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CONVERGING METHODS OF GOVERNANCE AT THE SUPRANATIONAL LEVEL – THE ROLE OF CIVIL SOCIETY

A CONVERGÊNCIA DE MÉTODOS DE GOVERNANÇA AO NÍVEL SUPRANACIONAL – O PAPEL DA SOCIEDADE CIVIL

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Abstract: *This article is divided in three parts. Part I briefly introduces a few examples of coalitions of civil society actors operating at the supranational level. These coalitions advocate for topics as diverse as environmental protection, global poverty, transparency, social innovation and fight to corruption; and they cooperate with a vast range of supranational organisations. Part II of this article reflects on the role of the coalitions of civil society actors in shaping closer connections between methods of administrative governance pertaining different supranational regulators. To conclude, Part III of this article envisages a number of tensions that may raise doubts about civil society coalitions' desirability as drivers of harmonized principles of administrative governance at the supranational level. Coalitions of civil society actors may be good at influencing supranational policies, but – it may be asked – can they truly encourage the spill over of a method of democratic governance across supranational legal regimes? Further: should they?*

Resumo: O presente artigo está dividido em três partes. A Parte I introduz brevemente alguns exemplos de coligações de atores da sociedade civil que operam ao nível supranacional. Estas coligações cooperam com um vasto leque de organizações supranacionais e patrocinam e promovem causas em áreas tão diversas quanto a proteção do ambiente, a pobreza global, a transparência, a inovação social e a luta contra a corrupção. A Parte II reflete sobre o papel destas coligações de atores da sociedade civil na criação de ligações mais próximas entre os métodos de governança administrativa de diferentes reguladores supranacionais. Na parte III, identificam-se algumas tensões que podem levantar dúvidas sobre a desejabilidade de coligações da sociedade civil funcionarem como agentes facilitadores de princípios harmonizados de governança administrativa ao nível supranacional. As coligações de atores da sociedade civil podem até ser boas a influenciar políticas supranacionais, mas – pode perguntar-

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se – conseguirão encorajar o efeito de *spillover* do método democrático nos diferentes regimes jurídicos supranacionais? Mais: deveriam fazê-lo?

Keywords: *Globalization, Civil Society, Advocacy, Convergence, Democracy*

Palavras-chave: Globalização, Sociedade Civil, Ativismo, Convergência, Democracia

Summary: 1. Civil society coalitions at the supranational level. – 2. Three common elements. – 3. Why civil society coalitions exist? – 4. Civil society actors and the democratization of the supranational legal order. – 5. The democratic potential of civil society coalitions – 6. Civil society coalitions and administrative convergence. – 7. Reassessing the boomerang effect. – 8. Forces opposing administrative convergence. – 9. Supranational coalitions and their controversies. – 10. Conclusions. The role of supranational coalitions of civil society actors and the desirability of a global participatory democracy.

1. Civil society coalitions at the supranational level

The “Pan-European NGO Coalition” is a network of environmental Non-Governmental Organisations (NGOs) established in 1993, during the “Environment for Europe” Ministerial Conference of the United Nations Economic Commission for Europe. The coalition has coordinated civil society’s participation in the political process set out in the final declaration of the Conference ever since. In 1998 the coalition adopted a new name – “Pan-European ECO Forum” – during the negotiations for the ratification of the Aarhus Convention, signed in Aarhus that same year. The government representatives decided that non-governmental interested parties should be given the opportunity to express their opinion and ideas. The invitation to participate in the negotiations was then extended to all the NGOs concerned with environmental issues. In order to be more influential, the NGOs that adhered to the invitation melted into the ECO Forum. At present, the ECO Forum is in charge of coordinating the civil society interests with the Meeting of the Parties of the Aarhus Convention.²

Civil society actors advocating for environmental protection are not new to coalitions. Exemplars of environmental civil society coalitions date back to the 1970s. The “European Environmental Bureau” (EEB)³, for instance, was established in 1974. The EEB claims to be the Europe’s largest federation of environmental organisations, with 140 members who, as the EEB’s website states, “*Are guided by the voices of 15 million European citizens*”. Over the years the EEB has become an official interlocutor of both European and global institutions. The EEB policy officers are in dialogue with the European Commission, Parliament and Council, as well as with the relevant departments of the United Nations and the Organisation for Economic Cooperation and Development (OECD).

Environmental protection is not the only field in which supranational coalitions of civil society actors can be found. The “Euclid Network” is a case in point. This coalition connects around 300 organizations of various kinds from 24 countries from across Europe, including large international charities, social enterprises, cooperatives, and small grass-roots initiatives, to “*facilitate peer-learning, pan-European partnerships, and influence processes, and make the sector as a whole stronger and more innovative at the core of civil society in Europe and worldwide*”.⁴ Another example is the “Alliance for Lobbying Transparency and Ethics Regulation” (Alter-EU), a coalition of about 200 European civil society groups, trade unions, academics and public affairs firms concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe, the resulting loss of democracy in the European Union (EU) decision-making and the postponement, weakening, or blockage even, of urgently needed progress on social, environmental and consumer-protection reforms.⁵

2. See generally www.eco-forum.org.

3. See generally www.eeb.org.

4. See generally www.euclidnetwork.eu.

5. See generally www.alter-eu.org.

Examples of coalitions of civil society actors abound outside the EU. Take the case of the “BetterAid network”, created in 2007 to advocate the OECD Assistance Committee on development cooperation and aid effectiveness (OECD DAC). At the beginning BetterAid included over 700 development organizations from civil society.⁶ Interestingly, this coalition has gone through various iterations since 2007, becoming a consultative body for the OECD DAC, then splitting into two different, although related, coalitions, and finally merging into a broader network of civil society actors. The UNCAC Coalition is another case in point. This is a global network of over 350 civil society organisations spanning 100 countries, committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption (UNCAC).⁷ The UNCAC Coalition was established in August 2006, and since then it engages in joint action around common positions on the UNCAC, it facilitates the exchange of information among members, and it supports national civil society efforts to promote the UNCAC. Exemplary is also the “Global Call to Action Against Poverty” (GCAP).⁸ Formed in 2004, the GCAP is an alliance composed of more than 100 national coalitions and over 300 supporting organizations (trade unions, community groups, faith groups, women and youth organisations, NGOs and other campaigners) from six continents, working together across more than 100 national platforms.

