3RD GLOBAL ADMINISTRATIVE LAW SEMINAR

VITERBO, JUNE 15-16, 2007*

Introduction

Since 2005, a two-day seminar on Global Administrative Law has been held ever year (usually in mid-June) in Viterbo, Italy, at the Political Science Faculty of La Tuscia University. These seminars, convened by Professors Stefano Battini and Giulio Vesperini, draw from research projects headed by Professor Sabino Cassese at the University of Rome "La Sapienza", and regularly involve scholars from universities in Italy and other parts of Europe, NYU, and elsewhere. Each has been structured around a series of papers dedicated to a specific theme within the emerging field of global administrative law: this year, for example, the discussions recounted below were centred on the issue of the "participation of private actors in global administrative law". Most of the papers submitted for discussion in previous years can be found on the IILJ's GAL website (www.iilj.org/global_adlaw). The fourth seminar in this series, which will take place on June 13-14 2008, will focus on the theme of "Global Administrative Law: From Fragmentation to Unity?".

Session I

Presentation of papers

A. Laurence Dubin and Rozen Nogellou, "Public Participation in Global Administrative Organizations".

Tiago Fidalgo de Freitas, "The Role of Private Actors in the Making of SARPs by ICAO".

Discussant: Prof. Marco D'Alberti

The discussant, after giving a short presentation of the papers, made the following observations:

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* Prepared by Euan MacDonald. My thanks are due to Jessica Green for her help in ensuring that this represents a full account of the discussions.

1) global areas and spaces have not yet developed a full "interest representation" model of administrative law; often, the obligation to consult is rather "distributed" to national agencies, often through soft law mechanisms (this, for example, is the approach predominantly adopted by the WTO – private parties are to make their preferences known to states, who then bring these to trade negotiations);
2) participation in the norm-making procedures of global administrative bodies appears, for the time being, to be largely restricted to powerful interest groups, such as industry (whether by design or practical effect). In this sense, global administrative procedures can be viewed at being only at the "first historical stage", at least in terms of the development of national procedures in US domestic administrative law;
3) there can be no direct transplantation of the concepts and mechanisms of domestic administrative law to the global sphere; nonetheless, it is important to take account of the conceptual frameworks of the former when considering the latter.

B. Jessica F. Green, "Delegation to Private Actors: A Study of the Clean Development Mechanism".

Larisa Dragomir, "Private Parties' Involvement in Prudential Banking Regulation – Some Thoughts on the Underlying Accountability Mechanisms".

Discussant: Prof. Christian Tietje

Again, the discussant provided a short outline of the papers, before going on to make a number of comments and criticisms of the two papers. In terms of the Dragomir paper, he suggested that the following be taken into consideration:

1) the role of private actors not simply in the application of the Basel II regulations, but also in the actual norm generation process itself;
2) the concrete interrelationship between individual states and the Basel II norms;
3) the issue of whether the introduction of external credit agencies to the administration of Basel II really represents a radical departure from previous rules, i.e. was there much *less* private involvement in the past?
4) applying an economic analysis approach to the issues raised.

In terms of the Green paper, the discussant made the following observations:

1) was her use of the classical concept of sovereignty, which appeared in this paper in the form of the claim that principals can revoke an agent's delegated power at any time (and thus, for example, withdraw from international organizations they feel do not adequately reflect their interests) either necessary or accurate?
2) the paper suffered from an absence of certain new theoretical approaches to the discipline of public international law, in particular those coming from the field of law and economics, and new ideas concerning sovereignty and the effect of these on approaches to the concept of delegation;
3) the issues of defining and distributing public goods, and ensuring accountability for these acts, are fundamentally questions of *constitutional* design – thus raising the "international constitutional question";
4) global administrative law is also concerned with issues of identifying the applicable law in any given situation.

C. Chien-Heui Wu, "How Does TRIPs transform Chinese Administrative Law".

Samir R. Ghandi, "Voluntary Environmental Standards: The Interplay Between Private Initiatives, Trade Rules and the Global Administrative Process".

