

ABF American Bar Foundation
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RESEARCHING LAW

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THE CENTER ON LAW
AND GLOBALIZATION

The Center on Law & Globalization

It has become a truism verging on cliché to say that we live in an increasingly globalized age. In the last two decades “globalization” has become one of the most popular buzzwords in business circles, the media, and academia.

Yet, there is no denying that changes in technology and communications have minimized constraints of time and geography, resulting in global exchanges of people, information, ideas, products and commerce of unprecedented speed and intensity. The effects of this interconnectedness can be observed in markets, politics, health, education, migration and military conflict, to name just a few realms of human activity. Inevitably, law is implicated in all of these areas.

In a move that is both a reaction to globalization and a driver of it, business groups, non-governmental organizations, judges, sovereign

states, multi-national activist interest groups and other actors are increasingly defining global legal “norms” to facilitate the flow of information and commerce, to pursue justice for crimes committed in internal or cross border acts of war, to delineate standards for combating climate change, and for promoting food safety and health. In 2004, for example, the United Nations Commission on International Trade Law (UNCITRAL) adopted a “Legislative Guide on Insolvency Law” which was “intended to be used as a reference by national authorities and legislative bodies when preparing new laws and regulations or reviewing the adequacy of existing laws and

regulations” (UNCITRAL, 2004). But how, exactly, do these norms originate? How are they propagated, adopted and enforced? What happens when global norms encounter local politics, laws and customs?

These and other questions frame the research agenda of the Center on Law and Globalization, a joint venture between the American Bar Foundation and the University of Illinois College of Law. Founded in 2007, and seeking to promote and disseminate the best research on law and globalization, the Center has already emerged as a leader in its field.

BACKGROUND AND GOALS

The Center on Law and Globalization (the Center) was conceived in 2006 by ABF's Terence Halliday and John Hagan, and Tom Ginsburg, then of the University of Illinois College of Law (now of the University of Chicago Law School). Halliday, Hagan and Ginsburg recognized the critical importance of law in a globalized context, yet also noted that empirical research on law and globalization is in its infancy. Similarly, the study of the legal dimensions of globalization is segregated by discipline, so that those who study human rights, for example, rarely talk to scholars of business law. At the same time Hagan, Halliday and Ginsburg noted a paucity of opportunities for scholars to engage in dialogue and exchange with global policy makers and journalists. Thus, the Center was proposed to both stimulate and disseminate research on law and globalization as well as to create a meeting place for the "thinkers" and the "doers."

The Center was proposed to the Executive Committee of the Board of Directors of the ABF in January of 2007, and they and the University of Illinois College of Law's Board of Visitors approved the idea in a meeting on October 27, 2007, agreeing to fund it jointly for a six-year period. Charlotte Ku, Assistant Dean for Graduate and International Legal Studies at Illinois, and

former Executive Vice President and Executive Director of the American Society of International Law, was appointed a Co-Director of the Center, alongside Halliday, Hagan, Ginsburg and Ralph Brubaker, Professor of Law at Illinois.

The Center engages in two major activities to achieve its goals. First, it sponsors colloquia at venues around the world to share the most up-to-date research on law and globalization, bringing academics, policy makers, diplomats and journalists together in fruitful exchanges. Second, to reach a much broader audience on an ongoing basis, the Center has created "Smart Libraries," pages on the Center's website (www.lexglobal.org) that offer the latest and best research on law and globalization in a variety of formats from easy-to-digest summaries of leading research, to definitions of key concepts, to extensive bibliographies. The substantive areas of focus of the Center capitalize on the research strengths of professors at the ABF and University of Illinois College of Law as well as those of other affiliated scholars. The current research areas of the Center are:

- Law & Globalization of Human Rights and Security
- Law & Globalization of Markets
- Law & Globalization Related to Health

CONFERENCES AND COLLOQUIA IN 2009

In 2009 the Center has focused its scholarly sessions on the areas of Law & Globalization of Markets and Law & Globalization of Human Rights and Security.

