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INTERNATIONAL FINANCIAL REGULATION: COOPERATION AND/OR CONFLICT?

International community has seen the current crisis as a new opportunity to intensify political processes that should lead to updated or a new international financial regulation. Despite numerous intergovernmental organizations' declarations and plans to handle international finance, only national packages have been so far implemented. Norms to regulate international finance have been developed but only within the realm of national hard law. The paper has a two-fold aim. First, it aims to present the soft-law approach as probably the only feasible possibility to commence the process of regulating cross-border finance, bearing in mind the reality of the Westphalian system. Secondly, as significant political interplay precedes any such arrangement, the paper makes an overview of political responses to the crisis, culminating at G20 summits. Even though the concept of soft-law international agreements might be a framework to deliver certain results in the future, the present level of discrepancy among national political agendas is still too significant for the general goals of international financial regulation to be agreed upon.

Key words: *crisis, international finance, regulation, soft law*

INTRODUCTION

In March 2010, Anton Valukas, appointed by a US court to examine the Lehman Brothers' failure in September 2008, made his report available to general public. One of the key findings were that

significant regulatory differences between the US and the UK system, in the area of repo operations, presented then (and still do) excellent opportunities to be used for financial malversations[1]. This was an extreme case with catastrophic consequences but most illustrative for the issue of international financial law.

Since the onset of transnational banking and definitely since the beginning of the current crisis, the issue of international financial regulation has been among the most contentious ones on the global agenda. At the first glance, major actors on the scene seem united in their efforts to stabilise the financial world and design new mechanisms which could prevent future turbulences on the global scale. Nevertheless, declarations produced at intergovernmental fora do not in any way point out to regulatory/legal framework through which such global actions would or could be implemented. The concept of soft law, implying international agreements based on jointly defined goals to be achieved, might be an option. This is even more realistic if one keeps in mind that financial regulation belongs to the 'core' regulatory powers of a sovereign state. But, the development and improvement of national hard-law norms to regulate modern finance might not be (depending on national political consensus) as sensitive as their harmonization at the international level, or even their subordination to a higher-than-national regulatory body.

Therefore, it is first necessary to present the basic concept of soft law and its advantages over the hard law. It is followed by the overview of global political interplay which should result in a set of commonly accepted goals, as the main input into the process of soft-law building. As the overview will illustrate, various national agendas are still too far apart, so three alternative hypothesis of soft- and hard-law interaction in the domain of global financial regulation are presented in the final part of the paper.

I. NOTION OF INTERNATIONAL FINANCIAL LAW (IFL)

1. Jurisdiction of the world and relevant law

Despite wide research, no appropriate or comprehensive theoretical approach to international financial law (IFL) has singled

[1] For details see: http://lehmanreport.jenner.com

out in legal theory so far[2]. Whenever it comes to the attempt to define the notion of IFL the problem of approximation of the existing, national legal systems arises.

According to Philip Wood[3], there are currently 193 sovereign states that apply almost 320 jurisdictions. They are ranked from the largest in terms of number of inhabitants and geographical size (such as China and Brazil) all up to miniature ones such as Niue and Pacific. Some of the states have a large number of jurisdictions, such as the USA (there are 51 of them, including the District of Columbia), Canada (11), Australia (8) and UK (7). From the global aspect, some of the jurisdictions are very close to each other and we can say that they belong to the same legal circle while others are essentially different (e.g. Mexico and Queensland). Despite the existing differences, legal operations (financial transactions, contracts between banks etc.) are carried on a daily basis. Those operations are known under the term cross-border business transactions - contracts with international elements or with international characteristics[4], contrary to international treaties that are concluded between the states as entities.

The basic legal dispute regarding the transactions with international characteristics is the issue of the applicable law. As by the rule, the existing regulations do not contain an explicit reply to the question when such transactions feature international characteristics and when that is not the case. It is left to legal and arbitrage practice to

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[2] Sebestianutti, Paul (2009). What is that t nal financial hing called interatio law? *Law and Finanacial Market Review*, 64-167.Sebestianuti (2009) gives an extensive and detailed overview of IFL as a separate branch of law. Also J.H. Dalhuisen (Dalhuisen, Jan, H. (2007). *Dalhuisen on Transnational and Comparative Commercial, Financial and Trade Law*, Oxford and Portland, Oregon: Hart Publishing) is trying to present a completely new meaning of transnational comemercial, financial and trade law sa modern *lex mercatoria*. This new merchant law is clearly not yet a unified system of transnatioanal substantive rules and it may, depending on the subject, still have an important domestic law component.

[3] Wood, Philip (2007). How to compare regulatory regime. Capital Market Law Journal, 2- 4: 332-344. According to Wood, there are 8 legal circles, representing: 1. American common law jurisdicitons, 2. English common law jurisdictions, 3. Roman - German jurisdictions, 4. Mixed civil /common law jurisdictions, 5. Islamic jurisdictions, 6. New jurisdictions, 7. Unallocated jurisdictions.

[4] In everyday speech they are referred to as international agreements, although legal operations that span over several legal orders should be referred to as operations with international characteristics, like in private law.

find the reply depending on a specific situation. Depending on the type of transaction in a particular case, the relevant law can be agreed upon between the contracting parties themselves. However, if there is no such agreement, several legal systems (English, Chinese, and Russian) may pretend to be the relevant law. By means of the collision norms, the selected law will be implemented in its full scope, meaning not only the disposition norms but also the imperative ones.[5] The main problem that occurs in those situations is the complicated system of collision norms that the above-mentioned legal rules could be built on.[6]

2. Public law in the financial sphere

In order to understand International Financial Law, it is very important to take into the account, aside from the norms of private law (which apply to the conclusion and fulfilment of contracts with the international elements), also the rules agreed upon in international treaties between the states (which represent a part of public law). Ratified (confirmed) international treaties become integral parts of the national legal order, which means that they produce the same legal action as if they had been enacted by national parliaments. In case of regulatory discrepancies between national laws and ratified international treaties, provisions of the treaties will prevail. For example, this is the case with the most important IMF document - "Articles of Agreement", which is, by its legal nature, an international treaty that produces international public-law obligations for signatory parties to that Agreement – Member States, namely the obligations that they have in their mutual relations towards each other.

The attempt to define the International Financial Law has to include, as noted, the fields of both private and public law. Globalisation of business operations on financial markets creates a new trend, namely the approximation and unavoidable changing of the current division of legal circles. The work on creation of new global legislation (as a new form of International Financial Law) requires

[5] Exceptions for the implementation of collision norms are cases of fraud circumvention of law (fraus legis) and when the effects of foreign law implementation contravene the public-law order (orde public) of the state in question.

