THE GLOBAL GOVERNANCE OF AI: BETWEEN SOFT LAW AND BINDING OBLIGATIONS IN INTERNATIONAL LAW

Sijuola Atanda-Lawal ✉

School of Law, IALS London, United Kingdom

siju.favour@yahoo.com

Victor Chinonye Onuchukwu

University of Benin, Nigeria

onuchukwuvictor7@gmail.com

Abstract

Global efforts to regulate artificial intelligence increasingly rely on soft-law instruments such as principles, guidelines, and codes of conduct rather than binding treaties. This paper examines the implications of this governance model for international legal order and state accountability. It explores the emergence of AI governance norms across various organizations, including the OECD, UNESCO, the G7 Hiroshima Process, and the UN Global Digital Compact, and contrasts these soft law approaches with binding frameworks like the EU AI Act and national regulations. Through a comparative institutional analysis, the study investigates whether soft-law coordination can achieve genuine accountability in areas such as algorithmic fairness, transparency, and the protection of human rights. While soft law facilitates flexibility and global alignment, it also has the potential to create normative fragmentation and weak enforcement. The paper advocates for a "graduated normativity" model, in which soft AI principles gradually evolve into legally binding obligations through iterative harmonization and regional codification. This framework provides a roadmap for reconciling the adaptability of soft law with the legitimate requirements of the international legal order.

Keywords: AI governance, soft law, binding obligations, international law, global regulation, human rights, normative harmonization

INTRODUCTION

Artificial intelligence (AI) has emerged as a defining technology of the twenty-first century; it is reshaping economies, altering social structures, and challenging existing legal and ethical frameworks (Chang, 2025). Its development and deployment transcend national boundaries, producing transnational effects in domains as varied as finance, healthcare, defense, and digital communication (Maas, 2025). Yet, despite the global reach of AI systems, international law remains fragmented in its approach to their governance (Crawford, 2021). States and international organizations have largely opted for soft-law instruments principles, guidelines, and codes of conduct rather than binding treaties or uniform regulatory frameworks (Boyle, 2014). This preference reflects a broader trend in global governance: the shift from coercive legal obligations toward flexible, cooperative norms that evolve through dialogue and consensus rather than negotiation and ratification (Abbott & Snidal, 2000).

The turn to soft law in AI governance is understandable. The rapid pace of technological innovation often outstrips the capacity of formal legal systems to respond. Soft-law instruments offer agility, inclusiveness, and the ability to accommodate diverse regulatory traditions (Marchant & Gutierrez, 2022). Initiatives such as the OECD AI Principles, the UNESCO Recommendation on the Ethics of Artificial Intelligence, and the G7 Hiroshima Process illustrate how states, international organizations, and private actors have collaborated to articulate shared normative foundations fairness, transparency, accountability, and human rights protection without imposing binding commitments (OECD, 2019; UNESCO, 2021; G7, 2023). These frameworks facilitate convergence in principle while avoiding the political and procedural hurdles associated with treaty formation (Boyle, 2014).

However, reliance on soft law also raises critical questions for international legal order. Without a binding force, such instruments risk producing normative fragmentation, inconsistent implementation, and weak accountability (Karlsson-Vinkhuyzen & Vihma, 2009). The proliferation of overlapping frameworks may create an illusion of global coherence while obscuring significant gaps in enforcement and oversight (Crawford, 2021). Moreover, as AI technologies increasingly affect fundamental rights, democratic processes, and security interests, the absence of binding international obligations challenges the legitimacy and authority of global governance structures (Boyle, 2014). The central tension, therefore, lies between the need for flexibility in regulating dynamic technology and the demand for legal certainty and accountability in safeguarding human rights and public interests (Hasan, 2025).

This paper situates AI governance within the broader continuum between soft and hard law in international regulation (Shaffer & Pollack, 2012). It examines how soft-law mechanisms have shaped emerging global norms on AI ethics and accountability and assesses whether they

can deliver substantive regulatory outcomes in the absence of formal legal obligations (Maas, 2025). Through a comparative institutional analysis of global and regional initiatives including those of the OECD, UNESCO, G7, and the European Union the study explores how soft-law coordination interacts with binding legal frameworks (Li, Schütte, & Sankari, 2023). It argues that while soft law facilitates early-stage norm diffusion and global convergence, its long-term effectiveness depends on structured pathways for institutionalization and codification (Finnemore & Sikkink, 1998). The paper concludes by proposing a model of "graduated normativity," under which soft-law commitments evolve progressively toward binding obligations through iterative harmonization, regional codification, and international legal reinforcement (Karlsson-Vinkhuyzen & Vihma, 2009).

CONCEPTUAL FRAMEWORK: Hard Law, Soft Law, and Graduated Normativity

The conceptual foundation of this study rests on understanding the evolving relationship between hard law and soft law within international legal governance and how this dynamic gives rise to what may be termed graduated normativity (Finnemore & Sikkink, 1998). Hard law, with its binding force and enforceability, has long defined the formal structure of international obligations, while soft law comprising non-binding principles, guidelines, and declarations has emerged as a flexible mechanism for addressing complex, rapidly changing global issues such as artificial intelligence (Abbott & Snidal, 2000; Boyle, 2014).

Yet, the distinction between the two is increasingly blurred. Soft-law instruments often initiate normative consensus that later crystallizes into binding commitments (Karlsson-Venhuizen & Vihma, 2009). This dynamic evolution demonstrates how informal norms can shape state behavior and institutional frameworks before becoming codified in treaties or domestic legislation (Shaffer & Pollack, 2012). In this sense, soft law functions as a precursor to legal obligation providing the groundwork for cooperation, experimentation, and eventual institutionalization within international governance (Meyer, 2008; Senden, 2005).

Hard Law and Its Classical Attributes

In international law, hard law denotes instruments that create binding legal obligations for states and international actors (Abbott & Snidal, 2000). Treaties, conventions, and customary international law form the traditional pillars of this domain. Hard-law instruments possess three defining characteristics: obligation, precision, and delegation (Shaffer & Pollack, 2012). They not only prescribe specific behavior but also provide mechanisms for interpretation, adjudication, and enforcement.

The strength of hard law lies in its capacity to ensure legal certainty and accountability, offering clear standards against which compliance can be measured (Boyle, 2014). Examples include the International Covenant on Civil and Political Rights (ICCPR), the Convention on Biological Diversity, and, in emerging contexts, the EU Artificial Intelligence Act (European Parliament, 2023; Council of the European Union, 2024).