The list of coalitions of civil society actors operating at the supranational level could go on indefinitely. “NGO monitor” was founded in 2002, a few months after the UN World Conference Against Racism in Durban. NGO Monitor commits to generate and distribute critical analysis and reports on the output of the international NGO community for the benefit of government policy makers, journalists, philanthropic organizations and the general public. The main scope of this coalition is to increase the accountability of its NGOs members. Similar to NGO Monitor is the “Humanitarian Accountability Partnership” (HAP). Established in 2003, HAP is a partnership of humanitarian and development organizations dedicated to ensuring greater accountability to people affected by crises through the promotion of standards on quality and accountability. HAP also certifies organizations against those standards. The World Third Network (WTN) advocates for topics as development, developing countries and North-South affairs.

2. Three common elements

Admittedly, geographical, topical and structural variations of the coalitions described above are manifest. They operate in fields as diverse as transparency, corruption, global poverty, accountability or social innovation, and they establish diverse forms of collaboration with supranational regulators, ranging from occasional meetings to institutional agreements. Yet, three common elements

6. See generally www.betteraid.org/en/about-us.html.

7. See generally www.uncaccoalition.org/en/.

8. See generally www.whiteband.org/en.

may be identified among the supranational coalitions of civil society actors.

First and foremost is the fact that all civil society coalitions mentioned above engage in activities held at the supranational level. Not that the domestic sphere is negligible. On the contrary, states remain predominant actors of advocacy and policy-making. But the focus of decisions, at least in their essential aspects, crosses national borders and is found at the supranational level. “*Willingly or unwillingly*” – reminds Eyal Benvenisti⁹ – “*sovereigns surrender their monopoly on regulatory power to actors whose reach defies political boundaries*”. This, after all, reflects the complexity of the era we are currently living in. An era in which nation-states are no longer the sole or dominant players, and almost any contemporary phenomenon of importance transcends some kind of border. When the UN was formed, some 70 years ago, there were only 51 states, few international organizations and a world population of around two billion people. Today there are almost seven billion people, nearly 200 states and an estimated 60,000 international organizations. Multilateralism is perceived as a necessity by states: treaties and conventions are often too slow for immediate issues. Cooperation at the supranational level is thus needed to reach effectively a multitude of goals, including the fight to global warming and terrorism, the liberalization of economy, the integration of communication, and the standardization of goods and services.

Secondly, the abovementioned cases always involve a public body partnering with a private body. While distinct analytically, civil society is never wholly autonomous or completely separate from supranational public powers. Nor are public powers insensitive or invulnerable to the actions of non-state actors. “*No governor governs [the globe] alone*”, notes Deborah Avant.¹⁰ Or, as Robert Keohane and Joseph Nye argued almost forty years ago, in world politics public and private powers are necessarily interdependent.¹¹ Visions diverge for how the interdependence public-private in the global landscape has to be interpreted. Some view a constitutional order in progress,¹² and envisage a “subjectivation” of supranational law (*i.e.* the progressive extension of rights and participatory opportunities to private actors in the global arena).¹³ Other scholars see further fragmentation taking hold.¹⁴ However, agreement exists upon the fact that such alliances, or public-private partnerships (PPPs), multi-stakeholder initiatives or even, more generally, networks, entails a power shift, a role shift and a responsibility shift. The “power shift” leads towards more synergetic relationships between public and private actors. The “role shift” implies that non-state actors

9. See EYAL BENVENISTI, *The Law of Global Governance*, The Hague, 2014, pp. 1 ff.

10. See DEBORAH AVANT/ MARTHA FINNEMORE / SUSAN SELL, *Who Governs the Globe?*, Cambridge, 2010.

11. See ROBERT KEOHANE, JOSEPH NYE (eds.), *Transnational Relations and World Politics*, Cambridge MA, 1971.

12. See, for instance, NICO KRISCH, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law*, Oxford, 2010.

13. See MIGUEL POIARES MADURO, *We the Court: The European Court of Justice and the European Constitution*, Oxford, 1998.

14. See, for instance, TURKULER ISIKEL, *Global Legal Pluralism as Fact and Norm*, in *Global Constitutionalism*, II, 2013, pp. 160 ff.

perform regulatory functions that were traditionally in the responsibility of states. Hence, by assumption the role shift goes along with a “responsibility shift” (with consequences on the legitimate use of authority). PPPs may vary in nature and scopes. Some contain measures that are legally binding upon their members; others are based on mutual trust and recognition. Further, depending on the case, civil society actors involved in PPPs may strategize, lobby, advocate, complain, monitor and collaborate; whereas public powers may negotiate, give financial and/or logistic support and, at times, resist stakeholders’ pressure. In any case, PPPs overcome the classic divide between state regulation, on the one hand, and self-regulation, on the other hand, and encourage the birth of hybrid forms of co-regulation. They capture the crucial changes that the exercise of political authority is experiencing in the global arena.

