



VITERBO GLOBAL ADMINISTRATIVE LAW SEMINARS

est. 2005

June 2012

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Foreword

Born from the 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 Viterbo Global Administrative Law Seminar was originally conceived by a group of prominent scholars from Italy, United States, France, Spain, and Germany as a *forum* to discuss the most salient and debated issues related to the increasing use of administrative law-type mechanisms in global governance.

The aim of the annual GAL seminar – held in Viterbo, Italy, at the University of La Tuscia since 2005 – is to provide an opportunity for scholars from all over the world to explore and contribute to the development of these emerging themes. Since the beginning the Seminar has been promoted and organized by the Law Department (now Department of European linguistic and literary studies, communication studies and historical-judicial studies) of the Tuscia University of Viterbo, with the support of the [Institute for Research on Public Administration \(IRPA\)](#) and other public and private entities.

Each year a general topic is chosen as overarching theme of the Seminar. Nine months in advance a call for papers is issued to invite scholars from all over the world to submit paper proposals. Since the first GAL seminar, the best papers presented have been published in leading legal reviews and journals.

The topics discussed in the past editions are: 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 the Global Regulatory Governance (2010); Private and Private-Public Regulation: Global Administrative Dimensions (2011); and Indicators as a Technology of Global Governance (2012).

Since 2010 the 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 Giulia Bertezolo, Eleonora Cavalieri, and Elisabetta Morlino.

This document provides basic information regarding the first eight editions of the Seminar since its establishment: call for papers, programs, papers presented, participants. 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-IILJ website (www.iilj.org).

The 1ST VITERBO GLOBAL ADMINISTRATIVE LAW SEMINAR
GLOBAL ADMINISTRATIVE LAW AND GLOBAL GOVERNANCE
Viterbo, June 10-11, 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

Friday June 10, 2005
First session

3.30 pm

Welcome

Marco Mancini, President of "La Tuscia" University, Viterbo
Massimo Ferrari Zumbini, Dean of the Political Science Department, "La Tuscia" University, Viterbo

4.00 pm

Connecting the world: the role, governance and networks of global organizations

Giacinto della Cananea, Naples University "Federico II"

The G8 and "the others" (Martina Conticelli)

Captive to its own web? Wto's relations with non-State actors (Luisa Perrotti)

4.15 pm

Beyond multilevelism: member States' participation in international organizations

Bernardo Giorgio Mattarella, Siena University

States' control over international organizations? Loss or transformation? (Chiara Martini)

The role of transnational committees in the European and global order (Mario Savino)

4.30 pm

Globalizing standards: overlaps and coexistence

Marco D'Alberti, Rome University "La Sapienza"

Global standards for domestic financial regulations (Maurizia De Bellis)

International standards for public procurement (Hilde Caroli Casavola)

4.45 pm

Global limits upon national regulators: input and mediation by supranational and non-State actors

Stefano Battini, "La Tuscia" University, Viterbo

Food safety: between European and global administration (Alessandra Battaglia)

Emissions trading and polycentric negotiation (Marta D'Auria)

5.00 pm

Discussion

6.30 pm

End of session

Saturday June 11, 2005
Second Session

9.30 am

Martina Conticelli -Luisa Perrotti

9.50 am

Chiara Martini - Mario Savino

10.10 am

Maurizia De Bellis - Hilde Caroli Casavola

10.30 am

Alessandra Battaglia

10.50 am

Discussion

11.30 am

Global Administrative Law Projects: agenda and next steps

12.30 pm

End of Seminar

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 VITERBO GLOBAL ADMINISTRATIVE LAW SEMINAR
ACCOUNTABILITY WITHIN THE GLOBAL CONTEXT
Viterbo, June 9-10, 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 problem of accountability within the global context.

REPORT ON THE SELECTION PROCEDURE

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 e, 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

Friday, June 9, 2006

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

First session

Case studies: presentation of papers

Chairman: Luis Ortega

12.00 a.m.