[6] Sebastianuti has termed this 'shopping basket approach'.

significant efforts towards the creation of new meeting points and gradual removal of strict borders between national legal circles.

IFL can be defined as a specific legal discipline that includes different, special subjects (as compared to agents operating strictly within national economy), as well as operations and legal relations that result from such supranational operations and contacts.

II. THE G20 AND NEW FINANCIAL LEGISLATION

The forthcoming task of G20 (to devise a global regulatory framework and define new financial legislation) leads us to the area of public law in the field of financial markets. When we talk about public law, we think of legislation (in different forms)[7] enacted by the states or public bodies they had jointly created, but not by informal bodies that had been created at the international scene (e.g. G7, G8, and G20).[8] In the early stage of development of a modern public law, enacting of financial regulations was aiming at:

- Protection of national interests of states that legislation referred to, and
- Protection of interests of certain groups of actors or segments of financial market (interests of which were most often identical or similar to those of the state). In the US Investment Companies Act of 1940, for example, the declared policy of the regulation was to protect "the national public interest and the interest of investors. "[9]

[7] The example may include agreements, treaties, conventions, decisions etc. All these forms are of various legal strength depend on the area and importance they cover. Bilateral investment treaties, for example, typically include dispute resolution procedures, as does the WTO, whereas The Geneva Convention Relative to the Treatment of Prisoners of War does not. For a detail review of the literature in this field see, for example Guzman (2005). Guzman, Andrew, T. (2005). The Design of International Agreements. European Journal of International Law, 16 (4): 579-612

[8] Public law in English-inspired systems is usualy taken to signify administrative law- law that specifically has to do with a narrow area related to the power and actions of govermental and public entites, as well as the available remedies. The civil law concept of public law tends to be broader. Public law in this broad sense includes administrative law, revenue law, criminal law and market regulation.

[9] The Investment Company act of 1940 (15 USC 80a-1ff).

However, the current level of development on financial markets shows the intertwining of many interests vested in financial flows. Such a pyramid of interest is protected by different layers of legislation hierarchy. The development of the global market requires the overcoming of discrepancies arising from different legal systems. The higher the place of a particular interest (i.e. an objective with extremely important effects), the more difficult will be to reach an agreement of how this interest should be protected. Thus, for example, the international payment transactions are regulated by globally-accepted standards and harmonised rules (e.g. SWIFT) because they mostly involve technical/technological standards which are not expected to interfere with e.g. financial sovereignty of a state.

Taking into account that our focus is directed on the role of G20 in creating new world financial regulations, the mere status of the G20 as an informal group[10] is very important in understanding possibilities to accomplish financial stability, set as the priority. At the London Summit, the G20 leaders established the Financial Stability Board (FSB) with an expanded membership and a broadened mandate to promote financial stability. Since the London Summit, the FSB and its members have advanced a major programme of financial reforms designed to ensure that a crisis on this scale never happens again. The newly established FSB delivered three reports on the accomplished level of progress towards creating of new legislation/regulation.[11]

This is certainly the first step in efforts to resolve the problems of the world financial crisis. However, a new dilemma has inevitably arisen – Are the establishment of a new body (FSB) and undertaking of a number of measures by the G20 actually steps towards creating a new theoretical approach/model in development of new international financial legislation /regulation or just the signs of reconstruction of the existing practice? In order to decide whether this is a new model or just a reconstruction of the existing system, we will have to wait for the results to be yielded. Until then, we can investigate the possibility

[10]The Group of Twenty (the G20) Finance Ministers and central bank Governors was established in 1999 to bring together systemically important industrialized and developing economies to discuss key issues in the global economy.

[11]These G20 documents include: Overview of Progress in Implementiing the London Summit Recommendations for Stregthening Financial Stability; Impoving Financial Regulation, and Progress Report on the Actions to Promote Financial Regulatory Reform - Issued by the US chair of the Pittsburg G20 summit. They are available at www.g20.org.

of achieving an agreement on international financial regulation through the analysis of previous policies and enacted documents.

There is no doubt that the mechanisms for enacting of legislation/regulation in the field of international public law are relatively limited. In addition, the existence of different national financial legislation/regulation and interests protected by them make even stronger obstacles for plans to devise a globally-accepted regulatory framework for international finance. So far, the influence of the national financial regulation on the global-market transactions has followed the impact those economies (e.g. the US, the UK, EU, China, and Russia) were producing in different parts of the world economy. This is not a surprise keeping in mind that through such influence those states actually tend to protect their own political/economic interests across the borders. Finally, and maybe most importantly, those interest seem not to converge to a significant extent and hence the possibilities of agreeing over a joint set of regulatory objectives are still quite narrow. So, at this point we cannot talk about the existence of realistic possibilities to create hard law legislation/regulation for global finance. Nevertheless, a feasible option for building a new framework might open if we give up a classical legal approach and turn to the concept of soft law.

III. SOFT LAW

1. Conditions for soft-law regime creating

During the 20th century, the existing legal theories and practice within the international law were under constant pressures to adjust to fast economic and political changes. The transfiguration of the world political map, accompanied with or arising from the changing world economic landscape, resulted in corresponding modifications of international relations regulation. There was a basic shift regarding the sources of law and methods of norms codification at the international level. International agreements were replaced with international treaties. Soon, this has became a new trend where international organisations and other informal governmental organisations took over an active role in managing international relations using a new method of enacting and implementing legal norms. This was an environment within which the notion of "soft law" has started to gain

importance in the western legal doctrine[12]. Nowadays, in the 21st century, the implementation of soft law represents a system of principles of modern international law that differs from previous practice. Since the treaty (explicit or implicit) is today one of the instruments to create international law, the norms created in such a way do not have the same legal nature as the hard-law norms. Consequentially, they do not produce the same legal effects. Therefore, they can be only evaluated from political or moral perspectives[13].

2. Definitions of hard and soft law

The western schools of legal thought differentiate between hard law and soft law primarily as to their implementation. This is most often the starting point for defining of hard and soft law. Most authors believe that hard law generally refers to legally binding obligations. Soft law is usually understood as being not formally binding but may nonetheless exercise significant influence on behaviour.

The existing scholarly literature on hard and soft law can be divided into three camps: legal positivist, rationalist and constructivist theories. All three of these camps predominantly view hard law and soft law as interacting in complementary ways, but they have different theoretical starting points (Gregory Shaffer and Mark Pollack 2008, 2).

