

# I. Financial Crisis



# Innovation in Global Governance of Crises of Transnational Magnitude

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**Abstract:** This chapter discusses special features of public governance and public goods in the international dimension (i.e. global governance): a distinctive model of identification of relevant demand for them and a distinctive model of their provision. Based on this analysis, the chapter argues that that model is far from being coordinated internationally. Worthwhile coordination takes place in the area of financial regulation regarding the important elements of a safety net (which is rather limited in scope). In the case of health protection and other public policy areas, coordination is largely coincidental and/or based on mimicry. Consequentially, the international community has not yet developed 'a system' which would be appropriate for a bringing together all the currently dispersed activities of its incumbent parts into a foreseeable and coordinated global action. As for internationally emerging, widespread crises, the level of organization and coordination of the action of states is indeed relatively low as, internationally, the states do not wish to limit their Westphalian prerogatives by constraining them at the international level. More systemic coordination takes place in areas of regional integration (such as the European Union) and specific, rather narrowly defined, regulatory impact areas of public policy (such as prudential aspects of financial markets). There is not just one factor which could be used to explain the persistence of non-coordination. Yet, the explanatory model certainly refers to the Westphalian paradigm within which the states operate, to the logic of dependence on the path they follow, and to the subsidiarity analysis they apply.

## *I. Introduction*

Global governance is a network of legal and institutional arrangements adopted – in various settings depending on their context, content and the procedure envisaged for their application – by states around the world, as well as by international organizations established by them to bring about, nurture and increase welfare with respect to respective groups of people. As a continuously emergent phenomenon, welfare is construed by the incumbent states and/or organizations as a multifaceted concept encompassing economic, social and political, as well as any other socially valuable elements.

The advancement of globalization processes (regardless of the fact that it is currently fragmented) makes it evident that welfare construed in this way

is determined not only by any comparative or competitive advantages that each state has, but also by any significant international contingencies which are likely to emerge under increasing (fragmented) globalization and, in fact, to define the said advantages for open or relatively open economies. Under such conditions, even (self-imposed or/and induced by others) autarchy has its (quite high) opportunity costs, as countries pursuing this type of economic and social policy desperately fail to optimize their production and trade patterns.

With globalization, various determinants of welfare are inextricably interwoven. Therefore, they cannot be assessed and addressed separately, but rather need to be considered holistically. This implies that causal relations among these determinants, as well as their impact on the economic and social life of respective states and regions should be identified in order to adequately address emerging problems pertaining to their intrinsic coordination, which is needed to make the model of provision sustainable, effective and efficient.

The present model of global governance is a product and a special representation of the Westphalian structure of relations among states and international organizations (created by these states). This implies that the basic platforms for formulating and implementing public policies intended to address global-scale challenges are also the states. They are considered to be (collective) 'owners of their international treaties'. Consequentially, they decide on the powers of international organizations created by such treaties; they also decide on the form of coordination of collective action in the international realm, including coordination between international organizations or formal or informal fora which can be used for such policy-making. It should be noted that coordination requires that simultaneously:<sup>1</sup>

- (a) relevant plans are developed to address emerging challenges;
- (b) standards of reaction to the emerging problems of structural nature are set forth;
- (c) there is a system of exchange or all relevant information in the set of coordinated units.

The Westphalian model of international relations does not serve the coordination well, as its priority is to enable respective states to pursue their own national interests (with all the means and measures they can

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1 James D Thompson, *Organisations in Action: Social Science Bases of Administrative Theory* (McGraw-Hill 1967) 55–56.

activate without breaching internationally recognized rules deemed to be fundamental, such as rules pertaining to non-aggression) and to achieve the compromises needed to contain emerging conflicts. As a result, the emerging arrangements are most often distant from the equilibria needed for 'complete' coordination.

