



VITERBO
GLOBAL ADMINISTRATIVE LAW
SEMINARS
est. 2005

June 2014

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INTRODUCTION

"In the last quarter of a century, the process of globalization has impacted upon legal institutions as much as the economy. Global regulatory regimes have been established in almost all subject areas, from arms control to health and environment, from food and agriculture to labour, from the use of oceans to financial and accounting standards, to name but a very few.

Intergovernmental organizations, global standards and global courts have developed at an extraordinary pace because global problems (such as terrorism, the environment, and trade) require global solutions. International organizations produce standards or guidelines addressed to national governments or directly to civil societies. They perform inspections and controls. They issue guidelines to ensure compliance. They oversee and coordinate the action of national governments. Moreover, alongside these global institutions, there are regional organizations, like the European Union, Mercosur and ASEAN, which cover Europe, South American and South-East Asia respectively.

Global regulatory regimes come in different sizes. Some encompass all of the world's States: for example, the United Nations brings together 193 national governments. Others have a more limited number of members, but are nevertheless open to worldwide participation. Above all, they are not isolated from, but are rather interconnected with national governments, which are represented in supranational bodies, both in political and administrative terms. Their regulatory outcomes are closely related to national proceedings and practices: domestic agencies must ensure the enforcement of global standards. As a consequence, national governments, once the only rulers of the world, are now weaker, because they must adjust to global standards, but also stronger, because they can act in areas that were once outwith their control.

These global regulatory regimes have two peculiarities. In the first place, they do not form a unitary legal order. While domestic legal systems are unitary and are subject to general principles that regulate all aspects of government and civil society, the global space, in spite of its regulatory density, is fragmented: indeed, there are around two thousand "self-contained" regulatory regimes. In order to address this fragmentation, many regulatory regimes establish links with each other (giving rise to what is known as a "regime complex"): agriculture and food control, trade and the environment, labour and trade. Through these links, global principles and rules are transplanted from one regime to another.

Secondly, the global regulatory space has developed principles and rules that are mainly administrative in nature, relating to the due process of law, procedural fairness, transparency, participation, duty to give reasons, and judicial review. The entire arsenal of administrative law, as it is known to national governments, can be found in the global space. Global regulatory regimes, therefore, are more developed from an administrative perspective than they are from a constitutional one. This does not mean, however, such "global administrative law" is identical to national administrative law; on the contrary, it displays several particularities.

First, global administrative law is not hierarchical: there is no single regulatory regime that has supremacy vis-à-vis the others, and nor are global regulatory regimes hierarchically superior to national governments. Therefore, cooperation, "bargaining" and the government by contract are the rule, and majority decision-making is replaced by unanimity or consensus, with shared powers and networking dominating the scene. This makes the global administrative machine somewhat fluid and confusing.

Second, notwithstanding some areas of overlap, global administrative law should be distinguished from traditional international law. "Ius gentium", "Ius inter gentes" and the law of the nations refer to the law established between the governments of States to regulate relations between States as legal entities. Despite displaying some features to the contrary, this law is still largely non-hierarchical; obligations arise on a voluntary basis and are contractual in nature. Global law, on the other hand, consists largely of the rules produced by international organizations of different kinds. International law is mainly based on transactions, while global law has developed a more robust hierarchy of norms. This hierarchy originally developed within each individual regulatory regime; it is now also emerging among the different regulatory regimes.

Third, global administrative law is sectoral, due to the presence of many different global regulatory regimes. This feature stems directly from the very origin of global regulation, which is a response to the emergence of a specific public aim that cannot be achieved by the actions of a single State. This sectorality itself has effects on the organization of global governance, with the variety of regimes producing various forms of global administration – ranging from formal international organizations (such as the WTO) to private institutions with regulatory functions (such as the ICANN). This lack of unity, however, is to some extent counterbalanced by a strong inter-connections between different sectors: for example, global bodies can be formed by other international institutions (such the Codex Alimentarius Commission, created by the

FAO and the WHO); agreements or networks can be established that connect different regimes (as in the case of the agreements between the WTO and the WIPO, or between the WTO and the WHO); and dispute settlement bodies created by one regime can be used to resolve disputes raised within another: (the WIPO Arbitration and Mediation Center addressing disputes involving internet domain names provides one example).

Fourth, the public-private divide is blurred at the global level (there exist many significant cases of “hybridization”: see, for instance, the ICANN, the WADA, the IUCN, the WIPO, the ISO, etc.), and does not follow the domestic paradigm of government regulating business.

Fifth, the global and the national levels interact in a number of different ways: for example, national governments act as law-makers at the global level, but they are also the addressees of global substantive and procedural standards. A global administrative law has thus developed with the aim of encouraging – or, sometimes, compelling – global regimes to ensure and promote the rule of law and procedural fairness, transparency, participation, and the duty to give reasons throughout all areas of their activity. Global administrative law, therefore, addresses a wide range of actors – States, domestic administrations, global institutions, NGOs, and citizens. The role of States within the global arena has become increasingly multifaceted; global administration cannot plausibly be said to exist in isolation from the national level. It is for this reason that an examination of the decision-making processes of IOs reveals a plurality of techniques for facilitating joint action and mutual conditioning. In other words, there is no clear way of separating, either analytically or empirically, the global from the national.

Sixth, global administrative law lacks enforcement powers and procedures, and is, therefore, obliged to have recourse to non-compulsory means of ensuring compliance with global standards (for example, retaliation in the world trade regulatory regime), or to rely on the cooperation of national authorities for its implementation. Compliance in the global space is, therefore, “induced”. Global regulatory regimes have various means for ensuring their own effectiveness, using surrogates to implement their standards: retaliation, authorizing controlled self-enforcement (in particular, the certification and accreditation mechanisms applied to the implementation of global food standards, forestry rules, ISO standards, etc.), and the introduction of incentives for compliance. Implementation and enforcement may also be left to national governments acting as instruments of global institutions. As a consequence, dispute settlement by compulsory adjudication remains, as yet, the exception rather than the rule within the global legal order. Traditional diplomatic relationships and negotiations survive and operate side-by-side with compulsory and binding adjudication by supranational courts and the non-binding decisions of different quasi-judicial bodies.

Seventh, while there is a well-developed administration, governed by a well-developed set of administrative laws, in the global space, there is as yet no constitutional law; the discourse of constitutionalism remains, for the time being, more appropriate to national legal systems. However, a process of constitutionalization is arguably already underway at the global level through the strengthening of international civil society, the creation of a global public sphere, the growing number of transnational networks and the proliferation of global courts. There is, however, no government in this global constitution; and nor, more generally, is there real evidence of the emergence of the type of overarching institutional and/or normative unity that constitutionalism is usually thought to imply. This is why global law remains, for the time being at least, largely administrative and not constitutional in nature.

Lastly, from a strictly legal perspective, the global administrative space is both international and administrative: as such, the coexistence of both international and administrative law aspects must neither be denied nor conceptualized as a rigid dichotomy; rather, it should simply be recognized, accepted, and confronted as a new challenge, necessitating the development of a new set of conceptual and institutional tools.

This complex network of global organizations and procedures has been studied, in the last quarter of a century, by many scholars around the world. A global administrative legal scholarship has progressively emerged, strengthened through the establishment of the Viterbo Global Administrative Law Seminar Series as a “forum” for scholars from various parts of the world working in the field (<http://www.irpa.eu/category/gal-section/gal-seminars/>). In this way, a network of scholars is emerging that matches in complexity and scope that of the organizations that they study”.

From *Global Administrative Law: The Casebook*, 3rd ed., Rome-Edinburgh-New York, 2012

Born in 2005 from a collaboration between the Tuscia University of Viterbo (Professors Giulio Vesperini and Stefano Battini), the University of Rome Sapienza (Professor Sabino Cassese) and the New York University School of Law (Professors Benedict Kingsbury and Richard B. Stewart), the aim of this annual GAL seminar – held in Viterbo, Italy – is to provide an opportunity for scholars from all over the world to explore and contribute to the development of these emerging themes. Each year, a general topic is chosen as the overarching theme of the Seminar. Nine months in advance a worldwide call for papers is issued to invite scholars to submit paper proposals. Since the first GAL seminar, the best papers presented have been published in leading legal reviews and journals. The topics of previous Seminars included Global Administrative Law and Global Governance (2005); Accountability within the Global Context (2006); Participation of Private Actors in Global Administrative Law (2007); Global Administrative Law: From Fragmentation to Unity? (2008); Legality Review in the Global Administrative Space (2009); The Financial Crisis and Global Regulatory Governance (2010); Private and Private-Public Regulation: Global Administrative Dimensions (2011); Indicators as a Technology of Global Governance (2012); Inter-institutional Relations in Global Law and Governance (2013); and Law and Global Governance of Development (2014).

As the results of these seminars demonstrate, global administrative law scholarship is important not only for the cooperation that has been established between different national legal academies, but also for the “de-nationalization” of the study of law that it has produced. This is not the least relevant aspect of the globalization of law.

The current Viterbo GAL Seminar Steering Committee includes professors Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino, and Lorenzo Casini. The current Seminar Organizing Team is made of Eleonora Cavalieri, Giulia Dimitrio and Giuseppe Sciascia.

This document provides information regarding the first ten editions of the Seminar since its establishment: call for papers, programs, papers presented, participants. The call for papers texts are presented in their original version.

The text was prepared by Mariangela Benedetti, Giulia Bertezolo, Eleonora Cavalieri, Martina Conticelli, and Elisabetta Morlino.

Further Information are available on the IRPA website (www.irpa.eu) and on the NYU-ILJ website (www.ilj.org).

The 1ST GLOBAL ADMINISTRATIVE LAW SEMINAR
GLOBAL ADMINISTRATIVE LAW AND GLOBAL GOVERNANCE
June 2005

1.1. SUMMARY AND PROGRAM DESCRIPTION

The first seminar on Global Administrative Law was held in Viterbo on June 10-11, 2005.

1.2. PAPERS PRESENTED

M. CONTICELLI, *The G8 and "the others"*

L. PERROTTI, *Captive to its own web? WTO's relations with non-State actors*

C. MARTINI, *States' control over International Organizations: loss or transformation?*

M. SAVINO, *The role of Transnational Committees in the European and global order*

M. DE BELLIS, *Global standards for domestic financial regulations. Concourse, competition and mutual reinforcement between different types of global administration*

H. CAROLI CASAVOLA, *Internationalizing public procurement law. Conflicting global standards for public procurement*

A. BATTAGLIA, *Food Safety: Between European and Global Administration*

M. D'AURIA, *Emissions Trading and Polycentric Negotiation*

1.3. SEMINAR PROGRAM

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| <p>Friday June 10, 2005 First session</p> | <p>3.30 p.m. Welcome Marco Mancini, President of "La Tuscia" University, Viterbo Massimo Ferrari Zumbini, Dean of the Political Science Department, "La Tuscia" University, Viterbo</p> <p>4.00 p.m. <i>Connecting the world: the role, governance and networks of global organizations</i> introduced by Giacinto della Cananea, Naples University "Federico II"</p> <ul style="list-style-type: none"> • <i>The G8 and "the others"</i> (Martina Conticelli) • <i>Captive to its own web? Wto's relations with non-State actors</i> (Luisa Perrotti) <p>4.15 p.m. <i>Beyond multilevelism: member States' participation in international organizations</i> introduced by Bernardo Giorgio Mattarella, Siena University</p> <ul style="list-style-type: none"> • <i>States' control over international organizations? Loss or transformation?</i> (Chiara Martini) • <i>The role of transnational committees in the European and global order</i> (Mario Savino) <p>4.30 p.m. <i>Globalizing standards: overlaps and coexistence</i> introduced by Marco D'Alberti, Rome University "La Sapienza"</p> <ul style="list-style-type: none"> • <i>Global standards for domestic financial regulations</i> (Maurizia De Bellis) • <i>International standards for public procurement</i> (Hilde Caroli Casavola) |
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| | <p>4.45 p.m. <i>Global limits upon national regulators: input and mediation by supranational and non-State actors</i> introduced by Stefano Battini, "La Tuscia" University, Viterbo</p> <ul style="list-style-type: none"> • <i>Food safety: between European and global administration</i> (Alessandra Battaglia) • <i>Emissions trading and polycentric negotiation</i> (Marta D'Auria) <p>5.00 p.m. Discussion</p> <p>6.30 p.m. End of session</p> |
| Saturday June 11, 2005 Second Session | <p>9:30 a.m. Responses to Friday's comments by authors of the papers</p> <p>10.50 a.m. General discussion</p> <p>11.30 a.m. Global Administrative Law Projects: agenda and next steps</p> <p>12.30 p.m. End of Seminar</p> |

1.4. Published Papers

The papers presented at the first GAL seminar are now published in *Global Jurist, Advances*, Volume 6, issue 3 (<http://www.bepress.com/gj/advances/>). The Italian version of the papers has been published in *Diritto e amministrazioni nello spazio giuridico globale*, edited by S. Cassese and Martina Conticelli, Quaderno della Rivista trimestrale di diritto pubblico, n. 7, Milano, Giuffrè, 2006.