Discussant: Prof. Gregory Shaffer

The discussant began by framing his outline of the two papers by underlining the importance of including a strong developing country perspective within the GAL project, noting in this case that both of these authors took positions on the WTO and its relation to developing countries that may seem surprising. While in the areas covered in the papers (intellectual property rights and the environment) the WTO is often viewed as a negative actor, both authors stress the positive (or potentially positive) effects that its rules and procedures may have in terms of developing countries (the first arguing that the TRIPs agreement has had a positive effect on Chinese administrative law in general, the second that WTO control of private environmental standards could help stop what is becoming a significant non-tariff barrier to developing country exporters).

In terms of the Wu paper, the discussant made the following comments:

1) picking up on the idea that global administrative law is part of a global constitutional project (in terms, say, of Petersmann's writing), the discussant

suggested that the author might rather find the work of Neil Walker on constitutional pluralism more fruitful; in general, the GAL project raises the issue of distinguishing GAL from global constitutionalism

2) the paper dealt almost exclusively with the administrative law benefits brought by TRIPs within Chinese domestic law for foreign rights holders; no attention was paid to how it might have benefited Chinese actors, either those in the private sphere or others, such as judges, who may have seen an increase in their power *vis à vis* the Government.
3) relatedly, is it possible, perhaps, to speak after TRIPs of three separate Chinese "administrative laws"? One for Chinese nationals, one for foreigners, and a third for foreign holders of IP rights?

General Discussion

Professor Auby opened the discussion, posing the question of how we can theorise the nature and status of private actors who are subordinated to global administrative bodies, and the various relations between such bodies. He proposed two types of private actors: those to whom some authority is delegated; b) those to whom no authority is delegated, that simply want a voice or to exercise some impact. He then moved on to consider the issue of global constitutionalism – the "constitutionalisation" of global and international institutions, recommending a book by Gavin Anderson, "Constitutional Rights After Globalization" (Hart, 2005), and arguing that, in applying constitutionalism, or public law values, in disputes between private actors, it is necessary to separate the private nature of the entity involved from the public nature of its function. He also suggested that the cosmopolitan democracy approach of authors such as David Held could yield fruitful insights. Lastly, he considered the position of authors like Michael Walzer that membership in a group is a precursor to any notion of justice (perhaps the public law value *par excellence*), noting that, in terms of global administrative law, this issue was considerably complicated by the multiplication of political communities involved.

Professor Cassese put to the authors what he saw as the central question(s) of the workshop, namely 1) Is participation as important to GAL as it is at the domestic level? 2) To what extent are participation rights *effective*, given the relative absence of judicial review mechanisms? 3) Where, when and why are participation rights

relatively strong among different global institutions? In response to the last of these, he hypothesised that the more hybrid the global regime, the stronger the participation mechanisms. **Professor Stewart** then posed the questions of who are the "consumers" of the participation rights that the various papers highlighted. What conditions demand for participation? Under what conditions are interest groups prepared to devote presumably often scarce resources to making use of the participation mechanisms available? And lastly, when private actors are involved in regulatory governance, to what extent might the most effective means of holding them to account be to move out of the public regulatory system altogether, and make use instead of private liability rules?

Professor Vesperini suggested that the papers, taken together, raised four separate issues concerning the role of private actors in global administrative law. The first, dealt with in the de Freitas as Dubin/Nogellou papers, concerned the scope and function of private company participation in the decision-making processes of international organizations. The second, brought up in the papers by Wu and Dubin/Nogellou, focused on the issue of the creation under global law of rights for private actors *vis-à-vis* national administrative agencies. The third, dealt with in the papers by Dragomir, Green and Ghandi, concerned circumstances in which global regulatory authority has been delegated onto private actors, thus in effect turning them into administrative bodies themselves. Lastly, and relatedly, the issue arose of the conditions under which private standard-setters could themselves be subject to global law.

Professor Cafaggi insisted on the maintenance within GAL scholarship of a distinction between ensuring participation of relevant actors, and ensuring the accountability of authority holders. **Professor Ortega** raised then the issue of identifying the *subjects* of participation, arguing that a central question is the relation between *who* is participating and *what* they are participating in, noting in particular that major multinational corporations are not, for example, the same as NGOs. Second, he asked what the *object* of participation; whether it was to defend, or protect, an interest or a legal right, for example – the question of *what* is being promoted through participation. Professor Ortega also flagged other issues such as the distinction between participatory and representative democracy; the relations between

collectivity, order, and rules; the right of demonstration as an aspect of participation; and more general issues such as democracy, accountability, transparency and due process, suggesting that it might be worthwhile to structure analyses of what has been written to date in the GAL project around these conceptual issues.

