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Global Economic Governance: A New Regime through Soft Law?

Miroslava FILIPOVIC and Sonja BUNCIC*

ÖZET

Since the onset of the current economic crisis, a global debate on the regulation of the new economic reality has intensified. Challenging three traditional governance assumptions (the Westphalian system of states, national policies and its hard-law norms), the paper will examine the activities of the Group of 20 towards developing a new global economic regime, drawing on aspects of the regime theory and global governance concepts. After analyzing three distinct models of supranational governance, the paper will show the relevance of soft law in successful implementation of new global norms.

Anahtar Kelimeler: Global Governance, Regime, Regulation, G-20, Soft Law.

Küresel Ekonomik Yönetişim: Bağlayıcılığı Olmayan Hukuktan Kaynaklanan Yeni bir Rejim mi?

ABSTRACT

Son ekonomik krizin başlaması sonrasında yeni ekonomik gerçekliğin kurallarının neler olduğu konusundaki küresel tartışmaların arttığı görülmektedir. Yönetişimin geleneksel üç varsayımını (Vestfalyen devletler sistemi, ulusal politikalar ve bunların hukuki bağlayıcılığı olan ilkeleri) sorgulayan bu çalışma, G-20'nin, rejim kuramı ve küresel yönetim kavramları üzerinden yeni bir küresel ekonomik rejim geliştirme çabalarını incelemektedir. Bu çalışma, uluslar üstü yönetişimin üç belirgin modelini inceledikten sonra, bağlayıcılığı olmayan esnek uluslararası hukukun yeni küresel normların başarıyla uygulanmasındaki geçerliliğini ortaya koyacaktır

Keywords: Küresel Yönetişim, Rejim, Düzenleme, G-20, Bağlayıcılığı Olmayan Hukuk.

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Introduction

The current economic and financial crisis has resulted, *inter alia*, in various ideas, plans and proposals for how to revise the existing structure of or devise a new, global economic management model. Despite a plethora of ideas, stemming from multiple and diverse interests, not many of them have been elaborated afterwards. However, most of the proposals converge around two basic dilemmas: how to create a governing /managing structure and norms for the global economy, and how to devise a system to have the agreed norms implemented in practice. Should this integrated and interconnected world be regulated by one global authority or a group of national authorities who would agree on basic regulatory aims and principles – thus avoiding or better managing future crisis? This paper will examine the efforts of international community, exemplified by the Group of 20 (G20), since the beginning of the crisis. The paper challenges three basic pillars of traditional governance concepts. First, the Westphalian order and system of states still dominates both practice and theory of international relations. So, the issue is whether the nation states, as the ultimate norm-making authority will accept a superior authority to impose supranational norms on them. Secondly, national policies, norms and actions have so far been at the center of efforts to manage this crisis and most of international crises in the past. So, the second issue to be challenged is whether measures devised and taken at the level of national states are sufficient to manage the effects of the global crisis. Thirdly, it has been widely and stubbornly assumed that policies can only be implemented if they are legal, i.e. based on hard law that each state passes. Hence, the third issue is whether hard-law norms, inevitably limited by state boundaries, are appropriate to regulate international/global issues. Furthermore, intensive issue linkages from various domains of economics, finance, development, energy, social inclusion, ecology and food security present another challenge to the world economy and its regulation. The paper will challenge the three traditional assumptions about global governance by showing the relevance of soft law, as one of the opportunities for such coordinated policies to be successfully implemented on the national level. The paper's main hypothesis is that the G20 strives to build a new economic and financial regime for the global economy, using soft law instruments.

Concerning the methodology used in the research program, a negative heuristic approach will be used in the following way. First, regime theory and governance concepts will be analyzed against the current crisis environment and the three basic assumptions (the so-called “hard core” of the research program, Lakatos) explained above. Secondly, the process of induction (including both qualitative and quantitative methods) will be applied to the work of the G20 in the period 2008-2013. Then, a progressive auxiliary hypothesis of an emerging G20 regime will be tested against basic regime characteristics (in order to enhance the program's explanatory power), and finally, empirical evidence of new governance models will be analyzed against the hypothesis.

Global Governance and Politics

Since the crisis outbreak in September 2008, a plethora of diverse political ideas, plans, statements and declaration were made on the causes, effects and prospects of the current

crisis. Actions have been implemented to support individual institutions (the so-called “too-big-to-fail” institutions), capital injections have been made to enhance banks’ capital, guarantees were extended, banks nationalized and reference rates cut. International financial institutions have also stepped in to provide additional lending at more favorable conditions, especially for developing countries. In 2011, new measures were introduced aiming at the reduction of government and private debt, raising new finance, cutting budgets, etc. In 2012, it was widely accepted that certain structural changes in global economic/financial order might be necessary. In 2013, the focus of the agenda has been changed to put more emphasis on sustainable economic growth, employment and further tightening of coordinated financial regulation.

Intensive political interplay at both national and international level about the crisis causes and effects have resulted in somewhat conflicting views and different proposals on how to handle the crisis have been brought forward.: The intensity of these political processes and widening of their scope may lead to a conclusion that a new global/transnational social space is coming into being – a supraterritorial social space not limited by territory, distance or legal systems, wherein a structural change occurs independently of human agency¹. Furthermore, actors may choose between different, multiple equilibria and a number of potential outcomes because structural changes today allow actors’ strategic and tactical choices to interact with such changes. Various issue domains cross-cut each other and a multitude of actors emerge on such a supranational scene (previously strictly reserved for governmental actors) of multinodal politics² which may be understood also as a relative disarmament of public authorities.³ Cohen goes further and describes the structural changes as favorable conditions for the emergence of public-private hybrid regulatory regimes.⁴ Years before the crisis outburst, John Ruggie underlined that the present level of world “fluidness” requires its total remake.⁵ Beyond doubt, global economy and its various subsystems today present some of the major areas of concern and there is a pressing demand for new/updated regulatory arrangements to be made.⁶ That is why the concept of global governance has to be introduced.

