REDESIGNING THE ARCHITECTURE OF THE GLOBAL FINANCIAL SYSTEM

DOUGLAS W ARNER* AND ROSS P BUCKLEY†

During the great period of globalisation before the First World War, the international economy was based on global trade and global finance with monetary policy largely fixed under the gold standard. After the Second World War, a new international system was designed based upon global trade, fixed exchange rates and essentially domestic finance. This system did not include global financial regulation as finance was to be largely nationally constrained. Over the succeeding decades, however, capital markets globalised. The consequences have been a return to a level of financial and monetary instability not seen since the period following the First World War. The most dramatic example of this instability is the global financial crisis of 2007–10. We argue in this article that there is a fundamental need to redesign the architecture of today's global financial system to meet the requirements of this new reality, with established mechanisms to address economic coordination, macroeconomic and monetary management, development, and financial crisis prevention and resolution, as well as promote trade.

CONTENTS

* BA (Drury); JD (Southern Methodist); LLM, PhD (Lond). Director, Asian Institute of International Financial Law <www.aiifl.com>; Director, LLM (Corporate and Financial Law) Program; and Professor, Faculty of Law, University of Hong Kong; Co-Director, Duke–HKU Asia–America Institute in Transnational Law; Visiting Research Fellow, University of New South Wales.

† BEcon, LLB (Hons) (Qld); PhD (UNSW); LLD (Melb). Professor of International Finance Law, Faculty of Law, University of New South Wales; Fellow, Asian Institute of International Financial Law, University of Hong Kong.

I Introduction

The global financial crisis of 2007–10 has triggered discussions of reform of domestic, regional and international financial architectures.[1] Financial crises are not new phenomena — in fact, they occur frequently.[2] As a result, there is a clear need to design domestic, regional and international financial architecture to address their causes and consequences.[3] In this article, we argue the necessity of redesigning the architecture of the global financial system to meet the realities of global finance.

Such an approach has in fact been attempted before. In the wake of World War II, an overall design for the international economic system was agreed. The structure was based on open trade flows, fixed exchange rates, limited capital flows and international support for reconstruction and development, and was embedded in a series of international treaty-based institutions. The system sought to establish formal arrangements for interactions between nation states in four main areas: economic coordination and cooperation (through the United Nations); trade and investment liberalisation (through the International Trade Organisation ('ITO')); monetary arrangements (through the International Monetary Fund ('IMF'); and reconstruction and development finance (through the International Bank for Reconstruction and Development ('IBRD'), today a part of the World Bank group). As international capital flows were to be restricted, there was no international treaty-based organisation designed to

1 See, eg, Douglas W Arner, 'The Global Credit Crisis of 2008: Causes and Consequences' (2009) 43 *International Lawyer* 91.

2 See Carmen Reinhart and Kenneth Rogoff, *This Time is Different: Eight Centuries of Financial Folly* (Princeton University Press, 2009).

3 For detailed discussion, see Ross P Buckley and Douglas W Arner, *From Crisis to Crisis: The Global Financial System and Regulatory Failure* (Kluwer, forthcoming, 2011); Ross P Buckley, *International Financial System: Policy and Regulation* (Kluwer, 2009); Douglas W Arner, *Financial Stability, Economic Growth and the Role of Law* (Cambridge University Press, 2007).

regulate global capital and the existing organisation, the Bank for International Settlements ('BIS'), was to be closed. The system was designed on the premise that global capital flows and exchange rate instability were destabilising but cross-border trade and investment were necessary for economic growth and political stability.

For a range of reasons, only the Bretton Woods monetary system — centred on the IMF and the United States dollar — actually functioned according to the original design and only up until 1971. However, despite this fact, the international economic architecture has not been redesigned to address the realities of a global economy, realities which have changed fundamentally in the past 65 years due to the advent of floating currencies, profoundly liberalised capital markets, the emergence of new economic powers (especially in Asia) and the general liberalisation of trade and investment. Although certain changes were made following the collapse of the Bretton Woods international monetary system over three decades ago (with the *Second Amendment to the IMF Articles of Agreement*)[4] and again following the Asian financial crisis over a decade ago (with the establishment of the Financial Stability Forum ('FSF') and related arrangements), the current global financial crisis has thrown into stark relief the limitations of the existing arrangements.

This article discusses the implications of the global financial crisis of 2007–10 for reform of the international financial architecture and argues for a fundamental redesign.

At the international level, the general elements which need to be addressed have not changed fundamentally, although their context has changed profoundly. The outlines of the international architecture appear to be emerging: (1) economic policy cooperation and coordination through the Group of 20 ('G20'), though with some role for the UN in the context of development and climate change; (2) liberalisation of trade in goods and services through the World Trade Organization, although questions remain about financial services and investment as well as the future of the current Doha trade round; and (3) sustainable development coordination and assistance through the UN and the multilateral development banks ('MDBs'), but with questions remaining regarding financial sector issues, macroeconomic restructuring, trade finance, climate change, and food security issues, among others.

In the context of finance, macroeconomic policy and financial coordination is occurring via the G20, along with macroeconomic assessment and surveillance in tandem with the IMF. Responsibility for financial stability, international standard-setting and coordination lies with the Financial Stability Board ('FSB', the successor to the FSF), yet implementation is at the domestic and regional levels. Monitoring and assessment is taking place through the IMF, the FSB and regional arrangements. At the same time, issues exist with respect to the provision of liquidity and crisis management, both for sovereign and financial institution crises. For liquidity provision, domestic arrangements have been supplemented with bilateral arrangements (through the US Federal Reserve, the European Central Bank ('ECB') and the People's Bank of China), with regional

[4] *Articles of Agreement of the International Monetary Fund*, 2 UNTS 40 (signed and entered into force 27 December 1945) ('*IMF Articles of Agreement*'), as amended by the *Board of Governors Resolution 31-4* (1976) ('*Second Amendment to the IMF Articles of Agreement*').

arrangements in Europe and Asia, and with international liquidity support through the IMF. However, major issues remain with respect to sovereign crisis resolution, with the current IMF-centred structure arguably dysfunctional and certainly subject to sustained, fundamental criticisms. Further, as the collapse of the Lehman Brothers investment bank illustrated, there are simply no arrangements for resolving crises of global financial institutions.

This article argues that each of these issues must be addressed with appropriate structures, and suggests possible arrangements at the international and regional levels. At the same time, as the preceding brief summary demonstrates, speaking of the 'architecture of the international financial system' suggests a far more functional and comprehensive structure than exists. In fact, our current 'system' at present remains a patchwork. We argue that a global financial system requires an appropriately designed architecture.

II THE INTERNATIONAL FINANCIAL ARCHITECTURE: 1944–98

A *The International Economic Architecture as Designed*

Today's global financial architecture is largely the legacy of the international economic system designed at the end of World War II. The design of the post-war international economic architecture was largely the result of the work of two economists and civil servants, one British and one American: John Maynard Keynes and Harry Dexter White. The approaches of each reflected the need to support the future development of the international economy following the end of the World War II. In August 1941, US President Franklin D Roosevelt and British Prime Minister Winston Churchill met off the coast of Canada and laid down their vision of a peaceful world order after World War II in the *Atlantic Charter*.[5] This document was essentially based on three pillars: peace, financial stability and trade between equal nations. The second and third pillars (discussed in 1944 under the auspices of the US and the UK) focused on preventing international economic instability and high unemployment of the sort seen in the inter-war period (1918–39) and supporting economic development through reintegration of domestic economies. In light of the much stronger bargaining position of the US, White's ideas were taken up to a greater extent than those of Keynes during the negotiations at Bretton Woods in 1944, and the resulting institutions (the IMF and the World Bank) were subsequently located in Washington DC.

The design encompassed three fundamental features. First, its structure was formal and institutional, based on an interlinked set of international treaties and institutions. Second, it strongly encouraged closed national financial markets,[6] with limited capital flows, and open markets for trade in goods. Third, relationships among closed national systems were structured through an international institutional framework.[7] Institutionally, the Bretton Woods system

---

5 See Samuel Rosenman (ed), *The Public Papers and Addresses of Franklin D Roosevelt* (Harper, 1938–50) vol 10, 314.

6 *IMF Articles of Agreement* art VI s 3.

7 See US Department of State, *Proceedings and Documents of the United Nations Monetary and Financial Conference: Bretton Woods, New Hampshire July 1–22 1944* (US Governmental Printing Office, 1948).

was to include three new interlinked international organisations: the IMF, the World Bank and the ITO.

Under the design, the overall political coordination of economic affairs was meant to take place through the UN (established in 1945), primarily through the UN Economic and Social Council ('ECOSOC').[8] Monetary arrangements were to be based on currencies being fixed to the US dollar, which in turn would be fixed to gold, and were to be maintained through the IMF (established in 1945).[9] Responsibility for the financing and coordination of reconstruction and development was placed with the World Bank (established in 1945).[10] Liberalisation of trade and investment was to be the responsibility of the ITO. As global capital flows were to be limited, the BIS was abolished.[11]

The essential underlying theory of both Keynes and White and the final structure adopted was based, first, on a system of stable exchange rates. All negotiators involved felt that, while it was impossible to return to the gold standard as it existed prior to World War I, it was important to return to a parallel system, with money circulating on the basis of a fixed relationship to gold, rather than on the basis of pure paper currencies (that is, fiat money).[12] This design was intended to provide a stable base for finance, investment and trade — the other central pillars of the structure — and to avoid the sorts of monetary instabilities seen during the interwar period. Capital movements were to be largely controlled through domestic national restrictions, with the IMF supporting the system through monitoring of capital flows and facilitating orderly exchange readjustments when necessary.

However, the international economic architecture as designed never came to be. The ITO was stillborn,[13] although it was ultimately reincarnated in 1994 as a quite different organisation, the WTO, after fifty years in the limbo of the *General Agreement on Tariffs and Trade*.[14] The coordination that was to be provided by ECOSOC was quickly neutered by Cold War politics.[15] The role of the World Bank in reconstruction was quickly usurped, firstly by the bilateral

---

8 See *Charter of the United Nations* arts 57, 63.

9 The *IMF Articles of Agreement* were adopted at the UN Monetary and Financial Conference, Bretton Woods, New Hampshire on 22 July 1944 and entered into force 27 December 1945. They have subsequently been amended three times: (1) *Board of Governors Resolution No 23-5*, adopted 31 May 1968 and effective 28 July 1969; (2) *Board of Governors Resolution No 31-4*, adopted 30 April 1976 and amended effective 11 November 1992; and (3) *Board of Governors Resolution No 45-3*, adopted 28 June 1990 and effective 11 November 1992. IMF, *History of the IMF* (1 October 2008) <http://www.imf.org/external/about/history.htm>.

10 *Articles of Agreement of the International Bank for Reconstruction and Development*, opened for signature 27 December 1945, 2 UNTS 134 (entered into force 27 December 1945).

11 Gianni Toniolo, *Central Bank Cooperation at the Bank for International Settlements, 1930–1973* (Cambridge University Press, 2005).

12 For discussion of 'fiat money', see N Gregory Mankiw, *Principles of Economics* (South-Western College Publishing, 5th ed, 2010).

13 See, eg, John H Jackson, *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations* (Cambridge University Press, 2000) 21–3.

14 Opened for signature 30 October 1947, 55 UNTS 187 (entered into force 1 January 1948) ('*GATT 1947*').

15 See Secretary-General's Panel of Eminent Persons on United Nations Relations with Civil Society: UN, *UN System and Civil Society — An Inventory and Analysis of Practices: Background Paper* (May 2003) <http://www.un.org/reform/civilsociety/practices2.shtml>.

efforts of the US through the 'Marshall Plan' and related reconstruction initiatives, and later by the European Community with its aid programs for Southern and Eastern European countries. This forced the World Bank to move on, far more quickly than had been envisaged, to the second part of its mandate — the development of poor countries — the role it continues to play today. Finally, the BIS was not abolished and in fact continues to function today much as it had functioned since being established in 1930.[16]

Indeed the only part of the structure to function as designed was the area of monetary relations, with the IMF at the centre of a system of fixed exchange rates tied to the US dollar and its link to gold. This worked, arguably quite well, until the early 1970s, with financial crises in this period being far more limited than before or since.

The IMF was founded to

> promote international monetary cooperation, exchange stability, and orderly exchange arrangements; to foster economic growth and high levels of employment; and to provide temporary financial assistance to countries to help ease balance of payments adjustment.[17]

---

16 *Convention Respecting the Bank for International Settlements*, 104 LNTS 441 (signed and entered into force 20 January 1930) art 3 states that

> [t]he objects of the Bank are: to promote the co-operation of central banks and to provide additional facilities for international financial operations; and to act as trustee or agent in regard to international financial settlements entrusted to it under agreements with the parties concerned.

17 WTO, *The Integrated Framework for Least Developed Countries* (2010) <http://www.wto.org/english/tratop_e/devel_e/teccop_e/if_e.htm>. *IMF Articles of Agreement* art I — unchanged since 1944 — states that the purposes of the IMF are:

> (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
>
> (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
>
> (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
>
> (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
>
> (v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
>
> (vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

This is supplemented by the *Second Amendment to the IMF Articles of Agreement* art IV(i):

> Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates.

This is a reasonable summary of the aims embedded in the IMF founding treaty, the *IMF Articles of Agreement*. According to the Bretton Woods Committee:

> Since the IMF was established its purposes have remained unchanged but its operations — which involve surveillance, financial assistance, and technical assistance have developed to meet the changing needs of its member countries in an evolving world economy.[18]

This may be formally true but is substantively questionable. The IMF's purposes have changed. They changed in the 1970s when most developed countries moved from fixed to floating exchange rates and the core function of the IMF, the maintenance of exchange stability, was ceded by governments to the market. The IMF's operations today involve surveillance and financial and technical assistance, but these operations are primarily in the service of the prevention and management of developing country financial crises, not exchange stability.

In the beginning, however, the system selected was one of fixed exchange rates and limited capital mobility, and was focused on the need to re-establish international trade and investment linkages,[19] based around the ITO, which was intended to serve a formal role in reducing trade barriers and supporting investment.[20] However, due to US and French domestic political concerns, this institution was not established. Instead, trade relationships were addressed through the treaty that the ITO was intended to administer, the *GATT 1947*. Despite being only a part of the intended ITO system, the *GATT 1947* — over the next 50 years — gradually and successfully reduced trade barriers around the

---

[18] The Bretton Woods Committee, *Bretton Woods Institutions* (2010) <http://www.brettonwoods.org/index.php/180/Bretton_Woods_Institutions>.

[19] By 1944, due to economic nationalism and the needs and results of war, the system of free trade that had existed in the 1870–14 period had been completely destroyed.

[20] *Havana Charter for an International Trade Organization*, opened for signature 24 March 1948, UN Doc E/Conf 2/78 (not yet in force) ('*Havana Charter*'). Under the *Havana Charter* art I, the ITO was

> to promote national and international action designed to achieve the following objectives:
>
> 1 To assure a large and steadily growing volume of real income and effective demand, to increase the production, consumption and exchange of goods, and thus to contribute to a balanced and expanded world economy.
>
> 2 To foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment.
>
> 3 To further the enjoyment of all countries, on equal terms, of access to the markets, products and productive facilities which are needed for their economic prosperity and development.
>
> 4 To promote on a reciprocal and mutually advantageous basis the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce.
>
> 5 To enable countries, by increasing the opportunities for their trade and economic development, to abstain from measures which would disrupt world commerce, reduce productive employment or retard economic success.
>
> 6 To facilitate through the promotion of mutual understanding, consultation and co-operation the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy.

world, especially among developed economies and in relation to goods. In 1994, the WTO, an institution superficially similar to the ITO but with a quite different operating ethos, was established, although by this time the system of fixed exchange rates with which it was meant to operate in tandem had long since ceased to exist.

While the area of monetary relations functioned well in the 1950s and 1960s, one clause of the *IMF Articles of Association* fell into disuse. The so-called 'scarce currency clause' of art VII empowers the IMF to identify a country that is consistently running trade surpluses and declare its currency a scarce currency, in which case other nations may discriminate against imports from that country by limiting exchange operations in the scarce currency.[21] The idea, which was principally that of Keynes, was to put the primary burden of adjustment on countries that chronically ran trade surpluses. Instead the clause has been ignored and the IMF has consistently placed the adjustment burden on countries that run trade deficits (except for the US which, as the source of the global reserve currency, has had a free ride).[22] This idea is obviously of considerable importance today, and it is one to which we will return later.

The third institution, the World Bank, was established to coordinate and provide financial support for reconstruction and development.[23] The IBRD was the first institution of the World Bank, established in 1944. Based on government shareholders, it raises funds in the global financial markets, and issued its first

---

[21] Frances Stewart, 'Back to Keynesianism: Reforming the IMF' (1987) 4 *World Policy Journal* 465, 472; Fred L Block, *The Origins of International Economic Disorder: A Study of United States International Monetary Policy from World War II to the Present* (University of California Press, 1977) 52; Roy F Harrod, *The Dollar* (Harcourt Brace, 1954) 110.

[22] Stewart, above n 21, 472.

