

The VIII Viterbo Global Administrative Law Seminar  
“Indicators in Global Governance: Legal Dimensions”

SEMINAR REPORT

By *Elena Mitzman* \*

On 14-15 June 2012, the Aspen Institute in Rome hosted the eighth edition of the Viterbo Global Administrative Law Seminars, titled “Indicators in Global Governance: Legal Dimensions.” The seminar was organized by the University of Viterbo La Tuscia, the New York University School of Law and the Institute for Research on Public Administration of Rome. The event was sponsored by the LUISS Guido Carli School of Government, IFAD, ENI, Formez and Cleary Gottlieb. The Seminar Steering Committee included professors Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino, and Lorenzo Casini. The Seminar Organizing Team consisted of Giulia Bertezolo, Eleonora Cavalieri, and Elisabetta Morlino.

Held every year since 2005, the GAL seminars provide a forum for discussing cutting-edge issues in Global Administrative Law. Topics are chosen annually and a call for papers is issued. A committee of experts selects papers for presentation. Over the years, covered topics included the relationship between global administrative law and global governance, legality review, the role of private actors in global regulation, the relationship between global governance and the financial crisis.

This year’s topic, the use of indicators as tools of global governance, has been the focus of a prominent research project, *Indicators as a Global Technology, and Governance by Information Project*, led by the Institute for International Law and Justice (IILJ) at NYU School of Law. Indicators are increasingly employed in global governance and, as such, constitute one of the emerging themes in the GAL field of research. Some of the more prominent examples include the World Bank’s Doing Business Indicators, Good Governance, and Rule of Law indicators; the Millennium Development Goals; and a variety of OECD indicators and rankings. Proliferation of indicators has not been accompanied by systematic study and research regarding their implications on decision-making processes, compliance with global standards, distribution of power, and allocation of resources among global actors.

The IILJ project defines indicators as “named collections of rank-ordered data that purport to represent the past or projected performance of different units”, “generated through a process that simplifies raw data about a complex social phenomenon” and, “are capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards” (Davis, Kingsbury, Engle Merry, 2012).

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The 25 papers presented in Rome examined a broad range of issues, including the relationship between ‘indicators and governance’ and ‘indicators and law.’ In addition, certain papers considered sector-specific issues relating to health and human rights indicators, development indicators, and economic and financial indicators.

Giulio Tremonti opened the seminar (University of Pavia, Chairman of the Aspen Institute Italia and Member of the Italian Parliament) with a short statement reminding the audience that indicators in governance pose problems that are both old and new. The global scenario is changing rapidly and is becoming increasingly complex, but on a hopeful note, “truth is not clearer than in the middle of the darkest night.”

Giulio Vesperini (University of Viterbo) chaired the first session, *Governance by Indicators*. Benedict Kingsbury (NYU School of Law) discussed his paper on *Indicators and Law in Global Governance*, which outlined the relationship between indicators and law, highlighting their shared characteristics. Kingsbury noted that indicators and law share similar features. For example, both indicators and law express values and political commitments; like law, indicators are used for the supervising or implementing standards, they influence expectations and behaviors of various operators, and often operate similarly to international legal instruments (like naming and shaming, building and intensifying networks, and altering the power structures inside and outside of the given organizations). Indicators can also complement and support legal norms, be incorporated within laws, act as substitutes for laws, and, in certain cases, undercut and bypass laws.

In her paper, *The Politics of Global Rankings*, Christiane Arndt (OECD), highlighted strong demand for indicators from policy-makers, but at the same time, noted that indicators also pose a variety of problems. For example, indicators’ intrinsic complexity; it makes it difficult for both citizens and governments to react to indicators and understand how to influence them. Policy-makers lack expertise to understand how indicators are produced and have poor incentives to invest in good-quality data. Ms. Arndt suggested that despite the problems, indicators are here to stay. Therefore, it is important that academics – who often appear skeptical – play a role in providing a clear normative framework for the production and use of indicators.

Discussing Kingsbury’s paper, David Nelken (University of Macerata and Cardiff University) pointed out that before analyzing similarities and relations between indicators and law, one must take into account the lack of consensus on the concept of “law” itself. According to the adopted definition, indicators themselves could be considered “laws.” Nelken also underlined the difficulty of locating the source of indicator legitimacy – whether in scientific consensus, voluntary adhesion, procedural legitimacy, or merely sheer effectiveness. He noted that with indicators, what constitutes an advantage for a given operator (e.g., simplicity or technicality) can represent a defect for another (e.g. excessive simplification or excessive de-politicization), so that indicators’ virtues and defects seem to cancel each other out.

