

Past Feature Updates

Regulating Regulators

When the U.S. Immigration and Naturalization Service denies refugee status to an individual, the agency is required to follow certain administrative procedures, including giving notice and holding hearings. Disappointed applicants can obtain some judicial review, albeit limited.

But what happens when a similar scenario unfolds at the global level, when the United Nations High Commissioner for Refugees issues such a denial? The applicant has no opportunity for independent review. Similar problems arise in such diverse areas as capital requirements for banks, conditions attached to third world development funding and the setting of product safety standards. All too often, global administrative bodies “are not subject to much in the way of accountability,” says Professor Richard Stewart, the John Edward Sexton Professor of Law, and the director of the NYU School of Law’s Center for Environmental and Land Use Law.

Stewart, along with his colleague Benedict Kingsbury, the Murry and Ida Becker Professor of Law, who directs the Institute for International Law and Justice, launched the Global Administrative Law Project to start a dialogue that they hope will lead to changes in the way both formal and informal international agencies do business, in order to protect rights and provide greater public participation and accountability. This spring, they hosted a colloquium inviting a dozen speakers from the U.S. and abroad to address these issues, including Israeli author, law professor and human rights advocate Eyal Benvenisti, a member of the Law School’s global faculty, and Oxford University’s Bronwen Morgan, an expert on reshaping regulatory laws. Also planned are a project website, a workshop at Oxford in October, and conferences in Italy and at the NYU School of Law next year.

“The question is, what rules govern how global agencies decide?” said Kingsbury. Until recently, for example, the U.N. Security Council could direct states to freeze the bank account of anyone suspected of financing terrorist activities without giving the subject an opportunity to say: “I’m the wrong guy,” said Stewart.

While they’re not advocating a separate court to oversee global agencies, Kingsbury and Stewart suggest that national courts need to create new practices for administrative cases that are international in origin; and more international agencies need to develop

new safeguards like the World Bank did in the early 1990s, when it set up an independent inspection panel to review environmental compliance issues after a controversy about the proposed Narmada dam in India.

“It’s starting to happen, but people aren’t connecting the dots,” Stewart said. ■

Danube Clean-up

When the Berlin Wall fell in November 1989, environmentalists saw an opportunity to knock down another wall—the one that kept the public from environmental information about their beloved, albeit polluted, Danube River. “Once the Wall came down, a lot of information about the status of the environment in Eastern Europe became available,” said Jane Bloom Stewart (’79), director of the NYU School of Law’s International Environmental Legal Assistance Program.



Jane Stewart (’79), left, and Ernestine Meijer.

But government officials weren’t sure what information to provide to the public, and citizens didn’t know where to go or what questions to ask to get information.

Stewart’s program, to be undertaken jointly with the Regional Environmental Center for Central and Eastern Europe and Washington-based Resources for the Future, recently received a substantial grant from the Global Environment Facility to improve public access to environmental information about the Danube and increase public participation in clean-up efforts in five Danube-basin countries: Croatia, Serbia-Montenegro, Bosnia-Herzegovina, Bulgaria, and Romania. The grant comes on the heels of a successful pilot program in Slovenia and Hungary that NYU and its partners conducted in 2002.

This time around, Stewart will be aided by Ernestine Meijer, who joined NYU as a senior research fellow at the Center on Environmental and Land Use Law. A Dutch

environmental lawyer with expertise in working with grassroots organizations, Meijer is an ideal fit. “The idea of the project is to assist in setting up legal and practical measures on public participation that will actually work in these five countries,” said Meijer. “We want people to see it as their project, so that basically by the end of the project we can just tiptoe away and progress will continue without us.”

To that end, Stewart and Meijer and their partners at the REC and RFF will start this Fall by meeting with public officials, environmental organizations, and concerned citizens from the five countries to determine their priorities. If there’s legislation in place, why isn’t it working? “Is it because the laws are unclear or because people don’t know what to do with them?” asks Meijer. The project will continue through November 2006. ■

Bait and Switch?

Professor Katrina Wyman is particular about her fish. She won’t eat endangered Chilean sea bass or snapper. No salmon unless it’s wild from Alaska, as she doesn’t like to eat farmed fish. And unless she’s hungry enough to swallow her principles, her halibut must come from Alaska too, where its catch is regulated by a quota system based on tradable permits.

For the past two years, Wyman, who joined the NYU School of Law faculty in June 2002, has been researching the question of why the U.S. was first to use tradable permits to regulate air pollution, but has lagged behind her native Canada in adopting individual transferable quotas (ITQs) for the fishing industry.