A third common feature among the coalitions described above relates specifically to the civil society, and pertains again to networks. Bearing in mind the differences in terms of volume, length, legal nature and aims, all the initiatives presented at the outset of this article are indicative of the presence of an organized network of civil society actors, where “organized” stands chiefly for an administrative, hierarchical structure to support the network’s members, and foster its commitment to a set of common values. Such networked civil society seems to show a reverse trend to that commonly associated with representative democracy, and exemplified by drops in voter turnouts, waning party membership, and citizens’ alarmingly low levels of trust and satisfaction in politics. From the web of NGOs that tie together to advocate for environmental matters, passing through an alliance of civil society groups aimed at boosting transparency in lobbying, up to coalitions of non-State actors operating in the fields of anti-corruption and fight to poverty, an associative spirit puts the basis for cooperation that, albeit apparently, may offset the much debated decline in representative democracy. The rising involvement of civil society actors into transnational coalitions may be explained according to various reasons (to be addressed in the next Paragraph of this article). However, if a main reason has to be identified this would be that coalitions offer a powerful tool for influence on supranational regulators.¹⁵

3. Why Civil Society Coalitions Exist?

What reasons explain the existence of coalitions of civil society actors at the supranational level? Seven factors are key. The first is the dramatic increase of problems of global – rather than local – dimensions that are dealt by civil society activists. Exemplary are environmental protection and human rights. Such problems, observe some authors, can only be solved by a coordinated exercise of power.¹⁶ Take the case of violence against women. This issue did

15. A recent study has proven the importance of transnational networks of NGOs for advocacy. See JONAS TALLBERG *et al.* NGO Influence in International Organizations: Information, Access and Exchange, in *British Journal of Political Science*, I, 2016, pp. 1 ff.

16. See, for instance, ROBERT HOWSE, *The end of the globalization debate: A review*

not receive international recognition until the early 1980s, and only became an object of United Nations activity from 1985 onwards. However, by the 1990s, having global standing, the issue was considered amongst the most important international women's issues. It received significant institutional support and was advocated in increasing numbers by civil society actors, both domestically and internationally.

The second factor is the diffusion of technology, which has decreased the costs of trans-boundary communications, providing means for non-state actors to communicate with greater frequency. The use of Internet has allowed NGOs to coordinate global campaigns to an extent that would have been impossible even as recently as 20 years ago. New forms of organization via the Internet have enabled the recruitment of previously inactive citizens into social participation and civic action. As a result of global communication systems, proximity now appears unimportant for social interaction, as well as for political and economic organization.

The globalisation of mass media is the third factor that is driving the tendency to a networked civil society. It has been since the second half of the 1990s that communication media have become increasingly global, extending their reach beyond the nation-state to conquer audiences worldwide. The production, distribution and consumption of an increasing number of media products now take place in a transnational context. More than 346 million people globally read blogs published in 81 languages, and 900,000 blog posts are generated in an average 24h period. Dissemination of information through digital and participatory channels has partly replaced what bloggers derisively term the "elite media".¹⁷

The fourth factor consists of the dramatic increase of transportation of goods and people around the world. With modern transport, no two cities in the world are any more than about a day's travel apart. And costs are lower too. The reality that travelling costs have significantly reduced over the last 10 years has had direct effect on non-state actors mobility. The Union of International Organization Yearbook reports that in 2012, 392,588 official meetings were held in 167 Countries and 1,374 cities.

A fifth catalyst of a networked civil society is globalized knowledge. This creates the conditions for a growing number of interactions between students, scholars, universities, think tanks and other centres of cultural activity, and shapes the identity of future civil society leaders – leaders who are increasingly educated in the same universities, and who have been taught to share the same set of values and vision of the world – values and vision that they will most likely promote throughout their professional lives.

Fundraising is the sixth factor behind the emergence of civil society coalitions.

essay, in 121 Harvard Law Review, 2008, p. 1528.

17. See JAY BLUMLER, DENNIS KAVANAGH, The Third Age of Political Communication. Influences and Features, in Political Communication, 16, 1999.

It is well acknowledged that chronic under-funding and understaffing affect many NGOs through their lifespan. Exemplary is the case of non-profits that rely heavily on government grants and contracts, which have been the most affected by the recent economic recession. Coalitions provide a workable solution for increasing chances of getting funds from donors. One may look at EU grants as an example. EU funds are notoriously awarded to organised networks of civil society actors rather than to single NGOs. In 2015, for instance, 16 out of the 24 operating grants of the LIFE programme.

Finally, but decisively, the growing prominence of coalitions of civil society actors can be explained by addressing the benefits for both non-state actors and supranational regulators that result from joining into a network. Benefits for civil society actors include increased visibility and opportunity for advocacy. Benefits for supranational regulators include the chance to improve their accountability/legitimacy and reduce costs. In other words, supranational coalitions of civil society actors could be viewed pragmatically as a necessity for both supranational regulators and civil society actors themselves. The former need to efficiently address the topics they are demanded to regulate, and to overcome issues of legitimacy and accountability. They may therefore find it easier to negotiate with a single coalition instead of managing multiple negotiations with a multitude of civil society actors. Civil society actors unite their interests – rarely identical, but nonetheless complementary – into coalitions as a way to enhance their impact on supranational governance as well as to increase their chances to raise funds from donors.

4. Civil society actors and the democratization of supranational legal order

Supranational coalitions of civil society actors may be analysed under many perspectives.¹⁸ This article focuses on the cooperation established between these coalitions and supranational regulators, and the effects it produces for harmonization of administrative governance. This cooperation, it is assumed in this article, encourages convergence of administrative methods of governance, and specifically encourages the spread of principles of democratic governance – *e.g.* transparency, access to documents, and reason-giving – across supranational legal systems.