IMF GOVERNANCE AND IMF LAWMAKING

The Center organized a colloquium, jointly with the International Monetary Fund, and in association with the American Society of International Law, March 25-28, 2009, in Washington D.C., on "**International Monetary Fund Governance Reform and its Broader Implications for the IMF's Work.**" Conference organizers, recognizing the critical role the IMF plays in the global financial crisis of 2008-09, raised the question of the links between the IMF's governance, and its legitimacy and effectiveness. The conference addressed the recommendations of the Manuel Committee Report, released days before the colloquium, for governance reform at the IMF, its implications for the IMF's global activities, and its potential impact on governance reforms of other international financial institutions and international governance bodies.

The program was moderated by Hans Corell, former United Nations Legal Counsel, and a member of the Center's International

STOCKHOLM | JUNE 23, 2009

STOCKHOLM PRIZE IN CRIMINOLOGY

On June 23, 2009 Center Co-Director John Hagan, along with co-recipient Raúl Zaffaroni of the Supreme Court of Argentina, was awarded the Stockholm Prize in Criminology for his groundbreaking work on genocide in the Balkans and in Darfur. As the Criminology Prize Committee noted, “John Hagan pioneered the application of advanced crime measurement techniques to the study of genocide in his work on violence in Darfur and in the Balkans. Using systematic methods of estimating crime volumes from victimization surveys, Hagan and his colleagues found substantial under-counting of murders by the State Department and the World Health Organization. Their methods produced evidence of between 200,000 and 400,000 homicides, the worldwide reporting of which transformed the discussion of the Darfur tragedy.”



On June 23, 2009 the Stockholm Prize in Criminology was awarded to John Hagan (left) of the ABF and Northwestern University, and Raúl Zaffaroni (right) of the Supreme Court of Argentina, by Swedish Minister of Justice, Beatrice Ask. Photo by Pernille Tofte.

Advisory Board. Participants in a day of public and closed sessions included Sean Hagan, General Counsel, International Monetary Fund, and Kenneth Dam, University of Chicago and Member, Manuel Committee on International Monetary Fund Governance, and the General Counsels of the World Bank, International Finance Corporation, World Health Organization, and World Intellectual Property Organization, among others.

The session was sponsored, in part, by Sullivan & Cromwell, LLP.

SYSTEMATIC SEXUAL VIOLENCE AND INTERNATIONAL CRIMINAL LAW

In June, the Center co-sponsored a large conference in The Hague entitled “**Sexual Violence as International Crime: Interdisciplinary**

Approaches to Evidence.” Inspired by John Hagan’s research on documenting genocide in the Balkans and Darfur, the conference focused on the opportunities and challenges posed by using social scientific data in the prosecution of war crimes. The conference, co-sponsored by The Grotius Centre for International Legal Studies, Leiden University, The Hague, the Dutch Ministry of Foreign Affairs, the International Victimology

THE HAGUE | JUNE, 2009

INTERDISCIPLINARY COLLOQUIUM ON
SEXUAL VIOLENCE AS INTERNATIONAL CRIME



Justice Richard J. Goldstone (center), former Chief Prosecutor of the International Criminal Court Tribunals for the former Yugoslavia and Rwanda, and current lead investigator for the UN Human Rights Council fact-finding mission on the Gaza conflict, addresses the closing session of the Interdisciplinary Colloquium on Sexual Violence as International Crime, held at the Peace Palace, The Hague, June 2009. Flanking Justice Goldstone are (left to right) Willem van Genugten, The International Victimology Institute Tillburg (INTERVICT), Justice Teresa Doherty, Special Court for Sierra Leone, and Terence Halliday, Co-Director, Center on Law and Globalization. Photo by Martijn van Dam.



From left: Professor Nico Schrijver, Grotius Centre for International Legal Studies, Leiden University, Dean Bruce Smith, University of Illinois College of Law, John Hagan, Northwestern University and American Bar Foundation, Judge Theodor Meron, International Criminal Tribunal for the Former Yugoslavia, Dutch Minister of Foreign Affairs Maxime Verhagen, Judge Navanethem Pillay, United Nations High Commissioner for Human Rights, Prosecutor Luis Moreno-Ocampo, International Criminal Court, all participants in the Interdisciplinary Colloquium on Sexual Violence as International Crime, June 2009. Photo by Martijn van Dam.



