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Comment on the Developing Transnational Network(s) in the Area of International Financial Regulation: The Underpinnings of a New Bretton Woods II Global Financial System Framework

Joseph J. Norton
Southern Methodist University, Dedman School of Law

Comment on the Developing Transnational Network(s) in the Area of International Financial Regulation: The Underpinnings of a New Bretton Woods II Global Financial System Framework

JOSEPH J. NORTON*

I. Introduction

For the November 7, 2008, SMU Dedman School of Law and SMU International Law Review Association Symposium on Transnational Networks,[1] I was requested, as a conference panelist, to comment briefly on the developing transnational network in the area of international financial regulation, with the focus of this being on "the nature, effectiveness and practical contributions and challenges of this network as to international cooperation in this specific area."[2] In taking on this request, I decided to focus on the specific financial area of international bank regulation, a topic also being touched upon, in part and in a different context from my approach, by my fellow panelist, Professor David Zaring.[3]

As I will develop in this Comment, the discrete focus on the banking-side of financial markets/institution regulation in recent times invariably and necessarily spills over to and becomes interconnected with other non-bank financial markets, with the payment and clearance systems, with non-bank financial intermediaries and regulators, with high-level intergovernmental economic policy-making groupings, and with various formal multilateral and regional financial institutions. In effect, when speaking today about a transna-

* LL.B (Hons.), LL.M, S.JD, DPhil., LL.D, LLD (hc)., James L. Walsh Distinguished Faculty Fellow in Financial Institutions Law and Professor of Law, SMU Dedman School of Law. Sir John Lubbock Professor of Banking Law, University of London—1993-2004. Unless otherwise expressly stated, this Comment speaks as of November 7, 2008.

1. I wish to express my deepest appreciation to my superb young SMU Dedman School of Law colleagues, Jenia Turner and Anthony Colangelo, for putting together this superb and highly relevant academic colloquium on an increasingly important and evolving area of both international law and domestic regulatory law. Special recognition needs also to be given to the sixty plus student members of our SMU International Law Review Association who helped to organize the Symposium and its proceedings.

2. *See* SMU Dedman School of Law, Rise of Transnational Networks Conference Brochure, Nov. 7, 2008, at 2 (on file with author).

3. *See* David Zaring, *Three Challenges for Regulatory Networks*, 43 INT'L LAW. X (2008).

tional network for international financial regulation, one needs, in light of global circumstances over the past decade and particularly in light of the current Global Financial Crisis (GFC),[4] to conceptualize a complex patchwork (some wishfully refer to this as an "architecture") of interconnected individual networks (most public, but some private), networks within networks, and networks of networks. It will be from and upon this existing and rather peculiar architecture that any new "Bretton Woods II" framework of international financial regulation will be devised.[5]

This brief Comment reflects my submitted panelist paper and related conference remarks,[6] with primary emphasis on banking markets and institutions, concerning the central roles and interconnection of the following informal international networks/ arrangements: the Basel Committee on Banking Supervision (Basel Committee);[7] the Group of 7/8 (G7/8) (Heads of States and respective Finance Ministers and Central Bank Governors, and their Deputies, of the major world domestic powers acting in sovereign capacities but collectively);[8] the G-7/8's 1999 offspring, the Group of Twenty (G-20) Finance Ministers[9] and the umbrella Financial Stability Forum (FSF);[10] and the G-7's 1989 offspring, the Financial Action Task Force (FATF).[11] Often, we will see these networks/ arrangements collaborating with the following formal multilateral institutions (MIs): the International Monetary Fund (IMF),[12] the World Bank Group,[13] the Organization of Ec-

4. *See, inter alia*, Douglas Arner, *The Global Financial Crisis of 2008; Causes and Consequences*, 43 INT'L LAW. 91 (2009).

5. *See* discussion *infra* Part V of this Comment.

6. Unless otherwise indicated, this Comment speaks as of the date of the Nov. 7, 2008, SMU conference.

7. *See generally* Basel Committee, http://www.bis.org/bcbs (last visited Mar. 12, 2008) [hereinafter Basel Committee]. The original name of this Committee was "Basle Committee on Banking Regulation and Supervisory Practices."

8. *See generally* University of Toronto Munk Centre for International Studies at Trinity College G8 Research Group, G8 Information Centre, http://www.g7.utoronto.ca (last visited Mar. 12, 2009). This Group, which first met in 1975 as a G6, became a G-7 in 1976 (France, Canada, Germany, Italy, Japan, United Kingdom, and United States, with the European Communities/Union being a participant since 1977) and in 1998 to a G8 with Russia formally added to the Leader level but not to the Finance Ministerial level. Since its beginning, it was customary that the respective country's Finance Minister meet with the Leaders at the Summit. A broader G-7 Finance Ministers Group (with Central Bank Governors) was set-up in 1986, and beginning in 1998, the Finance Ministers and Central Bank Governors met separately, pre-summit, and periodically, they or their Deputies would meet. . For purposes of this Comment, primary emphasis will be on the G7 Group of Finance Ministers and Central Bank Governors. *See generally* PETER I. HAJNAL, THE G8 SYSTEM AND THE G-20: EVOLUTION, ROLE AND DOCUMENTATION (2007).

