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# Rethinking Global Administrative Law: Toward an Alternative Path

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***Abstract**:*

*This article explores the concept of global administrative law (GAL), arguing for the need to redefine it within the context of contemporary global legal phenomena. It critically examines the evolution of GAL as a legal framework and identifies the limitations of existing definitions, which often rely on outdated notions of state sovereignty and institutional centrality. The article proposes a more inclusive and functional approach to global administrative law, focusing on procedural norms that enhance the legitimacy of global decisions, whether made by public or private entities. Drawing on various theoretical perspectives, including those of Léon Duguit and Maurice Hauriou, the article emphasizes the importance of ethical governance and the interplay between global and local legal orders. By analyzing the practical and normative implications of GAL, it highlights how global entities, both governmental and corporate, contribute to shaping legal norms through their decision-making processes. The article also explores the central role of the state, not as a central actor but as a regulator that continues to influence global administrative practices. Ultimately, the article presents global administrative law as a dynamic and evolving field, offering a foundation for understanding how legal norms are created, implemented, and contested in an increasingly interconnected world.*

## INTRODUCTION

Considering the question of an "alternative" Global Administrative Law (GAL) brings the author of these lines back to a period of his life – namely, his doctoral years – which might be thought to be behind him. Indeed, I devoted my doctoral dissertation to the sources of global administrative law[2], which led me, as early as 2012, to raise – without always being able to address it – the question of its definition.

Global Administrative Law presents itself as a research project or "intellectual program"[3] initiated in 2005 by New York University, notably through the work of scholars B.

[1] The author declares having no conflicts of interest or relevant affiliations with any institution in connection with the subject matter of this article.
[2] R. MAUREL, *Les sources du droit administratif global*, Dijon, LexisNexis, coll. des travaux du CREDIMI, 2021, 752 p.
[3] J.-B. AUBY, *La globalisation, le droit et l'État*, 2nd ed., Paris, LGDJ, coll. Systèmes Droit, 2010, p. 243.

Kingsbury, N. Krisch, and R. B. Stewart[4]. In Europe, it was notably taken up by Sabino Cassese[5], whose perspective can be summarized as follows:

> "[T]here exist, within the mechanisms characteristic of globalization, bodies and institutions that exhibit an administrative nature through both their structure and the functions they perform. […] These bodies and institutions display various distinctive features, some of which are of particular interest to administrative law. National administrations are generally represented within them, in committees composed of national officials. Review mechanisms are often provided, which strongly resemble the administrative or judicial remedies found in domestic administrative law, and raise similar types of issues[6]."

Moreover – and this is a crucial point – GAL is a prescriptive research project, meaning that it seeks to promote the adoption of specific rules and behaviors:

"[T]he purpose of GAL is to analyze a set of mechanisms, rules, and procedures comparable to those found in domestic administrative laws, used to promote transparency, increased participation, and the establishment of accountability mechanisms within a hybrid structure (the Global Administrative Space), composed of both international organizations and non-state actors[7]."

After several years of doctoral research, I concluded that Global Administrative Law, as defined both by its original proponents[8] and by the Italian school[9], was not the most appropriate analytical framework for my research, which aimed to be grounded in positive law. I therefore undertook an effort to redefine it. Without prejudging the outcomes of that endeavor, I believe it is important to state clearly that I did not write my dissertation on Global Administrative Law, but rather on droit administratif global (the chosen expression being in French), which is by its very nature "other" than the GAL project. While GAL is a prescriptive project, the droit administratif global whose existence I sought to establish in the context of my doctoral work refers to a normative framework grounded in positive law.

With the essence of this distinction thus clarified, it is now appropriate to further explain the reasons that led, and continue to lead, to the belief that an "alternative" GAL is both necessary and desirable (I). This will be followed by a discussion of several doctrinal

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[4] B. KINGSBURY, N. KRISCH et R. B. STEWART, "The Emergence of Global Administrative Law", *Law and Contemporary Problems*, vol. 68, 2005, n°3-4, p. 15-61.
[5] S. CASSESE, *Au-delà de l'État*, Bruylant, 2011, 246 p. This volume brings together eight articles published between 2005 and 2006.
[6] J.-B. AUBY, "Vous avez dit : droit administratif global ?", *DA*, n°5, mai 2007, p. 5. Our translation.
[7] E. FROMAGEAU, *La théorie des institutions du droit administratif global. Étude des interactions avec le droit international public*, Bruylant, 2016, p. 1. Our translation.
[8] B. KINGSBURY, N. KRISCH et R. B. STEWART, "The Emergence of Global Administrative Law", *op. cit.*
[9] On these schools, sometimes referred to as the "Manhattan" and "Italian" schools, see E. FROMAGEAU, *La théorie des institutions du droit administratif global. Étude des interactions avec le droit international public*, *op. cit.*, p. 26-27.

proposals – which, with the benefit of hindsight, go further than those included in the book derived from my dissertation – toward the recognition of an "alternative" GAL (II).

## I. WHY IS AN "ALTERNATIVE" GAL RELEVANT?

The necessity – or at the very least, the value – of initiating a reflection on a GAL that differs from the one proposed by its founders stems from a series of observations concerning both the methodology (A) and the substance (B).

### A. Revisiting some methodological difficulties of GAL

Rather than mere methodological limitations, certain methodological issues raised by GAL can be framed as problems to be addressed. One such issue concerns the very definition of GAL (1); another lies in the role of comparative analysis within the doctrinal project of GAL (2); finally, several difficulties can be identified about "global" reasoning itself (3).

