The internationalisation of administrative law: a French perspective[1]

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1. If for some authors the very existence of administrative law is miraculous[2] it is because its task as well as its content are intrinsically linked to the history of the Council of State. This *long-lasting* dependence, which conditions the loyalty of the administrative scientist to the guardians of the temple of administrative law, is the source of the creative force and also of the relative dogmatic weakness of French administrative law.

For a long time, this form of dogmatic insufficiency of administrative law was not discussed. There has been no lack of harsh criticism, which has gone so far as to question the very existence of administrative jurisdiction as an autonomous and sovereign jurisdictional order. Sometimes radically, sometimes more subtly[3] , the foundations of the institution and its law are questioned[4] . Yet, French administrative law has in some ways been the most illustrious source of administrative law science in Europe and in part of the world. Presenting the foundations of administrative law[5] , Sabino Cassese begins by explaining the Blanco judgment. Notions such as the general interest, the public service and the administrative contract have had an undeniable influence. It is palpable in many legal systems, including Spain, Colombia and to some extent Italy. In his teaching, even Otto Mayer constructed the German theory of administrative law on the basis of French administrative law, sometimes by contrast.

Although the cornerstones of French administrative law influenced the general theory of administrative law in the same way as Greek monuments structured the history of architecture, they were not followed by other exportable construction processes. Indeed, one refers to an external influence on French administrative law, and not to the reverse process, when one evokes the principle of human dignity[6] , legal certainty, legitimate expectations[7] , the reasonable duration of the process, the prohibition of cumulation of sanctions or the principle of good

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[1] This article was published in French as an introductory contribution to the conference "L'internationalisation du droit administratif", which took place at the Panthéon-Assas University (Paris 2) from 23 to 25 May 2018. The proceedings will be published for Editions Panthéon-Assas (2019).

[2] P. WEIL and D. POYAUD, *Le droit administratif.*[25], Paris, PUF , 2017, 3.

[3] G. BIGOT, *Ce droit qu'on dit administratif....* , Paris, *La mémoire du droit*, 2015. Even earlier and on a different register, no less radical B. LATOUR, *La fabrique du droit*, La découverte, 2004.

[4] The usual criticism of the Council of State's work seems to be increasingly directed at the way the institution functions and goes beyond the traditional dialogue between Palais Royal and the academy. Consider the criticism of the administrative competence over house arrest, the legitimate questions on the impartiality of the Vice-President of the Council of State in the exercise of his disciplinary functions, or the even more pregnant question of conflicts of interest.

[5] S. CASSESE, *Le basi del diritto amministrativo*, Turin, Einaudi, 1989 and ID. *La construction du droit administratif : France et Royaume-Uni*, Paris, Montchrestien, 2000.

[6] P. COSSALTER , *La dignité humaine en droit public français : l'ultime recours*, in *Revue générale du droit on line*, 2014, no. 18309 (www.revuegeneraledudroit.eu/?p=18309).

[7] See in particular: S. CALMES-BRUNET, *Du principe de protection de la confiance légitime en droits allemand, communautaire et français*, Paris, Dalloz , 2001.

administration[8] . There is nothing regrettable about this, provided that one is not convinced that French administrative law still exerts a universal influence[9] , when it no longer does[10] . In any case, it is easy to see how administrative law, as a notion and as a discipline, seems to be renewing itself strongly, in two ways: on the one hand, through the appearance of administrative law in the European Union and in the global space, in the relations between international bodies and NGOs ; on the other hand, through external influences on the sources and doctrine of internal administrative law. Both aspects of this internationalisation are known and are highlighted by a broad and cosmopolitan doctrine. Several of these doctrinal currents, which rarely intersect[11] , can be grouped under the banner of internationalisation.

The expression "internationalisation of administrative law" refers to a set of doctrinal currents and phenomena that confront administrative law with certain foreign elements. elements of foreignness. This complex set of ideas and developments in positive law seems to prefigure a reciprocal rapprochement of national laws and between these and the international order. In this way, internationalisation is not to be understood merely as a neologism, referring to phenomena of progressive subjection of domestic systems to international law, written or unwritten, or to the extension of the jurisdiction of the administrative judge to international relations[12] . It is in these two senses that in France we sometimes refer to the extension of the sources of administrative law[13] .

Although these aspects of internationalisation are of fundamental importance, the opening up of the administration and its law cannot be reduced to an examination of international influences on administrative law.

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[8] Of which there is indeed only a trace in a subordinate way in French administrative law, in a decision in chambers Council of i French State, Joint Chambers (CE Ccr.), 21 September 2016, Urban Community of Grand Dijon, n° 399656, T.

[9] An idea that probably reached its climax when Prosper Weil saw in the theory of *state contracts the* symbol of a universal influence of the theory of the administrative contract, whereas it seems to constitute its antithesis. P. WEIL, *Un nouveau champ d'influence pour le droit administratif français : le droit international des contrats,* in *Etudes et documents du Conseil d'Etat*, n. 23, 1970 ; *reprint* : *Ecrits de droit international*, Paris, PUF, 2000, 303-323.

[10] However, there are still some striking examples of direct influence, although not attributable to the work of the Council of State. One in particular, which seems to us to have never been documented despite its exemplary nature, is the almost word-for-word repetition of *Ordinance* No. 2004-559 of 17 June 2004 on partnership contracts by Spanish legislation in Royal Legislative Decree 3/2011 of 14 November, *by which the revised text of the Ley de Contratos del Sector Público was adopted.* The *contrato de colaboración público-privada* is the essentially identical copy of the partnership contract. Like the latter, it was repealed following the transposition of the 2014 EU procurement directives: Ley 9/2017, of 8 November, *de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014*. It should be noted that in this case, while the drafting of the Spanish regulatory text was clearly inspired by the French one, it was a transposition of the British practice of the *PFI* and not a contract, which has always met with the explicit opposition in France of both the Council of State and the Court of Auditors.

[11] With the notable exception of a conference organised on 14 November 2018 at the University of Tuscia, 'European Administrative Law and Global Administrative Law'. See E. CHITI, *European organisation and global organisation: elements for a comparison,* in this *Review* , 2009 , 359 ff .
See also S. CASSESE, *La funzione costituzionale dei giudici non statali. Dallo* spazio *giuridico globale all'*ordine *giuridico globale*, in questa *Rivista* , 2007, , 609 ff .

[12] J. MOREAU, *Internationalisation du droit administratif français et déclin de l'acte de gouvernement*, in *L'internationalisation du droit, mélanges en l'honneur de Yvon Loussouarn*, Paris, Dalloz, 1994, 293 ff.

[13] In the Loussouarn miscellany, Jacques Moreau dealt with the 'internationalisation of French administrative law' and the decline of the governmental act.

In the sense considered here, internationalisation more broadly includes doctrinal influences[14] , the phenomena of imitation or harmonisation[15] of European law (European administrative law), the subjection of national administrations to common administrative procedures in the international order (global administrative law) and the emergence of procedures enabling foreign administrative acts to take effect on national territory (transnational administrative law).

