The two ways of global governance after the financial crisis: Multilateralism versus cooperation among governments

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In an ever-more interdependent world economy, the number of global and regional public goods, from financial stability to sustainable growth, quickly increase and call for greater global and regional collective action. This paper tries to understand which mechanisms, if any, have been adopted to achieve a proper degree of international cooperation after the 2008 financial crisis. The analysis shows that the movement toward a new economic global governance is not the result of a single strategy but, rather, an original blend of different solutions enhanced by flexibility and experimentalism. Some of these solutions involve efforts to strengthen multilateral agreements and the effectiveness of supranational institutions and regulatory measures; others aim to develop new forms of cooperation among governments, through a "concerted practice" form of action. Informal contacts and meetings among political leaders and the G-20 summits become the preferred rooms in which to exchange points of view, to coordinate action without assuming legal obligations, and to monitor voluntary compliance. The parallel approval of similar pieces of legislation at the national level signals the willingness of governments to cooperate effectively, while leaving space for opportunistic behaviors.

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1. A failure of globalization? The 2008 financial crisis and the gaps of economic global governance

The financial crisis of 2008 reversed the dominant image of the relationship between states and markets of the last twenty years and offered a powerful argument in favor of a new economic global governance.

In the last twenty years, the powers of most states declined, so that their authority over people and businesses inside their territorial boundaries was greatly weakened. As a consequence, where states were once the masters of markets, the markets, on many crucial issues, became the masters over the states. In this context, governments could play a merely reactive role, trying to minimize the adverse effects of market institutions' behaviors and of general trends in economics. Mostly, they no longer had more of the proper tools to achieve their objectives, insofar as all the pertinent forces of the market operated beyond the scope of their authority.[1]

The privatization process greatly reduced the role of the state both in economic activities and in welfare provisions. Many goods and services, even if public and of general interest, began to be produced by private firms and nongovernmental organizations. At the same time, the deregulation movement pressed states to give up regulatory powers and to put their confidence in the self-regulatory virtues of the markets. Following this path, governments dismissed many regulatory tools, from entry controls to prices and standards setting. At the same time, the impersonal forces of world markets, integrated by private enterprises in finance, industry, and trade, became more powerful than the states to which ultimate political authority over society and the economy supposedly belonged.[2]

In this context, economic globalization largely exceeded legal and institutional globalization. Many markets were fully integrated throughout the world, even in the absence of a common regulatory framework. This result could be considered consistent with the free-market approach under which the contemporary globalization took place. As a consequence, the institutional landscape of economic global governance remained highly fragmented. International organizations remained too weak. Moreover, no substantial connection among the different institutional systems was activated. Finally, important regulatory gaps even in a free-market perspective were kept remained unfilled. The absence of effective global antitrust jurisdiction is, perhaps, the most conspicuous example of those gaps.

1 For such a conclusion, see Susan Strange, The Retreat of the State: The Diffusion of Power in the World Economy (1996); *see also* Denis Swann, The Retreat of the State: Deregulation and Privatisation in the UK and US (1998). Empirical evidence at the European level is provided by Volker Schneider & Frank M. Hage, *Europeanization and the Retreat of the State*, 15 J. Eur. Pub. Pol. 1 (2008). In the Italian literature, Sabino Cassese, *La fine della sovranità economica dello Stato* [The end of state sovereign in economy], *in* La Crisi dello Stato 36 (2002).

2 From this perspective, the end of the state was going to be followed by the fall of administrative law: Richard A. Posner, *The Rise and Fall of Administrative Law*, 72 Chi.-Kent L. Rev. 953 (1997); for a different image, see The Province of Administrative Law (Michael Taggart ed., 1997); Sabino Cassese, *Le trasformazioni del diritto amministrativo dal XIX al XXI secolo* [Transformations of administrative law from 19th to 21st century], Rivista Trimestrale Di Diritto Pubblico 27 (2002); Giulio Napolitano, Pubblico E Privato

The 2008 financial crisis put into question the fundamental assumptions and theories of the last two decades about the retreat of the state and the rise of markets' dominance over governments. As a matter of fact, the crisis forced governments to act as saviors and to nationalize banks, financial institutions, and other strategic companies.[3] The deregulation recipe was seriously attacked and regulatory reforms, needed to strengthen standards and controls over finance and business, were put at the top of the policy agenda.[4] Furthermore, the idea of a spontaneous adjustment by the markets toward an efficient equilibrium was brought into question, and governments adopted comprehensive recovery plans.[5]

The dynamics of globalization were deeply reconsidered, too. On the one hand, the crisis was at the root of a potential deglobalization effect, due to reduced confidence in free trade and to artificial barriers erected by the governments' bailout and recovery measures. Moreover, tightened regulation after reforms might reduce the size, complexity, and interconnectedness of financial institutions. On the other, the crisis showed the need for supranational collective action. Since the markets, both industrial and financial, have not been this integrated since the end of the nineteenth century, so the correction of their failures must be global, for two different, even if often confused, reasons. The first one is that merely national solutions would leave space for regulatory arbitrage by multinational enterprises in order to escape unwanted rules and controls. As a result, government action would be ineffective. The second reason is that virtually all domestic policies produce important international spillovers, and some of these can be quite harmful. Uncoordinated national measures may cause a government's failure if regarded from a third country's point of view and produce even a negative reverse effect for the state which adopted them.

How the financial crisis changed the economic role of government, the constitutional equilibrium within it, and the administrative law instruments governing its

Nel Diritto Amministrativo (2003); from the point of view of global administrative law, Benedict Kingsbury *et al.*, *The Emergence of Global Administrative Law*, 68 Law & Contemporary Problems 15 (2005), and Sabino Cassese, *Administrative Law Without the State? The Challenge of Global Regulation*, 37 J. Int'l L. & Pol. 663 (2005), and, more recently, Benedict Kingsbury, *The Concept of 'Law' in Global Administrative Law*, 1 IILJ Working Paper, (2009); in the Italian literature, Sabino Cassese, Lo Spazio Giuridico Globale (2003); Stefano Battini, Amministrazioni Senza Stato. Profili Di Diritto Amministrativo Internazionale (2003).

3 The metaphor of the "savior" was introduced into the Italian literature by Giulio Napolitano, *Il nuovo Stato salvatore: strumenti di intervento e assetti istituzionali* [The new savior state: tools of actions and institutional orders], 11 Giornale Di Diritto Amministrativo 1083 (2008); the French suggested that of the firefighter: Dominique Custos, *L'Etat pompier à la fin de la présidence de George W. Bush ou les subtilités de la nationalisation à l'américaine* [The fireman state at the end of George W. Bush presidency or the niceties of American way nationalization], 4 Droit Administratif 21 (2009). *See also* Gunnar Folke Schuppert, *The New Interventionist State*, *in* Responses to the Global Crisis: Charting a Progressive Path 71 (Olaf Cramme & Elena Jurado eds., 2009). The legal problems arising from public property in the U.S. law are addressed by Marcel Kahan & Edward Rock, *When the Government is the Controlling Shareholder*, New York University Law and Economics Research Paper, No. 10–20.

4 About this trend, see Richard D. Cudahy, *The Coming Demise of Deregulation II*, 61 Admin. L. Rev. 543 (2009).

5 A general overview in Richard A. Posner, A Failure of Capitalism: The Crisis of '08 and the Descent into Depression 148-219 (2009).

actions has already been sketched.[6] What this paper seeks to stress is that the crisis obliges states and governments to "play the music again" even while globalization changes the environment in which countries assume their legal and economic policy strategies.[7] The point is that in an intensely interdependent world economy, the number of global or at least regional public goods quickly increased, from financial stability to sustainable growth, and this calls for greater global and regional collective action.[8]

In this context, it becomes fundamental to understand which mechanisms, if any, have been selected to achieve a proper degree of international cooperation and to ensure the production of global and regional public goods, such as financial stability and sustainable and balanced growth. This requires, too, that we ask whether the selected cooperative mechanisms are effective or not; to assess how compliance is monitored and enforced; to verify how governments can give evidence of their cooperative behavior and how they may prove intransigent?[9]

The interesting point, here, is that the move toward a new economic global governance is not the result of a single strategy. Flexibility and experimentalism lead to an original mix of different solutions. Some of these represent an attempt to strengthen multilateral agreements and the effectiveness of supranational institutions and regulatory

[6] With reference to the U.S., Eric A. Posner & Adrian Vermeule, *Crisis Governance in the Administrative State: 9/11 and the Financial Meltdown of 2008*, 440 U. Chi. L. Rev., John Olin Law & Economics Working Paper (2008); Adrian Vermeule, *Our Schmittian Administrative Law*, 122 Harv. L. Rev. 1095 (2008–2009); from a comparative law perspective, Giulio Napolitano, *The role of the State in (and after) the financial crisis: new challenges for administrative law*, *in* Comparative Administrative Law, chap. 33 (Peter Lindseth & Susan Rose-Ackerman eds., 2010).

[7] From this perspective, the analysis is consistent with a new scientific line of thought that offers a much more nuanced view of the changing role of the state than the idea of its mere retreat, both at national level and at supranational one: Inge Kaul et al., *Conclusion: Global Public Goods. Concepts, Policies and Strategies, in* Global Public Goods: International Cooperation in the Twenty-First Century 450 (Inge Kaul et al. eds., 1999); Kenneth W. Abbott & Duncan Snidal, *The Governance Triangle: Regulatory Standards, Institutions and the Shadow of the State, in* The Politics of Global Regulation 44 (Walter Mattli & Ngaire Woods eds., 2009). The argument of the persisting role of the state, in any case, should not be used to contradict the feasibility of any form of global governance, as suggested by Timothy W. Waters, *"The Momentous Gravity of the State of Things Now Obtaining": Annoying Westphalian Objections*, 16 Ind. J. Global Legal Stud. 25 (2009). In the Italian literature, the ambiguous decline of the state is stressed by Mauro Bussani, Il Diritto Dell'Occidente [The Western Law] 87-93 (2010).

