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Global Governance from the Perspective of Law and Economics

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Abstract

The globalization process of the last decades has challenged the theoretical approaches of economics, particularly in the field of governance. This is the case with law and economics insofar as global rules, in conformity with economic principles, are necessary to govern the increasing interdependence that emerges from larger and deeper relationships, particularly between national governments, transnational firms and international institutions, that characterize globalization. Considering global governance as the management of the world economy in a way that accommodates the interests of its diverse players, it is clear that there is no system of law that covers the global marketplace, at least in some important respects. Moreover, many of the globally relevant laws and rules are drawn up at a nation-state level. This paper explores the possible conflicts that may arise from this situation and the way that we can cope with them. It also raises some questions related to the core subject: What may the contribution of law and economics be to the resolution of these problems? Is law and economics well-equipped to deal with international problems of this type? What are the legal incentives and consistent frameworks that may be created, inspired by this approach, for a better functioning of the global system? Within this context, we will focus on some major topics of law and economics, such as regulation and effective competition. Particular attention will be addressed to the analysis of global rules, their emergence and enforcement, linked to the choices made by the players on the international stage, for example between discretion and cooperation.

Key words: law and economics; governance; globalization; international institutions; diversity

1. Introduction

The age of globalization has brought to the forefront the need to develop a theoretical approach of governance that more closely embraces governments, transnational firms and international institutions in their multiple interactions on the broadest geograph-

ical scale. Governments and international organizations, in a criss-crossing process, produce rules that have a particular impact on the behavior of transnational firms (we mean by this firms that fulfill a combination of multi-domestic and global strategies), just to mention the three institutions with the strongest impact at this level. Nonetheless, others, such as non-governmental organizations (NGOs) and religious communities, are also important, as are those in which organized crime is effective. The three main players of the international game mentioned above are, in general, supported by large, complex administrative structures. However, they have quite different degrees of leverage over the global process. In such circumstances, and considering the deeper integration of the world economy developed hereafter, it is often argued that an increasing number of issues should be treated at a global level, rather than a strictly regional or national level, not to mention the individual level. As succinctly expressed by Pascal Lamy, Director General of the WTO, in November 2009:

> Global challenges need global solutions and these can only come with the right global governance, which today, twenty years later (after the fall of the Berlin Wall), remains too weak.

Many other authors have shown similar concerns from different perspectives, particular in the wake of the world financial crisis of 2007-2008, for example: "How we might 'govern' the global economy is a question that has gained increasing importance for the scholar of political science and international relations over the last decade or so." (Higgott 2009, 1)

In light of this claim, the present paper bridges global governance and law and economics analysis, focusing on some aspects of this approach that aim to achieve efficiency through competition, regulation and the monitoring of monopoly activities among major global players. Indeed, in his appraisal of the intellectual history of law and economics, Rowley (2005, 24-25) stressed that its research program, particularly in the initial stage, emphasized "theories concerning the wealth-maximizing characteristics of the common law – property, contract and tort … using rational choice theory, complemented by sound microeconomic theory", in order to efficiently induce the desired outcomes. It is also necessary to emphasize, following Drobak and North (1999, 56), the role of legal institutions (including the enforcement of their decisions) in the growth process, insofar as they "make up the 'rule of law', an essential component of sustained economic growth. Real economies cannot operate without these legal underpinnings. Likewise, realistic economic analysis has to incorporate legal institutions." Taking into account these views, we shall pay particular attention to the elaboration of rules and standards and their enforcement by institutions with global impact. In so doing, we also accept the following challenge:

> Economists and jurists alike have debated the appropriate role of economic analysis in the institutional design of lawmaking and the limits of methods of evaluation of social preferences and aggregate welfare … The marriage of law and economics has also affected the economics profession, contributing to the expansion of the original domain of microeconomic analysis – the

> study of individual and organizational choices in the market – to the study and understanding of other institutions and non-market phenomena … law and economics can no longer be appraised as a branch of applied microeconomics; rather, it must be seen as contributing to a better understanding of the economic system itself. (Parisi 2005, 33-37)

Of course, our work connecting two areas, global governance and law and economics, which are not usually analyzed together, must be seen as basically exploratory in order to identify the main points of the issue. In this context, an important caveat must be borne in mind: the global economy is not a level playing field; it has underlying power relations in which countries are differently endowed, which may bring about global arrangements that produce unequal gains, if not losses for some of them, for example in the form of dependence, as was shown long ago in the seminal work of Hirschman (1980).

