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Introductory Remarks—Symposium Articles on Globalization and Sovereignty

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We present here, with pleasure, the written contributions to our Symposium on Globalization and Sovereignty. They are contributions indeed, for these Articles, written by members of a panel that reflects a wealth of deep experience and broad perspectives, add importantly to a growing literature on the issues of globalization, economic integration, international institutions, and state sovereignty.

We had the good fortune to gather in Lawrence some of the leading lights on these topics. For several years, Professors Daniel Bradlow (American University) and Raj Bhala (George Washington University) have helped give shape and substance to debates over the roles of international economic institutions, the rules they administer, and the values they represent. Both of them are widely published, and each of them brings to his writings a cross-cultural element born of his own personal background and heritage. Lori Wallach speaks for thousands of people in her position as Director of Public Citizen's Global Trade Watch. In doing so, she has focused attention on the effects that trade agreements and organizations have not only on the economic well-being of individuals but also on their physical and social well-being and their ability to participate in decision-making. Herbert Morais has extraordinarily broad experience in the actual workings of international financial institutions, having served in senior positions in three of them—the Asian Development Bank, the World Bank, and the International Monetary Fund—and this background gives him an authoritative voice in discussing the functions and futures of such institutions. The fifth panelist for

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our Symposium was John Head of our own KU law faculty, who also brings the experience of working in international institutions to his writings on the challenges facing such institutions and the environment of change in which they operate.

Bringing together these five persons has created a rich palette of topics and views, all of them aimed at illuminating our overall theme of Globalization and Sovereignty. Without attempting to offer a summary or synthesis of their Articles, we sketch out below some of the specific issues they address and then invite our readers to enjoy the Articles themselves.

Raj Bhala helps us look closely at a set of trade rules that are central to the great divide between rich countries and poor countries—the GATT-WTO rules offering so-called "special and differential" (S&D) treatment to less economically developed nations. Such S&D rules include, for example, those providing preferential (low) tariff treatment for poor countries or longer time periods for poor countries to phase in certain national trade policy reforms. One complaint raised by anti-globalization protestors, Bhala explains, is that such S&D rules, taken as a whole, actually run contrary to the interests of the Third World—and, by extension, that participation in the entire GATT-WTO legal regime runs contrary to the interests of Third World countries. Bhala contends that this complaint reflects sloppy thinking, because it is made without any organizational framework in which to think about the S&D rules. So he sets about constructing such a framework. As a first step, Bhala draws on Roman Catholic teaching to identify four main theological categories in which S&D treatment rules can be placed—homily, mortification, mercy, and almsgiving—and explains what kinds of rules would fit within each of these categories. Then Bhala expands his analysis by expressing the same theological framework in Islamic terms, thus underscoring a theme that runs throughout the Article: there are certain fairly universal concepts about helping the poor that we should think about in considering, critiquing, and ultimately improving the S&D rules in international trade law.

Daniel Bradlow has also chosen a topic that reflects anti-globalization concerns, but from a different angle. Whereas Professor Bhala deals with a complaint that globalization has done too little (to help the poor countries), Professor Bradlow deals with a concern that globalization does too much. He poses this question: Should the international financial institutions (IFIs) play a role in the implementation and enforcement of international humanitarian law? In addressing this question, Bradlow first traces how the operations of the World Bank

and the IMF have undergone a gradual but substantial evolution in the half-century since their creation—an evolution that has recently drawn sharp criticism as inappropriate "mission creep." In particular, he explains how these institutions have dealt with "countries in conflict" and with "post-conflict situations" in recent years—focusing, for example, on certain operational policies of the World Bank that guide that institution's activities in such situations. Bradlow then examines the costs and benefits of having the IFIs take a more active role in the implementation and enforcement of international humanitarian law in such situations. In drawing conclusions from this examination, Bradlow distinguishes between enforcement and implementation, positing that the IFIs have a role to play in the latter but should generally avoid the former.