Internationalisation also refers to the processes of acceptance or resistance to conflicts of laws in space (private international law) as well as to the state's relations with regard to international arbitration and the consequences of arbitral decisions, regardless of whether this acceptance or resistance concerns appeals against judgments or *exequatur decisions*, or the distribution of jurisdiction to hear appeals against such decisions .

The term "internationalisation of administrative law", although hardly used in the French language, enjoyed a certain amount of success about ten years ago in Germany. After Mayer dedicated his habilitation thesis to the subject[16] , Christoph Möllers, Andreas Voßkuhle and Christian Walter edited a collective work on "international administrative law" (*Internationales Verwaltungsrecht*)[17] in 2007, which dealt in particular with internationalisation as a process[18] , before Claus Dieter Classen was invited the following year to discuss the subject at the annual congress of public law professors[19] .

Claus Dieter Classen seems to us to propose a systematic approach to the idea of internationalisation of the administration and its law, distinguishing vertical internationalisation, which involves organisations and international law in an ascending and descending sense, and horizontal internationalisation, which includes foreign influences on national law and the law of cooperation[20] .

As will be understood, internationalisation is a multifaceted phenomenon, which calls for the renewal or maintenance of a number of new areas of study. The internationalisation of administrative law can be considered as a phenomenon (section 2) and as a method (section 3).

2. The internationalisation of administrative law can be divided into four areas: doctrine, sources, activity and litigation. There is in fact a doctrine of internationalisation, which deals with the phenomena of relations between systems, applicable to administrative law in particular and public law in general. Without going so far as to reflect on the dissolution of the borders of

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[14] Inasmuch as influence presupposes imitation, whatever its intensity, extent or forms. C. WITZ, *Soixante ans d'influences du droit allemand sur le droit français des obligations*, in *60 ans d'influences juridiques réciproques franco-allemandes*, edited by P. Cossalter and C. Witz, Paris, Société de Législation comparée , 2016, 19 ff.

[15] Harmonisation, well known in the European space, is a process triggered by a higher, supranational authority, resulting in a "mere approximation between two or more legal systems". G. CORNU, *Vocabulaire juridique*, Paris, PUF, 2018..

[16] F.C. MAYER, *Die Internationalisierung des Verwaltungsrechts. Modi und Strukturen der Einwirkung auf das nationale Recht in Zeiten der Europäisierung und Globalisierung*, Tübingen , Mohr Siebeck, 2005 . The notion of internationalisation makes it possible to deal, as the title indicates, with both Europeanisation and globalisation. The term "hat" of internationalisation has, as here, a federating and unifying role for multiple trends.

[17] *Internationales Verwaltungsrecht*, edited by C. Möllers, A. Voßkuhle and C. Walter, Tübingen, Mohr Siebeck, 2007.

[18] F.C. MAYER, *Internationalisierung des Verwaltungsrechts*, in *Internationales Verwaltungsrecht*, edited by C. Möllers, A. Voßkuhle and C. Walter, Tübingen Mohr Siebeck, 2007, 39 ff.

[19] C.D. CLASSEN, *Die Entwicklung eines Internationalen Verwaltungsrechts als Aufgabe der Rechtswissenschaft* in *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer*, Band 67, 2008, 365 ff . The term will later be used in detail. See, for example, internalisation as a process of globalisation of legal problems and responses, in particular through the application of the Aarhus Convention : N. WIESINGER, *Innovation im Verwaltungsrecht durch Internationalisierung - Eine rechtsvergleichende Studie am Beispiel der Aarhus-Konvention*, Tübingen, Mohr Siebeck, , 2013 .

[20] C.D. CLASSEN, *Die Entwicklung eines Internationalen Verwaltungsrechts als Aufgabe der Rechtswissenschaft, op. loc. cit.*

the "open States" and their recomposition[21] , several doctrinal currents propose a new approach by including administrative law. This approach is based on the development of new relationships between legal systems, fuelled by the international activity of States.

Thus it is appropriate to distinguish the discourse on administrative law, the doctrine (section 2.1), from the objects of study, the internationalisation of administrative activity (section 2.2).

2.1. The study of the phenomena of internationalisation requires the examination of a considerable body of literature, which demonstrates the existence of doctrines of internationalisation, formed through international networks of teachers.

2.1.1. The doctrines of the internationalisation of administrative law are ancient. The advent of global administrative law has given prominence to a large number of forgotten authors, at least in France, who were the precursors of the emergence of the phenomena of globalisation of law.

Before mentioning them, it should be pointed out that what characterises these doctrines is the almost total absence of French authors, with the exception of the protective influence of Léon Duguit or Georges Scelle. In fact, it is mainly German and Italian authors, with the exception of a few Spaniards, who between the end of the 19th and the beginning of the 20th century, like today, constructed and animated the doctrine of administrative law in this field.

For example, the father of international administrative law is commonly regarded as Lorentz von Stein[22] . The word used by von Stein and the translation of the expression into Italian are certainly at the origin of the persistent confusion between the notions of international administrative law and international administrative law. The author defines *internationales Verwaltungsrecht* as the complex of activities of an administrative nature carried out by States, either by means of their own administrative bodies or by means of international treaties of a new type. It is not a question here of international treaties of peace or alliance, but of treaties with an administrative object (*Verwaltungsträge*), which allow for an initial embryonic elaboration of European administration.

After von Stein and up to the Second World War, there was a succession of authors who systematised or went beyond the German jurist's thinking, taking inspiration from new phenomena, such as the birth of the League of Nations (SDN): Emilio Bonaudi[23] , José Gascon Y Marin[24] , Paul Négulesco[25] , Andrea Rapisardi-Mirabelli[26] .

The influence of Georges Scelle is not foreign to the development of some of these doctrines, such as that of the emphatic Négulesco. Without wishing to reiterate Scelle's doctrine, it is clear that the law of 'functional splitting' leads to emphasising in the international system a properly administrative function and in the administrative system the execution of international law[27] .

It is well known, and there is no need to analyse the differences in a field where terminological confusion is frequent, that the current of international administrative law, which studies the exercise of an administrative function in the international system, is answered by international administrative law, which focuses on the elements of extraneousness applicable to

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[21] U. DI FABIO, *Das Recht offener Staaten*, Tübingen, Mohr Siebeck, 1998.

[22] See in particular: L. VON STEIN, *Einige Bemerkungen über das internationale Verwaltungsrecht*, in *Schmollers Jahrbuch für Gesetzgebund*, 1882, 395 ff .

[23] E. BONAUDI, *A proposito di Diritto Amministrativo Internazionale* , in *Annali della Facoltà di giurisprudenza di Perugia*, XL, Perugia, 1929, 103 ss .