In order to substantiate this claim, it is crucial to draw a separation between the contribution made by individual civil society actors and the coalitions of civil society actors to the shaping of principles of administrative governance at the supranational level. Hypothetically, both contribute to fostering principles of democratic governance within the supranational regulators' decision-making. However, on a closer inspection, an important difference is evident. The influence of single non-state actors on the decision-making of supranational regulators is fundamentally erratic. The rhetoric about the democratization of the supranational

18. See GIANLUCA SGUEO, *Beyond Networks, Civil Society Coalitions, the European and the Global Legal Orders*, Springer, 2016.

legal space through the involvement of civil society actors has run far beyond real achievements. This mainly owed to two factors. The first involves the excessive number and variety of competing civil society players operating at the supranational level, all at the same time. On the one hand, the polycentric system of supranational governance provides the bedrock for civil society's presence in the supranational sphere. However, on the other hand, it challenges the formation of a homogeneous civil society with a shared identity of its constituency. To prove this, one should consider two phenomena. First, the tendency of NGOs from different parts of the world to advocate for different goals, rather than being united, when given the opportunity to confront governmental representatives; and, second, the excessive costs that may discourage minor non-state actors from participating in supranational decision-making, despite being invited to do so.

The second reason explaining the substantial failure of civil society's actors to contribute to the democratization of supranational administrative governance involves shortcomings in their accountability and legitimacy. Non-state actors' finances, agenda, and governance, the critical argument runs, are not legitimate themselves. Neither a representative nor an electoral process makes them accountable. At its heart, the only source of legitimacy of civil society actors is the factual and diffuse acceptance of their presence and active role in the supranational arena.¹⁹ Hence, the problems they potentially raise: how can accountability be provided to supranational regulators by bodies that are not accountable for themselves? Combined, these two factors diminish the capability of civil society actors to influence the democratization of the supranational legal order.

5. The democratic potential of civil society coalitions

Do the same limits constrain the coalitions of civil society actors? This article identifies four reasons to clash this assumption. Firstly, supranational coalitions of civil society actors are designed to bring non-state actors together into networks for advocacy. They were actually born out of the necessity of championing a sense of communality among its members. Second, the coalitions of civil society actors increasingly make use of certification criteria to restrict and regulate the access of new members. Filtering accession to a coalition may provide stronger cohesion and may guarantee greater accountability. Third, in the supranational coalitions of civil society actors all topics of interest must be debated and agreed upon amongst coalition members well before they are presented to supranational regulators. This facilitates coherent (and possibly effective) advocacy within supranational decision-making. Fourth, membership to the coalitions of civil society actors is rarely exclusive. Non-state actors are free to join more coalitions – which, in fact, they often do – as well as to operate autonomously. This helps to overcome the divisions between transnational actors who operate across

19. See, for instance, HELMUT ANHEIER / MARCUS GLAUSIUS / MARY KALDOR, *Global Civil Society*, Oxford 2001.

continents and time zones, and actors who are situated in marginalized locations and operate mainly at the local level. Non-state actors may in fact operate in autonomy, but they are likely to adopt a similar position agreed to within the coalitions.

Coalitions of civil society actors are therefore supposed to have a stronger potential to influence the formation of principles of democratic governance across legal systems and supranational institutions. After all, there is wealth of research that focuses on how supranational networking benefits the democratization of legal orders. Barbara Wejnert, Paul Ingram and Magnus Thor Torfason – to name but a few – have analysed the diffusion of democracy through networks. In the opinion of Wejnert,²⁰ three elements combine to help the spread of democracy: spatial proximity, media communication, and membership in international networks. The last is also the most important. Wejnert explains how membership in international networks exposes governments to the influence of the other members of the same network, and might therefore foster democratization. Ingram and Torfason also address the role of supranational regulators in the democratization of international networks.²¹ These supranational regulators, they explain, provide interpretation and interaction venues for elites, and support a shared identity among the populace of member-states. This increases the likelihood of change consistent with shared norms, and decreases the likelihood of inconsistent change. The most immediate conclusion of these arguments is that, at least in theory, the supranational coalitions of civil society actors have a stronger potential in influencing policy transfer compared with that of single non-state actors.

6. Civil society coalitions and administrative convergence

In order to better understand the capacity of supranational coalitions of civil society actors to meaningfully drive policy transfers across supranational systems of administrative law the concept of administrative convergence need to be introduced. The concept of ‘administrative convergence’ does not have an agreed meaning. At root, administrative convergence is the process that brings administrative systems to grow alike, since they develop similarities in structures, processes, role conceptions and performances. However, some scholars describe administrative convergence as part of the broader notion of “policy transfer”, whereas others oppose the idea that convergence equates such a notion, and prefer to describe it as an outcome of policy transfer. It is not within the scope of this article to engage these claims directly. Rather, this article will focus on the application of the notion of administrative convergence within the relationships among supranational systems of administrative law.

20. See RICHARD WEJNERT, *Diffusion of Democracy. The Past and Future of Global Democracy*, Cambridge, 2014.

21. See PAUL INGRAM, MAGNUS THOR TORFASON, *Organising the In-Between: The Population Dynamics of Network-weaving Organisations in the Global Interstate Network*, in *Administrative Science Quarterly*, LV, 2010, pp. 577-584.

