Hard and Soft Law: What Have We Learned?

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Political scientists and legal scholars have increasingly explored the concepts of hard and soft law in international governance.1 Although the concept of soft law remains to some extent controversial in the legal academy, the burgeoning literature of the past decade has generated valuable insights regarding the adoption of hard and soft law as a design choice; the advantages and disadvantages of each form under different conditions; the ways in which hard and soft legal instruments interact over time; and the impact and effectiveness of hard and soft legal provisions in various issue-areas.

In this chapter, we review and assess this literature, with a focus on the insights generated by interdisciplinary IL/IR scholarship. The first four parts cover the four core areas of IL/IR theorizing about hard and soft law: definition, design, interaction, and impact. That is, we first address a key definitional question, noting the substantial disagreements among positivist, rational institutionalist and constructivist scholars about the definitions and the key features of hard and soft law, respectively. Next, we examine the question of hard and soft law as a design choice, asking under what conditions states (or other actors) might opt for hard- or soft-law commitments in international relations. Here, we distinguish between a nearly ubiquitous functionalist approach and a nascent but promising distributive approach distinctive to contemporary IL/IR scholarship. Third, we examine the question of how hard and soft law interact in an increasingly complex and fragmented international legal landscape, arguing that hard and soft law can interact not only as alternatives or complements, but also, under certain conditions, as antagonists. Fourth, we examine the sparse but suggestive scholarship on the impact of hard and soft law beyond the law-making stage, i.e. in terms of legal interpretation as well as compliance and effectiveness. A brief final section concludes with a discussion of the value-added contributions, and as well as the lacunae and blind spots, of the IL/IR literature in this area.

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1 See e.g. Chinkin 1989; Lipson 1991; Boyle 1999; Abbott and Snidal 2000, 2004; Shelton 2000a; Guzman and Meyer 2009, 2010; Shaffer and Pollack 2009, 2010; and the sources cited in the pages that follow.
1. Definitions: Theorizing Hard and Soft Law

One fundamental challenge of studying hard and soft law is that definitions of these terms vary dramatically across different schools of thought in legal and political science scholarship. Simplifying slightly, we identify three basic positions in the literature: a legal positivist view that associates the hard/soft distinction with a binary binding/non-binding dichotomy; a constructivist view that considers the purported hardness or softness of law as secondary to its social effects; and a rational institutionalist position, which takes a multidimensional and continuous view of hard and soft law. Let us consider each view, very briefly, in turn.

1.1. Positivism

Positivist legal scholars generally adopt a simple binary binding/non-binding divide to distinguish hard law from soft law. In this view, what makes law distinctive with respect to other norms is its claim to bind actors, to impose legal obligation, and the fundamental distinction between hard and soft law is the distinction between legally binding and non-binding commitments. Indeed, taking the legal positivist argument to its logical conclusion, some scholars go further and reject the very concept of soft law. They do so because, from the internal perspective of a judge or legal advocate, law is by definition “binding” (Klabbers 1996; 1998; Raustiala 2005; Weil 1983). Other legal scholars remain open to the idea that non-binding agreements may retain some characteristics and effects of law, but generally agree that the fundamental distinction between hard and soft law is determined by its binding or non-binding nature (Snyder 1993; Shelton 2000b: 4; Reinicke and Witte 2000; Guzman and Meyer 2010). Distilling this view, we might conceive of soft law in positivist terms as a codified instrument that is publicized, issued through an institutionalized process, with the aim of exercising a form of authority or persuasion, even though the instrument is not formally legally binding.²

1.2. Constructivism

Constructivist scholars, by contrast, focus less on the formal terms of law as understood at a single point of time, such as the enactment stage, and more on law as part of a process of social interaction which can shape shared social understandings of appropriate behavior. Many constructivist scholars have thus questioned the characterization of law as either “hard” or “soft,” because such characterizations focus too narrowly in the interpretation and enforcement of law by courts, and fail to capture how law operates normatively as part of an interactional process over time (Finnemore and Toope 2001; Trubek et al. 2006). Their counterparts in interdisciplinary debates in international relations and international law tend to discount the efficacy of soft law

² While most of the literature limits the concept of soft law to agreements among states and non-state actors including international organizations and civil society, Guzman and Meyer (2009, 2010) compellingly extend the concept to what they call “international common law,” namely the decisions of international courts that are either advisory or else not binding on states that are not party to the litigation but that nevertheless issue interpretations of law that are widely accepted and shape actors’ subsequent expectations.
because it does not create binding obligations on states who can thus more easily ignore it in light of their interests. ³ Constructivists, in contrast, explicitly address how international law can lead states to change their perceptions of their interests through transnational processes of interaction, deliberation, persuasion, or acculturation over time (Ruggie 1998; Boyle and Meyer 1998; Goodman and Jinks 2004; Brunnée and Toope 2012). Scholars working in an experimentalist “new governance” tradition sometimes go further, arguing that soft law approaches should generally be privileged to promote responsive governance (e.g. Sabel and Simon 2006). Indeed, for constructivists, the creation of soft law might not reflect a “choice” at all, but the accumulation and gradual transformative effect of shared understandings and state practices over time.

1.3. Rational Institutionalism

International relations scholars, by contrast, frequently express skepticism about the binding nature of international law, noting that “the term ‘binding agreement’ in international affairs is a misleading hyperbole,” (Lipson 1991: 508) and that “most international law is ‘soft’ in distinctive ways” as compared to most domestic law (Abbott and Snidal 2000: 421). Institutionalist scholars in international relations nonetheless note that the language of “binding commitments” often matters because, through it, states signal the seriousness of their commitments, so that non-compliance can entail greater reputational costs and justify reprisals (Lipson 1991; Raustiala 2005; Guzman 2005, 2008).

In the most influential statement of the institutionalist approach, Kenneth Abbott and Duncan Snidal sought to integrate the pre-existing concept of soft law into the interdisciplinary effort to theorize about the “legalization” of world politics. Following the editors of the project, Abbott and Snidal define legalization in international relations as varying across three dimensions, (i) precision of rules; (ii) obligation; and (iii) delegation to a third-party decision-maker, such as a dispute settlement body. In this context, hard and soft law can be defined along a continuum depending on the qualities of a given instrument along these three dimensions (cf. Boyle 1999). Hence, hard law “refers to legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law” (Abbott and Snidal 2000: 421).

