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Excerpt
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A Transformative Forty Years

We don't like publicity. We prefer, I might say, our hidden secret world of the supervisory continent.[1]

—Basel Committee on Banking Supervision Chairman Huib J. Muller (1993)

International bodies derive legitimacy, however, only from their membership. They have no ability to promulgate regulations with the force of law.[2]

—Securities and Exchange Commissioner Kathleen Casey (2010)

One of the great achievements of international relations in the past forty years has been the transformation of the regulation of financial institutions. Not so very long ago, there was no way for regulators or investors to know what financial institutions were doing when they started doing business across borders. Today an international process sets the most important rules under which any financial institution of any size operates. It is a story about a new form of global governance – the regulatory network – that has provided detailed, organized, and binding oversight over the wild and woolly financial markets without adhering to almost any of the traditional mechanisms of international or domestic governance. To create the institutions of international financial regulation, no treaties have been signed. There is no bureaucratic code overseeing things.

And yet banks, shadow banks, insurers, and investment companies are now governed globally. This global oversight enjoys respect, compliance, and an increasing degree of order at a time when nations like the United States have turned away from their free trade commitments and worked to reverse international efforts to police war criminals or stop climate change.

Not every effort to come up with standard rules for the oversight of our financial markets has proceeded at the same pace or enjoyed the same kind of success, but the contributions and changes are undeniable. Regulators have gotten together and agreed to do things in the same way, and they have figured out a way to make those agreements stick. The result is a new model of international governance, one that makes policy on the global level and that implements that policy locally.

Because of this governance, banks have to finance themselves more by selling shares to investors, and less by borrowing money from depositors. They can take on risk through leverage, but the global regime has limited the amount of permissible leverage. Insurance companies also face an internationally consistent set of capital requirements. Capital markets regulators have agreed on a program of mutual assistance that is designed to allow them to ferret out fraud, no matter in which part of the world it starts. The global anti-money laundering and counterterrorism finance regime has supersized compliance departments in financial firms across the world. The big lenders to the developing world – the World Bank and International Monetary Fund – have insisted that their client countries adopt common approaches to deposit insurance, derivatives regulation, the handling of bankrupt financial firms, and a host of other financial policies on which regulators have agreed to agree.

This book tells the story of a successful international cooperation, realized through consistent interaction by regulators with other regulators. It is an account of technocratic governance, but one that has matured into a form of supervision that follows a consistent process, that entertains feedback from the public, that stands for some bedrock values, and that has started to open itself up to input from poor nations as well as wealthy ones.

One might think that this story of progress would be threatened by the new economic and international policies of less globally minded elected leaders. America's current presidential administration has withdrawn from numerous formal and informal international commitments. It has evinced skepticism of trade deals, and upped the scrutiny of foreign investment in the United States for national security reasons.

But instead of reducing regulatory cooperation with foreign bureaucracies, even policymakers inclined to focus on American first have continued to embrace international financial coordination.

President Donald Trump's choice for the chairmanship of the Federal Reserve Board, Jerome Powell, has describe international regulatory cooperation as "essential."[3] Randal Quarles, Trump's choice for the Federal Reserve Board's vice chairman for financial supervision, has observed that "America's active participation in the Financial Stability Board," the network to which all of the other networks belong, "is important to our nation."[4] He has been so enamored of the organization that he successfully campaigned to be appointed as its chair.

The administration's Treasury Department has stated that it "generally supports efforts to finalize remaining elements of the international reforms at the Basel Committee," the global banking regulatory network.[5] The Treasury Secretary in 2017 issued a statement of support for the coordination of shareholder financing requirements for banks.[6] The chair of the government's commodities and derivatives regulator, Christopher Giancarlo, has urged his European counterparts to "realize the dreams of cross border regulatory coordination and make it a reality."[7]

Regulatory cooperation, as it turns out, is "sticky." Perhaps because it works, and perhaps because four decades of active regulatory cooperation has created momentum, the development of common standards for the financial markets has proven to be a hard habit to break. The regular consultation and promulgation of rules in consultation with foreign regulators has proven to be a stabilizer of policy across administrations in the United States, and between different countries with varying leaderships across the world.

This general support for international financial regulation may suggest that the process has managed to convince even relatively deregulatory financial supervisors of its value, or that these regulators recognize that the globalization of finance has left them with no choice but to participate in a global effort to oversee it. At a minimum, it appears that regulators have developed a taste for international financial regulation that is relatively stable across administrations.