A significant part of the literature on global governance takes James Rosenau’s explanation as a basis: “global governance is conceived to include systems of rule at all

1 Jan A. Scholte, “Governing Global Finance”, *CSGR Working Paper*, Vol.88, No.2, 2002, Warwick, University of Warwick, p.7.

2 Philip Cerny, *Multi-Nodal Politics: Toward a Political Process Theory of Globalization*, International Political Economy Society, Stanford, Stanford University Press, 2007, p.2.

3 G. Underhill and X. Zhang, “Norms, Legitimacy, and Global Financial Governance”, *WEF 0013*, 2006, London, University of London, p.29.

4 Edward S. Cohen, *Assessing the Impact of the Global Financial Crisis on Transnational Regulatory Governance: The Case of Public-Private Hybrid Regulatory Networks*, paper presented at the Third Biennial Conference of the ECPR Standing Group on Regulatory Governance, University College, Dublin, 2010.

5 John G. Ruggie, “Territoriality and Beyond: Problematizing Modernity in International Relations”, *International Organization*, Vol. 47, No.1, 1993, p.140.

6 Georg Sorensen, “What Kind of World Order? The International System in the New Millennium”, *Cooperation and Conflict*, No.41, 2006, p.7-9.

levels of human activity – from the family to international organizations – in which the pursuit of goals through the exercise of control has transnational repercussions”.⁷ Dingwerth and Pattberg distinguish two ways of approaching and understanding global governance: “global governance as a set of observable phenomena, and global governance as a political program.”⁸ Karns and Mingst apply a thorough analysis of the concept of global governance⁹, starting from the description provided by the Commission on Global Governance in 1995¹⁰: On the global level, governance should be understood as a multilevel set of problem-solving arrangements and activities, including both formal and informal rules and mechanisms. Of a particular importance for our study is that Karns and Mingst include specific norms or soft law in the components of global governance, in addition to hard law (rules), international organizations, extemporized arrangements, information gathering, certain operational capabilities, etc.

Still, the very notion of regulation deserves a brief explanation because it has always been regarded as belonging to the (national) state domain and very few international economic arrangements (e.g. Bretton Woods) have been effectively implemented. As Jordana and Levi-Faur describe, recent global economic developments have emphasized a growing use of the notion in its broadest sense as all mechanisms of social control (in contrast to a narrow understanding of the term as specific forms of governance with authoritative rules, monitoring and compliance enforcement).¹¹ From this aspect, new regulation for global problems is characterized by partial voluntary agreements, lack of strong monitoring and enforcement rules and obvious disregard for the concept of national sovereignty.

For others, the appearance of new regulatory arrangements on the global scene may be a result of “patchwork” political structures: in an interdependent world, actors stretch across fluid boundaries, adapt themselves and liaise with other actors in order to achieve their goals.¹² The higher the interdependence, the larger the need to coordinate actions across states and regions and hence the larger the need for international regulation. Kratochwil gives another dimension to regulation, especially from the international

7 James N. Rosenau, “Governance in the Twenty-first Century”, *Global Governance*, Vol.1, No.1, 1995, p.13.

8 K. Dingwerth and P. Pattberg, “Global Governance as a Perspective on World Politics”, *Global Governance* No.12, 2006, p.186.

9 M.P. Karns and A. K. Mingst, *International Organizations: The Politics and Processes of Global Governance*, 2nd edition, Boulder, CO, Lynne Rienner, 2009.

10 The Commission on Global Governance was an independent group of international experts, created in 1992 with the support of the UN Secretary-General that conducted studies in the fields of internationalization, globalization and the related challenges for the world community. Their most influential and controversial report was “*Our Global Neighborhood*” published in 1995.

11 J. Jordana and D. Levi-Faur (eds.), *The Politics of Regulation: Institutions and Regulatory Reforms for the Governance Age*, Edward Elgar and the CRC Series on Regulation, the University of Manchester, 2004.

12 Stephen, J. Kobrin, “Economic Governance in an Electronically Networked Global Economy”, R. D. Hall and T. J. Biersteker (eds.), *The Emergence of Private Authority in Global Governance*. Cambridge, Cambridge University Press, 2002, p.43-75.

legal aspect: “the real problems of praxis lie in the dilemmas created by colliding duties or in bringing a concrete problem under different descriptions which require (justify) different norms.”¹³ Applied to the need for new regulation of the interlinked global economy (with many and diverse concrete issue areas), Kratochwil implies that it would be more appropriate to create new agreements on certain shared practices than trying to force the application of existing norms which derive from universal principles (of market economy and economic regulation).

Such ideas had previously been extensively developed by the regime theories of international relations, for example by Krasner who defines regimes “as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in given area of international relations”.¹⁴ The regime theories are particularly useful when politics focuses specific issues or issue areas, for example, international debates about cross-border financial regulation or the current economic crisis as a whole (its roots, consequences and modes of management to revive global economic growth).

This has been advanced by experimentalist governance/regime theories, which argue that in the absence of a single hierarchical structure of norms to govern a transnational issue area, the regime complexity increases and the regime can actually – not *de jure* – successfully function through specific linking of its components. If broad goals and metrics are agreed among the stakeholders, if the stakeholders are given a certain level of discretion in achieving the goals and they regularly report on the progress, then there is a basis for a continuous interaction of actors, revision of goals and actions, and finally for a supranational regime to emerge.¹⁵ Such a situation, exemplified by the European Union’s Forest Law Enforcement Governance and Trade (FLEGT) initiative, which will be later presented, may be of significant importance in analyzing available modes to govern the global economy. Despite the negative consequences of such complex regimes, a number of positive effects may be identified, as argued by Keohane and Victor: some parts of a wide issue-area will be easier to agree upon, thus forwarding supranational regulation on those segments and making more solid grounds for a future, comprehensive regime to emerge.¹⁶

In efforts to analyze the possibilities of a new global regime to emerge, the next part of the paper provides a brief analysis of one of the global actors – G20, and its activi-

13 Friedrich Kratochwil, “Re-thinking the ‘inter’ in International Politics”, *Millennium - Journal of International Studies*, Vol.35, 2007, p.3.

