THE NEW RULES OF GLOBAL SOCIETY, FLEXIBILITY AND INFORMALITY DEALING WITH DIFFICULT ISSUES AND ACHIEVING GOOD RESULTS

AS NOVAS REGRAS DA SOCIEDADE GLOBAL, FLEXIBILIDADE E INFORMALIDADE TRATANDO COM QUESTÕES DIFÍCEIS E ALCANÇANDO BONS RESULTADOS

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Abstract: Economic and social relations, related to the movements of transnational corporations as an important sphere of globalization, have generated a strong impact on the positive law of the states and, as a result, in the international legal system itself. All this has led to studies that point to a new role of the national state, which comes to live with international actors that create rules applied in the internal system of these states. These new rules have proven the inability to discipline and create social relationships, allowing the emergence of private regulatory regimes and a diversity of sources of law describing current legal pluralism. As a private standard of relevant social regulation at a global level, the object of this study is transnational collective bargaining, highlighting its definition, reasoning, legal frameworks, main difficulties of implementation and effectiveness.

Keywords: International Economic Law.

Resumo: As relações econômicas e sociais, relativas aos movimentos das empresas transnacionais como uma esfera importante da globalização, têm gerado um forte impacto sobre o direito positivo dos estados e, como decorrência, no próprio sistema jurídico internacional. Tudo isso tem levado a estudos que apontam um novo

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papel do Estado nacional, que passa a conviver com atores internacionais que criam regras aplicadas no sistema interno desses estados. Essas novas regras comprovaram a incapacidade de disciplinar e criar relações sociais, permitindo o surgimento de regimes regulatórios privados e uma diversidade de fontes de direito que descrevem o atual pluralismo jurídico. Como um padrão privado de regulamentação social relevante em âmbito global, o objeto deste estudo é a negociação coletiva transnacional, destacando sua definição, raciocínio, quadros legais, principais dificuldades de implementação e eficácia.

Palavbvras-chave: Direito Internacional Econômico.

INTRODUCTION

The increasing performance of multinational companies, corroborated by the financial liberalization, shows the main characteristics of financial globalization.

Financial, economic and social relations, which derive from the internationalization of commercial and monetary operations, demand supranational legal systems, that may take place where States cannot discipline them yet, efficiently and safely, though several new international agreements settled.

The State inefficiency in the regulation of new situations, involving transnational relations, causes a reflection on the role of the State in society and a possible redefinition in some of its functions, especially the state regulatory function.

In a globalized society, a clear attenuation in the state power of regulation is observed, while new attributions are conferred to it. Among these new activities, the coordination of new normative microsystems resulting from the globalization process, the neutralization of market dysfunctions and the development of public policies that reduce the negative effects of globalization attracts attention, which is noticed most clearly in the social field.

Global interdependence has occasioned the arise of different social situations that require from the State modern ways of acting, not only concerning their political actions, but also on the adoption of different legal standards and responsibility, security patterns.

The society begins to produce its own standards, aimed at specific areas and interests, without violating previous legal systems, such as disciplinary regulations, guidelines of production, codes of conduct, global agreements and standardized contracts with global reach.

This spread of private standards - which produce their effects without breaking the rules of public nature that still dominate the social order - reveal the current legal pluralism, widely characterized nowadays.

International Labor Law was significantly affected by new legal sources deriving from the expansion of multinational companies and the trans

nationalization of markets and labor relations, reducing the role of the ILO as a regulator in this field of Law.

The state alone no longer is able to meet all the expectations of the globalized society, which entails the redefinition of its institutional role, and makes room for the rise of new social actors, supranational powers and new types of social regulation.

1 GLOBALIZATION AND THE REDEFINITION OF THE ROLE OF THE STATE

The modern legal history has been shaped by politics, and is characterized primarily by the statehood of Law. The bourgeois class, conquering the power in the 19th century, concentrated the monopoly of law in the state hands, making it the legitimate and sole creator of legal rules. Public law, subjected to the manifestation of the State's supreme will, became superior to other sources of normativeness, constituting a manifestation of authority and state sovereignty. Therefore, the legal system shaped exclusively by the State was gradually dissociated from the social and economic facts that have remained in continuous transformation (GROSSI, 2009: 158).

Even in the early twentieth century, dissatisfaction of different social groups (such as trade unions and industry groups) with the state apparatus and its limitations began to emerge. The internal sovereignty of the State began to be questioned, making room then to a state crisis scenario. Recently, along the creation of international public authorities who have imposed limitations on States - such as those resulting from the formation of the European Union – again the topic came to light. (CASSESE, 2010)

Currently the state crisis is still discussed, but from a different standpoint: the incapacity of state services to meet the expectations of citizens and society. The modern situation has caused a growing number of privatizations and state activities concessions to private companies, which has led to a reduction in government's role. (CASSESE, 2010)

Based on the analysis of these facts, Cassese (2010: 14) defines the State of crisis as the "loss in unit of the strongest public power in the domestic context and the loss of sovereignty in the international scene."

Internally, civil groups, many of them private, have won importance in the regulation of activities they develop, responding suitably and efficiently to the desires of the represented categories.

Externally, the continuous transformations in society led to the expansion of social and economic transactions, that exceeded national borders, arising then, the need for global public systems, which would prove able to discipline the new cross-border relations.

The States, hence, currently face a new reality, reshaped by the moment in which their economic and social relations begin to transcend their geographic boundaries and internal demands, having to live with new regulatory subjects, which arose during the process of globalization. These events have significantly affected the role of the State, especially in its regulatory function.