The global governance of finance is not perfect. It has not always been transparent, and it has been developed by rich countries acting in concert, without much representation from anyone else. It is technocratic in a good sense, but also has been made at a far remove from the observation or participation by the man in the street.

Whatever its faults, it serves as an example of governance without law. The big multilateral treaties of the twentieth century – the United Nations charter, the Global Agreement on Tariffs and Trade, the World Trade Organization – look impossible to duplicate in the twenty-first century. If cross-border cooperation is to be sustained, it will have to be sustained in a different way. The global governance of financial regulation suggests a path forward to those who would deal with the increasingly global problems in a multinational way. This book shows how that process has developed and offers some lessons, both salutary and cautionary, for how it might be developed elsewhere in the future.

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In 1974, the world had many internationally active financial firms but no set of international rules and no global regulator to police how they should operate outside of their home countries. A German bank could enter into foreign-exchange swaps with foreign institutions, receiving Deutschmarks in the morning in Frankfurt in exchange for the promise to pay dollars that it would deliver later that same day in New York, perhaps six hours later, without worrying about violating some international convention on foreign exchange. An Italian banker could finance the purchase of an American bank by borrowing from Italian banks he controlled, then paying back the loans with capital siphoned from the US bank, secure in the knowledge that there was no money-laundering treaty to hinder him, and no international organization to track the transactions and prosecute him.

Bank regulators in that year could not always see proliferating international connections, and events underscored the consequences of this lack of transparency. In 1973 and 1974, a mid-tier Cologne bank, Herstatt Bank, did engage in foreign-exchange trading, and suffered significant losses in volatile markets, particularly for the dollar, which had recently been freed to float on international markets. On June 26, 1974, German regulators swooped in at the end of the German business day and forced Herstatt into liquidation – before it could deliver dollars in New York in exchange for the Deutschmarks it had received before its seizure. The broken foreign exchange trades in New York were a consequence not just of the failure of the bank but also of the way German regulators took it over. The result was a systemic failure that rippled through the global economy, grinding foreign exchange markets all over the world to a halt. The perilous situation generated a term that describes the possibility that a trade may not settle that is still taught in finance classes, "Herstatt risk."

In 1972, Long Island-based Franklin National Bank, another medium-sized bank, was taken over by a shadowy Italian banker named Michele Sindona, who had ties to the Vatican Bank and Italian organized crime. Sindona too played in the forex markets, losing large sums. To pay for these losses, Sindona drained Franklin's capital, triggering a run by depositors in mid-1974 and forcing the bank to borrow from the Federal Reserve and, subsequently, from the Federal Deposit Insurance Corporation (FDIC) – at the time, an unprecedented step. US regulators, unable to see how the bank's foreign owner was deploying its assets, felt forced to take. Sindona was eventually convicted in the United States of fraud and extradited to Italy, where he died of cyanide poisoning in prison.

The dramatic collapse of these two banks forced regulators to address the accelerating globalization of finance. The effort that resulted has been so consequential that even the largest banks in the world have felt its effects, often in painful ways. In 2010, Jamie Dimon, the chief executive officer of JPMorgan Chase & Co., one of America's largest banks, characterized the work that began after the collapses of Herstatt and Franklin as "blatantly anti-American."[8] In 2016, Xavier Musca, the Deputy CEO of the major French bank Credit Agricole, protested, "We need to stop this process."[9]

However, others insist that the internationalization of financial oversight has been a boon to prosperity. Jean-Claude Trichet, the former head of the European Central Bank and a former governor of the Bank of France, contended that through regulatory internationalization, "we eliminate uncertainty in a large area, which is a major contribution in consolidating the global economy."[10]

This book tells the story of how we moved from a world in which there was no way for regulators or investors to grasp the risks that rogue financial institutions were taking abroad to one in which international processes govern the most important rules under which financial institutions of any size operate. It is a tale about the creation and evolution of a new form of global governance –

the regulatory network – that has provided detailed, organized, and binding governance without adhering to the traditional mechanisms of international or administrative law. The centrality of the regulatory network in setting policy for today's global financial sector raises a question: Is this a form of governance that could or should be pursued elsewhere, instead of more traditional steps such as concluding treaties between nations and establishing tribunals? The rise of the regulatory network poses a traditional problem for lawmakers of legitimacy and accountability that is exacerbated by regulators' informal and technocratic approaches to dealing with problems that cross borders.