To fulfill the objective of this paper, we will examine the following issues. In Section 2, we present an overview of how the links between global governance and law and economics can be established and may have an analytical common ground to be explored. Section 3 deals with the creation and characteristics of spontaneous and constructed world legal orders that may emerge in the light of the contribution of law and economics to global issues. Section 4 analyzes the potential and limits of world institutions designed for global purposes, particularly in their dimension as producers of rules and disciplines. In Section 5, we develop some consequences of the previous analyses. Finally, in Section 6, we present our concluding remarks.

2. Global governance and law and economics: an overview

It is useful to begin by recalling some trends of the world economy that emerged during the last decades as topical characteristics of globalization and that can be submitted to analysis from the perspective of law and economics. 1) Since the 1980s, commercial and financial flows have greatly expanded and acquired an increasingly global scope in their effects and linkages; this is particularly evident in the domains of foreign direct investment and the internationalization of production embarked upon by many firms. 2) The international monetary order that should facilitate the course of movements of the real economy was traditionally an area of interest for global governance (for example, in the gold-standard era). However, since the early 1970s and the collapse of the Bretton Woods monetary agreement, there has been no clear global framework, and it appears that exchange and monetary circulation do not satisfactorily couple with the real flows, allowing for major disequilibria. 3) The steady rise of environmental concerns is historically a new field, but it is probably also one of the best examples of the lack of global governance in the face of significant negative externalities; indeed, the question of how to tackle such a global problem appears highly complex and difficult to answer. 4) More recently and directly, the eruption of the world crisis in the middle of 2007 and its later worsening (after the collapse of Lehman Brothers in September 2008) has emphasized, once again, another major dimension of the same problem: the concern with the global management of business cycles.

The increasing internationalization of the markets has necessarily had a great impact on domestic legal and institutional issues. As far as global governance is concerned, however, an appropriate theoretical basis has yet to be constructed, and not surprisingly, the existing institutional framework, whatever its level, remains weak and poorly founded. Studying the case of world order, Breton (1998, 264-265) points out that from the perspective of conventional welfare economics, "approaches that would focus on institutions and policies designed to make competition efficient and productive are given short shrift or not even contemplated". Not only mainstream economics, but even most alternative paradigms seem hardly capable of equating a global perspective of such interactions on the basis of a robust theoretical framework, and this appears to be also the case of law and economics. Its foundations lie at the national/individual level and, at first sight, they do not seem particularly well adapted to broader analytical views. Even for those authors who give a central place to efficiency and maximization of wealth in this theoretical context, internationally related issues do not integrate the areas on which law and economics made progress in its first period (Posner 1987, 4), or even later (Posner 1993). Obviously, this does not mean that global governance was never analyzed under the concepts and methodology of this approach in papers, journals or books, but that the subject has not been at the core of law and economics during major phases of its development.

However, the fact that national governments and firms (in their reciprocal interconnections) are now essentially competing for worldwide market shares should require treatment from the legal and institutional point of view in order to guarantee full efficiency and fairness of the process. Moreover, if in spite of some infringements, an international division of labor effectively runs the world economy, which, at the same time, means a certain degree of cooperation between all the players of the international game (particularly on the basis of specialization), a more global perspective from law and economics as to how to govern the whole system must be embraced. Of course, we may also question whether global governance as such is really necessary or even desirable, at least in various domains of the world economy, and if it makes any sense to analyze the issue from the scope of law and economics or, at least, from that of some of its most significant elements. In any case, due to the importance attained by globalization with all its implications, a clear viewpoint on the subject is necessary, and we explore it here through the analysis of some causal chains.

