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EXPLAINING THE FINANCIAL STABILITY BOARD: PATH DEPENDENCY AND ZEALOUS REGULATORY APPREHENSION

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The present paper tries to explain why the current international financial legal regime has taken the shape it has, particularly as it regards to the use of soft-law norms and institutional-making in the apex of the regime: the coordination level of the relevant actors by the Group of Twenty's Financial Stability Board (FSB). Accordingly, it will be argued that path-dependency and the national financial regulators' zealously held powers are two main factors that explain the current informal, "softness" of the FSB—its lack of international legal personality and legally binding instruments.

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I. INTRODUCTION

A key characteristic of international financial law is the lack of binding rules: Almost every aspect of the field has been created through "non-binding" standards that states, banks and financial institutions can implement on a voluntary basis through so-called "soft-law".

This regime was put to the test in the recent 2007-2008 financial crisis, and was found to be wanting, particularly in its ability to coordinate all relevant actors. While there were many causes for the crisis, it is clear that the financial institutions and their national regulators played a key role in triggering it.[1] Therefore, there appears to be a post-crisis consensus that financial institutions cannot only be regulated through market forces,[2] but rather that governmental oversight is needed—as the failures and successes of countries in

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[1] *See* Joseph Stiglitz, *The Anatomy of a Murder: Who Killed the American Economy?*, *in* WHAT CAUSED THE FINANCIAL CRISIS 139, 141–42 (Jeffrey Friedman ed., 2011) (recognizing that although there are many actors and institutions responsible for the crisis, "blame should be centrally placed on the Banks (and the financial sector more broadly) and the investors," because the former created the risk they were supposed to manage by "engag[ing] in excessive leverage" and the latter didn't understand the risk involved); *but cf.* Richard Posner, *Afterword: The Causes of the Financial Crisis*, *in* WHAT CAUSED THE FINANCIAL CRISIS, *Id.* at 279 ("there were two main causes [for the crisis]: unsound monetary financial intermediation [and inadequate banking regulation]").

[2] *See* José Fernández, *Global Politics*, 5 MEXICAN LAW REVIEW 333, 363–64 (2013) (arguing that the 2008 financial crisis ended the neoliberal free-market model, thereby posing a global economic challenge difficult to overcome: "finding an economic model to go beyond statism (*Welfare state*), and mercantilism (*liberalism*)") (emphasis in the original).

weathering past crises attest[3]—and more coordination between parties through regulation at the international level.[4]

In the aftermath of the crisis, a new entity was created to address the lack of coordination: the Financial Stability Board (FSB). Established in April of 2009 by the Group of Twenty (G-20)—an informal forum for central banks' governors and financial ministers of nineteen economies and the European Union to discuss global economic issues—the FSB has assumed the function of coordinating all the regulatory and supervisory actions done at the international level.[5] As a successor of the Financial Stability Forum (FSF), which in turn was created by the Group of Seven (G-7)—akin to the G-20, the G–7 is a political forum for the most industrialized economies—the FSB "has assumed a key role in promoting the reform of international financial regulation."[6] However, unlike other creations in the international financial legal regime, the FSB was not endowed with any

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3 *See, e.g.,* Karen Sigmond, *Banking Regulation in Mexico: Lessons from Financial Crisis*, 4 MEXICAN LAW REVIEW 3, 31 (2011) (praising the creation of the CNBV in Mexico during its 1995 crisis—the governmental entity entrusted with supervising the whole financial system—and asking whether this could be made at the international level); *see also* Geoffrey Miller, *Is Deposit Insurance Inevitable? — Lessons from Argentina*, *in* ECONOMIC DIMENSIONS IN INTERNATIONAL LAW: COMPARATIVE AND EMPIRICAL PERSPECTIVES 392, 398–401 (Jagdeep S. Bhandari & Alan O. Sykes eds., 1997) (arguing that one effect of the Mexican 1995 crisis was the bank runs and burgeoning crisis that arose in Argentina during that year, which in turn led Argentina to the creation of both a deposit insurance system and an entity that oversees its functioning to counteract the crisis effectively; thus, despite the opposition of high-ranking officials in Argentina's government to deposit insurance, that country departed from its policy of controlling bank risk through only market discipline because the political pressure of reinstating the deposit insurance system became irresistible).

4 *See* Rosa Lastra, *Do We Need a World Financial Organization?*, 17 J. INT'L ECON. L. 787, 805 (2014).

5 G20 2016 CHINA, *About*, (last visited May 1, 2016), http://g20.org/English/aboutg20/AboutG20/201511/t20151127_1609.html; Charter of the Financial Stability Board (June 19, 2012), art. 1, (last visited May 1, 2016), http://www.financialstabilityboard.org/wp-content/uploads/FSB-Charter-with-revised-Annex-FINAL.pdf.

6 FINANCIAL STABILITY BOARD, *About: Our History*, (last visited May 1, 2016), http://www.fsb.org/about/history/.

real international legal personality,[7] and therefore, its decisions are not legally binding.[8]

In light of this "softness", different proposals have emerged that try to give more "teeth" to the international financial architecture, particularly through "hardening" the existing norms into internationally, legally binding ones, enforced through an international organization.[9] On the other side of the debate, there are calls to keep soft-legal instruments and forums with greater flexibility, but enhancing their effectiveness to accomplish what the pre-crisis regime did not: more coordination of supervisory, standard-setting, and enforcement authorities.[10]

Considering that debate helps establish a backdrop for the present paper which will try to explain why the current international financial legal regime has taken the shape it has, particularly as it regards to the use of soft-law norms and institutional-creation in the apex of the regime: the coordination level of the relevant actors in the regime. Furthermore, it will be argued that path-dependency and the powers zealously held by national financial regulators are two

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[7] Articles of Association of the Financial Stability Board (January 28, 2013), art. 1, (last visited May 1, 2016) http://www.financialstabilityboard.org/wp-content/uploads/r_130128aoa.pdf ("An association by the name of "Financial Stability Board" . . . is hereby established pursuant to Article 60 of the Swiss Civil Code.").

[8] Charter of the Financial Stability Board, *supra* note 5, art. 24 ("This Charter is not intended to create any legal rights or obligations"); *but cf.* Suyash Paliwal, *The Binding Force of G-20 commitments*, 40 YALE J. INT'L L. ONLINE 1 (2014) (analyzing the bindingness of the commitments undertaken within the FSB as unilateral declarations, custom, estoppel and reciprocity).