[8] On the topic, Todd Sandler, *Overcoming Global and Regional Collective Actions Impediments*, 1 Global Policy 40 (2010); with specific reference to the problem of systemic risk, Ian Goldin & Tiffany Vogel, *Global Governance and systemic Risk in the 21st Century: Lessons from the Financial Crisis*, 1 Global Policy 4 (2010).

[9] A remarkable exception is represented by the works of David T. Zaring, who co-wrote with Steven M. Davidoff, *Big Deal: The Government's Response to the Financial Crisis*, 61 Admin. L. Rev. 463 (2009); (with Lawrence Cunningham) *The Three or Four Models of Financial Regulation*, 39 Geo Wash. L. Rev. 78 (2009); *International Institutional Performance in Crisis*, 10 Chi. J. Int'l L. 475 (2010). I tried to tackle the different institutional and legal issues arising from the financial crisis in: *Il nuovo Stato salvatore: strumenti di intervento e assetti istituzionali,* [The new savior state: tools of actions and institutional orders], *supra* note 3; *L'intervento dello Stato nel sistema bancario e i nuovi profili pubblicistici del credito* [The State intervention in banking system and new public outlines in the credit], 4 Giornale Di Diritto Amministrativo 429 (2009); *L'assistenza finanziaria europea e lo Stato co-assicuratore* [The financial European assistance and the co-insurer state], 10 Giornale Di Diritto Amministrativo 1085 (2010); *The role of the State in (and after) the financial crisis: new challenges for administrative law*, supra note 6.

measures; others aim to develop new forms of cooperation among governments. The result is the rise of a collective, even if unstable, discipline.

2. The pathway toward a new multilateralism: The global reaction to the financial crisis

At first sight, the global economic crisis launched a new multilateralism. Numerous and regular G-20 leaders' summits took place immediately after its eruption. New international or supranational institutions—such as the Financial Stability Board—were created. Both the International Monetary Fund and the World Bank, and other multilateral development banks, have been promised new resources to mitigate the development emergency caused by the crisis. The United Nations has become an important forum for discussion among world leaders regarding the development of markets and the proper institutions to regulate them.[10]

The move toward a new multilateralism was pushed strongly, after the outbreak of the financial crisis, by radical reformers who asked for a stronger global governance. Theories of a "light touch" regulation have been criticized, leaving space for the advocacy of the establishment of a global financial authority, charged with the task of both regulating and supervising transnational financial institutions and operations.[11] Other and even more ambitious proposals were floated, aimed at adding a specific protocol regarding business conduct to the framework of the United Nations Charter and requiring financial entities sign international agreements assuring the propriety, integrity, and transparency of all economic activities.

Notwithstanding the gravity of the crisis and the widespread criticism directed at the existing regulatory framework, the delegation of formal powers to new international organizations did not take place. Nor did governments agree on a new international treaty concerning business conduct and economic activities.[12] Even so, multilateral solutions were strengthened in various ways, in particular, by expanding the role, the structure, and the resources of international forums, networks, and organizations. These developments may be better assessed in relation to: (*a*) the establishment of the G-20 as the forum of economic global governance; (*b*) the reformation of international financial institutions; (*c*) the new global regulation of financial markets.

2.1. The establishment of the G-20 as the "premier forum of international economic governance"

The first attempt to strengthen the institutional architecture of global governance was the establishment of the G-20 as the "premier forum of international economic

10 The importance of these steps is underlined by Ngaire Woods, *Global Governance after the Financial Crisis: A New Multilateralism or the Last Gasp of the Great Powers?*, 1 Global Policy 51(2010).

11 Ian Goldin & Tiffany Vogel, *supra* note 8, at 6.

12 *See* Miles Kahler & David A. Lake, *Economic Integration and Global Governance: Why So Little Supranationalism?*, *in* The Politics of Global Regulation, *supra* note 7, 242.

governance."[13] The Group of Twenty (G-20) finance ministers and central bank governors was established in 1999 to bring together systemically important industrialized and developing economies to discuss key issues in the global economy. At that time, the G-20 was created as a response both to the financial crises of the late 1990s and to a growing recognition that key emerging-market countries were not adequately included in the core of global economic discussion and governance.

The G-20 has dealt with a range of issues since 1999, including agreement on policies for growth, reducing abuse of the financial system, dealing with financial crises, and combating terrorist financing. The G-20 also aimed to foster the adoption of internationally recognized standards through the example set by its members in areas such as the transparency of fiscal policy and combating money laundering and the financing of terrorism. In 2004, the G-20 countries committed themselves to new, higher standards of transparency and the exchange of information on tax matters, in order to combat abuses of the financial system and illicit activities, including tax evasion.

To tackle the financial and economic crisis that spread across the globe in 2008, the G-20 members were called on to strengthen further international cooperation. Accordingly, the G-20 summits have been held in Washington in 2008, in London and Pittsburgh in 2009, and in Toronto and Seoul in 2010. Leaders' summits were coupled with those held by treasury ministers, thus giving the G-20 the highest political authority. In this way, the G-20 became the most important room for global economic governance.

The concerted and decisive actions of the G-20, with its balanced membership of developed and developing countries, has helped the world to deal effectively with the financial and economic crisis. The scope of financial regulation has been largely broadened, and prudential regulation and supervision have been strengthened. There has been great progress in policy coordination thanks to the creation of the framework for a strong, sustainable, and balanced growth designed to enhance macroeconomic cooperation among the G-20 members, therefore mitigating the impact of the crisis. Finally, global governance has improved better to take into consideration the role and the needs of emerging of developing countries, especially through the reforms of the governance of the IMF and the World Bank.

The G-20 cooperates closely with various other major international organizations and forums, as the potential to develop common positions on complex issues among

[13] This formula was introduced by the G-20 leaders in their first meeting after the eruption of the financial crisis and repeated in all the official documents of the G-20 meetings. On this shift, John Kirton, *Towards Multilateral Reform: The G-20 contribution*, 2004, www.utoronto.ca; Peter I. Hajnal, The G8 System and The G-20: Evolution, Role and Documentation (2007). A different issue concerns the emergence of a de facto joint leadership of U.S. and China, as underscored by Geoffrey Garrett, *G2 in G-20: China, the United States and the World after the Global Financial Crisis*, 1 Global Policy 29 (2010). From the perspective of middle powers, Daniel D. Bradlow, *Reforming Global Economic Governance: A Strategy for Middle Powers in the G-20*, Paper prepared for the workshop on Going Global: Australia, Brazil Indonesia, Korea and South Africa in International Affairs, Jakarta, Indonesia, May 25–26, 2010. For an insight of the task accomplished by the G-20, see Giulio Tremonti, *Le cause e gli effetti politici della prima crisi globale* [The political causes and effects of first global crisis], Lezione presso la Scuola Centrale del Partito Comunista Cinese, November 24, 2009, who describes the G-20 as a political body playing a fundamental operational role on a case-by-case basis.

G-20 members can add political momentum to decision making in other bodies. The participation of the president of the World Bank and the managing director of the IMF ensures that the G-20 process is well integrated with the activities of the Bretton Woods institutions. The G-20 also works with, and encourages, other international groups and organizations, such as the Financial Stability Board and the Basel Committee on Banking Supervision, in advancing international and domestic economic policy reforms. In addition, experts from private sector institutions and nongovernment organizations are invited to G-20 meetings on an ad hoc basis in order to exploit synergies in analyzing selected topics and avoid overlap.

The establishment of the G-20 as the "premier forum of economic global governance" was fundamental in transfusing new blood into multilateralism, overcoming the limits to the authority and legitimacy of the Group of Seven (G-7) industrialized countries.[14] The G-20 proved to be well-positioned to provide impetus to both the reformation of international financial institutions and the strengthening of global financial regulation. The next challenges will be to find the capability to coordinate the economic policies of major countries and regions and to ensure an active follow-up on processes already underway. The more prominent the role the more the G-20 will be able to play a prominent role in this phase, the more the solutions adopted will be tinged with politics rather than with regulatory expertise and technocratic know-how.[15]

2.2. The reformation of international financial institutions

A second attempt to strengthen the economic global governance was represented by the reformation of the international financial institutions that were established by the framework of the Breton Woods agreements: the World Bank and the International Monetary Fund. The fundamental idea was to modernize the institutions in some basic way so that they could better reflect changes in the world economy after the crisis and play their roles more effectively in promoting global financial stability, fostering development, and improving the lives of the poorest.

In April 2010, the one hundred and eight-six countries that own the World Bank Group endorsed boosting its capital by more than $86 billion and giving developing countries more influence. This was the first general capital increase for the World Bank in more than twenty years, and, with the shift in voting power to developing countries, the Development Committee of the board of governors also reinforced the bank's new postcrisis strategy, and a comprehensive reform package in order to improve the governance of the bank. The four main components of the package concern financial resources, voting power, postcrisis strategy, and operational reforms.

Regarding financial resources, first, it was decided an increase of $86.2 billion in capital for the International Bank for Reconstruction and Development (IBRD), the arm that lends to developing countries. Second, there was a $200 million increase in

[14] Ngaire Woods, *Global Governance after the Financial Crisis: A New Multilateralism or the Last Gasp of the Great Powers?*, *supra* note 10, at 51–52.

[15] *See* David Zaring, *supra* note 9.

the capital of the International Finance Corporation (IFC), the World Bank Group's private sector arm, as part of an increase in shares for "developing and transition countries" (DTCs). The IFC will also consider raising additional capital by issuing a hybrid bond to shareholding countries and by retaining earnings.

