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BOOK REVIEW

CONFOUNDING OCKHAM'S RAZOR: MINILATERALISM AND INTERNATIONAL ECONOMIC REGULATION

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ABSTRACT

In Minilateralism: How Trade Alliances, Soft Law, and Financial Engineering Are Redefining Economic Statecraft*, Professor Chris Brummer embraces the complexity of the global economic system and its regulation by exploring the emerging role and dominance of varying strands of economic collaboration and regulation that he collectively refers to as "minilateralism." In describing the turn toward minilateralism, Brummer notes a number of key features of this new minilateral system, including a shift away from global cooperation to strategic alliances composed of the smallest group necessary to achieve a particular goal, a turn from formal treaties to informal non-binding accords and other soft law, and the willingness of governments to resort to financial engineering to achieve their goals. While doing so, Brummer's book explores how and why this shift from multilateralism to minilateralism has occurred, and he discusses the issues associated with managing and shaping the healthy growth and development of this system. He advocates that policymakers and regulators use what he terms "smart minilateralism" to define policy objectives, choose the proper minilateral tools, and legitimize their actions by seeking the support of relevant stakeholders.*

This Review engages Brummer's theories, complicates them, and in a variety of instances challenges them. It explores whether the world is merely experiencing the fine tuning of multilateralism, rather than a shift to minilateralism; whether minilateralism is simply better documented today than it has been in the past, rather than the emerging norm; and whether minilateralism is really a new phenomenon. It also challenges Brummer to offer his readers more on how multilateral and minilateral systems interact, how minilateral legitimacy might be achieved, and what role non-governmental entities do and should play in international economic regulation. In addition, this Review suggests that in various contexts minilateralism is doomed to fail and explores the implications of that failure. Thus, in a style of academic criticism, this Review criticizes the excellent and

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demands an unattainable level of perfection, especially because it would require Brummer to turn his readable and fully formed text into a multi-volume treatise.

INTRODUCTION

During the early to mid-1300s, William of Ockham, a Franciscan monk and medieval philosopher, is credited with formulating and championing a problem solving rule that has become known as "Ockham's razor."[1] Ockham's razor is the principle that when faced with a problem with an uncertain solution, the simplest answer is the best answer until refuted.[2] A similar sentiment has also been attributed to Albert Einstein, who is credited with saying, "[e]verything should be made as simple as possible, but not simpler."[3] Comparably, the obsession of many economists with efficiency also is likely a tacit endorsement of Ockham's razor, as complexity often leads to inefficient results.[4]

Yet, Ockham's razor itself is deceptive because it conveys the appearance of simplicity. This approach to problem solving rests upon at least two important assumptions. First, Ockham's razor rests upon the assumption that the problem can be identified and isolated. Second, Ockham's razor rests upon the assumption that the simplest solution can be determined. In the absence of these assumptions being met, the value of Ockham's razor as a problem-solving tool declines dramatically.

International economic regulation confounds Ockham's razor. This is because the international economic system entails a wide variety of subsystems, including global trade, international finance, and the global monetary system. In addition, the goals sought to be achieved within international economic regulation can vary widely among regulators. Examples of these varied goals include achieving greater global efficiency, creating ties among nations to avoid global conflict, promoting national interests, and promoting various political and economic ideologies. Also, figuring out what is a "simple" solution to the task of creating an effective system of international economic regulation can be extraordinarily difficult. For example, global government, which might be a simple and effective solution to global economic issues, raises a host of implemental and operational difficulties. In short, the word "simple" and its foreign equivalents likely should not be included in discussions of how the global

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1. *See* JULIAN BAGGINI & PETER S. FOSL, THE PHILOSOPHER'S TOOLKIT § 5.7 (2d ed. 2011) (providing an overview of Ockham's razor).

2. *Id.*

3. THE ULTIMATE QUOTABLE EINSTEIN 475 (Alice Calaprice ed., 2011) (noting that although this quotation is regularly attributed to Einstein, its origins are uncertain).

4. *See* George M. Cohen, *The Negligence-Opportunism Tradeoff in Contract Law*, 20 HOFSTRA L. REV. 941, 946 (1992) ("In formulating efficient legal rules, economists usually start with the simplest model and then add complexities.").

economic system should be regulated. Applying Ockham's razor in the realm of international economic regulation is difficult, if not impossible, because of the challenges of identifying and isolating the problems and the difficulties of determining meaningful solutions. All of this demonstrates the complexity of international economic regulation makes it an extraordinarily demanding area of study.

In *Minilateralism: How Trade Alliances, Soft Law, and Financial Engineering Are Redefining Economic Statecraft* (*Minilateralism*), Professor Chris Brummer embraces the complexity of the global economic system and its regulation by exploring the emerging role and dominance of varying strands of economic collaboration and regulation that he collectively refers to as "minilateralism."[5] In doing so, Brummer contrasts minilateralism with the "multilateralism" that dominated international economic regulation during the latter half of last century. Importantly, although Brummer acknowledges that "multilateralism" can be defined as cooperation among three or more countries, he defines "multilateralism" as the type of cooperation in which numerous countries enter formal treaties that memorialize economic relationships often under the supervision of international organizations, such as the International Monetary Fund or the World Trade Organization.[6] In contrast, according to Brummer, "minilateralism" refers to more modest, innovative, and less formal emerging approaches to coordinate activities to regulate the global economy.[7]

In describing the turn toward minilateralism, Brummer notes a number of key features of this new minilateral system, including a shift away from global cooperation to strategic alliances composed of the smallest group necessary to achieve a particular goal, a turn from formal treaties to informal nonbinding accords and other soft law, and the willingness of governments to resort to financial engineering to achieve their goals.[8] While doing so, Brummer's book explores how and why this shift from multilateralism to minilateralism has occurred, and he discusses the issues associated with managing and shaping the healthy growth and development of this minilateral system. He advocates that policymakers and regulators use what he terms "smart minilateralism" to define policy objectives, choose the proper minilateral tools, and obtain legitimacy for their actions by seeking the support of relevant stakeholders.[9]

This Book Review engages Brummer's theories, complicates them, and, in a variety of instances, challenges them. It explores whether the world is merely experiencing the fine-tuning of multilateralism, rather than a shift to

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5. CHRIS BRUMMER, MINILATERALISM: HOW TRADE ALLIANCES, SOFT LAW, AND FINANCIAL ENGINEERING ARE REDEFINING ECONOMIC STATECRAFT (2014).
6. *Id.* at 2.
7. *Id.* at 17–19.
8. *Id.*
9. *Id.* at 165.

minilateralism; whether minilateralism is just better documented today than in the past, rather than the emerging norm; and whether minilateralism is really a new phenomenon or a well-established historical occurrence.[10] It also challenges Brummer to offer his readers more on how multilateral and minilateral systems interact, how minilateral legitimacy might be achieved, and what role nongovernmental entities do and should play in international economic regulation.[11] Thus, in a style similar to a great deal of academic criticism, this Review explores the excellent and demands an unattainable level of perfection because it would require Brummer to turn his readable and fully formed text into a multi-volume treatise.

