Prospects for International Financial Deglobalisation and its Potential Impact on International Financial Regulation

Iris H-Y Chiu*

Introduction

The indefatigable globalization of finance depicted in accounts such as the *Ascent of Money*[1] has become an assumed phenomenon for international financiers. Global interconnectedness and financial mobility has also paved the way for the development of international financial regulation,[2] especially in the aftermath of the global financial crisis where policy-makers sought coordinated and convergent regulatory solutions to common problems. In the wake of trade and economic disruptions caused by the public policy measures dealing with the covid-19 pandemic, debates have arisen[3] as to whether a reversal of global economic interconnectedness and seamlessness is taking place- such as soundings of 'deglobalisation' at the 2022 World Economic Forum at Davos.[4] The war in Ukraine further sharpened sensitivities to geo-political risk that may adversely affect international financial flows in the public and private sectors.[5] If financial de-globalisation occurs, or to an extent, it is queried how international financial regulatory policy and architecture may be affected by such prospects. Specifically, it can be queried, given international regulatory leadership after the global financial crisis 2007-9,[6] whether there would be development of regulatory policy to deal with banks' and financial institutions' exposures to heightened levels of geopolitical risk and the risk of deglobalisation. For example, would standards in prudential regulation be developed to require common provisioning for deglobalisation and geopolitical risks in order to foster prudential risk management conduct, contributing to the collective good of financial stability?

This article argues that the 'ramping up' of international financial regulation to deal with geopolitical risks in prudential regulation is unlikely. A corresponding relationship between the intensity of international financial regulation and financial globalisation has existed to date, and the opposite is likely. International financial regulation as developed so far is

---

*Professor of Corporate Law and Financial Regulation, University College London. This paper was presented at the Law and Financial Markets Review Inaugural Conference, University of Manchester, 16 September 2022. I thank Michael Galanis, Vincenzo Bavoso and Geraint Howell, as well as conference participants for valuable comments and feedback. All errors and omissions are mine.

[1] Niall Ferguson, *The Ascent of Money: A Financial History of the World* (London: Penguin Books, 2008).
[2] Claudio Borio, Marc Farag and Nikola Tarashev, 'Post-crisis International Financial Regulatory Reforms: A Primer' (BIS Working Paper 2020), https://www.bis.org/publ/work859.htm.
[3] Eg see Douglas Irwin, 'The pandemic adds momentum to the deglobalisation trend' (CEPR column, 5 May 2020), https://voxeu.org/article/pandemic-adds-momentum-deglobalisation-trend but see Pol Antràs, 'De-globalisation: Global Value Chains in the Post Covid-19 Age' (NBER Working Paper 2020), http://www.nber.org/papers/w28115.
[4] Rana Foroohar, 'Davos and the new era of deglobalisation' (Financial Times, 22 May 2022), https://www.ft.com/content/1afaa628-41cb-4620-84c9-48b4b6b5b956.
[5] 'Ukraine conflict to test resilience of global financial system, IMF warns' (Reuters, 19 April 2022), https://www.reuters.com/business/finance/ukraine-conflict-test-resilience-global-financial-system-imf-2022-04-19/.
[6] Such as by the Basel Committee and Financial Stability Board, see Basel III, https://www.bis.org/bcbs/basel3.htm; and the FSB's work on resolution of financial institutions, 'Key Attributes of Effective Resolution Regimes for Financial Institutions' (2014), https://www.fsb.org/2014/10/key-attributes-of-effective-resolution-regimes-for-financial-institutions-2/.

based on the chequered state of financial globalisation. The chequered state of financial globalisation already reflects decades of geopolitical risk being managed by the financial sector, hence, in the absence of radically unexpected drivers for change, international financial regulation will likely remain limited in addressing geopolitical risks and the risks of deglobalisation. This does not mean that domestic regulators would not each arrive at their own policies. However this article addresses in particular the (un)likelihood of new prudential regulatory policy in light of recent geopolitical and deglobalisation risks at the international level. Nevertheless, the article interrogates possible levels of international financial regulation convergence on this issue and what the drivers for change may be.

Section A first addresses the state of international financial regulatory policy and architecture (called 'international financial regulation' in this article), which many scholars have commented, seems 'weak' in terms of its 'legal quality'. We explore why and how international financial regulation is limited in nature and posit that this is because it reflects and supports a state of financial globalisation that is chequered to date. Section B explores the state of 'chequered' financial globalisation.[7] International financial globalisation is equally characterised by seamless and liberal flows of capital, as well as by actions of 'exclusion' and 'division' such as by the imposition of extraterritoriality that drives up legal risks,[8] economic sanctions[9] and legal policies inducing frictions in financial transactions.[10] Although it is too simplistic to pit the opposing driving forces in financial globalisation as between private sector neoliberalism and state-based interventions reflecting states' preferences and interests, the chequered landscape of financial globalisation is an arena for different private and public contests, not to mention critiques against financial globalisation too. Such a chequered landscape has existed prior to the heightened geo-political tensions since February 2022, and forms the broader context for the limited nature of international financial regulatory policy.

Section C predicts that despite recent anxieties, there is unlikely to be a marked change in financial globalisation. We explain why and how this supports no or limited change to international financial regulation especially in relation to prudential regulatory policy for geopolitical and deglobalisation risks. Section D then suggests what radical drivers for change may affect financial globalisation and international financial regulation. Section E briefly concludes.

A. **Limitations of International Financial Regulation**

There are two aspects to international financial law. First, there is a body of transactional legal terms and principles that have been forged by international bodies, many of which are

---

[7] Financial globalization is an aggregate concept that refers to increasing global linkages created through cross-border financial flows, see Eswar S. Prasad, Kenneth Rogoff, Shang-Jin Wei, and M. Ayan Kose, 'Effects of Financial Globalization on Developing Countries' (IMF, 2003), https://www.imf.org/external/pubs/nft/op/220/index.htm#:~:text=Financial%20globalization%20is%20an%20aggregate,these%20concepts%20are%20closely%20related..

[8] Such as extraterritorial insider dealing regulations extended by the US and EU, for the US see Stephen J Choi and Andrew T Guzman, 'The Dangerous Extraterritoriality of American Securities Law' (1996) 17 Northwestern Journal of International Law and Business 207. For the EU, see art 2(4), Market Abuse Regulation No 596/2014.

[9] See further discussion in Section B.

[10] Such as anti-money laundering regulations.

trade associations representing the financial sector's interests. The internationalisation of private transactional law facilitates and enables international financial transactions and reduces legal uncertainties and transaction costs.[11] This body of 'transnational financial law'[12] comprises for example: the long-running Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce[13] that has been almost uniformly adopted by all international banks for international trade; the standard terms for derivatives transactions[14] issued by the International Swaps and Derivatives Association; the International Capital Markets Association's Global master agreements for repurchase[15] for wholesale markets and the principles for corporate bonds labelled as 'green',[16] 'social'[17] or sustainability-linked';[18] the International Securities Lending Association's Master agreement;[19] and the Loan Market Association's documentation for syndicated loan arrangements.[20]

Second, there is a body of law that deals with the international governance of financial institutions and activities that have cross-border impact, as cross-border activities implicate the supervisory capacities of more than one regulator, that is, other than the home regulator of an internationally-active financial institution. This body of law that pertains to 'governance' rather than focusing on 'enabling' transactions, has been persistently framed as non-binding soft law[21] but with a persuasive 'compliance pull'.[22] This body of soft law emanates from international bodies that comprise of networked public sector actors, such as central bankers at the Bank for International Settlements and its Basel Committee, or both central bankers and Treasury/Finance officials from governments of countries participating in networks such as the Financial Stability Board or the Financial Action Task Force.

[11] William K Tabb, 'Clubs, Soft Law and Financial Institutions' in *Economic Governance in the Age of Globalization* (Columbia University Press 2004), 158-164.
[12] Discussed as part of modern transnational commercial law, Ross Cranston, 'Theorizing Transnational Commercial Law' (2007) 42 Tex Int'l LJ 597.
[13] UCP600, https://iccwbo.org/global-issues-trends/banking-finance/global-rules/#1488883561633-a6f3f3ac-5b0b.
[14] The 1992 and 2002 ISDA Master agreements, https://www.derivsdocu.com/services/consultancy/What-is-an-ISDA-Master-Agreement/.
[15] https://www.icmagroup.org/market-practice-and-regulatory-policy/repo-and-collateral-markets/icma-ercc-publications/frequently-asked-questions-on-repo/19-what-is-the-gmra/.
[16] Green Bond Principles 2021, https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/.
[17] Social Bond Principles 2021, https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/social-bond-principles-sbp/.
[18] Sustainability-linked Bond Principles 2020, https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/sustainability-linked-bond-principles-slbp/.
[19] The GMSLA, https://www.islaemea.org/wp-content/uploads/2019/03/GMSLA_2010_amendments_July_2012-1.pdf.
[20] https://www.lma.eu.com/about-us.
[21] Joseph J. Norton, 'Comment on the Developing Transnational Network(s) in the Area of International Financial Regulation: The Underpinnings of a New Bretton Woods II Global Financial System Framework' (2009) 43 Int'l Law 175; Chris Brummer, 'How International Financial Law Works (And How It Doesn't)' (2011) 99 Geo LJ 257.
[22] Brummer (2011).