The legal positivist approach tends to deny the very concept of soft law, since law by definition is binding[14]. Rationalists respond that the term "binding agreement" is a misleading hyperbole when applied to international affairs, but they still find that the language of "binding commitments" matters in terms of indicating the seriousness of the parties' commitments, such that non-compliance will entail significant reputational risk. Constructivist scholars, in contrast, focus less on the binding nature of law at the enactment stage and more on the effectiveness of law at implementation stage. They emphasize that the very concept of "binding" international law as an operational

[12] D'Amato, Anthony (2008, 2). International Soft Law, Hard Law and Coherence. Public Law and Legal Theory Series , 08 (1): 1- 29.
[13] Velizanina,, M (2006, 3) Soft Law and Its Role in Regulation of International Relations, *International Solicitor* , Vol. 3
[14] Klebers, Jan (2005). Reflections on Soft International Law in Privatized World. *Finnish Yearbook of International Law*, 16: 313-328

concept is highly dubious. At the international level, most areas of international law are closer to soft law in various ways[15].

At the same time, the Russian legal theory attempts to define soft law through observing of its legal nature. The point of dispute in defining of its legal nature is the existence of obligation. There are two main approaches to the issue: one that recognises the legal nature of soft law, and the other which claims that it cannot be considered law due to the absence of obligation. Thus, according to Russian authors, if international relations are regulated on the basis of soft law, two types of norms can emerge:

- Declarative types of legal norms that do not contain clear legal obligations, and
- Norms that cannot be characterised as legal norms at all since they do not have necessary legal nature but produce a moral or political obligation for their implementation.

According to Russian authors, states are becoming more and more supportive of the second type of norms and such norms are increasingly gaining dominance in international law doctrine. Thus, soft law is a complex and controversial phenomenon with positive and negative effects. Its existence shades the borders between classical law (legal regulation) and treaties (consensual regulation). The latter is based on norms without the implied obligation where a special emphasis is placed on the principle of good will in fulfilment of undertaken obligations.

3. Advantages and disadvantages of soft law

In order to achieve their regulatory aims, states have diversified the range of used instruments. As to the instruments' legal nature, states have at their disposal those closer to hard-law concept and those closer to the soft-law one. The use of one or the other group of instruments depends on various domestic or international factors. Sometimes, the decision is made to rely solely on one group of instruments while in other instances a state may choose to apply a combination of 'harder' and 'softer' instruments. This inevitably leads to the formation of a complex, hybrid system of instruments in use,

[15] Shaffer, Gregory, C. and Pollack, Mark, A. (2008). Hard vs. Soft Law: Alternatives, Complemets and Antagonists in International Goveranance. University of Minnesota, Law School, Legal Studies Research Paper Series, No. 09-23.

both hard and soft in their legal nature. Abbot and Snidal[16] have defined three criteria in distinguishing legal norms from the soft- to the hard-end: precision, obligation, and delegation

Hard-law instruments allow states to add credibility to their commitments to international agreements. Such an increase of credibility is based on considerable costs of renouncing the legal commitment, deriving either from pending legal sanctions or compromised international reputation[17].

Hard-law treaties have a direct effect on national legislation and require enactment of national rules that create new tools to mobilise domestic stakeholders. Hard-law instruments, applied due to the signed international treaties, permit one signatory to monitor the other signatories' commitments, including the use of dispute-settlement mechanisms in case of non-compliance.

In addition to the above-mentioned advantages, a hard-law regime also has its disadvantages. Once the formal framework of an agreement between states is created, it affects states behaviour as it limits their sovereignty in the regulated areas. Therefore, the probability of the rules violation rises, as well as the costs of keeping the agreement in force.

Contrary to that, soft law as a new form of regulating international relations offers much more flexibility. Soft-law instruments are easier and less costly to negotiate. They induce lower "sovereignty costs" in sensitive areas, provide greater flexibility for states to cope with uncertainty and learn over time. Soft-law instruments allow states to engage in "deeper" co-operation as they would be less concerned with the enforcement. Soft-law instruments are also available to non-governmental actors, including international organizations' secretariats, administrative agencies and business associations. Although a soft-law document is not legally binding for the states that subscribe to it, it is widely accepted that such documents contain norms that should be followed on the good-faith basis even without the legal obligation.

The main disadvantage of soft law is the absence of legal obligation so that many authors do not even consider it a law. The results of the implementation of soft-law instruments are relatively

[16] Abbott, Kenneth, W. and Duncan Snidal (2000). Hard and Soft Law in International Governance, *International organization*, 54 (3): 421-456

[17] (Shaffer and Pollack, 2008)

unclear because the parties may have different approaches to their implementation. Some parties to a soft-law agreement will implement, for example, the recommendations in full, while the other will resort only to certain parts of the recommendations in accordance with their own needs.

So far, soft law documents have been used in international affairs in the following ways: a) as a first step to binding international commitments, b) as a tool for holding nations accountable, c) as a legal basis for resolving disputes in international affairs, and d) as a flexible way of developing international standards. With no need to further elaborate soft law advantages and disadvantages, we should here summarize key benefits of implementation of soft-law instruments. Soft law can be a tool to change/influence behaviour of governments and it can be a legal basis for resolving disputes in international affairs. The compliance to soft-law norms originates from threats of publicly exposing non-compliant behaviour, blacklisting the states which do not adhere to such norms or using other political/economic weapons to internationally discredit the non-compliant states.

We can conclude that as long as non-treaty agreements are not recognised in international law as a source of legal obligations and are not provided with a set of rules regulating their coming into existence, functioning and effects, they remain closed. Outside the regime created by the non-treaty agreement, rules of international law presently take account of such agreements only as a factor, not as source of law[18].

IV. THE G20 AND POLITICS OF INTERNATIONAL REGULATION

The severity and outreach of the present crisis not only have seriously affected most of national economies but has also proved to be an opportunity to question / test / change basic principles of the dominant neo--liberalism and even capitalism itself.

Since September 2008, governments in developed market economies have implemented actions aimed at supporting individual institutions (the so-called 'too--big--to--fail' institutions) and

[18] Hillgenberrg, Hartmut (1999). A fresh look at soft law. *European Journal of International Law,* 10 (3): 499-515

programmes directed to the system as a whole. National measures have included, *inter alia*, capital injections to banks' capital, taking over contaminated assets or extending guarantees to help reduce banks' exposure to large losses, strengthening the deposit insurance schemes, cutting reference rates and nationalizing banks. International financial institutions have also stepped in to provide additional lending at more favourable conditions, especially for developing countries[19]. At the same time, a plethora of diverse political ideas, plans, statements and declaration were made on the causes, effects and prospects of the current crisis.