Contents

M. Conticelli, *Presentazione* - Il "governo" della frammentazione e le reti di organizzazioni globali: M. Conticelli, *Il G8: un governo globale?* - L. Perrotti, *Le relazioni tra Organizzazione mondiale del commercio e i soggetti dell'ordinamento ultra-statale* - "Nazionale" e "globale" nelle organizzazioni internazionali: C. Martini, *Il controllo degli Stati sulle organizzazioni internazionali di nuova generazione* - M. Savino, *Il ruolo dei comitati negli ordinamenti europeo e globale* - La globalizzazione degli standards di regolazione: M. De Bellis, *Gli standards globali per i servizi finanziari: concorrenza e reciproco rafforzamento tra diversi modelli di amministrazione globale* - H. Caroli Casavola, *L'internazionalizzazione della disciplina dei contratti delle pubbliche amministrazioni* - I regolatori e gli interessi globali: A. Battaglia, *La sicurezza alimentare: amministrazione comunitaria e amministrazione globale* - M. D'Auria, *L'emissions trading e la negoziazione policentrica* - M. Circi, *L'attività del World Bank Inspection Panel a più di dieci anni dall'istituzione: un bilancio* - B. Carotti e L. Casini, *Diritto amministrativo globale: bibliografia*.

S. CASSESE – M. CONTICELLI (edited by), *Global Administrative Law and Global Governance*, *Global Jurist, Advances*, Volume 6, issue 3, October 2006 (<http://www.bepress.com/gj/advances/>).

Contents:

M. Conticelli, *Global Administrative Law: Preface* - 1. *Cosmos and taxis. The role, governance, and networks of global organizations* - M. Conticelli, *The G8 and "the Others"* - L. Perrotti, *WTO Relations with Non-State Actors: Captive to Its Own Web?* - 2. *Beyond multilevelism. How member states participate in international organizations* - C. Martini, *States' Control over New International Organization* – M. Savino, *The Role of Transnational Committees in the European and Global Orders* - 3. *Global standards. Overlaps and coexistence, Global Standards for Domestic Financial Regulations* – M. De Bellis, *Mutual Reinforcement between Different Types of Global Administration* – H. Caroli Casavola, *Internationalizing Public Procurement Law: Conflicting Global Standards for Public Procurement* - 4. *Global limits on national regulators. Mediation between supranational and non-state actors*, Alessandra Battaglia, *Food Safety: Between European and Global Administration* - M. D'Auria, *Emissions Trading and Polycentric Negotiation* - M. Circi, *The World Bank Inspection Panel: Is It Really Effective?* – B. Carotti and L. Casini, *Global Administrative Law: Bibliography*

THE 2ND GLOBAL ADMINISTRATIVE LAW SEMINAR
ACCOUNTABILITY WITHIN THE GLOBAL CONTEXT
June 2006

2.1. SUMMARY AND PROGRAM DESCRIPTION

The second seminar on Global Administrative Law was held in Viterbo on June 9-10, 2006. It was dedicated to discuss case studies regarding the theme “*Accountability within the global context*”.

A call for papers was launched. 17 abstract were sent (Lorenzo Saltari, Bruno Carotti, Dario Bevilacqua, Joana Mendes, Dyonisia T. Avgerinopoulou, Benjamin Dalle, Philipp Dann, Treasa Dunworth, Maurizia de Bellis, Steven Dewulf, Matthias Goldmann, David Livshiz, Marco Macchia, Didier Pacqu  , Eran Shamir- Borer, Ventsilav Velikov, Maarten Vidal).

13 among them were selected by the selection panel (Prof. Richard B. Stewart Prof. Stefano Battini, Prof. Giacinto della Cananea). The other 4 papers, however, were distributed among conference participants.

2.2. CALL FOR PAPERS

Aims and scope

The second GAL seminar will aim to explore the emergence of global law’s accountability mechanisms, as related to the exercise of regulatory functions by foreign and global public authorities, and by transnational private organizations. To this end, the seminar’s program foresees:

- ✓ Presentation and discussion of eight case study papers, prepared by junior researchers from different countries.
- ✓ Presentation and discussion of more general and cross-cutting issue papers, prepared by senior researchers involved in the GAL project.

Call for papers

The advisory group for the conference invites submissions of case study papers on the conference themes outlined below.

The case study papers must be related to the following issue areas:

- ✓ accountability and foreign regulation
- ✓ accountability and global public regulation
- ✓ accountability and global private or hybrid regulation

Topics of the case study should include, but are not limited to:

- ✓ air and space
- ✓ antitrust
- ✓ banking and finance
- ✓ energy and utilities law
- ✓ environment
- ✓ foreign investments
- ✓ health
- ✓ human rights
- ✓ intellectual property
- ✓ internet regulation
- ✓ military law
- ✓ security
- ✓ social welfare
- ✓ sports
- ✓ trade
- ✓ transports

2.3. PAPERS SELECTED

M. MACCHIA, *Public Administration and International law: should or shall? The review of compliance in the Aarhus Convention*

B. DALLE, *The Global Aspirations of the Aarhus Convention and the Case of the World Bank*

- D.-T. AVGERINOPOULOU, *Autonomy without Accountability – the case of the International Seabed Authority and the Enterprise*
- P. DANN, *Accountability in Development Aid Law: Some Trees but Forest?*
- T. DUNWORTH, *The Organization for the Prohibition of Chemical Weapons (OPCW): Is a culture of legality possible?*
- D. LIVSHIZ, *Holding Professionals Accountable: The Challenge of Privatized International Standard Setting in Accounting and Architecture Service Sectors*
- E. SHAMIR-BORER, *Administrative Law Mechanisms in the Rule-making Processes of the International Organization for Standardization (ISO) – What Makes them Thrive? What Accounts for their Paucity?*
- V. VELIKOV, *Initiating of European and International Standards into national regulatory instruments – can the Global Administrative Law penetrate equally into the national legislations?*
- M. GOLDMANN, *Holding Governments Accountable through Information: Multilevel Education Assessments by Private and Public Institutions*
- J. MENDES, *Accountability in rule-making in the area of financial services: The EU in the context of global regulation*
- D. PACQUÉE & S. DEWULF, *The Consequences of the Substitution of a State by an International Organization – Holding UNMIK and KFOR Accountable for Human Rights Violations in Kosovo?*
- D. BEVILACQUA, *The Codex Alimentarius Commission: increasing accountability through transparency*
- B. CAROTTI, *Legitimacy and Accountability in Internet Governance: is ICANN in Quest of global administrative law?*

2.4. SEMINAR PROGRAM

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| Friday, June 9, 2006 | <p>11.30 a.m. Welcome Marco Mancini, President of “La Tuscia” University, Viterbo Massimo Ferrari Zumbini, Dean of the Political Science Department, “La Tuscia” University, Viterbo</p> <p>First session Case studies: presentation of papers Chairman: Luis Ortega</p> <p>12.00 p.m. <i>Accountability and foreign regulation</i> introduced by Benedict Kingsbury</p> <ul style="list-style-type: none"> • <i>Public Administration and International law: should or shall? The review of compliance in the Aarhus Convention</i> (Marco Macchia) • <i>The Global Aspirations of the Aarhus Convention and the Case of the World Bank</i> (Benjamin Dalle) <p>12.20 p.m. <i>Accountability and global public regulation</i> introduced by Francesca Bignami</p> <ul style="list-style-type: none"> • <i>Autonomy without Accountability – The Case of the International Seabed Authority and the Enterprise</i> (Dyonisia -Teodora Avgerinopoulou) • <i>Accountability in Development Aid Law: Some Trees but no Forest?</i> (Philipp Dann) • <i>The Organization for the Prohibition of Chemical Weapons (OPCW): Is a culture of legality possible?</i> (Treasa Dunworth) |
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| | <p>12.40 p.m. Coffee-break</p> <p>12.50 p.m. <i>Accountability and global private or hybrid regulation</i> introduced by Christian Joerges</p> <ul style="list-style-type: none"> • <i>Holding Professionals Accountable: The Challenge of Privatized International Standard Setting in Accounting and Architecture Service Sectors</i> (David Livshiz) • <i>Administrative Law Mechanisms in the Rule-making Processes of the International Organization for Standardization (ISO)– What Makes them Thrive? What Accounts for their Paucity?</i> (Eran Shamir-Borer) • <i>Initiating of European and International Standards into national regulatory instruments – can the Global Administrative Law penetrate equally into the national legislations?</i> (Ventsislav Velikov) • <i>The Accountability of Governance by “Naming and Shaming”: Legal Aspects of Transnational Policy Review in the Field of Education</i> (Matthias Goldmann) <p>1.20 p.m. End of session</p> <p>1.30 p.m. Lunch</p> <p>3.00 p.m. Second session</p> <p><i>Cross cutting issues</i> Chairman: Harm Schepel</p> <p>3.00 p.m. Jean-Bernard Auby, <i>Global Administrative Law's constitutional and democratic bases</i></p> <p>3.30 p.m. Christoph Möllers, <i>Patterns of Legitimacy in GAL: trade-offs between accountability and due process</i></p> <p>4.00 p.m. Richard B. Stewart, <i>Accountability and the Discontents of Globalization: US and EU Models for Regulatory Governance</i></p> <p>4.30 p.m. Coffee-break</p> <p>4.45 p.m. General discussion</p> <p>6.30 p.m. End of session</p> <p>8.30 p.m. Dinner</p> |
| Saturday June 10, 2006 | <p>Third session Chairman: Sabino Cassese</p> <p>9.30 a.m. Responses to Friday's comments by authors of the case studies</p> |

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| | 11.00 a.m. Coffee-break 11.10 a.m. General discussion 12.15 p.m. GAL Project: Agenda and Next Steps 1.00 p.m. End of session Lunch |
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2.5. PUBLISHED PAPERS

The papers presented at the second GAL seminar are available on the website of the *Institute for International Law and Justice*, New York University School of Law (www.iilj.org/research/ViterboConferenceReports2006.html)

- B. DALLE, *Instruments of a Universal Toolbox or Gadgets of Domestic Administration? The Aarhus Convention and Global Governance*, 1 *Rivista trimestrale di diritto pubblico* 1-40 (2008);
- M. GOLDMANN, *The Accountability of Private vs. Public Governance "by Information". A Comparison of the Assessment Activities of the OECD and the IEA in the Field of Education*, 1 *Rivista trimestrale di diritto pubblico* 41-69 (2008);
- M. MACCHIA, *La compliance al diritto amministrativo globale: il sistema di controllo della Convenzione di Aarhus*, 3 *Rivista trimestrale di diritto pubblico* 639-669 (2006);
- T. DUNWORTH, *Towards a Culture of Legality in International Organizations: The Case of the OPCW*, 5(1) *International Organizations Law Review* 119-139 (2008);
- V. VELIKOV, *Incorporation of High Level Regional and International Technical Standards into National Standardization Systems -A Model for Global Administrative Law?*, 40 *Kobe University Law Review* 37-66 (2006);
- D. PACQUÉE and S. DEWULF, *"The Consequences of the Substitution of a State by an International Organisation – Holding UNMIK and KFOR Accountable for Human Rights Violations in Kosovo?"*, 4 *Chinese Yearbook of Human Rights* (2006);
- D. BEVILACQUA, *Il principio di Trasparenza come strumento di Accountability nella Codex Alimentarius Commission*, 3 *Rivista Trimestrale di Diritto Pubblico* (2007);
- B. CAROTTI, *L'ICANN e la governance di Internet*, 3 *Rivista trimestrale di diritto pubblico* 681 (2007).