[9] *See* Lastra, *supra* note 4, at 793 ("The IMF is the only institution (other than the Bank for International Settlements and the World Trade Organization) that has international legitimacy, an array of tools (surveillance, conditional financial assistance, and technical assistance), appropriate financial resources, and staffing to assume a formal role as global financial authority . . . . [O]nly the Fund can effectively contribute to the enforcement of those standards through its surveillance function."); *see also* John Jackson, *Global Economics and International Economic Law*, 1 J. INT'L ECON. L. 1, 22-23 (1998) (providing a laundry list of topics to address whenever designing international institutions for the banking and financial sectors).

[10] *See* Jan Wouters & Jed Odermatt, *Comparing the 'Four Pillars' of Global Economic Governance: A Critical Analysis of the Institutional Design of the FSB, IMF, World Bank, and WTO*, 17 J. INT'L ECON. L. 49 (2014).

important factors that explain the current informal, "softness" of the FSB.[11] Through arguments that explore the unique and rapid technological changes of the regime, the use of soft-law in international financial law has been said to be preferred because of its flexibility and expediency. However, on one hand, through these soft-law and informal forums national regulators have been able to retain the power they hold pursuant to their domestic legislative instruments, while on the other, have found success in projecting these enhanced power and enforcement capabilities on the international level. Contrary to what would occur by ceding rule-making power to an international organization—which allegedly would complicate the decision-making process and diminish direct communication among national regulators—the national regulators retain the ability to wield the rules of the international financial game through soft-law standards that conform to their points of view, and which countervail the need for achieving consensus with more stakeholders[12] that formal venues and treaty-making would require.

Although not every national financial regulator is invited to the game, this result is not necessarily negative, as the main priority and value of the regime (financial stability) does not rely on the democratic character of the rule-making process and institutions, but rather, on the technocratic knowledge of its experts. But even when taking that factor into account, the move from the "elite" membership of the FSF to the FSB's more democratic structure signals a positive step taken by the controllers of the regime: the national financial regulators.

II. SOFTNESS IN INTERNATIONAL FINANCIAL LAW

Many of the legal institutions and instruments underpinning the international financial legal regime are neither treaty-based, nor considered to be part of general international law. Conversely, they are part of another subset of norms referred to as "soft–law" that are used in the international financial legal world; particularly because of soft

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[11] *See* Pierre-Hugues Verdier, *The Political Economy of International Financial Regulation*, 88 IND. L.J. 1405 (2013).

[12] Like their national diplomatic representatives or other foreign regulators.

law's tendency for flexibility and effectiveness *vis-à-vis* their "harder" siblings.

A. Distinction Between "Soft" and "Hard" International Law

Under a rule-based approach to public international law,[13] legally binding norms are only those reflected in Article 38 of the Statute of the International Court of Justice: international treaties, custom, and general principles of international law;[14] everything else is legally irrelevant.[15] Under this positivistic view, only rules created by states are legally binding, and thus enforceable.[16]

In contrast, different ways of regulating areas of international relations have emerged on a transnational and global basis, thus leading to the emergence of the so-called "soft-law" norms.[17] The main characteristic of these soft law norms is that they do not comply with either of the requirements for "harder" norms: those being created by states and conforming to one of the three primary sources of international law. Therefore, they are not "legally" binding, but rather, implemented on a voluntary basis without the ability to be legally enforced or sanctioned at the international level.

Because soft-law does not require creation by states, it has largely been international organizations, private entities, other non-state actors, and even subsets of states' governments creating them.[18]

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13 The main feature of this approach is the emphasis on the normative aspect of public international law, conceptualizing the law as a system of rules binding upon its subjects, which can be appreciated through an examination of the three recognized normative sources of international law. MARTTI KOSKENNIEMI, THE POLITICS OF INTERNATIONAL LAW 39–41 (2011).

14 Statute of the International Court of Justice (entered into force 24 October 1945) 1 UNTS 993, art. 38 (1).

15 JOSÉ ÁLVAREZ, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS 48 (2005).

16 *Id.*

17 Nico Krisch & Benedict Kingsbury, *Introduction: Global Governance and Global Administrative Law in the International Legal Order*, 17 EJIL 1 (2006).

18 *See* Mauricio Del Toro, *El Fenómeno del Soft Law y las Nuevas Perspectivas del Derecho Internacional*, 6 ANUARIO MEXICANO DE DERECHO INTERNACIONAL [Mexican Yearbook of International Law] 513 (2006) (advocating for the conceptualization of soft law as a continuum of normative force to analyze practically

Thus, this flexibility makes these alternative bodies suitable for whenever there is deadlock or lack of consensus for a multilateral treaty, or a need to harmonize the rules at the international level.[19]

When technocratic experts create soft law, the legitimacy of these rules rely on their consensual basis to attain the common goal of their creators, as well as the technocratic expertise involved.[20]

The use of soft-law has mainly been attributed to two of its main virtues: flexibility and effectiveness, both of which have been praised for their help in achieving greater rates of compliance in certain areas, such as capital adequacy.[21] Whereas soft-law can be rapidly created without the need to seek state consensus or state participation

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how the international legal system works and norms are created by actors other than states).

[19] *See e.g.*, Andrea Bjorklund, *Assessing the effectiveness of soft law instruments in international investment law*, *in* INTERNATIONAL INVESTMENT AND SOFT LAW 51, 81 (Andrea Bjorklund & August Reinisch eds., 2012) (analyzing the forms of soft law instruments and their usage for investment law, concluding that because of the criticism to the regime and failed, past attempts to negotiate a multilateral instrument without states' participation—like the Organization for Economic Co-operation and Development's failed Multilateral Agreement on Investment—the "negotiation of a multilateral instrument might be facilitated and influenced by a soft law instrument that brings together investment law practice in an objective manner, that sets forth areas of convergence and divergence and the choices that need to be made by drafters, and that clearly sets out the policy implications of each of those choices". In other words, not a codification attempt, but rather "the distillation would more likely take the form of a commentary, annotation or treatise, and would be directed towards a wider audience than just States, though it could help to guide treaty negotiators and decision-makers, including States and arbitrators").