While the enabling, private sector-driven body of international financial transactional law has hardened through international practice and jurisprudence in leading litigation and arbitral jurisdictions,[23] the governance role of international financial regulation has been largely reactive and has only undergone incremental change up to the global financial crisis 2007-9. International financial regulation has had a history of modest response to cross-border financial scandals, playing catch up to the deficiencies of home country control for internationally-active financial institutions. The Basel Concordat 1975[24] for example establishes high-level principles of consolidated and adequate supervision between home and host bank regulators after the failure of Herstatt in 1974, but the Concordat left details to inter-governmental or inter-regulator implementation without any form of supranational scrutiny. The lack of robust international supervisory coordination for banks continued through the amended Concordats of 1983[25] and 1992[26] after the collapses of Bank Ambrosiano and BCCI respectively. Although the Basel Capital Accord of 1988[27] was lauded as an achievement in international convergence in prudential regulation for internationally-active banks, it was limited in risk coverage. The expanded Basel II Accord of 2004[28] included a fuller suite of banking risks within its prudential regulatory scope but was designed to allow banks to more precisely calculate their risk exposures at a meta-regulatory level.[29] This led to implementation of complex models by many banks that were inscrutable to regulators, hence unsupervised,[30] ultimately allowing the build-up of supervisory deficits, excessive risks taken by globally important banks, and the implosion of the 2007 global financial crisis.

The historical passage of international financial regulation up to the global financial crisis reflects more intergovernmentalism than institutionalisation,[31] as international financial regulation reflects peer-level negotiated compromises framed in soft law. The dominance of intergovernmentalism over institutionalisation is, this article posits, largely attributable to the state of financial globalisation. As Section B explains, financial globalisation is an arena where private sector financial institutions' incentives and interests are played out, along with states' preferences and agendas in terms of their appetites for financial liberalisation. These contests in financial globalisation drive: politicians' interests in international financial regulation where there may be preferences for protectionism, regulatory competition etc; regulators' interests deriving from both their technocratic expertise and reflection of domestic political constituents' preferences; and the financial industry's various interests which may influence politicians and regulators through lobbying or capture. Section B

---

[23] Cranston (2007).
[24] https://www.bis.org/publ/bcbs00a.htm.
[25] https://www.bis.org/publ/bcbsc312.htm.
[26] https://www.bis.org/publ/bcbsc314.htm.
[27] https://www.bis.org/publ/bcbs04a.htm.
[28] https://www.bis.org/publ/bcbs107.htm.
[29] Folarin Akinbami, 'Is Meta-Regulation All It's Cracked Up To Be? The Case of UK Financial Regulation' (2013) 14 Journal of Banking Regulation 16.
[30] sa Dragomir, *European Prudential Banking Regulation and Supervision* (Oxford: Routledge 2010) at 124ff; Jukka Vaukhonen, "Bank Safety and Basel II" (Bank of Finland Research Paper 2009) at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1513239.
[31] Michael Abendschein and Harry Gölz, 'International Cooperation on Financial Market Regulation' (2021) 18 International Economics and Economic Policy 787; Tony Porter, 'Technical Collaboration and Political Conflict in the Emerging Regime for International Financial Regulation' (2003) 10 Review of International Political Economy 520.

explains why the state of financial globalisation today is a chequered state, and this coheres with the relatively limited nature of international financial regulation.

Some commentators take the view that there is nevertheless progress made in international financial regulation. Networked technocratic leadership at platforms such as the Basel Committee can be seen to represent a 'new world order', forging common solutions and increasingly levels of regulatory convergence.[32] To an extent, technocratic-led convergence in international financial regulation may reflect broad consensus on the more apolitical needs of international efficiencies and reduction of transaction costs which the financial industry desires.[33] Further, the 'rise' in international financial regulation can be regarded as a companion to countries' common goals of economic development, which can be helped by financial globalisation.[34] Zaring[35] argues that convergence at meta-level norms or practices in international networks reflects a form of legalisation that should not be dismissed, although such 'legal tenets' are pitched at high levels such as: national treatment, Most-favoured Nation status, the implementation of domestic legal standards, subsidiarity, peer review and the maintenance of a network of permanent form. Indeed 'norms' such as subsidiarity and domestic legal standards permit substantive divergences and the existence of peer review of permanent network existence does not indicate the strength of supranational scrutiny. At a more modest level, Ahdieh[36] argues that practices such as sustained international regulatory coordination or information sharing reflects a form of governance in international financial regulation. However, it cannot be expected that such governance would achieve intense levels of convergence amongst countries that come with different interests, preferences and agendas.

In the immediate aftermath of the global financial crisis 2007-9, standard-setting leadership at the Basel Committee and at the Financial Stability Board (which had been reconstituted into a more permanent network from its previous 'Forum' status),[37] brought about the prospect of institutionalisation[38] of international financial regulation. The Basel III Accord provides detailed and prescriptive standards in prudential risk calculations for bank assets as well as liquidity provisions,[39] while the Financial Stability Board's Key Attributes for Effective Resolution Regimes for Financial Institutions[40] harmonises a template for resolving in an

---

[32] Anne-marie Slaughter, *A New World Order* (Princeton University Press, 2004).

[33] Porter (2003); Robert B. Ahdieh, 'Coordination and Conflict: The Persistent Relevance of Networks in International Financial Regulation' (2015) 78 Law & Contemp Probs 75; Philip Arestis and Santonu Basu, 'Financial Globalization and Regulation' (2004) 18 Research in International Business and Finance 129.

[34] M. Ayhan Kose, Eswar Prasad, Kenneth Rogoff, and Shang-Jin Wei, 'Financial Globalization: A Reappraisal' (2009) 56 IMF Working Papers 8; WR Cline, 'Capital Market Integration' in Evidence and Impact of Financial Globalization (Elseiver, 2013), ch18 on more optimistic evalutations of the connection between financial liberalisation and economic development; but there are sceptical views discussed in Section B.

[35] David Zaring, 'Financial Regulation's Overlooked Networks' in Douglas Arner, Emilios Avgouleas and Ross Buckley (eds), *Reconceptualising Global Finance and its Regulation* (Cambridge: CUP 2016), ch5.

[36] Ahdieh (2015).

[37] Douglas W Arner and Michael W Taylor, 'The Financial Stability Board and the Future of International Financial Regulation' in Douglas Arner, Emilios Avgouleas and Ross Buckley (eds), *Reconceptualising Global Finance and its Regulation* (Cambridge: CUP 2016), ch4.

[38] See doubts: Manuella Moschella, 'Designing the Financial Stability Board: A Theoretical Investigation of Mandate, Discretion, and Membership' (2013) 16 Journal of International Relations and Development 380.

[39] Note 6.

[40] Ibid.

orderly manner, systemically important financial institutions in the world. The FSB's G-SIB name list that attracts extra capital provision requirements[41] has practically been hardened, such as by legislative adoption in the EU.[42] Abendschein et al[43] argue that states and financial regulators come to international fori so as to forge common solutions to collective problems, such as global financial stability. Quaglia and Gadinis[44] (to an extent) also argue that states and regulators are likely to push for international convergence aligned with developed areas of regulation that already exist in their jurisdictions,[45] in order to mitigate the threats of regulatory competition. Hence sufficient motivators can exist for international financial regulation to be developed.

