GLOBAL ADMINISTRATIVE LAW SEMINAR

Viterbo June 10-11, 2005

Friday June 10, 2005

3.30 pm
First session

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

9.30 am  
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
Authors, abstracts and discussants of the papers are as follows.

- The G8 and “the others”  
  Martina Conticelli

  Since 1975, the heads of State and government of the richest countries have held regular meetings. Their partnership derives from the sharing of common values, both political and economic. The main advantage of having such discussions, for those who take part in them, consists in knowing in advance the movement of the other players, and in coordinating their action consequentially.

  On the other hand, the main issues of discussion, such as trade, relations with developing countries, energy, and terrorism, have a concrete relevance not only for those who take part in the group. In most cases, the G8 has played a central role in complex international decision-making processes, which affected mainly third States. Good examples of this effect are the G8 action in conflict prevention, its contribution to the HIPC Initiative, and its leading role in the resolution of the conflict in Kosovo.

  The G8 holds a central position in the current developments of global governance. Following on the output of the annual meetings, the group coordinates and addresses a broader range of issues than that assumed to be entrusted with it (the G8 process); similarly, the action of the group affects a wider range of actors (the G8 system) than that comprising its actual membership.

  Thus, behind the label of “sharing ideas about complex issues of the world economy” operate “the rich leaders trying to rule the world”. This being so, how relevant may the G8 be for those countries which can neither play any active role, nor take part in decision making?

  The analysis will move from the study of the G8 decision-making process, focusing, first, on the relationships among the members, secondly, on the connections with other existing international organizations, and, finally, on the dialogue with “third parties”. The aim of the paper is to investigate if and how the intervention of the G8 in international policy making may affect actors other than the ones involved in decision making.

- Captive to its own web? WTO’s relations with non-State actors  
  Luisa Perrotti

  WTO’s relations with intergovernmental, transgovernmental and non-governmental agents and actors operating at a level other than that of the nation State (hereinafter NSAs) constitute an under-researched subject, at least in the legal literature. Particularly lacking are a comprehensive map and some rationalisation of the panoply of connections and channels whereby NSAs become increasingly involved in consultative processes, informal decision making, and – even – actual negotiation within the WTO.

  Filling in this gap is not only intrinsically interesting, for it demands exploring into a degree of detail certain facets of WTO’s day-to-day operation which escape most published research. Empirical interest in the subject is compounded by a theoretical ambition. Arguably, an analysis of the ways in which the WTO relates with NSAs will shed new light on the nature of this institution and on the dynamics that it may generate, catalyse or facilitate. Thereby, the observation of “how” the WTO relates with other NSAs is instrumental to a deeper understanding of “what” it actually is.

  Evidence is marshalled at three levels of empirical analysis. Firstly, the traits of WTO’s organization and decision-making processes which are relevant to the subject in hand are briefly outlined. Secondly, the paper maps out the several and different NSAs with which the WTO maintains relations. Thirdly, a typology of such relations is sketched out with the aim of extracting
some significant examples. The concluding section contends that, insofar as the constitutional foundations and the mandate of the WTO remain unchanged, the relations linking this institution to NSAs, albeit expanding and increasingly significant, are unlikely substantially to alter the traditional patterns of intergovernmental relations and bargaining within the WTO.

- States' control over international organizations: loss or transformation? Chiara Martini

International organizations (IGOs) are considered instruments of the States which created them and which retain the authority to decide when they cease to exist. Most part of contemporary international institutions, however, is not established by States through formal international treaties, but on the basis of joint decisions by other international organizations. Thus, States become members of such second-order organizations by passive assent, by virtue of their membership in the parent organization.

Do these developments in the current constellation of IGOs still allow for considering international organizations as mere instruments of national governments? To what extent, and how, are the international organizations subject to the control and influence of the States in those cases in which they are not directly constituted by them?

In order to address these questions, the paper will map out the variety of relationships and connections, which currently link States and second-order organizations. Then, the analysis will turn to the procedures for creating, as well as to the actual structure and activities of such organizations. Attention will be focused on those aspects which best highlight the presence and power of the States within them.

- The role of transnational committees Mario Savino

The aim of the paper is twofold. First, its purpose is to challenge the idea that composite systems, such as the European Union, can be depicted as “multi-level”. In fact, in the European Union a dense jungle of transnational committees, composed of national and supranational officials, of experts and of civil society representatives, carry on the day-by-day decision-making process. The distinction between national and supranational level is therefore, blurred by this transnational dimension: EU committees fill in the gap between EU law-making, on the one hand, and administrative implementation by Member States, on the other.

Secondly, the paper aims at demonstrating that the widespread belief that the EU is the only order in which transnational bodies play a relevant institutional role is misleading. EU committees do not constitute an unicum. Many other international organizations rely on transgovernmental committees, entrusted with important decision-making and coordinating tasks. UN committees, WTO committees and Codex Alimentarius committees provide but some examples of the increasing institutional role of administrative networks in the global order.

The overall assumption of the paper is that supranational bodies (i.e. international secretariats and the European Commission) embody but one face of the executive power beyond the State; the other face – a fragmented, non-hierarchical and neglected one – is transgovernmental.