THE 3RD GLOBAL ADMINISTRATIVE LAW SEMINAR
PARTICIPATION OF PRIVATE ACTORS IN GLOBAL ADMINISTRATIVE LAW
June 2007

3.1. SUMMARY AND PROGRAM DESCRIPTION

The third Viterbo Global Administrative Law seminar was held on June 15-16, 2007. It was hosted by Professors Stefano Battini and Giulio Vesperini, together with an organizational team led by Martina Conticelli.

The seminar was dedicated to discuss case studies regarding the "*Participation of private actors in global administrative law*". 12 researchers submitted their abstract. Among them, 8 papers were selected by the panel (Prof. Benedict Kingsbury, Prof. Giulio Vesperini and Prof. Stefano Battini).

3.2. CALL FOR PAPERS

Aims and issue

Private actors are of pivotal importance in the emerging practice of Global Administrative Law.

On the one hand, individuals, private companies and NGOs are more and more affected by decisions taken by global administrations. GAL provides private parties with means of expression, by allowing them some influence on decisions taken by global administrations and by national agencies.

On the other hand, private actors are themselves shaping aspects of the law of global administration, and in some cases are conducting that administration themselves.

The aim of the Viterbo III conference is to discuss research on specific topics within this broader issue, and to develop key ideas as well as delineate areas requiring further investigation.

Private Actors and global administration

In most cases, GAL demands a multi-faceted involvement of private sector in global decision making processes (including determination of rights of specific persons, and rule-making). This occurs, for example, when an individual, a private company or an NGO:

- ✓ is included in the main organization of an international regime
- ✓ is entrusted with global administrative functions
- ✓ is allowed to attend to a meeting as an observer
- ✓ receives notice of a proposed action and an opportunity to comment or make representations before it is definitively taken
- ✓ receives access to information necessary to enable effective participation
- ✓ is given the chance to intervene during the judicial review process, acting as "amicus curiae" in the dispute

Foreign private parties, foreign governments and domestic administration

GAL multiplies the chances given to foreign parties and foreign government to have their voice on domestic choices. Again, to exemplify, this occurs when:

- ✓ a global norm requires national governments to consult with private parties (often irrespective of nationality)
- ✓ a global norm entitles private parties to challenge before global authorities the decisions adopted by national governments.

Global and national

- ✓ what is the impact of private parties on global decision making processes?
- ✓ does this lead to further changes?

3.3. PAPERS SELECTED

L. DUBIN- R. NOGELLOU, *Public consultation in the decision making process in global administrative law*;

C. O'BRIEN, *Private actors' participation in the work of the United Nations Secretary General's Special Representative on Business and Human Rights*;

M.WEIMER, *The Role of Private Actors and Civil Society in the Application of the Precautionary Principle – Global Administration of Genetically Modified Products Between EU and WTO*

J. GREEN, *Hybrid Authority in the Clean Development Mechanism of the Kyoto Protocol*

T. FIDALGO DE FREITAS, *Participation, Proceduralization and Compliance: The Role of Private Actors in the Making of Standards and Recommended Practices by ICAO*

L. DRAGOMIR, *Validation – an accountability mechanism for private actors' involvement in prudential regulation*

S. GANDHI, *Voluntary Environmental Standards: The Interplay Between Private Initiatives, Trade Rules And The Global Decision-Making Processes*

C.-H. WU, *How Does TRIPS Agreement Transform Chinese Administrative Law?*

3.4. SEMINAR PROGRAM

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| <p>Friday June 15, 2007 First session (3:00 p.m. - 7:00 p.m.)</p> | <p>Presentation of papers:</p> <p>Marco D'Alberti, University of Rome "Sapienza"</p> <ul style="list-style-type: none"> • <i>Public consultation in the decision making process in global administrative law</i> (Laurence Dubin- Rozen Nogellou) • <i>Private actors' participation in the work of the United Nations Secretary General's Special Representative on Business and Human Rights</i> (Claire O'Brien) • <i>The Role of Private Actors and Civil Society in the Application of the Precautionary Principle – Global Administration of Genetically Modified Products Between EU and WTO</i> (Maria Weimer) <p>Christian Tietje, Martin-Luther-University Halle-Wittenberg</p> <ul style="list-style-type: none"> • <i>Hybrid Authority in the Clean Development Mechanism of the Kyoto Protocol</i> (Jessic Green) • <i>Participation, Proceduralization and Compliance: The Role of Private Actors in the Making of Standards and Recommended Practices by ICAO</i> (Tiago Fidalgo de Freitas) • <i>Validation – an accountability mechanism for private actors' involvement in prudential regulation</i> (Larisa Dragomir) <p>Gregory Shaffer, University of Wisconsin</p> <ul style="list-style-type: none"> • <i>Voluntary Environmental Standards: The Interplay Between Private Initiatives, Trade Rules And The Global Decision-Making Processes</i> (Samir Gandhi) • <i>How Does TRIPS Agreement Transform Chinese Administrative Law?</i> (Cheah H. Wu) <p>General discussion</p> |
| <p>Saturday, June 16, 2007 (9.30 a.m. - 12.00 a.m.) Second session</p> | <p>Responses to Friday's comments by authors of the papers</p> <p>General discussion</p> <p>GAL Project: Agenda and Next Steps</p> |

3.5. PUBLISHED PAPERS

J. GREEN, *Delegation to Private Actors: A Case Study of the Clean Development Mechanism*, IILJ Emerging Scholars Papers 5 (2007)

THE 4TH GLOBAL ADMINISTRATIVE LAW SEMINAR
FROM FRAGMENTATION TO UNITY?
June 2008

4.1. SUMMARY AND PROGRAM DESCRIPTION

The fourth Viterbo seminar on global administrative law was held on June 13-14, 2008. It was hosted by Professors Stefano Battini and Giulio Vesperini, together with an organizational team of three people (Antonella Albanesi, Eleonora Cavalieri, Elisa D'Alterio).

The seminar was dedicated to discuss papers regarding the theme "*From Fragmentation to Unity?*".

4.2. CALL FOR PAPERS

The *IV Viterbo GAL Conference* aims at discussing researches and studies that contribute to reflection on such questions.

The papers should deal with problems such as the following. Do different global systems and organizations share a number of institutes or general principles of administrative law? Can we register any process of cross-fertilization or reciprocal influence among global regimes? Is there an exchange of practices and experiences among global organizations? If so, through which instruments? And what is the extension of such processes? If a tendency towards a greater unity can be registered, which are its main actors and driving forces? Courts? International or domestic bureaucracies? National governments? How do national administrative laws influence the development of GAL general principles? Are there any prevailing models? How can the development of a common GAL applicable to all global administrations by sector compensate the lack of a common constitutional anchorage?

4.3. PAPERS SELECTED

P. ALA'I, *Supra-national Governance And The WTO: A Model For The Anti-Corruption Movement?*

M. BENEDETTI, *Global Judicial Review: A Remedy Against Fragmentation?*

R. CHETRIT, *Into GAL's Fragmentation and Unity Debate: Governance in Environmental Law*

G. DIMITROPOULOS, *A Common GAL: The Legitimizing Role Of The Global Rule Of Law*

C.I. FUENTES, *Transparency As A Global Goal: Towards An Unity Of Principles In Global Administrative Law*

T.N. HALE, *'Info-courts' and the Accountability of International Organizations: Evidence from the World Bank Inspection Panel*

A. LANG, *Global Administrative Law in Domestic Courts. Why and How to hold Global Administrative Bodies accountable*

M. KISILOWSKI, *The Alternative Foundations: How New Public Management Can Shape Global Administrative Process*

M. KUO, *Fragmentation Or Unity? A Critique Of The Status Of Global Administrative Law Through The Lens Of Global Constitutionalism*

E. MACDONALD, *The "Emergence" Of Global Administrative Law?*

B. MARCHETTI, *The WTO Dispute Settlement System: Administration, Court or Tertium Genus?*

S. SCHILL, *Investment Treaties: Instruments Of Bilateralism Or Elements Of An Evolving Multilateral System?*

R. T. LANCEIRO, *The Arctic gold rush is juridical - The Procedure Of The Extension Of The Russian Federation's Continental Shelf Analysed Through Global Administrative Law*

M. V. DE AZEVEDO CUNHA, *The Judicial System of Mercosur: Is there Administrative Justice?*

4.4. SEMINAR PROGRAM

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| <p>Friday, June 13, 2008 First session</p> | <p>3.00 p.m. Welcome Marco Mancini, President of "La Tuscia" University, Viterbo</p> <p>Case studies: presentation of papers Chairman Francesca Bignami</p> <p><i>The Role of Courts in the Global Administrative Space</i> Introduced by Tom Zwart</p> <ul style="list-style-type: none"> • <i>Global Judicial Review: A Remedy Against Fragmentation?</i> (Mariangela Benedetti) • <i>The Role of Domestic Courts in the Global Administrative Space</i> (Andrei Lang) • <i>The WTO Dispute Settlement System: Administration, Court or Tertium Genus?</i> (Barbara Marchetti) • <i>Mercosur's Judicial System: Is There Administrative Justice?</i> (Mario Vila de Azevedo Cunha) • <i>The Politics of Info-courts and International Development Assistance: A Fragmented Accountability Tool</i> (Thomas Hale) <p><i>Principles of Global Administrative Law</i> Introduced by Daniel Bradlow</p> <ul style="list-style-type: none"> • <i>Transparency As A Global Goal: Towards An Unity Of Principles In Global Administrative Law</i> (Carlos Ivan Fuentes) • <i>The Alternative Foundations: How New Public Management Can Shape Global Administrative Process</i> (Macie Kisilowski) • <i>Supra-national Governance And The WTO: A Model For The Anti-Corruption Movement?</i> (Padideh Ala'i) • <i>The Arctic gold rush is juridical - The Procedure Of The Extension Of The Russian Federation's Continental Shelf Analysed Through Global Administrative Law</i> (Rui Tavares Lanceiro) • <i>Between Fragmentation and Unity, GAL Should Focus On Efficiency - The Arguments For An Effective Environmental Protection</i> (Raphael Chetrit) <p><i>Constitutionalism and Global administrative law</i> Introduced by Jean Bernard Auby</p> <ul style="list-style-type: none"> • <i>The "Emergence" Of Global Administrative Law?</i> (Euan MacDonald) • <i>Fragmentation Or Unity? A Critique Of The Status Of Global Administrative Law Through The Lens Of Global Constitutionalism</i> (Ming-Sung Kuo) • <i>A Common GAL: The Legitimizing Role Of The Global Rule Of Law</i> (Georgios Dimitropoulos) • <i>Investment Treaties: Instruments Of Bilateralism Or Elements Of An Evolving Multilateral System?</i> (Stephan Schill) <p>5.05 p.m. General discussion</p> <p>7.00 p.m. End of session</p> <p>8.00 p.m. Dinner</p> |
| <p><u>Saturday June 14, 2008</u> Second session</p> | <p>Chairman: Sabino Cassese (Judge of the Italian Constitutional Court)</p> <p>9.00 a.m. Responses to Friday's comments by authors of the papers</p> <p>11.00 a.m. General discussion</p> <p>12.10 p.m.</p> |

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| | <p>Upcoming and recent books/journals on GAL</p> <p>12.40 p.m. GAL Project: Agenda and Next Steps</p> <p>1.15 p.m. End of session</p> <p>1.20 p.m. Lunch</p> |
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4.5. PUBLISHED PAPERS

- I. FUENTES, *Transparency As A Global Goal: Towards An Unity Of Principles In Global Administrative Law*, September 2008, available at SSRN: <http://ssrn.com/abstract=1134122>
- B. MARCHETTI, *The WTO Dispute Settlement System: Administration, Court or Tertium Genus?*, 32 Suffolk Transnational Law Review 257 (2009)
- M. BENEDETTI, *Global judicial review: a remedy against fragmentation?* in G. della Cananea, A. Sandulli (edited by), *Global Standards for Public Authorities*, Editoriale Scientifica (2012)

THE 5TH GLOBAL ADMINISTRATIVE LAW SEMINAR
LEGALITY REVIEW IN THE GLOBAL ADMINISTRATIVE SPACE
June 2009

5.1. SUMMARY AND PROGRAM

The fifth Viterbo seminar on global administrative law was held on June 12-13, 2009. It was hosted by Professors Stefano Battini, Giulio Vesperini and Edoardo Chiti, together with an organizational team led by Martina Conticelli. The seminar was sponsored by Finmeccanica Spa and Fondazione del Monte di Bologna e Ravenna.