Fundamental changes in governance are related to a 3.13 percentage point increase in the voting power of the DTCs at IBRD, bringing them to 47.19 percent—a total shift to DTCs of 4.59 percentage points since 2008. The IBRD 2010 realignment will result from a selective capital increase of $27.8 billion, including paid-in capital of $1.6 billion. There will also be an increase in the voting power of DTCs at the IFC to 39.48 percent—a total shift to DTCs of 6.07 percentage points. An agreement was also reached to review IBRD and IFC shareholdings every five years with a commitment to equitable voting power over time between the developed countries and DTCs.

The postcrisis strategy aims to emphasize the role of the bank in targeting the poor and vulnerable, especially in Sub-Saharan Africa; creating opportunities for growth with a special focus on agriculture and infrastructure; promoting global collective action on issues from climate change and trade to agriculture, food security, energy, water and health; strengthening governance and anticorruption efforts; and preparing for crisis alerts and management.

Operational changes represent, perhaps, the most comprehensive reform agenda undertaken by the institution. These include, first, a new access-to-information policy, inspired by the Indian and U.S. freedom-of-information acts, which makes the bank a world leader among multilateral institutions on information disclosure. Second, the bank's Open Data Initiative was launched in order to put the World Bank at the forefront of giving free and easy access to information on developing countries. Third, investment lending reform is intended to improve the focus on results, increased speed and delivery, and strengthened risk management. Fourth, strengthened governance and anticorruption efforts should provide more resources for prevention and coordinated sanctions to fight corruption.

The International Monetary Fund is also central to the effort at global financial reform, with a comprehensive package of quota and governance reforms designed to achieve a more legitimate, credible, and effective institution. The aim is to ensure that quotas and executive board composition better reflect new global economic realities and secure the IMF's status as a quota-based institution, with sufficient resources to support members' needs.

The IMF reforms include five fundamental steps. First, there will be shifts in quota shares of over 6 percent to dynamic emerging markets and developing countries and to underrepresented countries, while protecting the voting share of the poorest. Second, there will be a doubling of quotas, with a corresponding rollback of the New Arrangements to Borrow (NAB) preserving relative shares, when the quota increase becomes effective. Third, continuing the dynamic process aimed at enhancing the voice and representation of emerging markets and developing countries, including the poorest, there will be a comprehensive review of the quota formula better to reflect the economic weighting. Fourth, there will be greater representation for emerging markets and developing countries on the executive board. Fifth, there will be a move to an all-elected board.

In this context, it was suggested to reform, as well, the IMF's mission and mandate, in particular, in order to strengthen surveillance. The fundamental idea is that IMF surveillance should be enhanced to focus on systemic risks and vulnerabilities wherever they may be. The IMF will make financial stability assessments under the Financial Sector Assessment Program (FSAP) a regular and mandatory part of article IV consultation for members with systemically important financial sectors. The IMF is also called on to strengthen bilateral and multilateral work on surveillance, covering financial stability, macroeconomic, structural and exchange rate policies, with increased focus on systemic issues; to enhance synergies between surveillance tools; to help members strengthen their surveillance capacity; and to ensure evenhandedness, candor, and independence of surveillance. The IMF will conduct spillover assessments of the wider impact of systemic economies' policies.

Notwithstanding all these goals and achievements, the role of the IMF is different from that which was envisioned for the fund when it was founded after World War II. Then, it was meant to serve, more broadly, as something like a central banker or a lender of last resort to the countries of the world, both developed and developing, and was designed to provide international market stability, as well as to backstop governments that found themselves in macroeconomic or budgetary crises. Now, even with its new resources, there is no prospect that the IMF could come to the aid of more than one member of the G-20, were such a member in crisis. The IMF cannot bail out Europe, the United States, Japan, or China. So, rather than being part of the architecture of worldwide finance stability, the IMF is at the core of a different construction, aiming at global development.[16]

2.3. Strengthening global financial regulation and supervision

A third attempt to push for a worldwide solution to global crises is to be found in the strengthening of global financial regulation and supervision.

On the institutional side, the most important achievement was the establishment in April 2009 of the new Financial Stability Board (FSB) as the successor to the Financial Stability Forum (FSF). In November 2008, the leaders of the G-20 countries called for a larger membership and a stronger institutional basis of the FSF. The purpose was to strengthen its effectiveness as a mechanism for national authorities, standards-setting bodies, and international financial institutions in order to address vulnerabilities and to develop and implement strong regulatory, supervisory, and other policies in the interests of financial stability. The FSB is now called upon to coordinate at the international level the work of national financial authorities and international standards-setting bodies and to develop and promote the implementation of effective regulatory, supervisory, and other financial sector policies. It brings together national authorities responsible for financial stability in significant international financial centers,

[16] According to Ngaire Woods, *supra* note 10, at 60, "an ambiguous new order may be emerging in which multilateral institutions—such as the IMF—have only a limited role to play alongside emerging national and regional strategies."

international financial institutions, sector-specific international groups of regulators and supervisors, and the committees of central bank experts.

On the regulatory side, all financial institutions and operations were put under review. The most important achievement was the agreement reached by the Basel Committee on Banking Supervision (BCBS) on the new bank capital and liquidity framework, which increases the resilience of the global banking system by raising the quality, quantity, and international consistency of bank capital and liquidity; constrains the build-up of leverage and maturity mismatches; and introduces capital buffers above the minimum requirements that can be drawn upon in bad times. The framework includes an internationally harmonized leverage ratio to serve as a backstop to the risk-based capital measures. The new standards are expected to reduce banks' incentive to take excessive risks, lower the likelihood and severity of future crises, and enable banks to withstand—without extraordinary government support—stresses of the magnitude associated with the recent financial crisis. This will result in a banking system that should better support stable economic growth.

Other regulatory initiatives aim to work in an internationally consistent and non-discriminatory manner to strengthen the regulation and supervision on hedge funds, OTC derivatives, and credit-rating agencies. In particular, the FSB adopted new standards for sound compensation and specific recommendations for implementing OTC derivatives market reforms, designed to implement fully previous commitments in an internationally consistent manner, recognizing the importance of a level playing field. Furthermore, the FSB adopted principles concerned with reducing reliance on external credit ratings. Standards setters, market participants, supervisors, and central banks should not rely mechanically on external credit ratings.

Another issue is the role of financial institutions that are too big or too complicated to fail. The FSB proposed the policy framework, work processes, and timelines to reduce the moral hazard risks posed by "systemically important financial institutions (SIFIs) and address the "too big to fail" problem. This requires a multi-pronged framework combining: a resolution framework and other measures to ensure that all financial institutions can be resolved safely, quickly and without destabilizing the financial system and exposing the taxpayers to the risk of loss; a requirement that SIFIs and initially in particular financial institutions that are globally systemic (G-SIFIs) should have higher loss absorbency capacity to reflect the greater risk that the failure of these firms poses to the global financial system; more intensive supervisory oversight; robust core financial market infrastructure to reduce contagion risk from individual failures; and other supplementary prudential and other requirements as determined by the national authorities which may include, in some circumstances, liquidity surcharges, tighter large exposure restrictions, levies and structural measures.

New and stronger rules must be complemented with more effective oversight and supervision. The FSB, in consultation with the IMF, was tasked to report to Finance Ministers and Central Bank Governors on recommendations to strengthen oversight and supervision, specifically relating to the mandate, capacity and resourcing of supervisors and specific powers which should be adopted proactively to identify and address risks, including early intervention. The institutional design of supervisory authorities remains, in any case, in the hands of national governments. Regional entities, like the European Union, may set minimal requirements of structural and functional independence. The G-20 members strengthened, as well, the commitment to the IMF–World Bank's Financial Sector Assessment Program (FSAP) and pledged to support robust and transparent peer review through the FSB. Other multilateral initiatives are designed to address noncooperative jurisdictions based on comprehensive, consistent, and transparent assessments with respect to tax havens, the fight against money laundering and terrorist financing, as well as the adherence to prudential standards. International assessment and peer review should play a fundamental role in order to ensure the achievement of common objectives.

3. Myth and reality of cooperation among governments after the financial crisis: Concerted practices or parallel behaviors?

Nonetheless, greater levels of global economic integration, even after the shocking experience of the financial crisis, did not produce, at least apparently, a radical change on the institutional front.[17] As a matter of fact, the states did not transfer authority to existent or new supranational bodies. They decided, simply enough, to let the FSF evolve into the FSB and to strengthen the role and the financial resources of IMF. Even the enlargement of the G-8 in the G-20 as the "premier forum of international economic governance" did not entail any delegation of authority.

Recently, some scholars, in order to offer a possible explanation for the "missing" supranationalism, described two additional modes of international governance: hierarchy, in which states transfer regulatory authority to a dominant state; and network, in which states and private actors meet and coordinate their action within a common institutional framework.[18] These alternative modes of global governance, in any case, played a marginal role in managing the financial crisis. The hierarchy option can explain the relevance of some U.S. initiatives, in shaping bailouts, financial reform, and recovery plan strategies. But these could not work without coherent and coordinated action by other governments. Also the room for a network model solution was very limited, as it remained circumscribed, confined to well-known examples, as in the case of public-private financial regulators.[19]

Individual action by national governments, on the contrary, was fundamental. The point is that governmental reactions to the crisis were not the results of a single-player game. Instead, outcomes were, much more than ever in the past, affected by other

[17] For a critical assessment of the existing framework in David Zaring, *supra* note 9. On the different techniques to promote accountability and legitimacy of the Basel process, Michael S. Barry & Geoffrey P. Miller; *Global administrative Law: The View from Basel*, 17 *European Journal of International Law*, 15 (2006); for a comprehensive analysis, *see* in La Regolazione Globale dei Mercati Finanziari [The Global Rules of Financial Markets] (Stefano Battini ed., 2007).

[18] *See* M. Kahler & D. A. Lake, *supra* note 12, p. 242.