The remainder of this Review is structured as follows. Part I provides a brief overview of Brummer's text and explores the intricacies of his theories. Although ultimately agreeing that Brummer's thesis is correct, Part II pushes back against Brummer's claim that minilateralism is a new and innovative approach to international economic regulation that is becoming the dominant mode of international diplomacy. Part III explores some of the topics that still need to be addressed relating to minilateralism now that Brummer has authored his text. Part IV discusses the reality that, in certain areas of international economic regulation, minilateralism is doomed to fail and explores the implication of that failure. Lastly, the Conclusion provides brief final remarks.

I. THE INTERNATIONAL ECONOMY IN TWO HUNDRED PAGES

Brummer's sophomore book is anything but sophomoric, which is not surprising considering the depth and breadth of his credentials.[12] In terms of his writing, Brummer has published numerous law review articles[13] and book chapters[14] on international financial regulation. He also is the author of *Soft*

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10. *See infra* Part II (exploring whether the world is actually experiencing a move to minilateralism).

11. *See infra* Part III (exploring future topics that Brummer could explore relating his theories).

12. *See Chris Brummer*, GEORGETOWN LAW, http://www.law.georgetown.edu/faculty/brummer-chris.cfm# (last visited Feb. 12, 2016) (containing Professor Brummer's biography).

13. *See, e.g.*, Chris Brummer, *How International Financial Law Works (And How It Doesn't)*, 99 GEO. L.J. 257 (2011) [hereinafter Brummer, *How International Financial Law Works*]; Chris Brummer, *Post-American Securities Regulation*, 98 CAL. L. REV. 327 (2010); Chris Brummer, *Why Soft Law Dominates International Finance—And Not Trade*, 13 J. INT'L ECON. L. 623 (2010); Chris Brummer, *Territoriality as a Regulatory Technique: Notes from the Financial Crisis*, 79 U. CIN. L. REV. 499 (2010); Chris Brummer, *Corporate Law Preemption in an Age of Global Capital Markets*, 81 S. CAL. L. REV. 1067 (2008); Chris Brummer, *Regional Integration and Incomplete Club Goods: A Trade Perspective*, 8 CHI. J. INT'L L. 535 (2008); Chris Brummer, *Stock Exchanges and the New Markets for Securities Laws*, 75 U. CHI. L. REV. 1435 (2008); Chris Brummer, *The Ties That Bind? Regionalism, Commercial Treaties, and the Future of Global Economic Integration*, 60 VAND. L. REV. 1349 (2007).

14. *See*, *e.g.*, Chris Brummer & Rachel Loko, *The New Politics of Transatlantic Credit Rating Agency Regulation*, *in* TRANSNATIONAL FINANCIAL REGULATION AFTER THE CRISIS 154 (Tony Porter ed., 2014); Chris Brummer, *Networks In(-)Action?: The Transgovernmental Origins of, and Responses to, the Financial Crisis*, *in* THE WORLD BANK LEGAL REVIEW: INTERNATIONAL

Law and the Global Financial System: Rule Making in the 21st Century, a book describing the architecture of international financial regulation.[15] His second book, *Minilateralism*, builds upon some of the insights regarding soft law and international financial coordination found in his first book by exploring the broader topic of international economic regulation and charting themes in this broader area.[16]

Before going into a deeper theoretical engagement, some basic style points are worth noting, as well as the basic layout of *Minilateralism*. The book is written with a high level of depth and sophistication that makes it a worthwhile read for an expert in the field of international financial regulation. It is also an accessible and useful text for someone who may be relatively new to the field or someone who may have knowledge of some, but not all, of the wide range of subfields that compose international economic regulation.

In a very real sense, if you give Brummer two hundred pages, he will give you the world. This is in part possible because, unlike many law professors, Brummer spends most of his time in his scholarship describing how the world *is*, rather than how the world *ought* to be.[17] This book is no exception. Brummer's descriptive style makes the text a valuable resource for those starting to think about the state of world, although based on his breadth and depth of knowledge, the reader is at times left wishing that Brummer would spend more time talking about how international economic cooperation ought to evolve. He does, however, make a number of very useful observations throughout the book about how international economic cooperation should evolve, especially in the conclusion. Notably, as will be explored in the Part II of this Review, Brummer is relatively aggressive in reinforcing the idea that minilateralism is new and innovative. Although his point has merit, especially based upon the examples he offers and the trends he describes, one should remember that history repeats itself, and the seeds of minilateralism as the emerging model of international economic regulation were sown long ago.[18]

A majority of Brummer's theories on minilateralism are laid out in the introduction and chapter five of the text. The remaining chapters of the book largely provide background material and examples supporting Brummer's

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FINANCIAL INSTITUTIONS AND GLOBAL LEGAL GOVERNANCE 323 (Hassane Cissé, Daniel D. Bradlow & Benedict Kingsbury eds., 2012); Chris Brummer, *Why Soft Law Dominates International Finance—and Not Trade*, *in* INTERNATIONAL LAW IN FINANCIAL REGULATION AND MONETARY AFFAIRS 95 (John H. Jackson, Thomas Cottier & Rosa M. Lastra eds., 2012); Chris Brummer, *Examining the Institutional Design of International Investment Law*, *in* APPEALS MECHANISM IN INTERNATIONAL INVESTMENT DISPUTES 281 (Karl P. Sauvant ed., 2008).

15. CHRIS BRUMMER, SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM: RULE MAKING IN THE 21ST CENTURY (2012).

16. *See generally* BRUMMER, *supra* note 5.

17. *See supra* notes 13–15 (containing citations to Professor Brummer's other scholarship).

18. *See infra* Part II.C (discussing various historical examples of minilateralism).

thesis that the prevailing model for regulating the global economy is transitioning from multilateral diplomacy to minilateral diplomacy.

In the introduction, after suggesting that the large, global international organizations that regulated the global economy in the latter half of last century have declined in importance in recent years, Brummer argues that international economic diplomacy is now dominated by regional clubs—such as the European Union and Association of Southeast Asian Nations—and other more geographically diverse initiatives—such as the G-20, Basel Committee on Banking Supervision, and the Financial Stability Board.[19] In describing his central thesis, Brummer states,

> [c]ore tenets of postwar multilateralism – from big global forums, to formal rules of the road for economic relations, to U.S. dollar hegemony – are being supplemented, and in some instances replaced, with alternative mediums and diplomatic tools in order to respond to a world of more varied interests, preferences, and power constellations.[20]

He credits this transition from multilateralism to minilateralism in part to an aversion to the transaction costs associated with creating and operating large, global institutions to regulate the global economy.[21] Relatedly, he also credits this transition to the decline of the United States as a hegemon.[22] This decline has resulted in a lack of leadership to push forward global agreements because a dominant power no longer exists to pacify and overcome the competing interests of other nations to allow for the creation of such agreements.[23] Brummer argues this has fueled a sea of change in international economic diplomacy from "big" to "small" as a transition from multilateralism to minilateralism has occurred in recent years.[24]

As previously discussed, Brummer suggests this new minilateral system is characterized by three major changes: a shift from global cooperation to strategic alliances, with the goal of finding the smallest group necessary to achieve the desired international economic regulation; a turn from formal treaties to informal nonbinding accords; and the willingness of nations to resort to financial engineering to achieve their objectives.[25] Importantly, although Brummer notes that others have used the term "minilateralism" previously, no one has tackled the topic in a single work as it applies to international economic regulation.[26]

In chapter one, Brummer explores the rise and fall of multilateralism. He notes that prior to the mid-seventeenth century, nations rarely cooperated