- Global standards for domestic financial regulation Maurizia De Bellis

Over the last decades, the number of international standards for financial regulation has increased remarkably. Transgovernmental networks for banking, securities and insurance regulation, such as the Basel Committee, IOSCO and IAIS, all constitute financial standards-setting
bodies. Similarly, international organizations like the IMF and the World Bank produce standards for financial stability, while the WTO has a specific discipline for trade in financial services. Furthermore, the Financial Stability Forum (FSF) brings together the financial transgovernmental regulatory bodies and some international organizations, such as the IMF, the International Accounting Standards Board (IASB), the Financial Action Task Force on Money Laundering (FATF), and others.

This phenomenon raises a number of questions. Which are the links between the standards produced by the different bodies mentioned above? What is the role of national administrations in implementing these standards?

On the one hand, a non homogenous application of international financial standards by national regulators may lead to a patchwork of rules in a market which is increasingly connected.

On the other hand, the number of States participating in international standards-setting bodies might be much smaller than that of States, which are due to implement these rules. Hence, the question of how to strengthen the participation of States in financial standards setting.

- Emissions trading and polycentric negotiation
  
  Marta D’Auria

  The Kyoto Protocol not only establishes specific times and quantities for the reduction of greenhouse gases; it also provides for so called “flexibility mechanisms”, that are market instruments that should enable to reduce pollution at a lower cost than that of the traditional instruments of “command and control”.

  Among the flexibility mechanisms, a central role should be played by the trading of emissions. This new instrument establishes an innovative system of relationships between subjects which mutually recognize their respective differences, and decide to make the best of them. These subjects have a common objective - the achievement of agreed global environmental outcomes - that can be attained through regulation.

  For national regulators, global rules provide, at the same time, limits and opportunities. The former consist in the fact that pollution-reduction objectives are binding; the latter rest in the opportunities for collaboration among different actors provided for by the new rules. There is a redrawing of the borders of the public sphere; public entities accomplish some tasks, but leave other activities with private entities. Different players meet on the market (where the price of air pollution is set), but this market needs common regulation. Regulation is necessary because the market will become more competitive as it becomes more open.

  Moving from shared rules, polycentric negotiation enables to trespass national borders and, at the same time, promotes larger participation, also by private economic operators.

  In this context, two are the main issues explored in this paper: firstly, the roles and tasks of the different subjects involved and the relationships among them, both within national boundaries and in the new, open market; secondly, the controls and sanctions provided for in order to create an integrated system of environmental protection. It will be argued that the degree of effectiveness of the measures analysed in the paper depends upon an organized flow of information as well as on a clear system of responsibilities at both the national and international levels.

- International standards for public procurement
  
  Hilde Caroli Casavola

  International standards and rules increasingly apply to public procurement. Overlapping sets of norms, however, may generate complex relationships between existing disciplines and, even, conflicts of law.
On the one hand, international organizations apply several common procurement standards. The Wto Government Procurement Agreement (Gpa), the World Bank Procurement Guidelines and several conventions and bilateral free trade agreements set forth a number of basic principles, such as transparency, fairness and participation. On the other hand, however, each organization and procurement standard-setting body elaborates its own, peculiar procedural norms.

The main example consists in non-discrimination mechanisms. In order to ensure a level playing field and the broadest access to public procurement contracts, the Gpa prohibits discriminatory treatment and restrictions of competition based on domestic contract law providing, for instance, for the need that bids meet certain requirements or for country-specific technical and financial conditions for qualification. To the contrary, the World Bank procurement discipline contains preference mechanisms for development assistance and aid, aimed at favouring firms settled and goods manufactured in the borrower’s country.

The existence of a number of procurement standard-setting bodies raises the following main issues: what are the implications of the differences among relevant substantive and procedural models? How to address and solve potential conflicts between incompatible international public procurement standards and the underlying one between the different organizations and financial institutions?

- Food safety: between European and global administration
  
  Alessandra Battaglia

Several actors operating at multiple levels play a role in the design of food safety regulation: the WTO, the Codex Alimentarius Commission, the European Commission, the new European Authority, and national administrations. While the matter becomes increasingly salient, the boundaries across the different levels of decision-making - international, European and national - remain flexible.

Against this background, and based on a number of case studies, the paper aims at, on the one hand, mapping out the existing relationships across the three levels of decision making mentioned above and, on the other hand, framing an hypothesis on the functioning of the system.

It would appear that inter-institutional relationships across different levels of decision making in the area of food safety regulation could be compared to a sandglass the two poles of which are constituted by, respectively, the international and the national legal orders, with the European one standing in the middle. At each turning of the sandglass, the sand flow is “filtered” through European law. This peculiar position of the European Union and of the law that originates from it suggests that European institutions, particularly the Commission, are actively engaged in both the bottom-up and the top-down processes of implementation. In the context of the examples provided, the centralization-decentralization dynamics so identified are further explored from both a functional and an organizational perspective.

Ultimately, the paper suggests a model for approaching the trends driving European policies in the area of food safety regulation in both international and national arenas.
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