Much of what has taken place in international financial regulation began as an effort to solve problems of coordination that appeared to be intractable under international law. In 1947, with the world still recovering from World War II, twenty-three largely Western countries entered into the first multilateral trade deal, the General Agreement on Tariffs and Trade, and created the first two global international financial institutions, the World Bank and the International Monetary Fund. But these nations found it impossible to make progress on the creation of an international financial organization, and abandoned a modest effort to do so.

There is still no international financial organization or broad multilateral treaty that outlines how financial firms should be treated when they do business abroad. But there is a great deal of international financial regulation. Today, the networked institutions of international financial regulation continue to promulgate a dizzying array of standards, agreements, best practices, principles, and rules. Intertwined with these substantive efforts to coordinate the global regulation of finance has been the attempt to improve procedures followed by the coordinators. As this regulatory network has become established as the principal mechanism for coordinating global financial regulation, it has imposed procedural regularity and political oversight on a process that previously had neither.

The evolution, both procedural and substantive, of this regulatory network makes for a compelling story about the growth of a global regulatory enterprise with few peers. Traditional efforts to deal with cross-border externalities of finance, which were limited in their ambitions and range, have been cast aside. In their place, a new order has emerged over more than half a century that is hierarchical, procedurally regular, and politically supervised.

The emergence of this "legalish" system of global financial oversight is shaping up to be one of the principal accomplishments of modern international governance – one that has developed through regulation and regulatory cooperation rather than through more traditional mechanisms of public international law. But while regulatory cooperation involves a negotiated sort of informality that lawyers might easily dismiss as insufficiently law-like, the way cooperation has evolved, as this book chronicles, suggests something quite different.

Political supervision, increasingly regularized output, and bureaucratic order are familiar phenomena to students of the modern state. They are the fundaments of regulatory practice. International financial regulation works like an administrative agency stretched onto a global multilateral context.

This "agencification" of international financial regulation offers an alternative to traditional public international law. It creates a two-step process for legal obligation. The international context of financial regulation – the networks of regulators where policy is made – is the first step. It creates no binding obligations; those obligations come, if at all, after the international process has ended and financial regulators have returned to their home countries to complete the second step, which is making domestic administrative rules into binding law.

This hardly makes the first, international part of international financial regulation superfluous. In fact, the first step in international financial regulation is the most interesting. It is the source of the principles of international financial regulation. It is growing and developing in its own right. And it has added hierarchy, structure, and distributional consequence since the financial crisis of 2008.

Post-crisis financial regulation has resulted in institutionalization along hierarchical lines, with a political overseer, a regulatory supervisor, and a group of task-specific but increasingly coordinated regulatory networks making the rules for banks, capital markets participants, insurers, and other financial intermediaries. What those regulators do, moreover, is both procedurally regular and increasingly based on a few organizing principles that mimic fundamental principles espoused by hard-law international organizations, such as the standard that foreign businesses should be treated in the same way that domestic businesses are treated.

The transformation of international financial regulation has not only entailed the imposition of procedural regularity, bureaucratization, and a degree of political oversight. It has also created an increasingly tractable and definable enterprise, at least if defined through a legal lens.

In conjunction with these post-crisis reforms, there is emerging an identifiable commitment to a variety of legal principles that undergird particular decisions made by international financial regulators. At least six principles can be identified in the organization and institutionalization of the post-crisis financial regulatory settlement. Although many of these principles are rooted in the cooperation that existed before the financial crisis, the flurry of activity after the crisis accentuated them.

The legal principles include a commitment to *national treatment*, meaning that domestic and foreign financial intermediaries should be subject to roughly similar rules, and a *most-favored nation* (MFN) principle identifiable through the consensus practices of regulatory organizations that govern the myriad forms of finance. These principles are institutionalized through *rulemaking*, rather than adjudication – international financial regulation sets its standards in advance, without the assistance of a tribunal. Those standards are administered with adherence to a principle of *subsidiarity*, whereby each agency engaged in the global financial regulatory architecture is charged with implementing the rules and standards agreed to internationally in its own domestic jurisdiction, without international direction. That subsidiarity is paired with a *peer-review* process meant to check implementation decisions of member agencies in lieu of a third-party dispute resolution, such as that offered by an international tribunal.

