THE ROLE OF SOFT LAW IN THE LEGALIZATION OF INTERNATIONAL BANKING SUPERVISION: A CONCEPTUAL APPROACH

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Abstract

The process of legalization and the role of international soft law in developing international banking supervisory standards are extremely important for assessing the feasibility of establishing effective international rules for banking supervision. This paper analyses the concept of legalization at the international level and how it may be applied to the development of international 'soft law' principles and rules that shape and constrain state behaviour in international banking supervision. Legalization includes a wide range of normative and institutional arrangements, from binding 'hard' law through various forms of non-binding soft law rules, to arrangements that share some characteristics of hard law but are not legally binding, though they have a normative impact on state practice. An analysis of the concept of legalization is necessary for determining whether non-binding international rules can be effective in reducing systemic risk in the international financial system.

Keywords: International baking law, international financial markets, international economic order, banks, international policy coordination and transmission

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1. Introduction

The process of legalization of international financial relations is occurring in most areas of the international financial system. Legalization includes a wide range of normative and institutional arrangements, from binding 'hard' international legal rules enforceable in judicial or quasi-judicial fora, through various types of non-binding 'soft law' rules, to arrangements that share some characteristics of hard law but are not legally binding, though they may have indirect legal effects. This spectrum of arrangements has occurred in other areas of international economic law, such as the efforts in the 1970s to establish a 'new international economic order' through United Nations General Assembly resolutions. In international financial relations, the legalization process has been driven in recent years by the creation of the World Trade Organization and by the continuing development of European Community financial regulation.

In the area of international banking supervision, the legalization process has involved various types of 'soft law' principles and rules that have been adopted by the national banking regulators of the G-10 countries under the aegis of the Basle Committee on Banking Supervision ('Basle Committee').[1] These soft law agreements have the overriding objective of reducing systemic risk in the international banking system and of promoting competitive equality amongst banking institutions. Consequently, they exhort their members to cooperate in the exchange of information and to coordinate regulatory activities in order to supervise effectively the transnational activities of banks and financial institutions. In 1988, the Basle Committee members adopted the *1988 Basle Capital Report* (the '1988 Basle Accords'), which urged the G-10 countries to adopt a set of guidelines on the capital adequacy of banks.[2]

Although the Basle Committee framework and its principles are non-binding in a legal sense, they constitute a form of international soft law for the supervision of international banking and financial institutions. This paper argues that the development of soft law principles within the Basle framework is an important step in devising international standards for the effective management of systemic risk. The paper describes the conceptual process of legalization that occurs in the development of international soft law rules. The paper then argues that a particular form of soft law is necessary in order to have effective international rules to govern the activities and operations of banking institutions. The development of effective soft law standards can be achieved through the legalization process, in which rules and standards become more precise and begin to have a normative impact on state practice. This may eventually result in a more developed system of international rules and obligations for the prudential supervision of banking institutions. At such a stage of development, the transaction costs of operating national regulatory systems without coordination by an international authority may become so great that states decide to delegate certain powers and responsibilities to an international financial organization that could perform the function of rule generation and surveillance of institutions and markets.

2. International Soft Law

2.1. Preliminary observations

Before analysing international soft law, it is necessary to describe some of the basic conceptual attributes of any legal system. These attributes can be generally described as *precision* of rules, an established level of *obligation*, and *delegation* of authority for compliance and enforcement, and *sanctions*. The notion of soft law may be used to describe a system of rules and principles in which these attributes are not fully developed. I use the term legalization to describe the process by which states at the international level pursue policies and agreements with other states that are initially non-binding in nature, but which may later develop into binding obligations that

reflect increased trust and coordination between states in particular issue areas. I will further analyse the role of international soft law in the legalization process in Part 3.

The role of soft law in the legalization process and its potential to crystallise into hard law at both the national and international levels is extremely important for determining the feasibility of establishing effective international rules for banking supervision. The concept of soft law will be discussed as an arrangement whereby states can voluntarily implement standards and practices that are generated on the international level through informal consultations and negotiations amongst the world's leading banking and financial regulators. These non-binding international norms shape and constrain the regulatory practices of the major nation states and may eventually be incorporated into national law in a manner that respects their sovereignty and independence.