[23] *Articles of Agreement of the International Bank for Reconstruction and Development* 2 UNTS 134 (signed and entered into force 27 December 1945). Article I — unchanged since 1944 — states that the purposes of the IBRD are:

> (i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
>
> (ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
>
> (iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labour in their territories.
>
> (iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
>
> (v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

bond in 1947 to finance the reconstruction of Europe in the aftermath of World War II. The World Bank's explicit mission is to reduce global poverty,[24] by primarily focusing on the UN's Millennium Development Goals.[25] While the World Bank provides financial support in times of economic crisis and seeks to enhance social development, a key objective has been to promote policy and institutional reforms within lower- and middle-income economies. Thus loans have been coupled with conditionality of financial reforms, particularly focused upon improving the climate for private international investment.[26]

B *The International Economic Architecture in Practice: 1944–94*

Since the end of the Bretton Woods international monetary system in 1973, financial markets have changed dramatically through a process of liberalisation, internationalisation and globalisation, undergirded by technological revolution. In the 1990s, the deficiencies of the international institutions and arrangements (the 'international financial architecture') were highlighted by the Mexican, Asian and other financial crises. Since then, the IMF, the World Bank and the WTO have been forced to attempt to come to grips with the increasingly globalised nature of finance. Discussions in these institutions and elsewhere have focused on whether there is a need to reform the existing international institutional arrangements — whether there is a need for a new international financial architecture.[27]

1 *The IMF and the International Monetary System*

The system of fixed exchange rates functioned rather well from 1945 until 1973,[28] when the US finally abandoned the fixed link between the US dollar and gold. Despite the abandonment of the fundamental link to gold, many economies continued to maintain fixed relationships between their currencies and the US dollar (though subject to periodic, often painful, adjustments) and capital flows remained largely restricted until the 1980s (with the exception of the development of the European markets, which provided the foundation for today's global financial system).[29] During this period, the role of the IMF mainly focused on the relationship between the developed economies and exchange rate

---

[24] More specifically, its mission is '[t]o fight poverty with passion and professionalism for lasting results. To help people help themselves and their environment by providing resources, sharing knowledge, building capacity and forging partnerships in the public and private sectors.' World Bank, *About Us* (17 March 2010) <http://go.worldbank.org/3QT2P1GNH0>.

[25] UN, *Millennium Development Goals* (20 May 2008) <www.un.org/millennium developmentgoals>.

[26] See, eg, Michael Gavin and Dani Rodrik, 'The World Bank in Historical Perspective' (1995) 85 *American Economic Review* 329.

[27] For an overview, see Rolf H Weber, 'Challenges for the New Financial Architecture' (2001) 31 *Hong Kong Law Journal* 241; Mario Giovanoli, 'A New Architecture for the Global Financial Market: Legal Aspects of International Financial Standard Setting', in Mario Giovanoli (ed), *International Monetary Law: Issues for the New Millennium* (Oxford University Press, 2000) 3.

[28] With some exceptions, see Andreas F Lowenfeld, *International Economic Law* (Oxford University Press, 2003) 526–7.

[29] See Arner, above n 3, ch 2.

adjustments (especially as the economic importance of Germany and Japan increased and that of the UK decreased).

Having partially lost its role in the 1970s after the abandonment of the gold standard, the IMF sought to replicate the tie of the US dollar to an external standard through the creation of a new synthetic currency, the Special Drawing Rights ('SDR').[30] However, this never really worked as intended. The IMF nonetheless continued to maintain a certain role in the process of exchange rate adjustment. Additionally, the *Second Amendment to the IMF Articles of Agreement* reflected its new role in the international monetary system, establishing that 'the Fund shall oversee the international monetary system in order to ensure its effective operation',[31] and allowing the IMF to focus increasingly on lending to support economies dealing with periodic exchange crises, including imposing a range of conditions for such support, which became known as 'conditionality'.[32] This move out of monetary affairs and into 'structural adjustment' was the major fork in the road towards development of the IMF — and its move into areas of development which were meant to be the realm of the World Bank. The lesson is that when an international organisation loses much of its original mission it is natural for it to seek to reinvent itself in new roles, and this should be anticipated by the international community.

In the early 1990s, the IMF argued for a further amendment to its *IMF Articles of Agreement* to formalise its role in encouraging and supporting capital liberalisation, especially in developing, emerging and transition economies.[33] In addition, with the collapse of the Soviet bloc, the IMF began to focus on monetary aspects of the economic transition process — furthering its move into development work and out of its original remit of monetary affairs. By 1994, the 50th anniversary of the Bretton Woods conference, the IMF largely understood its role — and the mechanisms through which to achieve its goals — as being centred on the policy-focused ideas of the Washington Consensus.[34]

---

[30] The *IMF Articles of Agreement* as amended by the *Board of Governors Resolution 23-5* (1969) ('*First Amendment to the IMF Articles of Agreement*') established a facility based on the SDR.

[31] The *Second Amendment to the IMF Articles of Agreement* in 1976 established the rights to adopt exchange rate arrangements of their choice: *Second Amendment to the IMF Articles of Agreement* art 4.

[32] IMF, *IMF Conditionality* (27 September 2010) Factsheet <http://www.imf.org/external/np/exr/facts/conditio.htm>.

[33] *IMF Articles of Agreement* as amended by the *Board of Governors Resolution 45-3* (1990) art 4.

[34] See Paul Krugman, 'Dutch Tulips and Emerging Markets' (1995) 74(4) *Foreign Affairs* 28–9. Krugman describes the so-called 'Washington Consensus' regarding economic policies that developed in the early 1990s as:

> Liberalize trade, privatize state enterprises, balance the budget, peg the exchange rate, and one will have laid the foundations for an economic takeoff; find a country that has done these things, and there one may confidently expect to realize high returns on investments.

See also John Williamson (ed), *Latin American Adjustment: How Much Has Happened?* (Institute for International Economics, 1990); World Bank, *World Development Report 1991: The Challenge of Development* (Oxford University Press, 1991); Stanley Fischer, 'ABCDE: Past Ten Years, Next Ten Years' in Stanley Fischer (ed), *IMF Essays from a Time of Crisis: The International Financial System, Stabilization and Development* (MIT Press, 2004) 487.

2 *Development and the World Bank*

With the onset of the Cold War in the late 1940s, the US realised the need to build allies — even on the foundations of former enemies — and initiated a number of bilateral programs to support reconstruction, especially in Europe and Japan. (These programs mostly took the form of grants, rather than loans, in contradistinction to most later World Bank programs which have involved loans). As a result, quickly after the World Bank's creation, its primary role and mission had to move on to what its founders had intended to be its secondary role, the development of poor countries.

This role received a significant boost as the former colonial powers stepped back from, or lost, their empires. The World Bank stepped in to assist these new countries in developing infrastructure and building their economies. During its initial decades, the World Bank focused on loans to governments for specific projects and increasingly, through the 1970s, for general budgetary support. Lending was supplemented by the provision of grants to the least developed countries, generally through the International Development Association ('IDA') created in 1960.[35]

With the onset of the developing country debt crisis in 1982, the World Bank was faced with a challenge to its program of state lending, as it became obvious that resources lent for general purposes and even for specific projects had often been squandered and in some cases caused more harm than good.[36] As a result, in addition to state lending and grants, the World Bank began to focus to a greater extent on providing private sector assistance through the International Finance Corporation ('IFC')[37] and the Multilateral Investment Guarantee Agency ('MIGA'),[38] established in 1956 and 1988 respectively. By the end of the 1980s, the World Bank Group included the IBRD, IFC, IDA, MIGA and International Centre for Settlement of Investment Disputes,[39] dealing with (respectively) state lending and technical assistance, private sector projects, grants to poorer developing countries, investment guarantees and the resolution of cross-border investment disputes.[40]

At the same time, especially during the 1960s, a range of other multilateral development organisations were established, often based on the World Bank model, including the UN Development Programme,[41] the UN Conference on

[35] The World Bank, *International Development Association (IDA)* (1999) <www.worldbank.org/ida>.

[36] Phillip A Wellons, *Passing the Buck: Banks, Governments and Third World Debt* (Harvard Business School Press, 1987).

[37] IFC, *IFC History*, <http://www.ifc.org/ifcext/about.nsf/AttachmentsByTitle/ifchistory.htm/$FILE/ifchistory.htm>.

[38] Multilateral Investment Guarantee Agency, *About MIGA* (1999) <http://www.miga.org/about>.

[39] Founded in 1966: World Bank, *ICSID* (2010) <www.worldbank.org/icsid>.

[40] See Carl Jayarajah and William Branson, *Structural and Sectoral Adjustment: World Bank Experience, 1982–92* (IBRD, 1995).

[41] The UN Development Fund was established in 1965 as the consolidation of the Special Fund and the Expanded Program of Technical Assistance: *Consolidation of the Special Fund and the Expanded Program of Technical Assistance in a United Nations Development Program*, GA Res 2029, UN GAOR, 20th sess, 11th mtg, UN Doc NR021792 (22 November 1965).

Trade and Development ('UNCTAD'),[42] the African Development Bank ('AfDB'),[43] the Asian Development Bank ('ADB'),[44] the Inter-American Development Bank ('IADB')[45] and in the 1990s, the European Bank for Reconstruction and Development ('EBRD'),[46] as well as a range of other multilateral financial institutions,[47] sub-regional development banks,[48] and national development agencies.[49]

With the collapse of the Soviet bloc, the World Bank (like the IMF) added the transition economies to its development assistance portfolio. Nonetheless, unlike the IMF, the World Bank directly faced many questions about its role and future at the time of the 50th anniversary of the Bretton Woods conference in 1994, a reappraisal that led it to focus on the overarching objective of poverty reduction.[50] This focus has now served to unite the various MDBs. At the same time, with the growth of other multilateral development institutions, bilateral programs and non-governmental organisations, and especially with the increase in financial flows to developing countries from the private sector, the World Bank now takes a much less central role in global capital flows than was envisioned in the post-war design.

3 *Trade, the* GATT 1947 *and the WTO*

As noted above, international trade relationships were structured through a series of rounds of negotiations formalised through the *GATT 1947*, which was established in 1948.[51] At the same time, cross-border investment was left to bilateral arrangements. Even with a narrower focus than planned, the *GATT 1947* was, in fact, highly effective in gradually reducing trade barriers, especially

---

42 Established in 1964: UNCTD, *About UNCTAD* (2010) <http://www.unctad.org/Templates/Page.asp?intItemID=1530&lang=1>.

43 Founded in 1964: AfDB, *The African Development Bank Group — Fast Facts* (2010) <http://afdb.org/en/about-us>.

44 Founded in 1966: ADB, *About ADB* (28 September 2010) <http://www.adb.org/About>.

45 Established 1959: IADB, *About the Inter-American Development Bank* (2010) <http://www.iadb.org/en/about-us>.

46 Began operations in April 1991: EBRD, *About Us* (6 September 2010) <http://www.ebrd.com/pages/about.shtml>.

47 Leading examples include the European Commission and European Investment Bank, the International Fund for Agricultural Development, the Islamic Development Bank, the Nordic Development Fund and Nordic Investment Bank, and the OPEC Fund for International Development.

48 Examples include the Corporation Andina de Fomento, the Caribbean Development Bank, the Central American Bank for Economic Integration, the East African Development Bank and the West African Development Bank.

49 The most active include: the Australian Agency for International Development, the Canadian International Development Agency, the Agence Française de Développement, the Deutsche Gesellschaft für Technische Zusammenarbeit and the Kreditanstalt für Wiederaufbau, the Japan Bank for International Cooperation and the Japan International Cooperation Agency, the UK Department for International Development and the US Agency for International Development.

50 See Michael Goldman, *Imperial Nature: The World Bank and Struggles for Social Justice in the Age of Globalization* (Yale University Press, 2005).

51 *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*GATT 1994*').

among the developed countries, and in relation to trade in manufactures.[52] In 1994 the *GATT 1947* members agreed to the establishment of the WTO, reflecting a general consensus in support of greater trade liberalisation and the need of the US in particular to extend the global trade regime to embrace intellectual property.[53] Therefore, by the 50th anniversary of the Bretton Woods conference in 1994, the successor to the ITO had finally emerged, to much fanfare and high expectations.

4 *Coordination and Linkage*

Because the ITO was never formed, the planned coordinating structure between the UN (via the ECOSOC), the ITO, the IMF and the World Bank was never established.[54] Perhaps as a result, the IMF and the World Bank have often been criticised for failing to coordinate their activities — despite sitting on opposite sides of the same street in central Washington DC. Some efforts were made in this direction following problems arising after the 1980s debt crisis, including the creation of what is now called the International Monetary and Financial Committee[55] and the Development Committee[56] to coordinate activities, but this remains a continuing concern.[57]

---

52 Kathryn M Dominguez, 'The Role of International Organizations in the Bretton Woods System' in Michael D Bordo and Barry Eichengreen (eds), *A Retrospective on the Bretton Woods System: Lessons for International Monetary Reform* (University of Chicago Press, 1993) 357, 378.

53 See, eg, Anne O Kruger, 'Introduction' in Anne O Kruger (ed), *The WTO as an International Organisation* (University of Chicago Press, 1998) 1. According to the *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) art 2 ('*Marrakesh Agreement*'):

> The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments …

Under art 3, the functions of the WTO are that:

> 1 The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
>
> 2 The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.
>
> 3 The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the 'Dispute Settlement Understanding' or 'DSU') in Annex 2 to this Agreement.
>
> 4 The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the 'TPRM') provided for in Annex 3 to this Agreement.
>
> 5 With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

54 See *Havana Charter* arts 10, 86, 87.

55 See IMF, *Factsheet — A Guide to Committees, Groups and Clubs* (April 2009) <http://www.imf.org/external/np/exr/facts/groups.htm>.

5 *Finance*

In the area of cross-border finance, no international institutional framework was established, although meetings of central banks continued to take place through the BIS.[58] These were joined from the late 1960s by a range of informal groups of developed countries, including the Group of Ten ('G10'), Group of Five ('G5'), Group of Six ('G6'), Group of Seven ('G7') and Group of Eight ('G8'), with the G7 and G8 emerging by 1998 as the most significant fora for economic and financial cooperation. These various groups met at the level of finance ministers and central bank governors, as well as deputies and heads of government as cross-border financial issues began to return to significance. Initially, international finance was allowed to develop outside of individual domestic markets, through the European markets, across the 1950s and 1960s. In 1974, following the collapse of the dollar standard, the collapse of a small German bank, Herstatt Bank, caused the first major post-war cross-border financial crisis through its role in the international payments systems. Realising that cross-border finance posed risks, G10 central bankers in charge of banking supervision began meeting at the BIS as the Committee on Banking Regulations and Supervisory Practices, today called the Basel Committee for Banking Supervision ('BCBS').[59] The BCBS was the first of a series of international financial organisations of varying levels of formality (though none as traditional international treaty-based organisations) formed to encourage financial cooperation and coordination, including most significantly the International Accounting Standards Board ('IASB') (formed as the International Accounting Standards Committee in 1973) and the International Organisation of Securities Commission ('IOSCO') (formed in 1983) the International Association of Insurance Supervisors ('IAIS') (formed in 1994). In their respective areas, these organisations promoted discussion and development of common solutions to cross-border financial issues, with domestic implementation of 'soft law' international agreements.

The combination of the G7/G8, IMF, BIS and international financial organisations thus comprised the international financial architecture as it existed until 1998.

III THE 'NEW' INTERNATIONAL FINANCIAL ARCHITECTURE: 1998–2008

The Asian financial crisis of 1997–98 surprised almost everyone and unleashed a torrent of analysis about the need for a 'new international financial

---

[56] Ibid.

[57] See Joseph Stiglitz, *Globalization and Its Discontents* (Norton, 2002) ch 1; Allan H Meltzer, 'The Report of the International Financial Institution Advisory Commission: Comments on the Critics' in David Vines and Christopher L Gilbert (eds), *The IMF and Its Critics: Reform of Global Financial Architecture* (Cambridge University Press, 2004) 106. Recognising this, the *Second Amendment to the IMF Articles of Agreement* art 7(i) sch D established a power for the IMF Board of Governors to establish a Council by an 85 per cent majority.

[58] See generally Douglas W Arner, Michael A Panton and Paul Lejot, 'Central Banks and Central Bank Cooperation in the Global Financial System' (2010) 23 *Pacific McGeorge Global Business and Development Law Journal* 1.

[59] See Joseph Jude Norton, *Devising International Bank Supervisory Standards* (Kluwer, 1995) ch 4.

architecture'. As Paul Krugman wrote at the time, 'the first step of such reform is to find out who is responsible for that pompous phrase and punish him'.[60] For, of course, this popular phrase implied the existing financial architecture was a coherent system, functioning as designed, whereas it was, and is, nothing of the sort.

These issues loomed large due to the transformation of the international financial system through globalisation. By the beginning of the 1990s, financial globalisation had fundamentally altered the financial landscape, both internationally and domestically. As the decade progressed, a clear feature of international finance was a succession of financial crises, often with international or global implications — exactly the sort of crises that the Bretton Woods system was designed to prevent. These crises brought increasing attention to their causes, resolution and possible future prevention and were often discussed in the context of a 'new' international financial architecture.[61]

A *Financial Crises in the 1990s and the International Response*

According to Michel Camdessus, then IMF Managing Director, speaking in 1998, seven areas of the 'architecture of the international financial system' needed to be strengthened in the wake of the Asian and Mexican financial crises.[62] First, more effective surveillance of countries' economic policies, coupled with fuller disclosure of all relevant economic and financial data, was needed, given that in each situation market responses were aggravated by a significant lack of proper information.[63] Second, regional surveillance efforts needed to be improved in order to encourage neighbouring countries to put pressure on one another to prevent contagion. While little has developed yet in this respect outside of the context of the EU, discussions continue in regional fora worldwide, especially in East Asia. Third, financial sector reform grounded in improved prudential regulation and supervision was necessary, based on ongoing efforts to develop 'best practices' through the activities of the various international financial organisations and institutions in order to transfer lessons learned as broadly and quickly as possible. Fourth, more effective structures needed to be developed in regard to debt workouts, both on a national level through bankruptcy laws and at the international level through ongoing efforts[64] such as those of the G10. Fifth, capital account liberalisation needed to continue but needed to be based on prudence and proper sequencing to increase the

---

[60] Paul Krugman, 'Analytical Afterthoughts on the Asian Crisis' in Takashi Negishi, Rama V Ramachandran and Kazuo Mino (eds), *Economic Theory, Dynamics and Markets: Essays in Honor of Ryuzo Sato* (Kluwer, 2001).

[61] See Barry Eichengreen, *Toward a New International Financial Architecture: A Practical Post-Asia Agenda* (Institute of International Economics, 1999) 133–42.

[62] Michel Camdessus, 'The Role of the IMF: Past, Present, and Future' (Speech delivered at the Annual Meeting of the Bretton Woods Committee, Washington DC, 13 February 1998); Michel Camdessus, 'Reflections on the Crisis in Asia' (Speech delivered at the Extraordinary Ministerial Meeting of the Group of 24, Caracas, Venezuela, 7 February 1998) <http://www.imf.org/external/np/speeches/1998/020798.htm>.