#### *1. The challenge of definition*

The question of defining GAL is undoubtedly the first major methodological limitation of the doctrine that gave rise to it. Twenty years after the programmatic article by B. Kingsbury, N. Krisch, and R. Stewart, it is reasonable to say that no one is truly able to provide a clear definition. The most developed formulation proposed by these founding authors is based more on identifying its content than on offering a precise definition. According to them, GAL can be define:

> "as comprising the mechanisms, principles, practices, and supporting social understandings that promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring they meet adequate standards of transparency, participation, reasoned decision, and legality, and by providing effective review of the rules and decisions they make. Global administrative bodies include formal intergovernmental regulatory bodies, informal intergovernmental regulatory networks and coordination arrangements, national regulatory bodies operating with reference to an international intergovernmental regime, hybrid public-private regulatory bodies, and some private regulatory bodies exercising transnational governance functions of particular public significance[10]."

This approach leads to a catalog-style definition, incorporating various elements without any prior or systematic demonstration of the underlying assumptions – one of the main methodological limitations of the project. This situation reflects an Anglo-American

[10] *Ibid*., p. 17. In order to disseminate this reflection, a translation of this article, widely cited – in particular this definition – in France, has been published by A. LEMOINE *in* C. BORIES (ed.), *Un droit administratif global ? / A Global Administrative Law ? Actes du colloque des 16 et 17 juin 2011*, Paris, Pedone, coll. Cahiers internationaux, CEDIN, CRDP, n° 28, 2012.

approach to international law – and to law more broadly – which tends to view formal definition as non-essential to the understanding of a legal phenomenon. By contrast, the French civil law tradition generally adopts the opposite approach, in which legal qualification is seen as a necessary prerequisite for determining the applicable legal regime. Consequently, the definition, which enables such qualification, assumes critical importance. This, as will be evident, accounts for the author's unease with the definitional vagueness surrounding GAL.

This Anglo-American approach, which does not always deem it necessary to precisely define an object of study when it appears too complex or when such an operation is considered non-essential, exposes the GAL project – at the very least – to strong theoretical criticism. Despite attempts to draw on Hartian legal theory[11], both the Italian and American doctrinal currents ultimately favored a prescriptive approach to GAL, considering that the question of its foundations and definition was not problematic in itself. However, it may be argued that this lack of conceptual clarification contributed to the decline of scholarly interest in the subject, as evidenced by the significant slowdown in academic output on GAL since the late 2010s.

## *2. The question of the role of comparison*

Another methodological pitfall of GAL lies in its use of comparative methods to demonstrate the existence of a convergence of so-called administrative norms and, through that, to foster their development. However, the two main schools interested in this issue are fully aware of the inherent limitations of legal comparison[12], particularly since prior doctrinal attempts related to GAL have frequently encountered the impossibility of transposing structural legal concepts from one legal system to another.

Aware of these difficulties, GAL scholars ultimately opted to sidestep the issue by largely abandoning any genuine comparative analysis. As a result, most studies on the subject follow either a relatively abstract theoretical approach – especially prominent in American scholarship, though also present among some Italian authors – or a compilation of juxtaposed examples, lacking any evident structural connection but nonetheless presented as forming a coherent whole by analogy. This methodological looseness is particularly evident in the Global Administrative Law Casebook (2008), which places, within a single analytical framework, topics as diverse as ICSID, ICANN, and the Court of Justice of the European Union, before invoking jurisdictional conflicts as evidence of GAL's existence[13]. The argument rests on the juxtaposition of heterogeneous practices, such as the oversight exercised by the French Conseil d'État over transnational measures

[11] See on this topic M.-S. KUO, "The Concept of 'Law' in Global Administrative Law: A Reply to Benedict Kinsgbury", *EJIL*, vol. 20, n°4, 2009, p. 997-1004.
[12] B. KINGSBURY, "The concept of 'law' in Global Administrative Law", IILJ Working Paper 2009/1, Global Administrative Law Series, 2009, p. 5
[13] S. CASSESE, B. CAROTTI, L. CASINI, M. MACCIA, E. MCDONALD, M. SAVINO (dir.), *Global Administrative Law. Cases, Materials, Issues*, Second Edition, Rome/New York, IRPA/IILJ, 2008, 246 p.

stemming from the Schengen system, and the interplay between federated courts and private actors in the enforcement of antitrust governance in the United States[14].

While these analyses yield valuable insights, the lack of methodological structuring makes it difficult to identify the relationship between the various case studies and GAL itself. In the absence of clear guiding criteria, it is at times impossible – without referring to the title of the Casebook chapter – to understand the rationale behind the inclusion of a particular case. At the very least, such an approach complicates the formulation of general conclusions.

Two reflections arise from this situation. If the project's ambition is genuinely prospective – as its founders openly acknowledge – then it becomes essential to adopt a clearly defined methodology regarding the role of comparison, as well as the objectives pursued through it. Conversely, if the primary objective is to identify a set of norms that reflect a general process of legal transformation, the demand for a rigorous comparative method may reasonably be tempered.

### *3. The contradictions of "globalizing" reasoning*

Finally, the need to arrive at a globalizing form of reasoning constitutes a final methodological limitation of GAL, one that warrants brief discussion. One of the fundamental assumptions of this approach, particularly emphasized by the founders of the GAL concept in its early formulations, is the idea that, to some extent, the traditional tools of legal reasoning should be set aside, as they are considered ill-suited to the contemporary dynamics of globalized law.