International soft law refers to legal norms, principles, codes of conduct and transactional rules of state practice that are recognised in either formal or informal multilateral agreements.[3] Soft law generally presumes consent to basic standards and norms of state practice, but without the *opinio juris* necessary to form binding obligations under customary international law. States often prefer to enter such non-binding agreements in rapidly developing fields of state practice, such as international financial services, telecommunications, and the environment. Based on these characteristics, soft law may be defined as an international rule created by a group of specially affected states which had a common intent to voluntarily observe the content of such rule with a view of potentially adopting it into the national law or administrative code. Another important characteristic of soft law is that it leaves the interpretation and application of rules to the parties in a context of political bargaining.

As we consider the concept of international soft law throughout this paper, it is important to remember that the Basle Committee has no legal status as an international organization, and otherwise has no

legal capacities to promulgate 'hard' law. The Basle Committee is merely an informal group of bank supervisors of a limited number of industrialized countries who meet periodically under the auspices of, and subject to the guidance of, the G-10 Central Bank Governors. Moreover, collectively and individually, the Committee's members have no legal capacity to create any binding legal obligations from this group, nor to bind their respective governments. Indeed, since its inception in 1974, the Basle Committee has been very careful to articulate that it is a non-legal institution that makes non-legal pronouncements.

2.2. Soft law and the inadequacies of public international law

An analysis of the concept of international soft law must be done within the context of an examination of the sources of public international law. There is a growing recognition of the inadequacy of the traditional sources of public international law, as enumerated in Article 38 (1)(a)-(d) of the Statute of the International Court of Justice,[4] to explain, describe, and categorise the increasing complexity of many areas of inter-state relations.[5] Indeed, the limited scope of the sources of public international law in Article 38(1) has become especially acute in explaining the complexity of international financial relations – not to mention areas like the environment, telecommunications and technology, and the regulation of multinational corporate groups.[6] The enormous expansion of activities by international organisations and non-governmental organisations, along with shifts in how states conduct relations in which informal, non-legally binding agreements, are becoming the most important factor in mediating and regulating relations amongst states. As a result, the international lawyer is confronted with an unprecedented proliferation of international non-conventional or non-treaty agreements, which have been brought about by states and international organisations and are intended to have, and are having, the effect of influencing state conduct and behaviour in a*permissive*, *prohibitive*, and *prescriptive* way. Traditional sources of public international law are inadequate to explain this state practice as

legally relevant, even though such instruments are intended by their authors to influence state conduct.

The existence of international rules – in a true legal sense – outside traditionally recognised legal sources (*i.e.* treaty or uniform customary state practice) has proven controversial amongst international economic lawyers. In the context of international financial regulation, a particular instrument or report may become soft law if it has at least a *quasi-legitimacy* to it derived from the collective intent of those involved in the preparation of that instrument or report, and that the standards and principles advocated therein ought to be observed.[7]

2.3. International soft law in banking supervision

Many international lawyers hold a condescending view of soft law – especially in the banking law context – and do not recognise its legal significance.[8] Some view the concept itself as a classic example of a contradiction in meaning. Others view international soft law as a futile effort to overextend the limits of public international law so that more areas of international relations can be rendered juridical. However, it is recognised in many areas of inter-state relations that 'hard' law may not be a preferable mechanism for regulating state behaviour. Indeed, international soft law can arise from agreements that would otherwise not be possible in a treaty or other enforceable agreement because of fundamental differences amongst states involving their reluctance to be bound by specific legal obligations in technical areas of law that significantly impact on national interests.

The usefulness of soft law as a contribution to the growth of international legal principles in banking supervision is that the generation and adoption of soft law rules and principles can produce over time an accretion of hard law. In addressing whether certain IMF exchange arrangements should constitute soft law, a leading public international lawyer defined soft law in the international banking context as:

[T]he essential ingredient of soft law is an expectation that the states accepting these instruments will take their contents seriously and will give them some measure of respect. Certain other elements are postulated. First, a common intent is implicit in the soft law as formulated, and it is this common intent, when elucidated, that is to be respected. Second, the legitimacy of the soft law as promulgated is not challenged. Third, soft law is not deprived of its quality as law because failure to observe it is not in itself a breach of obligation. Fourth, conduct that respects soft law cannot be deemed invalid.[9]

Based on this view, the essential elements of international soft law are: (1) whether there is in fact a common intent amongst the parties that certain principles be implemented and observed, and (2) whether it is desirable to transform these principles into hard law. In order to accomplish the latter, one must take into account the various interconnections between the soft law norms and the national and regional processes by which they may be implemented into 'hard' law.

