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The ‘puzzle’ of global governance after the financial crisis

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1. A globalization without rules

In the second half of the 20th century, the economic globalization largely exceeded the legal and institutional one. Many markets were fully integrated throughout the world, even in the absence of a common regulatory framework. This output was coherent with the free market approach under which the contemporary globalization took place. As a consequence, the institutional landscape of the economic global governance remained highly fragmented. On one side, international institutions revealed internal weakness and criticism. Moreover, no substantial connection among the different institutional systems was activated. Finally, important gaps even in a free-market perspective remained unfilled. The absence of an effective global antitrust jurisdiction is perhaps the most evident example of that.

Financial markets were the champions of the globalization process. Their global regime was characterized by three fundamental features. The first one was the primacy of the deregulation recipes. Governments throughout the world were pushed to open their markets and to soften the regulatory devices. The second one was the dominance of free competition among legal (dis)orders, according to which financial institution were able to choose the most favorable regulatory environment. The third one was the reservation to national jurisdiction of every decision needed to face a “local” crisis of a financial institution.

The United States and the United Kingdom were at the forefront of this transformation of the financial markets. In the Nineties they abolished any significant restriction to the movement of capitals and to the capacity of the traditional commercial

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banks to expand their business into hazardous activities. This way, they were able to attract foreign investors and to get their financial institutions free from intrusive oversight by public authorities. When banks and other financial institutions got under distress, the U.S. and U.K. governments decided autonomously, on a case by case basis, to nationalize them and to avoid the default. The same happened when the U.S. government, on the contrary, decided not to bail out Lehman Brothers. No consultation process was opened, not even with strategic partners of U.S. Citizens and world political leaders knew about that decision only from the newspapers, before experiencing the negative outcomes of it over their national financial markets.

2. Financial stability as a global public good

The 2008 financial crisis, followed by the 2010 sovereign debt crisis, might represent a chance to reverse such an historical trend and to build up the basis for a stronger economic global governance and a better relation between the State and the market.2

After the Lehman Brothers’ default and the global panic and distress generated by it, crises of big financial institutions are not any longer considered purely “local”. That’s why also solutions may not be exclusively “national”. The financial crisis showed the need for supranational collective action. As far as the markets, both real and financial, have not been so integrated since the end of the 19th century, also the correction of their failures must be global, for two different, even if often confused, reasons.

The first reason is that merely national solutions would leave space to regulatory arbitrage by multinational enterprises in order to escape unwanted rules and controls. This way, government action would be ineffective. The second reason is that virtually all domestic policies produce important international spillovers, and some of these can be quite harmful. Uncoordinated national measures may cause a government’s failure if regarded from a third country point of view and produce even a negative reverse effect for the state which adopted them.

The point is that in a greatly interdependent world economy, the number of global or at least regional public goods quickly increased, from financial stability to sustainable growth, and called for greater global and regional collective action. The sovereign debt crisis in 2010 strengthened this awareness. The risk of a default of Greece became pretty soon a problem for the whole Europe. And European institutions and Member States were asked to solve it by all the world leaders, starting from the U.S. President.

Strategic reaction to the financial and the sovereign debt crises are different and reveal the ‘composite’ approach towards a new global governance. Like a ‘puzzle’, each piece is different from the other. And there are still some badly cut and other missing. The solution of the puzzle is far away, but global public law can give a contribution to it.

3. An enhanced multilateralism: the establishment of the G-20 and the global reform of financial markets

One kind of reactions to the financial crisis was the attempt to re-launch multilateralism enlarging the membership and increasing the effectiveness of supranational fora and institutions.

The first attempt to strengthen the institutional architecture of global governance was the establishment of the G-20 as the «premier forum of international economic governance», The Group of Twenty (G-20) Finance Ministers and Central Bank Governors was established in 1999 to bring together systemically important

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industrialized and developing economies to discuss key issues in the global economy. To tackle the financial and economic crisis that spread across the globe in 2008, the G-20 members were called upon to further strengthen international cooperation. Accordingly, Leaders’ Summits coupled the ones held by Treasury Ministers, giving the G-20 the highest political authority. This way, the G-20 became the premier forum for international economic development in order to promote open and constructive discussion between industrial and emerging-market countries on key issues related to global economic stability.