Jacob Olsen distinguishes between two main hypotheses of administrative convergence.²² He describes the first in terms of “attractiveness”, while the second is traced in terms of “imposition”. To simplify a complex argument, Olsen states that attractiveness signifies learning and voluntary imitation of a superior model. Organizational forms are copied because of their perceived functionality, utility, or legitimacy. However when no single way of organizing administrative governance is seen as functionally or normatively superior, convergence by imposition is likely to happen. Differently from attractiveness, convergence conveyed through imposition does not build upon a cooperative arrangement or voluntariness. Rather, it is based on the use of authority and power that compel actors to conform. With imposition, actors are forced to adopt policy innovations that they would not have adopted otherwise. A typical example of this form of convergence is membership of supranational legal regimes such as the EU. Membership always comes with the imposition of economic and political measures. It should be noted, however, that convergence through imposition may exist in both hierarchical and non-hierarchical relationships. Obviously, in the former case there are binding rules and sanctioning tools to avoid policy divergence. However, in the latter case there is no direct prescriptive relationship between the actors involved in convergence. This is imposed by the (perceived) superiority of some actors – the “great powers”, in the definition used by Daniel Drezner²³ – over other actors.

Attractiveness and convergence are commonly described as mutually exclusive forms of convergence. In other words, Olsen and other scholars suggest that administrative convergence may follow from attractiveness or imposition. Instead, this article assumes that convergence as pursued through the influence of the supranational coalitions of civil society actors follows from attractiveness and imposition, or combinations thereof. These two forms of convergence, assumes this article, may be considered as self-completing. This notion rests on the idea that coalitions of civil society actors operating at the supranational level may mobilize good practices and normative standards from different legal arenas by linking various actors and institutions across borders (which can be sketched as convergence through attractiveness), but they may also construct a web of rules by relying on the leadership and authority of supranational regulators (which can be described as convergence through imposition).

The standards produced by the supranational coalitions of civil society actors may help to clarify this point.²⁴ Civil society actors in general, and the supranational

22. See JASON OLSEN, *Towards a European Administrative Space?*, *Journal of European Public Policy*, X, 2003, pp. 506-520.

23. See DANIEL DREZNER, *Globalization, Harmonization, and Competition: the Different Pathways to Policy Convergence*, *Journal of European Public Policy*, XII, 2010, pp. 842-852

24. The term “standard” is often used in scholarly writing with quite different meanings. Academic researchers refer to standards in terms of technical harmonisation (*e.g.* in the EU harmonisation of technical standards is used to indicate the removal of barriers to trade) or, in the common law tradition, as specific sources of law opposed to rules. International law scholars make use of the concept of standards mostly in economic, environmental and human right laws. These, it is generally supposed, consist of a wide array of non-binding sources of law,

coalitions in particular, remain among the most prolific producers of standards, or soft-law, in the supranational legal space. The main reason to motivate this is related to the practical outcomes of standard-setting. By developing and publicizing such standards, the coalitions of civil society actors seek to make them more widespread and influential, in order to let them acquire a sort of increased value which could eventually bind upon supranational regulators;²⁵ and, indeed, they aim at increasing their leverage at the international level. Now, when the supranational coalitions of civil society actors create new standards, these are often merely symbolic, with little or no real effect. In order to gain leverage on the supranational level, standards need “institutional interpretation”, *i.e.* they need to be supported by a well-articulated and organized system of monitoring and enforcement. This support may be provided through attraction and imposition. Attraction is enhanced by the diffusion of standards across various coalitions, whereas imposition occurs in the moment in which the supranational regulators decide to implement the concerned standards – and in the latter case imposition may assume various forms: by “reference”, when the integral text of a decision is referenced in another legal text from a different supranational regulator; by “incorporation” of only few programmatic lines; or by “application”, when standards are given direct application.²⁶ Indeed, the reverse hypothesis is also possible: convergence is initially supported through imposition, and in a second moment through attractiveness. Case in point is that of global financial standards. Normally, financial standards would be considered exemplary of convergence through imposition. However, argues Maurizia De Bellis, global financial standards may be implemented through methodologies, assessment programmes, or training/technical assistance programs.²⁷ Thus, even if financial standards were initially spread through imposition, attractiveness would likely perform a role in the phase of implementation.

7. Reassessing the boomerang effect

Since we conceived the supranational coalitions of civil society actors as engines of administrative convergence (either through attractiveness or imposition) we may now compare their penetration into global administrative governances to

including principles (*i.e.* general statements that allow a great flexibility in their interpretation and implementation), recommendations, official reports, codes of conduct, declarations of intents, methodologies and guidelines providing detailed guidance on requirements to be met for its implementation.

25. See generally DANIEL SHELTON, *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*, Oxford, 2000. On the relation between networks of NGOs and the formation of international standards See DAVID HUNTER, *Civil Society Networks and the Development of Environmental Standards at International Institutions*, in *Chicago Journal of International Law*, VIII, 2007, pp. 437 ff.

26. See MARTINA CONTICELLI, *The G8 and “The Others”*, in *Global Jurist Advances*, VI, 2006 article 2.

27. See MAURIZIA DE BELLIS, *Global Financial Standards and Networks: the Global Administrative Law Perspective*, in *Revista de derecho publico de l’Universidad de los Andes*, XXX, 2013, 1-20

what Margareth Keck and Kathryn Sikkink named “the boomerang effect”²⁸ – and Kathrin Zippel later re-named “ping-pong effect”²⁹. According to this effect, any appeal made by external actors to the international community bounces back and puts pressure on supranational regulators and national governments. In Keck’s and Sikkink’s view, a boomerang pattern can be sketched when national/local groups operating in a repressive and closed political system circumvent their government by looking for allies on the transnational level to place pressure upon their state from the outside. Via these connections to transnational networks, national NGOs gain access to international public opinion, donor organizations, supranational regulators, and Western governments, which can then be mobilized to put pressure on the norm-violating state. It is thus a “transnational network” of public and private actors that provide national groups with financial resources as well as information and leverage on the international public opinion. In this process, according to Keck and Sikkink, transnational networks serve three purposes. The first is getting the issue on the international agenda and thus shaming the norm-violating state. The second is the attempt to legitimate the claims of domestic groups – which closely relates to the first. Finally, the third purpose of transnational networks is to challenge norm-violating states through a structure operating at the transnational level.