Deformalization is a particularly emblematic example of this. The original idea is based on a rejection of traditional approaches grounded in the theory of legal sources, or at the very least, a deep skepticism toward them. According to the architects of GAL, the classical theory of legal sources is no longer a relevant analytical tool, due to the transformation of law-making processes in the transnational context[15]. However, legal scholarship, most notably Jean d'Aspremont, has since demonstrated that the initially proclaimed deformalization was followed by an implicit re-formalization[16]. In other words, far from fully breaking away from traditional frameworks, the law envisioned by GAL operates through a variety of modes of norm production that, taken together, do not fundamentally depart from existing normative structures. Kingsbury himself soon acknowledged that the concept of "normative practice", initially promoted as a substitute for the notion of "sources", could not function effectively, and he recognized that the sources of GAL likely include those of classical international law[17].

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[14] *Idem*.

[15] See, in particular, E. FROMAGEAU, *La théorie des institutions du droit administratif global. Étude des interactions avec le droit international public*, *op. cit*., p. 49-50.

[16] See, e.g., J. D'ASPREMONT, "Droit administratif global et droit international", *in* C. BORIES (ed.), Un droit administratif global ? / A global administrative law ?, *op. cit*, p. 91.

[17] B. KINGSBURY, "The Administrative Law Frontier in Global Governance", *American Society of International Law Proceedings*, Vol. 99, 2005, p. 146.

This reflection on deformalization ultimately leads back to the more fundamental question of the definition of GAL. If one follows Sabino Cassese in considering GAL to constitute a legal order, or at the very least in asserting the existence of a "global legal order"[18] – a claim that, however, is not supported by any explicit demonstration[19] – the absence of formal sources poses a major conceptual problem. It is indeed difficult to conceive of a legal order structuring itself without identifiable sources, relying solely on a notion of "normative practice" whose definition remains vague. That said, this issue is less pressing within the American approach to GAL, which does not necessarily conceive of it as an autonomous legal order, but rather as a method or analytical framework for understanding the phenomenon of globalized law. Nevertheless, over time, this approach too encounters an epistemological dead end. The repeated claim that international law and its traditional modes of norm production are insufficient—sometimes explicitly stated, sometimes implied as an underlying assumption—raises challenges that cannot be indefinitely avoided.

Finally, the issue of deformalization also points to a broader question of methodological strategy. GAL presents itself as a prescriptive discipline, but by rejecting any reference to formal sources and positing a form of spontaneous norm generation, it structurally limits its own capacity for voluntary expansion. Indeed, there is a contradiction between, on the one hand, the claim that this legal framework is not based on any identifiable formal source and emerges spontaneously, and, on the other hand, the prescriptive ambition of encouraging as many global administrative bodies as possible to adopt and replicate such norms. This intrinsic tension, in my view, weakens GAL's ability to establish itself as a structured and lasting normative framework.

## B. A discussion of certain substantive assumptions made by the founders of GAL

Beyond the methodological limitations discussed above, it is also necessary to examine the theoretical foundations of GAL. Two substantive assumptions warrant closer scrutiny, as they have played a decisive role in shaping the evolution of the doctrinal debate and have led to the consideration of an alternative approach to GAL. These elements can be formulated as postulates or conclusions open to critique: international law is deemed obsolete (1), and multinational corporations are considered incapable of constituting "global administrations" (2).

### *1. "International law is obsolete"*

The first fundamental assumption of GAL stems from the points previously discussed. According to this approach, international law is necessarily evolving toward GAL due to

[18] S. CASSESE, "La fonction constitutionnelle des juges non-nationaux. De l'espace juridique global à l'ordre juridique global", Bulletin d'information de la Cour de Cassation, n°693, 15 décembre 2008, pp. 6-14

[19] See the debate on this issue in R. MAUREL, *Les sources du droit administratif global*, *op. cit.*, p. 553 et s.

its alleged inability to integrate new legal phenomena that now fall within the global sphere. This reasoning is based on the idea that international law remains excessively state-centered and, as such, fails to effectively grasp the contemporary dynamics of globalized law. However, this claim is not supported by any convincing empirical demonstration.

To be sure, certain critiques can be made of what is commonly referred to as public international law—notably by questioning the continuing relevance of the traditional distinction between public and private law in the international sphere. This distinction, which appears increasingly obsolete, is largely downplayed in some academic circles, such as at CREDIMI in Dijon, France, where the divide between publicists and privatists is deliberately set aside in favor of interdisciplinary collective research. Similarly, the absence of "global democracy"[20] and of formalized democratic mechanisms in international law can be debated, although such critique requires careful definition in order to properly assess its implications.

Nonetheless, one of the least contestable features of international law remains its adaptability. Once it is acknowledged that Article 38 of the Statute of the International Court of Justice is neither the sole analytical framework for the international legal phenomenon nor an insurmountable normative reference point, it becomes possible to better understand the evolution of international law. As is often recalled and demonstrated, international law is characterized by a high degree of flexibility and "plasticity"[21], which enables it to evolve far more rapidly than the designers of GAL tend to assume.

In this respect, the Italian approach to GAL diverges significantly from that advocated by B. Kingsbury and his colleagues, insofar as it does not rest on a premise of international law's obsolescence. It favors an analysis grounded in administrative law and highlights new interactions between the global and the local, which may serve to structure an emerging legal order. The Italian school thus examines norms produced by networks of local authorities and the democratic oversight mechanisms associated with them, while also studying the role of corporations and standard-setting bodies at the local level[22]. This approach, which makes it possible to examine legal transformations without relying on the claim that international law is outdated, therefore appears more fruitful and methodologically more rigorous.