The actions of the G20, with its balanced membership of developed and developing countries, helped the world to deal effectively with the financial and economic crisis. The scope of financial regulation was broadened, and prudential regulation and supervision were strengthened. Global governance improved to better take into consideration the role and the needs of emerging of developing countries, especially through the reforms of the governance of the IMF and the World Bank.

The strengthening of the G-20 was fundamental to transfuse new blood into multilateralism, overcoming limits of authority and legitimacy of the Group of Seven (G-7) industrialized countries. The more the G-20 will be able to play a prominent role, the more solutions adopted will be tinged with politics rather than with regulatory expertise and technocratic know-how.

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

In April 2010, the 186 countries that own the World Bank Group endorsed boosting its capital by more than $86 billion and giving developing countries more influence. Along with this first general capital increase for the World Bank for more than 20 years and shift in voting power to developing countries, the Development

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Committee of the Board of Governors also backed the Bank’s new post-crisis strategy, and a comprehensive reform package in order to improve the governance of the Bank. The four main components of the package concerned financial resources, voting power, post-crisis strategy, operational reforms.

Also the International Monetary Fund was at the core of a comprehensive package of quota and governance reforms in order to achieve a more legitimate, credible and effective institution. The aim is to ensure that quotas and Executive Board composition are more reflective of new global economic realities, and to secure the IMF’s status as a quota-based institution, with sufficient resources to support members’ needs.

A third attempt to push for worldwide solution was the strengthening of global financial regulation and supervision.

On the institutional side, the most important achievement was the establishment in April 2009 of a new Financial Stability Board (FSB) as the successor to the Financial Stability Forum (FSF). In November 2008, the Leaders of the G20 countries called for a larger membership and a stronger institutional basis of the FSF.

The purpose was to strengthen its effectiveness as a mechanism for national authorities, standard setting bodies and international financial institutions in order to address vulnerabilities and to develop and implement strong regulatory, supervisory and other policies in the interest of financial stability. As announced in the G20 Leaders Summit of April 2009, the expanded FSF was then re-established as the Financial Stability Board (FSB) with a broadened mandate to promote financial stability. The FSB is now called to coordinate at the international level the work of national financial authorities and international standard setting bodies and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies.

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

Nonetheless, greater level of global economic integration, even after a shocking experience like the financial crisis, didn’t produce, at least apparently, a radical change on the institutional side. As a matter of fact, states didn’t transfer authority to existent or new supranational bodies. No global authority of financial markets was established. The regulatory reform didn’t re-introduce a clear distinction between commercial banks and financial institutions and require a long-lasting implementation process at national level. According to the critics, the capacity of the FSB and of the Basel Committee to design sound reforms was undermined by capture and conflict of interest. Some of the rules applied at national level to prevent them could be usefully applied to prevent those risks.

4. The cooperation among governments in bailout, recovery and fiscal sustainability policies

Benefits and outcomes of the re-launched multilateralism were limited. Individual action by national governments remained fundamental to address the financial crisis. The crisis, anyhow, showed how far an individual government's decision (to bailout or not a big financial institution, just to take an example) may affect the economic and financial outcome of other countries. Since September 2008, then, governments realized the existence of relevant spill-over effects of every response to the crisis they were going to adopt.

All governments recognized the importance of cooperation to achieve the production of new fundamental global public goods, like financial stability and sustainable growth. At the same time, experiencing the relation of the required decisions to the core of national sovereignty, they didn’t want to tie their hands and to commit to some form of legally binding supranational authority.
That’s why governments implicitly claimed that “concerted practices” could represent the most viable way to achieve cooperation in highly sensible political matters. Informal contacts and meetings among political leaders and the G-20 summits became the preferred rooms to exchange points of view, coordinate action without assuming legal obligations, monitoring voluntary compliance. Of course, what governments claim to be cooperative behaviors at the global level could actually be mere “parallel behaviors”, simply adopted to satisfy domestic interests and pressures at the national level. This kind of ambiguity could perfectly fit a double and opposite need of governments: on one side, ensuring financial markets and public opinions throughout the world that global collective action is taking place through concerted practices; on the other side, assessing that the well-being of national citizens is at the core of sovereign decisions of governments (even if «parallel» across countries)\(^6\).