[20] *See* Alejandro Rodiles, *Coalitions of the Willing: Coyuntura, Contexto y Propiedades. Un Primer Esbozo*, 7 ANUARIO MEXICANO DE DERECHO INTERNACIONAL [Mexican Yearbook of International Law] 675, 701-02 (explaining that soft law norms compete with formal public international legal rules, as the former do not claim legitimacy from their legal status, but rather from the political consensus achieved by its participants—engaging in a normative process to regulate a common right cause—and the technocratic nature of both the decision-process and the standard created).

[21] Bas Arts & Dieter Kerwer, *Beyond legalization? How global standards work*, *in* LAW AND LEGALIZATON IN TRANSNATIONAL RELATIONS 144, 160–62 (Christian Brütsch & Dirk Lehmkuhl eds., 2007).

at all, custom and principles require long periods of time and universal consensus to emerge.

Likewise, whereas soft-law can be created by entities other than states and does not require consensus by its creators or the ratification of national legislatures to exist and be modified, treaties do require the consensus of state entities or international organizations for their creation, usually after a national legislature ratification process has occurred, and can only be modified with the consensus of the involved parties;[22] all of which lengthens the creation and adaptation processes and may hinder its effectiveness as a rule–making tool.[23] When informal forums, or what Vabulas and Snidal call "informal international intergovernmental organizations," (IIGOs) are preferred over international organizations it is due to the following reasons:

> States opt for less formality by using IIGOs when the advantages of lower sovereignty and negotiation costs, flexibility and speed outweigh the need for enforcement commitment, consensus, and the bureaucratic centralization.[24]

Accordingly, although soft-law lacks the status of harder law, *per se*, "[it] is not necessarily inferior to legally binding obligations as a

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22 *See* UNGA Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts. (2)(1)(a), 11, 39; *see also* Vienna Convention on the Law of Treaties between States and International Organizations or between International Organzations, arts. 2 (1)(a)(b), 11, 39.

23 Hanspeter Neuhold, *Variations on the Theme of 'Soft International Law'*, *in* INTERNATIONAL LAW BETWEEN UNIVERSALISM AND FRAGMENTATION. FESTSCHRIFT IN HONOUR OF GERHARD HAFNER 343, 344 (Isabelle Buffard et al. eds., 2008); *but cf.* Nico Krisch, *More equal than the rest? Hierarchy, equality and US predominance in international law*, *in* UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW 135, 156–59 (Michael Byers & George Nolte eds., 2003) (depicting the use of informal standard-setting—such as the Basel Committee on Banking Supervision—as a departure of the sovereign equality of states, and thus as an opportunity for the United States to place itself above the law: "the United States relies heavily on informal means of lawmaking and enforcement, as this very informality allows it to disregard many of the constraints otherwise imposed by sovereign equality.").

24 Felicity Vabulas & Duncan Snidal, *Organization without delegation: Informal intergovernmental organizations (IIGOs) and the spectrum of intergovernmental arrangements*, 8 REV. INT. ORG. 193, 219 (2013).

means for solving problems in international relations [because, as discussed previously] . . . it offers advantages, which in some cases may outweigh its shortcomings [i.e., their lack of enforceability]."[25] As espoused by Chris Brummer, the use of soft law in international financial regulation is bolstered by disciplining mechanisms that make soft law more coercive: "reputational constraints inform the decision making of regulators in the same way that reputation disciplines heads of state who commit to international agreements".[26]

B. International Financial Architecture

The use of soft-law mechanisms can be seen throughout the whole international financial regime. To illustrate this, the following sections will analyze the three different levels or stages that comprise the regime: standard-setting; supervision and coordination; and enforcement and sanctioning.

1. *Standard-setting*

International financial law has been regulated mainly through soft-law norms, such as standards, which are implemented on a voluntary basis by national financial regulators or financial institutions and banks. Almost invariably, all members of the FSB[27] have engaged in international standard setting: states' financial regulators; international financial organizations;[28] and other standard-setting bodies that were conceived to standardize international finance and that we could call standard-setting bodies *strictu sensu*.[29]

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25 Neuhold, *supra* note 23, at 351.

26 Chris Brummer, *How International Financial Law Works*, 99 GEO. L.J. 257, 263 (2011).

27 *See* Charter of the Financial Stability Board, *supra* note 5, art. 5(1).

28 International Monetary Fund (IMF), World Bank, Organization for Economic Co-operation and Development, and the Bank for International Settlements (BIS).

29 Such as the Basel Committee on Banking Supervision (BCBS), the Committee on the Global Financial System, the Committee on Payments and Market Infrastructures, the International Association of Insurance Supervisors, the International Accounting Standards Board, and the International Organization of Securities Commissions.

Perhaps the most effective production of soft-law, in terms of compliance, has been BCBS's work on standardizing the capital adequacy of banks, which has been praised for the high number of states that have implemented it (90 percent of all countries adhere to Basel I's capital requirement), and that effect has been attributed to the BCBS's departure from the rigidness of classic international law making,[30] in addition to its undisputed expertise in that area.[31] An additional example of highly valued soft-law is the Equator Principles of the International Financial Corporation, a member of the World Bank Group, which sets *de facto* standards for parties dealing with project finance on a global scale by inciting financial institutions to voluntarily adopt standards in order to implement normative and business related rationales for the conduction of environmental and social risk management.[32] Likewise, this includes the

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[30] *See* Arts & Kerwer, *supra* note 21; *see also* Rodiles, *supra* note 20, at 693–95 (defining the Basle Committee of 1975 as a "coalition of the willing": defined as a transnational network of actors that do not rely on the procedural or substantive rules of public international law rule-making, but conversely engage into normative creation processes through standards that depart from it and which are implemented effectively because of the political consensus of its participants and the convenience to accomplish a common goal).

[31] *See* Arts & Kerwer, *supra* note 21 ("the Committee has a high reputation of experts, no competition from other bodies that engage into standard-setting in that area, and has effective third party enforcement mechanisms—national authorities implement the law voluntarily or are obligated through loans from IMF or other international lenders that require compliance with the standard"); *but see* the critiques on Basel Rules' role in the 2007–2008 financial crisis in Juliusz Jablecki & Mateusz Machaj, *A Regulated Meltdown: The Basel Rules and Banks' Leverage*", *in* WHAT CAUSED THE FINANCIAL CRISIS, *supra* note 1, at 200, 226 (analyzing the negative role that Basel's rules had by diminishing the financial entities incentive to regulate themselves: "Capital-adequacy rules based on fixed risk measurements—and designed (paradoxically) to protect the economy from excessive credit expansion—were used in unanticipated ways, hiding the risks from the sight of supervisors and investors alike and giving everyone an utterly false sense of security, confidence, and stability."); *see also* Posner, *supra* note 1, at 288 ("the American amendment to Basel I adopted in 2001, and Basel II, adopted in 2004, underestimated the riskiness of mortgage-backed securities by assigning them a minimal risk weight, and so gave banks a green light to buy more of these assets than turned out to be safe for the economy as a whole.").