3. The Legalization Process: The Role of Soft Law Norms

This paper posits that *legalization* is a form of institutionalization defined along three dimensions: obligation, precision, and delegation. *Obligation* means that norms are not only binding (on states and other actors) but are *legally* binding, bringing to bear all the general rules, procedures and discourse of international law. *Precision* refers to the definiteness, elaboration and density of legal rules. Precision is especially important in international law because of the relative absence of courts and similar devices for applying and clarifying broad legal principles. *Delegation* refers to the acceptance of third party authority for dispute resolution, rule interpretation,rule-making and related tasks. Courts are the obvious example, but similar authority can be delegated to non-judicial, dispute-resolution tribunals, as well as to regulatory agencies and other political bodies.[10]

According to this theory, each of these attributes is a matter of degree and gradation, not a rigid dichotomy, and each can vary independently. The degree of *obligation* can be varied, for example, by framing normative commitments as mandatory, contingent, or hortatory; by introducing softening devices such as escape clauses and reservations; and at the extreme by explicitly removing agreements from the realm of international law. *Precision* is varied through the drafting of legal agreements, from the highly specific and elaborated rules in recent treaties on arms control and economics (e.g. WTO and NAFTA) to vague statements of principle. *Delegation* is varied by fine-tuning the structure and powers of governing institutions, from judicial institutions such as the European Court of Justice, through binding and non-binding arbitration, administrative rulemaking, authoritative interpretation and alternative dispute resolution, all the way to 'pure politics'.

Legalization, then, is in fact a multi-dimensional continuum. It ranges from the complete absence of law (an ideal type not found in practice), where none of the three properties exists, through various forms of 'quasi-' and 'soft' legalization involving different combinations of properties, to 'hard law' (another ideal type), in which all three properties are maximized. Where international (or municipal) governance arrangements fall on this continuum varies widely between issues, between countries and over time.

Viewed in this way, it becomes apparent that legalization is not a binary phenomenon: law or nonlaw. An enormous variety of international governance arrangements partake of some or all of the elements of legalization, in different combinations. In contrast, many lawyers tend to believe that arrangements further down the continuum are essentially failed attempts to achieve the hard law that the parties really wanted, or should have wanted. According to this view, the points on the continuum (various combinations of the three properties) are way stations on the road to hard law. Both characterizations may be accurate, yet in many circumstances soft legalization is the optimal instrument of governance. For example,

soft legalization is a prime tool of compromise and learning. It also functions like the European doctrine of subsidiarity that reserves authority to national decisionmakers, an allocation of jurisdiction that may be desirable for all the reasons adduced in support of federalism as a constitutional principle.

With this definition based on three components (obligation, precision, and delegation), one can construct a simple chart of the continuum of legalization by assigning each component one of two values: High or Low. The chart would then include eight rows, each representing a level or type of legalization (see Table 1). Row I, at the top, would represent the situation in which all three components are High; Row VIII, at the bottom, would represent the situation in which all three are Low. The upper boundary of this chart would be the 'ideal type' of a fully developed legal system, with all three properties maximized; the bottom boundary would be the 'international anarchy' defined by many international relations scholars,[11] where all three properties are absent. Several rows on the chart are particularly interesting because they depict the trade-offs involved in designing more-or-less 'soft' legal institutions, which may nevertheless be optimal regimes for certain types of international governance.

First, agreements or regimes represented by Rows I and II differ only in the precision of their governing rules. With binding legal rules, and, especially, high delegation – as in the EU and WTO – this difference equates to the choice between 'rules' and 'standards,' much discussed by legal theorists.[12] The choice involves many practical and jurisprudential considerations, but both alternatives are consistent with high legalization.

Second, the institutions represented by Rows I and III differ only in the degree to which authority is delegated to international institutions. Row III – with precise, legally binding rules but a low level of delegation – represents a large number of international agreements, such as modern arms control agreements. These agreements are not usually thought of as part of 'soft law', but they should be, since they

leave the interpretation and application of rules to the parties in a context of political bargaining.

