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## Supranational Governing Regime for the Global Economy<sup>3</sup>

### Abstract

Since the onset of the current world economic crisis, whose effects continue to reverberate, the Group of Twenty has taken a premier role in world economic governance. The group, which represents the major part of world economic flows, has been negotiating on a multistructural set of rules and recommendations in order to devise a new regime for the world economy. In light of this, the paper asks two critical questions: what are the values and norms of this new regime-in-the-making, particularly as they are manifest in new financial regulation, and how are these supranational norms to be put into (national) practices? The paper presents a brief history of regime-making in the period 2008 to 2014, and examines several soft-law models of supranational norm-creation in order to assess success in its implementation. The paper concludes that the G20 regime-in-the-making could prove successful in devising supranational economic policy for the present interconnected world economy if it takes the governance achievements of other such regimes into the account and if the members' but also non-members' national economic differences are taken into account to a

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greater extent. Otherwise, this new structure of norms might become another instrument for the sole benefit of industrialized countries.

Keywords: global economy, governance, regime, regulation, G20, soft law

## Introduction

In recent decades it has become obvious that the world needs new arrangements for international governance, arrangements more suited for it's a world in which the long-standing dominance of the advanced industrial countries is being contested by emerging economies. However, it was not until the eruption of the global economic crisis in 2008 that major actors started to take a more active approach towards devising a new world regime by converting the Group of seven (G7) into the Group of Twenty (G20). At the same time, as Farer and Sisk (2010: 4) point out, all too often, international actions undertaken as 'afterthoughts of disaster' result, at best, in 'increments in global governance'. Certainly, conversion of the G7 into the G20 was not as dramatic a development as many might imagine: after all, the G20 began life as a meeting of finance ministers in the aftermath of the East Asian Financial Crisis in the late 1990s in which, as Wade (2007) concludes, the G7 sought to push for a new global regime he calls an 'unstoppable check-list' to operate a standards-surveillance-compliance system.

Since 2008, a plethora of ideas, proposals and plans of differing merit and consequence, have been put on the table, but not many of them have had a practical impact. These ideas and proposals converge around two basic dilemmas/challenges for all the involved actors: how to prioritize economic goals and devise world economic norms, and how to devise a system to have such agreed norms implemented in practice.

The G20 has positioned itself in the center of these attempts to create a new international governance system aiming at the creating a global economic policy forum (focusing on the financial issue-area), setting certain grounds for more coordinated national economic policies and maybe building a basis for a world economic policy in a distant future. But, in the world of today, with firm state/legal boundaries that cut across the global economy, the soft law system may open opportunities for such coordinated policies to be successfully implemented on the national level.

This paper aims at presenting briefly the evolution of global agenda developed by the G20, in the period 2008-2014, and outlining basic

principles and norms of a possible new international economic governance regime built upon the agenda. Upon that, the paper will examine recent legal models of soft law which could prove very effective in the regime implementation, as well as compare the activities of the G20 and the three soft law models. As the implementation of any international/cross-border agreement critically depends on how and by whom the norms with extraterritorial reach have been designed, the paper aims to fill the gap not only in the research of multilateral organizations' agendas, such as the G20's, but also in comparing the existing experience with soft law models and their use in other issue areas where supranational regulation is required.

## **Global governance and politics**

For a number of years now, national and international actors have been implementing various measures to deal with the current crisis. Three phases in national and international economic policies can be identified: in the period 2008-2009 there was a widespread use of both fiscal and monetary policies to stimulate demand; from 2010 to 2014 most governments (supported by the IMF and the G20) embarked on fiscal consolidation and quantitative monetary-policy easing to promote lending and liquidity; finally, in 2014, fiscal policy became more neutral as neither taxes nor government spending sought to affect demand, while monetary policy of most countries continued to be easy.

Nevertheless, as is increasingly widely recognised, the crisis will continue for several more years unless certain structural changes in the global economic/financial order are devised and implemented (Filipović 2011). Setser (2008) and Bernstein (2009) point out changes occurring with regard to major actors, i.e. the differences in governmental actors' values and foreign policy goals that underlie global movements of capital, eroding capabilities of contemporary governmental actors and politics in general to deal with global challenges.

As Wade (2009) concludes, historical examples (e.g. Great depression or two oil shocks of the 1970s) show how severe economic crisis contributes to economic regimes' changes and inter-state relations, as well as redistribute wealth and power. Other authors justifiably emphasize that the global crisis revises frameworks of the political settlements in terms of using (neo)liberalism as a power technology to help transform

capitalism (Palma 2009). It particularly needs to be emphasized that, since 2013, measures have started to focus on goals other than recovery, including sustainable economic growth, employment and further tightening of coordinated financial regulation, trade, green economy, inclusion, energy, etc.

Multinodal politics (Cerny 2007: 2) of today's world features various issues domains crosscutting each other and a multitude of actors, not only governmental ones, emerging on the supranational scene. Cohen (2010) goes further and describes the structural changes as favorable conditions for the emergence of public-private hybrid regulatory regimes. Fifteen years before the crisis, John Ruggie underlined that the present level of world 'fluidness' requires its total remake (Ruggie 1993: 2). As the global economy and its various subsystems present some of the major areas of concern today, and as there are general calls for new/updated regulatory arrangements to be created (Sorensen 2006: 7-9), the concepts of global governance and regimes have to be briefly explained.

