GLOBALIZING PROCEDURAL JUSTICE. SOME GENERAL REMARKS

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Abstract

Entre los muchos problemas que plantea la globalización, es particularmente relevante el de la justicia civil, dado que la circulación global de las relaciones jurídicas hace necesario pensar en una tutela supranacional del derecho. Se trata de establecer qué derechos van a ser efectivamente tutelados, en favor de qué sujetos y con qué método. El arbitraje internacional sirve sólo para los ricos, mientras que la mediación encuentra muchos límites y no es una solución válida en todos los casos. Excluida la hipótesis de un único código procesal mundial, es necesario pensar en una adecuada armonización de la disciplina procesal nacional.

1. Introduction

The label "globalization" has become so "loose and possibly rhetorical"[1] and has acquired so many meanings that any attempt to define its contents would be meaningless. Yet, multifaceted and ambiguous as it is, the real phenomenon is under our eyes more every day, and therefore more every day it makes sense to analyze it trying at least to identify some of the effects that it provokes on the administration of justice all around the world. If we assume that the law in general, or at least many areas of the law—if not all—have been, are being or will soon be globalized, then it is meaningful to discuss a topic dealing with the "globalization of procedural justice". It is not enough, however, to introduce such a label—that might also be loose and rhetorical—without trying to deal with some of the most relevant issues that immediately arise from that label.

2. Globalization of what?

A first question that may be asked while talking of the globalization of procedural justice may be "globalization of what?", referring to the areas of civil litigation that are more deeply and more frequently affected by the globalization of disputes and conflicts, i.e. those areas in which the "transnational" character

[1] Vid. TWINING, *Globalization and Legal Theory*, Northwestern U. Press, Evanston, Ill., 2000, pág. 2.

of litigation is more frequent. In its general meaning, "transnational" refers to any kind of litigation arising among parties (private citizens, companies, nation states, international organizations, multinational enterprises, and so forth) that "belong" to different national jurisdictions[2]. One could say that any civil dispute about any matter could have this character, but such a statement—although true—would not say much. More concretely, it is easy to consider that at least *prima facie* the areas in which transnational disputes are specially frequent, and then in which we could think of globalizing civil justice, are those of international commerce, of the fluxes of financial capital, and generally the world of "economy and business". The evidence for this is the fact that in the last decades the so-called *lex mercatoria* has been considered as the real if not the only subject matter of globalization[3]. Correspondingly, one might be inclined to think that globalizing procedural justice means just globalizing the solution of disputes arising in the area covered by the *lex mercatoria.*

Nobody could reasonably deny that this is by far the most important area in which globalization has occurred in the last decades and is developing at present, but this—although important—is only *a part* of the problem. The practical development of economies indicates several other areas of the law in which significant problems are arising insofar as the administration of justice at a transnational level is involved. Just to stress some of them, we could think of: a) labor disputes, becoming more and more transnational as a consequence of the outsourcing and the de-localization of industrial production, so that the employees working for the same employer (national or multinational) actually are located in different countries; b) environmental protection, which is clearly necessary at a global level due to the global dimension of pollution and mass disasters; c) intellectual property, as an effect of the global circulation of cultural products. And so forth.

Moreover, besides such very important but specific subject matters it is worth stressing that an extremely significant aspect of cultural and legal globalization is the growing generalization of the sensitivity towards the recognition and the enforcement of *fundamental rights* at a supra-national level. This is an extremely relevant aspect of the complex phenomenon of *judicial globalization*[4], i.e. of the trend that is growing in the practice of several supreme, constitutional and supra-national courts to make references to the case law and to the precedents of *other* national or international courts all around the world, mainly when the subject matter of their decision deals with the interpretation

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[2] For a systematic use of the word in this sense vid. e.g. ALI/UNIDROIT *Principles of Transnational Civil Procedure,* Cambridge U. Press, Cambridge a.o., 2006.

[3] In the extremely broad literature about this topic vid. for instance GALGANO, *La globalizzazione nello specchio del diritto,* Il Mulino, Bologna, 2005, pag. 43; FERRARESE, *Diritto sconfinato. Inventiva giuridica e spazi nel mondo globale,* Laterza, Roma-Bari, 2006, pag. 76; TWINING, *ibidem,* pags. 51, 139.