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19. *See* BRUMMER, *supra* note 5, at 1.
20. *Id.* at 3.
21. *Id.* at 3–8.
22. *Id.* at 14–17.
23. *Id.* at 8–17.
24. *Id.* at 18.
25. *Id.* at 18–19.
26. *Id.* at 21.

internationally because of poor communication and the ongoing development of the modern concept of a "state."[27] As he notes, international economic cooperation finally began to solidify in regard to monetary policy in the late 1850s and became more and more formalized from that point forward.[28] Similarly, as Brummer reports, trade policies also began to formalize in the late 1800s, although the robustness of the cooperation between states waxed and waned based on financial crises and global conflicts.[29] In the wake of World War II, the United States became a dominant power and sought greater multilateral cooperation in international monetary policy and international trade regulation.[30] These efforts led to the Bretton Woods Conference in July 1944 that laid the groundwork for the establishment of the International Monetary Fund (IMF) and the General Agreement on Tariffs and Trade (GATT).[31] The GATT ultimately resulted in the creation of the World Trade Organization in 1995 to enforce the GATT and deal with other trade issues.[32] As Brummer argues, the post-World War II dominance of the United States allowed it to fuel the development of the multilateral system, particularly in the areas of monetary policy and trade, which the United States had special interests in developing.[33] He also suggests that similar multilateral development did not occur in international financial regulation because the United States could wait for those seeking capital to come to the United States to try to obtain access to its world-class financial institutions and capital markets.[34] However, as a result of the United States' waning dominance in recent years, Brummer argues that "alternative forums and instruments of economic cooperation *will* proliferate away from the traditional multilateral model [and] . . . a new toolset for economic statecraft is being developed that attempts to navigate the multipolar world in an orderly way."[35]

In chapters two, three, and four of the text, Brummer provides examples of this emerging minilateral system of international economic regulation, along with examples of the "new toolset for economic statecraft" that focuses upon minilateralism.[36] In chapter two, Brummer explores minilateralism in international trade regulation with a focus on the rise in regional and selective trade agreements.[37] In chapter three, he explores minilateralism in international financial regulation.[38] He reports that financial regulators seeking to regulate international financial markets work through relatively

27. *Id.* at 22.
28. *Id.* at 25–32.
29. *Id.* at 32–38.
30. *Id*. at 38–39.
31. *Id.* at 39–40.
32. *Id.* at 39–44.
33. *Id.* at 38–39.
34. *Id.* at 48–49.
35. *Id.* at 52.
36. *Id.*
37. *See id.* at 53–83.
38. *See id.* at 84–123.

informal institutions, such as the Basel Committee, Financial Stability Board, and International Organization of Securities Commissions.[39] In the pursuit of efficient regulation, these regulators tend to use informal and nonbinding "soft law" (e.g., recommendations regarding best practices, reports and data analysis, and memorandums of understanding), to achieve international regulatory goals.[40] Although some additional formality has occurred in the wake of the financial crisis that began in 2008,[41] Brummer asserts that participants in international financial markets adhere to these nonbinding agreements as a result of reputational concerns and fear of public shaming of actors that fail to comply with "soft law" international norms.[42] Brummer acknowledges that work is still needed to optimize the regulation of the international financial system and discusses some of the options that might be used to achieve this optimization.[43] This includes the possible establishment of an international financial court—which he views to be unlikely[44]—and better surveillance reports of financial market participants—which Brummer views as feasible.[45] In chapter four, Brummer explores minilateralism in the international monetary system.[46] Brummer discusses the waning dominance of the United States dollar,[47] regional ties and challenges created by the Euro,[48] and the increasing importance of the Chinese RMB in Asia and globally.[49] Brummer ultimately concludes that nationalistic tendencies make broad multilateral accords on monetary issues unlikely, and although the future remains uncertain, minilateral coordination will probably be the mode of international monetary regulation for the foreseeable future.[50]

In chapter five, Brummer deepens his discussion of minilateralism. He acknowledges, "[t]he challenges facing the global economy are big *and* diverse. Not every problem can be tackled the same way, with the same partners, or with the same commitments or market-related instruments."[51] He then advocates for what he terms "smart minilateralism."[52] He states that policymakers should go through the following process of determining when and how to use minilateralism as a tool of international economic regulation:

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39. *Id.* at 85–86.
40. *Id.* at 92–99.
41. *Id.* at 105–09.
42. *Id.* at 112–18.
43. *Id.* at 118–23.
44. *Id.* at 120–21.
45. *Id.* at 122–23.
46. *Id.* at 124–64.
47. *Id.* at 127–33.
48. *Id.* at 133–45.
49. *Id.* at 149–62.
50. *Id.* at 164.
51. *Id.* at 165.
52. *Id.*

> First, they have to determine their own preferred policy objectives. Next, they have to identify what tools are possibly available to achieve their objectives, and the likelihood of success with each. Finally, officials have to ask whether their actions will be viewed by other relevant actors and stakeholders as legitimate uses of power.[53]

In essence, Brummer provides a roadmap for best practices in minilateral relations.

Brummer is particularly concerned about the legitimacy of minilateralism because such economic diplomacy in many instances ignores stakeholder approval, is relatively informal, occurs behind closed doors, and involves technocrats (i.e., regulators who have been appointed, rather than elected).[54] Within Brummer's conception of "smart minilateralism," he suggests a number of ways to increase the legitimacy of minilateral economic regulation, including inviting wider participation in the regulatory process,[55] allowing citizens of the participating nations to vote on minilateral initiatives,[56] and allowing courts to rule on whether the participating entities in minilateral activity are acting within their mandates.[57] He also notes the possibility of what he terms "macro level legitimacy,"[58] which he believes can exist because minilateralism often involves numerous entities interacting and at least some of these entities are controlled by democratic processes.[59] He sums up his theory of "smart minilateralism" by stating, "only by teaming technocratic pragmatism with democratic norms and global aspirations will today's economic diplomats enjoy widespread support for their work – and begin to create a sustainable infrastructure for the twenty-first century economy."[60]

II. A MOVE TO MINILATERALISM?

Brummer gets it right. He tells a compelling story of how the "golden age" of multilateralism came into being and why that time has passed as a new age of minilateralism has begun in international economic regulation. He chiefly credits this transition to an aversion to the transaction costs associated with creating and operating large, global institutions[61] and to the decline of the United States as a hegemon.[62]

Various other reasons exist for this transition, and these reasons strengthen Brummer's theory. First, during the past few decades, the threat

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53. *Id.*
54. *Id.* at 169–80.
55. *Id.* at 180–84, 186–88.
56. *Id.* at 184–86.
57. *Id.* at 188–92.
58. *Id.* at 192. An explanation of Brummer's definition of legitimacy is provided *infra* Part III.B.
59. *Id.* at 192–94.
60. *Id.* at 198.
61. *Id.* at 3–8.
62. *Id.* at 14–17.

of global war—one of the major animating reasons for creating and operating multilateral institutions during the twentieth century—has decreased significantly. Although Brummer flirts with this idea in his text, he does not emphasize that multilateralism in the twentieth century is inseparably linked to lessening the threat of global conflict. For example, the League of Nations was founded as a result of the Paris Peace Conference that ended World War I as a means of preventing future conflicts.[63] Additionally, the United Nations was founded in the wake of World War II for the same reason.[64] However, since the fall of the Soviet Union, the threat of global conflict has been greatly reduced, and as a result, the perceived need for multilateral organizations as a means of ensuring global peace and stability has been reduced as well.[65]

Second, technology has fueled the transition toward minilateralism as the dominant mode of economic diplomacy. This is because it makes spontaneous, informal communication possible in ways that were unavailable during the latter half of last century.[66] Although Brummer discusses technology as fueling globalization,[67] he does not emphasize it as fueling the transition from multilateralism to minilateralism. Just as plants are fueled by the sun's light, minilateralism has grown and blossomed in the light of computer screens, smart phone screens, and various other types of screens around the globe because these devices make communication and coordination possible with greater ease and simplicity.