In an ITQ program, government regulators cap the amount of fish per species that can be caught. That amount is divided up and allocated through permits that fishermen can sell to one another. In this way, fishermen are assured a certain percentage of the catch, eliminating the frantic fishing races that exist when governments restrict when, where and how much can be caught. In the long term, ITQs should guard against overfishing.

“Given the crisis in our fisheries, why haven’t policy makers adopted these market-based approaches, which economists have been advocating for three decades?” Wyman asked. Only 11 fish species, which represent 24 percent of the fish taken in federal waters, are regulated by ITQs. ■



NYU's Florence Campus Hosts Experts on Global Terrorism



NYU's sun-drenched La Pietra campus, with its fragrant lemon trees amid a peaceful Tuscan landscape, was a sometimes jarring backdrop for the somber discussions held during the Center on Law and Security's June conference, "Prosecuting Terrorism: The Global Challenge."

Karen J. Greenberg, executive director of the center, along with faculty co-directors Stephen Holmes and David Golove, pulled together prominent legal experts, law-enforcement officials and policymakers. The group included Judge Jean-Louis Bruguiere, the chief prosecutor for terrorism in France; Armando Spataro, one of the leading Italian prosecutors for terrorism; Ronald K. Noble, the secretary general of Interpol and a member of the Law School's faculty; Peter Clarke, the head of the antiterrorist branch at New Scotland Yard; Dov Lutsky, the commander of security for the Northern Galilee subdistrict of Israel; and a group of former national security advisers from the Bush and Clinton administrations, including Roger Cressey, Daniel Benjamin and Steven Simon.

The gathering discussed ways to remove the impediments to countering terrorism and the possibility of forming a multilateral body, and what those changes might mean for the Middle East. In the wake of the Madrid bombing on March 11, 2004, participants were eager to consider the merits of greater communication and more formalized methods of cooperation among nations. If one premise underlay the talks, it was that national security for any one nation no longer exists independently of international

security. "International cooperation is a priority not only in Europe but also with all the countries in the world," said Judge Bruguiere, "especially the United States."

The conference attendees have been involved in the war against terror—either by radical Islamists or on the part of national liberation groups—for decades. Behind the headlines, it is their work that

thwarts the terrorists on a daily basis. The general consensus of the gathering was that the terrorists remain strong; that the war in Iraq has greatly harmed the cause of counterterrorism globally by diverting resources, radicalizing a new recruitment base for Al Qaeda and enhancing anti-Americanism; and that the expectation of chemical warfare is real and growing, particularly in regions such as Chechnya.

The group agreed that bilateralism, which has been the trusted method of informational exchange among law-enforcement officials, is not enough to counter growing threats. Daniel Benjamin, now a senior fellow at the Center for Strategic and International Studies, recommended the creation of

panelists suggested using the incentive structure of the International Atomic Energy Commission as an example, perhaps by creating a fund to help developing nations with technical capabilities.

Other participants rejected the idea of a new organization; rather, they insisted that the legal mechanisms in place needed to be improved.

Meanwhile, the panelists said law-enforcement officials face the persistent and adapting strategies of terrorists on a daily basis. At each of the sessions, stories of missed arrests and miscommunications mingled with reports of daring escapades and novel captures. Much remains to be done, according to Bruguiere and others. Speaking of the challenges faced by Britain, Scotland Yard's Peter Clarke pointed out the changes that have taken place in capturing terrorists. "Irish terrorism was by and large domestic. Obviously we are now facing a global threat and in order to investigate it we have to operate globally... We are now looking at much looser networks," he said. "If we take one or two leaders out, they are very quickly replaced and the network is re-formed."

Across the board, participants expressed concern about the need for legal systems to adapt rapidly to the needs of law enforcement in counterterrorism. Suggestions included more detention time prior to formal charges, better coordination of data at the international level, expansion of the parameters around covert operations, and more creative methods of penetration into terrorism groups. "Of course, catching a suicide bomber alive is like a treasure for all those who try to understand terrorists' motives," said Israel's Dov Lutsky.

Despite the bleak subject matter, the meeting was an exercise in coming together to examine the problems faced by the global community. Amid the fear of brewing terrorist plots, the experts agreed that thwarting the enemy is possible, but that it takes conviction, a sense of reality, a genuine willingness to collaborate and a commitment to worldwide policing. "There are a lot of us thinking about this," said Greenberg in summing up. "Therefore we do have some chance of having a more stable world in the future." ■



Karen Greenberg, executive director of the Center on Law and Security, and Judge Jean-Louis Bruguiere, chief prosecutor for terrorism in France.

a multilateral counterterrorism organization that monitors terrorist activities such as money laundering and arms trafficking. It was also suggested that the organization provide incentives for membership in such a group, including economic support. Some