In many respects, the same dynamics appear in the relationship between the supranational coalitions of civil society actors and supranational regulators. To begin with, the former supports issues at the supranational level. At the same time, the advocacy from these coalitions challenges governments (albeit only indirectly, since such coalitions only interact with supranational regulators). There are, however, five important differences between the dynamics behind the advocacy of supranational coalitions of civil society actors and those described by Keck, Sikkink and Zippel. The first concerns the balance between the national and the supranational levels. Differently from the boomerang effect, in which the domestic level plays a significant role, in the case of the coalitions described in this article national powers are reduced in importance, to the advantage of the supranational level.³⁰

A second difference from the models of Keck and Sikkink concerns the involvement of both the public and the private sector in pursuing administrative

28. See MARGARTH KECK, KATHERIN SIKKINK *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell Paperbacks 1998. See also ERIC SORENSEN, “Governance Network as a Frame for Inter-Demoi Participation and Deliberation”, in Working paper 2007:1, Centre for Democratic Network Governance Roskilde University, available at www.ruc.dk/demnetgov; MICHAEL WARREN, “Governance-Driven Democratization” Working paper 2008:3, Centre for Democratic Network Governance Roskilde University, available at www.ruc.dk/demnetgov.

29. See KATHRIN ZIPPEL, *Transnational Advocacy Networks and Policy Cycles in the EU: The Case of Sexual Harassment*, in *Social Politics*, XI, 2006, 57-62

30. Undoubtedly, all supranational policy-making is crafted to produce effects at the local level. The leverage from the supranational coalitions of civil society actors, however, is organized and developed mostly at the supranational level. Not only are the topics to be advocated agreed upon through the coalitions, but these coalitions are also expected to advocate such topics towards the supranational regulators they cooperate with.

convergence. When the boomerang theory was conceived, there were still doubts as to whether the presence of the private sector in the process of administrative convergence would be beneficial, or whether it would be seriously undermined by the subverted relationship of power between the public and the private sectors. Nowadays, while the public/private distinction is still important, the content of each sphere and their interaction with each other is no longer considered an issue.

The third difference relates to the reasons motivating convergence. Closer collaboration between the supranational coalitions of civil society actors and supranational regulators signifies that policy transfer is motivated by reasons other than contestation. While the boomerang effect theory postulates that an international network is mobilized to challenge a particular (domestic) policy, in the case of the supranational coalitions of civil society actors, the push for reforms may also be the motivation for policy transfers. As an example, economic crises are likely to put pressure on the supranational regulators to enhance engagement from governments to borrow policies from other governments.

This brings us to the fourth difference from the original boomerang effect. This difference is concerned with the “degree” of transfer. On this point, Dolowitz and Marsh already noted that policy transfer is not an all-or-nothing process.³¹ They distinguished four degrees of transfer: the first is “copying”, which involves direct and complete transfer; the second is “emulation”, in which ideas – rather than the policies themselves – are the objects of transfer; the third is “combination”, in which ideas and policies are combined and transferred together; fourth and final is “inspiration”, where policy in another jurisdiction may inspire a policy change. In Keck’s and Sikkink’s model, discipline inspiration and selective imitation appeared as the main forms of convergence. By contrast, the relationship between the supranational coalitions of civil society actors and supranational regulators seems to favour emulation and inspiration.

A fifth, and final, difference from the original boomerang effect is linked with the consequences that convergence has for the actors that drive it. In effect, this is a point that Keck and Sikkink leave almost unexplored. However, it is important to understand how advocacy efforts from the supranational coalitions of civil society actors produce convergence among the coalitions themselves. These coalitions, as with any other actor of advocacy, are hinged to a duty to accomplish their tasks. This means that they would likely adapt their organizations and activities in accordance with the changes they want to induce in supranational regulators’ policy-making. In the long run, this adaptive process will render the supranational coalitions of civil society actors increasingly similar to one another, at least in terms of organizational outlines, procedures and activities they undertake. Without need to go into further details (the last section of this article will take the endeavour to explain this point) it can be noted that this isomorphism is an opportunity, but also a threat to the future of such coalitions.

31. See DAVID DOLOWITZ, DAVID MARSCH, *Learning From Abroad: The Role of Policy Transfer in Contemporary Policy Making*, in *Governance: An International Journal of Policy and Administration*, XIII, 2000, pp. 5 ff.

8. Forces opposing administrative convergence

With the importance of the supranational coalitions of civil society actors for the concept of policy transfer at the supranational level defined, a few additional considerations can be made about the forces that may oppose administrative convergence. While there is an underlying assumption that policies that have been successful in one legal regime will be successful in other regimes, at least two reasons challenge this assumption. The first is institutional inertia, the second relates to cultural divergences. Institutional inertia occurs when policy-makers only formally adopt rules crafted in other legal systems. In particular, this may occur in the imposition of democratic values to national governments in the framework of financial agreements with supranational coalitions of civil society actors such as the International Monetary Fund or the World Bank.