Governance in general has had many definitions (World Bank 1992), as has global governance specifically. In this paper, we consider global governance to be the attempt to establish rules or norms that influence the course of the world economy, including not only those emanating from international institutions, but also agreements (bilateral or not) between governments, and even unilateral actions with that purpose. This does not mean that governments and international institutions are the sole producers of global rules and norms, and their role may be complemented by other organizations of the most diverse origin (Michaels 2005). Within this context, the role of privately governed rules and standards must be highlighted.

If such rules and regimes are actually enforced, their objective is to bring better and more benefits to the global community. It must be added that, as underlined

below, not all rules are created by institutions, and a significant contribution to this process may result from a natural evolution of the markets, which also applies at the global level. Specifically, we bear in mind the framework and practices that govern the most diverse flows of goods, services and factors (capital and labor), and their basic monetary equilibriums. As mentioned earlier, environmental issues could be another possible extension of global governance, although we will not particularly focus on these in this paper. Therefore, what has been the contribution of law and economics to confronting issues that have arisen from the course of the global economy during the last two or three decades? What are the legal and institutional incentives that may be created based on this approach for a possible better working of the global system, or at least for allowing an improvement in the understanding of its functioning? Is law and economics suited to coping with international problems of this type, or is it only nationally or individually oriented (for example, through specific judicial cases that do not allow predictability)? Why does it seem so difficult to apply the peculiarities of this analysis to global governance?

3. Spontaneous order and legal world order

Considering global governance as the management of the world economy in a way that accommodates the interests of its players, it is clear that there is no system of law or government as such that encompasses the global marketplace, at least in some of its most relevant domains. In spite of the increasing importance of commercial and financial flows, or the growing international dimension of many firms (which may take various forms, such as fragmented production, multiple foreign ownership of securities, etc.), the fact is that institutionally, the world economy is still basically dominated by the reality of nation-states and governments, including their extension in the inter-governmental form. This makes the global community of countries/governments quite distinct from the community of individuals and groups, including firms, which compose each nation-state from the perspective of competition. Under this framework, it is also important to observe that since the last few decades of the 20th century, the fiscal state with its large administrative structures, leading for example to the strategic design and implementation of extensive economic policies (e.g. trade and industrial policies), has had a key role in replacing the old state apparatus with its lesser economic weight and being more focused on its classical geographic frontiers and functions. In addition, it must be noted that nations, through their governments, even in deeply integrated areas, have some degree of monopoly power in the global market (Silva 2007), often asymmetrically (Silva 1999), and can be easily mobilized for world competition purposes. Although we have emphasized here the differences between the national and global levels, as observed by some authors (Breton 1998; Petersmann 1994), there are also important similarities, for example in relation to market and government failures and their treatment. All of this occurs when the threads of the process linking the evolution of rising transactions made by firms across the globe and the laws and institutions created to govern the "rules of the game" are not at all clearly established at their different levels and there are considerable degrees of freedom for governments, transnational firms and other global players to maneuver.

Thus, in the globalization age, countries are actively competing through firms, be they of national or foreign origin, often stimulated by governmental measures in order to gain an increased share of the world's wealth. Governments take all possible measures to achieve such an outcome, supposing that their support (be it strongly financial or only based on rules and the creation of a competitive atmosphere) will lead to increased welfare among the country's population. These policies not only affect the administration of the external sector (diplomatic services for economic agents, organizations that promote exports and foreign direct investment inflows and outflows, etc.), but also many other areas. Some of them seem, at first sight, to be basically focused on internal matters (R&D, education, vocational training, etc.). Of course, this does not necessarily imply discrimination, and domestic as well as foreign firms may benefit from this outward orientation of many economies. As was stressed by Sandler (1997, 213), with regard to the particular case of global treaties: "Nations act when it is in their interest; to date, treaties do not reflect a global consciousness." How can these conflicting interests and forces, operating at the international level but almost never completely cut off from their national basis, be governed, or at least disciplined, in an efficient manner for the global community? The international institutions analyzed hereafter may have a positive role in such a process, but to rely on them is not sufficient (for example due to the lack of a "global consciousness") for an understanding of how the global system really works and produces benefits. How may all these trends combine with a contribution of law and economics to global governance?

