAIRES 272 (Ed. Législatives) (2005); JOËL RIDEAU, DROIT INSTITUTIONNEL DE L’UNION ET DES COMMUNAUTÉS EUROPÉENNES 109–17 (2^e éd. 1996).

52. For a general discussion on this initiative, see Hans Schulte-Nölke, *Ein Vertragsgesetzbuch für Europa?*, 18 JURISTEN ZEITUNG [J.Z.] 917 (2001) (F.R.G.).

53. See Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament, On European Contract Law*, COM (2001) 398 (July 11, 2001), available at http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/cont_law_02_en.pdf.

54. Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council, A More Coherent European Contract Law: An Action Plan*, COM (2003) 68 final (Feb. 12, 2003), available at http://www.isda.org/c_and_a/pdf/com_2003_68_en.pdf.

55. See generally Martin Schmidt-Kessel, *Auf dem Weg zu einem Europäischen Vertragsrecht*, 49 R.I.W. 481 (2003) (F.R.G.); Yasmine Lahlou, *L'avenir du droit Européen des contrats le programme d'action de la Commission Européenne [What Future for the European Contract Law? The Action Plan of the European Contract Law]*, 2003 R.D.A.I. [INT'L BUS. L.J.] 473 (Fr.) (discussing the future of European contract law following the Commission's action plan).

56. For more on the issue of global law growing around “hubs” or sub-categories of global law, see *supra* Part I.B.2.

3. The International Chamber of Commerce

The International Chamber of Commerce (ICC) presents itself as the “world business organization.”⁵⁷ There is probably no better term to signal an impact on the development of global law. Such impact is attested to by leading quasi-legal instruments, which help on a regular basis with the shaping of international legal principles of global application.

Among the highlights, the Incoterms⁵⁸ (e.g., Ex Works, Free on Board, Cost Insurance & Freight, Delivered Duty Paid) certainly join the top ten of the best achievements of the ICC. By compiling standard trade definitions most commonly used in international sales contracts, the Incoterms “are at the heart of the world trade,” as the ICC proudly publicizes.⁵⁹ Indeed, in fifteen years of international contract drafting and negotiation experience, the author cannot recall a single major sales contract in which the delivery terms were not defined by reference to the Incoterms.

The ICC Model Contracts are another major contribution of the ICC worth mentioning.⁶⁰ The ICC Model Technology Transfer Contract and the ICC Model Major Project Turnkey Contract, to name just two, provide a useful benchmark for international practitioners in these fields and, at the same time, contribute to the effort of harmonizing approaches in international contract practice.⁶¹

4. International Arbitration Centers

International arbitration is a preferred way to settle international disputes.⁶²

57. International Chamber of Commerce Home Page, <http://www.iccwbo.org> (last visited Jan. 29, 2007).

58. INT'L CHAMBER OF COMMERCE, INCOTERMS 2000: ICC OFFICIAL RULES FOR THE INTERPRETATION OF TRADE TERMS (1999).

59. International Chamber of Commerce, Policy and Business Practices, Commission on Commercial Law and Practice, <http://www.iccwbo.org/policy/law/id315/index.html> (last visited Nov. 16, 2006).

60. For a general commentary on the ICC Model Contracts, see Fabio Bortolotti, *The ICC Model Contracts: A New Approach to the Drafting of Model Forms for International Trade [Les Contrats Modèles de la CCI: Une Approche Nouvelle dans la Rédaction des Modèles de Contrat pour le Commerce International]*, 2001 INT'L BUS. L.J. [R.D.A.I.] 969 (Fr.); Hans van Houtte, *ICC Model Contracts [Les Modèles de Contrats de la CCI]*, 2003 INT'L BUS. L.J. [R.D.A.I.] 253 (Fr.).

61. For the full list of ICC Model Contracts, see International Chamber of Commerce, Commission on Commercial Law and Practice, ICC Model Contracts and Clauses, <http://www.iccwbo.org/policy/law/id272/index.html> (last visited Nov. 16, 2006).

62. See Rudolf Liesecke, *Die typischen Klauseln des internationalen Handelsverkehrs in der neueren Praxis*, ZEITSCHRIFT FÜR WIRTSCHAFTS-UND BANKRECHT, Apr. 1978.