Accountability and foreign regulation

introduced by Benedict Kingsbury

Public Administration and International law: should or shall? The review of compliance in the Aarhus Convention
 (Marco Macchia)

The Global Aspirations of the Aarhus Convention and the Case of the World Bank

(Benjamin Dalle)

12.20 a.m.

Accountability and global public regulation

introduced by Francesca Bignami

Autonomy without Accountability – The Case of the International Seabed

Authority and the Enterprise

(Dyonisia -Teodora Avgerinopoulou)

Accountability in Development Aid Law: Some Trees but no Forest?

(Philipp Dann)

The Organization for the Prohibition of Chemical Weapons (OPCW): Is a culture of legality possible?

(Treaasa Dunworth)

12.40 a.m.

Coffee-break

12.50 a.m.

Accountability and global private or hybrid regulation

introduced by Christian Joerges

Holding Professionals Accountable: The Challenge of Privatized

International Standard Setting in Accounting and Architecture Service Sectors

(David Livshiz)

Administrative Law Mechanisms in the Rule-making Processes of the International Organization for Standardization (ISO)– What Makes them Thrive? What Accounts for their Paucity?

(Eran Shamir-Borer)

Initiating of European and International Standards into national regulatory instruments – can the Global Administrative Law penetrate equally into the national legislations?

(Ventsislav Velikov)

The Accountability of Governance by “Naming and Shaming”: Legal Aspects of Transnational Policy Review in the Field of Education

(Matthias Goldmann)

1.20 p.m.

End of session

1.30 p.m.

Lunch

3.00 p.m.

Second session

Cross cutting issues

Chairman: Harm Schepel

3.00 p.m.

Jean-Bernard Auby, *Global Administrative Law's constitutional and democratic bases*

3.30 p.m.

Christoph Möllers, *Patterns of Legitimacy in GAL: trade-offs between accountability and due process*

4.00 p.m.

Richard B. Stewart, *Accountability and the Discontents of Globalization: US and EU Models for Regulatory Governance*

4.30 p.m.

Coffee-break

4.45 p.m.
General discussion

6.30 p.m.
End of session

8.30 p.m.
Dinner

Saturday June 10, 2006

Third session
Chairman: Sabino Cassese

9.30 a.m.
Responses to Friday's comments by authors of the case studies

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

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 VITERBO GLOBAL ADMINISTRATIVE LAW SEMINAR
PARTICIPATION OF PRIVATE ACTORS IN GLOBAL ADMINISTRATIVE LAW
Viterbo, June 15-16, 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*.

Report on the selection procedure

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

<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 (L. Dubin- R. Nogellou, <i>Public consultation in the decision making process in global administrative law</i>; C. O'Brien, <i>Private actors' participation in the work of the United Nations Secretary General's Special Representative on Business and Human Rights</i>; M.Weimer, <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>)</p> <p>Christian Tietje (J. Green, <i>Hybrid Authority in the Clean Development Mechanism of the Kyoto Protocol</i>; T. Fidalgo de Freitas, <i>Participation, Proceduralization and Compliance: The Role of Private Actors in the Making of Standards and Recommended Practices by ICAO</i>; L. Dragomir, <i>Validation – an accountability mechanism for private actors' involvement in prudential regulation</i>)</p> <p>Gregory Shaffer (S. Gandhi, <i>Voluntary Environmental Standards: The Interplay Between Private Initiatives, Trade Rules And The Global Decision-Making Processes</i>; C.-H. Wu, <i>How Does TRIPS Agreement Transform Chinese Administrative Law?</i>)</p> <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 General discussion 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*, ILLJ Emerging Scholars Papers 5 (2007)

THE 4TH VITERBO GLOBAL ADMINISTRATIVE LAW SEMINAR
FROM FRAGMENTATION TO UNITY?
Viterbo, June 13-14, 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'ì, *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

Friday, June 13, 2008
First session

3.00 p.m.