Global governance literature has widely used James Rosenau's definition: 'global governance is conceived to include systems of rule at all levels of human activity – from the family to international organizations – in which the pursuit of goals through the exercise of control has transnational repercussions' (Rosenau 1995: 13). Dingwerth and Pattberg (2006: 186) distinguish between 'global governance as a set of observable phenomena, and global governance as a political program', as two complementary ways of approaching and understanding it. Such a description has proved particularly useful in analyzing the activities of the G20. Karns and Mingst (2009: 3-4) develop the concept of global governance on the basis of the description provided by the Commission on Global Governance in 1995. It has to be emphasized that, in addition to hard law (rules), international organizations and extemporized arrangements, Karns and Mingst include specific norms of soft law in the components of global governance, i.e. in the process of new 'ordering', as a continuous process (Josifidis, 2014: 598) and a way to surmount the obstacles built by hard-law boundaries. This primarily refers to the hard law being 'naturally' or traditionally confined to space and actors within state boundaries/jurisdiction.

Jordana and Levi-Faur (2004) underline that global governance comprises all mechanisms of social control as distinct from specific forms of governance with authoritative rules, monitoring and enforced

compliance. As Josifidis and Losonc argue, 'Order... is constructed; it represents a societal construct, and is a result of intersecting processes of conflict and cooperation in interdiscursive relations of society.' (Josifidis and Losonc. 2014: 598). Kratochwil (2013) gives another dimension to regulation, especially from the international legal aspect: '...the real problems of praxis lay in the dilemmas created by colliding duties or in bringing a concrete problem under different descriptions which require (justify) different norms.' (2013: 3). Instead of forcing the application of existing norms which derive from universal principles of market economy and economic regulation, Kratochwil concludes that it would be more appropriate to create new agreements on certain shared practices.

These views had previously been extensively developed by regime theories of international relations, exemplified by Krasner (2007) who defines regimes '... as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in the given area of international relations' (Krasner 2007: 3). Regime theories were particularly 'flourishing' in the early years of economic globalization, during which self-regulation in many economic sectors of industrialized countries was on the rise, and non-state actors (predominantly, private transnational corporations and associations) were seemingly taking over the regulatory torch from governments<sup>4</sup>. Thus, the rise and development of the regime theories and practice can be viewed as responses to the need to understand supranational issues and their regulation in the absence of a single pole/power/regulatory authority.

Experimentalist governance/regime theories have further analyzed regimes in the contemporary world, arguing that in the absence of a single hierarchical structure of norms to govern a transnational issue area, the regime complexity increases. Providing that the national legal systems are not obstructed, such regimes can in reality successfully function through specific linking of their components. If broad goals and metrics are agreed among the stakeholders, if the stakeholders are given a certain level of discretion in achieving the goals and they regularly report on the progress, then there is a basis for a continuous interaction

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4 See, for example, The International Council of Securities Association or International Association of Bond Dealers (today, International Capital Market Association), both of whom have worked extensively in devising and promoting global norms and rules for cross-border securities trading.

of actors, revision of goals and actions, and finally for a supranational regime to emerge (Overdevest, Zeitlin 2014). Such a situation, exemplified by the European Union's Forest Law Enforcement Governance and Trade (FLEGT, hereinafter: the Forest Plan) initiative, which will be later presented, may be of significant importance in analyzing available modes to govern the global economy. Although such complex regimes face a multitude of challenges and operational problems, a number of positive effects may be identified, as argued by Keohane and Victor (2011): an advancement of supranational regulation of a complex issue area, may come from the progress reached on specific issues therein, which will in turn make more stable (wider) grounds for a future, comprehensive regime regarding the whole issue area to emerge.

The next part of the paper provides a brief analysis of one of the global actors – G20, and its activities to update existing or create new rules and norms for the global economy. Although theoretical views on global governance differ, most of the literature emphasizes its several key components: supranational arrangements, sets of rules and norms, actors' expectations, different layers and actors in the process, and necessary display of a certain level of representativeness, inclusiveness, efficiency, adaptability and fairness (Biersteker 2011). The analysis that follows takes these criteria as the basis for assessing the role of G20 in creating global regulatory arrangements.

## **Global economic agenda of the G20**

Although the G20 has placed itself in the center of the efforts to deal with the current crisis, joining of forces among the leading industrial states to deal with economic challenges is nothing new. Without going too far back in the history, let us remember that the 'original' precursor to the G20 was the Group of Six (G6) which has led to a later formation of the Group of Seven (G7) and the Group of Eight (G8). Following the 1971 collapse of the Bretton Woods system of exchange rates ('closing the US gold window' and the free float of many other currencies) and the oil crisis in 1973, the G6 was formed by the finance ministers and central bank governors of the UK, US, France, West Germany, Italy and Japan in 1975. Even thirty years ago, it was evident that major industrial states should mutually assess their economic policies and closely monitor the growing internationalization of economic activities. In 1976, Canada has joined the group and it became G7, while Russia became its

member in 1998 thus forming the G8. Since then, the group has started also to hold annual summit meetings. The G6/G7 period was characterized mainly by their efforts to stabilize global currency markets and manipulate the US dollar value (firstly to depreciate it, then to stop its uncontrollable decline) to support economic recovery.

As a response to the financial crises in 1999, finance ministers of the major industrialized (first of all, Canada and the US) decided to invite emerging market countries to join a new group in order to introduce regularity to the cooperation and increase its level, particularly regarding fast-growing emerging market economies. This is how the G20 has emerged.