Nowadays, many believe that the Westphalian model of international cooperation indeed transformed into a somewhat distinctive model of multi-centred and multi-layer governance.<sup>2</sup> Yet, with the exception of:

- (a) the European Union (with regard to matters falling within the ambit of its powers – exclusive or shared with its Member States);
- (b) the safety net of the financial and money market;

– the arrangements adopted by the states have fallen short of establishing sustainable, effective, and efficient patterns of cooperation between them. This implies that (with the exceptions identified above) international organizations have not been vested with powers extensive enough to coordinate their own actions or the actions of the incumbent states. This also means that the arrangements adopted by the states fall short of a full-scale coordination because, most often, they simply represent the lowest possible denominators, i.e. arrangements which sometimes reflect meagre national aspirations to cooperate and, simultaneously, relatively strong reliance of the states on their own resources to respond to even significant challenges.<sup>3</sup>

These notorious factors are quite conducive for producing some worthwhile hypotheses regarding the emergence or its lack with respect to organized action intended to provide responses to global scale crises. The following hypotheses will be verified in this chapter:

H1: With regard to significant challenges of a transnational nature, the terms 'multi-layer governance' or 'polycentric governance' obscures the real situation, which is very much short of 'governance' (implying a sufficiently high degree of organization and co-ordination) altogether.

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2 See eg Terrence E Paupp, 'Conclusion: The Birth of a Multicentric World Order' in Paupp (ed), *The Future of Global Relations: Crumbling Walls, Rising Regions* (Palgrave Macmillan 2009) 231–239; Paul D Aligica and Vlad Tarko 'Policentricity: From Polanyi to Ostrom, and Beyond' (2012) 25 *Governance* 237; Paul Cairney, Tanya Heikkila and Matthew Wood, *Making Policy in a Complex World* (Cambridge UP 2019) 3–27.

3 See, eg Daniel Wolfish and Gordon Smith, 'Governance and Policy in a Multicentric World' (2000) 26 *Canadian Public Policy-Analyse de Politiques*, Supplement: The Trends Project 51.

H2: Activities intended to address wide-scale transnational challenges (politically considered to be crises) are included in systemic (i.e. foreseeable and coordinated) action. Consequently, they represent a reflection of a rational, endogenous model of public policy response, conceived as a result of an internationally accepted compromise; since this compromise involves many stakeholders of diversified interests, it represents a set of relatively low-quality common denominators, i.e. solutions which are not very apt to fully, effectively and efficiently address the emerging challenges;

H3: States operate in a model of reaction that represents a relatively low level of organization and coordination at the international level; therefore, more worthwhile coordination is achieved at the national level; the quality of coordination (measured in terms of quality of plans, common standards, and a systemic exchange of information) is much lower at the international level.

Verification of the three hypotheses can help identify and understand the nature of the contemporary ‘practice of sovereignty’ in international relations. Major challenges of significant global gravity can – at least potentially – incentivize respective states to limit their traditionally, ‘Westphalian-construed’ prerogatives to achieve greater effectiveness and efficiency in combating the negative effects of such challenges. In line with Cohen, evidently inspired by Kelsen<sup>4</sup> and Jellinek,<sup>5</sup> the ‘Westphalian-construed’ sovereignty should denote:

a claim to supremacy of the authority and exclusive jurisdiction of the state within a territory and over a population, signifying the coherence, unity, and independence of a territorially based legal system and political community. The correlative of domestic supremacy is external independence, i.e. the political autonomy and self-determination of the domestic constitutional order and political regime *vis-à-vis* outsiders (foreign powers).<sup>6</sup>

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4 Hans Kelsen, ‘The Principle of Sovereign Equality of States as a Basis for International Organisation’ (1944) 53 *Yale Law Journal* 207–220.