For international construction projects, for instance, the normal approach is to exclude the competency of national courts in favor of an arbitration panel.⁶³ As a result, international arbitration centers are necessarily at the heart of the development of practices shared by international lawyers and, consequently, contribute to the forming of this important area of global law.

It would be too cumbersome to give an exhaustive list of international arbitration centers, but the ICC International Court of Arbitration, the London Court of International Arbitration, the Stockholm Chamber of Commerce, the American Arbitration Association, the Vienna International Arbitration Center, the Singapore International Arbitration Center, and the China International Economic and Trade Arbitration Commission are certainly among the leaders in the field.⁶⁴ Through the publication of arbitration rules, the hosting and supervision of arbitration proceedings, and the publication of arbitration cases (e.g., the Handbook of ICC Arbitration), international arbitration centers facilitate the definition of and access to the source of law in the field of international commercial arbitration and, by the same token, are part of the global law experience.

5. International Trade Associations

International trade associations regroup individuals or companies that belong to the same economic branch and are involved in international matters. Throughout the world, the number of these associations is difficult to estimate, but there are certainly thousands of them in all types of markets.

63. MICHAEL LAPPE, RISIKOVERTEILUNG BEI TURN-KEY-PROJEKTEN DES INTERNATIONALEN INDUSTRIEANLAGENBAUS 60 (1987); See Wolfgang Kühn, *Probleme des einstweiligen Rechtsschutzes und der Beweissicherung, in VERTRAGSGESTALTUNG UND STREITERLEDIGUNG IN DER BAUINDUSTRIE UND IM ANLAGENBAU (II)* 85 (Karl-Heinz Bockstiegel ed., 1995); Fritz Nicklisch, *Vorteile einer Dogmatik für komplexe Langzeitverträge, in DER KOMPLEXE LANGZEITVERTRÄGE: STRUKTUREN UND INTERNATIONAL SCHEIDSGERICHTSBARKEIT* 22 (Adolfo Alello & Fritz Nicklisch eds., 1987). For a general discussion on the development of international commercial arbitration, see Éric Robine, *L'évolution de l'arbitrage commercial international ces dernières années (1990-1995) [The Evolution of International Commercial Arbitration over these Past Years (1990-1995)]*, 1996 R.D.A.I. [INT'L Bus. L.J.] 145 (Fr.).

64. For a presentation of various international arbitration centers and their applicable arbitration rules, see FOUCARD, GAILLARD, GOLDMAN ON INTERNATIONAL COMMERCIAL ARBITRATION 557-77 (Emmanuel Gaillard & John Savage eds., 1999); Guy S. Lipe & James L. Loftis, *The American Arbitration Association and the International Centre for Dispute Resolution (AAA/ICDR), in ARBITRATION WORLD: JURISDICTIONAL COMPARISONS* xxxi (J. William Rowley ed., 2d ed. 2006); Michael Schneider, *Schiedsverfahren in Streitigkeiten aus Bau- und Anlagenverträgen, in VERTRAGSGESTALTUNG UND STREITERLEDIGUNG IN DER BAUINDUSTRIE UND IM ANLAGENBAU* 159 (Karl-Heinz Bockstiegel ed., 1984).

To illustrate the role of these associations in the development of global law, a suitable field for the purpose of narrowing the analysis is international construction, since it is particularly active and dynamic.⁶⁵ The European Engineering Industries Association (ORGALIME)⁶⁶ and the European International Contractors (EIC),⁶⁷ which represent the interests of companies involved in engineering and construction activities, are good examples of these associations in the European market. The most well known at the international level is the International Federation of Consulting Engineers (FIDIC), seated in Geneva, Switzerland.⁶⁸