Opposed to the 'glass half-full' views above, many however still regard international financial regulation as relatively 'weak', in terms of the soft law nature of standards and principles.[46] Further, as far as 'troubled times' can forge a consensus in the need for collective financial stability goods,[47] resulting in a culminating moment for international financial regulation, such apparent convergence may wane over a long drawn-out period of post-crisis implementation, punctuated by other crises and needs of member countries. Post-crisis implementation of international financial regulation now reveals gaps and divergent approaches taken in key jurisdictions.[48] These are possible because of the inherent soft law nature of international financial regulation, although the Basel Committee has also upped its game by performing regular implementation surveys to exert peer pressure for compliance.[49] For example, the UK and EU has taken different approaches to the implementation of the recommended leverage ratio.[50] The EU has embarked on regulating bankers' remuneration as part of its overall prudential package,[51] a move that

---

[41] https://www.fsb.org/2021/11/fsb-publishes-2021-g-sib-list/.

[42] Art 131, EU Capital Requirements Directive 2013/36/EU.

[43] Abendschein and Gölz (2021).

[44] Stavros Gadinis, 'The Politics of Competition in International Financial Regulation' (2008) 49 Harv Int'l LJ 447, arguing that states or regulators are more likely successful in securing convergence in international financial regulation where the state also has a dominant market which is attractive to others, hence drawing other buy-ins for such regulatory convergence.

[45] Lucia Quaglia, 'The European Union, the USA and International Standard Setting by Regulatory Fora in Finance' (2014) 19 New Political Economy 427.

[46] Brummer (2011); Matthew C. Turk, 'Reframing International Financial Regulation after the Global Financial Crisis: Regional States and Interdependence, Not Regulatory Networks and Soft Law' (2014) 36 Mich J Int'l L 59.

[47] Turk (2014), ch2, Mads Andenas and Iris H-Y Chiu, *The Foundations and Future of Financial Regulation* (Oxford: Routledge 2014).

[48] Orfeo Fioretos, 'Retrofitting Financial Globalization' in Thomas Rixen, Lora Anne Viola, and Michael Zürn (eds), *Historical Institutionalism and International Relations: Explaining Institutional Development in World Politics* (Oxford: OUP 2016), ch3.

[49] E.g. 'Progress Report on Adoption of the Basel Regulatory Framework' (14 Oct 2021), https://www.bis.org/bcbs/publ/d525.htm.

[50] The UK has implemented a minimum leverage ratio according to the Basel III standard of 3% since 2017 but the EU has taken more time to debate this until the amendment of Arts 428a, 428b, Regulation (EU) 2019/876 amending Regulation (EU) No 575/2013.

[51] Art 91, EU Capital Requirements Directive 2013/36/EU.

was opposed by the UK[52] and absent in the US. The EU's 'gone-concern' capital regulation[53] first differed from the Financial Stability Board's recommendations for 'Total Loss Absorption Liabilities'[54] which is implemented in the US.[55] The US' Volcker Rule,[56] although weakened at present, differs significantly from the UK's adoption of structural reforms.[57] The EU has rejected considering such structural reforms.[58] The FSB also has not achieved a consensus on how orderly cross-border resolution of financial institutions should be carried out, and settled for an ambiguous approach[59] allowing involved regulators to agree on a 'single point of entry' approach where bank resolution is led by the home authority or a 'multiple points of entry' approach where home and host authorities may proceed separately. More recently, international financial regulatory convergence on Basel III was dealt a blow during the covid-19 pandemic when financial regulators took slightly different approaches to prudential regulation suspension in order to allow the financial industry to support households and businesses hit hard by lockdowns and economic fallout.[60] The final outputs of Basel III, dubbed Basel IV, are likely delayed by major jurisdictions.[61] The UK's prudential regulatory supervisor has also mooted the possibility of radically changing Basel III into a more simplified framework.[62]

International financial regulation is a soft body of governance and is subject to divergences in regulatory implementation.[63] Broadly, there is arguably little optimism in thinking that

---

[52] Case C-507/13 *United Kingdom v. Parliament and Council*, ECLI:EU:C:2014:2481 which was withdrawn. The UK has also decided on the post-Brexit measure of scrapping the bonus cap, 'UK to scrap banker bonus cap in deregulation drive for growth' (Reuters, 23 Sep 2022), https://www.reuters.com/world/uk/britain-scrap-banker-bonuses-keep-city-competitive-2022-09-23/.

[53] The Minimum Requirement of Eligible Liabilities, Art 45, Bank Recovery and Resolution Directive 2014/59/EU, theoretically has much broader coverage than the TLAC, below.

[54] FSB, 'Total Loss-Absorbing Capacity (TLAC) Principles and Term Sheet' (Nov 2015), https://www.fsb.org/2015/11/total-loss-absorbing-capacity-tlac-principles-and-term-sheet/.

[55] Imposed only on the largest systemically important banks, https://www.federalregister.gov/documents/2020/03/26/2020-06371/total-loss-absorbing-capacity-long-term-debt-and-clean-holding-company-requirements-for-systemically

[56] https://www.federalreserve.gov/supervisionreg/volcker-rule.htm.

[57] Sections 142B-142E, Financial Services and Markets Act 2000 as amended by the Financial Services (Banking Reform) Act 2013. See Iris H-Y Chiu and Joanna Wilson, *Banking Law and Regulation* (Oxford: OUP 2019), ch10.

[58] See the withdrawal by the European Commission in 2017 of a proposed legislation drafted in 2014 based on the recommendations of the Liikanen report, Erkki Liikanen, Reforming the Structure of the EU Banking Sector (2011), http://ec.europa.eu/internal_market/bank/docs/high-level_expert_group/report_en.pdf.

[59] FSB, 'Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Developing Effective Resolution Strategies' (July 2013), https://www.fsb.org/wp-content/uploads/r_130716b.pdf?page_moved=1.

[60] Iris H-Y Chiu, Andreas Kokkinis and Andrea Miglionico, 'Relief and Rescue: Suspensions and Elasticity in Financial Regulation, and Lessons from the UK's Management of the Covid-19 Pandemic Crisis (2021) 6 Stanford International Policy Review 24.

[61] 'Britain aligns with EU on delaying Basel bank capital rules' (Reuters, 21 March 2022), https://www.reuters.com/business/finance/bank-england-consult-applying-final-basel-changes-2025-2022-03-21/. The Fed in the US has only recently announced its intention to implement the Basel IV output but without a definite timeline.

[62] 'BoE official proposes overhaul of global capital rules for banks' (Financial Times, 27 April 2022), https://www.ft.com/content/76bbdb7e-103a-4af0-b4f9-a826dca59dba.

[63] See arguments that this is not a sub-optimal state, as one-size-fits-all regulatory convergence can be more ill-fitting for states' different needs and reflect hegemony, see Hossein Nabilou, 'Reconceptualising Global Finance and Its Regulation: Review of Douglas Arner, Emilios Avgouleas and Ross Buckley (eds), Reconceptualising Global Finance and its Regulation (Cambridge: CUP 2016)' (2016) 32 Banking and Finance

international financial regulation would provide the source of leadership for dealing with the governance of financial institutions' heightened exposures to new geopolitical and deglobalisation risks, a matter of different sensitivities in different jurisdictions. Section B further explains that the state of international financial regulation closely coheres with the chequered state of financial globalisation. Hence, clues may lie in changes to the state of financial globalisation in order to shed light on potential changes to international financial regulation, and in what ways.

B. Financial Globalisation as a Chequered State of Affairs

Financial globalisation is described as 'an aggregate concept that refers to increasing global linkages created through cross- border financial flows.'[64] The capital account liberalisation on the part of many countries since the 1980s facilitates the allocation of financial flows in many ways, from foreign direct investment to indirect portfolio-based allocations including credit and investment.[65] The financial industry seeks choice to meet its needs for efficient and yield-returning opportunities.[66] Hence the industry has a bottom-up appetite for friction-reduction as well as transaction-cost efficiency, in the form of legal and regulatory convergence.[67] Although legal forms and documentation have converged through the use of templates provided by internationally powerful trade associations, regulatory convergence has been more patchwork and limited, even after the 'great moment' for re-regulation in the aftermath of the global financial crisis.[68] This Section suggests that the limited nature of international financial regulatory convergence can be attributed to states' and regulators' different preferences[69] for financial liberalisation and globalisation. These divergences in preferences are also a source of forms of geopolitical risk, broadly defined, to be discussed shortly.

States and financial regulators do not merely respond to the phenomenon of financial globalisation led by the private sector. Their concerns and preferences also shape the nature of financial globalisation. States and financial regulators may have mixed views regarding the pros and cons of financial globalisation, resulting in hesitation in agreeing to certain aspects of regulatory convergence or legal transplantation, or even introducing domestic requirements that cause frictions to financial globalisation.

Law Review 579; Avinash Persaud, 'The Locus of International Financial Regulation' in *Re-inventing Financial Regulation* (Springer, 2015), pp215-233.