The existence of a legal order, as so clearly underlined long ago by Hayek (1960), based on Locke's key contribution on the principle of the "rule of law", is essential for the preservation and the expansion of liberty. The global scale is no exception to this principle. In spite of its political and economic advantages, history has bluntly shown that a world legal order has high costs, and is extremely difficult to construct (Frey 1984; Kindleberger 1986). Obviously, progress may be reached by small steps, but such a stumbling block is widely recognized, not only because of the free-riding of some global players, but also because their ranking of preferences may not coincide, for example between hegemonic powers (sometimes fading) and the other countries. All of this strongly increases the transaction costs that may lead to a stable and beneficial world economic order. Indeed, such a global legal order requires the formation of a laboriously assembled consensus between the conflicting parties with different interests and was only reached from some perspectives (monetary and trade, for example) at very particular historical circumstances, such as those from which emerged the Bretton Woods agreements (Ikenberry 1992) or just after the fall of the Berlin Wall with the attempt to reinforce international institutions (see the case of the WTO in Sutherland 1994).

To be sure, in view of the previous remarks, a spontaneous process can be envisaged for the emergence of global rules, and if possible, this would be far preferable. Such a process is highlighted by the case of money, so well described long ago by Menger (1892); but languages and even law in most societies can also be subject to similar natural evolutions. Due to the importance of this concept, we need to clarify its meaning. According to Demsetz (2008, 9), the process of "spontaneous order" should be seen as a puzzle: "'spontaneous' because no person or group of persons,

and no institution, determines how resources will be allocated in the liberal economy; a 'puzzle' because, despite the absence of managed, conscious control, there seems to emerge a 'sensible' allocation of resources." This does not imply, however, that the spontaneous order cannot be improved by some degree of legislation coming from the state or other relevant actors. As was also pointed out by Hayek, the rules that arise from the spontaneous order are the result of a long cultural evolution (Van den Hauwe 1999, 341-342). Undoubtedly, in this regard, there are legacies that can be quite valuable, but this is not always the case. Even when they are positive and effective, such rules are sometimes broken, as happened in the case of the gold standard, or they need to be adapted to the new conditions that prevail in the world economy, i.e., it is not therefore a question of pure evolution, without purposeful human design. Analyzing institutions in light of Posnerian law and economics, in a way that can be applied to the global level, Samuels considers that "legal institutions are not given immutably by nature but are themselves a response to economic needs and flexible in response to changes in those needs." (1992, 38)

Beyond spontaneous order, there is the constructed legal world order. In this context, it must be stressed that the production of global rules as such by governments and world institutions as referred to below is not the only alternative to challenges that require rules that are adhered to by the parties involved. They can, for example, come through legal transplants, horizontal and/or vertical, from national law into international law, as analyzed by Wiener (2001) for the case of environmental law. This author advises that such a borrowing process must be undertaken with care, but at the same time, he underlines that the international level facilitates legal transplants. We may also admit that global rules can have a non-state origin coming from other global actors such as NGOs and religious groups (Michaels 2005). There are thus several ways of expanding the production of rules that enable global players to overcome specific problems and to improve the mechanisms that are pivotal to the world economic system as a whole, although there are natural disagreements about the path by which to reach such an objective.