Welcome

Marco Mancini, President of "La Tuscia" University, Viterbo

Case studies: presentation of papers

Chair Francesca Bignami

The Role of Courts in the Global Administrative Space

Introduced by Tom Zwart

(M. Benedetti: *Global Judicial Review: A Remedy Against Fragmentation?*; A. Lang: *The Role of Domestic Courts in the Global Administrative Space*; B. Marchetti: *The WTO Dispute Settlement System: Administration, Court or Tertium Genus?* M. Vila de Azevedo Cunha: *Mercosur's Judicial System: Is There Administrative Justice?*; T. Hale: *The Politics of Info-courts and International Development Assistance: A Fragmented Accountability Tool*).

Principles of Global Administrative Law

Introduced by Daniel Bradlow

(C. I. Fuentes: *Transparency As A Global Goal: Towards An Unity Of Principles In Global Administrative Law*; M. Kisilowski: *The Alternative Foundations: How New Public Management Can Shape Global Administrative Process*; P. Ala'i: *Supra-national Governance And The WTO: A Model For The Anti-Corruption Movement?*; R. Tavares Lanceiro: *The Arctic gold rush is juridical - The Procedure Of The Extension Of The Russian Federation's Continental Shelf Analysed Through Global Administrative Law*; R. Chetrit: *Between Fragmentation and Unity, GAL Should Focus On Efficiency - The Arguments For An Effective Environmental Protection*).

Constitutionalism and Global administrative law

Introduced by Jean Bernard Auby

(E. MacDonald: *The "Emergence" Of Global Administrative Law?*; K. Ming-Sung Kuo: *Fragmentation Or Unity? A Critique Of The Status Of Global Administrative Law Through The Lens Of Global Constitutionalism*; G. Dimitropoulos: *A Common GAL: The Legitimizing Role Of The Global Rule Of Law*; S. Schill: *Investment Treaties: Instruments Of Bilateralism Or Elements Of An Evolving Multilateral System?*)

5.05 p.m.

General discussion

7.00 p.m.

End of session

8.00 p.m.

Dinner

Saturday June 14, 2008
Second session

Chair Sabino Cassese

9.00 a.m.

Responses to Friday's comments by authors of the papers

11.00 a.m.

General discussion

12.10 a.m.

Upcoming and recent books/journals on GAL

12.40 a.m.

GAL Project: Agenda and Next Steps

1.15 p.m.

End of session

1.20 p.m.

Lunch

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)

THE 5TH VITERBO GLOBAL ADMINISTRATIVE LAW SEMINAR
LEGALITY REVIEW IN THE GLOBAL ADMINISTRATIVE SPACE
Viterbo, 12-13, 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 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

Friday, June 12, 2009
First session

Chairman Giandomenico Falcon

3.00 p.m. Welcome
Giuseppe Nascetti
Vice President of "La Tuscia" University, Viterbo

Case studies: presentation of papers

3.10 p.m.
Rozen Nogellou – *Discussant*

Implications Of Transparency In The International Civil Aviation Organization's Universal Safety Oversight Audit Programme
(Jimena Blumenkron)
Deference in U.S. Domestic Courts and Implications for Legality Review
(Catherine Sweetser)
Beyond Multilateralism and Regionalism. Analysis of the Review Process of Global Trade Dispute Resolution
(Blake C.Y. Wang)

3.35 p.m.
Mario Savino - *Discussant*

Proactive Strategies in the Global Legality Review
(Gianluca Sgueo)
Review Bodies in Multilateral Environmental Agreements. Competences, Coherence, Coordination
(Dionysia-Theodora Avgerinopoulou)
Peer Review As a Metric of Success For Regulatory Networks
(David Zaring)