Regardless of their differences, the intensity of national and international political debates, particularly around the issues of interdependence and global linkages, might point out that a new global/transnational social space is coming into being and all social, political and economic activities are becoming affected by its logic. Such a supraterritorial social space seems not to be bound by territory, distance or legal systems, and structural change occurs independently of agency, frequently used by political leaders to justify their decisions as inevitable[20].

Furthermore, structural changes today allow for potential different, multiple equilibria because actors' strategic and tactical choices interact with such changes, thus creating a number of potential outcomes. In the present world, and this is even truer for the global capital, numerous and interlinked processes design the global scene: internationalization, transnationalisation, translocalisation, and so on. In addition, a multitude of actors emerge on the supranational scene which had previously been strictly reserved for governmental actors, what Cerny[21] calls multinodal politics and Underhill and Zhang[22] describe as a relative disarmament of public authorities. Even though non-governmental actors have gained in importance, the extent and consequences of the current crisis have proved to be an excellent

[19] Panetta, Fabio et al. (2009). An Assessment of Financial Sector Rescue Programmes. 48, *BIS Papers*, Basel: Bank for International Settlements.

[20] Jan A. Scholte 2002, 7 Governing Global Finance. *CSGR Working Paper*, 88(02),Warwick: University of Warwick.

[21] Philip Cerny 2007, 2 Multi-Nodal Politics: Toward a Political Process Theory of Globalization, International Political Economy Society, Stanford: Stanford University Press.

[22] Underhill, Geoffrey and Xiaoke Zhang (2006). Norms, Legitimacy, and Global Financial Governance. WEF 0013, London: University of London, p. 29.

opportunity for the authorities to invest in regaining the strength of their 'arms'.

Is this crisis just a final touch to 'destroy' the neoliberal economic order that dominates today or are we witnessing a time frame wherein the level of world 'fluidness' requires its total remake[23]? What certainly is beyond doubt is the fact that global capital today presents one of the major areas of concern for the world economy as a whole and there is a pressing demand for new/updated regulatory arrangements to be made[24].

The processes of global political deliberations were directed to two culminating points: the G20 meetings in London and Pittsburgh. What had been planned to be a show-room for a united and orchestrated action, actually resulted in a serious compromise between the different agendas of the Anglo-Saxon axe and the continental-European 'league', while only a few of the developing countries' proposals were adopted. Once again, their overlapping but different agendas have pointed out that contemporary politics is one of detachment[25], of 'cool loyalties' and 'thin' patterns of solidarity.

The London G20 communiqué came out as a result of an ongoing political process, lasting for many months and encompassing a variety of issues, standing points, interlinked and conflicting values, as well as diverse proposals how to structure new (regulatory) arrangements. Some of the most important inputs into the politics of new financial regulation are presented bellow.

1. European Union: efficiency, transparency, state control

In October 2008, the EC Commission issued a communication with an outline of the European recovery plan[26], which clearly emphasized the view that the current crisis poses an excellent opportunity for achieving a two--fold goal: on the one hand, improving the endangered EU competitiveness (especially in relation

[23] John G. Ruggie 1993, 2. Territoriality and Beyond: Problematizing Modernity in International Relations. *International Organization,* 47(1): 139-174.
[24] Sorensen, Georg 2006, 7-9 What Kind of World Order? The International System in the New Millennium. Cooperation and Conflict, 41: 343-363.
[25] Kratochwil, Friedrich (2007, 5). Re-thinking the 'inter' in International Politics., Millennium - Journal of International Studies, 35: 495-511
[26] European Union (2008). From financial crisis to recovery: A European framework for action, COM(2008), 706 final, 29. 10. 2008.

to the US and the far East), and on the other, fortifying the Union and rising state control. The latter has indeed become one of the stumbling stones in reaching the compromise over proposals for a new global financial architecture. Also of importance, the communication was backed up with decisive, coordinated and effective action: at the EU level by the French Presidency of the Council, the Commission and the European Central Bank, and at the national level by the Member States, with full support and cooperation from the European Parliament.

A three part approach which will be developed into an overall EU recovery action plan/framework includes: a new financial market architecture at the EU level (read as: stronger state support and control); increasing investments in R&D innovation and education, with country--specific differences allowed in fiscal room for manoeuvres (read as: enhancing the EU position but maintaining state's fiscal sovereignty), and a global response to the financial crisis (neoliberalism in international affairs but wider and stronger control at home). In March 2009, the EU included two additional components in its proposal: changing of the IMF's role and plans to adopt a global charter for sustainable economic activity, as a first step towards a set of global governance standards[27].

2. The G7: economic and trade liberalism, beneficial globalization

Leaders of the seven most developed nations have been active in issuing joint declarations since the beginning of 2008, but their views have somewhat change during the course of the crisis development. In Tokyo in February 2008, the G7 finance ministers concluded that the world economy remained vulnerable to tighter credits, a deterioration of the US housing market, higher oil prices and rising inflation. Market economy was not questioned.

In February 2009, at the G7 meeting in Rome, a general intonation of the final communiqué radically changed. The market economy principles were not challenged but more specific issues were discussed: the need to restore normal credit flows, enhance liquidity

[27] European Union (2009). *Presidency Conclusions*, Council of the European Union, 7880/1/09, 29.04.2009.

and use newly created instruments and facilities, strengthen banks' capital base, and so on. For the first time, wide fiscal packages were proposed, as well as the need to redesign international financial system (particularly the IMF). [28]

Two particular features of the G7 responses differ them from the majority of other (inter)governmental responses. Firstly, they always manage to link issues of wider (or greater) importance to their own markets' development, such as the value of Chinese currency, Japan's rising fiscal imbalance, the growth of sovereign wealth funds, terrorism, oil prices, and so on. Secondly, the G7 has been among the very few to underscore the significance of co-operation with private sector, for instance in developing mutually recognized securities regimes. The transition of the leading role (from G7 to G20), ever wider issue-linkages in dealing with the crisis, and the involvement of private actors might well serve to illustrate that traditional approaches to international regimes are gaining in significance.

3. The G8: international organizations' coordination, structural changes

The finance ministers of G8 (the G7 plus Russia) met in June 2008 in Osaka, again to reaffirm their beliefs in the basic market principles but their final address clearly pointed out a new dimension to be taken. Namely, by calling upon a range of international (intergovernmental) organizations to start immediately providing their own inputs to (national) measures, they implicitly recognized the need for more structural changes. In other words29, the group acknowledged the need for steering various multi-level entities towards shared rules.