Since then, the G20 has grown into a major forum for discussing world economic issues and pooling efforts in producing new agreements for the global economic system. Several reasons may have contributed to this development: the crisis of 2008 has forced major economies to foster international cooperation on global economic and financial issues (favourable conditions); the member states of the G20, despite many criticisms, manages and controls a major part of the global economy<sup>5</sup> (representativeness); since 2008, the group has gathered not only finance ministers but also the members' leaders (increase in its legitimacy); the group itself has improved its structure and relations with other international governmental and non-governmental actors (adaptability), and has managed to deliver certain results upon numerous commitments made by the members' leaders (efficiency). Such an expanded and vigorous role of the G20 '... is due to proliferating shocks that exposed the new, equalizing vulnerabilities of all countries, the failure of other international institutions to cope, the rising capabilities and increasing openness of the non-G7 members, the domestic political cohesion that participants brought, and their rational attachment to a compact G20 club at the hub of a global governance network in an interconnected world.' (Kirton 2014, 45)

A particular feature of the G20, as an international organization, is that it belongs to the group of discursive organizations. 'The term Discourses refers to general and enduring systems for the formation and articulation of ideas in a historically situated time.' (Fairhurts and Putnam 2004: 8) Such organizations do not make explicit and mandatory de-

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5 According to some estimates, the G20 represents about 2/3 of the world's population, 85 per cent of global GDP and over 75 per cent of global trade (Source: [https://www.g20.org/about\\_g20/g20\\_members](https://www.g20.org/about_g20/g20_members), accessed 27. 11. 2014)

cisions regarding its members (the so-called decisional organizations), but set general guidance upon an agreed set of values/actions and the level of members' commitment most significantly influences such an organization's success.

## **The G20's agenda development**

Global political deliberations within the group have reached their peaks on the leaders' summits: the G20 summit meetings in Washington (2008), London and Pittsburgh (2009), Toronto and Seoul (2010), Cannes (2011), Los Cabos (2012), Saint Petersburg (2013) and Brisbane (2014). Despite the fact that it had probably been planned to present the G20 actions as a show-room for united and orchestrated action, the five-year experience actually resulted in a series of compromises between the different agendas of the Anglo-Saxon pole and the continental European 'league', while only a few of the developing countries' proposals have been accepted (for example, a radical change of the IMF voting structures and shares, or the creation and introduction of a new international liquidity currency). Once again, their overlapping but differing agendas pointed out that contemporary politics is one of detachment (Kratochwil 2007: 5), 'cool loyalties' and 'thin' patterns of solidarity.

During these last five years, the G20 agenda has changed its priorities and the values ranking (Filipović 2011), under various paths of influence and on the basis of different individual values and agendas of the actors involved (Filipović 2012). Despite the particular actors' different agendas, a body of principles and rules (mostly in the financial area) has started to emerge, shedding some light at a possible new world economic and financial order. Some authors stress that such an order should regulate all financial and capital markets worldwide, offer emergency funding, manage excessive indebtedness, guide national economic policies toward global stability and ensure a fair and effective international monetary system (Ocampo and Griffith-Jones 2010). A number of action plans and numerous proposals and measures to counter the current crisis were adopted at the summits.

The G20 agenda has evolved as the crisis effects widened in scope and depth. These changes have not only involved changing the agenda items (e.g., from private actors' risk taking to sovereign financing) and rankings (e.g., from the prominence of financial regulation in 2008 to



that of employment in 2011), but also changes to the agenda's comprehensiveness (from financial regulation in 2008 to monetary and fiscal coordination in 2011 and employment in 2012 and 2013, and further to sustainable global growth in 2014), its geographic focus (from the US in 2008 to Europe and the East in 2011, to Latin America in 2012 and Europe again in 2013, and to Australia in 2014) and modes of the Group's functioning (from the top leaders to specific ministerial meetings, newly formed tracks of work and the internal working groups).

The analysis of the changing/widening G20 agenda may also point out that, contrary to the traditional believes, the market principles and GDP as a measure of their effectiveness, may not hold any more. '... Prosperity in human societies can't be properly understood by looking just at monetary measures, such as income and wealth. If the real measure of a society's prosperity is the availability of solutions to human problems, growth cannot simply be measured by changes in GDP. Rather, *it must be a measure of the rate at which new solutions to human problems become available*. If prosperity is created by solving human problems, a key question for society is what kind of economic system will solve the most problems for the most people most quickly' (Beinhocker and Hanauer 2014: 2).

The underlying objective of the first three summits (Washington, London and Pittsburgh 2008/2009) was to establish rules of cooperation and coordination in financial regulation across and within national financial systems. That was particularly highlighted in Washington at the time when the current crisis was still developing its full force. The final document of the summit<sup>6</sup> presented an Action Plan focused on several objectives, such as improving transparency and accountability, developing sound regulation, promoting financial markets' integrity, strengthening international cooperation and reforming international financial organizations.

Upon intensive pre-summit deliberations and numerous formal and informal meetings within and outside the group, the G20 London Summit in April 2009 produced three declarations targeting the economic recovery, the financial system and resources needed to implement the plan of recovery<sup>7</sup>. The Global Plan for Recovery and Reform underscores two basic elements in order to attain a sustainable growth: an

6 Full text of the document available at <http://www.g20.org/images/stories/docs/eng/washington.pdf>

7 Official text of the documents available at <http://www.number10.gov.uk/Page18914>

effectively regulated market economy and strong, supranational institutions. This summit was very important as it produced the inaugural set of norms planned to guide building of the foundation of a new international economic regime. Four different types (or levels) of norms can be identified in the G20 London Summit documents: global standards (most binding, applicable to all countries: related to accounting standards and principles), internationally-agreed norms (subject to separate agreements: financial system regulation), best practice (desirable, recommended: activities of credit rating agencies) and a consistent approach (most flexible: basic principles of national financial regulation, for example, coverage and boundaries).

The Pittsburgh Summit<sup>8</sup> pointed out to a number of undergoing changes. As a sign of expanding the political community, the G20 should take over from the G8 the role of being the central/premier forum for creating a new global economic architecture. Secondly, leading intergovernmental financial institutions should be reformed to give more power to fast-growing economies. In addition, the group's agenda underwent first of its major changes: a consensus was reached to incorporate macro-prudential concerns about system-wide risks (primarily those related to the structure, soundness and vulnerability of the global financial system) into international regulation.