4.00 p.m.
Coffee break

4.15 p.m.
General discussion

5.40 p.m.
Responses by the authors of the papers

6.30 p.m.
End of the session

8.15 p.m.
Dinner

9.45 p.m.
Guided walk around Viterbo

Saturday, June 13, 2009
Second session

Chairman Sabino Cassese

9.30 a.m. Round table

Eyal Benvenisti - Armin von Bogdandy – Richard B. Stewart

11.00 a.m.
General discussion

11.30 a.m.
Coffee break

11.45 a.m.
GAL research

12.40 a.m.
GAL project: agenda and next steps

1. 25 p.m.
End of the session

1.30 p.m.
Lunch

5.5. Published papers

- J. BLUMENKRON, *Transparency and the International Civil Aviation Organization. Implications 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 VITERBO GLOBAL ADMINISTRATIVE LAW SEMINAR
THE FINANCIAL CRISIS AND GLOBAL REGULATORY GOVERNANCE
Viterbo, June 11-12, 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

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.

6.3. SEMINAR PROGRAMFriday June 11th 2010

Welcome

Opening Session

“Regulatory Failures and the Impact of the Financial Crisis”*Chair:* Sabino Cassese (Judge of the Italian Constitutional Court)*Global Financial Standards and Regulatory Failure*

(Maurizia De Bellis)

Banking Regulation in Mexico: Lessons from Financial Crisis

(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.

coffee break

17:00 p.m. Second Session

“Regulatory and Institutional Responses”*The impact of the financial crisis on institutional transformation;*

(Myriam Senn)

The global management of systemic risk to the financial market: developing an effective regulatory system;

(Markus Glaser)

Global Regulatory Contracts: Basel II and Beyond

(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 12th 2010

Third Session

“A Critical Assessment”*Chair:* Richard B. Stewart (School of Law, New York University)*Protection of Investors in Financial Crises: Lessons of 1929 and 1930*

(Martins Paparinskis)

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

(Chiara Orlandini)

Credit Rating Agencies: Do We Need Draconian Oversight? A Critical Assessment of Current Reforms Initiatives

(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 a.m.

GAL Project: Agenda and Next Steps

12:30 a.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 VITERBO GLOBAL ADMINISTRATIVE LAW SEMINAR
PRIVATE AND PUBLIC-PRIVATE GLOBAL REGULATION: GLOBAL ADMINISTRATIVE LAW DIMENSIONS
Viterbo, June 10-11, 2011

7.1. SUMMARY AND PROGRAM DESCRIPTION

The seminar was held in Viterbo (Italy), at the Tuscia University, on June 10-11, 2011. The Seminar Steering Committee included Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino, and Lorenzo Casini. The Seminar Organizing Team was made of Giulia Bertezolo, Eleonora Cavalieri, and Elisabetta Morlino.

The selected papers were the basis for a thorough and wide-ranging discussion on the legal questions raised.

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

PRIVATE AND PUBLIC-PRIVATE GLOBAL REGULATION: GLOBAL ADMINISTRATIVE LAW DIMENSIONS

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

Friday June 10th, 2011

Chair: SABINO CASSESE, Judge of the Italian Constitutional Court

First Session

Rationales and Instruments for Public–Private Partnership

2:15 p.m.

Welcome

2:30 p.m.

Presentation of papers by the authors:

Innovations in Governance: Global Health vs. Global Environment

(Kenneth W. Abbott and David Gartner)

Private Ordering and Expertise Legitimacy

(Alberto Biasco and Alessandra Quarta)

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

(Sébastien Duyck)

Public-Private Partnerships in the Management of Water Resources: the Example of the Global Water Partnership

(Edouard Fromageau)

3:10 p.m.

Discussant: Laurence Boisson De Chazournes (University of Geneva)

3:25 p.m.

Discussant: Lorenzo Casini (University of Rome Sapienza)

3:40 p.m.

General Discussion

4:30 p.m.

Coffee Break

Second Session

Coordination, Separation and Conflicts between Public and Private Regulation

5:00 p.m.