The list of institutions and issues included: Financial Stability Board, (cross-border cooperation in crisis management, sound compensation principles, sound financial systems), International Accounting Standards Board (off-balance sheet items, valuation in illiquid markets), International Organization of Securities Commissions (code of conduct for credit rating agencies, improved disclosure by financial institutions), the Basel Committee (sound practice guidance on liquidity risk management), the OECD (best

[28] www.g8.utoronto.ca
[29] Underhill and Zhang, op. cit, p. 8.

practices for open investment regimes), the World Trade Organization (successful conclusion of the Doha Round), International Energy Agency (volatility and level of oil and commodity prices) and the Financial Action Task Force (survey of financial system abuses).

In October 2008, the G8 summit, for the first time, allow for doubts to be raised regarding the quality of financial market regulation and the global system design: 'While our focus now is on the immediate task of stabilizing markets and restoring confidence, changes to the regulatory and institutional regimes for the world's financial sectors are needed to remedy deficiencies exposed by the current crisis.'[30]

4. BRIC: democratic international system, new global leadership

In May 2008, the BRIC summit in Yekaterinburg brought together ministers from the second-largest food producer (Brazil), biggest energy exporter (Russia), the largest democracy (India), and the most populous country (China). The agenda for the meeting sought to turn their combined economic power into political clout, and covered issues from the global food crisis to the UN reform. The joint communiqué released at the conclusion of the summit outlined vastly different positions than those of the G8 and International Monetary Fund[31]. The BRIC ministers urged the creation of a more democratic global system with the rule of law and multilateral diplomacy, wherein emerging markets should have a greater role and the dominant powers adhere to rules as all other countries. In this way, an expanded, new political community might add legitimacy to the governance of the world economy which should be characterized by an accountable, legitimate, effective and fair governance structure[32].

[30] www.mofa.go.jp/policy/economy/summit/statement0810.html

[31] International Monetary Fund (2009). *World Economic Outlook.* April 2009, Washington DC

[32] Germain, Randall (2007,5). Financial Governance and Transnational Deliberative Democracy. Paper prepared for the conference: "Pathways to Legitimacy? The Future of Global and Regional Governance" Centre for the Study or Regionalisation and Globalisation, University of Warwick

5. The UK: financial isolationism, fairness, fiscal stimulus

It is particularly illustrative to present the position and views of the United Kingdom with regard to new financial regulation. During the business meetings in Davos, in January 2009, British PM Gordon Brown admitted that one of the problems was the absence of a global 'map' to deal with the crisis. Again, globalization was taken as something that happens in the outer sphere and governments could do nothing than to react to such a process[33]. He added that the international financial system had to be rebuilt, and offered a confusing explanation: such an effort would partly serve as a means of limiting the contagion problem (limit negative globalization effects), but at the same time it would present a support to basic market principles (continue harvesting positive globalization effects). Governments were to decide how to set the border between the positive and negative effects of globalization as 'not everything can be left to the market.' [34]

Implicitly admitting the danger of further deterioration of the UK's position in the world finance, Brown underscored that financial protectionism was a greater danger than trade protectionism. This is leading to the withdrawal of capital from these institutions' foreign operations and a new form of financial isolationism.

Nevertheless, during the London G20 meeting preparation, the focus of the attention has changed: from global financial flows to family and business values: *'*Our task today is to bring the imperatives served by our financial markets into proper alignment with the values held by families and business people across our country - hard work, taking responsibility, being honest, being fair.*'*[35]

In April 2009, the UK (together with the US) pressed hardly for a wide, internationally coordinated fiscal stimulus that could help the real economy and, inter alia the seriously affected British economy, but with no success. Nevertheless, at the same time, the alliance managed to resist the Franco--German efforts to introduce strict and comprehensive supervision rules for the global finance. This supports the arguments of Underhill and Zhang that governments are becoming more inclined to actively participate in international arrangements for

[33] Garrett, Geoffrey (2000, 29). The causes of globalization. *Comparative Political Studies,* 33: 941

[34] http://www.weforum.org/en/knowledge/Events

[35] www.telegraph.co.uk 31 March 2009

the purpose of enhancing their capacity to deal effectively with the denationalized economic structure.

6. France / Germany: new world – new capitalism

Although the financial sectors of France and Germany have experienced different levels of stress under the current crisis (the former being less affected in relative terms), two governments seem to share very similar positions as to the solution for current turmoil and the future financial architecture.

In January 2009, under the banner 'New world – new capitalism', politicians and financial experts met in Paris to discuss how the world can protect itself from financial crises in future. In line with the prevalent state-capitalism and social market economy tradition, Chancellor Angela Merkel called for a stronger governmental co--operation for the current crisis was seen as an expression of poorly coordinated globalization. New regulation for the international financial markets was urgently needed, in addition to a sort of a UN economic council (a world government).

The crisis of capital is also a crisis of capitalism, declared French President Nicolas Sarkozy, and called for extensive state interventionism. It is necessary for moral and ethical values to be more firmly anchored in the system because they formed the basis for other fundamental values of capitalism36. At the summit in Pittsburgh, France further developed the idea by introducing new concepts of economic development and progress.

Both France and Germany see the current crisis also as good opportunity to enhance Europe's position, particularly in relation to more technologically advanced economies.

7. China: new international partnerships, new institutions

More than other developing countries, China sees the crisis as a significant opportunity to improve its growth, as its economy has not suffered a decline comparable to that of developed countries. Beijing wants further strengthening of global financial markets and a strong

[36] Nicolas Sarkozy**:** To the G-20: Do What We Must for Global Growth, But Regulate All Finance**,** April 3, 2009, The Huffington Post (www.huffingtonpost.com)

but reciprocal fight against protectionism[37]. A part of Beijing's plan is a substantial reform of international financial institutions, in order to give developing nations more power. It also backs plans for a new global reserve currency to replace the US dollar which certainly adds another dimension to the already changing currency structure of the world capital flows.

Radical proposals have also included changing the role of governments in today's economies, introducing new models of market economies and dismantling international financial institutions all together. China presses for initiating an institutional experiment, in terms of market actors, processes and structures, which could more readily accepted and shared by authorities and investors worldwide.

Both official and unofficial voices from China agree that the country has acquired a new and powerful position in the international community but they disagree as to what role it should play: the one 'prescribed' to it within the existing global system (by other major powers) or a new one within reformed world architecture. One must bear in mind that rules of global governance, and that is particularly true for international financial regulation, can be maintained (held legitimate) only if widely accepted and obeyed voluntarily. If, however, such a major player as China is strongly questioning the legitimacy of the present order and institutions, the success of current global politics, in terms of yielding new regulatory results, raises serious doubts.