[64] Note 7.

[65] Roy E Allen, *Financial Crises and Recession in the Global Economy* (4th ed, Edward Elgar, 2017), ch1.

[66] Arjen Mulder & Gerarda Westerhuis, 'The Determinants of Bank Internationalisation in Times of Financial Globalisation: Evidence from the World's Largest Banks, 1980–2007' (2015) 57 Business History 122.

[67] Arestis and Basu (2004).

[68] See Chs 1, 2, Eilís Ferran, Niamh Moloney, Jennifer G Hill and John C Coffee, *Regulatory Aftermath of the Global Financial Crisis* (Cambridge: Cambridge University Press 2012); Roberta Romano, The Iron Law of Financial Regulation, 2021 Wallenberg Lecture of 28 October 2021, European Corporate Governance Institute, https://ecgi.global/content/2021-wallenberg-lecture#:~:text=Romano%20terms%20the%20%E2%80%9Ciron%20law,costs%20that%20can%20have%20adverse.

[69] Emilios Avgouleas, 'Effective Governance of Global Financial Markets: an Evolutionary Plan for Reform' (2013) 4 Global Policy 74; Porter (2003) on technocratic networks affected by political interests too.

One of the often lauded benefits of financial globalisation is the promotion of financial and economic development in a country,[70] such as by liberating companies' access to fund-raising or promoting competitive financial markets for both households and corporations.[71] Further, a number of commentators[72] argue that even where developmental benefits are ambiguous, financial globalisation brings about collateral benefits for a country willing to be so exposed, such as improving corporate innovation, corporate governance and reduction in agency problems at firms, institutional improvement, reduction of corruption etc. However, sceptics point out that a key negative externality is the increase in financial market volatility and instability, such as associated with increased bank risk-taking and potential for failure. Unpredictable inflows and outflows of portfolio-based investment funds can also cause asset price bubbles and busts in a domestic economy.[73] Real economic casualties can take place such as domestic corporate insolvencies and human cost from regression in employment and development.[74] Financial sector short-termism and speculation[75] exacerbates these instability risks for countries open to financial globalisation, such as currency crises during the Asian financial crisis 1999. In this manner, it is questioned whether dividends of financial globalisation are largely reaped by the financial sector, or as developmental dividends in real economies. The economic shocks and losses entailing from financial crises, which can become more frequent in conditions of financial globalisation,[76] can wipe out wealth and development gains.[77]

States' and regulators' divergent preferences can be based on caution in view of the potential negative externalities of financial globalisation.[78] These are arguably manifested in

[70] Cline (2013), but, often short-term economic growth is observed which is not always sustainable for the longer term, Dani Rodrik and Arvind Subramaniam, 'Why Did Financial Globalisation Disappoint?' (2009) 56 IMF Staff Papers 112; Alexander Popov, 'Evidence on Finance and Economic Growth' in Thorsten Beck and Ross Levine (eds), *Handbook of Finance and Development* (Edward Elgar, 2018), ch3.

[71] Hoshul Shin, 'Financialization, Financial Globalization, and Investment – Panel Cointegration Results Using OECD Data' (2021) 34 Seoul Journal of Economics, DOI: 10.22904/sje.2021.34.3.004; Brahim Gaies, Stéphane Goutte and Khaled Guesmi, 'Are We Sentenced to Financial Globalization?' (2019) 1 Journal of European Economic History 49; Shauku Kihombo, Arif I. Vaseer, Zahoor Ahmed, Songsheng Chen, Dervis Kirikkaleli & Tomiwa Sunday Adebayo, 'Is There a Tradeoff Between Financial Globalization, Economic Growth, and Environmental Sustainability? An Advanced Panel Analysis' (2022) 29 Environmental Science and Pollution Research 3983 on access to new green or sustainable finance.

[72] D. Aykut, M.A. Kose, 'Collateral Benefits of Financial Globalization' in *Evidence and Impact of Financial Globalization* (Elseiver, 2013), ch19; Frederic S Mishkin, 'Is Financial Globalisation Beneficial?' (2007) 39 Journal of Money, Credit and Banking 259.

[73] G Gelos, 'International Mutual Funds, Capital Flow Volatility, and Contagion – A Survey' in *Evidence and Impact of Financial Globalization* (Elseiver, 2013), ch9; K. Kirabaeva, A. Razin, 'Composition of International Capital Flows' in *Evidence and Impact of Financial Globalization* (Elseiver, 2013), ch7.

[74] David Furceri, Prakash Loungani and Jonathan D Ostry, 'The Aggregate and Distributional Effects of Financial Globalization: Evidence from Macro and Sectoral Data' (2019) 51 Journey of money, Credit and Banking 163. On the cost of economic slumps after financial crises, Shin (2021); Kose et al (2009).

[75] James Tobin, 'Financial Globalization' (2000) 28 Word Development 1101.

[76] Roy E Allen, *Financial Crises and Recession in the Global Economy* (4th ed, Edward Elgar, 2017), chs 2, 3 and 4; Aykut and Kose (2013).

[77] See Jodi Gardner, Mia Gray and Katharina Möser (eds), *Debt and Austerity: Implications of the Financial Crisis* (Cheltenham: Edward Elgar 2020) on the negative impact of austerity followed by the global financial crisis 2007-9 on real economic and financial welfare.

[78] Logvinenko for example explained that countries may weigh the risks of open-ness against their redistributive capacity to combat welfare and social problems, Igor O Logvinenko, 'Open Economies, Closed Polities' (PhD Dissertation, Cornell University, 2015).

examples such as China's protectionist controls over the market for corporate control,[79] Chinese and Indian capital controls,[80] limitations on foreign direct investment,[81] and enhanced controls over the establishment and activities of foreign financial institutions.[82] Indeed capital controls have been used by many emerging countries at different times of precarity.[83] Emerging economies are not exclusive in their cautious disposition towards certain negative effects of financial globalisation, and developed economies such as the US and UK also maintain measures such as security screening for national interests in relation to certain foreign direct investments;[84] competition screening in the market for corporate control.[85] The UK also maintains an ex ante authorisation regime for both financial institutions and their senior management.[86] It may also be argued that anti-money laundering regulation introduces frictions into financial and economic transactions and activities, but the legalisation of these standards is ironically an achievement of international regulatory convergence.[87] Nevertheless, implementation remains chequered amongst jurisdictions,[88] and gaps remain, such as the co-option of offshore financial centers into regimes of beneficial ownership transparency pertaining to business and economic vehicles.[89]

---

[79] Eg in relation to restricted classes of tradeable shares in state-owned companies (H shares as opposed to A shares) and restricted classes of shares for domestic or foreign investors (A shares or B shares), see JR Barth, L Li, T Li, and F Song, 'Policy Issues of China's Financial Globalization' in *Evidence and Impact of Financial Globalization* (Elseiver, 2013), ch25.

[80] Fengjuan Xiao and Donald Kimball, 'Effectiveness and Efficacy of China's Capital Controls' (2006), https://faculty.washington.edu/karyiu/confer/beijing06/papers/xiao-kimball.pdf, also see India, A Shah and I Patnaik, 'India's Reintegration into the World Economy in the 1990s' in *Evidence and Impact of Financial Globalization* (Elseiver, 2013), ch23.

[81] Eg maintenance of a negative list for FDI in China, https://www.iflr.com/article/b1x0k06x92n0zh/primer-chinas-new-negative-list-for-foreign-investment. Theoretically, this can be explained in René M. Stulz, 'Limits to Financial Globalisation' (2005) 60 Journal of Finance 1595 and likely affects countries with state-owned corporations and corporations with concentrated ownership.

[82] 'China Puts Limits on Foreign Banks, Worrying Businesses' (NY Times, 2 April 2021), https://www.nytimes.com/2021/04/02/business/china-foreign-banks.html.

[83] IMF, Capital Controls (undated), https://www.imf.org/external/pubs/ft/op/op190/pdf/part1.pdf surveying capital controls implemented in Brazil, Chile, Colombia, Malaysia and Thailand.

[84] Scrutinised in the US by The Committee on Foreign Investment in the United States (CFIUS); for the UK see powers of the Secretary of State for Business in the National Security and Investment Act 2021 which came into force in January 2022.

[85] Under the jurisdiction of the UK Competition and Markets Authority, and in the US, under the purview of the Federal Trade Commission.

[86] S19, s59ZA, UK Financial Services and Markets Act for example.

[87] Under the Financial Action Task Force Recommendations, https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.