[32] *See* Christopher Wright, *Setting standards for responsible banking: examining the role of the International Finance Corporation in the Emergence of the Equator Principles*, *in* INTERNATIONAL ORGANIZATIONS IN GLOBAL ENVIRONMENTAL GOVERNANCE 51 (Frank Biermann et al. eds., 2009); *see also* Susan Park, *Socialization, the World Bank*

Recommendations on anti-money laundering by the Financial Action Task Force.[33]

Although there are a lot of ways in which members of the FSB engage in standard-setting, for purposes of the present paper, it suffices to show that none of the standard-setting bodies *strictu sensu* possess international legal personality.[34] This explains why those bodies are depicted as a different class of members than states' national regulatory agencies and international financial organizations, which do possess an international legal personality within the FSB Charter.[35] Likewise, it explains why they all work with the BIS's assistance in

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Group and global environmental governance, *in* INTERNATIONAL ORGANIZATIONS IN GLOBAL ENVIRONMENTAL GOVERNANCE 91 (Frank Biermann et al. eds., 2009) (appraising the International Financial Corporation's proneness to incorporate environmental norms into its work and contrasting it with the Multilateral Investment Guarantee Agency's reticence, also part of the World Bank; particularly because the former has been opened to environmental networks that have socialized the institution, thereby diffusing environmental norms through the International Financial Corporation's work, whilst the Multilateral Investment Guarantee Agency has resisted this effect).

33 *See, e.g.*, Nicholas Turner, *The Financial Action Task Force: International Regulatory Convergence Through Soft Law*, 59 N.Y.L. SCH. L. REV. 547, 559 (2014) ("The FATF demonstrates that under the right conditions, it is possible to achieve substantial, albeit imperfect, legal and regulatory coordination across the globe.").

34 *See* BANK FOR INTERNATIONAL SETTLEMENTS, *Monetary & financial stability - Overview*, (last visited Mar. 1, 2016), http://www.bis.org/stability.htm (Basel Committee on Banking Supervision Charter, §3 ("The BCBS does not possess any formal supranational authority. Its decisions do not have legal force. Rather, the BCBS relies on its members' commitments . . . to achieve its mandate.")); BANK FOR INTERNATIONAL SETTLEMENTS, *Committee on the Global Financial System: mandate*, *id.* ("The Committee . . . is a central bank forum"); BANK FOR INTERNATIONAL SETTLEMENTS, Charter of the Committee on Payments and Market Infrastructures, *id.* at §3 ("CPMI does not possess any formal supranational authority"); INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS, (last visited May 1, 2016), http://iaisweb.org/index.cfm?event=showHomePage&persistId=2F9C2180155D89A4065E749C0A3A37F0; INTERNATIONAL ACCOUNTING STANDARDS BOARD, (last visited May 1, 2016), http://www.ifrs.org/About-us/Pages/IFRS-Foundation-and-IASB.aspx; INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS, *About Iosco*, (last visited May 1, 2016), https://www.iosco.org/about/?subsection=about_iosco.

35 *See* Charter of the Financial Stability Board, *supra* note 5, art. 5(1).

terms of venue, infrastructure, and resources.[36] Finally, this premise also illustrates why states use this approach: because they are a form of IIGO, lacking a binding effect in their decisions.[37]

2. *Supervision and Coordination*

This level of the international financial legal regime is shared mainly between the FSB and the IMF.[38] Whereas the former is concerned with macro-stability, the latter has been said to be concerned with the micro-stability of avoiding risky behavior by banks and other financial institutions.[39] However, considering that the IMF participates within the FSB and the latter's mandate in coordinating all financial entities, it can be said that the FSB holds the coordination

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[36] *See* BANK FOR INTERNATIONAL SETTLEMENTS, *Monetary & financial stability – Overview*, *supra* note 34 (describing the kind of assistance rendered by the BIS); *see also* C.F. AMERASINGHE, PRINCIPLES OF THE INSTITUTIONAL LAW OF INTERNATIONAL ORGANIZATIONS 13, 75 (2d ed., 2005) (analyzing how the dual personality of the BIS as a legal person in both international and Swiss law does not affect its character as an international organization); *see also* ROLAND PORTMANN, LEGAL PERSONALITY IN INTERNATIONAL LAW 228–32 (2010) (analyzing the BIS litigation of *Reineccius et al. v. Bank for International Settlement* as a form of "actor conception"—attaching legal consequences to an international actor without justifying them—whereby a panel of arbitrators recognized the international legal personality of the Bank and analyzed certain legal consequences deriving therefrom, such as the applicability of the expropriation and compensation rules of international law towards its actions *vis-à-vis* private investors).

[37] *But see* Gregory Shaffer & Mark Pollack, *Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 MINN. LAW REV. 706, 765–67 (2010) (arguing that many of the standards produced by standard-setting organizations within the international financial legal world have been hailed for being effective because the existing treaties and soft law instruments created acted complimentarily, on account of the consensus generated by the powerful states that participated actively in all of the standard-setting forums explained above: the European Union and the United States).

[38] *But see* Gary Hufbauer, *Rules of the International Trade, Investment, and Financial Systems: What they Deliver, how they Differ, the way Forward*, 17 J. INT'L ECON. L. 833, 839 (2014) (citing Rosa M Lastra, 'Do we need a World Financial Organization', Special Conference in Honor of Professor John Jackson and the Institute of International Economic Law, Georgetown Law Center, 16 November 2012) (arguing that the World Trade Organization also performs this role in the liberalization of financial trade, and that the BIS and other standard-setting bodies share the FSB's role at the micro-stability level).