8. Russia: international supremacy and power

In addition to its activities, ideas and agenda pursued within the BRIC group of countries, Russia obviously wants to use the crisis for making a re-entry to the world scene and at least partially regain channels of influence.

"Naturally the world is asking 'why should we take seriously the American model of "free-enterprise" as the debacle worsens? This crisis, it seems, is to America what "imperial overstrain" was to Great Britain: a slow-motion unwind of international power and credibility -

[37] Setser, Brad (2008:24). *Sovereign Wealth and Sovereign Power.* Special Report No. 7. Centre for Geoeconomic Studies, New York: Council on Foreign Relations.

in short, the erosion of U.S. supremacy around the world and the ushering in of a 'post-American system.'' [38]

Russia came to the G20 summit in April 2009 with the most radical agenda for change, including proposals to counter the US dominance, empower poorer countries and sent an 'obsolescent' economic order to the past. According to the view, almost all components of the global system should be reformed: international monetary and financial systems, institutions and international regulation.

After the Pittsburgh summit, president Medvedev was happy to report that from a number of aspects, a new reality of the international political scene has been accepted by international community, thus marking at least the beginning of legitimacy rise. Russia's pressures for redistribution of quotas yielded results, showing 'responsible attitude' of various state leaders with regard to their international obligations. More importantly, a 'revolutionary change' was introduced regarding multilateral monitoring of macroeconomic parameters of the world's largest economies, not only by the IMF but also by other countries.

9. United States: from Reaganomics to Obamanomics

Even before the major bankruptcies of the US banks, the presidential campaign revealed a shift in the agenda of the then-candidate Barack Obama. The US economy was beginning to slow down and refocusing was clearly a necessity. America was to reconsider free-market principles, introduce more governmental oversight, reorganize its society towards achieving more equality and less uncertainty, but at the same time continue to pursue its role as the world leader. Those basic ideas have later found their way in various rescue and assistance packages. The G20 summit in April 2009 was actually the first opportunity for the new administration to test its positions vis-à-vis international responses to the crisis. In accordance with the tradition (and its position), the US was reluctant to proposals for 'submitting' its economy to supranational rules and regulation.

[38] Ross, C: US-China relations affect world markets greatly, Pravda, Moscow, 6 April 2009(http://english.pravda.ru/business/finance/06-04-2009/107363-US_China_relations-0)

At the Pittsburgh Summit in September 2009, the US position was more consolidated and the group adopted President Obama's framework for an improved economic cooperation and coordination. The framework outlined three basic dimensions of future (US) growth: strength, sustainability and balance. Furthermore, the US openly admitted that, in the world of shared security and prosperity, its own interests depend on other countries' actions[39]. A declining economic power of the US and a deteriorated political coherence at home, on one hand, as well as an increasing transnationalisation of economic issues, on the other, resulted in a change of the US agenda. For the US, the international community does exist, interdependence cannot be overlooked anymore, common values have been developed and, most importantly, (all) members of international community have the obligation to work towards realizing those common values.

10. The G20: minimal common denominator?

During the height of the crisis, the G20 was among the most energetic actors on the world scene. Its proposals to deal with the crisis were quite comprehensive, and linked various other issues, such as poverty reduction, social inclusion, climate change, etc. The G20's current status as a discursive organisation is in this way contrasted with the more strongly decisional types of other intergovernmental actors, such as the IMF[40] and might shed more light on the future of multilateralism. Following the arguments of Muller and Lederer[41], the power and activities of the G20 might point to a new developing form of managing global affairs, with specific actors, instruments and practices. Hence, this organization might be the centre point from which new, soft-law instruments of international financial regulation would appear.

Following numerous formal and informal meetings within and outside the group, and in conjunction with other streams of political

[39] Remarks by President Obama at the G20 closing press conference**,** Pittsburgh, September 2009, [www.pittsburghsummit.gov]

[40] Higgott, Richard (2004). Multilateralism and the Limits of Global Governance. CSGR Working Paper No. 134/04. Warwick: University of Warwick.

[41] Muller, Phillip S. and Markus Lederer (2003). Reflecting on Global Governance: Demarcating the Politics of Global Governance, in Lederer, Muller (eds.): *Challenging Global Governance: A Critical Perspective*, ELRC/ CPOGG workshop at Harvard Law School, October 2003

actions described above, the G20 summit in April 2009 resulted with three declarations on the recovery plan, the financial system and resources to implement the plan[42]. Issues that were covered included, inter alia, fairness/equality in enjoying indivisible growth, sustainability, effective regulation of the market economy, strong, supranational institutions, promotion of global trade, etc. A commitment was made to implement a $1.1 trillion programme in support credit markets, growth and employment in the world economy.

Without the need to go into much detail, one must pay particular attention to different levels of norms planned to guide further actions. Four different types (or levels) of norms can be identified in the documents: global standards (most binding ones, applicable to all countries – related to accounting standards and principles); internationally-agreed norms (subject to separate agreements – financial system regulation); good practice (desirable, recommended – activities of credit rating agencies) and a consistent approach (most flexible – basic principles of national financial regulation, for example, the coverage, boundaries). The core part of the documents focuses strengthening of financial supervision and regulation. In order to secure a much greater consistency and systematic co-operation, a new international body should be established – Financial Stability Board. It would encompass a wider membership and work closely with the IMF to provide early warning of macroeconomic and financial risks.

Referring to the previous parts of this paper, the above pyramid of international financial norms, as well the other related measures, might lead to a conclusion that a new, soft-law regime for international finance has been born.

The G20 Summit in Pittsburgh proved that leaders have decided to keep the spotlight on their actions, at least in the short term. Though not yielding many results in terms of structural transformations (output side) as the London Summit did, this event brought forward two major changes. First, the G20, as a precursor to expanding the political community, should take over from the G8 the role of being the centre forum for the creation of new international economic architecture. Secondly, leading intergovernmental financial

[42] Official text of the documents available at http://www.number10.gov.uk/Page18914

institutions should be reformed in a way that would give more voting power to dynamic emerging economies, thus enhancing the probability of a successful future implementation of global norms. Reaching a consensus on the incorporation of macro-prudential concerns about system wide risks into international regulation has been one of the most significant accomplishments.

But maybe most importantly, the Pittsburgh Summit has initiated 'a regulatory race to the top' for reaching international agreement and then for implementing new standards nationally. One must not forget that, back in the 1970s, it was a similar state competition (though in opposite direction of deregulation) that had created impetus for sometimes high-risky search for a friendly environment and very short term economic restructuring.