14 Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables”, Beth A. Simmons and Richard H. Steinberg (eds.), *International Law and International Relations*, Cambridge, MA, Cambridge University Press, 2006, p.3.

15 C. Overdevest and J. Zeitlin, “Assembling an Experimentalist Regime: Transnational Governance Interactions in the Forest Sector”, *Regulation & Governance*, Vol.8, 2014, p.22–48.

16 R. O. Keohane and D. G. Victor, “The Regime Complex for Climate Change”, Discussion Paper 2010-33, Cambridge, Mass., Harvard Project on International Climate Agreements, 2010.

Richard Higott, *Multilateralism and the Limits of Global Governance*, CSGR Working Paper No. 134/04. Warwick, University of Warwick, 2004.

ties to update existing or create new rules and norms for the global economy. Regardless of somewhat differing views of global governance, most of the literature emphasizes its several key components: supranational arrangements, sets of rules and norms, actors' expectations, different layers and actors in the process, and necessary display of a certain level of representativeness, inclusiveness, efficiency, adaptability and fairness.¹⁷ The analysis that follows takes these criteria as the basis for assessing the role of G20 in creating global regulatory arrangements.

Group of Twenty and Global Economic Agenda

The G20 was originally developed in 1999, by finance ministers of the major industrialized and emerging market countries, as a response to the financial crises in the last years of the decade and as a vehicle to promote the role of fast-growing emerging market economies. Since then, the G20 has grown into a major forum for discussing world economic issues and creating new arrangements for the global economy, due to several reasons: the crisis of 2008 has forced major economies to foster international cooperation on global economic and financial issues (favorable conditions); the G20, despite many criticism, manages and controls a major part of the global economy (representativeness); since 2008, the group has been gathering not only finance ministers but also the members' leaders (increase in its legitimacy); the group itself has improved its structure and relations with other international actors (adaptability), and has managed to deliver certain results upon numerous commitments made by the members' leaders (efficiency).

Global political deliberations within the group have reached their peaks on the leaders' summits: the G20 summit meetings in Washington (2008), London and Pittsburgh (2009), Toronto and Seoul (2010), Cannes (2011), Los Cabos (2012) and Saint Petersburg (2013). Despite the fact that it had probably been planned to present the G20 actions as a show-room for united and orchestrated action, the five-year experience actually resulted in a series of compromises between the different agendas of the Anglo-Saxon pole and the continental European "league", while only a few of the developing countries' proposals have been accepted. Once again, their overlapping but differing agendas pointed out that contemporary politics is one of detachment of "cool loyalties" and "thin" patterns of solidarity.¹⁸

During these last five years, the G20 agenda has changed its priorities and their ranking¹⁹, under various paths of influence and on the basis of different individual values and agendas of the actors involved.²⁰ Despite the particular actors' different agendas, a

17 Thomas Biersteker, *Global Governance, the Sustainability of International Institutions, and the Potential Role of University-based Research Institutes*, paper presented at the Eight Glion Colloquium on Global Sustainability, Glion, Switzerland, 2011.

18 Kratochwil, "Re-thinking the 'inter' in International Politics", p.5.

19 Miroslava Filipović, "Exigency Politics or New World Order", *Panoeconomicus*, No.3, 2011, p.373-391.

20 Miroslava Filipović, "The G20 and the World Economic Policy: Agenda Development", *Serbian Political Thought*, Vol.5, No.4, 2012, p.83-102.

body of principles and rules (mostly in the financial area) has started to emerge shedding some light at a possible new world economic and financial order. Some authors emphasize that such an order should regulate all financial and capital markets worldwide, offer emergency financing, manage excessive indebtedness, guide national economic policies toward global stability and guarantee a fair and effective international monetary system.²¹ A number of action plans and numerous proposals and measures to counter the current crisis were adopted at the summits. The analysis that follows aims at presenting the evolution of the G20 agenda as the crisis effects widened in scope and depth. These changes have not only involved changing the agenda items (e.g., from private actors' risk taking to sovereign financing) and rankings (e.g., from the prominence of financial regulation in 2008 to that of employment in 2011), but also changes to the agenda's comprehensiveness (from financial regulation in 2008 to monetary and fiscal coordination in 2011 and employment in 2012 and 2013), its geographic focus (from the US in 2008 to Europe and the East in 2011, to Latin America in 2012 and Europe again in 2013) and modes of the Group's functioning (from the top leaders to specific ministerial meetings, newly formed tracks of work and the group's bodies).

The underlying objective of the first three summits (Washington, London and Pittsburgh 2008/2009) was to establish rules of cooperation and coordination in financial regulation across and within national financial systems. That was particularly highlighted in Washington at the time when the current crisis was still developing its full force. The leaders discussed the causes of the crisis and shared opinions on the needed regulatory reform and macroeconomic policies in the short- and medium-terms. The final document of the summit presented an Action Plan focused on several objectives, such as improving transparency and accountability, developing sound regulation, promoting financial markets' integrity, strengthening international cooperation and reforming international financial organizations.²² At the time, a general opinion was that stronger support for market principles, open trade and investment regimes, as well as sound financial regulation would give positive outcomes in the worldwide economic system.