Yet, hard law is inherently slow-moving. Negotiation, ratification, and amendment processes are lengthy, and geopolitical divergences often stall consensus (Karlsson-Vinkhuyzen & Vihma, 2009). In fast-evolving technological domains such as AI, this rigidity may render legal frameworks obsolete before they take effect (Crawford, 2021). Consequently, international actors increasingly complement or substitute hard law with softer, more adaptive governance tools (Marchant & Gutierrez, 2022).

The Turn to Soft Law in AI Governance

Soft law refers to non-binding norms, principles, guidelines, declarations, and codes of conduct developed by states, international organizations, or transnational networks (Boyle, 2014; Meyer, 2008). These instruments lack formal enforceability but shape expectations and influence behavior through persuasion, peer pressure, and reputational incentives (Abbott & Snidal, 2000). In the field of AI governance, the appeal of soft law stems from its flexibility, speed of adoption, and inclusive multistakeholder nature (Marchant & Gutierrez, 2022).

Documents such as the OECD AI Principles (2019), the UNESCO Recommendation on the Ethics of Artificial Intelligence (2021), and the G7 Hiroshima AI Process (2023) exemplify this model. They articulate shared ethical values transparency, fairness, accountability, and respect for human rights while allowing national authorities to implement them contextually (OECD, 2019; UNESCO, 2021; G7, 2023). Soft law thus performs a dual function: it builds international consensus on normative baselines and serves as a precursor to eventual legal codification (Karlsson-Vinkhuyzen & Vihma, 2009).

However, soft law's advantages are tempered by significant limitations. Its non-binding nature risks normative fragmentation, as states may selectively internalize principles or reinterpret them to fit domestic priorities (Hasan, 2025). Moreover, without monitoring or enforcement mechanisms, compliance often depends on political will or voluntary self-regulation by corporations (Boyle, 2014). The proliferation of overlapping guidelines can also dilute accountability, creating "soft law fatigue" rather than genuine governance coherence (Crawford, 2021).

The Interaction Between Hard and Soft Law

Hard and soft law should not be viewed as binary opposites but rather as points along a continuum of normativity (Abbott & Snidal, 2000; Shaffer & Pollack, 2012). In practice, they often interact dynamically, reinforcing and complementing one another. Soft-law instruments can fill regulatory gaps, clarify ambiguities, or prepare the ground for future treaties (Boyle, 2014). Conversely, hard-law regimes frequently rely on soft-law processes such as recommendations, technical standards, or peer-review mechanisms to adapt to new developments without renegotiation (Senden, 2005; Meyer, 2008).

This interplay is evident in various global policy domains, including environmental governance through the Paris Agreement and anti-corruption efforts via the OECD Anti-Bribery Convention (Karlsson-Vinkhuyzen & Vihma, 2009). Within AI governance, this hybridity is particularly pronounced. While soft law promotes early convergence and cooperation among diverse actors, the absence of enforceable obligations may hinder accountability and consistency in global regulatory practice (Marchant & Gutierrez, 2022).

The key challenge, therefore, is designing mechanisms that allow for the progressive "hardening" of soft-law norms into binding commitments without sacrificing flexibility (Finnemore & Sikkink, 1998). Such mechanisms might include institutionalized monitoring, peer learning, and gradual incorporation of voluntary norms into national or regional legislation (Li, Schütte, & Sankari, 2023). This balanced approach fosters both adaptability and accountability, ensuring that the international legal order evolves coherently in response to technological change (Karlsson-Vinkhuyzen & Vihma, 2009).

Soft law can evolve into customary or treaty law through processes of normative consolidation and institutional uptake. When states and international organisations consistently refer to soft-law instruments — such as AI principles, guidelines, or ethical frameworks — and act in accordance with them out of a sense of legal obligation (opinio juris), these norms may gradually crystallise into customary international law. Alternatively, repeated endorsement of such principles in multilateral forums can pave the way for their codification into binding treaties or regional regulations, as seen in the progression from voluntary digital ethics declarations to instruments like the EU AI Act. Translation into enforceable standards may thus occur through several routes: incorporation of soft-law norms into treaty negotiations, domestic legislation, judicial interpretation, or institutional practice. Each pathway strengthens the normative authority of soft law, transforming it from guidance into obligation within the international legal order.

Graduated Normativity: Bridging Flexibility and Accountability

The concept of graduated normativity captures the evolution of voluntary principles into binding legal rules through incremental institutionalization and codification (Finnemore & Sikkink, 1998). Rather than treating soft law as an endpoint, this model envisions a continuum of norm development that begins with voluntary commitments and matures through structured legalization (Karlsson-Vinkhuyzen & Vihma, 2009). It reflects the reality that international governance often advances through gradual consensus-building and iterative adaptation rather than abrupt treaty formation (Abbott & Snidal, 2000).

Graduated normativity can be understood as a three-phase process: (1) norm articulation, where voluntary frameworks and declarations establish shared ethical baselines; (2) norm consolidation, involving regional codification, peer review, and policy alignment; and (3) norm legalization, through which principles are incorporated into binding treaties or domestic law (Shaffer & Pollack, 2012). This structure parallels the "norm life cycle" described by Finnemore and Sikkink (1998), where ideas progress from emergence to cascade and eventual internalization as accepted legal norms.

The model's strength lies in reconciling two seemingly conflicting imperatives in global governance flexibility and accountability (Boyle, 2014). Soft law's adaptability allows states and organizations to respond swiftly to technological innovations, while hard law ensures enforceability and legitimacy (Crawford, 2021). Through graduated normativity, these dual needs are harmonized, transforming soft law from a temporary solution into a developmental stage toward full legal recognition (Marchant & Gutierrez, 2022).

Applied to AI governance, the concept demonstrates how ethical principles such as fairness, transparency, and human rights protection introduced by instruments like the OECD AI Principles (2019) and the UNESCO Recommendation on the Ethics of Artificial Intelligence (2021) can gradually solidify into regional or global obligations (UNESCO, 2021; OECD, 2019). As these norms gain consistency and institutional backing, they progressively acquire the precision, obligation, and delegation that define hard law (Karlsson-Vinkhuyzen & Vihma, 2009; Shaffer & Pollack, 2012).