Another force against convergence is that cultural preferences render particular solutions unattractive in particular polities. Administrative law is particularly concerned by the problem of cultural divergence. The scopes and definition of administrative law differs across legal systems.³² The obvious consequence of this is that convergence, if applied to administrative law, may not exist, or may be less evident than, say, convergence of private or business law. This objection, however, has fewer grounds in the supranational legal domain. Supranational administrative law is mainly composed of principles that are borrowed from domestic administrative systems. Thus, principles of administrative governance, rather than substantive rules, are conveyed through convergence among supranational regulators.

The consequences of such obstacles to convergence may vary. However, for the sake of simplicity, three are salient. First is uninformed transfer, when the borrowers have insufficient information about the policy that is transferred and how it operates in the lender's legal regime. Second is that of incomplete transfer. In this instance, crucial elements of the policy are missed during the transfer. The obvious consequence is, again, failure in transferring policies. A third case of failure in policy transfer is that of inappropriate transfer. In this case, it is assumed by Dolowitz and Marsh, the borrower did not pay sufficient attention to the differences between contexts.

9. Supranational coalitions and their controversies

The effects on global governance as a result of the growing presence of coalitions of civil society actors are not entirely positive. Networking in civil society presents a number of tensions. These tensions raise doubts about network's

32. Take the administrative systems of the EU as an example. They are different not only in the rules and regulations applied to society, but also in the rules and regulations that regulators apply to themselves.

desirability as drivers of harmonized principles of participatory democracy at the supranational level. If that were the case, civil society coalitions may not be the brave new world they appear to be at first sight. They would better fit into the definition of a “compromise” between civil society actors – interested in increasing their fundraising capacity – and supranational regulators – concerned by the preservation of their, albeit only seemingly, legitimacy. As a further consequence, the leverage of such networks on global governance, if any exist, would at the best promote a “nominal democracy”, as Robert Keohane names it³³ – *i.e.* a democracy that meets democratic standards on the surface and embodies the rhetoric of democracy, but lacks the content.

The most evident tension is related to the functioning of coalitions of civil society actors. Holding civil society actors together in a coalition constitutes a complicated enterprise. This is especially apparent when coalitions grow bigger. When networks expand into hundreds of participants, the likeliness of controversial opinions increases. Thus, larger coalitions may be considered weaker coalitions, due to the wide range of adherents with different views, sizes, and strategies. Furthermore, a bigger network is also a more formalized network, since it is obliged to sacrifice some flexibility, and to adopt formal procedures, in order to reflect the views of all its constituents. Paradoxically, smaller coalitions may turn out to be stronger coalitions, because of the better capacity to organize themselves and the ability to tackle issues of advocacy with greater flexibility.

Competition among different coalitions represents the second tension that, according to this article, challenge networking in civil society. This article assumes that the presence of a large number of civil society actors in the policy arena creates not only the basis for cooperation, but also (and perhaps more frequently) for competition. This may be the case of bigger coalitions, encompassing a great diversity of actors and in a constant struggle to be guided by a clear leadership. But it may also be the case of smaller coalitions, motivated by the necessity to remain competitive in order to gain attention, and associated advantages in terms of funding and accessibility to supranational policy-making.

A third tension may occur when a given supranational regulator refuses to cooperate with a coalition of civil society actors on the basis of rules or standards formerly approved by a different regulator, assuming their uniqueness. Richard Stewart recently exemplified this point by describing competition among global regulatory bodies in providing regulatory standards to firms, governmental bodies, and other global regulatory bodies. In Stewart’s analysis, such competition is regarded as beneficial, because it can generate powerful incentives to respond to the interests and concerns of consumers of regulatory standards. However, the opposite is also true. Competition among global regulatory bodies may hamper or delay the process of harmonization of regulatory standards, including those of interest to this article, *i.e.* those concerned with transparency, participation and reason giving.

33. See ROBERT KEOHANE, *Nominal Democracy? Prospects for Democratic Global Governance*, in *ICON-S Working Paper – Conference Proceedings Series 1*, No. 4/2015.

A last tension to be accounted for relates to the loss of creativity and experimentation that might occur when the same standards and practices are massively recycled from different coalitions of civil society actors. Organized networking in civil society may hamper cultural diversity and ultimately produces anonymous standards and undistinguished convergence.

10. Conclusions. The role of supranational coalitions of civil society actors and the desirability of a global participatory democracy

When combined, the tensions described above concern the impact of the coalitions of civil society actors on the harmonization of methods of democratic governance in the global arena. Organized networks of civil society actors may be good at influencing supranational policies, but – it may be asked – can they truly encourage the spill over of democratic governance across supranational legal regimes? Further: should they? Drawing from these two questions doubts may be raised on, first, the role played by the coalitions of civil society actors in the reconfiguration of individuals' rights, entitlements and responsibilities in the global sphere; and, second, on the desirability of a “global participatory democracy”. The conclusions of this article will try to respond to both questions.

When we talk about the “impact factor” of supranational coalitions of civil society actors, we implicitly question whether the proliferation of these networks translates into the recognition of more participatory rights to individuals worldwide; and we question whether this process of recognition is equally distributed among citizens all over the globe, or rather if some individuals get more participatory rights than others, and why. This is the suggestion made by scholars such as Bhupinder Chimni. Global civil society, Chimni believes, could play a beneficial role in the democratisation of global rule making. However, as the theory – and to an increasing extent the practice – of the advocacy of supranational coalitions of civil society actors grows in importance, it has also shown to be unbalanced. Organised networks of civil society actors tend to embody asymmetric power relations in which powerful participants often play the dominant decision-making roles, rather than all members. The moment we assume that the supranational coalitions of civil society actors do not represent all interests, but only certain interests, we have to conclude that they are not capable of imposing democratic governance at the supranational level.³⁴