Upon intensive pre-summit deliberations and numerous formal and informal meetings within and outside the group, the G20 London Summit in April 2009 produced three declarations targeting the economic recovery, the financial system and resources needed to implement the plan of recovery.²³ The Global Plan for Recovery and Reform underscores two basic components in order to achieve a sustainable growth: an effectively regulated market economy and strong, supranational institutions. This summit was very important as it produced the first set of norms planned to guide further actions and/or maybe built a part of the foundation of a new international economic regime. Four differ-

21 J. A. Ocampo and S. Griffith-Jones, "The G20 and Global Financial Governance", *Policy Brief*, ISSN 1989-2667, Madrid, FRIDE, 2010.

22 Full text of the document available at <http://www.g20.org/images/stories/docs/eng/washington.pdf>, (Accessed on 10 June 2013).

23 Official text of the documents available at <http://www.number10.gov.uk/Page18914>, (Accessed on 15 June 2013).

ent types (or levels) of norms can be identified in the G20 London Summit documents: global standards (most binding, applicable to all countries: related to accounting standards and principles), internationally-agreed norms (subject to separate agreements: financial system regulation), best practice (desirable, recommended: activities of credit rating agencies) and a consistent approach (most flexible: basic principles of national financial regulation, for example, coverage and boundaries).

The Pittsburgh Summit resulted in two important conclusions. As a sign of expanding the political community, the G20 should take over from the G8 the role of being the central/premier forum for creating a new global economic architecture. Secondly, leading intergovernmental financial institutions should be reformed to give more power to fast-growing economies. Including such economies in the group itself and promoting their position in intergovernmental financial institutions should enhance their compliance with the group's commitments and the probability of a successful future implementation of the G20 norms. In addition, the group's agenda underwent first of its major changes: a consensus was reached to incorporate macro-prudential concerns about system-wide risks into international regulation.

In 2010, the summits in Toronto and Seoul proved that, if the G20 was to become an architect of global economic revival, it was not sufficient for it only to react to financial distress and devise new financial regulation. Steering macroeconomic policies came as a necessary and critical extension of the group's agenda. It was necessary because the already agreed norms had proved too limited and partial in their effects, and it was critical because such an extension of a supranational agenda inevitably would strike domestic monetary and fiscal policy. Hence, it is not surprising that the Toronto Summit in 2010 demonstrated the first signs of declining unity in dealing with the world economic problems. The sovereign debt crisis that emerged in the European Union, especially affected the EU-US stance regarding the need for further spending to spur growth. Not surprisingly, China and India supported the US in favor of the larger spending while Europe presented its ideas on significant deficit cuts. Once again, continental European ideas, primarily German and French, confronted Anglo-Saxon ideas. Irrespective of a significant economic potential of coordinating fiscal policies, major industrialized states have demonstrated a high reluctance to behave thus. Notwithstanding numerous commitments made, the national fiscal wall was to remain in place and this might have defined the final frontier in developing the Group's joint policies.

Contrary to the previous meetings, the G20 agenda in Seoul focused more on development issues, economic revival, employment and social protection.²⁴ Surprisingly, the leaders committed to developing a common view of global economic problems, which might point to the birth of a set of principles or underlying values upon which a new global economic regime would be built and which would define the regime basic characteristics.²⁵ That was in sharp contrast to the conclusions from the previous summits when they had sought to develop particular rules/practical standards to handle the crisis. This new,

24 Full text of the final document available at <http://www.g20.org/images/stories/docs/eng/seoul.pdf>, (Accessed on 15 June 2013).

25 Stephen Krasner, "Structural Causes and Regime Consequences".

common view should have macroeconomic policy as its center, especially fiscal policy and debt reduction, as well as market-based currency policy. In line with this new common view, a mutual assessment of the group members should be enhanced. The Seoul Summit was assessed as successful due to its “globally predominant, internally equalizing capabilities among members of the group”.²⁶ This is particularly true if advances in national financial regulation and safety nets are reviewed, but much less true for reforms of international financial organizations, supporting the arguments of Keohane and Victor regarding the possibility of different pieces of progress for different segments of a regime.²⁷ Once again, the arguments of Higgott that discursive organizations such as the G20 (as opposed to decisional organizations) may be building a new road to multilateralism are supported.²⁸

The final declaration of the 2011 Cannes Summit reiterates members’ growing concerns about the slow recovery, high unemployment and rising sovereign risks in the euro area.²⁹ It focused the need for a renewed collective action for the “common future”. The summit resulted in certain changes as to the way the group functioned: a G20 Task Force on Employment has been set up and many multilateral organizations (e.g., IMF, ILO and World Bank) were invited to join the group’s activities. Another significant expansion of the supranational agenda targeted international monetary stability and excessive currency reserves (most probably regarding China), as well as a new regulatory category of market participants: global systemically important financial institutions (G-SIFIs). One of the most striking characteristics of the Cannes Summit documents is the repeated reference to a great number of international organizations, such as the IMF, World Bank, ILO, OECD, IOSCO, BIS, etc. One may understand this as a new “reality-check” for the G20: although it has positioned itself as a center for global economic governance (backed by a 90% share of the world GDP), the issues may be beyond reach of such an informal, minilateral group.³⁰

The 2012 Summit in Los Cabos resulted in significant agenda development, with five priority areas: economic stabilization and reforms, financial system strengthening and financial inclusion, remodeling the international financial architecture, improving food security and reducing the volatility of commodity prices, and promotion of sustainable development, green growth and sound environmental policies. Furthermore, efforts were invested to broaden the dialogue with many other groups of actors: the UN, international organizations (already evident at the Seoul summit), business sector (B20), experts, civil society, youth organizations, etc.³¹ Further institutional developments of the group itself have become apparent, as the global issues were divided into two domains/tracks: the

26 John, J. Kirton, “A Summit of Substantial Success: The Performance of the Seoul G20”, 2010, p.7.

27 Keohane and Victor, “The Regime Complex for Climate Change”.

28 Higgott, “Multilateralism and the Limits of Global Governance”.

29 Available at <http://www.g20.org/images/stories/docs/eng/cannes.pdf>, (Accessed on 10 July 2013).

30 Giovanni Grevi, “The G20: Panacea or window-dressing?”, *Policy Brief*, ISSN 1989-2667, Madrid, FRIDE, 2010.

31 Discussion Paper of the Mexican Presidency of the G20, 2012.

Finance Track (all G20 finance ministers and governors of the central banks) and the Sherpa's Track (the work done by personal representatives of the G20 leaders outside the domains of financial issues, e.g. food, energy, employment, etc.). In this way, the G20 gradually develops a rather elaborated internal structure that has started to resemble that of other, permanent international organizations.