Third, while not emphasized by Brummer, technology is a leading factor in the decline of formality because it makes large, formal multilateral institutions seem cumbersome and less useful.[68] The formality that

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63. *See* League of Nations Covenant pmbl. (stating that one of the purposes of the League of Nations was "to promote international co-operation and to achieve international peace and security").

64. *See* U.N. Charter pmbl. (stating that the purpose of the United Nations is "to save succeeding generations from the scourge of war").

65. *See* Mamedov Muschwig, *Crisis of Transatlantic Relations: NATO and the Future European Security and Defense Identity (ESDI)*, 10 U. MIAMI INT'L & COMP. L. REV. 13, 38 (2002) (noting "[t]he disappearance of the danger of a nuclear world war between the superpowers and the fact that the possibility of a comprehensive conventional war between West and East Europe [has] become inconceivable").

66. Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1, 12 (2002) ("The rise of the telephone, the jet, the fax and now email and the Internet has progressively made long-distance communication, and thus networks [and transgovernmental cooperation], far easier and (all else being equal) more prevalent."); *see also* Robert B. Ahdieh, *Dialectical Regulation*, 38 CONN. L. REV. 863, 863 (2006) ("In the face of advances in communication technologies, the increased ease and decreased cost of long-distance travel, and the expanded and extended scope of economic and industrial activity, regulators today face the undeniable reality of a small, small world.").

67. *See* BRUMMER, *supra* note 5, at 87.

68. *See* Siddhartha M. Velandy, *The Green Arms Race: Reorienting the Discussions on Climate Change, Energy Policy, and National Security*, 3 HARV. NAT'L SEC. J. 309, 339 (2012) ("[I]nformal network relationships [among nations] have increased in frequency and strength as communications technology has improved. Peers from across the globe are able to discuss critical areas of mutual concern outside of the traditional international organizations . . . .").

dominated international diplomacy for past centuries has now given way to simpler, less formal communication among politicians and regulators that has helped facilitate a transition to minilateralism.[69] In sum, as the examples above show, Brummer's theory about the emerging dominance of minilateralism in economic diplomacy is well grounded in fact.

With that said, Brummer is careful to acknowledge that the choice between minilateralism and multilateralism is not a polar question in which those seeking to regulate the global economy must choose between one means of economic diplomacy and the other. As he argues, minilateralism is part of an "expanded toolset of options for countries navigating a world of increasingly heterogeneous economic interests and preferences."[70] To put it differently, in Brummer's view, minilateralism may be replacing traditional multilateral economic diplomacy in some instances, although in most instances, minilateralism is merely supplementing such diplomacy.[71]

Brummer's notion that minilateralism is just part of the "toolset" for economic diplomacy is an important one. For various reasons, attention may be centered on minilateralism, despite the fact that multilateralism continues to play a very important role in the regulation of the global economy. Because Brummer is focused on proving his thesis, he does not spend time discussing why minilateralism is currently being thrust into the spotlight while the role of multilateralism remains strong. In the remainder of this Part, the continued importance of multilateralism will be explored.

A. ENOUGH IS ENOUGH: DO WE HAVE ALL THE MULTILATERAL ORGANIZATIONS THAT WE NEED?

In 2008, the United States suffered a financial crisis that the U.S. Department of Treasury referred to as the "most severe financial crisis since the Great Depression."[72] Many commentators have referred to the event as the "Great Recession,"[73] and some commentators were willing to go so far as to declare the crisis to be a depression.[74] In the wake of the Great Depression of the 1930s, the United States Congress created a multitude of administrative

69. *See id.*

70. BRUMMER, *supra* note 5, at 165.

71. *Id.* at 3.

72. U.S. DEP'T OF THE TREAS., FINANCIAL REGULATORY REFORM: A NEW FOUNDATION 2 (2009), https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf (discussing the financial crisis that began in 2008).

73. *But see* Catherine Rampell, *'Great Recession': A Brief Etymology*, N.Y. TIMES (Mar. 11, 2009, 5:39 PM), http://economix.blogs.nytimes.com/2009/03/11/great-recession-a-brief-etymology ("Nobody can take credit for coining the term 'The Great Recession' . . . . Why? Because the 'Great Recession of 2008' is not the first recession to be slapped with the lofty title. *Every* recession of the last several decades has, at some point or another, received this special designation . . . .").

74. *See* RICHARD A. POSNER, A FAILURE OF CAPITALISM: THE CRISIS OF '08 AND THE DESCENT INTO DEPRESSION, at x (2009) ("It is the gravity of the economic downturn, the radicalism of the government's responses, and the pervading sense of crisis that mark what the economy is going through as a depression.").

agencies to coordinate economic regulation in the United States and to reduce systemic risk on the national level.[75] However, in the wake of the financial crisis that began in 2008, the government's response was quite different. In the voluminous body of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)[76]—an act designed to improve financial stability in the United States and to prevent future financial crises[77]—only a handful of new entities (e.g., the Consumer Financial Protection Bureau and the Financial Stability Oversight Council), were created to coordinate regulation and reduce systemic risk.[78] The Dodd-Frank Act certainly was not the death knell for administrative agencies in the United States. However, the reason that Congress did not create a new administrative agency to regulate the mortgage-backed securities that were at the heart of the financial crisis beginning in 2008 was because the U.S. Securities and Exchange Commission already existed and creating a duplicative agency would have been inefficient and nonsensical. Instead, the Dodd-Frank Act was about fine-tuning the existing national infrastructure to prevent future financial crises by reducing systemic risk.

In a very real sense, this phenomenon is also occurring at the international level, and Brummer's text can be viewed as a study of this higher-level fine-tuning. This is not to claim that the patchwork of international economic regulation is comprehensive and complete. However, as Brummer's book details, in the past decade or two, those interested in regulating the global economy have just focused more on fine-tuning and filling gaps in this patchwork of international economic regulation. Much of this fine-tuning and gap filling has occurred through minilateral diplomacy, while multilateral institutions continue to toil.

Brummer acknowledges, but does not emphasize, this phenomenon in his text. In his chapter on international finance, after lauding the possibility of an international financial court to resolve international financial disputes and stating that creation of such a court is unlikely,[79] Brummer writes, "[w]ith so many practical difficulties [in creating an international financial court], it's probably not surprising that regulators have focused on improving those tools that they already have at their disposal in order to combat systemic risk [in

75. *See* Richard E. Levy & Robert L. Glicksman, *Agency-Specific Precedents*, 89 TEX. L. REV. 499, 503 (2011) ("[I]n response to the Great Depression, Congress created a myriad of new regulatory and benefit programs and created new administrative agencies to implement them.").

76. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended in scattered sections of 7, 12, and 15 U.S.C.).