### *2. "Multinational corporations are not global administrations"*

A second fundamental assumption of GAL rests on the implicit idea that multinational corporations do not constitute global administrations. The proponents of GAL

[20] See the overview provided by E. FROMAGEAU, *La théorie des institutions du droit administratif global. Étude des interactions avec le droit international public*, *op. cit.*, p. 68.
[21] P.-M. DUPUY, Y. KERBRAT, *Droit international public*, 10th ed., Dalloz, Précis, 2010, p. 588.
[22] This is particularly evident in the works published in the 2008 GAL Casebook, and in its subsequent 2012 edition.

deliberately restrict its scope to entities that display characteristics akin to those of the public sector—even when these entities are private in nature, such as ISO or ICANN. This postulate, which may seem self-evident within a French or European public law approach, is nonetheless highly debatable. At the very least, it reflects an underdeveloped reflection on the nature of global actors and "global administrations". The exclusion of multinational corporations from the category of global administrations (or even global actors) does not appear fully justifiable.

Two major shortcomings in GAL scholarship, whether from the Italian or American strand, should be emphasized in this regard: first, the absence of a clear definition of global administration; and second, the persistent confusion between the subjects and the actors of GAL.

GAL literature typically identifies five types of global administrations or "global regulators"[23]: states, including their subnational networks such as independent administrative authorities; international organizations; hybrid bodies combining public and private elements; informal transnational networks, such as the Basel Committee; and finally, private standard-setting organizations, such as ISO or institutions regulating banking and accounting standards. This categorization is presented as exhaustive and fails to clearly distinguish between entities subject to GAL and those contributing to its development. The main criterion used to characterize a global administration appears to be the recognition of its activity as serving the public interest – yet this notion is never rigorously defined. In fact, in 2012, Kingsbury explicitly rejected the idea that the public interest could serve as a defining criterion[24]. In practice, however, certain private structures, such as ICANN or ISO, are indeed included within the GAL framework.

The exclusion of multinational corporations from this category raises a conceptual difficulty. There is no compelling reason why such entities, especially when they invest heavily within a given state or across a transnational economic sector, should not be considered "global administrations," particularly when their activities align with a public interest purpose – or at the very least, when they are likely to affect public interest concerns such as environmental protection or personal data privacy. Consequently, the question must be addressed directly: why should multinational corporations not also fall within the scope of GAL, or be subject to it in one form or another?

GAL scholarship does not provide a direct answer to this question, seemingly dismissing it as irrelevant. In my view, this position is grounded in the idea that a global administration is one that both creates and applies GAL norms. The notion that a private company could act in the public interest and, more importantly, generate administrative norms remains difficult to accept within classical doctrinal frameworks. It is indeed rare for a European legal scholar – especially a French public law specialist – to assert that

[23] L. DUBIN, "Le droit administratif global, analyse critique de son existence et de son articulation avec le droit international public", *in* C. BORIES (ed.), *Un droit administratif global ? / A global administrative law ?*, *op. cit.*, p. 106 et ss.

[24] B. KINGSBURY, M. DONALDSON, "Global Administrative Law", *in* R. WOLFRUM (dir.) *Max Planck Encyclopedia of Public International Law*, vol. IV, Oxford, Oxford University Press, 2012 p. 472, §12.

private corporations could generate "administrative" law. Such a claim would likely be perceived as fundamentally challenging the very structure of administrative law and could be considered, at best, a conceptual misunderstanding and, at worst, a theoretical aberration. In any case, it would represent a doctrinal stance that is extremely difficult to sustain.

However, a multidisciplinary approach allows us to qualify this categorical rejection. From the perspective of management sciences, it quickly becomes apparent that the corporation constitutes a political institution, in the sense that it "governs", in much the same way as the state manages a public health crisis or a series of terrorist attacks[25]. This "governance" involves decision-making with potentially global implications, as well as adaptation to evolving operational rules. Consequently, the question of recognizing multinational corporations as global administrations is not a marginal debate, but rather raises a more fundamental critique of GAL. The failure to distinguish between actors and subjects of global law reveals a broader semantic and theoretical bias. In GAL scholarship, all entities are treated as global administrations, without any clear differentiation regarding their role in the production or application of norms[26]. Yet within this all-encompassing perspective, it becomes difficult (though not impossible) to incorporate multinational corporations into this conceptual framework.

This approach raises an additional difficulty: while claiming to break free from public international law, both schools of GAL paradoxically continue to rely on its classical categories without truly questioning them. The actors and subjects of GAL are essentially those of public international law, interpreted somewhat broadly but without any genuinely innovative distinction.

Thus, the critique is both methodological and substantive. In attempting to move beyond the traditional categories of international law (whether in terms of legal orders, sources, subjects, or actors) the GAL doctrine has reproduced the same conceptual frameworks, thereby limiting its own theoretical renewal. This doctrinal dead end is precisely the starting point for a reflection on the possibility of an alternative global administrative law, or "droit administratif global" in french, conceived in terms of positive law and rooted more firmly in the French legal tradition. This will be the focus of the second part of this analysis.

## II. PROPOSALS FOR AN ALTERNATIVE GAL

It is worth reiterating here that GAL is a scientific project with a prescriptive ambition. However, the purpose of this reflection is not to elaborate a prospective normative framework, but rather to explore the existence of a structured body of positive law. This divergence in approach does not, however, entail a systematic rejection of GAL

[25] This idea can even be found today, widely accepted in the French public debate on Corporate Social Responsibility; see, for example, J.-M. LE GALL, "L'entreprise est une institution politique", *Le monde.fr*, 13 février 2012.