For a better understanding of this process of globalization, the definition of the phenomenon by Faria stands out (2004: 52).

> A systemic integration of the economy at supranational level was triggered by the increasing structural and functional differentiation of production systems and the subsequent expansion of business, trade and financial networks in scale.

This is a process of economic, trade and financial integration with supranational extent that goes beyond the limits of state action, and counts on the participation of public and private bodies and movements, in which the state power of control and management is reduced and shared with the new private actors who have gained more space and importance in the globalized economy.

Cassesse (2010:25) brings the same idea, more specifically as follows:

> Globalization comprehends the development of networks of international production, allocation of productive units in different countries, fragmentation and flexibility of the production process, interpenetration of markets, quick reports and financial flows, change in the type of wealth and work, in addition to universal standards to means of bargaining.

Under the light of this new reality, mainly characterized by deterritorialization of economic activities, the State has experienced a process of redefinition in its sovereignty and regulatory role.

Sovereignty, one of the basis of the modern concept of State-Nation, had its concept modified since the 15th Century until the current moment. At the end of the 15th Century, when the concept of State arose, meanwhile the clash between the modern State and the Church for its political autonomy in issues related to public interests took place; sovereignty was characterized by unity and exclusivity of state power in politics, without the submission to any other authority (MIRANDA, 2004: 87).

Even in this period, Jean Bodin and Thomas Hobbes – the first authors to study the edges of sovereignty – highlighted in its concept the monopoly of the State's Legislative power: the power to create and repeal law; and the monopoly to use force or physical coercion: the power to impose particular behaviors to members of society, in order to generate new mechanisms to create and keep political and social cohesion (MIRANDA, 2004: 87).

Heller's concept was conceived in the same way, as follows:

> Sovereignty comprehends the capacity, either legal or real, to decide definitive and effectively every conflict that change the unit of socio-territorial cooperation, including against their legitimate people, if needed, besides the capacity to impose any decision to everyone, not even members of the State, but, initially, to all inhabitants of the territory. (HELLER, 1995, *apud* MIRANDA, 2004, p. 87)

Hobbes' concept, i.e. absolute sovereignty, without limitations, was deeply chanced during the next centuries, particularly in the 18th Century, when Rousseau defined sovereignty as an "expression of the common will of people, and not anymore as an exclusive attribute of some State or supreme commander " (ROUSSEAU, 1953 *apud* MIRANDA, 2004:88), and as well as when some proposes to create an equilibrium in the Republican Power among the Executive, Legislative and Judiciary Powers were debated, since the latter was the sole and exclusive one.

Since that perspective have prevailed, the Legislative Power became the most important one among the political powers, once it expresses the common will of people by the elections of their representatives in the Parliament, consolidating a new concept of sovereignty, reaching a large extent in an internal order (MIRANDA, 2004.)

Based on that perspective, Habermas analyzed the question of sovereignty in State-Nations, drawing attention to three processes that, according to his understanding, could affect the capacity of sovereign activity of the State. The first one would be the loss in state control capacity which, according the author, means as follows:

> the State alone is no longer sufficiently able, by its own force, to defend its citizens against external effects resulting from decisions of other actors or against chain effects of such processes, which have their origin in their borderlines (HAVERMAS, 1999: 4-5).

The second process pointed out by the author as a possible damage to the State's sovereignty refers to the "growing deficits of legitimation in the decision-making process", since, as a result of interdependence and interstate alliance, there is no coincidence between the circle of those who take democratic decisions with those who are affected by these decisions (HABERMAS, 1999.)

And, at last, the author writes "a progressive incapacity to prove, by a legitimate effect, command and organization actions," deriving from the limitation in the State's ability to interfere, mainly because of the unnecessary national presence of the capital, which is always seeking the possibility of making investments and earning speculative gains, creating the possibility to use the their options of withdrawal as a threaten against States that prioritize social patterns seen as burdensome to the maintenance of resources in the national territory, in such a way that, according to the words used by the philosopher, "national rulers lose, then, their capacity to exhaust tributary resource of the internal economy, to stimulate growth and, thus, the ability to assure fundamental basis to their legitimation." (HABERMAS, 1999)

The reflections of these processes has affected significantly the relation between the economy and the State, mainly in the last twenty-five years, The State, which previously had the control over the economy (monetizing, controlling importations, etc.) has to follow financial impositions, market rules, adapting its structure to the world-economy[4]. Now, the same multinational company has its headquarters, productive facilities and clients spread in different nations. If the State previously set rules for the economy, nowadays, it has to adapt to it, inciting market trends, wielding just a relative power in relation to the economy. (CASSESE, 2010: 45-47)

The speed in which the market integration in the so called world-economy occurs also has reduced the macroeconomic capacity to coordinate the State-Nations. As consequence of a greater interconnection between business structures and financial systems as well as the development of great regional trading blocs, the political system has lost its exclusivity to organize society and begins to internalize the limitations imposed by financial agents, experiencing an order increasingly self-organized and self-regulated. (FARIA, 2004).

Forjaz analyzes the decline of the national State, listing transnational (or supranational) institutions and sub-national (or sub-national) institutions which compete with the State, making it more fragile in one of its main public functions: social regulation.

Initially, external institutions, which operate in a wider scope than the national State, are cited. They start to exercise governmental functions and to produce standards to the States, imposing an another external sovereignty, a new power that constrains and can restrain the power of the State.

