

Why Soft Law Dominates International Finance—and not Trade

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Abstract

International financial law is in many ways a peculiar instrument of global economic affairs. Unlike international trade and monetary affairs, where global coordination is directed through formal international organizations, international financial law arises through inter-agency institutions with ambiguous legal status. Furthermore, the commitments made by regulatory officials participating in such forums are non-binding. This divergence is perplexing, especially when comparing international financial law to international trade. Both trade and finance comprise key areas of ‘international economic law’ and their rules have important distributive consequences for global markets and market participants. This article suggests that in order to understand soft law’s value as a coordinating mechanism, an institutional assessment of the way that law is enforced is necessary. Under close inspection, international financial law departs from traditional public international law notions of informality and can in fact be ‘harder’ than its soft-law quality suggests. This feature helps explain why international financial rules, though technically non-binding, are often relied upon. The predominance of international soft law in finance does not, however, imply that it is without flaws, and this article highlights important structural deficiencies that the World Trade Organization, a more mature legal regime, largely avoids.

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