

THE GROUP OF 20: A SHORT LEGAL ANATOMY FROM THE PERSPECTIVE OF INTERNATIONAL INSTITUTIONAL LAW

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Over the past five years, the Group of 20 ('G20') has become an important cooperative framework through which the world's largest industrialised nations have sought to tackle systemic issues that affect the global economy. However, its legal status, and the basis on which G20 members engage with non-member states and formal international organisations, has not been the subject of detailed legal consideration to date. In this paper, we examine how G20 members have so far avoided establishing the G20 as a formal international organisation, but have institutionalised some of its practices to enhance its legitimacy and ensure its effectiveness as a global governance forum. Our objective is to develop a clearer legal understanding of the nature, structure and working practices of the G20 from the perspective of international institutional law. This paper contends that international institutional law offers a valuable critical perspective from which to explain and assess the legal status and functioning of the G20 and can provide insights and guidance in relation to the ongoing institutionalisation and reform of the G20, as well as a useful foundation for further critical consideration of the role of the G20 in the framework of international cooperation more broadly.

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I INTRODUCTION

Since 2008, the Group of 20 ('G20') has made bold strides towards assuming a central role in the global governance of economic affairs, overshadowing other 'G-level'¹ meetings (including the Group of 8 ('G8')).² Following the third summit held under the auspices of the G20 at Pittsburgh in September 2008, G20

¹ 'G-level grouping or meeting' is a shorthand expression used by commentators to refer to an informally-instituted grouping of states (and sometimes international organisations) that meets outside, or in the shadows of, international organisations: see, eg, David Zaring, 'International Institutional Performance in Crisis' (2010) 10 *Chicago Journal of International Law* 475.

² But see John Kirton, *Why the G8 Will Endure* (10 February 2011) G8 Information Centre <<http://www.g8.utoronto.ca/scholar/kirton-g8endurance-110210.html>>.

leaders stated:³

We meet in the midst of a critical transition from crisis to recovery to turn the page on an era of irresponsibility and to adopt a set of policies, regulations and reforms to meet the needs of the 21st century global economy.

When we last gathered in April [at the London summit], we confronted the greatest challenge to the world economy in our generation.

Global output was contracting at a pace not seen since the 1930s. Trade 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 everything necessary to ensure recovery, to repair our financial systems and to maintain the global flow of capital.

It worked.

The following year, speaking at the United Nations General Assembly, President Barack Obama declared that G20 members had made the forum ‘the focal point for international coordination’.⁴

The G20 is an informal intergovernmental conference, involving a regular process of ministerial meetings and leaders’ summits, which is held by 20 of the world’s most significant economies: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, the Republic of Korea, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States and the European Union. Together, the G20 countries account for 85 per cent of global gross domestic product (‘GDP’) and two thirds of the world’s population.⁵ Since its initial leaders’ summit, the number and type of meetings held by the G20 has proliferated. The website of the 2013 Russian Presidency of the G20⁶ shows an extensive annual calendar of over 60 meetings — an average of at least one meeting every week. Interspersed among the ministerial meetings and the leaders’ summit, technical and consultation meetings are held by Sherpas⁷ and working groups, along with meetings involving a broader range of non-state participants from business and civil society — Business 20, Youth 20, Labour 20, Think 20 and Civil 20. Some of these meetings are thematic and change from year to year with the priorities of the rotating Presidency; others have become regular features in the calendar. Over time, there has been a growing degree of consistency and regularity of the participants in G20

³ Group of 20, ‘Leaders’ Statement: The Pittsburgh Summit’ (Statement, 24–25 September 2009) 1 <http://ec.europa.eu/commission_2010-2014/president/pdf/statement_20090826_en_2.pdf>.

⁴ Barack Obama, ‘President Barack Obama’s Remarks to the United Nations General Assembly as Prepared for Delivery: News Event’ (Speech delivered at the 65th session of the United Nations General Assembly, New York, 23 September 2010) <http://www.un.org/en/ga/65/meetings/generaldebate/Portals/1/statements/634209239344218750US_en.pdf>.

⁵ Group of 20, ‘The Group of Twenty: A History’ (2008) 8 <<http://www.g20.utoronto.ca/>>.

⁶ Unless otherwise indicated, all information concerning the Russian Presidency that is cited in this paper has been taken from the official website of the Group of 20 (‘G20’): Group of 20, *Russia G20* (2013) <<http://en.g20russia.ru/>>.

⁷ See below Part III(C)(6).

meetings. All of these developments speak of the creeping institutionalisation (through practice, if not by design) of the G20.

The G20 is unique in several respects: its membership is drawn from the global North and the global South, as well as from both East and West; it is fluid and informal, yet engages closely with and fundamentally influences relations in and between existing formal international organisations; and its annual rotating presidency with the direct participation by serving ministers and heads of state in its meetings and summits, lends it a character that is less like a permanent conference and more like an international exhibition. It also represents a fascinating locus of tension in the realm of contemporary international cooperation. On the one hand, the G20 is an informal forum of major economies that seeks to achieve political consensus in relation to significant global issues, thereby purporting to exercise *de facto* governance authority over such matters.⁸ However, policy decisions are implemented through the voluntary adoption of principles for national implementation or through the facilitation of reforms within existing international organisations such as the World Trade Organization and the International Monetary Fund ('IMF'), rather than through imposing formal legal requirements on its members through the negotiation of new multilateral treaties. From this perspective, the G20 is not a thing in itself: it avoids becoming its own centre of gravity and, instead, aims to either reform existing legal institutions or generate specific new ones with specific functions.

However, the G20's lack of a clear, rule-based institutional structure makes it vulnerable to criticism. Some critics contend that the G20 threatens the primacy of the UN framework for international cooperation and consider the G20 to be unrepresentative, undemocratic and lacking the legitimacy required of a global governance body (based largely on the exclusivity of, or lack of regional balance in, its membership).⁹ Others see the G20's informal, *ad hoc* structure as being institutionally weak, inherently incapable of delivering effective policy leadership and as lacking the capacity to govern.¹⁰ Other analysts point to the ongoing influence the Group of 7 ('G7') exerts within the G20 or raise concerns that such incumbency may spur the BRICS nations¹¹ to develop a balancing

⁸ Major issues considered by it to date include the coordination of international financial regulation; the removal of protectionist trade tariffs and inefficient fuel subsidies; the implementation of regulatory principles for key food and energy commodities; and policies to generate 'green' growth and stable employment conditions: see generally Group of 20, 'G20(12) Los Cabos Mexico: G20 Leaders Declaration' (Declaration, 18–19 June 2012).

⁹ See, eg, Jakob Vestergaard, 'The G20 and Beyond: Towards Effective Global Economic Governance' (Report, Danish Institute for International Studies, April 2011) 18–25 <http://subweb.diiis.dk/graphics/Publications/Reports2011/RP2011-04-G20-and-beyond_web.pdf>.

¹⁰ See, eg, Jean-Christophe Nothias, Interview with Jacques Attali (Magazine Interview, 3 May 2011) <<http://www.attali.com/en/actualite/interviews/tomorrow-who-will-govern-the-world>>.

¹¹ Brazil, Russia, India, China and South Africa.

bloc.¹² Partly to engage with these political criticisms, then-French President Nicolas Sarkozy, in outlining the priorities for the French Presidency of the G20 in 2011, asked British Prime Minister David Cameron to review the G20's existing governance framework and practices and consider reforms including the establishment of a permanent secretariat for the G20.¹³ Cameron's report, 'Governance for Growth: Building Consensus for the Future' ('*Cameron Report*'),¹⁴ recommended that certain G20 working practices and processes should be institutionalised, but that its informal framework for cooperation should be maintained.

To date, academic consideration of criticisms of the G20 has occurred mainly in the realm of political science.¹⁵ This work has concentrated on issues including the political significance of the rise of the G20 for the UN¹⁶ and the G20's ability to reform the formal international financial institutions.¹⁷ However, there is no detailed consideration to date of the legal nature of the G20 and such rare references as exist are limited to noting that the G20 is a 'flexible, informal' form of 'international cooperation occurring outside the framework of international organizations'¹⁸ or that it represents 'a throwback to the late 19th century, when international organisations were yet to gain their full independence'.¹⁹ Against this backdrop, we propose to examine the nature and structure of the G20: to conduct an exercise in legal taxonomy, an investigation into its genesis and evolving anatomy. In our view, international institutional law offers a valuable critical perspective from which to conduct this analysis. By conducting a detailed classification of the features, practices and functions (such as they are) of the G20, a largely comparative, inward-focused and 'bottom-up'

¹² See, eg, Alison Bailin, *From Traditional to Group Hegemony: The G7, the Liberal Economic Order and the Core-Periphery Gap* (Ashgate, 2005). The geopolitical impact of the G20 has also attracted attention from senior figures within the United Nations such as the current Administrator of the UN Development Program (and former New Zealand Prime Minister) Helen Clark: see Helen Clark, 'Improving Global Governance: Making Global Institutions Fit-for-Purpose in the 21st Century' (Speech delivered at the Institute for Governance and Policy Studies, Victoria University, Wellington, 13 November 2012) <[http://www.undp.org/content/undp/en/home/presscenter/speeches/2012/11/13/helen-clark-improving-global-governance-making-global-institution-s-fit-for-purpose-in-the-21st-century-/-](http://www.undp.org/content/undp/en/home/presscenter/speeches/2012/11/13/helen-clark-improving-global-governance-making-global-institution-s-fit-for-purpose-in-the-21st-century-/)>.

¹³ Nicolas Sarkozy, 'Address by the President of the French Republic: Press Conference to Present the Presidency of the G20 and G8' (Press Statement, 24 January 2011) <http://www.consulfrance-newyork.org/Nicolas-Sarkozy-Press-Conference>.

¹⁴ David Cameron, 'Governance for Growth: Building Consensus for the Future' (Report, Prime Minister's Office, November 2011).

¹⁵ For an excellent discussion of the key themes debated: see, eg, Mark Beeson and Stephen Bell, 'The G-20 and International Economic Governance: Hegemony, Collectivism, or Both?' (2009) 15 *Global Governance* 67. A considerable body of literature has also been produced or amassed by several organisations, in particular: the G20 Information Centre at the University of Toronto; the Brookings Institution in Washington DC; and the Lowy Institute for International Policy in Sydney. See also Andrew F Cooper and Ramesh Thakur, *The Group of Twenty (G20)* (Routledge, 2013). This book considers the history and role of the G20 from the perspective of political science and international relations.

¹⁶ See, eg, Bruce Jones, 'Making Multilateralism Work: How the G-20 Can Help the United Nations' (Policy Analysis Brief, Stanley Foundation, April 2010).

¹⁷ See, eg, Zaring, above n 1.

¹⁸ See, eg, Henry G Schermers and Niels M Blokker, *International Institutional Law* (Martinus Nijhoff, 5th ed, 2011) 32 [30].

¹⁹ Jan Klabbbers, 'Unity, Diversity, Accountability: The Ambivalent Concept of International Organisation' (2013) 14 *Melbourne Journal of International Law* 149, 156.

analysis,²⁰ we contend that proposals for the further institutionalisation or reform of the G20 that seek to enhance its legitimacy and practical effectiveness can be meaningfully evaluated.

Our analysis takes as its point of departure the two ‘poles’ of Michel Virally’s general theory of international organisations: on the one hand, the political and legal reality of state sovereignty; and on the other the concept of ‘function’.²¹ Virally understands states to have a *raison-d’être* or a ‘*finalité intégrée*’ — the preservation or enhancement of the common good, of national security and prosperity — whereas international organisations have an instrumental function or ‘*finalité fonctionnelle*’. Simply put, states are ends in themselves, whereas international organisations are means to (specific) ends. The instrumental function arises from a need felt by states to cooperate in an institutional setting because they no longer consider themselves capable of performing a given task independently.²² The genesis of international institutional cooperation is therefore derived from the idea of functional necessity, rather than from a pure act of sovereign will or the implementation of a component of the international constitutional order. When considered from this perspective, the G20 is an ideal candidate for analysis: its initial formation and subsequent ‘upgrading’ to a world leaders’ forum were both sparked by the need felt by major economies to cooperatively tackle a global economic crisis that could not be averted by any of them in isolation.

Virally’s notion of function has three normative aspects: authorisation (*habilitation*), which involves the structure, competences and instruments of an international organisation; moderation (*limitation*), being the limitations imposed on the authorisation aspect; and obligation (*obligation*), in which the organs of the institution are obliged to perform functions entrusted to them by members.²³ In this respect, the G20 is elusive: its structure is informal, its lack of clear competences requires little limitation and its activities are largely conducted by government departments or existing international organisations. Some of the conclusions we reach, therefore, are far from earth-shattering: for example, no theorists we surveyed considered the G20 to be an ‘international organisation’ as such. However, while it clearly does not satisfy the requirements of definitions of ‘international organisation’,²⁴ the G20 can sometimes come much closer than one initially expects. This indicates certain resonances between the institutional practices of the G20 and those of more formal international organisations. For this reason, we proceed from the premise that the G20 members may learn lessons from the institutional practices of other forms of international cooperation.

Our objective in this paper is thus to shed light on how G20 member states may most effectively institutionalise certain cooperative practices to address

²⁰ Schermers and Blokker, above n 18, 13 [13G].

²¹ See Michel Virally, ‘La Notion de Fonction dans la Théorie de l’Organisation Internationale [The Concept of Function in the Theory of International Organisation]’ in Charles Rousseau (ed), *Mélanges Offerts à Charles Rousseau: La Communauté Internationale* [Selected Works of Charles Rousseau: The International Community] (A Pedone, 1974) 277. See also Schermers and Blokker, above n 18, 17–18 [15].

²² See Schermers and Blokker, above n 18, 18 [16].

²³ *Ibid* 19 [17].

²⁴ See below Part IV.

matters that have transcended the independent control of any one of them individually, and with a view to achieving their objective (*finalité fonctionelle*) of establishing the ‘premier forum for international economic cooperation’,²⁵ while maintaining the G20’s informal, flexible structure. To do this, it is useful to first understand what the G20 currently is — to conduct a legal anatomical analysis — and then assess those features in the light of Virally’s normative aspects of *habilitation*, *limitation* and *obligation*. Our analysis therefore has a modest objective and we do not seek to address broader constitutional or public law questions, such as whether the G20 may have a (de)constitutionalising influence on the international legal order or whether the G20 can exercise legitimate governance authority.²⁶ However, we consider that an anatomical analysis of the G20 from the perspective of international institutional law would facilitate a more detailed and effective analysis of the G20 from a constitutional, public law or global administrative law (‘GAL’) perspective to be conducted in relation to the G20’s structure and practices in the future. This paper therefore aims to be a useful early contribution towards, but by no means the last word on, a better legal understanding of the nature and functions of — and importantly the challenges presented to international law and cooperation by — the G20.

Part II of this paper outlines a brief history of the establishment of the G20 and offers some observations on the significance of certain historical forerunners, precedents and parallels. In Part III we then examine the anatomy of the G20 in detail: its structure, components and inner workings.²⁷ Part IV considers the G20’s place in the taxonomy of international organisations and informal mechanisms for international cooperation, primarily in the light of the definition of ‘international organisation’ proposed by the International Law Commission, and by way of comparison with other fora that comprise summit-level meetings. Part V then considers some key recommendations from the *Cameron Report* and offers a critical assessment from the perspective of international institutional law on two key issues: the establishment of a permanent secretariat for the G20; and the G20’s engagement with UN bodies and other international organisations. We also raise some issues concerning the privileges and immunities of G20 delegates and supporting personnel, a question of some immediate relevance as Australia prepares to host G20 meetings in 2014.²⁸ Finally, Part VI offers some concluding observations regarding the relevance of international institutional law for the development of the G20 into the future.

²⁵ Department of Foreign Affairs and Trade, Australian Government, *The G20* <<http://www.dfat.gov.au/trade/g20/>>.

²⁶ Schermers and Blokker, above n 18, 13 [13G]. See also Jan Klabbers, ‘The Life and Times of the Law of International Organizations’ (2001) 70 *Nordic Journal of International Law* 287; Jan Klabbers, ‘The Changing Image of International Organizations’ in Jean-Marc Coicaud and Veijo Heiskanen (eds), *The Legitimacy of International Organizations* (United Nations University Press, 2001) 221; Armin von Bogdany et al (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer, 2010); Benedict Kingsbury and Lorenzo Casini, ‘Global Administrative Law Dimensions of International Organizations Law’ (2009) 6 *International Organizations Law Review* 319.

²⁷ The description of the G20 set out in this paper is based on publicly available information as at 1 December 2013, unless otherwise indicated.

²⁸ See, eg, Department of Prime Minister and Cabinet, Australian Government, *G20 Australia 2014* (12 December 2013) <<http://www.dpmc.gov.au/g20/>>.

II THE JOURNEY FROM BRETTON WOODS TO ST PETERSBURG

The development of the G20 represents the confluence of two historical streams of international cooperation. One stream has as its wellspring the desire for formal international financial and economic cooperation following the Great Depression of the 1930s and World War II, which led to the formation of the Bretton Woods Institutions ('BWIs'). The second began to flow a generation later when, in the early 1970s, a series of economic 'shocks' or crises — including the floating of the US dollar and the 1973 Organization of the Petroleum Exporting Countries oil embargo — shook the foundations of the post-war institutions and led to a change in the political and economic landscape that gave rise to prominence of the G-level groupings.²⁹

More recently, summitry practices have also been embraced by regional groupings or emerging economies, marking a notable rise to prominence of regional forums and emerging economies and challenging the political and legal exclusivity of the major Western industrialised economies in their ambitions to act as the primary coordinators of international economic cooperation.

An understanding of these organisations, institutions, conferences and summits, their catalysts and how they have evolved over time, provides an important critical context for the evaluation of the genesis of the G20.

A *Post-World War II International Financial Cooperation*

Following the famous conference held at Bretton Woods in 1944, the IMF and International Bank for Reconstruction and Development (now part of the World Bank Group) were established to assist with the global economic recovery program implemented following the economic crisis of the 1930s and the cataclysmic impact of WWII.³⁰ As Cook and Thirlwell note: 'Like the G-20, Bretton Woods was the child of crisis'.³¹ The primary focus of the Bretton Woods pact was to provide stable financial and economic architecture for the post-war period; and the framework of the BWIs is indeed viewed as having produced stable results until the early 1970s.³² Legally, the BWIs were established as formal entities with separate legal personality and with detailed internal rules dealing with issues of membership eligibility and requirements; obligations to make contributions to the budget of the organisation; the powers of the organisation's various organs; members' voting rights; and powers and responsibilities of an independent secretariat. Significantly, the BWIs were dominated by the major (Western) industrialised nations of the time and were physically located (along with the UN) in the US, though in Washington DC rather than in New York. This basic structure remains to the present date and the preponderance of influence of the original founders still clearly permeates the

²⁹ See, eg, John Raulston Saul, *The Collapse of Globalism, and the Reinvention of the World* (Penguin, 2009) 55–6.