The 2013 G20 Summit in Saint Petersburg was held at the time when differences in the global economy started to widen: major industrialized countries had set about to recover and so brought an end to their extremely loose monetary policy, which in turn resulted in withdrawing investment funds from the originating nations, slowing their own recovery, as well as putting pressure on currencies and financial securities industries in general. The Russian presidency of the G20 focused on measures to support sustainable, inclusive and balanced growth and job creation at the worldwide level, through quality jobs and investment (dealing with structural unemployment, vulnerable groups, food protection, infrastructure, human capital), confidence and transparency (IMF reform, government borrowing and fighting corruption), as well as through effective regulation (of finance, trade, energy and green growth). A new tone that emphasizes the need to develop mutual confidence, enhance the principle of fairness and create an overall set of rules can be detected in the Official G20 Leaders Declaration after the summit: "We understand that sound and sustainable economic growth will be firmly based on increased and predictable investments, trust and transparency, as well as on effective regulation as part of the market policy and practice. As Leaders of the world's largest economies, we share responsibility for reinforcing the open and rules-based global economic system".³²

When examining the performance of G20 summits, various aspects and criteria need to be taken into consideration, e.g. the state of the world economy, particular crisis consequences in some regions (like the Eurozone crisis), the scope of the group's agenda, number of commitments, the level of compliance, etc. Researchers from the University of Toronto³³ have analyzed the performance on the basis of several criteria: domestic political management (support given to specific G20 measures in domestic political interplay), outlining directions for creating principles and norms that should be internationally adopted (regarding open democracy and human rights), creating adequate decision making process (to deliver clear collective commitments of binding nature), the members' compliance level, and the development of global governance (both within the G20 and in relation to other international organizations). From all these aspects, one can conclude that a general performance of the G20 has improved since the first summit in 2008, although such a trend has not been even in all aspects. For instance, the general level of commitment was the highest after the first summit in 2008 (+0.67), then it gradually declined (London, Pittsburgh, Toronto in the range +023 to +028) and again improved in 2012 (+0.55).³⁴

32 From <http://www.g20.utoronto.ca/2013/2013-0906-declaration.html>, (Accessed on 18 November 2013).

33 J. Kirton, J. Kulik and L. Rasmussen, *A Firm Foundation for Los Cabos: G20 Summit Performance 2008-2011*, G20 Research Group, University of Toronto, 2012.

34 University of Toronto G20 Research Group assesses the compliance level in the following way: +1 is full compliance, 0 is partial compliance or work in progress, while -1 is non-compliance with the agreed commitment. *Ibid.*, p.2.

For the purpose of this paper, it is important to distinguish between two types of pledges: commitments that need actions at the national level (the members' individual commitments), and commitments that require action by the G20 as an institution - institutional commitments.³⁵ In the period 2008 to 2012, the G20 members' individual compliance averaged to +0.34, while the level of the G20 institutional compliance with collective commitments was significantly higher and averaged to +0.49. The highest compliance was attained with the regard to the IMF reform and growth, while the commitments made in the areas of structural reforms and financial regulation were much less complied with. The domain with the lowest level of the G20 commitments has been trade, i.e. commitments to refrain from protectionism (-0.35).

Referring to Krasner's understanding of international regimes as a possible form of global governance³⁶, let us make an attempt to outline some of the basic principles and norms of a global economic policy defined by the G20. Markets should remain open and liberalized (including the norms of diminishing state intervention, structural reforms of labor market and tax systems, etc.), as well as international trade (with the norms to eliminate protectionist barriers). States should carry out a balanced fiscal policy (through the norms of fiscal deficit reduction and debt stabilization). International liquidity is of the utmost importance for the global economic revival (hence, international financial institutions should be modernized, liquidity surveillance should be reinforced, etc.). Financial regulation should be improved and coordinated across boundaries to allow for the financial markets' integrity and transparency (with the norms of global accounting standards, higher capital base for banks, integrated stress testing mechanisms, etc.).

The G20 can further promote financial regulation through enforcement of the new rules at the national level and the establishment of a monitoring system by the relevant international institutions on the mandate from the G20. Such 'leadership by example' can help boost the G20 status as an effective and legitimate global governance forum.³⁷

Nevertheless, the comprehensiveness of the proposed regulation varies between the segments of a new global regime, supporting the argument of Keohane and Victor that regulatory advancements can be made in distinct parts of a transnational issue area even in the absence of a single, unified regime.³⁸ So, norms were designed and commitments made, but what is left as a critical component in devising a global economic policy is their implementation at the national level.

35 *Mapping G20 Decisions Implementation: How G20 is Delivering on The Decisions Made*, Draft Report (2012), <http://www.g20.utoronto.ca/implementation/mapping/index.html> (Accessed on 03 December 2013).

36 Krasner, "Structural Causes and Regime Consequences".

37 *Mapping G20 Decisions Implementation*, p.7.