[63] In this regard, the IMF developed the *Special Data Dissemination Standard* (and *General Data Dissemination Standard*) and promoted disclosure through its programs and policy advice.

[64] Crisis resolution and workout issues are beyond the scope of the present article. For more detailed discussion, see the sources at above n 3.

orderliness of and access to international capital markets. Sixth, worldwide efforts needed to be increased to promote good governance and reduce corruption. Seventh, multilateral financial institutions needed to be strengthened, both in terms of resources and authority and in terms of equitable representation.

This was what the IMF's Managing Director thought needed to be done following the Asian financial crisis. However, far less actually happened. Actions taken centred on enhancing IMF transparency and liquidity, World Bank technical assistance and international financial standards. First, the IMF acted to further enhance its role both in the provision of international liquidity and in encouraging transparency. In regard to additional liquidity, the IMF approved the Supplemental Reserve Facility and a general capital increase. In addition, the IMF initially continued to attempt to expand its mandate to include capital account liberalisation, though these efforts were largely abandoned by the end of 1998.

The focus of the World Bank and the MDBs has been somewhat different from that of the IMF post-1982. In general terms, the World Bank and other MDBs are more like construction agencies whereas, since 1982, the IMF has functioned more like a fire brigade.[65] While these institutions increasingly worked together in the wake of the Asian financial crisis (especially the IMF and World Bank), there are real differences. First, the MDBs' focus is structural and sectoral, as compared with the IMF's traditional focus on macroeconomic aggregates. Second, the MDBs' focus is on long-term restructuring while the IMF focuses on short-term adjustment. Third, the MDBs do not focus solely on economic and financial issues, but often on a broad array of development issues (especially poverty reduction), while in practice the IMF remains focussed on economic and financial issues, particularly the national macroeconomic profile.[66]

Overall, the division of responsibilities among these various international institutions remains quite tentative. Nonetheless, following the Mexican and Asian financial crises, the MDBs increasingly focused on efforts to strengthen the domestic financial systems of their member countries, especially given the potential of financial crisis to negatively impact countries' development and the quality of the multilateral institutions' own loan portfolios. These initial steps, aimed at strengthening the financial resources of the IMF and on increasing transparency of financial markets were useful. However, much more was required.

B *Financial Stability*

In addition to liquidity and transparency issues, the third major area of concern was prevention of financial crises through enhancement of the quality of individual financial systems. In response to an initiative at the G7 Lyon summit in June 1996, representatives of the G10 countries and of emerging and transition

---

65 Sven Sandström, 'The East Asia Crisis and the Role of the World Bank' (Speech delivered at the Bretton Woods Committee of the World Bank, Washington, 13 February 1998) [5]–[6].

66 Ross P Buckley and Jonathan Baker, 'IMF Policies and Health in Sub-Saharan Africa' in Adrian Kay and Owain D Williams (eds), *Global Health Governance: Crisis, Institutions and Political Economy* (Palgrave Macmillan, 2010) 209.

economies jointly sought to develop a strategy for fostering financial stability through the analysis of experiences in previous crises and to elucidate basic standards and principles to guide individual economies in the development of stronger financial systems.[67] The primary conclusion to emerge from this study was that a robust financial system is less susceptible to crises in the wake of real economic disturbances and is more resilient in the face of crises that do occur. The MDBs were given a leading role in providing technical assistance to countries seeking to build robust financial systems.

Since the Mexican financial crises, the concept of 'financial stability' has become the primary target in preventing financial crises and reducing the severe risks of financial problems which do occur from time to time. Financial stability, however, is not a clearly defined term. In fact, financial stability is usually described by what it is not, the absence of a major financial crisis, rather than by what it is.[68] According to Garry Schinasi, financial stability may be defined as the joint stability of the key financial intermediaries operating within the financial system and the stability of the constituent markets.[69] For financial intermediaries, this generally means that they are sound, that is they have sufficient capital to absorb normal, and at times abnormal, losses and sufficient liquidity to manage operations and volatility in normal periods. Market stability generally means the absence of the kind of volatility that could have severe real economic consequences (that is, systemic risk).

Financial stability is therefore both the absence of financial crisis and the normal operation of financial intermediaries and markets. Marc Quintyn and Michael Taylor go one step further, suggesting that the financial sector plays a special and unique role in an economy, and that as a result, 'the achievement of *financial stability* … is now generally considered a *public good*',[70] a proposition with which we agree. With financial stability the agreed international objective, a system was developed to assist countries to achieve this goal.

C *Structure and Process*

The post-Asian crisis international strategy for the promotion of financial stability was a system of international financial standards. The system had the following primary characteristics: (1) development of an international consensus

[67] Report of the Group of Ten Working Party on Financial Stability in Emerging Market Economies, 'Financial Stability in Emerging Markets Economies' (Report, G10, April 1997) ('*G10 Strategy 1997*'). This framework was developed further in: Group of 22 Systemically Significant Countries, 'Reports on the International Financial Architecture' (Report, G22, October 1998). G10 documents are available at the BIS website at <http://www.bis.org>.

[68] See Udaibir S Das, Marc Quintyn and Kina Chenard, 'Does Regulatory Governance Matter for Financial System Stability? An Empirical Analysis' (Working Paper No 04/89, IMF, May 2004) 5–6 <http://www.imf.org/external/pubs/ft/wp/2004/wp0489.pdf>. As a result, they use a definition of 'financial system soundness' rather than 'financial stability'.

[69] See Garry Schinasi, 'Responsibility of Central Banks for Stability in Financial Markets' (Working Paper No 03/121, IMF, June 2003) 4 <http://www.imf.org/external/pubs/ft/wp/2003/wp03121.pdf>; for further discussions see generally Andrew Crockett, 'The Theory and Practice of Financial Stability' (1997) 6 *GEI Newsletter* <http://www.cepr.org/GEI/6rep2.htm>; David Bieri, 'The Basel Process and Financial Stability' (November 2004) (in possession of the authors).

[70] Marc Quintyn and Michael Taylor, 'Regulatory and Supervisory Independence and Financial Stability' (Working Paper No 02/46, IMF, March 2002) 8 (emphasis in original) <http://www.imf.org/external/pubs/ft/wp/2002/wp0246.pdf>.

on the key elements of a sound financial and regulatory system by representatives of the relevant economies; (2) formulation of sound principles and practices by international groupings of technocratic authorities with relevant expertise and experience, such as the BCBS, IOSCO, IASB, IAIS and the Joint Forum on Financial Conglomerates (established in 1996); (3) use of market discipline and market access channels to provide incentives for the adoption of sound supervisory systems, better corporate governance and other key elements of a robust financial system; and (4) promotion by multilateral institutions such as the IMF and the MDBs of the adoption and implementation of sound principles and practices.[71] Importantly, however, the ultimate responsibility for policies to strengthen financial systems lay with the governments and financial authorities in the economies concerned.

More generally, this system had four levels, incorporating both existing and new international institutions and organisations. At the first level, there was a structure mainly established through political processes at the G7, G8 and G10. At the political level, prior to the global financial crisis of 2007–10, the G7 and G8 took the lead in establishing an operating framework for the process, the G10 initiated efforts to elaborate the details, and other groups such as the G20[72] were also involved in various aspects. The second level was international standard-setting, largely of a technocratic nature. The FSF (established in 1999) and the BIS served the primary coordinating role in the process of standard-setting. At the third level was implementation of standards — in principle a domestic process but with technical assistance through a variety of international, regional and bilateral sources. The fourth level focused on monitoring implementation of standards, through the IMF and World Bank Financial Sector Assessment Program (‘FSAP’).[73]

D *International Financial Standards and Standard-Setting Organisations*

International standards and their development are the only truly new element of the international financial architecture to emerge from the series of financial crises across the 1990s and related discussion of the need for a new international financial architecture. The only new institution to emerge from discussions of the international financial architecture was the FSF.[74] The FSF was established to serve the role of the coordinator and promoter of the system of international standards. In addition to coordination and standard-setting through the FSF, the established international financial institutions such as the IMF, World Bank and BIS, were involved in standard-setting, implementation and monitoring. In

---

[71] *G10 Strategy 1997*, above n 67, 49.

[72] The G20 includes the finance ministers and central bank governors of 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom and the US. It also includes the European Union (Council President) and the European Central Bank (‘ECB’), as well as (on an ex-officio basis) the Managing Director of the IMF, the President of the World Bank, and the chairs of the IMFC and Development Committee of the IMF and World Bank.

[73] This essential structure was affirmed by the G7 Finance Ministers in the Communiqué from their Köln summit in 1999. G7 Finance Ministers, ‘Report of the G7 Finance Ministers to the Köln Economic Summit’ (Report, G7 Finance Ministers, 18–20 June 1999).

[74] The FSF is the predecessor to the FSB which was established in April 2009: FSB, *History* (2010) <http://www.financialstabilityboard.org/about/history.htm>

addition to the international financial institutions, other formal international organisations such as the Organisation for Economic Cooperation and Development (‘OECD’) were involved in certain areas. However, the WTO was not formally included — a weakness in the framework.

As noted, the FSF was established under the auspices of a G7 mandate in February 1999, with a threefold purpose to: (1) promote international financial stability; (2) improve the functioning of markets; and (3) reduce systemic risk through enhanced information exchange and international cooperation in financial market supervision and surveillance.[75] The FSF included five different types of members: national authorities,[76] international financial institutions,[77] other international organisations,[78] international financial organisations[79] and committees of central bank experts.[80] In addition, the FSF created a number of ad hoc working groups to develop recommendations on specific issues, including highly leveraged institutions, capital flows, offshore financial centres, implementation of standards, incentives to foster implementation of standards, deposit insurance, and e-finance.

In addition to the FSF, the BIS played an important role in coordination. It provided the Secretariat for the FSF, as well as the BCBS, Committee on Payment and Settlement Systems, Committee on the Global Financial System, the G10 and IAIS.

1 *Standard-Setting*

As noted, standard-setting takes place through a range of different bodies. These can largely be grouped into international financial institutions,[81] other formal international organisations[82] and international financial organisations. The international financial organisations include a range of different forms, including regulators,[83] central banks,[84] professional groups,[85] market associations,[86] expert groups[87] and legal groups.[88]

---

75 Ibid.

76 Ibid. National authorities in the FSF were the G7, plus the ECB, plus four economies: Australia, Canada, France, Germany, Hong Kong, Italy, Japan, Netherlands, Singapore, Switzerland, UK, US and the ECB.

77 Ibid. The BIS, IMF and World Bank.

78 The OECD. BIS, *Fact Sheet of the Financial Stability Forum* (2010) <http://www.bis.org/about/factsfsf.htm>

79 The BCBS, IAIS and IOSCO: BIS, *Fact Sheet of the Financial Stability Forum (FSF)* (2010) <http://www.bis.org/about/factsfsf.htm>

80 The Committee on the Global Financial System and the Committee on Payment and Settlement Systems.

81 The international financial institutions include the IMF, World Bank and BIS.

82 At present, the OECD. The WTO is not officially represented.

83 The BCBS, IAIS and IOSCO. The Financial Action Taskforce (‘FATF’) can also be included in this category.

84 The Committee on Payment and Settlement Systems and the Committee on the Global Financial System.

85 These include the International Accounting Standards Board and the International Federation of Accountants.

86 Market associations include the International Swaps and Derivatives Association, the International Capital Markets Association and the Loan Market Association.

The FSF agreed upon 12 key standards areas,[89] including a total of 15 standards, which are considered the minimum requirements for good practice.[90] Each set of key standards was supported by a methodology for assessment and implementation and a variety of related principles, practices and guidelines.

The exact processes of selecting areas for the promulgation of standards, designating such areas as 'key', selecting appropriate standard-setting organisations, and developing standards themselves were unclear — despite the extended emphasis on transparency. Selection and designation was something of a bottom-up process, with standard-setters choosing to address and promote their respective standards to the political groupings such as the G7/G8 and the international financial institutions for adoption and support. Nonetheless, a sort of standardised process for standard-setting appeared to develop. In addition, over time processes included more public consultation and input, which tended to enhance the quality of, and the support for, the resulting standards.

2 *Implementation and Monitoring*

An important element of the standard-setting process involves monitoring the implementation of international standards. While primarily a domestic process, implementation is supported by a range of assistance mechanisms. Monitoring mainly takes place at the international level through the international financial institutions, especially the IMF and World Bank. Specifically, the IMF works through its annual Article IV consultations. The IMF and the World Bank collaborate through Reports on the Observance of Standards and Codes ('ROSCs') and FSAPs. The OECD and the Financial Action Task Force on Money Laundering ('FATF') also engage in monitoring, with the FATF playing quite an influential role in the context of money laundering and terrorism financing. At a regional level, the regional development banks encourage implementation through their respective projects and reviews.[91] In addition, regional economic associations may have a role — in some cases, such as the EU, a very important one.[92] At the bilateral level, some countries (especially the US) are keen to support the implementation of certain standards — for example, those of the FATF. Finally, at the market level, the rating agencies have shown

---

[87] Expert groups include the Institute of International Finance, the Group of Thirty, the Institute for International Economics and a plethora of domestic and academic research and policy institutes.

[88] Legal groups include the International Law Association, International Bar Association, the UN Commission on International Trade Law, the International Institute for the Unification of Private Law, the Hague Conference on Private International Law, and the Council of Europe.

[89] Some of the key standards are relevant for more than one policy area. See for example Interim Committee of the IMF 'Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of First Principles' (Declaration of Principles, IMF, 26 September 1999) where sections have relevance for aspects of payments and settlement as well as financial regulation and supervision.

[90] FSB, *12 Key Standards for Sound Financial Systems* (23 April 2008) <http://www.financialstabilityboard.org/cos/key_standards.htm>.

[91] Chiefly, the AfDB, ADB, EBRD and IADB.

[92] Chiefly, the EU, Association of Southeast Asian Nations ('ASEAN'), MERCOSUR, North American Free Trade Agreement and Southern African Development Community.

some interest in monitoring standards, though not to the extent of policy makers' hopes.

E *Financial Liberalisation and the WTO*

In addition to the various organisations discussed above, foreign participation in domestic financial services is dealt with largely through bilateral, regional and international negotiations, with the latter centred on the WTO. Specifically, on 1 January 1995, the *Marrakesh Agreement* entered into force, with its annexes, including, inter alia, the *GATT 1947*, and the *General Agreement on Trade in Services*.[93] The main legal components affecting international trade in financial services include: (1) *GATS*,[94] (2) Annex on Financial Services, (3) Second Annex on Financial Services, (4) Understanding on Commitments in Financial Services, (5) Second Protocol to the *GATS*, (6) Fifth Protocol to the *GATS*, (7) Decisions, and (8) Understanding on Rules and Procedures Governing the Settlement of Disputes.

These components contain a number of general obligations respecting trade and financial services contained in the various agreements, including most-favoured nation ('MFN') treatment,[95] transparency, and the effect of domestic regulation, discussed further in the following section. The *GATS* covers all sectors of services,[96] including financial services. In addition, the Annex on Financial Services and the Second Annex on Financial Services, as part of the *GATS*, directly relate to financial services.[97] The Understanding on Commitments in Financial Services, as part of the Final Act, stipulates higher requirements for financial liberalisation for those members that have adopted it. The so-called Financial Services Agreement and its scheduled commitments, in contrast to the financial services commitments undertaken in the Uruguay Round and in the 1995 interim agreement, are not temporary, but permanent until the WTO members conclude a new agreement through negotiations. The Fifth Protocol to the *GATS* entered into force on 1 March 1999, and at the same time, those schedules of specific commitments and lists of MFN exemptions annexed to the Fifth Protocol replaced those undertaken in the 1995 interim agreement or in the Uruguay Round. These commitments form the basis for future financial services negotiations.

The WTO provides the international framework for foreign participation in financial services. However, unlike areas such as trade in goods, in the area of

---

93 *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1B ('*General Agreement on Trade in Services*') ('*GATS*').

94 According to the results of the Uruguay Round of Multilateral Trade Negotiation, the *GATS* is composed of four parts: (1) the main text of the *GATS*; (2) eight annexes; (3) schedules of specific commitments; and (4) list of art II exemptions. The *GATS* text refers to only the first part.

95 *GATS* art II MFN treatment is composed of three paragraphs. Paragraph 1 is the core rule identifying the MFN obligation with respect to trade in services. It requires that each member accord to services and service suppliers of any other member treatment no less favourable than that it accords to like services suppliers of any other country.

96 '"[S]ervices" includes any service in any sector except services supplied in the exercise of governmental authority': *GATS* art I 3(b).

97 For a general overview, see Wendy Dobson and Pierre Jacquet, *Financial Services Liberalization in the WTO* (Institute for International Economics, 1998).

financial services, commitments made by members are exclusive rather than inclusive. Therefore liberalisation is at the discretion of individual WTO members and remains quite limited in most cases. This framework is an important starting point in supporting foreign competition in financial services. At the same time, it needs to be carefully considered in the context of the relationship between financial liberalisation and financial stability.

F *Development*

While not directly related to the Asian financial crisis, the UN agreed on an overall set of objectives to guide development in 2000 — the Millennium Development Goals ('MDGs').[98] The MDGs are significant not so much for their content (which is, as might be expected, somewhat general and sometimes aspirational) than for the fact that for the first time they provide an agreed set of guidance for multilateral development agencies and banks — a set of guidelines which, following their various constituent treaties, all of the various MDBs have explicitly agreed to pursue. The MDGs thus provide the most concrete basis for cooperation and coordination amongst the various multilateral development agencies yet devised.

In addition to the MDGs and their significant coordinative and aligning function, the WTO also launched a new round of trade talks at Doha, Qatar in 2001. With the hope born of entering a new millennium and the promulgation of the MDGs, this trade round aimed higher than any of its predecessors and committed to real progress on sustainable development, environmental issues, labour standards, and, overarchingly, on securing a better future for developing countries. However, to date, the round continues to linger in stalemated discussions. The reasons for this deadlock are beyond the scope of this article; however, the consequence of the impasse makes progress in improving the international financial system even more important.