In any event, global rules, whatever their origin, achieved through cooperation (specifically created by law and institutions or reached through spontaneous evolution), if they incorporate the best practices, have the potential to increase the benefits of globalization and, possibly, their fairer distribution. This may happen when, for example, they reduce uncertainty and instability and make the behavior of economic agents more predictable, facilitating the circulation of trade, investment and other international flows. Therefore, global governance based on rules could not only contribute to a better functioning of the world market but also, in the long run, provide positive externalities from which derive benefits for the majority of participants in the international game. Hence, the global economy needs rules, particularly legal rules, and norms, because they bind countries more strongly (Guitián 1992) and, as was underlined earlier, if they induce good practices, growth is stimulated as well as better development. However, as the rules may have different origins and outcomes, we need to know to what extent they are needed and can be implemented, and because of this, they must always be submitted to a cost-benefit analysis.

4. The case of world institutions: potential and limits

We pointed out that globalization has brought about a peculiar situation in which – besides increasing new opportunities for international players, as is now clearly the case for emerging countries, including the weakest and poorest regions of the world – it also imposes constraints on domestic national policies (for example, in macroeconomic policy manipulations) that possibly may have a negative impact. Whatever its merits, many conflicts arise between all the contradictory interests existing in the system, which, at least in some areas, may function far from the optimum. How can this vast and heterogeneous world be governed? To begin with, we may say that as there is no international government, there is no room for true global governance. Nonetheless, we are obliged to acknowledge the effective situation.

Indeed, world economic institutions, like the International Monetary Fund, the World Bank and the World Trade Organization, provide rules and directives that are supposed to produce, through cooperation, global public goods from which the most diverse countries and regions around the globe may benefit. However, they do not frame all the rules that govern transactions in the global marketplace, and due to the world structure of power with its repercussions at this level, they may present considerable flaws. On the one hand, not only are large portions of the world economy not covered by their rules, but also they have a limited degree of power to enforce them, although there are differences of influence among such institutions from this point of view (we need only to compare the WTO with the IMF). On the other hand, their ranking of preferences, in the realm of policies in particular, often does not correspond to the rightly understood interests of their members; for example in the case of the WTO, important trading partners since the beginning of the GATT, like Brazil or India, have been mere "rule-takers" rather than "agenda setters" (Narlikar 2003). Moreover, these institutions probably have a greater influence in critical situations and, in this case, their role is far from negligible (e.g. the IMF). In other situations, they can have powerful global leverage together, formally or informally, as was the case with the policy guidelines of the so-called "Washington Consensus" in the 1990s (for a critical view of this global experience, see Rodrik 2006). Following such an approach to international management, we would risk falling into a "globocentric" view based on the existence of a supposed "single model" (Guedes and Faria 2010, xi). Therefore, in their present state or without change in their administrative procedures, the relative weakness or limited scope of such institutions is not necessarily bad for world players, including from a welfare point of view, insofar as they can adapt better to each particular setting.

As a complement to the previous considerations, it is necessary to highlight that in some cases, the multilateral option also appears to be weak, and so we have to be cautious with the application of such a program. This occurs for example with foreign direct investment (Brewer and Young 2003; Nunnenkamp and Pant 2003) and international competition (Petersmann 1994). Looking at this literature, notwithstanding the differences between both cases (foreign direct investment and international competition), we may conclude that multinational firms are not eager for global governance in these areas and comply quite well with existing legal frameworks where national diversity predominates. Another complex but highly interest-

ing case to be examined here concerns financial capital movements. They are close to foreign direct investment in the current functioning of transnational firms (in practical terms, we cannot completely separate them from the statistical viewpoint in many cases, unless arbitrarily), but they have a quite different economic impact, notably at the global level – for example, in concerns of short- versus long-term gains –, which calls for different policy approaches and, consequently, different legal treatment. On this basis, an ongoing controversy has dominated this major issue of international economics (see, for example, Bhagwati 1998, 10), and the crisis of 2008-09, with the implosion of large sectors of loose worldwide financial operations at its origin, accentuated even further the perception of considerable differences between these global "twin" flows.