V. CAN SOFT LAW LEAD TO HARD FINANCIAL REGULATION?

Let us return to legal issues and possibilities for the G20 to build a road towards hard financial regulation on a global scale. The purpose of portraying the political processes within the G20 was to assess how close (or how far) the main actors are from reaching an agreement on new international financial regulation.

As the analysis of the London Summit documents shows, the participating states have basically agreed to have binding norms only in the field of accounting principles. Other important aspects of international financial regulation were left out, waiting for future, separate agreements to be negotiated and designed. This clearly reflects that, beyond joint pictures taken and statements made, the G20 leaders have set a particular 'scale' of submitting their own policies and principles to global harmonization. Unless the norms and the policies in which they manifest themselves are perceived by the community as authoritative, and that they can be justified in terms of shared beliefs, there is still a long way for new, global governance in the field of finance to emerge. Nevertheless, despite many different and sometimes conflicting values the states of the G20 pursue, one can think of essentially three paths towards new global regulation of finance.

The accomplishment of the G20's main objectives, in the present Westphalian world, may seem be possible mainly with soft-law instruments. However, that is not completely true. In order to accomplish such complex tasks at the international scene, there certainly must be a level of interaction between hard and soft instruments The internationalization, since the mid-1970s, required fresh approach to regulating cross-border businesses, and this has often included various combinations of hard- and soft-law instruments (for example, international payments, rules devised by the International Chamber of Commerce, etc). Nevertheless, an approach that is used more frequently is based on specific interactions/relationship between hard and soft law, and not just their simple combination over time.

For delineating paths towards new financial regulation, we must put together three building blocks defined above: the reality of the current state system, the prospects of achieving a wide, international consensus over political values, and the existence of a dual, hard/soft structure of international law. Having put this foundation, it is possible for us to set three hypotheses in accomplishment of the G20 objectives.

1. Hardening of the soft-law regime

The advantages of a soft law regime in creating of future financial regulation are indisputable. The constellation of international economic and political relations does not allow the use of instruments with strong binding elements. There are several arguments in support of the hypothesis that the soft-law regime will harden and this will result from the process of accomplishment of the G20 objectives. The evidence of the soft-law regime hardening can be found in agreements reached among the G20 dominant states over some of the aspects/objectives of financial regulation. After the governments have reached a consensus over the ranking of values, it was not difficult to set the goals of regulation, for example in the field of accounting. In a similar way, the path of a soft-law regime hardening was previously used in creating of joint and later unified objectives of the European Union, exemplified by the establishment of the European Payment Union (Schafer 2006, 199).

The analysis of the mentioned FSB reports on efforts to build new financial regulation could lead to a conclusion that hardening of

the soft-law regime is the way towards a future international hard regulation. The readiness to fortify the soft law regime with hard-law instruments can be seen from the documents presented at the Pittsburgh Summit. The overview of progress in implementing the London Summit recommendations emphasizes that the US and the EU were willing to take further steps. Both sides were ready to implement the proposed measures as binding in certain fields (macro prudential policy, hedge funds, regulatory reform, etc.). For example, the US Treasury has proposed, among other important measures, the Financial Services Oversight Council Act of 2009 and the Restoring American Financial Stability Act of 2010, to be passed by the Congress. In this way, the values underneath the soft-law regime will be integrated into the national/EU legislation. The hypothesis could thus be sustainable if the US and the EU had an absolutely dominant role in creating of new financial regulation to prevent a new crisis. However, the reality of the global capital flows does not fit this picture. The above-mentioned reports do not contain a single note on the intentions of other G20 members, in particular China and Russia, to resort to this method of hardening of soft-law instruments. Furthermore, the G20 countries have emphasized a number of other important issues related to their own agendas, for example, the dissatisfaction with the dollar as the world reserve currency, changing of the IMF voting structure, multilateral surveillance of national economies, redesigning of capitalism itself, etc. Having this in mind, we must put strong reservations on the sustainability of this hypothesis, at least in the short run

2. Softening of the hard-law regimes

Before we commence the analysis of this hypothesis, we should say that in cases when social/international relations are still not mature enough for formal regulation, the advantage is given to soft-law instruments. They are fairly efficient to direct the development of relations towards formal regulating without the risk for the states that potential problems will be resolved by legal means. Since an overall, comprehensive agreement of the G20 member states has not yet been reached, one cannot expect that the future step towards financial stability will be signing of any legally binding instrument (treaty). However, if we assume that the G20 members will not reach such an agreement soon, we could also assume that a few of them, 'allied' in

the economic, political and even legal sense, could decide in favour of even closer linking through hard-law regime instruments. In order to extend the existing legislation/regulation and one's own impact on new areas/markets, the legislation will have to be softened through the concept of soft law. Essentially, this would mean granting of certain 'privileges' for the purpose of establishment of global financial stability and/or for the purpose of increasing the benefits of globalization – both inwards and outwards. Such a process could involve a certain degree of lowering of the enacted national standards, simplifying of the procedures with regard to certain transactions or actors originating from the 'allied' countries, passing of legislative changes in accordance with the foreign regulation, etc.

However, such a process of forming groups of linked, softened regimes would definitely result in building of new barriers for outsiders and a rise of financial protectionism. Despite of the differences among the G20 countries, they have indeed presented themselves as unified with regard (at least) to the main objective – reinstating financial stability of the global market. As there are no indices that certain countries are forming alliances in order to create their 'own', separate legal circles, the hypothesis is also not sustainable at this point of time. Nevertheless, the probability of such a path towards a global financial regulation could maybe rise in the future if the G20 efforts in this domain become futile.

3. Interaction of soft and hard law as alternatives: complementarities and antagonism

The link between hard and soft law regimes

The main forms or evidence of harmonisation of national legislation, until now, have been setting of standards for business operations in the banking sector (Basel Committee on Banking Supervision) and in the field of securities issuing and trading (International Organisation of Securities Commission). In addition to introduction of those standards, national financial markets were also influenced by the World Trade Organization in the field of liberalisation of trade in services that also include financial ones. The proposed reforms of the world financial legislation/regulation anticipate special regulation of large banks, hedge funds and rating agencies.

There is no doubt that the process of regulating inter-states relations is always burdened with the need to protect national interests. At the same time, the selection or ranking of such interests may not always facilitate internationalization or even maintenance of the country's position in the intertwined world economy. As a retreat to higher or lesser isolation is not an option, certain 'adjustments', compromises or rearrangements need to be made. In order to facilitate approximation of different interests, the use of both hard and soft law instruments in their interaction might be the most efficient option.