[26] E. FROMAGEAU, *La théorie des institutions du droit administratif global. Étude des interactions avec le droit international public*, *op. cit.*, p. 100.

scholarship. On the contrary, that body of work has made it possible to identify numerous instances of legal phenomena that indeed fall within the scope of a global administrative law, as redefined here.

The approach adopted is therefore based on a clear distinction between the empirical observations emerging from GAL studies and the theoretical frameworks that have been derived from them. While the facts identified by GAL scholars provide a valuable foundation for reflection, the theoretical conclusions drawn, particularly the idea of international law being surpassed, rest largely on doctrinal assumptions that are not necessarily substantiated. Likewise, the conceptual constructions developed on the basis of those premises are not always convincing.

The objective, then, is to present an alternative proposal. This begins with an attempt to define the global administrative law whose recognition is suggested here[27] (A), followed by an examination of the value of such an approach and the perspectives it opens (B).

## A. A proposed redefinition of the GAL

In my view, any redefinition requires abandoning the notion of a global "administration". I instead propose referring solely to "global entities" (1), which are capable of making "global decisions".

### *1. Global entities*

Rather than maintaining the reference to a vaguely defined "global administration", it seems to me more appropriate to speak of "global entities". These entities are not necessarily defined by their capacity to produce or enforce global administrative law, but rather by their subjection to it during their activities. While these categories may at times overlap, they do not systematically coincide.

The identification of a global entity rests on a central criterion: its capacity to adopt global decisions. It is therefore necessary to clarify what is meant by this notion. A global decision can be defined as a decision (whether binding or not) that arises from or is conditioned by globalization, and whose effects transcend national legal frameworks, crossing legal systems and geographical boundaries. In concrete terms, such decisions address issues that fall outside the exclusive jurisdiction of states and require transnational coordination: the fight against terrorism, global financial regulation, environmental protection, biodiversity preservation, pandemic management, the fight against tax fraud and financial misconduct, as well as technical and normative standardization. The scope of such decisions is therefore extremely broad and, to some extent, tends to encompass all transnational phenomena.

[27] In my doctoral dissertation, I marked the distinction between the classical approach to GAL and my own by using the expression "droit administratif global" (in French).

Global decisions are also characterized by the fact that they are binding upon (or at the very least exert influence over) actors operating within multiple distinct legal orders. This criterion of the transnational dimension of the global thus echoes, to some extent, the conception of the transnational developed by Philip Jessup in 1956. In one of his seminal works, Jessup proposed an approach to transnational law that goes beyond the traditional sphere of public international law. He notably included elements of private international law and outward-facing aspects of domestic public law, considering transnational law as the entirety of norms applicable to international situations in the literal sense of the term: "[t]ransnational law then includes both civil and criminal aspects, it includes what we know as public and private international law, and it includes national law, both public and private[28]".

The example of the Kadi case[29], concerning a decision by the United Nations Security Council establishing a list of individuals designated as terrorists[30], illustrates this reality: such a decision produces legal effects within the international legal order, within the legal order of the European Union, within the domestic legal systems of its Member States, and, of course, with respect to the individuals concerned. Similarly, a decision adopted by ISO on the standardization of A4 paper size affects a wide range of economic and institutional actors on a global scale. Another example would be a decision to establish highly polluting industries in ecologically sensitive areas, in the absence of any oversight. Such a decision is likely to have consequences far beyond the borders of the host state, potentially affecting all of humanity.

From this perspective, an entity may, in my view, be qualified as "global" insofar as it makes such decisions—even though this qualification does not apply uniformly to all of its activities. A state, for instance, may be considered a global entity when it adopts regulations with extraterritorial effects in the field of personal data protection, but not necessarily when it redraws its internal electoral boundaries, as that decision remains strictly domestic. Moreover, this approach leads to the full inclusion of multinational corporations within the category of global entities. A decision that results in the accelerated destruction of the atmosphere through massive deforestation – even if it is legally permitted by the host state – constitutes a global decision by virtue of its transnational impact.

This proposal is grounded in the principles of institutional pluralism as formulated by Santi Romano[31], whose scope may be enriched by insights drawn from the writings of Herbert H. Hart[32]. According to this perspective, *ubi societas, ibi jus*: every organized entity possesses its own legal order; thus, each global entity produces an autonomous

[28] Ph. C. JESSUP., *Transnational law*, New Haven / London, Yale University Press / Cumberlege, 1956, p. 106.
[29] Developed in R. MAUREL, *Les sources du droit administratif global*, *op. cit.*, p. 247 and following.
[30] Notably through Resolution 1267 (1999) of October 15, 1999, S/RES/1237 (1999).
[31] S. ROMANO, *L'ordinamento giuridico*, 2nd ed. with additions, Sansoni, 1946, 190 p.
[32] H. L. A. HART, *The Concept of Law*, The Clarendon Press, 1961. For an example of the mobilization of both theories, see the works of Franck Latty on transnational legal orders in sports law: F. LATTY, *La* lex sportiva*. Recherche sur le droit transnational*, Martinus Nijhoff Publishers, Études de droit international, 2007, 849 p.

legal order that can be studied either in terms of its internal logic or through its interactions with other legal systems.