[88] Mikhail Reider-Gordon & Truman Kirkland Butler, 'Anti-Money Laundering' (2013) 47 International Lawyer 387;Noura Ahmed Al-Suwaidi and Haitham Nobanee, 'Anti-Money Laundering and Anti-Terrorism Financing: A Survey of the Existing Literature and a Future Research Agenda' (2020) Journal of Money Laundering Control, https://www.researchgate.net/profile/Haitham-Nobanee/publication/341505768_Anti-money_laundering_and_anti-terrorism_financing_a_survey_of_the_existing_literature_and_a_future_research_agenda/links/5f044f4692851c52d61ddf12/Anti-money-laundering-and-anti-terrorism-financing-a-survey-of-the-existing-literature-and-a-future-research-agenda.pdf; Selina Keesoony, 'International Anti-Money Laundering Laws: The Problems with Enforcement' (2016) 19 Journal of Money Laundering Control 130.

[89] Refinitiv, 'Beneficial Ownership Compliance: Gaps Persist' (3 Sep 2019), https://www.refinitiv.com/perspectives/regulation-risk-compliance/beneficial-ownership-compliance-gaps-persist/.

Financial globalisation is also affected by broader matters in international relations that affect trust and the maintenance of liberal flows of capital. These can be described as geopolitical risks that affect finance. The limited nature of international financial regulation reflects rational participation by states and regulators, emerging and developed economies alike, in international discourse and negotiations relating to cross-border finance, where trust levels may be fluctuating.[90] At more severe levels of trust deficits, powerful financial jurisdictions such as the US and EU can introduce economic sanctions against certain state, individual and corporate entities.[91] These result in disruptions to existing financial and business ties, as well as more broadly to markets.[92] Nevertheless, even throughout the duration of sanctions regimes, business and financial entities make choices in terms of strategic behaviour, whether to circumvent sanctions with higher inconvenience and cost,[93] or to terminate financial and/or business ties.[94] In particular, as sanctions are often limited in their targeting, there remains plenty of scope for financial business to continue. For example, sanctions against Russian politicians and oligarchs in light of the annexation of Crimea in 2014 did not extend to the state and many corporations, and left sovereign and corporate debt markets not severely affected.[95] Jurisdictions affected by sanctions also develop alternative channels which can appeal to the financial industry.[96] Hence, on the one hand, the financial industry navigates fragmentations and gaps between regimes of domestic financial regulation and the risks these entail, but on the other hand also takes advantage of regulatory arbitrage.[97] Further, despite the lack of either national policy or international standards in evaluating geopolitical risk, financial institutions have coped by incorporating these into strategic decision-making.[98]

---

[90] Ahdieh (2015).

[91] Described as 'financial weapons of war', see Tom CW Lin, 'Financial Weapons of War' (2016) 100 Minnesota Law Review 1377; Joanna Diane Caytas, 'Weaponizing Finance: U.S. and European Options, Tools and Policies' (2017) 23 Columbia Journal of European Law 441.
Sanctions are however seldom 'blanket' against a state and its citizens as this may offend human rights and other legitimate protections, see Matthew Happold, 'Economic Sanctions and International Law: An Introduction' in Matthew Happold and Paul Eden (eds), *Economic Sanctions and International Law* (Oxford:Hart Publishing, 2016).

[92] Vikkram Singh & Eduardo Dacillo Roca, 'China's Geopolitical Risk and International Financial Markets: Evidence from Canada' (2022) 54 Applied Economics 3953; Ahmed H. Elsayed and Mohamad Husam Helmi, 'Volatility Transmission and Spillover Dynamics Across Financial Markets: The Role of Geopolitical Risk' (2021) 305 Annals of Operations Research 1.

[93] Blaine Stout, 'Sanctioned to Survive: How Foreign Firms Perform when Economic Sanctions Affect their Business Relationships—A Study of Contemporary Economic Sanction Actions and their Impact' (2017) 16 Perspectives on Global Development and Technology 501; Hossein Askari, John Forrer, Hildy Teegen and Jiawen Yang, 'US Economic Sanctions: Lessons from the Iranian Experience' (2001) 36 Business Economics 7.

[94] Andy Cavo, 'Lost Opportunities for International Financial Institutions: Foreign Direct Investment in Cuba, Amid U.S. Economic Sanctions' (2009) http://ssrn.com/abstract=1457014.

[95] Iikka Korhonen, 'Sanctions and Counter-Sanctions – What Are Their Economic Effects in Russia and Elsewhere?' (Bank of Finland BOFIT Policy Brief 2/2019).

[96] Erik Andermo and Martin Kragh, 'Sanctions and Dollar Dependency In Russia:Resilience, Vulnerability, And Financial Integration' (2021) 37 Post-Soviet Affairs 276.

[97] Heikki Marjosola, 'The Problem of Regulatory Arbitrage: A Transaction Cost Economics Perspective' (2019) 15 Regulation and Governance 388.

[98] Duisenberg School of Finance, 'Non-traditional Risk Sources and Financial System Resilience' (June 2015), http://ssrn.com/abstract=2637782; Dario Caldara and Matteo Iacoviello, 'Measuring Geopolitical Risk' (Board of Governors of Federal Reserve System Working Papers, 2018), https://www.federalreserve.gov/econres/ifdp/files/ifdp1222.pdf.

Ferguson raised the question whether severe geopolitical risks like the Cold War adversely affected global financial flows, and concluded in the negative, as the industry learnt to cope with such realities and strategised their behaviour accordingly.[99] Significant geopolitical risks such as the September 11 disaster in New York and subsequent war on terrorism[100] and regional conflicts in various jurisdictions[101] have not stopped movements of financial globalisation, even if the financial industry has had to adapt their behaviour. In this manner, financial globalisation has always been a chequered landscape, and this has not deterred financial industry participants from making their calculated decisions whether to fund certain governments' borrowing[102] and balance decisions of risk against yield. The apartheid regime in South Africa which lasted until 1991 drew sharply different responses from investors, with some looking to engage with opportunities,[103] while others preferring to divest.[104] These different decisions are also likely to be taken by financial institutions in response to their business engagement with Russia[105] in light of the war on Ukraine.

The ebb and flow of significant geopolitical risks is not new to the landscape of financial globalisation, which has always been chequered and is arguably no worse now than before. In other words, the issue of regulatory governance for geopolitical risks has always existed but has not been selected to be addressed in international financial regulation such as in micro-prudential standards, or in standards pertaining to investor stewardship such as engagement or divestment.

The next Section examines the unlikely prospects that there would be dramatic change in international financial regulation to address recent geopolitical and deglobalisation risks. Two scenarios of no and incremental change to international financial regulation are posited and discussed. Section D however introduces the caveat that certain dramatic changes in the landscape of financial globalisation may result in more significant change to international financial regulation. It is however yet unpredictable whether such changes are in the form of augmentation or marginalisation for international financial regulation.[106]

---

[99] Niall Ferguson, 'Financial Systems, Economic Growth, and Globalization in the Era of the Cold War' in Peter L. Rousseau and Paul Wachtel (eds), *Financial Systems and Economic Growth* (Cambridge: CUP 2017), ch5.
[100] 'The Economic Impact of 9/11, in 10 Charts' (Bloomberg, 9 Sep 2021), https://www.bloomberg.com/opinion/articles/2021-09-09/the-economic-impact-of-9-11-in-10-charts.
[101] Eg Jason Sorens and William Ruger, 'Globalisation and Intrastate Conflict: An Empirical Analysis' (2014) 16 Civil Wars 381.
[102] Tom Ginsburg and Thomas S Ulen, 'Odious Debt, Odious Credit, Economic Development and Democratization' (2007) 70 Law and Contemporary Problems 115; Sebastian M Salegh, 'Do Countries Have a "Democratic Advantage"?: Political Institutions, Multilateral Agencies, and Sovereign Borrowing' (2005) 38 Comparative Political Studies CHK on lack of pricing difference between sovereign debt prices for democratic and non-democratic regimes.
[103] David Beaty and Oren Harari, 'Divestment and Disinvestment from South Africa: A Reappraisal' (1987) 29 California Management Review 31.
[104] Discussed critically in Stout (2017).
[105] On terminating business, see 'European banks face tough choice as they weigh Russia pullback' (SNL European Financials Daily, 26 Apr 2022).
[106] Similar dilemma voice during the onset of the global financial crisis, Eric Helleiner and Stefano Pagliari, 'The End of an Era in International Financial Regulation? A Postcrisis Research Agenda' (2011) 65 International Organisation 169.