The second set of papers in this session considered two specific indicators: Sovereign Ratings and State Fragility indicators, as well as a broader question of whether indicators should be subject to regulation.

In his paper, *Sovereign Ratings as Normative Predictions: The Preference for a Stable Future*, Ariel Colonomos (CNRS, University of Science Po) argued that credit ratings operate under a deliberately adopted meta-norm that favors stability over accuracy, which tends to occult change and create overly conservative predictions of the future. These predictions, in turn, have a normative effect in shaping the future itself, with a sort of stabilizing effect on the market.

The paper by Nehal Bhuta (European University Institute), *Governmentalizing Sovereignty: Indexes of State Fragility and the Calculability of Political Order*, analyzed the proliferation of “State fragility” indicators in international governance, particularly in the sector of development aid. Bhuta argued that the concept of State fragility is deeply normative, reflecting a series of implicit choices with respect to what characterizes good and bad political order; these choices are deeply contestable. Bhuta noted that at the global level, there seems to be a need for cross-national comparison through simple comparative statements, even at the cost of making inaccurate inferences. In other words, there is a demand for an “appearance of simple comparability”, for synthetic and synoptic “panoramic” snapshots, even though they can’t be accurate.

Sabino Cassese (Judge of the Italian Constitutional Court and *emeritus* Professor at the “Scuola Normale Superiore” of Pisa) and Lorenzo Casini, (University of Rome Sapienza) argued that indicators constitute a technology of global governance which requires regulation according to their specific accountability framework. In their paper, *Public Regulation of Global Indicators*, they distinguished between indicators that appear “biding” and those that appear “voluntary”, suggesting that the need for regulation will be less evident for voluntary indicators than for bindings ones, and for publicly-produced indicators than for privately-produced ones. They noted that it is necessary to understand that regulation of indicators can vary from case to case, including liberal models (e.g. the idea that credit ratings constitute “opinions” and are constitutionally protected by the right to free speech), indicator-based models, models focusing on producers (e.g. the post-crisis regulation of credit rating agencies in the US and the EU), and models focusing on procedures (in which administrative law principles may play a particularly useful role).

In discussing the papers, Stefano Battini (University of Viterbo) drew attention to the need to clarify which elements included in the definition of indicators are “essential” and which are “accidental”. Though indicators aren’t new *per se* (since governments have been using them for centuries), what is new is their proliferation at the global level. In light of the growing importance of indicators, it is necessary to identify the source of their authoritativeness – not an easy task! He noted that when discussing regulating indicators, it is necessary to also to investigate the extent to which indicator legitimacy can be regulated through other indicators. Moreover, it is necessary to analyze the relationship between the degree of indicator popularity and their degree of accurateness (given that, while certain indicators derive their legitimacy from scientific accuracy, others seem intrinsically inaccurate and operate in quite the opposite way).

During the wider discussion some participants pointed out that it seems necessary to focus on the specific reasons why indicators could be useful at the global level, such as the need for cross-national comparisons, their usefulness as instruments of horizontal accountability between governments, the fact that they can reduce investment-related risks, and the fact that, given the

variety of indicators and indicator producers – both public and private – there is a need for providing an adequate form of regulation (Cassese). Others questioned whether the apparent demand for indicators is actually disinterested, or rather reflects governmental agendas, and whether it is really possible to distinguish between “binding” and “voluntary” indicators (Matthias Goldmann, Max Planck Institute of Heidelberg). In this respect, differences among indicators seem to depend on the different impacts that they have, according to the various contexts in which they operate rather than on the distinction between binding and non-binding ones – or between global and non-global ones – (Rene Urueña, Universidad de Los Andes, Bogotá). Some noted that it is necessary to be aware of credit ratings’ specificity (as tools for shaping market reality, rather than merely describing it), to verify whether they act as self-fulfilling predictions, and to focus on the analytic models on which they are based (Kevin Davis, NYU School of law). With respect to the legal approaches to indicators some suggested moving away from a positivist analysis and, instead, adopting a game-theory approach, focusing on the strategic relations between the various involved parties, particularly indicator-producers and operators (Giulio Napolitano, Roma Tre University). Conversely, given the proliferation of indicators at the global level (for instance indicators produced by the OECD), it is necessary to determine their actual impact at the national level, to verify whether their proliferation constitutes a disincentive for compliance, and whether international organizations could do away with them (Itai Apter, Israel Ministry of Justice). Finally, it is necessary to keep in mind the various differences among indicators: for instance some are based on comparative studies and can be seen as scientific products, while others are based on statistics or even on the measurement of human feelings. Furthermore, there is a need to focus on accountability issues and legitimacy concerns, especially with indicators that have a well-defined economic impact (Mauro Bussani, University of Trieste).

