

Economic Analysis of Law Review

International Law and Transnational Production

Direito Internacional e a Produção Transnacional

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RESUMO

O objetivo principal deste artigo é retomar a discussão sobre o confronto entre a Produção Transnacional e a legislação trabalhista. Os sindicatos perderam o poder neste mundo que se desdobra no século XXI. O título, "Direito internacional e produção transnacional", tenta desafiar os analistas a examinarem essa questão, que corrói os direitos conquistados pelos trabalhadores do mundo e os transfere para os produtos que serão consumidos por todos. Globalização significa a quebra do monopólio e o estrito controle estatal do Direito. A Lei não mais deriva apenas do Estado; agora vem de várias fontes. A globalização, com base na perspectiva legal, enfraqueceu a capacidade de regulamentação governamental, transformando estruturas hierárquicas de atividades empresariais em organizações sob a forma de redes. Este novo padrão baseia-se em parcerias, cooperação e relações contratuais flexíveis; gerando situações sociais únicas e singulares, que exigem novos padrões de responsabilidade, controle e segurança.

Palavras-chave: Direito Internacional, Direitos Humanos, Produção Transnacional, Direito do Trabalho Internacional

JEL: K21, L49

ABSTRACT

The main purpose of this article is to resume the discussion on the confrontation between the Transnational Production and labor law. Trade unions have lost power in this world that unfolds in the twenty-first century. The title, "International law and transnational production" attempts to challenge the analysts to look into this issue which erodes the rights won by workers of the world and transfers them to the products that will be consumed by all. Globalization means the breaking of monopoly and strict state control of Law. 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.

Keywords: International Law, Human Rights, Transnational Production, International Labor Law

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1. 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, specially 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 transnationalization 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.

2. Redefining the role of 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, it is clear that 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 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.

Cassese (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” 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 theirs 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” (HABERMAS, 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)

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 strategies³.

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.

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 in order 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.

3 <http://www.transparency.org/> Accessed in 05/06/2016

The phenomenon is more easily understood when the most classic examples of successful private rules is brought up: *Lex Mercatoria*⁴. 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 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 most rich 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-hierarchical 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,

⁴ 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)

as well as concerning the field of technical standardization and professional self-control, where there are 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 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 .

4. 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. Favelas, 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 most vague 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 overposition, 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 economical 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 transgovernmental 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 everyday, 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 economical 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 an 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 (TAMANHA, 2007: 411).

5. 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 transnationalization 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 Labour 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 losses 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 are based on work rules and conditions inferior to the reasonable level or adequate level in international scale”(GONÇALVES, 2000: 50)⁵. 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, 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,

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

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 work 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, nightwork, 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 Labour Conference, it signed, based on its eight fundamental conventions⁶, 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 occupation⁷. Although such guidelines are not legal obligations, they constitute an orientation to behavior, having the main goal of 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 policies to face the social consequences of globalization. As a result 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 States 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

6 ILO Conventions 87, 98, 29, 105, 100, 111, 138 e 182.

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

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.

The following chapters will analyze more deeply that topic, based on the analyze of the international collective bargaining, of its concept and fundamentals of international collective bargaining in transnational corporations, which have represented such an important collaboration in the lowering of the negative effects of Globalization in the social sphere.

Despite the continuous debate and the formulation of proposals by international organizations, in order to lower the negative impact of Globalization in the work relations, there is still no legal regulatory framework of working relations in international sphere able to assure minimal standards of dignity, health and security to workers throughout the world.

The changes in the world scene resulted in comprehensive competition, hard-fought encounter, the increasing of informal jobs, the arising of new types of working relations that affect the stability of the worker, with the proliferation of short-term contracts and the expansion of exportation processing zones, which many times discourage socialism (GERNIGON, 2000).

At the same time, more autonomy of labor unions in relation to public authorities and politics was noticed, and more consciousness of fundamental rights, human dignity and basic principles of democracy, being integrated to union's claims regarding minorities, environmental politics and macroeconomic issues (GERNIGON, 2000).