[24] J. GASCÓN Y MARIN, *Les transformations du droit administratif international*, Recueil des cours de l'Académie de droit international,T. 46, IV, 1930.

[25] P. NÉGULESCO, *Principe du droit international administratif*, Recueil des cours de l'Académie de droit international,T. 51, I, 1935.

[26] A. RAPISARDI-MIRABELLI, *Diritto internazionale amministrativo*, Padua, Cedam, 1939.

[27] See for example : G. SCELLE, *Manuel de droit international public*, Paris, Editions Domat-Montchrestien, 1948, 18.

the activity of state administrations. The initiators of this doctrinal current were Karl Neumeyer from 1910[28] , Umberto Borsi[29] , Prospero Fedozzi[30] or Umberto Fragola[31] . Again, no Frenchmen. Since these old masters have been honoured several times, there is no need to dwell on their works here.

The contemporary doctrinal currents that were represented at the conference of 23, 24 and 25 May 2018, global administrative law (Sabino Cassese), European administrative law (Giulio Napolitano, Jan Henrik Klement) and transnational administrative law (Jean-Bernard Auby) are dense with references to the classical authors mentioned and many others. When Mathias Audit debuted in 2008 with his chronicle of transnational administrative law in the journal *Droit administratif*, then directed by Jean-Bernard Auby, he did so with a tribute to Karl Neumeyer[32] . It is common for analyses of *global* administrative law to refer to international administrative law, whether this is embodied in Borsi[33] , Negulesco[34] or Gascon y Marin[35] . The jurists of the past are cited, analysed and taken up by a small but active community of authors who lay the foundations of transversal analyses. This is a veritable wave, of which only a few drops have so far lapped the ethereal shores of French administrative law doctrine.

2.1.2. This wave has materialised in the current of *Global Administrative Law* (*GAL*), one of the inventors and promoters of which, Sabino Cassese, has done us the honour of presenting the *state of the art*. *Global Administrative Law* has so much questioned observers because of the transversal approach adopted by its promoters: straddling international law and administrative law, but also between the United States, represented by New York University (NYU), and Europe, represented essentially by the Italian academy.

It is even more certain that European administrative law has become a genuine branch of study of general administrative law. It is not insignificant that an entry is devoted to it in the *Traité de droit administratif* edited by Pascale Gonod, Fabrice Melleray and Philippe Yolka, just as it is not insignificant that it is the German Matthias Ruffert who edited it[36] . Although European administrative law has gained its own dignity in France[37] , this does not detract from the fact that it remains a rather peculiar field, unlike Germany, where it has become a sort of cornerstone of administrative doctrine. This is not so much due to the influence of Jürgen

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[28] K. NEUMEYER, *Internationales Verwaltungsrecht, Verlag für Recht und Gesellschaft,* Munich, Zurich, I, 1910; I, 1922; III I, 1936 ; III II, 1930; IV, 1936. A fifth volume is devoted to "internal" administrative law (*Innere*). See in French, K. NEUMEYER, *Le droit administratif international* in *Revue générale de droit international public*, 1911, 492-499.

[29] U. Borsi, *Carattere ed oggetto del diritto amministrativo internazionale*, in *Riv. dir. internaz.* , 1912, 368 ff.

[30] P. FEDOZZI, *Il diritto amministrativo internazionale (nozioni sistematiche)*, in *Annali dell'Università, Nuova Serie*, XII, 1902, 5 ff .

[31] U. FRAGOLA, *International Administrative Law*, Naples, Pellerano & Del Gaudio, 1951.

[32] M. AUDIT, *Veille de droit administratif transnational Chronique 2008*, in *Droit Administratif*, n° 10, October 2008, chron. 3.

[33] See for instance S. BATTINI, *The Impact of EU Law and Globalization on Consular Assistance and Diplomatic Protection* , in *Global Administrative Law and EU Administrative Law*, edited by E. Chiti and B.G. Mattarella, Springer, 2011, 174. B.G. MATTARELLA, *Umberto Borsi e il diritto amministrativo internazionale* , in *Riv. it. dir. pubbl. com.* , 2005, 933 ff .

[34] B. KINGSBURY, N. KRISCH and R.B. STEWART, *L'émergence du droit administratif global*, in *Revue internationale de droit économique*, 2013/1, XXVII, 37 ff .

[35] See B. KINGSBURY and M. DONALDSON, *Global administrative law*, in *Max Planck Encyclopedia of Public International Law*,.

[36] M. RUFFERT, *Chapitre IV - Le droit administratif européen*, in *Traité de droit administratif*, edited by P. Gonod, F. Melleray and P. Yolka, Paris, Dalloz, 2011, volume 1, 733 ff.

[37] *Traité de droit administratif européen*[2] , edited by J.-B. Auby and J. Dutheil de la Rochère, Brussels Bruylant, 2014. J. SIRINELLI, *Les transformations du droit administratif par le droit de l'Union européenne*, Paris, LGDJ , 2011.

Schwartze, to whom thoughts clearly run[38] , but thanks to the impetus of the "master" Eberhard Schmidt-Assmann, who in Heidelberg in 1989 founded the Institute for German and European Administrative Law (*Institut für deutsches und europäisches Verwaltungsrecht*).

A significant presence of European administrative law can also be found in Italy, where handbooks are increasingly numerous, although the subject does not seem to have been treated as systematically as in Germany so far; moreover, it is often closer to a sectoral teaching of EU law[39] than to a study of the effects of EU law on national administrative law[40] .

The development of the major doctrinal areas identified here indicates the emergence and consolidation of a study of phenomena linked to the export of administrative law concepts beyond the State and the penetration of globalised phenomena into the sphere of national administrative law. This internationalisation is palpable in the emergence of groups of experts and doctrinal figures supported by structured projects. In addition to an object of study, the *GAL* has been a network which, over a period of about ten years, has produced doctrinal analyses of great depth[41] at regular conferences, including the one in Viterbo. There are many other structured projects. One of the most important of these is 'Comparative European Public Law' (*Jus publicum europaeum*), an encyclopaedic project on comparative European public law launched by Armin von Bogdandy in Heidelberg[42] . This comparative approach, less "inclusive" than the previous ones, perpetuates and at the same time, perhaps, attempts to construct in the sphere of public law a *jus commune*, an idea or myth[43] quite widespread and ancient in civil law[44] . Even the chair "Mutation of action and public law" (MADP) directed by Jean-Bernard Auby, who did so much to build the thought of global administrative law and European administrative law and disseminate them in France, proved to be an essential tool for propagating the most contemporary reflections on comparative administrative law. Its termination, in June 2018, represents a serious loss. Although the MADP Chair has ended its activity, French-language doctrine cannot be absent at a time when the new comparative public law is being structured.