The second session, chaired by Marcello Clarich (LUISS “Guido Carli”), discussed specific problems posed by *Global Health and Human Rights Indicators*. Nicole Hassoun and Denise Teo Wei Lin (Carnegie Mellon University), in *The Extending Access Index: Promoting Global Health*, proposed a Global Health Impact label on pharmaceutical products. They recommend rating pharmaceutical companies on the basis of their impact on global health, which could provide incentive for extending access on essential medicines to the poor. The authors evaluated all first-line drugs used to treat some of the worst diseases in developing countries (i.e. HIV/AIDS, tuberculosis, and malaria), and ranked companies by aggregating their drugs’ marginal impact on the poor. They then underlined some of the difficulties incurred in ascertaining the data, given the complex structure of the pharmaceutical market.

Melanie Samson (Union for International Cancer Control), argued that health law is an area in which indicators play a fundamental role, especially in monitoring health law compliance (like in the WHO context). In her paper, *Indicators as a monitoring tool for the implementation of Global Health Law*, Samson noted that even though most indicators at the global level aren’t legally binding, they still operate as regulatory tools and generate a significant impact because of their science-based legitimacy. At the same time, their non-binding nature assures a broader participation and applicability.

Discussing the papers, Gian Luca Burci (WHO) underlined the increasing complexity of public health law, the increased interaction between health and other areas of law and the challenges that come with it. The use of indicators, targets, and benchmarks has become more controversial and from a certain point of view, more politicized (following a shift from purely scientific indicators to indicators that set specific policy goals). In this context, it is possible to distinguish between a market- and incentive-based approach (exemplified by the Global Health Impact label) and a regulatory approach (exemplified by WHO indicators). Indicators can be used in variety of ways, for instance by NGOs as advocacy instruments, or even by judges, like the WTO Appellate Panel. Their complexity thus reflects the complexity of the global governance arena, where a variety of public and private parties are involved. Vertical controls are lacking, and greater corrective measures should perhaps be introduced.

Moving to human rights indicators, Marta Infantino (University of Trieste) argued that indicators have significant regulatory implications and therefore require a stronger legal contribution to their production. In order to identify possible legal approaches to this field, her paper, *The Law of Indicators on Women's Human Rights: Unmet Promises and Global Challenges*, analyzes various examples of women rights indicators. These indicators raise a series of public law issues – demands for transparency, participation, reason-giving, review, and legality – that could be addressed through administrative law tools. However, contributions from other fields of research - private law, constitutional law, and especially comparative law (with its specialization in comparing different legal cultures) - are also necessary.

Emma Dunlop (Oxford University) focused on the use of indicators by the UNHCR (for the purpose of collecting data on refugee conditions in camp settings, urban settings, and returnee areas). Her paper, *Indications of Progress? Assessing the Use of Indicators in UNHCR Operations*, identified a series of structural flaws and methodological concerns with the indicators, and highlighted possible indirect consequences of arising from the use of the indicators (like deflecting attention from wider, less easily measurable concerns). While Dunlop conceded that indicators may enhance the organization's hierarchical and supervisory accountability, she questioned whether they actually provide participatory accountability to the beneficiaries of UNHCR operations. Dunlop called for closer attention to the limitation of the indicators.

In discussing the papers, Angelina Fisher (NYU School of Law) noted that one should not overestimate contributions of lawyers to the production of indicators. At the local level, informal practices may prevail on formal legal rules, thus requiring empirical analysis that lawyers might not be trained to do. Indicators are sometimes preferred over other means of governance (for instance State reports) because of their capacity to shield legal debates and simplify legal intricacies. In order to determine the extent of lawyers' contributions, it is necessary to obtain a better understanding of when and why indicators are used. With respect to the UNHR, Fisher highlighted a number of issues for further inquiry, including the reasons why indicators are used by the organization despite the problems they create, the role of donors, identifying tensions within the organization and NGO reactions to these tensions.

