



**University of
Zurich** ^{UZH}

Institute of Law

International Financial Law

Overview: International financial architecture and legal framework

International Financial Law

Lecture 1

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Lecture 1	Overview: International financial architecture and legal framework
Lecture 2	Financial crime, FATF standards, Anti-money laundering and counter terrorist financing (Guest Lecturer Holly J Hoch)
Lecture 3	Bank capital adequacy and liquidity rules and standards, bank risk management and corporate governance, Basel III/IV, Core Principles for Banking Supervision
Lecture 4	Bank Resolution and Deposit Guarantee Schemes
Lecture 5	Central Clearing of Derivatives
Lecture 6	Sustainable Finance Regulation and International Monetary Fund
Lecture 7	Securities regulation & investor protection
Lecture 8	Shadow Banking & Private Funds
Lecture 9	Decentralized Finance and Stablecoin
Lecture 10	Insurance and Reinsurance Regulation
Lecture 11	World Trade Organization General Agreement on Trade in Services (GATS)
Lecture 12	Extra Credit Presentations
Lecture 13	Extra Credit Presentations / Exam Review / Questions



Information and Website

- **Prof. Alexander:**
<https://www.ius.uzh.ch/en/staff/professorships/alphabetical/alexander.html>
- **Written exam (open book)**
- **Extra credit presentations (optional)**
- **Podcast available**
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Main points – Lecture 1

- Theories of international financial/economic law
- International financial standard setting bodies – i.e., Basel Committee
- International Monetary Fund
- the governance gap in international standard-setting
- global governance regime – core principles
- The G20 and international financial regulation



Changing structure of financial markets

- Globalisation
- Consolidation
- Conglomeration
- Convergence

Financial services industry has become more complex and the risks have changed. Global financial service firms have changed their structures and strategies in response to these changes.



What is regulation?

- Political economy - ‘sustained and focused control exercised by a public agency over activities that are valued by a community’ Selznick (1985)
- Determined by different forms of economic organisation supported by a legal regime (Majone, 1990)
- Public law – ‘directive function’ exercised by centralised state authority (Ogus, 1994)



International law and financial regulation (I)

- International conventions & treaties
- International custom with *opinio juris sive necessitatis*
- General legal principles of world's leading legal systems
- Subsidiary sources – tribunals and publicists