³⁰ See, eg, N D White, *The Law of International Organisations* (Manchester University Press, 1996) 76–7.

³¹ Mark Thirlwell and Malcolm Cook, 'Geeing up the G-20' (Policy Brief, Lowy Institute for International Policy, April 2006) 5 <http://lowyinstitute.org/files/pubfiles/Thirlwell_and_Cook%2C_Geeing_up_the_G20_s.pdf>.

³² White, above n 30, 152–5.

functioning of the BWIs and the related multilateral organisations and institutions that have coalesced among and around them since 1945.³³

However, the rapid success in negotiating a legally binding multilateral cooperative framework for international financial regulation through the BWIs was in stark contrast to the failure by the same nations to negotiate a multilateral pact in relation to international trade. Lack of agreement on the establishment of the International Trade Organization³⁴ greatly delayed coordinated international cooperation on measures to address protectionist trade practices and reduce constraints on international trade: the series of agreements centred around the *General Agreement on Tariffs and Trade* ('GATT')³⁵ only slowly and incrementally began to crystallise a multilateral approach into an international organisation and it was not until 1994 that the WTO was established.³⁶ The Doha Development Round of WTO negotiations appear to be proceeding at a comparable pace.³⁷

B *The Emergence and Evolution of G-Level Groupings*

The earliest 'G-level' international cooperation was undertaken by the so-called 'Group of 5' ('G5') countries (France, Germany, Japan, the UK and the US) as early as 1973 in informal meetings of a collection of senior national finance officials dubbed the 'Library Group' (the meetings first took place in the White House library in Washington DC).³⁸ These meetings occurred against the backdrop of (and generally coincided with) meetings of the IMF or World Bank (also in Washington DC)³⁹ and considered issues relevant to the stabilisation of the international financial system.⁴⁰ A broader group of ministers also began to meet in another guise as the Group of 10 ('G10') — somewhat confusingly, an 11-member grouping of major industrialised nations that met annually to discuss

³³ The convention that Europe and the United States alternate in their respective appointments of the head of the International Monetary Fund ('IMF') and the World Bank remains a significant factor today: see, eg, Kim Willsher, Richard Blackden and Kamal Ahmed, 'Why Christine Lagarde is the Favourite to Replace Strauss-Kahn as IMF leader', *The Telegraph* (online), 21 May 2011 <<http://www.telegraph.co.uk/finance/dominique-strauss-kahn/8527776/Why-Christine-Lagarde-is-the-favourite-to-replace-Strauss-Kahn-as-IMF-leader.html>>.

³⁴ See generally William Diebold Jr, 'The End of the ITO' (Essay No 16, International Finance Section, Department of Economics and Social Institutions, Princeton University, October 1952).

³⁵ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*General Agreement on Tariffs and Trade*') ('GATT').

³⁶ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995). For an interesting discussion of this history: see, eg, John H Jackson, *World Trade and the Law of GATT (A Legal Analysis of the General Agreement on Tariffs and Trade)* (Bobbs-Merrill, 1969) 119–22; Wolfgang Benedek, *Die Rechtsordnung des GATT aus Völkerrechtlicher Sicht [The Legal System of the GATT from an International Law Perspective]* (Sprinter-Verlag, 1990) 248.

³⁷ See, eg, World Trade Organization, *Doha Round: What Are They Negotiating?* (2013) <http://www.wto.org/english/tratop_e/dda_e/update_e.htm>.

³⁸ Michael G Schechter, *Historical Dictionary of International Organizations* (Scarecrow, 2nd ed, 2010) 96–7.

³⁹ *Ibid.*

⁴⁰ Saul, above n 29, 89–90.

international financial cooperation.⁴¹ As a precedent for the presence of central bank governors at G20 meetings, the G10 also involved relevant central bank governors meeting every second month at the Bank for International Settlements.⁴²

Informal leaders' summits were also being penned into the calendars of world leaders during the critical mid-1970s period. Two key summits emerged. The first was the Group of 6 ('G6') (as it then was), the first summit of which was held in 1975, on the invitation by French President Giscard d'Estaing, at Chateau Rambouillet, having been called in response to the oil crisis, European 'stagflation' and subsequent global economic destabilisation.⁴³ As the name suggests, the initial summit involved only six participants: the leaders of France, Germany, Italy, Japan, the UK and the US. Its rationale was simple: leaders of nations faced with common crises should come together and seek to find practical, politically achievable and, importantly, coordinated solutions. Such meetings were characterised by their informality: in a 'fire-side' chat atmosphere, leaders could sound out each other's views, discuss issues of mutual concern and hammer out politically achievable solutions to common problems.⁴⁴ As the G6 lacked formal rules, rights or binding treaty obligations, commitments for the coordinated implementation of policies or decisions were expressed in communiqués that used very general language, providing (at most) a political commitment to pursue common objectives within each state's respective national framework. Because of its informal nature, invitations to future G6 summits could easily be extended to other leaders. Canada was invited to join the summit the following year, forming the G7;⁴⁵ and from 1977, the President of the European Commission and (when that office was not held by a G7 member) the President of the Council of the European Union were also invited. Russia was invited from 1997 and, since then, the grouping has been called the G8 (although meetings of G7 finance ministers continue to be held).⁴⁶ The G8 continues to meet today and has also pursued 'dialogue partner' relationships with major emerging economies such as China. However, while the membership and participation practices of the G8 have evolved over the past four decades, the nature of the forum has not: it remains an informal grouping which aims to facilitate coordination, but falls short of requiring its members to commit to

⁴¹ See Amos J Peaslee, *International Governmental Organizations: Constitutional Documents* (Martinus Nijhoff, 3rd ed, 1974) pt 1 vol 1, 786–7. The members were Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom and the US, with Switzerland playing a minor role. The disparity between a 'GX' grouping's name and its actual number of participants is a recurring theme.

⁴² Schechter, above n 38, 97. The group's role appears limited to this function now and may indeed have been superseded by the Financial Stability Board.

⁴³ See, eg, Desmond Dinan, *Ever Closer Union: An Introduction to European Integration* (Lynne Rienner, 4th ed, 2010).

⁴⁴ *Ibid* 205–11.

⁴⁵ See, eg, White, above n 30, 38; Saul, above n 29, 90. The remainder of this paragraph is based on these sources and also the information available through the Group of 8 ('G8') Information Centre (the forerunner to the G20 Information Centre): Group of 8 Research Group, *G8 Information Centre* (2011) <<http://www.g8.utoronto.ca>>.

⁴⁶ The most recent meeting was held on 12 February 2013 to discuss foreign exchange markets: see Her Majesty's Treasury, *Statement by the G7 Finance Ministers and Central Bank Governors* (12 February 2013) UK Government <<https://www.gov.uk/government/news/statement-by-the-g7-finance-ministers-and-central-bank-governors>>.

legally binding cooperation. Interestingly, in 2013 the presidencies of the G8 and G20 are held by different parties: the G7/G8 is currently presided over by the UK and the G20 by Russia.

Another informal summit, this time of exclusively European heads of state or government, also began in the mid-1970s; but it followed a very different course. While the development of this summit, the European Council, mirrored that of the G6 (though with exclusively European membership) until in the mid-1980s, its composition, role and functioning was progressively codified by the *Single European Act*⁴⁷ and the *Treaty on European Union*;⁴⁸ and now, since the *Lisbon Treaty*⁴⁹ entered into force, it has evolved into a formal institution of the EU.⁵⁰ In the process of its formalisation, the European Council made the progression from an informal summit bound by few if any formal rules into an institution which is part of, and which must act within, the legal order of the EU.⁵¹ However, while the European Council has been vested with specific powers — such as making appointments to key positions within the EU or approving the admission of a new member of the Eurozone — it has retained several of its original ‘summit’ functions. It still provides strategic direction to the EU; must agree to important foreign policy declarations; and continues to acquaint EU leaders with each other and each other’s views on issues of mutual concern.⁵² Apart from its ‘encapsulation’ within the legal order of the EU, another difference between the European Council and other G-level groupings is its membership, which is not limited to the most powerful EU states but comprises all EU members.

C *G-Level Meetings of Developing or Emerging Economies*

Both the G8 and the European Council are summits of the leaders of major Western industrialised economies and the implication of referring to a ‘G-level meeting’ has generally been that its participants are major industrialised powers. However, the nomenclature has also been applied at the other end of the political spectrum to groupings of developing countries and emerging economies. Such groupings sometimes arose as a response to perceived ‘Northern’ bias in the formal international organisations, specifically those within the UN framework: the Group of 77’s long political history is intimately connected with the work of the UN Conference on Trade and Development.⁵³ Others came about as a result of a shared position of the participants vis-a-vis less formal Northern interests:

⁴⁷ *Single European Act*, signed 17 February 1986, [1987] OJ L 169/1 (entered into force 1 July 1987).

⁴⁸ *Treaty on European Union*, opened for signature 7 February 1992, [1992] OJ C 191/1 (entered into force 1 November 1993) (‘EU’).

⁴⁹ *EU* as amended by *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, opened for signature 13 December 2007, [2007] OJ C 306/1 (entered into force 1 December 2009).

⁵⁰ *EU* art 15. See also Dinan, above n 43, 206.

⁵¹ This organic development and later codification can be contrasted with the more formal development of the European Union’s Council of Ministers, a congress institution that meets in several different ‘thematic’ compositions depending on the substantive issue under discussion (agriculture, finance, employment and so forth). For a general discussion: see, eg, Schermers and Blokker, above n 18, 302–3 [396].

⁵² Dinan, above n 43, 207–8. Article 15(1) of the *EU* explicitly provides that the European Council ‘shall not exercise legislative functions’.

⁵³ Schechter, above n 38, 97.

the Group of 11, proposed by King Abdullah of Jordan in 2005, is a grouping of lower middle-income countries⁵⁴ established with the aim of narrowing the income gap with the world's rich nations, mainly by advocating for debt forgiveness from G8 countries and increased access to world markets.⁵⁵ More recently, the 'Global Governance Group' ('3G'), convened at the margins of the Davos World Economic Summit forum in 2009, was expressly designed to focus and facilitate non-G20 member representation to (and if possible within) the G20,⁵⁶ a strategy which appears to have been effective: matters raised by the 3G group were expressly considered by the *Cameron Report*,⁵⁷ and the group issued a media release following the Mexican Summit expressing their appreciation for the engagement by the Mexican Presidency with the 3G during 2012.⁵⁸ However, it is not yet clear whether a representative of the 3G has been invited in that capacity to any meetings during the Russian G20 Presidency.

Also significant on the world stage today are the so-called 'BRICS' and 'MIST' groupings, all of whose members are also G20 members.⁵⁹ While the terms developed merely as shorthand descriptions for countries with certain economic features and investment opportunities, the relevant countries — particularly the BRICS members — have begun to assert themselves politically under those banners. For example, the leaders of (then) BRIC members issued their first joint statement at the conclusion of a summit of

⁵⁴ The participants are Croatia, Ecuador, El Salvador, Georgia, Honduras, Indonesia, Jordan, Morocco, Pakistan, Paraguay, Sri Lanka and Tunisia.

⁵⁵ See the section of the website of His Majesty King Abdullah II ibn Al Hussein dedicated to the Group of 11 ('G11'): *Initiatives* (2013) King Abdullah II Official Website <http://www.kingabdullah.jo/index.php/en_US/initiatives/view/id/28.html>. There is another G11 of debtor countries, also known as the G11 (Cartagena Group), which consists of the main debtor countries of Latin America. The group, set up in 1984, consists of Argentina, Bolivia, Brazil, Chile, Colombia, the Dominican Republic, Ecuador, Mexico, Peru, Uruguay and Venezuela. Interestingly, Ecuador is a participant in both G11s: Schechter, above n 38, 96.

⁵⁶ See generally Iftekhar Ahmed Chowdhury, 'The Global Governance Group ('3G') and Singaporean Leadership: Can Small Be Significant?' (Working Paper No 108, Institute of South Asian Studies, 19 May 2010) <<http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?id=116447&lng=en>>. Global Governance Group ('3G') members comprise six from South-East Asia and Asia Pacific (Brunei, Malaysia, New Zealand, the Philippines, Singapore and Vietnam); three from the Middle East (Bahrain, Qatar and the United Arab Emirates); three from Africa (Botswana, Rwanda and Senegal); eight from Europe (Belgium, Ireland, Liechtenstein, Luxembourg, Monaco, San Marino, Sweden and Switzerland); two from Latin America (Chile and Uruguay); and six from Central America and the Caribbean (Barbados, Bahamas, Costa Rica, Guatemala, Jamaica and Panama).

⁵⁷ See below Part V(C)(1).

⁵⁸ Group of 3, 'Press Statement by the Global Governance Group (3G) on Its Fifth 3G Ministerial Meeting in New York, 28 September 2012' (Press Statement, 28 September 2012) <http://www.mfa.gov.sg/content/mfa/overseasmission/newyork/nyemb_statements/global_governance_group/2012/201209/press_20122809.html>.

⁵⁹ 'BRIC' is a term often attributed to Jim O'Neill: see Jim O'Neill, 'Building Better Global Economic BRICs' (Paper No 66, Goldman Sachs Global Economics Paper, 30 November 2001). This attribution is made even by BRICS members themselves. See, for example, the BRICS website maintained by the University of Toronto: BRICS, *About the BRICS* (6 January 2013) BRICS Information Centre <<http://www.brics.utoronto.ca/about.html>>. 'MIST' refers to Mexico, Indonesia, South Africa (again) and Turkey. For a critical consideration of these terms: see, eg, Leslie Elliott Armijo, 'The BRICs Countries (Brazil, Russia, India, and China) as Analytical Category: Mirage or Insight?' (2007) 31(4) *Asian Perspective* 7.

BRIC's leaders,⁶⁰ and have issued joint statements during and within the context of G20 meetings.⁶¹ It has also recently been reported that at the BRICS summit that was held in Durban on 26–27 March 2013, members will consider the possible establishment of the organisation's 'virtual secretariat'.⁶² However, members do not appear to consider that their participation in any of these groupings limit their ability to pursue other cooperative arrangements: a grouping of Brazil, China, India, Mexico and South Africa (sometimes called the Group of 5 ('G5')) has also begun to meet relatively regularly to discuss issues of mutual concern and consolidate positions to be presented in G8 outreach meetings.⁶³ As noted above, these groupings also mark out potential political divisions between G20 members or 'blocs'.⁶⁴ This issue will be particularly interesting to follow during this year's G20 proceedings as Russia, which holds the rotating G20 Presidency in 2013, is a member of the G8 and the BRICS grouping, but not of the G7.

D *Regional Groupings and Summits*

While they are not 'G-level' groupings as such, some regional conferences and summits also provide precedents for certain G20 features which we will explore later. A quarter of the G20's members are Asian countries: China, India, Indonesia, Japan and South Korea. Like the European nations who are EU members, member states of Asian regional organisations and conferences have gained considerable experience in summit-based multilateral economic cooperation. The Association of South-East Asian Nations ('ASEAN'), for example, in which Indonesia is by far the largest participant, has not only held 18 annual summits, but has also pursued the 'dialogue partner' model referred with respect to the G8 to facilitate senior meetings between ASEAN leaders and their counterparts from China, Japan and South Korea.⁶⁵

In the Pacific region, summit experience has been gained through the Asia-Pacific Economic Cooperation ('APEC') forum, a regional economic forum that includes Australia, Canada, China, Indonesia, South Korea, Japan, Mexico, Russia and the US.⁶⁶ The impetus for APEC's establishment in 1989 is often credited to former Australian Prime Minister Bob Hawke. Originally meeting only at the ministerial level, leaders of the APEC 'member economies' have met

⁶⁰ BRIC, *Joint Statement of the BRIC Countries' Leaders* (16 June 2009) BRICS Information Centre <<http://www.brics.utoronto.ca/docs/090616-leaders.html>>.

⁶¹ BRICS, *BRICS Finance Communiqué* (14 March 2009) BRICS Information Centre <<http://www.brics.utoronto.ca/docs/090314-finance.html>>.

⁶² 'BRICS Leaders to Discuss Establishment of "Virtual Secretariat"', *Russia: Beyond the Headlines* (online), 13 February 2013 <http://rbth.ru/news/2013/02/13/brics_leaders_to_discuss_establishment_of_virtual_secretariat_22815.html>.

⁶³ See, eg, John Kirton, 'The G20, the G8, the G5 and the Role of Ascending Powers' (Paper presented at Ascending Powers and the International System, Instituto Matias Romero, 13–14 December 2010).

⁶⁴ See generally Bailin, above n 12.

⁶⁵ Information concerning the Association of Southeast Asian Nations ('ASEAN') has been obtained from the ASEAN website: Secretariat, Association of Southeast Asian Nations, *Overview* (2009) The Official Website of the Association of Southeast Asian Nations <<http://www.aseansec.org/overview>>.

⁶⁶ Information concerning the Asia-Pacific Economic Cooperation has been obtained from the APEC website: Secretariat, Asia-Pacific Economic Cooperation, *History* (2013) <<http://www.apec.org/About-Us/About-APEC/History.aspx>>.

in annual ‘leaders meetings’ since the first such meeting was called by US President Bill Clinton in 1993, held in Seattle. Interestingly, after expansion from 12 to 21 member economies, APEC imposed a moratorium on the inclusion of new members until 2010 and, while this date has now passed, the moratorium does not yet appear to have been lifted.

III THE NATURE AND STRUCTURE OF THE G20

A *Impetus and Formation*

The first meeting of the G20 finance ministers and central bank governors was convened on 15–16 December 1999 to bring together systemically important industrialised and developing economies to discuss key issues in the global economy.⁶⁷ Its catalyst was the Asian financial crisis of the late 1990s: members of the G7 (as it then was) perceived that key emerging market countries were not sufficiently included in the core of global economic discussion and governance. Early G20 meetings discussed the exposure to international financial and economic risks shared by the participants and world markets and sought to forge consensus on how to reduce those risks and coordinate the domestic implementation of targeted mitigation strategies.

However, it took a second crisis — the 2008 US sub-prime debt crisis, this time predominantly affecting the G20’s Western industrialised members — to precipitate the G20’s first leaders’ summit, held in Washington DC in 2008 (‘Washington Summit’). Following the initial G20 finance ministerial held in 1999, G20 members continued to meet annually to discuss a slowly expanding agenda increasingly informed by the interconnected implications of globalisation. Although G20 meetings became the focus of broad-based, public anti-globalisation protests, the agendas of those meetings largely remained limited to crises in financial markets and the related aspects of fiscal and monetary policy. Only in 2008 did US President George W Bush seek to mobilise the heavyweight political clout of leaders of both highly industrialised and emerging economies by calling for the summit with a view to coordinating national economic stimulus packages and related financial and fiscal controls.