Presentation of papers by the authors:

Informal Co-Regulation among Public and Private Regulators: Lessons from the Payment Systems

(Agnieszka Janczuk Gorywoda)

What If Publicness Is the Problem? On the Ultra Hybrid Regulation across the Taiwan Strait and the Functional Limits of Global Administrative Law

(Ming-Sung Kuo)

Public and Private Partnerships in Cross-border Policing: The Evolving Role of Private Entities

(Cheah Wui Ling)

Law as a registered designation of origin: The case of Financial Law

(Bertrand Du Marais)

5:40 p.m.

Discussant: Susan Rose-Ackerman (Yale Law School)

5: 55 p.m.

Discussant: David Zaring (Wharton School of Business - University of Pennsylvania)

6:10 p.m.
General Discussion

7:00 p.m.
End of session

8:30 p.m.
Dinner

Saturday, June 11th 2011

Chair: Richard B. Stewart, New York University School of Law

Third Session
The Interplay between National and Supranational Levels
in Private Regulatory Intervention

9:30 a.m.
Presentation of papers by the authors:
The Global Fund to Fight AIDS, Tuberculosis and Malaria: a New Type of International Organization
(Gülen Newton)
The Role of Domestic Administrative Law in the Accountability of Transnational Regulatory Networks
(Ayelet Berman)
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?
(Stéphanie Dagron)
Going Against the Grain: When Private Rules Shouldn't Apply to Public Institutions
(Rutsel Martha and Sarah Dadush)

10:10 a.m.
Discussant: Eelco Szabó (GAVI Alliance)

10:25 a.m.
Discussant: Ingo Venzke (University of Amsterdam)

10:40 a.m.
General Discussion

12:10 a.m.
GAL Project: Agenda and Next Steps

12:30 a.m.
End of session

12:30 a.m.
Lunch

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 IRPA GAL Working Paper 2012/4.

The 8th VITERBO Global Administrative Law Seminar
INDICATORS AS A TECHNOLOGY OF GLOBAL GOVERNANCE
Rome, June 14-15, 2012

8.1. SUMMARY AND PROGRAM DESCRIPTION

The seminar was held on June 14-15, 2012, in Rome. The Seminar Steering Committee includes Giulio Vesperini, Stefano Battini, Edoardo Chiti, Mario Savino, and Lorenzo Casini. The Seminar Organizing Team is made of Giulia Bertezolo, Eleonora Cavalieri, and Elisabetta Morlino.

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 also participated in the seminar and acted as discussants or commentators, together with leading academics in the field.

This edition was held in Rome, in cooperation with the Aspen Institute Italia, and it was sponsored by Eni S.p.A., Formez, Luiss School of Government, IFAD, and Cleary Gottlieb Steen & Hamilton.

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 Viterbo 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*

M. RIEGNER, *Measuring the Good Governance State: A Legal Reconstruction of the World Bank’s “Country Policy and Institutional Assessment”*

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, *Imaginations of Governance: Indexing Happiness and Well-being*

8.4. SEMINAR PROGRAM

Thursday, June 14

h. 13.45 – Registration

h. 14.00 – Opening Remarks

Giulio Tremonti (Chairman, Aspen Institute Italia; Member of the Italian Parliament, University of Pavia)

h. 14.10 – 16.30

Session One – Governance by Indicators

Chair: Giulio Vesperini (Tuscia University)

- *Indicators and Law in Global Governance*
Benedict Kingsbury (NYU School of Law)
- *The Politics of Global Rankings*
Christiane Arndt (OECD)
⁵
Discussant: David Nelken (University of Macerata)
- *Sovereign Ratings as Normative Predictions: The Preference for a Stable Future*
Ariel Colonomos (CNRS-CERI)
- *Governmentalizing Sovereignty: Indexes of State Fragility and the Calculability of Political Order*
Nehal Bhuta (EUI)
- *Public Regulation of Global Indicators*
Sabino Cassese (Italian Constitutional Court) and Lorenzo Casini (Sapienza University)

Discussant: Stefano Battini (Tuscia University)

h. 16.30 – 17.00 Coffee Break

h. 17.00 – 19.00

Session Two – Global Health and Human Rights Indicators

Chair: Marcello Clarich (LUISS)