These comprehend multilateral organizations such as the United Nations (UN), World Trade Organization (WTO) and the International Monetary Fund (IMF). In addition, there are also regional blocs, supranational entities composed by groups of nations that set their own standards, and transnational companies, that transcend the boundaries of national States, seeking attractive markets, not conditioned by reasons of state. Also, continuous flows of financial capital and the global network of communication interfere in the State's sovereignty, since they do not follow national boundaries, making no room for the State to control them. (FORJAZ, 2000: 42)

Sub-national entities and centrifugal forces also undermine internally the State's authority, such as tribalism and strengthening of sub-national levels of power as municipalities or provinces, increasingly autonomous.

Tribalism is characterized by the formation of new social groups defined by ethnicity, religion, gender, culture and even language, whose identity has a smaller extent than the national State, pressing it to achieve greater autonomy. These movements cause the national State to lose importance and precision as a social, cultural and political definer. (FORJAZ, 2000)

4 It is characterized by the world scale production, which is fragmented and geographically dispersed, in which comparative advantages of each market are used.

At the same time, the State has suffered political decentralization processes resulting from the strengthening of sub-national levels of government municipalities, whose policies directly affect the lives of their citizens, more clearly and significantly than national policies. (FORJAZ, 2000)

There is still the creation of new groups deriving from the network of contacts and the organization of individuals with common interests in the economic, political, social or professional area (either with or not State interference) which begin to seek more efficient solutions to meet their interests, acting as new centers of regulation. The same applies to groups of countries with identities of interests that are organized to meet their demands altogether. The state rules now compete with bilateral, multilateral and supranational disciplines resulting from contracts, agreements and regional integration.

Therefore, the state no longer determines solely the direction of the economy. In the globalized economy, several other autonomous public entities gain importance in economic decisions, such as international organizations, regional blocs, as well as supranational and sub-national institutions. Even other countries have now influence on the domestic economy of other countries. A weakening of the interventionist role of the State is seen and an internal fragmentation of public control of the private economy, which produces an imbalance between the State and the economy (CASSESE, 2010).

Though the State continues to wield its authority within the boundaries of its territory, there is a clear limitation of its taking-decision autonomy. This new social-economic context points out the impossibility for the State to establish and achieve their objectives on its sole will. (FARIA, 2004)

Once the State is vulnerable to standard rules bound to economic decisions set forth in foreign territories, by people, company groups and institutions over in which it does not have power control, the national State had to restructure and redefine their administrative, political and legal structures by means of processes of delegalization[5] and privatization.

These processes were formulated and justified to assure the governance and integration of the national economy in trans nationalized economies, among other reasons of the same nature. Because of this rearrangement, administrative, political and legal structures of the Nation-State start to exercise new functions, such as the reduction of its role as privileged centers of direction, the deliberation and imposition of mandatory behavior, starting to act as coordinative, adequate mechanisms of interests and pragmatic adjustments. (FARIA, 2004)

Not only in the financial level the cooling of the State's authority and the affect over its sovereignty is seen. Technology, media and telecommunications, once tools under the state domination, currently transcend its control and imposes limitations. Individuals can communicate through electronic networks, creating direct relations with each other, establishing networks, associations and international

5 Delegalization comprehends the process of taking from the legislative regulatory control (by means of law) certain subjects and give their regulatory control to the Executive power (by means of decrees).

groups, without the interference of public authorities, as well as non-governmental organizations does internationally.

Non-governmental organizations also play an important role in the current scenario, exercising an effective part in the production of legal norm. Many of them have status of official consultative entity. Many are formally invited to attend plenary sessions of several meetings to exchange information, and even to collaborate in the reporting of certain governmental committees and committees of experts. (ARNAUD, 1997)

As an example of non-governmental organization, the Transparency International can be highlighted, which develops tools to fight corruption and works with other organizations, businesses and governments to deploy strategies[6].

Other associations, both domestic and international, are also emerging, focusing on the interference on the normative production to achieve their specific objectives. This is the case of international labor unions, which seek to improve the work condition of particular professions at regional level or in sphere of a multinational company. Such measures take place through transnational collective bargaining and global agreements – which are objects of this study – or even by the participation in the development of international codes of conduct.

According to Arnaud (1997), more than a matter of fragility of state sovereignty, there is an erosion of the authority of government resulting from, among other things, the porosity of borders, the difficulty of controlling the monetary cross-border flows, of goods and information, and technological advances. Currently, governments have suffered as much external pressures – coming from the process of globalization – as internal pressure, by virtue of locally rooted social movements.

Nevertheless, Arnaud points out an interesting paradox between the process of globalization and the reduction of the State's role. Accurately the jurist points out that the State is still the most effective tool to ensure the better regulation in the current resulting social and economic context of globalization, mainly through the adoption and implementation of public policies that, for example, can improve the functioning of the market and protect the most vulnerable social classes (ARNAUD, 1997).

In order to better understand this paradox, the previous author points out that, though globalization allows labor unions to bargain collectively with companies' incomes and conditions for a certain job category, the State sets limits to these privileges and reaffirms the rights of each part, as well as establishes hygiene and security standards which application the unions will control. The State, thus, guarantees the participation of civil society, equally, in the development of normative rules, even though, initially, it means its own weakening in face of several controlling centers for decision regulation. (ARNAUD, 1997)

Therefore, the first alternative remains the quest for state protection. Since it no longer seems capable of providing all the demands of society, new solutions are

6 Available at: http://www.transparency.org/

sought, which do not depend on the state action. In this context, the importance of civil movements stands out, arising as new entities in the political, economic, social, cultural and environmental decision-making, where the State no longer can respond to the social needs. (ARNAUD, 1997).