C. No or Incremental Change Envisaged to International Financial Regulation?

The article argues that there would likely be no or incremental change to international financial regulation. International financial regulation has focused on multinational banks for an extended period of time after the global financial crisis. After over a decade's length of post-crisis regulatory implementation since the early 2010s. the banking industry's capital strength has improved[107] but regulators have not fostered policy leadership regarding the sites to which credit risk and non-bank financial intermediation have migrated.[108] Regulators are still overseeing the post-crisis 'pact' in terms of the agreed reform trajectory and framework beyond 2025.[109] Regulators' path dependent pre-occupations are unlikely to change. Although the FSB has included risks from the war in Ukraine in its outlook monitoring, there is no indication on further policy development on exactly these are to be prudentially provisioned for. This Section predicts that deglobalisation and geopolitical risks of late would entail little or incremental change, if any, to international financial regulation.

This does not mean the risks of deglobalisation and geopolitical developments are not significant, but the article argues that the likely response at the international financial regulation level is limited, therefore aligning with the more sceptical views of international financial regulation thus far. The article is even sceptical whether national regulators may take clear policy positions on these risks. As argued in Section B, the private sector would likely be delegated with risk management based on its history of navigating a chequered state of financial globalisation anyway. In this manner, there is ironically a form of 'stability' preserved for international financial regulatory bodies in relation to 'keeping calm' and 'carrying on' with their established agendas.

First, it is predicted that national regulators would unlikely highlight deglobalisation and geopolitical risks for particular risk management beyond the existing framework, preferring to analyse and evaluate the financial implications of these risks within the existing suite of microprudential regulation. In this manner, there would be no significant need to elevate these issues to the stage of international financial regulation.

Banking groups with exposures to Russia have swiftly been transparent about a few matters:

(a) Asset losses as a result of sanctions[110] and possible expropriation;[111]
(b) Future financial relations with Russia;[112] and

[107] OECD, *Global Financial Development Report 2019/2020* (2020), ch3, https://openknowledge.worldbank.org/bitstream/handle/10986/32595/211447ch3.pdf.
[108] The FSB monitors levels of activity but the monitoring role has not culminated in articulations of policy, see for eg FSB, *Global Monitoring Report on Non-Bank Financial Intermediation* (2021), https://www.fsb.org/wp-content/uploads/P161221.pdf.
[109] With the EU's and UK's expression of intention to delay implementation of the Basel Committee's final 2017 reform output till 2025.
[110] 'Banks feel a chill wind from Russia' (Investors Chronicle, 18 March 2022).
[111] 'Banks confront possible loss of Russia businesses amid Ukraine crisis' (SNL European Financials Daily, 9 March 2022).
[112] 'European banks face tough choice as they weigh Russia pullback' (SNL European Financials Daily, 26 Apr 2022).

(c) Regulatory information regarding non-performing losses, loss provisions[113] and capital strength.[114]

Such transparency is beneficial for assuaging investors, and also regulators in terms of institution-specific or systemic risk. Large banking groups' public stances during this episode are likely intended to maintain both market and regulatory stability.

Nevertheless, regulators such as the Bank of England (which houses the Prudential Regulation Authority as one of its Committees) are not entirely at ease. Its recent exercise on evaluating large bank resolvability signals supervisory toughness in ensuring resilience even though detailed supervisory concerns are not publicly disclosed. The Bank of England evaluated large banking groups' recovery planning as part of the regulatory framework for contingency and crisis management. HSBC and Standard Chartered were prominent amongst the banks required to make improvements in their contingency and crisis planning.[115] It is queried to what extent geopolitical risks may have featured in this supervisory assessment given HSBC's and Standard Chartered's strong Asian presence and exposures. Further, the European Banking Authority is also keenly gathering intelligence regarding national authorities' supervisory preparedness in view of banks' risk management in current uncertainties.[116]

Supervisory concerns regarding geopolitical risks would likely manifest in the form of information monitoring and supervisory dealings rather than in the form of standardised prudential policy. This is also because prudential provision for geopolitical risks would be challenged by the difficulties in forming scientific judgments about the nature and magnitude of such risks, involving qualitative and contentious judgment calls. For example, should geopolitical risk be regarded as affecting credit and market risk, and be embedded into those calculations, or should be regarded as a standalone category that interacts with other financial risks? What sort of occurrence should be regarded as geopolitical risk and at what magnitude? The election of a maverick right-wing political leader in a developed jurisdiction may or may not pose severe levels of policy and/or geopolitical risk. It is not straightforward to assess if any political or regime change should count and to what extent. Such evaluations may also be made through the lens of institutional biases[117] and inevitably

---

[113] 'Investors Face steep losses in Russian assets' (Financial Times, 4 March 2022); 'Jamie Dimon warns that JPMorgan faces a $1 billion loss from its Russia exposure' (Business Insider, 4 Apr 2022); 'Allianz unit's exposure to Ukraine war 'very limited'; CFO hints at Russia exit' (SNL European Financials Daily, 13 May 2022); 'Crédit Agricole does not expect more losses from Russia, Ukraine exposure' (SNL European Financials Daily, 6 May 2022); 'Wall Street banks detail Russia losses and warn of more volatility' (Financial Times, 14 Apr 2022), https://www.ft.com/content/28366e93-3173-43f7-82e6-474b29d85ebd.

[114] 'Banks' Exposures To Russia Are Much More Transparent Than Those Of Non-Banks' (Forbes, 12 Mar 2022), https://www.forbes.com/sites/mayrarodriguezvalladares/2022/03/12/banks-exposures-to-russia-are-much-more-transparent-than-that-of-non-banks/?sh=5a5c740345c9.

[115] Bank of England, *Resolvability of Major UK Banks 2022* (2022), https://www.bankofengland.co.uk/financial-stability/resolution/resolvability-assessment-framework/resolvability-assessment-of-major-uk-banks-2022.

[116] European Banking Authority, *2022 EU-wide Transparency Exercise* (2022), https://www.eba.europa.eu/risk-analysis-and-data/eu-wide-transparency-exercise.

[117] For example, the preference for neoliberal ideologies, see Ziya Öniş and Ali Burak Güven, 'The Global Economic Crisis and the Future of Neoliberal Globalization: Rupture Versus Continuity' (2011) 17 Global Governance 269. See however Mark Beeson, 'G-20 and International Economic Governance: Hegemony, Collectivism, or Both?' (2009) 15 Global Governance 67 who earlier argued that the G-20 seemed more

involve political preferences. Geopolitical risks also cannot be confined to outbreaks of wars and civil conflicts. How far do institutional failures such as corruption, social issues such as large scale unrests, protests or human rights abuses constitute geopolitical risks? Can geopolitical risks be entwined with other risks such as climate risks that affect social and economic development?

These issues are neither straightforward to recalibrate and resolve, for any national regulator, let alone at international fori requiring consensus. For instance, it would be difficult for any regulator to incorporate geopolitical risks in current prudential regulatory measures, such as imposing a 'systemic risk buffer'[118] for significant exposure to China or certain Chinese sectors. In this respect Tett warns of concentration-type risks in many economic activities such as involving supply, sourcing and infrastructure that have been taken for granted in the more benign days of globalisation and international trade, but can disrupt business and finance significantly.[119] Arguably the broad-brush G-SIB buffer[120] may incorporate all forms of interconnected risks at a global level, but the quantitative approaches involved in calculating a G-SIB's footprint does not show how nuances of risks in different forms of interconnectedness or jurisdictional footprints are taken into account of.

In view of the uncertain nature and magnitude of geopolitical risks, it is possible that national regulators may take certain supervisory management actions that could culminate in a form of international financial regulatory commonality. These measures would be incremental in nature and comfortably within the current regulatory frameworks. For example, national regulators could require all financial institutions to assess geopolitical risks and their financial impact in a meta-level regulatory manner,[121] ie to require that there be risk management policies or strategies at the level of the regulated entity instead of imposing prescriptive regulations for risk management or prudential provision. These can be reinforced in the UK for example by allocating senior management responsibility and oversight so as to be accountable to the regulator.[122] Further, disclosure and transparency regulation of banks and financial institutions can be enhanced in relation to geopolitical risks

---

inclusive and tolerant of diverse views, https://d1wqtxts1xzle7.cloudfront.net/2681362/GG_pdf-with-cover-page-v2.pdf?Expires=1655108779&Signature=OnDhjbzWNdPZ73R~fsX5vmwv~t99Pvt8vPyYXO7SkRZ1Ovkza1F6LH1ep7auGg45VFhiNeevO2YdKstu9YUFeNH949Py~4QPoK14~6A0kRukKU~apX2b5DUEAiay5C-cbCsL6QzHsJdvQ6RvMdjSL90XngraSyf9IFA1K5YfuewHXvg14q1pLSgTCiQoOSpS0ft0m6Vcwl4nkrP1nPu92CPnH1vDF2u8nwY0gyZegCuxtZf~gC-MsHg53W-qI5ZUavHlYtHIjtrH-W0zyeZ5LxViIHUDX4L0IItaxULthonbdxCpCogj-rjqW0kHF01VJxTXG15shvSKkIE2JLvRvQ__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA.