5 Georg Jellinek, *Allgemeine Staatslehre* (Verlag von O. Häring 1914) 435–504.

6 Jean L Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism* (Cambridge UP 2012) 8.

## *II. Specific features of global governance*

### **II.1. Global governance as a means of providing public goods/services**

Global governance, as any other type of governance, is meant to provide specific public goods or services to its stakeholders. Assuming rationality of international actors, global governance can be construed to be a result of their more or less spontaneous, yet somewhat (self-coordinated) behaviour induced by the results of their own calculation of subsidiarity promising better public value at the highest (i.e. international) level of policy-making. This calculation can also be construed as a cost-benefit analysis of different modes of provision of public goods/services at different levels of political polity organization to identify the best (effective and efficient) fit between the needs to be satisfied within that polity and the mode of provision of adequate goods/services. Therefore, if any innovation is sought to be identified in the global governance, it may emerge in the following realms:

- (a) in the mode of identifying the needs of global actors, where needs are considered to emerge at both individual and collective level of the global polity organization;
- (b) in the mode of internationally acknowledging these needs within a legitimized political system (therefore being appropriate to trigger collective action for the provision);
- (c) in the mode of providing public goods/services which would satisfy these needs.

The specific mode of provision of public goods/services includes both the design of the goods/services (i.e. their conceptualization in a format that is suitable for public provision at a global level), investigation of the demand for the goods/services that are conceptualized and satisfying this demand at the international (or even global) level.

It is of utmost importance to note that global governance is to contribute to the welfare of the broadly understood 'international community', i.e. mostly the states and broad social groups which are recognized under international law. This contribution is one of the constitutional values of the UN Charter, especially its Article 55. According to this provision, states have the general obligation to cooperate to achieve economic and social welfare.

Any economic crisis is 'a crisis' because it undermines this constitutional value and makes the 'old' measures providing for welfare look inadequate to

what is to be done in order to restore 'welfare' at a desired pre-crisis level. And it does so with such a pace that the emerging negative change takes place at a pace that makes any quick adjustment of the behaviour of the respective actors impossible or possible, but at an excessively high social cost.

## II.2. The basic regulatory structures available to address global crises

The existing international system provides for some bottom line of assessment of whether anything which has emerged in the aftermath of global-scale crises (such as e.g. the 2008+ global financial crisis or the 2019–2021 Covid-19 health crises) could be considered 'innovation-inducing' or 'innovative' (with regard to responses). Anything they have represented and done should rather be referred to as 'bottom-line' as the 'regular' fulfilment of their institutional mandate cannot be deemed to fetch the added value expected of 'innovations'. Therefore, the term 'innovative' should refer to something which exceeds that bottom-line.

It is most important to note that the 'bottom-line' arrangements meant to trigger institutional reactions to any global-scale crisis include:

- (a) the international trade system based on the standards agreed upon within the WTO regulatory framework (which include GATT regulations, as well as the regulations pertaining to somewhat narrowly defined aspects of trade, such as GATS, TBT or GPA);
- (b) the regulatory arrangements pertaining to currency regimes, raising sovereign debt to domestic and international creditors and international capital movements;
- (c) the international system of cooperation which is also envisaged to address global imbalances in migration, health protection and food security.

The most comprehensive legal basis for international cooperation in these areas is provided for in Articles 55–56 of the UN Charter. These provisions require that the UN, considering its goal of 'the creation of conditions of stability and well-being', promotes, *inter alia*:

- (a) higher standards of living,
- (b) conditions of economic and social progress and development;
- (c) solutions of international economic, social, health and related problems;



Article 56 UN Charter provides that:

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.<sup>7</sup>

Therefore, any global arrangements intended to address challenges of a significant scale and widespread scope, which can be referred to as 'global crises', should indeed represent the measures of economic and/or social policy which are appropriate for promoting economic, internationally-conceived welfare and are to be achieved by international cooperation, including cooperation within the UN. The international cooperation of this type has a multifaceted format and encompasses various forms of international coordination of policy action.

This chapter considers two major areas of public policy: that concerned with the financial 'safety net' and that concerned with the protection of health.

Financial 'safety net' became an especially important area of public policy coordination during the 2008+ global financial crisis; coordination in the area of health had gained paramount importance during the 2020–2021 Covid-19 pandemic crisis. Both crises had potentially significant negative economic consequences, which had to be averted, or at least mitigated, by deliberate policy actions. Because of their global nature, at least some of these actions were to be coordinated at the international level to achieve a better fit between the public policy measures and the nature of the challenges to be addressed by them. The core question, however, is not about the fulfilment of their mandate but rather about how innovative the response was.