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[38] J. SCHWARZE, *Europäisches V erwaltungsrecht* , Baden-Baden, Nomos, 1988. J. SCHWARZE, *Droit administratif européen*, Brussels, Luxembourg, Bruylant & Office des publications officielles des communautés européennes, 1994 . J. SCHWARZE, *Europäisches Verwaltungsrecht : Entstehung und Entwicklung im Rahmen der Europäischen Gemeinschaft*, Baden-Baden , Nomos, 2005. J. SCHWARZE, *Droit administratif européen*[2] , Brussels, Bruylant, 2009.

[39] *European Administrative Law. Principles and Institutions*[3] , edited by G. Della Cananea, Milan, Giuffrè, 2011. M.P. CHITI, *European Administrative Law*[2] , Milan, Giuffrè, 2018.

[40] See by contrast: A. SANDULLI, *Il ruolo del diritto in Europa. L'integrazione europea dalla prospettiva del diritto amministrativo*, Milan, Franco Angeli , 2018. L. SALTARI, *Amministrazioni nazionali in funzione comunitaria*, Milan, Giuffrè , 2007.

[41] The temporary completion of which can currently be found in *Research Handbook on Global Administrative Law*, edited by S. Cassese, Cheltenham, Edward Elgar, 2017.

[42] The project aims to publish an encyclopaedic *handbook* of European public law, the *Handbuch ius publicum europaeum*, the first six volumes of which have already been published. The volumes published deal with the foundations and main lines of European constitutional law (1), the theory of the 'open state' (*Offene Staatlichkeit)* (2), the administrative law of the States of Europe, origins, current science and developments (3 to 5), and constitutional appeals (6). Volume I: *Grundlagen und Grundzüge staatlichen Verfassungsrechts* (2007); Volume II: *Offene Staatlichkeit - Wissenschaft vom Verfassungsrecht* (2008); Volume III: *Verwaltungsrecht in Europa: Grundlagen* (2010); Volume IV: *Verwaltungsrecht in Europa: Wissenschaft* (2011); Volume V: *Verwaltungsrecht in Europa: Grundzüge* (2014); Volume VI: *Verfassungsgerichtsbarkeit in Europa: Institutionen* (2016).

[43] J.-L. HALPERIN, *L'approche Historique et la problématique du Jus commune* in *Revue internationale de droit comparé* (2000), 717 ff .

[44] See F. CALASSO, *Introduzione al diritto comune*, Milan, Giuffrè, 1951. A. CAVANNA, *Storia del diritto moderno in Europa: 1*, Milan, Giuffrè, 1900. *Handbuch der Quellen und Literatur,* edited by H. Coing, Munich, , Max-Planck-Institut, 1973; H. COING, *Europäisches Privatrecht*, t. 1, *Älteres Gemeines Recht (1500 bis 1800)*, Munich, C. M. Beck1985.

2.2. If the currents of study we have mentioned are so active, it means that they are supported by a legal reality and that they are not mere intellectual constructions.

In this respect, the phenomenon of the internationalisation of administrative law falls largely within the field of interest of the doctrines that have been evoked, although it surpasses them, since it is both broader and more widespread. Indeed, it would be a mistake to consider that global administrative law deals exclusively with the activities of non-governmental organisations and that links are not made with other branches of comparative law. The phenomenon of internationalisation is broader than the contemporary doctrines of global administrative law, European administrative law or transnational administrative law. The phenomenon is broader because it is more widespread. The extraterritorial activity of the administration has developed (Section 2.2.1). It leads to the application of new "rules" of administrative legality (Section 2.2.2).

2.2.1. For the time being, the extraterritorial effects of the unilateral administrative act are little developed. This is based on the idea that the consent of the State is equivalent to its dispossession. Obviously, this is not the case and if a legal act can produce so-called "transnational" effects, this depends on the circumstance that at least two national states agree, at least for their omission. As regards the effect produced by acts enacted by public authorities in a different legal system, studied by private international law under the label of "foreign public act"[45] , it concerns "any intervention by a public authority in an individual private law relationship"[46] . The foreign public act, although consecrating the extraterritorial effect of an act issued by a public authority, does not concern administrative law relationships.

In fact, it is through the mechanism of mutual recognition that the transnational character of the administrative act is traditionally examined[47] , since there does not seem to be any domestic rule providing for the recognition of foreign administrative acts[48] . It was the famous Cassis de Dijon decision of 20 February 1979[49] that affirmed this principle of mutual recognition. According to the principle enshrined in this decision, any product lawfully manufactured and marketed in one of the Member States must be freely distributed in all the other Member States, unless it undermines an overriding requirement of general interest. The principle of mutual recognition has since spread to become the cornerstone of numerous harmonisation directives, for example on the recognition of qualifications.

The transnational administrative act has been defined as an act "issued by a public authority and subject to administrative law, which takes legal effect in the other Member States of the European Union by determination of Community law"[50] . But outside of mutual recognition, the transnational character of the administrative act is almost completely absent.

Essentially, therefore, the development of the extraterritorial activity of the State is supported by contracts concluded with foreign parties, or executed abroad and which, for this reason, are sometimes qualified as administrative contracts of an international character[51] . Malik Laazouzi in his contribution elaborates on the regime of arbitration rules applied[52] . It is

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[45] See . for a general presentation: C. PAMBOUKIS, *L'acte public étranger en droit international privé*, Paris, LGDJ, 1993.

[46] P. CALLÉ, *L'acte public en droit international privé*, in *Droit écrit*, 2002, 127.

[47] M. GAUTIER, *Acte administratif transnational et droit communautaire*, in *Traité de droit administratif européen*[2], edited by J.-B. Auby and J. Dutheil de la Rochère, Bruylant , 2014, 1303 ff .

[48] For France see T. PARIS, *La reconnaissance des actes administratifs étrangers en droit français* in *Recognition of Foreign Administrative Acts*, edited by J. RODRÌGUEZ-ARANA MUÑOZ, Springer , 2016, 115 ff .

[49] Aff. 120/78, rec. 649.

[50] M. GAUTIER, *Acte administratif transnational et droit communautaire*, in *Traité de droit administratif européen*[2] , edited by J.-B. Auby and J. Dutheil de la Rochère, Brussels, Bruylant, 2014, 1305.

[51] M. LAAZOUZI, *Les contrats administratifs à caractère international*, Paris, Economica, 2008.

[52] M. LAAZOUZI, *L'arbitrage et l'internationalisation des contrats administratifs* , in *L'internationalisation du droit administratif*, edited by P. Cossalter and G.J. Guglielmi, Paris, Editions Panthéon-Assas, 2019, forthcoming publication.

obviously the most visible contracts that attract attention and one might think that the example represented by the road toll concession of the French State to the private (Italian) company Autostrade per l'Italia S.p.A. is an isolated one[53] . It would mean forgetting the extraordinary proliferation of administrative agreements linking French local authorities to one of the twenty-three neighbouring foreign institutions, including German, Belgian, Italian, Spanish or Brazilian local authorities[54] .