[118] Art 133, EU Capital Requirements Directive 2013/36/EU amended by Directive 2019/878.

[119] Gillian Tett, 'Executives are only now waking up to their collective blind spots' (Financial Times, 3 Nov 2022), https://www.ft.com/content/8ab1b476-035e-45b4-8fe7-7247dadf3653.

[120] Art 131(4), EU Capital Requirements Directive 2013/36/EU.

[121] An account of meta-level regulation at banks and financial institutions can be found in Iris H-Y Chiu, *Regulating (from) the Inside: The Regulatory Framework for Internal Control at Banks and Financial Institutions* (Oxford: Hart 2015) on the role of Internal Control functions in implementing policies that would yield compliant and prudent results.

[122] The Senior Manager and Certified Persons Regime was introduced in the UK to allow the regulator to map out key responsibilities for which individuals in banks and financial institutions must be identified to be personally responsible, see Anat Keller and Andreas Kokkinis, 'The Senior Managers and Certification Regime in Financial Firms: An Organisational Culture Analysis' (2022) 22 Journal of Corporate Law Studies, https://www.tandfonline.com/doi/pdf/10.1080/14735970.2022.2054165.

at portfolio level, whether in relation to full or partial intermediation, as being relevant both to 'stability' monitoring for regulators and accountability to investors. Bank regulators could also compel banks to include geopolitical risks explicitly in their reverse stress-testing in order to show their extent of resilience. In this manner, regulatory monitoring is likely achieved without skewing financial institutions' incentives through prudential regulatory prescriptions. That said, prudential regulators have room to impose discretionary capital requirements under Pillar 2[123] for individual institutions, but such imposition may require regulators to first be able to explain the nature and magnitude of geopolitical risks in supervisory dialogue.

Further, it is queried whether capital markets actors may frame geopolitical risks in ways that affect other financial sector actors and regulators more broadly. Institutional investors in particular may exert pressure on asset managers, such as asset management arms of large banking groups, to take into account of geopolitical risks and to become more accountable for them. Such pressures can also be framed within 'stewardship' terms[124] or as concerns in 'ESG investing'. In particular, commentators observe that investors are sensitive to geopolitical risk effects upon their portfolios, especially ESG-themed portfolios in terms of their integrity and financial risks.[125] In this respect it has been argued that banks are behind the curve compared to investment firms in identifying and measuring geopolitical risk.[126] As cross-fertilisation of risk management regulatory policy amongst sectors is emerging, for example, reflected in the adaptation of bank prudential regulation for investment firms in the EU,[127] the investment sector's responsive absorption of geopolitical risk considerations can offer useful lessons.

There is more international alignment in relation to economic sanctions and anti-money laundering policies[128] as immediate reactions to the war in Ukraine, these reflecting the underpinning political stances regarding international relations and solidarity. However, these regulatory reforms are chiefly announced by individual states and the EU collectively, and not as a matter of policy-making at international fori. Reforms to anti-money laundering regulation for example are introduced at a national level in the UK.[129] It is arguable that political leadership in financial regulation reforms during times of exigencies eclipses that of international financial regulation bodies. The importance of the G-20's leadership has been

---

[123] See https://www.bis.org/bcbs/publ/d465.htm.

[124] Benjamin Colton, Holly Fetter, and Ryan Nowicki, 'Stewardship in the Context of Geopolitical Risk' (Harvard Law School Forum on Corporate Governance, 13 May 2022), https://corpgov.law.harvard.edu/2022/05/13/stewardship-in-the-context-of-geopolitical-risk/ posting an opinion from State Street regarding the stewardship actions investors take with investee companies in light of geopolitical risk developments.

[125] Ming Deng, Marcus Leipold, Alexander F Wagner and Qian Wang, 'Stock Prices and the Russia-Ukraine War: Sanctions, Energy and ESG' (May 2022), http://ssrn.com/abstract=4080181.

[126] Henry Engler, 'Managing geopolitical risk: US banks may be unprepared for the next crisis' (Thomson Reuters Regulatory Intelligence, 17 May 2022), https://www.thomsonreuters.com/en-us/posts/investigation-fraud-and-risk/managing-geopolitical-risk/.

[127] Investment Firms Directive (EU) 2019/2034 and the Investment Firms Regulation (EU) 2019/2033.

[128] 'Global banks eschew risk as they navigate Russia sanctions quagmire' (Reuters, 2 March 2022), https://www.reuters.com/business/finance/global-banks-eschew-risk-they-navigate-russia-sanctions-quagmire-2022-03-02/.

[129] Economic Crime and Transparency Act 2022.

remarked[130] to be crucial for leading the coordination of policy needs during the onset of the global financial crisis 2007-9, such as in terms of workstreams and crisis management, before the more technocratic policy work devolved to international financial regulatory bodies. In this light, national regulators, less international financial regulatory platforms, are arguably unlikely to act until there is political articulation for the financial risk implications of deglobalisation and geopolitical developments.

In this manner it is arguable that international financial regulatory bodies would offer little change in policy leadership, especially in relation to prudential regulation for geopolitical risk management. The Basel Committee and FSB would likely continue sustaining their current agendas of post-crisis implementation and dealing with matters of more accepted convergence such as the importance of climate risks in financial management. This is nevertheless a thin or precarious form of apparent stability for international financial regulatory bodies. The next Section depicts major drivers that may shift the needle more significantly in international financial regulation.

D. Shifting the Needle in International Financial Regulation

This Section attempts at crystal ball-gazing and suggests that certain major triggers can shape international financial regulation more radically.

First, a major trigger could be the failure of a globally systemically important financial institution, or the failure of expected liquidity at a systemic level for customers in relation to certain financial instruments. The near-failures of a number of large and important financial institutions in the US, such as AIG, and in the EU and UK, mostly nationally important banks, were the reason for extensive state bail outs and the subsequent embarkation upon a decade-long journey into international financial regulation reform.[131] If a GSIB, as identified by the Financial Stability Board, or a number of these, were to fail due to significant losses from geopolitical risk, it is likely that the issue may be forced onto the agenda for international financial regulation. Such an issue would relate to systemic risk,[132] in terms of how collective interests amongst financial jurisdictions should be addressed from the ramifications of a GSIB's problems. However, financial regulators would still have to collectively debate the nature and measurement of geopolitical risk, which is inherently challenging. It is nevertheless possible for regulators to agree on meta-level principles, such as asking national authorities to require banks to plan for geopolitical risk in risk management policies, contingency recovery and resolution planning and reverse stress-testing, while leaving details to supervisory implementation.

---

[130] Mario Giovanoli, "The Reform of the International Financial Architecture after the Global Crisis" (2009) New York University Journal of International Law & Politics 81, 91-98.

[131] Ferran et al (2012); Mads Andenas and Iris H-Y Chiu, *The Foundations and Future of Financial Regulation* (Oxford: Routledge 2014).

[132] Dinh Hoang Bach Phan, Vuong Thao Tran, Bernard Njindan Iyke, 'Geopolitical Risk and Bank Stability' (2022) 46 Finance Research Letters 102453 on geopolitical risk affecting bank stability.

