

national courts, or endowing it with a form of preliminary reference jurisdiction (such as that exercised by the ECJ with respect to national courts). He also adds a suggestion that the ICJ could potentially act as an arbiter in cases of jurisdictional competition. However, Shany concedes that such reform is unlikely to be agreed. Another proposal is for states to review their acceptances of the jurisdiction of international courts and tribunals, in order to minimize jurisdictional competition. This is unrealistic, as states will generally want to ensure that they are free to submit disputes to the most favourable forum available, and this assessment can usually be made on a case-by-case basis only. More promising, however, is the use of the principle of comity: this has, indeed, been employed by an ICSID tribunal in the *Pyramids* case to suspend the exercise of its jurisdiction pending the conclusion of a case before the French *Cour de cassation*, and also by the UNCLOS Tribunal in the *MOX Plant* case. Shany argues that the exercise of judicial comity and information exchange between courts is the most realistic solution, and this recent experience indicates that he is right. In light of the increasing frequency of jurisdictional clashes, however, one senses that the development of other solutions, including those proposed by the author, cannot be ruled out: the acceptance of the principle of *res judicata*, for instance, suggests that rules of private international law are not altogether out of place in public international law.

This book represents an impressive contribution to the study of the relationship between different international regimes and international adjudicatory bodies. It is also an ideal companion volume to PICT's *Manual on International Courts and Tribunals*, which Shany co-edited with Professor Philippe Sands and Ruth Mackenzie. Given the rising tendency on the part of states to submit disputes to third-party adjudication, and the increased availability of international dispute settlement bodies with compulsory jurisdiction, there is more likelihood today of jurisdictional overlap between international dispute settlement bodies than has previously been the case.

Yuval Shany's book offers an excellent exposition of how these issues have been dealt with by a wide range of international courts and tribunals. In making proposals to mitigate the problem of jurisdictional competition, his work is valuable both as a practical tool for those faced with such dilemmas, and also as an aid to a better theoretical understanding of the emerging international judicial system.

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Anheier, Helmut, Marlies Glasius and Mary Kaldor (eds). *Global Civil Society 2001*. Oxford: Oxford University Press. 2001. Pp. XII + 348 pages. ISBN 0-19-924643-2.

Glasius, Marlies, Mary Kaldor and Helmut Anheier (eds). *Global Civil Society 2002*. Oxford: Oxford University Press. 2002. Pp. XII + 404 pages. ISBN 0-19-925169-X.

Until very recently, the concept of a civil society was principally focused on national analyses. The idea of a 'global civil society' is of comparatively recent vintage and only began to be an object of intense theoretical attention after the Cold War ended. However, it is rooted in the same model of a social space, located between the public and private spheres, in which citizens participate.

While one would expect international lawyers to develop their own conceptualization of what civil society means for the discipline, it is clear that the legal field can benefit from the insights developed in other disciplines such as sociology, political science, international relations and economics. Hence the relevance of the *Yearbook on Global Civil Society*<sup>1</sup> for international lawyers seeking to understand the state of the art in this growing field. The Yearbook is published jointly by the Centre for the Study of Global Governance and the

<sup>1</sup> The Yearbook is available from OUP in paper version, but is also, very usefully, downloadable online at <http://www.lse.ac.uk/Depts/global/Yearbook/yearbook.htm>.

Centre for Civil Society and is intended to be the flagship of the London School of Economic's Global Civil Society Programme. Neither of the two Yearbooks published to date contains any purely juridical analysis or any systematic treatment of the legal dimension of civil society. Legal questions are nevertheless clearly relevant.

The structure of the Yearbooks consists of: Part I, which deals with 'Concepts of Global Civil Society', devoted to the theory and general evolution of the concept; Part II on 'Issues in Global Civil Society', consisting of case studies focusing on specific sectors in which global civil society has been involved; Part III, the 'Infrastructure of Global Civil Society', charts the various methods through which global civil society makes its voice heard; and Part IV on 'Records of Global Civil Society', which comprises an index, a data section, information on parallel summits, a chronology of recent developments, and a list of recommended reading (but with very few references to the international law literature).

A key issue addressed in the Yearbooks, both explicitly and implicitly, is that of the definition of 'global civil society'. The concept is not only a truly complex one in itself. It is at heart a contentious idea, and the debate over its definition is, inevitably, also a debate as to its appropriateness. In addition, the considerable theoretical attention it has generated means that we are confronted with hundreds of different definitional criteria which originate in various branches of the social sciences. Such a wealth of concepts often clouds what should be understood by the term instead of clarifying it (in this respect, the idea of civil society suffers a similar fate to that of 'globalization').