Third, Row V represents legally binding rules that are relatively imprecise and involve low delegation. Examples include the Vienna Convention for the Protection of the Ozone Layer. Although judicial or quasi-judicial organs do not play a significant role in agreements of this type, such agreements frequently utilize political institutions, ranging from consultative fora to full-fledged international organizations.[13]

Fourth, Row VII represents instruments that enunciate precise and often highly elaborated norms but are not legally binding and do not involve delegation to legal institutions. Instruments of this type are common, and often prove difficult for scholars and commentators alike. They include the General Assembly resolutions calling for a new international economic order, Agenda 2000, approved at the Rio Conference on Environment and Development, and, for our purposes, the 1988 Basle Accords and other statements of regulatory good practice by the Basle Committee on Banking Supervision.

Beyond its value as a typology, this table suggests a link between particular forms of international legalization and corresponding processes for rulemaking and application. For example, the traditional process of diplomacy covers the entire spectrum of legalization but appears to lead most often to legally binding norms with low delegation. Issue-oriented frameworks and statements of principles, such as the 1988 Basle Accords, where most delegates favour particular outcomes, frequently produce non-binding instruments with high levels of precision and elaboration. Similarly, informal arrangements to cooperate in the exchange of information or coordination in the regulation of transnational entities are often reached by infra-state actors[14] that may or may not be legally binding, but they almost never include high levels of delegation.[15]

3.1. Strategies for adopting international standards

The chart also suggests a number of strategies for national actors seeking international regulation. National actors that are politically influential in narrow issue areas, such as the high technology industries that support the WTO 'TRIPS' (Trade Related Aspects of Intellectual Property Rights) agreement, will rapidly obtain high levels of legalization. Politically weaker actors, however, may have to choose a more indirect route that follows a softer form oflegalization. In this way, soft law is understood as a point on a continuum en route to hard law, but in a strategic sense. The G-10 national banking authorities who meet periodically at Basle may fall into this category of politically weak actors because they do not have the authority to bind their governments, in a hard law sense, to the collective decisions they adopt at Basle. Instead, they approve 'frameworks' or statements of principles that form the basis for subsequent efforts at the national and regional level to adopt more precise rules and norms that elaborate the broader principles reached at the international level.

This analysis suggests three main approaches: (1) work first for the elaboration of precise non-binding norms (e.g. 1988 Basle Accords), then utilise those norms in political arenas, trying to build a consensus for stronger legalization; (2) press first for a legally binding rule, even at the expense of precision and delegation, then work for its elaboration and institutionalisation (e.g. Montreal Protocol on Substances That Deplete the Ozone Layer, and the later protocols that strengthened Vienna Ozone Convention); and (3) first involve an international organization that can research an issue and keep it on the political agenda, easing the way to legalization later on. These strategies could also be combined.

The second approach would probably be unsuitable as a route to legalising the Basle framework and establishing an international authority to regulate and supervise international banking activities. In contrast, a combination of the first and third approaches may be appropriate as a route towards legalization of the Basle standards with

the eventual goal of delegating supervision for compliance to an international supervisory authority. The elaboration of precise norms and rules of international supervision could continue under the auspices of the Basle Committee in conjunction with other international financial organisations that have expertise in the prudential supervision of transnational financial entities (e.g. IMF, IOSCO, IAIS, and IASF). These international organisations[16] could also play a role by promoting the concept of more effective international supervision as a desirable political objective that involves the adoption of rules and standards that are precise and binding and involve delegation to an international authority for effective supervisory compliance. Such supervisory compliance could also involve national efforts at enforcement.

4. Overcoming the Obstacles: Some Theoretical Perspectives

The central conundrum in analysing the process of legalization and adopting an appropriate model of soft law is why different types of legalization apply in different circumstances. The first steps towards an answer are organised in two broad functional categories: transaction costs and sovereignty costs.

4.1. Transaction costs

The general perspective that I have adopted treats various forms or levels of legalization as rational responses to the contracting environment. Similar problems facing any actors negotiating a contract will often make softer arrangements desirable. One set of problems falls under the heading of *transaction costs.* Complexity of the issues, difficulties in negotiating and drafting, the number of participants and similar factors make it difficult for governments – as it would for individuals or corporations – to agree on precise, binding and highly institutionalised commitments. Softer commitments provide many of the coordinating benefits of legalization, and may be easier to agree upon.

Another set of contracting problems concerns the pervasive uncertainty in which states and other international actors must operate. Many international agreements can affect national wealth, power, and autonomy. Yet, governments can never foresee all the contingencies that may arise under an agreement. They are never certain that they will be able to detect cheating or other threats. They cannot even be sure how they will react to particular contingencies, let alone how others will. These problems are exacerbated by the relative weakness of the international legal system which cannot fill gaps and respond to new situations as easily as domestic legal systems can.