Professor Auby suggested that a comparative study of participation in global administrative bodies would be particularly useful, examining also questions such as who decides what participation mechanisms are available, and whether there are any possibilities of review of these decisions (administrative law in this light begins to appear as if it could go on *ad infinitum*; perhaps this is inevitable, in a legal order in which much administrative law is made not by a legislature or a judiciary, but rather by administrative bodies themselves). **Professor Battini** then suggested that the conference papers highlighted that, while there was a considerable amount of global administrative law regulating domestic administrative bodies, which was growing in scope, impact and compliance, there was relatively little that was applicable to global bodies. Some elements of GAL, such as some degree of transparency and participation in global institutions, do exist; however, participation appeared more as privilege than as right, with important choices being made over whom to grant it to by the regulator. He concluded that, while we can certainly conceive of administrative law without the state, it is much harder to do so without courts capable of compelling independent and impartial review of administrative actions. (We might ask, however, whether the lack of courts at the global level is any more destructive to the idea of global administrative law – at least in terms of its application to global administrative bodies – than it is to that of public international law more generally).

Professor Cafaggi insisted on a distinction between a right to membership in an organisation, and rights to participate in actual regulatory activity; and, moreover, that the different principles and evaluative criteria applicable to democracy- or efficiency-based participation be recognised. A further contribution also suggested that the terms of analysis and evaluation of participation change radically depending on whether an "input" or "output" approach to democratic legitimacy is adopted, while **Professor Stewart** noted that, in evaluating whether participation is more important in national or global administrative bodies, if we think of participatory rights at the

global level as a substitute for elections, then participation at the global level becomes even more important than at the national level.

Professor Zwart suggested that, in terms of private liability litigation, the US experience of apparently frivolous claims represented, in fact, a direct substitute for more developed and invasive forms of public governance: the US public's desire for a smaller governmental machine was made possible by allowing much governance to be done through court-based private litigation. He thus inquired as to whether judicial review could be used as a means of securing participatory rights? Lastly, **Mario Savino** distinguished three models of private participation: pluralist (e.g. through notice and comment procedures); neo-corporatist (participation through interest groups); and participation in the formulation of state policies that are then taken to the global level (although he questioned the extent to which states take this seriously).

Session II

Authors' responses

Laurence Dubin began her comments by responding to the issue of whether the EU, as a regional body, was a useful organisation to analyse from the standpoint of global administrative law. She insisted that the EU forms an integral part of the global administrative system, and that, as such, it would be an error to remove all EU administrative law from the scope of GAL. She then noted that the EU, the OECD and the WTO were all self-contained regimes, containing their own methods of, and approaches to, allowing participation. As in her paper, she distinguished between the horizontal and vertical forms of participation, and noted that one difference between the two concerned the actors involved in participation. At the horizontal level, only global private actors are involved; whereas in vertical forms of participation, even private individuals can take part.

She then moved on to discuss the claim that public participation can serve as a proxy for democracy, noting that most global administrative bodies seem reluctant to adopt this approach. The WTO, for example, insists that citizens are represented in the organisation through the participation of their respective national governments. When the OECD makes use of public participation mechanisms, it does so on pragmatic

grounds. In these terms, horizontal participation within the OECD not for democratic purposes, but for less ambitious reasons of efficiency.

The author then went on to talk briefly about the European Commission's practice of soliciting participation through the publication of "green papers", which could target very diverse groups, including, in some cases, the "public in general". She noted, however, that the OECD public participation mechanisms were significantly more transparent, and provided for participation not merely in the generation but also the implementation of norms. The WTO, on the other hand, has made disappointingly little progress in terms of "horizontal" public participation. The author concluded by arguing that the best way that global administrative bodies could improve the democratic element of global administration was through reinforcing vertical forms of participation, that is, through creating possibilities for participation in national implementation of global regulation.

Tiago Fidalgo de Freitas limited his response to three specific points that had been raised in terms of his paper during the previous day's discussion: the question of whether participating actors came from the "supply" or "demand" side of the regulated activity; the issue of whether participation was an essentially ("ontologically") different activity at the global and national levels, or whether it inhabited basically the same conceptual framework; and the question of the "private" self-regulation by a public body.