[4] Vid. generally TARUFFO, *Globalization, Processes of Judicial,* in *Enc. of Law & Society. American and Global Perspectives,* David D. Clark ed., SAGE Publ., Los Angeles a.o., 2007, vol. 2, pag. 656.

and the implementation of fundamental rights. In such a practice these courts go far beyond the boundaries of national law and national jurisdictions and refer to what seems to be a "common—and hopefully global—core" of fundamental rights[5].

3. Globalization for whom?

Trying to understand how globalization might affect the implementation of procedural justice, a further question may arise. It can be stated in these terms: "globalization of justice for whom?" Such a question seems to be meaningful for various reasons. On the one hand, it is well known that that powerful phenomenon of globalization that was the colonization of some continents of the world was made also through the forced imposition of legal models by the colonizers on the colonized, obviously in favor of the former with the aim of subordinating the latter. On the other hand, it seems clear that the current legal globalization is not a "neutral" or "equal" means oriented towards achieving a higher level of justice for all. Actually, there are some subjects that would take advantage from a globalized civil justice, and many other subjects that could be disadvantaged by it. A globalized civil justice may actually work, under the formal label and the appearance of the rule of law, in favor of "strong" parties, such as powerful countries, multinational companies, banks, commercial organizations, and so forth, since it may result in more efficient devices that could be used by the "strong" in order to exploit the "weak" (which could be small countries, individual debtors, private investors, workers, and so forth). As is well known, the globalization of financial markets is a very efficient means to export financial crises to weak countries and weak investors. In a similar way, the globalization of the labor market is a powerful way to exploit less protected workers (such as minors and women) all around the world.

Even procedural devices that *prima facie* would seem able to protect the weak parties of commercial transactions may reveal their actual nature as double-edged weapons. Transnational efficient procedures for small claims are usually presented as a useful device for the protection of small creditors against big transnational debtors, but we should not forget that the same procedures may be used as efficient mechanisms for quick and inexpensive debt collection by big creditors (such as insurance companies, banks, commercial networks, and so forth) against thousands or millions of small debtors.

Moreover, it seems worthy to take into account—notwithstanding the time which has passed—the fundamental analysis made in the Seventies by Marc

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[5] Vid. mainly MARKESINIS-FEDTKE, *Judicial Recourse to Foreign Law: A New Source of Inspiration?*, UCL Press, London, 2006; MARKESINIS-FEDTKE, *Engaging with Foreign Law,* Hart Publ., Oxford-Portland, Ore., 2009, pag. 127; SLAUGHTER, *Judicial Globalization,* in 40 *Va.J.Int'l. Law* 1999–2000, pag. 1103.

Galanter about the strategic advantages of the "Haves" over the "Have-nots"[6]. Actually one may wonder whether any kind of procedural globalization would work in the sense of reducing the strategic, economic and cultural differences among "repeat players" and "one-shotters". A first impression can be just in the opposite sense: at the global level "repeat players" are much bigger, more powerful and better organized than at the national level, while "one-shotters" tend to be relatively smaller, weaker and less able to take advantage of transnational or international procedural devices (which in many cases do not exist or are not available). It might be said, therefore, that globalization may work as a powerful "multiplier" of the differences among the parties, and correspondingly as a relevant factor of procedural inequality.

Looking at the same problem from the standpoint of the weak and of the "Have-nots", the most important aspect deals with the judicial implementation of fundamental rights. As abovesaid, such rights tend to be recognized at a global level, and then their implementation cannot be intended only as a "domestic" problem within the borders of single nation-states.

As Luigi Ferrajoli writes, jurisdiction is the fundamental guarantee of all rights, but specially of the fundamental ones that are specially important for the weakest subjects: no right—and no fundamental right—actually exists if it cannot be vindicated and protected by jurisdictional means[7].