In 2010, the summits in Toronto<sup>9</sup> and Seoul<sup>10</sup> proved that, if the G20 was to become an architect of global economic revival, it was not sufficient that it reacts to financial distress and devise new financial regulation. Steering macroeconomic policies came as a necessary and critical extension of the group's agenda. It was necessary because the already agreed norms had proved too limited and partial in their effects, and it was critical because such an extension of a supranational agenda inevitably would strike domestic monetary and fiscal policy. Regardless of a significant economic potential of coordinating fiscal policies, major industrialized states have shown a high reluctance to act in that manner. Notwithstanding numerous commitments made, the national fiscal wall was to remain in place and this might have defined the final frontier in developing the Group's joint policies.

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8 For details, see: <http://www.g20.utoronto.ca/2009/2009communiqué0925.html>

9 The G20 Toronto Summit Declaration, at <http://www.g20.utoronto.ca/2010/to-communiqué.html>,

10 The G20 Seol Summit Declaration, at [https://g20.org/wp-content/uploads/2014/12/Seoul\\_Summit\\_Leaders\\_Declaration.pdf](https://g20.org/wp-content/uploads/2014/12/Seoul_Summit_Leaders_Declaration.pdf)

Contrary to the previous meetings, the G20 agenda in Seoul focused more on development issues, economic revival, employment and social protection<sup>11</sup>. Surprisingly, the leaders committed to developing a common view of global economic problems, which might point to the birth of a set of principles or underlying values upon which a new global economic regime would be built and which would define the regime basic characteristics (Krasner 2006). The Seoul Summit was assessed as successful due to its 'globally predominant, internally equalizing capabilities among members of the group' (Kirton 2010: 7). This is particularly true if advances in national financial regulation and safety nets are reviewed, but much less true for reforms of international financial organizations, supporting the arguments of Keohane and Victor (2011) regarding the possibility of different pieces of progress for different segments of a regime. It may also serve to support the arguments of Higgot (2004) and Mueller and Lederer (2003) that discursive organizations such as the G20 may be building a new road to multilateralism are supported. It seems that not only discursive organizations may prove more effective than decisional ones in securing regime implementation, but discursive multilateral organizations such as the G20 may prove more capable of reaching a consensus among contesting poles in a wider issue area (in this case the world economy).

The final declaration of the 2011 Cannes Summit<sup>12</sup> reiterates members' growing concerns about the slow recovery, high unemployment and rising sovereign risks in the euro area. The summit resulted in certain changes as to the way the group functioned: a G20 Task Force on Employment has been set up, many multilateral organizations (e.g., IMF, ILO and World Bank) were invited to join the group's activities, international monetary stability and excessive currency reserves started to be targeted, and a new regulatory category of market participants has been created - global systemically important financial institutions (G-SIFIs). One may understand this as a new 'reality-check' for the G20: although it has positioned itself as a center for global economic governance (backed by a 90% share of the world GDP), the issues may be beyond reach of such an informal, minilateral group (Grevi 2010: 3).

The 2012 Summit in Los Cabos resulted in significant agenda development, with five priority areas: economic stabilization and reforms,

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11 Full text of the final document available at <http://www.g20.org/images/stories/docs/eng/seoul.pdf>

12 Available at <http://www.g20.org/images/stories/docs/eng/cannes.pdf>

financial system strengthening and financial inclusion, remodeling the international financial architecture, improving food security and reducing the volatility of commodity prices, and promotion of sustainable development, green growth and sound environmental policies. Furthermore, efforts were invested to broaden the dialogue with many other groups of actors: the UN, international organizations (already evident at the Seoul summit), business sector (B20<sup>13</sup>), experts, civil society, youth organizations, etc. (Discussion Paper of the Mexican Presidency of the G20, 2012).

The 2013 G20 Summit in Saint Petersburg was held at the time when differences in the global economy had started to widen: recovery of major industrialized was contrasted to slowing the recovery of the rest. The Russian presidency of the G20 focused on measures to support sustainable, inclusive and balanced growth and job creation, and a new tone that emphasizes the need to develop mutual confidence, enhance the principle of fairness and create an overall set of rules could be detected in the Official G20 Leaders Declaration after the summit.<sup>14</sup>

The 2014 Brisbane summit of the G20, amidst tensions about Ukraine, sanctions against Russia and the Ebola outbreak, further widened the agenda scope. The new set of issue areas was organized towards achieving three broad aims: the promotion of strong, sustainable economic growth and employment (by supporting the private initiative); increasing the resilience of the world economy (not just the G20 members) to future shocks and crisis, and strengthening global institutions relevance and work.<sup>15</sup> The need to produce positive spillover effects to other group's members and the rest of the world was accentuated. The inclusion of a number of geopolitical issues (e.g. climate change, the Ebola and pandemics, Ukraine, etc.) clearly pointed out that the whole of the international community faces today numerous non-economic challenges and that the G20, if it strives to become a 'world government' must stretch over its members' economic boundaries/interests<sup>16</sup>.

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13 The Business 20 (B20) is a gathering/forum of international business community, as part of the G20, created to solicit business views and recommendations regarding the issues the G20 is dealing with.