77. *See id.* pmbl. (declaring the Dodd-Frank Act to be designed "[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.").

78. *See generally id.*

79. *See* BRUMMER, *supra* note 5, at 118–21.

the global financial system].”[80] Brummer then discusses existing multilateral entities doing more to monitor international financial activities as a means of promoting stability in the global financial system.[81] Notably, in this same chapter, Brummer also reports many of the large multilateral institutions and some minilateral bodies have now created a “vertically integrated system” of international financial regulation to better address global financial issues.[82] As a result, international entities are now working together to coordinate agenda setting, standard setting, monitoring, and implementation.[83] This demonstrates fine-tuning of multilateral institutions is occurring not only at the micro level, but at the macro level as well.

As will be explained later, the world definitely does not have all of the multilateral organizations that we need.[84] Brummer, however, is right that the world has entered an age of minilateralism in which financial regulators are working with the existing entities and using a new minilateral “toolset” to fine-tune and fill gaps in international economic regulation. Minilateralism has definitely not replaced multilateralism in international economic regulation, but minilateralism certainly has augmented it.

B. Big Brother Is Watching and So Is Everyone Else: Is Minilateralism Just Being Better Documented Today?

Other reasons exist to question how substantial the shift to minilateralism really is. Because of the ubiquity of the Internet, the availability of information today is much different than in the past. The activities of politicians, regulators, and other bureaucrats are being documented in ways that they have never been before. Beyond the information that politicians, regulators, and other bureaucrats want to make available, transparency laws often require the release of a broad variety of information either by default or by demand. In the United States, for example, the Freedom of Information Act of 1966 requires the release of a broad range of information held by the government upon public request.[85] Politicians, regulators, and other bureaucrats also have to be concerned about the release of information beyond these willing and unwilling intended disclosures. In the United States, Edward Snowden provides a prime example of how quickly and easily a single individual can distribute information a government would prefer to

80. *Id.* at 121.
81. *Id.* at 121–22.
82. *Id.* at 105–09.
83. *Id.* at 107–08.
84. *See infra* notes 148–151 and accompanying text (suggesting the need for a multilateral solution to the regulation of the emerging securities markets through the harmonization and centralization of international securities regulation and the creation of a global securities regulator).
85. Pub. L. No. 89-487, 80 Stat. 250 (1966) (codified as amended at 5 U.S.C. § 552 (2012)).

keep classified.[86] In short, the availability of information is very different than it was even a few decades ago.

As a result, one has to consider whether minilateralism is in fact a new phenomenon, or simply better documented than in the past. The formal global agreements and institutions that were created in the second half of last century to regulate the international economy were extraordinarily well documented because they were both formal and global. In the past, at least some more informal interactions designed to regulate the global economy were probably not as well documented. This reality may create the perception that minilateralism is emerging and coming into vogue with a strength and force that really it is not.

At the same time, global economic diplomacy exists on a spectrum with large, formal multilateralism at one end and extraordinarily informal minilateralism at the other. Even if some minilateralism was not well documented in the past, a wide range of minilateral economic diplomacy would have been well documented, if it had been occurring in the past. For example, Brummer discusses the regional and selective groups that are now playing a leading role in international economic regulation.[87] Even in the pre-Internet world, one would have a hard time arguing that these types of minilateral entities would have gone unnoticed and would not have been well documented. In addition, many of the less formal minilateral agreements, which Brummer terms "soft law," likely would have been well documented as well by historians and the entities impacted by them, if these agreements were being made. For instance, one example of soft law is the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU) that was adopted by the International Organization of Securities Commissions (IOSCO) in May 2002.[88] The MMOU is designed to facilitate cooperation and information sharing among securities regulators,[89] and it is an excellent example of minilateralism and soft law.[90] One would have a hard time arguing that such a substantial undertaking as this MMOU would have been ignored by historians prior to the advent of the Internet. In short, while the lack of documentation of some truly informal types of minilateralism may make those types of minilateralism appear new, many forms of soft law agreements

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86. *See* James Ball, *Edward Snowden NSA Files: Secret Surveillance and Our Revelations So Far*, GUARDIAN (Aug. 21, 2013, 3:36 PM), http://www.theguardian.com/world/2013/aug/21/edward-snowden-nsa-files-revelations; Pierre Thomas et al., *Officials: How Edward Snowden Could Hurt the U.S.*, ABC NEWS (June 24, 2013, 6:38 PM), http://abcnews.go.com/blogs/headlines/2013/06/officials-how-edward-snowden-could-hurt-the-u-s/.

87. *See* BRUMMER, *supra* note 5, at 1–2.

88. INT'L ORG. OF SEC. COMM'NS, MULTILATERAL MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION AND COOPERATION AND THE EXCHANGE OF INFORMATION (2002), http://www.iosco.org/library/pubdocs/pdf/IOSCOPD126.pdf.

89. *Id.* at 2.

90. *See* BRUMMER, *supra* note 5, at 98 (citing memoranda of understanding among banking and securities regulators as examples of soft law in international financial regulation).

would have been well documented in the past, demonstrating Brummer has identified a substantial and significant shift in how international economic diplomacy is undertaken.

C. EVERYTHING OLD IS NEW AGAIN: IS MINILATERALISM REALLY AN INNOVATION?

In describing the emerging dominant model of minilateral economic diplomacy, Brummer argues that the old multilateral model is "giving way to new innovative modes of cooperation, which . . . are aimed at both liberalizing and supervising the global economy."[91] In a certain regard, this statement is undoubtedly true because minilateralism is becoming the dominant mode of economic diplomacy, and because innovation is always occurring in international economic regulation as a result of the complex and evolving nature of the international economy. The question of the novelty of minilateralism, however, is an interesting one. Rather than speaking of the *emergence* of minilateralism as the dominant mode of international economic diplomacy, the better approach might be to refer to the *reemergence* of minilateralism. Much of the history that Brummer offers in his text regarding international economic regulation prior to World War II are examples of minilateral solutions to international economic problems.[92] Brummer even acknowledges that the post-war dominance of multilateralism was a "rare historical fluke."[93] As a result, minilateralism is actually the norm, and multilateralism is the anomaly.

Notably, the roots of many modern nations can be traced to minilateral economic diplomacy. In his chapter on international monetary regulation,[94] Brummer writes extensively about the recent financial crisis in Greece and its implications for the eurozone.[95] Throughout this discussion, Brummer speaks of Greece as a unified, monolithic nation.[96] The territory that is now occupied by modern Greece, however, was historically governed by city-states that were originally formed by villages in part for protection and in part for purposes of normalizing trade.[97] Put another way, these city-states are an early example of the minilateral economic diplomacy at work.