### II.3. The financial realm of the coordination of international public policy

The present monetary (and currency) system is based on the Westphalian concept of the state relations within which it is up to respective individual states to decide on their own currency regimes in their territories.<sup>8</sup> In Simmelian terms, the states decide on the nature and features of the most

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<sup>7</sup> Art 56 of the United Nations Charter.

<sup>8</sup> See: Benn Steil and Manuel Hinds, *Money, Markets, and Sovereignty* (Yale UP 2009) 67–106.

fundamental economic link of an obligatory nature between themselves and the people over whom they exert their power: the money they issue.<sup>9</sup> Consequently, any choice of monetary (and therefore currency) regime (which itself can be interpreted as a choice pertaining to various modes of coordination of monetary policy) represents an arbitrary decision on the choice of the intrinsic value of money and on any procedure of its possible modification. This clearly does not imply that the international monetary system is 'petrified', as convincingly argued by e.g. Zimmermann.<sup>10</sup>

The issuance of sovereign debt by states is also associated with the Westphalian concept of the state prerogatives – both internationally and domestically. In both realms, sovereign debt is subject to the obligation to repay all the money due (i.e. the capital and the interest promised). Yet, the Westphalian concept of the state also implies that the state can unilaterally default on its sovereign debt, as very convincingly indicated, for instance, by Reinhart and Rogoff.<sup>11</sup> With regard to the state creditor, default can be construed as an act of opening an international dispute. Under the rules of the UN Charter (Article 2(3)), such a dispute (as any other dispute) shall be settled 'by peaceful means in such a manner that international peace and security, and justice, are not endangered'. For private creditors, however, the most relevant set of rules for solving the problem of a sovereign default are the legal instruments of the country which defaulted. No firm and widely respected rules exist which would apply in such circumstances and would place the position of private creditors on par with the defaulting state, so there would be some balance of weapons between them.<sup>12</sup>

The international financial order rests on a handful of extensive legal rules (of diversified binding power) meant to provide for what is referred to as a 'safety net' (or Global Financial Safety Net, GFSN) of financial markets and on institutional arrangements which have sedimented over

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9 Georg Simmel, *Philosophie des Geldes* (Duncker & Humblot 1922) 62–99.

10 Claus D Zimmermann, *A Contemporary Concept of Monetary Sovereignty* (Oxford UP 2013) 229–233.

11 Carmen M Reinhart and Kenneth S Rogoff, *This Time is Different: Eight Centuries of Financial Folly* (Princeton UP 2009) 275–292.

12 See, eg Karsten Nawrot, *Normative Ordnungsstruktur und private Wirkungsmacht: Konsequenzen der Beteiligung transnationaler Unternehmen an den Rechtssetzungsprozessen im internationalen Wirtschaftssystem* (Berliner Wissenschafts-Verlag 2006) 347–350.

decades to address the need for international policy cooperation and/or coordination.<sup>13</sup>

The GFSN is based on safety net rules which are meant to:

- (a) promote sound macroeconomic policies;
- (b) prevent a wider scale crisis in the respective financial markets;
- (c) provide liquidity when crises hit.

The GFSN includes legal arrangements for providing adequate financial information to existing or prospective investors (like those produced with recourse to the Generally Accepted Accounting Practices, GAAP), and to ensure that misconduct of the market participants is limited to minimum. At a more general level, the GFSN has rules adopted under Article III-5 of the Agreement establishing the World Trade Organization (WTO) requiring that, in order to promote international trade, the WTO shall cooperate, 'as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies' (i.e. with the World Bank and its constitutive organizations). This includes, *inter alia*, cooperation to prevent 'currency manipulation' which can be pursued by respective states to substitute for tariff manipulation to an extent that is prohibited under WTO rules.