This entails at least two consequences that should be taken into consideration in a global perspective. First: fundamental rights—as well as all rights—should be interpreted and implemented on a bases of *equality*: so to say, any citizen of the world is entitled to be treated as equal to any other, mainly when he or she is economically, socially or culturally weak. From this point of view, the globalization of procedural justice might be considered as a powerful factor of *equalization* insofar as it may ensure an equal access to the judicial protection of fundamental rights of everyone, and specially of the weak. Second: such a protection should be *effective* and not only symbolically affirmed. This requires an analysis that cannot be properly made here, but a reference to one specific aspect of the problem may give an idea of the dimension of the issue. Considering the frequency and the disastrous effects of "global torts" deriving for instance from pollution, sale of dangerous products, and so forth, the moment has come to think in terms of supra-national devices for the protection of collective interests. A sort of transnational class action could be

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[6] Vid. mainly GALANTER, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change,* in 9 *Law & Soc.Rev,* 1974, pag. 1.

[7] Vid. FERRAJOLI, *Principia iuris. Teoria del diritto e della democrazia. 1. Teoria del diritto,* Laterza, Bari, 2007, pags. 675 ss.

useful as an effective means for the equal protection of rights in a global dimension[8].

4. Devices of globalization

The preceding remarks lead to a further question concerning the ways in which procedural justice could possibly be globalized.

An almost immediate answer to this question is that the solution should be found by looking at the set of devices known as "informal justice" or ADR[9]. But such an answer needs to be carefully considered, mainly because a clear distinction has to be made between mediation and arbitration due to the structural and functional differences existing between the two types of dispute resolution devices. There is no need to insist here about such a distinction, but different remarks are worthy about mediation and arbitration in the perspective of the globalization of civil justice.

4.1. About mediation

Reaching the settlement of the conflicting interests of the parties may be an acceptable means to solve a dispute, and this is the reason why most lawgivers try to persuade (or even to compel) the parties to settle their dispute, with the clear aim of reducing the workload of courts. It seems clear, however, that mediation cannot be taken as the unique and ideal device for the resolution of all disputes, for at least three reasons (but many other reasons could be referred to).

First: reaching a compromise between conflicting interests is not the same as doing justice by establishing rights and obligations. Therefore, mediation is not a real functional equivalent of jurisdiction. At most, it could be a second-best (or even a third-best) solution of the problem. Thus it cannot be said in general terms that some forms of mediation could be the main road to the globalization of procedural justice.

Second: mediation may be accepted mainly when the matter at stake is money, since an agreement can always be achieved about a fair compensation, but it may not be acceptable when the matter at stake is a right without any monetary value (or that cannot be completely transformed into a right to compensatory damages in case of violation). This is particularly clear in the area of fundamental rights. For instance: could my right of freedom be "mediated"

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[8] Vid. e.g. the essays collected in *The Globalization of Class Actions,* ed. by HENSLER, HODGES and TULIBACKA, Thousand Oaks, CA, 2009.

[9] About the role of such devices in the globalized world, still useful is the article by GLENN, *Globalization and Dispute Resolution,* 136, *CJQ,* 2000, pag. 137.

with the result that I sell myself as a slave for a fair sum of money? Is it more acceptable if a new form of slavery is created just because a good mediation could be used to fix the market price of liberty? Or could I give up my right to my physical personal integrity provided a mediator establishes the current market value of my organs?

Third: last but not least it is worth stressing that mediation is structurally unable to compensate the differences between a strong party and a weak party. The mediator has to be neutral and impartial, although his task is to help the parties to reach an agreement, but he is not there to ensure the equity of the agreement. Therefore, when the differences between the parties are particularly strong—as happens in many globalized areas—it seems clear that the weak party will "voluntarily agree" with the solution determined and imposed by the other party[10]. In this sense, globalizing mediation may result in the globalization of injustice and inequality.

4.2. About arbitration

It is well known that in the last decades arbitration has been, and at present continues to be, the most important—and virtually the only—means to solve disputes concerning international commercial transactions. In a sense, *lex mercatoria* has become a synonym for international commercial arbitration. No wonder about that: the advantages of arbitration (such as speed, control of the parties, privacy, choice of the arbitrators, and so forth) largely exceed its disadvantages (costs and complexity), and this is particularly clear when two parties—possibly of the same strength and with converging interests—are making up an international commercial transaction. Moreover, although international commerce is by far the most important area of economic globalization, one may even think of a broader use of arbitration well beyond the application of *lex mercatoria.* For instance, a very interesting suggestion refers to the possibility of a "class action international arbitration"[11].