IV The Global Financial Crisis and the International Architecture

In this section, we discuss the performance of the international architecture in the global financial crisis of 2007–10. Unlike in the Asian financial crisis, the majority of activity in response to the global financial crisis has taken place at either the domestic level or at the European regional level through the EU. At the international level, coordination initially took place through the G7 and at a multilateral level through the FSF and the world's major central banks. However, from late 2008 this coordination shifted to the G20. During the initial phases which mainly affected developed countries, the IMF, MDBs and WTO played a limited role. Only as the crisis began to spread beyond the G7 did the IMF and MDBs begin to be involved, and even then only in minor ways, at least until the crisis returned full circle to Europe in 2010 with the Greek and Eurozone

98 *United Nations Millennium Declaration*, GA Res 55/2, UN GAOR, 55th sess, 2nd mtg, Agenda Item 60b, UN Doc A/Res/55/2 (18 September 2000). See *Road Map towards the Implementation of the United Nations Millennium Declaration: Report of the Secretary-General*, GA Res 56/326, UN GAOR, 56th sess, Agenda Item 40, UN Doc A/56/326 (6 September 2001). See also *United Nations Millennium Declaration*, GA Res 55/2, UN GAOR, 55th sess, 2nd mtg, Agenda Item 60b, UN Doc A/Res/55/2 (18 September 2000).

financial crises. Throughout, the WTO has remained largely on the sidelines, mentioned only in terms of aspirations for the completion of Doha round of negotiations and as a possible venue for resolving crisis related disputes. At the same time, over the years since the agreement of the MDGs, a new international economic issue has emerged which has begun to dominate the development debate: climate change.

A *The G7, FSF and Major Central Banks*

Initially, as in the Asian financial crisis, international activity focused on the G7, the centre of global economic and financial policy coordination for the previous two decades and the forum comprising the major economies initially affected by the systemic financial crisis in the global financial system in 2007–08. Likewise, the FSF initially appeared to be playing its designated coordinative role in regulatory affairs.

In April 2008, the FSF met to discuss emerging issues and release a significant report, albeit one which would in many ways be overshadowed by subsequent events.[99] The recommendations in this report are central to the international framework for financial stability and, had they been implemented quickly, could perhaps have prevented the systemic phase of the crisis which followed.[100]

More significantly, during the week of 6–10 October 2008, a comprehensive global response emerged from the G7 and major central banks. While not sufficient to prevent the systemic financial crisis or significant economic damage, the response was sufficient to resuscitate the US and global financial systems. Further, in the aftermath of the G7 and IMF, World Bank and FSF meetings the following weekend, the Federal Reserve dramatically increased the provision of liquidity in dollars to the world's major central banks, agreeing on 13 October 2008 to provide unlimited dollar liquidity to the ECB, Bank of England, Swiss National Bank and Bank of Japan.[101]

Clearly, the focus at this time was directly on addressing the systemic financial crisis and halting its collapse. The G7 statement and plan were rapidly reaffirmed by the full membership of the IMF and World Bank,[102] as well as by the FSF and the EU, with actions directly following the agreed approach. However, as the crisis progressed, international economic coordination shifted from the G7 to the G20.

---

99 FSF, 'Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience' (Report, FSF, 7 April 2008).

100 Issues of actual regulatory responses to the crisis are beyond the scope of this article. For discussion see Douglas Arner and Lotte Schou-Zibell, 'Global Crisis Response: New Financial Frontiers — Meeting the Challenges in Asia' (Working Paper, Asian Development Bank, June 2010).

101 Board of Governors of the Federal Reserve System, 'Federal Reserve and Other Central Banks Announce Further Measures to Provide Broad Access to Liquidity and Funding to Financial Institutions' (Press Release, 13 October 2008) <http://www.federalreserve.gov/newsevents/press/monetary/20081013a.htm>.

102 IMF, 'Communiqué of the International Monetary and Financial Committee of the Board of Governors of the International Monetary Fund' (Press Release 08/240, 11 October 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08240.htm>.

B *The G20*

Following the initial G7 and FSF-centred approach, the G20 emerged as the new global coordinating mechanism in economic and financial matters. At its first meeting at the heads of government level (it had previously met only at finance ministers and central bank governors or deputies level), in November 2008, attention focused on economic and regulatory responses. At the second heads of government meeting in April 2009, the G20 built upon agreed principles with a series of concrete proposals, focused mainly on regulation but also on economic responses. At the third heads of government level meeting, in September 2009, the G20 proposed changes in four areas of relevance to the international financial architecture and moved on to address a broader array of issues from climate change to food security, and from energy security to the sustainability of development. In September 2009 the G20 also issued a detailed progress report on the implementation of the reforms resolved at the two earlier summits.[103] At its meeting in June 2010, the G20 reaffirmed progress and laid out the agenda for the leaders' summit in November 2010, including a major focus on reform of the global financial architecture.

1 *November 2008*

On 15 November 2008, the G20 leaders[104] released their *Declaration of the Summit on Financial Markets and the World Economy* ('*G20 Declaration*').[105] In the *G20 Declaration*, the G20 discussed the causes of the crisis, committed to supporting an open global economy and defined a range of actions to be taken (under the supervision of G20 finance ministers) to reform financial regulation to avoid future crises. While the majority of press and market attention focused on the various global economic aspects of the *G20 Declaration*, in many ways the most significant aspects of the November 2008 summit related to balanced reform of financial regulation.

The G20 agreed the following overriding objective in reform efforts to avoid future crises:

> Regulation is first and foremost the responsibility of national regulators who constitute the first line of defence against market instability. However, our financial markets are global in scope, therefore, intensified international cooperation among regulators and strengthening of international standards, where necessary, and their consistent implementation is necessary to protect against

---

103 US Chair of the Pittsburgh G20 Summit, 'Progress Report on the Actions to Promote Financial Regulatory Reform' (Progress Report, G20, 25 September 2009) <http://www.g20.org/Documents/pittsburgh_progress_report_250909.pdf>.

104 In addition to the regular membership, the UN Secretary-General and the FSF Chair were invited to attend the November 2008 meeting.

105 G20, 'Declaration: Summit on Financial Markets and the World Economy' (Declaration, G20, 15 November 2008) <http://www.g20.org/Documents/g20_summit_declaration.pdf> ('*G20 Declaration*'). Certain aspects, especially those relating to the global economy and the international financial architecture, build upon the G20 communiqué from the previous week: G20, 'Communiqué: Meeting of Ministers and Governors, Sao Paolo, Brazil', (Communiqué, G20, 8–9 November 2008) <http://www.g20.org/Documents/2008_communique_saopaulo_brazil.pdf>.

> adverse cross-border, regional and global developments affecting international financial stability.[106]

In this context, the G20 established five main principles to guide reforms: (1) strengthening transparency and accountability; (2) enhancing sound regulation; (3) promoting integrity in financial markets; (4) reinforcing international cooperation; and (5) reforming the financial architecture.[107] In supporting these principles, the G20 established a 'comprehensive work plan' under the authority of the G20 finance ministers, who are 'responsible for the development and implementation of these recommendations drawing on the ongoing work of relevant bodies, including the IMF, an expanded FSF, and standard setting bodies.'[108] For each of the five principles, the leaders established a detailed action plan ('the Action Plan'), incorporating immediate actions and medium-term actions.[109] In addition, the leaders tasked finance ministers to give highest priority to six areas: (1) mitigating against pro-cyclicality in regulatory policy; (2) reviewing and aligning global accounting standards, particularly for complex securities; (3) strengthening the resilience and transparency of credit derivatives markets and reducing their systemic risks, including by improving the infrastructure of the over-the-counter ('OTC') markets; (4) reviewing compensation practices as they relate to incentives for risk taking and innovation; (5) reviewing the international financial architecture; and (6) defining the scope of systemically important financial institutions and determining their appropriate regulation and oversight.[110]

While much of the detail had been previously addressed by the FSF, the November *G20 Declaration* established the framework for the content of financial regulation going forward. While most of the focus of the November summit was on economic coordination and regulatory responses, under the fifth principle, the G20 committed 'to advancing the reform of the Bretton Woods Institutions so that they can more adequately reflect changing economic weights in the world economy'.[111] In this respect, the Action Plan mandated six immediate actions and three medium term actions.[112]

The first immediate action directed the FSF to broaden its emerging economy membership. In relation to the FSF, this resulted in the inclusion of members of the G20 which were not FSF members, namely China, Brazil, India, Russia, and Turkey.[113] Other major standard-setting bodies, including among others the BCBS and IOSCO, have now modified their membership to reflect G20 and FSB

[106] *G20 Declaration*, above n 105, 2.
[107] Ibid 3.
[108] G20, 'Action Plan to Implement Principles for Reform' (Action Plan, G20, 15 November 2008) 1 <http://www.g20.org/Documents/g20_summit_declaration.pdf>, ('*G20 Action Plan*').
[109] Ibid.
[110] *G20 Declaration*, above n 105, 4.
[111] Ibid 3.
[112] See *G20 Action Plan*, above n 108, 5.
[113] FSF, 'Financial Stability Forum Decides to Broaden its Membership' (Press Release 10/2009, 12 March 2009) <http://www.financialstabilityboard.org/press/pr_090312b.pdf>.

membership.[114] The second immediate action item delineated responsibilities, with the IMF focusing on surveillance and the FSF focusing on standard-setting, and mandated increased cooperation between the IMF and FSF, especially in integrating regulatory and supervisory processes into the macro-prudential framework and conducting early warning exercises. The third directed the IMF to take a leading role in drawing lessons from the crisis, in close coordination with the FSF and others. The fourth committed to a review of the adequacy of resources of the IMF, the World Bank Group and other MDBs, with increases as necessary. At the same time, these institutions were directed to review and adapt their lending instruments to meet members' needs and to revise their lending roles in the light of the crisis. The fifth was an agreement to explore ways to restore emerging market and developing country access to finance, including private capital. Finally, MDBs were directed to put in place arrangements to support countries with good records and sound policies.

The medium term actions were more ambitious. First, the G20 committed to comprehensive reform of the Bretton Woods institutions so that they could more adequately reflect changing economic weights in the world economy and be more responsive to future challenges, with emerging and developing economies to be given greater voice and representation. Second, the IMF was directed to conduct vigorous and even-handed surveillance reviews of all countries as well as giving greater attention to their financial sectors, including improving integration of the FSAP, all in support of providing improved macro-financial policy advice. Third, the advanced economies and the IMF committed to providing necessary capacity-building programs for emerging and developing economies to support implementation of international regulatory standards.

2 *Working Groups*

Following the November 2008 Summit, four working groups were established on: (1) enhancing sound regulation and increasing transparency (chaired by India and Canada);[115] (2) reinforcing international cooperation and promoting integrity

---

[114] The BCBS extended its membership to include Argentina, Indonesia, Saudi Arabia, South Africa, Turkey, Hong Kong and Singapore: Basel Committee, 'Basel Committee Broadens its Membership' (Press Release, 10 June 2009) <http://www.bis.org/press/p090610.htm>. IOSCO invited the securities regulatory authorities from Brazil, China and India to become members of the Technical Committee: IOSCO, 'IOSCO Technical Committee Invites Brazil, China and India to Join Its Membership' (Media Release, IOSCO/MR/002/2009, 12 February 2009) <https://www.iosco.org/news/pdf/IOSCONEWS136.pdf>. The IAIS did not broaden its membership after the G20 declaration (the last new member was the European Commission in April 2008) — but there has been an increased emphasis on group-wide supervision and macro-prudential regulation, in line with the dictates of the G20. See IAIS, 'Issues Paper on Group-Wide Solvency Assessment and Supervision' (5 March 2009) <http://www.iaisweb.org/__temp/Issues_paper_on_group-_wide_solvency_assessment_and_supervision.pdf>.

[115] The Regulation and Transparency Working Group was tasked to: monitor implementation of actions already identified; develop additional recommendations to strengthen international standards in the areas of accounting and disclosure, prudential oversight and risk management; and develop policy recommendations to dampen cyclical forces in the financial system and address issues of scope and consistency of regulatory regimes: see G20 Working Group 1, 'Enhancing Sound Regulation and Strengthening Transparency' (Final Report, G20, 25 March 2009) 1 <http://www.g20.org/Documents/g20_wg1_010409.pdf> ('*G20 Working Group 1 Report*').

in financial markets (chaired by Mexico and Germany);[116] (3) reforming the IMF (chaired by South Africa and Australia);[117] and (4) the World Bank and other MDBs (chaired by Indonesia and France).[118] In addition, the G20 deputy finance ministers and deputy central bank governors took direct responsibility for addressing macroeconomic cooperation, focusing on generating growth and avoiding negative spillovers.[119]

3 *April 2009: The Second G20 Heads of Government Level Meeting*

On 2 April 2009, the G20 leaders met a second time in London to address issues relating to the financial crisis and resulting economic crisis. In their communiqué, the leaders revisited many of the issues discussed in November 2008, stating that '[w]e face the greatest challenge to the world economy in modern times … [a] global crisis requires a global solution.'[120] To address the financial and economic crisis and prevent future crises, the leaders pledged 'to do whatever is necessary' to: (1) restore confidence and growth; (2) repair the financial system; (3) 'strengthen financial regulation to rebuild trust'; (4) fund and reform the international financial institutions; (5) reject protectionism and promote global trade and investment; and (6) 'build an inclusive, green, and sustainable recovery'.[121]

As headline numbers, the G20 committed to making available US$1.1 trillion in international resources, including: (1) trebling IMF resources to US$750 billion; (2) approving a special US$250 billion SDR allocation; (3) increasing MDB lending by over US$100 billion; (4) making available US$250 billion in

---

[116] The Cooperation and Integrity Working Group was tasked to develop plans to: enhance international cooperation in regulation and oversight of international institutions and financial markets; strengthen management and resolution of cross-border financial crises; protect the global financial system from illicit activities and non-cooperative jurisdictions; and strengthen collaboration between international bodies and monitor expansion of their membership: see G20 Working Group 2, 'Reinforcing International Cooperation and Promoting Integrity in financial Markets' (Final Report, G20, 27 March 2009) http://www.g20.org/Documents/g20_wg2_010409.pdf 13 ('*G20 Working Group 2 Report*').

[117] The IMF reform working group was tasked to review: the IMF's role, governance and resource requirements; the appropriateness of IMF lending instruments and the effectiveness of its surveillance function; the sufficiency of its resources; general arrangements and accountability; and reform of the governance structure so that it more adequately reflect changing economic weights in the world economy: see G20 Working Group 3, 'Reform of the IMF' (Final Report, G20, 4 March 2009) 3–9 <http://www.g20.org/Documents/g20_wg3_010409.pdf> ('*G20 Working Group 3 Report*').

[118] The MDB working group was tasked to address MDB mandates, governance, resourcing and policy instruments in light of the needs of their members and the pressures resulting from the impact of the downturn on developing countries; and reform of governance structures so that they more adequately reflect changing economic weights in the world economy: G20 Working Group 4, 'The World Bank and Other Multilateral Development Banks' (Final Report, G20, March 2009) 4 <http://www.g20.org/documents/g20_wg4_010409.pdf> ('*G20 Working Group 4 Report*').

[119] *G20 Declaration*, above n 105, 4.

[120] G20, 'The Global Plan for Recovery and Reform' (Communiqué, 2 April 2009) [2] <http://www.g20.org/Documents/final-communique.pdf> ('*G20 Leaders' Statement (April 2009)*').

[121] Ibid [4]. See G20, 'Declaration on Delivering Resources through the International Financial Institutions' (Declaration, G20, 2 April 2009) <http://www.g20.org/Documents/Fin_Deps_IFI_Annex_Draft_02_04_09_-__1615_Clean.pdf> ('*G20 IFI Declaration (April 2009)*'); *G20 Working Group 3 Report*; above n 117; *G20 Working Group 4 Report*, above n 118.

trade finance; and (5) selling some IMF gold reserves to provide additional funding for the poorest nations.[122]

In relation to fiscal responses to the crisis, the G20 committed to a fiscal expansion of US$5 trillion by the end of 2010 to 'accelerate transition to a green economy'[123] and to building long-term fiscal sustainability, price stability, and credible exit strategies.[124] Second, in relation to financial stability, the leaders committed to repair their financial systems, based on a previously agreed (and rather limited in content) G20 'framework for restoring lending and repairing the financial sector'[125] and IMF assessments of all their financial sectors.[126] Third, in relation to monetary stability, the leaders committed to refrain from competitive devaluations, and to 'promote a stable and well-functioning international monetary system'[127] backed by IMF assessments.[128]

In relation to financial regulation and supervision, the leaders committed to 'build a stronger, more globally consistent, supervisory and regulatory framework for the future financial sector, which will support sustainable global growth and serve the needs of business and citizens.'[129] In this regard, the leaders argued that regulation and supervision must be designed to: 'promote propriety, integrity and transparency; guard against risk across the financial system; dampen rather than amplify the financial and economic cycle; reduce reliance on inappropriately risky sources of financing; and discourage excessive risk-taking'.[130] Regulators and supervisors were tasked to: '[1] protect consumers and investors; [2] support market discipline; [3] avoid adverse impact on other countries; [4] reduce the scope for regulatory arbitrage; [5] support competition and dynamism; and [6] keep pace with innovation'.[131]

Significantly, the leaders committed to continued implementation of the November Action Plan, with substantial progress in all areas relating to financial regulation,[132] and also extended their commitments in nine major areas,[133] with finance ministers responsible for implementation and the IMF, FSF and FSB monitoring and reporting at the next G20 finance ministers' meeting to be held in autumn 2009.[134] Of these, the most significant commitment related to the reform of the FSF into the FSB.[135] This reform lies at the foundation of the reform of

---

122 *G20 Leaders' Statement (April 2009)*, above n 120, [6].

123 Ibid [6].

124 Ibid [11].

125 Ibid [8].

126 Ibid [10].

127 Ibid [12].

128 Ibid.

129 Ibid [13].

130 Ibid [14].

131 Ibid.

132 Ibid [15]; See G20, 'Progress Report on the Actions of the Washington Action Plan' (Action Plan, G20, 2 April 2009) <www.g20.org/Documents/FINAL_Annex_on_Action_Plan.pdf>.