The World Bank (encompassing the already mentioned International Bank for Reconstruction and Development and the International Development Association) is essentially an international development institution. In the realm of international financial matters, it provides loans and grants to governments of low and middle-income countries which are intended to produce significant multiplier effects or increase the general welfare of their population.

The original Bretton Woods arrangement paved the way for investing with the IMF in the power to control capital transfers. Yet the exact provision of Article VI (Section 3) of the IMF Agreement only opened that opportunity without, indeed, making it happen, as the realm of regulation of financial markets was left to the sovereign discretion of the states. For a relatively long time, this made financial markets largely subject to national rather than international legislation. Consequently, financial markets were inhabited by the so-called multi-domestic industries, i.e. industries which

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13 See, eg Christian Tietje, 'The Role of Law in Monetary Affairs: Taking Stock' in Thomas Cottier and others (eds), *The Rule of Law in Monetary Affairs: World Trade Forum* (Cambridge UP 2014) 11.

develop their competitive advantage separately on each and every national market, as opposed to global industries, i.e. where competitive advantage could have been developed on a global scale with no significant regard to the specificities of the respective national markets.<sup>14</sup> In other words, the legal structure of the international financial and monetary order has been decentralized and domestically embedded.<sup>15</sup> In other words, the IMF's original mission focused more on the stabilization of currency systems with a view of the foreseen ever-increasing liberalization of trade in goods and services. Nowadays, the IMF is less focused on supervising the international currency system, but rather on providing relevant intellectual and material support for national economic policies pursuing a macroeconomic balance. The IMF does this by supporting economic policies that promote financial stability and monetary cooperation through policy advice, appropriate loans given on a conditionality basis and the administrative capacity development needed to implement the economic policies promoted.

In a more general sense, GFSN includes all the arrangements encompassed by the so-called New International Financial Architecture (NIFA). Therefore, it also applies to economic and monetary policy standards intended to enable the incumbent states to insure themselves against external shocks using their foreign reserves or fiscal surpluses accumulated before the shocks, bilateral swap lines concluded between countries to enable them to undertake adequate foreign exchange intervention and the use of the IMF's financial assistance to restore macroeconomic balances. Most importantly, in the general sense, GFSN, not only includes the 'focused' international institutional arrangements (such as the IMF, or the Financial Stability Board, FSB), but also institutionalized forms of cooperation having a more general mission, such as G-8 or G-20 meetings. Quite interestingly, G-8 and G-20 (argued to be 'a self-appointed steering board of the international financial architecture' at the time of the financial crisis<sup>16</sup> are both fora which easily transfer their focus to ever-changing challenges of international significance, which are predominant in a given period. This implies that, during the crises referred to in this chapter, both groupings focused on, respectively, the global financial crisis and the Covid-19 crisis.

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14 Michael E Porter, 'Changing Patterns of International Competition' (1986) 28(2) California Management Review 9.

15 Tietje (n 13) 37–38.

16 Zimmermann (n 10) 193–201.

Overall, the 2008+ financial crisis did not trigger much significant change to the institutional arrangements which could be used to address global-scale economic, and especially financial, turmoil. In their vast majority, such arrangements responded to the challenges they faced in a manner largely prescribed by their existing missions; the new ones (such as FSB) were vested with relatively soft advisory and monitoring powers).

Notwithstanding the above, because of the peculiar mission enabling a fairly flexible response to these challenges, the Basel Committee on Banking Supervision (BCBS) came up with a set of arrangements which can be considered innovative. Its regulatory reaction was quite important, as it set out new standards for the banking sector, which had contributed largely to the outbreak of the crisis, having been plagued with excess liquidity, resulting in insufficient liquidity buffers and the consequential creation of excessive credit under weak credit underwriting standards. The rules of that time were insufficient not only to address these weaknesses but also inadequate to avoid negative externalities (i.e. the situation where the counterparties, not having a direct interest in the respective banks, would have to bear the cost of bailing them out). The problem was only exacerbated by the relative international consolidation of the banking sector which gave rise to a risk that systemic failures in one national banking sector would permeate internationally.