During the wider discussion, participants observed that indicators reveal the complexities of the relationship between information and governance, as they tend to become binding not through law, but by means of interpretation (Nikhil Dutta, New York University School of Law). Participants questioned whether global indicators like UNHCR's could become accepted standards at the national level (Goldmann). Indicators seem to play a double role, both as a tool of governance (vertically), and of comparative analysis (horizontally). Thus, indicators in fact constitute form of governance by comparison (Urueña). Lawyers should provide specificity for the objectives indicators are intended to fill, the subjects involved in their creation, and whether indicators play a descriptive or a normative role (Maria Rosaria Ferrarese, Scuola Superiore della Pubblica Amministrazione). From the standpoint of critical legal thought, it is important to understand indicators as socially construed instruments, embodying a certain idea of society and the economy (Asta Zokaityte, Kent Law School). Finally, some participants highlighted that the problems posed by indicators transcend the traditional debate on problematic relations between science and government: indicators have an evident political nature, and must therefore be analyzed accordingly (Cassese).

The third session, chaired by Christiane Arndt (OECD), focused on *Indicators and Development*, and was opened by Kevin Davis (NYU School of Law), with a paper on *Legal Indicators: Potential and Perils*. Davis argued that indicators provide highly simplified representations of legal systems that, in the development field, fail to account for a number of locally relevant determinants and for different conceptions of what constitutes "development". Indicators can thus be seen as "defective products" that could be improved in various ways: either by developing better information on indicators, or by regulating them (for instance introducing procedural standards), or by ensuring competition among indicator producers. An alternative solution, however, would be to abandon indicators altogether, and work with raw data directly.

Taking a somewhat different approach, Maria Angelica Prada Uribe (Universidad de Los Andes, Bogotá) argued that indicators advance a specific idea of development, and therefore, reflecting changing conceptions of development (from a purely economic approach to more institutional- and rights-based approach), have gradually become more complex. In her paper titled *Development through Data? A Case Study on the World Bank's Performance Indicators and their Impact on Development in the Global South* Prada argues that the main problem posed by performance-based indicators is that they assign full responsibility for the development process to the receiving States, that don't participate in defining the development model by which they are judged. For this reason, Prada suggests the introduction of greater forms of participation in this field.

The paper by Michael Riegner (Justus Liebig University), *Measuring the Good Governance State: A Legal Reconstruction of the World Bank's "Country Policy and Institutional Assessment,"* characterized the World Bank's "Country Policy and Institutional Assessment" as a form of "international public authority," and analyzed it, first, against the framework of administrative law principles (like transparency, participation, reason-giving, contestation, and review) and then against principles of development cooperation law, like effectiveness and autonomy (for instance, suggesting the introduction of better forms of consultation). Riegner proposed a better legal

framework for the indicators, integrating the administrative law procedural approach with broader substantive policy concerns – like fairness, equality, and distributive justice.

Gaby Umbach (European University Institute, Florence) discussed the papers by underlining general problems posed by indicators (e.g., balancing indicator regulation with flexibility defining the concept of indicator more clearly) as well as offering specific comments. She pointed out that the paper by Davis requires defining what the legal substance of indicators actually is, distinguishing among the various policy areas in which they are used, and, clarifying better the actual means for working with raw data. Prada's paper could benefit from clarifying whether performance-based monitoring and the monitoring of aid allocation are negative *per se*. Finally, while Riegner adopts a more conceptual approach that summarizes the reasons why indicators are important for law, he could elaborate more on the application of the principle of autonomy.

From the floor, a question was raised on whether, within the development field, the use of indicators is actually decisive, or is it mitigated by other governance instruments and procedures, like in the case of the European Commission (Giulia Bertezolo, European Commission). Others, instead, questioned whether it is really possible to do away with indicators, as Davis suggested, and instead offered alternative solutions like the multiplication of indicators (for ensuring greater pluralism), or the introduction of more fair procedures, as suggested by Riegner (Cassese).

Next, David T. Hofisi and Araya K. Araya (Loyola University Chicago) presented a paper on *The Ease of Doing Business and Land Grabbing: Critique of the Investing-Across-Borders Indicators*. The paper analyzes the impact on cross border land investment of the International Finance Corporation Investing Across Borders indicators (IAB), which evaluate a country's regulatory framework with the aim of stimulating foreign direct investment. The authors argued that these indicators, by design, violate various sustainable development principles and risk benefiting investors at the expense of environmental and social protections. The paper recommends a review of these indicators, to ensure greater systemic consistency with IFC principles.