133 *G20 Leaders' Statement (April 2009)*, above n 120, [15]. See also G20, 'Declaration on Strengthening the Financial System' (Declaration, G20, 2 April 2009), <www.g20.org/Documents/Fin_Deps_Fin_Reg_Annex_020409_-_1615_final.pdf> ('*G20 Financial System Declaration*'); *G20 Working Group 1 Report* above n 115; *G20 Working Group 2 Report*, above n 116.

134 *G20 Leaders' Statement (April 2009)*, above n 120, [16].

135 Ibid [15].

the system of international financial standards as opposed to their content. Second, the FSB and IMF were directed 'to provide early warning of macroeconomic and financial risks and the actions needed to address them.'[136]

In one of two annexes to the April G20 Leaders' Statement, the G20 provided additional detail in respect of their major commitments in the area of financial regulation. Specifically, the G20 Financial System Declaration provides additional detail in eight major areas:[137] (1) FSB; (2) international cooperation; (3) prudential regulation; (4) scope of regulation; (5) compensation; (6) tax havens and non-cooperative jurisdictions; (7) accounting standards; and (8) credit rating agencies.[138]

In relation to strengthening global financial institutions, the G20 provided detail of their headline funding commitments of an additional US$850 billion to 'support growth in emerging market and developing countries by helping to finance counter-cyclical spending, bank recapitalisation, infrastructure, trade finance, balance of payments support, and social support',[139] with additional details provided in a second annex.[140] Essentially, this broke down into US$750 billion for the IMF, through an additional US$250 billion SDR allocation and by expanding the New Arrangements to Borrow by US$500 billion and considering 'market borrowing if necessary'.[141] The *G20 Declaration* on Delivering Resources through the International Financial Institutions ('IFI Declaration') supplements this with a commitment to doubling the IMF's concessional lending capacity and access limits, funded by gold sales.[142] The remaining US$100 billion comes from capital increases for the MDBs.[143] In addition, the IMF is directed to implement a new Flexible Credit Line, and to reform lending and conditionality 'to ensure that its facilities address effectively the underlying causes of countries' balance of payments financing needs, particularly the withdrawal of external capital flows'.[144] The IFI Declaration expands this to include support for certain World Bank and IDA funds.[145]

As a second element relating to the IFIs, the G20 statement addressed issues relating to the relevance, effectiveness and legitimacy of the IMF and MDBs. Specifically, the mandates, scope and governance of these entities are to be reviewed and reformed 'to reflect changes in the world economy and the new

---

136 Ibid.

137 *G20 Financial System Declaration*, above n 133.

138 The *G20 Financial System Declaration*, above n 133, is largely based on analysis and recommendations contained in the *G20 Working Group 2 Report*, above n 116.

139 *G20 Leaders' Statement (April 2009)*, above n 120, [17].

140 *G20 IFI Declaration (April 2009)*, above n 121.

141 *G20 Leaders' Statement (April 2009)*, above n 120, [17] including ratification of the *Fourth Amendment to the IMF Articles*.

142 *G20 IFI Declaration (April 2009)*, above n 121.

143 *G20 Leaders' Statement (April 2009)*, above n 120, [17]. This is elaborated to include 'full and exceptional use of MDB balance sheets' for lending, a 200 per cent capital increase for the ADB and capital reviews for the AfDB, IADB and EBRD, actions by MDBs 'to leverage private capital more effectively' and support for a new IFC Global Trade Liquidity Pool of US$50 billion to support US$250 billion of trade finance and other MDB trade finance facilitation efforts: *G20 IFI Declaration (April 2009)*, above n 121, 2.

144 *G20 Leaders' Statement (April 2009)*, above n 120, [18].

145 *G20 IFI Declaration (April 2009)*, above n 121, 2.

challenges of globalisation'.[146] Better strategic oversight and decision making are mandated to enhance credibility and accountability.[147]

In support of these objectives, the leaders committed to:

> 1 Implementing IMF quota and voice reforms agreed in April 2008, with the IMF to complete the next review of quotas by January 2011.
>
> 2 Giving consideration to greater involvement of the Fund's Governors in providing strategic direction to the IMF and increasing its accountability.
>
> 3 Implementing World Bank reforms agreed in October 2008, with further recommendations on voice and representation reforms on an accelerated timescale.
>
> 4 Heads and senior leadership of the international financial institutions to be appointed through an open, transparent, and merit-based selection process.
>
> 5 Building on the current reviews of the IMF and World Bank, consulting widely in an inclusive process and reporting back with proposals for further reforms to improve the responsiveness and adaptability of the IFIs.[148]

The IFI Declaration adds to these by strengthening cooperation and providing emerging and developing countries greater voice and representation.[149] Finally, the leaders commit to develop a charter for sustainable economic activity embodying a 'new global consensus on the key values and principles that will promote sustainable economic activity'.[150]

Overall, if the Washington communiqué provided the outline of the content of international financial regulation going forward, the London communiqué provided the outline of the system of international financial regulation as well as additional detail regarding content. At the same time, details of the reform of the international financial institutions such as the IMF were left for the next leaders' summit in September 2009 in Pittsburgh.

4 *September 2009: The Third G20 Heads of Government Level Meeting*

In their September 2009 Pittsburgh communiqué, leaders focused on maintaining economic stimulus and working to meet existing commitments.[151] The tone of the Leaders Statement from this summit is almost triumphal. The Preamble recites:

> When we last gathered in April, we confronted the greatest challenge to the world economy in our generation. Global output was contracting … [t]rade was plummeting. Jobs were disappearing rapidly. Our people worried that the world was on the edge of a depression. At that time, our countries agreed to do

146 *G20 Leaders' Statement (April 2009)*, above n 120, [20].
147 Ibid.
148 Ibid.
149 *G20 IFI Declaration (April 2009)*, above n 121, 2.
150 *G20 Leaders' Statement (April 2009)*, above n 120, [21].
151 G20, 'Leaders' Statement: The Pittsburgh Summit' (Statement, G20, 24–25 September 2009) <http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf> 1.

> everything necessary to ensure recovery, to repair our financial systems and to maintain the global flow of capital. It worked.[152]

In line with these laudatory sentiments, the G20 designated itself 'the premier forum for our international economic cooperation',[153] in effect transferring the reigns of global economic coordination from the G7 and G8 to itself. And perhaps it is this sense of satisfaction that led to the decrease in the proposed rate of reform. Despite expectations that the G20 would address reform of key elements of the global financial architecture, namely IMF reform, such matters were left to future meetings.

Fewer concrete reforms were agreed at this meeting than the two previous ones. The principal financial regulatory reforms included those to bank capital adequacy, executive compensation, derivatives markets and financial firm failure. In relation to capital adequacy, the leaders committed to agree to rules by the end of 2010 to enhance the quantity and quality of bank capital, to discourage excessive leverage, and to require counter-cyclical capital buffers (to reduce pro-cyclicality).[154] All major financial centres committed to adopting these changes to the *Basel II Capital Framework* by 2011 and implementing them by the end of 2012. In relation to compensation, the leaders committed to reform compensation policies to align compensation with long-term value creation, by requiring significant portions of variable compensation to be deferred and tied to long-term performance. In relation to derivatives, the leaders committed to improve OTC markets by moving all trading of standardised OTC derivative contracts onto exchanges by the end of 2012.[155] Finally, in relation to cross-border financial institution failures, the G20 made very limited progress; ironically on the very issue that led to the global contagion of the recent financial crisis. The leaders merely committed to address cross-border resolutions of financial institutions by requiring such institutions to have plans in place and by requiring national regulators to have crisis management groups. In addition the G20 called on the FSB to propose other measures to achieve this end by October 2010.[156]

At the same time, unlike previous statements, leaders looked explicitly forward, pledging 'to adopt the policies needed to lay the foundation for strong, sustained and balanced growth',[157] including 'growth without cycles of boom and bust and markets that foster responsibility not recklessness'.[158] In so doing, the G20 committed to: (1) launch a framework that lays out policies and cooperation to generate strong, sustainable and balanced global growth;[159] (2) address regulatory issues;[160] (3) reform the global economic and financial architecture;[161] (4) 'take new steps to increase access to food, fuel and finance

---

152 Ibid.
153 Ibid 3.
154 Ibid 8.
155 Ibid 9.
156 Ibid.
157 Ibid 2.
158 Ibid.
159 Ibid.
160 Ibid.
161 Ibid 2–3.

among the world's poorest while clamping down on illicit outflows';[162] (5) 'phase out and rationalize over the medium term inefficient fossil fuel subsidies while providing targeted support for the poorest';[163] and (6) 'maintain openness and move toward greener, more sustainable growth'.[164]

In relation to sustainable growth, leaders agreed on the need to establish a pattern of growth across countries 'that is more sustainable and balanced'[165] and reduce development imbalances. In this context, leaders agreed that '[e]nsuring a strong recovery will necessitate adjustments across different parts of the global economy',[166] including macroeconomic policies that promote adequate and balanced global demand, and 'decisive progress on structural reforms that foster private [domestic] demand',[167] narrow development gaps 'and strengthen long-run growth potential.'[168]

In this respect, leaders launched a new 'Framework for Strong, Sustainable and Balanced Growth' ('Framework'),[169] based on agreed 'Core Values for Sustainable Economic Activity'[170] which, significantly, includes two principles addressing financial sector development[171] among its eight principles.[172] The Framework is to include: (1) fiscal, monetary, trade and structural policies collectively consistent with sustainable and balanced growth; (2) a sustainable growth model to take into account social and environmental dimensions of economic development; and (3) a process of mutual assessment among G20 members, based on shared policy objectives supported by medium-term policy

162 Ibid 3.

163 Ibid.

164 Ibid 4.

165 Ibid 5–6.

166 Ibid 5.

167 Ibid 2.

168 Ibid 2.

169 Ibid.

170 Ibid.

171 According to the third principle, leaders have a

> responsibility to ensure, through appropriate rules and incentives, that financial and other markets function based on propriety, integrity and transparency and to encourage businesses to support the efficient allocation of resources for sustainable economic performance.

According to the fourth principle, leaders have the 'responsibility to provide for financial markets that serve the needs of households, businesses and productive investment by strengthening oversight, transparency and accountability': ibid 20.

172 Under the first principle, leaders have a 'responsibility to ensure sound macroeconomic policies that serve long-term economic objectives and help avoid unsustainable global imbalances.' Under the second, leaders have a 'responsibility to reject protectionism in all its forms, support open markets, foster fair and transparent competition, and promote entrepreneurship and innovation across countries.' Under the fifth, leaders have a 'responsibility to secure our future through sustainable consumption, production and use of resources that conserve the environment and address the challenge of climate change.' Under the sixth, leaders have a 'responsibility to invest in people by providing education, job training, decent work conditions, health care and social safety net support, and to fight poverty, discrimination, and all forms of social exclusion.' Under the seventh, leaders have a 'responsibility to recognize that all economies…are partners in building a sustainable and balanced global economy in which the benefits of economic growth are broadly and equitably shared', including achievement of 'internationally agreed development goals.' Finally, leaders have a 'responsibility to ensure an international economic and financial architecture that reflects changes in the world economy and the new challenges of globalization': ibid 20–1.

frameworks, with primary responsibility assigned to the IMF and G20 finance ministers and central bank governors.[173] From the standpoint of financial sector development and addressing global imbalances, the Framework includes two commitments: G20 members with sustained, significant external deficits (1) pledged to undertake policies to support private savings and undertake fiscal consolidation while maintaining open markets and strengthening export sectors; and (2) strengthen domestic sources of growth, including (depending on circumstances) increasing investment, reducing financial market distortions, boosting productivity in service sectors, improving social safety nets, and lifting constraints on demand growth.[174] The IMF and World Bank, among others, were tasked to report on options and to develop a mutual assessment process.

In addition, in the context of strengthening support for the most vulnerable, G20 leaders made specific commitments relating to financial sector development with the establishment of a G20 Financial Inclusion Group — tasked to identify lessons learned in providing finance to the poor, promote regulatory and policy approaches, and establish standards on financial access, literacy and consumer protection.

5 *June 2010: The Fourth G20 Heads of Government Meeting*

On 27 June 2010, the G20 released their fourth leaders' summit communiqué,[175] stating that they had held 'our first Summit of the G20 in its new capacity as the premier forum for our international economic cooperation'[176] and focusing on four main areas: (1) the Framework for Strong, Sustainable and Balanced Growth; (2) financial sector reform; (3) international financial institutions and development; and (4) fighting protectionism, promoting trade and investment, addressing other issues and setting the agenda for the next meeting.[177]

In relation to financial sector reform, the G20 focussed on 'four pillars', consolidating previous principles and agenda items: (1) a strong regulatory framework and financial market infrastructure; (2) effective supervision; (3) resolution and addressing systemic institutions; and (4) transparent assessment and peer review.[178] In relation to the financial architecture as opposed to the content of regulation, the more important issues relate to support for FSB peer review and the FSAP. Once again however cross-border financial

---

173 Specifically, the Framework is to include: (1) implementation of responsible fiscal policies; (2) strengthening of financial supervision; (3) promotion of more balanced current accounts and support for open trade and investment; (4) monetary policies consistent with price stability in the context of market oriented exchange rates that reflect underlying economic fundamentals; (5) structural reforms to increase potential growth rates and where needed, improve social safety nets; and (6) promoting balanced and sustainable economic growth in order to narrow development imbalances and reduce poverty: ibid 22.

174 Ibid.

175 G20, 'G20 Toronto Summit Declaration' (Declaration, G20, 26–27 June 2010) <http://www.g20.org/Documents/g20_declaration_en.pdf> ('*Toronto Summit Declaration*').

176 Ibid 1.

177 Ibid.

178 Ibid 4–5 [17]–[22], annex II. See also Letter from the Chairman of the FSB, Mario Draghi, to G20 Ministers and Governors, 24 June 2010; FSB 'Overview of Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability' (Research Report, FSB, 18 June 2010).

institution resolution was pushed back for further analysis and discussion. At the same time, discussions of a possible financial institution levy proved politically fraught and were left to the determination of individual countries.[179]

In relation to international financial institutions and development, the G20 reaffirmed progress on financial commitments from April 2008, including significant capital increases for MDBs and additional IMF resources, initial World Bank ownership reforms, and merit-based selection processes for IFI heads and senior leadership (the last being an important expression of the April 2008 commitment).[180] At the same time, IMF reform was pushed back to the upcoming November 2010 summit.

In relation to the framework for growth, the G20 released studies prepared by the IMF and World Bank but not their own peer assessment[181] and committed to an ambitious agenda of structural reform to support balanced growth and development, with the process beginning to resemble to some extent the original cooperative processes envisaged in the ITO Havana Charter.[182]

Overall, the stage is set at the G20 level for discussions of core global financial architecture reform issues over the coming year.

C *The IMF, MDBs and the WTO*

Unlike the G20, the IMF was largely absent from responses to the crisis until late 2008. Since then (and excluding poverty reduction and growth facilities[183]), it has played an increasingly significant role. First, it has made a range of traditional standby arrangements, including two to developed countries (Iceland[184] and Greece[185]) and to a range of Central and Eastern European states, including both EU Member States (Hungary,[186] Latvia[187] and Romania[188]) and

---

179 See Staff of the IMF, 'A Fair and Substantial Contribution by the Financial Sector' (Report, G20, June 2010) ('*IMF Fair and Substantial Contribution Final Report*').

180 *Toronto Summit Declaration*, above n 175, 5–6, annex III.

181 Staff of the IMF 'G20 Mutual Assent Process — Alternative Policy Scenarios' (Paper presented at the G20 Toronto Summit, Toronto, 26–7 June 2010) <http://www.imf.org/external/np/g20/pdf/062710a.pdf>; World Bank, 'G20 and Global Development' (Paper presented at G20 Toronto Summit, Toronto, 26–27 June 2010).

182 *Havana Charter*.

183 The Poverty Reduction and Growth Facility ('PRGF') was established in 1999: IMF, *Factsheet: The Poverty Reduction and Growth Facility (PRGF)* (31 July 2009) <http://www.imf.org/external/np/exr/facts/prgf.htm>.

184 IMF, 'IMF Executive Board Approves US$2.1 Billion Stand-By Arrangement for Iceland,' (Press Release, 08/296, 19 November 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08296.htm>.

185 IMF, 'IMF Executive Board Approves €30 Billion Stand-By Arrangement for Greece' (Press Release, 10/187, 9 May 2010) <http://www.imf.org/external/np/sec/pr/2010/pr10187.htm>.

186 IMF, 'IMF Executive Board Approves €12.3 Billion Stand-By Arrangement for Hungary' (Press Release, 08/275, 9 November 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08275.htm>.

187 IMF, 'IMF Executive Board Approves €1.68 Billion Stand-By Arrangement for Latvia' (Press Release, 08/345, 23 December 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08345.htm>.

188 IMF, 'IMF Executive Board Approves €12.9 Billion Stand-By Arrangement for Romania' (Press Release, 09/148, 4 May 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09148.htm>.

non-members (Georgia,[189] Ukraine,[190] Belarus,[191] Serbia[192] and Armenia[193]) and others (Seychelles,[194] Pakistan,[195] El Salvador,[196] Mongolia,[197] Costa Rica[198] and Guatemala[199]). Second, it has made use of its Exogenous Shocks Facility[200] to assist Malawi,[201] Kyrgyzstan,[202] Senegal,[203] Tanzania,[204] and

189 IMF, 'IMF Executive Board Approves US$750 Million Stand-By Arrangement for Georgia' (Press Release, 08/208, 15 September 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08208.htm>.

190 IMF, 'IMF Executive Board Approves US$16.4 Billion Stand-By Arrangement for Ukraine' (Press Release, 08/271, 5 November 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08271.htm>.

191 IMF, 'IMF Executive Board Approves US$2.46 Billion Stand-By Arrangement for Belarus' (Press Release, 09/05, 12 January 2009) <http://www.imf.org/external/np/sec/pr/2009/pr0905.htm>.