[19] From a normative point of view, the establishment of a new network model of governance is suggested by Katharina Pistor, *Financial Governance Networks,* in Responses to the Global Crisis: Charting a Progressive Path, *supra* note 3.

players' games. The problem, thus, is to understand if, in this context, governments were able to develop a cooperative approach in order to share and divide a better payoff, or, on the contrary, if they were induced to develop unilateral courses of action, looking at short-term benefits, under pressure of national political process. As a matter of fact, the crisis showed how far an individual government's decision (to bail out or not a big financial institution, to take an example) may affect the economic and financial outcome of other countries. Since September 2008, then, governments realized the existence of relevant spillover effects in every response to the crisis they were going to adopt, from banks' bailouts to regulatory reform, from recovery and growth policies to fiscal sustainability and financial assistance measures.

To understand better if and how cooperation is working after the financial crisis, new behavioral models must be worked out. From this perspective, useful reference could be made to antitrust law, which prohibits all kinds of legal and actual conducts that might restrict the competition, whether originated deliberately or consequentially.[20]

The cooperative actions (deemed illegal from the antitrust point of view) are evaluated in one of the three categories including agreements among undertakings, concerted practices, and "decisions by association" of undertakings. While agreements are the objects of binding contracts, written or orally stipulated, and decisions by association are adopted by a well-established institution to which the members have delegated some kind of authority, a concerted practice may exist where there is informal cooperation without any formal agreement or decision and the related conducts do not provide obligatory power.

When transplanted into the international law setting, agreements may be considered similar to treaties and other forms of legally binding, bilateral or multilateral "contracts" stipulated among states. Decisions by association may be likened to any measure adopted by an international governmental organization or other boards, forums, or networks vested with some form of authority over its members. Sovereign and autonomous conduct of governments, on the other hand, may be considered a form of concerted practice, whenever state actors' behavior is the result of direct or indirect contacts between countries leaders who knowingly enter into practical cooperation.

As previously noted, to face the financial crisis and its cross-border effects, governments did not stipulate new formal agreements, whether bilateral or multilateral. At the same time, they did not delegate any formal authority to a supranational organization. However, all the governments recognized the importance of cooperation in order to achieve the production of new fundamental global public goods, like financial stability and sustainable growth. At the same time, wary of the near relation of the required decisions to the core of national sovereignty, they did not want to tie their hands and to commit to some form of legally binding supranational authority.

[20] For a confirmation of the broader meaning that the concept of concerted practice can assume, Maksymilian Del Mar, *Concerted Practices and the Presence of Obligations: Joint Action in Competition Law and Social Philosophy*, www.ssrn.com.

This is why governments claimed, implicitly, that concerted practices were the most viable way to achieve cooperation in highly sensitive political matters. Informal contacts and meetings among political leaders and the G-20 summits became the preferred venues in which to exchange points of view, coordinate action without assuming legal obligations, and monitor voluntary compliance.

The claim that governments learned the lesson of the financial crisis and effectively took cooperative action through a concerted-practice scheme may be questioned, reversing the argument usually made by undertakings suited for anticompetitive action. When undertakings are suspected of a violation of antitrust law through concerted practices, restricting free trade and third parties' economic rights, it is argued that the contested behavior is not the result of a coordinated action but simply the object of independent rational choices. The final result may well be the "parallel behavior" of multiple economic actors behind which there is no even informal or tacit agreement.

From this perspective, what governments claim to be cooperative behavior at the global level actually could be mere parallel behaviors, adopted simply to satisfy domestic interests and pressures at the national level. This kind of ambiguity could perfectly fit a double and opposite need of governments: on one side, ensuring financial markets and public opinions throughout the world that global collective action is taking place through concerted practices; on the other, making the assessment that the well-being of national citizens is at the core of sovereign decisions of governments (even if appearing "parallel" across countries).

3.1. Governmental bailouts and global financial stability

The first response of governments to the financial crisis was the bailout of banks and financial institutions in order to guarantee the stability of the financial system, injecting liquidity into the market and restoring confidence among savers and investors.

In the first half of 2008, bailout measures were adopted on a case-by-case basis by governments, in the United Kingdom and the U.S., for example, as purely domestic choices. At the beginning of September 2008, it was the decision by the U.S. not to bail out Lehman Brothers that revealed the worldwide negative spillover effect of a national government option. In this dramatic way, the need for a neglected global public good (financial stability) became clear and that it should have been protected from both market and government failures.

Since then, efforts at coordination between states started. Informal contacts and meetings among the U.S. and the European countries began to create the basis for a shared economic policy analysis and to work out the measures necessary to avoid the collapse of the global financial system. As the crisis was coming to a head, October 9 saw a simultaneous move by the central banks of the U.S., Europe, and China, which was aimed at reducing interest rates by a half point. On October 11, the meeting of G-7 finance ministers, for the first time, outlined a set of joint rules and measures. Only after that, the enlarged G-20 Washington summit, held in November 2008, for the first time agreed on the relevance of the "urgent and exceptional measures" to be taken by governments to stabilize financial markets and to support the global economy, providing liquidity, strengthening the capital of financial institutions, protecting savings and deposits, and unfreezing credit markets.

Nonetheless, no a formal agreement was stipulated, neither was a decision from any supranational authority or network provided. On the contrary, the governments adopted parallel behaviors in order to address the insolvency and liquidity problems of financial institutions in each country. In this way, the governments succeeded in combining a cooperative approach at global level with the defense of national prerogatives. Even if coordinated, bailouts following the failure of Lehman Brothers continued to be predominantly national, for two fundamental reasons. On the one hand, the pressure from individuals, families, and businesses for protective measures are focused on electorally accountable national representative bodies. On the other hand, states are the only entities that possessed the financial resources necessary to fund rescue packages. Moreover, they were the only ones that had the necessary authorizing powers, as well as the acknowledged legitimacy to exercise them.

In efforts at coordination, the approval of specific pieces of legislation on the bailouts played an important role, as a signal that would reveal the game that each state intended to play. Before that, each country decided case by case whether to bail out or not and how. Going on in this fashion would have greatly increased uncertainty not only in the market but also in the relationships among states. In this context, each government would have acted solely in its own interests, ignoring the spillover effects of its decisions. On the contrary, the approval in many countries of relevant new legislation created a more cooperative environment, revealing the existence of a dominant strategy vis-à-vis the bailout and creating a more uniform playing field.

In this signaling behavior through laws, the first mover was the U.S. In October 2008, the Congress passed the Economic Emergency Stabilization Act. The statute authorized the treasury secretary to establish a Troubled Asset Relief Program (TARP) for the purpose of purchasing or committing to purchase "troubled" financial instruments. Through the approval of the statute, the U.S. revealed a double commitment. First, the U.S. government was going to rescue national financial institutions and protect citizens, workers, and investors. Second, by paying for the bailout, the U.S. showed its willingness to internalize part of the negative spillover effects of the crisis.

Acting as first mover, the U.S. attempted to shape the behavior of second movers and to push for the development of a cooperative environment, possibly mirroring the domestic one. This was consistent with the common assumption that a dominant state will usually promote coordination that is centered on its own domestic standards in order to minimize adjustment costs for its domestic actors.[21] The outcome, in any case, was a only partial success. As a matter of fact, all European countries adopted, within few months, similar laws and statutes on bailouts, revealing in this way their willingness to cooperate and commitment to avoid a reverse effect in the U.S. caused

[21] That is the fundamental argument as explained by Daniel W. Drezner, All Politics is Global (2007). Be that as it may, from a legal point of view, the issue is much more complicated, insofar as there is a two-way influence: Richard Stewart, *U.S. Administrative Law: A Model for Global administrative Law*, 68 Law & Contemp. Probs. 63 (2005); Richard Stewart, *The Global Regulatory Challenge to U.S. Administrative Law*, 37 J. Int'l L. & Pol. 695 (2005).

by the failure of some big European financial institution. Moreover, limits and controls by the European Commission on state aid to banks and other institutions were relaxed.[22]

However, only in some countries, like Spain, were the legal and economic instruments of the bailout copied from the U.S. Meanwhile, several different solutions were introduced in many European countries, such as the creation of special funds, concession of government guarantees, and the exchange of government securities.[23] Above all, many European countries adopted the strategy of nationalization. In fact, outright acquisition of equity in banks was preferred to the purchase of troubled assets. The United Kingdom, for example, decided to buy equity in eight of the major banks, with a recapitalization plan backed by 50 billion pounds. To this purpose, the Banking Bill contemplated the proposal of "temporary public ownership" through the Treasury's release of transfer orders of credits. The choice in favor of nationalization appeared to be both more effective and convenient for the taxpayer.

To a certain extent, European countries took advantage of acting as second movers, after having observed the negative reaction of markets and citizens to the choices of first mover. That is why the strategy of second movers finally reversed that of the first. As a matter of fact, the U.S. Treasury, on the basis of the broad definition of "troubled asset" contained in the Economic Emergency Stabilization Act, which can be extended to any financial instrument, changed its approach, in light of both the early negative responses of the stock exchange toward plans to purchase only troubled mortgage-related securities and the initial success of the different European model, which was based precisely on the government's acquiring equity and stocks in banks. In this way, even the U.S., traditionally reluctant to embark on public ownership, was induced to experiment with nationalization.[24]

3.2. Coordinating local reforms: A path to the new global financial regulation?

While implementing bailout measures, various governments announced programs of regulatory reforms to broaden the scope and strengthen the efficacy of market supervision, particularly in the financial sector. In the context of internationally active banks and globalized financial markets, collective action is even more important when it comes to crisis prevention through regulatory actions. The fundamental challenge is to ensure level playing fields and to fight attempts to avoid regulatory rules through

22 *See* Communication from the Commission–Temporary Community Framework for state aid measures to support access to finance in the current financial and economic crisis (2009/C 16/01), of January 22nd, 2009, and as modified on February 25th 2009.