A definitely innovative response to these challenges was the adoption of the Basel III accord by the BCBS. The reform represented by the accord included:

- (a) increasing the quality and transparency of the equity component of the capital of the banks and making it the major loss-absorber;
- (b) strengthening the capital requirements for counterparty credit risks (measured under stress conditions), introducing self-enforcement mechanisms pertaining to the capital requirements;
- (c) improving the coverage of risks pertinent to the credit activity, especially related to capital markets activities so that (a) the most prevalent or/and atypical exposures would be subject to a stressed value at risk requirement, and (b) transactions giving rise to increased risks be balanced by an increased level of capital;
- (d) introducing a global liquidity standard to supplement the capital requirements by requiring that the exposed banks be able to withstand a 30-day system-wide liquidity shock;

- (e) introducing stronger supervision, risk management and disclosure standards for credit institutions;
- (f) reviewing standards pertaining to external ratings in the regulatory capital framework, so that they would be worked out and applied in a more transparent mode.

Despite its international reach, the Basel III accord does not represent a directly applicable set of rules but rather an instrument which has to be implemented in a respective national or regional setting.

#### II.4. The health realm of the international public policy consideration

The extent and the nature of Covid-19 pandemic was a surprise to all governments in the world. None of them was prepared for this highly disturbing heterogeneous phenomenon. The global extent and magnitude of this pandemic was first identified as such at international level, by the World Health Organization (WHO). The WHO was therefore able to trigger UN-coordinated activities intended to help countries with underdeveloped healthcare capacities to cope with the health and economic challenges they were facing with the pandemic. The WHO was able to serve as an important monitoring platform and an advisory facility which is able to gather information about the national practices used to cope with Covid-19 pandemic. The WHO also appeared as a promotor of a quite complex set of activities intended to make appropriate vaccines available to the countries which were unable to develop their own technological and/or financial capacities to ensure adequate supplies.

The WTO acknowledgement that the Covid-19 pandemic was a high global health emergency incentivized the respective countries and international organizations to react in a way which took a global view and recognized that the trade and the movement of people across national borders might represent a health and economic concern. Their policy approach was relatively uniform at the very beginning as most countries of the world introduced lockdown measures. These measures were intended to radically restrict physical contact between people in order to reduce the possibility of contagion (such as a ban on movement, closure of establishments that bring people together and severe limits on social and economic activities to those deemed necessary to ensure order and security). Nevertheless, lockdown only extended to border closures in a few countries. Although the lockdown regime and other measures to limit the spread of the Covid-19

virus have been applied quite universally as a result of a great deal of mimicry, the respective governments had public policies with regard to health. At this stage, health concerns were of the utmost importance with the result that information collected by the World Health Organization and the recommendations issued by this UN specialized organization were considered of utmost importance and followed by the UN member states. The primary motive for these measures was to protect national health systems from becoming overloaded and to provide an adequate health service to the people infected by the virus.

Yet, with time, economic issues started to dominate the public policy agenda. This shift of focus was induced by the fact that lockdown restrictions within and among respective countries were (rightly) foreseen to have a dramatic impact on the economic activity or, at that time, already had the adverse economic consequences foreseen by, for example, Brahmbhatt and Dutta.<sup>17</sup> As a result, economic policies had to be adjusted to these developments which, in turn, contributed to the consequential diversion of any new public policy measures adopted in the respective countries. Therefore, at the international level, the economic and social situation became very complex because of:

- (a) increasing policy diversity among the respective countries of the world;
- (b) a consequential increase in asymmetry of responses of respective economies to all internal and external stimuli arising from that ever-more-complicated setting.