International Criminal Court Prosecutor Luis Moreno-Ocampo (left) addresses participants at the Center on Law and Globalization's Interdisciplinary Colloquium on Sexual Violence as International Crime, hosted by the Grotius Centre for International Legal Studies, Leiden University, The Hague, June 2009. Photo by Martijn van Dam.

Institute Tillburg (INTERVICT), Tillburg University, and LexisNexis, was attended by more than 180 experts in international law, global health, social science, and human rights, including ABF's John Hagan and Terence Halliday.

The opening session, hosted by Maxim Verhagen, Dutch Minister of Foreign Affairs, featured keynote addresses by Judge Theodor Meron of the International Criminal Tribunal for the Former Yugoslavia, Navanethem Pillay, United Nations High Commissioner for Human Rights, and Luis Moreno-Ocampo, Prosecutor, International Criminal Court.

Navanethem Pillay, in her address, "Sexual Violence: Standing by the Victim," spoke about the need for international justice to "address the real experience of sexual violence" during armed conflict "from the victim's perspective." The international courts have established that "rape during international or internal armed conflict is a war crime, a crime against humanity, and may constitute an element of genocide." However, Pillay noted that the issue of "consent"—absurd as it may be in the context of armed conflict—still plays a role in prosecutions of rape, requiring victims to engage in painful detailed recounting of the crime.

Pillay offered a novel method of prosecuting rape without requiring detailed testimony from victims by drawing a parallel to the prosecution



United Nations High Commissioner for Human Rights, Navanethem Pillay addresses the Interdisciplinary Colloquium on Sexual Violence as International Crime, The Hague, June 2009. Photo by Martijn van Dam.

of human trafficking: "The underlying rationale of the anti-trafficking protocol is that an individual cannot freely consent to be trafficked... Effective investigative methodology can probe the conditions of work and the level or absence of remuneration as indicators of labor exploitation. It follows that, technically, it is entirely possible to investigate and prosecute trafficking without the need for the victim to actually testify. Thus, a good prosecutor should be able to argue a case without individual testimony by establishing the planning, the *modus*, and the effects of the crime. I submit to you that the application of this approach to investigations of rape in armed conflict could also yield optimal results."

Luis Moreno-Ocampo spoke to the gathering about his work as the first prosecutor of the International Criminal Court, whose mandate is "to put an end to impunity for the most serious crimes of concern to the international community, including gender crimes as part of genocide, crimes against humanity and war crimes, and to contribute to the prevention of such crimes." He stated that in pursuing these goals the Court has "benefited extensively from the expertise of international and non governmental organizations" including "a number of experts who are here this week." Moreno-Ocampo welcomed the contributions of social scientists in developing methodologies that can be used to pursue international justice. "One of our goals is a case with no witnesses, no victims. We want to use methods that you are developing, such as statistical analysis. We must refine how to use your tools," Moreno-Ocampo stated.

GLOBAL LAWMAKING

When the American Bar Association met for its Annual Meeting in Chicago in July, the Center offered a Continuing Legal Education seminar, co-sponsored by the ABA Section of International Law, entitled "How International Organizations Craft Global Laws: The Case of Corporate Bankruptcy Regimes." Terence Halliday convened

CHICAGO | JULY 31, 2009

CENTER INAUGURAL RECEPTION

On July 31, 2009, in conjunction with the ABA Annual Meeting in Chicago, the Center on Law and Globalization hosted a reception at Fulton's on the River for alumni of the University of Illinois College of Law who are also Fellows of the ABF. The purpose of the gathering was to introduce those individuals who have a connection to both institutions to the activities of the Center on Law and Globalization. ABF Director Robert Nelson welcomed the group and introduced Bruce P. Smith, Dean of University of Illinois College of Law, and Center Co-Directors Terence Halliday and John Hagan. Smith, Halliday and Hagan all addressed the group about the importance of the Center in promoting and disseminating the best research on key issues of law and globalization, and Hagan was recognized for his recent award of the Stockholm Prize in Criminology for his groundbreaking work on genocide in Darfur. The general Fellows of the American Bar Foundation reception followed immediately at the same location.