What emerged from these meetings, particularly the summits, was a unique manifestation of international coordination. Unlike the formal political meeting of dominant powers in the UN Security Council; the specialised technical and administrative coordination of the decentralised strands of formal international cooperation through specialised agencies such as the IMF or the World Health Organisation (‘WHO’);⁶⁸ or groupings of like-minded states such as the G8, the G20 sought to achieve high-level but informal political coordination among those economies, developed and emerging, that were seen as being most capable of tackling global financial instability. The emergence of a new global economic balance had been recognised as a possibility by G8 members in 1999 and, by the end of the Pittsburgh Summit in 2009, all participating leaders had agreed that the G20 would become the ‘premier forum for ... international economic cooperation’.⁶⁹ Further, and as a reflection of the interconnected nature of the

⁶⁷ Group of 20, ‘The Group of Twenty: A History’, above n 5, 8.

⁶⁸ See, eg, White, above n 30, 138–69 (especially at 148–52).

⁶⁹ Group of 20, ‘Leaders’ Statement’, above n 3, 3 [19].

global economy and the key concerns of its members, the G20's agenda has also greatly expanded to encompass issues including employment, agricultural policies, green growth, energy security, financial inclusion and trade protectionism, raising many questions about the boundaries of responsibility between the G20 and specialised international organisations including the WTO, the International Labour Organization ('ILO') and the Food and Agriculture Organization ('FAO') among others.⁷⁰

In this Part, we briefly outline the anatomy of the G20: its membership, meetings (primarily the 'ministerials' and the summits), its supporting structures and its conventions and practices. This understanding will then lead us to a consideration of the place of the G20 in the constellation of international organisations and other forms of cooperation.

B *Membership and Participation*

The exclusive nature of G20 membership has provoked criticism, but also catalysed new forms of international cooperation between non-member states to achieve better representation within the G20. This indicates the value placed by states on G20 membership. Further, as well as inviting many international organisations to participate in and advise at G20 meetings, the G20 has developed a practice of inviting non-member states and certain international organisations to participate in ministerials and summits as 'outreach participants', mirroring the practice of granting 'observer status' to non-members in international organisations.

1 *Members*

Five criteria were used by G7 members when selecting the original G20 members:⁷¹

- (i) systemic importance to the global economy;
- (ii) the ability to contribute to global economic and financial stability;
- (iii) a broad representation of the global economy;
- (iv) the need for regional balance; and
- (v) a desire to maintain a small, intimate grouping of 'equals'.

Using these criteria, the original informal selection and invitation of members was made, and it is striking that since the Berlin Ministerial in 1999 no change to the list of 'members' has been made. However, this may partially result from the ambiguous boundary that initially existed between G20 'members' and other 'participants'. A key issue relates to 'indirect' or representative membership. This issue was significant in the initial membership selection process. Given the 'regional balance' criterion, it seems that the presence of France, Germany, Italy

⁷⁰ As well as this reconsideration of the boundary between political and administrative functions within the public, it is also noteworthy that the G20's policy of encouraging (even formalising) 'outreach participation' has also partially dissolved the boundary between the public and private sphere, with the Business 20 meeting (see below Part II(C)(9)) and organisations like the think-tank 'Reinventing Bretton Woods Committee' being clear examples of such shifts, together with the G20's increasing participation in forums like the World Economic Forum.

⁷¹ Group of 20, 'The Group of Twenty: A History', above n 5, 20–1.

and the UK (ie, the European G8 members), plus the EU delegates, was considered to be the maximum possible European membership.⁷² Through the EU, the remaining EU member states (of which, with the entry of Croatia on 1 July 2013, there are 24) were thought to be indirectly represented.⁷³ The result of this approach to the regional balance criterion, however, was that Spain (which in 2010 was ranked 12th by GDP) was left out, while Argentina (ranked 27th in the same year) was included.⁷⁴

Early summit outcome statements, such as the statement issued following the Washington Summit, listed a long range of participants without formally categorising them.⁷⁵ Subsequent terminology has become more precise and the term ‘membership’ is now generally used in G20 documents to refer only to the 19 original member countries and the EU. A clear distinction therefore now exists between three categories of attendees at G20 meetings: members; international organisations (whether ex officio or by invitation on an ad hoc basis); and ‘outreach participants’ (who are generally invited on an ad hoc basis, though some standing invitations appear to be emerging).

While only EU countries enjoy indirect G20 ‘membership’, increasing levels of indirect regional representation have been enjoyed via the ‘outreach participant’ practices, especially by Africa (through the African Union (‘AU’) and the New Partnership for African Development (‘NEPAD’), South East Asia (through ASEAN), the Asia-Pacific (through APEC) and the Gulf states (through the Cooperation Council for the Arab States of the Gulf (‘CCASG’)). However, many states in other regional groupings have missed out even on indirect representation.⁷⁶

The G20 has no foundational treaty⁷⁷ and no legal rights or obligations as such attach to members: to use Virally’s words, it lacks *habilitation* or a substantive legal structure. It is therefore hard to characterise ‘membership’ of the G20 as involving much more than a political expectation (but not a legal entitlement) to participate in its meetings. In meetings themselves, the practice appears to be that all communiqués, statements and reports are approved and issued by consensus and there does not appear to be any practice of including any references to differences of opinion between members in public documents issued by the G20. A parallel can perhaps be drawn, therefore, between the decision-making practices of the G20 and those of the cabinet of a national government — to encourage frank and open debate and discussion concerning matters of policy and political significance, only the agreed outcomes of such discussions and not the details of the discussions themselves are made public.

⁷² Ibid 21.

⁷³ Ibid 20.

⁷⁴ World Bank, ‘Gross Domestic Product 2010’ (Statistics, 1 July 2011) <<http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf>>.

⁷⁵ See, for example, the list of ‘delegates’ to the G20 Leaders Summit on Financial Markets and the World Economy released by the White House, now only available via the G20 Information Centre: Group of 20, *G20 Leaders Summit on Financial Markets and the World Economy: Delegations* (14–15 November 2008) G20 Information Centre <<http://www.g20.utoronto.ca/2008/2008delegations1115.html>>.

⁷⁶ However, the 3G includes some members that are also members of other regional groupings: see Chowdhury, above n 56.

⁷⁷ See below Part IV.

The enthusiasm for attending G20 meetings appears to be sufficiently strong that no G20 member has ever missed a ministerial or summit.⁷⁸ Further, calls are frequently made by non-members or regional organisations for inclusion.⁷⁹ This level of participation in G20 meetings exceeds the participation in many formal international organisations, where lack of sufficient interest in the issue being debated, or a perceived lack of substantive competence of the relevant organisation's organ, can erode attendance rates, much in the same manner as debates within national parliaments often lack participation from representatives of all constituencies. Certainly, one might expect political repercussions should a member simply not be invited by the relevant host President or if that member failed to attend meetings or flagrantly contradicted a consensus position adopted by a previous meeting. In this respect, the participation 'obligations' of members of the G20 are much less onerous than those of members of international organisations: a moral obligation to participate may exist, but even a systematic policy of refusal to participate would be unlikely to lead to anything other than non-invitation to future ministerials or summits.⁸⁰

Membership of the G20 therefore largely represents a standing invitation to 19 states and the EU to attend and participate with an equal voice in ministerials and summits and in all related preparatory work. As well as this political guarantee of participation, G20 membership also offers an opportunity to members to host G20 meetings, in particular the summit. This right, however, is not enjoyed equally by the EU, which has never held the presidency of the G8 and has not sought such a role within the G20.⁸¹ However, the EU's disinclination or inability to host summits is unlikely to jeopardise its G20 membership.

2 *Participation by International Organisations and 'Outreach Participants'*

At the Washington Summit, the additional participants were the IMF, World Bank, Financial Stability Forum (now the Financial Stability Board ('FSB')) and the UN, as were the Netherlands and Spain (as guest states).⁸² At the London Summit (2009), the WTO, ASEAN and NEPAD were also invited to participate. In Pittsburgh (2009), the Organisation for Economic Co-Operation and Development ('OECD') was added to the London list. For the Toronto Summit (2010), those classified as 'outreach participants' included (additionally): Malawi (President of the African Union at the time), Vietnam (Chair of ASEAN)

⁷⁸ Based on a review of the documents available through the G20 Information Centre.

⁷⁹ See, eg, Campbell Clark, 'Better G20 Representation for Africa Sought', *The Globe and Mail* (online), 24 June 2010 <<http://www.theglobeandmail.com/news/world/g8-g20/africa/better-g20-representation-for-africa-sought/article1617217>>.

⁸⁰ See, eg, Matthias Ruffert and Christian Walter, *Institutionalisiertes Völkerrecht: Das Recht der Internationalen Organisationen und seine wichtigsten Anwendungsfelder* [International Institutional Law: The Law of International Organisations and Its Major Fields of Application] (Verlag C H Beck, 2009) 93. See also Schermers and Blokker, above n 18, 121–2 [156], 199–200 [255].

⁸¹ See, eg, European Union External Action Service, *The EU's relations with G7/G8* (4 March 2012) <http://web.archive.org/web/20120124155936/http://www.eeas.europa.eu/g7_g8/index_en.htm>.

⁸² The leaders of Spain and the Netherlands were noted as 'representing the European Union', together with José Manuel Barroso, President of the European Commission: see Group of 20, *G20 Leaders Summit on Financial Markets*, above n 75.

and Ethiopia (Chair of NEPAD); and the ILO was added as an organisation (the FSB continued its participation). While NEPAD and ASEAN had been invited to the London and Pittsburgh Summits, each represented by their respective heads, the AU was an addition in Toronto: all three were listed as 'outreach participants' rather than international organisations. In Seoul later in 2010, the ILO lost its invitation (however it has been invited again by the Russian Presidency, given the strong focus on labour in the 2013 priorities), as did the Netherlands as an 'outreach participant'; while Singapore (representing 3G) received its first invitation.

To date, invitations to non-members to attend summits are issued by the host Presidency, in consultation with the other G20 members.⁸³ Under the South Korean Presidency, some principles were established regarding the manner in which outreach participants would be invited to future meetings and the Seoul Summit Document provides:⁸⁴

Bearing in mind the importance of the G20 being both representative and effective as the premier forum for our international economic cooperation, we reached a broad consensus on a set of principles for non-member invitations to Summits, including that we will invite no more than five non-member invitees, of which at least two will be countries in Africa.

The official G20 website of the Russian Presidency indicates that this model will continue to be followed this year.⁸⁵ Previously, for example in relation to the Cannes Summit, a specific list of organisations to be invited was identified in advance.⁸⁶ However, this practice does not appear to have been followed by Mexico or Russia. Further, following the replacement of Mali by Equatorial Guinea as the AU representative in 2011, it now seems clear that national leaders who hold rotating presidencies of regional organisations (such as the AU or NEPAD) are invited only in that representative capacity and not as the head of their state.

The fifth and final place for outreach participants at the summit appears to be firmly held by Spain. Described by the French Presidency in 2011 by the slightly

⁸³ See, eg. Group of 20, 'Invitation to Non-Members of the G20 to the G20 Summit of Cannes' (Press Release, 12 February 2011) <<http://www.ambafrance-ca.org/Invitation-to-non-members-of-the>>.

⁸⁴ Group of 20, 'The Seoul Summit Document' (Report, 12 November 2010) 17 [74].

⁸⁵ Group of 20, *Invitees and International Organizations* (2013) Russia G20 <http://en.g20russia.ru/docs/about/international_guests.html>.

⁸⁶ At the time, this information could also be accessed from the official G20 website maintained by France. However, as an example of a minor but inconvenient consequence of the G20's lack of institutionalisation, responsibility for the official G20 website from year to year shifts with the rotating presidency. As a result, the G20 members maintain no publicly-available repository of historical documentation concerning the G20's meetings or participants. A dedicated section of the Russian website for 2013 constitutes the most comprehensive attempt so far: see Group of 20, *Official Materials* (2013) Russia G20 <<http://en.g20russia.ru/documents>>. However the information it contains is not nearly as comprehensive as the records kept (very importantly) by the G20 Information Centre at the University of Toronto.

bizarre term ‘permanent guest’,⁸⁷ the Russian Presidency for 2013 has standardised Spain’s position to that of a ‘permanently invited country’.⁸⁸ Spain’s peculiar but seemingly secure position within the G20 also appears to have facilitated their greater participation in the G20’s work: Spain is the only outreach participant to have made policy commitments comparable to those of G20 members proper at summits since Seoul.⁸⁹ Spain therefore appears to have become a de facto member of the G20.

3 *Other Participants*

The identity of participants other than members or ‘outreach participants’ who are invited to G20 ministerials and summits depends largely on the type of meeting being considered and the priorities of the host presidency for the relevant year. There is no regularity of participants across all meetings.

Information concerning non-G20-member participation in ministerials is scant. Only the 1999 ministerial annexed a list of participants to the resulting communiqué.⁹⁰ However, there is no indication that its composition has changed over time. The original non-member participants were senior officials of the BWIs: the Managing Director of the IMF, the President of the World Bank and the chairs of the International Monetary and Financial Committee and the Development Committee (each with deputies).⁹¹ The standing invitation granted to these representatives to attend ministerials ex officio perhaps indicates what G7 members intended when they determined that the G20 should work ‘within the framework of the Bretton Woods institutional system’.⁹² Different or additional participants appear to have attended the more recently-instituted ‘thematic’ ministerials.⁹³ For example, the Director-General of the ILO and the Secretary-General of the OECD attended the initial labour and employment ministerial in Washington DC in 2010.⁹⁴

C *Internal Structure of the G20*

1 *Ministerials*

Finance ministerials involve the finance ministers and central bank governors of G20 member states (for the EU, meetings are attended by the EU

⁸⁷ While the original reference on the official website of the French Presidency is no longer accessible, similar text now appears on the website of France’s Permanent Mission to the UN: Permanent Mission of France to the United Nations in New York, *G20* (April 2013) France at the United Nations <<http://www.franceonu.org/france-at-the-united-nations/thematic-files/development/global-economic-governance/article/g20-6501>>.

⁸⁸ Group of 20, *Invitees and International Organizations*, above n 85.

⁸⁹ See, eg, Group of 20, ‘Policy Commitments by G20 Members — Seoul, Republic of Korea’ (Table, 12 November 2010); Group of 20, ‘Policy Commitments by G20 Members — Cannes, France’ (Table, 4 November 2011); Group of 20, ‘Policy Commitments by G20 Members — Los Cabos Summit’ (Table, 19 June 2012).

⁹⁰ See Group of 20, ‘Meeting of G-20 Finance Ministers and Central Bank Governors’ (Communiqué, 15–16 December 1999) annex (*List of Participants*).

⁹¹ *Ibid.*

⁹² Group of 20, ‘The Group of Twenty: A History’, above n 5, 8.

⁹³ See below Part III(C)(1).

⁹⁴ United States Department of Labor, ‘US Labor Department and Secretary Hilda L Solis to host G20 Labor and Employment Ministers’ Meeting on April 20 and 21’ (News Release, 19 April 2010) <www.dol.gov/opa/media/press/ilab/ILAB20100507.htm>.

Commissioner for Economic and Monetary Affairs and the Governor of the European Central Bank). The finance ministerial continues to be predominantly concerned with international financial stability, monetary policy and finance-related agenda items such as persistently large trade imbalances.⁹⁵

Each G20 member sends three delegates to finance ministerials: the minister, central bank Governor and a deputy; ex officio participants and outreach participants (if any) may only send two.⁹⁶ While initially held only annually, finance ministerials have been held with increasing frequency since the inception of summits: they are now held in more than one country in any given 'host' year; and a practice has emerged whereby an April ministerial is held in Washington, to coincide with the spring meetings of the World Bank and IMF.⁹⁷ As at 1 March 2013, 27 finance ministerials (involving finance ministers and central bank heads and, in one case, development ministers) have been held, along with one conference call of these participants.⁹⁸ Four finance ministerials are scheduled during the Russian Presidency.

More recently, 'thematic' ministerials have also been held. So far, these meetings have dealt with labour and employment (Washington DC, April 2010; Paris, September 2011; Guadalajara, May 2012);⁹⁹ agriculture (Paris, June 2011);¹⁰⁰ and an 'informal' meeting of foreign ministers was held in Mexico in 2012.¹⁰¹ During the Russian Presidency, a labour ministerial took place in July and there was also a separate joint labour and finance ministers ministerial later that month. Thematic ministerials are a clear indication of the expanded agenda and scope of work of the G20.¹⁰² For example, reports concerning the single

⁹⁵ See, eg, Group of 20, 'Meeting of Finance Ministers and Central Bank Governors, Paris, 18–19 February 2011' (Communiqué, 18 February 2011).

⁹⁶ Group of 20, 'The Group of Twenty: A History', above n 5, 20. See also Group of 20, 'Invitation to Non-Members', above n 83.

⁹⁷ Group of 20, 'The Group of Twenty: A History', above n 5, 20.

⁹⁸ Group of 20, *G20 Meetings of Finance Ministers and Central Bank Governors and Deputies: Official Documents* (11 October 2013) G20 Information Centre <<http://www.g20.utoronto.ca/ministerials.html>>.

⁹⁹ For the documents released by these ministerials, see the dedicated page maintained by the G20 Information Centre: Group of 20, *G20 Meetings of Labour and Employment Ministers* (19 July 2013) G20 Information Centre <<http://www.g20.utoronto.ca/labour.html>>.

¹⁰⁰ For the documents released by these ministerials, see the dedicated page maintained by the G20 Information Centre: Group of 20, *G20 Meetings of Agriculture Ministers* (18 October 2012) G20 Information Centre <<http://www.g20.utoronto.ca/agriculture>>.

¹⁰¹ Group of 20, *G20 Meetings of Finance Ministers and Central Bank Governors*, above n 98.

¹⁰² The scope and legitimacy of the G20's objectives and mandate are substantial, even controversial, topics in their own right and are beyond the scope of this paper. However, in addition to the papers noted above that acknowledge or address these issues such as Vestergaard (above n 9), Jones (above n 16) and Chowdhury (above n 56), a number of other interesting discussions on this topic can be found, although many of them approach the topic more from the perspective of political economy: see, eg, Paul Heinbecker, 'The Future of the G20 and Its Place in Global Governance' (Paper No 5, Centre for International Governance Innovation, 5 April 2011) <<http://www.cigionline.org/sites/default/files/G20No5.pdf>>. See also Cooper and Thakur, above n 15.

agriculture ministerial (23 June 2011) indicate the issues discussed included

measures intended to lift global production and improve supplies of basic foods, while mitigating price swings. ... The initiatives included a database on food stocks to be managed by the United Nations' Food and Agriculture Organization in Rome; a joint international research program on wheat; support for research into rice production; and a 'rapid response forum' among [G20] members to assess and respond to food crises.¹⁰³

Given previous summit declarations concerning issues including energy security policy and climate change, among others, it is not inconceivable that future ministerials might also be held by the relevant ministers from G20 members, although there has not been the same degree of proliferation in relation to ministerials as can be observed regarding engagement by the G20 with participants outside member-state governments. An emerging parallel can perhaps also be observed between the G20's practices regarding ministerials and the Council of the European Union, which meets in several different 'thematic' compositions, though technically always as the same institution.