Although the clear success of arbitration in a broad area of transnational disputes shows that it may be the best method to solve many such disputes, it does not prove that arbitration is always the ideal device to be used in every kind of litigation. On the one hand, arbitration is the best solution when jurisdiction is not available or when going to a court would be exceedingly complex, but this is not enough to claim that arbitration is *a priori* the best

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[10] On such topics the fundamental reference is the article by OWEN FISS, *Against Settlement,* recently reproduced in FISS, *The Law as It Could Be,* New York U. Press, New York-London, 2003, pag. 90.

[11] Vid. STRONG, *From Class to Collective: The De-Americanization of Class Arbitration,* in 26 *Arb.Int.* 2010, pag. 493; Id., *Class Arbitration Outside the United States: Reading the Tea Leaves,* in *Dossier VII: Arbitration and Multiparty Contracts,* ICC, Paris, 2010, pag. 183.

alternative. All things considered, arbitration requires an agreement of the parties to withdraw from jurisdiction, and then to give up the fundamental guarantees of procedural justice: but nothing proves that this is always a positive choice. On the other hand, a necessary condition of arbitration is the capacity of the parties to dispose of the substantive subject matter at stake, but such a condition in many cases does not exist. Once again, the puzzling issue is the implementation of fundamental rights: usually they are considered as *absolute* rights just to stress that they cannot be given up or disposed of by a mere act of will or by an agreement with the adverse party. Therefore, it is difficult to imagine an arbitration agreement concerning the implementation and the protection of a fundamental right. For similar reasons Ferrajoli claims, as abovesaid[12], that jurisdiction is the essential guarantee of fundamental rights.

Moreover, there are some matters in which the use of arbitration may raise relevant objections. For instance, one might wonder whether in labor relationships the employer (i.e. the strong party) may impose on the employee (i.e. the weak party) an arbitration clause with which such a party gives up her right to the judicial protection of her legal position. Or one may wonder whether arbitration could be a viable and fair solution in a case of pollution of the air or of the sea, where the need is not only to compensate damages but also—or mainly—to impose in a public and global dimension compliance with general standards of environmental protection.

5. Which globalization of procedural justice?

Coming back—finally—to jurisdiction, the main issue is to imagine how a globalization of procedural justice could be achieved. Such an issue may have several solutions, and we may take into account at least the three most significant ones.

5.1. Unification of procedural systems

At first sight, a suggestion may be to unify all the national procedural systems: if all the countries had the same procedural regulations, globalizing the administration of civil justice would be virtually *in re ipsa*. Unfortunately, such a solution sounds practically impossible, but even if it were practically possible there would be good reasons not to adopt it. The impossibility is clear if we consider that a single and unique code of civil procedure to be enacted in all the countries of the world is just an abstract product of the imagination lacking any reasonable connection with any predictable future.

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[12] Vid. *supra,* fn. 7.

On the other hand, even within the limited range of the European Union of the Nineties the project of unifying at least some relevant aspects of civil procedure was theoretically very interesting but was not successful[13].

At any rate, a unification of civil procedure at a global level would be unacceptable for various cultural reasons. A procedural code is not just a set of rules of thumb that could be applied everywhere all around the world with just a few technical adaptations. The systems of justice are the historical outcomes of complex evolutions involving different social, ethical, economic and even religious factors and values. Such systems may evolve and change and they may be adapted—to some extent—to new needs and new situations, but they cannot—and should not—be set aside just in order to enact a completely new and uniform system of justice falling down—so to say—from heaven.

Such remarks are meaningful not only when a unification of procedural systems is imagined at an abstract level of thinking, but also when the practical issue is whether or not to apply in other contexts an already existing system of justice. Actually the real problem is whether or not the American system of civil procedure should be adopted in other countries and possibly all around the world. Many Americans are so deeply persuaded that their system of litigation is "exceptional" (in the sense of: the best of all), that they could wish to benefit the rest of the world by exporting such a system everywhere[14]. However, such a perspective may raise some doubts. First of all, if anything is really exceptional it may be difficult or even impossible to export it elsewhere: the American procedural system is becoming more and more exceptional or even unique (mainly after the English reforms of the last years), but this is going to be an obstacle to a possible globalization of such a system by means of its application in quite different social, political and ethical contexts. So to say: the more exceptional, the less global.

