

Abbot and Snidal 2000, "Hard and Soft Law In International Governance."

Brief Summary:

*In contrast to the conventional understanding that soft legalized arrangement is simply a failure of achieving hard legalization, Abbot and Snidal argue along the **functionalist** lines that international actors often deliberately choose softer forms of legalization as superior institutional arrangements. Soft law offers many of the advantages of hard law, avoids some of costs of hard law, and has certain independent advantages of its own. This softening can occur in varying degrees of the weakening along each of three dimensions—obligation, precision, and delegation—and in different combinations across dimensions.*

Main puzzles

- 1) Why international actors often prefer softer forms of legalization to harder ones?
- 2) Why they seek different types of legalized arrangements, especially the variation forms of the soft laws, to solve political and substantive problems?

Main answers

To question 1: Using the functionalist approach, Abbot and Snidal identify advantages and disadvantages of both hard laws and soft laws and show us that in certain circumstances international actors chose soft laws over hard ones because the benefits-minus-costs in responses to many common problems of the former exceeds those of the latter. Although the argument is mainly interest-based, the authors also incorporate 1) normative elements and 2) the role of non-state actors.

To question 2: Different forms of softness may be more acceptable or more efficacious in different circumstances. A number of variables, including 1) transaction costs, 2) uncertainty, 3) implications for national sovereignty, 4) divergence of preferences, and 5) power differentials, influence which form of soft law, which combinations of the three criteria, are likely to be selected in specific circumstances.

* The authors define hard and soft legalization based on three criteria: obligation, precision, and delegation. An arrangement that is highly legalized on three dimensions constitutes "hard law," whereas "soft law" begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation.

* The benefits of the hard laws: 1) international actors reduce transaction costs, 2) strengthen the credibility of their commitments, 3) expand their available political strategies and 4) resolve problems of incomplete contracting.

* The costs and limitations of the hard laws: 1) it contains a high contracting costs, it may be wasteful, forcing states to plan for highly unlikely events, 2) it imposes a high sovereignty costs, it may be counterproductive, introducing opaque and inconsistent provisions, and 3) due to its precision, it may lead to undesirable rigidity and may prevent agreement altogether.

* The benefits of the soft legalization: 1) it is easier to achieve, 2) provide strategies for dealing with uncertainty, 3) infringes less on sovereignty, and 4) facilitates compromise among differentiated actors.

* The costs of the soft laws: 1) it allows actors opportunities to shirk, it also weakens the ability of governments to commit themselves to policies by invoking firm international commitments, and therefore make it easier for domestic groups and other oppositions to undo the agreement.

* In the acknowledgment of increasing influences of non-state actors in the development of international agreements, Abbot and Snidal also discusses the role of non-state actors along three theoretical perspectives: 1) a pluralist account in which interactions among private groups determine national preferences and international outcomes, 2) a public choice account in which government officials pursue private rewards, and 3) a statist account in which autonomous national governments interact with private actors. They show that soft laws can accommodate non-state actors' preferences and interactive strategies as well as government's options to deal with those private actors.

* In conclusion, legalization reflects a series of tradeoffs. States are typically torn between the benefits of hard legalization and the contracting, sovereignty, and uncertainty costs it entails. Private actors, although generally seek hard legal arrangements that reflect their particular interests and values, propose the demands that often conflict with those of other private actors and of governments. In response, soft legalization helps balance contestation and compromise among all of these actors. In addition, it also helps actors handle the uncertainty problems and accommodate power differentials.

* Abbot and Snidal also point out that the rationalist and constructivist perspective, which are usually seen as contrasting, are actually mutually inclusive.

o Rationalists 1) see the relevant actors as motivated largely by material interests, 2) view international agreements as 'contracts' created to resolve problems of coordination, collaboration or domestic politics, and 3) understand contracts as operating by changing incentives or other material features of interactions, such as iteration, reciprocity or the influence of particular interest groups, or through enforcement.

o Constructivists 1) focus on non-state actors, often motivated by moral or social concerns, 2) view international agreements as 'covenants' embodying shared norms and understandings, and 3) understand covenants as operating through persuasion, imitation and internalization.

o In Abbot and Snidal's view, law is both an interest-based and normative enterprises because 1) states and actors look to law to achieve their ends, whether they are pursuing interests or values, 2) actors utilize both normative and interest-based strategies to create legal arrangements, and 3) legal rules and institutions operate both by changing material incentives and by modifying understandings, standards of behavior and identities.