2 *Summits*

Detailed proposals had been made since 2005 to establish a leaders' summit for the G20.¹⁰⁴ However, even some who championed the G20 in principle did not support an 'upgrading' of the institution to include a summit or 'L-20'.¹⁰⁵ Nevertheless, the initial summit was called rapidly once the full extent of the sub-prime debt crisis began to be realised and this crisis-genesis is a key dynamic that characterises the ongoing institutionalisation of the G20. The 2008 summit was hosted by the US in Washington DC, although France appears to seek the credit for the initiative.¹⁰⁶ Six more summits have been convened: two in 2009 (London, UK and Pittsburgh, US), two in 2010 (Toronto, Canada and Seoul, South Korea), one in 2011 (Cannes, France) and one in 2012 (Los Cabos, Mexico). At the summit in Pittsburgh, the leaders articulated that they 'expect to meet annually' after the Seoul Summit and this pattern now appears to be settling:¹⁰⁷ the annual summits were held as announced in 2011 and 2012;¹⁰⁸ and future summits are scheduled for St Petersburg, Russia in 2013 and Australia in 2014, where the host city will be Brisbane.¹⁰⁹

¹⁰³ Matthew Saltmarsh and Steven Erlanger, 'G-20 Officials Agree on Steps to Stabilize Food Prices and Improve Supplies', *The New York Times* (online), 23 June 2011 <<http://www.nytimes.com/2011/06/24/world/europe/24food.html>>.

¹⁰⁴ See, eg, John English, Ramesh Thakur and Andrew F Cooper (eds), *Reforming from the Top: A Leaders' 20 Summit* (United Nations University Press, 2005).

¹⁰⁵ See, eg, Thirlwell and Cook, above n 31, 1. Note that the term 'L20' now appears to be exclusively used by the G20 to refer to the thematic issues relating to labour, not leaders.

¹⁰⁶ See John Kirton, *What is the G20?* (22 July 2010) G20 Information Centre <<http://www.g20.utoronto.ca/g20whatisit.html>> (this was a paper prepared in 1999).

¹⁰⁷ Group of 20, 'Leaders' Statement', above n 3, 19 [50].

¹⁰⁸ Group of 20, 'The G-20 Toronto Summit Declaration' (Declaration, 26–27 June 2010) 9 [48] <<http://www.g20.utoronto.ca/2010/to-communique.html>>.

¹⁰⁹ Department of the Prime Minister and Cabinet, Australian Government, *G20 Australia 2014*, above n 28.

3 Relationships between G20 Meetings

There is no formal institutional relationship between the summit and the ministerials. The legal relationship between the various G20 meetings therefore differs from that between organs or sub-organs of formal international organisations, which may involve specific review functions or the delegation of certain functional powers, and which are characterised by formal relational rules set out in the constitution of the organisation.¹¹⁰ No such constitutionalised ‘rules’ exist for the G20. To use Virally’s words once more, there is a lack of *obligation* with respect to the ‘organs’ or ‘institutions’ within the G20; and consequent to the G20’s lack of *habilitation* or substantive legal structure, there is no legal obligation on the ministerials or the summit meetings to discharge any specific functions of the G20 as a whole.

Nevertheless, many informal indications confirm the intuitive expectation that the ministerials are subordinate to and are, to some extent, directed by the summit. A convention has developed whereby ministerials prepare for summits and subsequently implement the agreements reached at summits. Generally, finance ministers have borne the brunt of the work: for example, the ‘Pittsburgh Summit Declaration’ explicitly acknowledged the work of the G20 finance ministers and ‘direct[ed] them to report back at their next meeting with a range of possible options for climate change financing to be provided as a resource to be considered in the UNFCCC negotiations at Copenhagen’.¹¹¹ While trade ministers have not yet participated directly in G20 meetings, in the Los Cabos ‘G20 Leaders Declaration’ the summit noted the discussions held by G20 trade ministers regarding ‘the relevance of regional and global value chains to world trade’, calling on them to

accelerate their work on analyzing the functioning of global value chains and their relationship with trade and investment flows, development and jobs, as well as on how to measure trade flows, to better understand how our actions affect our countries and others, and to report on progress under Russia’s Presidency.¹¹²

The number, arrangement and timing of meetings is not fixed, but is determined instead by the host. Since the G20 resolved to hold summits only annually, the program of meetings now generally incorporates a series of ministerials, Working Group meetings and other meetings that build to a summit towards the end of each host year.

¹¹⁰ See, eg, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Advisory Opinion)* [1996] ICJ Rep 66, 75. See also *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, opened for signature 21 March 1986, UN Doc A/CONF.129/15 (not yet in force) art 2(1)(j). For a critical discussion, see José E Alvarez, *International Organizations as Law-Makers* (Oxford University Press, 2005) 79–81, 87–92.

¹¹¹ Group of 20, ‘Leaders’ Statement’, above n 3, 15 [33].

¹¹² Group of 20, ‘G20(12) Los Cabos Mexico’, above n 8, 5 [29].

The Russian calendar for 2013 is too extensive to extract fully, but it is interesting to consider the categorisation of the meetings to be held:¹¹³

Table 1: Russian Presidency Events

Governmental	Sherpa Track	Finance Track	Outreach Track
Summit	Development Working Group	Ministerials	Business 20
Non-finance thematic Ministerials	Energy sustainability Working Group	International Financial Architecture Working Group	Youth 20
Troika meetings	Employment Working Group	G20 sessions at World Economic Forum	Civil 20
—	Anti-corruption Working Group	—	Think 20
—	—	—	Labour 20

This four-part categorisation of meetings — governmental (political), Sherpa (administrative/functional), finance (special focus on key agenda items) and outreach (engagement with business and civil society) — gives an insight into the structure of the G20's working practices and internal structure, as well as into the way in which G20 members have sought to achieve four key functions: forging informal international political consensus at the highest levels of government; ensuring efficiency and consistency in the G20's work; maintaining a clear focus on the key issue of financial crisis and regulation; and engaging with civil society and non-state actors to enhance the legitimacy and the representativeness of the G20.

Given the potential changes in attendees at some of the G20's meetings, and also the fluid arrangement of the various meetings throughout the year hosted by each rotating presidency, difficulties can arise in ensuring consistency in these meetings; promoting or ensuring follow-up and implementation of the commitments and policy decisions achieved in them; and in the summit outcome documents more generally. Further, there does appear to be a tension inherent in one year's summit issuing instructions to international organisations or relevant minister to report to the following summit, as it relies on effective coordination by the troika¹¹⁴ to manage the G20's agenda and also relies on the host Presidency of the following summit making sufficient time available among its own priority areas of focus for the year's agenda. The difficulties of ensuring this level of accountability, 'follow up' and effectiveness explains why such detailed discussions within the G20 regarding 'institutional' reform of the G20 have often concentrated on both the troika structure and, more recently, consideration of the establishment of a more permanent secretariat.¹¹⁵

¹¹³ Group of 20, *Program* (2013) Russia G20 <<http://en.g20russia.ru/events/>>.

¹¹⁴ See below Part III(C)(4).

¹¹⁵ See below Part V(B).

4 *Chair and Presidency*

The G20's chairing policy is another example of the progressive formalisation of G20 practices. Initially, the G20 members agreed on¹¹⁶

principles to guide the selection of future chairs. ... [F]uture chairs would be selected well in advance to ensure continuity and allow a country time to prepare for its chairmanship. ... [T]here should be an equitable annual rotation among all regions and between countries at different levels of development. ... Five notional groups of countries were established ... from which a particular year's chair would be drawn.

Those notional groups were as follows:¹¹⁷

Table Two: Notional Groups of the Group of 20

Group One (2001, 2006, etc.)	Group Two (2002, 2007, etc.)	Group Three (2003, 2008, etc.)	Group Four (2004, 2009, etc.)	Group Five (2005, 2010, etc.)
Australia	India	Argentina	France	China
Canada	Russia	Brazil	Germany	Indonesia
Saudi Arabia	South Africa	Mexico	Italy	Japan
United States	Turkey	—	United Kingdom	Korea

Canada's Paul Martin chaired the initial three finance ministerials. Since 2002, this position has been held by a rotating chairman from the relevant annual host member.¹¹⁸ As at the end of 2007, countries in bold characters had hosted G20 ministerials and two scheduled finance ministerials (Brazil in 2008 and the UK in 2009) were also held in accordance with this roster.

However, from 2008 the G20 was fundamentally affected by the institutionalisation of a far more significant practice: the holding of summits. While the summits hosted by the UK (London 2009) and Korea (Seoul 2010) still matched the anticipated schedule, the frequent summits in 2009, held in Washington, Pittsburgh and Toronto, broke the pattern; and the selection of France for 2011, Mexico for 2012, Russia for 2013 and Australia for 2014 indicates that this notional grouping pattern no longer influences the rotation of the host state among G20 members. Further, there is also no indication that an alternative roster system is now being used.

This episode highlights the schizophrenic nature of crisis with respect to the institutionalisation of G20 practices. On the one hand, crisis can be a source of creation: it was the chief catalyst for the initial G20 ministerials and summits. On the other hand, crisis also has a destructive aspect: the abandonment of the chairing policy shows that progressively formalised practices are vulnerable to crisis-driven changes. Unlike in formal international organisations, in which formal constitutional changes or long subsequent and alternative practice may be necessary to amend internal rules, the informal, flexible framework of G20

¹¹⁶ Group of 20, 'The Group of Twenty: A History', above n 5, 23.

¹¹⁷ Ibid 130. This table also indicated that G20 members did not intend for the EU to host G20 meetings.

¹¹⁸ Ibid 22–3.

cooperation allows G20 members to dispense with particular practices rapidly if their relevance or utility is undermined by external events.

5 *Troika*

Because the G20 chair rotates between members, there is a significant risk of loss of momentum, institutional knowledge and efficiency. As a consequence, the G20 has developed a ‘virtually unique’¹¹⁹ revolving three-member management ‘troika’ of past, present and future chairs. The role of the troika is to ensure continuity in the G20’s work and management across host years; and as expressed on the official G20 website, the purpose of the troika ‘is to ensure transparency, fairness, and continuity from one presidency to another’.¹²⁰

The troika practice was established in 2002 and meetings were originally convened by the relevant finance Ministers.¹²¹ However, ‘membership’ of the troika now appears to be held by the G20 member rather than specifically by the office of the finance minister.¹²² This enables troika activities to be carried out by a combination of leaders, ministers and national Sherpas. The troika is therefore now a more multi-dimensional entity, a development which mirrors the expansion of the G20’s activities generally.

The troika’s key functions are to propose agenda issues for the G20, select speakers in consultation with members and deal with the logistics of meetings, as well as giving the current and upcoming chairs ready access to the experience of the previous year’s chairman.¹²³ During the Australian host year in 2006, a document entitled *Policy Manual: Guidance for Chairing the G20* was developed to assist the rotating chairs of the G20.¹²⁴ Both the creation of the troika and the development of guidelines for it indicate a perceived need by G20 members to institutionalise these aspects of its practice to improve the effectiveness of the work of the institution. Unfortunately this document is not publicly available and the extent to which it continues to offer useful guidance since the inception of the summits and non-finance ministerials is unclear. However, the practice of selecting the future G20 chairs ‘two years out’, which is essential for the troika’s composition to be determined and as a practice continues today, is apparently one guideline detailed within it.¹²⁵

6 *Sherpas, Sous-Sherpas and Ad Hoc Secretariat*

The G20 process employs the summitry term ‘Sherpa’ to refer to those persons — generally senior civil servants from national ministries or officials within international organisations — who assist the leaders to get to the annual summits by attending interim delegate’s meetings, undertaking the preparatory work for the main G20 meetings and otherwise providing substantive assistance

¹¹⁹ Ibid 23.

¹²⁰ Kirton, *What is the G20?*, above n 106.

¹²¹ Group of 20, ‘The Group of Twenty: A History’, above n 5, 22–3.

¹²² See, eg, Kim Young-jin, ‘Mexico Seeking to Lead G20 Development Issues’, *The Korea Times* (online), 26 September 2010 <http://www.koreatimes.co.kr/www/news/biz/2010/10/299_73537.html>.

¹²³ Group of 20, ‘The Group of Twenty: A History’, above n 5, 23.

¹²⁴ Ibid 38, citing Group of 20, *Policy Manual: Guidance for Chairing the G20* (2006).

¹²⁵ Ibid.

to G20 members and outreach participants. The term ‘delegates’ is also used. Since summits have been held, a further practice has emerged, at least for national and EU leaders, in which a Sherpa will also be assisted by two or more ‘sous-Sherpas’. Each sous-Sherpa has a separate portfolio responsibility, key among which are finance and foreign affairs.¹²⁶ While the term does not appear to be used by international organisations that participate in the G20, a ‘deputy’ role is usually played by the deputy of the representative participant (for example, the Deputy Managing Director of the IMF) or an official with relevant expertise or responsibility within the broader organisational framework (for example, an Administrator from the UN Development Program for the UN).

Little information can be obtained that details the work of the Sherpas: given the highly sensitive and often politically controversial nature of the issues being discussed, this is unsurprising. However, Sherpas have nevertheless been key sources of information on the ‘internal’ functioning of the G20 more generally, in addition to providing their behind the scenes insights into the publicly-disclosed aspects of the G20’s communiqués and statements.¹²⁷ From this we have learned that Sherpas meet frequently with their counterparts; conduct extensive discussions on agenda items to enable the ‘development and testing of ideas’; obtain expert guidance on specific issues; undertake considerable work internally within their own ministries, departments or organisations; and accompany ministers or leaders to the various ministerials and summits.¹²⁸

It appears that Sherpas will be primarily responsible for developing the internal working practices of the G20. In the Los Cabos Summit Declaration, the leaders noted:¹²⁹

It is important that we continue to further improve the transparency and effectiveness of the G20, and ensure that it is able to respond to pressing needs. As a contribution to this, in line with the commitment made in Cannes [see [92] of the Cannes Summit Declaration], *Sherpas have developed a set of evolving G20 working practices.*

...

[W]e welcome the extensive outreach efforts undertaken by the Mexican Presidency, including the meetings of Business-20, Labor-20, Youth-20, and Think-20. We will continue developing efforts with non-members, regional and international organizations, including the UN and other actors. In line with the Cannes mandate, in order to ensure our outreach remains consistent and effective, *we welcome a set of principles in this area, developed by Sherpas.*

¹²⁶ See, eg, Sanjay Kumar, ‘List of G20 Sherpas’ on Sanjay Kumar, *Incredible India and Inspiring Korea in 21st Century: Let’s Know Korea: The Land of Morning Calm* (4 November 2010) <<http://sanjaykumarjnu.blogspot.com.au/2010/11/list-of-g20-sherpas.html>>.

¹²⁷ One such example is a paper prepared by former Australian Sherpas after Australia’s initial host year in 2008: see, eg, Gordon de Brouwer and Luke Yeaman, ‘Economic Roundup Autumn 2007 — Australia’s G-20 Host Year: A Treasury Perspective’ (2007) The Treasury, Australian Government <http://archive.treasury.gov.au/documents/1268/HTML/docshell.asp?URL=03_G-20.asp>. See also Group of 20, ‘The Group of Twenty: A History’, above n 5; Beeson and Bell, above n 15 (for the list of persons interviewed for the G20 History).

¹²⁸ de Brouwer and Yeaman, above n 127, 34–5.

¹²⁹ Group of 20, ‘G20(12) Los Cabos Mexico’, above n 8, 14 [81]–[83] (emphasis added).

This outlines the technical nature of the role of the Sherpa meetings, which can be contrasted with the more administrative function of the troika as a body which is responsible for coordinating the planning of the G20 meetings and the management of its agenda.

7 *Study Groups, Working Groups and Panels*

The G20 often establishes working groups to provide G20 member representatives with analysis and insights to inform their consideration of specific policy challenges and options. Working and study groups have been created by G20 ministerials since the G20's inception and also seek to 'maintain momentum of analytic work in the G20 that may not be carried by the main agenda'.¹³⁰ During the Russian Presidency, there will be at least 14 working group meetings on issues including energy sustainability, international financial architecture, anti-corruption and development. Most will be held prior to the summit.

The G20 has also established short-term, specialised advisory bodies designed to aid future meetings. One example was the establishment of the 'High Level Panel for Infrastructure Investment', called for in 'Action 2' in the Multi-Year Action Plan on Development developed at the Seoul Summit.¹³¹ Composed of leaders and experts from multilateral development banks, private investment houses and academia, the Panel's membership was indicative of the broad expertise capable of being harnessed by the G20. Its chair was Mr Tidjane Thiam, chief executive officer of Prudential publicly limited corporation, a member of the Advisory Council of the World Bank Institute and a member of the Africa Progress Panel. The Panel's role was to

prepare recommendations for the G20 summit in France, in order to scale up and diversify financing for infrastructure needs, including from public, semi-public and private sector sources, and identify, with multilateral development banks, a list of *concrete regional initiatives*.¹³²

The Panel appears to have disbanded following the Cannes Summit. The disbanding of ad hoc bodies is also the approach recommended by the *Cameron Report*.¹³³

8 *Reporting by International Organisations*

Ministerials and summits have both requested international organisations — especially the IMF, but increasingly other organisations including the WTO, the Food and Agriculture Organisation and the World Food Program — to undertake research and analysis, prepare written reports and

¹³⁰ Group of 20, 'The Group of Twenty: A History', above n 5, 24.

¹³¹ Group of 20, 'Seoul Summit Document' (Report, 12 November 2010) annex II 2–3 ('*Multi-Year Action Plan on Development*'). From a process perspective, it is not clear how the Panel was appointed. The annexed document itself provides no guidance and the next official G20 document on the subject simply 'welcomed the appointment' of Panel members: see Group of 20, 'Meeting of Finance Ministers and Central Bank Governors', above n 95.

¹³² Group of 20, 'Multi-Year Action Plan on Development' (Communiqué, 24 February 2011) (emphasis added).