These interactions take various forms. On the one hand, they may involve relationships with autonomous and independent legal orders, as illustrated by the Kadi case, which reflects the material reception of global administrative norms within both the European Union and the United Nations, without the existence of a formal connection between those systems. On the other hand, some global entities operate within a framework structured by a reference legal order. This notion, inspired by Prosper Weil's *Grundlegung* concerning state contracts[33], refers to the legal system on which the given entity primarily depends at a specific point in time. In the conception of global administrative law developed here, the reference legal order for a multinational corporation may thus be the law of the state in which it is headquartered, or the state in which it conducts its principal activities. Similarly, the reference legal order for a Member State of the European Union is that of the EU, when the state acts within the framework of its membership. This frame of reference, although variable over time, may serve as a source of global administrative norms applicable to the entity in question at a given moment.

Accordingly, within this conception of global administrative law, global entities apply global administrative norms as part of their global decision-making activities. In this respect, the list of norms identified by GAL – transparency, reason-giving, the existence of review mechanisms, and so on – remains relevant. However, it is important to examine what specifically gives these norms their administrative character.

This question leads to a broader reflection on the very nature of the administrative quality of a normative framework. As recently emphasized by the French administrative law professor Benoît Plessix, GAL remains, at this stage, too underdeveloped and impoverished to be properly characterized as "administrative"[34]. This critique, moreover, echoes those historically directed at international law itself.

For a French jurist, this approach thus involves a degree of theoretical risk, insofar as it challenges certain well-established distinctions within (French) administrative law. Nevertheless, it also opens new avenues for approaching global administrative law through a more flexible articulation between norms and actors within the global legal phenomenon.

### *2. Global administrative decisions*

The idea developed here is based on a functional definition of the administrative nature of norms, detached from any organic criterion, though not necessarily excluding all forms

[33] P. WEIL, "Droit international et contrats d'État", *in Mélanges offerts à Paul Reuter. Le droit international : unité et diversité*, Paris, Pedone, 1981, p. 549-582 ; for further elements see R. MAUREL, *Les sources du droit administratif global*, *op. cit.*, p. 105 and following.

[34] B. PLESSIX, "Le droit administratif dans la globalisation", *in* M. CHAMBON et P.-M. RAYNAL (dir.), *L'identité de l'État dans la globalisation*, Ed. Université de Cergy-Pontoise / LEJEP, 2022, p. 181 and following.

of material criteria. While this approach may appear iconoclastic when measured against the canons of administrative law – and more broadly within the European legal tradition – it nevertheless follows a logic similar to that defended by Jean Rivero, a respected scholar of French administrative law, for whom (in the words of Georges Abi-Saab) administrative law is, above all, the law of "the exercise of power in everyday life"[35].

This perspective also resonates with analyses developed by certain scholars in management studies who examine the role of the corporation in French society. In this regard, the work of Armand Hatchuel, professor at Mines ParisTech and one of the key figures behind the creation of the "Société à mission" (mission-driven company) by the "Pacte law"[36], offers particularly valuable insight. The guiding idea is to conceive of administration in its etymological sense of management, and consequently, to envision administrative law as a law of *bene gesta*[37]. Applied to global administrative law, this approach allows for the inclusion of a broader range of actors and norms in the analysis, without being confined to classical institutional configurations.

Until recently, this line of thought appeared relatively isolated. However, a convergence of analysis now seems to be emerging, as evidenced by the recent publication of an article by Maxence Chambon in the French *Revue de droit international d'Assas*. Although he does not explicitly refer to the work presented here, the author arrives—through a very similar line of reasoning—at comparable conclusions regarding the nature and evolution of global administrative law:

> "The idea that corporations could serve as a new source of global administrative law is not as far-fetched as it may seem. On the one hand, the recent and remarkable rise of corporate social responsibility (CSR) has transformed the very notion of the corporation, which now increasingly incorporates social, societal, and environmental considerations—factors that are no longer alien to the public interest and may, at the very least, relate to the common good. On the other hand, some authors had, from the outset, envisioned that global administrative law would not be found primarily in the actions of public transnational or global entities, but should instead be devoted to international administrative activities originating from private or hybrid actors (part-public, part-private). This body of law could then be presented as a 'third legal order', a *lex administrativa*[38]".

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[35] This quote is cited by Benedict Kingsbury himself in an interview with Alain Pellet.: B. KINGSBURY, A. PELLET, « Views on the development of a Global Administrative Law », *in* C. BORIES (dir.), *Un droit administratif global ? / A Global Administrative Law ?*, *op. cit.*, p. 13.

[36] *Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises*. See A. HATCHUEL, K. LEVILLAIN, B. SEGRESTIN, "Comment la loi a instauré l'entreprise comme un acteur politique. Analyse historique et théorique de la loi Pacte et de la loi sur le devoir de vigilance", *Entreprises et histoire*, n° 104, 2021, p. 184-197.

[37] See A. HATCHUEL, "Exit to the past and voice for the future. Sciences de gestion, sciences fondamentales de l'action collective", *Revue française de gestion*, 2019, n° 285, p. 43-57; A. HATCHUEL, *Ce que gérer veut dire. Voyage à travers les dérives et les réinventions de l'entreprise contemporaine*, MA Editions, 2021, 291 p.