The law of cross-border cooperation, which covers different types of cooperation depending on their sources and purpose[55] , opens up a field of study for administrative law whose diversity is astonishing. Administrative agreements allow, for example, the cross-border management of waste[56] or the allocation of patients between hospitals according to their specialities[57] . The most recent example of the prospects for cross-border cooperation is the publication on 29 May 2018 of the draft regulation "on a mechanism for the elimination of legal and administrative obstacles in cross-border cases"[58] . Reading its Article 1 is quite instructive. It traces the prospect of the application by a French administrative judge of a foreign law, made applicable on national territory by an international treaty[59] . This goes beyond the extraterritorial effect of the administrative act or the conflict of laws in space (see *below*).

2.2.2. This development of border law may lead to the application of new "rules" of administrative legality. Two examples will be given below : conflicts of laws in space and arbitration.

The first example is taken from an interesting decision of the French Council of State. By means of an agreement concluded in 1997, the region of Alsace, the French State, the *Land* of Baden-Württemberg and others laid down the terms of their participation and that of the Commission and the European Commission in the financing of a project for a cross-border institute for agronomic application and development. The region of Alsace, which commissioned the project, brought an action for damages against the French State, which had not fulfilled its commitment to financially support the project. Referring to the famous *Tegos* decision of 1999[60] , the Conseil d'Etat recalls that "the French administrative court, which has

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[53] Concerning this concession given to the subsidiary Ecomouv' for the collection of the ecotax: P. COSSALTER, *The failure of the French State illustrated by its road transport policy,* in *Mercato conc r eg.* , 2015, 85 ff .

[54] J. SOHNLE, *L'autonomie locale à l'épreuve du droit de la coopération transfrontalière*, in L'*Union européenne et l'autonomie locale et régionale*, edited by L. POTVIN-SOLIS, Brussels, Bruylant, 2016, 245 ff .

[55] J. GERMAIN, *Les sources juridiques de la coopération transfrontalière entre collectivités publiques françaises et allemandes,* in *La coopération transfrontalière en Grande Région: état des lieux*, edited by P. Cossalter, Saarbrücken, , EJFA, 2015, 31 ff .

[56] L. BABST, *Collecte et traitement des déchets en zone frontalière : étude de cas autour du SYDEME*, *Seminar im französischen Recht mit rechtsvergleichenden Aspekten zum deutschen Recht*, University of Saarland , 2015.

[57] L.P. FISCHER, *La coopération hospitalière transfrontalière : étude de cas*, *Seminar im französischen Recht mit rechtsvergleichenden Aspekten zum deutschen Recht*, University of Saarland , , 2015.

[58] COM (2018) 373 final. 2018/0198(COD).

[59] "1.This Regulation establishes a mechanism to enable, in relation to a cross-border region, the application in a Member State of the legal provisions of another Member State, where the application of the legal provisions of the first Member State would constitute a legal obstacle to the implementation of a joint project ("the mechanism"). 2.The mechanism shall consist of one of the following measures: (a) the conclusion of a European Cross-Border Commitment, which shall be directly applicable; (b) the conclusion of a European Cross-Border Declaration, which shall require a legislative procedure in the Member State".

[60] This is the decision of principle concerning contracts concluded by the administration outside French territory and which have no connection with French law (EC, Sec., 19 November 1999, Tegos, No 183648, 356). Mr. Tegos, who was employed as a substitute teacher at the French school in Athens, had been refused a renewal of his contract for the 1996-1997 school year by the director of the school. Having to define the question of the jurisdiction of the French administrative court, the Council of State ruled that

jurisdiction *ratione materiae* over international contracts, has no jurisdiction to hear a case concerning the performance of a contract that is in no way governed by French law [...]"[61] . The Convention provided that it was 'subject to German law and to the court of the seat of the L-Bank or of one of its branches'. According to the Council of State, it is not so much the attribution of jurisdiction to a German court as the reference to German law that determines jurisdiction. The approach is the opposite of the classic conflict of laws procedure in the area of private international law. In this way, the Conseil d'Etat refers to a German court, which applies German private law, a claim for damages between the Region of Alsace and the French State which, under the classic rules of French administrative law, would have fallen within the jurisdiction of the administrative court. Private international law is one of the objects of study of interest to internationalisation and raises, moreover, a rather stimulating reflection. Maxence Chambon and Elie Lenglart analyse the subject more skilfully[62] . With the exception of a doctoral thesis[63] , a conference at the Universität des Saarlandes[64] , an in-depth section of the journal *Actualité juridique du droit administratif*[65] and a few articles[66] , the question of the conflict of laws in space applied to administrative activities has enjoyed little interest on the part of French doctrine.

The second example refers to the use of arbitration in the performance of government contracts. We limit ourselves here to noting that the question of arbitration applied to state contracts is not new and has engaged the French doctrine of public international law. Prosper Weil[67] and, above all, Charles Leben[68] have on several occasions been active in the study of *state contracts*. Although this subject seemed to focus exclusively on large international investment contracts[69] , it is tending to expand more and more ; indeed, it no longer concerns

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"...there is no jurisdiction of the French administrative court over a dispute arising from the performance of a contract which is in no way governed by French law". The Conseil d'Etat considers, first of all, the common intention of the parties which, in this case, was to submit to Greek law. Moreover, no contractual clause contains any provisions of French law. The noteworthy element of this case is that Mr Tegos was employed in a department of the Ministry of Foreign Affairs without legal personality and, consequently, was an employee of the State in the context of an administrative public service. The case-law prior to the Tegos decision held that the jurisdiction of the administrative courts was applicable even if the contract was partly or even totally subject to local law (EC, SSR., 10 March 1997 Mrs. De Waele, req. n° 163182, T. 741: the case of an employee of the cultural service of the French Embassy in Mexico, whose employment contract, according to the Council of State, is subject to Mexican federal labour law).

[61] CE 5 juillet 2013, *Région Alsace*, req. n° 348050 ; M. CHAMBON, *La compétence du juge allemand pour trancher un litige opposant deux collectivités publiques françaises. Retour sur CE, 5 juillet 2013, n° 348050*, in 34 *Civitas Europa* (2015) , 191 ff .

[62] E. LENGLART, *Questions théoriques relative à l'extension du recours à l'arbitrage en droit public français*, in *L'internationalisation du droit administratif*, edited by P. Cossalter and G.J. Guglielmi, Paris, Editions Panthéon-Assas, 2019, forthcoming publication.

[63] M. CHAMBON, *Le conflit des lois dans l'espace et le droit administratif*, Paris, Mare & Martin, 2016.

[64] Seminar of the Association of French and German Jurists in Sarrebruck on 24 September 2015. The reports of this seminar have not been published.

[65] See the dossier *Le juge administratif et le droit international privé*, *AJDA* 2015 n° 20: M. LAAZOUZI, *Quand droit administratif et droit international privé se rencontrent*, 1134 ; M. GAUTIER, *Une autre traversée du Rhin*, 1139 ; F. BRENET, *Contrat administratif international et droit international privé*, 1144 ; F. LOMBARD, *Arbitrage international et répartition des compétences juridictionnelles*, 1144.