In this way, graduated normativity bridges the flexibility of ethical governance with the accountability of legal obligation, providing an adaptive pathway for managing technological disruption while upholding the rule of law in international relations (Finnemore & Sikkink, 1998; Boyle, 2014).

MAPPING GLOBAL AI GOVERNANCE: Institutions and Instruments

Global artificial intelligence (AI) governance has evolved through a polycentric network of international and regional institutions rather than a unified treaty-based regime (Maas, 2025). Instead of a single authority establishing binding rules, a constellation of actors including intergovernmental organizations, regional blocs, and multistakeholder coalitions has produced overlapping frameworks of principles, guidelines, and recommendations (Boyle, 2014). This institutional diversity reflects both the novelty of AI as a regulatory object and the broader decentralization of global governance in the digital era (Abbott & Snidal, 2000). Each instrument contributes distinct normative emphases ranging from ethical and human rights foundations to technical and market-oriented standards revealing how global AI governance is negotiated across political, economic, and cultural contexts (Karlsson-Vinkhuyzen & Vihma, 2009).

The OECD AI Principles (2019): A Foundational Soft-Law Instrument

Adopted in 2019, the OECD Principles on Artificial Intelligence were the first intergovernmental consensus on AI ethics and governance (OECD, 2019). Endorsed by over forty countries, including non-OECD members, the principles rest on five value-based commitments: (1) inclusive growth and human well-being; (2) human-centered values and fairness; (3) transparency and explainability; (4) robustness, security, and safety; and (5) accountability (Giardini & Fritz, 2024). These are complemented by policy recommendations urging governments to promote research, foster trustworthy ecosystems, and ensure international cooperation.

Although non-binding, the OECD Principles have exerted substantial normative influence. They served as a reference point for the G20 AI Principles (2019) and informed national strategies such as Japan's Society 5.0 and Canada's Directive on Automated Decision-Making (Russo & Oder, 2023). The OECD's implementation mechanism through its AI Policy Observatory fosters peer learning and policy diffusion, illustrating how soft law can function as a transnational coordination platform without direct legal enforcement (Karlsson-Vinkhuyzen & Vihma, 2009).

UNESCO Recommendation on the Ethics of Artificial Intelligence (2021)

The UNESCO Recommendation on the Ethics of Artificial Intelligence, adopted unanimously by 193 Member States in 2021, represents the most globally inclusive normative framework for AI to date (UNESCO, 2021). It articulates a human right–based approach grounded in principles of human dignity, equality, and environmental sustainability (Clare

O'Hagan, 2023). The Recommendation identifies four ethical pillars: proportionality and do-no-harm, safety and security, fairness and non-discrimination, and sustainability and privacy.

Distinctively, the UNESCO framework introduces implementation and monitoring obligations, including the establishment of national AI ethics commissions, periodic reporting, and capacity-building mechanisms (UNESCO, 2021). These procedural elements transform it into a quasi–soft law instrument on-binding in form yet accompanied by structured accountability processes (Boyle, 2014). Its global legitimacy stems from the participation of developing countries and civil society actors, bridging the North–South divide often visible in digital governance (Hasan, 2025).

The G7 Hiroshima AI Process (2023): Coordinating Among Advanced Economies

In 2023, under Japan's presidency, the G7 Hiroshima AI Process emerged as a high-level initiative among advanced industrial states (G7, 2023). Its purpose is to promote interoperability among AI governance frameworks, particularly regarding generative AI and large language models (Haruka & Socol de la Osa, 2025). The Hiroshima Leaders' Communiqué emphasized risk-based governance frameworks and voluntary codes of conduct for developers of advanced foundation models.

The Hiroshima Process underscores the strategic dimension of AI regulation aligning democratic nations around shared values in contrast to state-centric models of digital control (Li, Schütte, & Sankari, 2023). While its limited membership restricts universality, its political weight influences corporate standards and transatlantic regulatory coordination, serving as a bridge between OECD principles and the European Union's binding regime (Karlsson-Vinkhuyzen & Vihma, 2009).

The United Nations and the Global Digital Compact (Forthcoming)

At the multilateral level, the United Nations seeks to consolidate digital governance under the proposed Global Digital Compact (GDC), which articulates shared principles for AI ethics, data governance, and digital inclusion (UNESCO, 2021). It builds upon the UN Secretary-General's High-Level Panel on Digital Cooperation and the Roadmap for Digital Cooperation (2020) (Maas, 2025).

The Compact envisions a multi-tier governance model combining voluntary commitments with institutional coordination among UN agencies such as UNESCO, ITU, and UNDP (Boyle, 2014). However, its broad scope and political complexity present challenges particularly reconciling divergent regulatory philosophies between liberal democracies and more state-controlled digital systems (Hasan, 2025). If effectively implemented, the GDC could

provide a normative umbrella for global AI governance, aligning disparate initiatives under a coherent ethical and developmental framework (Karlsson-Vinkhuyzen & Vihma, 2009).

Regional and Sectoral Developments

Beyond global institutions, regional organizations play an increasingly pivotal role in operationalizing AI governance principles. The European Union AI Act (European Parliament, 2023; European Union, 2024) represents the first comprehensive hard-law regime, classifying AI systems by risk and imposing binding obligations on developers and users (Musch, Borrelli, & Kerrigan, 2024). Similarly, the African Union's Data Policy Framework (2022) and draft AI Strategy emphasize inclusive and sustainable AI development aligned with continental priorities (African Union, 2022). The Council of Europe is also negotiating a Framework Convention on AI, Human Rights, Democracy, and the Rule of Law, which aims to bridge the gap between ethical principles and binding human rights obligations (Council of the European Union, 2024).

Sector-specific regimes such as those addressing AI in health, finance, and defense introduce functional norms that complement general ethical frameworks (Li, Schütte, & Sankari, 2023). This sectoral differentiation reflects the pragmatic adaptation of soft-law principles into enforceable regulations within particular domains (Karlsson-Vinkhuyzen & Vihma, 2009).

Synthesis: A Fragmented but Evolving Normative Landscape

The mapping of institutional instruments reveals a fragmented yet interconnected normative ecosystem (Maas, 2025). Soft-law initiatives such as those of the OECD and UNESCO lay the ethical foundations for cooperation; political forums like the G7 and the UN provide platforms for coordination; and regional actors like the EU translate shared principles into binding law (OECD, 2019; UNESCO, 2021; G7, 2023). Together, these layers demonstrate the graduated evolution of normativity in global AI governance where voluntary guidelines progressively inform and sometimes crystallize into legal obligations (Finnemore & Sikkink, 1998).