The concerted practice/parallel behavior scheme can be applied to explain the governmental strategies about the bailout of banks and financial institutions. In the first half of 2008, bailout measures were adopted on a case by case basis by governments, like the United Kingdom and the U.S., as purely domestic choices. At the beginning of September 2008, it was the decision by the U.S. not to bailout Lehman Brothers that revealed the worldwide negative spillover effect of a national government option. In such a dramatic way, it became clear the existence of a neglected global public good (financial stability), that should have been protected from both market and government failures.

Since that, efforts at coordination between states started. Informal contacts and meetings among the U.S. and the European countries put the basis to share an economic policy analysis and to figure out the necessary measures to avoid the collapse of the global financial system. As the crisis was coming to a head, October 9 saw a simultaneous move of the central banks of U.S, Europe and China aimed at reducing interest rates by half a point. On October 11, the meeting of G-7 Finance Ministers, for the first time, outlined a set of joint rules and measures. Only after that, the enlarged G-20 Washington summit held in November 2008 for the first time agreed on the

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relevance of the «urgent and exceptional measures» taken by governments to stabilize financial markets and to support the global economy, providing liquidity, strengthening the capital of financial institutions, protecting savings and deposits, unfreezing credit markets.

Nonetheless, nor a formal agreement was stipulated, neither a decision from any supranational authority or network was delivered. On the contrary, governments adopted parallel behaviors in order to address insolvency and liquidity problems of financial institutions in each country. This way, governments succeeded in combining a cooperative approach at global level with the defense of national prerogatives. Even if coordinated, bailouts after the failure of Lehman Brothers continued to be predominantly national, for two fundamental reasons. On the one hand, the pressure from individuals, families and businesses for protective measures are focused on electorally-accountable national representative bodies. On the other hand, states are the only entities that possessed the financial resources necessary to fund rescue packages. Moreover, they were the only ones who had the necessary authorizing powers, as well as the acknowledged legitimacy to exercise them. The success of this strategy was assessed in the G-20 London summit, where the final declaration stated that governments «have provided significant and comprehensive support» to the banking systems «to provide liquidity, recapitalize financial institutions, and address decisively the problem of impaired assets».

In efforts at coordination, the approval of specific pieces of legislation on bailout played an important role, as a signal revealing the game that each state was going to play. Before that, each country decided case by case whether to bailout or not and how. Going on this way would have greatly increased uncertainty not only in the market but also in relationships among states. In this context, each government would have acted just looking at his own interest, ignoring the spillover effects of its decisions. On the contrary, the approval in many countries of a new body of legislation created a more cooperative environment, revealing the existence of a dominant strategy to bailout and creating a more uniform playground.

7 As the Financial Stability Board stated, «while financial crisis management remains a domestic competence, the growing interactions between national financial systems require international cooperation by authorities» (FSF Principles for Cross-border Cooperation on Crisis Management, 2 April 2009, p. 2).
The governments’ response to the crisis was not limited to the financial sector. With potential supply exceeding actual demand, due to falling of private consumption, each country adopted stimulus packages to restore balance in the markets. Once again, in a deeply interconnected economy, national measures, to be effective, must be coordinated at global level, in order to cover supply both through internal consumption and export. The problem is that fiscal stimulus policies, compared to financial regulation, represent a field where achieving true supranationalism is even more difficult, as far as they produce distributional effects and largely rely on taxpayers. That’s why, also in this field, cooperation among governments through “concerted practices” was the only viable mechanism through which some form of economic global governance could take place.