Similarly, the German Confederation, which was created by the Congress of Vienna in 1815, was a loose association designed to coordinate the defense

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91. *Id.* at 17.
92. *See generally id.*
93. *Id.* at 10.
94. *Id.* at 124–64.
95. *Id.* at 135–36.
96. *Id.*
97. *See generally* MOGENS HERMAN HANSEN, POLIS: AN INTRODUCTION TO THE ANCIENT GREEK CITY-STATE (2006); LÉOPOLD MIGEOTTE, THE ECONOMY OF THE GREEK CITIES: FROM THE ARCHAIC PERIOD TO THE EARLY ROMAN (2009).

and economies of thirty-nine German-speaking states in central Europe.[98] This minilateral effort was a precursor to the modern German state. In addition, the United States is partially the product of minilateral economic diplomacy. The Articles of Confederation, a precursor to the modern United States Constitution, is an example minilateralism at work. The Articles of Confederation established a confederation of thirteen sovereign states,[99] and the document bound these sovereign states together in part for purposes of protection and in part to regulate economic activity.[100] Although an aggressive use of the term, even the Constitution of the United States might be viewed in part as minilateral diplomacy that yielded a nation.[101] Major portions of the Constitution are designed to normalize economic relations among the previously sovereign states discussed in the Articles of Confederation.[102] The Interstate Commerce Clause, for instance, might be viewed as an example of minilateral coordination at play.[103]

One counter-argument to this discussion of modern nations tracing their roots to minilateral economic diplomacy might be that it misapplies the term "minilateralism" because minilateralism only applies to efforts intended to regulate the global economy as a whole. The problem with this argument is that many of the examples of minilateralism in Brummer's text are not intentional efforts to regulate the global economy. For example, the preferential trade deals Brummer discusses throughout chapter two of his text as minilateral activity look more like the activities relating to nation building discussed above, rather than attempts to intentionally regulate the global economy.[104]

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98. *See German Confederation*, ENCYCLOPEDIA BRITTANICA, http://www.britannica.com/EBchecked/topic/230682/German-Confederation (last visited June 29, 2014).

99. *See* ARTICLES OF CONFEDERATION of 1781, art. II [hereinafter ARTICLES OF CONFEDERATION] ("Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled."); *see also* MERRILL JENSEN, THE ARTICLES OF CONFEDERATION: AN INTERPRETATION OF THE SOCIAL-CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION 1744–1781, at 175 (reporting that under the Articles of Confederation "states retained their sovereign position and the central government was made a subordinate body of severely and strictly delegated powers").

100. *See* ARTICLES OF CONFEDERATION, *supra* note 99, art. III ("The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever."); *id.* art. IV (declaring that "the free inhabitants of each of these States . . . shall enjoy therein all the privileges of trade and commerce"); *id.* art. IX, para. 4 (declaring that the established government under the Articles of Confederation "shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States").

101. *See generally* U.S. CONST.

102. *Id.*

103. *Id.* art. 1, § 8.

104. *See* BRUMMER, *supra* note 5, at 53–83.

Even after being placed in a historical context, however, Brummer's thesis regarding the novelty of minilateral international economic diplomacy remains a valid and valuable contribution to the existing scholarship for a variety of reasons. First, a major shift from multilateral economic diplomacy to minilateral economic diplomacy is occurring and the shift constitutes a rediscovery of minilateralism. Second, minilateralism is much "bigger" than it was when it helped to build nations. As Brummer reports, international economic diplomacy is now dominated by regional clubs (such as the European Union and Association of Southeast Asian Nations) and more geographically diverse initiatives (such as the G-20, Basel Committee on Banking Supervision, and the Financial Stability Board) that are larger than most minilateral initiatives in the past.[105] Third, the global economy is constantly growing and evolving and, as a result, new and innovative tools for regulating it are constantly being developed.

III. A STUDY OF MISSING PUZZLE PIECES AND EMPTY SPACES ON THE BOOKSHELF

One characteristic of quality scholarship is that it is written with a depth and sophistication that provides a starting point for future work either by its author or other scholars. Brummer's text is no exception. Although the text is cohesive and thoughtfully written, it discusses a number of topics that could and should be developed into future articles and books. In this Part, a small number of these topics will be explored.

A. "MANY-LATERALISMS"

In his text, Brummer reports that minilateral economic diplomacy is more often supplementing multilateral economic diplomacy, rather than replacing it.[106] As Brummer puts it, minilateral economic diplomacy is part of an "expanded toolset" in international economic diplomacy and regulation.[107] This creates an interesting question: How do these minilateral and multilateral tools for international economic diplomacy and regulation interact? If international economic diplomacy and regulation is a story of international communication and coordination, then to tell the whole story, one must be able to describe how both forms of diplomacy (i.e., both minilateral and multilateral) operate independently and describe how they interact with each other.

In chapter two of his text, in a section entitled "Many-Lateralisms[,]" Brummer does provide some discussion of how minilateralism and multilateralism interact along with a discussion of how different minilateral

105. *Id.* at 1.
106. *Id.* at 3.
107. *Id.* at 165.

regimes may interact with each other in the realm of international trade.[108] He acknowledges that minilateralism can be a stepping stone to multilateralism,[109] argues that multilateralism is unlikely to provide deep integration because it is difficult to get broad buy-in for it,[110] and discusses some of the tensions that minilateral diplomacy can create when interacting with multilateral diplomacy.[111] Importantly, Brummer also states, "how trade minilateralism will be practiced in the future is still very much up for grabs."[112] The section is well written, and its length is appropriate for a chapter in which it is included and the text in which it is placed.

Many readers, however, will want to know more about how minilateralism and multilateralism fit together. This is especially true in regard to international trade because the area is still "up for grabs" as to how minilateralism will be practiced in it.[113] Moreover, Brummer does not discuss "many-lateralisms" in regard to the international monetary system and international finance. Based on Brummer's breadth and depth of knowledge, this provides fertile ground for future writing.

B. MINILATERALISM AND MACRO LEVEL LEGITIMACY

As discussed previously,[114] Brummer talks extensively about minilateralism and legitimacy, which he views as an essential component of the "smart minilateralism" for which he advocates in chapter five of his text.[115] He defines legitimacy as "acceptance of the rulers (and their rules) by the ruled – an acceptance which usually turns on the degree to which authority wielded is based upon democratic consent."[116] Based on this definition, Brummer notes numerous concerns that minilateralism creates, including in many instances it does not involve stakeholder approval, is relatively informal, occurs behind closed doors, and often involves technocrats (i.e., regulators who have been appointed, rather than elected).[117] He explores various solutions to these issues, including offering greater stakeholder participation in minilateral diplomacy,[118] requiring stakeholder approval of minilateral initiatives,[119] and allowing courts to rule upon the legitimacy of minilateral activities and those undertaking them.[120] He also notes that although certain kinds of reforms—like more direct stakeholder

108. *Id.* at 79–83.
109. *Id.* at 80.
110. *Id.* at 80–82.
111. *Id.* at 82–83.
112. *Id.*
113. *Id.*
114. *See supra* Part II.
115. *See* BRUMMER, *supra* note 5, at 165–98.
116. *Id.* at 169–70.
117. *Id.* at 169–80.
118. *Id.* at 181–84, 186–88.
119. *Id.* at 184–86.
120. *Id.* at 188–92.

participation—may add to democratic legitimacy, too much participation, especially in highly technical matters, can damage or threaten economic stability because, for example, voters may be much less informed than technocrats.[121]

In part because of this observation, Brummer makes an interesting point in a subsection entitled "The Importance of 'Macro' Level Legitimacy,"[122] that the entire regulatory system must be accounted for when assessing the legitimacy of multilateral regulation.[123] Although he concedes that the entities operating at the micro-institutional level of many minilateral initiatives suffer from democratic deficits, he believes that when the interactions of these institutions are examined at the macro level, the legitimacy concerns are lessened or disappear because of the interconnectivity of these organizations.[124]

The relatively brief length of this subsection is appropriate based on what Brummer tries to accomplish in his book, but most readers will be left wanting more of a discussion of macro-level legitimacy and how it plays out in the three segments of the global economy that Brummer focuses on in the text (i.e., international trade, international finance, and the international monetary system). A discussion of how macro-level legitimacy works (and does not work) in minilateralism would offer an interesting project both for Brummer and for other scholars.[125] Numerous related questions also linger: How should politicians and regulators undertaking minilateral activities connect with those who they are serving? Does the proliferation of minilateral forums increase or reduce legitimacy? What roles does the increasing availability of information via the Internet and other media play in minilateral legitimacy? All of these questions provide an excellent basis for future research and scholarship.