By contrast with this ideal-type of hard law, Abbott and Snidal (2000: 38) define soft law as a residual category: “The realm of ‘soft law’ begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation.” Thus, if an agreement is not formally binding, it is soft along one dimension. Similarly, if an agreement is formally binding but its content is vague so that the agreement leaves almost complete discretion to the parties as to its implementation, then the agreement is soft along a second dimension. Finally, if an agreement does not delegate any authority to a third party to monitor its implementation or to interpret and enforce it, then the agreement again can be soft (along a third dimension) because there is

³ For example, Richard Steinberg (2002: 340) contends, from a realist perspective, that “most public international lawyers, realists and positivists, consider soft law to be inconsequential.” Similarly, Andrew Guzman maintains, from a rational institutionalist perspective, that, “soft law represents a choice by the parties to enter into a weaker form of commitment.” Guzman, 2005: 611.
no third party providing a focal point around which parties can reassess their positions, and thus the parties can discursively justify their acts more easily in legalistic terms with less consequence, whether in terms of reputational costs or other sanctions.

Over the past decade, the rational institutionalist definition has been adopted by a growing number of IL/IR scholars, including us — yet the positivist critique suggests four important notes of caution about its use. First, while Abbott and Snidal recognize the importance of legal obligation in their definition, their conception of hard and soft law assigns no weighting or priority to these three dimensions: obligation is considered, but is assigned no greater weight than precision or delegation in determining the hardness or softness of a legal provision. From an internal perspective adopted by legal actors who must make and weigh arguments at court, obligation matters most. From an external perspective adopted by scholars assessing the impact of these dimensions on outcomes, however, there is greater debate regarding these dimensions’ relative weights, as we will see below.

Second, the authors of the legalization volume model the “obligation” dimension of hardness and softness along a continuum ranging from an explicit negation of an intent to be legally bound to an unconditional obligation to be legally bound, with multiple intermediate points. Yet, as noted above, legal positivists contest whether legal obligation indeed varies along a continuum or is rather a binary, on/off question (Raustiala 2005). Whether obligation varies dichotomously or continuously is a question which again divides those taking an internal legal perspective (dichotomous view) and those taking an external perspective focusing on parties’ intentions in designing an agreement (continuous view). Those taking an external view contend that intentions behind the extent of obligation vary, as exemplified by unconditional obligations, reservations, escape clauses, hortatory obligations, political treaties with implicit conditions on obligations, and norms adopted without law-making authority (Hollis and Newcomer 2009).

Third, the primary virtue of the Abbott and Snidal definition, in our view, is precisely its multidimensionality, yet much of the work that has applied Abbott and Snidal’s definition loses this multidimensionality, effectively flattening the definition into a single dimension and theorizing about the effects of “hard and soft law” without examining the impact of possible combinations of obligation, precision, and delegation in any given case. Indeed, just as various flexibility mechanisms may represent alternative means of addressing uncertainty, each with its own strengths and weaknesses, variations in obligation, precision, and delegation in legal agreements may represent alternative responses to similar challenges, with states choosing particular combinations of the three dimensions to address particular challenges. To take full advantage of the multidimensional character of Abbott and Snidal’s definition, scholars would need to disaggregate hardness and softness into its component parts, and seek to understand the choice of, and effects of, each of these parts individually and in combination. We attempt to do this briefly in this chapter but our effort is at best a preliminary one, which currently finds no echo in the existing literature.

A fourth and final critique is that institutionalist scholars in the legalization project implicitly assumed that the three dimensions of legalization combine in an additive fashion, namely:
Obligation + Precision + Delegation = High Legalization [or Hard Law]

However, it seems likely that these three dimensions interact in complex but systematic ways that are not considered in the legalization project. Consider, for example, the relationship between precision and delegation. If we imagine an international agreement that is high in both obligation (e.g., a legally binding treaty) and delegation (e.g., featuring a binding dispute settlement mechanism), then by definition such a treaty would become “harder” as it increased along the third dimension of precision. Such a claim, however, ignores the potential interaction of precision and delegation. An agreement that scores high on obligation, precision, and delegation would empower a neutral third party to settle disputes about the interpretation of the agreement – yet, the high precision of the agreement might reduce the need to resort to dispute settlement in the first place, and, in any case, it would constrain the discretion of the arbitrators or adjudicators were cases brought. By contrast, an agreement that scored high on obligation and delegation but low on precision (i.e., an agreement with vague provisions) would score lower in terms of hardness according to Abbott and Snidal. Yet, such an agreement would clearly provide potential litigants (either states or private actors) with the ability to file cases, and judges or adjudicators hearing these cases would have greater freedom to interpret, elaborate, and apply its vague positions. These features, in turn, would increase the likelihood that the resulting legal order would be dynamic and evolving over time in ways that might not have been anticipated by its founders (Stone Sweet and Brunell 1998; Keohane, Moravcsik and Slaughter 2000; Moravcsik 2012). Hence, while the Abbott and Snidal conceptualization of hard and soft law offers a promising enrichment of the simple binary binding/non-binding distinction, understanding how these three dimensions interact in combination remains undertheorized and largely unexplored, both in terms of design and effect.

2. Design: The Choice of Hard and Soft Law

Regardless of one’s preferred classification of hard and soft law, it is clear that states (and other actors) seeking to regulate their interactions have a large menu of choices when it comes to designing agreements that may be harder or softer along several dimensions. Over the past two decades, both legal and political science scholars have sought to explain why and under what conditions states might opt to conclude agreements of a hard or soft nature, and what advantages and disadvantages hard and soft law present to states from an ex ante negotiating perspective. The dominant approach to this question has been functionalist, theorizing about the respective advantages and disadvantages of hard and soft law in responding to problems of collective action, incomplete contracting, and uncertainty, and making predictions about the conditions under which states might choose hard or soft law and law-making processes. This functionalist literature has generated considerable insight into the reasons why states might choose hard and soft law, but it runs into difficulties in explaining why different states might have different preferences over hard and soft law, and why states might establish multiple, overlapping and inconsistent hard- and soft-law norms to govern a single issue in international politics. In this context, we identify a second, distributive, approach, which emphasizes the distributive consequences of international lawmaking, and notes how distributional
concerns can explain varying state preferences for hard and soft law, as well as the existence of multiple, overlapping regimes. This distributive approach will also, we argue in the next section, help explain why and under what conditions hard and soft law can interact as antagonists as well as complements. We begin, in the rest of this section, by examining the functionalist and distributive approaches to the choice and design of hard and soft law, respectively.