The seminar was dedicated to discuss papers regarding the theme "*Legality Review in the Global Administrative Space*". 6 papers were selected by the panel (Prof. Giandomenico Falcon, Prof. Benedict Kingsbury and Prof. Lorenzo Casini).

5.2. CALL FOR PAPERS

In the last fifteen years, the number of mechanisms and proceedings for legality review in the global administrative space has rapidly grown up. What is their current state of development? Do such mechanisms and proceedings give place to a tendentially coherent and unitary system of review of global administrations' action? Or are they shaped as fragmented and diverse tools, based on different standards? Do they depart from the traditional international modes of dispute resolution, basically centred around negotiation? And in what way do their gradual emergence and consolidation affect the development of global administrative law?

The *Vth Viterbo GAL Conference* aims at discussing researches and studies which, though focussing on specific issues or sectors, contribute to academic reflection on such general subject.

Papers should deal with questions such as, for example, the following. Who has access to global review? How are review mechanisms and proceedings shaped? Which global measures can be held amenable to review? On which grounds? And what are the effects of the review decision? What is the relationship between non judicial and judicial mechanisms and proceedings? And how do they interact with the review mechanisms and proceedings available at the domestic level?

5.3. PAPERS SELECTED

D. T. AVGERINOPOULOU, *Review Bodies in Multilateral Environmental Agreements. Competences, Coherence, Coordination*

J. BLUMENKRON, *Implications Of Transparency In The International Civil Aviation Organization's Universal Safety Oversight Audit Programme*

G. SGUEO, *Proactive Strategies in the Global Legality Review*

C. SWEETSER, *Deference in U.S. Domestic Courts and Implications for Legality Review*

B. C.Y. WANG, *Beyond Multilateralism and Regionalism. Analysis of the Review Process of Global Trade Dispute Resolution*

D. ZARING, *Peer Review As a Metric of Success For Regulatory Networks*

5.4. SEMINAR PROGRAM

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| Friday, June 12, 2009 First session | Chairman: Giandomenico Falcon (University of Trento) 3.00 p.m. Welcome Giuseppe Nascetti Vice President of "La Tuscia" University, Viterbo Case studies: presentation of papers 3.10 p.m. Discussant – Rozen Nogellou (University of Nantes) |
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| | <ul style="list-style-type: none"> • <i>Implications Of Transparency In The International Civil Aviation Organization's Universal Safety Oversight Audit Programme</i> (Jimena Blumenkron) • <i>Deference in U.S. Domestic Courts and Implications for Legality Review</i> (Catherine Sweetser) • <i>Beyond Multilateralism and Regionalism. Analysis of the Review Process of Global Trade Dispute Resolution</i> (Blake C.Y. Wang) <p>3.35 p.m. Discussant – Mario Savino (University of Viterbo)</p> <ul style="list-style-type: none"> • <i>Proactive Strategies in the Global Legality Review</i> (Gianluca Sgueo) • <i>Review Bodies in Multilateral Environmental Agreements. Competences, Coherence, Coordination</i> (Dionysia-Theodora Avgerinopoulou) • <i>Peer Review As a Metric of Success For Regulatory Networks</i> (David Zaring) <p>4.00 p.m. Coffee break</p> <p>4.15 p.m. General discussion</p> <p>5.40 p.m. Responses by the authors of the papers</p> <p>6.30 p.m. End of the session</p> <p>8.15 p.m. Dinner</p> <p>9.45 p.m. Guided walk around Viterbo</p> |
| <p>Saturday, June 13, 2009 Second session</p> | <p>Chairman: Sabino Cassese (Judge of the Italian Constitutional Court)</p> <p>9.30 a.m. Round table</p> <p>Eyal Benvenisti – Armin von Bogdandy – Richard B. Stewart</p> <p>11.00 a.m. General discussion</p> <p>11.30 a.m. Coffee break</p> <p>11.45 a.m. GAL research</p> <p>12.40 p.m. GAL project: agenda and next steps</p> <p>1. 25 p.m. End of the session</p> <p>1.30 p.m. Lunch</p> |

5.5. Published papers

- J. BLUMENKRON, *Transparency and the International Civil Aviation Organization. Implicationtions of Increased Transparency In Safety Audit Information*, Saarbrücken (Germany), Lap Lambert Academic Publishing (2011)
- G. SGUEO, *Proactive Strategies in the Global Legality Review*, 60 (1) *Rivista Trimestrale di Diritto Pubblico* 21 (2009)

The 6TH GLOBAL ADMINISTRATIVE LAW SEMINAR
THE FINANCIAL CRISIS AND GLOBAL REGULATORY GOVERNANCE
June 2010

6.1. SUMMARY AND PROGRAM DESCRIPTION

The sixth Viterbo seminar on global administrative law was held on June 11-12, 2010. It was hosted by Professors Stefano Battini, Giulio Vesperini and Edoardo Chiti, together with an organizational team led by Martina Conticelli and Mariangela Benedetti.

The seminar was dedicated to discuss papers regarding the theme "*The Financial Crisis and Global Regulatory Governance*".

Since this edition the prize was the most promising paper has been established.

6.2. CALL FOR PAPERS

1. Overview

The basic models of market regulation that have prevailed during the XX century had been forged in reaction to the crisis of 1929. The responses given to that economic emergency, initially conceived as transient, have deeply shaped the relations between the market and the State for more than fifty years. In the United States, the New Deal has immensely expanded the reach of the public regulatory powers in economic and social matters and has led to the introduction of new modes of interaction between the citizens and the agencies through the 1946 Administrative Procedure Act. Similarly, in Europe, the crisis has expanded the programs of public assistance and the instruments of central planning, thereby subjecting the market to a significant State control.

At the international level, the Bretton Woods institutions (IMF, WTO, World Bank) were created after WWII to address various structural aspects of the 1929 crisis as well as states' "beggar thy neighbor" policy responses to it, and prevent a recurrence of a prolonged global depression.

In the last thirty years, widespread convergent processes of liberalization, privatization and internationalization have eroded the State control over the economy and altered the balance between the public and the private sphere. State authorities have begun to lose their centrality, to the advantage of private organisms and supranational institutions. Many aspects of state regulation have been regarded as ineffective or even counterproductive, and have been complemented or partially superseded by private law approaches, by private regulatory initiatives and/or by self-regulation.

However, the recent financial crisis has subverted the trend. States have reasserted enormous powers over the market and its actors. On one hand, the bailout of banks and financial institutions – considered "too big to fail" – has paved the way to the reintroduction of public tools to regulate and shape the economy. Some of the crucial developments concern specifically the financial sector, which is increasingly subject to regulatory scrutiny and expanded controls. . Are these tools comparable to techniques used earlier? Though designed for temporary purposes, are they destined to endure and live through the crisis, as happened after the Great Depression? What similarities are there between problems and remedies in earlier crises in different economies, including the general economic crisis which began in 1929, and the current epoch?

The crisis has also shown the limits of a State-centered regulatory model, inducing the national authorities to intensify their cooperation. At the same time, it has tested the ability of Bretton Woods institutions and other international and supranational consultative or regulatory regimes to deal with the crisis as such or to deal with measures taken by states to limit damage to domestic production and employment. At the global level, as in Europe and other regions, initiatives have been launched to reform the financial institutional setting and expand the reach of their powers. Just to mention one example, the Financial Stability Forum has been institutionalized as Financial Stability Group, in order to fill an evident gap in global regulatory governance. How successful will this and similar attempts be? Is it possible to "redeem" the financial sector from its "vices"? Is the lack of rules the real problem? And is the regulatory system ready to take a sustained statist turn?

The 6th Viterbo GAL Conference will provide the opportunity to present advanced research projects on the financial crisis and on global regulatory measures to deal with it, including states' domestic policy responses.. A global administrative law approach will provide the main analytical tools: accordingly, the papers should focus on the structure of the global and regional regulatory governance relating to finance, trade (including questions of state aids) and related aspects of the crisis; on the powers thereby exercised; on their effectiveness and accountability, or on critical or conceptual perspectives on these issues. Given the complexity of the subject, an interdisciplinary exchange will be favoured. Papers may, thus, also address the topic by adopting an historical,

economic and/or international relations approach, and/or a legal approach. Historical approaches could include an analysis of responses to past global economic and financial crises.

2. Provisional program

The seminar will be held in Viterbo (Italy), at the Tuscia University, on June 11-12, 2010. Both junior and senior scholars are encouraged to submit a paper proposal. The selected papers will constitute the basis for a thorough discussion on the strategies and techniques adopted to tackle the crisis. The overall aim is not only to assess the consistency of the scientific categories so far adopted, but also to define working tools that may pave the way to a more effective and forward-looking regulatory reaction to the crisis.

6.3. SEMINAR PROGRAM

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| Friday June 11 th 2010 | Welcome |
| | First Session <i>Regulatory Failures and the Impact of the Financial Crisis</i> |
| | Chairman: Sabino Cassese (Judge of the Italian Constitutional Court) |
| | <ul style="list-style-type: none"> • <i>Global Financial Standards and Regulatory Failure</i> (Maurizia De Bellis) • <i>Banking Regulation in Mexico: Lessons from Financial Crisis</i> (Karen B. Sigmond) |
| | 15:00 p.m. Discussant: Daniel Bradlow (American University Washington College of Law and University of Pretoria) |
| | 15:15 p.m. Discussant: Giulio Napolitano (University of Rome "Roma Tre") |
| | 15:30 p.m. General Discussion |
| | 16:30 p.m. <i>coffee break</i> |
| | 17:00 p.m. Second Session <i>Regulatory and Institutional Responses</i> |
| | <ul style="list-style-type: none"> • <i>The impact of the financial crisis on institutional transformation</i> (Myriam Senn) • <i>The global management of systemic risk to the financial market: developing an effective regulatory system</i> (Markus Glaser) • <i>Global Regulatory Contracts: Basel II and Beyond</i> (Maciej Borowicz) |
| | 17:30 p.m. Discussant: David Zaring (Wharton School, University of Pennsylvania) |
| | 17:45 p.m. Discussant: Christian Tomuschat (Institut für Völker- und Europarecht, Humboldt-Universität zu Berlin) |
| | 18:00 p.m. General Discussion |
| | 19:00 p.m. End of session |
| | 20:30 p.m. Dinner |
| Saturday June 12 th 2010 | Third Session |

