Chapter 4
Compliance with International Soft Law:
Is the Adoption of Soft Law Predictable?

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ABSTRACT

The present article considers the importance of legal system origin in compliance with 'international soft law,' or normative provisions contained in non-binding texts. The study considers key economic and governance metrics on national acceptance an implementation of the first Basle accord. Employing a data set of 70 countries, the present study considers the role of market forces and bilateral and multi-lateral pressures on implementation of soft law. There is little known about the role of legal system structure-related variables as factors moderating the implementation of multi-lateral agreements and international soft law, such as the 1988 accord. The present study extends upon research within the extant literature by employing a novel estimation method, a neural network modelling technique, with multi-layer perceptron artificial neural network (MPANN). Consistent with earlier studies, the article identifies a significant and positive effect associated with democratic systems and the implementation of the Basle accord. However, extending upon traditional estimation techniques, the study identifies the significance of savings rates and government effectiveness in determining implementation. Notably, the method is able to achieve a superior goodness of fit and predictive accuracy in determining implementation.

INTRODUCTION

The decision to implement international soft law maybe motivated by a number of different factors as noted by Ho (2002) the implementation of economic soft law, specifically in the case of the Basle Accord of 1998, appears to be driven by the strength of the underlying democratic system of governance in place within a particular jurisdiction affording credence to the democratic legalists theories of international

law. While the extant research does appear to support this proposition, there appears to be little, if any, credence afforded to the interaction between democracy and government effectiveness and their impact on the implementation of international soft law. Artificial intelligence methods have been largely absent from discussions of international soft law implementation. This appears problematic and potentially inapt given the plausible interaction effects that exist between government effectiveness democracy and other macro-economic variables in determining the likelihood of soft law implementation.

The concept of soft law, pertains to quasi-legal instruments which have no formal legally binding capability, or where the enforcement capability is assumed to be weaker relatively speaking than the force that underlines traditional law, sometimes in this context referred to as hard law. While the term soft law is largely synonymous with discussions with international law, it may also be referred to when commenting on domestic legal and doctrinal matters. Herein, our focus remains on international law. An apt example of what may be described as soft law would include resolutions and declarations of the United Nations general assembly components of bilateral and multi-lateral treaties, such as codes of practice and other non-treaty obligations. It is nonetheless problematic identifying a consistent definition of soft law given the fervent debate that exists between those denying that such a legal paradigm exists and those that deem it an additional sphere of international law. Shelton (2000), offers the following guiding definition that soft law is in essence the normative provisions contained in non-binding texts. Arguably, the works of Baxter (1980), and Weil (1983), are seminal within the sphere of research. Baxter (1980), contends that soft law is representative of the different intensity of agreement that exists within the expression of international law. Weil (1983), responds to this assertion and argues for caution when seeking to derive concepts of relative normativity in international law. Shelton (2000), and Abbott & Snidal (2000), offer a unifying set of theses that serve as the conceptual framework for the present study. Specifically, Shelton (2000), outlines compliance with soft law through the analysis of a wide variety of non-binding legal instruments within a variety of domains. Abbott & Snidal (2000), contend that soft law exists by virtue of the weakening of a legal arrangement with respect to the obligations delegation and precision of said arrangement. Having accepted the existence of soft law, it is pertinent to understand what factors motivate the enactment of international soft law.

Guzman & Meyer (2010), offer a worthwhile summation of why soft law is employed by states. The authors advance for complementary explanations for why states employ soft law that seek to describe a much broader range of state behaviour than has been previously explained.

First, and least significantly, states may use soft law to solve straightforward coordination games in which the existence of a focal point is enough to generate compliance.

Second, under what we term the loss avoidance theory, moving from soft law to hard law generates higher sanctions that both deter more violations and, because sanctions in the international system are negative sum, increase the net loss to the parties. States will choose soft law when the marginal costs in terms of the expected loss from violations exceed the marginal benefits in terms of deterred violations.

Third, under the delegation theory, states choose soft law when they are uncertain about whether the rules they adopt today will be desirable tomorrow and when it is advantageous to allow a particular state or group of states to adjust expectations in the event of changed circumstances. Moving from hard law to soft law makes it easier for such states to renounce existing rules or interpretations of rules and drive the evolution of soft law rules in a way that may be more efficient than formal renegotiation.

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