2 THE IMPACT OF GLOBALIZATION ON THE INTERNATIONAL LEGAL SYSTEM

According many jurist, globalization means the breaking of monopoly and strict state control of Law (GROSSI, 2009: 160). The Law no longer derives solely from the State; now it comes from several sources.

Globalization, based on the legal perspective, has weakened the capacity of government regulation, turning hierarchical structures of business activities into organizations under the form of networks. This new pattern is based on partnership, cooperation and flexible contractual relations; generating unique, singular social situations, which require new standards of responsibility, control and security. Such phenomenon has also changed the type and the dimension of conflicts, making the rules and procedural mechanisms, traditionally used by positive law to erase them, ineffective. Globalization has redefined the extent, importance and scope of state functions and roles, allowing new forms of political action and new models of legality. (FARIA, 2004)

In the current and complex socioeconomic order, continually transformed by globalization, the positive Law has proved ineffective, emerging rules spontaneously generated in different branches and sectors of the economy to meet their specific needs. The increasing global interdependence caused the internationalization of social relations, which intensifies the demands for supranational rights that cause the relativism of the nation-state's role, which has as one of its characteristic features the territoriality as a privileged interaction unit (FARIA, 2004).

Thus, the legal institutions of the nation-State are progressively reduced regarding the number of standards and legislation, making it, however, more agile and flexible in terms of procedure. The state's retained their legislative work in various subjects, but has decreased in its power to intervene and often compelled to share their ownership of legislative initiative with different forces that transcend the national level, having to be restricted, in many situations, in the articulator and conductor role of "self-regulation", the standards produced by the interested parties to meet their demands, or even the rules drawn up within the transnational financial and business organizations, in the context of the world economy, in the form of guidelines for production, disciplinary regulations, codes of conduct and standardized contracts with global reach (FARIA, 2004).

In addition, international public authorities arise too, such as *Correios* (the Brazilian post office), and the regulator power of idealized entities is revealed, as a forum for discussion, negotiation and agreements, like the World Trade Organization, which begin to question the State-control model. (CASSESE, 2010).

Private actors, who wield economic power, become producers of Law, in a process that occurs outside the state boundaries, without the need for the deconstitution of traditional legal structures, which will then be considered altogether the self-ordering of society.

The strong link between the Law and the political will that prevailed in the modern State shows weakened by the field of economic forces which impose other sources of legal production. The state Law is no longer compatible with the speed and flexibility of the construction of the capitalist economy, already global. (GROSSI, 2009)

The social structure seeks to self-management. The legal system becomes a choice for, in the search for better protection, the less severe or more convenient right. There is a replacement of the state monism, and its compact organization, for a conglomerate of rights, that sometimes stand incompatible, but provided of rules of conflict, indicating which standards should be applied to an actual case. A particular way of establishing relations between the public and private sectors is noted. These relationships are no longer bipolar, but multipolar. A national company can develop partnerships with a supranational administration, with the support, or even in opposition to the national government, together with other economic agents from the same country or from other countries. There is no superiority of public over private. The State and the market, once considered separate and opposed worlds, are interrelated entities (CASSESE, 2010).

Effectiveness begins to prevail over validity. The centralized and authoritarian model loses space for new legal models in its informality and flexibility express the practical demands of everyday life in different periods and places (GROSSI, 2009). According to Teubner, "in the path of globalization, politics has been clearly overtaken by other social systems" (TEUBNER, 2003: 12).

The new legal rationality, that comes along the phenomenon of economic globalization, appears as a result of constant tension between the process of harmonization and global standardization of important areas and branches of national positive Law and the proliferation of rules drawn up by large corporate conglomerates, transnational financiers and organizations that create technical standards to meet the minimum requirements of safety and quality of outstanding goods and services, among other private settings. (FARIA, 2004: 148-149)

This legal rationality requires from the Nation-Sate new intermediary roles to regulate social relations arising from interconnections between international financial institutions and transnational business corporations, in which the cooperation of new political, economic agents is unavoidable (FARIA, 2004).

This new reality will primarily create decentralized, procedural and facilitative legal institutions, as opposed to centralized institutions in an interventionist State. Institutions designed to prevent the outbreak of conflicts, and that simply neutralize any distortion of the market, aimed at coordination of legal particularism, normative microsystems with their own pace of development and different forms of legality developed within the numerous productive chains that exist in the globalized economy (FARIA, 2004).

According to Marcos Valadão (2003: 16), the soft law can be understood on the international scene as follows:

> Rules organized by international associations and organizations, either public or private, for which their normative force is recognized and may have effect on the formation of legal acts with international effects, regarding personal, real or trade features between the parties or private.

These standards stood out with the arise of multilateral organizations and international organizations, both public and private, taking place in the early twentieth century, adopted by the Bretton Woods institutions, exercising strong influence in international relations, producing legal effects, even with some degree of relative cogency. Although not formally manage classical sanctions of international law, they generate other penalty arrangements, excluding from the market or the international community those who do not follow its precepts (VALADÃO, 2003).

The strong influence of the soft law, mainly on trade and international economy matters, was due the regulatory vacuum regarding the discipline and regulation of these issues. The market began to act without a pattern in various subjects, standardization of procedures and arrangement of data for exchanging of information, finding out in the soft law a way to facilitate economic and trade transactions globally (VALADÃO, 2003).

Economic globalization has created a need for new legal instruments to discipline the current economic and social issues that go beyond the boundaries of a State. This is a global economy that requires a renewed Law, in which the prerogatives of transnational economic actors can be supervised, even by contracts or agreements, in which cross-border disputes can be resolved, not by state judges and judgments of limited jurisdiction, but through arbitration decisions took by private judges chosen or accepted by the parties.