In this context, collective bargaining settled between employers and employees has gained major importance, and has suffered from significant impacts. It became more dynamic and has involve a broader subject, whose reach goes beyond physical and monetary conditions in a particular sector inside a company, extending to aspects of social and economic policies that affect living and work conditions, discussing topics as inflation, professional formation and social security (GERNIGON, 2000).

At the same period, as a result from the process of Globalization and the growing of multinational corporations, collective bargaining – in the company level, covering workers in several countries⁸ – received more focus, and they have been used more often than agreements signed among union entities that represent employers and employees. Those agreements take into account, mainly, the criteria of company productivity, with less emphasis in general interests of professional categories involved in the negotiation (GERNIGON, 2000).

8 They are known as global agreements, collective contracts, macro international agreements or even international framework agreements

Although more usual in the sphere of multinational corporations, where the companies have more power of bargaining, the role of transnational collective bargaining have been of high importance to the pacification of labor conflicts deriving from economic and social transformations in the global scene. In the same way, the bargaining have been relevant to the implementation of important labor regulatory mark in the international sphere, considering the comprehensive achievement in establishing minimal working standards, all similar in different countries or regions, in the company level in which they are settled.

Despite the importance of these legal tools in order to improve work relationship and, thus, making them more fair and equal, that legal norm have been hardly studied though. In addition, it have been applied strictly, mainly in regions with low development or in process of development, being the its higher levels of incidence verified in European countries, where there is more space – and more prestige is awarded – for social dialogue.

The question of autonomy - that attributes to particular social groups the power of designing norms to rule their interests, having collective bargaining as the expression of its occurrence - will be discussed along the text. Next, a brief explanation about the concept and fundamentals of collective bargaining will be made, in order to better understand such institute, in addition to the analyses of the legal framework. The formation and importance of international work unions is also pointed out, as an issue in the development and the spread of international collective bargaining. This study also counts on the analysis of details of these bargains in global level, with the indication of more difficult situations to its achievement. At the end of the chapter, the Maritime Labor Convention is briefly presented, settled with the participation of the business, labor sector and the ILO, being applied to the whole category, global extent, underlining the actual possibility of effective private regulation in the international labor relationship sphere.

6. References

BOURQUE R. (2005), **Les accords cadres internationaux (ACI) et la négociation collective internationale à l'ère de la mondialisation**, Genève, Institut international d'études sociales, Bureau international du travail, DP/161/2005

BÜTHE, Tim. "Governance through Private Authority? Non-State Actors in World Politics." **Journal of International Affairs** vol.58 no.1 (Fall 2004): 281-290

CARDOSO, Luciane. Códigos de Conduta, Responsabilidade Empresarial e Direitos Humanos dos Trabalhadores, artigo In. **Revista LTR**, v. 67

CASSAR, Vólia Bomfim. **Princípios Trabalhistas, Novas Profissões, Globalização da Economia e Flexibilização das Normas Trabalhistas**. Rio de Janeiro: Impetus, 2010

CASSESE, Sabino. **A crise do Estado**. tradução: Ilse Paschoal Moreira e Fernanda Landucci Ortale. Campinas, SP: Saberes Editora, 2010, p. 13-14.

CRIVELLI, Ericson. **Direito internacional do trabalho contemporâneo**. São Paulo: LTr, 2010

DAUGAREILH, Isabelle. **La negotiation collective internationale**. Travail et Emploi n° 104. Octobre-decembre 2005.