For the benefit of their members and of international lawyers advising clients in the relevant industries, these trade associations produce very useful guidelines and model contracts that are quite widely used by practitioners. The “ORGALIME Model Form of Consortium Agreement” provides a solid contractual frame for companies desiring to team up for the completion of a construction project.⁶⁹ Similarly, the “EIC Turnkey Contract” can be used as a contract basis for projects in which the contractor is responsible for the design and construction of the works.⁷⁰ Of very global application are the various FIDIC conditions of contract, which are regularly encountered on numerous construction projects worldwide. Worth mentioning among the FIDIC collection is the “FIDIC Silver Book—Conditions of Contract for EPC Turnkey Projects,” which constitutes one of the most recent international model contracts for privately financed infrastructure projects.⁷¹ Through the recurrent use of these or other similar model contracts by international negotia-

65. For an overview of trade associations in the construction industry and an analysis of standard conditions or model contracts issued at national or international levels, see PIERRICK LE GOFF, DIE VERTRAGSSTRAFE IN INTERNATIONALEN VERTRÄGEN ZUR ERRICHTUNG VON INDUSTRIEANLAGEN 99–116 (2005).

66. ORGALIME, The European Engineering Industries Association Home Page, <http://www.orgalime.org> (last visited Nov. 17, 2006).

67. EIC, European International Contractors Home Page, <http://www.eicontractors.de/index.php> (last visited Nov. 17, 2006).

68. FIDIC, International Federation of Consulting Engineers Home Page, <http://www.fidic.org> (last visited Nov. 17, 2006).

69. See ORGALIME, Publications, Model Forms, <http://www.orgalime.org/publications/forms.htm> (last visited Nov. 17, 2006). A copy of this form is available by request from the Orgalime member association located in the applicable country.

70. European International Contractors makes this contract available for purchase at its online bookstore, <http://www.eicontractors.de/seiten/bookshop/main.php> (last visited Nov. 17, 2006).

71. For a general discussion on the FIDIC Silver Book, see Pierrick Le Goff, *A New Standard for International Turnkey Contracts: The FIDIC Silver Book [Une Nouvelle Référence pour les Contrats Internationaux Clé en Main: Le Livre Argent de la FIDIC]*, 2000 INT'L BUS. L.J. [R.D.A.I.] 151 (Fr.).

tors involved in major construction projects, various key contract principles are emerging on a customary basis toward some form of harmonized law applicable to international construction projects.⁷² This kind of practical development, which is made possible through the efficient and creative work of international trade associations, contributes to the development of global law.

B. The Role of International Law Practitioners

It will certainly not come as a full surprise that international lawyers strongly contribute to the development of global law. To a large extent, they stand to benefit the most from it. As H. van Houtte and P. Wautela put it, “[b]y far the greatest obstacle the international lawyer faces . . . is the existence of widely diverging national laws. . . . It is no wonder, therefore, that lawyers have welcomed the attempts of states and various organizations to unify and/or harmonize national legal rules.”⁷³ Our overview of the input from international lawyers will cover global law firms, global in-house legal departments, international judges and arbitrators, international lawyers’ associations, and international alumni associations.

1. Global Law Firms

Most multi-office law firms with wide international presence advertise the global nature of their services. Clifford Chance for example presents itself as “a truly integrated global law firm.”⁷⁴ Freshfields proudly announced through a press release in 2004 that it had been elected “Global Law Firm of the Year.”⁷⁵ John Conroy, Chairman of Baker & McKenzie, indicates in his website welcoming message that the firm was building a “distinctive global law firm” before many people even realized the global economy dimension.⁷⁶ In connection with the 2005

72. See Pierrick Le Goff, *Théorie et pratique du contrat de réalisation d'ensembles industriels en RFA: vers une lex mercatoria germanica?* [Theory and Practice of Contracts for the Construction of Industrial Facilities in Germany: Towards a Lex Mercatoria Germanica?], 2004 R.D.A.I. [INT'L Bus. L.J.] 5, 27 (Fr.).

73. Van Houtte & Wautela, *supra* note 4, at 90–91.

74. Clifford Chance Home Page, <http://www.cliffordchance.com/home/default.aspx> (last visited Nov. 17, 2006).

75. Press Release, Freshfields Bruckhaus Deringer, Freshfields Bruckhaus Deringer zur “Global Law Firm of the Year” gewählt (May 13, 2004), available at <http://www.freshfields.com/news/dynamic/pressrelease.asp?newsitem=482>.