38 Keohane and Victor, "The Regime Complex for Climate Change".

Understanding of Soft Law

Traditionally numerous international legal instruments, like international conventions and treaties, have been devised and put in practice to manage transnational issues, and such international instruments have always needed to be incorporated into national, hard law. However, recent history of international relations has emphasized the significance of other instruments, such as strategies, guidelines, conclusion, recommendations, and “white papers”, sometimes termed “administrative non-binding rules” created to manage/regulate certain issue-areas. Such non-binding rules are today known as the concept of soft law.

There is yet no universally accepted academic definition of soft law. Hard law is based on the legal norm as a rule of conduct, implementation of which is guaranteed by the state and therefore it is based on obligation. In contrast, the concept of soft law has not yet been fully developed, as it includes a wide range of modalities, such as principles and tenets, model laws, recommendations. Amongst numerous attempts to define soft law, three clear theoretical directions can be identified.

Some authors consider the issue of legal obligation as the key criterion in defining soft law: due to the absence of obligation in soft law norms, it cannot even be considered a law.³⁹ Others advocate a view that even though it does not have a binding character, soft law shapes expectations and behavior of subjects.⁴⁰ Snyder, for example, defines soft law as a set of rules without legally binding power, but which nevertheless produces certain legal consequences in practice.⁴¹ Yet other authors⁴² explain soft law as rules created with the expectation that they will be given the force of law either through national legislation or binding international agreements, i.e. international rules as a basis for developing domestic legal rules.⁴³

We can conclude that soft law is a complex and contradictory phenomenon with positive and negative sides. Its existence blurs the boundaries between positive law and agreements, i.e. it creates norms without integral obligation, wherein particular emphasis is placed on the principle of good will in honoring the obligations undertaken by agreement.⁴⁴ There is no doubt that soft law is a concept used in an interdisciplinary and trans-disciplinary discourse - somewhere at the intersection of law, economics and politics.⁴⁵ In

39 Anthony, C. Arend, *Legal Rules and International Society*, Oxford University Press, 1999, p.25.

40 Andrew Guzman, “The Design of International Agreements”, *European Journal of International Law*, Vol.4, 2005, p.591.

41 Francis Snyder, “The Effectiveness of the European Community Law: Institutions, Processes, Tools and Techniques”, Terence Daintith (ed.), *Implementing EC Law in the UK: structures for indirect rule*, Chichester, West Sussex, New York, J. Wiley, 1995, p.51-87.

42 K. Abbott and D. Snidal, “Hard and Soft Law in International Governance”, *International Organization*, Cambridge Journal No.54, 2000, p.421-456.

43 Timothy Meyer, “Soft Law as Delegation”, *Fordham International Law Journal*, Vol. 32, No.3, 2009, p.906.

44 Sonja Bunčić, “G20- Od Pitsburga do Toronta-put ka novoj finansijskoj regulativi”, *Srpska Politicka Misao*, No.3, 2010, Beograd, p.281.

45 Dominik Vuletić, “Pravni aspekti Lisabonske strategije i budući izazovi-razrada s motrišta pravne prirode mekog prava (soft law)”, *Zbornik Pravnog Fakulteta u Zagrebu*, No.3, 2011, Zagreb, p.1012.

this context we could conditionally define soft law as a non-binding normative framework, implementation of which is conditioned by the will of the norm's addressee. In this way, it is easier to distinguish it from mere political promises because the lack of the legally-binding character of its norms does not imply a complete absence of the obligation in the material sense. Advantages of soft law can also be derived from various, non-legal modalities of its enforcement and sanctioning (moral pressure, warning, reprimand, naming and shaming, conditioning, granting or denial of assistance) that may produce strong influence on the conduct of the addressee.

One can distinguish three basic functions of soft law. The first function is a pre-law function, when soft law paves the way for the creation of hard law provisions. The second function is a law-plus function, when soft law is used for filling legal gaps and interpretation of hard law. The third function is its para-law function when it compensates for the lack of hard law provisions, under the condition that these two laws are complementary and their interaction produces positive outcomes.⁴⁶ The functions of soft law have indeed proved to be very useful when rules are to be designed and implemented in complex/complicated structures with transnational issue-areas.

Models of Soft Law Implementation

The realization of the EU Lisbon Strategy relies on a particular soft-law implementation model -Open Method of Coordination (OMC). This model presents the most flexible approach in managing the EU. It relies on a set of mutually agreed indicators and metrics that allows the members to pursue the realization of the defined goals in different ways, the latter not being legally prescribed at the EU level. The model has been applied (differently) to various issue-areas, such as the employment, social inclusion and health protection. The differences in its application include a varying time table, types of the expected results, number of participants and role of the common institutions, as well as the level of already existing harmonization in the issue-area.

It is possible to identify another model of supranational governance through soft-law in the area of the EU fiscal coordination (EUFC), regarding the implementation of the Lisbon Treaty (which is itself considered a hard law). The EUFC system relies primarily on the soft-law instruments, such as general guidelines for the members' economic policy and the multilateral surveillance of their fiscal policy. However, certain regulatory elements in the fiscal area are of a binding-nature, for example the level of fiscal deficit (Lisbon Treaty: Excessive Deficit Procedure) and the EC's actions when this level is exceeded. In this way, the model is a specific combination of hard- and soft-law instruments, called the theory of hybridity⁴⁷.

46 A. Peters and I. Pagoto, *Soft Law as a New Mode of Governance: A Legal Perspective*, New Modes of Governance Project No. CIT1-CT-2004-506392, 2006, 22-24.

47 D. Trubek, M. Cottrell and M. Nance, "Soft Law Hard Law and European Integration: Toward a Theory of Hybridity", *University of Wisconsin Legal Studies Paper*, No.1002, 2005, p.30-34.