The paper by Itai Apter (Israel Ministry of Justice), *Corruption in the Eye of the Beholder – Creating Milestones for Future Global Corruption Indicators*, focused on global corruption indicators, analyzing various models for fighting corruption (the treaty model, the recommendation-based model, and the general principle and perception-based regimes). The author analyzed the benefits and pitfalls of the indicators used in each model, highlighting their subjective nature. Apter suggested that in order for indicators to achieve their anti-corruption goals, it is necessary to develop a single, widely recognized, rational-based framework and increase government participation both in the design and in the application of indicators.

Kevin Davis discussed the papers by noting that, when analyzing the IFC indicators, it is important to understand that they exclude a good amount of relevant information, which is usually available to investors through other means. One must also analyze their practical use, as well as their structure. With respect to corruption indicators, instead, he pointed out that government enforcement is a key issue in anti-corruption efforts and, underlined that there is a trade-off between the degrees of specificity and validity of indicators. Davis questioned whether greater government involvement

actually constitutes the preferable solution, arguing instead for the consideration of market-based models as an alternative. Sarah Dadush (International Fund for Agricultural Development), discussed the papers on behalf of Rutsel S.J. Martha. Dadush noted that the two papers seem to converge on one fundamental issue: ensuring a continuous review of indicators is made necessary by various factors, such as (in the case of the World Bank) the need for modifying indicators according to their impact on a growing number of people, the intrinsic subjectivity in evaluating the social impact of displacement of rural people, and the emergence of conflicts among various indicator users.

From the floor, some participants agreed with the need for greater government involvement in the production and use of indicators, and observed that a market-based system, such as suggested by Davis, wouldn't ensure the selection of the best indicators. For the market-based model to work properly there is an intrinsic need for transparency, which is something the field of indicators (characterized by hidden assumptions and un-used information) is actually lacking (Arndt). Others observed that the positivist approach adopted by certain papers, though generally useful, would be problematic in the case of indicators, which calls for a more complex approach that is capable of underlining economic behaviors and social norms that are often decisive in non-western legal traditions and are not usually reflected in indicators. In addition, when evaluating the impact of land investment indicators, it is necessary to take into account the role of local land-registration systems, and the recent move toward greater registration (Bussani). With respect to the Investing-Across-Borders indicators, other participants observed that they provide a very strong model of investment, and wondered whether, in order to improve their use, it would be preferable to complement them with other sources of information, or, instead, change indicator design (Bhuta). Others, in the end, questioned whether it is really possible to distinguish between objective and subjective indicators, and argued that the real problem is that of determining whether indicators are adequate in performing the functions they are designed for, and underlined the need for developing a public debate on indicators (Colonomos). In addition, it was observed that, even though perception-based indicators are less accurate than data-based ones, there is still an interest in measuring and influencing perceptions, as they contribute to shaping social and economic behaviors (Marco Macchia, University of Rome, Tor Vergata).

During the fourth session, chaired by Benedict Kingsbury (NYU School of Law), and titled *Framing and Positioning of Issues through Indicators*, Florencia Lebensohn (NYU School of Law) presented a paper on *Assessing the Indicators of GHG Emissions as a New Form of Governance*. Lebensohn analyzed the use of indicators within GHG reporting mechanisms, in particular the Carbon Disclosure Project (CDP) and the Global Reporting Initiative (GRI). She identified three main concerns arising from the indicators: the lack of comparability in disclosed information, the lack of guaranteed accuracy of reported data, and the incompleteness of disclosed information, (which affects the transparency of the reporting mechanisms). Lebensohn concluded that, unless these shortcomings are adequately addressed, the attempt to reduce GHG emissions by these means will not be successful.

The paper by Peter Robson (S.J. Quinney College of Law, University of Utah), *The Global Aquaculture Performance Indicator*, analyzed the global aquaculture performance index (GAPI),



which attempts to measure the sustainability of aquaculture across countries and species. Robson finds that the actual impact of GAPI on governance and general behaviors appears limited. He attributes this to the fact that GAPI indexes –focusing on species scores, country scores, or even species-country scores. – are too general. Robson argues that a next generation of more specific indexes could prove more effective.