2.1. A Functionalist Approach

Within international relations theory, there is a strong tradition, dating back to Robert Keohane’s (1984) groundbreaking work, which takes a functional approach, explaining the nature and the specific features of international institutions and international law in terms of the functions that these institutions perform and the types of problems they are designed to solve. Culminating in the “rational design” research program, the functionalist approach seeks to explain a wide variety of design features of international law and institutions, including the choice of formal vs. informal agreements, and more recently of hard and soft law-making processes, identifying the advantages and disadvantages of each in different contexts (Lipson 1991; Abbott and Snidal 1998, 2000; Koremenos et al. 2001).

As an institutional form, hard law features many advantages. In particular, functionalist scholars argue that:

- Hard-law instruments allow states to commit themselves more credibly to international agreements. They make state commitments more credible because they increase the cost of reneging, whether because of legal sanctions or because of the costs to a state’s reputation where it is found to have violated its legal commitments.4

- Hard-law instruments are more credible because they can have direct legal effects in national jurisdictions, or require domestic legal enactment, thereby creating new tools that mobilize domestic actors, increase the audience costs of a violation, and thus make state commitments more credible.

- Hard-law instruments solve problems of incomplete contracting by creating mechanisms for the interpretation and elaboration of legal commitments over time.

- Hard-law instruments better permit states to monitor and enforce their commitments, including through the use of dispute settlement bodies.

Note that this functionalist scholarship generally articulates the functional advantages of “hard law” as a simple, one-dimensional phenomenon. However, if we take seriously the notion of hard and soft law as a multidimensional distinction, we can in principle make finer distinctions, formulating more specific hypotheses about the effects of obligation, precision, and delegation separately. Obligation, for example, seems particularly

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4 The increased reputational engagement of hard law is a core theme in the literature. See e.g. Guzman 2005, 2008; Abbott & Snidal 2000; Lipson 1991: 508. For a critique of this view, see Brewster 2012.
important with respect to certain functions of hard law, such as engaging states’ reputations and entrenching international commitments in state law. Precision similarly is implicated in engaging states’ reputations and should also facilitate monitoring and enforcement, on the logic that it is easier to measure, identify, and punish noncompliance with more precise rules. Delegation, finally, confers distinct functional advantages, including not only monitoring and enforcement of contracts (and, once again, implicating states’ reputations), but also, and distinctively, the elaboration of incomplete contracts over time.

In any event, functionalists point out, hard law also entails significant costs. Binding law creates formal commitments that restrict the behavior of states, infringing on national sovereignty in potentially sensitive areas. Precise rules are more likely to constrain states than vague obligations, all else being equal. And delegation of dispute settlement to a third party decision-maker further constrains state discretion, and unleashes the possibility of an agreement’s terms being interpreted in ways contrary to a state’s initial understanding. As a result, hard law can encourage states to bargain fiercely and at length, increasing transaction costs and diverting resources from other endeavors. In addition, hard law agreements can be rigid and more difficult to adapt to changing circumstances (Lipson 1991; Abbott and Snidal 2000: 433). Hard law is particularly problematic, sociolegal scholars contend, where it requires uniformity when a tolerance of national diversity is needed, where it presupposes a fixed condition when situations of uncertainty demand constant experimentation and adjustment, and where it is rigid and difficult to amend when frequent change may be essential (Trubek et al 2006; Raustiala and Victor 1998).

Defending soft law, functionalist scholars argue that soft-law instruments offer significant offsetting advantages over hard law. They find, in particular, that:

- Soft-law instruments provide greater flexibility for states to cope with uncertainty and learn over time through information-sharing and deliberation.

- Soft-law instruments allow states to be more ambitious and engage in “deeper” cooperation than they would if they had to worry about enforcement.

- Soft-law instruments impose lower “sovereignty costs” on states in sensitive areas.

- Soft-law instruments are easier and less costly to negotiate.

- Soft law instruments are more efficient in simple coordination games in which the creation of a focal point is sufficient to induce compliance.

- Soft-law instruments can be propagated by non-state actors, including international secretariats, state administrative agencies, sub-state public officials, and business associations and non-governmental organizations, and
may be used to complement or displace state authority in transnational governance.\(^5\)

In short, the functionalist view holds that hard- and soft-law instruments offer particular advantages for different contexts, and these scholars generally advocate a pragmatic approach, contending that hard- or soft-law instruments should be selected depending on the characteristics of the issue and the negotiating and institutional context in question. As Abbott and Snidal write, while “soft law sometimes [is] designed as a way station to harder legalization, ... often it is preferable on its own terms” (Abbott and Snidal 2000: 421, 423; Abbott and Snidal 2004). In this sense, the literature on the choice of hard and soft law finds echoes in the related literature on the choice and design of flexibility provisions, in which rational states are assumed to fine-tune a variety of flexibility provisions in response to the functional demands of specific cooperation problems (Koremenos 2012; Helfer 2012).

2.2. A Distributive Approach

The functionalist approach reviewed above has generated significant insights into the design of international institutions and international law, yet functionalist approaches have been criticized for relying too heavily on the metaphor of the Prisoner’s Dilemma (PD) game in assessing the role of international law (McAdams 2009). The distributive challenge to regime theory calls into question the appropriateness of the PD game as the proper model for most instances of international cooperation because it fails to capture the potential for distributive conflicts among the participants.\(^6\) The classic PD model assumes that states share a common interest in reaching a cooperative outcome, and the primary impediment to successful cooperation is the fear that other states will cheat on their agreements. In PD models of international relations, these problems are typically addressed by creating mechanisms for monitoring state behavior and sanctioning states that violate the terms of the agreement—i.e. international law.

However, the PD game ignores another important obstacle to successful cooperation, namely conflicts among states with different interests over the distribution of the costs and benefits of cooperation. That is to say, when states cooperate in international politics, they do not simply choose between “cooperation” and “defection,” the binary choices available in PD games, but rather they choose specific terms of cooperation, such as the specific level of various tariffs in a trade regime, or the precise levels of greenhouse gas emissions in an environmental regime, and so on. In game-theoretic terms, there may be multiple equilibria – multiple possible agreements that both sides prefer to the status quo – and states face the challenge of choosing among these many possible agreements. In an international trade agreement, for example, one side may prefer to drastically reduce tariffs on industrial goods, while another may place a stronger emphasis on reducing agricultural tariffs or agricultural subsidies. As a result,


\(^6\) Among important works on the problem of distribution in world politics are Krasner 1991; Fearon 1998; Drezner 2007; Büthe and Mattli 2011.
states face not only the challenge of monitoring and enforcing compliance with a trade agreement, but also of deciding on the terms of that agreement, e.g., the mix of industrial and agricultural tariffs. Yet PD models, with their binary choice of cooperation or defection, fail to capture these elements of international cooperation.