¹³³ Cameron, above n 14.

develop specific recommendations for consideration by the subsequent ministerial or summit. This practice is sometimes referred to as ‘tasking’.¹³⁴ For example, the ILO prepared an update report on employment and labour market trends in G20 countries for the Seoul Summit.¹³⁵ Tasking allows the G20 members to obtain relevant information from (for example) a UN specialised agency which, moreover, must also bear the costs associated with the preparation of this material.¹³⁶

An example of the G20’s enthusiasm for tasking is provided by the June 2011 agriculture ministerial. At that meeting, Ministers agreed to

remove export restrictions on food for humanitarian purposes and reaffirmed their opposition to export bans — an issue that will be taken up by the [WTO]. They asked the World Food Program to develop a pilot program for regional humanitarian food reserves.¹³⁷

The relationship between international organisations and the G20 can sometimes be somewhat triangular, in that the summit may request an organisation to prepare a report to be presented to an upcoming ministerial or a ministerial will request that a body make recommendations to the next year’s summit.¹³⁸

This type of relationship between the G20 and existing international organisations is interesting not only because of the apparent need on the part of the G20 for the resources provided by specialised agencies, but also because of the apparent willingness of those agencies to collaborate. It can also be seen as a demonstration by the G20 of a strong desire to work together substantively with the UN specialised agencies. It also enables the G20 to operate efficiently and reduces the need for the G20 to duplicate expertise housed elsewhere.

However, the G20’s lack of *habilitation* means that such relationships are necessarily ad hoc and there is no legal obligation for an international organisation to continue to collaborate. This informality also means that no limits can be imposed effectively on the extent to which the G20 seeks to ‘task’ international organisations. This indicates two vulnerabilities of the G20: its lack of dedicated administrative or technical staff and infrastructure; and the lack of legal clarity regarding its relations with international organisations. While G20 members may be able to compel their own Sherpas to undertake necessary preliminary work, no guarantee of comparable control exists with respect to relevant international organisations. In practice, while some organisations, such as the IMF, may be sufficiently ‘controlled’ by G20 members to secure cooperation by the relevant organs of that organisation, others may not. Were the non-G20 member states of the ILO, for example, to resist the expenditure of ILO resources on G20 activities, whether because those activities did not sufficiently relate to the broader work of the ILO or purely for political reasons, it is possible

¹³⁴ This term is drawn from language used in certain G20 declarations: see, eg, Group of 20, ‘The G-20 Toronto Summit Declaration’, above n 108, 4 [20]. Notably, the G20 has not sought to task the UN or any of its organs, subcommittees or other internal committees.

¹³⁵ International Labour Organization, ‘Weak Employment Recovery with Persistent High Unemployment and Decent Work Deficits: An Update on Employment and Labour Market Trends in G20 Countries’ (Report, 11–12 November 2010) <http://www.ilo.org/global/publications/working-papers/WCMS_146307/lang--de/index.htm>.

¹³⁶ Interview with International Labour Office Official (Oral Questions, May 2011).

¹³⁷ *Ibid.*

¹³⁸ See, eg, Group of 20, ‘The G-20 Toronto Summit Declaration’, above n 108, 6.

that those member states could effectively prevent the G20 from enjoying the support of the ILO. In turn, this could undermine the policy-development work pursued by the G20. Given the apparently willing participation of most if not all international organisations in the work requested by the G20 so far, this possibility currently seems somewhat remote and should not be overemphasised. However, from an institutional perspective, the practice of ‘tasking’ carries a potential structural vulnerability. We will return to this later in considering some of the recommendations of the *Cameron Report*.¹³⁹

9 *National Ad Hoc Secretariat*

The G20 does not have an independent secretariat. Instead, the administrative functions of the institution are coordinated by the public service of the host country of that year. While certain organisations have in the past relied on ‘bureaux’ or secretariats under the supervision of one of the member states, such examples are rare. This feature — or lack of organ — therefore provides the strongest support for drawing comparisons between the G20 and 19th century conferences or ‘concerts’.¹⁴⁰

The lack of a permanent secretariat has a number of consequences for the G20:

- (i) The logistics and organisation of the year’s meetings are coordinated and planned by the host state and, consequently, the costs of the G20 meetings are predominantly borne by the host state.¹⁴¹ Therefore, while each participant pays its own expenses in relation to attending and participating in meetings, the bulk of the costs, relating to security arrangements and impact on infrastructure are borne by the host.
- (ii) The host state can strongly influence the agenda of the annual meetings. Subject to certain institutionalised practices regarding invitations and the agenda items, the host invites all participants, prepares preliminary documents and schedules the upcoming meetings and their agendas. Changes or additions to the agenda can therefore be made by the host with much greater flexibility than is often the case in formal international organisations and the host retains considerable latitude to establish new areas of focus. Coupled with the relatively open-ended mandate of the G20, this ability to influence discussions permitted the US to host the initial labour and employment ministerial in 2008 and enabled South Korea to place development issues on the G20 agenda for the first time in 2010.¹⁴²

¹³⁹ See below Part V(C).

¹⁴⁰ See, eg, Zaring, above n 1.

¹⁴¹ Canada’s combined hosting of the G8 and G20 meetings in 2010 was reported to have cost an estimated CAN\$860 million: see, eg, Canada Television News, *Ottawa Releases Costs for G20, G8 Summits* (5 November 2010) <<http://toronto.ctv.ca/servlet/an/local/CTVNews/20101105/g20-cost-s-101105/20101105/?hub=TorontoNewHome>>.

¹⁴² This flexibility has generally been welcomed by the participants themselves. For example, see the comments made in: Paul Martin and Kemal Dervis, ‘The G20 and Prospects for International Cooperation on Economic and Security Challenges’ (Transcripts from the Brookings Institution, Washington DC, 8 April 2011).

- (iii) A more logistical consequence is the possibility for loss of momentum or ‘institutional memory’ between meetings or sets of meetings, when the hosting of the meetings is passed from one participant to another. This consequence has to some extent been mitigated by the work of the Sherpas, the introduction of the troika system and the documentation practices of the G20 (such as the Multi-Year Action Plan for Development initiated at the Seoul Summit).
- (iv) A fourth key consequence is monitoring and ‘follow-up’. The G20 relies on a combination of decentralised implementation of G20 recommendations and peer-review compliance assessment. Legally, these are both relatively weak forms of their respective processes. However, within the informal G20 framework, such strength as can be derived from peer-review of mutual commitments and seeking consensus on agenda reform and continuity may be detrimentally affected, rather than aided, by the existence of a permanent secretariat: hence, the ‘lack’ of secretariat is not necessarily a detriment.
- (v) A final consequence concerns representation. Without a permanent representative distinct from the members’ representatives, no such independent ‘G20’ representative could attend meetings in such a capacity and the role would in all likelihood fall to the host leader of the year. However, this may be an instance in which a ‘lack’ may not necessarily constitute a detriment, given it is likely to allow the host of the year to fulfil such a role in accordance with its own priorities.

10 ‘X20s’

The final category of G20 meetings, and one which appears to be growing more rapidly than ministerials, are what we refer to as various ‘X20’ meetings that have been held since the inception of the summits in 2008. During the Russian Presidency, there were meetings of the Business 20 (business forum), Labour 20 (labour and unions forum), Civil 20 (NGOs and civil society organisations), Youth 20 (youth forum) and Think 20 (a forum of leading think tanks). Some of these forums (such as the Youth 20) have a relatively long history: this particular forum harks back to the ‘Junior 8’ forum first held in conjunction with the G8 series of meetings in 2006.¹⁴³ The Think 20 forum was first convened during the Mexican Presidency.

The function of these forums is to pursue ‘consistent and effective engagement with non-members’ including civil society organisations, in order to strengthen the G20’s ‘ability to build and sustain the political consensus needed to respond to challenges’ and to ‘remain efficient, transparent and accountable’.¹⁴⁴ While the contributions of these various forums to the outcomes

¹⁴³ See Central and Eastern Europe Commonwealth of Independent States, *Girls and Boys from Latin America Ask Leaders of the G8 to Combat Violence* (14 July 2006) UNICEF <www.unicef.org/ceecis/voice_children_4577.html>.

¹⁴⁴ Group of 20, ‘Cannes Summit Final Declaration — Building Our Common Future: Renewed Collective Action for the Benefit of All’ (Declaration, 4 November 2011) 18 [92] <<http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html>>.

of the summit are not always apparent from the relevant declarations, some of their contributions have been explicitly recognised.¹⁴⁵

IV DEFINITIONS: WHY THE G20 IS NOT AN INTERNATIONAL ORGANISATION

The foregoing discussion demonstrates that while the G20 is far more than an ad hoc conference, its ‘member states’ have nevertheless studiously sought to ensure that it remains something less than an international organisation. In this section, we will analyse the significance of the definition of ‘international organisation’ for the G20. In doing so we focus on practical matters regarding the features or characteristics of international organisations that will be most relevant to G20 members should they wish to further institutionalise the G20 without creating an international organisation and have not pursued a broader a constitutional or GAL analysis. There are interesting questions that could be considered in this latter respect, but we consider that such an analysis would require, first of all, a clear organisational understanding of what cooperation within the G20 actually involves; hence this more practical purpose is the focus of our analysis.

A ‘International Organisation’

There are almost as many definitions of an international organisation as there are books on the subject. However, the key elements of these definitions are similar and the differences are far from fundamental. When applied in practice, these definitions broadly agree on the group of entities that qualify as international organisations and handbooks on the law of international organisations cover and discuss more or less the same organisations. Nevertheless, there are certain exceptions to be found in ‘special cases’: organisations such as the International Committee of the Red Cross, Interpol and the Organization on Security and Co-Operation in Europe, which may satisfy the requirements for some definitions of international organisation but not others.

For the purposes of our analysis, we will use the definition used by the International Law Commission (‘ILC’) in its 2011 *Articles on the Responsibility of International Organisations* (‘ARIO’).¹⁴⁶ According to art 2(a) of the *ARIO*:

‘international organization’ means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities ...

¹⁴⁵ See, eg, Group of 20, ‘G20(12) Los Cabos Mexico’, above n 8, 4 [24].

¹⁴⁶ For the text of these arts, see: International Law Commission, *Report of the International Law Commission on Its Sixty-Third Session*, UN GAOR, 66th sess, Supp No 10, UN Doc A/66/10 (2011) ch V(E) (‘Text of the Draft Articles on the Responsibility of International Organizations’) (‘Draft Articles’); *Responsibility of International Organizations*, GA Res 66/100, UN GAOR, 66th sess, 82nd plen mtg, Agenda Item 81, Supp No 49, UN Doc A/RES/66/100 (27 February 2012) annex (‘Responsibility of International Organizations’). In this resolution, the General Assembly ‘takes note’ of the *Articles on the Responsibility of International Organizations*. See also the first report prepared by the International Law Commission: Giorgio Gaja, Special Rapporteur, *First Report on Responsibility of International Organizations*, UN Doc A/CN.4/532 (26 March 2003).

This definition is relatively recent and, in particular, it is the result of a process of international consultation and negotiation within the ILC and the UN General Assembly and therefore reflects broad universal consensus. This *ARIO* definition is to be distinguished from definitions by individual authors in books and articles,¹⁴⁷ which seek to identify the organisations that are appropriate for academic analysis through the lens of international institutional law, in that it is intended to identify the group of international organisations to which international responsibility should attach. The *ARIO*'s requirement for an organisation to have legal personality is the key distinction between its definition and that used by commentators and, as a result, the *ARIO* definition is somewhat narrower in its scope. However, even for scholars who cast a far wider net, the G20 strains at almost all of the key elements of the definition.

As noted by Schermers and Blokker, '[i]n practice, the boundary between international organizations and less structured forms of international cooperation is less clear-cut than any definition of these organizations would suggest'.¹⁴⁸ Each definition proposed is purposive and seeks to identify a boundary line between those organisations that should be the subject of institutional law analysis (in the case of textbook definitions) or capable of bearing international responsibility for their acts separate from that of their member states (in the case of the *ARIO*s) and those that fall outside the scope of those exercises. Our analysis indicates that a tension between these various definitions exists with respect to the G20. The G20 members have expressly sought to structure their cooperation in an informal framework and not in a formal international organisation, without establishing the G20 as a thing in itself, to which they may be held to owe international obligations and which may achieve a level of independent functioning. Nevertheless, in order for the G20 to be an efficient and effective mode of cooperation, certain institutional practices will inevitably need to be implemented. As a consequence, G20 members can draw many useful lessons from the experience of other formal and informal modes of international cooperation which fall within a much more widely cast definition of 'international organisation'. If one imagines that different forms of international cooperation can be placed along a spectrum from the least to the most formal, the tension faced by G20 members in ensuring effective yet informal cooperation can be conceived of as inward pressure being applied at both ends of this spectrum, pushing the G20 away from each of the poles. The significance of the *ARIO* definition, therefore, is that it represents the limit of their intended manner of cooperation, a boundary line to the formal part of the spectrum beyond which they do not wish to go. However, the efficiency of their cooperation will be enhanced by approaching that line as nearly as possible. In this respect, lessons drawn from a more widely defined collection of international organisations may provide useful practical guidance.

To articulate these formal limits, therefore, we consider each element of the *ARIO* definition in turn. Later, we draw on understandings from broader

¹⁴⁷ See, eg, Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge University Press, 2nd ed, 2009); Schermers and Blokker, above n 18, 37–46 [33]–[45]. See also C F Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge University Press, 2nd ed, 2005).

¹⁴⁸ Schermers and Blokker, above n 18, 33 [30].

definitions of ‘international organisation’ to assess various forms of institutionalisation which may nevertheless advance the effectiveness of cooperation through the G20.

1 ‘Organisation’

The ILC definition is somewhat circular, because the term ‘organisation’ is not itself defined. Little guidance is given, therefore, as to whether the ‘Group of 20’ could be considered an ‘organisation’ as such. However, the word ‘group’ does not exclude this possibility: international organisations have a wide variety of names, some of which may suggest that a rather informal mode of cooperation is intended or that the organisation has grown from such practices — examples include the International Network for Bamboo and Rattan¹⁴⁹ and the Gas Exporting Countries Forum (‘GECF’),¹⁵⁰ each of which would clearly satisfy the *ARIO* definition.¹⁵¹

2 ‘Treaty or Other Instrument Governed by International Law’

The second and critical element is the requirement that the organisation should be ‘established by treaty or other instrument governed by international law’. Almost all existing international organisations have been created by treaty. However, in practice there are also a few entities that are widely considered to be international organisations, but which lack a treaty basis.¹⁵² According to the commentary to art 2(a) *ARIO*,

[t]his wording is intended to include instruments, such as resolutions adopted by an international organization or by a conference of States. Examples of international organizations that have been so established include the Pan American Institute of Geography and History (PAIGH), and the Organization of the Petroleum Exporting Countries (OPEC).¹⁵³

The ILC has therefore sensibly not restricted its definition to organisations created by treaty; but at the same time, it has opened the door only to a limited extent by requiring that organisations must at least be established by another ‘instrument governed by international law’.

¹⁴⁹ Created in 1997 by: *Agreement on the Establishment of the International Network for Bamboo and Rattan*, 2132 UNTS 197 (signed and entered into force 6 November 1997), as amended by *Agreement on the Establishment of the International Network for Bamboo and Rattan, 6 November 1997, as Revised*, UN Doc ST/LEG/SER.A/759, 14 (signed and entered into force 15 October 2008). The seat is in Beijing, China: International Network for Bamboo and Rattan, *Member Countries* (2013) <<http://www.inbar.int/who-we-are/member-countries>>.

¹⁵⁰ Formalised in 2008 by: *Agreement on the Functioning of the Gas Exporting Countries Forum*, reproduced in Qatar, *Official Gazette*, No 11, 25 November 2009, 62. The seat is in Doha, Qatar: Gas Exporting Countries Forum, *Secretariat* (2013) <<http://www.gecf.org/aboutus/secretariat>>.

¹⁵¹ *Draft Articles*, UN Doc A/66/10, [87]; *Responsibility of International Organizations*, UN Doc A/RES/66/100, annex art 2(a).

¹⁵² See Ignaz Seidl-Hohenveldern, ‘Internationale Organisationen aufgrund von soft law [International Organisations and Their Basis in Soft Law]’ in Ulrich Beyerlin et al (eds), *Recht zwischen Umbruch und Bewahrung: Völkerrecht, Europarecht, Staatsrecht — Festschrift für Rudolf Bernhardt* [Law between Rupture and Conservation: International Law, European Law, Domestic Law — Commemorating Rudolf Bernhardt] (Springer, 1995) 229.

¹⁵³ *Draft Articles*, UN Doc A/66/10, [88] (citation omitted).

It is clear that the G20 does not fulfil this requirement. As noted above, the G20 was initially convened or ‘created’ by a statement adopted at the September 1999 meeting of the G7 in Washington DC, in which the G7 finance ministers and Central Bank Governors

propose[d] to establish a new mechanism for informal dialogue in the framework of the Bretton Woods institutional system, to broaden the dialogue on key economic and financial policy issues among systemically significant economies and promote cooperation to achieve stable and sustainable world economic growth that benefits all.¹⁵⁴

The statement of which this quotation forms part is not a ‘treaty’ within the meaning of art 2 of the *Vienna Convention on the Law of Treaties*.¹⁵⁵ But could it be considered to be another ‘instrument governed by international law’? Prima facie this does not seem to be the case: it is merely a statement of policy and does not appear to be intended as a legal instrument (or less a collective unilateral undertaking). However, as noted above, the ILC commentary mentions as examples of such instruments ‘resolutions adopted by an international organisation or by a conference of States’. The G7 meeting in September 1999 should probably be considered to be a conference of states. In principle, therefore, it would appear that such meetings should not be precluded from having the ability to create an international organisation. Nevertheless, it is quite clear from the wording of the paragraph quoted above that the G7 did not have any intention to create a formal international organisation or that the forum of states proposed was created with the intention that it assume legal obligations. Rather, a better characterisation would appear to be that G7 ministers wished to establish a ‘group’, ‘a new mechanism for informal dialogue’, within which policy coordination could take place.

3 ‘Possessing Its Own International Legal Personality’

The third element is the requirement that the organisation must possess its own international legal personality. In essence, this means that the organisation has its own legal identity which is separate from that of its members.

The constituent instrument of the organisation may explicitly provide that it has such international legal personality. However, in the absence of such a provision, possession of international legal personality may also be implied. In the *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)*,¹⁵⁶ the International Court of Justice (‘ICJ’) recognised the UN as an international organisation with international legal personality, holding that although not a state, the UN is ‘a subject of international law ... capable of possessing international rights and duties’.¹⁵⁷ While no article of the *United Nations Charter* (‘UN Charter’) expressly grants international legal personality

¹⁵⁴ Group of 7, *Statement of G7 Finance Ministers and Central Bank Governors* (25 September 1999) G8 Information Centre [19] <<http://www.g8.utoronto.ca/finance/fm992509state.htm>>.

¹⁵⁵ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

¹⁵⁶ *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174 (‘*Reparations Opinion*’).