[38] M. CHAMBON, "Retour inattendu au droit administratif global", *Revue de droit international d'Assas*, n°6, 2023, p. 208, citing C. BORIES, "Histoire des phénomènes administratifs au-delà de la sphère étatique :

This analysis highlights the normative potential of CSR as a structuring framework for global administrative law. Although Maxence Chambon's reasoning is based on a comparison between the effects and functions of CSR-related contractual mechanisms and the early administrative police law in France, the conclusion he reaches is particularly thought-provoking:

> "If contractual mechanisms can thus confer a "coercive effect" on the prescriptive provisions of CSR, applying to a plurality of entities in the name of higher and shared principles, then how can one not, at least formally, question the potential role of multinational corporations in assuming a policing function within international commercial relations? In this light, CSR may well represent a relatively advanced expression of global "administrative" law which – although arguably less underdeveloped than other branches of global law – remains nonetheless primitive. Indeed, the protection of immanent values, rather than the pursuit of a voluntarist objective aimed more at those wielding power than at the subjects over whom it is exercised, is strongly reminiscent of early administrative law – the administrative law before administrative law – when it was essentially synonymous with the police function[39]".

While certain aspects of this analysis may be debated – particularly regarding the formation of CSR norms in international law – the core of the reasoning aligns closely with the conclusions defended here. These lead to a more precise definition of global administrative norms: those norms which, when applied to the decision-making process, to the contestation of that process or its impacts, or to the functioning of the entity issuing the decision, aim to enhance the legitimacy of the resulting global decision.

From this comparative and transdisciplinary perspective, it is not the rules enacted by actors exercising authority on the basis of a public or general interest – that is, an organic criterion – that should be understood as global administrative norms. Rather, it is the procedural norms that structure the global decision-making process itself that ought to be so qualified.

In other words, global administrative law encompasses the procedural rules governing the decision-making of global entities, whether public or private. It thus includes norms concerning the internal functioning of global entities (transparency, auditing, the creation of ethics or compliance bodies), as well as those that directly govern global decision-making (reason-giving, review mechanisms, environmental impact minimization, *etc.*).

This definition, while operational and capable of providing a structured framework for analyzing global administrative law, remains a proposal open to debate. It is unlikely to raise significant objections among scholars from Anglo-American legal traditions, but it may encounter resistance in France, where the administrative law tradition remains

tâtonnements et hésitations du droit et/ou de la doctrine", *in* C. BORIES (ed.), *Un droit administratif global ? / A Global Administrative Law ?*, *op. cit.*, p. 59. Our translation.

[39] M. CHAMBON, "Retour inattendu au droit administratif global", *ibid.*, p. 219. Our translation.

closely tied – for historically and pragmatically understandable reasons – to organic and material criteria for qualification. These doctrinal reservations, however, often seem to stem less from the definition of administrativity itself than from sociological factors specific to the structuring of the French legal field. Indeed, after a century of doctrinal formalization of administrative law around the organic criterion – and to a lesser extent, the material one – it appears difficult to envision a conceptual overhaul based solely on a functional and procedural approach. More importantly, one may question whether such a conceptual shift would serve any useful purpose for French legal scholarship – an issue that lies beyond the scope of the present reflection.

However, this approach finds strong theoretical grounding in the thought of Niklas Luhmann, particularly through his analysis of legitimation through procedure[40]. Such a conception of global administrative law, based on procedural norms aimed at reinforcing the legitimacy of global decisions, thus aligns with certain developments in systems theory as applied to law. From this perspective, the absence of an organic criterion in the proposed definition does not constitute a shortcoming but rather a necessity. The hypothesis of an additional material criterion – allowing certain norms to be qualified as global administrative law – remains conceivable; indeed, if one focuses on the purpose of global decisions, it is possible to identify multiple public interests underlying these norms. It must be acknowledged, however, that the inherent volatility of this approach makes it difficult to establish a unified material criterion.

This difficulty explains its absence from the definition proposed in the present analysis. While one might consider that global administrative norms respond to social needs expressed by various actors and legally translated through normative procedures, the diversity of the interests at stake makes any unified material qualification particularly complex. This observation helps explain the failure – albeit a relative one, since the authors of GAL never made such a search a fundamental condition of their project – to integrate a structuring material criterion into the definition of GAL.

The approach adopted here therefore does not entirely exclude the idea of a material criterion grounded in a global public interest, while remaining mindful of the inherent challenges of identifying such an interest. It seems more appropriate, in this respect, to reserve the use of this notion for qualifying the decisions themselves, rather than the norms that govern them.

In other words, the objective is not to resolve the impossible question of defining the "administrativity" of a legal system or normative framework, but rather to offer – in the context of globalization – a definition that is broad enough to be operational, while sufficiently rigorous to avoid the theoretical pitfalls that have given rise to critiques of GAL.

## B. Remarks on the benefits of this "alternative" Global Administrative Law

[40] N. LUHMANN, *Legitimation durch Verfahren*, Luchterhand, Neuwied, 1969.

Three potential benefits of the redefinition of GAL proposed above can be identified (1), before suggesting a few avenues for further research (2).

### *1. Three potential benefits*

First, global administrative law as presented here—which, as noted, overlaps significantly with many of the norms identified under GAL but does so within a distinct theoretical framework that is, in my view, more conducive to a positive law analysis—offers a means of understanding certain "legal artifices[41]".

Global administrative law is a law of appearances. While presented as a factor of legitimation, it is primarily developed to appear to legitimize global decision-making. The notion of "global democracy" in which it is purported to participate remains largely illusory, yet these norms help to sustain that idea—and thereby contribute, at least in part, to legitimizing global entities. In this sense, there is a performative function to global administrative law, and especially to its sources, which becomes particularly evident upon closer examination[42]. However, the GAL framework does not allow us to reach such conclusions, which to some extent deconstruct the phenomena it observes. To summarize this idea: if one rejects – along with the founders of GAL – the notion that there are identifiable sources of GAL, that is, specific modes of norm production, one necessarily closes off the possibility of analyzing how these norms are actually formed. This is unfortunate, because it is precisely through examining the processes by which norms qualifying as global administrative law are produced that one becomes aware of their intrinsic performative function, as well as many other critical elements.