76. Baker & McKenzie, Firm Profile, A Welcome from Our Chairman, <http://www.bakernet.com/bakernet/firm+profile/welcome/default.htm> (last visited Nov. 17, 2006).

opening of their Geneva office specializing in international arbitration, Hogan & Hartson mentioned in the press release their status as “a top global law firm.”⁷⁷ Other firms emphasizing their wide international presence and, consequently, their global approach, include White & Case (“A Global Law Firm”),⁷⁸ Orrick (and its “Global Operations Center”),⁷⁹ Lovells (“A Truly International Business Law Firm”),⁸⁰ Shearman & Sterling (and its “global base”),⁸¹ Jones Day (“One Firm Worldwide”),⁸² and DLA Piper, the recipient of the 2006 Global Law Firm of the Year award,⁸³ to name just a few.⁸⁴

With such global infrastructures, international law firms clearly have the potential to contribute to the emergence of global law, and do so effectively. These firms traditionally work on major cross-border transactions. Many of them advise foreign governments on the development of key legislation, are involved in the drafting of model contracts or the making of recommendations on international conventions or other similar legal instruments, or have lawyers who are members of the working groups and strategy committees of major international institutions. The role of global law firms in the process of legal harmonization transpires through their endeavors to ensure consistency in quality and to offer seamless legal service throughout their multi-office base.⁸⁵ For this reason, we fully share the views of

77. Press Release, Hogan & Hartson, Hogan & Hartson, A Top Global Law Firm, Opens a Geneva Office Specialised in International Arbitration (October 17, 2005), available at http://www.genève.ch/_law_firm_hogan_geneva.htm.

78. White & Case, About Us, Firm Overview, <http://www.whitecase.com/about/overview.aspx> (last visited Nov. 17, 2006).

79. Orrick, Offices, Global Operations Center, <http://www.orrick.com/offices/goc> (last visited Nov. 17, 2006).

80. Lovells Corporate Home Page, <http://www.lovells.com/Lovells/Homepage.htm?ShowFlash=True> (last visited Nov. 17, 2006).

81. Shearman & Sterling, About the Firm, History, <http://www.shearman.com/about/history/> (last visited Nov. 17, 2006).

82. Jones Day Home Page, <http://www.jonesday.com> (last visited Nov. 17, 2006).

83. Press Release, DLA Piper, DLA Piper Named Global Law Firm of the Year (June 28, 2006), available at <http://www.dlapiper.com/global/media/detail.aspx?news=2167>.

84. As a matter of good conduct and professional ethics, the author wishes to indicate for avoidance of doubts that citations of law firms in this article are for illustration or didactic purposes only and do not aim at establishing any ranking or making any other specific form of publicity for the firms cited. Conversely, the fact that other law firms with global presence may have not been included shall not be construed as a sign of neglect or disregard for such firms but simply attests that this article is not about listing or ranking international law firms.

85. For a general discussion of the challenges faced by global law firms in achieving consistency of legal services, see Ronald F. Pol & Patrick J. McKenna, *The Quest for Seamless Service: Ensuring Consistency with Multioffice Law Firms*, ACC DOCKET, Jan. 2005, at 34; Patrick J. McKenna,

Professor Flood, our co-panelist during the 2006 Indiana University School of Law Symposium, *Globalization of the Legal Profession*, whose analysis of international law firms led him to conclude that since these firms are “a pillar of globalization,” the globalization process would not succeed without them.⁸⁶

2. Global In-house Legal Departments

Multinational corporations are equipped with global in-house legal departments. Similar to global law firms with their multi-office base, global legal departments are made of in-house lawyers based at the main geographical sites where the corporation has a foreign industrial or commercial presence. Global legal departments are more discreet than global law firms, since their services are for the exclusive use of their employer. They do not have a vocation to work on business development or other public relation matters aimed at expanding the client portfolio. This does not mean, though, that their role in shaping global law is more limited.