From left: University of Illinois College of Law alumni and ABF Fellows J. David Andrews and Richard L. Thies speak with ABF Board Member Jonathan Cole, at a reception for ABF Fellows and the Center on Law and Globalization, Fulton's on the River, Chicago, July 31, 2009. Photo by John Zich, 2009.



Center on Law and Globalization Co-Director Charlotte Ku (left) speaks with Miraim Shearing, retired Chief Justice of the Supreme Court of Nevada and ABF Life Fellow, at a reception for ABF Fellows and the Center on Law and Globalization, Fulton's on the River, Chicago, July 31, 2009. Photo by John Zich, 2009.

the session with introductory remarks and a research presentation. Calling global norm-making “one of the most important issues of the next decade or two,” Halliday posed the question, “Who is exercising what kind of influence on the global laws that are developed,” and commented, “this is an absolutely fundamental question for the legitimacy of global laws and the likelihood that they will be enacted and... implemented around

the world.” To address this question Halliday and co-researcher Susan Block-Lieb of Fordham University studied the attendees of global law-making forums in the wake of the Asian financial crisis of the late 1990s. Forum attendees came from international financial institutions, international organizations like the United Nations Commission on International Trade Law (UNCITRAL), professional organizations and

sovereign states.

Halliday and Block-Lieb focused particularly on UNCITRAL, scrutinizing the backgrounds of the attendees as they worked to produce UNCITRAL's “Legislative Guide on Insolvency Law.” They found that the meetings were attended most consistently, and with the strongest delegations (in terms of professional depth), by delegations from countries with advanced economies. “Based on

CHICAGO | JULY 31, 2009

ABA CLE PROGRAM



Panelists for the ABA CLE program, "How International Organizations Craft Global Laws: The Case of Corporate Bankruptcy Regimes," (left to right) Leonard Gilbert, Terence Halliday, Ralph Brubaker, and Steven Kargman, Chicago, July 31, 2009. CGPA Photography/Chris Buzanis.

our statistics," Halliday noted, "the Legislative Guide on Insolvency Law is very much going to be influenced by orientations of advanced countries. It's going to bear the expertise of international associations of professionals, but predominantly it's going to be influenced by the United States." (Halliday and Block-Lieb's research has been published in many journal articles, and features as well in the book *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (Stanford University Press, 2009) by Halliday and ABF Visiting Scholar and Northwestern University sociologist, Bruce Carruthers.)

Leonard Gilbert, partner, Holland & Knight LLP, co-chair of the International Bar Association's Section on Insolvency, Restructuring and Creditors Rights, and ABF Life Patron Fellow, followed Halliday with a presentation on the particulars of the UNCITRAL Legislative Guide on Insolvency Law. The Legislative Guide was adopted by UNCITRAL in 2004, according to Gilbert, "to assist in the establishment of an efficient and effective legal framework to address the financial difficulties of debtors. The Guide is intended to be used as a reference by national authorities and legislative

bodies when preparing new laws and regulations, or reviewing the adequacy of their existing laws." But as Gilbert stressed, the Guide is just an aid to national lawmakers; there is nothing proscriptive or obligatory about it.

That the adoption of global legal norms is hardly a straightforward "top down" process was made clear by the next presenter, **Steven Kargman**. Kargman, President of Kargman Associates, a New York City-based strategic advisory firm specializing in restructurings, spoke about "how these international norms are translated into practice..."

how things actually play out, with a focus on emerging markets.” Kargman relayed anecdotes about his experience working on debt restructuring in emerging markets such as Brazil, China, Mexico, and Indonesia. As Kargman conveyed, among the factors complicating the adoption and implementation of global norms in emerging markets are national and local politics, customary business practices, and judicial corruption.