On the other hand, it may be difficult to accept, outside of the US, that the American procedural exceptionalism be converted into a sort of American procedural imperialism (as has already happened in some Latin American countries, where the American system of criminal procedure was adopted under the threat of not obtaining funds from the World Bank or from the International Monetary Fund). Moreover, being clear that the American system of civil litigation is largely inefficient and continues to be accepted only in the

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[13] Vid. *Rapprochement du droit judiciaire de l'Union européenne – Approximation of judiciary law in the European Union,* ed. by STORME, Dordrecht, 1994.

[14] About American exceptionalism in the field of civil procedure vid. e.g. MARCUS, *Exceptionalism and Convergence: Form versus Content and Categorical Views of Procedure,* in 49 *Sup.Ct.L.Rev,* 2010, pag. 521; CHASE, *American "Exceptionalism" and Comparative Procedure,* in 50 *Am.J.Comp.L.* 2002, pag. 277; Id., *Law, Culture, and Ritual. Disputing Systems in Cross-Cultural Context,* New York U. Press, New York-London, 2005, pag. 47.

very peculiar social and ethical context of the US[15], it is difficult to understand by which reasons all the other countries of the world should adopt such a system. So to say, people may well accept the Coca-Colaization of soft drinks and kids may appreciate the McDonaldsization of fast food, but the administration of justice at a global level is something different.

Nevertheless, while it seems very difficult to imagine or to accept the idea of a complete unification of procedural regulations, several *partial* unifications are possible and useful in the domain of international judicial assistance. As the European example clearly shows, uniform rules concerning for instance the choice of jurisdiction, the recognition and enforcement of foreign judgments and awards, the circulation of evidence and monetary injunctions, are important for the efficiency of transnational litigation. A broad unification of rules like these could provide partial but valuable solutions to several problems provoked by globalization.

5.2. Regional models

One of the reactions that may be provoked by globalization in the domain of civil justice is the trend to figure out *regional* models of civil proceedings and to use them either directly as a basis for reforms concerning domestic procedural codes, or as "model laws" representing a common frame of reference for procedural reforms in a specific area of the world. A well-known and important example of this trend is the *Codigo Modelo* for Latin America[16] that was directly enacted in Uruguay but still is referred to as a model when the system of civil justice is reformed in other countries of the continent.

The experience of drafting regional models for civil litigation is extremely interesting from many points of view but can hardly be considered as a viable solution for the globalization of civil justice. On the one hand, in point of fact the Latin American experience has not been completely successful, at least so far, but above all it is still unique. As abovesaid, the attempt to unify at least some parts of civil proceedings failed in Europe, but it is also very difficult to imagine a common European model of procedure, if one considers that historically, and at present as well, in Europe there are at least four important procedural models: the German–Austrian one, with all its variations in Scandinavian and East European countries; the French one, with its variations in Italy and in Belgium; the Spanish one and—last but not least—the English one. In such a fragmented and diversified situation a common "model code" of civil procedure is clearly beyond reach.

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[15] Vid. KAGAN, *Adversarial Legalism. The American Way of Law,* Harvard U. Press, Cambridge, Mass.-London, 2001, pags. 99, 229.

[16] Vid. *El código procesal civil modelo para Iberoamérica,* Montevideo, 1988.

On the other hand, in many important "regions" of the world there are simply no model codes for civil litigation, and it is hardly predictable whether or not they will be drafted in the future. Could we realistically imagine an Islamic model code of civil procedure, an African model code or even an Asian model code made applicable in China, Japan, Korea and Singapore? Maybe, but all this needs to be verified in the future.

At any rate, even imagining that the worldwide map of procedural systems were "covered" by a horizontal set of regional procedural codes, such codes would probably be very different from each other. Then the variety of local procedural systems would be reduced to some extent, but there would be no real globalization of procedural justice. In this direction a more positive perspective could emerge if the various regional models were converging on a common set of principles or rules. This could be an intermediate step in the direction of a global harmonization of procedural systems.