23 *See* Spain, the Real Decreto-Ley, October 10, 2008, n. 6, which creates the *Fondo para la Adquisición de Activos Financieros*, and the Real Decreto-Ley, October 13, 2008, n. 7, on *Medidas Urgentes en Materia Econòmico-Financiera*, including the issue of public guarantees for banks and the market. In Germany, the *Finanzmarktstabilisierungsgesetz* approved on October 17, 2008 created a special Fund for market stabilization managed by the Bundesbank, in conformity with direction from the finance minister.

24 The point has been stressed, with some malice, in the French literature, by Dominique Custos, *supra* note 3.

international arbitrage.[25] From this perspective, the G-20 members pledged to act together to work out commitments to the reform of the financial sector made at the official summits.[26]

In the framework of this common strategy, efforts to establish system-wide oversight and macroprudential policy arrangements greatly depend on measures adopted at the national level and on the capacity of governments to coordinate them to ensure global financial stability.[27] The problem is that strategies may vary among the different areas of the world. In the U.S. and in Europe, the key issue is how to deal with the systemic risk arising from financial innovation and big institutions. In Asia, on the contrary, financial institutions and structures are less sophisticated. The main problem is how to make the financial system more efficient and responsive to economic and social sectors needs.[28] African countries may call for broadening the scope of the regulatory agenda in order to guarantee effective access to financial services for their citizens and small companies.[29]

In the transatlantic area, the U.S. was the first mover, once again. On June 2010, Congress approved “the Dodd-Frank Wall Street Reform and Consumer Protection Act”, which passed into law the regulatory reform program presented by the Obama administration the year before.[30] First, the bill creates a new independent watchdog, housed at the Federal Reserve, with the authority to ensure that consumers receive the information they need to shop for mortgages, credit cards, and other financial products and to protect them from hidden fees, abusive terms, and deceptive practices. Second, the bill seeks to create a safe way to liquidate failed financial firms; imposes tough new capital and leverage requirements that make it undesirable to become too big; updates the Fed’s authority to allow system-wide support but no longer to prop up individual firms. Third, it creates a council to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the economy. Fourth, it tries to eliminate loopholes that allow risky and abusive practices to go on unnoticed and unregulated—including loopholes for

[25] On the topic, William R. White, *The Importance of Collective Action and Sound Policy Frameworks*, Introductory address at the G-20 Workshop on a Framework for Strong, Sustainable and Balanced Growth, Toronto, May, 7–9, 2010.

[26] Useful suggestions were provided by the FSB, Improving Financial Regulation. Report of the Financial Stability Board to G-20 Leaders, 25 September 2009.

[27] The danger of another “messy compromise between the needs of financial markets for global coordination and the protectiveness of national governments” is stressed by Howard Davies, *Global Financial Regulation after the Credit Crisis*, 2 Global Policy 185 (2010). But, for the argument that “international and regional cooperation and national political leadership are essential complements for achieving global financial reforms,” *see Modernisation of the Global Financial Architecture: Global Financial Stability*, Remarks of Mario Draghi, Chairman of the Financial Stability Board, to the Committee on Economic and Monetary Affairs European Parliament, 17 March 2010.

[28] The point is stressed by Andrew Sheng, *The Regulatory Reform of Global Financial Markets: An Asian Regulator’s Perspective,”* 2 Global Policy 191 (2010).

[29] On this issue, D. D. Bradlow, *supra* note 13, 7.

[30] About the different alternatives faced by legislatures, Zaring & Cunningham, *supra* note 9, 78. On the position of the administration, Scheherazade S. Rehman, *The Obama Administration and the U.S. Financial Crisis*, 1 Global Economy Journal 1 (2010).

over-the-counter derivatives, asset-backed securities, hedge funds, mortgage brokers, and payday lenders. Fifth, it strengthens oversight and empowers regulators to aggressively pursue financial fraud, conflicts of interest, and manipulations of the system that benefit special interests.

The European regulatory reform is far less comprehensive, but, like the new U.S. legislation, it aims to address more effectively the fundamental problem of systemic risk.[31] To this end, it established a European financial supervision system based on two pillars. The first is a new European Systemic Risk Board that will monitor and assess potential threats to financial stability that arise from macroeconomic developments and from developments within the financial system as a whole (macroprudential supervision). The second is the European System of Financial Supervisors (ESFS), which comprises a robust network of national financial supervisors working in tandem with new European supervisory authorities to safeguard financial soundness at the level of individual financial firms and to protect consumers (microprudential supervision).[32] The existence of a European project and its final approval did not hinder, in the interim, parallel reforms at national level, all meant to face the problem of systemic risk through similar institutional solutions.[33] Informal contacts among leaders, imitative behaviors by governments and legislatures, and peer review by the FSB played a fundamental role in ensuring some degree of coordination.[34]

[31] Asymmetries between U.S. and European strategies can be explained in the light of the different institutional and political contexts. The U.S. bill, in order to gain political consensus in the Congress and among citizens, aims to strengthen consumer protection and reveals the U.S. purpose to lead the worldwide process of regulatory reform. The EU proposal, on the contrary, is much more concerned with the problem of institutional cooperation at the European level between national authorities. It is progress, if compared with the present situation, but it runs the risk of being not courageous enough to reduce the transaction costs arising from a system of multilevel governance. Both in the U.S. and in Europe, the objective to increase the level of cooperation and integration between supervisory authorities remains unfulfilled, inasmuch as responsibilities are still strongly divided among several regulators (in banking, insurance, or real estate) and different levels of governments (in the U.S. between federal and state authorities; on the other side of the Atlantic, between in European and national equivalents). On the topic, *see* Designing Financial Supervision Institutions: Independence, Accountability and Governance (Donato Masciandaro & Marc Quintyn eds., 2007).

[32] On the topic, Fabio Recine & Pedro Gustavo Teixeira, *The new financial stability architecture in the EU*, www.ssrn.com/abstract=1509304.

[33] In France, banking and insurance authorities merged to create a new Prudential Authority. The aim is to strengthen financial stability by establishing a supervisory authority capable of monitoring risks across financial sectors and eliminating "blind spots" in the monitoring. To tighten the regulation of the financial sector, a council for financial regulation and systemic risk, chaired by the minister of finance, was established. Furthermore, the Autorité des Marchés Financiers established an in-house Risk Committee to identify risks at an early stage and extended its supervision to all markets and products including OTC derivatives markets. In the U.K. a new Financial Services Act was approved. The act aims to strengthen the financial stability framework through the introduction of a statutory financial stability objective for the Financial Services Authority (FSA). In addition, a new committee (the Council for Financial Stability) has been established, consisting of the chancellor, FSA chairman, and the governor of the Bank of England. The objective of the council is to analyze and examine emerging risks to the financial stability of the U.K. economy and coordinate the appropriate response. Other reforms announced by the new cabinet aim to enhance to role of the Bank of England in prudential macrosupervision.

[34] *See* FSB, *Overview of The Progress in the Implementation of the G-20 Recommendations for Strengthening Financial Stability*, Report of the Financial Stability Board to G-20 Leaders, 18 June 2010.

This highly fragmented landscape raises a fundamental question: Why do governments reform national regulation and supervision over banks and other financial institutions, if they recognize that the issue must be solved at a global or, at least, regional level? There are at least five possible explanations.

First, national reforms respond to citizens' demands for stricter rules and controls over financial institutions that political actors, playing at the national level, feel compelled or at least highly motivated to acknowledge. Not surprisingly, in the U.S. the approval of the Dodd-Frank act is widely considered an important political success of the Obama administration and of the Democratic majority of the Congress, in defense of the American "Main Street," against Wall Street.

Second, reforms at the national level may strengthen the power of political actors vis-à-vis both independent regulatory agencies and financial institutions. This hypothesis is confirmed by the fact that, almost everywhere, reforms establish oversight councils on financial stability chaired by political actors (treasury ministers, usually). This kind of institutional arrangement will give the treasury the last word on regulatory and oversight strategies of the individual regulators and on conflicts between them arising as a result of overlapping authority over the market. Furthermore, the treasury can develop specific expertise on financial matters, without relying solely on the disclosure of information by regulators.

Third, reforms at national level, even when complex, face lower transaction costs than those that must be played out in a regional or global arena. This is true even in a system of divided government like U.S., where the reform was approved in less than a year from the announcement of the proposals by the Obama administration. While debates and negotiations go on at global and international level, governments may be quicker in approving regulatory reforms at national stage.

Fourth, the race to earlier approval of reforms at national level may be a device for the preemption of supranational reform. This may be especially true for leading countries whose business models may differ from those of other countries. That is the case in the U.S., where, unlike the European countries, financial institutions are much more relevant than banks. A stricter national regulation of the latter, if transplanted to the global level, may foster a competitive advantage for the entire American economic system.

Fifth, even if substantial rules should become more and more common at the global level, institutional structures, such as supervisory authorities, may still differ at regional and national level. This means that they can be freely and broadly shaped by legislatures according to purely political evaluations.

All things considered, the interplay between global and national initiatives and its outcome are highly uncertain.[35] In general terms, insofar as national reforms reduce systemic risk at country level, their overall impact may be positive at global level. Furthermore, sound national solutions may be transplanted to other countries, if they

[35] The argument that in the globalized world, worldwide and local action must go "hand in hand" is developed by Eddy Wymeersch, *Global and Regional Financial Regulation: The Viewpoint of a European Securities Regulator*, 2 Global Policy 201 (2010).

proved to be effective. Also in this case, even if stronger models of supranationalism are still too hard to achieve, successful cooperation at the global level can be achieved through concerted practices among governments. As a matter of fact, without assuming any legal obligation, countries, through direct and indirect contacts, can adopt parallel behaviors enacting new laws and statutes and adopting similar institutional solutions in the field, for example, of macroprudential oversight. The interplay between the U.S. and the EU reform is a good example of that.