This polycentric model offers flexibility but also exposes vulnerabilities: overlapping mandates, variable compliance, and unequal participation between the Global North and South (Boyle, 2014). The challenge for international law is to reconcile these diverse instruments within a coherent governance architecture that balances adaptability with accountability (Shaffer & Pollack, 2012).

THE TURN TO HARD LAW: COMPARATIVE REGULATORY DEVELOPMENTS

While soft-law instruments have dominated the early landscape of AI governance, recent years have witnessed a gradual shift toward the creation of binding, enforceable regulatory

frameworks (Boyle, 2014). This transition reflects increasing awareness of the societal, ethical, and security risks posed by AI technologies and the need for formal mechanisms of accountability (Crawford, 2021). Governments and regional bodies now recognize that voluntary principles alone are insufficient to ensure transparency, fairness, and protection of human rights in AI deployment (Hasan, 2025).

The European Union: The AI Act as a Model for Binding Regulation

The European Union Artificial Intelligence Act (European Parliament, 2023; European Union, 2024) represents the first comprehensive attempt to codify AI governance into a legally binding regime. Adopting a risk-based approach, the Act classifies AI systems into four categories unacceptable risk, high risk, limited risk, and minimal risk and imposes specific obligations on developers, deployers, and users (Musch, Borrelli, & Kerrigan, 2024). High-risk systems, such as those used in biometric identification, education, or employment, must comply with strict transparency, documentation, and human oversight requirements (Council of the European Union, 2024).

The Act also introduces penalties for non-compliance, aligning AI regulation with the enforcement rigor seen under the General Data Protection Regulation (GDPR). This binding structure contrasts sharply with the flexible, principle-based frameworks of the OECD and UNESCO, signaling a decisive shift from ethical guidance to enforceable governance (Karlsson-Vinkhuyzen & Vihma, 2009). The EU's initiative has also generated what scholars describe as the "Brussels Effect", whereby European regulatory standards influence global practices and legislative drafting in third countries (Li, Schütte, & Sankari, 2023).

The United States: Sectoral and Agency-Based Regulation

Unlike the European Union's centralized approach, the United States continues to rely on sector-specific enforcement mechanisms. Agencies such as the Federal Trade Commission (FTC) and the Food and Drug Administration (FDA) have extended their oversight mandates to AI systems under existing consumer protection and medical device laws (Federal Trade Commission, 2024; Food and Drug Administration, 2025).

The FTC has issued enforcement actions against deceptive AI marketing practices and discriminatory algorithmic systems, invoking its authority under the Federal Trade Commission Act (FTC, 2024). Similarly, the FDA regulates AI-based medical software under its Software as a Medical Device (SaMD) framework, establishing standards for safety, effectiveness, and data quality (FDA, 2025). Although these measures fall short of a unified AI statute, they demonstrate

the incremental adaptation of hard-law enforcement to emerging technological contexts (Boyle, 2014; Shaffer & Pollack, 2012).

China: State-Centric Hard Law with Rapid Adaptation

China has pursued a markedly different trajectory, emphasizing state-led control and centralized governance through binding regulatory measures. The Cyberspace Administration of China's Interim Measures for the Management of Generative AI Services (2023) sets strict requirements for content moderation, algorithmic transparency, and data security, reflecting the state's broader digital sovereignty model (Cyberspace Administration of China, 2023).

The Chinese framework distinguishes itself by prioritizing national security, ideological stability, and social harmony over market-driven innovation (Chang, 2025). Enforcement is supported by administrative penalties and mandatory compliance audits. While these measures ensure swift implementation, critics argue that they limit freedom of expression and international interoperability (Karlsson-Vinkhuyzen & Vihma, 2009).

Africa and Other Emerging Regions: Hybrid Approaches

Emerging economies, particularly in Africa, Latin America, and Southeast Asia, have begun integrating both soft and hard law approaches to AI governance. The African Union Data Policy Framework (2022) and related initiatives emphasize digital inclusion, ethical development, and cross-border cooperation (African Union, 2022). Although these frameworks are primarily soft law in nature, several states such as Nigeria, Kenya, and South Africa are exploring domestic legislation to regulate AI applications in financial services, education, and health (Hasan, 2025).

This hybridization demonstrates a pragmatic progression toward graduated normativity balancing flexibility in principle with gradual legal codification. It also underscores the importance of contextual governance models that reflect distinct socio-economic and technological realities (Karlsson-Vinkhuyzen & Vihma, 2009; Finnemore & Sikkink, 1998).

Synthesis: The Legalization of AI Governance

The shift toward hard law marks a pivotal stage in the maturation of global AI governance (Boyle, 2014). What began as voluntary ethical commitments has evolved into enforceable legal obligations that assign responsibility to states, corporations, and developers. Yet, this legalization is not uniform. Instead, it reveals a differentiated global order, where regulatory philosophies vary across jurisdictions ranging from Europe's rights-based approach to China's sovereignty-driven model and the United States' sectoral pragmatism (Maas, 2025).

Together, these developments illustrate the trajectory of graduated normativity in practice: soft law establishes the normative foundations, while hard law institutionalizes them within enforceable frameworks (Finnemore & Sikkink, 1998; Shaffer & Pollack, 2012). This dynamic ensures that global AI governance remains both adaptive and legitimate, balancing ethical aspirations with regulatory certainty (Karlsson-Vinkhuyzen & Vihma, 2009).

CAN SOFT LAW DELIVER ACCOUNTABILITY?

Accountability remains one of the most significant challenges in soft-law–based AI governance (Hasan, 2025). Although frameworks such as the OECD AI Principles (2019) and the UNESCO Recommendation on the Ethics of Artificial Intelligence (2021) promote fairness, transparency, and non-discrimination, they often lack clear enforcement mechanisms or measurable benchmarks (Boyle, 2014). As a result, while these instruments help establish normative expectations, their capacity to ensure compliance and remedy violations is limited (Crawford, 2021).

In theory, accountability in AI governance encompasses three interrelated dimensions: transparency, which ensures that AI systems and decision-making processes are understandable; responsibility, which identifies who bears legal and moral obligations; and redress, which guarantees remedies for harm caused by algorithmic decisions (Marchant & Gutierrez, 2022). Soft law contributes primarily to the first two dimensions by encouraging disclosure and ethical review, but it struggles with the third ensuring binding accountability for harm (Boyle, 2014).