192 IMF, 'IMF Executive Board Approves €402.5 Million Stand-By Arrangement for Serbia' (Press Release, 09/12, 16 January 2009) <http://www.imf.org/external/np/sec/pr/2009/pr0912.htm>.

193 IMF, 'IMF Executive Board Approves US$540 Million Stand-By Arrangement for Armenia' (Press Release, 09/68 6 March 2009) <http://www.imf.org/external/np/sec/pr/2009/pr0968.htm>.

194 IMF, 'IMF Executive Board Approves US$26 Million Stand-By Arrangement for Seychelles' (Press Release, 08/282, 14 November 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08282.htm>.

195 IMF, 'IMF Executive Board Approves US$7.6 Billion Stand-By Arrangement for Pakistan' (Press Release, 08/303, 24 November 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08303.htm>.

196 IMF, 'IMF Executive Board Approves Precautionary Stand-By Arrangement for El Salvador of about $800 Million' (Press Release, 09/10, 16 January 2009) <http://www.imf.org/external/np/sec/pr/2009/pr0910.htm>.

197 IMF, 'IMF Executive Board Approves US$229.2 Million Stand-By Arrangement for Mongolia' (Press Release, 09/110, 1 April 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09110.htm>.

198 IMF, 'IMF Executive Board Approves US$735 Million Precautionary Stand-By Arrangement for Costa Rica' (Press Release, 09/124, 13 April 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09124.htm>.

199 IMF, 'IMF Executive Board Approves US$935 Million Stand-By Arrangement for Guatemala' (Press Release, 09/142, 23 April 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09142.htm>.

200 See IMF, *Factsheet: The Exogenous Shocks Facility — High Access Component (ESF-HAC)* (21 September 2010) <http://www.imf.org/external/np/exr/facts/esf.htm>. The ESF helps facilitate quick foreign financial assistance to low-income countries that are in danger of failing to meet balance of payments needs due to 'sudden and exogenous shocks' that are hard to predict: IMF, 'IMF Establishes an Exogenous Shocks Facility' (Public Information Notice, 05/163, 8 December 2005).

201 IMF, 'IMF Executive Board Approves US$77.1 Million Exogenous Shocks Facility Arrangement for Malawi' (Press Release, 08/309, 3 December 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08309.htm>.

202 IMF, 'IMF Executive Board Approves US$100 Million Exogenous Shocks Facility Arrangement for Kyrgyz Republic' (Press Release, 08/316, 10 December 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08316.htm>.

203 IMF, 'IMF Approves US$75.6 Exogenous Shocks Facility Arrangement for Senegal and Completes Second Review under the Policy Support Instrument' (Press Release, 08/334, 19 December 2008) <http://www.imf.org/external/np/sec/pr/2008/pr08334.htm>.

204 IMF, 'IMF Executive Board Approves US$336 Million Exogenous Shocks Facility Arrangement for Tanzania and Completes Fifth Review under the Policy Support Instrument' (Press Release, 09/190, 29 May 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09190.htm>.

Mozambique.[205] Third, following G20 discussions, it has expanded its lending arrangements to include a new contingency line[206] and extended credit lines to Mexico,[207] Poland[208] and Colombia.[209] Fourth, once again following G20 arrangements, it has also changed its funding arrangements, including expanding bilateral borrowing arrangements,[210] creating a new note issuance facility[211] and by the additional allocation of US$250 billion SDR.[212] Finally, and perhaps most significantly, it has agreed to provide support to the Eurozone EU Member States, although without any detailed arrangements to date.[213]

Likewise, the World Bank and other MDBs played a relatively limited role until the economic impact of the crisis began to be felt in emerging market and developing countries around the world. Since that time, all have rapidly expanded activities to meet demand. At the same time, the WTO has been largely dormant at the policy level, although crisis-induced disputes appear to be escalating.

---

205 IMF, 'IMF Executive Board Approves US$176 Million Exogenous Shocks Facility Arrangement for Mozambique and Completes Fourth Review under the Policy Support Instrument' (Press Release, 09/247, 1 July 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09247.htm>.

206 See IMF, 'IMF Overhauls Lending Arrangements' (Press Release, 09/85, 24 March 2009) <http://www.imf.org/external/np/sec/pr/2009/pr0985.htm>.

207 IMF, 'IMF Executive Board Approves US$47 Billion Arrangement for Mexico under the Flexible Credit Line' (Press Release, 09/130, 17 April 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09130.htm>.

208 IMF, 'IMF Executive Board Approves US$20.58 Billion Arrangement for Poland under the Flexible Credit Line' (Press Release, 09/153, 6 May 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09153.htm>.

209 IMF, 'IMF Executive Board Approves US$10.5 Billion Arrangement for Colombia under the Flexible Credit Line' (Press Release, 09/161, 11 May 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09161.htm>.

210 IMF, 'IMF Signs US$100 Billion Borrowing Agreement with Japan' (Press Release, 09/32, 13 February 2009) <http://www.imf.org/external/np/sec/pr/2009/pr0932.htm>; IMF, 'IMF Signs US$4.5 Billon Borrowing Agreement with Norway's Central Bank' (Press Release, 09/253, 6 July 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09253.htm>; IMF, 'IMF Signs US$10 Billion Borrowing Agreement with Government of Canada' (Press Release, 09/257, 8 July 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09257.htm>.

211 IMF, 'IMF Approves Framework for Issuing Notes to the Official Sector' (Press Release, 09/248, 1 July 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09248.htm>. China, Russia and Brazil have each announced their intention to invest in notes issued by the IMF to the order of US$50 billion, US$10 billion and US$10 billion, respectively: IMF, 'IMF Managing Director Dominique Strauss-Kahn Welcomes China's Intention to Invest up to US$50 billion in Notes Issued by the IMF' (Press Release, 09/204, 9 June 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09204.htm>; IMF, 'IMF Managing Director Dominique Strauss-Kahn Welcomes the Russian Federation's Intention to Purchase the First-Ever Notes Issued by the IMF' (Press Release, 09/187, 27 May 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09187.htm>; IMF, 'IMF Managing Director Dominique Strauss-Kahn Welcomes Brazil's Intention to Invest up to US$10 Billion in Notes Issued by the IMF' (Press Release, 09/207, 10 June 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09207.htm>.

212 IMF, 'IMF Executive Board Backs US$250 Billion SDR Allocation to Boost Global Liquidity' (Press Release, 09/264, 20 July 2009) <http://www.imf.org/external/np/sec/pr/2009/pr09264.htm>.

213 IMF, 'IMF Welcomes European Actions to Stabilize Euro Area' (Press Release, 10/188, 9 May 2010) <http://www.imf.org/external/np/sec/pr/2010/pr10188.htm>.

V A NEW DESIGN?

From the above discussion, the question emerges: is there a need for a new design for the architecture of the global financial system? Given the global financial crisis, one can now say with unusual certainty that the arrangements put in place following the Asian financial crisis were neither effective in preventing a global systemic financial crisis nor in dealing with such a global systemic financial crisis when it actually occurred.

The fundamental features underlying the original post-war design (open trade, fixed exchange rates, domestic finance and centralised development support) no longer hold true. Instead, our world is one of largely open trade, generally floating fiat currencies, global finance and decentralised development support. The implications of these fundamental changes are well known and have been consistent since the early 1990s: financial and monetary instability resulting in economic crises.

One possibility, which is rarely discussed, is a return to the post-war design: finance can be national, not global, and currencies can be fixed — an idea that China generally supports (and which it has followed domestically to its great benefit). Much research suggests that globalised finance is beneficial over the long term,[214] however the position is far from settled, and the critical question of the extent to which finance should be allowed to be globalised is underexplored. The world did very well in the 1950s and 1960s with national financial systems, as has China more recently. However, if finance is to remain global, as currently seems likely, and there continues to be general support for open trade and foreign investment in non-strategic areas (the economic benefits of which are manifestly clear), then it makes sense to develop international arrangements to support these objectives.

So, if the objective is sustainable global development based upon economic growth underpinned by liberal trade and global finance, what would an effective international design look like and how could it be realistically organised?

Zhou Xiaochuan, Governor of the People's Bank of China (China's central bank), has suggested the following lessons from the current financial crisis and the resulting elements of a design to address the challenges. In 'On Savings Ratio', he focuses on the question of global imbalances at the heart of the global economy.[215] In this respect, he highlights four points. First, comprehensive prescriptions are required, with the US stimulating consumption now and rebalancing its economy later, while East Asia undertakes structural reform to reduce savings. Second, countries and international organisations must strengthen and intensify regulation of international speculative capital flows, including reinforcing regulation, enhancing transparency, developing early warning systems and other preventive measures for developing countries, increasing aid, and providing rapid mechanisms to address temporary balance of payments problems that have limited conditionality. Third, there must be appropriate measures to channel more savings into developing countries and emerging markets as the future growth engines of the world economy. Fourth,

---

[214] See Arner, *Financial Stability, Economic Growth and the Role of Law*, above n 3, ch 1.

[215] Zhou Xiaochuan, 'On Savings Ratio' (Speech delivered at the High Level Conference hosted by the Central Bank of Malaysia, Kuala Lumpur, 10 February 2009) <http://www.bis.org/review/r090327b.pdf>.

the international monetary system should be reformed so as to move away from reliance on the US dollar.

This is a very good starting point, with the G20 largely reflecting all except the final point, but it is not a comprehensive prescription. Instead, we would suggest a more structured approach, focusing on the aspects which have historically proven necessary in the context of the global economy. First, there is a clear need for some sort of mechanism to support economic cooperation and coordination, the role originally intended for ECOSOC and now being filled by the G20. Second, trade arrangements must lie at the heart of the design, with special provision for cross-border financial services. Third, there is a need for some system of macroeconomic policy standard-setting and monitoring, to some extent the role that the IMF has come to play. This would include monetary arrangements. Fourth, there is a clear necessity, if finance remains global, for appropriate financial stability and development arrangements to prevent financial crises and to resolve those crises which do occur, at the level of sovereign and global financial institutions and markets. Fifth, sustainable development is now no longer just a domestic issue but a global imperative — with implications both positive and negative for the entire planet. So this new design needs to genuinely support all nations in developing sustainably.

This presents an outline for an overall design for the international economic architecture incorporating the necessities of both global development and the challenges of global finance. Only after resolving the design at these levels of overall objectives and specific needs, can one sensibly turn to questions of organisation and allocation of responsibilities, mandates and powers and then, finally, to questions of the design of individual organisations, including membership, governance, funding, independence and accountability.

A *Coordination*

The need for international economic cooperation and coordination has been clearly demonstrated by the variety of arrangements which have been attempted, from the League of Nations to the BIS, from the UN to the OECD, from the Comecon to the European Economic Community, to the various Gs, most recently the G20. At the most basic level, it is clearly important for heads of government and senior economic officials to meet periodically and multilaterally to discuss the common issues and concerns which flow from a global economy. However, issues of inclusiveness and exclusiveness immediately arise: who should be there, and who should not, in order to have the most effective discussion? While the formal idea of ECOSOC appeared initially sensible, it is probably the case that the near-universal membership of the UN makes it an unwieldy forum, albeit one that (at the General Assembly level) is highly useful in those cases where there is universal agreement (for example, the MDGs).

As a result, a range of fora have developed over time to bring together smaller numbers of like-minded or important economies. Following the Asian financial crisis, the G7 and G8 served such a global coordinating function but were always regarded as very sub-optimal solutions. As the current global financial crisis unfolded, the G20 has increasingly assumed the central role, with the G7 and G8, EU or Eurozone and other groups (such as the new BRIC meeting, comprising Brazil, Russia, India and China) increasingly acting as interest groups manoeuvring around issues to be discussed at the G20. On balance the G20 has during the global financial crisis emerged as a relatively effective forum for cooperation and coordination. The general view amongst members appears to be that the G20 is both useful and appropriate and probably does not require any greater level of formality than has previously been the case, albeit with the probable exception of the need for some sort of formal secretariat to provide support. One issue that may arise, if the creation of the IMF Council is finally approved, is that this would provide both a permanent set of political representatives and also a secretariat. We would argue that the culture of the IMF, which at times approaches that of free-market fundamentalism, means that this set of representatives and secretariat should not also serve the G20 and that the G20 should be given its own secretariat.

One way to enhance the coordinating role would be to further strengthen the G20 by making it more representative. This could be done by increasing its size slightly by the addition of some regional representatives. While it will be difficult to remove the seat of any current nation, logically Argentina's seat should go to a regional grouping for Latin America ex-Brazil, Saudi Arabia's to a regional grouping for North Africa and the Middle East, and a seat should be given to a Sub-Saharan African grouping. If the G20 was then expanded to a G22, and regional seats added for ASEAN and South Asia, the organisation would directly or indirectly represent the great majority of countries.

B *Trade*

Overall, the WTO has not played an overtly important role in the global financial crisis. However, it has arguably played a significant role in providing an outlet for disputes arising from the crisis-inspired protectionist inclinations of a range of countries around the world. In addition, the April 2009 and June 2010 G20 directives to the WTO (as well as to the OECD and UNCTAD) to engage in third-party monitoring of protectionist measures is a potentially significant development for the organisation and points to an expanding role for it in the global economy. At the same time, the Doha round remains stalled. There are a range of causes of the Doha impasse, including political attention and administrative capacity in many countries being deflected onto other issues such as bilateral and regional trade agreements,[216] terrorism,[217] the crises in global food and energy supplies and climate change. However, perhaps the principal cause of the Doha stalemate is a potent sense of historical grievance. A group of developing countries, led by India, believe that the agreements which made possible the founding of the WTO in 1995 and the simultaneous expansion of the global trade regime into intellectual property, services and investment measures were not entered into, or implemented, in good faith.[218] These nations agreed to

---

[216] See Ross Buckley, Vai Io Lo and Laurence Boulle (eds), *Challenges to Multilateral Trade: The Impact of Bilateral, Preferential and Regional Agreements* (Kluwer Law International, 2008).

[217] See Tim Fischer, 'Trade and Security Tango' in Ross Buckley, Vai Io Lo and Laurence Boulle (eds), *Challenges to Multilateral Trade: The Impact of Bilateral, Preferential and Regional Agreements* (Kluwer Law International, 2008) 11.

[218] Farid Islam, David McArthur and Ian Wilson, 'Globalization and the World Trade Organization: The Challenges Ahead' (Working Paper No 11-07, Utah Valley State College Finance and Economics Department, June 2007) 15.

this historic expansion of the global trade regime in return for promises of improved access to rich country markets for the exports most important to them: agriculture and textiles, clothing and footwear. However, the promised improvements in access, especially for agricultural products, never eventuated. In short, many developing countries believe the former trade round has bequeathed the world a very uneven playing field on trade. The rich countries, on the other hand, complain that the poor will not reciprocate when they offer concessions.

In addition, while support continues for liberalisation of trade in goods, issues of respecting investment, competition and financial services have largely been abandoned, with interest in these issues in all likelihood suffering as a result of the crisis. In respect of financial services, the crisis likely means that there will be very limited support for further liberalisation in the near future. On balance, this is a good thing, as financial services liberalisation brings with it a range of risks and challenges which are not inherent in trade in goods or even investment; and financial services liberalisation needs to be preceded by the implementation of rigorous and effective financial services regulation.

C *Macroeconomic and Monetary Policy*

In a global economy with a global financial system, problems in one country can quickly spread to others, whether or not they are similarly situated. This was a clear lesson from all the crises of the 1980s, 1990s and 2000s. As a result, self-protection requires some sort of mechanism for monitoring the macroeconomic stability of countries. While this could be done at the bilateral level (and is in some cases), efficiency argues for the centralisation of this sort of function — perhaps at the regional level in some cases as well as at the global level. Such monitoring includes transparency at the sovereign level (one area in which changes following the Asian financial crisis have been largely effective) as well as issues relating to fiscal policy and monetary policy.

1 *Macroeconomic Policy*

In the context of macroeconomic policy, the IMF has arguably been rather effective in terms of both enhancing transparency and in providing external monitoring (through its data, research and surveillance functions). As such, there is a strong argument for building upon its effectiveness in these areas. At the same time, it has been much less effective in the context of financial stability (which it has until recently not regarded as a central mandate) and development (where its structural adjustment policies and approaches have often impeded development and transferred the costs of crises to those least able to bear them, the poor in developing countries).[219] Accordingly, there are strong arguments for removing these responsibilities from the IMF's mandate while extending its mandate to include regional arrangements and issues in addition to global and domestic considerations.

---

[219] Buckley and Baker, above n 66; Ross P Buckley, 'Re-Envisioning Economic Sovereignty: Developing Countries and the International Monetary Fund,' in Trudy Jacobsen, Charles Sampford and Ramesh Thakur (eds), *Re-Envisioning Sovereignty: The End of Westphalia?* (Ashgate, 2008) 267.

2 *Monetary Arrangements*

The IMF was also quite effective under the original Bretton Woods monetary system until political and economic circumstances changed such that that system was no longer sustainable. Since the 1970s, however, its role in monetary affairs has arguably been much less effective.

This crisis has brought back into the spotlight questions regarding international currency arrangements which have largely been dormant since the 1970s and the end of the Bretton Woods system of fixed exchange rates. In this context, the highest profile proposals have come from China. In 'Reform the International Monetary System',[220] Zhou Xiaochuan begins with the premise that, as demonstrated by the current global financial crisis, the risks of the current system of floating exchange rates and fiat currencies exceed its benefits and fail in the overall objective of supporting trade and enhancing economic growth and financial stability. In place of the current system, he proposes a new system based on an international reserve currency disconnected from individual nations and able to remain stable. While this is not a new idea, harking back to ideas of Keynes and discussions from the 1970s, it is the first major proposal along these lines from a major economy in decades.

Overall, he suggests that achieving this is a grand long-term vision, requiring a long-term process with specific deliverables. In this context, he suggests three. The first, developed in more detail in his proposal 'On Savings Ratio',[221] is to strengthen surveillance of reserve currency countries — rather a reverse of the approach traditionally taken by the IMF. The second is to broaden the SDR. In this respect, he suggests several elements, including development of a settlement system between the SDR and other currencies; promoting use of the SDR in international trade, commodities pricing, investment and corporate accounts; creating financial assets denominated in SDR, for example from the IMF; improving valuation and allocation, with the SDR based on a basket comprising all major economy currencies, GDP-weighted, with allocation on the basis of real assets. Finally, he suggests entrusting member reserves to the IMF, with an open-ended SDR fund and centralised management.