In international politics, as Stephen Krasner (1991: 339) argues, efforts at cooperation often take the form of a Battle of the Sexes (or Battle) game, in which different states have clear preferences for different international norms or standards. Even if all states benefit from a common standard, raising the prospect of joint gains, the distribution of those gains depends on the specific standard chosen, and the primary question is whether and how states can secure cooperation on their preferred terms. The canonical example, from which the Battle game takes its name, is one in which two players (say, a husband and wife) agree that they want to take a vacation together, but disagree on the destination (he prefers the mountains, she the beach). In such a game, the primary challenge is not the threat of cheating (since both players prefer some joint vacation to being alone), but rather of deciding which of two possible equilibrium outcomes (the mountains or the beach) will be selected. Any agreement in Battle is likely to be self-enforcing once adopted, with little need for monitoring or enforcement mechanisms, since both players prefer either cooperative outcome to uncoordinated behavior. By contrast with the PD game, however, the Battle game is characterized by a strong distributive conflict over the terms of cooperation. Put differently, the most important question is not whether to move toward the “Pareto frontier” of mutually beneficial cooperation, but which point on the Pareto frontier will be chosen. Under such circumstances, Krasner (1991: 340) suggests, outcomes are determined primarily by the use of state power, with more powerful states securing cooperation on terms closest to their own preferences.

Looking beyond the specific features of the Battle game, James Fearon has argued that it is misleading to attempt to characterize international cooperation over any given issue as either a Prisoners’ Dilemma or a Battle game. Rather, Fearon maintains, all areas of international cooperation involve both a bargaining stage, in which the actors bargain to resolve distributive conflicts, and an enforcement stage, in which actors design institutions to monitor and enforce compliance with agreed-upon rules (Fearon 1998; see also Mattli and Büthe 2003).

The story does not end here, however, for it is also clear that different international lawmaking procedures and forums are likely to influence the terms of cooperation, and hence the distribution of joint gains, in more or less predictable ways. This phenomenon is the subject of a growing literature in international relations, which examines the politics of “regime complexity” and the phenomenon of “forum-shopping.” As theorized by Kal Raustiala and David Victor, a regime complex is “an array of partially overlapping and nonhierarchical institutions governing a particular issue-area” (Raustiala and Victor 2004; see also Helfer 2004; Alter and Meunier 2009). One characteristic feature of such regime complexes is that they provide states, and other actors, with an incentive to forum-shop, selecting particular regimes that are most likely to support their preferred outcomes. More specifically, states will select regimes based on characteristics such as their membership (e.g., bilateral, restricted, or universal), voting rules (e.g. one-state-one-vote vs. weighted voting and consensus vs. majority voting), institutional characteristics (e.g., presence or absence of dispute-settlement procedures), substantive
focus (e.g. trade finance, environment, or food safety), and predominant functional representation (e.g. by trade, finance, environment, or agricultural ministries), each of which might be expected to influence substantive outcomes in more or less predictable ways (Helfer 2004; Jupille and Snidal 2006).

If this analysis is correct, then the choice of hard and soft law and lawmaking procedures is likely to be a function, not simply of the nature of the cooperation problem, but also of the varying preferences of individual states (and other actors) about the specific terms of cooperation. For our purposes here, the core claim of the distributive approach is that individual states, and other actors, are likely to have conflicting preferences for hard- or soft-lawmaking procedures in any given issue-area, as a function of their substantive preferences in that issue-area, and therefore champion multiple, competing procedures and forums in practice. For example, the countries of the European Union (EU), concerned about the problem of climate change and already undertaking considerable efforts to reduce their own greenhouse-gas emissions, evinced an early and strong preference for formal lawmaking procedures within the UN Framework Convention on Climate Change, while, the United States, faced with the same collective action problem and the same degree of uncertainty about the state of the world, sought to avoid the imposition of costly limits on its ever-growing greenhouse-gas emissions, and therefore strongly favored informal lawmaking forums and agreements to deal with the issue. Problem structure, in other words, may dictate the general level of distributive conflict, but a single problem structure can spur states with different substantive preferences to champion different institutional designs. The result, in the climate-change arena as in other areas, has been a proliferation of hard- and soft-law forums, each championed by a diverse coalition of states and non-state actors, and each competing to formulate international rules and norms. This last observation, in turn, directs our attention to the third question motivating this chapter: how do these various, overlapping hard- and soft-lawmaking procedures interact in practice?

3. Interaction: Hard and Soft Law as Complements or Antagonists

3.1. Hard and Soft Law as Complements

Although the respective costs and benefits of hard and soft law as alternatives remain a subject of contention, legal and political science scholars have moved increasingly towards a view that hard and soft international law can interact and build upon each other as complementary tools for international problem-solving. These scholars contend that hard- and soft-law mechanisms can build upon each other in two

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7 This point, to be clear, is where our distributive approach differs from the rational-design approach. The rational design project, unlike most of the functionalist literature, explicitly theorizes about the existence of distributive conflict, and it hypothesizes that distributive problems will lead states collectively to design international institutions with larger memberships, wider scope, and greater flexibility; see Koremenos, Lipson and Snidal 2001: 783-97. Our argument, by contrast, is that individual states, and other actors, will have distinct and often conflicting institutional design preferences, as a function of their substantive preferences, resulting different choices over hard and soft law instruments.

8 In a compelling paper, Meyer (2012) similarly employs a distributive model to understand the subject of customary law codification, arguing that states seek to codify existing customary law not to clarify that law or enforce compliance, but to “capture” the law and move it toward their own preferred outcomes.
primary ways: (1) non-binding soft law can lead the way to binding hard law, and (2) binding hard law can subsequently be elaborated through soft-law instruments. For example, a leading US international law casebook introduces the concept of soft law by noting both that “soft law instruments are consciously used to generate support for the promulgation of treaties or to help generate customary international law norms [i.e. binding hard law],” and that “treaties and state practice give rise to soft law that supplements and advances treaty and customary norms” (Dunoff, Ratner and Wippman 2010: 95). In both cases, hard- and soft-law instruments serve as complements to each other in the progressive development of international law, leading to greater international cooperation and coordination over time (Chinkin 1989; 2000: 30-31; Shelton 2000b).