In spite of the great variety of situations we can encounter, many authors continue to consider that "the most appropriate solution to the governance problem seems, nevertheless, to lie in reaching multilateral agreements on global mechanisms or approaches" (Zecchini 1996, 55). According to our analysis, this may be a correct perspective in some cases but not in others; for example, global harmonization would reduce competition (Breton 1998, 276). Moreover, in a study on a set of multilateral and regional agreements endorsed by many governments in the first half of the 1990s, Petersmann (1994, 43) recognized that international organizations are needed (because of market and government failures and the provision of public goods), but at the same time, there are also important reasons why international organizations might "not be necessary or desirable." Therefore, even if the costs of global consensuses are overcome, we need to know which international agreements may be profitably achieved, in which areas and why. In spite of its possible desirability, the non-existence of a legal framework specifically designed for the purpose of the global economy in its many dimensions has the consequence that rather different settings exist in each particular domain (for example, concerning such flows as trade in goods and services, financial movements, factors' mobility). In many cases, such an outcome is possibly better adapted to the global realities, due to their great diversity as well as to their significant and frequent changes. World institutions that produce global rules should not be seen as a panacea, and it is important to stress that "there is no single blueprint or magic potion for addressing global challenges" (Sandler 1997, 212).

5. Analytical consequences

For Trebilcock and Howse (1999, 502-503), "deep economic integration among nation states is typically predicated" in two cases when there is: 1) a hegemonic power with the ability to influence weaker or smaller partners (like the US in the immediate post-WW2 years); or 2) a willingness of the other countries to cede substantial portions of their domestic political sovereignty to supranational institutions (as has been the case with the European Union). These authors also think that neither of the two cases has conditions to be applied in the "foreseeable future", the former because we are now at a different stage, in which the hegemonic power seems to be fading (and new powers seem to be emerging like the so-called BRICs: Brazil, Russia, India and China), while the latter cannot be imagined outside the European

context. This argument may be debatable because economic integration has continued to increase throughout the world, and many countries are still willing to accept restrictions on their degree of national sovereignty; in any event, we should recognize that it also contains some rationality: it is a long process that most likely will go only to a certain extent and no further. In the European Union context, at the beginning of the present decade, it is clear to most European citizens that there are limits to the transfer of sovereignty, even through its most desirable and consensual forms. Moreover, from this perspective, the EU, despite its deeper integration, often resembles a microcosm of the global economy, and the disagreements over "tax harmonization" or social policies are good examples of this difficulty. In the broadest view of this case, there is very likely more willingness to agree to reduce sovereignty in some areas than in others: for example, in the monetary domain rather than in the harmonization of legislation or social institutions, as referred to above.

According to Bhagwati (2004, 226), even considering the increased economic interdependence between countries, international macroeconomic coordination "can be counterproductive." Based on the results of a study published in 1988, he recalls that this happens particularly "in cases where there is no objectively clear and dominant model of the working of the economy on which everyone agreed." This raises again the issue of the necessary consensus to effective international economic coordination or other forms of global governance. Indeed, multilateral decisions and agreements, even when they are sustained by solid institutions, are frequently not backed by a substantial consensus and have become ineffective or are a cause of serious trouble (as was the case, in the aftermath of the financial and economic crisis of 2007-2009, of the persistent maintenance of high levels of public deficits and debt with the consequent difficulty in borrowing by some Member States within the Euro area; there was no common ground on the fulfillment of the prerequisites that are necessary for a monetary union).

The solution of the present weak and limited reach of global governance may thus lie in the strengthening of domestic legislation, with the aim of guaranteeing open and competitive markets (well defined and respected property rights, credible contracts, law enforcement) and creating an environment favorable to firms that internationalize their activities, of domestic or foreign origin. In addition, such legislation should vouchsafe firms from discrimination arising from arbitrary criteria, such as those laid down by protectionist lobbies that are well-positioned in the existing institutions. As was emphasized under a perspective presented earlier: "Extensive decentralization, characterized by independently-acting private owners of resources, describes the core of the spontaneous order problem." (Demsetz 2008, 10) This can also apply to a somewhat "constructed" world legal order. Thus, a good management of law at a decentralized level may be (at least, partially) a solution to the difficulties encountered by global governance as such.