The author noted that, within the context of the ICAO, those private actors participating in the norm generation process were typically from the supply side (IATA, airports, pilots, etc.); there was a general absence of "demand" participation, such as, for example, a voice for consumers. He then asked whether organisations existed that could represent the interests of those on the "demand" side of the equation within the ICAO, and, if so, whether these would be able or willing to take on this role. He noted that while IAPA (The International Airline Passengers Association) does exist, it has not taken an interest in the generation of SARPs, dealing instead with member benefits (access to lounges, provision of insurance, etc.). On the issue of whether the participation of this or other similar groups in the development of SARPs should be encouraged, the author suggested that we distinguish between the

Air Navigation and Air Transport elements of SARPs. The former deals with exclusively technical matters, in which passengers should have little interest; the latter, on the other hand, deals with borders, documentation, etc., making it by far the more important site for demand-side participation.

The author then stated his scepticism at the idea that participation was a fundamentally different activity at the domestic and global levels. He argued that the main difference lies in the lack of judicial review at the global level; this notwithstanding, however, participation rights *do* exist at the global level, with a view to enhancing both the democratic legitimacy and the efficacy of global administrative bodies and the norms they generate.

Here, the author argued that there was a basic difference in the structure of professional associations between the domestic and global levels: at the former, these are "horizontally" arranged, whereas at the latter, they are structured "vertically". A number of potentially conflicting interests are represented at the ICAO (e.g. those of airline operators and pilots). At the domestic level, the author argued, such organizations have often been "captured" by professional associations, and are now basically little more than trades unions. In the global sphere, however, this has not transpired; the technical, apolitical nature of the regulation is still emphasised, and the existence of strong competing interests have ensured that no one group has been able to capture the organization.

Jessica Green made four different sets of comments on the concept of participation in response to the issues raised the previous day. The first concerned the issue of the "quality" of participation over the "quantity", where the author argued that more participation is not necessarily a good thing, as it can function as merely a legitimating façade for practices that are in fact deeply exclusionary. Participation itself can range from shallow mechanisms (such as granting observer status) to more profound ones (such as granting formal standing, the ability to table proposals, or to trigger compliance spot-checks). There is, the author suggested, normally a relationship of inverse proportion between the scope and the depth of participation: the broader the range of actors involved, the more shallow the mechanisms. As with

others, the author noted here that, at the global level, participation is often more accurately viewed as a privilege than a right.

The author then considered the issue of the desired goal of participation: is it, for example, process legitimacy? Or perhaps a better regulatory outcome? (The author suggested that, for the former, a shallow approach to participation may suffice, whereas the latter would require deeper forms). Again, the issue was raised of the identity of the beneficiaries of the right (or privilege) of participation in this context. The author stressed the importance of distinguishing process from outcome: a process may provide for much participation, and display a high degree of accountability, but yet not lead to efficient outcomes (as, she suggested, the experience of the Clean Development Mechanism, which is often not effective in realising any significant carbon emissions reductions, illustrates). The de Freitas paper on SARPs in the ICAO, she argued, showed that the opposite could also hold: a process with little accountability, but with generally effective outcomes. The author argued that, when authority is delegated, we are particularly concerned with the outcome: do agents do what the principals want them to do? When authority is not delegated, we are more concerned with process, giving members of civil society or affected citizens should have the right to voice their opinions.

The author then explained her use of the term "delegation", and clarified the notion of sovereignty implicit in her paper, taking into consideration that the delegating actors at the global level include both states and non-state entities. While the "new sovereignty", in which states "pool" their sovereign powers in international organisations, is increasingly important, this model still stresses the primacy of the state as the principal delegating actors. She distinguished two types of delegation: 1) *ex ante* delegation (where states agree beforehand to delegate responsibility to another body – such as, for example, happened in the context of the CDM); and 2) *ex post* delegation (where standards already generated by an external body are adopted after the fact by states in their administrative regulation – as has happened, for example, with the Codex Alimentarius and numerous ISO standards).