Angelina Fisher (NYU) presented a paper on *Education Indicators in India*, focusing on the Annual Status of Education Report (ASER), a local alternative to global attempts to measure quality of education, that, despite its non-binding nature, has acquired growing popularity and effectiveness. Fisher argues that the popularity of this mechanism – based, very simply, on household assessments led by a local NGO – is due, in part, to the lack of comparable alternatives. After analyzing its main characteristics and shortcomings, she emphasized the need to keep monitoring this indicator’s evolution and growing governance impact.

Asta Zokaityte (Kent Law School) presented a paper on *Imaginaries of Governance: Indexing Happiness and Well-being*, analyzing the documents produced by the UK Office for National Statistics and the Stiglitz-Sen-Fitoussi International Commission. These documents present the GDP as an economic and technical failure, and endorse the index of happiness as an alternative solution, capable of providing a better reflection of reality. On the basis of this case, Zokaityte suggests that, rather than questioning the implications, effects, and outcomes of indicators; these tools might be examined more radically by “unpacking” the social, economic, and political imaginaries that they encapsulate.

Rene Urueña (Universidad de Los Andes) underlined specific aspects of the papers that appeared particularly interesting, or that were in need of clarification. For example, with respect to the first paper; he highlighted (i) the fact that indicators constitute an on-going process rather than a static object, (ii) the paradox between participation and excess of information in self-reporting indicators, and (iii) the impact of ranking on the design of indicators. With respect to the GAPI case, Urueña discussed the political economy of aquaculture, the idea of compound indicators, and the relationship between indicators and labels. Urueña also discussed the idea of the marginalization of indicators, the concept of indicators as reverse communication, and how indicators impact the general population. Addressing comments regarding regulation of indicators, Nehal Bhuta (EUI) noted that it is necessary to identify the source of their authoritativeness, especially in the case of privately-created indicators, like the ones analyzed by Lebensohn and Robson, which are designed for incentivizing certain behaviors. In these cases, it is a question of determining what kind of information grabs the attention of involved actors and how these mechanisms influence indicator reliability. The ASER indicator seems to derive its legitimacy from social prestige, international adoption, and savvy constituencies. The index of happiness prompts us to ask how information becomes an instrument of power and whether (and how) to promote its regulation.

Participants to the discussion expressed the need to distinguish, given the variety of indicators, between public and private forms authority, with a particular emphasis on the continuing importance of this general distinction in law (Matthias Goldmann). Others pointed out the difficulty of factoring cultural differences between populations in indexes of happiness and well-being.

Participants articulated that one of the main problems posed by indicators is the impact of globally-developed indicators on erosion of State sovereignty (Mario Savino, University of Viterbo). However, others observed that the main source of indicator authority is their usefulness and effectiveness, calling for greater procedural regulation and guarantees (Hilde Caroli Casavola, University of Molise).

The Fifth Session, chaired by Kevin Davis (NYU School of Law), focused on *Economic and Financial Indicators* and was opened by Matthias Goldmann, who presented a paper, *Stress Testing Stress Tests: Challenging the Authority of Indicators of Indicators*. Goldmann focused on the governance role of stress tests – i.e. “meta-indicators” used to measure financial stability by simulating the impact of hypothetical downside scenarios – that appear particularly effective in shaping the policies of supervisory authorities and triggering direct and indirect market effects. Even if stress-tests don't necessarily constitute a form of international public authority, there are various policy reasons for creating an international regulatory framework for them. This framework should provide common standards, regulation (for instance the selection of risk scenarios, the design of risk models, and the use), timing, and follow-up of stress tests. Jose Angelo Estrella Faria (Unidroit) presented a paper on *Legal norms as indicators: a case study from the Unidroit perspective*, analyzing the relationship between indicators and legal harmonization efforts. Faria adopted the Cape Town Convention as a case-study. He observed that, while it was created as an instrument of legal harmonization and to facilitate financing of high-value mobile equipment, this convention was gradually used *de facto* by export credit agencies as an indicator of a country's creditworthiness. For Faria, the approval procedure of the Convention serves as an example of political negotiation and constitutes a useful model for the development of indicators in general. Amparo Salvador (University of Navarra School of Law), presented a paper on *Marketable Risks in export credit insurance: A Global Administrative Law Indicator Case*, which describes the legal framework of export credit insurances. It analyzed the role played by the concept of “marketable risks” (in a 1997 EU Commission Communication), indicating what commercial and political risks on public and non-public debtors are considered non-marketable, particularly for purposes of defining what constitutes State aid within the EU in the case of publicly supported ECAs. Salvador argued that this concept acts as an indicator and that its use poses problems of transparency and accountability analogous to those of indicators in general. The paper by Yinling Zhou, *China's Role in Shaping Global Indicators: Insights on the Global Knowledge Economy*, highlighted growing efforts of a developing country, like China, participating in the standard-setting processes in the market of telecommunications and advanced technology products. Yet these markets are still controlled, the author argues, by Western developed countries. Zhou favors a more active Chinese role in the future global scene, and explores ways in which compliance with administrative law principles of proportionality, transparency, and review could help achieve this goal.