14 From: <http://www.g20.utoronto.ca/2013/2013-0906-declaration.html>

15 Details available from [https://www.g20.org/g20\\_priorities](https://www.g20.org/g20_priorities)

16 For critical reviews, see for example Kirton, J (2014). *The G20 Discovers Global Health at Brisbane*. Available from <http://www.g20.utoronto.ca/analysis/141115-kirton-ebola.html>, or Bracht, K., Kurik, J. (2014). *Sticking to the Core, Ignoring the Current*:

## The G20 performance and accomplishments

When examining the performance of G20 summits, various aspects and criteria need to be taken into consideration, e.g. the state of the world economy, particular crisis consequences in some regions (like the Eurozone crisis), the scope of the group's agenda, number of commitments, the level of compliance, etc. Researchers from the University of Toronto (Kirton *et al.* 2012) have analyzed the performance on the basis of several criteria: support given to specific G20 measures in domestic political interplay, outlining directions for principles and norms that should be internationally adopted, adequate decision making process (to deliver clear collective commitments of binding nature), the members' compliance level, and the development of global governance (both within the G20 and in relation to other international organizations). From all these aspects, one can conclude that a general performance of the G20 has improved since the first summit in 2008, although such a trend has not been even in all aspects. For instance, the general level of commitment was the highest after the first summit in 2008 (+0.67), then it gradually declined (London, Pittsburgh, Toronto in the range +0.23 to +0.28), improved again in 2012 (+0.55) but slightly declined in 2013 and 2014 (+0.44)<sup>17</sup>. (Kirton 2012: 2, Bocknek *et al.* 2014: 2).

In the period 2008 to 2012, the G20 members' individual compliance averaged to +0.34. The highest compliance was attained with the regard to the IMF reform, the economic growth and employment (in 2013/2014), while the commitments made in the areas of structural reforms and financial regulation were much less complied with. In the period 2008 – 2014, the domain with the lowest level of the G20 commitments has been the trade, i.e. commitments to refrain from protectionism (-0.35).

Referring to Krasner's understanding of international regimes as a possible form of global governance (Krasner, 2006), let us make an attempt to outline some of the basic principles and norms of a global economic policy defined by the G20<sup>18</sup>. Markets should remain open

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*The Brisbane G20 Summit*. Available at <http://www.g20.utoronto.ca/analysis/141116-kulik-bracht.html>.

17 University of Toronto G20 Research Group assesses the compliance level in the following way: +1 is full compliance, 0 is partial compliance or work in progress, while -1 is non-compliance with the agreed commitment.

18 A summary of all the commitments, area by area, made in the period 2008-2014 can be found at: <http://www.g20.utoronto.ca/compliance/commitments.html>

and liberalized (including the norms of diminishing state intervention, structural reforms of labor market and tax systems, etc.), as well as international trade (with the norms to eliminate protectionist barriers). States should carry out a balanced fiscal policy (through the norms of fiscal deficit reduction and debt stabilization). International liquidity is of the utmost importance for the global economic revival (hence, international financial institutions should be modernized, liquidity surveillance should be reinforced, etc.). Financial regulation should be improved and coordinated across boundaries to allow for the financial markets' integrity and transparency (with the norms of global accounting standards, higher capital base for banks, integrated stress testing mechanisms, etc.). 'The G20 can further promote financial regulation through enforcement of the new rules at the national level and the establishment of a monitoring system by the relevant international institutions on the mandate from the G20. Such 'leadership by example' can help boost the G20 status as an effective and legitimate global governance forum' (Mapping G20 Decisions Implementation 2012: 7). Nevertheless, the comprehensiveness of the proposed regulation varies between the segments of a new global regime, supporting the argument of Keohane and Victor (2011) that regulatory advancements can be made in distinct parts of a transnational issue area even in the absence of a single, unified regime.

The varied levels of comprehensiveness and of regulatory advancements can be attributed to several reasons. Firstly, the G20 (as opposed to the G7/G8) brings together many more national political/economic programmes and agendas, so compromising is far more difficult than among the leaders of seven/eight countries. Second, the G7/G8 creates a particular environment that allows close consultations and personal contacts (with an expected high level of compliance afterwards), which is almost impossible to achieve during the G20 meetings. Third, having BRICS countries in the group might be seen not only as openly respecting their growing economic/political strength but also as acknowledging that the seven industrialized countries are not a single 'pole' of the world development any more. Having this in mind, one might not be surprised that different types of proposals coming from BRICS (and other developing 'challenger' countries in the group) and asking for more radical changes in the world economic and financial system<sup>19</sup> have

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19 Since 2008, BRICS countries have openly challenged the current international financial architecture (mainly, the structure, voting system and activities of intergovernmental financial institutions, the role of the US dollar as international liquidity, pres-

influenced a varying degree of the regime's regulatory advancement. Finally, another difference between the G7/G8 and the G20 norms are that the former have mostly remained in the declarative, neo-liberal conformance area, with some exceptions related to standardization and monitoring of macroeconomic data (Wade 2007), while the latter are mostly followed by concrete actions plans, on country-by-country basis, developed in conjunction with other international organizations as well.

So, norms were designed and commitments made, but what is left as a critical component in devising a global economic policy is their implementation at the national level.

### **Soft law as a legal concept**

As noted, dynamic global economic relations of today require new instruments of their governance/regulation. Traditional and numerous international legal instruments, like international conventions and treaties, have been devised and put in practice to manage transnational issues. In line with their nature, such international instruments have always needed to be incorporated into national, hard law. However, recent history of international relations has emphasized the significance of other instruments, such as strategies, guidelines, conclusion, recommendations, and 'white papers', sometimes termed 'administrative non-binding rules' created to manage/regulate certain issue-areas. Such non-binding rules are today known as the concept of soft law.

There is yet no universally accepted academic definition of soft law. Hard law is based on the legal norm as a rule of conduct, implementation of which is guaranteed by the state and therefore it is based on obligation. In contrast, the concept of soft law has not yet been fully developed, but it includes a wide range of modalities, such as principles and tenets, model laws, recommendations. Amongst numerous attempts to define soft law, three clear theoretical directions can be identified.