5.3. Harmonization.

If a complete unification of procedural regulations is impossible and undesirable, and that of regional models seems to be in itself—at least so far—an uncertain perspective, a possible solution to the problem of globalization could consist in the harmonization of procedural systems. Actually one may reasonably believe that the differences existing among the various national systems of civil procedure, and even within some national systems, are too many and too deep, and that significant advantages could derive from a substantial reduction of these differences. If the European and the extra-European landscapes of procedures were to some extent simplified and clarified —one might say— judicial resolution of transnational disputes would become easier, less complicated, less expensive and more efficient. Such remarks are very obvious and may be shared by anyone involved in the administration of civil justice. However, after having said that a fair degree of harmonization among the national systems of civil procedure would be desirable, the problem arises of determining "which" harmonization, and "of what", could and should possibly be implemented.

Harmonization is clearly a matter of degrees. Moreover, since we are thinking of extremely complex sets of rules, and the idea of unification is rejected, the other side of the coin is to decide which rules, or which procedural devices, should be harmonized. Finally, a further problem would concern the technique that should be used to implement such a harmonization.

Thinking of a possible harmonization of the current procedural systems in terms of degrees, the two extremes of the scale could be set aside. The top extreme includes a narrow set of extremely general principles, such as: independence of the judiciary, fair trial, right to be heard, reasonable delay, effective protection of rights. Such principles are very important, but they have become

so obvious and so "commonsense" that they should be assumed as valid in each modern system of civil litigation. They may not be effectively implemented —and actually they are not— in every procedural system all around the world, but they are recognized without difficulty in any system of procedure. They are also expressly stated by several national constitutions and in article 6 of the European Convention on Human Rights as well as in other international conventions. It does not mean that these principles are stated and interpreted in the same ways in every country, and some uncertainties may arise about which principles should be included and which may not be included in this short list. However, roughly speaking it may be said that there is a general agreement about a group of principles concerning the fundamental guarantees of the administration of justice in civil matters[17]. At this level of generality, therefore, there is no problem for a future harmonization: to a large extent, actually, such principles are already harmonized. Therefore it may be said that a "substantial" convergence, if not a complete harmonization, already exists at the level of the fundamental guarantees of civil litigation.

At the bottom level of procedural regulations there is a broad and chaotic array of very specific and detailed rules concerning a number of procedural devices and regulating the peculiar features of the judicial practice in each national system. It is well known that all the procedural codes include several hundreds of rules, many of which have some subsections. Moreover, a huge number of technical adjective norms is necessary for the functioning of the procedural machinery. Perhaps the harmonization of some of these rules (for instance: how to direct the notice of a complaint) may be useful, but when we think of harmonizing procedural systems we cannot realistically believe that it should concern all the hundreds of rules regulating the proceedings in all the jurisdictions involved. In other terms: at this level the problem of harmonization cannot be stated at a general level, although harmonizing "some" technical mechanisms could be useful.

Between the top level and the bottom level of procedural regulations there is a broad intermediate area in which several degrees can be distinguished by taking into consideration differences and similarities concerning the subject matter, the importance, the form and the structure of procedural provisions. Somewhere in this area there is a level at which a possible and fruitful harmonization might be achieved: actually one might think of a set of principles and rules conceived with the aim of representing a reference point for different and perhaps more specific particular regulations. It is the level where the so-called *Model Laws*, as for instance those drafted by UNCITRAL, can be placed. It is also the level to which sets of procedural rules actually in force, such as the

[17] Significant steps in this direction were already made in the Würzburg congress of the Association. Vid. *Effektiver Rechtsschutz und verfassungsmässige Ordnung – Effectiveness of Judicial Protection and Constitutional Order*, Würzburg, 1983.

American *Federal Rules of Civil Procedure* or the *Federal Rules of Evidence,* may belong. These sets of rules are specific enough not to be confused with abstract principles, but general enough not to include excessively detailed regulations of procedural devices. This is just the level at which a substantial harmonization of procedural regulations may be imagined.