The future benefits arising from cooperation among governments, in any case, must not be overstated. Some countries may be tempted to hitch a free ride on the regulatory reforms of other countries, which reduce overall systemic risk and, in this fashion, seduce financial institutions with the promise of an island of free love. Moreover, enacting reforms at the national or regional level could impede, for a long time, the negotiation of an international treaty or other forms of supranational agreement for regulating the global financial system, even though this step is both necessary and a declared objective of many countries. Insofar as parliaments have passed legislation altering national financial regulatory structures, these alterations will prevent executives from acceding to foreign proposals inconsistent with them and, thus, will erect a barrier to successful negotiations.[36] The final result, once again, may be a leopard's-spots system in which financial institutions may still adopt strategies of regulatory arbitrage, taking advantage both of incoherent legislation and fragmentation among global, regional, national, and local supervisory authorities.

3.3. Synchronizing national recovery programs to enhance a worldwide balanced growth

The governments' response to the crisis was not limited to the financial sector. With potential supply exceeding actual demand, due to the decline of private consumption, each country adopted stimulus packages to restore balance to the markets. Once again, in a deeply interconnected economy, national measures, to be effective, must be coordinated at global level, in order to cover supply both through internal consumption and export. The problem is that fiscal stimulus policies, compared with financial regulation, represent a field where achieving true supranationalism is even more difficult, since they produce varying distributional effects and largely rely on taxpayers. That is why, in this field as well, cooperation among governments was the only viable mechanism through which some form of economic global governance could take place.

Since the first Washington summit in November 2008, the G-20 recognized "the importance of monetary policy support, as deemed appropriate to domestic conditions," and requiring those involved to "use fiscal measures to stimulate domestic demand to rapid effect, as appropriate." Six months later, in the London summit, the G-20 countries stressed the fact that they were "undertaking an unprecedented and concerted fiscal expansion." As a matter of fact, almost all the countries in the G-20

[36] The argument is drawn from Richard A. Posner, The Crisis of Capitalist Democracy 170–171 (2010).

announced and then approved fiscal stimulus measures. While almost all countries signed on to the fiscal stimulus program, the size of the stimulus, of course, varied substantially across nations.

The U.S. played a leading role, as well, in recovery policies, inducing parallel behaviors in several other countries. The American Recovery and Reinvestment Act and the similar statutes passed in all the Western countries in the last two years focused the stimulus mainly on three areas: aid to specific economic sectors, social welfare expenditures, and public works programs. Tax reductions, instead, played a very limited role.[37]

First, state aids were introduced in favor of specific economic sectors, the most pertinent example being the benefits conferred on the automakers. The U.S. initiative was justified with the argument that the peculiarities and the dimensions of the industry would have made bankruptcy likely to exacerbate the nation's already miserable economic condition.[38] In a globalized market, the U.S. initiative stimulated a European equivalent. Member states were induced to adopt similar measures so as not to dislocate the competitive position of their national industries.[39] On both sides of the Atlantic, state aid set preconditions requiring the use of specific green technologies. More generally, many countries decided to support the development of new networks, like broadband, capable of producing positive externalities for the environment, information, and other high-quality services. An indirect way to give aid to business is to link government underwriting of bonds in banks and other financial institutions to the way in which they are managed and to the credit that is supplied to third parties. The U.S. Financial Stability Plan obliges operators who receive credit to demonstrate how public support extends loans to businesses and families, and it obliges the treasury secretary to publish data and reports on the subject. In some European countries, such as France and Italy, financial institutions aided by the state must guarantee an adequate flow of credit to the economic operators and to the families affected by unemployment. State officials operating at local levels are charged with enforcing these commitments, through administrative law powers and soft law tools.

Second, the economic crisis following the financial induced many countries to adopt programs of wealth transfer and other social welfare expenditures. All over the world, protection against poverty and unemployment was strengthened. The U.K. developed a comprehensive plan to help people and small business.[40] France and Italy introduced mechanisms of money transfers in favor of the poorest.[41] The U.S. was the first to enlarge the coverage of public subsidies in the case of unemployment.[42] At the

[37] In the U.S. one may quote the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, which reduced taxes or postponed their payment for the unemployed and victims of natural disasters.

[38] Auto Industry Financing and Restructuring Act of 2008; on the topic, Posner, *supra* note 5, 153–164.

[39] In Germany, *Gesetz zur Neuregelung der Kraftfahrzeugsteuer und Änderung anderer Gesetze*, approved on 2009, May 29th; in Spain, *Plan Integral de Automoción*, approved on 2009, February 13th.

[40] *See* Department for Business, Enterprise and Regulatory reform, "Real help now for people, for businesses," February 2009.

[41] *See*, in France, "Décret n° 1351-2008 du 19 décembre 2008 instituant une prime de solidarité active"; in Italy, "Decreto legge n. 112/2008", art. 81, co 29 ff.

[42] *See* Unemployment Compensation Extension Act of 2008.

beginning of 2009, Germany and Spain approved the more comprehensive statutes in the field of welfare services.[43] Many countries introduced new provisions regarding housing. The U.S. achieved the record on the topic. On the one hand, the Federal Housing Finance Regulatory Reform Act of 2008 established the new Federal Housing Finance Agency, having regulatory and oversight powers over Fannie Mae, Freddie Mac, and the Federal Home Loan Bank. On the other, the Emergency Economic Stabilization Act of 2008 and the Helping Families Save Their Homes Act of 2009 gave assistance to homeowners.

Third, most countries adopted public works programs.[44] The problem of delay in initiating the expenditure of project funds was reduced in two ways. On one hand, resources were concentrated on projects that had been interrupted by the economic downturn and could be resumed at short notice. On the other, ordinary rules on adjudication were derogated, allowing direct negotiating. Even if in Europe this solution proved to be difficult, considering the existing regulatory framework on public contracts, some countries, like France, tried to pursue precisely that sort of direct negotiation.[45]

The first results of all these stimulus and recovery plans were appreciated in the second half of 2009. The Pittsburgh summit declaration recognized that "national commitments to restore growth resulted in the largest and most coordinated fiscal and monetary stimulus ever undertaken" and that the G-20 countries "acted together to increase dramatically the resources necessary to stop the crisis from spreading around the world." However, to the extent that the process of recovery and repair remains incomplete, the G-20 member states pledged to sustain the strong policy response adopted until a durable recovery is ensured. In the short term, unilateral exit strategies were strongly discouraged. On the contrary, governments were asked to "avoid any premature withdrawal of stimulus."

Cooperation among governments, once again, played a fundamental role in shaping a collective response to the crisis, even while preserving the sovereign domain of national economic fiscal policies. Informal talks among governments and open discussions within the G-20 summits helped to clarify and compare different solutions, which were then adopted through the simultaneous approval of specific pieces of legislation at national level. Once approved, the G-20 asked members to avoid unilateral holding-out to keep recovery plans at work. Perfect synchronization of stimulus action was sought as a key factor for the sake of ensuring the full success of the concerted-practice strategy.[46]

[43] *See*, in Germany, "Gesetz zur Sicherung von Beschäftigung und Stabilität in Deutschland" (approved on 2009, March 2); in Spain, "Real Decreto-ley 2/2009, de medidas urgentes para el mantenimiento y el fomento del empleo y la protección de las personas desempleadas" (approved on 2009, march 6).

[44] *See*, in France, "Décret n° 1355-2008 du 19 décembre 2008 de mise en œuvre du plan de relance économique dans les marchés publics"; "Loi n° 2009-179 du 17 février 2009 pour l'accélération des programmes de construction et d'investissement publics et privés."

[45] "Décret n° 1356-2008 du 19 décembre 2008 relatif au relèvement de certains seuils du code des marchés publics."

[46] The relevance of the simultaneity or near simultaneity criteria in antitrust law to detect the existence of a concerted practice is stressed by Oliver Black, Conceptual Foundations of Antitrust (2005).

Still, relying on national measures approved by elected parliaments may be dangerous, inasmuch as the results of the political process could be altered by the influence of pressure groups. For example, cooperative efforts to sustain a recovery may be eradicated by crisis-era state measures that are likely to affect adversely a large number of trading partners and a sizeable proportion of international trade. Notwithstanding the repeated collective commitments to develop further an open global economy and to "fight protectionism,"[47] governments have almost trebled the amount of discrimination in place by imposing 356 discriminatory measures, with harmful measures outnumbering beneficial by a ratio of four to one.[48] Even among the G-20 countries, some inflicted more harm than others. Any notion that the current G-20 process generates a parity of pain and opportunity ought to be dismissed. European countries (especially Germany) were in the top-five list of discriminatory measures ranked by overall number, sectors, and trading partners affected. Other countries at the head of the list are Russian Federation, Argentina, Venezuela, China, and India.

One of the most powerful discriminatory measure is the "buy American" requirement included in the American Recovery and Reinvestment Act of 2009 approved by the U.S. Congress on February 2009. The bill requires that all of the iron, steel, and other manufactured goods used in the program be made in the United States. In response to the administration's concerns over sending a protectionist message, the Senate amended the bill to specify that these provisions "shall be applied in a manner consistent with United States obligations under international agreements." This allows the U.S. to discriminate against those developing and transition economies that have not signed the World Trade Organization's Government Procurement Agreement (GPA) and have not reached other free trade agreements with the United States.

The results of cooperation among governments are even more uncertain insofar as the recovery and stimulus programs seek to achieve, as stated in the Pittsburgh summit final declaration, a "strong, sustainable and balanced growth." According to the Pittsburgh summit, this objective requires working together in order to manage the transition to a more balanced pattern of global growth. The crisis and the subsequent initial policy responses already had produced significant shifts in the pattern and level of growth across countries. Within the context of national stimulus packages, many countries took important steps to expand domestic demand, bolstering global activity and reducing imbalances.[49]

The G-20 members committed themselves to agree on shared policy objectives that should be updated as conditions evolve. In order to achieve these objectives, they will

[47] In the Pittsburgh summit, governments declared their intention to minimize "any negative impact on trade and investment" of their "domestic policy actions, including fiscal policy and action to support the financial sector"; reassessed the importance of an "open global economy"; vigorously stated their commitment to "fight protectionism."