Some authors consider the issue of legal obligation as the key criterion in defining soft law: due to the absence of obligation in soft law norms, it cannot even be considered a law (Arend 1999: 25). Others

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ures put on them to adjust their currency policies, etc), and have organized several summits of their own, culminating in 2014 with foundation of New Development Bank, as opposed to the IBRD and the IMF.

advocate a view that even though it does not have a binding character, soft law shapes expectations and behavior of subjects (Guzman 2005: 591). Snyder, for example (1995: 51-87) defines soft law as a set of rules without legally binding power, but which nevertheless produces certain legal consequences in practice. Yet other authors (Abbott, Snidal 2000: 421-456) explain soft law as rules created with the expectation that they will be given the force of law either through national legislation or binding international agreements, i.e. international rules as a basis for developing domestic legal rules (Mayer 2010).

We can conclude that soft law is a complex and contradictory phenomenon with positive and negative sides. Its existence blurs the boundaries between positive law and agreements, i.e. it creates norms without integral obligation, wherein particular emphasis is placed on the principle of good will in honoring the obligations undertaken by agreement (Bunčić 2012: 281). There is no doubt that soft law is a concept used in an interdisciplinary and transdisciplinary discourse - somewhere at the intersection of law, economics and politics (Vuletić 2011: 1012). In this context we could conditionally define soft law as a non-binding normative framework, implementation of which is conditioned by the will of the norm's addressee. In this way, it is easier to distinguish it from mere political promises because the lack of the legally-binding character of its norms does not imply a complete absence of the obligation in the material sense. Advantages of soft law can also be derived from various, non-legal modalities of its enforcement and sanctioning (moral pressure, warning, reprimand, naming and shaming, conditioning, granting or denial of assistance) that may produce strong influence on the conduct of the addressee.

One can distinguish three basic functions of soft law. The first function is a pre-law function, when soft law paves the way for the creation of hard law provisions. The second function is a law-plus function, when soft law is used for filling legal gaps and interpretation of hard law. The third function is its para-law function when it compensates for the lack of hard law provisions, under the condition that these two laws are complementary and their interaction produces positive outcomes (Peters, Pagoto 2006: 22-24). The functions of soft law have indeed proved to be quite useful when rules are to be designed and implemented in complex/complicated structures with transnational issue-areas.



## Possible models of soft law implementation

One of the most important questions, raised at the beginning of the paper, is how to ensure a higher degree of implementation of internationally-agreed rules at the national level. An excellent example in this regard is the EU, as a community of 28 states, particularly when it comes to the implementation of the EU-agreed rules at the national level. Analyzing different methods used in the EU to create and implement the supranational regulation, one can identify wide common grounds to the work of the G20.

The realization of the EU Lisbon Strategy relies on a particular soft-law implementation model - Open Method of Coordination (OMC). This model presents the most flexible approach in managing the EU. It relies on a set of mutually agreed indicators and metrics that allows the members to pursue the realization of the defined goals in different ways, the latter not being legally prescribed at the EU level. The model has different applications in various issue-areas, such as the employment, social inclusion and health protection. The differences in its application include a varying time table, types of the expected results, number of participants and role of the common institutions, as well as the level of already existing harmonization in the issue-area.

It is possible to identify another model of supranational governance through soft-law in the area of the EU fiscal coordination (EUFC), regarding the implementation of the Lisbon Treaty (which is itself considered a hard law). The EU fiscal coordination system relies primarily on the soft-law instruments, such as general guidelines for the members' economic policy and the multilateral surveillance of their fiscal policy. However, certain regulatory elements in the fiscal area are of a binding-nature, for example the level of fiscal deficit (Lisbon Treaty: Excessive Deficit Procedure) and the EC's actions when this level is exceeded. In this way, the model is a specific combination of hard- and soft-law instruments, called the theory of hybridity (Trubek, Cottrell and Nance 2005)<sup>20</sup>.

Another example of soft law implementation is the 2003 EU's Forest Law Enforcement Governance and Trade Action Plan (the Forest Plan), aiming at improving forest sustainable management and reducing ille-

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<sup>20</sup> Theory of hybridity argues that certain regulatory areas/domains (particularly regarding cross-border issues) need or allow both hard and soft-law processes to operate simultaneously and to affect the same actors,

gal logging It includes numerous private and public actors, as well as actors outside the EU through Voluntary Partnership Agreements (VPAs). The initiative covers a number of interrelated issues, such as legal forest management, improved governance, trade in legally produced timber, promotion of public procurement policies and private sector's voluntary codes of conduct, appropriate finance to support such conduct and procedures, etc. This model of soft law implementation has been emphasized as an example of an effective supranational regulation of a complex issue-area (Overdevest and Zeitlin 2014). From the experimentalists' view, the Forest Plan is an example of a new governance model that might prove useful also for other transnational issue-areas, due to its particular nature. Such a governance architecture is highly flexible and a 'learning' one: common, provisional goals are set and revised if necessary, based on the experience of the governance subjects in reaching the goals by alternative routes. In the case of the Forest Plan, common, broad goals have been set and progress metrics developed. Local subjects (i.e. lower-than-central, regulatory actors) from both public and private sector enjoy a high level of discretion to pursue the agreed goals. Monitoring and reviewing processes have been established to compare progress achieved through different routes taken by local actors. Finally, the goals, metrics and procedures are revised and new actors brought in, if necessary. Beyond the forest sector, the EU uses this model also for the regulation of energy, telecommunication, food safety, etc. The relation between such a soft-law model and the traditional hard-law governance is exemplified by the Voluntary Partnership Agreements component of the initiative: these legally binding international agreements are concluded with non-EU stakeholders in the related issue-areas. Despite its usefulness, this component of the model widely opens the opportunities for non-equal treatment of other countries/actors and the related discrimination.