Because of the growing importance of the supra standards and national infrastructure, the National State loses its monopoly to promulgate rules, which results in an increasing privatization of legal regulation in a primarily coming right to private negotiation. In this context, the State has not proven sufficiently able to adapt to the evolution of contemporary society, and being part of its role, at the international level, the control of rightness in bargaining procedures (RUDIGER, 2006: 78).

Given the inefficiency of the State in the exclusive regulation and discipline of society, in its various sectors and activities, new and different sources of law proliferate aiming at the regulation of many social, political, economic, environmental and cultural relations, mainly derived from globalization, emerging thus an international scenario characterized by legal pluralism.

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3 EMERGENCY IN REGULATORY PRIVATE REGIMES

Private organizations and the civil society move to meet new ways of regulating their conducts and transactions, since the incapacity of the State to rule increasingly complex relations that overcome the physical boundaries of their territory. This attitude comes to make possible the maintenance of the social order in different sectors of the international sphere.

The role that until then seemed to be exclusive function of law made by States (order society through rules to ensure social peace) shall be exercised by different social fields in the private sector, consistently and specific, that reveal often higher degree of efficacy to that experienced by public standards, produced by state bodies, regulating situations for which hitherto was not possible and effective legal remedy.

The phenomenon is more easily understood when the most classic examples of successful private rules is brought up: Lex Mercatoria.[7] This new concept is a part of the global economic law which operates on the periphery of the legal system structurally dependent on companies and global economic transactions, conceived as a paralegal law, created outside the Law, deriving from economic and social processes (TEUBNER, 2003: 18).

Regardless the economic nature of the example previously mentioned, the process of globalization encompasses other social areas such as education, health care and culture, although normally discussed under the view of politics and economy – covering their specific paths in the globalization process – they began to

7 Lex Mercatoria can be understood as "a set of proceeding that allow adequate solutions to the expectations of the international market, regardless necessary connections with national systems and legally effective" (STRENGER, Irineu, **Direito do comércio internacional e lex mercatoria**. São Paulo: LTr, 1997)

demand specific standards of global extent, which have to be set up within intergovernmental or non-governmental organizations. This phenomenon developed an increasing production of substantive Law without the participation of the State, without necessary interaction with national or international treaties resulting from original requirements of legal certainty and regulation for conflict resolution beyond state borders (TEUBNER, 2004).

A clear displacement from the focus on the state legislative process (by means of the Legislative and Judiciary Powers) to a private process of normative production, controlled under contracts between global social actors, the regulation of the private market by international companies and the internal regulation of international organizations, which, according to Teubner, composes the current dominant sources of the law. Since these normative sources are closer to other social sectors, they create a particular peripheral, social and spontaneous legislation. In this context, the central sources of Law become the private regulation, as the nation-State is unable to broaden the extent of their public standards to the legal regulation of social activities of private sectors in world scale. (TEUBNER, 2004).

In reference to David Levi-Faur, Donadelli points out the role exercised by the actors of the private sector. Levi-Faur defines this phenomenon as "regulatory capitalism," calling attention to the particularities that characterize it as follows: a new division of regulatory tasks between the State and society; the increase in the delegation of new technologies of regulation, by the formalization of mechanisms of self-regulation without state interference. Also according Livi-Flaur, the regulation exercised by the private actors legitimate the neoliberal capitalist system and make economic relations more trustful in an environment that necessarily involves the richest people. (LEVI-FAUR, 2005: 2 apud DONADELLI, 2011: 6)

Therefore, considering the nonexistence of a global political organism able to institutionalize an organized sphere of a "legal political decision," new corpora of private standards to specific social sectors appear constantly, even though following a decentralized, non-hierarchal way, but spontaneously coordinated. (TEUBNER, 2003).

This phenomenon of production of global legal sui generis systems by different sectors of world society with relative autonomy in the nation-State, Teubner named is as "global Bukowina", conveying the idea of a "global Law with no State" (TEUBNER, 2003: 10). This concept is characterized in regulatory norms established by multinational business groups, and following human rights and environmental Law, which require specific rules of global extent, as well as concerning the field of technical standardization and professional self-control, where there is strong tendency to coordination on a global scale (TEUBNER, 2003).

However, non-state legal systems are constantly questioned. Their activities are not necessarily based on national, supranational or international law; there is no central locus of authority; often there are no clear structures such as courts, legislative committees, auditors and ombudsmen; They have no clear jurisdictional boundaries; and they do not require an easily identifiable set of potential democratic participants in their processes (BLACK, 2008).

The proposition or creation of a new regulatory regime or another organizational structure, especially when it takes place outside the State, is always accompanied by huge challenge concerning the acceptance by the recipients and suitability of activity for its validity in the social order.

That is the starting point to the need for legitimacy of transnational non-state regulations, in order to strengthen its mechanisms, and motivate their recipients. Although this claim is disassociated from any intervention of States, that could more easily give them a legitimate orientation. Suchman (1995) argues that such legitimacy can be achieved through the following legitimacy building strategies: a) conformation of private regulation environment and preexisting precepts, keeping in accordance with the ideals and principles of the environment in which it is set up, when substantial needs of different sectors of the population is sought and offer them access to decision-making; b) environmental selection through which the regime or organization choose the environment which is the most appropriate and may legitimate it without requiring many changes in exchange; and finally, c) environmental manipulation, reserved for the most innovative schemes, which the conformist or environmental selection strategies are not enough, being necessary to intervene preventively in the cultural environment to develop bases of support specifically adapted to their particular needs, manipulating, then, the environment in which you want to be inserted. This hypothesis requires an active promotion of new explanations for the social reality by those seeking the legitimacy (SUCHMAN, 1995).