In their examination of hard and soft law acting as complements, scholars of hard and soft law can be divided into the same three camps we discussed above: (1) positivist legal scholars who find that soft law is inferior to hard law but recognize that non-binding instruments can potentially lead to hard law; (2) rationalist scholars who view soft law as a complement to hard law which serves state interests in many contexts; and (3) constructivist scholars who view soft law as a complement to hard law which can facilitate dialogic and experimentalist transnational and domestic processes which transform norms, understandings, and perceptions of interests.

Positivist legal scholars generally view soft law as a second-best alternative to hard law, either as a way-station on the way to hard law, or as a fall-back when hard law approaches fail (Weil 1983; Klabbers 1998). Sindico (2006: 846) summarizes this view when he writes, “[s]oft law, and voluntary standards in particular, are a stage in the creation of international legal norms. It is as a pioneer of hard law that soft law finds its raison d'être in the normative challenge for sustainable global governance.”

These scholars tend to view soft law solely in terms of its relationship to a hard law ideal. Reinicke and Witte (2000: 76), for example, stress how soft-law agreements “can and often do represent the first important element in an evolutionary process that shapes legal relationships among and between multiple actors, facilitating and ultimately enhancing the effectiveness and efficiency of transnational policy-making.” Similarly, Kirton and Trebilcock (2004: 27) conclude that soft law is not a replacement for hard international law. “At best, it is a complement.”

By contrast with positivist scholars, institutionalist scholars are generally agnostic as to whether hard or soft law is preferable. In their work on “pathways to cooperation,” Abbott and Snidal (2004) nonetheless define three pathways, two of which explicitly involve the progressive hardening of soft law. The three pathways are: (1) the use of a framework convention which subsequently deepens in the precision of its coverage; (2) the use of a plurilateral agreement which subsequently broadens in its membership; and (3) the use of a soft-law instrument which subsequently leads to binding legal commitments. They note how these three pathways can be “blended” and “sequenced,” once more resulting in a mutually reinforcing, evolutionary interaction between hard- and soft-law mechanisms (Abbott and Snidal 2004: 80).

Constructivist-oriented scholars also focus on hard and soft law as complements. Trubek et al. (2006: 32), for example, contend that soft-law instruments can help to generate knowledge (as through the use of benchmarking, peer review, and exchange of good practices), develop shared ideas, build trust, and, if desirable, establish “non-binding standards that can eventually harden into binding rules once uncertainties are
reduced and a higher degree of consensus ensues.” Janet Levit (2004), working in a legal pluralist framework, finds that international hard- and soft-law regimes engage in ongoing interactions in which each is reconstitutive of the other (Levit 2004: 107, 162).

3.2. Hard and Soft Law As Antagonists

Although the bulk of legal scholarship assumes a complementary interaction, or progressive development, of hard and soft law, a few legal scholars have recognized the possibility of tension, or conflict, between existing and emerging norms in the process of international law’s development. For example, in an early article on soft law, Christine Chinkin acknowledges that soft law “has both a legitimising and deligitimising direct effect.... While there is no doctrine of desuetude in international law, the legitimacy of a previously existing norm of international law may be undermined by emerging principles of soft law” (Chinkin 1989: 866). Similarly, Michael Reisman (1992: 144) noted the challenge of the rise of soft law in terms of generating an “inconsistent normativity to the point where, in critical matters, international law has become like a camera whose every shot is a double exposure.”

In our own recent work, we have articulated a distributive model of hard- and soft-law interaction, specifying two scope conditions – the degree of distributive conflict and the unity or fragmentation of the legal order – under which hard and soft law might interact either as complements or as antagonists. Put simply, we argue that distributive conflict provides states (and other actors) with the incentive to use both soft and hard legal provisions strategically and often antagonistically to shape and reorient international law in line with their substantive preferences, while the existence of legal fragmentation and regime complexes offers them the opportunity to do so at a relatively low cost. Our argument is summarized in Table 1, which illustrates our expectations about the interaction of hard and soft law under different combinations of distributive conflict and regime complexity.

Three core claims arise from this model. First, where distributive conflict among states is low, hard and soft law do indeed tend to works as complements in an evolutionary or progressive manner. This scenario particularly arises when powerful states have convergent interests. In the field of international political economy, for example, Daniel Drezner (2007) argues that, as a general rule, agreement between the United States and the European Union is both a necessary and sufficient condition for successful international regulation. The existing literature on international regulation provides numerous examples of such complementary interaction, including in areas such as the conclusion of the international agreements to protect the ozone layer, the anti-bribery convention, and anti-money laundering regulation: in each area, US and EU preferences converged over time, yielding soft-law agreements in a first stage which later hardened into binding international agreements (Pollack and Shaffer 2012). Our argument, therefore, is not that hard and soft legal provisions cannot interact in a complementary fashion, but that much of the existing literature exhibits selection bias by drawing disproportionately from cases in which the most powerful states agree on the aims and terms of regulation.
Second, where distributive conflict among states is high, hard and soft law can interact as antagonists, in two senses. From a legal perspective, hard and soft legal norms can be antagonistic in a conflict-of-laws sense; that is, a proliferation of legal norms can and often do lead to inconsistencies and conflicts among norms, creating confusion rather than clarity in a fragmented international legal order. From a political perspective, States and non-state actors can strategically create and deploy hard and soft legal norms and processes in an attempt to undermine, change, and reorient substantive legal provisions with which they disagree, and advocate for legal norms that most closely fit their substantive preferences. In this second, political sense, inconsistency among hard and soft law is not an unintended consequence of unplanned proliferation of regimes, but rather a strategic choice. In practice, we argue, the most common pattern has been for states to contribute to the creation of new soft-law norms, which can be negotiated or even asserted at a relatively low cost, in an effort to challenge existing hard-law norms.

Third, the antagonistic interaction of hard and soft law will often have the effect of undermining the purported advantages of each type of law, leading to the hardening of soft-law processes, resulting in more strategic bargaining and reducing their purported advantages of consensus-building through information-sharing and persuasion, and the softening of hard-law regimes, resulting in reduced legal certainty and predictability as a result of multiple, conflicting legal provisions. That is, where states deploy hard and soft law in opposition to each other, the soft-law regimes and fora can lose some of their technocratic, flexible, and deliberative features, and the hard-law regimes and fora can become less clear and determinate in their requirements. Where distributive conflict is ongoing, international legal instruments will not simply converge into a new synthesis, but may remain in conflict for a prolonged period. Such a stalemated outcome is particularly likely where powerful states line up on multiple sides of the issue (Drezner 2007), but even in so-called North-South disputes, countries of the global South may deploy extended soft-law challenges to existing hard law favored by the global North (Helfer 2004).