[66] See in particular M. CHAMBON, *L'espace et le territoire: le droit public à l'épreuve de l'extranéité*, in 35 *Civitas Europa* (2015), 95 ff .

[67] P. WEIL, *Un nouveau champ d'influence pour le droit administratif français : le droit international des contrats*, in *Etudes et documents du Conseil d'Etat*, 1970 ; *reprint* : *Ecrits de droit international*, Paris, PUF, 2000, 303 ff .

[68] C. LEBEN, *La théorie du contrat d'Etat et l'évolution du droit international des investissements*, 302 Recueil des cours, 2003. ID, *L'évolution de la notion de contrat d'Etat - Les Etats dans le contentieux économique international, I. Le contentieux arbitral*, in *Revue de l'arbitrage*, 2003 , 629 ff .

[69] Indeed, the whole case of the five famous arbitral decisions that justified the creation of the notion of *state contract* and allowed the emergence of a specific legal regime: *Lena Goldfields* of 2 September 1930; A. NUSSBAUM, *The Arbitration between the Lena Goldfields Ltd and the Soviet Government*, in

only oil and gas exploitation, but also public services, including those provided on French soil. It should be noted, however, that the *Achema* judgment[70] could halt the development of "public arbitration" by excluding its use in relations between EU Member States and uropean Union. From another angle, the prospect of the signing of the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada revives the issue in different forms. In any case, the question of the *body of* law applied by the arbitrators remains and is bound to remain. They are allowed to apply, instead of national laws, general principles drawn from commercial practices specific to a specific economic sector. The fundamental question is thus that of the resistance of elements derogating from the common law capable of protecting the State and its articulations in the exercise of sovereign prerogatives[71] .

3. It is through its boundaries that every scientific discipline evolves and grows stronger, constantly questioning its axiomatic elements. Like any other knowledge, law manifests its fascination not through the constant reminder of its principles, but through their contradiction. This is what the process of internationalisation expresses in all its elements: it allows for a renewed reflection on the methods of studying domestic administrative law (section 3.1) and comparative law (section 3.2).

3.1. Comparative law in the strict sense has never really been able to evolve French administrative law (insofar as such an evolution was necessary) because it did not respond to a need. The imperative nature of the application of European Union law, the development of the State's extraterritorial activity, and legal globalisation, with the classic areas of the police and public service competing with external regulation, require changes whose pace is no longer dictated by the will to reform, sometimes stimulated by the Council of State. Internationalisation must penetrate the common language of administrative law (section 3.1.1), overcoming traditional academic barriers (section 3.1.2).

3.1.1. The reference to the doctrines of internationalisation will have made it possible to understand this: each of the components of what we have called "the internationalisation of administrative law" constitutes in itself an object of study, although these subjects are not always grouped together.

The first advantage of dealing with this subject is not so much the search for novelty, but rather the desire to perpetuate existing currents of study. It is necessary to take a position. As Matthias Ruffert recalls in a chapter devoted to European administrative law in the *Traité de droit administratif*[72] , Eberhard Schmidt-Aßmann, considered in Germany to be an authority on

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Cornell Law Quarterly, 1950-1951, 31 ff . *Petroleum Development (Trucial Coast) Ltd v. cheikh d'Abu Dhabi* en 1951, *ICLQ*, 1952, 247 ff . *Ruler of Qatar v. International Marine Oil Company* de 1953; ILR, 1953, 545. *Arabie saoudite et l'Arabian American Oil Company (ARAMCO)* of 23 August 1958; *Rev. crit. dr. int. privé*, 1963, 272-363. *Sapphire International Petroleum Limited v. National Iranian Oil Company* of 15 March 1963; *ASDI*, 1962, 273-302. See in doctrine, in addition to the previous references to Charles Leben and Prosper Weil: F.A. MANN, *The Law Governing State Contracts*, BYbIL, 1944, 11 ff. A. MCNAIR, *The General Principles of Law Recognized by Civilized Nations* in BYbIL, 1957, 1-19. A. VERDROSS, *Quasi-International Agreements and International Economic Transactions*, in *Yearbook of World Affairs*, 1964, 230 ff .

[70] CGUE, 6 March 2018, *Slovak Republic v. Achema*, C-284/16; F. SCHUBERT, *L'UE et l'arbitrage d'investissement - une nouvelle relation à la lumière de l'arrêt 'Achmea'*, in *Revue générale du droit* 2018 ; M. LAHOUAZI, *L'arrêt 'Achmea' ou les dissonances entre l'arbitrage d'investissement et le droit de l'Union européenne*, in *Revue du droit de l'Union européenne*, 2018 , 217 ff. ; C. NOURISSAT, *La clause d'arbitrage contenue dans un traité bilatéral d'investissement n'est pas compatible avec le droit de l'Union européene*, *Procédures*, 2018 nº 5, 18; D. SIMON, *L'arbitrage en matière d'investissement remis en cause par la Cour de justice? , Europe*, May 2018 nº 5, 5-9.

[71] See for numerous references to this issue: M. AUDIT, *Contrats publics et arbitrage international*, Brussels, Bruylant, 2011.

[72] M. RUFFERT, *Chapitre IV - Le droit administratif européen*, in *Traité de droit administratif*, edited by P. Gonod, F. Melleray and P. Yolka, Dalloz, 2011, volume 1, 733 ff .

administrative law, took the view in 2004 that the creation of an administrative law system would now pass through the development of European administrative law[73] . In any case, the maintenance of the fields of study inaugurated by Jürgen Schwarze is assured. We have quoted Claus Dieter Classen's article on the internationalisation of administrative law. We should add that this article is the written version of his communication to the 2007 annual meeting of German professors of public law, which means that this authoritative meeting considered the topic of fundamental importance for the contemporary evolution of administrative law.

The pervasiveness of the issues of Europeanisation and internationalisation of administrative law is now commonplace in Germany. The same happens in Italy, where the manuals of European administrative law[74] have already reached a considerable number. Is there any need to recall the fundamental role of Italian doctrine in the emergence and evolution of global administrative law? The openness of these themes has allowed them to enter the common language of the doctrine of administrative law in the same way as the powerful current of contemporary constitutionalism determined the famous "fundamentalisation" of rights. Of course, it can be argued that European administrative law and transnational administrative law are nothing more than a different way of systematising Union law and that global administrative law is a borrowing from public international law. With regard to arbitration law and private international law, provincial disputes are of little use.

All these observations, which constitute recurrent criticisms, are acceptable. And these criticisms are to a large extent irrefutable, if one limits the analysis to the disciplinary field taken into consideration by those who formulate them. But the project of global administrative law, and the topic of internationalisation, do not challenge the current disciplinary boundaries.