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| | <i>A Critical Assessment</i> |
| | Chairman: Richard B. Stewart (School of Law, New York University) |
| | <ul style="list-style-type: none"> • <i>Protection of Investors in Financial Crises: Lessons of 1929 and 1930</i> (Martins Paparinskis) • <i>The Finance Good Shepherd: How legal intervention will serve the quest for global financial stability as a public good</i> (Chiara Orlandini) • <i>Credit Rating Agencies: Do We Need Draconian Oversight? A Critical Assessment of Current Reforms Initiatives</i> (Elisabetta Cervone) |
| | 10:00 a.m. Discussant: Alfred C. Aman Jr. (School of Law, Indiana University) |
| | 10:15 a.m. Discussant: Matthias Goldmann (Max Planck Institute for Comparative Public Law and International Law) |
| | 10:30 a.m. General Discussion |
| | 12:00 p.m. GAL Project: Agenda and Next Steps |
| | 12:30 p.m. End of session |
| | Lunch |

6.4. PAPERS SELECTED

M. DE BELLIS, *Global Financial Standards and Regulatory Failure*

KAREN B. SIGMOND, *Banking Regulation in Mexico: Lessons from Financial Crisis*

M. SENN, *The impact of the financial crisis on institutional transformation*

M. GLASER, *The global management of systemic risk to the financial market: developing an effective regulatory system*

M. BOROWICZ, *Global Regulatory Contracts: Basel II and Beyond* (**Awarded as the most promising paper presented at the seminar**)

M. PAPARINSKIS, *Protection of Investors in Financial Crises: Lessons of 1929 and 1930*

C. ORLANDINI, *The Finance Good Shepherd: How legal intervention will serve the quest for global financial stability as a public good*

E. CERVONE, *Credit Rating Agencies: Do We Need Draconian Oversight? A Critical Assessment of Current Reforms Initiatives*

6.5. PUBLISHED PAPERS

KAREN B. SIGMOND, *Banking Regulation in Mexico: Lessons from Financial Crisis*, IV(1) Mexican Law Review 3 (2011)

M. SENN, *The impact of the financial crisis on institutional transformation*, 2010, available at SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1706266

THE 7TH GLOBAL ADMINISTRATIVE LAW SEMINAR
PRIVATE AND PUBLIC-PRIVATE GLOBAL REGULATION: GLOBAL ADMINISTRATIVE LAW DIMENSIONS
June 2011

7.1. SUMMARY AND PROGRAM DESCRIPTION

The seventh Viterbo seminar on global administrative law was held on June 10-11, 2011. It was hosted by Professors Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino, and Lorenzo Casini together within an organizational team led by Giulia Bertezzo, Eleonora Cavalieri, and Elisabetta Morlino.

The seminar was dedicated to discuss papers regarding the theme "*Private and Public-Private Global Regulation: Global Administrative Law Dimensions*".

The overall aim of the Seminars was not only to assess the consistency of the analytic categories adopted to date, but also to develop more effective and forward-looking tools and technologies of global governance. To this end, legal counsel and leading practitioners also participated in the seminar and acted as discussants or commentators, together with leading academics in the field.

7.2. CALL FOR PAPERS

1. Overview

In recent decades, the development of the market economy, the general retrenchment of public funds and resources, and growing doubts about the ability of public administrations to respond to complex and multilayered public needs have contributed to two trends. First, State and local governments have sought alternative ways to provide services by contracting out to private actors, triggering the development of hybrid public-private forms of organizing and carrying out public functions. Second, the State has increasingly opened up rule-making functions to private and public-private entities, both to gain access to expertise not present within traditional public bodies, and in recognition of the significant involvement of private actors in particular sectors.

The traditional dichotomy of public and private bodies is breaking down at the global level as well. In many regimes, the organizational framework for addressing global issues has been enriched by public-private partnerships and mechanisms. There are also cases in which fully private entities play a dominant role in regulating global issues (such as credit-rating agencies in standard-setting).

The greater flexibility of rule-making by private or hybrid entities, and the associated ability to deploy highly specialized expertise, and enable direct participation of affected parties, have contributed to a perception that production of rules and regulations by these entities is more efficient and effective than rule-making by public bodies. However, the direct or indirect delegation of administrative rule-making to private or hybrid entities may be open to criticism on both procedural and substantive grounds. How are these entities legitimate? To whom and in which ways are they accountable for their exercise of power? Are their rule-making procedures sufficient to safeguard participatory rights, and guarantee proper representation of the interests at stake? Might 'privatization' of the rule-making function erode fundamental public law values, human rights norms, social values or democratic requirements? Do the final regulatory products correspond to the needs for which they were conceived? If the involvement of hybrid entities blurs the lines between public and private authority, rather than producing a clear bifurcation of responsibilities, how is the exercise of power by different actors regulated? To what extent does competition between different bodies in standard setting and other functions provide alternative incentives and mechanisms for accountability?

The complexity of public-private dynamics is increased by the interplay between various levels of governance. Private bodies can be global and yet produce rules applicable to the national sphere, but can also be national bodies, and produce regulations of global relevance and application. How are issues related to the interaction between public and private complicated by this interplay between national and supranational realms?

From the Global Administrative Law perspective, different questions might be raised: What are the legal framework regulating these private and hybrid entities and mechanisms? How does public and private regulation affect transparency and accountability? What kinds of oversight mechanisms are provided? Which operational issues create most difficulties in the relationships between public and private actors?

The 7th Viterbo GAL Seminar will provide an opportunity to present advanced research projects on private and hybrid regulation through a global administrative law perspective. In particular, applicants are encouraged to submit research projects concerning institutional or procedural aspects of the involvement of private or hybrid bodies in regulatory matters. The institutional dimensions of this phenomenon are particularly prominent in sectors such as the environment, cultural heritage, finance, public health, the Internet, or sports. Other examples include specific global institutions created to assist developing countries, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Global Environment Facility, or the International Fund for Agricultural Development. Procedural dimensions may arise in these sectors but also in other fields in which private actors play a significant role in rule-making (for example through participation, consultation or, as in the case of nuclear energy, specific

agreements), or in instances where private actors (such as the International Organization for Standardization) adopt standards of global relevance. Applicants may take a case study approach or present a more comprehensive or cross-cutting analysis. An interdisciplinary exchange is welcomed, and papers may also draw on historical, economic and/or international relations scholarship to complement the global administrative law perspective.

2. Provisional program and next seminar

The seminar will be held in Viterbo (Italy), at the Tuscia University, on June 10-11, 2011. The selected papers will constitute the basis for a thorough and wide-ranging discussion on the legal questions raised. As has been the case since the first GAL seminar in 2005, the best papers presented will be published in leading legal reviews and journals.

The overall aim of the Seminars is not only to assess the consistency of the analytic categories adopted to date, but also to develop more effective and forward-looking tools and technologies of global governance. To this end, legal counsel and leading practitioners will also participate in the seminar and act as discussants or commentators, together with leading academics in the field.

In accordance with this aim of examining – and improving the effectiveness of – instruments of global governance, the theme of the 8th GAL Seminar (June 2012) will be “Indicators as a Technology of Global Governance”. The call for papers will be published at the beginning of 2011. In the meantime, information about this highly significant and emerging issue is available at www.iilj.org/research/IndicatorsProject.asp.

7.3. PAPERS SELECTED

K. W. ABBOTT - D. GARTNER, *Innovations in Governance: Global Health vs. Global Environment*;

A. BERMAN, *The Role of Domestic Administrative Law in the Accountability of Transnational Regulatory Networks*
(Awarded as the most promising paper presented at the seminar)

A. BIASCO – A. QUARTA, *Private Ordering and Expertise Legitimacy*

W.-L. CHEAH, *Public and Private Partnerships in Cross-border Policing: The Evolving Role of Private Entities*

S. DAGRON, *The international conference on harmonization of technical requirements for the registration of pharmaceuticals (ICH), multinational corporations and national agencies: who is doing what in the field of pharmaceutical regulations?*

S. DUYCK, *Delegation to Private Actors of the Competences in Validation and Verification in the Kyoto Protocol Flexibility Mechanisms: Accountability Issues and the Role of the Public*

B. DU MARAIS, *Law as a registered designation of origin: The case of Financial Law*

E. FROMAGEAU, *Public-Private Partnerships in the Management of Water Resources: the Example of the Global Water Partnership*

A. JANCZUK GORYWODA, *Informal Co-Regulation among Public and Private Regulators: Lessons from the Payment Systems*

M.-S. KUO, *What If Publicness Is the Problem? On the Ultra Hybrid Regulation across the Taiwan Strait and the Functional Limits of Global Administrative Law*

R. MARTHA – S. DADUSH, *Going Against the Grain: When Private Rules Shouldn't Apply to Public Institutions*

G. NEWTON, *The Global Fund to Fight AIDS, Tuberculosis and Malaria: a New Type of International Organization*

7.4. SEMINAR PROGRAM

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| Friday June 10th, 2011 | Chairman: Sabino Cassese (Judge of the Italian Constitutional Court) |
| | First Session <i>Rationales and Instruments for Public-Private Partnership</i> 2:15 p.m. Welcome |
| | 2:30 p.m. Presentation of papers by the authors: <ul style="list-style-type: none"> <i>Innovations in Governance: Global Health vs. Global Environment</i> (Kenneth W. Abbott and David Gartner) |

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| | <ul style="list-style-type: none"> • <i>Private Ordering and Expertise Legitimacy</i> (Alberto Biasco and Alessandra Quarta) • <i>Delegation to Private Actors of the Competences in Validation and Verification in the Kyoto Protocol Flexibility Mechanisms: Accountability Issues and the Role of the Public</i> (Sébastien Duyck) • <i>Public-Private Partnerships in the Management of Water Resources: the Example of the Global Water Partnership</i> (Edouard Fromageau) <p>3:10 p.m. Discussant: Laurence Boisson De Chazournes (University of Geneva)</p> <p>3:25 p.m. Discussant: Lorenzo Casini (University of Rome Sapienza)</p> <p>3:40 p.m. General Discussion</p> <p>4:30 p.m. Coffee Break</p> <p>Second Session <i>Coordination, Separation and Conflicts between Public and Private Regulation</i></p> <p>5:00 p.m. Presentation of papers by the authors:</p> <ul style="list-style-type: none"> • <i>Informal Co-Regulation among Public and Private Regulators: Lessons from the Payment Systems</i> (Agnieszka Janczuk Gorywoda) • <i>What If Publicness Is the Problem? On the Ultra Hybrid Regulation across the Taiwan Strait and the Functional Limits of Global Administrative Law</i> (Ming-Sung Kuo) • <i>Public and Private Partnerships in Cross-border Policing: The Evolving Role of Private Entities</i> (Cheah Wui Ling) • <i>Law as a registered designation of origin: The case of Financial Law</i> (Bertrand Du Marais) <p>5:40 p.m. Discussant: Susan Rose-Ackerman (Yale Law School)</p> <p>5: 55 p.m. Discussant: David Zaring (Wharton School of Business - University of Pennsylvania)</p> <p>6:10 p.m. General Discussion</p> <p>7:00 p.m. End of session</p> <p>8:30 p.m. Dinner</p> |
| Saturday, June 11th 2011 | <p>Chairman: Richard B. Stewart, New York University School of Law</p> <p>Third Session <i>The Interplay between National and Supranational Levels in Private Regulatory Intervention</i></p> <p>9:30 a.m.</p> |

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| | <p>Presentation of papers by the authors:</p> <ul style="list-style-type: none"> • <i>The Global Fund to Fight AIDS, Tuberculosis and Malaria: a New Type of International Organization</i> (Gülen Newton) • <i>The Role of Domestic Administrative Law in the Accountability of Transnational Regulatory Networks</i> (Ayelet Berman) • <i>The international conference on harmonization of technical requirements for the registration of pharmaceuticals (ICH), multinational corporations and national agencies: who is doing what in the field of pharmaceutical regulations?</i> (Stéphanie Dagron) • <i>Going Against the Grain: When Private Rules Shouldn't Apply to Public Institutions</i> (Rutzel Martha and Sarah Dadush) <p>10:10 a.m. Discussant: Eelco Szabó (GAVI Alliance)</p> <p>10:25 a.m. Discussant: Ingo Venzke (University of Amsterdam)</p> <p>10:40 a.m. General Discussion</p> <p>12:10 p.m. GAL Project: Agenda and Next Steps</p> <p>12:30 p.m. End of session</p> <p>12:30 p.m. Lunch</p> |
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7.5. PUBLISHED PAPERS

- A. BERMAN, *The Role of Domestic Administrative Law in the Accountability of Transnational Regulatory Networks: The Case of the ICH*, in IRPA GAL Working Paper 2012/1 and in IILJ ESP 22 (2012)
- S. DAGRON, *Global harmonization through public-private partnership: The case of pharmaceuticals*, in IRPA GAL Working Paper 2012/2
- G. A. NEWTON, *The Global Fund to Fight AIDS, Tuberculosis and Malaria: an Innovation in the Form of International Organization*, in IRPA GAL Working Paper 2012/3
- R.S.J. MARTHA and S. DADUSH, *Going Against the Grain: When Private Rules Shouldn't Apply to Public Institutions*, in International Organizations Law Review, vol. 9, Issue 1, 2012 (also available at <http://www.irpa.eu/irpa-working-papers/>)

The 8th Global Administrative Law Seminar
INDICATORS AS A TECHNOLOGY OF GLOBAL GOVERNANCE
June 2012

8.1. SUMMARY AND PROGRAM DESCRIPTION

The eight seminar was held on June 14-15, 2012. It was hosted by Professors Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino, and Lorenzo Casini, together with an organizational team led by Giulia Bertezolo, Eleonora Cavalieri, and Elisabetta Morlino.