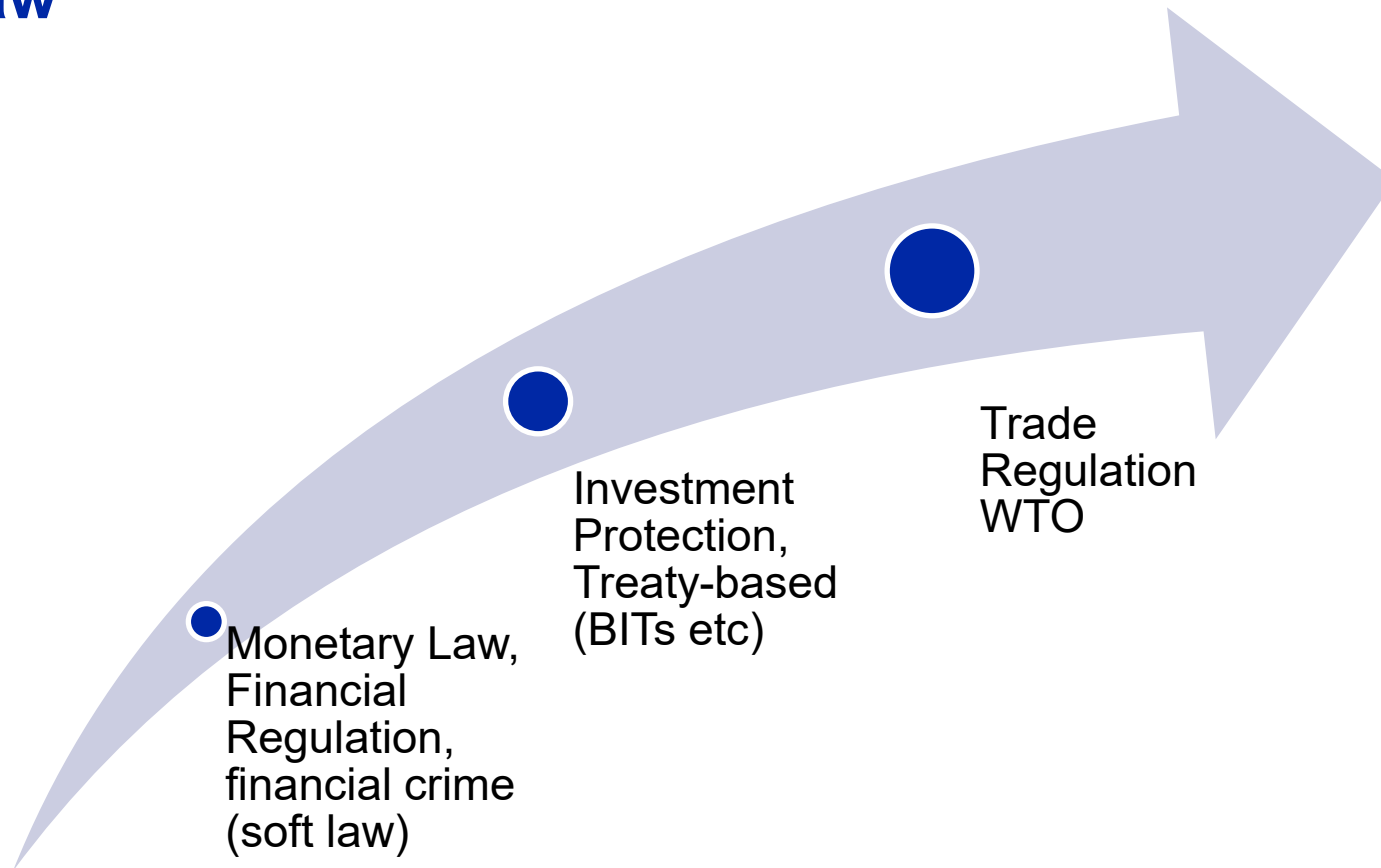


International law and financial regulation (II)

- Basel Accord and Revised Concordat
- IOSCO standards (securities)
- IAIS standards (insurance)
- FATF 49 Recommendations (AML/CFT)
- WTO GATS Article VI domestic regulatory disciplines & Annex on Financial Services prudential carve-out

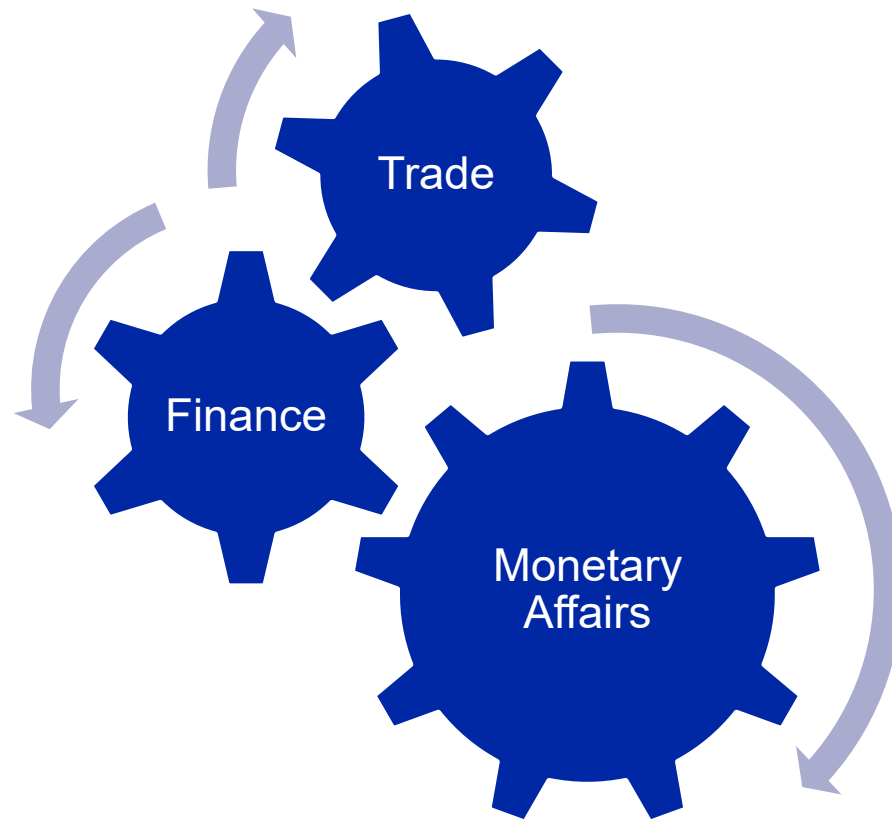


Legalization of International Economic/Financial Law





Interactions





International Financial Regulation – *Background*

- Bretton Woods system – 1945-1971 US dollar fixed to gold (fixed exchange rates)
- Post-Bretton Woods – floating exchange rates and liberalization of forex markets. Central banks begin to use interest rates to control currency fluctuations.
- Deregulation of financial activities
- Technology advances
- 3 major bank collapses in 1974
- Basel Committee on Banking Supervision 1st meets in 1975 after Herstatt bank collapse
- 1975 Basel Concordat
- 1983 Revised Concordat (after collapse Banco Ambrosiano) – more precise home-host allocation of jurisdiction over cross-border banks



The Basel Committee (1974 – present)

- G10 bank regulators
- Informal meetings at Bank for International Settlements in Basel
- No official communiques or agreements
- Sharing of information
- G10 banks that operate cross-border
- Informally promulgated non-binding standards



Political & economic policy rationale of international bank regulation

- 1980s sovereign debt crisis
- Need for enhanced capitalization of G10 banks
- Competitive level playing field