Examples of such antagonistic interactions between hard and soft law are readily found, and our simple model provides an overarching theoretical framework for explaining the findings of case study analyses that cut across issue-areas in economic regulation, human rights, and international security. A number of distributive conflicts pit coalitions of great powers against each other and demonstrate the strategic use of hard and soft law as antagonists. The United States and the European Union have, for example, taken dramatically different approaches to the regulation of genetically modified organisms (GMOs), with each side seeking to advance its views in competing forums, with the US favoring the free-trade oriented WTO and the EU fostering the negotiation of the Cartagena Biodiversity Protocol, while both sides have sought to “upload” their regulatory frameworks for food safety through the soft-law Codex Alimentarius Commission, a classic soft-law body traditionally dominated by technically oriented experts. Under the terms of WTO’s Sanitary and Phytosanitary (SPS) Agreement, implementation of a Codex standard creates a presumption of compliance with harder WTO law provisions, subject to binding dispute settlement. As a result, the traditionally softer and more deliberative Codex has also become a forum for hard strategic bargaining among states that recognise that the content of Codex standards on GMOs could
significantly influence the outcome of formal litigation about the marketing of GM foods and crops (Veggeland and Borgen 2005; Pollack and Shaffer 2009).

Other prominent examples of great power stalemates and antagonistic interaction of hard and soft law include:

- the protection of cultural diversity, where the EU took a leadership role in negotiating a series of soft-law provisions, which ultimately evolved into a hard-law UNESCO convention (to which the United States is not a party), with the aim of enshrining a cultural exception to free-trade rules which the EU had failed to secure in WTO law (Graber 2006; Voon 2006; Pollack and Shaffer 2012).

- the issue of climate change, where the US has fostered the creation of a growing number of soft-law negotiating forums such as the Major Economies Forum and the Asia-Pacific Partnership for Clean Development and Climate as alternatives to the EU-sponsored, hard-law Kyoto Protocol (van Asselt, Sindico, and Mehling 2008; Andonova, Betsill, and Bulkeley 2009; Vihma 2009; Andonova and Elsig 2012; Pollack and Shaffer 2012).

- the issue of humanitarian intervention, where a coalition of Western states and non-state actors have championed a soft-law “responsibility to protect” (R2P), which would challenge an “absolute sovereignty” reading of the hard-law Article 2(4) of the United Nations Charter, supported by Russia, China, and a large bloc of authoritarian regimes (Shaffer and Pollack 2011).

In other areas, we find a great-power consensus enshrined in existing hard law, but challenged by coalitions of weaker states attempting to undermine existing hard law through the use of soft-law proclamations, particularly in sovereign-equality negotiating forums such as the UN General Assembly. The most well known example here is intellectual property rights, where Helfer has explored how developing countries can “engage in regime shifting,” adopting “the tools of soft lawmaking” (Helfer 2004: 32; see also Raustiala and Victor 2004). In doing so, they often work with non-governmental groups who serve as allies to help generate development-oriented “counter norms” (Helfer 2004: 53-54). Specifically, Helfer demonstrates how developing countries have attempted to counter the creation of formal intellectual property rights rules under the WTO Trade-Related Intellectual Property Rights (TRIPS) Agreement and bilateral TRIPS-plus agreements through forum-shifting tactics involving the Convention on Biodiversity, World Intellectual Property Organization (WIPO) and the World Health Organization (WHO), within which they constitute a majority voting bloc. Shaffer and Pollack (2011) find a similar process at work in the security realm, where a large bloc of non-nuclear-weapons countries have sought to challenge the threat or use of nuclear weapons by nuclear-weapons countries through a series of soft-law resolutions in the UN General Assembly as well as by requesting an advisory opinion from the International Court of Justice in the famous 1996 Nuclear Weapons case. In both cases, coalitions of weaker states sought with some success to use their numerical advantages in universal-
membership bodies to create “counter-norms,” although in both cases a competing coalition of powerful states has prevented any fundamental change to existing hard law.

In each of these cases, IL/IR scholars have demonstrated that hard and soft law do not automatically interact in a complementary fashion, but are often deployed strategically and antagonistically – the result being not the progressive development of law, but an indefinite stalemate and in many cases a muddying of the international legal waters.

4. Impact: The Interpretation and Effectiveness of Hard and Soft Law

By and large, the literature on hard and soft law has focused on the choice and design of legal instruments, thus justifying its placement in the “making” section of this volume. By contrast, there have been few studies comparing compliance with and effectiveness of hard and soft legal commitments, respectively, and virtually no systematic analysis regarding the interpretation of hard and soft legal instruments. These issues are nevertheless significant, and indeed the purported advantages of hard and soft law at the design stage are often predicated on thinly theorized or unspoken assumptions about these later stages. We therefore offer a few observations on each of these questions.

4.1. Interpretation

At first blush, it would seem as if soft law agreements are likely to be deeply problematic when it comes to the interpretation stage of the international legal process. Here again, however, it is useful and indeed vital to distinguish among the three dimensions – obligation, precision, and delegation – identified by Abbott and Snidal, each of which has distinct implications for the implementation stage.

Reversing the traditional order of Abbott and Snidal’s typology, we can begin with delegation, and in particular delegation to third-party arbitrators and adjudicators as authoritative interpreters of international agreements. Here, it is clear that such delegation shifts the primary locus of interpretation from states to arbitrators and courts. Legal agreements that are soft along the delegation dimension leave broad scope for auto-interpretation of treaties by states-parties, minimizing sovereignty costs but also increasing the risk of opportunistic interpretation. By contrast, agreements that are hard on the delegation dimension ensure that interpretation will take place among third parties, which in turn raises important questions about the independence or dependence, and the neutrality or bias, of third-party judges or arbitrators (Voeten 2012). In between these extremes, non-judicial “management” regimes (Chayes and Chayes 1995) or “systems of implementation review” (Raustiala and Victor 1998) can provide some degree of centralization of legal interpretation within a given regime, thus limiting the scope for auto-interpretation even in the absence of legal sanctions for noncompliance.