The author concluded with some thoughts on the potential contribution of political science to the global administrative law project. She noted that a political economy

approach could be useful for understanding the functioning of global administrative bodies: private actors have different incentives to act from public ones, and understanding these differences could allow us to frame more clearly the pertinent issues of institutional design. She underlined the need for more empirical, comparative analyses in the field, in order to understand the functioning of, and differences between, global administrative bodies. Her comments concluded with the following hypothesis: that "low" politics (e.g. technical regulation) tends to give rise to much higher levels – in both quantitative and qualitative terms – of participation than do issues of "high" politics (such as WTO negotiations).

Larisa Dragomir commented that her paper had been based upon a broad notion of the "participation" of private bodies within global administrative law. She noted that the Basel II accord had introduced considerably more complexity into prudential banking regulation; and that the traditional command-and-control model of administrative law had been nuanced by the transfer of regulatory authority to private bodies. There are, the author insisted, two important aspects to the Basel process: the Basel Committee as a global administrative body itself, subject to rules of administrative law; and the Basel rules as a global regime the administration of which has been distributed to domestic actors. The scope of distributed administration in this sense has been extended through the involvement of private agencies, with the result that Basel mandates both public and private involvement in the national administration of its global rules.

The author further clarified that she had adopted a broad understanding of the term "accountability" in her paper, including in that category all mechanisms designed to enable supervisors to ensure that those private actors to whom regulatory authority has been delegated behave as they should. She then concluded by flagging one area for future research, namely the connection between structure of, and the levels of participation in, the notice and comment procedures adopted by the Basel Committee in generating the Basel II accord, and the substance of the regulations that it contains.

Samir Ghandi began by addressing the issue of how developing countries view concepts such as participation and accountability in the context of world trade rules and negotiations. He noted that developing countries are, in this context, generally

viewed as "standard-takers", not standard-makers; on this basis, he questioned whether global administrative bodies (such as the Codex Alimentarius Commission, the ISO and the WTO) represented the best forums for the development of these standards, which can, under certain circumstances, function as protectionist barriers to trade. The author argued that these standards were becoming increasingly important in trade law, often serving to create a rebuttable presumption (thus shifting the burden of proof) that trade-restrictive measures are nonetheless WTO-compliant. He argued that there is still some considerable way to go in attempting to ensure that the standard-setting procedures achieve adequate degrees of accountability – and that developing countries in particular are struggling to come to terms with the new processes.

Although participation must be viewed as a general good, in terms of developing countries it is still woefully inadequate: not simply in terms of actual presence (which can, in itself, be problematic, given the often considerable financial costs involved in travelling to and staying at the relevant global administrative bodies), but also in terms of the increasingly complex and technical knowledge often necessary to make participation meaningful. The author suggested that one way forward in terms of improving effective participation in the standard-setting process may be to place more emphasis in the meantime on regional groupings of states, more likely to involve those with broadly similar perspectives.

The author concluded with some reflections on whether or not it is necessary or desirable to extend WTO control to cover the manner in which private standards that may have trade-restrictive implications are set. Developing countries are, he notes, beginning to come to terms with the possibilities and options opened to them by WTO mechanisms, such as the SPS and TBT committees and, of course, the DSB. He finished by noting his scepticism of the proposition that the best way to handle such trade-restrictive private standards is to adopt a *laissez-faire* approach.

General Discussion

Professor Stewart began by making some further specific comments on the papers presented. He noted that a number of the papers (such as those by Dubin and Wu) argued that the main democratic benefits that could arise from the development and

application of global administrative law were not to be seen at the global level itself, but rather through creating and reinforcing democratic procedures at the domestic level. This, he suggested, indicated a paradox, as – as the Wu paper demonstrated – very often the interests protected by the administrative law rules set by global bodies to be applied in domestic administration are those of foreign, not national, entities. He thus posed the question of whether democracy at the domestic level was enhanced by "globalising citizenship". To Ghandi, he posed the question of how regulatory due process can be promoted and ensured in the absence of direct judicial review of the decisions of global administrative bodies. He also argued that private standards can (using Green's proposed terminology) constitute a form of *ex post* delegation if they are recognised and utilised after the fact by global administrative bodies – and that this very process, of turning non-law into law, can itself be viewed as a process of validation and review of the standards themselves.