The said asymmetry of responses arose not so much from subjective reasons (i.e. from the domestic political dynamics and from the original level of openness of respective economies) as rather from one objective reason, namely from differences in the economic power of the respective countries. More affluent countries were able to introduce costly intervention programmes and be the first to be served in their public procurement for necessary medical supplies (especially supplies of vaccines) and other healthcare resources. Because of their relatively better administrative capacity, they also were first in detecting and adequately addressing pandemic

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17 Milan Brahmbhatt and Arindam Dutta, 'On SARS type economic effects during infectious disease outbreaks' (2008) World Bank Policy Research Paper No 4466 <<http://documents.worldbank.org/curated/en/101511468028867410/On-SARS-type-economic-effects-during-infectious-disease-outbreaks>> accessed 22 March 2024.

phenomena or pandemic-related economic phenomena taking place within their jurisdiction.

All international organizations, including the WHO, responded to these challenges in a rather conventional way. For instance, the IMF offered loans and other financial aid to countries in need; it also offered advisory services to them, especially in the area of management of macroeconomic balances. Within its own realm, the WTO offered an attractive platform for adjusting global arrangements for trade in medical products which would make it easier for less economically powerful countries to access the resources needed to provide healthcare for the population affected by Covid-19 and, most importantly, to perform vaccinations on time. The WTO-promoted arrangements included an adequate adjustment of mutual recognition and certification practices within the Technical Barriers to Trade Agreement (TBT Agreement). Yet, this adjustment did not go beyond the mere procedure, reflecting an increase in pressure on the WTO to speed up notifications of extraordinary and temporary national measures (meant to relax, streamline or simplify procedures of conformity assessment) which were adopted as a response to the public health emergencies brought on by the pandemic. It should not come as a surprise that the notifications mainly applied to BTB-concerned exemptions pertaining to medical or other health-significant supplies, such as supplies of food. The notifications were then handled in the manner prescribed in the internal regulations of the respective international organizations. Interestingly, even quite far-reaching proposals (such as a rejected proposal for a waiver of protection of IP rights on medical products that are essential for combating Covid-19) were handled that way.<sup>18</sup>

These initiatives indeed failed to initiate concerted international action. Instead, the policy response to the pandemic was largely differentiated and – as a result – fragmented. This differentiation (and the resulting fragmentation) appeared in the following arrangements:

- (a) in the differentiation of both material and procedural lockdown measures adopted by individual countries

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18 See: Council for Trade-Related Aspects of Intellectual Property Rights, 'Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19: Communication from India and South Africa' World Trade Organization IP/C/W/669 (2 October 2020) paras 12, 13 <<https://t1p.de/qpopx>> accessed 23 March 2024.



- (b) in the diversity of impact that relatively identical lockdown measures had on respective economies because of the structure of these economies; the impact of these measures was also largely asymmetric in large territorial states with complex regional economic structures.

In addition, it should be noted that an important determinant of the vulnerability of the economies to what we can generally call ‘pandemic impact’ is their openness (regional and especially international) and their integration into international production and exchange networks. This is clearly shown by the example of Sweden (an significant exporter of goods and services), where the applied policy mix was geared towards the least possible disruption to society (and therefore to the economy), but which did not avoid a negative (largely exogenous) demand shock because of the reduction of trade with Sweden by other countries.

The adopted lockdown measures also show significant dynamics of change.<sup>19</sup> In other words, in the first phase of the pandemic (or, more strictly, in the first phase of the public policy reaction to the pandemic), respective countries adopted a relatively uniform policy mix based on simple forms of lockdown and some economic support to the business entities most obviously affected by that lockdown. Soon, however, the variation in the intensity and content of the measures adopted in response to the Covid-19 pandemic became diverse. That diversion was largely a consequence of the scale of infections, the recorded number of deaths and the observation by the authorities of the cross-border and inter-regional spread of the Covid-19 virus, as well as the assessment by the authorities of the potential of national healthcare to cope with larger scale pressures. Therefore, for example, within the group of the EU Member States, Italy had the broadest range of lockdown measures, with the highest relative intensity; whereas the catalogue of measures in Sweden was the least extensive and the measures themselves were of low intensity. There were no major problems in Sweden particularly because of the efficiency of the health service – but with the important exception that the Swedish authorities failed to stop a significant number of deaths among the elderly.