All of this evinces an approach that prefers the commitment of the institutional form of the *network* over all others – a final, discernible legal principle that governs and characterizes international financial regulation. Anne-Marie Slaughter has said that networks are "really any collection of people or things that are linked together on an ongoing basis."[11] In financial regulation, networks are comprised of agencies, are not disciplined or authorized by governmental treaties, and meet informally and regularly to handle problems posed by globalization in their task-specific issue areas. But they are not creatures of formal public international law. Any effort to create a more formal treaty-based organization to ensure that financial regulation is accomplished globally and consistently has so far been eschewed in favor of an increasingly elaborate network. Global financial regulation, while idiosyncratic, has become a form of the rule of law. The problem for lawyers – and this is a problem that has long characterized all sorts of international law – is that the rule of law embodied by global financial regulation has few of the formal characteristics of the rule of domestic law, ranging from promulgation to enforcement.

In other ways, of course, the bedrock principles espoused by the increasingly global outlook of agencies involved in international financial regulation are unique. It is useful to think of the transformation of financial regulation from something domestic to something international; from something devised by supervisors and central bankers of individual countries in isolation to something designed in coordination through a multinational and institutionalized process of network regulation; from something created by backroom deals to something created in the way that law is created, through the orderly promulgation of rules through a recognized process. Moreover, this soft law may be more effective than many hard-law instruments, making it particularly interesting to compare it to formal international law.

Some analysts – certain sorts of realists, for example, or those persuaded that international law is rooted exclusively in state interaction sanctioned by treaty or custom – may question the utility of this soft law. These skeptics compare global financial regulation to trade law, another central form of economic regulation on the global stage, and find it wanting. After all, trade law features a treaty, a court, the offices of foreign and trade ministries, and it is undoubtedly as binding as international law gets. More to the point, it appears to enjoy a substantial degree of compliance. By offering a process of dispute resolution, the broad principles of trade law (principles that are not unfamiliar to financial regulators, as we shall see) can be applied to specific contexts, such as whether Japan or Korea can tax shochu differently than vodka or gin without violating the national-treatment principle, or whether a Canadian automobile production and import agreement that privileged incumbent car manufacturers discriminated in favor of those manufacturers' countries of origin in violation of trade's MFN principle.

Global financial regulation is largely incapable of rendering such fine-grained legal pronouncements, though occasionally it does get quite detailed. Moreover, soft law is not international law as Section 38 of the statute creating the International Court of Justice (ICJ) – the paradigmatic definition of public international law – defines it.[12]

It is, however, a form of law that occupies many lawyers' time and attention – perhaps there are even more international banking lawyers than there are lawyers who practice "hard" trade law – and financial regulation exemplifies this sort of soft law. It would not surprise some of the thousands of lawyers engaged in global financial regulation that the work they are doing has something to do with their professional qualifications. Those lawyers include private-sector luminaries such as Rodgin Cohen, the former chairman of white-shoe law firm Sullivan & Cromwell, who has weighed in on Basel's international capital adequacy rules in the pages of *Bloomberg Businessweek* and CNBC, as well as on behalf of his clients. As for public-sector lawyers, Christopher Cox, when he chaired the Securities and Exchange Commission, said that international work "easily comprises over half of my time and responsibilities."[13]

All of this amounts to soft law that nonetheless meets a standard definition of what international economic law is supposed to do. The Restatement (Third) of International Law provides that:

> The law of international economic relations in its broadest sense includes all the international law and international agreements governing economic transactions that cross state boundaries or that otherwise have implication for more than one state, such as those involving the movement of . . . funds.[14]

International financial regulation, with no assistance from treaties, has provided the rules for the movement of funds that have implications for more than one state. It is a crucial variant of the "law of international economic relations" of which the Restatement speaks, without being the sort of law that the other parts of the Restatement are supposed to define and govern.

That apparent contradiction lies in this fact: international financial regulation makes no pretense to be law. As Peter Cooke, the regulator perhaps most responsible for the work of the committee has said, rather representatively, "[T]he Committee does not possess any formal supranational supervisory authority. Its conclusions do not have, and were never intended to have, legal force."[15]

Some have observed that the sort of network, soft-law governance offered by international financial regulation might present international lawmakers with a choice to regulate informally or to pursue a legal regime governed by the formal strictures.[16] The legal scholar Kal Raustiala has predicted that this alternative might present a challenge to public international law that could "reduce relative importance or 'share' of cooperative activity governed by treaties."[17] Others have agreed.[18]

But sometimes alternatives, at least in legal regulation, are not as different as they might otherwise seem. We can learn from the similarities between putatively different international financial regulation and public international law. In three distinctive ways – in its reliance on debate and negotiation for principles, in its purpose as a coordinative exercise, and in its reliance on domestic institutions for legal enforcement – international financial regulation shows how cross-border legal systems can work.