[39] *Id.*

role of all standard-setting and supervisory functions within the international financial architecture:

> The [FSB] is established to coordinate at the international level the work of national financial authorities and international standard setting bodies (SSBs) in order to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies. In collaboration with the international financial institutions, the FSB . . . address[es] vulnerabilities affecting financial systems in the interest of global financial stability.[40]

Regarding the IMF's supervisory functions, it is important to note that its supervisory function was triggered by the abandonment of the par-value regime in the 1970s.[41] Consequently, the IMF went from being an international monetary institution with a limited mandate on exchange rate stability and convertibility to a financial one with a much narrower mandate, redefining its three main functions: surveillance, conditional financial support, and technical assistance.[42] This has led the IMF to address issues ranging from payment systems, to financial reform, banking and other capital markets.[43] Contrary to the FSB and other actors, the IMF has been heavily criticized for its stance on development, particularly through its function as the lender of last resort for states in addition to the conditions typically imposed,[44] which allegedly straightjackets developing countries to follow a set of economic policies that may not be the best for their development. It also has been denounced for neglecting environmental and

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[40] Charter of the Financial Stability Board, *supra* note 5, art. 1; *see also* Wouters & Odermatt, *supra* note 10, at 75 ("the FSB was not established to harmonize rules or to impose international regulation, but rather to coordinate other important actors involved in maintaining financial stability.").

[41] Rosa Lastra, *The International Monetary Fund in Historical Perspective*, 3 J. INT'L ECON. L. 507, 514 (2000).

[42] *Id.*

[43] *Id.*

[44] *Id.* at 521–23 ("[Since the Mexican and Asian crisis in the mid-1990s,] the IMF appear[ed] to . . . emerg[e] as a de facto international lender of last resort" through its financial support to developing economies in stress.").

stakeholders' interests, such as human rights,[45] that seem to constrain basic sovereign regulatory spaces.[46] Even compared to other international financial institutions, the IMF has not been viewed as receptive towards civil society and developing countries interests and demands,[47] contrary to the World Bank that created the Inspection Panel for that purpose,[48] for example. Be that as it may, today, the IMF

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45 *See, e.g.*, David Enríquez, *El Derecho Internacional Económico. Apuntes para una Crítica Contemporánea*, 6 ANUARIO MEXICANO DE DERECHO INTERNACIONAL [Mexican Yearbook of International Law] 251 (2006) (advocating for an interdisciplinary approach towards international economic legal issues that considers stakeholders' interests, including human rights and environmental concerns); *see also* David Enríquez, *Batallas en el Sistema Financiero Internacional. Críticas y Réplicas Contemporáneas en torno al Fondo Monetario Internacional y al Banco Mundial*, 11 BOLETÍN MEXICANO DE DERECHO COMPARADO [BMDC] 467, 499–502 (2007) (arguing that states parties to loan agreements with the IMF and the World Bank, as well as those institutions, have an obligation to respect human rights).

46 *See, e.g.,* ANTHONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 258–69 (2004) (arguing that the World Bank and the IMF, through the promotion of "good governance" in their conditional loans—a recipe for making governments accountable, transparent and democratic, which in turn links human rights and development—reproduce colonial aspects of international law by imposing upon Third World countries structural adjustment programs that reshape their economic, political and financial systems, and that are driven by the economic considerations of richer states, wherein the countries regulated cannot participate in their elaboration).

47 *See* Enríquez, *Batallas en el Sistema Financiero Internacional. Críticas y Réplicas Contemporáneas en torno al Fondo Monetario Internacional y al Banco Mundial*, *supra* note 45, at 523–25 (contrasting the IMF's and the World Bank's receptiveness to civil society's criticisms and democratic deficits: whereas the IMF's openness has been limited to its co-partnership role in combating poverty and debt relief with the World Bank because economic concerns—and the need to tighten orthodox economic policies—have prevailed over other interests in order to secure the repayment of its loans, the latter has been more receptive due to more criticism by civil society and because its infrastructure financing projects directly concern social and environmental problems; for instance, the World Bank has permitted civil society participation and has changed its policies through the creation of the Inspection Panel).

48 Alix Gowlland-Gualtieri, *The Environmental Accountability of the World Bank to Non-State Actors: Insights from the Inspection Panel*, *in* NON-STATE ACTORS AND INTERNATIONAL LAW 333 (Andrea Bianchi ed., 2009) (a positive outcome of the World Bank's Inspection Panel is its inclusion of environmental norms into its procedures, thereby making states and the World Bank itself accountable through a soft-law and flexible procedure for their loan activities *vis-à-vis* certain non-state actors); *see also* Ellen Hey, *The World Bank Inspection Panel and the Development of International Law*, *in* INTERNATIONAL COURTS AND THE DEVELOPMENT OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF TULLIO TREVES 727 (Nerina

is one of the oldest actors in the field and the fact is that the IMF has acquired a key place in the new financial architecture through its surveillance powers, mainly.

Given the participation of the IMF in the FSB, and the coordination of the latter in the international legal arena, both institutions have cooperated very strongly to conduct Early Warning Exercises for the analysis of systemic risk at the international level.[49]

3. *Enforcement and Sanctioning*

The picture would not be complete without the governmental actors that behold the monopoly of the enforcement and sanctioning of financial institutions' and banks' deviations from the standards created and consented to by the FSB and member institutions: the national financial regulators. According to Gary Hufbauer, their power, and thus the absence of an international or external examining and disciplining scheme, can be attributed to two main reasons: First, prescriptive rules in international finance are much more probabilistic than trade or investment—in both of which regimes, dispute adjudication has been delegated to international bodies—and thus national regulators prefer to do so themselves because they have more information about their national financial markets; and second, because national financial regulators are not willing to cede their power to an international body—contrary to what trade and investment bureaucrats did—and their regulated financial entities prefer these domestic, national bodies over foreign international regulators.[50]

This second reason could explain, in turn, the use of soft law norms for the other two levels: since the standard-setting agencies' regulations are not legally binding, and therefore cannot be imposed upon states or financial institutions and banks, it seems reasonable that

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Boschiero et al. eds., 2013) (appraising the World Bank Inspection Panel's role in promoting an administrative form of accountability wherein private parties' access is provided without the need of their home state, thereby departing from the classic rules of international law).

[49] *See* Charter of the Financial Stability Board, *supra* note 5, art. 2(h); *see also* Wouters & Odermatt, *supra* note 10, at 70-74 (arguing that since the IMF and World Bank are members of the FSB, they cooperate with it more than with the World Trade Organization, who is not a FSB member).