The effects of variation along the second dimension, precision, are more complex, and are likely to interact, as noted above, with the delegation dimension. That is to say, low precision combined with a low degree of delegation provides a wide range of state and non-state actors with the ability to interpret opportunistically a vague set of legal provisions, and is therefore likely to impose few if any real constraints on states-parties. By contrast, low precision combined with high delegation to third-party dispute settlement systems grants international judges or arbitrators wide latitude to issue
authoritative interpretations of vague treaty provisions, and can result in growing constraints on states over time.

The effects of variation in the obligation dimension would seem to be the most straightforward, since non-binding legal agreements would seem by definition to be non-justiciable before an international dispute settlement body. This purely formal distinction, however, can be questioned, on two counts. First, while international courts may not explicitly enforce non-binding norms of international law, in practice it is possible that non-binding norms, such as the precautionary principle, may inform judges’ interpretation of specific treaty provisions (Shafer and Pollack 2010: 753). Second, international legal interpretation is not limited to international courts, but takes place as well among national governments and/or international implementation review systems, as well as in the court of international public opinion, which may not distinguish clearly between binding and non-binding commitments. Political scientist Daniel Thomas (2001), for example, has demonstrated how the human rights provisions of the cold-war Conference on Security and Cooperation Agreement, despite being explicitly non-binding, were seized upon by Western governments, human rights NGOs, and Soviet-bloc dissidents to criticize and delegitimate communist governments in the 1970s and 1980s.

Our point here is not that there are no important differences in interpretation between hard and soft law, but rather that the differences are likely to be more fine-grained than a simple hard/soft distinction might imply, and additional research will clearly be needed to understand how varying degrees of obligation, precision, and delegation – and the interactions among them – influence the interpretation of international legal provisions by judicial and non-judicial actors alike.

4.2. Compliance and Effectiveness

In assessing the impact of hard and soft law, we must distinguish between the concepts of compliance and effectiveness (Raustiala and Victor 1998; Raustiala 2000). As Kal Raustiala (2000: 398) writes, “compliance as a concept draws no causal linkage between a rule and behavior, but simply identifies a conformity between the rule and behavior. To speak of effectiveness is to speak directly of causality: to claim that a rule is ‘effective’ is to claim that it led to certain behavior or outcomes, which may or may not meet the legal standard of compliance.”

Strictly speaking, soft-law provisions – which are either non-binding, or vague, or non-justiciable before international courts – are problematic in terms of assessing compliance. For this reason, some of the few studies of the impact of soft-law agreements focus on effectiveness (as Martin 2012 advocates in this volume), asking whether soft law is more or less effective than hard law in changing the behavior of states and thereby addressing the problems that international agreements are designed to manage. Intriguingly, these studies challenge the popular view that soft-law agreements are necessarily less effective in changing behavior and solving international problems than their hard-law counterparts. In one multi-issue study of the effectiveness of international environmental agreements, Raustiala and Victor (1998: 685-689) conclude that soft-law agreements can, under certain circumstances, be more effective than hard-law agreements in the same area. The reason is that, in the face of significant uncertainty about the nature of environmental problems and the costs of addressing them, states are
more willing to engage in ambitious or deep cooperation through non-binding instruments. In many cases, such non-binding agreements set in train a process of “learning-by-doing,” through which the nature of the problem and the means of addressing it are clarified. Finally, they claim, both compliance and effectiveness of non-binding agreements are increased where these agreements are paired with systems of implementation review, which increase transparency, build capacity, and shame non-complying countries. Other studies of international environmental cooperation have produced similar findings (Brown Weiss 1997).

There has, to date, been only one major, cross-issue study that examined the impact of soft-law agreements. In a study funded by the American Society of International Law, a group of legal scholars examined compliance with soft-law provisions across four issue-areas – human rights, the environment, arms control, and trade and finance – asking whether the formal status of a norm (binding or non-binding) makes a difference when it comes to compliance by state and non-state actors (Shelton 2000a). Compliance with non-binding norms, they hypothesized, may be affected by four factors: (1) the context of norm-creation, and in particular whether a soft-law norm is free-standing or adopted pursuant to a hard-law agreement; (2) the content, or precision, of a norm, with precise norms more likely to elicit compliance; (3) the institutional setting, and in particular the existence of compliance review mechanisms; and (4) the targets of the norm, where compliance is more likely when states alone can comply, as opposed to when the behavior of private actors is implicated (Shelton 2000b: 13-17).

Drawing on the findings of many rich case studies of multiple soft-law agreements, the project concludes with mixed findings:

[1] In some cases the binding instrument evokes much greater compliance, in others there may be little difference, and in still others a non-binding legal instrument may evoke better compliance than would a binding one. In general the same factors are at play and the pathways through which compliance takes place are the same. But domestic institutions for enforcing law, such as the judiciary, are not available, in the absence of domestic legislation or a customary international law rule, and the various international and national incentives to comply may often be less. Moreover, it is less likely that the institutions often associated with agreements will be created for soft law instruments (Brown Weiss 2000: 536).

Elaborating on these findings, the study found support for several key hypotheses, including the claim that context (i.e., the link between a soft-law norm and a related hard-law agreement) made compliance with soft-law agreements more likely, as did the existence of a compliance review system. These findings, and those of the individual case studies in the volume, are significant, yet the research design of the project limits our ability to draw clear lessons from it. As a matter of research design, the authors seek to determine whether soft law produces greater or lesser compliance than hard law, yet no systematic effort is made to compare hard- and soft-law agreements in each issue-area. Furthermore, one could argue that the project’s focus on compliance – rather than effectiveness – is misplaced. As Raustiala and Victor (1998: 686) note, soft-law
agreements may, as a result of their greater depth, produce greater effectiveness despite imperfect compliance, a possibility that is missed by focusing primarily on compliance as the object of study. In addition, the authors may repeat the long-standing danger of overstating the causal significance of a legal norm, which may in some circumstances reflect a shallow, lowest-common-denominator agreement. Indeed, several of the key findings of the project – that compliance with soft-law norms is higher where a broad international consensus exists (Brown Weiss 2000: 537) and where the costs of compliance are low (Brown Weiss 2000: 538) – point precisely to depth or shallowness, rather than the binding or non-binding nature of the agreement, as the most significant predictor of compliance.