9. For information on the G-20, see generally G-20, http://www.g20.org/index.aspx (last visited Mar. 12, 2009) [hereinafter G-20], and University of Toronto Munk Centre for International Studies at Trinity College, G-20 Information Centre, http://www.g7.utoronto.ca/g20/ (last visited Mar. 12, 2009). For purposes of this Comment, see, in particular, *infra* notes 42-46, 61-63, and related text. It needs to be kept in mind that the G-20 was originally constituted on the Finance Ministerial level, but since November 2008, it is comprised at the highest level now by the Heads of State (Leaders), with the finance Ministerial level co-existing. .

10. *See generally* Financial Stability Forum, http://www.fsforum.org/ *(last visited Mar. 12, 2009); see also* related discussion/references elsewhere in this Comment.

11. *See generally* Financial Action Task Force, http://www.fatf-gafi.org (last visited Mar. 12, 2009). *See infra* note 37.

12. *See generally* International Monetary Fund, http://www.imf.org (last visited Mar. 12, 2009); *see also* related discussions/references elsewhere in this Comment.

13. *See generally* The World Bank, http://www.worldbank.org (last visited Mar. 12, 2009).

onomic Cooperation and Development (OECD),[14] the Bank for International Settlements (BIS),[15] and various United Nations bodies/initiatives.[16]

The primary points I wish to make, for present purposes, are twofold. First, since the mid-to-late 1990s, the disparate evolvement of international or global financial regulatory networks (GFRNs), such as the Basel Committee, has come increasingly under the coordinating policy directions of the informal intergovernmental Group (i.e., network) of 7/8 (G-7/8) (which, in addition to its policy-direction role, has created three other important relevant networks, the G-20 and the FSF in 1999 and the FATF in 1989). Second, while greater transparency, accountability, legitimacy, and efficacy needs to be encouraged as to the GFRNs and the related MIs, the ultimate need for greater transparency, accountability, legitimacy, and efficacy will rest (for the foreseeable future) on the domestic level of financial regulation and regulators.[17]

I will start my remarks by making a few preliminary personal observations (Part II), and then I will provide some historical perspectives on the developments leading up to the formulation of the so-called "New International Financial Architecture" in the mid to late 1990s (NIFA-I) as a response to the Asian Financial Crisis (Part III). Next, I will present a brief consideration of post 1999 developments (Part IV), and, in conclusion (Part V), I will make a few observations on the network configuration that might arise as to the impending Bretton Woods II-NIFA-II, as considered by the G-20 Leaders at its November 14, 2008, Summit in Washington, D.C. and to be further considered at the subsequent April 2009 London Summit.[18]

II. Some Preliminary Personal Observations

International/global financial regulation indeed reflects an economic area of regulation where, over the past several decades, there has been increasing usage of informal mechanisms of global and domestic rulemaking and of transnational cooperative networks. But before one becomes mesmerized and preoccupied by talk of "global financial regulatory networks" and "international financial architectures," let me share some of my personal, but professionally-based, observations on the broad subject-matter of this Comment, derived from a quarter-century of academic and professional experience.

14. *See generally* Organization of Economic Cooperation and Development, http://www.oecd.org (last visited Mar. 12, 2009).

15. Though the oldest existing international monetary and financial institution, founded in 1930 primarily to handle German reparations, the BIS historically has remained quite non-transparent and obscure. Its primary mandate today is as "an international organization which fosters international monetary and financial cooperation and serves as a bank for central banks." *See* Bank for International Settlements (BIS), About BIS, http://www.bis.org/about/index.htm (last visited March 12, 2009).

16. For example, the UN has been the primary forum for the Millennium Project, for the Monterrey Consensus on International Finance and Development, and for involving multinational enterprises in corporate social responsibility through the UN Global Compact. *See generally* United Nations, http://www.un.org (last visited Mar. 12, 2009).

17. Actual financial regulation is the primary legal responsibility of national authorities. I recognize that the case of financial regulation within the European Union presents a special situation of EU Directives and institutions and member state institutions and regulations.

18. Respecting these G-20 (Leader Summits), see discussion in Part V, *infra*.

A. Practice Roots[19]

My introduction to a GFRN came about through the area of practical banking law work on bank capital adequacy. When I first produced a treatise on banking law in the early 1980s, I had only a couple of paragraphs on bank capital. Matters then were regulatorily simple: banks had to keep a set percentage of capital against assets (then 3 percent). In addition, the bank regulators used capital as one factor in their bank examination (then CAMEL) processes and required a flat level of minimum capitalization (then one million dollars) for bank formation. But, with the rise of the Third World Debt Crisis in the late 1970s and early 1980s, it became clear to the U.S. bank regulators that most of the major money-centered banks and many of the large regional banks were unduly exposed to sovereign and other international-related risks. So, in the first part of the 1980s, the various U.S. bank regulators began interagency discussions on devising a new capital adequacy framework.