[50] Hufbauer, *supra* note 38, at 842.

the supervisory and coordinating entities would also apply soft-law. By doing so, they would have coordinating and supervisory functions through a more-narrow mandate, leaving the sanctioning of deviations to states once they voluntarily decide to implement the standards consented to. This analysis is well-explained in the words of Rosa Lastra:

> The development of international financial law has been a slow and patchy phenomenon because of three reasons: (i) the lack of a clear legal mandate; (ii) a reactive rather than a proactive character;[51] and (iii) the vested interests national governments have in the supervision and regulation of their financial sectors.[52]

Accordingly, (i) the absence of legally binding norms is explained by the use of soft-law standards, which in turn helps fathom the (ii) reactive character of the norms and the limited supervisory and coordinating role that the IMF and the FSB have. Since they cannot impose rules on states, reactive standards seem more suitable to be implemented *ex post* financial crises; at a time in which consensus on how to regulate the flaws for counteracting a crisis has emerged—as well as the (iii) lack of delegation of adjudicative and sanctioning functions for an international body.

III. THE FSB EXPLAINED

A. Path Dependency

Why would states seek recourse to an international organization? Traditionally, through institutionalization, not only can

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51 This aspect has been considered fundamental in explaining the reason why the trade regime has scored better in its objective of liberalizing trade than the financial regime has done to stabilize markets—although international financial institutions have also promoted liberalization, whenever it enters into conflict with stabilization, the latter will always prevail—particularly because GATT/WTO has worked prospectively, whereas the IMF does so at the moment the crash occurs and with "little power to compel appropriate macroeconomic policies and financial practices". Gary Hufbauer & Erika Wada, *Can Financiers Learn from Traders?*, 2 J. INT'L ECON. L. 567, 569-73 (1999).

52 Lastra, *supra* note 4, at 796.

states act collectively and overcome their coordination problems,[53] but they could also accomplish legally binding decisions derived from the treaty that created the organization.[54] Furthermore, through an international organization they can also legitimize the whole rule-making process, as they would have to be constrained by the rules of international law that protect non-powerful states through the sovereign equality principle.

However, the need for consensus, and even the ability to afford the same voting rights to all states has changed, depending on the international organization concerned.[55] And even in the aegis of the United Nations, the Bretton Woods institutions did not foresee equality of voting rights. Nevertheless, the legitimacy that being an international organization accrues might differentiate them with other informal venues, such as IIGOs. Dani Rodrik depicts this idea by contrasting the contemporary globalization world with the "multilateralism" that existed during the Bretton Woods system:

> Multilateralism meant that rule enforcement and belief systems would work henceforth through international institutions—the International Monetary Fund, the World Bank, and the General Agreement on Tariffs and Trade (GATT)—rather than through naked power politics or imperial rule. Even though the influence of the United States was undeniable, multilateralism endowed these institutions with a certain degree of legitimacy independent of the American power that backed them up.[56]

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[53] Wouters & Odermatt, *supra* note 10, at 52 ("While the whole international community has an interest in a 'stable' global financial system, individual states will continue to take steps that are in their own (short-term) interests, even if they remain precarious for the system as a whole. It is for this reason that states have looked to international institutions to help overcome this collective action problem and promote greater global cooperation.").

[54] ÁLVAREZ, *supra* note 15, at 395.

[55] *Id.*

[56] DANI RODRIK, THE GLOBALIZATION PARADOX: DEMOCRACY AND THE FUTURE OF THE WORLD ECONOMY 70 (2011); *see also* Robert Howse, *From Politics to Technocracy—and Back Again: The Fate of the Multilateral Trading Regime*, 96 AM. J. INT'L L. 94, 94–95 (2002) (arguing that Bretton Woods was "concerned with the

Chris Brummer explains how the current globalization system not only meant an erosion of the dominance of the United States in the world arena—and thus of a more diffused world in terms of power, where "[e]merging markets have generally been the big winners"—but also that the current multi-polarity has made multilateralism more difficult and costly, thereby "giving way to new, innovative modes of cooperation" called minilateralism: strategic alliances with smaller groups; states turning away from treaties towards more soft law; and financial engineering in states' dealings.[57] Although effective, this new economic statecraft raises issues of fairness and democratic legitimacy, given its exclusive character and "sidestep[ping] [of] some of the multilateral values of universality and due process".[58]

Accordingly, Georges Baur argues that whereas international organizations respected the equality of states and other rules of international law through inclusiveness and consent, informal international task groups do not, such as the FSF, because they impose standards and sanctions that are created by the task group's member-states against other non-member states, with the purpose of advancing the former group's economic and political interests at the cost of the latters'.[59]

Nevertheless, this is the current paradigm of global finance today, and we cannot simply return to the Bretton Woods system.[60] On the contrary, the financial globalization created by deregulation,

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interdependency of different states' trade and other economic policies—i.e., managing or constraining the external costs that states impose on other states by virtue of their policies.") (emphasis in original).

[57] CHRIS BRUMMER, MINILATERALISM: HOW TRADE ALLIANCES, SOFT LAW, AND FINANCIAL ENGINEERING ARE REDEFINING ECONOMIC STATECRAFT 16–19 (2014).

[58] *Id.* at 20.

[59] Georges Baur, *Will New Developments in Global Economic and Financial Policy Erode International Law and the Sovereignty of States? – The Example of Liechtenstein*, *in* PROMOTING JUSTICE, HUMAN RIGHTS AND CONFLICT RESOLUTION THROUGH INTERNATIONAL LAW: LIBER AMICORUM LUCIUS CAFLISCH 1017 (Marcelo G. Kohen ed., 2007).

[60] *See* Rolf Weber & Douglas Arner, *Toward a New Design for International Financial Regulation*, 29 J. INT'L L. 391, 438 ("The Bretton Woods system was designed to support global trade but not global finance. As a result, we cannot simply return to the old system but must look towards the requirements of today's reality.").

technology and financial innovation has changed the regulatory space of the field.[61] The reality is that states have decided to use the minilateralism strategy of soft law in international finance, at least since the Group of Ten (G-10)—composed of the most industrialized nations of that time[62]—established the BCBS in the aftermath of the failure of the German Herstatt Bank and the American Franklin National Bank of New York in 1974.[63] In the words of Pierre-Hugues Verdier:

> When the fixed rate system collapsed in the 1970s, national regulators faced numerous new cross-border challenges. With no international framework to address them and no authority to create formal institutions or binding agreements, they instead created informal networks and non-binding standards.[64]

Thereafter, cooperative informal initiatives in other financial sectors were created and their roles exacerbated in the demise of Bretton Woods system, which had a very limited role for international private finance where international capital mobility was not the norm,[65] and thus, "no provision was made for regulating private finance."[66] Contrary to arguments that espouse the rationality of using soft law in international financial law as the ones depicted in the section above, the use of IIGOs and soft law norms in the international financial legal arena can be explained through what Verdier calls a historical path dependency:[67]

> In the absence of an international institution, national regulators took the initiative, but they faced several constraints. Their options were limited by their

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61 CHRIS BRUMMER, SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM: RULE MAKING IN THE 21ST CENTURY 10 (2015).