The seminar was dedicated to discuss papers regarding the theme “*Indicators as a Technology of Global Governance*”.

8.2. CALL FOR PAPERS

An indicator may be defined as a named, rank-ordered representation of past or projected performance by different units (such as States, corporations, or persons) that uses numerical data to simplify more complex social phenomena, drawing on scientific expertise and methodologies. The production and use of indicators is now a widespread and multifaceted trend in contemporary global governance. Prominent indicators include the OECD’s Programme for International Student Assessment (PISA) rankings, the UNDP’s Human Development Index, Transparency International’s Corruption Perception Index, and the World Bank’s Doing Business indicators, measuring the ease of doing business in different countries.

Indicators are produced by, or under the auspices of, a wide range of different organizations, from public actors to hybrid private-public institutions and purely private entities. Users include public international development agencies, national governmental agencies, global businesses and investors, NGOs, and various scientific and expert communities. Performance to a particular standard on an index may be mandatory, or necessary to receive benefits like donor funding, or may be pursued as a self-imposed target. The relationship between producers and users of indicators may vary over time, and there are many instances in which indicators produced by or for one entity are taken up by other actors and used in unforeseen ways.

Despite the widespread use of indicators, many questions remain about the nature of the phenomenon. The conceptual and analytical framework provided by global administrative law may help to answer those questions, and to examine the implications of, and problems posed by, the growing use of indicators.

Possible questions include: what social processes surround the creation and use of indicators? How does the process of creating indicators influence the kind of knowledge that they provide? Why and how do indicators work as a technology of global governance? Does the use of indicators change the nature of decision-making or the distribution of powers between those who govern and those who are governed? What are the needs that indicators are intended to meet? And are these needs satisfactorily fulfilled?

Indicators are used by public actors to provide a basis for evaluation, judgment or policy-making, thereby emerging as a peculiar form of public authority. At the same time, indicators may themselves represent a tool to hold governments accountable. The authority of indicators appears to be linked mainly to the scientific expertise on which they claim to be based, but what is the source of indicators’ legitimacy? How can the legitimacy of indicators be assessed? Are their “producers” sufficiently accountable? Which indicators should be subjected to some form of additional control? What kinds of control (e.g. public or private) would be appropriate and feasible? Which would be the most suitable regulatory approach to solve possible conflicts? How can indicators improve global policies, and what is the role of developing countries in producing global indicators?

The 8th Global Administrative Law Seminar will focus on these issues, and on the overarching questions: Do we need a legal framework for addressing concerns related to the use of indicators as a technology of global governance? If so, what kind of legal framework: public or private, unitary or plural, binding or soft?

8.3. PAPERS SELECTED

I. APTER, *Corruption in the Eye of the Beholder – Creating Milestones for Future Global Corruption Indicators*

G. DIMITROPOULOS, *Global Administrative Law as “Enabling Law”: How to Monitor and Evaluate Indicator-Based Performance*

- E. DUNLOP, *Indications of Progress? Assessing the Use of Indicators in UNHCR Operations*
- M. GOLDMANN, *Stress Testing Stress Tests: How to Make Financial Indicators Legitimate and Effective*
- M. INFANTINO, *The Law of Indicators on Women's Human Rights: Unmet Promises and Global Challenges*
- F. D. LEBENSOHN, *Assessing the Indicators of GHG Emissions as a New Form of Governance*
- M. A. PRADA, *Development through Data? A Case Study on the World Bank's Performance Indicators and their Impact on Development in the Global South* (**Awarded as the most promising paper presented at the seminar**)
- M. RIEGNER, *Measuring the Good Governance State: A Legal Reconstruction of the World Bank's "Country Policy and Institutional Assessment"* (**Awarded as the most promising paper presented at the seminar**)
- P. ROBSON, *The Global Aquaculture Performance Index*
- A. SALVADOR, *Marketable Risks in Export Credit insurance: A Global Administrative Law Indicator Case*
- M. SAMSON, *Indicators as a monitoring tool for the implementation of Global Health Law*
- Y. ZHOU, *China's Role in Shaping Global Indicators: Insights on the Global Knowledge Economy*
- A. ZOKAITYTE, *Imagaries of Governance: Indexing Happiness and Well-being*

8.4. SEMINAR PROGRAM

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| Thursday, June 14 | <p>13.45 p.m.– Registration</p> <p>14.00 p.m. – 16.30 p.m.</p> <p>Session One – <i>Governance by Indicators</i> Chair: Giulio Vesperini (Tuscia University)</p> <ul style="list-style-type: none"> • <i>Indicators and Law in Global Governance</i> (Benedict Kingsbury) • <i>The Politics of Global Rankings</i> (Christiane Arndt) <p>Discussant: David Nelken (University of Macerata)</p> <ul style="list-style-type: none"> • <i>Sovereign Ratings as Normative Predictions: The Preference for a Stable Future</i> (Ariel Colonomos) • <i>Governmentalizing Sovereignty: Indexes of State Fragility and the Calculability of Political Order</i> (Nehal Bhuta) • <i>Public Regulation of Global Indicators</i> (Sabino Cassese and Lorenzo Casini) <p>Discussant: Stefano Battini (Tuscia University)</p> <p>16.30 p.m. – 17.00 p.m. Coffee Break</p> <p>17.00 p.m. – 19.00 p.m.</p> <p>Session Two – <i>Global Health and Human Rights Indicators</i> Chair: Marcello Clarich (LUISS)</p> <ul style="list-style-type: none"> • <i>Global Health Impact Indicators: Incentivizing Access to Essential Medicines</i> (Nicole Hassoun) • <i>Indicators as a monitoring tool for the implementation of Global Health Law</i> (Melanie Samson) <p>Discussant: Gian Luca Burci (WHO)</p> |
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| | <ul style="list-style-type: none"> • <i>The Law of Indicators on Women's Human Rights: Unmet Promises and Global Challenges</i> (Marta Infantino) • <i>Indications of Progress? Assessing the Use of Indicators in UNHCR Operations</i> (Emma Dunlop) <p>Discussant: Angelina Fisher (NYU School of Law)</p> |
| Friday, June 15 | <p>9.00 a.m. – 11.15 a.m.</p> <p>Session Three – <i>Indicators and Development</i></p> <p>Chair: Christiane Arndt (OECD)</p> <ul style="list-style-type: none"> • <i>Legal Indicators: Potential and Perils</i> (Kevin Davis) • <i>Development through Data? A Case Study on the World Bank's Performance Indicators and their Impact on Development in the Global South</i> (Maria Angelica Prada) • <i>Measuring the Good Governance State: A Legal Reconstruction of the World Bank's "Country Policy and Institutional Assessment"</i> (Michael Riegner) <p>Discussant: Gaby Umbach (EUI)</p> <ul style="list-style-type: none"> • <i>The Ease of Doing Business and Land Grabbing: Critique of the Investing-Across-Borders Indicators</i> (David T. Hofisi and Araya K. Araya) • <i>Corruption in the Eye of the Beholder – Creating Milestones for Future Global Corruption Indicators</i> (Itai Apter) <p>Discussant: Rutsel S.J. Martha (IFAD)</p> <p>11.15 a.m. – 11.45 a.m. Coffee Break</p> <p>11.45 a.m. – 13.15 p.m.</p> <p>Session Four – <i>Framing and Positioning of Issues through Indicators</i></p> <p>Chair: Benedict Kingsbury (NYU School of Law)</p> <ul style="list-style-type: none"> • <i>Assessing the Indicators of GHG Emissions as a New Form of Governance</i> (Floencia D. Lebensohn) • <i>The Global Aquaculture Performance Index</i> (Peter Robson S.J.) • <i>Education Indicators in India</i> (Angelina Fisher) • <i>Imaginations of Governance: Indexing Happiness and Well-being</i> (Asta Zokaityte) <p>Discussants: Nehal Bhuta (EUI), Rene Uruena (Universidad de Los Andes, Bogotá)</p> <p>13.15 p.m. – 14.15 p.m. Lunch</p> <p>14.15 p.m. – 15.45 p.m.</p> <p>Session Five – <i>Economic and Financial Indicators</i></p> <p>Chair: Kevin Davis (NYU School of Law)</p> <ul style="list-style-type: none"> • <i>Stress Testing Stress Tests: How to Make Financial Indicators Legitimate and Effective</i> (Matthias Goldmann) • <i>Legal Norms as Indicators: A case study from the UNIDROIT Perspective</i> (José Angelo Estrella Faria) • <i>Marketable Risks in Export Credit insurance: A Global Administrative Law Indicator Case</i> (Amparo Salvador) • <i>China's Role in Shaping Global Indicators: Insights on the Global Knowledge Economy</i> (Yinling Zhou Wuhan) <p>Discussants: Giulio Napolitano (Roma Tre University), Nicola Lupo (LUISS)</p> |

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| | <p>15.45 p.m.– 17.45 p.m.</p> <p>Final Session: <i>Indicators and Law</i></p> <p>Chair: Marta Cartabia (Italian Constitutional Court)</p> <ul style="list-style-type: none"> • <i>Qualitative and Quantitative Conditionality: Accountability in the EU Accession and MCC Processes</i> (Nikhil Dutta) • <i>The Rule of Law Index: An exploration of indicators as the working language for interaction among regimes</i> (Rene Urueña) • <i>Global Administrative Law as “Enabling Law”: How to Monitor and Evaluate Indicator-Based Performance</i> (Georgios Dimitropoulos) <p>Discussant: Edoardo Chiti (Tuscia University)</p> <p>Concluding Remarks</p> <p>GAL next steps</p> |
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8.5. PUBLISHED PAPERS

- S. CASSESE, L. CASINI, *Public Regulation of Global Indicators*, in K. Davis, A. Fisher, B. Kingsbury, S. E. Merry (edited by) *Governance by Indicators: Global Power through Classification and Rankings*, Oxford University Press, 2012
- G. DIMITROPOULOS, *Global Administrative Law as “Enabling Law”: How to Monitor and Evaluate Indicator-Based Performance of Global Actors*, IRPA GAL Working Paper 2012/7
- A.K. ARAYA AND D.T. HOFISI, *The Ease of Doing Business and Land Grabbing: Critique of the Investing-Across-Borders Indicators*, IRPA GAL Working Paper 2012/8
- M. INFANTINO, *The Law of Indicators on Women’s Human Rights: Unmet Promises and Global Challenges*, IRPA GAL Working Paper 2012/9
- M. SAMSON, *Indicators as a Monitoring Tool for the Implementation of Global Health Law*, IRPA GAL Working Paper 2012/10
- N. HASSOUN, *The Extending Access Index: Promoting Global Health*, IRPA GAL Working Paper 2012/11

The 9th Global Administrative Law Seminar
INTER-INSTITUTIONAL RELATIONS IN GLOBAL LAW AND GOVERNANCE
June 2013

9.1. SUMMARY AND PROGRAM DESCRIPTION

The night Viterbo seminar on global administrative law was held on June 13-14, 2013. It was hosted by Professors Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino, and Lorenzo Casini, together with an organizational team of three people (Eleonora Cavalieri, Andrea Averardi and Lorenzo Carbonara).