On balance, these are rather reasonable proposals and pragmatic steps, albeit likely to be politically unattractive to the US. At the same time, the IMF Articles of Agreement do in fact allow countries (with an 85 per cent vote) to adopt general exchange arrangements.[222] Looking forward, there are strong arguments for moving towards regional currency arrangements (notwithstanding the Eurozone financial crisis of 2010) and towards a multi-currency international reserve system.

D *Financial Stability and Development*

As highlighted by the four G20 leaders' summits, financial regulation has been the central focus at the domestic, regional and international levels in the context of the global financial crisis. In looking forward, three elements need to

---

[220] Zhou Xiaochuan, *Reform the International Monetary System* (23 March 2009) The People's Bank of China <www.pbc.gov.cn>.

[221] Zhou, above n 215.

[222] *IMF Articles of Agreement*, above n 6, art IV(2)(c).

be addressed: first, crisis prevention (largely focusing on regulation and supervision); second, crisis management (largely focusing on liquidity arrangements); and third, crisis resolution (focusing on mechanisms to address both sovereign and global financial institution crises).

1 *Crisis Prevention: Regulation*

During the previous period of globalised finance prior to World War I, not only was there no international financial regulation, there was in fact very little domestic financial regulation. At the end of World War II, reflecting the view that while global trade was desirable, global finance was not, the Bretton Woods structure did not provide a specific hard law, international institution-based structure for finance because the design was based on the premise that finance would be domestic and subject therefore only to domestic regulation.[223] This system functioned rather well until the 1970s, by which time finance was once again internationalising. In response to the risks raised by increasing internationalisation of finance, domestic central banks and regulators established informal committees hosted by the BIS. As finance continued to internationalise across the 1970s and 1980s, these initial efforts expanded beyond banking to a range of other areas, including securities and accounting. As a result of the 1980s debt crisis and other cross-border financial problems, these informal committees began to agree to common approaches to common problems, with such approaches implemented via domestic legal and regulatory systems — a network-based, soft law approach of which the *1988 Basel Capital Accord* is the leading and most widely implemented example.[224]

During the 1990s, as finance became increasingly global, so did financial crises, especially in emerging market economies. Following the Mexican and Asian financial crises, much was said and written about the need for a 'new international financial architecture' to meet the needs of global finance. In the end, the system adopted was to organise the disparate soft law networks in a new informal organisation, the FSF. However, for the first time, the international standards being developed were to be supported by a rudimentary level of monitoring at the international level, primarily through the IMF and World Bank or FSAP and ROSC process, moving standards and standard-setting organisations from a purely agreement-based system, to one with a limited level of international review.

As a result of the current global financial crisis, this system, while not fundamentally a cause of the crisis, has been exposed as insufficient to meet the realities of global finance and its attendant risks. In looking at this issue, there are a variety of potential approaches.

At the most fundamental level is the question which was addressed at Bretton Woods: whether on balance finance should be global? The decision taken at Bretton Woods was that it should not. In Keynes' words, 'above all, let finance be primarily national'.[225] Yet in the context of the global financial crisis, despite some misgivings, the consensus at least among the economic elites around the

---

[223] See generally, Arner, *Financial Stability, Economic Growth and the Role of Law*, above n 3.

[224] See Michael S Barr and Geoffrey P Miller, 'Global Administrative Law: The View from Basel' (2006) 17 *European Journal of International Law* 15.

[225] John Maynard Keynes, 'National Self-Sufficiency' (1933) 22(4) *Yale Review* 755, 769.

world appears to be settling in favour of continued globalisation of finance, albeit with enhanced mechanisms for prevention and resolution of problems. Civil society groups and people in a number of countries have considerably more doubts about financial globalisation but by and large these are not shared by the G20.

In this context, the discussions in many ways have followed the forms of global administrative law, with a range of approaches ranging from a traditional hard law treaty-based approach centred on a formal international organisation down to uncoordinated domestic responses.[226] While the latter have been found to be ineffective in the context of global finance, despite periodic calls for a global financial regulator, a traditional international law or institution approach does not seem feasible at this time, even in the context of the EU: issues of domestic sovereignty continue to make a global regulator for global finance unlikely for the foreseeable future. In looking forward, on balance, it appears to make little sense to incorporate financial regulation into the WTO framework, both because the WTO system is already overburdened and also because its focus on negotiated liberalisation combined with dispute resolution is not overly useful in the context of financial regulation. At the same time, however, if amendments are to be made to the *IMF Articles of Agreement*, then this would also present an opportunity to provide the IMF with a specific mandate and related tools in relation to financial regulatory surveillance. However, it is uncertain at this time whether actual amendment will be the path chosen — though for a variety of reasons beyond the scope of this article, this is probably in fact necessary though not politically simple, even in the present crisis environment.

At the other end of the spectrum, purely soft law cooperative arrangements (such as the Basel Committee and the *1988 Basel Capital Accord*) as existed until 1999 have proven ineffective in preventing and resolving international crises. Following financial crises in the 1990s, to some extent, the cooperative mechanisms were given a greater level of coordination through the FSF and a higher level of formality through the FSAP and ROSC monitoring mechanisms. Once again, however, a hardened soft law approach of coordinated networks with limited external monitoring of compliance proved insufficient to address either prevention or resolution of a truly global financial crisis.

Discussion has thus turned towards intermediate arrangements. At the next level down from a hard law (that is, international organisation) approach are discussions of creating hard law to underpin for the existing network model.[227] While this is the approach which is largely being pursued in the EU following

---

[226] For detailed discussion, see Douglas W Arner and Michael W Taylor, 'The Global Financial Crisis and the FSB: Hardening the Soft Law of International Financial Regulation?' (2009) 32 *University of New South Wales Law Journal* 488.

[227] One approach would be a new treaty: Barry Eichengreen, 'Not a New Bretton Woods but a New Bretton Woods Process' in Barry Eichengreen and Richard Baldwin (eds), *What G20 Leaders Must Do to Stabilise Our Economy and Fix the Financial System* (VoxEU.org, 2008) 25 <http://www.voxeu.org/reports/G20_Summit.pdf>. Another possible approach would be an amendment to the BIS Charter, to provide the BIS with an explicit mandate in the area of financial regulation and formally bringing the FSB under its umbrella. Under this approach, the FSB would become part of an existing international institution without the necessity of establishing a new institutional framework.

the Larosière Report,[228] with European authorities composed of domestic agencies responsible for setting regional regulation but with domestic enforcement, this approach has to date not been followed at the international level and may still prove unworkable even in the EU context.

Instead, the approach which has been adopted at the international level by the G20 is a further hardening of the pre-crisis system, through the strengthening of the FSF into the FSB, with a wider range of member commitments and strengthened peer review and external monitoring mechanisms and with enhancements to the *1988 Basel Capital Accord*. The G20 is now following the experiences of the FATF and its peer review and external monitoring systems. Most explicitly, this methodology has been adopted in relation to banking secrecy, tax disclosure, information sharing and cooperation in enforcement, and financial regulatory standards. Unfortunately, while this may be the most effective compromise possible under present circumstances, it must also be said that this is largely the model adopted by the EU in the Lamfalussy Process — and which is now being viewed as less than satisfactory in the context of the operations of a truly single European financial market, even at the wholesale level only, as largely existed prior to the current crisis.[229] At the same time, the experiences of the IOSCO Multilateral Memorandum of Understanding (‘MMOU’) provide potentially a very useful model for the development of the FSB as a truly international self-regulatory organisation, of the sort familiar to financial regulators around the world. In this way, standard-setting would continue to rest with individual standard-setting organisations such as the BCBS and IOSCO, with coordination through the FSB. Under this framework, the FSB would be a membership organisation, with requirements for initial and continuing membership and monitoring of those requirements through peer review (similar to the IOSCO, MMOU and FATF mutual evaluation systems). Under this structure membership would be open at varying levels with differing requirements and monitoring.

Overall, the FSB might work reasonably well when it comes to coordination and prevention functions without it being a hard-law institution, but the issue which remains is how to handle cross-border financial institution failures. Although the FSB will play a role in facilitating discussion among its members, what is lacking from the system is the ability to put its members under binding obligations that will lead to a greater willingness to burden-share the costs of cross-border financial institution failures. Some form of binding arbitration mechanism might be the best way to achieve this (and this in fact is the approach being pursued in the EU), but without a more formal and binding arrangement for burden sharing and dispute resolution, probably through a formal treaty or international organisation, the problems raised by the failure of global financial institutions will not be adequately addressed by the current approach to

---

228 European Commission, *The High-Level Group on Financial Supervision in the EU: Report* (2009) (‘Larosière Report’).

229 Ibid.

international financial regulation.[230] As in many ways these were among the major causes of the systemic phase of the global financial crisis, failing to properly address these issues indicates that significant risks will continue to exist in the context of global finance. Unfortunately, based on the unsuccessful experience of the IMF's proposals for a sovereign debt restructuring mechanism[231] and the weakness of the G20's resolutions on this issue, the outlook for failure resolution mechanisms for cross-border financial institutions is not overly bright.

An approach more likely to meet with success is one that recognises that while globalised finance is probably with us for the foreseeable future, we have allowed the financial sectors of some developed nations to grow too large in size[232] and to devote too large a proportion of their activities to casino type speculation rather than the intermediation of capital, which is the core function of a financial sector. The globalisation of finance has made its taxation more difficult, as capital can so easily migrate to lower tax jurisdictions. And the relative undertaxation of financial sectors generally has contributed to their growth.

Hedge funds pay very little tax and investment banks pay less than their fair share. This matters on equity grounds. It matters more on efficiency grounds. If there is a sector of the economy that pays too little tax, resources should logically flow into it. And this is what we have seen over the past 30 years. As one example, the assets under the management of hedge funds in Australia increased by 30 times from 2000 to 2008.[233] These savings, that could be being put to productive uses, are in large measure going into socially useless and purely speculative trading.

Financial markets have grown disproportionately to the real economy. For example, today, Australia's financial market turnover is 81 times greater than real economic turnover (GDP). Before the global financial crisis the ratio was 98 times greater.[234] Speculation has become the dominant form of financial market activity and works against productive investment. Short-term speculation distorts and damages the critical price-setting function of markets, and it consumes financial assets that could be invested long-term in the real economy.

We need to reweight our markets in favour of longer-term investment and away from rewarding short-term speculation. This is not a radical idea. For example, in 2009, the Aspen Institute issued a paper entitled 'Overcoming

---

230 For discussion, see Douglas W Arner and Joseph J Norton, 'Building a Framework to Address Failure of Complex Global Financial Institutions' (2009) 39 *Hong Kong Law Journal* 95, 127–8 arguing that, in the absence of effective international arrangements, individual jurisdictions should adopt an approach based on requirements for separately capitalised and regulated subsidiaries for foreign financial institutions.

231 See IMF, *Factsheet: Proposals for a Sovereign Debt Restructuring Mechanism* (22 January 2003) <http:// http://www.imf.org/external/np/exr/facts/sdrm.htm>. See also Buckley, above n 3, 145–50.

232 *IMF Fair and Substantial Contribution Final Report*, above n 179, 14.

233 Australian Trade Commission, *Alternative Investments in Australia* (September 2010), <http://www.austrade.gov.au>.

234 G North compiled these figures based on data sourced from the Australian Financial Markets Association and the Australian Bureau of Statistics. See Australian Financial Markets Association, *2010 Australian Financial Markets Report* (2010) and Australian Bureau of Statistics, *Australian National Accounts: National Income, Expenditure and Product (December Quarter 2009*) (2010).

Short-Termism', signed by a spectrum of leaders of corporate America, including Warren Buffett, Pete Peterson, former Chairmen of IBM and Goldman Sachs, and others.[235] We need to slow our markets down to human time and encourage them to trade on the value of the asset being traded, not merely its market performance in the hours or minutes preceding the trade. The best way to do this is with a transactions tax.

A financial transaction tax would be a very small impost of between 0.005 per cent and 0.05 per cent which would be levied on all financial transactions globally, generating large amounts of funds to be available to support development and provide liquidity assistance in future financial crises. Estimates vary because of the dissuasive effect of the tax on transactions, but reliable revenue estimates for a half basis point (0.05 per cent) tax of over US$500 billion annually are common.[236] These funds could do so much good: build reserves to insure against future financial crises; finance the adaptations required to combat climate change; more than halve global hunger and poverty in the next decade; and still have money left over to improve drinking water and health care in poor countries. And all this from a tax that would be essentially pain-free, as this tax would improve the operation of capital and foreign exchange markets by dissuading excessively speculative and short-term transactions. Warren Buffett and George Soros have made their fortunes in the financial markets, and each believe this tax would improve the operations of markets.[237] Removing these 'noise' transactions will enable the markets to trade more effectively on fundamentals. The global financial crisis has highlighted the limits of unregulated markets. Now is the time to begin to reconceive the global financial system and its supporting architecture.

This idea for a global financial transactions tax grew from the idea of James Tobin for a small tax on all foreign currency transactions.[238] This Nobel Prize winning economist wanted a tax to work as sand in the cogs of foreign currency trading, to improve the functioning of these markets. Any revenue raised was incidental. With laissez-faire market ideology on the rise when he advanced the idea in 1972, the proposal gained little traction. But the times, and the markets, have changed.

This is a quite remarkable tax and one that most economists agree would improve the workings of these markets and that is worth having irrespective of the revenue raised, and it has attracted qualified and somewhat tentative IMF

---

235 The Aspen Institute, *Overcoming Short-Termism: A Call for a More Responsible Approach to Investment and Business Management* (2009)

236 Max Lawson estimates a return of US$700 billion per year from a 0.05% tax. Max Lawson, 'Financial Transaction Tax — The Time is Now!' (11 December 2009) Rethinking Finance <http://rethinkingfinance.org/documents/financial-transaction-tax-time-now>. See also Stephen Schulmeister, 'Boom-Bust Cycles and Trading Practices in Asset Markets, the Real Economy and the Effects of a Financial Transaction Tax' (Working Paper No 364, Austrian Institute of Economic Research, March 2010) 21–2. Assuming global GDP figures for 2007, a tax rate of 0.05%, and medium range dampening effects on transaction levels, Schulmeister estimates tax receipts of US$661.1 billion.

237 Center for Economic and Policy Research, *Support for a Financial Transactions Tax (FTT)* (2010).

238 James Tobin, 'A Proposal for International Monetary Reform' (1978) 4 *Eastern Economic Journal* 153.

support.[239] The predictable voices in opposition come from those who profit from the short-term, speculative trading. Such a tax would help a dysfunctional system to work better.

The opponents of such a tax claim it is unworkable and that its implementation would require the cooperation of every country in the world.[240] These objections had substance two decades ago. They no longer do. In the interim, trading has moved onto a small number of large-scale settlement and clearing systems. These systems are well adapted to levying such a tax and attempts to avoid the tax would be uneconomic, for returning to the informal proprietary trading technologies of 30 years ago would impose costs many times higher than the tax.

The tax is not a radical idea. The UK and Hong Kong (for instance) have both long imposed a stamp duty of ten times this magnitude on share sales, and the trading has not moved elsewhere. Universal agreement is not required among nations. Essentially all that is needed is the agreement of the US and the EU, with the addition of China ASEAN+3 and the remaining BRIC countries being useful but not essential. Alternately, the EU could implement it alone, without the US if necessary, though due to fears regarding competitiveness it is unlikely to do so.

The world needs this tax to reduce short-term speculation in foreign exchange and capital markets and render them more stable and efficient; to accumulate into reserves to be used instead of taxpayer funds in the event of another bank crisis; and to provide a reliable and much-needed source of revenue with which to reduce global poverty and hunger.

A financial institutions levy, on the other hand, is a small levy probably imposed on all financial institutions, not just banks, and calculated on their assets. The IMF has actually called for two such levies. A Financial Stability Contribution to be levied on assets and accumulated to fund future bail-outs and a Financial Activities Tax, to be levied on financial institutions' profits and staff remuneration, and to have the delightful acronym, FAT. The IMF suggests a FAT be set at levels to rise from 0.2 per cent to 0.4 per cent of a nation's GDP annually.[241]

The need for both a levy and a tax (either on activities or transactions) is fairly clear if one looks at the balance sheets of most rich nations, which are in tatters. According to the IMF, the G7 nations alone owe US$30 trillion in debt.[242] The levy is needed to build up reserves so that if banks require bailing out again, as they most certainly will, the next bailout will be funded by the financial sector, not taxpayers. As the IMF has put it:

> Expecting taxpayers to support the [financial] sector during bad times while allowing owners, managers and/or creditors of financial institutions to enjoy the gains of good times misallocates resources and undermines long-term growth.[243]

---

239 See *IMF Fair and Substantial Contribution Final Report*, above n 179.

240 Eric Helleiner, 'The Contemporary Reform of Global Financial Governance: Implications of and Lessons from the Past' (Discussion Paper, No 55, United Nations Conference on Trade and Development, April 2009) 9.

241 *IMF Fair and Substantial Contribution Final Report*, above n 179, 14.

242 See IMF, *World Economic Outlook* (October 2010).

243 *IMF Fair and Substantial Contribution Final Report*, above n 179, 9.

And the managers of financial institutions are already enjoying the gains again. In April 2010 the 25 top US hedge fund managers 'earned' US$25 billion.[244]

The levy rates being discussed are sufficient to fund future bailouts but are inadequate to plug the massive holes in national balance sheets, holes created by the need to bail out financial institutions, and then to stimulate the economies to counter the damage done by the financial crisis. So one reason we need a financial transactions tax is that it would raise many times the amount of a levy, or a FAT, and these funds are needed, to repair national balance sheets and to address the massive problems remaining in relation to global poverty and climate change adaptation in poor countries.