One way to deal with uncertainty is through soft delegation: not to courts, but to political institutions, subject to continuing oversight and control, that can produce information, monitor behaviour, assist in further negotiations, mediate disputes and produce interstitial or technical rules. Another is through imprecise norms that provide general guidelines for expected behaviour while allowing states to work out more detailed rules over time. A third way involves crafting relatively precise, but nonbinding, rules that allow actors to experiment by applying the rules under different conditions while limiting unpleasant surprises. All these approaches have costs, including their limited ability to regularise behaviour. Yet on balance they are frequently seen as beneficial, permitting states to achieve some immediate gains from cooperation while structuring ongoing learning; this is a political process that can take states further along the path of institutionalisation of obligations.

4.2. Sovereignty costs

The process of soft legalization offers states a variety of institutional ways to limit ‘sovereignty costs’. Sovereignty costs may arise for psychological or symbolic reasons, or they may have a material basis where by supranational decisions could be detrimental to national interests. Sovereignty costs appear to be highest when authority is transferred to supranational entities. State resistance to superior authority is also evident in domestic settings, but it is particularly

acute at the international level. Soft legalization, especially in the form of limited delegation, allows states to obtain many of the advantages of full legalization while limiting sovereignty costs.

The concept behind the term *sovereignty costs* is not new.[17] But thinking of limitations on sovereignty as a cost leads us to focus on situations in which the costs may vary, suggesting at least a partial explanation for the varieties of legalization discussed above. For example, sovereignty costs clearly vary between issues. They are especially high in areas affecting national security (though a group of states with an external adversary may face greatly reduced sovereignty costs amongst themselves), moderate in areas such as economics and environmental protection, and low in technical areas where national interests of participating states are closely aligned. This accords with the incidence of legalization.

Sovereignty costs also vary across states. Small states would seem to have low sovereignty costs on average, since they already have less autonomy than large states and are dominated quite often within the international system by the economic and political objectives of hegemonic or leading states. Indeed, they may have negative sovereignty costs, since legal arrangements offer them protection from powerful neighbours. Large states, by contrast, would appear to have less need of legalization, though in fact they might seek it as an efficient way to structure governance where they can dictate the rules and exert political control over their implementation. Soft legalization can bridge the gap between the weak and strong states. This is especially true of the type of legalization that is represented by Row III of the above chart, where norms and rules are binding and relatively precise, but authority for compliance is delegated to national political institutions. In this situation, weak states are protected by legal rules that fix expectations of behaviour, while strong states maintain influence in political bodies where they can shape future developments.

Row VII of the table describes the Basle framework, where norms are relatively precise, but nonbinding, and authority is delegated to the national political institutions to ensure compliance. In this way, sovereignty costs are minimised. In the Basle context, this is a necessary prelude that allows states – weak and strong alike – to regularise their behaviour and comply with international soft law rules by adopting national regulation. As more countries adopt these rules, they attain a certain binding, hard law status. This provides the necessary political and legal basis at the national level that recognises the benefits of delegation to an international authority to ensure compliance. This is where an international supervisory authority could play a role in monitoring compliance, proposing rules of conduct, and orchestrating enforcement at the national level.

5. Conclusion

In recent years, the increasing magnitude and occurrence of major financial crises in global markets has led many experts and policymakers to recognise the importance of having effective international financial supervisory standards to supplement national regulation of financial markets. The determination of an optimal set of international rules requires an assessment of the conceptual attributes of a legal system, namely, precision, obligation, and delegation. The process of legalization involves various combinations of these properties along a multi-dimensional continuum, ranging from absence of law, where none of the three properties exist, through different forms of 'soft' legalization, to 'hard law' (fully-legalized system), in which all properties are maximized. This paper argues that international soft law can only be adequately understood in this dimension.

Along this continuum of legalization, the process of devising international norms and rules to regulate international banking activity must involve a form of international soft law that has precise, non-binding norms that are generated through consultations and negotiations amongst the major state regulators. This particular form

of international soft law provides the necessary political flexibility for states to adopt international rules and standards into their national legal systems in a manner that accommodates the sovereign authority of the nation state. States could then move forward through the process of legalization by building on the collective intent of the major economic powers to develop binding international rules for banking supervision. States could potentially delegate the adjudication of violations to an international financial authority, but states would retain ultimate enforcement authority, including sanctions.