¹⁵⁷ *Ibid* 179.

to the organisation, the Court emphasised that, in order to achieve the purposes and principles specified in the *UN Charter* and to ‘carry out the intentions of its founders’¹⁵⁸ (being the states parties to the *UN Charter*), ‘the attribution of international personality [to the UN was] indispensable’.¹⁵⁹ However, the Court failed to specify which factors (if any) are critical for the establishment of international legal personality. Hence, the case gives only incomplete guidance as to the correct methodology for considering or weighing those factors in less clear cases. Complicating the issue further, the Court’s definition of personality seems somewhat circular, as the key indicia referred to — the holding by an entity of rights and duties — themselves rely for sense on the existence of a legal person.¹⁶⁰ While not specifically addressing the question of personality but rather the UN’s capacity to maintain claims, the Court confirmed this capacity vis-a-vis non-member states by stating that

the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone.¹⁶¹

In this passage, the Court departs from general treaty principles (treaties only bind members to them) and effectively finds that the existence of the UN applies *erga omnes* such that the UN has ‘objective personality’.¹⁶²

The Court’s analysis therefore leaves unresolved certain difficulties that arise when analysing potential ‘organizations’ that are ‘closed’ or less ‘universal’ than the UN.¹⁶³ While the G20 — ‘established’ by (at the least) the seven members of the G7 or (at most) the 19 states, EU and (to some extent) the ‘outreach participants’ that also participate in relevant meetings — may represent a significant proportion of the world’s population and economic activity, by no calculations could it be said to represent the ‘vast majority’ of states. However, in any event it is clear from the G20’s own statements and ancillary documents such as the *Cameron Report* that the G20 was not created as an international legal person, nor has subsequent practice led it to develop into a legal entity separate from its members.

It is worth noting that the *ARIO* definition is more formal and stringent in respect of this element than other more analytical definitions, for example that used by Schermers and Blokker, who refer to a requirement that an organisation have ‘at least one organ with a will of its own’ (in French, *volonté distincte*).¹⁶⁴ The requirement that an organ have a will independent of its members casts a wider net and potentially catches entities such as the organs progressively established within the context of the *GATT*, which some scholars consider to have evolved into an international organisation incrementally as the

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.* 178.

¹⁶⁰ Ian Brownlie, *Principles of Public International Law* (Oxford University Press, 7th ed, 2008) 57.

¹⁶¹ *Reparations Opinion* [1949] ICJ Rep 174, 185.

¹⁶² Malcolm N Shaw, *International Law* (Cambridge University Press, 6th ed, 2008) 260.

¹⁶³ See Schermers and Blokker, above n 18, 990–1 [1568].

¹⁶⁴ *Ibid.* 44 [44].

'distinctness' of its organs was progressively formalised.¹⁶⁵ While the G20 would still not satisfy even this broader requirement, this alternative formulation lends more nuanced guidance as to how the G20 members may more closely approach the 'boundary line' between informal and formal modes of cooperation while at the same time not inadvertently stepping over it.

The G20's lack of personality has a number of significant practical implications: for example, unlike international organisations, the G20 cannot conclude agreements with its members or host states dealing, *inter alia*, with the privileges and immunities of persons attending G20 meetings. We discuss these matters further in Part V below.

4 *'May Include as Members, in Addition to States, Other Entities'*

The fourth and somewhat incidental element provides that '[i]nternational organizations may include as members, in addition to States, other entities'.¹⁶⁶ This is the only requirement of the ILC definition that is clearly fulfilled in the case of the G20, which has as its members not only 19 states, but also the EU.

5 *Conclusion*

It must be concluded that the G20 is not an international organisation, since it has not been established by a treaty or other instrument governed by international law and because it does not possess its own international legal personality. This is confirmed in the main textbooks and treatises on the law of international organisations, which pay hardly any attention to the G20 and the observations by Ruffert and Walter in relation to the G8 are equally apposite with respect to the G20: '[es] ist organisatorisch nicht zur Internationalen Organisation verdichtet' [cooperation within the G20 has not been sufficiently 'condensed', or 'crystallised', such that it has been transformed into an international organisation].¹⁶⁷ This conclusion is fully in line with the circumscription of the nature of the G20 in the founding G7 statement from 1999 and in subsequent statements. Of particular relevance is the 'Leaders' Statement' adopted at the 2009 Pittsburgh Summit, from which it is clear that the G20 (not the G7/G8) was henceforth intended by its members to be 'the premier forum for [their] international economic cooperation'.¹⁶⁸ Elaborating upon this position, the 2011 'Cannes Summit Final Declaration' stated that the G20 is 'a Leader-led and informal group and it should remain so. The G20 is part of the overall framework of international governance'.¹⁶⁹ In the Los Cabos 'G20 Leaders Declaration',

¹⁶⁵ See, eg, Benedek, above n 36, 262.

¹⁶⁶ *Responsibility of International Organizations*, UN Doc A/RES/66/100, annex art 2(a).

¹⁶⁷ Ruffert and Walter, above n 80, 201 [607] [author's trans].

¹⁶⁸ Group of 20, 'Leaders' Statement', above n 3, 3 [19], 19 [50].

¹⁶⁹ Group of 20, 'Cannes Summit Final Declaration', above n 144, 18 [91].

they stated:¹⁷⁰

In light of the interconnectedness of the world economy, the G20 has led to a new paradigm of multilateral co-operation that is necessary in order to tackle current and future challenges effectively. The informal and flexible character of the G20 enables it to facilitate international economic and financial cooperation, and address the challenges confronting the global economy. It is important that we continue to further improve the transparency and effectiveness of the G20, and ensure that it is able to respond to pressing needs. As a contribution to this, in line with the commitment made in Cannes, Sherpas have developed a set of evolving G20 working practices.

It is clear from these passages that ‘informality’ and ‘flexibility’ are key words that characterise this forum for cooperation, which is intended by its members to help generate the necessary political consensus for dealing with global economic policy issues. Existing formal international organisations for international economic cooperation and coordination (such as the IMF, the World Bank, the WTO and the UN (Economic and Social Council (‘ECOSOC’) and the General Assembly)) are not considered appropriate to perform this function. At the same time, the founding G7 statement refers to the G20 as ‘a new mechanism for informal dialogue *within the framework of the Bretton Woods institutional system*’,¹⁷¹ and the 2011 ‘Cannes Summit Final Declaration’ stated that the G20 is ‘part of the overall framework of international governance’.¹⁷² Therefore, the G20 is considered to be both an informal forum for coordination at the highest political level, as well as part of (or at least not disruptive to) the larger structure of global economic governance.

Having now analysed the G20’s lack of formal structure, in the following section we consider the analysis set out in the *Cameron Report* with respect to the G20’s internal structure and its external relations with existing international organisations.

V INSTITUTIONALISATION AND REFORM

A *The Cameron Report*

In January 2011, French President Sarkozy indicated that consideration of the ‘creation of a permanent G20 secretariat to follow up on the implementation of our decisions between two presidencies’ was to be a governance priority of the French Presidency of the G20 and asked UK Prime Minister David Cameron to work more specifically on this and other governance reform topics.¹⁷³ Sarkozy’s proposal was somewhat surprising at the time, coming as it did in the wake of multiple statements and communiqués by former G20 presidents that emphasised the informal, rotating nature of the forum and its presidency. In the lead-up to the Cannes Summit, G20 members made no further mention of their expectations with respect to the features of such an office: its intended function, the

¹⁷⁰ Group of 20, ‘G20(12) Los Cabos Mexico’, above n 8, 14 [81].

¹⁷¹ Group of 7, *Statement of G7 Finance Ministers and Central Bank Governors*, above n 154, [19] (emphasis added).

¹⁷² Group of 20, ‘Cannes Summit Final Declaration’, above n 144, 18 [91].

¹⁷³ Sarkozy, above n 13, 6.

appointment or role of its officers, contributions to its budget or the more precise delineation of its mandate.

The report delivered by David Cameron to the Cannes Summit is a balanced and relatively detailed consideration of some key potential governance reforms for the G20. For our purposes, it contains several interesting observations on matters that go directly to the impetus for international cooperation that the G20 represents and illuminates how necessity and circumstance inform the nature and structure of such cooperation. In the introduction to the *Cameron Report*, which identifies that harnessing political will to achieve political consensus on key issues affecting economic growth and wealth disparity is the focus of the G20's work, Cameron contends that the solution to problems with the current state of global governance is 'not to be found in elaborate new institutions and global architecture'.¹⁷⁴ Instead, he identifies some immediate priorities for action:

First, the power of informality. The G20, representing 85 per cent of global GDP, is not a formal institution. But from Washington to Cannes, Leaders have come to the G20 to speak candidly and reach political agreement on the most difficult economic issues. We must uphold this spirit over time. I have suggested here some practical ways to do that.

Second, we must prioritise the areas where improvements to governance will matter most. That means: taking immediate steps to strengthen the Financial Stability Board; reinforcing the World Trade Organization's role at the heart of the multilateral trading system; and making our economic policy coordination more effective. All this helps to ensure that our institutions keep pace with the realities of the global economy.

Third, we need common principles that guide our development of the standards that govern our global economy, from tax transparency to anti-corruption. And we need common objectives that encourage our institutions to work together on complex issues. We cannot behave as if the world economy has not changed dramatically over the past 20 years. The lesson from the G20 is that advanced and emerging markets need to come together on an equal footing, and provide existing institutions and processes that they work alongside with a clearer political direction on what needs to be done.

The scope of the *Cameron Report* extends well beyond questions concerning the nature and structure of the G20 and includes the question of its mandate; its role in the international community and among existing organisations; and the underlying policy objectives of the G20 members, all of which would be interesting matters for extensive analysis. For the purposes of this paper, however, the following recommendations of the *Cameron Report* are most

¹⁷⁴ Cameron, above n 14, 2–3.

pertinent:¹⁷⁵

the G20 must:

- maintain its informal and Leader-driven nature for the foreseeable future, and provide a clear public declaration of its role and purpose within the global system;
- become much more consistent and effective at engaging non-members, international institutions and other actors, welcoming their effective participation in specific areas of the G20's work; and
- develop clear agreed working practices to manage and deliver its agenda through time more effectively; formalise the Troika of past, present and future Presidencies; and underpin it with a small secretariat, possibly staffed by officials seconded from G20 countries and based in and chaired by the Presidency.

The first recommendation did not occasion any change in the structure of the G20 and the rationale for informality has been discussed in detail in Parts II to IV above. In this Part, we consider the (lack of response) to the latter two reform proposals: first, why the G20 members determined not to establish a permanent secretariat and instead decided to formalise the role of the troika; and secondly, the legal issues that G20 members must consider when engaging with: non-members; regional and international organisations, including the UN; and other actors.

The response by G20 members to the *Cameron Report* has — at least expressly — been limited. The ‘Cannes Summit Final Declaration’ concludes:

We welcome the report of UK Prime Minister David Cameron on global governance.

As our premier Forum for international economic cooperation, the G20 is unique in bringing together the major economies, advanced and emerging alike, to coordinate their policies and generate the political agreement necessary to tackle the challenges of global economic interdependence. It is a Leader-led and informal group and it should remain so. The G20 is part of the overall framework of international governance.

We agree that, in order to strengthen its ability to build and sustain the political consensus needed to respond to challenges, the G20 must remain efficient, transparent and accountable. To achieve this, we decide to:

- Maintain our focus on the broad global economic challenges;
- Bolster our ability to deliver our agenda and work program effectively. *We decide to formalise the Troika, made of past, present and future Presidencies to steer the work of the G20 in consultation with its members. We ask our Sherpas to develop working practices for the G20 under the Mexican Presidency;*
- *Pursue consistent and effective engagement with non-members, regional and international organisations, including the United Nations, and other actors, and we welcome their contribution to our work as appropriate. We also encourage engagement with civil society. We request our Sherpas to make us proposals for the next meeting.*

¹⁷⁵ Ibid 5.

We reaffirm that the G20's founding spirit of bringing together the major economies on an equal footing to catalyse action is fundamental and therefore agree to put our collective political will behind our economic and financial agenda, and the reform and more effective working of relevant international institutions.¹⁷⁶

It can be seen that the main departure from what was recommended in the *Cameron Report* and what was endorsed by the Cannes Summit is the idea of a permanent secretariat for the G20. It is to that issue we turn first.

B *Secretariat and (or versus) Troika (Enhancing Internal Governance)*

1 *Recommendations from the Cameron Report*

The *Cameron Report* carefully calibrates the nature of the secretariat under its consideration:¹⁷⁷

Establishing a permanent policy Secretariat for the G20 now could be seen as an over-reaction to the G20's needs, undercutting the G20's member-driven quality without offering clearly discernible benefits. Instead, this report recommends that the G20 should expand its capacity by formalising the Troika of past, present and future Presidencies; and underpin it with a small secretariat, possibly staffed by seconded officials from G20 countries and based in and chaired by the Presidency.

As noted above, the G20 currently uses an ad hoc secretariat, responsibility for which rotates annually with the host. However, the lack of a permanent, independent secretariat has a number of significant consequences. The following sections assess Cameron's recommendation by considering the key features of a secretariat of an international organisation as well as the advantages that the less formal, yet still structured, troika mechanism may offer the G20.

2 *Legal Issues Relevant to Secretariats of International Organisations*

(a) *Functions of the Secretariat — 'Follow-Up'?*

The functions of a permanent secretariat of an international organisation may include administrative and clerical functions; information provision and recording, collection of information and reports from members and other supporting international organisations; coordination of internal functions; representation of the organisation in external bodies; and the performance of tasked instructions and potentially executive functions. While the G20's lack of formality may reduce the need for or significance of some of these functions, one clearly useful function would be ensuring that the work program and commitments of the G20 are documented, monitored and potentially even assessed: what may be termed a 'follow-up' function. However, in relation to members' substantive accountability for their commitments, ministerials and summits already conduct a significant amount of peer-assessment and much of the force of such processes is that the members' hold each other politically

¹⁷⁶ Group of 20, 'Cannes Summit Final Declaration', above n 144, 18–19 [90]–[93] (emphasis added).

¹⁷⁷ Cameron, above n 14, 18 [1.20] (emphasis altered).

accountable for compliance.¹⁷⁸ Beyond this, the G20 has also tasked specialised bodies with further monitoring of G20 members' practices: for example, the WTO regarding commitment to certain trade policies.¹⁷⁹ Whether a secretariat could provide similar 'follow-up' processes, or could enhance the accountability of those currently being undertaken, is therefore not clear.

Secondly, it seems unlikely that a secretariat is needed to encourage recalcitrant members to participate actively in G20 discussions. Would a letter from an international civil servant (for example, the head of a G20 secretariat) encourage a more rapid response from the leader of a G20 member than a phone call from one of his or her counterparts? One of the essential benefits of an 'intimate' summit is the ability of participants to forge close personal connections. It is these connections that facilitate the application of direct political pressure between leaders. Adding intermediaries such as a secretariat staff could be seen to be incompatible with this aspect of the G20's structure and ethos.

Finally, G20 members each already have several senior officials who are responsible for their G20 relationships and preparatory work (Sherpas, deputies and, during and around host years, potentially additional troika staff). These personnel are in turn presumably supported by substantial departmental or ministerial offices in the relevant state. As a result, a 'virtual secretariat' already exists with a staff numbering close to 100 people, including members of the current ad hoc national secretariat.¹⁸⁰ Structurally, the troika also supports this process. So far, G20 members have not indicated that the efficiency or quality of work undertaken by these persons has hampered the work of the G20. However, it is possible that this situation may change over time, especially if the extent of the G20's work increases. By comparison, from its inception in 1967, ASEAN operated with the support of 'national secretariats', but it eventually established its own permanent secretariat in 1975 (the same year in which ASEAN summits began to be held).¹⁸¹

These factors all suggest that, if the G20 were to establish a permanent secretariat, it would need either be small (to coordinate the considerable number of people already performing customary secretariat functions) or extremely large (to replace them). Cameron's recommendation was for the former approach:¹⁸²

the G20 should expand [the Troika's] capacity by formalising [it] of past, present and future Presidencies; and underpin it with a small secretariat, possibly staffed by seconded officials from G20 countries and based in and chaired by the Presidency.

The function of this small secretariat would be to maintain continuity in the G20's engagement efforts, and to ensure that progress is being made across its inherited

¹⁷⁸ An interesting parallel could potentially be explored with the idea of 'political accountability' of UN member states for human rights matters through the reformed Human Rights Council.

¹⁷⁹ See, eg, World Trade Organization, 'Report on G-20 Trade Measures (Mid-October 2010 to April 2011)' (Report, 11 May 2011).

¹⁸⁰ This is consistent with the approach to a 'virtual secretariat' which is apparently being contemplated by the BRICS nations: see 'BRICS Leaders to Discuss Establishment of "Virtual Secretariat"', above n 62.

¹⁸¹ See Secretariat, Association of Southeast Asian Nations, above n 65.

¹⁸² Cameron, above n 14, 18 [1.20]–[1.21] (emphasis altered).

agenda and ongoing work programme. The secretariat could reside in and be chaired by the country holding the annual Presidency. It could act as part of the Presidency team, and draw its staff from Troika members and officials seconded from G20 members as desirable.

So far, at least, this recommendation has not been adopted by G20 members, although¹⁸³ the ongoing formalisation of the troika's function has been pursued.

Nevertheless, with a view to testing the 'boundary line' represented by the *ARIO*'s definition of 'international organisation' and other lessons to be drawn by G20 members from a broader range of formal and less formal international organisations, in the following sections we consider two other key issues that would flow from the creation of a G20 secretariat.

(b) *A G20 Secretary-General?*

A key benefit for an international organisation that establishes a secretariat lies in the creation of the office of a director- or secretary-general who can represent the interests of the organisation and promote its work and objectives in other fora. However, because of the political nature of the G20 and the direct participation of national leaders and ministers, that which offers benefits to an international organisation may cause detriment to the G20, for the reasons discussed below.

- (i) In terms of representational capacity, a G20 Secretary-General could offer considerable benefits. National leaders already attend numerous international summits and conferences, in addition to having full domestic calendars. Further, a G20 Secretary-General might be capable of speaking more impartially on key topics and more readily be seen as representing broader G20 interests rather than more parochial national interests.¹⁸⁴

Conversely, such an appointment might interpose an intermediary between conference participants and G20 leaders, thereby removing a form of indirect representation at the G20. In other cases, a senior officer may simply attend meetings already attended by (many) other G20 leaders (for example, APEC or G8 summits). Such duplication would do little to enhance cooperation between the two institutions and could even render collaboration less effective. Hence, it may be better for each of the G20 members; leaders to act as a mouthpiece and an ear of the G20; and where the G20 host of the year is not a member of the relevant forum, that state's leader could also be invited to the forum in its capacity as G20 representative (for example, the Australian Prime Minister could be invited to G8 meetings in that capacity in 2014).¹⁸⁵

- (ii) If a G20 Secretary-General position were appointed, he or she would hold an extremely prominent position on the world stage. Indeed, it is

¹⁸³ See below Part V(B)(3).

¹⁸⁴ The countervailing impact with respect to impartiality and independence is discussed below in Part V(B)(2)(c).