From the presented models, one can conclude that soft law certainly provides a framework for new, supranational governance concepts to emerge. Although the examples may seem quite similar, there are significant differences among them. The Open Method of Coordination and the Forest Plan models do not feature explicit and concrete goals and the related rules, as the model of EU fiscal coordination does (Theory of Hybridity), but only overall goals (the Open Method of Coordination) and provisional, not precisely defined goals (the Forest Plan). The Open Method of Coordination and the Forest plan also do not rely on formal binding documents, with defined standards and prescribed instructions

to be deployed at the national level, as does the EU fiscal coordination. On the other hand, latter does not include various types of actors and stakeholders, as the other two models do (particularly the Forest Plan which heavily relies on private actors), but depends on states and their hard-law implementation force. The EU fiscal coordination is a highly centralized and structured model that draws its efficiency from the state power and hard-law norms. However, it does not always function with high effectiveness because it does not take into greater account national goals/contexts, and is only exceptionally open for revision. Contrary to that, the other two models seriously consider local conditions (to a different extent) and are open to revision of the goals and methods, but sometimes they are too slow to start and develop. So, each of the models has its positive and negative sides, but in comparing them one must bear in mind that they have been created for very different issue-areas and purposes.

The presented models also seriously challenge the three basic assumptions from the beginning of our research: the Westphalian system of states (not capable of dealing with complex, supranational issues), national policies (also not adequate for responding to cross-border issues and their linkages), and hard-law norms (necessarily bounded by borders and difficult to harmonize). Recent theories of hybridity have paved the way for defining soft law as a mixture, i.e. the interaction of soft and hard law. One of the consequences of such interaction will present a new challenge in the form of soft law 'hardening', which may lead if not towards the creation of a hard legal norm, then certainly to custom building and uncertainty reduction (Bunčić, Filipović 2011: 3754-3755).

## **Soft law and G20**

This paper focuses on the use of soft law instruments by the G20, as one of the ways to create and implement a future, global economic regime. The main legal instruments used by the G20 are 'communiqués' and 'declarations', which represent the instruments of soft law. These legal documents are usually published at the end of the summit and inform the general public about the agreements reached.<sup>21</sup> These non-binding communiqués also contain information about future initiatives and tasks of the international bodies responsible for their implementa-

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21 See, for example: *Communiqués*, G-20, [http://www.g20.org/pub\\_communiques](http://www.g20.org/pub_communiques)

tion. In order to give them more strength and ensure their implementation, the G20 has formed working groups in charge of various issue areas (international accounting standards, prudential management, etc.) and has also strengthened links with other international organizations (such as the International Monetary Fund, the Organization for Economic Cooperation and Development, etc). In addition to the obligation of harmonizing the adopted rules, the working groups are required to monitor the implementation of the agreed and report on the implementation success. The range of soft law instruments expands due to public announcement of the reports of the G20 working groups<sup>22</sup>, as well as due to the display of progress compared to the previous summit.<sup>23</sup> Noncompliance of the G20 members (government by government) in relevant areas is particularly emphasized, thus putting more pressure on the concerned governments, clearly showing that soft law is used somewhere at the intersection of law, economics and politics. Such pressure has not only been directed to a simple achievement of the agreed goals because their total accomplishment is assessed as unrealistic. The recent practice of the G20 has included a new instrument of soft law – active discussions, aimed at constantly persuading all member states to adjust their national legal and economic system to the globalization process<sup>24</sup>. A deeper analysis of this new instrument shows that soft law instruments are indeed instruments at the disposal of industrially developed countries.

When the G20 activities are examined in the context of the presented models of soft law implementation, a number of conclusions can be drawn. The present activities in creating and implementing a G20 global economic regime display characteristics of all the three models: mostly from the EU fiscal coordination model, than the Open Method of Coordination and least from the Forest Plan. Today, the greatest similarity (at least from the formal aspect) can be observed between the EU fiscal

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22 See: The G20 Working group 1: Enhancing Sound Regulation and Strengthening Transparency, at i–ii, xvii, 1, 22, 40–41 (Mar. 29, 2009), [http://www.g20.org/Documents/g20\\_wg1\\_010409.pdf](http://www.g20.org/Documents/g20_wg1_010409.pdf);

G-20, G20 Working Group on Reinforcing International Cooperation and promoting Integrity in Financial Markets (WG2) 11–12, 36–37 (2009), [http://www.g20.org/Documents/g20\\_wg2\\_010409.pdf](http://www.g20.org/Documents/g20_wg2_010409.pdf)

23 See: The G-20, Progress Report on the Economic and Financial Actions of the London, Washington and Pittsburgh, G20, Summits (2010), [http://www.g20.org/Documents2010/07/July\\_2010\\_G20\\_Progress\\_Grid.pdf](http://www.g20.org/Documents2010/07/July_2010_G20_Progress_Grid.pdf)

24 See, for example, The G-20's Accountability Assessment framework, available at <http://www.mofa.go.jp/files/000059856.pdf>

coordination model and the G20 activities. The group membership is restricted to states and international governmental organizations. The overall goals are more or less concretely defined, depending on the area, referred to previously as principles or basic values of the G20 regime. Instructions have been given or they are widely known (e.g. there are only a few methods to curb fiscal deficit in order to achieve the basic goals). A great part of the nationally-based activities, stemming from the G20 conclusions, needs hard-law backing from their own legal systems, although the conclusions themselves are not legally binding.

The similarity between the Open Method of Coordination and the G20 activities can be identified in the implementation area. The method has four levels of implementation. The first level is the European Council's (EC) adoption of the objectives and guidelines for their implementation. It might be compared to the adoption of common objectives established at the G20 summits. The second level is the EC's determination of quantitative and/or qualitative indicators for evaluating the implementation effectiveness. In the case of the G20, this might be the level of various working groups that monitor the implementation progress. The third level of the method is the implementation of agreed goals on the national and/or regional level, but in line with the specific conditions therein. Compared to the G20, this level is a major distinguishing line. In the case of the G20, this level of implementation has been reached only in certain areas (as noted, the binding rules from the London Summit), such as international accounting standards and payments. For other issue-areas and particular issues, regardless of numerous conclusions, one cannot identify the third level of the Open Method of Coordination model. The fourth level of the method is the final level at which mutual evaluation of the achieved results is made by the EU Council, through the work of the European Commission and independent bodies.