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

Relying on national measures approved by elected Parliaments, anyhow, may be dangerous, as far as the results of the political process could be altered by the influence of pressures groups. For example, cooperative games to sustain recovery may be vanished by crisis-era state measures that are likely to adversely affect a large number of trading partners and a sizeable amount of international trade. Notwithstanding the repeated collective commitments to further develop an open global economy and to «fight protectionism»\textsuperscript{8}, governments almost trebled the amount of discrimination in place by imposing 356 discriminatory measures, with harmful measures outnumbering

\textsuperscript{8} Since the first Washington summit the G-20 member states reaffirmed the importance of an open global economy and assumed the commitments to refrain from raising barriers to investment or to trade in goods and services. From this perspective, in the Pittsburgh summit, governments declared their intention to minimize «any negative impact on trade and investment» of their «domestic policy actions, including fiscal policy and action to support the financial sector»; reassessed the importance of an «open global economy»; vigorously stated their commitment to «fight protectionism».
beneficial measures by a ratio of 4:1.\(^9\)

The objective of building up a strong and balanced growth became even more difficult to achieve in a context of fiscal crisis. On the topic, the G-20 Toronto summit clearly stated that «sound fiscal finances are essential to sustain recovery, provide flexibility to respond to new shocks, ensure the capacity to meet the challenges of aging populations, and avoid leaving future generations with a legacy of deficits and debt». At the same time, the Toronto summit warned that «the path of adjustment must be carefully calibrated to sustain the recovery in private demand». As a matter of fact, there is a risk that «synchronized fiscal adjustment across several major economies could adversely impact the recovery».

6. The global relevance of the sovereign debt crisis in Europe

As a matter of fact, the financial crisis of 2008 was followed by the crisis of sovereign debt. To a certain extent, the former had even paved the way to the latter, as the unbalance of public finances, combined with low growth rates, overloaded public debt rates. Thus, the risk of a default, that formerly lied with undertakings, suddenly concerned also the States. The issues of liquidity and solvency were particularly severe in the Euro zone. One year and a half after the downturn of the economic crisis, then, Europe was the first asked to face with the problem of “saving the saviors”.

The emersion of the sovereign debt crisis in the Eurozone became immediately extremely relevant for all the global community. Till that time, the European Union played a limited role in global economic governance arena\(^10\). Suddenly, Europe conquered the center of the stage. And its proper management of the sovereign debt crisis became matter of concern for all the world. Member States could not be let alone to face it. The president of the United States and the G-20 strongly pushed European leaders to find a political solution and the legal devices necessary to apply it.


The problem was that the European legal order did not envisage any tool for easing the public debt of a member State. This is why the outbreak of the Greek crisis required the creation of new institutional mechanisms, in order to prevent the (eventual) sovereign default from having negative domino effects on the Euro and on the public finances of other member States, no matter if they were virtuous. After subsidizing Greece through the coordination of several bilateral agreements, the European institutions and the member States decided to address these issues at European level and negotiated the creation of a specific safety nets.

At first the Members States agreed on the European Financial Stabilisation Mechanism (Efsm) Regulation, adopted under Art. 122, par. 2, Tfeu. Pursuant to Art. 122, where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council may grant financial assistance. However, the triggering event shall not depend on a failure to comply with EU law, but it should rather derive from a serious deterioration of international economic and financial conditions. On this basis, the Council created a small fund at the disposal of the European Commission.

Later on, financial assistance was considered worth more resources. In fact, the member States committed to allot up to 440 billion Euro to a special purpose vehicle. Moreover, they decided to issue special bonds guaranteed by the member States themselves, whose participation in the fund would be proportionate to their contribution to the capital of the European Central Bank. The special purpose vehicles was set up on 7 June 2010, under the name of European financial stability facility (hereafter “Efsf” or “Fund”). It was a limited company under the laws of Luxembourg and its sole shareholder was the Grand Duchy of Luxembourg. Pursuant to its by-laws, the Efsf then opened its capital to the sixteen members of the Euro Area (it was the so-called Efsf Framework Agreement). The (pretty complex) tools described above were used to grant financial assistance to Ireland and Portugal and the special purpose vehicle also intervened for granting the second rescue package to Greece.