US-UK take the lead with 1985 bilateral capital accord



1988 Basel Accord

- A common capital adequacy standard
- Defines capital as equity and certain bonds (ie.,subordinated debt)
- Defines a measure of credit risk called risk-weighted assets (RWAs)
- Banks required to operate with minimum ratio of capital to RWAs of 8%



International standards – how voluntary? (I)

The Basel Accord

- No international legal obligation to implement the Accord
- But for most countries incentives and sanctions are stronger than generally recognized

'the international community is likely to expect all banks to adopt and implement the Basel Committee recommendations'

The World Bank, 2004



International standards – how voluntary? (II)

- Official sector discipline
 - IMF/IBRD conditionality & WTO/GATS
 - G10 Market access requirements for non-G10 (ie., rules on consolidated supervision)
 - US unilateralism and extraterritoriality (ie., financial sanctions), also EU Equivalence
- Market discipline
 - risk premiums on sovereign debt
 - Economies of scale for multi-national banks
 - Reputation in international financial community



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IMF surveillance, assistance and conditionality (Article IV)

The IMF's functions are divided into three distinct areas:

- Surveillance: Oversee the economic and financial policies of the member countries and the international monetary system (
- Financial Assistance: Provide support to Members experiencing temporary balance of payment problems;
- Technical Assistance: Provide technical support and training on monetary issues to Member States upon request.

Surveillance applies to all members, conditional financial assistance and technical assistance only apply to the members that request such assistance .

The mandatory nature of surveillance contrasts with the voluntary nature of technical assistance.

The IMF promotes the implementation of international financial standards by instrumentalizing these three areas.



G20 Decision-making – A Governance Gap?

- Provide limited information regarding their governance
- G20 secretariat sets agenda
- Blurring of rights and responsibilities that produces unclear lines of accountability
- G20 retains decision-making power for global banking norms with little input from non-G20



Financial Regulation: International Soft Law

G-10, G-20 – post-2008 crisis international reforms

Bank of International Settlement (BIS)

Informal coordination of Central Bank policies

Basel Rules for banks (Basel I, II and III): soft law

Financial Stability Forum, Financial Stability Board (overview of global market)

Bank resolution agenda (too big to fail and moral hazard)

Other International Financial Bodies (IOSCO, IAIS & FATF)



Principles of global governance

- Effectiveness of standard setting
- Accountability of standard setters
- Legitimacy of process

The way that internationally agreed minimum standards are designed can itself affect financial stability.



Effectiveness of standard-setting

- requires clear mechanisms for resolving differences and enabling difficult decisions to be made in spite of opposition from some stakeholders
- capacity to carry out its mandate
- make relevant or necessary decisions
- apply necessary resources to implement and enforce decisions



Accountability

- Transparency – e.g., clear lines of authority
- Coherence of standard-setting process
- Decision-making procedures
- Represent stake-holder interests

Accountability is a mechanism to allow persons affected by decision-making to have input.



Legitimacy

- Wider issues of decision-making
- Participation – user involvement in standard setting and implementation
- Country Ownership of standards

International Financial Bodies need to enjoy a particular degree of legitimacy in order to be effective.



Possible Reforms – A Global Governance Council for financial regulation?

- multilateral framework treaty
- delegate standard setting to expert bodies
- international participation in standard-setting
- forum for policy debate and development of rules

(Alexander, Dhumale & Eatwell, 2006, chap 5)



International initiatives in response to the crisis

- The G20 Washington Action Plan (2008) and the London & Pittsburgh Summit Statements (2009) on strengthening the financial system
- FSF's April 2008 and 2009 Reports
 - A roadmap on financial supervision and regulation
 - A more robust supervisory and regulatory framework based on new rules not only for financial institutions but also other actors, markets and supervisors
 - Macro prudential to complement micro prudential regulation



Financial Stability Board (FSB) & Basel Committee initiatives

- Global arena:
 - FSB principles for cross-border cooperation on crisis management
 - G-20/FSB protocol to establish colleges for all major cross-border financial institutions
 - Basel Committee/FSB task force on colleges: review of college practices
 - Basel Committee membership increased to 20 (Australia, Brazil, China, India, Korea, Mexico and Russia)



Conclusion

- International financial law changing our notion of public international law
- Financial globalization requires international standards/rules - how voluntary? The role of soft law? Hard law?
- Lawmaking and standard setting becoming more transnational
- The G20 & international standard setting?
- The governance gap in international norm setting?



Thank you

Mandatory readings for Lecture 1:

- Kern Alexander/Rahul Dhumale/John Eatwell (2006), *Global Governance of Financial Systems*, Intro & Chapters 1-2
- Kern Alexander (2019), *Principles of Banking Regulation*, Chapter 3

Mandatory readings for Lecture 2:

- Kern Alexander (2019), *Principles of Banking Regulation*, Chapter 9, pp 263-290
- The FATF Recommendations, p. 7-15