An interesting feature of global legal departments is that they need to integrate and spread identical corporate and business values over groups of lawyers with very diversified cultural, ethnic, and professional backgrounds. It is not unusual for legal departments of major international corporations to exceed the symbolic threshold of more than 100 members coming from a multitude of foreign jurisdictions and having different legal education or professional qualifications.⁸⁷ There is a major resource here to share experience and information on foreign legal systems and to converge, after a comparative law analysis and a consensus on best practices, toward harmonized standards in the practice of law at the international level. In-house lawyers also typically influence contractual approaches when accompanying the international development of their corporations. In connection with the setting-up of international equity joint ventures, for example, the author remembers having encountered on a regular basis similar clauses in joint venture contracts although the projects were taking place in different countries or even continents. The reason was that the in-house lawyers involved in the transaction on each side of the negotiation table were using harmonized contractual approaches and were applying them re-

EDGE International, The Quest for Seamless Service: Ensuring Consistency in Multioffice Law Firms, Presented at the Indiana University School of Law Symposium: Globalization of the Legal Profession (Apr. 6, 2006).

86. John Flood, *Lawyers as Sancifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOBAL LEGAL STUD. 35, at 41 (2007).

87. These global in-house legal departments typically have a mixture of lawyers with civil law backgrounds and lawyers coming from the common law tradition.

gardless of the geographical location in which their corporations were doing business. During the 2006 Indiana University School of Law Symposium, *Globalization of the Legal Profession*, and in connection with the development of environmental norms arising from chemical plant constructions projects, J. Simmons made a pertinent demonstration of the way transnational lawyers help shape the regime of emerging markets.⁸⁸ All of this suggests that the contribution of in-house legal departments of multinational corporations to the development of global law cannot be denied.

3. International Judges and Arbitrators

The contribution of judges and arbitrators involved in international cases to the development of global law is so obvious that only a few lines are needed to explain it. Actually, we have already touched upon this aspect when explaining the input of the International Criminal Tribunal for the former Yugoslavia in the formation of international criminal law.⁸⁹ There are obviously other international jurisdictions giving judges an opportunity in their respective areas of specialization to take part in the global law movement. The International Criminal Tribunal for Rwanda,⁹⁰ the European Court of Justice,⁹¹ the International Court of Justice,⁹² and, last but not least, the European Court of Human Rights⁹³ are among the leading examples that come to mind.

One should not be led to believe that only judges working at international courts or tribunals have a say in the globalization trend. There is an increasing number of scholars pointing out that judges at national courts occasionally refer to foreign court rulings as part of their decision-making process.⁹⁴ Interestingly enough, Professor

88. Jacqueline A. Simmons, Partner, Baker & Daniels LLP, How Transnational Lawyers Shape the Regimes of Emerging Markets, Presented at the Indiana University School of Law Symposium: Globalization of the Legal Profession (Apr. 6, 2006).

89. *See supra* Part I.B.2.

90. International Criminal Tribunal for Rwanda Home Page, <http://69.94.11.53/default.htm> (last visited Nov. 17, 2006).

91. Court of Justice of the European Communities, The Institution, http://curia.europa.eu/en/instit/presentationfr/index_cje.htm (last visited Nov. 17, 2006).

92. International Court of Justice Home Page, <http://www.icj-cij.org/icjwww/icjhome.htm> (last visited Nov. 17, 2006).

93. European Court of Human Rights Home Page, <http://www.echr.coe.int/echr> (last visited Nov. 17, 2006).

94. For a discussion of the constitutional questions involved in the citation of foreign legal sources by U.S. courts, see William Burke-White, Address at the European Alumni Society Meeting of the University of Pennsylvania Law School: Citing Abroad? The Use of Foreign Legal Materials by U.S. Courts (June 2–4, 2006). For a discussion focusing on decisions rendered by U.S.