The seminar was dedicated to discuss papers regarding the theme “*Inter-Institutional Relations in Global Law and Governance*”.

9.2. CALL FOR PAPERS

The vast increase in global regulation has attracted significant attention from both scholars and practitioners. The global governance literature now comprises several different approaches, including a substantial body of work done from the perspective of ‘global administrative law’. In this and other work, it has long been recognised that institutions in the global administrative space do not act in isolation. Rather, global governance is accomplished through complex inter-relations between state-based government agencies, courts (national, regional and international), private standard-setting bodies, hybrid public-private bodies, transgovernmental networks, and formal intergovernmental organizations.

Yet, the interactions between such institutions—as opposed to the institutions themselves—remain understudied and under-theorized. This is a significant gap in the global governance literature. Interactions between institutions raise a series of important normative and descriptive questions, such as: What are the conditions that create a felt need for regulatory co-ordination? What are the problems and opportunities associated with public-private or other forms of collaboration? Whose values, interests or preferences prevail when institutions interact? How, if at all, does inter-institutional interaction vary in different parts of the world, particularly the Global South? For example, development projects constitute sites of interaction involving formal intergovernmental organizations, state-based agencies (both foreign and local), private business enterprises, and other transnational arrangements, enmeshing these different actors in policy-making and regulatory co-ordination. Greater knowledge about the processes of inter-institutional relations can shed light on the ways in which such processes help or hinder growth in the developing world.

The objective of the 9th Global Administrative Law Seminar is therefore to build on the existing literature, particularly previous work on the institutional dimensions of global administrative law,[1] in order to advance research on inter-institutional relations in global governance.

The ‘inter-institutional relations’ rubric is intended to capture a variety of different interactions between different types of institutions. The term ‘institution’ denotes bodies with some degree of formality, whether such bodies are described as formal intergovernmental organizations, private bodies, hybrid public-private bodies or state-based government agencies. The term ‘relations’ is deliberately open-textured, so to capture a range of possible behaviours, including those that may be alternately described as co-operative, competitive or antagonistic. Based on these parameters, at least three dimensions of inter-institutional relations in global governance can be distinguished for the purpose of delineating the field: (1) relations between institutions that are global actors (horizontal interactions at the global level); (2) relations between global and national institutions, where the latter may or may not be a member of the global institution (vertical and diagonal interactions, respectively); and (3) relations between national institutions, within and between national jurisdictions (horizontal interactions at the national level).

Along these three dimensions, several themes may usefully be explored in order to map and deepen our understanding of inter-institutional relations in the global administrative space. These themes include the following:

1.1 Managing the dynamics of inter-institutional relations

- through legal interpretation of the relevant rules or constituent instruments (e.g., the relationship between the IMF and the World Trade Organization under, *inter alia*, the IMF Articles of Agreement and the GATT 1994);
- through conflict of laws methodologies, such as interest analysis and contract law;

- through concepts of leadership or specialization (e.g., the ‘principle of speciality’ elaborated in the 1996 International Court of Justice advisory opinion on Legality of the Use by a State of Nuclear Weapons in Armed Conflict).

1.2. *Inter-institutional relations as a mechanism for institutional change*

- inter-institutional relations as regulatory ‘co-ordination’, competition or review;
- dynamic analyses or accounts of how institutional boundaries develop and shift over time, including movements to devolution or privatization (e.g., using theories of the firm);
- inter-institutional relations as a vehicle for learning, norm-diffusion or mimesis (e.g., using theories that focus on the role of knowledge and knowledge-production as a form of power);
- impediments to change, such as switching costs, inertia and the enmeshment of institutions among other organizations.

1.3. *Effects of inter-institutional interaction*

- effects of interaction on the distribution and flows of power; autarkic dimensions of interactions, where interactions perpetuate existing distributions of power;
- normative effects of interaction, e.g. from the liberal cosmopolitan perspective of ‘justice’ (encompassing notions of welfare, sustainable development and the rule of law), from a structural perspective, invoking broader organizing structural principles such as the separation of powers and constitutionalism, or from a ‘pluralist’ perspective, focusing on the enhancement (or diminution) of ‘voice’ and legitimacy through participation;
- effects of interaction vis-à-vis the promotion or coralling of expert rule;
- sites of non-interaction within the global administrative space;
- dynamic accounts of interactions as networks, where some nodes increase in power, or new pathways or linkages are generated.

1.4. *Consequences of inter-institutional relations for law*

- jurisgenerative impact of inter-institutional relations;
- legal innovation through inter-institutional relations;
- norm-diffusion through inter-institutional relations;
- revision of existing law through competition and review;
- inter-institutional relations as a vehicle for the incorporation of private law into public institutions, and vice versa.

9.3. PAPERS SELECTED

A. ARENA, *The Role of GAL Standards in Juris-generative Interactions between Global Antitrust Institutions in the light of the Mexico – Telecom case*

L. ANDONOVA, T. HALE, C. ROGER, *Diffusion or Domestic Politics? Explaining Global Patterns of Participation in Transnational Climate Governance*

K. FOURNIER, *Competition Law in Asia: A New Frontier for Global Administrative Law*

V. JHA, *Tracing the Vertical Inter-Relations between National and International Institutions within the Climate and Trade Regime Complex*

N. KINCHIN, *UNHCR as a Subsidiary Organ of the UN: Plurality, Complexity and Accountability*

C.F. LIN, *Public-Private Interactions in Global Food Safety Governance (Awarded as the most promising paper presented at the seminar)*

D. ROSSATI, *Inter-Institutional Dynamics of Global Climate Finance: Complementarity and Competition in the Emerging Practices of Coordination*

R. SCHIMDT, *The ISO 26000 Process as a Model for Public-Private Cooperation in a Fragmented Transnational Regulatory Space*

S.L.E. HARRIS, *Palm Oil and the Importance of Participation In Sustainability Regulatory Schemes*

Z. TURBEK, *Joint Exercise of Public Powers by International Institutions – The Revision of the International Basic Safety Standards*

9.4. SEMINAR PROGRAM

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| Thursday, June 13th 2013 | <p>First Session</p> <p><i>Inter-Institutional Relations in the Global Regulatory Space: Theory and Practice</i></p> <p>Chair: Sabino Cassese (Italian Constitutional Court)</p> <p>13:45 p.m. Welcome</p> <p>14:00 p.m. Presentation of papers by the authors:</p> <ul style="list-style-type: none"> • <i>Joint Exercise of Public Powers by International Institutions – The Case of the Revision of the International Basic Safety Standards</i> (Zoltán Turbék) • <i>UNHCR as a Subsidiary Organ of the UN: Plurality, Complexity and Accountability</i> (Niamh Kinchin) • <i>Inter-Institutional Relations Between Global Antitrust Institutions: the Role of GAL Standards in Global Jurisgenerative Interactions in the light of Mexico Telecom case</i> (Amedeo Arena) <p>14:40 p.m. Discussant: Mario Savino (University of Viterbo)</p> <p>14:55 p.m. Discussant: Clémentine Bories (University of Paris Ouest Nanterre)</p> <p>15:10 p.m. General Discussion</p> <p>15:50 p.m. Coffee Break</p> <p>Second Session</p> <p><i>The Institution Interplay Beyond the Public and Private Divide</i></p> <p>Chair: Benedict Kingsbury (New York University School of Law)</p> <p>16:20 p.m. Presentation of papers by the authors:</p> <ul style="list-style-type: none"> • <i>Palm oil and the importance of participation in sustainability regulatory schemes</i> (Swee Leng Harris) • <i>Competition Law in Asia: a New Frontier for Global Administrative Law?</i> (Knut Fournier) • <i>The ISO 26000 Process as a Model for Public-Private Cooperation in a Fragmented Transnational Regulatory Space</i> (Rebecca Schmidt) <p>17:00 p.m. Discussant: Mikael Rask Madsen (University of Copenhagen)</p> <p>17:15 p.m. Discussant: Barbara Marchetti (University of Trento)</p> <p>17:30 p.m. General Discussion</p> <p>18:10 p.m. End of session</p> |
| Friday, June 14th 2013 | Third Session |

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| | <p><i>The Multipolar Interaction in Governing Public Goods</i> Chair: Richard B. Stewart (New York University School of Law)</p> <p>9:30 a.m. Presentation of papers by the authors:</p> <ul style="list-style-type: none"> • <i>Tracing the Vertical Inter-Relations between National and International Institutions within the Climate and Trade Regime Complex</i> (Vyoma Jha New) • <i>Inter-Institutional Dynamics of Global Climate Finance: Complementarity and Competition in the Emerging Practices of Coordination</i> (David Rossati) • <i>Diffusion or Domestic Politics? Explaining Global Patterns of Participation in Transnational Climate Governance</i> (Thomas Hale – Charles Roger) • <i>Public-Private Interactions in Global Food Safety Governance</i> (Ching-Fu Lin) <p>10:10 a.m. Discussant: Sergio Fabbrini (LUISS School of Government)</p> <p>10:25 a.m. Discussant: Joana Mendes (University of Amsterdam)</p> <p>10:40 a.m. General Discussion</p> <p>11:20 a.m. Coffee Break</p> <p>11:50 a.m. Gal Project: Agenda and Next Steps</p> <p>13:00 p.m. End of session</p> |
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9.5. PUBLISHED PAPERS

- A. ARENA, *The Role of GAL Standards in Juris-generative Interactions between Global Antitrust Institutions in the light of the Mexico – Telecom case*, IRPA GAL Working Paper 2013/3
- N. KINCHIN, *UNHCR as a Subsidiary Organ of the UN: Plurality, Complexity and Accountability*, IRPA GAL Working Paper 2013/4
- D. ROSSATI, *Inter-Institutional Dynamics of Global Climate Finance: Complementarity and Competition in the Emerging Practices of Coordination*, IRPA GAL Working Paper 2013/5
- R. SCHIMDT, *The ISO 26000 Process as a Model for Public-Private Cooperation in a Fragmented Transnational Regulatory Space*, IRPA GAL Working Paper 2013/6
- S.L.E. HARRIS, *Palm Oil and the Importance of Participation In Sustainability Regulatory Schemes*, IRPA GAL Working Paper 2013/7

The 10th Global Administrative Law Seminar
LAW AND GLOBAL GOVERNANCE OF DEVELOPMENT
June 2014

10.1 SUMMARY AND PROGRAM DESCRIPTION

The seminar, which this year will be jointly organized also with the Justus Liebig University Giessen (Professor Philipp Dann), will be held on June 12-13, 2014. The Seminar Steering Committee includes Professors Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino and Lorenzo Casini. The Seminar Organizing Team comprises Eleonora Cavalieri, Andrea Averardi and Lorenzo Carbonara.

The selected papers will constitute the basis for a thorough and wide-ranging discussion on the legal questions raised. As has been the case since the first GAL seminar in 2005, the best papers presented will be published in leading legal reviews and journals.

The overall aim of the Seminars is not only to assess the consistency of the analytic categories adopted to date, but also to develop more effective and forward-looking tools and technologies of global governance. To this end, legal counsel and leading practitioners will also participate in the seminar and act as discussants or commentators, together with leading academics in the field.

10.2. CALL FOR PAPERS

Overcoming global disparities in wealth and living standards is one of major challenges for global governance in the 21st century – and poses a host of questions that make it particularly fascinating for scholars of global governance and the exercise of authority regulated by global administrative law. A field that ever since its emergence was more driven by international institutions than others is now an area of profound institutional change and innovation.