The Article by John Head, like the ones by Bhala and Bradlow, focuses on anti-globalization claims. In particular, he offers a catalog of key criticisms being leveled against the WTO and the network of trade rules emerging from the Uruguay Round of trade negotiations in the early 1990s. Head summarizes these criticisms—they include assertions that free trade hurts the poor, that it causes a "race to the bottom" in environmental standards, that the WTO lacks transparency and accountability, and numerous others—and he then identifies which ones of those should be dismissed and which ones endorsed. After offering prescriptions for change in the WTO and in the rules it administers, Head then paints with a broader brush in making some observations about how those specific changes fit within a larger picture of global pluralism that would rely on linkages among international organizations, private business interests, and non-government entities committed to civil society.

Herbert Morais also focuses on a topic that has seized the attention of anti-globalization groups and other observers: the proliferation of international standards, especially in the areas of business and financial law, and the methods by which they have been developed and disseminated. Morais poses this central question: To what extent does the rapid development of such new standards challenge the sovereign right of nations to establish their own regulatory regimes and standards? Morais traces a fascinating story of how a wide variety of standards—including human rights standards and others outside the area of commerce and finance—have gradually emerged since World War II, in parallel with the rise of international organizations dedicated to addressing the frictions of an ever smaller world. Crises have spurred this work forward with particular urgency; Morais explains how the seismic political and economic changes in recent years set the stage for a spate of in-

ternational standards in the areas of banking supervision, corporate governance, money laundering, corruption, data dissemination, securities regulation, insolvency, labor conditions, and so on. Then he turns to the anti-globalization complaint—that the process by which such international standards are formulated and implemented is dominated by Western industrial countries and represents an emerging regime of global governance that robs other countries of their freedom of action. Morais examines the components of this complaint and offers guidelines as to how future work on international standards can be improved. In particular, he suggests (among other things) a democratization of the process by which standards are developed, a flexibility in implementation that reflects local legal traditions and practices, and a presumption against making international standards the subject of conditionality in the operations of international financial institutions. Underlying these specific suggestions is a general principle that Morais emphasizes in his conclusion: the development of new international standards should be treated as an evolutionary and educational process, so that developing and transitional countries in particular have a realistic opportunity to absorb and accept the standards, to participate in their creation, and thereby to reap the benefits that globalization can afford them.

Lori Wallach also focuses on the issues of participation and international standards, but within the specific context of international trade agreements. Her Article—actually a collaborative effort drawing from the work of several Global Trade Watch staff members—opens with the observation that the WTO and NAFTA regimes appear to run directly counter to decades of committed struggle toward democratic, accountable decision-making. That struggle, the Article claims, has resulted in a diverse smorgasbord of laws, priorities and policies in different countries; but now the WTO and NAFTA regimes are threatening to squelch that diversity by imposing one-size-fits-all rules and decisions. Moreover, the Article continues, the rules and decisions themselves are formulated by unrepresentative and unaccountable officials whose interests and expertise are exclusively trade-oriented. The consequence, according to the Article, is a slow-motion coup d'etat against accountable, democratic governance, particularly through the phenomenon of international harmonization of standards. These standards govern such matters as domestic environmental and health policies, and they can override or displace locally made decisions—all of which is, according to the Article, evidence of the pressing need to reform the WTO and NAFTA regimes. The recommended reforms would include an insistence that U.S. regulators apply fully the due process and participation require-

ments central to U.S. law and an insistence that the Precautionary Principle be adopted so that nations may move at their own pace in setting policies on health and environmental protection.

These brief introductory comments cannot, of course, do any more than hint at the full richness of the Articles emerging from our Symposium. Again we thank the participants who came to Lawrence to discuss their views and for the Articles that they have allowed us to publish here. We hope our readers will enjoy them.

We also commend to our readers the Comment written by Chris Dove, published here as a companion piece. In that Comment, Mr. Dove (recently named the Law Review's editor-in-chief for the 2002–2003 academic year) examines the environmental side agreement to the NAFTA—the North American Agreement on Environmental Cooperation (NAAEC). He places the NAAEC in a broader context by considering various means of judging the effectiveness of its voluntary compliance enforcement mechanism. Mr. Dove considers the precedent of other treaties that began as voluntary and developed over time into fully enforceable treaties and suggests that the NAAEC might follow their path. He concludes that the NAAEC must be textually refined and gain the full support of its signatory states before it evolves into a more effective environmental treaty.