Burke-White refers with pertinence to the notion of “Judicial Globalization” when discussing the legal significance of this practice.⁹⁵ As to international arbitrators, we have already mentioned their leading contribution in establishing and enforcing legal principles specifically suited for international commercial relations.⁹⁶

4. International Lawyers’ Associations

By providing the ideal framework that allows legal experts to gather and exchange their knowledge and experience, international lawyers’ associations play an important role in the development of global law. An immediate and unchallengeable example is certainly the International Bar Association (IBA), which presents itself as “the global voice of the legal profession.”⁹⁷ Through its various international working groups and regular conferences and publications, the IBA is at the forefront of the process of globalization of the legal profession. Another classic example is the Swiss Arbitration Association (ASA), which gathers Swiss and foreign lawyers specialized in, or having a strong interest in, the field of international arbitration.⁹⁸ A noticeable ASA contribution to the development of common arbitration rules and knowledge at the international level is the recent ASA conference dedicated to an analysis of best practices in international arbitration.⁹⁹ During this conference, the identification and coordination of such best practices as a method of global harmonization was one of the main topics of discussions.¹⁰⁰

5. International Alumni Associations

Similar to international lawyers’ associations, international alumni associations enable a multilateral flow of information and sharing of expertise among legal experts, especially if they are active in organizing alumni reunions or circu-

cuits in international sales disputes in which the courts looked to foreign jurisdictions applying the U.N. Convention on Contracts for the International Sale of Goods, see van Houtte & Wautelet, *supra* note 4, at 101–02.

95. Burke-White, *supra* note 94.

96. See *supra* Part II.A.4.

97. International Bar Association, Member Organisations, http://www.ibanet.org/barassociations/BA_Home.cfm (last visited Nov. 17, 2006).

98. Swiss Arbitration Association, About ASA, Who is ASA?, http://www.arbitration-ch.org/about_us/index.html (last visited Nov. 17, 2006).

99. ASA Conference: Best Practices in International Arbitration, at the Marriott Hotel in Zurich, Switz. (Jan. 27, 2006) (papers from the conference published in Special Series No. 26, *available at* <http://www.arbitration-ch.org/publications/index.html>).

100. See Nathalie Voser, *Best Practices: What Has Been Achieved and What Remains to Be Done*, 26 ASA SPECIAL SERIES 1 (2006); Filip de Ly, *Best Practices and Third Party Participation*, 26 ASA SPECIAL SERIES 60 (2006).

lating newsletters. While international lawyers' associations tend to regroup lawyers within an area of specialization, e.g., international arbitration as far as the above-mentioned ASA is concerned, international alumni associations regroup lawyers belonging to different legal professions (e.g., judges, law professors, in-house counsels, lawyers in private practice) with different legal specialties, but who have their alma mater in common. The diversified background of lawyers attending alumni reunions prompts a wide return of experience among alumni located in different jurisdictions. Through the organization of yearly alumni meetings and academic working sessions on international topics, international alumni organizations participate in the globalization process.¹⁰¹

C. The Role of Universities

This article would be severely incomplete without mentioning the crucial role played by universities in the process of global law creation. Addressing the services rendered by universities toward the shaping of this international regime is all the more appropriate for a publication in a law review dedicated to global legal studies. The significant impact of universities manifests itself primarily through the development of international and comparative law curriculum. However, the role of universities expands far beyond their academic programs. International law reviews, international exchange programs, and international or comparative law institutes are equally worth the discussion.

1. International and Comparative Law Curriculum

In order to train a sufficient number of international lawyers needed to make a substantial contribution to the evolution of global law, law schools need to develop their course offerings in the field of international and comparative law. This is an educational requirement, which should be viewed as a priority for national law schools and other leading academic institutions. With respect to such a requirement, U.S. universities are quite well positioned. The choice of classes in international law topics at a large number of U.S. law schools is simply amazing, and students often struggle to decide which class to take without exceeding their limit of

101. The Penn Law European Society, for example, which is part of the Alumni Association of the University of Pennsylvania Law School, organizes an alumni weekend every year at a European location, which includes an academic session allowing the participants to inform themselves and to share views on various European or international law topics. See Penn Law European Society, PLES Conference, <http://www.law.upenn.edu/alumni/ples> (last visited Nov. 17, 2006).

credit hours. European schools equally offer access to international and comparative law exposure, although they tend to focus on the standard international law courses, such as international public law or international private law. Very specialized or diversified international or comparative law courses, such as international arbitration or international environmental law, are generally offered once students reach post-graduate study level. One can only encourage universities to continue with the strengthening of their international and comparative law curriculum, which is part of academia's effort to play a role in the development of global law.