Empirical research suggests that many governments and private organizations reference global AI ethics principles without implementing concrete accountability frameworks (Karlsson-Vinkhuyzen & Vihma, 2009). The result is a proliferation of "ethics washing," where entities invoke soft-law norms symbolically while avoiding substantive compliance (Crawford, 2021). For example, corporate AI ethics boards often lack enforcement authority, and national AI strategies frequently omit clear mechanisms for redress or independent oversight (Hasan, 2025).

Nonetheless, soft law plays a critical role in building the foundations for accountability. It fosters transparency through public reporting, benchmarking, and peer review (OECD, 2019). International initiatives like the Global Partnership on AI (GPAI) promote responsible innovation by encouraging cross-sector collaboration and knowledge sharing (Maas, 2025). Moreover, soft-law frameworks can evolve into quasi-binding obligations when embedded in procurement rules, funding conditions, or certification standards (Marchant & Gutierrez, 2022).

The principle of graduated normativity again becomes central here: while soft law alone may not guarantee accountability, it creates pathways for the progressive integration of ethical commitments into enforceable legal instruments (Finnemore & Sikkink, 1998). Over time, these iterative processes enhance transparency, institutional learning, and compliance culture, paving the way for stronger global regulatory coherence (Shaffer & Pollack, 2012).

Thus, even though soft law cannot substitute for binding legal obligations, it remains indispensable for developing trust, fostering cooperation, and harmonizing ethical standards in the rapidly evolving AI ecosystem (Karlsson-Vinkhuyzen & Vihma, 2009).

THE 'GRADUATED NORMATIVITY' MODEL

The concept of graduated normativity captures the dynamic relationship between soft and hard law in the evolution of international regulatory regimes (Finnemore & Sikkink, 1998). It recognizes that norm creation in international law rarely occurs as a binary shift from non-binding to binding obligations; rather, it unfolds through incremental stages of consolidation, institutionalization, and legalization (Karlsson-Vinkhuyzen & Vihma, 2009). This approach aligns with broader theories of norm development in international relations, particularly Martha Finnemore and Kathryn Sikkink's norm life cycle, which describes how ideas progress from emergence to cascade and eventual internalization (Finnemore & Sikkink, 1998).

In the context of AI governance, graduated normativity provides a conceptual bridge between ethical aspiration and legal obligation. It treats soft-law instruments not as alternatives to hard law but as precursors and catalysts that incubate shared principles, develop administrative capacity, and build consensus (Abbott & Snidal, 2000; Boyle, 2014). Through repeated adoption, monitoring, and adaptation, these norms gradually acquire features of hard law precision, delegation, and obligation without losing their original flexibility (Shaffer & Pollack, 2012).

Graduated normativity thus reflects a continuum of normativity rather than a dichotomy. It seeks to reconcile two imperatives that often appear incompatible in global governance: the flexibility necessary for innovation and the accountability demanded by the rule of law (Crawford, 2021; Marchant & Gutierrez, 2022).

The Three Phases of Normative Evolution

Under a graduated normativity framework, the evolution of AI governance norms can be understood as proceeding through three interrelated phases (Finnemore & Sikkink, 1998):

a. Phase I – Norm Articulation

In the initial stage, states, international organizations, and private actors articulate broad principles to guide behavior. These may take the form of declarations, recommendations, or

ethical codes such as the OECD AI Principles (2019) or the UNESCO Recommendation on the Ethics of Artificial Intelligence (2021). At this stage, the objectives are agenda-setting, consensus formation, and legitimacy building (Boyle, 2014). Compliance is largely voluntary, and norms function as benchmarks for best practice.

b. Phase II – Norm Consolidation

Over time, soft norms begin to consolidate through institutional mechanisms such as peer review, monitoring, and iterative revision (Karlsson-Vinkhuyzen & Vihma, 2009). Regional bodies, such as the European Union or the African Union, play a key role in embedding global principles within their legal orders (African Union, 2022). Instruments may gain quasi-binding status through conditional funding, trade incentives, or mutual recognition processes. For example, the OECD AI Principles inform not only policy discussions but also regulatory alignment within member states, generating normative consistency even without formal legal force (OECD, 2019).

c. Phase III – Norm Legalization

In the final phase, norms transition into binding legal obligations (Shaffer & Pollack, 2012). This may occur through codification in regional treaties such as the forthcoming Council of Europe AI Convention incorporation into domestic legislation like the EU AI Act, or recognition as customary international law through consistent state practice (European Parliament, 2023; Council of the European Union, 2024). By this stage, principles that originated as voluntary guidelines evolve into enforceable duties, complete with monitoring and adjudicative mechanisms. The norm thus acquires full juridical status while retaining legitimacy derived from its participatory origins (Karlsson-Vinkhuyzen & Vihma, 2009).

Mechanisms Driving the Transition

The movement from soft to hard law is neither automatic nor linear; it is facilitated by institutional and procedural mechanisms that translate normative consensus into binding commitments (Finnemore & Sikkink, 1998). Key mechanisms include:

- **Iterative Harmonization:** Regular updates, peer reviews, and policy dialogues allow soft norms to adapt to new technological developments, progressively enhancing precision and enforceability (OECD, 2019).
- **Regional Codification:** Regional organizations serve as laboratories for translating global soft norms into legally binding rules tailored to specific contexts, as exemplified by the European Union's adoption of risk-based AI regulation (European Parliament, 2023).

- **Institutional Scaffolding:** The creation of standing oversight bodies such as the OECD AI Observatory or UNESCO's Ethics Commissions provides continuity and accountability, acting as bridges between voluntary adherence and legal enforcement (UNESCO, 2021).

- **Cross-Regime Interaction:** Linkages between soft-law instruments and existing hard-law domains such as human rights treaties, trade agreements, or data protection frameworks embed AI norms within enforceable legal ecosystems (Shaffer & Pollack, 2012).

Through these mechanisms, soft-law commitments gain juridical traction while retaining adaptability, ensuring that governance evolves without requiring complete renegotiation of foundational instruments (Karlsson-Vinkhuyzen & Vihma, 2009).