Despite the difficulties in studying the effectiveness of, and compliance with, soft and hard international agreements, cutting-edge empirical work continues to identify potential causal mechanisms and scope conditions for the effectiveness of different types of international agreements. In the realm of international financial standards, for example, Daniel Ho (2002) finds some support for the claim that market forces (i.e., a desire for a positive reputation in global financial markets) partially explain state decisions to implement the Basle accord on capital adequacy standards, particularly among democratic systems, while divided government and corruption are both negatively associated with such compliance. In a study of compliance with voluntary financial standards in East Asia, however, Andrew Walter (2007) finds that both official and market incentives for compliance often fail, resulting in weak or “mock” compliance with standards by countries following the 1997 Asian financial crisis. In the field of European Union studies, a lively debate has emerged around the soft-law “Open Method of Coordination,” which was designed and celebrated as a soft-law, deliberative exercise in collective learning and benchmarking and an alternative to hard-law regulation (Trubek et al. 2006), but which has been shown in subsequent studies to be largely ineffective in changing either the views or the behavior of EU member states (Rhodes and Citi 2009).

Our point here is not that soft law does not produce high levels of compliance or effectiveness, but rather that the empirical study of the impact of hard and soft law presents extraordinarily difficult research design challenges, which existing scholarship has addressed at best imperfectly. Future research should therefore identify clearly the nature of the dependent variable in question, whether compliance or effectiveness; engage in explicit comparisons between hard- and soft-law agreements in a given issue-area; and engage in explicit comparisons across issue-areas as well.

5. Conclusions

Sustained scholarly consideration of soft as well as hard law is barely two decades old, and IL/IR scholars have been in the forefront of this scholarship, seeking to theorize, explain, and empirically analyze the increasing use and effects of soft law in international affairs. This scholarship, in our view, has made considerable strides forward in the four areas of definition, design, interaction, and impact. With respect to definition, scholars from various theoretical traditions have explored the meaning and content of the terms “hard” and “soft” law, offering competing and overlapping accounts of how harder or softer legal provisions are chosen and operate in practice. The design or choice of hard and soft law has received perhaps the greatest scholarly attention, and collectively the
literature has identified clear advantages and disadvantages of agreements that are harder and softer along various dimensions. Both functionalist and distributive theoretical approaches have begun to identify the conditions under which states (and non-state actors) might choose one or the other. The study of the interaction of hard and soft law is in its early stages, but here the addition of a distributive approach has shed light on the ways in which hard and soft law can be used not only in a complementary but also, under certain conditions, in an antagonistic fashion. We know less about the impact of soft as well as hard law, in terms of both interpretation and effectiveness, but the existing literature can be mined for systematic hypotheses about the interpretation of soft law, and for preliminary findings about its effectiveness. Clearly, more research is called for in these areas.

While we therefore see great promise in the scholarly study of soft as well as hard law, we have also found evidence of two major weaknesses in the literature, one theoretical and the other empirical. On the theoretical side, we have seen how scholarship on this subject is characterized by some confusion about the basic definitions or characteristics of hard and soft law, with legal scholars tending to focus on the question of bindingness, while political science and IL/IR scholars have largely adopted the multidimensional institutionalist definition. As a result, scholars in many instances speak past each other, using the same terms but defining them in fundamentally different ways. Furthermore, scholars who adopt the Abbott and Snidal approach have generally failed to operationalize and study individually the three dimensions – obligation, precision, and delegation – of their chosen definition. In the IL/IR study of institutional design and flexibility provisions, scholars like Koremenos (2012) and Helfer (2012) have distinguished multiple flexibility mechanisms, each with its own characteristics, advantages, and disadvantages, and they have begun to examine the tradeoffs and interactions among different flexibility mechanisms. The literature on hard and soft law can, in principle, make a similar theoretical move, understanding the choice of and interaction among the dimensions of obligation, precision, and delegation, but the extant literature has only begun to do so. Finally, the existing literature on hard and soft law has drawn almost exclusively on the functionalist approach, although recent work suggests that a distributive approach (emphasizing distributive conflict, strategic choice, and power) and a constructivist approach (emphasizing the communicative and constitutive impact of soft-law norms) have much to offer as accounts of how soft and hard law are designed and work in practice.

Empirically, one could argue that the literature on hard and soft law again lags behind that on flexibility mechanisms. Existing studies of soft-law design, interaction, and impact have thus far focused disproportionately on a few issue-areas (most notably the environment), with far more preliminary and equivocal results in other issue-areas. With a few exceptions, moreover, this literature has been more case-study driven, with far less comparative or large-n research. To some extent, this choice is an artifact of the subject matter: in the study of flexibility mechanisms, scholars have focused exclusively on hard-law treaties, which they have drawn from existing databases like the United Nations Treaty Series and coded for the existence of specific flexibility provisions. By contrast, soft-law agreements, and particularly non-binding agreements, have not been systematically collected in the same way, and resist easy quantification. Despite these limitations, a handful of studies have attempted to study comparatively the design,
interaction, and impact of hard and soft law across multiple issue-areas (e.g. Shelton 2000a; Pollack and Shaffer 2012), and there is a clear need for more such comparative work, including work that incorporates the activities of non-state actors (e.g. Abbott and Snidal 2009; Pauwelyn et al. 2012). In addition, the hard- and soft-law literature suffers from the same problem identified by Helfer in his review of the flexibility literature, namely a nearly exclusive focus on the initial choice and design of agreements, with far less discussion of their use or impact in practice.

Taken together, these criticisms allow us to identify an agenda for future research that would be more self-aware in its definition of terms, more attuned to distributive as well as functional considerations, and more geared to systematic, comparative empirical study of the interaction and impact as well as the design of hard- and soft-law agreements.
Table 1: Distributive Conflict, Regime Complexes, and The Interaction of Hard and Soft Law

<table>
<thead>
<tr>
<th>Dist. Conflict Low</th>
<th>Dist. Conflict High</th>
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<tbody>
<tr>
<td><strong>Single, Isolated Regime</strong></td>
<td><strong>Regime Complex</strong></td>
</tr>
<tr>
<td>Complementary interaction of hard and soft law, as per existing literature.</td>
<td>Possible antagonistic interaction of hard and soft law within the regime, although opportunities limited by invariant memberships, rules, and substantive content of regime.</td>
</tr>
<tr>
<td>Possible complementary interaction of hard and soft law, although differing memberships, rules and substantive foci may render coordination difficult even in the absence of major distributive conflicts.</td>
<td>Likely antagonistic interaction of hard and soft law between regimes with different decision-making rules, memberships and substantive foci.</td>
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References