On the other hand, even a G-SIB failure on the account of geopolitical risk may lead to international regulatory fragmentation and not convergence.[133] This would be due to deeper international relations and ideological faultlines that prevent substantive convergent policies from being readily forged. There are increased faultlines between certain financial jurisdictions with authoritarian governments vis a vis financial jurisdictions with a liberal democratic tradition,[134] which could lead to international financial regulatory fragmentation. The Russian invasion of Ukraine has divided the world in terms of condemnation by the 'liberal West' and the lack of condemnation or even support by more authoritarian regimes or countries reliant on Russian gas exports.[135] Indeed there are developments for sanctions avoidance assisted by regimes sympathetic to Russia such as to facilitate financial flows away from the channels blocked by many Western governments.[136] Further, it is uncertain if the great trade decoupling may be triggered[137] between the West and China, which is viewed as a significant source of geopolitical risk.[138] If China takes the lead in constructing alternative channels for financial flows, such as radiating from its pilot scheme of digital yuan on centrally controlled permissioned blockchain systems,[139] it can further move on to consolidate legal, transactional and even regulatory standards for those that wish to participate in these alternative systems. China's strategic moves for shaping its financial connectedness would be crucial to the shape of international financial regulation. Chao has observed China's willingness, after the global financial crisis, to transplant and implement internationally agreed standards such as Basel III,[140] and this may reflect China's continued keen-ness to participate in global financial markets. Hence, the prospect remains uncertain whether China would take the lead in carving out an alternative regime of financial flows and regulatory standards.

---

[133] Predicted in Helleiner and Pagliari (2011) in respect of the global financial crisis in respect of different incentives for crisis management on the part of different jurisdictions.

[134] David Bohl et al,' Understanding and Forecasting Geopolitical Risk and Benefits' (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3941439.

[135] 'As Ukraine war deepens great-power divisions, a revitalized non-aligned movement could emerge' (22 April 2022), https://theconversation.com/as-ukraine-war-deepens-great-power-divisions-a-revitalized-non-aligned-movement-could-emerge-181136.

[136] 'Russia Built Parallel Payments System That Escaped Western Sanctions' (Wall Street Journal, 29 March 2022); 'Russia Offers SWIFT Alternative to India for Ruble Payments' (Bloomberg, 30 March 2022).

[137] Philip Blenkinsop, 'Analysis: "Slow-balisation": how war, pandemic are reshaping global trade' (Reuters, 31 March 2022), https://www.reuters.com/business/slow-balisation-how-war-pandemic-are-reshaping-global-trade-2022-03-31/.

[138] Singh and Roca (2022).

[139] 'China has given away millions in its digital yuan trials. This is how it works' (CNBC, 4 March 2021), https://www.cnbc.com/2021/03/05/chinas-digital-yuan-what-is-it-and-how-does-it-work.html; Ross P Buckley, Douglas W Arner, Anton Didenko and Dirk A Zetzsche, 'Ukraine, Sanctions and Central Bank Digital Currencies: The Weaponization of Digital Finance and the End of Global Monetary Hegemony?' (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4133531; Cheng-Yun Tsang and Ping-Kuei Chen, 'Policy Responses to Cross-border Central Bank Digital Currencies – Assessing the Transborder Effects of Digital Yuan' (2022) Capital Markets Law Journal explores how the circulation of digital yuan abroad can be structurally facilitated.

[140] Chao Xi, 'Why Has Basel III Become Hard Law for China? The Domestic Political Economy of International Financial Law' in Douglas Arner, Emilios Avgouleas and Ross Buckley (eds), *Reconceptualising Global Finance and its Regulation* (Cambridge: CUP 2016), ch6.

It is arguable that there are two possibilities for international financial regulation in response to the potential of powerful jurisdictions' construction of alternative financial systems.

One is that Western interests can become more aligned and international financial regulation can become more politicised in order to introduce regulatory standards that counter 'alternative' jurisdictions' strategies. In this manner, geopolitical risk may indeed find its way into micro-prudential standards, but this area of policy would hardly be depoliticised. This type of policy convergence would reflect a more international relations-based agreement that binds like-minded jurisdictions in countering a common threat, but such convergence would become in reality more limited and 'partisan' than truly international. Microprudential regulation influenced in this manner would also likely import evaluations based on institutional preferences and the technocratic approach taken by international financial regulatory bodies thus far may be compromised. International financial regulation could become host to a more pronounced battleground, even amongst Western jurisdictions, rather than a platform for bridge-building and consensus.

The other possibility is that leadership in constructing regulatory standards compatible and advantageous to 'alternative' jurisdictions would arise. As the financial industry is replete with different incentives and preferences, there may be a sufficient market to support alternative systems, causing a global divide. In this manner, international financial regulation may be consigned to bipolarisation and become more regionalised, therefore 'regressing' from the height of its progress after the global financial crisis 2007-9.

However, there may be other countervailing pressures against division, clustering and bipolarisation in international relations and its impact on international financial regulation. As the world faces inflationary pressures in the wake of the covid-19 pandemic, supply chain disruptions and disruptions to energy security due to the Russian invasion of Ukraine, these can more immediately affect domestic central banks and regulators in their deliberations at fora for international financial regulation. There are urgent pressures to tame inflation and in this regard, seeking price efficiency, such as by opening up and liberating international trade, could still very much be on the agenda of politicians and experts alike.[141] If there is convergence upon the importance of international trade in combatting inflation, then international financial flows supporting international trade are likely to remain, maintaining a landscape of financial globalisation instead of repatriation. In this manner, international financial regulation would remain a platform for collective interest management and consensus. International trade may be affected by the spike in energy prices,[142] and it remains uncertain if such increased cost would be temporary or still less costly than reshoring or near-shoring.[143] If deglobalisation becomes commercially more sensible, changes in terms of import and export patterns could become more structural, fostering greater bipolarisation in international trade as well as financial regulatory standards.

---

[141] See note 137.
[142] 'WTO slashes 2022 global trade growth forecast amid COVID, Ukraine 'double whammy'' (Reuters, 12 April 2022), https://www.reuters.com/business/wto-lowers-its-2022-global-trade-growth-forecast-2022-04-12/.
[143] 'Push to reshore US manufacturing challenged by reliance on global supply chain' (SPGlobal, 14 Apr 2022), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/push-to-reshore-us-manufacturing-challenged-by-reliance-on-global-supply-chain-69752018.

Dynamic business trends are afoot as the US introduces policy to reshore its technology industry[144] while businesses explore different diversification options.[145] The picture for international trade should be keenly watched for its effects on international finance and ultimately, international financial regulation.

E. Conclusion

By end-2022, the world, still engaged in managing the public health covid-19 pandemic, faces heightened levels of inflation, geopolitical risk from fraying international relations, and increased risk of major conflict. There is talk of deglobalisation at the World Economic Forum at Davos and repatriations from international trade in the form of 'reshoring' or 'near-shoring'. Such movements would also affect international financial flows, although financial globalisation has already been chequered for a long time, while still growing in forms of interconnectedness and size. It is queried how these developments would impact international financial regulation, and in particular, whether we are likely to see more leadership on policy for managing new risks or the weakening of international financial regulatory bodies. This article argues that there is a strong likelihood of no or incremental change to international financial regulation due to the chequered nature of financial globalisation it already supports. In this manner, international financial regulation has 'found its place' even in a landscape of pockets of differences and waves of geopolitical risk.

However, international financial regulatory bodies can be seen as agnostic in the face of significant challenges such as faultlines in international relations and worsening global economic conditions. Such perceived agnosticism may be unsustainable, and would not support a 'stable' position for international financial regulatory bodies continuing with their existing policy agendas, if international developments force more political responses to be made by individual jurisdictions worldwide. More dramatic shifts in international relations, trade and finance, would likely affect international financial regulation in terms of the policy output, as well as coordinating exercises based on relationships forged at international financial regulatory bodies. Although the network of experts underlying international financial regulation have technocratised issues to a significant extent,[146] the politicisation of issues has always persisted. The article therefore addresses the potential for scenarios of more dramatic and turbulent change in international financial regulation and sketches the broad contours of such possibilities.

---

[144] US CHIPS and Science Act of 2022.

[145] Jong Woo Kang, 'Reshore or Diversify? How to Reorganize the World's Fragile Supply Chains' (Aug 2022), https://aric.adb.org/blog/reshore-or-diversify-how-to-reorganize-the-worlds-fragile-supply-chains; 'Reshoring and "friendshoring" supply chains' (Deloitte Insights, March 2022), https://www2.deloitte.com/us/en/insights/industry/public-sector/government-trends/2022/reshoring-global-supply-chains.html; Dambisa Moyo, 'Are Businesses Ready for Deglobalization?' (Harvard Business Review, Dec 2019), https://hbr.org/2019/12/are-businesses-ready-for-deglobalization.

[146] In terms of international regimes for issues-based cooperation and problem-solving and ultimately networked forms of technocratic governance, see Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (New Jersey: Princeton University Press, 1984); *International Institutions and State Power* (Boulder: Westview Press, 1989); Anne-Marie Slaughter, 'Governing the Global Economy through Government Networks', in Michael Byers (ed), *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford: Oxford University Press, 2000); Slaughter (2004).