Discussion then turned to the issue of whether or not "participation" was fundamentally different at the domestic and global levels. It was suggested that a good starting point for reflection on this issue is to compare the structural and teleological elements of participation at the two levels. Four different possible goals of participation were proposed in this regard: 1) "Defence rights"; 2) promoting democratic control of the exercise of public power; 3) improving the efficiency of outcomes; and 4) enhancing procedural legitimacy. In participation at the global level, it was suggested, we usually find only examples of the latter two. Moreover, and again picking up on a distinction suggested by Green, the following hypothesis was presented: that where the rationale driving participation measures is increased efficiency of outcomes, we are likely to see a higher level of "quality" of participation (that is, more influence being given to participating actors); where, on the other hand, the basic rationale is to improve procedural legitimacy, we are more likely to see increased "quantity" of participation (that is, the involvement of a wider group of actors, with corresponding implications for the depth of their involvement).

Following from this, it was argued that global administrative law differs from its domestic counterpart both *structurally* (in that there is a general absence of possibilities for judicial review of administrative decisions) and *teleologically* (as the goals of participation at the global level tend to be based on supply-side interests,

rather than including also demand-side ones). This contribution concluded by raising the question of whether the first two aspects of participation in the domestic sphere, namely "defence rights" and the promotion of democracy, could be effectively instituted or promoted at the global level in the absence of either judicial review mechanisms or a discernible global public? **Tiago Fidalgo de Freitas** responded to this comment, noting that, although it is certainly true that efficiency and procedural legitimacy are the dominant goals of participation at the global level, participation rights that aim at the other two goals noted above *do* exist at the global level. This means that the difference between participation at the global and domestic levels is a question of emphasis, and not one of ontology.

Professor Cafaggi noted that participation speaks with the language of rights, whereas delegation speaks with the language of power and authority. Delegation to private bodies includes contracts and/or ex-post approval, and primarily involves constraints on behaviour. Participation looks at ways to facilitate certain actors' involvement. Thus, he noted that, depending on the actor, we're either concerned with constraining or enabling participation.

Professor Shaffer argued that there was a pressing need to move away from what he referred to as "staple" institutional analysis, that is, the in-depth examination of one central organisation and the attempt to extrapolate to more general conclusions on that basis. He stressed that all institutions mediate participation through different mechanisms and to different ends, and thus emphasised the need for more comparative work within the GAL project, avoiding single-institution analyses. Moreover, he noted that, when we compare institutions, we often see tension between different systems of accountability. What, he inquired, are the alternatives to a hybrid or private arrangement and what are the motivations behind this choice of institutional design?

David Livshiz then suggested that perhaps the importance of the absence of judicial review at the global level was being over-emphasised in our discussions, noting recent research that illustrated that, in around 90% of judicial review cases, the decision of the administrative body in question was vindicated – suggesting that *ex post* judicial control may not be as important as it at first seems. **Professor Stewart**, however,

argued that the very existence of this possibility and the threat of its use remained an important factor in conditioning the behaviour of administrative agencies.

Professor Ortega then commented on the differences between global administrative law, and public international law as traditionally understood, noting in particular that the emphasis placed on the role of private actors in the former moved us a considerable distance from the classical state-centred conceptualisation of the latter. **Professor Tietje**, on the other hand, saw a basis for participation rights in international constitutional law: where such rights are applied by global administrative bodies (such as, for example, the WTO Appellate Body or ICSID tribunals), authority is drawn not from domestic instruments, but rather from international human rights treaties and from general principles of the rule of law. He insisted, therefore, that there exists a basis for global administrative law in (albeit underdeveloped) principles of international constitutional law.

New and Forthcoming GAL Publications

This session opened with a reminder of the publication of two recent journal symposia dedicated to issues of GAL: the first in 37(4) *New York University Journal of International Law and Politics* (published Nov. 2006); and the second in 6(3) *Global Jurist Advances* (2006) (http://www.bepress.com/gj/advances/) (containing the papers from the Viterbo I GAL conference).

- Martina Conticelli, *I vertici del G8. Governi e amministrazioni nell'ordine globale* (Milano: Giuffrè, 2006)

This book is premised upon the insight that informal networks of governmental officials often play an important role in global governance, sometimes equal to or even greater than that of more formally constituted global administrative bodies. Taking the G8 as its case study, the book considers such factors as the regularity and frequency of its meeting; its "enlargement" and other questions of participation in the network; and the "enforcement" of the decisions it reaches – not, of course, as legally binding norms, but as nonetheless important – sometimes decisively so – elements in the formation and shaping of global governance. The author argues that one special feature of these informal bodies is their ability to "bind without binding".