Giulio Napolitano (Roma Tre University) discussed the global administrative law facet of the first two papers. With respect to the first paper, he argued that the problem posed by stress tests is not that of guaranteeing democratic legitimacy, but of ensuring the political independence of financial supervisors. There is an ever present risk of favoring certain countries over others, which could lead to conflict between national supervisors. The real problem is being able to ensure objective, transparent, and non-discriminatory procedures at the global level. With respect to the second paper,

instead, Napolitano asserted that the international law model, provided by the Cape Town Convention, could be adopted in the field of indicators, but only in a limited number of cases and only in relation to very specific, and technical matters. On the contrary, in relation to political and controversial subjects, transaction costs would be too high and delegating decision-making at the supranational level would become advantageous. Nicola Lupo (University of Rome, LUISS “Guido Carli”) commented on the second of two papers, tracing a parallel between economic indicators and the Fiscal compact, noting that both need administrative and constitutional norms in order to be enforced. While both papers focused on the need for enhancing transparency, it is necessary to realize that transparency alone cannot solve the problem of democratic legitimacy. Finally, with respect to the proliferation of indicators at the global level, one of the reasons for their success may be legislators’ need for information. Information gathering is becoming more complex and difficult to achieve as territorial horizons are broadened and policy-makers find themselves less able to rely on their own experience and knowledge.

One participant observed that (a) stress tests differ from other indicators because they are intrinsically future-oriented rather than past-oriented, and extremely complicated rather than simplistic. (b) the distinction between binding and non-binding indicators is particularly difficult to draw and (c) although there is a need for ensuring greater simplicity in indicators, there is also a trade-off between simplicity and accuracy (Maurizia De Bellis, University of Rome, Tor Vergata). Another participant raised the problem of indicator fragmentation: how to coordinate the activities of the various financial authorities involved? (Cassese) Finally, it was observed that, despite their various defects, indicators still seem easier to criticize and regulate than other forms of governance (like *ad hoc* decision-making or political decision-making) (Dhutta).

During the final session, focusing on *Indicators and Law*, Nikhil Dutta (NYU School of Law) presented a paper on *Qualitative and Quantitative Conditionality: Accountability in the EU Accession and MCC Processes*. Dutta compared the US Millennium Challenge Corporation aid allocation criteria (a “quantitative conditionality” process, based on a number of indicators) with the EU accession process (a “qualitative conditionality” process, based on annual reports and meetings with government officials). Dutta explained how the quantitative processes seem easier to understand than the qualitative ones (although focusing much less on reason-giving), and that, unexpectedly, the EU process seems less open to participation than the MCC one. The paper identifies possible reasons for these differences and underlines the need for further comparative analysis of the two different approaches.

Rene Urueña (University of Bogotá) presented a paper on *The Rule of Law Index: An exploration of indicators as the working language for interaction among regimes*, arguing that indicators may serve as a *lingua franca* among various regimes, both at the international level and in the interaction between national systems and international law (for instance with the use of internationally developed indicators by domestic courts). However, governance indicators aren’t politically neutral and may end up channeling hegemonic aspirations of a given world view over the other. The paper proposes to adopt the Rule of Law Index (a quantitative assessment tool designed by a non-partisan NGO) as a case study and elaborates on the future steps of his ongoing research.

Georgios Dimitropoulos (NYU School of Law) presented a paper on *Global Administrative Law as “Enabling Law”: How to Monitor and Evaluate Indicator-Based Performance*, which analyzed the use of indicators in three different settings (the IMF and EU adjustment program implemented in Greece, the NEPAD African Peer Review Mechanism, and the review of the Common Agricultural Policy of the EU by the OECD). Dimitropoulos argued that global administrative law acts as “enabling law” for the use of indicators in the global legal order. The author analyzed how to monitor implementation and performance of administrative bodies based on indicators, arguing that the best form of control is provided by peer review systems and other horizontal forms of monitoring.