The Yearbook declares a preference for the expression *global civil society* instead of others like *transnational civil society*. The use of the term *global* is considered more appropriate than any other because it includes the normative aspiration that the process encompasses (one that seems to be explicitly endorsed by the editors who indicate their wish to be at the heart of 'efforts to contribute to the emerging community of activists and scholars investi-

gating and shaping global civil society'). Indeed, it would seem that only the idea of a *global* civil society could really support the concept's claim to act as a counterbalance to the other great characteristic process of our times, globalization (*Yearbook 2001*, at 16).

Beyond that, however, the editors avoid standardized definitions as well as definitional guidelines, as if the concept were still in too much flux to risk pinning it down too narrowly. When the editors are 'cornered' into giving a definition of exactly what they mean by it, if only to justify what they include under the 'Records of Global Civil Society', the definition adopted — 'global civil society is the sphere of ideas, values, institutions, organizations, networks, and individuals located *between* the family, the State, and the market and operating *beyond* the confines of national societies, politics and economies' (*Yearbook 2001*, at 17) — is so large as to be remarkably unconstraining. The advantage of this catholicism is that it favours an ongoing reflection on the topic, which may in turn favour new understandings and even the shaping of civil society itself.

One myth that the definition does puncture is the idea that there exists a perfect equation between global civil society and non-governmental organizations (NGO). NGOs certainly occupy a dominant position in the core of civil society. Their organizational capability, the diversity of the forms they may take (organizations, associations, networks, movements, coalitions)<sup>2</sup> and their capacity to transcend isolation by transforming themselves into large-scale protest movements with a wide focus — from the international economic order to the invasion of Iraq — has made them a central feature of the international system. But social movements other than NGOs also play a crucial role in international relations.

Beyond the definitional issues, of particular interest to readers of the *EJIL* is the light shed on the role of global civil society in relation to international law. By focusing on the role of

<sup>2</sup> Anheier and Themudo, 'Organisational Forms of Global Civil Society: Implications of Going Global', *Global Civil Society 2002*, at 191.

civil society in international norm production (mainly the work of NGOs), the Yearbooks highlight the fact that a vision of state consent as the exclusive origin and enforcer of international regulations is clearly outdated. This is illustrated by the change in recent years in the main targets of diverse civil society groups. By the end of the 1960s the objective of the protest movements in Western countries was the state. By the late 1990s, however, the principal focus had become the international economic institutions and multinational corporations, implying that the state was no longer the prime locus of international decision-making.<sup>3</sup>

This change of focus in the process of law-making has led some international lawyers, like Richard Falk, to propose the constitution of a World Parliament or Global Peoples Assembly which would have legislative powers.<sup>4</sup> While this kind of vision might seem to be far-fetched at present, it nonetheless already has a firm theoretical and practical footing in the international legal system (as illustrated, for example, by the European Parliament).

Perhaps the most direct and best-known way in which NGOs have shaped international law is through their participation in treaty-making processes. The 2002 Yearbook, for example, highlights the influence exercised by certain NGOs in the drafting of the Statute for the International Criminal Court, whether by their representatives being members of governmental delegations, by providing technical assistance to some states, or by being involved in the wording of con-

crete provisions.<sup>5</sup> Other more subtle and no less important ways in which NGOs regularly contribute to the shaping of international law include the problem-defining process, through which they contribute to translating complicated scientific questions into issues that the public can understand, prompting that public to demand international action for the provision of legal solutions (for example in relation to the ozone layer). NGOs have also demonstrated a capacity to generate certain standards of conduct regardless of the existence of international treaties, thus contributing to the development of customary rules.

In terms of specific normative outcomes, NGOs have been responsible for the emergence of values or concepts with regulatory significance in a great variety of fields. One generally thinks of human rights (such as in relation to the death penalty or crimes against humanity), but civil society's impact has in fact been much broader, including in relation to biotechnologies, humanitarian intervention, the responsibility of multinational corporations, and HIV/AIDS.<sup>6</sup> Perhaps their most important contribution, as shown in the Yearbooks, is the emergence of a 'global humanitarian regime' over the last decade. NGOs have contributed to the theoretical dimension of this question by opening up public debates on what humanitarian intervention should be, as well as by being involved in the practice (for example, by protecting civilians in conflict situations). What is significant here is not only the growth of the number of organizations dedicated to humanitarian assistance in all its forms and the increasing willingness of governments to offer resources (economic as well as military), but also the strengthening of international law itself, which has become evident in the adoption of

<sup>3</sup> Chandhoke, 'The Limits of Global Civil Society', *Global Civil Society 2002*, at 40.

<sup>4</sup> Falk and Strauss, 'On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty', 36 *Stanford Journal of International Law* (2000) 191, at 207 and 'Toward a Global Parliament', LXXX *Foreign Affairs* (2001) 212.

<sup>5</sup> Glasius, 'Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court', *Global Civil Society 2002*, at 137.