While traditional actors like the World Bank reconfigure their rationales and official assistance by OECD countries has reached \$128 billion in 2012, new actors such as China and Brazil and novel players such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Gates Foundation, and private banks are reshaping the field. These interactions of public, private and hybrid actors from North and South raise questions of autonomy and accountability, effectiveness and compliance, foreshadowing new configurations of law and politics in the 21st century.

Yet, the grammar and meaning of such innovations and interactions are hardly understood and are only beginning to attract attention of a broader community of scholars. While the substance of development interventions, in particular the good governance of recipients has been studied widely, the actors and mechanisms of financing and cooperation (or as one might say: the ‘good governance of donors’) have hardly been analysed. This is a surprising and significant gap, since important descriptive and normative questions of global governance and regulation remain, such as: Why do actors get motivated to engage in this field, with which preconditions and which goals? How to raise funds for development? How can results and compliance be assured without imposing rigid conditionalities or muffling sovereignty? How to measure development interventions? How to hold those accountable who do not comply with rules? What larger principles or values of international law in the 21st century are at stake (or in the making?) in development? How to best theorize ‘development’ as a part of wider international law? And finally, what are the implications of the “rise” of states, like China or Brazil, both with regard to institutional and legal consequences as well as in terms of how we study and research development law and governance?

The objective of the 10th GAL seminar is to lay foundations and capture the contours of an emerging field, while building on existing knowledge. We want to focus attention on the actors and instruments of development governance, be it through financing or sharing of knowledge, and their legal or regulative structures. Our interest has three starting points: actors, instruments, areas.

(1) Development processes engage an ever increasing set of actors. While international institutions such as the World Bank used to dominate the field, today private actors (private banks as well as philanthropies), hybrid institutions (Global Fund) as well as new public actors, in particular emerging nations such as China or Brazil (or a BRIC bank) engage in the field. Which actors engage? What are their mandates, institutional structures, specific goals and qualities in the field?

(2) Interaction can take place through various instruments and formats, which often foreshadow the roles that actors will play. The traditional instruments, namely loans and grants, are now complemented by complex financial instruments, often engaging various actors, stressing results-orientation and flexibility. At the same time, our understanding of the importance of knowledge and capacities has grown immensely. Knowledge transfers

and capacity support are hence equally important objects of analysis. How are instruments structured? What are they targeted upon? Whose interests are they supposed to serve – and how?

(3) Support for developing countries is needed in various areas of public policy and with different goals. While development cooperation to combat poverty is surely a central area, assistance through financing and expertise is also provided in humanitarian crises, in climate change or for securing clear and safe seas. There is also an increasing overlap between security and development policy and discourse. In which areas are instruments deployed – and to what ends?

With regard to all three starting points, a number of more general themes can be studied to map out more concretely the emerging field and understand its contours and dynamics. These themes include the following:

1.1 Drivers of involvement and innovation in development governance

- Shifting dynamics of global power, limits of the 'Washington system' (e.g. OECD-DAC's attempt to engage with China; problems of changing the World Bank's governance structure; Post-2015 MDGs)
- Emerging powers and their geopolitical and economic interests (e.g. the BRICS plans; China in Africa)
- Inter-institutional competition between development banks and other financing institutions
- South-South cooperation
- Civil society pressures
- Business opportunities in developing countries
- Postcolonial critique of development as a driver of change – disengagement, innovation, practical effects?

1.2 Autonomy and interests in development governance

- Sovereignty and Ownership: securing collective autonomy in development governance (e.g. Poverty Reduction Strategy papers; involvement in Post-2015 / MDG process; voting shares in financial institutions)
- Procedural rights in development finance (e.g. participation in programme and project design, community-driven projects in World Bank assistance, indigenous people's right to consultation and consent)
- Safeguard policies and substantive standards (e.g. World Bank safeguards policies under reform, IFC's Performance Standards, Equator Principles)
- Tax-payers perspective on development assistance
- Theorizing development cooperation principles and values in the wider framework of 21st century international law (e.g. emerging principle of solidarity?)
- Alternative approaches to development governance from TWAIL, postcolonial studies, critical IL etc.

1.3 Effectiveness and accountability in development governance

- Measuring effects, measuring 'development' (e.g. indicator-based instruments, such as World Bank Programming for Results, the MDGs)
- Anti-corruption efforts
- Coordination – or rather competition? (e.g. UN Development Group; coordination between regional and global institutions)
- Complaint mechanisms (e.g. Inspection Panel, Ombudspersons, domestic judicial review of development projects with global repercussions)
- Transparency: Access to Information policies in development organizations
- Domestic law attempts at regulating effectiveness and accountability of international development governance
- The role of social movements and local community for effectiveness and accountability

1.4 Role of law (and politics) in development governance

- The various layers, notions and roles of law engaged in development projects, the interplay of global, national and local norms
- Providing transparency, information – and basis for CSO involvement (e.g. World Bank policies on access to information, provision of development data by public and private actors)
- Stimulating inter-institutional competition, coordination and innovation (global coordination mechanisms, domestic regulation attempts)
- Masking politic-economic power-play and postcolonial hegemony
- Role model and reference field for general principles of GAL
- Law and development as a site and instrument of social and political struggles in developing countries

- Interdisciplinary methodological approaches to studying the role of law in development (e.g. IR, quantitative social science, anthropology, ethnography, political theory and philosophy)

We invite various types of papers and approaches – and in particular submission from scholars based or trained in developing countries or in new financing countries (BRICs, etc.). Papers can focus on a legal analysis, as knowledge about and understanding of the concrete rules is only slowly emerging. Papers might focus on the political economy of rules or analyse the political theory of development governance. We also welcome papers that provide a critical engagement with the structures, as “development” is surely one of the most contested concepts in international law today.

10.3 PAPERS SELECTED

T. BANDA, *Legal Aid and Extractive Contracting in Africa*

Q. BU, *Anatomy of Chinese Multinational's Behavior: Human Rights Perspective*

M.C. DA SILVA OLIVEIRA

D. DESAI, *Context as an Organizing Principle for the Rule of Law Field*

A. DI GIOVANNI, *Link between Law and Development – and the Regulation of Development*

F.C. EBERT, *Public Law Approach to Development Governance: World Bank's Country Assistance Strategy*

M. GUIMEZANES, *States and NGOs: Virtuous Circle of Aid Effectiveness?*

H. HOVANI, *Disaster Response Financing of African Risk Capacity*

G. JOKUBAUSKAITE, *Accountability of multilateral development banks: How useful is GAL approach?*

M. MALLI, *Institutional Capacity in World Bank Program-for-Results financing*

M.A. YANOU, *Land Rights Model in Cameroon*

D. STOYANOVA, *WTO-IMF-World Bank Cooperation*

10.4. SEMINAR PROGRAM

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| Thursday, June 12th 2014 | <p>10th GAL Anniversary</p> <p>14:00 Welcome</p> <p>14:10 Ten Years of GAL: Has GAL Grown Up? <i>Sabino Cassese (Italian Constitutional Court)</i> <i>Joseph H.H. Weiler (European University Institute)</i> <i>Richard B. Stewart (NYU School of Law)</i> <i>Benedict Kingsbury (NYU School of Law)</i> <i>Christoph Möllers (Humboldt-Universität Berlin)</i> <i>Viterbo Group</i></p> <p>16:40 Coffee break</p> <p>17:00 General discussion</p> <p>18:15 The Future of GAL Chair: <i>Sabino Cassese (Italian Constitutional Court)</i> <i>Richard Stewart (NYU School of Law)</i></p> <p>Gal Project: Research in Progress, Agenda and Next Steps</p> <p>19:00 Law and Development: Informal Introductory Meeting Chair: <i>Philipp Dann (Giessen University)</i> <i>Kevin Davis (NYU School of Law)</i> <i>Benedict Kingsbury (NYU School of Law)</i></p> |
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| | 20:00 | Dinner |
| Friday, June 13th 2014 | 9:00 | First Session: Effectiveness and Accountability Chair: <i>Philipp Dann (Giessen University)</i> Giedre Jokubauskaite (Edinburgh Law School): <i>Accountability of multilateral development banks: How useful is GAL approach?</i> Marie Guimezanes (Toulouse University): <i>States and NGOs: Virtuous Circle of Aid Effectiveness?</i> Maninder Malli (NYU School of Law): <i>Institutional Capacity in World Bank Program-for-Results financing</i> |
| | 9:30 | Discussant: <i>Sarah Dadush (Rutgers University)</i> |
| | 9:45 | General discussion |
| | 10:15 | Coffee break |
| | 10:30 | Second Session: Role of Law Chair: <i>Benedict Kingsbury (NYU School of Law)</i> Adrian Di Giovanni (IDRC Ottawa, Canada): <i>Link between Law and Development – and the Regulation of Development</i> Deval Desai (School of Oriental & African Studies): <i>Context as an Organizing Principle for the Rule of Law Field</i> Franz Christian Ebert (MPIL Heidelberg): <i>Public Law Approach to Development Governance: World Bank's Country Assistance Strategy</i> |
| | 11:00 | Discussant: <i>Kevin Davis (NYU School of Law)</i> |
| | 11:15 | General discussion |
| | 11:45 | Coffee break |
| | 12:00 | Third Session: Rights and Bargaining Power Chair: <i>Kevin Davis (NYU School of Law)</i> Qingxiu Bu (University of Sussex): <i>Anatomy of Chinese Multinational's Behavior: Human Rights Perspective</i> Michael Akomaye Yanou (University of Buea): <i>Land Rights Model in Cameroon</i> Tinenenji Banda (Cornell University): <i>Legal Aid and Extractive Contracting in Africa</i> |
| | 12:30 | Discussant: <i>Isabel Feichtner (Frankfurt University)</i> |
| | 12:45 | General discussion |
| | 13:15 | Light lunch |
| | 14:15 | Fourth Session: International Cooperation, Local Consequences Chair: <i>Sarah Dadush (Rutgers University)</i> Maria Cecilia da Silva Oliveira (Columbia University): <i>Security Apparatus and Sustainable Development in Brazil</i> Diliana Stoyanova (University of Helsinki): <i>WTO-IMF-World Bank Cooperation</i> Erica Hovani (African Risk Capacity Agency): <i>Disaster Response Financing of African Risk Capacity</i> |
| | 14:45 | Discussant: <i>Michael Riegner (Giessen University)</i> |
| | 15:00 | General discussion |

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| | 15:30 | Law and Global Governance of Development: Conclusions <i>Philipp Dann (Giessen University)</i> <i>Kevin Davis (NYU School of Law)</i> |
| | 16:00 | End of Seminar |

PARTICIPANTS

(Beside the names current affiliation of participants is reported; when this information was not available, position held when they lastly attended one of the seminars is indicated; year or years refer to the edition attended)

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173. François LICHERE, University of Aix-Marseille III (2008)
174. Chin-fu LIN, HARVARD LAW SCHOOL (2013)
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178. Euan MACDONALD, University of Edinburgh (2009, 2008, 2007)
179. Mikael Rask MADSEN, University of Copenhagen (2013)
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182. Barbara MARCHETTI, Trento University School of Law (2014, 2013, 2011, 2009, 2008)
183. Claudia MARCOLUNGO, University of Parma (2005)
184. Angelo MARI, Professor at the "Scuola Superiore della Pubblica Amministrazione" (2009)
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188. Luce MARINIELLO, Istituto Italiano di Scienze Umane, AGCom official (2011)
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192. Thomas F. MCINERNEY, IDLO (2010, 2008)
193. Ernestine MEIJER, New York University (2006)
194. Pablo MEIX, Universidad de Castilla-La Mancha (2009, 2008)
195. Joana MENDES, European University Institute of Florence (2013, 2007, 2006)
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197. Marika MICELI, Lawyer in Rome (2006, 2005)
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199. Monica MINELLI, University of Macerata (2011)
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201. Elena MITZMAN, Trento University School of Law (2014, 2012, 2011, 2010)
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296. Asta ZOKAITYTE, Kent University (2012)
297. Tom ZWART, Universiteit Utrecht School of law (2009, 2008, 2007)