Balancing Flexibility and Legitimacy

Graduated normativity offers a pathway to balance flexibility essential for managing rapidly changing technologies and legitimacy, which depends on enforceable accountability and transparency (Boyle, 2014). Soft-law instruments provide normative agility, enabling states to cooperate even amid divergent interests or capacities, while hard law provides stability and legitimacy through predictability and redress (Crawford, 2021).

The graduated model integrates these virtues by sequencing them temporally: flexibility first, legality later (Finnemore & Sikkink, 1998). It allows governance to mature organically as consensus deepens and technical understanding improves (Karlsson-Vinkhuyzen & Vihma, 2009). This dynamic mirrors hybrid regimes such as the Paris Agreement on Climate Change, where voluntary commitments coexist with structured reporting and review obligations that encourage progressive legalization (Boyle, 2014).

Applied to AI, graduated normativity envisions a governance system where ethical guidelines evolve into enforceable rights and obligations through deliberate institutional design rather than abrupt legal imposition (Marchant & Gutierrez, 2022).

Advantages and Potential Challenges

The primary advantage of the graduated normativity model is its pragmatism. It avoids the paralysis of seeking immediate binding treaties while ensuring that early-stage governance does not remain perpetually voluntary (Abbott & Snidal, 2000). It fosters inclusion by allowing developing states and non-state actors to participate in shaping norms before they become fixed in law (Karlsson-Vinkhuyzen & Vihma, 2009).

However, the model faces challenges. The incremental process risks stagnation if political will wanes or if powerful actors resist codification (Crawford, 2021). There is also the danger of soft-law capture, where corporations endorse voluntary standards to forestall stricter regulation (Boyle, 2014). Moreover, unequal participation in norm development particularly from the Global Southmayd reproduce existing asymmetries under the guise of consensus (Hasan, 2025). To succeed, graduated normativity must therefore be accompanied by transparent procedures, equitable participation, and institutional accountability (Shaffer & Pollack, 2012).

Toward a Framework for AI Governance

Operationally, the graduated normativity model suggests a structured roadmap for AI governance (Finnemore & Sikkink, 1998):

1. Global Principles (Stage 1): Adoption of universally endorsed ethical standards through multilateral instruments (e.g., OECD, UNESCO, UN GDC).

2. Regional Codification (Stage 2): Translation of principles into regionally binding frameworks tailored to specific contexts (e.g., EU AI Act, African Union AI Strategy, Council of Europe Convention).

3. International Integration (Stage 3): Harmonization through trade, human rights, or technology agreements, facilitating interoperability and eventual recognition as customary law (Karlsson-Vinkhuyzen & Vihma, 2009).

This staged process allows international AI law to evolve coherently, minimizing fragmentation while maintaining adaptability. It enhances legitimacy by ensuring that norms derive from collective deliberation before crystallizing into legal obligations (Boyle, 2014).

CONCLUDING: Graduated Normativity as a Bridge between Ethics and Law

Graduated normativity reframes the relationship between soft and hard law as complementary rather than oppositional (Abbott & Snidal, 2000). It recognizes that in fields characterized by uncertainty and innovation such as AI binding legal rules cannot precede the formation of shared ethical understanding (Crawford, 2021). By institutionalizing the gradual evolution of norms, the model reconciles the agility of soft law with the enforceability of hard law (Shaffer & Pollack, 2012).

Ultimately, graduated normativity provides a roadmap for the future of international AI governance: a layered system where voluntary ethical commitments evolve into binding legal standards through iterative harmonization, regional codification, and institutional learning

(Finnemore & Sikkink, 1998; Karlsson-Vinkhuyzen & Vihma, 2009). It transforms soft law from a symbol of weakness into a strategic instrument of norm-building aligning technological innovation with the demands of legitimacy, accountability, and the rule of law in the international order (Boyle, 2014; Marchant & Gutierrez, 2022).

IMPLICATIONS FOR INTERNATIONAL LEGAL ORDER

The proliferation of soft-law instruments in AI governance challenges traditional understandings of the sources of international law under Article 38(1) of the Statute of the International Court of Justice (United Nations, 1946). Whereas treaties, custom, and general principles have historically constituted the canon of lawful authority, the rise of non-binding norms recommendations, declarations, and codes of conduct signals a pluralization of norm creation (Boyle, 2014). These instruments lack formal binding force but nonetheless exert significant normative influence through processes of diffusion, socialization, and institutional endorsement (Abbott & Snidal, 2000; Karlsson-Vinkhuyzen & Vihma, 2009).

Graduated normativity intensifies this transformation by establishing a continuum between informal norm articulation and formal legal codification (Finnemore & Sikkink, 1998). It suggests that legal validity and normative authority no longer emerge solely from state consent expressed through treaties but also from iterative participation and convergence within transnational governance networks (Shaffer & Pollack, 2012). This evolution challenges positivist conceptions of law's sources, gesturing toward a more sociological and procedural conception of legality one grounded in legitimacy, participation, and iterative validation rather than binary bindingness (Chang, 2025).

Soft-law coordination and the gradual legalization of AI principles reconfigure state sovereignty in subtle but significant ways. Under the traditional Westphalian model, sovereignty implied autonomy in the adoption and enforcement of domestic laws (Boyle, 2014). However, as states voluntarily commit to transnational AI standards, sovereignty increasingly takes the form of networked interdependence (Karlsson-Vinkhuyzen & Vihma, 2009).

In practice, adherence to global AI principles often entails de facto legal harmonization through peer review, benchmarking, and policy alignment. For example, states that adopt the OECD AI Principles or participate in the G7 Hiroshima Process indirectly internalize shared standards of algorithmic transparency and human rights protection, even absent treaty obligations (OECD, 2019; G7, 2023). This phenomenon echoes what Anne-Marie Slaughter (2004) describes as the "disaggregated state," where national regulators operate within transnational epistemic communities, shaping governance through expertise and coordination rather than formal diplomacy.

Graduated normativity thus promotes a functional reconceptualization of sovereignty from command-based autonomy to cooperative responsibility (Jing, 2020). Sovereignty is not diminished but transformed, as states voluntarily pool normative authority to address problems that transcend borders, such as AI bias, data governance, and cross-border algorithmic harms (Karlsson-Vinkhuyzen & Vihma, 2009; Chang, 2025).