Moreover, the paper suggests that, although the delegation of authority to an international financial supervisor would result in sovereignty costs for nation states, the reduction in transaction costs achieved by improved coordination and surveillance by an international supervisor would produce benefits exceeding the loss of national authority. Indeed, states could derive an overall benefit in the effectiveness of their national regulatory functions because of the increased efficiency resulting from their delegation of powers and supervisory oversight to an international regulator and their increased coordination with other states.

Notes

1. See *International Convergence of Capital Measurement and Capital Standards* (July 1988: '1988 Basle Capital Report'). See also Survey of Banking in Emerging Markets, *Economist*, 12 April 1997, p. 17 (emphasising the need for a financial cross-border patrol, similar to global policing).

2. These guidelines eventually became known as the Basle Accord on Capital Adequacy. See J.J. Norton, *Devising International Bank Supervisory Standards* (1995) 210-219. They had two principal objectives: (1) to require banks to maintain higher levels of capital reserves by maintaining capital-to-asset ratios that are 'risk-based'; and (2) to establish a level-playing field so that a bank based in one country would not receive a competitive advantage by enjoying a lower capital adequacy requirement than a bank based in another country (*ibid*).

3. See discussion of soft law in K.C. Wellens & G.M. Borchardt, 'Soft Law in European Community Law', 14 *Eur L. Rev.* 267 (1989).

4. See Art. 38 (1)(a)-(d), ICJ Statute. The traditional sources of public international law as stated in Article 38(1) are:

   (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
   (b) international custom, as evidence of a general practice accepted as law;
   (c) the general principles of law as recognised by civilised nations;
   (d) … judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

5. See discussion in K.C. Wellons & G.M. Borchardt, *supra* note 3, pp. 268-270.

6. See J. Dine, *The Law of Corporate Groups* (2000) pp. 17, 43-45.

7. See Norton, *supra* note 2, pp. 216.

8. D. Thurer, '"*soft law*" eine neue Form von Volkerrecht' *Revue de Droit Suisse* (1985) 429, p. 432.

9. Sir J. Gold, 'Developments in the International Monetary System, The International Monetary Fund and International Monetary Law Since 1971,' [1982] *Recueil des Cours* 107, 156 *et seq*.

10. I omit *enforcement* from my model because I assume that an international system of regulatory governance must rely on enforcement by national or local authorities.

11. The most complete discussion of the concept of international anarchy can be found in H. Bull *The Anarchical Society* (1977) Ch. 2.

12. See K. Sullivan, Foreword: The Justices of Rules and Standards', (1992) 106 *Harv. L. Rev.* 22; L. Kaplow, Rules versus Standards: An Economic Analysis, (1992) 42 *Duke L. J.* 557.

13. Row V draws attention to the many roles played by predominantly political organizations in legal contexts, including the elaboration, interpretation and implementation of rules. See. K.W. Abbott & D. Snidal, "Why States Act Through Formal International Organizations" (1998) 42 *J. Conflict Res.* 3.

14. I use the term infra-state actors to refer to agencies of national governments that enter into international agreements and form transnational networks to exchange information and coordinate regulation.

15. The Basle Concordats are an example in which national banking authorities have agreed informally to cooperate in the exchange of information, and to coordinate the supervision of transnational banking activities based on principles of consolidated supervision. See K. Alexander, 'International Supervisory Framework For Financial Services: An Emerging Regime for Transnational Supervision' 2000 *Journal of International Banking Regulation* 133, pp. 139-40.

16. I use the term 'international organisation' loosely to include organisations composed of infra-state actors and which may not have legal personality on the international level. See Alexander, *ibid* p. 143.

17. See Abbott & Snidal, *supra* note 13, pp. 10-12.

TABLE

TABLE 1			Obligation	Precision	Delegation
1	Fully-Developed Legal System/ Nation States		H	H	H
2	Highly-Developed Legal System / WTO, EU & NAFTA		H		H
				L	
3	Highly-Developed – Arms Control, Montreal Protocol/Environment		H	H	
					L
4	Medium -			H	H
			L		
5	Medium - Ozone Layer Protocol		H		
				L	L
6	Low Legalization				H
			L	L	
7	Low – Basle Accords/ Concordats/ IOSCO/FATF			H	
			L		L
8	Minimal – Anarchy Theory				
			L	L	L

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