Bearing in mind critical differences between the EU and the G20 (the first being a formal union of states while the second is an informal international governmental organization of a decisional character), it is obvious that the full application of the Open Method of Coordination through the four levels cannot be replicated by the G20 but the use of the experience should be instrumental. This primarily concerns mandatory implementation of the agreed goals: the EU can enforce the implementation while the G20 lacks that capacity. Secondly, the process of agreeing on common principles and goals among the EU members has

been formalized to an extent much higher than within the G20, thus allowing (at least, formally) for equal powers of the EU members. Thirdly, the level of differences (economic, political and legal) among the EU members is certainly lower than the one among the G20 members, thus facilitating the process of defining common goals and their implementation.

On the other hand, the main advantage of the Open Method of Coordination is its flexibility. The method is not a rigid implementation process and differs with regard to the field of application and the desired level of alignment. Using this experience the G20 may improve the process of cooperation among the member states, not only in the formulation of the communiqués but also in establishing common goals more precisely. Each member state may then find it easier to make more detailed plans of possible implementation and achieve a wider progress in implementation of the agreed objectives (Meyer, Barber, Luenen 2011: 18). In addition, the G20 may include all the members in the deliberation process, that should be continuous and not only in times of the summit preparation. In this way, the present mechanisms for the summit preparation and adoption of common positions would be transformed into an institutionalized mechanism that would foster the implementation of the agreed objectives. In addition to the fact that the Open Method of Coordination lacks legally binding features, there are critical structural differences among the G20 member states. So, specific circumstances within the group do not allow the application of the principle 'one measure for all'. Overcoming of such difficulties probably requires further work on combining this method with other soft law instruments.

Finally, if the G20 activities are compared with the Forest Plan model, not many similarities can be found at present. It might be that a regime, for such a complex issue-area as the world economic policy is, cannot be built on a set of provisional goals (for example, 'let us plan for a reduction of unemployment and see what happens later'). Hypothetically speaking, if the Forest Plan cycle of learning from experience had been applied, it would have probably caused further deterioration of global economic conditions. Furthermore, if a high level of discretion had been granted to the G20 members in achieving the overall goals, for example in managing the current account deficits, this would have seriously impacted numerous other economies, thus endangering the realization of the overall goals. Still, certain developments regarding the G20 go in line with some the Forest Plan features, for example, an increasing involvement of other-than-state stakeholders (civil and business groups,

youth, academia, etc). In addition, similarities can be found regarding the G20 success in regulating particular parts of the issue-area, and the related (though segmental) advancement of a new, world economic regime.

## Conclusion

The current crisis has significantly intensified a world-wide debate on global economic governance and the need for a new global economic/financial order or regime. Despite numerous differences among the ideas and the actors of the debate, two basic dilemmas are crucial: how to devise norms for the global, interdependent economy (with a proper governance structure to oversee their implementation), and how to devise a system to have the agreed norms implemented in practice. The paper's main hypothesis has been that a new economic world order or regime is being created by the G20, and that its implementation could be successful if soft law instruments were used more consistently and taking into the account the existing experience in using such law model.

Although the enlargement of G7/G8 into the G20 was presented as a decision taken by the leading industrialized countries, it can be today also viewed as an evolutionary process and not simply 'growth' of the two groups. One of the reasons behind such a conclusion may include *inter alia* the fact that neither the US nor other challenger-countries (like, e.g. China, Germany, Russia) could superimpose their economies/states as the 'imperial' ones – with all 'prerogatives' this status may include, such as the national=world currency, basic rules of a world economic regime, etc. Simultaneously, most of the leading economic/political actors in the world of today acknowledge the fact that the uneven and combined development of competing national economies have created a multicolor world wherein national economic and political differences are here to stay for a significant time in the future. So, a new age of multi- or minilateralism (bearing in mind that the G20 is a limited-membership group) may be seen a way to further economic-political dialogue on the regulation of economic flows in this interconnected and interdependent way. The more such differences are acknowledged, negotiated over and built in soft law instruments to make them regulatory applicable, the more this new regime, advanced by the G20, will be effective in achieving the overall goals of a less uneven but still combined economic development in the world.

As to the main hypothesis of the paper, a certain level of success in building such a global economic regime can indeed be detected in the work of the G20, although this success has not been even in all issue-areas. This new global regime would be based on several principles, such as: open and liberalized markets, unrestricted international trade, balanced fiscal policies, strengthened system of international liquidity, financial regulation coordinated across boundaries, etc. However, the success in elaborating and implementing the principles has not been even: most of the regulatory advancements have been made in the financial area while least commitments have been made to keep international trade free from protectionism. Even so, these developments could form a basis for a new supranational governance regime to emerge.

The G20 may have taken the lead in creating a global economic policy forum, but in the world of today, wherein the Westphalian borders limit the impact of hard law, the soft law concept may open opportunities for such coordinated policies to be successfully implemented on the national level. Recent theories of hybridity have paved the way for defining soft law as a mixture, i.e. the interaction of soft and hard law, thus increasing the probability of successful implementation of the agreed principles and goals. Nevertheless, the G20's activities in creating and implementing a new regime for the global economy may further improve if positive experience from other supranational governance concepts and models are taken into the account, from the developed but also developing world. Finally, the effectiveness of such a new regime could also benefit from a more balanced approach towards national differences (level and structure of economic development, national economic goals, peculiarities of national legal systems, etc.) taken regarding not only the group's members, but also the rest of the international community.

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