3.1.2. The desired dissemination of our study themes cannot be achieved without going beyond the current categories.

In France, the principle of the link between competence and merit, which holds together like the law of gravity the various elements of the sources of administrative law, excludes mixing[75] . The acute reflections of Carlo Santulli, published in the *Revue française de droit administratif* (*RFDA*), highlight a form of deaf obstructionism of the French Council of State to the direct applicability of international treaties[76] . The *Tegos* jurisprudence, cited above[77] , marks the rejection of direct application by the administrative judge of sources other than those qualifying, with an acceptable degree of reasonableness, as administrative law. Nevertheless, the application of foreign law is part of the work of the ordinary judge[78] . But the ordinary judge

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[73] M. RUFFERT, *op. cit.* , 734. Moreover, as already mentioned, he founded the Institute of German and European Administrative Law in Heidelberg.

[74] See the references cited *above*.

[75] The Blanco judgment is considered to be the cornerstone of French administrative law. This consideration is probably exaggerated, although the contribution of this judgment is the principle of the "link between jurisdiction and merit". The French Court of Conflicts, which defines conflicts between administrative and ordinary jurisdiction, issued a judgment on 8 February 1873, in which it held that the administrative court had jurisdiction in a dispute over non-contractual liability of the public service. The Court considered, firstly, that the liability of the State for acts committed by its employees "cannot be subject to the principles laid down in the Civil Code", but is governed by "special rules". It follows, secondly, that only the jurisdiction of the administrative judge can be admitted. It is a question of establishing a direct (and which will prove to be reciprocal) link between the applicable law and the jurisdiction: what is called "*la* liaison *de la compétence et du fond*" (link between the competence and the merits).

[76] See, for example, C. SANTULLI, *Chronique de droit administratif et de droit international*, in *Revue française de droit administratif*, 2017 , 335 ff. .

[77] CE Sec., 19 November 1999, Tegos, 183648, rec. 356.

[78] See on this point *Application du droit étranger par le juge national : Allemagne, France, Belgique, Suisse*, edited by C. Witz, Paris, *Société de législation comparée*, 2014.

is still the judge of common law; he is not, as the administrative judge has constantly reiterated, a judge *ratione materiae*[79] .

And the jurisdiction of the administrative judge in matters of appeal and *exequatur* of arbitral awards to which the French administration is a party is not, after all, a question of jurisdiction but concerns the safeguarding of principles of administrative law, even if these principles are theoretically weak or of limited interest[80] . Jurisdiction follows merit.

Many examples could be given of the closure imposed by the principle of the link between competence and merit, and of the Council of State's firm intention to preserve the autonomy of the sources, which goes beyond strict compliance with the principle of the link. The effect of this closure is deleterious if the academic limits his field of enquiry to the object defined by the Council of State, which impoverishes the essence of administrative law and administrative scientists. The problem is wider and also stems from a form of closure of legal studies. When global administrative law made its appearance, the first analyses, especially in France, concentrated mainly on determining whether it was international law, administrative law or a new branch of law[81] . Its classification as a scientific field took priority and overshadowed the object of study.

The debate, as far as administrative law is concerned, seems to us to be in vain.

Defining categories is essential if a category leads to the application of a particular legal regime. But extending the study of administrative law (and not administrative law) beyond the borders of the state makes the search for and preservation of categories futile. As Jacques Ziller points out, there are few authors who distinguish between administrative law and administrative law[82] . And yet, this is necessary as soon as a comparative investigation is undertaken, since the subjective and objective scope of administrative law varies from one legal system to another. So much so that the crossing of national borders immediately undermines the unambiguous relationship between competence and merit, and the very attachment to the application of administrative law. Isn't the responsibility of the administration in Germany entirely subject to ordinary jurisdiction, while in France it is only partially? Does not the new law on "public contracts" now fall partly under ordinary jurisdiction? By a play of mirrors, the study of internationalisation requires an effort of systematisation that goes beyond the categories of what in France is called "domestic comparative law", public-private. Dialogue is necessary. It will not have escaped anyone's notice that the great specialists in the law of arbitration applied to public bodies are professors of private law[83] . What is still lacking is the dissemination work

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[79] "Whereas the ordinary judge may hear, by virtue of the rules on conflict of laws and jurisdiction, a dispute concerning a contract governed by a foreign law, the French administrative judge, having jurisdiction in matters of international contracts, cannot hear the validity of a contract that is not governed in any way by French law" EC, 30 March 2005, *SCP de médecins Reichheld et Sturtzer*, n° 262964, rec, 129 ; M. AUDIT, *Incompétence du juge administratif à l'égard d'un contrat régi par une loi étrangère, in Actualité juridique droit administratif* , 2005, 1844 ss. , ; C. BOITEAU , *Chronique de droit administratif* in *La Semaine Juridique Edition Générale* 2005, I, 145.

[80] We take the liberty of arguing that the allegedly constitutional principle of subjecting public procurement contracts to the principles of transparency and equal treatment (Decision No 2003-473 DC of 26 June 2003) is the result of a purely circumstantial case law of the Conseil constitutionnel and does not deserve to integrate the core of the principles applicable to the administration.

[81] See the very particular debate on the positioning of global administrative law vis-à-vis public international law in C. BORIES, *Histoire des phénomènes administratifs au-delà de la sphère étatique : tâtonnements et hésitations du droit et/ou de la doctrine*, in *Un droit administratif global*, edited by C. Bories, Pedone, 2012, 25 ss. ; see also, J. D'Aspremont, Droit administratif global et droit international, ivi, 83 ss. also, J. D'ASPREMONT, *Droit administratif global et droit international*, *ivi*, 83 ss. ; L. DUBIN, *Le droit administratif global, analyse critique de son existence et de son articulation avec le droit international public*, *ivi*, 95 ss .

[82] J. ZILLER, *L'usage du qualificatif de droit administratif en droit comparé*, in *Un droit administratif global*, edited by C. Bories, Pedone, 2012, 127-138, 127.

[83] We refer to Malik Laazouzi, who is participating in the conference, but we cannot forget the essential role of Mathias Audit.

that will make it possible to spread within the community of public lawyers a base of knowledge, if not shared, at least common knowledge of the mechanisms of arbitration.

More prosaically, it is rather difficult to find in a handbook of administrative law an exhaustive view of French administrative jurisdiction in cases where there are elements of extraneousness: yet, from the extraterritorial jurisdiction of the French administrative judge to the jurisdiction of foreign courts over the actions of the French administration, there is no lack of arguments.

3.2. Internationalisation calls for an enrichment of the comparative law method. While comparative law in the strict sense is still essential as a principle of openness, as Armin von Bogdandy did with his *Jus publicum europaeum*, it has shown its limits because it does not deal, as civil law has done for over a century, with specific issues: the international sale of goods, for example. The development and spread of international administrative activity offers the opportunity to provide comparative administrative law with concrete examples. Moreover, it is precisely the study of *case studies* that has made it possible to structure the reflection on global administrative law[84] .