Legitimacy and Democratic Accountability

In the Nigerian context, the binding force of international law equally rests on the principle of state consent. Nigeria becomes bound by an international obligation when it voluntarily accepts it — most commonly through the ratification of treaties or participation in customary international law. However, under Section 12 of the 1999 Constitution (as amended), no treaty has the force of law in Nigeria unless it is enacted by the National Assembly. This reflects a dualist approach to international law, where international obligations do not automatically operate domestically without legislative transformation. Accordingly, Nigeria's consent at the international level establishes obligation in principle, but domestic enforceability requires parliamentary approval, ensuring that sovereignty and democratic oversight remain central to the legal process.

In terms of enforcement, Nigeria's compliance with international obligations depends on a combination of international supervision and domestic implementation. At the international level, Nigeria is subject to monitoring by treaty bodies — such as the African Commission on Human and Peoples' Rights or the UN Human Rights Committee — which review its adherence to ratified instruments. Domestically, Nigerian courts may interpret statutes in light of international norms, especially where such norms reflect universally accepted principles or where national legislation gives them effect. Thus, while Nigeria participates actively in the global legal order, the binding character of international law within its territory ultimately depends on domestic incorporation and the readiness of national institutions to give those norms practical effect.

In international law, states remain the primary subjects and bearers of legal personality, endowed with rights and obligations arising from treaties, customary norms, and general principles. States possess full international capacity — they can enter into treaties, bring claims, and be held accountable for breaches of international obligations. Their actions and omissions are attributable to them under established doctrines such as state responsibility, codified in the International Law Commission's Articles on State Responsibility (2001). This framework ensures that international law maintains coherence and accountability by linking legal consequences directly to the conduct of states, as entities representing sovereign authority in the global order.

By contrast, corporate entities — such as technology firms and AI developers — are not traditional subjects of international law, even though their activities increasingly generate transnational impacts. They may be regulated indirectly through domestic laws or international frameworks that impose duties on states to control private actors within their jurisdiction. This distinction is critical in addressing cross-border AI harms, where the conduct of corporations (e.g., algorithmic discrimination, data misuse, or autonomous system failures) may affect individuals or communities beyond national boundaries. While responsibility for such harms ultimately falls on states to prevent, regulate, or redress under international law, corporate actors occupy a growing space as functional participants in global governance — entities whose behaviour shapes international outcomes but whose accountability depends on state action or the gradual evolution of international norms recognising their obligations.

The diffusion of non-binding norms raises pressing concerns about legitimacy and accountability in the international legal order (Boyle, 1999). Unlike treaties, soft-law instruments often lack formal negotiation, ratification, or parliamentary scrutiny. Their legitimacy derives instead from procedural inclusivity through multi-stakeholder participation and transparency and substantive coherence with human rights and ethical values (Maas, 2025).

The graduated normativity model helps mitigate legitimacy deficits by embedding accountability mechanisms at each stage of normative evolution (Finnemore & Sikkink, 1998). During early norm articulation, inclusivity ensures plural input from states, civil society, and private actors. In the consolidation phase, peer review and reporting mechanisms foster transparency and reputational accountability (Karlsson-Vinkhuyzen & Vihma, 2009). Finally, in the legalization stage, binding obligations restore democratic oversight through treaty-making and judicial enforcement (Shaffer & Pollack, 2012).

Nevertheless, legitimacy challenges persist. The dominance of technologically advanced states and corporate actors' risks entrenching asymmetric norm production, where developing countries participate more as norm-takers than norm-shapers (Hasan, 2025). To preserve the legitimacy of the international legal order, the graduated model must therefore include procedural safeguards for equitable participation, particularly from the Global South (Crawford, 2021).

While soft law promotes flexibility and innovation, its proliferation also risks normative fragmentation across overlapping jurisdictions and institutions. The coexistence of multiple AI governance frameworks OECD, UNESCO, G7, the UN Global Digital Compact, and regional instruments like the EU AI Act creates a patchwork of principles that may diverge in scope and enforcement (OECD, 2019; UNESCO, 2021; G7, 2023; European Parliament, 2023).

Graduated normativity offers a partial remedy by structuring the evolution of norms toward convergence and legal coherence (Karlsson-Vinkhuyzen & Vihma, 2009). Through iterative harmonization, soft-law instruments can progressively align around shared benchmarks such as transparency, fairness, and human rights protection (Finnemore & Sikkink, 1998). Regional codification further anchors these norms in coherent legal regimes (European Union, 2024). However, without deliberate coordination among institutions, fragmentation could persist, undermining predictability and weakening accountability (Boyle, 1999).

The challenge, therefore, lies in developing institutional linkages such as joint monitoring mechanisms and inter-organizational dialogue to ensure that soft-law instruments converge rather than compete (Marchant & Gutierrez, 2022). This coordination will determine whether the emerging AI governance order strengthens or destabilizes the coherence of international law (Maas, 2025).

Graduated normativity amplifies the regulatory authority of international organizations as intermediaries between ethics and law. Bodies like UNESCO, the OECD, and the United Nations serve as incubators of norms, facilitating consensus formation and disseminating best practices (UNESCO, 2021; OECD, 2019). Their soft-law outputs acquire quasi-legal significance through repetition, adoption, and cross-referencing by states and regional blocs (Karlsson-Vinkhuyzen & Vihma, 2009).

However, this expansion of institutional authority raises questions of democratic legitimacy and accountability. Unlike treaty-based organizations with formal mandates and review procedures, many AI governance initiatives operate through expert networks or voluntary participation, blurring lines of responsibility (Slaughter, 2004). The risk is the emergence of technocratic norm entrepreneurship, where unelected experts and corporate actors shape norms with global implications absent democratic oversight (Crawford, 2021).

To safeguard legitimacy, international organizations must ensure procedural transparency, multi-level participation, and accountability to member states and affected stakeholders (Hasan, 2025). Otherwise, the flexibility of soft law may evolve into governance without Lawa condition inconsistent with the principles of the international legal order (Boyle, 2014).

The ultimate implication of graduated normativity is the potential emergence of a hybrid global AI legal order system in which soft and hard law coexist within a layered architecture (Finnemore & Sikkink, 1998). At the base, ethical guidelines and technical standards provide normative adaptability; at the top, regional and international legal instruments codify binding obligations (Karlsson-Vinkhuyzen & Vihma, 2009). This tiered design mirrors multi-level

governance structures in environmental and trade law, where iterative interactions between norms generate cumulative coherence (Boyle, 1999).