¹⁸⁵ John Kirton, 'The G20 and Broader Multilateral Reform' (Policy Brief, Club of Madrid, Foundation for International Relations and Foreign Dialogue and Government of Korea, September 2010) <<http://www.fride.org/publications/2010>>.

hard to see how such a position could be de-emphasised, even if the G20 members wished to do so. Politically, therefore, the appointment of a G20 Secretary-General would appear to be counterproductive for a number of reasons. The prominence of the role (and potentially the character of the appointee) might overshadow the leader of the host state for that year, detracting from the political benefit to be gained by acting as host. The appointment of an additional senior global diplomat could also be seen as a direct challenge to the role of the UN Secretary-General and potentially being a catalyst for a schism in international diplomacy. This leadership quandary is therefore likely to be a material disincentive for G20 members when considering the creation of a G20 secretariat.

(c) *Independence of the Secretariat*

One of the fundamental principles of a permanent secretariat of an international organisation is the independence, loyalty and impartiality of that organ's staff.¹⁸⁶ This is maintained by two complementary obligations: the obligation of the secretariat not to take instructions from individual members; and the obligation of members not to seek to improperly influence the secretariat.¹⁸⁷ In the words of the ILO's Administrative Tribunal, independence is 'an essential guarantee, not only for the civil servants themselves, but also for the proper functioning of international organisations'.¹⁸⁸ Further, Jenks considers that 'the effectiveness of international secretariats depends largely on the extent to which they are genuinely international in character and consist of persons whose sole allegiance is to the international [organisation]'.¹⁸⁹

However, according to the *ARIO* definition, the G20 is not an international organisation. Prima facie, there is no G20 as such (lack of personality) to which secretariat staff can be loyal and no specific functions have been entrusted to it. The G20's lack of personality and international character therefore renders such arrangements impossible; and even if a legal instrument in the twin obligations of non-interference and independent loyalty were to be agreed by member states, it does not appear possible for such obligations to be owed merely to a set of principles or objectives rather than to a separate legal entity.

If the secretariat is not independent, then in respect of this issue, the only real distinction from the current ad hoc national secretariats might perhaps be that the 'permanent' secretariat would have a consistent staff and (possibly) location. Further, the broad range of the G20's agenda and activities means that the secretariat would need to be quite large in order to do this work itself. If, alternatively, the secretariat were small, it could at most coordinate and manage the work of others. This raises certain practical issues, in particular whether the G20 secretariat would require a 'seat' or permanent location.

¹⁸⁶ See C Wilfred Jenks, *The Proper Law of International Organizations* (Stevens and Sons, 1962) ch 3.

¹⁸⁷ *Ibid* 27–33.

¹⁸⁸ *Bustani v Organisation for the Prohibition of Chemical Weapons* (International Labour Organization Administrative Tribunal, Case No 2232, 16 July 2003) [16].

¹⁸⁹ Jenks, above n 186, 28.

(d) *Seat, Size and Practicalities*

Sherpas, deputies and their supporting staff are currently employed, trained and paid for individually by each G20 member, which can therefore house them within their own relevant departments or ministries and spend as much or as little as they wish. However, Cameron's recommendation is that any secretariat should not have a permanent seat, but should instead move with the rotating presidency. A few issues arise.

- (i) By dispensing with the idea of a fixed seat and establishing a highly mobile 'dedicated' secretariat, the personnel of which is fixed, but the location of which changes depending on the host of that year, each year's G20 host would benefit from the accumulated experience of the dedicated secretariat team, who would be able to ensure that the coordination of the various strands of G20 work continue seamlessly between meetings. However, experienced and qualified staff would be required to join and remain with this body for reasonable periods of time in order to achieve the continuity and effectiveness of the body. The relevant persons would be required to relocate themselves (and probably their families) every year to countries potentially as diverse as Argentina, Australia, China, Japan and Saudi Arabia. Aside from the considerable personal upheaval, the secretariat staff would need to be able to work in their new environment, needing adequate office space, communications facilities, translators, transport and access to international airports. Many circumstances that are seen as being relevant when selecting a seat for an international organisation involve issues of personal or professional convenience for staff members. These are significant considerations and would effectively need to be revisited each year when the secretariat moves from one host nation to another. It is difficult to imagine any suitably qualified and experienced employee being willing to undergo such significant and frequent relocations and if persons are only appointed for short periods of one or two years, it is hard to see how a secretariat composed in this way could work effectively or even maintain any meaningful semblance of permanence. Finally, such a mobile body must of necessity be quite small, in line with Cameron's recommendation.
- (ii) A second, and potentially determinative, consideration is one of nationality. Almost without exception, the diplomatic and governmental staff of a state must carry the nationality of that state and no other. This presents a dilemma: for a staff member to be adequately integrated into a national host secretariat, this would require a considerable degree of access, security clearances and other authorisations which are generally only given to a state's nationals. It is difficult to envisage a workable solution to this dilemma, which is in some respects the opposite scenario from that described in section (c) above.

- (iii) Finally, from the perspective of precedent, one might also consider whether other any informal summit-based forums have successfully established a permanent secretariat.

Normally, the creation of a permanent secretariat is part of the creation of an international organisation. For example, the GECF, which emerged initially in 2001 as a series of informal ministerial meetings and which later added summit-level meetings to its calendar, created a permanent secretariat in 2010, based in Doha, as part of its transformation from an informal forum to a formal international organisation with an establishing treaty and a host agreement with the state of Qatar.¹⁹⁰

However, there are precedents for summit-level conferences subsequently establishing a permanent and apparently independent secretariat. The APEC Secretariat is permanently based in Singapore, one of the APEC participating economies and since the 2006 APEC Leaders' Declaration, steps have been taken to 'strengthen and professionalize' the body.¹⁹¹ In 2010, APEC changed from having an ambassador from the annual host economy acting as its Executive Director to appointing a fixed-term professional candidate for a period of three years to head the Secretariat. The then-incumbent holder of the office, Malaysian diplomat His Excellency Muhamad Noor, was appointed to the role upon the change in appointment policy. The office has 12 staff.¹⁹²

There may be significant differences between APEC and the G20, however, which have enabled APEC to select a permanent base for its Secretariat. APEC has a regional focus and the selection of Singapore, the smallest but also arguably the most geographically central of all member states, may be seen as increasing the independence of the institution from the major participating states or, at least, as a way of preserving the interests of each of the major powers, which might otherwise wane if the institution was seen to be too closely connected with any one of them. As noted above, APEC is a comparable forum to the G20, in terms of its informality, mandate and style of operation. However, unlike APEC, the G20 is not regionally-focused, nor does it have 'small' states as members. Indeed, based on its membership criteria, one would expect that if one of the existing G20 members were for any reason to lose its 'systemic importance', that newly 'small' state could potentially lose its G20 membership and be replaced by a 'bigger' one that better matched the G20 criteria. Nevertheless, despite the differences in membership structure and the nature of the Secretariat created by APEC, APEC's development does indicate that the concept of a summit-based forum does not by definition exclude the creation of a permanent secretariat.

¹⁹⁰ Information concerning the Gas Exporting Countries Forum has been obtained from their website: Gas Exporting Countries Forum, *GECF History* (2013) <<http://www.gecf.org/aboutus/gecf-history>>.

¹⁹¹ Asia-Pacific Economic Cooperation, *2006 Leaders' Declaration: Ha Noi Declaration — Towards a Dynamic Community for Sustainable Development and Prosperity* (18–19 November 2006) <http://www.apec.org/Meeting-Papers/Leaders-Declarations/2006/2006_aelm.aspx>.

¹⁹² Information concerning the APEC Secretariat has been obtained from the APEC website: Secretariat, Asia-Pacific Economic Cooperation, *About Us* (2013) <<http://www.apec.org/About-Us/APEC-Secretariat.aspx>>.

The predicaments inherent in establishing a secretariat for the G20 recall Lorimer's lament for a 'want of an international locality' in which an 'international government' could be located 'which belonged to all members and to none'.¹⁹³ While the G20 is far more realist and exclusive an institution than Lorimer's lofty ideal for world government, the dilemma faced by the G20 in considering the establishment of a permanent secretariat indicates that Lorimer's paradox — that an organisation should belong to all its members and to none — continues to haunt a wide range of forms of international cooperation in their quest to gain legitimacy. The presence of this paradox with respect to the G20 also indicates that international institutional law, which has sought to develop practical solutions to the tensions it presents, may offer increasingly useful and practical insights into how the G20 can achieve its further institutionalisation in a manner that increases its legitimacy and promotes its effectiveness.

3 *Advantages of the Troika*

When compared with the notion of a permanent secretariat, the G20's troika has a number of advantages.

- (i) A key function of the troika is maintaining the stability of the agenda and organisation of the meetings of the G20 across presidencies. The involvement of government representatives of the past, present and future presidencies ensures that the G20's timetable can be planned in a coordinated fashion up to 24 months in advance, which appears from current practice to be sufficient time for the leaders and other representatives to manage their diaries.
- (ii) However, unlike a permanent, independent secretariat, the troika remains clearly representative of the relevant three host presidencies and is able to promote the priorities of each host year free from any constraints imposed by any constitutional mandates or functional limitations of the G20. Because the reconciliation of national priorities for the G20 is an inherently political process requiring a consensus to be forged, it is appropriate within the G20 that such agenda-planning negotiations are conducted within a political 'organ' rather than an administrative one.
- (iii) The foregoing observations also make it clear that the members of the troika do not need to be appointed for extended periods: hence, long-term stability within the membership of the troika or the establishment of any permanent seat is both unnecessary and inappropriate. At the most, an individual person working within the troika would hold such a role actively for approximately three years. While frequent travel may be involved, this would be no more than might ordinarily be expected of a professional expert working in their given field. It is also likely that persons with the best expertise

¹⁹³ James Lorimer, 'Le Problème final du Droit International [The Final Problem of International Law]' *Revue du droit international et de législation comparée* IX (1877), quoted in Schermers and Blokker, above n 18, 1209 [1885]. Turkey would presumably be quite happy to accept Lorimer's compromise solution of what was then Constantinople, now Istanbul.

and experience to fulfil such a role would be drawn from the close staff of the relevant G20 member's head of state and/or finance minister and that, while the demands of the G20 host year may cause a temporary change in their day to day responsibilities, ultimately their permanent position would likely remain unchanged. However, such 'troika personnel' would inevitably be likely to require a substantial staff to support them, particularly during the host year itself.¹⁹⁴

4 *Concluding Observations*

Given that G20 members wish to retain the forum's informal character, an international institutional law perspective concurs with the *Cameron Report's* assessment that a formalised troika mechanism is a more appropriate institutionalisation of existing practices than the creation of a permanent secretariat. Using Virally's terminology, the objective of maintaining a relatively political troika, which supports the host nation's priorities and has no independent mandate to discharge and, as a consequence of the fact that the G20 members have failed to extend to the G20 any degree of *habilitation*, there is no 'organ' as such which can carry any *obligation* or exercise its own independent will.

However, it also calls into question precisely what the *Cameron Report* intended with its reference to a 'small secretariat, possibly staffed by seconded officials from G20 countries and based in and chaired by the Presidency'.¹⁹⁵ If such an organ were to be chaired in this manner, it would certainly alleviate any concerns around the creation of an independent secretary-general for the G20. But it is not clear that seconding officials from any G20 members would be suitable or even possible: even if the nationality dilemma can be resolved and the officials seconded have prior G20 experience, their experience may not be in relation to the specific support functions required by the troika. Perhaps a better approach would be to second staff from current troika members first, to allow maximum scope for the political nature of the troika to be exercised and, thereafter, to second personnel from G20 members that have previously hosted the summit and where those personnel were themselves one of the host nation's troika members or Sherpas, in order to bolster the 'political' staff with personnel who have the requisite administrative experience.

¹⁹⁴ For the Australian host year, the Department of the Prime Minister and Cabinet has created a G20 Taskforce to coordinate the whole of government policy agenda and to manage the operations and security for the conduct of the meetings. It is recruiting staff to undertake non-ongoing positions within the Australian public service to support the G20 Taskforce, some of whom from the Operations Division would be required to relocate to the host city of Brisbane during the host year: see Department of Prime Minister and Cabinet, Australian Government, above n 28.

¹⁹⁵ Cameron, above n 14, 18 [1.20].

C *Relationship and Interaction with the UN and Other Organisations*
(*Enhancing External Coordination*)

1 *Recommendations from the Cameron Report*

Regarding the contribution of formal international organisations to the work of the G20, the *Cameron Report* notes:

The G20 attaches much value to the contributions by [international financial institutions] and [international organisations] to its work, and should ensure that they continue to make these contributions in specific areas where they have established expertise. So as to facilitate Leaders' own interactions, these representatives should participate in or be seated at the Leaders' table for the discussion of specific issues, as appropriate. In particular, Leaders' discussions should be informed by trenchant and candid analyses from international institutions to help frame the key questions across different parts of the G20 agenda.¹⁹⁶

It also suggests that

the G20 should become much more consistent and effective at engaging non-members, relevant international institutions and other actors ... and as recently recommended by the Global Governance Group (3G Group), the G20 should ensure that when it commissions work from international institutions, it does so in a transparent manner, allowing these requests to be considered within their governance structures, and *respecting these bodies' own decision-making processes*.¹⁹⁷

2 *Legal Issues Relevant to Collaboration between the G20 and Other International Organisations*

Each formal international organisation that the G20 may 'task' to provide a report in respect of that organisation's area of expertise or responsibility, or to undertake supporting work for the G20, has its own constitution which will define how decisions regarding the time spent by its staff and the use of its budgetary resources will be made. The G20's tasking practices may give rise to certain legal issues with respect to the organisation's compliance with such constitutional rules:¹⁹⁸

- (i) The formal membership and constitutions of the organisations that participate in the work of the G20 — including the IMF and the ILO — differ significantly, both in relation to decision-making structures and in relation to voting procedures. An analysis of the relative voting power of G20 nations within formal international organisations reveals significant differences. For example, within the IMF, Belgium (which is not a G20 member) has more than twice the number of Special Drawing Rights than G20 members Argentina or Turkey. Therefore, support by all G20 members for a particular motion to be adopted by an organ of a formal international

¹⁹⁶ Ibid 17.

¹⁹⁷ Ibid 12 [1.9]–[1.11] (emphasis altered).

¹⁹⁸ The role of the G20 in negotiating reforms to the constitutions of international organisations (such as the IMF) is a separate topic which is beyond the scope of this paper.

organisation such as the IMF does not of itself guarantee that any necessary votes or approvals within that organisation to undertake the ‘tasked’ work can be achieved. Hence, it cannot simply be assumed that an international organisation ‘tasked’ with a specific request will comply with that request.

- (ii) A second issue relates to financial resources. As the G20 has no budget of its own, its members participate in the relevant meetings and undertake such works as are required at their own expense. The host nation in each year bears the additional expenses of enjoying that privilege, in the form of hiring conference facilities, maintaining extra security and enlarging their own departmental staff. From a budgetary perspective, each Presidency is also relatively free in its ability to apportion resources across the various agenda items being considered. However, within formal organisations, the annual debates concerning the allocation of the organisation’s budget, which is usually comprised of funds drawn from the contributions of member states, is often subject to rigorous negotiation and debate to ensure any expenditure is in accordance with the organisation’s purpose and directed towards its strategic objectives. Programs often take place over a number of years and, hence, the budgetary flexibility of many international organisations is far more constrained than that of the G20. This in turn may affect the pace at which an organisation can respond to a request from the G20 summit to provide support in the form of reports or studies. There is therefore a potential mismatch between the speed and ease with which the G20 might make a request (and expect a positive response) and the ability of the relevant organisation to meet that request.
- (iii) Most formal international organisations that have worked within the G20 processes were established well before the possibility of the G20 was contemplated. Their participation has therefore been adaptive within the boundaries permitted by their constitutions. While in many respects it is clear that participation in G20 processes may be an efficient and cost-effective way for certain bodies to pursue their mandates, for other organisations (such as the WTO) whose membership is far broader than that of the G20 and which are intended to be the focal points for international policy debates on their areas of competence, the situation is less clear. The possibility exists, therefore, that certain types of participation in G20 processes could pull the secretariat of an international organisation outside the sphere of the organisation’s competence, opening up that participation to challenge from within the organisation as being *ultra vires* or an inappropriate expenditure of staff time or financial resources.

3 *Concluding Observations*

The key exposure faced by the G20 in relation to collaboration with international organisations arises not from within the G20, but instead from within the membership of the relevant organisation with which collaboration is

proposed. The greatest risk to the effectiveness of the G20 lies in challenges being made by members of the collaborating organisation that do not themselves enjoy the ability to participate strongly within the G20, but which do (either in their own right or together with other states) exercise significant control over the collaborating organisation. While such challenges would likely arise as internal challenges to administrative matters, such as the lawfulness of certain expenditures or activities, they highlight the potential vulnerability of the G20 in its task of seeking to coordinate the imperfectly overlapping arcs of the spheres of competence of existing international organisations. It is therefore a point at which fluid politics and rigid administration could clash and presents a significant challenge to the ability of the G20 to operate, for example, ‘within the framework of the Bretton Woods institutional system’ as initially proposed.¹⁹⁹ The G20’s engagement with such issues will therefore need to be highly coordinated with the work, and attuned to the circumstances, of each organisation. This in turn favours long-term cooperation, such as that which has been occurring within the finance track, over ad hoc or occasional collaboration because the risk of dislocation between the priorities and objectives of the G20 and the relevant organisation can be more effectively coordinated and managed in the former situation.

Of course, the question of the G20’s ‘external relations’ also raises the broader question of the normative significance and impact of the G20 and how best to conceive of its place or function within a global constitutional or administrative framework. We hope that the more inward-focused and comparative analysis set out in this paper may usefully contribute to the further consideration of these issues in subsequent writing on this topic.

D *Consequences of Informality: The Issue of Privileges and Immunities*

Having legal personality enables an international organisation to enter into agreements with states and other international organisations. As international organisations do not have their own territory, a particularly significant type of agreement is a headquarters or seat agreement, in which the organisation and the host state agree on a range of legal and practical matters to facilitate the work of the organisation in the territory of the host, including the privileges and immunities of the organisation itself and its personnel.

Because, as we concluded in Part IV above, the G20 lacks legal personality and does not have the capacity to enter into such an agreement, it cannot effectively obtain such rights and privileges for itself or for the individual participants attending G20 meetings in host countries. To some extent, this may not be problematic: the serving leaders and foreign ministers of G20 members enjoy immunities *ex officio*;²⁰⁰ and heads of state from or representing outreach participants, as well as senior officials from international organisations such as the UN Secretary-General, also enjoy immunities (as discussed further below) based on their position within the organisations or other bodies they represent. However, for other ‘thematic’ G20 Ministers, central bank governors, Sherpas

¹⁹⁹ Group of 20, ‘The Group of Twenty: A History’, above n 5, 8.