This is true for both vertical internationalisation (Section 3.2.1) and horizontal internationalisation (Section 3.2.2), to borrow C.D. Classen's distinction.

3.2.1. With regard to vertical internationalisation, it is European administrative law that proposes the most structured and effective method.

No fewer than three contributions have set out to demonstrate the dizzying prospects of European administrative law. Giulio Napolitano explicitly points out the usefulness of this subject for comparative analysis [85]. Jan Henrik Klement, referring to the influence of European law on the attribution of powers, invites us to question the democratic legitimacy of independent administrative authorities, a task that has been neglected in France since the early 1990s[86] . Ulrich Stelkens, for his part, presents an ongoing research project on general pan-European principles of good administration[87] .

There are many areas of research that could benefit from a comparative approach to the application of EU law. A good understanding of EU law and its legislative developments often makes it necessary to understand the imperatives of each legal system. Paradoxically, there is a return to a rather classical approach to comparative law, since the transposed Community concepts conceal classical legal institutions. The descriptive and functional methods thus prove to be of great help in understanding future developments in administrative law[88] .

As far as global administrative law is concerned, it understandably lends itself less to close comparison. Whether the law of the global space is really law[89] , whether this law is or is not administrative law, are classic questions and almost everything has been written on the subject. However, an approach that wants to be considered exhaustive of the law of French administration can no longer avoid dealing carefully with topics such as the ICANN , the *Codex alimentarius* or the law of sport.

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[84] See for instance *Global Administrative Law: The Casebook*[3] , edited by S. Cassese, IRPA, 2012.

[85] G. NAPOLITANO, *European Administrative Law and Comparative Administrative Law: Fierce Rivals or Mutual Friends?* , in *L'internationalisation du droit administratif*, edited by P. Cossalter and G.J. Guglielmi, Paris, Editions Panthéon-Assas, 2019, forthcoming .

[86] J. H. KLEMENT, *L'influence du droit européen sur l'exercice des compétences en Allemagne*, in *L'internationalisation du droit administratif, op. cit.*

[87] U. STELKENS, *Les principes généraux panuropéens de bonne administration - Présentation d'un projet*, in *L'internationalisation du droit administratif, op. cit.*

[88] One of the many examples is European public procurement law, the development of which over the last twenty years has responded to the needs of some of the most economically important States: the United Kingdom, Germany, and Italy in particular. French law is, so to speak, never taken into account.

[89] B. KINGSBURY, *The Concept of ' Law ' in Global Administrative Law*, in *The European Journal of International Law* .

3.2.2. Horizontal internationalisation can be explained by referring to transnational administrative law dealt with by Jean-Bernard Auby and border law[90] .

With regard to transnational administrative law, one might have some hesitation in considering it horizontal since, as has been recalled, until now it has been based on the Community principle of mutual recognition, as can be deduced, among others, from the recent writings of Jaime Rodríguez-Arana Muñoz[91] . However, it becomes horizontal if one accepts that it also includes the law of border administrative agreements, conflict of laws in space or arbitration.

As mentioned above, the range of concrete examples provided by cross-border and crossborder cooperation is practically inexhaustible. Enriching the analysis with such examples makes administration an object of comparative law. The results of the analysis are concrete and satisfy in equal measure the hunger for theoretical knowledge and the practical imperative. The internationalisation of the law of administration provides an opportunity to test functionalist and factual methods on an object of public law[92] .

Certainly the announced encounter between French administrative law and foreign rights is still not taking place (or is no longer taking place if we refer to what preceded the *Tegos* jurisprudence), at least on French soil. But it is possible to think that the *Tegos* case law is not the *last resort* in this matter and that, just as Article 6 of the European Convention on Human Rights had to overcome the obstacle of criminal and civil matters to cover French public subjects, Article 1 of the Brussels I *bis* Regulation[93] may one day cover administrative action not consisting in the exercise of public power[94] .

Moreover, one should not forget the mirror effect of the case law of the French administrative judge: if the contractual and even quasi-contractual relations of French public entities are subject to a foreign judge, the study of foreign law applicable to the French administration is itself of interest. Let us consider a final example that illustrates what has been argued here. The *Sydeme* (Syndicat mixte de transport et de traitement des dépôts householdes de la Moselle d'Est), responsible for the transport and treatment of household waste on the territory of fourteen Moselle intercommunautés, concluded an agreement with EVS (*Entsorgungsverband Saar*), a public structure responsible for the treatment of household waste on the territory of the Saarland (Germany). This agreement is a "contract for local cooperation and mutualisation of services for the treatment of household waste", concluded pursuant to the judgment CGUE 9 June 2009, C-480/06 Commission of the European Communities v. Federal Republic of Germany. The German site of Neunkirchen has "thermal recovery" capacities and the French site of Morsbach has bio-waste methanisation capacities, so the two entities exchange incinerable waste and bio-waste. An analysis of the contract is interesting[95] , although it is

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[90] On border law, see especially, in a bilingual edition: P. COSSALTER , *Grenzüberschreitende Zusammenarbeit in der Großregion : eine Bestandsaufnahme - La coopération transfrontalière en Grande région : état des lieux*, Edition juridiques franco-allemandes, 2016. The work is available in its entirety online in the *Revue générale du droit*.

[91] *Recognition of Foreign Administrative Acts*, edited by J. Rodrìguez-Arana Muñoz, Springer , 2016.

[92] For a concise presentation of comparative law methods: B. JALUZOT, *Méthodologie du droit comparé : bilan et prospective*, in 57-1 *Revue internationale de droit comparé*, 2005.

[93] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. "Article 1. § This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)."

[94] On the subject: F. BRENET, *Contrat administratif international et droit international privé*, in *AJDA* 2015 , 1144 ff. See for an original attempt by the CAA Douai to go in this direction : CAA Douai, 29 mai 2012, SA King Consult, n° 10DA01035, *Actualité juridique droit administratif*, 2012, 2223, concl. V. Marjanovic. M. Laazouzi, *Le contrat administratif international sans le juge administratif : à propos de la désignation conventionnelle du juge étranger*, in *Revue française de droit administratif* , 2013, 46 ff .

[95] L. BABST, *Collecte et traitement des déchets en zone frontalière : étude de cas autour du SYDEME*, *Seminar im französischen Recht mit rechtsvergleichenden Aspekten zum deutschen Recht*, Universität des Saarlandes, dact., 2015.

beyond the scope of this study. We merely note that Article 14 of the agreement stipulates that disputes between the parties are to be referred to the "competent administrative court". It would be interesting to know, if the Strasbourg Administrative Court were seised, what it would decide about jurisdiction and applicable law, since the latter has not been established by the Convention. It would be even more interesting if the matter were to be referred to the *Verwaltungsgericht* Saarlouis, since the matter belongs in principle to ordinary jurisdiction in Germany.