62 *See* BANK FOR INTERNATIONAL SETTLEMENTS, *G10*, (last visited Mar. 1, 2016), https://www.bis.org/list/g10publications/index.htm.

63 BRUMMER, *supra* note 57, at 99–100.

64 Verdier, *supra* note 11, at 1408.

65 *Id.* at 1411–12.

66 *Id.* at 1416.

67 *Id.* at 1427; *but cf.* BRUMMER, *supra* note 61, at 108–09 (analyzing an "institutional path dependency" in the structure and composition of the organizations).

> domestic statutory authority, which they could not easily change. They did not have a clear mandate to act internationally, much less bind their state to legal obligations. They did not have a forum in which to meet; often they did not even know each other. In that context, regulators proceeded incrementally by creating informal networks to exchange ideas, coordinate their actions, and agree on nonbinding standards.

B. Regulatory Zealousness

Verdier's explanation of a historical path dependency constraining national financial regulators' options is persuasive on the central role that they have had in the field ever since the 1970s. Under this account, national financial regulators have had a zealous attitude towards "preserv[ing] their domestic autonomy, flexibility and discretion" *vis-à-vis* the national legislatures that create them and other international actors, including their own peers from other countries.[68] Accordingly, national financial regulators have tried to look for legal tools that neither diminish their power nor grant additional ones to other bodies that could supervise or check their work. "[F]rom the regulators' private perspective, soft law and TRNs [transnational regulatory networks or IIGOs] reconcile their wish to achieve short-term regulatory objectives with their desire to preserve their domestic authority and flexibility."[69]

This zealousness can be also seen in bilateral investment treaties and free trade agreements, where although historically both instruments "have covered financial services for decades, . . . they all tread gingerly on national regulators' turf, separating financial liberalization from other investment and service commitments".[70] For

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[68] Verdier, *supra* note 11, at 1430. Verdier also contends that powerful states—such as the United States and the European Union—and private firms are the other two veto players that shape the agenda and outcome, along with national financial regulators, of the international financial legal regime.

[69] *Id.* at 1457.

[70] Anna Gelpern, *Financial Services, in* ASSESSING THE TRANS-PACIFIC PARTNERSHIP: VOLUME 1: MARKET ACCESS AND SECTORAL ISSUES 91 (Peterson

instance, "[n]either NAFTA nor other US bilateral trade and investment agreements curbed the unlimited discretion of financial regulators, so in this respect the TPP[71] continues a well-established tradition."[72]

Likewise, it can even be fathomed in certain domestic contexts. For example, the use of informal venues that coordinate already existing institutions was pursued by the United States with the creation of the Financial Stability Oversight Council through the Dodd-Frank Wall Street Reform and Consumer Protection Act[73] as an umbrella body that tightened cooperation among the existing federal banking and financial regulatory agencies.[74] Therefore, there seems to be

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Institute for International Economics, 2016) (last visited May 10, 2016), https://piie.com/system/files/documents/piieb16-1.pdf.

[71] Trans-Pacific Partnership.

[72] Jennifer Hillman, *Dispute Settlement Mechanism, in* ASSESSING THE TRANS-PACIFIC PARTNERSHIP, VOLUME 2: INNOVATIONS IN TRADING RULES 101, 110 (Jeffrey Schott & Catleen Cimino-Isaacs eds., 2016), (last visited May 10, 2016), https://piie.com/system/files/documents/piieb16-4.pdf; *see also* Gelpern, *supra* note 70, at 96 ("The TPP's novel treatment of exceptions in dispute resolution evokes a broader pattern of deference to financial regulatory authorities and financial experts. . . . The TPP's innovation is in the dispute settlement procedure that would apply to determine whether a measure is, in fact, there "for prudential reasons" or otherwise exempt. . . . In all, financial firms under the TPP are more limited than firms in other sectors in the relief they can get from taking their grievances to ISDS [investment system of dispute settlement].").

[73] DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT; FINANCIAL STABILITY ACT OF 2010; ENHANCING FINANCIAL INSTITUTION SAFETY AND SOUNDNESS ACT OF 2010; PRIVATE FUND INVESTMENT ADVISERS REGISTRATION ACT OF 2010; FEDERAL INSURANCE OFFICE ACT OF 2010; NONADMITTED AND REINSURANCE REFORM ACT OF 2010; BANK AND SAVINGS ASSOCIATION HOLDING COMPANY AND DEPOSITORY INSTITUTION REGULATORY IMPROVEMENTS ACT OF 2010; WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010; PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION ACT OF 2010; INVESTOR PROTECTION AND SECURITIES REFORM ACT OF 2010.; CONSUMER FINANCIAL PROTECTION ACT OF 2010; IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS ACT OF 2010; MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT; EXPAND AND PRESERVE HOME OWNERSHIP THROUGH COUNSELING ACT, 111 P.L. 203, Part 1 of 3, 124 Stat. 1377.

[74] Robert Thompson, *Financial Regulation's Architecture within International Economic Law*, 17 J. INT'L ECON. L. 807, 811 (2014).

continuity from the domestic unto the international level of creating umbrella-coordinating forums for existing agencies, instead of creating new institutions.[75] Seen in another light: the zealousness of financial national regulators to retain their power in the financial arena also affects the institutional building of domestic institutions.