Yet two reasons exist to be sceptical of this claim. Both reasons move from the same assumption: an increasingly networked global civil society is still a novel phenomenon in the global arena, and it should be treated as such when discussing the impact it has on the decision-making of supranational regulators. This article suggests that, as reminded by Sabino Cassese, in the global perspective legal concepts remain influenced by states and their rules. Administrative systems remain intrinsically divergent, because they still result from the overlap between

34. Not that the issue of disparities among civil society actors is a novel one. There is a burgeoning literature that discusses how imbalances are an inner part of civil society. See ELMER ERIC SCHATTSCHEIDER, *The semi-sovereign people*, New York, 1960; MICHAEL WALZER, *Equality and civil society*, in SIMONE CHAMBERS, WILL KYMLIKA (eds.), *Alternative conceptions of civil society*, Princeton, 2002, pp. 34-50

the traditional Westphalian model of state and the newly emerged supranational regulators and their rules.³⁵ In terms of participatory rights, then, this means that a mature participatory democracy is not yet developed at the global level. Rather, we observe principles and common rules that timidly spread across legal regimes. Inevitably, this causes tensions and divergences that reflect on citizens across the world. Having this in mind, we may assume that civil society actors coalescing into networks can help (albeit not yet solve) to overcome these tensions and to patch up the divergences.

A second, more wide-ranging, argument could be made that coalitions of civil society actors move a step forward to the construction of an infrastructure to support the voice of civil society in the development of a global democracy. On this point, it is worth recalling the work of Robert Keohane, one scholar who voiced his scepticism about the feasibility of democracy beyond the domain of national states (and, instead, has conceded to settle in practice for less demanding forms of accountability).³⁶ When Keohane explicates his idea of “nominal democracy” – i.e. a façade democracy, embodying the appearance of democracy, but lacking the substance – he addresses three main gaps to substantiate his claim. It is not necessary to provide full account of all the three gaps – namely: the interest-public goods, the emotional and the infrastructure gaps. It is sufficient to acknowledge the third gap, this being directly related to this chapter. Keohane argues that a democracy requires an associative spirit from citizens, who coalesce in order to advocate for their rights. Hence, our question: do the supranational coalitions of civil society actors provide a solution for this infrastructural gap? Not in Keohane’s opinion. He admits that transnational, networks of civil society may provide some of the infrastructure for a global democracy, by nurturing civil society at the elite level. However, concludes Keohane, these networks are still far behind from building a “social capital”. Much more energy and time has to be spent in building the multidimensional ties among civil society actors that could benefit the construction of a genuine, and not just nominal, democracy. Here, however, issue may be taken with the hypothesis advanced by Keohane, and it may be argued that the supranational coalitions of civil society actors offer the exact kind of infrastructure needed to develop more democratic governance at the global level. Indeed, it is tempting to conclude that with the supranational coalitions of civil society actors the issue of a quest for global democratic governance is solved. This temptation shall be resisted. Instead, it may be acknowledged that even if these coalitions are missing the creation of social capital evoked by Keohane, they move a significant step forward the creation of (more) democratic supranational governance.

This brings us to the last question addressed in this article, which concerns the desirability of supranational coalitions of civil society actors as drivers of principles of administrative governance across supranational legal systems. Despite their failings, are coalitions of civil society actors the best possible drivers of a global democracy? This cannot be easily answered. The concept of network evoked at the outset of this article is inevitably hinged on the idea that it is entirely based on interactions among its members. And, admittedly, the

35. See SABINO CASSESE, *Research handbook on global administrative law*, Cheltenham, 2016, pp. 20 ss.

36. See ROBERT KEOHANE, *Nominal democracy? Prospects for democratic global governance*, in *ICON-S Working Paper – Conference Proceedings Series 1*, No. 4, 2015.

concept of network fits well with the description of the coalitions of civil society actors that are described in this article. Yet, the same term, network, seems less appropriate to address the array of relationships established between such coalitions and supranational regulators. Reflecting on what Anne Marie Slaughter describes as a network – i.e. the professional relationships between civil servants, professionals and activists – it remains evident that a certain degree of separation exists between the supranational coalitions of civil society actors and the global regulators. With very few exceptions, no supranational regulator has shown an effort to integrate coalitions of civil society actors within its decision-making, or to improve organizational connection with them. More than a single network, the coalitions described in this article and the supranational regulators constitute two overlapping systems of relations, which interact and cooperate in a manner that is mutually beneficial.

In fact, cooperation between coalitions of civil society actors and supranational regulators shows more of an affinity with the idea of regime complexes. Two similarities and one difference exist between regime complexes and the cooperation between the coalitions of civil society actors and supranational regulators. The first similarity consists of this: in both cases we observe the overlap of different mixes of public actors, from the local to the global level. Differently from regime complexes, however, in the cases of cooperation between the coalitions and supranational regulators addressed in this article neither arrangement, nor a defined strategy towards a common goal seem to exist. In other words, the only (or, at least, the main) basis of the relationship between coalitions of civil society and supranational regulators is the practical benefits it produces. This brings us to a second similarity between regime complexes and the cooperation between supranational coalitions of civil society actors and supranational regulators. In both cases the latter may increase management costs without necessarily obtaining a wider set of choices. Having in mind these similarities between the regime complexes and the cooperation established between supranational regulators and the supranational coalitions of civil society actors we may conclude that, for the time being, the coalitions of civil society actors remain the best possible drivers of harmonization of principles of democratic governance at the supranational level. What is going to happen in the next future is open to debate. Principles of participatory democracy are likely spreading across supranational legal systems. By the time the convergence among supranational systems of governance will be completed, however, organised networks of civil society actors could be already overcome by new organisational models. Global democracy evolves beyond networks.