DILLER, Janelle. A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives. **International Labour Review**, Vol. 138 (1999), No. 2

DONADELLI, Flávia. Regulamentação privada no contexto da Governança global. **3º Encontro Nacional da ABRI**. 2011. p.8

DUPAS, Gilberto. A lógica da economia global e a exclusão social. **Estudos Avançados** 12 (34), 1998 (p. 121 – 159)

DUPRET, Baudouin. Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-specification. **European Journal of Legal Studies**, vol. 1, 2007, disponível em <http://www.ejls.eu/1/14UK.pdf>

ERMIDA URIARTE, “Fuentes extranacionales, armonización y unificación en el derecho laboral latinoamericano com especial referencia al Mercosur” in Roma e America. **Diritto Romano Comune**, nº 2/1996, Mucchi Editore, p. 214

FARIA, José Eduardo. **O direito na economia globalizada**. São Paulo: Malheiros, 2004

FORJAZ, M. C. S. Globalização e crise do estado nacional. **Revista de Administração de Empresas**, v. 40, n. 2, p. 38-50, 2000

GALLIN, Dan. International framework agreements: A reassessment in K. Papadakis (ed.) **Cross-border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?** Geneva, 2008.

GOLDIN, Adrián O.; FELDMAN, Silvio. Relaciones colectivas del trabajo en el Mercosur (sobre una hipótesis de convergencia). **RELASUR – Revista de Relaciones Laborales en America Latina** – Cono Sur. Nº 7. OIT/Ministerio de Trabajo y Seguridad Social – España, Montevideo: 1995. p. 47-102.

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

GUNTHER, Luiz Eduardo. A negociação coletiva do trabalho como direito fundamental: necessidade de afirmação da tutela dos direitos de personalidade na atividade empresarial mundializada, Curitiba: **Revista Jurídica**, n. 21, Temática n. 5, 2008, p.95-121.

HABERMAS, Jurgen. Nos limites do Estado. **Folha de São Paulo**, São Paulo, Caderno Mais!, p. 4-5, 1999. Disponível em: <<http://www1.folha.uol.com.br/fsp/mais/fs18079905.htm>> Acesso em 18 de novembro de 2013.

HAMMER, N. 'International Framework Agreements in the Context of Global Production', in K. Papadakis (ed.) **Cross-border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?** Geneva, 2008

LIMA, Aldo José Fossa de Sousa. **Negociação coletiva transnacional: o acordo supranacional dos metalúrgicos do Brasil e da Argentina com a Volkswagen**, Piracicaba, SP: [s.n.], 2006.

MARTINS, Sérgio Pinto. **O Pluralismo do Direito do Trabalho**. São Paulo: Atlas, 2001.

MIRANDA, Napoleão. Globalização, Soberania Nacional e Direito Internacional. **Revista CEJ**, Brasília, n. 27, p.86-94, out./dez. 2004

OIT. **Negociación Coletiva y Código de Conduta. Diagnóstico y propuestas para los Sindicatos de Nestle em America Latina**. Genebra, 2000. P. 67

OIT. Liberdade Sindical na Prática: Lições a retirar. **Conferência Internacional do Trabalho**, 97ª Sessão, 2008, Lisboa

OIT. **Convenções** 87, 98, 29, 105, 100, 111, 138 e 182

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

SILVA, Walkure. Autonomia Privada Coletiva. **In Curso de Direito do Trabalho**. Volume 3. Ed. LTr. Julho, 2008.

SOBCZAC, André. Legal dimensions of international framework agreements in the field of corporate social responsibility", in: K. Papadakis (ed.), **Cross-border social dialogue and Agreements: An Emerging global industrial relations framework?** International Institute for Labour Studies, Geneva, 2008

SPREMOLLA, Geraldo. Negociación colectiva internacional: realidad o utopía?", Revista **Relasur**, nº 6, p. 65

TAMANAH, Brian. Understanding Legal Pluralism: Past to Present, Local to Global. **Sydney Law Review**, Vol. 29, 2007; St. John's Legal Studies Research Paper No. 07-0080.

TEUBNER, G. (ed.). **Global Law Without a State**. Dartmouth, Aldershot, 1997.
Marcos. **O soft law como fonte formal do direito internacional**, 2003.

VIGEVANI, Tullo; LORENZETTI, Jorge (Org.). **Globalização e integração regional: atitudes sindicais e impactos sociais**. São Paulo: LTr, 1998