[48] Global Trade Alert, *Unequal Compliance: The 6th GTA Report*, Centre for Economic Policy Research, June 2010.

[49] *See* Leaders' Statement. The Pittsburgh Summit, September 24–25 2009, Annex, 2-8. Moreover, the G-20 countries adopted "Core Values for Sustainable Economic Activity, which include those of propriety, integrity and transparency," building on Chancellor Merkel's proposed charter and on Italian government proposal for a set of global legal standards.

set out medium-term policy frameworks and work together to assess the collective implications of national policy frameworks for the desired level and pattern of global growth and to identify potential risks to financial stability. In particular, the G-20 countries are committed to implementing responsible fiscal policies, attentive to short-term flexibility considerations, and longer-run sustainability requirements and to promote more balanced current accounts.

The process to ensure more balanced global growth, anyhow, must be undertaken in an orderly manner. All G-20 members agreed to address the respective weaknesses of their economies, adopting different strategies in relation to their specific situation. On one side, G-20 members with sustained, significant external deficits pledged to undertake policies to support private savings and undertake fiscal consolidation while maintaining open markets and strengthening export sectors. On the other side, G-20 members with sustained, significant external surpluses pledged to strengthen domestic sources of growth. According to national circumstances, this could include increasing investment, reducing financial markets distortions, boosting productivity in service sectors, improving social safety nets, and lifting constraints on demand growth. In this context, concerted practices should be not identical, but complementary, to achieve a cooperative outcome.

As the Pittsburgh summit final declaration clearly stated, of course, "each G-20 member bears primary responsibility for the sound management of its economy". But, in the same time, the G-20 members also have a responsibility to the community of nations to assure the overall health of the global economy." Regular consultations, strengthened cooperation on macroeconomic policies, the exchange of experiences on structural policies, and ongoing assessment can strengthen cooperation and promote the adoption of sound policies. In this context, a fundamental role will be played by the IMF, which was asked to assist finance ministers and central bank governors, in the process of mutual assessment, by developing a forward-looking analysis of whether policies pursued by individual G-20 countries are collectively consistent with more sustainable and balanced trajectories for the global economy, and to report regularly to both the G-20 and the International Monetary and Financial Committee (IMFC).

This system will provide the "mutual reliance with a common goal and with knowledge gained, in part, by communication" that distinguishes, according to the antitrust law conceptual schemes, concerted practices from mere conscious parallelism.[50] Of course, it remains to be seen if such a cooperative mechanism will be strong enough to overcome the multiple and divergent pressures arising from the national political processes once fundamental economic policy choices are on the carpet.

3.4. Joint financial assistance and sovereign debt sustainability

The objective of building up strong and balanced growth is even more difficult to achieve at the very moment in which the Greek crisis in the spring of 2010 has highlighted the importance of sustainable public finances and the need for all the G-20

[50] In that sense, Oliver Black, *Communication, Concerted Practices and the Oligopoly Problem*, 1 Eur. Competition J. 341 (2005).

countries to put in place credible plans to deliver fiscal sustainability, differentiated for and tailored to national circumstances.

On this topic, the Toronto summit clearly stated that "sound fiscal finances are essential to sustain recovery, provide flexibility to respond to new shocks, ensure the capacity to meet the challenges of aging populations, and avoid leaving future generations with a legacy of deficits and debt." At the same time, the Toronto summit warned that "the path of adjustment must be carefully calibrated to sustain the recovery in private demand." As a matter of fact, there is the risk that "synchronized fiscal adjustment across several major economies could adversely impact the recovery." Still, the failure to implement consolidation, where necessary, would undermine confidence and hamper growth.

Reflecting this balance, the advanced economies committed to fiscal plans that will at least halve deficits by 2013 and stabilize or reduce government debt-to-GDP ratios by 2016. Fiscal consolidation plans should be credible, clearly communicated, differentiated to national circumstances, and focused on measures to foster economic growth. To facilitate further the concerted practices, the European Union announced its intention to promote the synchronization of national budget decisions, through prior approval at the European level of the draft measures issued by governments.

The problem is that on the path to fiscal consolidation, governments may face serious risks of default. According to some financial institutions, there is a potential worldwide crisis caused by sovereign balance sheets being overstretched to the point where insolvency ceases to be merely possible and becomes plausible. This danger is not limited to the periphery of Europe. It is global, and it is far from over.[51] Such a situation might become extremely difficult to manage because there is no formal mechanism at the global level to help restructure sovereign debts owed to foreign creditors.[52] Cooperation, in this regard, would require proper mechanisms of financial assistance, which, at the moment, are far from consolidated (quite surprisingly, G-20 summits' final declarations are silent on the matter). In this context, cooperative action may develop on three different levels: (*a*) supranational, (*b*) bilateral, (*c*) regional.

The first is based on the IMF's lending capacity. The problem is that developing countries, because they are underrepresented in the governance of this body, seem not to trust the fund and prefer not to accept its scrutiny over national economic policy. As a matter of fact, during the crisis, only European countries and those allied with the U.S. asked to borrow from the IMF.

The second level works through case-by-case bilateral agreements between a national lending authority and a national borrowing authority. As an example, during the crisis, Singapore and South Korea received assistance from the U.S. monetary authorities through a mechanism of bilateral swaps.

[51] To quote the provocative assessment of a recent Morgan Stanley note (Arnaud Marès, *Ask Not Whether Governments Will Default but How*, 30 August 2010).

[52] The point is stressed by Eric Helleiner, *Filling a Hole in Global Financial Governance? The Politics of Regulation Sovereign Debt Restructuring, in* The Politics of Global Regulation, *supra* note 7, at 89.

The third level would be based on a multilateral agreement on a regional scale. An interesting example is the Chang Mai Initiative, which establishes a specific fund of 120 billion dollars at the disposal of Korea, China, Japan, and the other ASEAN member states in order to deal with financial emergencies and imbalances. Another good example is the solution adopted in the euro zone to cope with the Greek crisis and others that might occur (as it happened few months later in Ireland and Portugal). First, the euro zone countries approved an exceptional measure involving parallel loans from each member state to the Greece. And then the Council adopted a European Stabilization Mechanism to preserve the financial stability in Europe. The mechanism is based on article 122.2 of the treaty, which requires a "qualified majority at the Council and the Parliament to be informed, and an intergovernmental agreement of euro area member states".

The exceptional assistance given to the Greece was based on a concerted practice scheme, as far as each country adopted a parallel national decision to grant a loan to Greece. Only in the meanwhile, a special kind of international agreement was signed by all euro member states, even if compliance to it was not mandatory. Partially different is the mechanism established to grant financial assistance to a member state in difficulties or seriously threatened with severe difficulties caused by exceptional occurrences beyond its control. The financial assistance takes the form of a loan or credit line granted to the member state concerned. Within this institutional framework, the Commission is allowed, by means of the facility created under article 122, to contract for loans on the capital markets or with financial institutions on behalf of the European Union. All interest and loan principal would be repaid by the beneficiary member state via the Commission. In addition, the mechanism envisages possible financial assistance to a euro area member state by way of a special-purpose vehicle (SPV), established by intergovernmental agreement among all euro area member states. The mechanism is superior to the concerted-practice scheme experimented with in the Greek crisis and better serves the stability, unity, and integrity of the European Union.

When one country faces a serious risk of default, because its sovereign debt is growing out of control, governments may manage a twofold problem of strategic behavior.

From the perspective of potential lenders, countries others than the one under threat must decide whether to engage in a program of financial assistance or not. This is not, of course, an easy decision, since, at national level, citizens usually are not willing to pay the bills of others, especially if they assume that the risk of default has been created by opportunistic or even fraudulent conduct by other governments and people. Multilateral concerted practices may face both transaction costs and agency losses.

As to the problem of transaction costs, it is well-known that, in particular, the German government resisted the idea of assisting Greece, as there was next to no support from the German population, and this occasioned hesitancy on the part of the German government, thereby preventing for some months any decision by the E.U. countries. Only external pressure by the U.S. president, representing the worldwide negative spillover effects of a Greek default, persuaded the German chancellor to give her consent to a European program of financial assistance. Perhaps the final decision was influenced, as well, by the self-interested consideration regarding the large number of Greek bonds in the hands of the main German banks.[53]

After the framework for concerted practice was established, agency losses emerged. As a matter of fact, the Slovakian Parliament voted against participation in the conditional loan arrangement for Greece. The vote represented a breach both of the political commitment undertaken by Slovakia in the euro group to provide temporary and conditional financial assistance to Greece and of the general principle of solidarity among member states, in particular, within the euro area. In any case, the Slovak Parliament vote did not put in danger the loan, and the reform program of Greece, insofar as the two-thirds threshold of participating countries was concerned, had been reached already. The next time like occasions arise, the European shift from a concerted-practice mechanism to a supranational one should reduce the room available to both ex ante (even if the decision to grant assistance is kept in the hands of the national finance ministers) and ex post opportunistic behaviors by governments.[54]

From the perspective of the potential borrower, the country in financial distress must decide whether to ask for financial assistance or not. Even if its need is dire, it could still decide not to borrow money from other countries if the loan is extended under strong conditionality, obliging the debtor government to adopt unpopular measures. Greece and Hungary offer two interesting cases of alternative strategies. Greece accepted all the conditions imposed by the European program of financial assistance and is properly respecting the scheduled program. Hungary, on the contrary, after signing a borrowing agreement with the IMF, renounced the last tranche of the lending, because the new executive preferred to implement the program of tax reduction promised during the electoral campaign. The differences between the two cases show that when the potential spillover effects are higher, as in the case of Greece, due to its membership in the euro group, the external pressures for cooperative governmental behavior may be stronger and more successful.