Next—and somewhat paradoxically in light of the previous point—global administrative law, as conceived here, also allows for the desacralization of administrative law, and more specifically, for its extraction from the technical framework in which it has been gradually, whether consciously or unconsciously, confined. Indeed, administrative law exists both beyond and beneath the delegation of public service concessions, public procurement, administrative policing, public service, and the classification of administrative litigation branches: administrative law is the exercise of power in everyday life. It is about governance; and global administrative law is about better governance – whether in appearance or in substance.

This immediately raises the question of why we speak of global administrative law rather than global public law. This question, which has been posed to me many times, long lacked a fully satisfying answer. However, the explanation lies, in my view, precisely in the fact that global administrative law presents itself above all as the law of global good

[41] The expression is borrowed from a series of collective works published at the University of Clermont Auvergne See in particular A.-B. CAIRE, C. DOUNOT (ed.), *Les définitions. Les artifices du droit (II)*, Éditions du CMH, 2019, 184 p.

[42] This point is particularly developed in my doctoral thesis: R. MAUREL, *Les sources du droit administratif global, op. cit.*

governance, whether exercised by public or private actors. It is, ultimately, a "law of the ethics of management[43]".

A third potential contribution of studying global administrative law as conceived here lies in highlighting – particularly through an examination of its sources – the continued centrality of the State. The Italian school had already partially revealed this point, but stepping away from the methods of GAL is necessary to demonstrate it fully. In reality, the State remains omnipresent in one form or another, even in situations where it is claimed to have been surpassed by globalization. A schematic analysis of the relationships between global entities, from the perspective of the formation of global administrative law, reveals that the State is the direct or indirect origin of a large majority of normative processes – a reality that GAL, as defined by its founders, does not account for.

Even when the State is not the immediate source of these processes, it remains present, often in the background, or exerts indirect influence simply through the threat of intervention, which encourages self-regulation. Thus, the State's abstention from action in a given area does not mean it has been surpassed; rather, it reflects a strategic choice: it allows others to act while retaining the ability to intervene if its interests – whether general or otherwise – require it.

Moreover, a close analysis of the cases often presented as foundational to GAL reveals a telling paradox: quite frequently, norms of global administrative law emerge precisely when the State, acting as a regulator, intervenes in response to a situation perceived as problematic. This observation challenges the idea that GAL is developing in rupture with the state-based framework and once again calls into question the relevance of the GAL authors' foundational claim that international law is obsolete.

## *2. By way of conclusion: some research perspectives*

Finally, several research perspectives may be identified based on the present proposal for global administrative law.

First, there are avenues to explore regarding the potential contribution of French administrative law to global administrative law, particularly on a theoretical level. This field remains largely unexplored, and no in-depth systematic work has yet been devoted to it. The insights of major French administrative law scholars could prove especially fruitful in this regard. In fact, reading the works of Léon Duguit (1859-1928) played a fundamental role in reshaping the concept of global administrative law as proposed above. It appears that "Les Transformations du droit public[44]" offers a conceptual framework that could serve as one of its theoretical foundations.

[43] In more recent work, I develop the hypothesis that may initially raise questions about a "law of ethics," and more specifically a "international business ethics law" (in French : "droit international de l'éthique des affaires"). See in particular R. MAUREL, *Introduction au droit international de l'éthique des affaires*, Mare & Martin, à paraître en 2025.

[44] L. DUGUIT, *Les transformations du droit public*, Paris, Armand Colin, 1913.

One could even envision drawing connections between the thought of Léon Duguit and that of Maurice Hauriou (1856-1929). On the one hand, Hauriou's theory of the institution seems essential for fully grasping the dynamics of global administrative law; on the other hand, Duguit's idea of the social fact as a material source of law provides a particularly suitable theoretical basis for analyzing the sources of global administrative norms. The mere mention of these two foundational figures in French administrative law thus illustrates the rich potential this doctrinal tradition holds for enhancing the study of global administrative norms.

Moreover, French administrative law scholars have shown a growing interest in the impact of globalization on administrative law, an issue that represents one of the major contemporary tensions within the discipline[45]. While global administrative law does not claim to provide immediate answers to these questions, it nevertheless presents itself as a useful analytical framework for structuring such inquiries. Furthermore, the Italian vision of GAL offers particularly stimulating insights into these issues and undoubtedly deserves to be more widely disseminated and debated.

Finally, a third potential line of research concerns the still-unresolved question of the democratization of international law—its objectives, its limitations, and its mechanisms of implementation. In this regard, global administrative law may serve as a powerful analytical tool for examining the regulation of power at the international level and for encompassing a wide range of normative phenomena.

A related issue, which currently constitutes the focus of my research, involves the role of ethics in the globalization process – whether in the legal domain or in other normative frameworks. The analysis of the relationship between international law and ethics tends to support the hypothesis that global administrative law may ultimately resemble a "law of ethics", a view reinforced by its intrinsic function of preserving appearances.

This line of thought fully resonates with the idea of a "law of good governance" (or law of a *bene gesta*) which, in the final analysis, once again raises the age-old question of the boundary between law and ethics.

[45] This is evidenced by the earlier reflection of M. CHAMBON and the references he cites.