<sup>6</sup> Seckingelgin, 'Time to Stop and Think: HIV/AIDS, Global Civil Society, and People's Politics', *Global Civil Society 2002*, at 109.

new treaties, the expansion of universal jurisdiction and the creation of new international tribunals to prosecute the gravest violations of human rights.<sup>7</sup>

Global civil society's contribution to international law, however, does not stop with norm production and a case can be made that it also has an important role in ensuring norm compliance. The direct influence of global civil society in this area may be slight, but it is not negligible. In a sense, the global campaign against the war in Iraq — a campaign that was often explicitly framed in terms of that war's illegality — could be seen as marking the emergence of a more fully coordinated global civil society in the international realm. Demonstrations may not have stopped the war, but they certainly contributed to delegitimizing it.

NGOs also intervene directly through international judicial organs either because they have standing or more commonly because they can act as *amici curiae*. Most often, however, NGOs' 'norm enforcement' activities unfold outside the courts. It is clear that NGOs' role as watchdogs of states, international organizations, financial institutions and the private sector, for example, is geared towards ensuring that these actors adhere to international law. Indeed, some international treaties go as far as to anticipate an explicit role for NGOs in this respect<sup>8</sup> (although, needless to say, the existence of such formal recognition has not been indispensable for NGOs, which feel they have a role to play and make themselves heard). The importance of relatively informal strategies is particularly apparent in efforts to ensure the responsibility of multinational corporations, where civil society's use of various non-jurisdictional mechanisms (codes of conduct, certification mechanisms, etc.) and monitoring is dominant as a strategy to ensure respect for public

law.<sup>9</sup> Mechanisms of this kind are a useful means of smoothing over the gaps in international law, given that there are no obligations directly imposed on the transnational corporations.

The Yearbooks have a number of shortcomings, however. They pay, for example, little attention to the legitimacy deficits said to be characteristic of many NGOs, despite the extent to which this is currently the object of great debate.<sup>10</sup> This omission is particularly noteworthy given the importance of the moral authority of NGOs as one of the factors said to explain their growth in influence in international society.<sup>11</sup> It is a pity that the Yearbooks have thus far failed to tackle issues such as errors in the application of rules of democratic and transparent functioning, the absence of accountability, and the fact that the financing of many development NGOs comes from public sources, at the expense of their independence.

However, the Yearbooks have the great merit of bringing attention to a number of pressing issues, some of which may arguably have an impact on the issue of legitimacy. One such issue concerns the legal status of global civil society. From an international law perspective, there are serious gaps between fact and law that will need to be corrected. The lack of such a status seems less excusable than in the past, given that a democratic normative principle has now begun to take hold in international society. It is especially clear in the case of NGOs, where the distance between legal theory and practice is abysmal. Indeed, the contrast between NGOs' nearly invisible status in the international regulatory system

<sup>7</sup> Kaldor, 'A Decade of Humanitarian Intervention: The Role of Global Civil Society', *Global Civil Society 2001*, at 109.

<sup>8</sup> See, for example, Article 13.4.i. of the Kyoto Protocol to the United Nations Framework Convention On Climate Change, 1998.

<sup>9</sup> Oliviero and Simmons, 'Who's Minding the Store? Global Civil Society and Corporate Responsibility', *Global Civil Society 2002*, at 77.

<sup>10</sup> For a strongly critical view of the role of NGOs in the context of the build-up to the Rome Statute for an International Criminal Court, see Sur, 'Vers une Cour Penale Internationale: La Convention de Rome entre les ONG et le Conseil de Sécurité', 103 *RGDIP* (1999) 29, esp. at 31, 36 and 45.

<sup>11</sup> E.g. Chandhoke, *supra* note 3, at 41.

and their real-world relevance is one of the gaps that could cost the international legal system part of its legitimacy.<sup>12</sup> The consultative status that exists in many international organizations and bodies (e.g. the regulation in Article 71 of the UN Charter) is excessively rigid and anachronistic. It seems urgent, therefore, to acknowledge the presence of NGOs when they operate effectively by putting an end to their absence from regulatory texts. A good way to start would be to allow NGOs to take on a certain international legal personality in certain normative sectors, i.e. in those in which they play a role that can be recognized as being of international utility: international law of human rights, humanitarian international law, international environmental law and international development law.

Overall, therefore, these Yearbooks contribute important ideas towards a greater recognition of the central role played by civil society, even if the juridical dimensions of the relevant issues are not explicitly explored. It should be kept in mind, however, that their focus is truly pluridisciplinary and that international law specialists should read between the lines in order to derive greatest benefit from the wide-ranging contributions they contain.

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<sup>12</sup> The European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (N. 124; 1986), which arose within the framework of the Council of Europe (an area of high NGO concentration), is the only international treaty on the matter but its ratification rate so far has been disappointing.