²⁰⁰ See, eg, Peter Malanczuk, *Akehurst’s Modern Introduction to International Law* (Routledge, 7th revised ed, 1997) ch 8.

and deputies and members of working groups no such customary privileges or immunities would exist; and the members of the ad hoc national secretariat, if they are nationals of the host state, would certainly not receive such immunities (or only to a much more limited extent).

This is an issue that will need to be considered as part of Australia's preparation for the 2014 Australian G20 Presidency. Given the similarities in their legal systems, the example of Canada's approach for the 2010 Toronto Summit, which we set out below, is instructive. However, it also identifies certain difficulties that arise in seeking to extend privileges and immunities to both the G20 itself and individuals participating in its meetings and preparatory work.

1 *Privileges and Immunities for the Toronto Summit*

For the 2010 Toronto Summit, the Canadian government adopted the *G20 Summit Privileges and Immunities Order 2010* ('*Order*'),²⁰¹ pursuant to s 5 of the *Foreign Missions and International Organisations Act 1991*.²⁰² In accordance with that Act, the Order extends the privileges and immunities contained in various sections of the 1946 UN *General Convention on Privileges and Immunities* ('*Privileges and Immunities Convention*')²⁰³ to the G20 and its participants. This is facilitated by the definition of 'international organisation' contained in s 2(1) of the Act:

'international organisation' means an intergovernmental organisation, whether or not established by treaty, of which two or more states are members, and includes an intergovernmental conference in which two or more states participate.

This definition is less restrictive than any of the definitions discussed in Part IV and explicitly contemplates the extension of *Privileges and Immunities Convention* immunities to intergovernmental conferences like the G20. However, the legal consequences flowing from the *Order* are much more ambiguous. Here are the key provisions of s 2 of the *Order* (the G20 is referred to as 'the Organization'):

Privileges and Immunities

- (1) During the period beginning on March 11, 2010 and ending on July 4, 2010, the Organization shall have in Canada the legal capacity of a body corporate and the privileges and immunities set out in sections 2 to 5 of Article II of the Convention.
- (2) During the period beginning on March 11, 2010 and ending on July 4 2010, representatives of states and governments that are members of or participate in the Organization shall have in Canada, to the extent required for the exercise of their functions in Canada in relation to the preparatory

²⁰¹ *G20 Summit Privileges and Immunities Order 2010*, SOR/2010-62.

²⁰² Similar orders have been issued for other summits, including the 2010 G8 Summit and the 2007 North American Leaders' Summit: *G8 Summit Privileges and Immunities Order No 2010-2*, SOR/2009-336; *North American Leaders' Summit 2007 Privileges and Immunities Order*, SOR/2007-194. See also *Foreign Missions and International Organizations Act SC 1991*, c 41.

²⁰³ *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946).

- meetings, the privileges and immunities set out in section 11(d) of Article IV of the Convention.
- (3) During the period beginning on June 15 2010 and ending on July 4 2010, representatives of states and governments that are members of or participate in the Organization shall have in Canada, to the extent required for the exercise of their functions in Canada in relation to the Meeting, the privileges and immunities set out in sections 11, 12 and 14 to 16 of Article IV of the Convention.
 - (4) During the period beginning on March 11 2010 and ending on July 4 2010, experts performing missions for the Organization shall have in Canada, to the extent required for the exercise of their functions in Canada in relation to the Meeting and the preparatory meetings, the privileges and immunities set out in Article VI of the Convention.

The *Order* is fascinating for several reasons:

- (i) It treats the G20 as if it were an international organisation. This legal fiction is one of convenience: adopting an order that extends certain privileges and immunities to G20 members under existing legislation is far less procedurally (and perhaps politically) difficult than adopting a dedicated new law. Nevertheless, it indicates that, despite the intention of G20 members to avoid creating a new international organisation, for certain purposes it is useful to treat the G20 as if it were an international organisation (including for the purpose of extending privileges and immunities to it).
- (ii) For approximately four months, the G20 had legal personality under Canadian law. This means it had the capacity to hold property, enter into contracts, sue before court and so forth. No indication exists that this benefit was used. However, even if this were necessary, precisely how the G20 could exercise these rights is unclear: no formal structure exists within the G20 to authorise any person to act as an officer or agent on its behalf. Here, rights and benefits originally contemplated as being for a formal international organisation (the UN) cannot usefully be applied *mutatis mutandis* for the benefit of the G20, as it lacks the internal capacity to utilise that benefit.
- (iii) Section 2 of art II of the *Privileges and Immunities Convention* provides that the UN has absolute immunity from suit, unless this is waived (understood to be a waiver by the Secretary-General). With respect to the G20 the question arises: who could grant the waiver? Though the need to exercise a waiver may not seem necessary, the prospect of the rotating host of the G20 — or the head of the national ad hoc secretariat — being required to exercise discretion with respect to a waiver concerning actions commenced or investigations launched in the host state seems highly problematic and undesirable. The waiver in this situation might therefore only be capable of exercise by the G20 members by consensus. Again, because the G20 has no assets of its own and no chief administrator, this provision in the *Order* represents another problem for the *mutatis mutandis* application of the Convention to the G20.

- (iv) Paragraphs 2(2) and 2(3) of the *Order* set out two different regimes of privileges and immunities — one for preparatory meetings and one for the summit respectively.
- (a) The privileges relating to preparatory meetings are limited to those in Section 11(d) of the Convention: only an exemption from immigration restrictions applies to ‘representatives of states and governments that are members of or participate in the Organisation’. Apparently not covered by this provision are representatives of international organisations that participate in G20 meetings, nor any person who is appointed as an independent member of a panel or working group (see also comment (6) below). Assuming heads of state are covered by customary law rules, what protection is enjoyed by deputies of those who hold rotating chairs of regional organisations such as NEPAD? A deputy might not enjoy the benefit of this right if their state of nationality (such as Ethiopia) was not seen as being a member of or participating in the G20 as Ethiopia. Hence, if this provision was designed to ensure that all representatives and deputies invited to preparatory meetings were able to freely enter Canada, then it would have been clearer for this privilege to have been extended expressly to deputies of those attending in that regional representative capacity.
- (b) The *Privileges and Immunities Convention* privileges and immunities relating to the summits are far broader and include the key personal, property and movement freedoms and the right to freedom of speech and immunity from suit for words spoken or written in discharging their duties. While these provisions apparently neither supplement nor supplant the general rules applicable to heads of state or foreign ministers and, hence, cause no difficulties for those persons, they have uncertain value for Sherpas, deputies and other delegates. What do the phrases ‘while exercising their functions’ (s 11) or ‘discharging their duties’ (s 12) mean with respect to persons preparing for, attending and participating in a broad and informal intergovernmental conference? A permissive interpretation of those terms might simply consider what persons in such positions customarily do within the G20 framework and apply that standard. The consequence of this ambiguity is uncertainty and, if a Canadian court were presented with a claim potentially covered by the relevant immunity, the significantly different status and internal structure of the G20 from the UN may not provide any substantive guidance on the application of the actual legal test. The court may consequently have no choice but to apply an absolute immunity in order to give effect to the *Order* in the absence

of guidance as to how a functional threshold should be determined.

- (v) The *Order* also applies the *Privileges and Immunities Convention's* 'expert on mission' immunities to experts performing missions for the G20 'to the extent required for the exercise of their functions in Canada in relation to the Meeting and the preparatory meetings'. While the limitation to Canada is logical, the supplementary requirement that the exercise of their functions must be 'in relation to' a G20 meeting may impose a further substantive limitation on the scope of their immunities. Again, however, taking a permissive interpretation, one might construe the phrase broadly: indeed, in considering those phrases in the *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion)* ('*Cumaraswamy Case*'),²⁰⁴ the ICJ did not appear to insist too strongly on a formal or official articulation of functions or duties.²⁰⁵ Ambiguities might therefore only arise for non-state representative experts, working group or panel members who travel to Canada during those times for purposes other than to prepare for G20 meetings — presumably a very narrow set of persons. A further complication arising from the *Cumaraswamy Case*²⁰⁶ is that, with respect to the G20, it is difficult to determine who would exercise on behalf of the G20 the 'pivotal' role the Court determined that the UN Secretary-General holds with respect to determining whether the relevant expert remains protected by the *Privileges and Immunities Convention* in given circumstances.²⁰⁷
- (vi) Representatives of other international organisations are not covered by the *Order*. For the Toronto meetings, this was more problematic for small or regional organisations than for the major multilateral ones. A range of measures cover the situation. Specific orders have been issued in relation to the Food and Agricultural Organization ('FAO') (similar privileges and immunities from the *Privileges and Immunities Convention*, not limited in time).²⁰⁸ BWIs have their privileges protected by specific Canadian legislation, such as the *Bretton Woods and Related Agreements Act*,²⁰⁹ as required by the relevant multilateral treaty establishing the organisation, such as art IX s 10 of the *Articles of Agreement of the International Monetary Fund*.²¹⁰ However, as noted in (4)(a) above, representatives of

²⁰⁴ *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion)* [1999] ICJ Rep 62.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid* 26 [50].

²⁰⁸ *FAO Privileges and Immunities Order*, SOR/78-793.

²⁰⁹ *Bretton Woods and Related Agreements Act*, RSC 1985, c B-7.

²¹⁰ *Articles of Agreement of the International Monetary Fund and Articles of Agreement of the International Bank for Reconstruction and Development*, 2 UNTS 40 (signed and entered into force 27 December 1945), as amended by the *Board of Governors Resolution No 63-2* (28 April 2008).

bodies such as NEPAD, the AU and ASEAN do not appear to enjoy any protection by virtue of their roles within those organisations.

2 *Privileges and Immunities for Australia 2014*

While the structure of the Australian legislative scheme is quite different — for example, the *Privileges and Immunities Convention* is not integrated into the Australian legal framework — some of the same difficulties confronted by Canada, such as defining precisely what the G20 is and drawing sensible parallels between personnel involved in the G20 and those acting within or for international organisations, international conferences or diplomatic missions, will need to be considered again.

The relevant Australian legislation is the *International Organisations (Privileges and Immunities) Act 1963* (Cth),²¹¹ s 5 of which provides:

- (1) The regulations may declare an organisation:
 - (a) of which Australia and a country or countries other than Australia are members; or
 - (b) that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia;

to be an international organisation to which this *Act* applies.

The regulations must also specify — drawing from the list set out in s 6 and the first schedule to the *Act* — the privileges and immunities that will apply to the organisation and its personnel (these are broadly comparable to those under the Canadian *Order*). However, unlike the Canadian legislation, the *Act* does not precisely define the term ‘organisation’. Its deeming provisions appear to hint at the type of organisation to which the section is intended to apply: an organisation that is ‘established by an agreement to which Australia and one or more other countries are parties’ (see s 5(3)(a)) or ‘of which Australia and a country or countries other than Australia are members’ (see s 5(1)(a)). However, the lack of a definition or comprehensive deeming provisions in s 5 leave a large degree of ambiguity concerning whether the G20 could satisfy these requirements and be designated as ‘an international organisation to which this *Act* applies’ under regulations.

Alternatively, and perhaps more helpfully, s 7 of the *International Organisations (Privileges and Immunities) Act 1963* (Cth) provides:

- (1) Where:
 - (a) an international conference is, or is to be, held in Australia or in a Territory of the Commonwealth; or
 - (b) a mission is, or is to be, sent by:
 - (i) a country other than Australia; or
 - (ii) an international organisation to which this *Act* applies or an overseas organisation to which this *Act* applies;

to Australia or to a Territory of the Commonwealth;
and it appears to the Governor-General that the provisions of this *Act* other than this section do not, or may not, apply in relation to that conference or mission but it is desirable that diplomatic privileges and immunities should

²¹¹ *International Organisations (Privileges and Immunities) Act 1963* (Cth).

be applicable in relation to that conference or mission, the regulations may declare the conference or mission, as the case may be, to be a conference or mission to which this section applies.

‘International conference’ is defined by the *Act* to mean:

a conference that is attended by a person representing Australia and:

- (a) a person representing a country other than Australia; or
- (b) a person representing an international organisation to which this *Act* applies or an overseas organisation to which this *Act* applies;

whether or not it is also attended by another person or other persons.²¹²

Both the general purpose of s 7 and the definition of ‘international conference’ provide more accurate descriptions of both the G20 itself (with member representatives from both states and the EU) and also its participants (including those who are attending as representatives of ‘outreach participants’ or in relation to the various X20 meetings). However, a declaration made under s 7 is more limited in its potential scope than one under s 5. No power exists for the Governor-General to confer juridical personality on the G20 or confer protections on its ‘assets’ (such as protecting the inviolability of its archives) as would be possible for a formal international organisation; only member representatives and their official staff would obtain protections equivalent to those of a diplomatic agent or administrative or technical staff of a diplomatic mission (ss 7(2)(a)–(b)). Further, it is unclear whether the reference in s 7(2)(c) to a ‘secretariat established for the purposes of the conference’ would include any persons beyond Sherpas or troika members who were actually involved in the administrative aspects of organising and administering the various G20 meetings. However, given the Commonwealth Government will host the various G20 meetings and surrounding activities, the inability of the G20 to be granted juridical personality under s 7 is probably less significant than the limitation on the scope and duration of the privileges and immunities available to non-ministerial and other participants in G20 meetings.

Finally, it is unclear how an ambiguity in the application of the *Act* would be resolved should a participant become embroiled in legal proceedings before Australian courts. Section 11 empowers the Minister for Foreign Affairs to issue a certificate in relation to any fact relating to the question of whether a person is entitled to privileges and immunities under the *Act* and the certificate will be evidence of those facts in any proceedings. There appears to be only one instance in the case law of such a certificate being issued: in that case, the Minister stated that the relevant person had

never been recognised by the Government of the Commonwealth of Australia as a person entitled to diplomatic or other privileges or immunities as a representative of ... any ... international organisation to which the *International Organisations (Privileges and Immunities) Act 1963* applies.²¹³

Again, it is significant that the *Act* (unlike the Canadian *Order*) does not seek to incorporate the *Privileges and Immunities Convention*, but instead sets out its own scope of privileges and immunities that can be conferred by the regulations.

²¹² *Ibid* s 3.

²¹³ *von Arnim v Federal Republic of Germany* [1999] FCA 1747 (15 December 1999) [13].

In a *Cumaraswamy*-style scenario, therefore, in which a person involved in the work of the G20 became involved in legal proceedings, a ministerial statement of non-recognition would be final and determinative under the Act; and the question of who within the G20 could potentially synthesise the 'pivotal' role of the UN Secretary-General in such cases would not even arise.

3 *Concluding Observations on Privileges and Immunities*

A significant consequence of the G20's lack of international legal personality is the need to synthesise, if imperfectly, the privileges and immunities that are applicable to international organisations and their personnel. However, the domestic legislation that implements the privileges and immunities enjoyed by international organisations may contain gaps that cannot be remedied by a simple *mutatis mutandis* application of its provisions to the G20, whether it is based on the *Convention* or some other list of privileges and immunities. As part of Australia's preparations for its 2014 host year, therefore, consideration should be given to ensuring that appropriate privileges and immunities are available as appropriate to all persons who are invited or required to participate in the G20's work and meetings.

The timing of the relevant regulations coming into effect is also a consideration. Regulations extending the application of the relevant privileges and immunities would ideally be implemented by an upcoming host state as soon as possible once it has been selected for that role. For example: meetings to prepare for the Mexico Summit in 2012 began to be held in Mexico from the beginning of 2010; and Australia has been a member of the troika since December 2012.²¹⁴ As a consequence, the period over which privileges and immunities may be required appears to be far longer than was provided for by the Canadian Order.

However, it would not seem necessary or perhaps even useful for G20 members to develop model regulations regarding privileges and immunities. The legal systems of many G20 members (such as China, Germany, the UK and the US) vary widely and the instruments necessary to give effect to the privileges and immunities required by the G20 will need to be tailored to those legal systems. Nevertheless, the G20 may consider it useful to establish a working group to deal with the issue of privileges and immunities. Such a group could collect the relevant practice of G20 members over time, in order to function as a liaison for G20 host states in successive host years. The outcomes of this working group could then be fed into the corpus of the G20 working practices that are maintained by the Sherpas and the troika.

VI CONCLUDING OBSERVATIONS

The members of the G20 have frequently indicated that the G20 should retain its informal and flexible character and should not gradually develop into a formal international organisation. At the same time, they have sought to both enhance the efficiency and effectiveness of the G20's work program and working

²¹⁴ Treasury, Australian Government, 'Australia Joins G20 Leadership Team' (Media Release, 3 December 2007) <<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/121.htm&pageID=003&min=wms&Year=2012&DocType=0>>.

practices and also to respond to criticisms regarding the legitimacy, transparency and accountability of the G20. This paper has sought to contribute to the comparative analysis and ‘systematic mapping’ of institutional rules of international organisations by incorporating the G20 within that analysis.²¹⁵ In our view, international institutional law offers a valuable critical perspective from which to assess the current legal status and the ongoing evolution of the G20. As a practical matter, international institutional law can identify the potential legal consequences that may flow from certain structural decisions or governance reforms: for example, the difficulties that are confronted when seeking to apply international or national privileges and immunities legislation to an informal forum without legal personality such as the G20; or the principle of the independence of a permanent secretariat of an international organisation from member states and the consequences this would have for the flexibility with which a host presidency may influence the G20’s agenda. International institutional law therefore offers a useful analytical perspective from which to confront the seeming paradox of maintaining the G20 as an informal forum while at the same time formalising aspects of its structure or practices to enhance its efficiency and effectiveness. The rules and principles of international institutional law can help G20 members to understand what steps in the further development of the G20 should be encouraged or avoided.

However, our analysis does not suggest that there is any inevitability of outcome for the evolution of the G20. In this sense, our analysis from the perspective of international institutional law is not deterministic or teleological: rather, it seeks to understand the practice of international cooperation by finding unity within diversity, without losing sight of the diversity that can exist within unity. Nevertheless, we consider that developing a detailed understanding of the anatomy of the G20 is a critical first step in the consideration of broader questions regarding the appropriate role of the G20 in a global constitutional framework or the scope of its regulatory functions from a GAL perspective.

As the G20 grows in complexity from year to year, G20 members will need to be increasingly adept at managing an institutionalisation process that strikes the desired balance between informal coordination within the G20 and the effective implementation of the political consensus achieved. The Russian host year in 2013 sees the most extensive set of G20 outreach meetings held to date and may also give rise to some insights into the degree of influence that BRICS member states exert over the G20’s agenda. The Australian host year in 2014 also promises to consolidate past G20 practices, as well as generate fresh innovations in line with the priorities of the Australian Government and the nature of the key issues that concern the leaders of the G20 at that time. International institutional law will continue to offer a useful legal perspective from which to understand and evaluate such developments and to identify the legal consequences that may flow from them, in a manner which is complementary to political and economic analyses, and which will help us to understand the G20 within the broader context of international cooperation.

²¹⁵ See Schermers and Blokker, above n 18, 7 [11].