But there is another, even more pressing, reason why we need a transactions tax. It is because we need efficient markets. Markets are marvellous. They determine prices and allocate resources far better than any other mechanism. Capitalism relies on markets working. As the global financial crisis has proven dramatically, global financial markets are less regulated, and work less well, than in decades past.

Many French hedge funds recently moved their trading computers to London. The time it took electronic messages to travel from Paris was placing them at a disadvantage. In the US, Goldman Sachs has moved its computers right beside those of NASDAQ, the online exchange, and each millisecond gained, by Goldman's own admission, is worth at least US$100 million to it.[245]

A substantial proportion of financial markets activity is now measured in seconds or less. Assets are often bought, held and sold in under a second. No human mind is brought to bear on these individual trades and the economic fundamentals of the value of the asset are not factored into the algorithms which direct the computers.

Lord Turner, head of the UK's Financial Services Agency, has described some of this type of trading as 'socially useless'.[246] It is worse than that. Super brief trades move prices a little. Momentum programs then come into play and trade on these micro-movements, reading them as the beginning of a trend. The net result is prices that for long periods deviate substantially from what they would be if based on economic fundamentals. Financial markets today for much of the time send wildly wrong price signals. This is a major source of inefficiency, and it is not the only one.

The standard counterargument is that these trades provide liquidity to the market and arbitrage out price differences.[247] In fact most markets have excess liquidity, and these trades are far more likely to generate price inaccuracies than arbitrage away differences.[248] A bank levy and FAT as proposed by the IMF are

---

[244] Stephen Taub, *The Rich List* (31 March 2010) Absolute Return + Alpha <http://www.absolutereturn-alpha.com/Archive.aspx>

[245] Tee Williams, *Oh Dear! I'm Queued! It's Latency!* (2010) MondoVisione <http://www.exchangeandbook.co.uk/index.cfm?section=articles&action=detail&id=78441>.

[246] Angela Monaghan, 'Tax "Socially Useless" Banks, Says FSA Chief Lord Turner', *The Telegraph* (online), 27 August 2009 <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/6097420/Tax-socially-useless-banks-says-FSA-chief-Lord-Turner.html>.

[247] Stephen Schulmeister, 'A General Financial Transactions Tax: A Short Cut of the Pros, the Cons and a Proposal' (Working Paper No 344, Austrian Institute of Economic Research, October 2009) 4.

[248] Ibid 7–8.

both worthwhile reforms, but neither will reorient market behaviour. For this reason, above all others, a financial transactions tax is to be preferred over a FAT.

The globalisation of finance has benefited the financial markets far more than any other sector of the economy. The incredible rise in profitability of investment banks, hedge funds and private equity funds has translated into incredible political power. These forces are opposed to any regulation of the markets from which they profit so handsomely. Yet we need to reclaim those markets for their real functions, to serve the real economy that provides our livelihoods. This will only happen when there is a strong groundswell of public opinion in favour of a transactions tax or of other measures designed to once again get markets trading on fundamentals. One suspects, however, that global public opinion is not yet sufficiently strong for the G20 nations to adopt a transactions tax.

The politics of the issue are at least relatively clear. Most EU nations support a bank levy, but are more divided when it comes to a transactions tax. Britain will impose a bank levy but the coalition government appears to have dropped the idea of a transactions tax, which was part of the Liberal Democrat's policy platform before the election. The US administration supports a bank levy, but is silent on a transactions tax. Indeed, if international press reports are correct, the only voices consistently raised against a bank levy are those of Canada, Russia and Australia, who argue it would penalise the banks of nations who came through the global financial crisis unscathed.[249]

If the Australian government is arguing against the bank levy in international fora, it is wrong to do so. It indicates the political influence of the big four banks, rather than good policy. The bank guarantee charge earned the government a large amount of money, far more than Treasury had anticipated, although it will not now disclose how much revenue was collected. As the banks are now weaning themselves off using the formal guarantee of their borrowings, the income from it is declining, rapidly. But of course an informal guarantee remains in place. It is manifestly clear that no Australian federal government, of either persuasion, would allow a major bank to fail in this country. So if Australian taxpayers are, in effect, going to stand behind our banks, and the banks' credibility in the marketplace is strengthened thereby, the Australian taxpayer should be compensated for doing so.

The issue is not whether a levy would penalise banks that navigated the shoals of the global financial crisis. The issue is that we the people confer an extraordinary benefit on a company when we grant it a banking licence. We confer an even greater benefit when we impliedly commit the public purse to backstop the bank should it fail. And the people are entitled to ask for fair compensation for these massive benefits conferred upon one sector of industry to the exclusion of all others. A bank levy would be that compensation. A financial transactions tax would be an even more important reform that would redirect market activity in beneficial ways away from excessive speculation and back towards the core functions of a financial sector.

---

[249] Roya Wolverson, *The G20's Twenty Agendas* (24 June 2010) Council of Foreign Relations <http://www.cfr.org/publication/22542/g20s_twenty_agendas.html>.

2 *Crisis Management: Liquidity*

Assuming that crises will happen in future — both at the country level and in individual global financial institutions and markets — there is a clear need for appropriate liquidity arrangements to be put in place in advance. One lesson of the global financial crisis has been the continued validity of Bagehot's classic lender of last resort prescription: a lender of last resort needs to stand ready to provide liquidity quickly to solvent borrowers on the basis of any reasonable collateral.[250] Perhaps today, this could better be formulated as 'liquidity provider of last resort'. Those central banks (such as the ECB) which planned in advance for such circumstances and built appropriate systems were those which were best able to weather the contagious failure of financial institutions during the acute phases of the current crisis.

At the international level, there are two sides to this: temporary liquidity problems that face (1) countries and (2) individual financial institutions. In relation to countries, the initial response largely came from the major central banks (especially the US Federal Reserve and to a more limited extent the ECB). This however is a function which could reasonably be centralised with the IMF and is arguably being done through the new Flexible Credit Line. The weakness — already identified by the G20 — is that any such arrangement in today's global financial system must be backed by the availability of very large amounts of money, certainly beyond the IMF's current capacity. As such, the mechanism — essentially an emergency liquidity mechanism — requires a major extension of the IMF's access to funding, including SDR allocations and multilateral borrowing arrangements, including potentially from not only public sector lenders but also private sector lenders.

At the level of individual global financial institutions, the IMF is not well-suited as a potential liquidity provider of last resort. As a result, it seems that individual global financial institutions are likely to remain quite closely associated with their home jurisdiction and the major central banks of jurisdictions in which they operate — a reality clearly exposed in the context of the global financial crisis.

3 *Crisis Resolution*

Unfortunately, not all crises are liquidity crises and it is certain that in the future both countries and individual global financial institutions will periodically face debt or solvency crises, as has always been the case.

In the context of resolving sovereign debt crises, the IMF has emerged as the default option: if problems are not severe, bilateral central bank, sovereign or regional assistance may be available (and was made available during the global financial crisis). However, in circumstances involving severe financial problems (such as in Iceland and Greece), the politically acceptable solution has been to send the problem to the IMF. The IMF is not an attractive resolution authority in such circumstances, which is perhaps one incentive for countries to avoid these sorts of problems as far as is possible. This was certainly the reaction in Asia after the Asian financial crisis, as nations amassed massive foreign exchange

---

[250] Walter Bagehot, *Lombard Street: A Description of the Money Market* (John Wiley and Sons, first published 1873, 1999 ed).

reserves as a form of insurance against future possible IMF interventions in their economies. But even in the context of Asia's discussions relating to IMF alternatives, it has still been generally accepted that severe problem cases will have to be sent to the IMF as being too politically difficult and potentially expensive to resolve any other way — the eventuality finally accepted by the Eurozone in 2010.

One alternative may be a special board — such as a Council covering both the IMF and the World Bank — which would handle such issues, rather than leaving them to the IMF staff, with the IMF focusing on short-term funding and assistance and the Bank providing longer-term structural adjustment funding, perhaps in coordination with the relevant regional development bank.

The best alternative would be a formal sovereign bankruptcy regime, at first implemented by ad hoc arbitration. The US has an effective bankruptcy scheme for municipal bankruptcies, and this could serve as a most useful precedent for a scheme for sovereign debt crises.[251] Civil society continues to press for some form of a fair, transparent arbitral procedure to resolve instances of sovereign debt problems as was witnessed in Argentina in 2001.

Unlike sovereign crises, it is certain that the IMF is not the appropriate entity to address solvency crises of global financial institutions. At the moment, the solution is largely domestic. This suggests that individual jurisdictions should require separately capitalised and regulated subsidiaries rather than cross-border branching in financial services and highlights one of the greatest conflicts between financial services liberalisation (as negotiated through the WTO) and the requirements of domestic financial stability. As noted above, any other solution probably requires an international treaty, perhaps administered by the FSB.

E *Sustainable Growth and Development*

In looking at this issue, it is becoming increasingly clear that issues relating to climate change and development are inextricably linked. National actions, as committed to at the Copenhagen summit on climate change, are obviously essential, but there is also a real opportunity, and a pressing need, for the MDBs to take an active role. In addition, as noted above, the IMF has proven a damagingly ineffective development lender and its activities should be limited to exclude longer-term lending, allowing it to focus on macroeconomic surveillance, liquidity assistance and perhaps monetary arrangements.

The ongoing reform of the governance of the IMF and the World Bank is critical. There have been tiny reforms in the past two years, but essentially, most votes will remain in the hands of the US and the leading European countries after these reforms are implemented. The principal clients of these institutions need a real voice in their governance. The current crisis presents the first real opportunity for this to take place, at least to the extent of greatly extending the rights of G20 developing and emerging economies.

---

[251] Ross P Buckley, 'The Bankruptcy of Nations: An Idea Whose Time Has Come' (2009) 43 *International Lawyer* 1189.

VI CONCLUSION

While much has been taking place in the context of the international financial architecture, it is unlikely that an effective, comprehensive international design will emerge, from the November 2010 G20 summit in South Korea or elsewhere.

Given we are living through the aftermath of the largest financial and economic crisis since the 1930s, what is remarkable about the changes enacted in response to it is that they have been so minor. As we have analysed, there have been a raft of changes in regulation, which are still evolving at the time of writing, but all are essentially at the fringes. No major changes, such as the introduction of a global financial transactions tax, or a global sovereign bankruptcy regime, or a fundamental reconceptualisation of the role of ratings' agencies, have been implemented. The Obama Administrations' plan (implemented through the *Dodd-Frank Wall Street Reform and Consumer Protection Act*)[252] to require banks that accept deposits to close their proprietary trading desks is a significant step, but in all probability not one that would have avoided the global financial crisis. A bank does not need to trade its own money to be able to generate toxic loans, and repackage them into highly-rated securities of questionable value.

The absence of fundamental regulatory change contrasts sharply with the response of the US government, in particular, to the Great Depression. The *Securities Act of 1933*,[253] the *Securities Exchange Act of 1934*,[254] the *Glass-Steagall Act*[255] (which entirely separated commercial from investment banking) and other major enactments, completely reshaped the US financial sector and financial services business in the US for the rest of the century. Under that design and those developed elsewhere (in Germany, in Japan, in developing Asia), finance was meant to provide capital to industry and individuals, and that remains the major role of financial institutions in most economies. Now, however, in the global markets, financial products are seen as an end in themselves, as a source of profit to the financial institutions that invent them.

More fundamentally, however, if money is a good, then trade in it is beneficial. The doctrine of comparative advantage, the idea that trade between nations is mutually welfare enhancing, is almost universally accepted, and if the playing field is roughly fair, trade certainly works. And if we treat money as an end in itself, more trade in money must make countries better off. This is an intellectual trick, and it is the trick that underpins financial globalisation. The globalisation of finance offers real benefits: cheaper credit and more sophisticated hedging instruments with which to manage risk. But money is different from goods. So the globalisation of finance brings with it real risks.

Since 1994 sovereign financial crises, globally, have become appallingly frequent. There is a good reason for this. For as long as we treat capital as something it is not, we can believe that the ongoing liberalisation of national financial systems will make everyone better off. For as long as we misunderstand money, the global financial system will remain dysfunctional. It is not that

---

[252] Pub L No 111-203 2010 Stat 4173 (2010).

[253] 15 USC §§ 77a–77aa (1933).

[254] 15 USC §§ 78a–78jj (1934).

[255] Pub L No 73-66, 48 Stat 162 (1933).

financial globalisation does not bring benefits, but the ways in which capital differ from goods means it has to be managed and regulated far more carefully than has been the case.

We need to rethink fundamentally the role of capital and financial products and the privileges and rights we, the people, confer on banks by granting them a banking licence. The only truly new thinking on this subject is in the *Stiglitz Commission Report*.[256] But when the recommendations of this report were discussed at the UN in the month leading up to the UN Conference on the Economic Crisis in New York on 24–6 June 2009, developed countries blocked and obstructed most of the innovative proposals.

Nonetheless, the Commission's report is a valuable resource. The Commission divided its recommendations into two groups: immediate measures, and longer-term systemic reforms. As an immediate response, the Commission proposed that US$250 billion of SDRs be issued through the IMF for each year the crisis persists. It proposed that rich countries quickly donate one per cent of their own domestic stimulus packages to low income countries, to be applied there for similar purposes, and that regional liquidity arrangements such as the Chian Mai Initiative Multilateralisation in East Asia be used to inject extra funds into regional economies. The Commission also recommended establishing a new credit facility without conditions attached, and proposed an international panel on economic policy comprised of government representatives, leading academics and others, similar to the Intergovernmental Panel on Climate Change, to advise on coherent international responses to the global economy.

As we have seen, the G20 partially adopted one of these recommendations — the US$250 billion SDR allocation — but only as a once-off measure. The proposals that would have been an immediate help to developing countries or would have significantly reshaped global economic relations going forward were not taken up.

The Stiglitz Commission tackles the longer-term systemic reform task with many recommendations. It recommends that new financial mechanisms should be introduced to mitigate risk, including international institutions lending in local currencies. The governance of the IMF and World Bank should be reformed to make them responsive to the needs of their clients. Highly indebted countries should be given a moratorium or partial cancellation of debt, and new mechanisms for handling sovereign debt restructuring, such as a sovereign bankruptcy court, should be introduced. The Stiglitz Commission recommended the establishment of a Global Economic Coordination Council at the level of the UN General Assembly and Security Council, meeting annually, as well as a Global Financial Regulator and a Global Competition Regulator. Perhaps most controversially, the Stiglitz Commission recommended that the US dollar should be replaced as the global reserve currency by something like a greatly expanded SDR regime.

The first four of these proposals are the most achievable. There are strong reasons why all rescheduling of developed to developing country loans through

---

256 UN, *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System* UN Doc A/CONF.214/CRP.1 (21 September 2009) <http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf> ('*Stiglitz Commission Report*')

the Paris Club (a group made up of the financial officials of the world's nineteen richest countries) should be in local currency, as should all lending by international financial institutions such as the IMF and World Bank. Our current system places the currency risk on the party least able to bear it, the borrower. Lending in local currency puts the currency risk on those best able to bear it and hedge against it, the lenders, as well as acting to stimulate domestic financial markets. Likewise there are strong arguments for debt relief for more countries than currently receive it, and for an orderly, rules-based approach to sovereign insolvencies.

The remaining recommendations are far more controversial. To be effective, global financial and competition regulatory authorities are going to require real power to make rules, which raises such strong sovereignty concerns that the establishment of such regulators is highly unlikely. At the same time, a new reserve currency is needed because the current arrangement is leading to ever greater volatility. It is likely because China (the dominant creditor nation) is unsatisfied with the current arrangement. The Stiglitz Commission may have been better off analysing why the move to a new reserve currency is likely and contrasting the benefits of an orderly transition with the potentially devastating effects of a disorderly transition process.

Overall the *Stiglitz Commission Report* is informed by a different type of thinking than that which brought us the global financial crisis. The first of its 'principles for a new financial architecture' is that:

> [f]inancial markets are not an end in themselves, but a means: they are supposed to perform certain vital functions which enable the *real economy* to be more productive:
>
> (a) Mobilising savings
>
> (b) Allocating capital; and
>
> (c) Managing Risk, transferring it from those less able to bear it to those more able
>
> It is hard to have a well-performing modern economy without a good financial system.[257]

The financial crisis was a direct result of treating the creation of financial products as an end in itself — as a valuable driver of economic growth independent of the products' effects. The *Stiglitz Commission Report* is thus based on the premise that a financial sector exists to provide capital, a necessary input into the productive process. Just like telecommunications, electricity and roads, a financial system is an important piece of infrastructure.

An innovative idea we have already considered, that is supported by the Stiglitz Commission and strongly needed, is that of a global financial transactions tax.[258] Such a tax would discourage much of the incredibly short-term and purely speculative trading that characterises contemporary financial markets and consumes valuable savings in socially useless trading. It

---

[257] Ibid; Joseph Stiglitz, *Principles for a New Financial Architecture* (2009) General Assembly of the UN 1 (emphasis in original) <http://www.un.org/ga/president/63/commission/newfinancialarchitecture.pdf>.

[258] Ibid 89, 129–31.

would also serve to discourage complexity in financial transactions and thus assist the disclosure regimes of the securities markets to work more effectively, and nudge the markets towards fulfilling more of their traditional functions.

Rethinking the global financial system is vital. This article has attempted to lay out some of the groundwork for this endeavour, and indicated some ways forward. What is needed now is for governments around the world to open their minds and imagine a truly functional global financial system that serves the interests of all nations. A global financial transactions tax would be a great place to start. While the 2010 G20 meeting in South Korea focused on issues relating to reform of the international financial architecture (making important contributions in relation to the IMF and global financial safety nets, as well as a new development consensus), no fundamental re-thinking of the current system has yet occurred.[259] Without such a fundamental rethinking of the true role of finance and the current system, another global financial crisis in the years to come is almost certain. For things to change, fundamental reconsideration is necessary to support change to prevent similar crises in future, and so far no fundamental changes have been effected.

---

[259] G20, 'The G20 Seoul Summit Leaders' Declaration', (Declaration, G20, 11–12 November 2010); G20, 'The Seoul Summit Document' (Communiqué, G20, 12 November 2010).