- Gregory C. Shaffer and Mark A. Pollack, *Regulating Risk in a Global Economy: Law, Politics and the Struggle to Govern Genetically Modified Foods* (Oxford: Oxford University Press, forthcoming 2007)

This book combines a theoretical perspective with considerable empirical analysis of the ongoing dispute over the regulation of genetically modified foods. The bulk of the work is concerned with the central players in the dispute, namely the EU and the US, and considerable time is spent analysing the reasons behind the differences in regulatory approach between the two economic powers. The authors argue that the record of informal, deliberative network negotiations over GMOs has largely been one of failure, suggesting that such models can only flourish in the absence of highly politicised issues. The authors also consider the various institutions and instruments governing this issue (the WTO, the Codex, the Biodiversity Convention and the OECD), again suggesting that their success in ensuring cooperation has been limited, and outlining both parties' attempts to dominate these, or to "forum shop" between them. These failures continue to be reflected in both EU and US positions, which maintain their fundamental divergences, although there has been a little movement (much regulatory reform with little change in basic position from the EU, while the US position has undergone minor changes, but little regulatory reform). The authors conclude that the decision to take the matter before the WTO DSB, which in turn has offered some clarification as to the *legal* obligations of each party, and may through this open possibilities for mutual accommodation on both sides.

Future GAL-Related Projects and Research Areas

Professor Zwart outlined plans for the creation of the Transnational Law College (TLC) at Utrecht University (linked with a similar programme at the Washington University School of Law). This programme aims at equipping law students for the increasingly important marketplace in transnational legal services by inverting the standard law school syllabus: rather than teaching one jurisdiction in-depth initially before going on to teach issues of transnational law in more advanced classes, the TLC will from the outset look to provide law students with the general analytical and social tools and transferable skills necessary to work in *any* jurisdiction, before allowing specialisation in one at the LLM level. Core courses will thus include Comparative Law, Legal Strategy, Culture and the Law and Legal Globalization, with others, split into public and private law streams, available to chose.

It was then suggested that the GAL project was moving from a specific into a conceptual phase, and suggested that it may be better to narrow the focus of the project from the very wide approach adopted until this point. In particular, it was argued that the GAL effects on domestic administrative law had emerged as central to the project, and that attention paid to the organizational aspects at the global level should correspondingly be reduced. On the other hand, it was suggested that the project should widen its focus from what has been until now predominantly on procedural matters, to include substantive issues, and in particular to confront the questions of the "winners" and "losers" of GAL.

Professor Cafaggi highlighted a conference that he is organizing at the European University Institute in Florence, Italy, on the accountability of private actors, focusing on a distinction between accountability in rulemaking and accountability of corporate social responsibility.

Professor Tietje is working, at Martin Luther University, on the production of a Handbook of Transnational Economic Organizations, which aims to describe and analyse about 100 of the most significant organizations in global economic governance (excluding regional bodies and initiatives, informal networks of government officials, and multinational corporations). The project is funded by the German Research Foundation from October 2005 to October 2008, and they hope to publish the Handbook in spring of 2008.

Matthias Goldmann discussed a project currently ongoing at the Max Planck Institute in Heidelberg, Germany, on the law of international administration. This project, he noted, focused on one aspect of the broader field of GAL – that of the administrative law regulating the actions of international bureaucracies. One workshop has already been held at the Institute on the subject, with another planned for later this year. The final results of the project will be presented at a major conference on the issue in 2008.

Professor Cassese began by discussing plans for Viterbo IV, provisionally scheduled for June 13-14 2008. The topic for the workshop will be "From Fragmentation to

Unity?". In this regard, he encouraged all present to look at the ILC's work on the issue of fragmentation, and at a number of articles by Koskenniemi on the same issue. He also highlighted other areas of research, in particular plans to produce a second edition of the *GAL: Cases and Materials* textbook, and other research on topics such as global financial standards, WTO constraints on domestic administrative law, and a major project on cultural heritage and globalization (the latter discussed in more detail by Lorenzo Casini).