Interaction of soft and hard law as alternatives or complements

Most frequently, hard and soft law instruments are used as an interaction of those two systems. The interaction can involve them as alternatives or complements. The two types of instruments are considered as alternatives when the strengths and weaknesses are compared. According to legal positivists, the interaction of those two regimes as an alternative occurs when the implementation of hard-law regime is more appropriate for resolving of problems. In that case, hard-law regime defines rules that are placed higher on the legal hierarchy while soft law may contribute to agreeing upon the rules that are lower in the hierarchy. The institutional interaction of hard and soft law, through their alternative implementation, is evident when the regimes have different strengths and weaknesses. The choice will then be made under the influence of various other factors, such as national interests, economic and political costs related to implementation of the agreed rules into national legislation, state's credibility, and the need for flexibility. Contrary to that, constructivists are of the opinion that in cases when neither hard nor soft-law regime can be singled out as a better choice, the preference should be given to soft law since it can facilitate the introduction of new norms in certain fields.

Positivists emphasize that the interaction of hard and soft law as complements is particularly important when soft law can contribute to development or elaboration of hard law (Shaffer and Pollack, 15).

Taking this debate to the international domain, constructivists believe that hard and soft law are complements in interaction because soft law contributes to easier overcoming of disagreements between states. Soft law can contribute to socialization and normative convergence, paving the way for hard law (Shaffer and Pollack, 17). Abbott and Snidal take the institutionalist approach and emphasize that the interaction between hard and soft law depends on the context.

They define the interaction of soft and hard law by three mutually linked points (pathways): a) the binding framework of agreements between participants may lead towards overcoming of differences; b) openness of agreements and links between participants (pluralism) enable constant new accession of members; c) non-binding soft-law instruments are developed, with their perspective growing into hard-law instruments. Developing further this model, one can find numerous examples from the financial area. For example, if and when the US and the EU (being the major actors in the global regulatory interplay) come to an agreement concerning the regulatory goals, soft and hard regimes will interact as complements, thus leading to designing of shared, binding rules at the national/EU level. Contrary to that situation, in case that an agreement is not reached, soft and hard regimes will interact as antagonistic ones. Consequentially, states will then use both soft and hard instruments to advance their aims in the international arena.

CONCLUSION

The global financial market of today has not come into existence suddenly – it has evolved as a result of a multitude of trends and actors' strategies (including the state ones) to capture the benefits of globalization, in terms of rising efficiency, maximizing profit and developing flexibility to market changes.

On the other hand, governmental responses to the crisis (and the G20 compromise) seem to focus only a limited set of particular issues directly related to global financial trends: stronger (national) supervision, hedge funds, tax heavens, bankers' remuneration, and so on. Nevertheless, most of the world leaders / groups / organizations felt obliged to point out that in the present world, co-operation and joint efforts are unavoidable if the global economy is to resume its 'normal' functioning.

And here comes the critical part – what should be normal functioning of the world economy or a condition for that? Is that a completely new world economic system, or the existing one but with a changed leadership? Should a new social order ('new' capitalism) be based on social welfare, strong state presence and ownership? Or, is normal functioning of the world economy dependent on the development of public-private partnership and critical re-modelling of the governance concept? So far, the leaders have agreed jointly to support the global economy with a financial injection worth around 1/200 of the world financial assets. What lies ahead, once $1.1 trillion

is spent, is maybe a long process of building a set of shared values that might create a basis for legitimate and efficient governance.

As new regulation on the international level desires another (or a new) framework, the issue of international financial law is becoming ever more critical. It is realistic to expect that a new/changed IFL will rely on both soft and hard instruments. Furthermore, in order to facilitate approximation of different interests, the use of both hard and soft-law instruments in their interaction might be the most efficient option. The level, mode or intensity of the interaction will be derived from a broader context of international cooperation, including the power of key players and the distinct implementation politics. Nevertheless, as financial markets are extremely dynamic and they constantly adjust to changing environments (including the regulatory one), we may also see other modes of hard and soft law interaction in the future. The evolution of the relationship between hard and soft law will primarily depend on the efforts in the international community to reach an overall agreement on the basic aims of international financial markets' development.

Years ago Kenneth Waltz[43] wrote that it was not possible to understand an economy or explain its functioning without consideration of the rules that were politically laid down. This paper presented an overview of the official pronouncements at the beginning and during the crisis. From another perspective, the paper attempted to summarize main postulates of the hard and soft law regimes. Future research related to the international financial governance should focus on three major areas: political processes to allow a convergence of various agendas, implementation of the agreed norms and structures, and the developments in global financial flows. Irreversibly transterritorial flows of capital have started to exert such a significant pressure to heads of states that some sort of heterarchical compromise might be expected in years to come. The G20 might have a unique opportunity to use the prerogatives of an officialdom it strives to become, and create conditions for a new IFL to emerge. Bearing in mind that an order's legitimacy strongly depends on the body of shared beliefs, what remains to be seen is to which of the today's multiple agendas (input side) new or adapted global rules and norms (output side) will be closer.

[43] Waltz, Kenneth N. (1979, 141). *Theory of International Politics,* New York: Random House

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MEĐUNARODNA FINANSIJSKA REGULATIVA – SARADNJA ILI SUKOB

Međunarodna zajednica je shvatila značaj tekuće svetske krize kao jedinstvene prilike da se intenziviraju politički procesi koji bi doveli do inoviranja ili stvaranja potpuno nove međunarodne finansijske regulative. Uprkos brojnim deklaracijama i planovima međudržavnih organizacija, u primeni su još uvek mere samo na nacionalnom nivou. Norme koje bu regulisale međunarodne finansije su kreirane ali unutar nacionalne "hard" legislative. Sa jedne strane, ovaj rad ima za cilj da predstavi tzv. „soft-law" pristup, kao verovatno jednu od najrealnijih mogućnosti u procesu regulisanja finansijskih transakcija preko državnih granica, imajući u vidu važeći Vestfalijanski sistem. Drugo, rad daje pregled značajnih političkih odnosa i interakcija koje prethode bilo kojem režimu takve prirode, sa posebnim naglaskom na sastanke Grupe 20. Iako koncept „soft-law" međunarodnih sporazuma može da predstavlja okvir za postizanje izvesnih rezultata u ovom domenu, sadašnji nivo diskrepance političkih agendi je još uvek previše visok da bi se moglo očekivati postizanje sagalsnosti o opštim ciljevima međunarodne finansijske regulative u bližoj budućnosti.

Ključne reči: *kriza, međunarodne finansije, regulativa, soft law*