11 The no-rescue clause embedded in the Treaty suggested exactly the contrary. J.H.H. Weiler, highlights that certain choices made throughout European integration can be harmful and betray the view of Jean Monnet, who wanted to unify European citizens, rather than States (J.H.H. Weiler, «Nous coalisons des États, nous n’unissons pas des hommes», in La sostenibilità della democrazia nel XXI secolo, M. Cartabia e A. Simoncini (Eds.), Bologna, il Mulino, 2009, 51 onwards).
Note that the Efsf raised moral hazard concerns, as its intervention eased the burden of non-virtuous behaviors on both financial operators and member States\textsuperscript{13}. This is why it was agreed that the Fund would last for only three years. However, the Efsf was clearly too weak to ensure financial stability, especially when the “safety net” was faced to the speculative attacks against sovereign debts. On the one hand, the fund was weak because of its temporary nature; on the other hand, its resources were still scarce. In this respect, it is worth recalling that the Efsf was also financed through bonds guaranteed by the member States. Hence, the downgrade of their ratings inevitably affected the value of their guarantees, which, in turn, entailed a further reduction of the resources at the disposal of the Efsf.

6. The establishment of Esm as an insurance contract among governments

The legal framework changes radically with the establishment of the European Stabilization Mechanism (hereafter “Esm” or “Mechanism”). To that purpose, the Heads of State and Government modified Art. 136, by adding that “the Member States whose currency is the Euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the Euro area as a whole”. In order to prevent any misuse of collective support, it is also stated that “the granting of any required financial assistance under the mechanism will be made subject to strict conditionality”. In order to speed up the reform, the amendment was adopted under the simplified procedure, pursuant to Art. 48, par. 6, Teu.

The content of the Esm Agreement aimed at reconciling several interests. On the one hand, the new framework provided for stronger bases for financial support. In fact, instead of being based on the sole “emergency issue”, the Mechanism leans on a stable institutional frame. Besides, the new treaty has flattened some of the main objections raised against financial support in the aftermath of the Greek sovereign debt crisis. In fact, it was contended that the Council Regulation on the European Mechanism for Financial Stabilization conflicted with Art. 125 Tfeu, which states that “the Union shall

\textsuperscript{13} In this regard, European Central Bank, *Reinforcing economic governance in the Euro area*, 10 June 2010, 11 onwards, outlines the need to set a frame in order to minimize moral hazard.
not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State”. Thus, it was argued that European intervention implied a liability, incompatible with the wording of the Tfeu. Second, the financial solidarity principle laid down by Art. 122, par. 2, Tfeu, requires that the triggering financial emergency depend on causes beyond the control of the member State concerned. However, it was questionable whether the sovereign debt crisis, although deepened by international financial crisis, was really beyond control by member States\textsuperscript{14}. In view of these objections, the special provision is certainly welcome, as it explicitly sets aside the general “no-bailout principle” and it provides for a legal basis more robust than art. 122 Tfeu\textsuperscript{15}. However, this implied to set aside the solidarity principles and the idea of the natural expansion of the scope of European implicit powers.

Moreover, the Esm is tightly linked to the Fiscal Compact Treaty. In fact, in order to prevent moral hazard, the Esm will grant financial support only provided that: (i) the requiring member State has sought to avoid the crisis by adopting the virtuous behaviors imposed by the Treaty; (ii) the requiring member State has complied with the conditions laid down by the Commission. In sum, the Mechanism will address the issues of solvency and liquidity only after the failure of all the other means. In this regard, the possibility to be granted the Esm funds could be a powerful incentive for ratifying the Fiscal Compact Treaty, which could also be the foreword for issuing European bonds.

The establishment of the European Stability Mechanism represents a turning point in European integration process. Its permanent nature transforms the Union into a community of risks, not only of benefits. As a collective insurance device against future damages that could affect a country or a people, it assumes an intimate constitutional nature. The legal status and some fundamental rules of the Esm, unfortunately, seem unable to meet the challenges raised by such an ambitious program. Transparency and accountability needs are not satisfied. And the day by day effectiveness of the


Mechanism could be seriously undermined by ambiguities and perhaps mistakes in the institutional design.

Firstly, the Treaty defines the Esm an “international financial institution”. Such a definition doesn’t fit its authentic nature. On one side, it’s not truly international. Even if established by a specific Treaty, its birth is covered by an amendment to the Treaty on the functioning of the European Union. Its dimension is European and its tasks are complementary to the European economic governance. On the other side, the Mechanism is not merely a financial institution, like a commercial bank. Its subscribers are Member States of the Union. The governance is in the hands of ministries of finances. Its purpose is to give aid to Member States, not to earn money or raise revenues. The definition as an international financial institution is not only misleading. It also produces undue legal effects, creating an obstacle to the proper application of general rules on transparency and accountability referred to E.U. public institutions.