Therefore, legitimacy is clearly not an exclusive characteristic of state regulatory regimes. It can be built by private regime and, in some cases, delegated or given to them by their own States, which are unable to act in certain spheres of power.

Despite the possibility of acquiring legitimacy, and the well-known importance of private regulatory regimes in the discipline of supranational issues (considering the named inability of States in regulating the economy and other important sectors in a global society), there are still many criticisms to mechanisms of private regulation.

The main criticisms comprehend the goodwill attributed to perpetrators of such regulations, when the fact that these mechanisms are extremely exposed to the possibility of capture by special interests is pointed out, being against to the public interest, which entails a more cautious analysis of such private mechanisms. Another common criticism concerns the voluntary adherence to private rules without any coercive force, and the aforementioned democratic deficit that may make some private regulatory regimes questionable (DONADELLI, 2011).

Despite the criticisms, the regulatory failure of the State in the international sphere, associated with the conduct of private organizations in the construction of the legitimacy of its regulatory regimes, has made several private initiatives of regulation be accepted, practiced and considered legitimate by their recipients. Such thing is seen in companies with technical and environmental certification, internationally recognized, as well as in the increasing adoption of global labor

agreements resulting from transnational collective bargaining, which now regulate international framework of working relations within transnational corporations.

Therefore, the globalized society goes through a period of social transition, with the arise of new regulatory regimes of private sectors, although some changes are peacefully accepted and incorporated by the various social sectors as recipients, doubts and questions about their legitimacy is seen, even in decreasing degree.

3.1 Legal Pluralism

In the current social picture, the State has waived some prerogatives of its sovereign power, reducing their control over economic, political and legal issues, subjecting to a higher authority, as in the European Union. Moreover, as a result of a strong pressure from competitive global markets, some States have lost their ability to guide and protect their economy. In addition, evident signs of decreasing in traditional legal functions of the state are realized in the contemporary society. (TAMANAHA, 2007).

According to the ideas presented, many private organizations and institutions develop norms that apply to their own activities in order to fulfill the gaps from state legal regulation. During conflicts, usually the conflictive parts search for arbitrary decisions, fearing the inefficiency, lack of credibility and high costs of State Courts. Slums, common to many big cities all over the world, have being organized with few or any legal presence, and the "order" is kept by the use of other norms and social mechanisms designed by their people. These cases characterize the current face of legal pluralism (TAMANAHA, 2007: 386-387).

There is always legal pluralism where social actors identify more than one source of Law within the same social scene (TAMANAHA, 2007: 396). Although there is a deep discussion among researchers about the concept of Law in order to define the extent of legal pluralism, the idea that prevails is Law as something else wilder than the law developed by state institutions. Ehrlich understands Law is fundamentally a question of social order, being found everywhere (EHRLICH, 2007: 24 apud DUPRET, 2007: 5). Woodman argues the Law comprehends a continuum that ranges from the most understandable part of law to the vaguest forms of social control (WOODMAN, 1998 apud DUPRET, 2007: 5). Griffiths concludes the Law is the self-regulation of each social area (GRIFFITHS, 1986 apud DUPRET, 2007: 5). Dupret affirms that law is determined by people within the social area where they live though their own common practices (DUPRET, 2007: 5). In reference to Griffiths, Teubner shares the same understanding, pointing out that the current legal pluralism tends to replace the actual legal factor by social control (GRIFFITHS, 1986, p. 50, note 41 apud TEUBNER, 2003: 19).

The legal pluralism is everywhere, as in the acknowledgement of more than one normative source by means of social practices in a particular social area. This is identified in every social field, an apparent multiplicity of legal orders, either in a local level, as in a county, or in global level. Gathering all levels of law- county,

state, national, international and transnational level– nowadays, there are norms derived from religion, culture or ethnics, such as the rules seen in indigenous villages. There is also a strong private influence in the normative production, as the already mentioned lex mercatoria, that establishes rules to transnational trade (TAMANAHA, 2007: 375).

Faria (2004: 155-156), analyzing the legal thinking, describes legal pluralism as follows:

> In so far under such generalities and flexibility of the new standard of positive Law of the State-Nation, the international financial organizations and the transnational corporations form complex nets of formal and informal agreements in world scale, establishing their own rules, proceedings for self-solving conflicts, their normative culture and even their criteria for legitimation, as well as defining their own identities and regulating their own operations, what, in practice, is seen is an evident case of legal pluralism; such pluralism that is understood through the view of over position, articulation, intersection and interpretation of several mixed legal spaces. Being "porosity" its basic characteristic in these multiple normative nets, this sort of pluralism guarantees both the specificity and the originality of institutions of emerging Law with the phenomena of economic globalization.

Teubner (2003) points out in his researches the production of "global legal sui generis systems" - indicating legal systems of multinational business groups – the Law developed by companies and labor unions to rule work relations, the coordination in world scale in areas of technical standards, and the discuss of human rights, conducted initially in global sphere (TEUBNER, 2003: 10).

Among transnational corporations, international Non-Governmental Organizations (NGO) and global union entities, transnational networks stand out, with regulating power, such as the Financial Stability Forum, composed by three trans governmental organizations; the Basel Committee on Banking Supervision, the International Organization of Security Commissions and the International Association of Insurance Supervisors; in addition to other authorities, both national and international, responsible for the financial stability throughout the world. Active networks have been created by judges and other international organisms (TAMANAHA, 2007).