Another example of soft law implementation is the 2003 EU's Forest Law Enforcement Governance and Trade Action Plan (FLEGT), aiming at improving forest sustainable management and reducing illegal logging. It includes numerous private and public actors, as well as actors outside the EU through Voluntary Partnership Agreements (VPAs). The initiative covers a number of interrelated issues, such as legal forest management, improved governance, trade in legally produced timber, promotion of public procurement policies and private sector's voluntary codes of conduct, appropriate finance to support such conduct and procedures, etc. This model of soft law implementation has been emphasized as an example of an effective supranational regulation of a complex issue-area.⁴⁸ From the experimentalists' view, FLEGT is an example of a new governance model that might prove useful also for other transnational issue-areas, due to its particular nature. Such a governance architecture is highly flexible and a "learning" one: common, provisional goals are set and revised if necessary, based on the experience of the governance subjects in reaching the goals by alternative routes. In the case of FLEGT, common, broad goals have been set and progress metrics developed. Local subjects (i.e. lower-than-central, regulatory actors) from both public and private sector enjoy a high level of discretion to pursue the agreed goals. Monitoring and reviewing processes have been established to compare progress achieved through different routes taken by local actors. Finally, the goals, metrics and procedures are revised and new actors brought in, if necessary. Beyond the forest sector, the EU uses this model also for the regulation of energy, telecommunication, food safety, etc. The relation between such a soft-law model and the traditional hard-law governance is exemplified by the VPA component of the initiative: these legally binding international agreements are concluded with non-EU stakeholders.

From the presented models, one can conclude that soft law certainly provides a framework for new, transnational governance concepts to emerge. Although the examples may seem quite similar, there are significant differences among them. The OMC and FLEGT models do not feature explicit and concrete goals and the related rules, as the model of the EUFC does (Theory of Hybridity), but only overall goals (the OMC) and provisional, not precisely defined goals (FLEGT). The OMC and FLEGT also do not rely on formal binding documents, with defined standards and prescribed instructions to be deployed at the national level, as does the EUFC. The EUFC does not include various types of actors and stakeholders, as the other two models do (particularly FLEGT which heavily relies on private actors), but depends on states and their hard-law implementation force. The EUFC is a highly centralized and structured model that draws its efficiency from the state power and hard-law norms. However, it does not always function with high effectiveness because it does not take into greater account national goals/contexts, and is only exceptionally open for revision. Contrary to that, the other two models seriously consider local conditions (to a different extent) and are open to revision of the goals and methods, but sometimes they are too slow to start and develop. So, each of the models has its positive and negative sides, but in comparing them one must bear in mind that they have been created for very different issue-areas and purposes.

48 Overdevest and Zeitlin, "Assembling an Experimentalist Regime".

The presented models also seriously challenge the three basic assumptions from the beginning of our research: the Westphalian system of states (not capable of dealing with complex, supranational issues), national policies (also not adequate for responding to cross-border issues and their linkages), hard-law norms (necessarily bounded by borders and difficult to harmonize). Recent theories of hybridity have paved the way for defining soft law as a mixture, i.e. the interaction of soft and hard law. One of the consequences of such interaction will present a new challenge in the form of soft law “hardening”, which may lead if not towards the creation of a hard legal norm, then certainly to custom building and uncertainty reduction.⁴⁹

Soft Law and G20

This paper focuses on the use of soft law instruments by the G20, as one of the ways to create and implement a future, global economic regime. The main legal instruments used by the G20 are “communiqués” and “declarations”, which represent the instruments of soft law. These legal documents are usually published at the end of the summit and inform the general public about the agreements reached.⁵⁰ In such a way, the G20 leaders express their common positions on all major issues discussed at the summit (e.g. bank capital, reconstruction of the IMF early warning system, issues of coordination and harmonization of standards, rating agencies and their position in the financial market, etc.). The communiqués also contain information about future initiatives and tasks of the international bodies responsible for their implementation. The soft law instruments (communiqués), as mentioned earlier, are not binding. In order to give them more strength and ensure their implementation, the G20 has formed working groups in charge of various issue areas (international accounting standards, prudential management, etc.) and has also strengthened links with other international organizations (such as the IMF, OECD, etc.) for specific segments of the global economic regulation, as noted earlier. In addition to the obligation of harmonizing the adopted rules, the working groups are required to monitor the implementation of the agreed and report on the implementation success. The range of soft law instruments expands due to public announcement of the reports of the G20 working groups⁵¹, as well as due to the display of progress compared to the previous summit.⁵² Noncompliance of the G20 members in relevant areas is particularly emphas-

49 S. Bunčić and M. Filipović, “The Future of International Financial Business: Global Regulatory Framework”, *African Journal of Business Management*, Vol.5, No.9, 2011, p.3749-3756.

50 See, for example *Communiqués*, G-20, http://www.g20.org/pub_communiques, (Accessed on 20 December 2013).

51 See, *The G20 Working group 1: Enhancing Sound Regulation and Strengthening Transparency*, at p.i-ii, xvii, 1, 22, 40-41 (Mar. 29, 2009), http://www.g20.org/Documents/g20_wg1_010409.pdf, (Accessed on 17 September 2013); *G-20, G20 Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets (WG2)* p.11-12, 36-37, 2009, http://www.g20.org/Documents/g20_wg2_010409.pdf, (Accessed on 17 September 2013).

52 See, *The G-20, Progress Report on the Economic and Financial Actions of the London*, Washington and Pittsburgh, G20, Summits (2010), http://www.g20.org/Documents2010/07/July_2010_G20_Progress_Grid.pdf (Accessed on 20 September 2013).

zed, thus putting more pressure on the concerned governments, clearly showing that soft law is used somewhere at the intersection of law, economics and politics.

When the G20 activities are analyzed in the context of the presented models of soft law implementation, a number of conclusions can be drawn. The present activities in creating and implementing a G20 global economic regime display characteristics of all the three models: mostly from the EUFC, than the OMC and least from FLEGT.