Secondly, procedures to grant financial assistance are ill conceived. On one side, they are too much complicated and long lasting. On the other side, they depend on the request advanced by a needing Member State. But if it doesn’t issue the request – for internal political reasons – the financial stability of all the Eurozone could be threatened. That’s why it could be extremely useful to introduce a third party kick off. The power to start the procedure should be conferred also to a qualified number of other Member States, or to the European Systemic Risk Board.

Thirdly, too much discretion is given to the Board of Governors. The Board has been vested with the power to grant support to a member State. In order to foster the efficiency of the financial assistance, it can also allow Member States to allot the subsidy to the re-capitalisation of a financial institution. Finally, it can decide to purchase bonds of a Member State both on the primary and the secondary market. While adopting such measures, the Board of Governors seems to enjoy a broad discretion, as suggested by the fact that it “may decide” to adopt the measures mentioned above. Indeed, the Treaty does not set any general goal or primary interest for exercising such powers. Although the appraisal by the Commission shall be taken into account, it is not binding on the Board. The problem is that the Board is not even compelled to give reasons. It seems, however, that a motivation would be utterly necessary, especially whenever the Board sets aside the advice of a European
institution. It is highly recommendable also the introduction of the dissenting opinion: representatives of Member States exercising de facto a veto power should be obliged to give reasons, from the perspective of the European interest and not only of the national one.

Fourthly, the rules on dispute resolution violate the principle of “nemo iudex in causa propria”. In fact, the Treaty entrusts the Board of Governors itself with the settlement of disputes arising on the interpretation and application of the Ems Treaty between the Ems and an Ems member State. Thus, dispute resolution is mainly “political”, as it belongs to the same body that leads the Ems and represents national Governments, with the non negligible effect of rendering the Board of Governors a sort of iudex in causa propria. In this regard, the set up of an independent Board of Appeal – like those of some European agencies – would be more appropriate.

Fifthly, the Treaty does not envisage any of the accountability tools that are usually made available towards European agencies. There are no consultation procedures, neither with general stakeholders, nor with “qualified” parties, such as institutional investors and creditors. There are no transparency duties, nor is it possible to have access to the files. Moreover, the Board of Governors does not report to the European Parliament and there are no procedures to assess Esm's efficiency. Only the financial administration of Esm is subject to a specific set of rules.

7. Solving the puzzle of global governance: the contribution of global public law

The establishment of a stronger economic global governance is a complex and long-lasting process. Different solutions may converge to that purpose. Some of them represent a re-launch of multilateralism. Others are based on new forms of cooperation among governments. Each of them retains its own sovereign powers, but practices are concerted and outputs collectively rated. Finally, the emergence of the sovereign debt crisis gave birth to an original form of collective insurance among governments. The actual image of global governance is that of an incomplete puzzle. The pieces are different one from the others. Some are properly intertwined, others not. And there are still some missing.
The fundamental problem is that the proper working of each pillar of the new economic global governance is affected by legitimacy and efficiency deficits. The capacity of networks and fora to promote an effective regulatory reform is limited by conflict of interest and capture. Cooperation among governments is undermined by opportunistic behavior of political leaders, who sometimes appear to be too much sensible to short-term evaluations. Ambitious mechanisms of collective insurance between Member States of the European Union may fail, because operational and accountability devices are ill-designed.

Global and European Administrative Law devices, such as information, transparency, participation, judicial review, can play a very important role in increasing the legitimacy and the accountability of crucial players of the regulatory reform process and of the financial assistance mechanism\(^\text{16}\). At the same time, the constitutional relevance of the transformations arising from the financial and the sovereign debt crisis requires new conceptions of supranational constitutionalism, and an enhanced attention to democracy and check and balance issues. A sounder cutting of the existing pieces and a clever discovery of the missing ones could contribute to solve the puzzle of global governance.