Over time, this dynamic could give rise to a form of emergent legality, in which sustained practice and institutional reinforcement confer legal status upon once-soft norms (Shaffer & Pollack, 2012). For example, principles of algorithmic transparency or non-discrimination could evolve into customary international law, recognized through consistent state practice and opinion juris (Crawford, 2021). Such developments would not supplant traditional legal sources but rather expand the modalities of norm creation, aligning lawmaking with the complexities of technological governance (Maas, 2025).

The shift toward soft-law governance in AI regulation thus does not erode the international legal order it transforms it (Abbott & Snidal, 2000). Graduated normativity provides a framework for reconciling enduring tensions: flexibility and certainty, innovation and legality, global convergence and sovereign autonomy (Karlsson-Vinkhuyzen & Vihma, 2009).

If successfully institutionalized, this model could revitalize the relevance and resilience of international law in addressing fast-moving technological challenges (Boyle, 2014). Yet its success will depend on sustained efforts to preserve normative coherence, democratic legitimacy, and equitable participation across the global order (Finnemore & Sikkink, 1998). The future of international law in the AI era will therefore hinge not on a binary choice between soft and hard law, but on the international community's ability to integrate them into a coherent, accountable, and inclusive system of global governance (Maas, 2025).

CONCLUSION

The governance of artificial intelligence (AI) marks a pivotal juncture in the evolution of international law. As states and international organizations grapple with the ethical, social, and economic implications of AI, the limitations of traditional treaty-based regulation have become increasingly apparent (Boyle, 1999; Maas, 2025). The rapid pace of technological innovation, coupled with geopolitical fragmentation, has made binding global agreements difficult to achieve. In their place, soft-law instruments principles, guidelines, and codes of conduct have proliferated, shaping a new landscape of informal yet influential norm-making (Crawford, 2021; Abbott & Snidal, 2000).

This paper argued that while soft law offers critical advantages agility, inclusivity, and adaptability its reliance as a primary governance mechanism poses challenges for accountability, legitimacy, and coherence within the international legal order (Karlsson-Venhuizen & Vihma, 2009). The comparative analysis of institutional developments across the OECD, UNESCO, G7, and United Nations demonstrates that soft-law frameworks have been

indispensable in establishing shared values such as fairness, transparency, and human rights protection (OECD, 2019; UNESCO, 2021; G7, 2023). Yet their voluntary nature leaves enforcement uncertain and compliance uneven, risking a fragmented and unaccountable global regulatory environment (Boyle, 2014).

Against this backdrop, the paper introduced the concept of graduated normativity as a pathway to reconcile flexibility with legal authority (Finnemore & Sikkink, 1998). Under this model, AI governance norms evolve progressively from ethical principles to regional codification and eventual legalization through structured institutional mechanisms (Shaffer & Pollack, 2012). Graduated normativity acknowledges the continuum between soft and hard law, transforming voluntary standards into binding obligations through iterative harmonization, peer review, and cross-regime integration (Karlsson-Venhuizen & Vihma, 2009). It thereby reimagines the international legal process as a dynamic cycle of norm articulation, consolidation, and legalization (Abbott & Snidal, 2000).

The implications for the international legal order are profound. Graduated normativity challenges traditional positivist conceptions of law's sources, reframing sovereignty as participatory and interdependent, and expanding the role of international organizations as norm entrepreneurs (Chang, 2025; Slaughter, 2004). It offers a method for building legitimacy through procedural inclusivity and incremental legalization while mitigating the risks of normative fragmentation through coordinated institutional design (Maas, 2025). If effectively implemented, this model could serve as a template not only for AI regulation but also for other rapidly evolving technological fields such as biotechnology and digital trade (Boyle, 1999; Marchant & Gutierrez, 2022).

The future of AI governance should not be cast as a binary choice between soft law's flexibility and hard law's enforceability (Boyle, 2014). Rather, it requires a layered and evolutionary approach that leverages the strengths of both (Finnemore & Sikkink, 1998). Soft law can incubate consensus and ethical alignment, while hard law institutionalizes those commitments and guarantees accountability (Karlsson-Vinkhuyzen & Vihma, 2009). The international community's task, therefore, is to construct deliberate pathways through regional frameworks, peer-review mechanisms, and treaty codification that allow norms to move from the aspirational to the obligatory (Shaffer & Pollack, 2012).

In conclusion, the global governance of AI will test the adaptability and imagination of international law. The rise of soft-law coordination reflects both the promise and the peril of global interdependence: it enables cooperation in a divided world, yet risks undermining the very legal order it seeks to complement (Crawford, 2021; Maas, 2025). The graduated normativity model offers a means to navigate this tension to transform ethical principles into enforceable norms and to ensure that AI governance remains anchored in legitimacy, accountability, and the rule of law.

Only through such an integrated framework can international law remain a credible instrument for guiding technological power toward the service of humanity (Boyle, 2014).

SCOPE FOR FURTHER STUDIES

Future research may explore how emerging regional AI governance frameworks converge, diverge, or compete in shaping the global regulatory landscape. Comparative studies could examine the alignment between the EU AI Act, the African Union's developing AI strategy, China's state-centric model, and soft-law regimes from bodies such as UNESCO and the OECD. Such analysis would help determine whether these instruments are moving toward global harmonization or reinforcing geopolitical fragmentation.

Further study is also needed to provide empirical insights into state practice and opinio juris in the AI context, particularly regarding whether repeated reference to global AI principles may eventually crystallize into customary international law. Scholars may analyse official statements, policy documents, judicial decisions, and diplomatic engagements to understand how states internalize AI norms.

In addition, future research could investigate the expanding role of private governance, especially the influence of technology companies, standard-setting bodies, and industry consortia in shaping de facto international norms. As corporations increasingly issue ethical guidelines, model evaluation protocols, and technical standards, further inquiry is required to assess how these private instruments interact with formal legal processes and whether they support or undermine democratic accountability.

Moreover, there is room for research on the effectiveness of soft-law monitoring mechanisms, such as voluntary reporting, peer review, and benchmarking tools. Studies could evaluate whether these processes meaningfully influence state behaviour or simply reinforce symbolic compliance.

Finally, future work may explore the implications of AI governance for the Global South, including capacity gaps, equity concerns, and the risk of normative marginalization. This would include examining how developing countries can actively shape global AI norms rather than remaining passive recipients of externally developed standards.

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