The perspective of a uniform and monopolist law that rules the community is clearly obsolete. The expansion of capitalism and the movement of people and ideas among countries is fastening every day, resulting in transforming consequences to the law, society, politics and culture. In addition, globalization brings an expressive amount of supranational and international legal systems, possible to directly affect people, no matter where they live (TAMANAHA, 2007: 410).

The systems become autonomous, driving their attention to their own interests, problem-solving and conflicts internally created, leaving no space to the State and its legal system exercise their management, subordination, control and direction capacity over them. The State have less conditions to ensure the prevalence

of the public interest over particular interests of productive agents, in order to discipline individual behaviors and demand respect to the rules and its system (FARIA, 2004: 195).

Based on the idea that the very civil society prompts the globalization of their many discourses, instead of politics, Teubner (2003: 14) supports the thesis that "world Law have been developed from social peripheries, as a result of contact zones with other social system, and not in the center of State-nation's institutions or international institutions," the reason why nor political theories nor institutional theories on Law can offer adequate explanations about the globalization of Law. The pluralist theory of Law performs more appropriately this responsibility.

Teubner (2003) approaches the legal pluralist theory as being the only adequate way of interpreting the global Law, which is different from the traditional Law of State-nations and is already broadly settled nowadays, though little political and institutional support in the world sphere, but it is firmly related to social and economic processes which, according to the author, receive their most essential impulses.

The fragmentation of global Law – with its multiple chains and legal systems constituted from interactions of political, social and legal spaces – does not imply a chaotic order. These spaces, even though autonomous, influence each other during their interaction, though not necessarily with the same importance, power or influence. Therefore, each of them may work, for a certain period, as a signer, indicator, delimiter or polarizer of the others (FARIA, 2004: 163).

Although the fragmentation that multiple normative microsystems expresses, and yet the law of the State works in different intensities in the diverse social spaces, Tamanaha alerts the hardly it will be fully irrelevant. The public law is an exclusive position, both symbolic and institutional, which derives from the particular position of the State, in the national and international environment, in the contemporary political order. Besides, official legal systems of the State, the ones that work effectively at least, have a distinct instrumental capacity that allows them to evolve in a broad range of possible activities, and to exercise a huge amount of possible goals and projects, which extend beyond the normative regulation (TAMANAHA, 2007: 411).

3.2 Reflex of transnationalization of markets in International Labor Law

Labor Law was the legal field that most suffered from the impact of globalization, mainly due to the trans nationalization of markets and work relations. In face of the changes in the means of production and the process of work, and even with the arise of new sources of International Labor Law, both public and private, the internationalization of work rules and the development of a world social government emerges as the main challenges nowadays. (CRIVELLI, 2010: 9).

The International Labor Organization (ILO) – one of the most respectful organizations in the United Nations' system, having its main goals the normalization

of work relationships and the reach of social justice – has suffered from a hard and frequent questioning in the last decade, putting in check its role as a normative model, though the large normative production accomplished through its eight decades of existence (CRIVELLI, 2010).

The crisis that is taking place in the ILO has as main factor the replacement of the Fordist model of production by the Toyotist organization; the expansion of transnational corporations, that have started to develop financial activities in global scale, and, as a result, the deterioration of productive chains; the diversification of formal Law sources; the world extent achieved by international NGOs, that challenge international Law and social actors traditionally recognized and accepted by the ILO; the process of regional integration, such as the European Union and its community rules, in addition to the partial loss of sovereignty by State-nations, fact that has weakened the main tool of enforcement in international labor rules (CRIVELLI, 2010).

The changes that occurred in the core of the productive chains were one of the factors that brought deep modifications in work relationship. In the Fordist model, characterized by large-scale production for the market in expansion, the products are developed in the assembly line within the industrial establishment. There is a fragmented production, but collective, in which all workers have a function defined in the assembly line to the achievement of the final product. Fordist companies give importance to keep their medium to long-term workforce, guaranteeing conditions of stable jobs, by means of strong rules, that enhance their planning capacity (RUDIGER, 2006).

Toyotists companies, that have gained force with the opening of frontiers through globalization, do not produce to fulfill the market. Its model of organization is conducted by the demand of the market, what demands flexibility from companies to increase or decrease the amount of workers in a short period of time. The work force required must be multi-functional and organized in order to plan and execute different tasks in the period the demand arises. It is also common to hire workers from service company providers following the market demand, resulting in production decentralization (RUDIGER, 2006).

In this context, the need for flexibility in work relationships produces significant loses to workers, concerning their qualification, since they have no longer the former stability in the job.

Transnational corporations, which had grown dizzily through the 20th Century, act in different countries and continents. This process made them major actors in the contemporary international relations and they started thus to act as the main agents of globalization, bringing new changes to labor relations. During the process of collective bargaining, they develop rules of procedure, technical standards and code of conduct that discipline individual behavior of workers, influencing international labor Law (CRIVELLI, 2010).

The practice of social dumping, in which multinational companies reduce their worker's income in order to make their products more competitive in the

international market, is also one of the negative social consequences of globalization process.

Although there is no legal definition for social dumping, the term can be characterized as "international prices of products distorted by the fact that the production cost is based on work rules and conditions inferior to the reasonable level or adequate level in international scale" (GONÇALVES, 2000: 50)[8]. In order to become competitive and export such products with prices inferior to their competitor, some companies use of unfair means, as the hire of child labor, and even slave labor, a serious violation of fundamental rights of workers.

Another mechanism used by transnational companies is the Export Processing Zone (*Zona de Processamento de Exportação* – ZPE), which is questioned in terms of social justice. It is settled in developing countries to improve the economic strategic growth of regions where it operates.