Today, the greatest similarity (at least from the formal aspect) can be detected between the EUFC and the G20 activities. The group membership is restricted to states and international governmental organizations. The overall goals are more or less concretely defined, depending on the area, as explained in the concluding part of the second chapter, referred to as principles or basic values. Instructions have been given or they are widely known (e.g. there are only a few methods to curb fiscal deficit); in order to achieve the basic goals. A great part of the nationally-based activities, stemming from the G20 conclusions, needs hard-law backing from their own legal systems, although the conclusions themselves are not legally binding.

The similarity between the OMC and the G20 activities can be identified in the implementation area. The OMC has four levels of implementation. The first level is the European Council's (EC) adoption of the objectives and guidelines for their implementation. It might be compared to the adoption of common objectives established at the G20 summits. The second OMC level is the EC's determination of quantitative and/or qualitative indicators for evaluating the implementation effectiveness. In the case of the G20, this might be the level of various working groups that monitor the implementation progress. The third OMC level is the implementation of agreed goals on the national and/or regional level, but in line with the specific conditions therein. Compared to the G20, this level is a major distinguishing line. In the case of the G20, this level of implementation has been reached only in certain areas (as noted, the binding rules from the London Summit), such as international accounting standards and payments. For other issue-areas and particular issues, regardless of numerous conclusions, one cannot identify the third level of the OMC implementation. The fourth level of the OMC is the final level at which mutual evaluation of the achieved results is made by the EU Council, through the work of the European Commission and independent bodies. Bearing in mind critical differences between the EU and the G20 (the first being a formal union of states while the second is an informal international governmental organization of a decisional character), it is obvious that the full application of the OMC through the four levels cannot be replicated by the G20 but the use of the experience should be instrumental. This primarily concerns mandatory implementation of the agreed goals: the EU can enforce the implementation while the G20 lacks that capacity. Secondly, the process of agreeing on common principles and goals among the EU members has been formalized to an extent much higher than within the G20, thus allowing (at least, formally) for equal powers of the EU members. Thirdly, the level of differences (economic, political and legal) among the EU members is certainly lower than the one among the G20 members, thus facilitating the process of defining common goals and their implementation.

On the other hand, the main advantage of the OMC is its flexibility. The OMC is not a rigid implementation process and differs with regard to the field of application and the desired level of alignment. Using this experience the G20 may improve the process of cooperation among the member states, not only in the formulation of the communiqués but also in establishing common goals more precisely. Each member state may then find it easier to make more detailed plans of possible implementation and achieve a wider progress in implementation of the agreed objectives.⁵³ In addition, the G20 may include all the members in the deliberation process, that should be continuous and not only in times of the summit preparation. In this way, the present mechanisms for the summit preparation and adoption of common positions would be transformed into an institutionalized mechanism that would foster the implementation of the agreed objectives. In addition to the fact that the OMC lacks legally binding features, there are critical structural differences among the G20 member states. So, specific circumstances within the group do not allow the application of the principle “one measure for all”. Overcoming of such difficulties probably requires further work on combining this method with other soft law instruments.

Finally, if the G20 activities are compared with the FLEGT model, not many similarities can be found at present. It might be that a regime for such a complex issue-area as the world economic policy is, cannot be built on a set of provisional goals (for example, “let us plan for a reduction of unemployment and see what happens later”). Hypothetically speaking, if the FLEGT cycle of learning from experience had been applied, it would have probably caused further deterioration of global economic conditions. Furthermore, if a high level of discretion had been granted to the G20 members in achieving the overall goals, for example in managing the exchange rates, this would have seriously impacted numerous other economies, thus endangering the realization of the overall goals. Still, certain developments regarding the G20 go in line with some FLEGT features, for example, an increasing involvement of other-than-state stakeholders (civil and business groups, youth, academia, etc.). In addition, similarities can be found regarding the G20 success in regulating particular parts of the issue-area, and the related (though segmental) advancement of a new, world economic regime.

Conclusion

The current crisis has significantly intensified a world-wide debate on global economic governance and the need for a new global economic/financial order or regime. Despite numerous differences among the ideas and the actors of the debate, two basic dilemmas are crucial: how to devise norms for the global, interdependent economy (with a proper governance structure to oversee their implementation), and how to devise a system to have the agreed norms implemented in practice. The paper’s main hypothesis has been that a new economic world order or regime is being created by the G20, and that its implemen-

53 Henning Meyer, Stephen Barber and Chris Luenen, *The Open Method of Coordination: A Governance Mechanism for the G20?* Bertelsmann Stiftung, Brussels, Belgium, 2011, p.18.

tation could be successful if soft law instruments were used. For that reason, the paper first examined the outcomes of the G20 activities in devising global norms. Upon that, the paper analyzed the soft law concept, its advantages and shortcoming, as well as three models of supranational governance.

A certain level of success in building such a global economic regime can be detected in the work of the G20, although this success has not been even in all issue-areas. This new global regime would be based on several principles, such as: open and liberalized markets, unrestricted international trade, balanced fiscal policies, strengthened system of international liquidity, financial regulation coordinated across boundaries, etc. However, the success in elaborating and implementing the principles has not been even: most of the regulatory advancements have been made in the financial area while least commitments have been made to keep international trade free from protectionism. Even so, these developments could form a basis for a new supranational governance regime to emerge.

The G20 may have taken the lead in creating a global economic policy forum, setting certain grounds for more coordinated national economic policies and maybe for a world economic policy in a distant future. But, in the world of today, wherein the Westphalian borders limit the impact of hard law, the soft law concept may open opportunities for such coordinated policies to be successfully implemented on the national level. Recent theories of hybridity have paved the way for defining soft law as a mixture, i.e. the interaction of soft and hard law, thus increasing the probability of successful implementation of the agreed principles and goals. Nevertheless, the G20's activities in creating and implementing a new regime for the global economy may further improve if a balanced approach towards using positive experience from other supranational governance concepts and models are taken into the account.

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