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19 Artur Nowak-Far, ‘SARS-CoV-2 Pandemic: An Economic Analysis of Regulatory Intervention’ in Jolanta Itrich-Drabarek (ed), *Contemporary States and the Pandemic* (Routledge 2023) 69–88.

### III. Conclusions

Hypothesis H1 regarding the mode of governance adopted to address the challenges of the global-scale crises have been verified positively. Indeed, the conventional wisdom should be accepted to interpret the reality in such a way that the international layer of such governance is somewhat logically related to (territorially) lower layers of governance; therefore, it should be considered an integral part of 'a multicentric system' in which respective levels of governance are coordinated with one another, either by force of an explicit legal arrangement or by a rational force of some objective necessities. Yet, such a conclusion cannot be considered as reflecting reality. It is true only with regard to such regional communities (such as for instance, the European Union) organized by virtue of an extensive body of binding law applying to its counterparties. Yet, with larger communities of states which are not prone to waive their prerogatives, consideration of the situation in terms of 'multi-layer' governance obscures the real issue of mere coordination between the incumbent stakeholders needed to address large-scale crises. Such coordination indeed represents a 'governance', yet what counts is its effectiveness and efficacy, which can only result from meeting requirements that make up coordination, i.e. the requirement of common action planning, standard-setting and a systemic exchange of information which is relevant for that planning and standard-setting. as for what we can refer to as 'the global governance', such an intentional coordination is scarce. It only takes place in an area of financial regulation (Basel III accord) regarding essential elements of a safety net which is rather limited in scope. Even so, this regulation is as effective as the national enforcement arrangements allow. As for other areas, especially, the area of health protection, coordination is largely coincidental, as it is a result of a great deal of mimicry taking place in policy-making practices of respective states. Therefore, the system works in line with (very) bound rationality.

Consequently, the second hypothesis (H2) regarding the systemic nature of public policymaking with respect to wide-scale transnational challenges (politically considered to be crises) has been disproved. The international community has not yet developed 'a system' which would be appropriate for gathering all the currently dispersed activities of its incumbent parts into foreseeable and coordinated global action. Consequently, at the international level, these activities do not represent a reflection of any rational, endogenous model of public policy response, but rather result

from a somewhat chaotic, exogenous reaction, in which mimicry in selecting policy responses plays a significant role.

The third hypothesis (H3) regarding the model of reaction to global-scale challenges posed by the larger gravity crises should be considered to have been proven, but only in general terms. With regard to such challenges, the level of organization and coordination of the action of states is indeed relatively low as, internationally, the states do not wish to limit their Westphalian prerogatives by constraining them at the international level. As has already been stated, more systemic coordination results in areas of regional integration (such as the European Union) and specific, rather narrowly defined, regulatory areas (such as prudential aspects of financial markets). Astonishingly, much of the coordination results from mimicry among states.

The results of the verification of the respective hypothesis makes it pertinent to answer the obvious question of why the existing arrangements are so persistent at the international level that even large-scale crises do not make their stakeholders change it. There is not just one factor which could be used to propose an answer to this question. One argument which should be used to do that has already been formulated: the states operating under the Westphalian paradigm are not prone to adjust the international arrangements to a sometimes unique nature of the said challenges because such a change would have to result in some limitation of their powers which they would find unacceptable. Another argument follows the logic of path dependence and holds that the foreseen benefits from more coordination (and therefore the greater self-limitation of powers) is subject to some cost-benefit assessments which – even under the strains of the recent crises – opposed any more significant change (at least at the international level). This argument reveals even more important logic, that respective states apply some (more or less intuitive) subsidiarity analysis here, which suggests that global scale challenges could be more effectively and – as should be emphasized – efficiently addressed at lower levels of governance, most significantly at the state level. Most likely, in this intuitive cost-benefit assessment, the unavoidable cost of international-level coordination and its expected lowest-possible-denominator outcomes are the most important negative drivers which support refraining from any major change.