[53] Nonetheless, only a few hours after the German Bundestag's legislation was passed, four individuals brought a claim before the German Constitutional Court seeking to prevent the German president from signing the legislation by way of an interim injunction. The applicants claimed that the legislation would have infringed their constitutional right to property and other fundamental principles of the social state. The Constitutional Court rejected the application on the same date, arguing that the EU might be adversely affected were the interim injunction issued. Moreover, the absence of Germany's contributions would question the feasibility of the package altogether and threaten the stability of the euro zone. Accordingly, the Constitutional Court held that this risk outweighed the risk that the legislation could violate the German Constitution. The case is really interesting, as well, because it shows how far cooperative results may be endangered at national level, not only by the political process but also by the legal system and its mechanisms of rights' protection.

[54] The establishment of the Special Purpose Vehicle as a pillar of the new common policy aiming to protect the euro currency is stressed by Giulio Tremonti, Lezione al Walter Eucken Institut, Freiburg, Albert-Ludwigs-Universität, 20th July 2010, www.tesoro.it. The changing role of the state in the context of the European Stabilization Mechanism is sketched by Napolitano, *supra* note 9.

4. Rational governments and global governance

The financial crisis and the responses adopted by governments offer an interesting test for analyzing the strategic interactions between sovereign states and their capacity to develop a cooperative framework. From this perspective, the research suggests a broader view of global governance transformations following the crisis. As a matter of fact, the establishment of more effective "global collective action" is emerging in various ways, through a mixture of international, supranational, and national initiatives. The establishment of the G-20 as the "premier forum for economic global governance," the reformation of international financial institutions, and the strengthening of global financial regulation and supervision were important achievements reached at international and supranational levels through multilateral agreements.

More difficult to assess is the actual development of new modes of cooperation between governments when they adopt purely national decisions that, in some way, appear similar in conduct and in result. As a matter of fact, many Western countries adopted bailouts of banks and other financial institutions, regulatory reforms of financial markets, and recovery programs. In the European area, governments also experimented with new forms of financial assistance in cases of sovereign debt crisis. To some extent, these decisions may be considered independent parallel behaviors, each of them rationally satisfying a purely domestic interest. At some points, however, they appeared to be the results of an informal concerted practice, able to combine the resurrected authority of the state with the necessity of cooperation among governments to achieve the production of global public goods, such financial stability and balanced growth. The G-7 preliminary meetings and the enlarged G-20 summits became the most important forum wherein to share points of view, define common strategies, and assess consistent, even if not compulsory, execution of those strategies by governments.

Also within the European Union, the intergovernmental concerted-practices approach was successfully experimented with so as to allow cooperation in emergency situations where supranational mechanisms of collective action were not yet at work. In some cases, these concerted actions represented a fundamental preliminary step in the shift toward a more stable, comprehensive, and supranational solution, as finally emerged with the institutionalization of a financial assistance mechanism. This shift should make easier to reduce ex ante transaction costs (such as the one faced at the moment of the initial German refusal to assist Greece) and ex post agency losses (like the one generated by the Slovakian refusal to pay for the loan granted to Greece).

In this context, it becomes particularly difficult to consider measures and solutions issued by governments as parallel, independent behaviors adopted without any form of practical cooperation. The fact of the matter is that governments repeatedly interacted, observing and transplanting each other solutions, defining common objectives, and assessing outcomes. In some cases, the cooperative argument was fundamental to overcoming national resistance to unpopular or controversial measures, such as aids to the banking and automobile sectors and assistance to countries in financial distress.

In the establishment of a concerted practice a major role was played by the U.S. It was already observed that an influential leader nation, which is a major contributor to the problem, can also be an important facilitator of global collective action. In this case, the United States was at the origin of the crisis and played a fundamental role in shaping the responses to it. Once the United States pushed into action and showed that the Western and other countries could achieve net gains by adopting the same measures, decisive global action followed swiftly. As a matter of fact, the economic and legal solutions adopted at national level by U.S. soon influenced the measures assumed in other countries. The analysis, in any case, offers evidence also of the fact that second movers may take advantage of late entry and have a reverse influence on the first mover, as happened in the case of bailout measures.

Moreover, collective action through concerted practices also allowed nations to cooperate without sacrificing much autonomy. This way, governments could use their discretionary power in executing the concerted practice to strengthen or expand political influence and consensus at home. External pressures for nationalizing banks legitimated national governments' undisclosed desire to influence credit flows on the market. The common purpose of ensuring macroprudential oversight was satisfied through the establishment of councils and boards headed or influenced by political actors. International commitments to recovery plans for the economy helped many governments overcome limits and controls on state aids established at the regional and global level and to meet the demands coming from pressure groups. Even the financial assistance provided to other states proved to be extremely useful for some governments in order to protect the interest of national investors holding the sovereign debt bonds of the assisted country.

National law, through specific bills and statutes, represented a key factor facilitating cooperation in several ways. It was used as a signal, by leading countries, to show the right way to go about matters to all other countries, as happened with the Economic Emergency Stabilization Act adopted in U.S. It was an instrument for the execution of collective orientations, as it influenced national measures on bailouts, regulatory reforms, and plans of recovery. And it was an instrument of compliance—or, better, a signal of the willingness to comply—when it incorporated the required economic policy measures in the framework of a financial assistance program issued by the IMF or the EU. In this context, too, legislative techniques based on ambiguity and delegation played a relevant role. Many rules adopted at national level as a response to the crisis shared these peculiarities. Cooperation in an uncertain context, such as that arising from a financial and economic crisis, requires repeated fine tuning, which, on occasion, can work better through adjusting and manipulating existing pieces of national legislation, rather than, each time, adopting new laws. Principle-based or general-clause rules managed by expert bureaucrats in a proper timetable are, perhaps, best equipped to reach the common purposes set forth in international meetings, as those of the G-20.

The analysis, however, showed the many limits and traps in existing modes of cooperation vis-à-vis the financial crisis; loopholes in the safety net, incoherent regulatory reforms, protectionist measures are just few examples. The flexibility in legal provisions was used, as well, to allow drift and opportunistic behavior. Through delegation, the bureaucrats could secretly conspire together with legislatures to turn rules adopted within a cooperative framework into discriminatory actions. All these outcomes are due to the dependence of the national political process on interest-group pressure and the short-term calculations of electorally accountable actors. Only under special conditions, when domestic interests run together with third party or collective interests, are cooperative behaviors more likely to prevail. In all other cases, the production of global public goods, such as financial stability and balanced growth, is not yet guaranteed.

Game theory and rational choice approach may help us better understand and perhaps predict when and why cooperation succeeds or fails. As a matter of fact, the financial crisis created a context of repeated interactions among governments all engaged in winning the match against instability and economic depression. But not all the games in the match against the financial crisis are equal.

Bailouts, regulatory reforms, and recovery plans satisfy, first of all, a prevailing national interest (of course, with both winners and losers within each country). Even without efforts at coordination, each state would have adopted similar strategies on its own, after the learning experience of Lehman Brothers case. Thus, parallel behaviors would have spontaneously arisen all the same.

Coordination and cooperation, in any case, proved to be effective in achieving superior payoffs to the extent that all these policies constitute a network effect. Their utility increases to the degree that an additional mover (a particular government) plays the same game. Financial stability is protected more intensively the more that governments are willing to provide bailouts whenever necessary and the more the governments are willing and able to decide on strengthening financial regulation and supervision in order to prevent future crises. Recovery chances, too, are higher when many countries supply stimulus programs, in this way enhancing domestic consumption of goods and services to the benefit both of national producers and of exporting countries (of course, only if nations escape the prisoner's dilemma of erecting trade barriers against each other).

The strategic interactions in the game of financial assistance are different. Bailout measures, regulatory reforms, and stimulus plans are, in principle, self-interested domestic policies, even if cooperation at international level increases individual and collective payoffs. On the other hand, providing financial assistance to a third country is, in principle, an altruistic policy. When and why do rational governments commit to such policies?

Of course, countries rarely have a strong interest in preserving well-being in other countries. The governments stay in power by providing benefits to voters, not to foreigners. Thus, governments give aid to foreigners only when doing so benefits local voters, who mostly care about security and prosperity.[55] A possible conclusion is that the more direct is the cause and effect relationship between the well-being of foreigners

[55] In this sense, Eric Posner, *Human Rights, the Laws of War, and Reciprocity*, 537 University of Chicago Law School, John Olin Law & Economics Working Paper (2010).

and the security/prosperity of one's own citizens, the more likely is the dominance of a cooperative/altruistic strategy (which then converts in a selfish one).

Take the example cited above. The existence of a common currency, like the euro, whose stability can be threatened by the default of one member state, creates an incentive for all the others to provide financial assistance. Moreover, when national financial institutions hold foreign sovereign debt bonds, they might push their governments to intervene. This explains why euro zone countries, after some resistance, decided to adopt coordinated parallel behaviors providing financial assistance to Greece (through bilateral and synchronized loans). Acting in this way, governments provided benefits not only to foreigners but also to citizens and pressure groups.

Once the minimal requirements to ensure the workability of the financial assistance program are fulfilled (that is, when the two-thirds threshold of participating countries is reached), other countries may have a free ride. That the Slovak parliament refused to approve participation in the European program to aid Greece was a rational choice. Benefits flowing from the delivered financial assistance cannot be excluded to noncontributing countries. So why pay for that?

Ex ante delegation to a supranational agency (such as the SPV established in Europe to manage future emergencies after Greece) could reduce the sovereign free-ride problem; especially, if governments have to pay their fees in advance. Thus, in specific contexts, truly supranational models should be preferred to mere concerted-practices schemes of global or regional governance. When powers are delegated to some form of supranational, transnational, or international organization, however, transaction costs within the body and agency losses due to political or bureaucratic drift might arise. That is a well-known story: once you start playing, the games never end.