If a personal reference is allowed, I would say that an interesting example of procedural harmonization at the intermediate level just defined is the set of principles and rules that were drafted and recently published by the *American Law Institute* and by UNIDROIT[18]. This text includes 31 Principles and 36 Rules, each Principle and each Rule being composed of several subsections. The Principles are stated in rather general terms and cover a long and detailed list of procedural problems such as jurisdiction, procedural equality of the parties, due notice, provisional and protective measures, structure of the proceeding, obligations of parties and lawyers, direction of the proceeding, evidence, presentation of evidence, roles of the parties and of the court, decision, settlement, enforcement, appeals and recognition of judgments.

The Rules are somewhat more specific and detailed, although they are also stated in rather general terms, and provide an example of how the Principles could be implemented. The Rules deal with various topics including jurisdiction, joinder and venue, composition of the court, contents of the pleadings, role and powers of the court, law of evidence and disclosure and presentation of evidence, final hearing and decision-making, appeals and enforcement of judgments. If taken together[19], the Principles and Rules represent a consistent set of provisions that are much less general than abstract principles and much less detailed than a procedural code: however, they cover a broad number of procedural topics and for each of these topics they provide a model of regulation.

It has to be underlined that the Principles and the Rules were not initially conceived and were not proposed as a model for the procedural regulation of domestic disputes. Actually, their declared purpose was at the same time narrow and immodest: the inspiring idea was of drafting a set of procedural rules that could be applied by any national courts in any country of the world while trying and deciding transnational commercial disputes[20]. As a rule, as is well known, domestic procedures are applied by national courts also when they deal with

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[18] Vid. ALI/UNIDROIT, *Principles of Transnational Civil Procedure*, *supra,* fn. 2.

[19] The project initially sponsored by the *American Law Institute* was aimed at drafting a group of Rules, with Geoffrey C. Hazard and Michele Taruffo serving as co-reporters. When UNIDROIT joined the project it was shifted to a drafting of Principles, which finally were approved by both the sponsoring institutions. The Rules are then—so to say—a work product that may be referred only to the *American Law Institute.* However, the two texts are the outcomes of the same project and may be read as a homogeneous system of provisions.

[20] Vid. HAZARD, *A Drafter's Reflections on the Principles of Transnational Civil Procedure,* in ALI/UNIDROIT, *Principles, supra* n.3., at xlvii.

such disputes, and this is exactly the point that triggered the beginning of the ALI/UNIDROIT project: the variety of domestic procedures applied by national courts to transnational commercial disputes is provoking an incredible amount of problems due to the practical impossibility of controlling proceedings occurring everywhere, and under different procedural systems, in the world of the globalized economy. Ideally, then, the Principles and Rules could be applied by *any national court all around the world* when a transnational commercial dispute has to be decided. To the extent that it may happen, the proceedings and the decisions concerning transnational commercial disputes could follow the same procedural pattern, on the basis of the application of the same standards. Of course the Principle and Rules should be connected and combined with the existing domestic procedures, since such procedures should remain applicable to all the subject matters not directly regulated by the Principles and Rules. However, they could create an interesting degree of uniformity in the proceedings concerning transnational disputes, since they could be able to overcome, at least to some extent, the diversity of national procedures. In such a sense, the adoption of the Principles and Rules (by means of international conventions or by adoption by national lawgivers) could be a powerful factor of harmonization in the treatment of transnational disputes by different national jurisdictions, and therefore could be an efficient method to globalize procedural justice.

Although the ALI/UNIDROIT Principles and Rules were drafted with specific and explicit reference to transnational commercial disputes, it seems clear that they might be read and used also beyond the original intent of their drafters. Actually, just by setting aside a few provisions concerning specifically commercial disputes, most of the Principles and Rules may be read as a sort of *Model Law*, i.e. as a set of rules that could also be used as a frame of reference for procedural provisions concerning any kind of civil dispute. Provisions concerning pleadings, provisional measures, settlements, presentation of evidence, role of the court in managing the proceeding, form and contents of judgments, appeals, enforcement, and so forth, could be easily taken as "models" for regulations concerning several relevant aspects of civil litigation. Of course each national lawgiver could conceive more specific and detailed regulations of these topics, but different regulations could be "harmonized" just by the fact of being partially different variations based upon the same *Leitmotiv*.

This sort of harmonization could be a fair and efficient way to globalize procedural justice without meeting with the inconveniences that seem to be inherent in the other methods of globalization.