C. THE ROLE OF NONGOVERNMENTAL ENTITIES IN REGULATING THE GLOBAL ECONOMY

Brummer's project is ambitious. As he notes in his introduction, no one has tackled the topic of minilateralism in a single work as it applies to international economic regulation. In addition, from a reader's perspective, no one has tackled it in such a brief, readable, and comprehensive text. To achieve such a feat, however, Brummer did have to focus his work on the minilateral interactions of nations and on the minilateral activities of regional and selective organizations with strong national support and participation.

121. *Id.* at 186–92.
122. *Id.* at 192–94.
123. *Id.* at 192.
124. *Id.*
125. Brummer previously authored a law review article on international finance in general with a similar title. *See* Brummer, *How International Financial Law Works*, *supra* note 13.

Brummer's approach leaves open the issue of the role of nongovernmental entities in minilateralism. Nongovernmental entities often have a role to play in how nations interact and what courses of action they pursue in regard to transnational economic issues.[126] For example, corruption is a substantial concern in minilateral international economic regulation. Even if nations can reach some sort of agreement by way of minilateralism, this does not mean that the agreement will be effectively implemented and its mandates properly enforced. If six nations enter into a selective trade agreement, for instance, bribery of public officials implementing and enforcing the trade agreement can reduce or eliminate the agreement's effectiveness. To ensure the success of these minilateral agreements, nongovernmental entities are needed to fight against corruption.[127] For instance, Transparency International is one of the leading entities monitoring and working to fight corruption throughout the world.[128] It describes itself as "politically non-partisan and place[s] great importance on [its] independence."[129] The organization is currently headquartered in Berlin, Germany,[130] and it operates through more than one hundred chapters located around the globe, which it describes as "locally established, independent organisations."[131] Transparency International has played a role in drafting both minilateral and multilateral anti-corruption agreements (e.g., the OECD Anti-Bribery Convention and the United Nations Convention against Corruption).[132] Transparency International also annually compiles and publishes the Corruption Perceptions Index (Index), a ranking of countries based upon perceived levels of public corruption, which is a widely-used

126. *See* Stephen Kim Park, *Talking the Talk and Walking the Walk: Reviving Global Trade and Development after Doha*, 53 VA. J. INT'L L. 365, 411 (2013) ("NGOs engage with [nations] in a wide variety of legally-defined contexts: in the realm of domestic politics, under the auspices of international organizations, and through various other transnational processes."); Elad Peled, *Should States Have a Legal Right to Reputation? Applying the Rationales of Defamation Law to the International Arena*, 35 BROOK. J. INT'L L. 107, 137 (2010) ("Nongovernmental organizations . . . enjoy considerable power in global politics with respect to virtually all issues of international concern.").

127. *Our Organisation*, TRANSPARENCY INT'L, http://www.transparency.org/whoweare/organisation/mission_vision_and_values (last visited June 16, 2014) (describing Transparency International as "One global movement sharing one vision: a world in which government, business, civil society and the daily lives of people are free of corruption.").

128. *Id.*

129. *Overview,* TRANSPARENCY INT'L, https://www.transparency.org/whoweare/organisation/ (last visited Mar. 3, 2016).

130. *Our Organisation: Secretariat*, TRANSPARENCY INT'L, http://www.transparency.org/whoweare/organisation/secretariat (last visited June 16, 2014).

131. *Our Organisation: Our Chapters*, TRANSPARENCY INT'L, http://www.transparency.org/whoweare/organisation/our_chapters (last visited June 16, 2014).

132. *FAQs on Transparency International*, TRANSPARENCY INT'L, http://www.transparency.org/whoweare/organisation/faqs_on_transparency_international/2/ (last visited June 16, 2014) (discussing Transparency International's achievements).

monitoring tool in the fight against corruption.[133] In sum, nongovernmental entities, like Transparency International, have a substantial role to play in minilateral diplomacy.

Yet, Brummer's text does not focus on how nongovernmental entities interact with minilateral diplomacy among nations, despite the importance of these entities. This issue provides fertile ground for future scholarship and also nicely dovetails with the two topics discussed in the previous subsections: first, a discussion of the "many-lateralisms" at play in international economic diplomacy and regulation should include a discussion of how nongovernmental organizations are woven into the complex tapestry of entities involved in regulating the global economy;[134] and second, a discussion of macro-level legitimacy of minilateral initiatives should include a discussion of nongovernmental organizations because it provides an example of another voice that may add to the legitimacy of a minilateral process.[135]

IV. THE IMPENDING FAILURE(S) OF MINILATERALISM

In his text, Brummer acknowledges that minilateralism is not a solution to every problem facing the global economy.[136] He declares minilateralism to be only part of "an expanded toolset of options" for countries attempting to navigate issues related to international trade, international finance, international monetary policy, and the myriad of other segments of global economy.[137] As a result, multilateralism still has a role to play. As this Review notes, the history of modern nation building often contains examples of minilateralism that have transformed into more formal relationships (i.e., nations being born).[138] Nations emerged because problems existed that minilateralism simply could not address. For example, the thirteen sovereign states that ratified the Articles of Confederation opted to reimagine themselves as the United States under the Constitution based on concerns that they were not sufficiently unified for purposes of national defense and to be economically competitive.[139] Put differently, relatively weak minilateralism

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133. *See Corruption Perceptions Index*, TRANSPARENCY INT'L, http://www.transparency.org/research/cpi (last visited June 16, 2014) (describing the Corruption Perceptions Index and providing links to various versions of it).

134. *See supra* Part III.A. (discussing how the interplay of the "many-lateralisms" at work in international economic diplomacy and regulation provides an excellent topic for additional scholarship).

135. *See supra* Part III.B. (discussing why macro level legitimacy and how it relates to minilateralism provides an excellent topic for additional scholarship).

136. *See* BRUMMER, *supra* note 5, at 165.

137. *Id.*

138. *See supra* Part II.C (discussing minilateral steps that led to the formation of Germany, Greece, and the United States).

139. *See* Lucien J. Dhooge, *Condemning Khartoum: The Illinois Divestment Act and Foreign Relations*, 43 AM. BUS. L.J. 245, 280 (2006) ("The failure of the Articles of Confederation to centralize responsibility for the conduct of foreign affairs left the fledgling federal government

failed to achieve a satisfactory result and needed to be replaced by more substantial minilateral efforts, which resulted in the formation of nations. Similar failures of minilateralism are certain to occur on the global level as well when experimentation in regulating the international economic system does not succeed in achieving desired results.