National regulators are the most important actors in the financial legal arena: not only do they behold the gates to the implementation of the rules, but they also participate in their creation and supervision. In other words, this is a "departure from traditional public international models of diplomacy, where political elites and heads of state participate. It injects technocratic skill at the highest level of the rulemaking process."[76] Even though they are ultimately constrained by national regulators from other countries, on the one hand, and their own domestic political organs, on the other,[77] it is clear that they inform the shape of the whole process, and that without some external supervision, the regulators will not "internalize the costs of their regulatory decision making", thereby reducing the compliance pull of international financial law.[78] Accordingly, instead of retaining the current voluntary monitoring and surveillance programs, calls for third party enforcement of prudential standards have been raised.[79]

C. Diversity

As explained above, globalization and the subsequent liberalization of finance saw drawbacks in capital movement controls and financial crises, which for the most part occurred in the developing

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[75] *See Id.* at 808 (implying a continuity by arguing that the response to the 2007–2008 crisis began with national responses, such as Dodd-Frank in 2010, but then saw the creation of the FSB "to play a coordinating role that seeks to meld the technocratic expertise in various international standard setting and supervision bodies and the political legitimacy from heads of government"); *see also* Robert Howse, *The end of the globalization debate: continued*, *in* INTERNATIONAL ECONOMIC LAW AND NATIONAL AUTONOMY 7, 18 (Meredith Kolsky & Susy Frankel eds., 2010) (arguing that state responses to the financial crisis have not been devised to stop the liberalization of capital movements, but rather to strengthen its regulation at the global level through the FSB).

[76] Brummer, *supra* note 26, at 274.

[77] *Id.* at 274–75.

[78] *Id.* at 326–27.

[79] Arts & Kerwer, *supra* note 21, at 162.

world.[80] A tipping point occurred in the 1997 Asian financial crisis, which led to the creation of the first overarching forum for financial stability: the FSF.[81]

However, it was not until the 2008 financial crisis that a coordinated architecture for the whole international financial regime was created. The crisis highlighted the need to integrate the international financial legal regime, on one hand, and that developed nations could also be prone to catastrophic financial failures, on the other; all of which led to the displacement of the G-7 by the G-20 and the creation of the FSB.[82]

Through its more inclusive nature and stronger powers, the G-20 and FSB's combined efforts' have enhanced each other's legitimacy: by "teaming technocratic pragmatism with democratic norms".[83] Although there is a long way to go and the G-20 is still not universal, the transition from only like-minded countries in the G-7 to a more diverse membership in the G-20—in both the geographical and development level in terms of economic importance—is to be hailed.[84]

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[80] *See, e.g.,* Stephen Zamora, *Exchange Control in Mexico: Case Study in the Application of IMF Rules*, 7 HOUS. J. INT'L. L. 103 (1984-1985) (analyzing the compatibility of Mexican exchange control measures after the 1982-83 crisis with Article VIII of the IMF Agreement); *see also* Stephen Zamora, *Recognition of Foreign Exchange Controls in International Creditors' Rights Cases: The State of the Art*, 21 INT'L L. 1055 (1987) (analyzing different legal doctrines by which an American court could give effect or recognition to the exchange controls of foreign governments in the United States, and concluding that the cases demonstrate some limited recognition of foreign governments' acts on that regard, but noting that none of those cases used article VIII of the IMF Agreement).

[81] BRUMMER, *supra* note 57, at 102.

[82] *Id.* at 107.

[83] *Id.* at 193–98.

[84] *But cf.* Weber & Arner, *supra* note 60, at 453 ("a goal of the international financial architecture should focus on the increased integration of developing, emerging, and transition economies into the international financial system. However, this integration is not without its dangers and must be based on coherent sequencing of liberalization preceded as a necessary first stage by the development of an effectively functioning financial system in each country.").

IV. CONCLUSION

In regards to the recent international financial architecture created after the financial crisis, Robert Thompson summarizes its characteristics in the following manner: Focus on macro-prudential regulation through FSB's coordination; prudential regulatory competition between states that puts them in a parallel position, as they all want to regulate banks and financial institutions, thereby suggesting that harmonization of national laws through soft law is a better strategy than an inter-state dispute settlement approach; need for technocratic experts at the national regulatory agencies; lack of enforcement, accountability and transparency; and a possible de-legitimization because of exclusivity in membership to the G-20.[85] This sums up many of the challenges that the system must address.

Although certain reforms have been advanced to harden the regime, path dependency leads to the belief that states will only regulate this area of the international legal system through soft law. Flexibility is preferred over strict long-term rules that could forestall the need to apply effective action in response to a crisis, as has occurred in the past. Likewise, apprehension by national financial regulators of the adjudicative, enforcement, and sanctioning procedures seems to suggest an aversion by states of delegating those functions to an international body, and thus losing their power. Probably for this reason the FSB will remain an IIGO and not become an international organization: the objective underlying its creation was to become an umbrella-coordinating venue for all existing standard-setting bodies, national regulators, and international financial institutions; not to encroach the existing institutions' mandate by imposing another layer of institutionalization. G-20 member states explicitly denied granting an international legal personality to the FSB;[86] they only wanted coordination.[87]

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[85] Thompson, *supra* note 74, at 818–22.

[86] *See* Charter of the Financial Stability Board, *supra* note 5, art. 24.

[87] *See* Wouters & Odermatt, *supra* note 10, at 55-56 (highlighting the fact that G-20 members have adapted and modified continuously the mandate of the FSB, which would be difficult to accomplish had it been created through a treaty charter).

As of late, powerful countries have regulated this area of the law and probably won't cede that law-making power, particularly the states integrating the G-20. Further, it is not necessarily certain that rule-making in the international financial legal regime should be "democratized" and subjected to other state participants outside of the current G-20 members, as the safety and soundness of the international financial system relies purely upon technocratic expertise and legitimacy, not its democratic aspect. Hence, current G-20 member states may be more effective in addressing these issues than other developing nations who struggle with structural problems, such as lack of accountability and transparency in resolving crises.[88]

Nonetheless, the transition from the primordial role in the international financial space that the G-7 had to the current one held by the G-20 can be viewed as a positive step towards a more inclusive regime that, eventually, could lead to even more diversity, and perhaps even universality.

[88] *See, e.g.,* Sigmond, *supra* note 3 (contrasting the transparency and accountability in the American bailout of banks and financial institutions in the Obama administration with the opacity and corruption in the secretive bailout process of the 1995 Mexican crisis by then President Zedillo's administration; at a time when Mexico was not considered that relevant, and thus was not part of the G-20's predecessor—the Group of Seven); *but cf.* Stephen Haber & Aldo Musacchio *These Are the Good Old Days: Foreign Entry and the Mexican Banking System*, NATIONAL BUREAU OF ECONOMIC RESEARCH 3 (2013), (last visited May 10, 2016), http://www.nber.org/papers/w18713.pdf (contending that Mexico's 1997 liberalization of financial ownership to foreigners, which led to the ownership of more than half of the financial and banking industries to foreign capital very rapidly, actually helped increased the supply of credit, further the stability of the system, and not raise the credit cost).