Reflecting on these points of comparison also offers some insights about international financial regulation. Much scholarship on international financial regulation, and on the networks that are part of it, has correctly focused on differences posed by the phenomenon. Georgetown's Chris Brummer characterizes international financial regulation as a return to, and even a triumph of soft law and coincidence of interest.[19] Raustiala, as we have observed, thought the network-style governance epitomized by finance would pose an alternative to traditional legal rules.[20] Those differences are critical; it is those, in many ways, that make the subject worth studying. But the distinctions should not obscure the ways international financial regulation works like the governance system perceived to be its alternative. Instead, international financial regulation shows that international governance, because of its horizontality, its tastes for consensus and decentralization, and other reasons, can look much the same whether it is conducted through treaty, custom, or other, less formal, mechanisms.

This book investigates the questions posed by the transformation of international financial regulation. Chapter 2 focuses on the emerging architecture of international financial regulation. What we have seen in financial regulation is an effort to place a political institution at the top of the regulatory pyramid, a managerial institution in the middle, and use those institutions as organizers of various networks of regulators that provide content and perform rulemaking and policymaking at the bottom. The chapter explores the nuances of this process, and provides the evidence to support the claim about the way the process works.

Chapters 3 through 6 analyze a variety of the networks that comprise the fundamental policymaking institutions of international financial regulation. Chapter 3 focuses on the Basel Committee on Banking Supervision and shows how this network, the most important of the financial regulators, has managed to implement a series of very specific rules on bank capital around the world. Chapter 4 analyzes the International Organization of Securities Commissions (IOSC), placing its efforts to enhance the enforcement capacity of its members into perspective and analyzing its signature achievement, its Multilateral Memorandum of Understanding on enforcement cooperation. Chapter 5 tackles the International Association of Insurance Supervisors (IAIS). It examines this least developed of the regulatory networks and the way it has changed in the wake of the financial crisis. In particular, the network has attempted to develop solvency rules for insurers that mark an international effort on an issue that has never been thought of as an important component of global financial stability by domestic regulators. The financial crisis changed that calculus.

Although the three networks concerned with banking, securities, and insurance regulation are often thought to be the most important in international financial regulation, it is fascinating to see how institutionalized this form of policymaking has become. Chapter 6 accordingly looks at the other financial regulatory networks, the often-overlooked deposit insurers, counterterrorism finance regulators, and others, that also play a role in efforts to institutionalize governance on this subject area.

Chapter 7 considers lessons that can be learned from the evolution and transformation of international financial regulation for international law. It argues that there are similarities between the two sorts of governance, which suggests that international law is not so different from the international arrangements that are the subject of this book. As it turns out, informal arrangements require policing by expert lawyers and regulators in the same way that more formal treaty organizations do. Sometimes international lawyers argue that what they are doing is different from other international arrangements. But really, any sort of international institution, even one formed without a treaty, can attain the sort of formality that international law often claims. By the same token, international law frequently depends on the sort of cooperation offered by domestic regulators that characterizes regulatory cooperation in global finance.

Chapter 8 considers what this increasingly elaborated global regime means for one of the countries who did not get a chance to participate in its founding. China is now very much part of the regime of international financial regulation, and is an important, if young, player in global finance. But it has come to financial regulation late – and yet it has embraced the prescriptions, at least in word, and partly in deed. It will be considered as an example of how the developing world might think through the adoption of the requirements of the developed world.

Chapter 9 concludes by considering the implications for the next financial crisis of the currently constituted system of international financial regulation.

International financial regulation features a set of institutions that increasingly perform all the functions of legal systems, even while declaiming legal authority. This makes their development important, not just to international policymakers, but to anyone interested in the often-fuzzy border between a legal system and less obviously enforceable norms and obligations. International financial regulation is essentially a nonlegal institution with bedrock principles that resemble legal principles and enforcement mechanisms that succeed in actually enforcing. In that sense, the account here differs from those of scholars who have questioned the extent to which regulatory networks have managed to achieve their ends, and the nature of the legal obligations created by the institutions. The law-like account undertaken in this volume differs from those that emphasize the importance of politics and that are more skeptical of the promise of international cooperation more generally, which, as it turns out, constitutes most of the scholarly literature.