One recent instance in global economic regulation in which minilateralism has given way to multilateralism is in the fight against corruption. Until the 1970s, corruption was largely viewed as a domestic issue.[140] The United States began to change this perception with the enactment of The Foreign Corrupt Practices Act of 1977 (FCPA).[141] The FCPA was the first statute in the world prohibiting transnational bribery (i.e., bribery of a public official in a foreign country).[142] Although the main justifications for the FCPA were to legalize business ethics and address foreign policy concerns, the justifications have transitioned, as a result of the globalization that has occurred during the past few decades, to improving global economic efficiency, policing the international economy, and promoting the rule of law.[143] During the 1990s and early 2000s, selective and regional treaties were created as countries searched for minilateral solutions to concerns about corruption.[144] Because these minilateral efforts were viewed as insufficient, the United Nations General Assembly adopted the

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subject to a multiplicity of state regulation which strangled commerce, promoted interstate animosity, and threatened to embroil the country in conflicts with foreign powers."); Samuel Issacharoff, *Getting Beyond Kansas*, 74 UMKC L. REV. 613, 613 (2006) ("The familiar refrain on the failings of the Articles of Confederation informs that a centralizing national authority was required for spreading the burdens of taxation, ensuring the internal instrumentalities of commerce, policing the borders and national security of the entire nation, and conducting the foreign affairs of a unified national power.").

140. *See* Eric C. Chaffee, *From Legalized Business Ethics to International Trade Regulation: The Role of the Foreign Corrupt Practices Act and Other Transnational Anti-Bribery Regulations in Fighting Corruption in the International Trade*, 65 MERCER L. REV. 701, 709–13 (2014) (discussing the origins of the FCPA and the realization that corruption might be a transnational problem).

141. Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended in scattered sections of 15 U.S.C. (2012)).

142. *See* Andrew Brady Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets*, 62 FLA. L. REV. 351, 353 (2010) (reporting that the FCPA was the "first statute of its kind" when it was enacted).

143. *See generally* Chaffee, *supra* note 140.

144. *See*, *e.g.*, Inter-American Convention Against Corruption, Mar. 29, 1996, S. TREATY DOC. NO. 105-39, 35 I.L.M. 724; Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, May 26, 1997, S. TREATY DOC. NO. 109-6 (2003), 1997 O.J. (C 195) 1; Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. TREATY DOC. NO. 105-43 (2005), 37 I.L.M 1; Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173; Council of Europe, Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174; Economic Community of West African States Protocol on the Fight Against Corruption (ECOWAS), Dec. 21, 2001 (on file with the Brooklyn Journal of Corporate, Financial & Commercial Law); African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5.

United Nations Convention Against Corruption on October 31, 2003.[145] As of the writing of this Review, the Convention had one hundred forty signatories and one hundred seventy-eight parties,[146] which means it should fall within Brummer's relatively narrow definition of "multilateralism."[147]

Another area in which multilateral coordination is likely to occur is in the regulation of securities. The globalization of capital markets that has occurred over the past few decades has created new forms of systemic risk. Patchwork regulation has traditionally not worked in the area of securities regulation, which is evidenced by the fact that every developed nation in the world (with the exception of Canada) has transitioned to a national system of securities regulation.[148] The United States, for example, began with a system that governed its capital markets under general contract, tort, and criminal law; moved to state regulation in the form of Blue Sky Laws; and is currently governed by federal securities laws.[149] National securities regulators are unlikely to quickly denounce their nationalistic and protectionist tendencies and opt for a multilateral solution to regulating global capital markets through the harmonization and centralization of international securities regulation and the creation of a global securities regulator.[150] However, as future financial crises occur, greater coordination is likely to occur and incremental progress

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145. United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41; *see also* G.A. Res. 58/4, United Nations Convention Against Corruption, paras. 2–3 (Oct. 31, 2003) (adopting the United Nations Convention Against Corruption).

146. *See United Nations Convention against Corruption Signature and Ratification Status as of 1 December 2015*, U.N. OFFICE ON DRUGS & CRIME, http://www.unodc.org/unodc/en/treaties/CAC/signatories.html (last visited Feb. 12, 2016) (providing a complete list of signatories and parties to the United Nations Convention Against Corruption).

147. *See supra* note 6 and accompanying text (discussing the definition of "multilateralism" that Brummer uses within his text.

148. *But see* Lawrence A. Cunningham, *A Prescription to Retire the Rhetoric of "Principles-Based Systems" in Corporate Law, Securities Regulation, and Accounting*, 60 VAND. L. REV. 1411, 1485 (2007) ("Current forces are strongly in favor of moving Canada from its existing fragmented structure to a federal system with a single national securities regulator.").

149. *See* Eric C. Chaffee, *Contemplating the Endgame: An Evolutionary Model for the Harmonization and Centralization of International Securities Regulation*, 79 U. CIN. L. REV. 587, 614 (2010) ("The failure of the states to provide stability to the national securities markets led to the centralization of securities regulation in the United States through the enactment of the Securities Act of 1933, the enactment of the Securities Exchange Act of 1934, and the creation of the SEC."); Eric C. Chaffee, *Standing Under Section 10(b) and Rule 10b-5: The Continued Validity of the Forced Seller Exception to the Purchaser-Seller Requirement*, 11 U. PA. J. BUS. L. 843, 851 (2009) ("Prior to the Securities Act and the Exchange Act, individual states were the main forces in regulating securities. The state statutes were and are commonly referred to as 'blue sky laws,' and prior to the Securities Act and the Exchange Act, the state statutes created an inconsistent patchwork of securities regulation that was largely ineffective in preventing fraud.").

150. *See* Donald C. Langevoort, *U.S. Securities Regulation and Global Competition*, 3 VA. L. & BUS. REV. 191, 205 (2008) ("Even in the face of crisis and scandal, we will not see a global securities and financial services regulator . . . anytime soon. But we may well see joint task forces wherein regulatory personnel from various countries are detailed to a central location to coordinate enforcement efforts aimed at some kind of threat, and if that becomes routine, there will be further small steps toward a permanent regulatory institution, until it already exists de facto and is less threatening politically.").

is likely to be made from the minilateral to multilateral because crisis tends to fuel regulatory innovation.[151]

Brummer notes in his text that minilateralism is not good or bad,[152] and future decades hold the promise of seeing when minilateralism works and when it does not. Brummer focuses on the "present" in his work, but it is important to remember that these failures are coming, and they will offer an opportunity to reassess and reimagine minilateralism.

CONCLUSION

As discussed at the beginning of this Review, international economic regulation confounds Ockham's razor. First, the problems that need to be addressed have not been clearly identified because the goals trying to be achieved have not been sufficiently determined. Second, because of the recent dramatic acceleration of globalization, what might be the simplest solution to the problems that have been identified have yet to be determined. Brummer's text is an excellent addition to the work occurring to address how to regulate the international economic system. Whether simple solutions exist in international economic regulation is an interesting question, and whether the simplest answer will ultimately be the best answer is presently impossible to determine. What is clear, however, is that international economic regulation promises to evolve in new and exciting ways.

151. *See* Ethiopis Tafara & Robert J. Peterson, *A Blueprint for Cross-Border Access to U.S. Investors: A New International Framework*, 48 HARV. INT'L L.J. 31, 51 (2007) ("The history of financial legislation, from the Bubble Act of 1720 to the Sarbanes-Oxley Act of 2002, shows that it is usually the child of crisis.").

152. *See* BRUMMER, *supra* note 5, at 165.