Finally, **Professor Ralph Brubaker** of the University of Illinois College of Law spoke. He began by remarking on how much progress has been made in a relatively short period of time in the area of international bankruptcy law. The process of global norm making is characterized by incrementalism, making this progress all the more remarkable. Brubaker lauded Halliday and Carruthers for their identification and development of the theory of “recursivity” in global law making. Brubaker commented, “I think one of the most powerful insights of Terry’s book (*Bankrupt: Global Lawmaking and Systemic Financial Crisis*, 2009) is what he and co-author Bruce Carruthers, call the recursivity of global lawmaking or cycles of recursivity in global lawmaking that has, I think, power well beyond this insolvency context. What they mean by ‘recursivity’ is where global norms are articulated—for example, by UNCITRAL—but then must be enacted and implemented at the national level by independent nation-

states...and lots can happen in the politics of enactment and implementation. That creates something of a feedback loop for the further development and refinement of global norms, which feeds further cycles of recursivity—sort of an incrementalism in the development of global norms and standards. Recursivity, I think, is a very powerful concept for understanding how we make progress in global lawmaking.”

FUTURE ACTIVITIES

The Center is planning several colloquia and conferences in the next year:

- A regional academic colloquium, “Globalization of Law, International Organizations, and International Law,” in cooperation with the International Organizations/International Law working group of the Buffett Center for International and Comparative Studies, Northwestern University.
- A continuation of the meetings between Center faculty, international scholars, and international financial institutions on global governance and lawmaking.
- A follow-up conference at The Hague on sexual violence and child soldiers.
- A colloquium to be held in Geneva, Switzerland in 2010 on “Governance and public-private partnerships in matters of health, food safety, and trade.” The colloquium will address how the increasingly hybridized system of markets and regulation create special challenges for world-leading institutions such as the World Trade Organization and the World Health Organization. How can public and private sectors join forces to maximize their respective resources? How can new models of regulatory governance and accountability permit public and private organizations to work together cooperatively and effectively?
- Several publications, including journal symposiums and edited books, are planned. 

MORE INFORMATION ON THE CENTER ON LAW AND GLOBALIZATION CAN BE FOUND ON THE CENTER’S WEBSITE: WWW.LEXGLOBAL.ORG

IF YOU ARE INTERESTED IN SUPPORTING THE CENTER ON LAW AND GLOBALIZATION OR OTHER IMPORTANT ABF INITIATIVES, PLEASE CONTACT LUCINDA UNDERWOOD, ABF DEVELOPMENT OFFICE, AT 312.988.6573



center on law & globalization

A Partnership of the American Bar Foundation
and the University of Illinois College of Law

MISSION STATEMENT

The Center on Law and Globalization brings together leaders of international organizations, journalists, and legal scholars to understand the legal dimensions of key global issues, to stimulate exchanges on how these issues are addressed, and to advance research and conclusions on major topics in global debates.

The Center focuses on international human and legal rights issues, notably justice and security, the international economy and marketplace, and health.

By advancing social scientific understanding of global law, global legal institutions and global legal behavior, Center scholars lay foundations for potential solutions.

The Center on Law and Globalization aims explicitly to help international legal audiences, such as the United Nations Commission on International Trade Law, the Hague Courts, and the International Monetary Fund, to advance the research and scholarly frames available to global leaders, to enable national legal professions to catch a vision of the contributions they can make to

advance participatory democracy and to help global and local leaders better understand the constraints, ideologies, and difficulties of advancing global agendas in a world of nation-states.

To open public debate on global issues to a wide global audience, the Center is pleased to introduce an interactive website, providing easy access to ground-breaking research on its principal issues through its unique Smart Libraries where the best research has been transformed into easily accessible executive summaries. The website offers a rich range of research and teaching materials for all specialists in higher education, international organizations and international journalism.

Based on the background research and thorough examination of each situation, the Center can assist in identifying specific problems and provide concrete recommendations to better society and help global leaders advance the effective use of law and justice in a variety of international situations.

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