Furthermore, if the aim of global governance is clearer and better focused, if more information is conveyed, it will perhaps be possible to reduce the opposition to cooperation and achieve improved results through increased participation of all players. The process is likely to go from the lower to the higher level. This was emphasized, as follows, by Cowling and Sugden with regard to trade (1998, 351-352):

> A search for the social optimum requires public policy initiatives aimed at democratizing decisions over international trade. A possible implication of this argument is the need to develop international cooperation at all levels of the economy. Since the effects of strategic decisions within the economy have an international dimension, participation in strategy making has to be internationalized and could take place at various levels … What we are emphasizing is the possibility of evolving a process in which conflicts are recognized and addressed in a spirit of co-operation.

Indeed, as argued by Petersmann (1994, 44), one of the main shortcomings of international organizations is the fact that they are "less subject to constitutional restraints than domestic policy powers." This is a major obstacle to the increasing effectiveness of global rules provided by these organizations, since their decisions are not, in general, submitted to a democratic vote (Robertson 2006, 204-206) and often give rise to controversy. Taking this into consideration, probably the best way to develop a true spirit of cooperation between global players – as highlighted earlier, international cooperation has a significant basis in trade specialization and common interests (peace, stability, enforcement of law, etc.) – is to increase the level of knowledge of the implications of legal frameworks (concerning, for example, property rights, contracts and the treatment of tort). In this process, lawmakers and regulators well aware of the interconnections between infra-national, national and global levels may play a key role, insofar as adequate rules and institutions are an essential factor in the efficient working of the global marketplace (safeguarding competition and diversity, for example). Even if their realm is preponderantly at the national level, lawmakers and regulators should have a broader vision, seeking in particular to integrate more deeply the global realities into their domestic legal environments that frame the activities of firms, incumbents or new entrants (and indirectly, but not least important, favoring the fight to reduce world poverty, giving more opportunities to developing countries, etc.). In all events, this clearly leads to an international landscape where the production of rules is ensured by institutional diversity, located at different geographical levels, as was stressed by Ostrom (2005) for the case of commons.

6. Concluding remarks

In this paper, we have attempted to analyze global governance from the perspective of some themes that characterize the law and economics domain. Not only does this study enlarge the scope of this approach, but it also sheds light on current, highly relevant issues of the global economy. Indeed, within the context of the deeper integration of the world economy, the global level has become increasingly present in many decisions, while the importance of the national level has not declined greatly. On the contrary, it maintains a major role in the globalization process. Governments (including in the form of inter-governmental agreements) are still the source of many legal regulations that have a global impact, particularly those that concern the internationalization of markets through firms; they also guarantee their enforcement. In many domains, national rules and institutions are a complement, rather

than a substitute, to those that emanate from international organizations. However, the creation of international organizations that lay down effective rules and norms has high transaction costs; furthermore, they are more necessary in some cases than in others. There is no universal response for all areas; each case has to be analyzed in conformity with its own appropriate cost-benefit analysis. In addition, their justification seems more founded when they emerge spontaneously, whilst in the remaining cases, it is necessary to move cautiously and the outcomes are often uncertain. Whatever the case, international organizations have to be flexible, i.e., responsive to changes, as well as having to be open to multiple and worldwide participation with quite different interests. Therefore, in a broader view, globalization does not eliminate the need for a balance between domestic and international legal order, both remaining of critical importance for global players, and there is a possibility for their interaction.

Among the many by-products that globalization has brought until now, one of the most significant ones is to show that we are still in our infancy in the understanding of the whole international process and the intimate linkages between its main players. In this context, we need the help of alternative theoretical approaches like law and economics with its specific insights to foster knowledge in the field, allowing better approaches to global governance and related subjects.

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