Edoardo Chiti (University of Viterbo) focused on three general issues with indicators. First, the relationship between indicators and the regulatory process differs from case to case and thus, requires an analysis of the different purposes indicators serve and of their varied relationships with other components of the regulatory process. For example, administrative and political discretion may be influenced in various ways by indicators. Second, the juridification of the indicator-production process requires a plural approach because of the multifarious nature of indicators (whether based on scientific evaluations or on political choices). Third, the problem of determining whether indicators enhance or reduce accountability requires a broader approach rather than narrowly focusing on finding and promoting the best practices. One must focus on institutional design and the possibility of creating regimes in which indicators are deployed to ensure multiple modes of accountability. During the discussion, participants inquired about indicators being used as a form of *lingua franca*; whether these tools could also be used in post-conflict contexts (Apter) and whether the use of certain indicators, like the rule of law indicator, are actually necessary – as opposed to other alternative solutions (Nelken).

Like in previous editions, the steering committee assigned a prize for the most promising paper at the end of the seminar. This year, it was won *ex aequo* by Maria Angelica Prada (*Development through Data? A Case Study on the World Bank’s Performance Indicators and their Impact on Development in the Global South*), and Michael Riegner (*Measuring the Good Governance State: A Legal Reconstruction of the World Bank’s “Country Policy and Institutional Assessment”*).

Afterward, the floor was opened to the customary updates and reports from participants.

Among the on-going initiatives in the GAL field, the second version of the Global Administrative Law Scholars network, at the Universidad de los Andes, was launched. It is supported by the International Development Research Centre in Canada and hosts a number of seminars on various topics (like indicators, development, and climate change) focuses primarily on developing countries.

At NYU, Benedict Kingsbury and Kevin E. Davis published a report for the Rockefeller Foundation, *Indicators as Interventions: Pitfalls and Prospects in Supporting Development Initiatives* (<http://www.rockefellerfoundation.org/news/publications/indicators-interventions>). In addition, the Institute for International Law and Justice (IILJ), through Oxford University Press, launched a new book-series on *Law and Global Governance*. In 2012, a book on indicators was

published by the Oxford University Press, titled *Governance by Indicators, Global Power through Classification and Rankings* and edited by Kevin E. Davis, Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry. Several books on indicators were also published by the National Science Foundation (<http://www.nsf.gov/>).

In addition, the IILJ is hosting a number of other projects, like the one on *Transnational and Comparative Responses to Political Corruption* directed by Maira Machado (FGV), Guillermo Jorge (San Andres), and Kevin Davis (NYU); and the *Global Climate Finance Project*, which is a joint venture between the Frank J. Guarini Center for Environmental and Land Use Law that's co-directed by Richard B. Stewart and Benedict Kingsbury.

In Rome and New York, the third edition of the GAL Casebook – edited by Sabino Cassese, Bruno Carotti, Lorenzo Casini, Eleonora Cavalieri, and Euan MacDonald – has published (<http://www.irpa.eu/gal-section/9799/global-administrative-law-the-casebook-2/>).

The Max Planck Institute for Comparative Public Law and International Law, in Heidelberg, is hosting the *Schumpeter Research Group on Law and Governance of Development Cooperation* directed by Philipp Dann ([http://www.mpil.de/ww/en/pub/organization/schumpeter\\_gruppe.cfm](http://www.mpil.de/ww/en/pub/organization/schumpeter_gruppe.cfm)). Armin von Bogdandy and Ingo Venzke recently published a book on *International Judicial Lawmaking: On Public Authority and Democratic Legitimation in Global Governance* and the project on *The Exercise of International Public Authority* is now its third stage.

In Paris, the University of Science Po is hosting a project on Private International Law as Global Governance (<http://blogs.sciences-po.fr/pilagg/>).

The Seminar concluded with proposals for the next GAL Seminar topic, which will be on “Inter-Institutional Relations In Global Law And Governance.” The Seminar will be held in Viterbo on June 13-14, 2013 and the call for papers is available at [www.irpa.eu/gal-section](http://www.irpa.eu/gal-section).

Some of the papers presented at the VIII Viterbo Gal Seminar has been published as IRPA Working Papers and they are available at [www.irpa.eu](http://www.irpa.eu).