2. International and Comparative Law Reviews

International and comparative law reviews are useful supplements to a course offering addressing international and comparative law topics. We have had the opportunity at the beginning of this article to explain why international law and comparative law are important fields within the broader concept of global law.¹⁰² It is important to encourage the sharing of knowledge and views in these fields through research and publications, which is exactly what international and comparative law reviews enable. We can therefore only welcome the support given by universities and other sponsors to these law reviews, since they help to foster the constructive and intellectual debate around the formation of global law.

3. International Exchange Programs

Universities can only gain by welcoming visiting professors or other foreign law scholars and accepting foreign law students in their facilities. LL.M. programs in the United States and the United Kingdom constitute a good platform for such international exchange. As C. Silver and M. Freed rightly underline, “[t]he process of globalization has generated increasing interest in United States law. One consequence of this interest is the development of a new market for U.S. legal education.”¹⁰³ Similarly, most post-graduate or doctoral research programs in Europe are open to international students. These exchange initiatives set the scene for the subsequent development of international alumni associations or international lawyers' associations, whose contribution to the development of global law has already been exposed.¹⁰⁴

102. See *supra* Part I.A.1–5.

103. Carole Silver & Mayer Freed, *Translating the U.S. LLM Experience: The Need for a Comprehensive Examination*, 2006 Nw. U. L. REV. COLL. 3, available at <http://www.law.northwestern.edu/lawreview/colloquy/2006/3/LRColl2006n3Silver-Freed.pdf>.

104. See *supra* Part II.B.4–5.

4. International or Comparative Law Institutes

Whether linked to a university or created as a private and autonomous legal entity, international or comparative law institutes give the necessary incentive and sponsorship for the enhancement of global law knowledge and recognition. We have had the opportunity earlier in this article to mention a few institutes quite active in this area, such as the Institute of Global Law at the University College London.¹⁰⁵ There are other remarkable institutes to which we compulsorily owe strong recognition. We have specifically in mind the Max Planck organization in Germany, which to our knowledge is the largest private institution for research in the legal field. With its specialized institutes at Hamburg (comparative & international private law), Heidelberg (comparative & international public law), Freiburg (comparative & international criminal law), and Munich (comparative & international social law), the Max Planck organization covers the full spectrum of international and comparative law topics of which any international scholar could ever dream.¹⁰⁶

Other leading institutions to be mentioned due to their significant contribution to the research and dissemination of information on comparative and international law are the Swiss Institute of Comparative Law and its collection of over 280,000 documents in 60 languages,¹⁰⁷ the European University Institute in Florence, created in 1972 by the Member States of the European Community,¹⁰⁸ and the International Institute for the Unification of Private Law (UNIDROIT),¹⁰⁹ which has developed the famous UNIDROIT Principles of International Commercial Contracts mentioned earlier in this article.¹¹⁰

CONCLUSION

Without the tremendous efforts deployed by international organizations, international practitioners, universities and other academic institutions such as in-

105. *See supra* Part I.B.1.

106. Max Planck Society, Research Fields, Jurisprudence, Institutes, <http://www.mpg.de/english/researchFields/GW/REW/institutes/showInst.shtml?forschgeb=REW&show=no&lang=en&> (last visited Nov. 17, 2006).

107. Swiss Institute of Comparative Law, Overview of the Institute, <http://isdc.ch/en/institut.asp/4-0-10000-5-4-1/> (last visited Nov. 17, 2006).

108. European University Institute, About the EUI, <http://www.iue.it/About/> (last visited Nov. 17, 2006).

109. UNIDROIT, International Institute for the Unification of Private Law, About UNIDROIT, <http://www.unidroit.org/english/presentation/main.htm> (last visited Nov. 17, 2006).

110. *See supra* Part I.B.2.

ternational and comparative law institutes, the status of development of global law would probably be too negligible to dare to write about it. Even so, this does not imply that the status is very advanced. Much more needs to be done before all sub-categories of global law evoked in this article converge through a pyramidal effect toward a fully recognized and stand-alone global law system, with its own Global Law Code and its own Global Court of Justice applying it. Nevertheless, the current situation tells us that global law is in motion. It is a fact, not just a theory, and we can all contribute to it.

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