In 2003, the International Labor Organization defined EPZs as "industrial zones with special incentive designed to attract foreign incentives, where imported materials pass through a level of processing before being (re)exported (...)" (ILO, 2003, p. 1). Some years later, a study carried out under the coordination of the same organization broadened the concept of EPZ, defining them as "regulating spaces designed to attract exportation companies under supply within a country, which offers them special conditions of tax and norms" (MILBERG, 2008: 02).

Although EPZs open many job opportunities, hiring more than 50 million workers all over the world, and yet official public entities affirm such mechanism contributes to a fair development and the increase of good jobs, public authorities still worry about eventual exemption in labor Law to national ZPE, or by the fact they represent obstacles to people exercise their rights (MTE, 2005).

According to Dupas, the works exercised in EPZs usually have low or almost any qualification, besides fragile union relations. The workforce may majorly comprehend young women, who work for a long daily period, with low incomes, night work, high turnover and low job security, due mainly to the lack of other regional posts of work (DUPAS, 1998).

In the light of these changes in the international environment, the ILO has showed reactions through many initiatives. In the 86th Session of the International Labor Conference, it signed, based on its eight fundamental conventions[9], the 1998 ILO Declaration on Fundamental Principles and Rights at Work, establishing as fundamental principles the freedom of association and the effective recognition of the right to collective bargaining; the extinction of all ways of forced or compulsory labor; the effective abolition of child labor; the elimination of discrimination concerning job category or occupation[10]. Although such guidelines are not legal obligations, they constitute an orientation to behavior, having the main goal of

8 GONÇALVES, Reinaldo. **O Brasil e o Comércio Internacional**: transformações e perspectivas. São Paulo: Contexto, 2000: 50.

9 ILO Conventions 87, 98, 29, 105, 100, 111, 138 and 182.

10 OIT. **Declaração da OIT sobre Princípios e Direitos Fundamentais no Trabalho**. Available at: http://www.oitbrasil.org.br/sites/default/files/topic/oit/doc/declaracao_oit_547.pdf

enhance the ratification of the eight fundamental conventions for every Member State (CRIVELLI, 2010).

In 1994, a working group on the liberalization of the international trade was settled, which, in 1999, was renamed to Working Group on the Social Dimension of Globalization, aiming at the development of tripartite consensus proposals, consensus among employees, employers and the State, normative polices to face the social consequences of globalization. Because of suggestions from that group, the World Commission on the Social Dimension of Globalization, composed by personalities from all over the world focusing on the elaboration of a global report to propose to the international multilateral system an integrate approach to the social impact of globalization (CRIVELLI, 2010).

Another important initiative was the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy which, though approved in 1977, gained major importance in 2000, when the topic was discussed again, adding it matters and a monitoring system. That document comprehended normative subjects, of voluntary application, aimed at the government of Member Stated and their respective organizations, being the necessity of voluntary submission of their social actors one of the great problems faced in its practical implementation (CRIVELLI, 2010).

Many proposals and experiences of labor regulation in the international sphere sprouted at the same time of ILO's official initiatives during the process of Globalization. Such proposals and experiences vary in legal nature, territorial extent of its jurisdiction and the amount of States or international actors evolved. In this environment marked by legal pluralism, the ILO is no longer the only formal source of the international labor Law (CRIVELLI, 2010).

Among actual experiences of international labor regulation, the legal tools of private Law stand out, such as the codes of conduct, etiquette or social seal, established by transnational corporations, union labor organizations or even by Non-Governmental Organizations (NGOs) (CRIVELLI, 2010: 124-125).

There are also global agreements, or macro international agreements, signed between transnational corporations and international union labor organizations, in which minimal conditions of work are settled for workers who work in different countries, creating important labor standards in the international extent. Such agreements symbolize important advances in a social dialogue and a more equal relation between workers and companies.

CONCLUSION

Economic and social relations, related to the movements of transnational corporations as an important sphere of globalization, have generated a strong impact on the positive law of the states and, as a result, in the international legal system itself. All this has led to studies that point to a new role of the national state, which comes to live with international actors that create rules applied in the internal system

of these states. These new rules have proven the inability to discipline and create social relationships, allowing the emergence of private regulatory regimes and a diversity of sources of law describing current legal pluralism.

As a private standard of relevant social regulation at a global level, the object of this study is transnational collective bargaining, highlighting its definition, reasoning, legal frameworks, main difficulties of implementation and effectiveness.

The modern legal history has been shaped by politics, and is characterized primarily by the statehood of Law. The bourgeois class, conquering the power in the 19th century, concentrated the monopoly of law in the state hands, making it the legitimate and sole creator of legal rules.

Another point, globalization, based on the legal perspective, has weakened the capacity of government regulation, turning hierarchical structures of business activities into organizations under the form of networks. This new pattern is based on partnership, cooperation and flexible contractual relations; generating unique, singular social situations, which require new standards of responsibility, control and security.

In the current social picture, the State has waived some prerogatives of its sovereign power, reducing their control over economic, political and legal issues, subjecting to a higher authority, as in the European Union. Moreover, as a result of a strong pressure from competitive global markets, some States have lost their ability to guide and protect their economy. In addition, evident signs of decreasing in traditional legal functions of the state are realized in the contemporary society.

And finally, Labor Law was the legal field that most suffered from the impact of globalization, mainly due to the trans nationalization of markets and work relations. In face of the changes in the means of production and the process of work, and even with the arise of new sources of International Labor Law, both public and private, the internationalization of work rules and the development of a world social government emerges as the main challenges nowadays.

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