Notes

1 Huib J. Muller, Address to International Conference of Bank Supervisors (May 16, 1988), *quoted in* Tony Porter, States, Markets, and Regimes in Global Finance 66 (1993).

2 www.sec.gov/news/speech/2010/spch061210klc.htm.

3 Michelle Price & Pete Schroeder, *Top U.S. Regulators Confident Watchdogs Can Ease Volcker Rule*, Reuters, Oct. 3, 2017, www.reuters.com/article/us-summit-regulation-volcker/top-u-s-regulators-confident-watchdogs-can-ease-volcker-rule-idUSKCN1C81M1.

4 Randal K. Quarles, Speech, *America's Vital Interest in Global Efforts to Promote Financial Stability*, Utah Bankers Association June 27, 2018, https://home.treasury.gov/news/press-releases/sm0232.

5 Treasury Dep't, *A Financial System That Creates Economic Opportunities*, June, 2017, www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf at 16.

6 Quarles, *supra* note 4.

7 J. Christopher Giancarlo, Speech, *Remarks*, Eurofi Financial Forum, Sep. 6, 2018 http://business.cch.com/srd/RemarksbyChairmanJChristopherGiancarloattheEurofiFinancialForum.pdf.

8 *JPMorgan CEO Says Bank Rules "Anti-American,"* Reuters, Sep. 12, 2011 www.reuters.com/article/us-banks-basel-jpmorgan-idUSTRE78A3Z420110912.

9 *Enough Is Enough, Basel Committee Told*, Fin. Trib., Sep. 16, 2016, https://financialtribune.com/articles/world-economy/49918/enough-is-enough-basel-committee-told.

10 *Trichet Says Basel III Won't Hurt World Economy*, Reuters, Sep. 13, 2010, www.reuters.com/article/us-basel-trichet/trichet-says-basel-iii-wont-hurt-world-economy-idUSTRE68C2BJ20100913.

11 www.slate.com/articles/news_and_politics/interrogation/2017/04/anne_marie_slaughter_on_her_new_book_about_networks.html.

12 Article 38(1) of the Statute of the International Court of Justice (ICJ) provides,

> 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
>   b. international custom, as evidence of a general practice accepted as law;
>   c. the general principles of law recognized by civilized nations;
>   d. subject to the provisions of Article 59, 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.

Statute of the International Court of Justice, art. 38(1), 1947 I.C.J. Acts & Docs, available at http://tinyurl.com/npvuez. The article is often taken as a statement of the usual sources of international law. For a discussion of how Article 38(1) interacts with one variant of international economic law, see David Palmeter & Petros C. Mavroidis, *The WTO Legal System: Sources of Law*, 92 AM. J. INT'L L. 398, 398–401 (1998).

13 Christopher Cox, Chairman, U.S. Sec. & Exch. Comm'n, Address to the American Institute of Certified Public Accountants' International Issues Conference: International Business – An SEC Perspective (Jan. 10, 2008), *available at* http://tinyurl.com/74omldd.

14 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES Part VIII, intro. note (1987).

15 Peter Cooke, Chair of the Basel Committee, *quoted in* JOSEPH JUDE NORTON, DEVISING INTERNATIONAL BANK SUPERVISORY STANDARDS 177 (1995).

16 *See, e.g.*, Andrew T. Guzman, *The Design of International Agreements*, 16 EUR. J. INT'L L. 579, 612 (2005) (nothing that "the choice of form (i.e., treaty v. soft law) can be traded off against the substance of an agreement").

17 Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1, 88 (2002).

18 *See, e.g.*, Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 434–50 (2000); Richard L. Williamson, Jr., *Hard Law, Soft Law, and Non-Law in Multilateral Arms Control: Some Compliance Hypotheses*, 4 CHI. J. OF INT'L L. 59, 63 (2003). For a further discussion, see Gary E. Marchant et al., *International Governance of Autonomous Military Robots*, 12 COLUM. SCI. & TECH. L. REV. 272, 315 (2011).

19 CHRIS BRUMMER, SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM: RULE MAKING IN THE 21ST CENTURY (2011).

20 Kal Raustiala, *Rethinking the Sovereignty Debate in International Economic Law*, 6 J. INT'L. ECON. L. 841 (2003).