- *Global Health Impact Indicators: Incentivizing Access to Essential Medicines*
Nicole Hassoun (Carnegie Mellon University)
- *Indicators as a monitoring tool for the implementation of Global Health Law*
Melanie Samson (NYU School of Law)
Discussant: Gian Luca Burci (WHO)
- *The Law of Indicators on Women's Human Rights: Unmet Promises and Global Challenges*
Marta Infantino (Trieste University)
- *Indications of Progress? Assessing the Use of Indicators in UNHCR Operations*
Emma Dunlop (St. Anne's College, Oxford)
Discussant: Angelina Fisher (NYU School of Law)

Friday, June 15

h. 9.00 – 11.15

Session Three – Indicators and Development

Chair: Christiane Arndt (OECD)

- *Legal Indicators: Potential and Perils*
Kevin Davis (NYU School of Law)
- *Development through Data? A Case Study on the World Bank's Performance Indicators and their Impact on Development in the Global South*
Maria Angelica Prada (Universidad de Los Andes, Bogotá)
- *Measuring the Good Governance State: A Legal Reconstruction of the World Bank's "Country Policy and Institutional Assessment"*
Michael Riegner (Justus Liebig University)
Discussant: Gaby Umbach (EUI)
- *The Ease of Doing Business and Land Grabbing: Critique of the Investing-Across-Borders Indicators*
David T. Hofisi and Araya K. Araya (Loyola University Chicago)
- *Corruption in the Eye of the Beholder – Creating Milestones for Future Global Corruption Indicators*
Itai Apter (Israel Ministry of Justice)
Discussant: Rutsel S.J. Martha (IFAD)

h. 11.15 – 11.45 Coffee Break

h. 11.45 – 13.15

Session Four – Framing and Positioning of Issues through Indicators

Chair: Benedict Kingsbury (NYU School of Law)

- *Assessing the Indicators of GHG Emissions as a New Form of Governance*
Florencia D. Lebensohn (NYU School of Law)

- *The Global Aquaculture Performance Index*
Peter Robson (S.J. Quinney College of Law, University of Utah)
- *Education Indicators in India*
Angelina Fisher (NYU School of Law)
- *Imaginaries of Governance: Indexing Happiness and Well-being*
Asta Zokaityte (Kent Law School)

Discussants: Nehal Bhuta (EUI), Rene Uruena (Universidad de Los Andes, Bogotá)

h. 13.15 – 14.15 Lunch

h. 14.15 – 15.45

Session Five – Economic and Financial Indicators

Chair: Kevin Davis (NYU School of Law)

- *Stress Testing Stress Tests: How to Make Financial Indicators Legitimate and Effective*
Matthias Goldmann (Max Planck Institute of Heidelberg)
- *Legal Norms as Indicators: A case study from the UNIDROIT Perspective*
José Angelo Estrella Faria (UNIDROIT)
- *Marketable Risks in Export Credit insurance: A Global Administrative Law Indicator Case*
Amparo Salvador (University of Navarra)
- *China's Role in Shaping Global Indicators: Insights on the Global Knowledge Economy*
Yinling Zhou (Wuhan University International Law Institute, China)

Discussants: Giulio Napolitano (Roma Tre University), Nicola Lupo (LUISS)

h. 15.45 – 17.45

Final Session: Indicators and Law

Chair: Marta Cartabia (Italian Constitutional Court)

- *Qualitative and Quantitative Conditionality: Accountability in the EU Accession and MCC Processes*
Nikhil Dutta (NYU School of Law)
- *The Rule of Law Index: An exploration of indicators as the working language for interaction among regimes*
Rene Uruña (Universidad de Los Andes, Bogotá)
- *Global Administrative Law as "Enabling Law": How to Monitor and Evaluate Indicator-Based Performance*
Georgios Dimitropoulos (NYU School of Law)

Discussant: Edoardo Chiti (Tuscia University)

Concluding Remarks

GAL next steps

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