In 1983, the U.S. Congress, under the International Lending Supervision Act, gave these regulators express ruling-making authority in this area and also mandated these regulators to "enhance[e] international coordination among bank regulatory authorities" and to "consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending."[20] This was my first introduction to the nascent area of international coordination in the banking regulatory area. Thus, to understand the practicalities of U.S. bank capital regulation, in moving forward, I had to sort out exactly what was this international coordination; and, in this connection, I stumbled upon the then recently formed, informal (and non-transparent) network of the Basel Committee.

B. Law Reform Roots[21]

In the mid-1980s, I had the opportunity to assist in the formulation of securities legislation for an emerging economy. Through this venture I learned of the International Organization of Securities Supervisors (IOSCO) and how it provided an informal forum for networking international securities supervisors/regulators and various private parties involved in the securities industry.[22] With the rise of universal banking and global financial conglomerates in the 1980s, it became apparent that there were various interconnections between the Basel Committee and IOSCO efforts.

Then with the collapse of the Soviet Empire and the need of the Central and Eastern European(C.E.E) countries to develop viable financial systems and, later, the emerging market financial sector reform needs created by the Asian Financial Crisis of 1997-1998, I had numerous opportunities to consult with a range of IFIs/RFIs and domestic bank regulators on these law reform matters. It was in this context of transitioning and emerging

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19. The contextual reference for this subsection is generally from Joseph J. Norton & Sherry C. Whitley, Banking Law Manual (rev. ed. 1995), particularly Ch. 3.

20. International Lending Supervision Act of 1983, 12 U.S.C. 3901(a)(2), (b) (2000).

21. The contextual reference for this subsection is generally from, Joseph J. Norton, Financial Sector Reform in Emerging Markets (BIICL 2001) [hereinafter Norton-EM].

22. *See generally* International Organization of Securities Commissions, http://www.iosco.org (last visited Mar. 12, 2009) [hereinafter IOSCO].

economies that I began to appreciate the growing interconnection between the various separately created, ad hoc GFRNs that were developing and that appeared to be generating a form of "international soft administrative law" through an evolving "international standard-setting" process.

Moreover, starting in the mid-1990s, it was becoming apparent to me and my other colleagues at SMU, London, and Hong Kong that a "New International Financial Architecture" (NIFA-I) was evolving. With this in mind, in the 1999-2000 period, the SMU Dedman School of Law engaged in putting together a global series of international conferences on NIFA-I in Bangkok, London, Hong-Kong, Johannesburg, Stockholm, Cologne, and Montevideo. In 2001, the Dean of the SMU Dedman School of Law, John Attanasio, and I produced an edited volume on NIFA-I.[23] But it was only a few years on when it became clear that NIFA-I, whose main focus was on financial crisis prevention in emerging, transitioning, and developing countries, was deficient in meeting financial stability and long-term, sustainable, and equitable developmental objectives. In this connection, I was asked by the then World Bank General Counsel, Hon. Roberto Dañino, to prepare a study paper on a "second generation of financial sector reform."[24] While these developmental considerations remain most relevant and compelling today, events of the past year concerning the current, unfolding GFC have shown even greater deficiencies of NIFA-I as to the financial systems of the major industrialized countries—giving rise to a new Bretton Woods II-NIFA-II.

C. Some Lessons Learned

From my professional and academic work with and study of GFRNs and MIs, (particularly in the context of international standard-setters and of sustainable and equitable economic development) over the past quarter century, I have come to understand the following:

1. In my informed view and recognizing views to the contrary, there is *no* international or global financial system in the sense of some form of integrated and closed system. There are domestic financial systems and markets that are subject to a range of domestic financial regulations and that are overseen by various and differing domestic regulators, supervisors, and enforcement authorities. Through the globalization processes over the past several decades, these domestic financial markets have exponentially expanded and, on a functional level, have become increasingly linked and interdependent to the point where a country can no longer view the health and stability of its financial system through snapshots of segregated types of financial markets and financial institutions or of separate domestic financial systems in isolation. Today, the functional workings of different financial institutions, players, and instruments have become so interrelated that related regulatory actions often require increasingly cross-market and multilateral cooperative

23. *See* A New International Financial Architecture: A Viable Approach (John A. Attanasio & Joseph J. Norton eds., BIICL 2001) [hereinafter Attanasio-Norton].

24. *See* Joseph J. Norton, *Taking Stock of the "First Generation" of Financial Sector Legal Reform* (World Bank Law and Development, Working Paper Series No. 4, 2007) *available at* http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/LDWP4_FinSecLegRef.pdf. This author prepared this report for the World Bank, Office of the Legal Vice Presidency.

approaches. In effect, for some time there has been an international system in the making and awaiting some form of appropriate and effective global regulatory coordination.

2. Historically, the so-called international financial system, to the extent it existed, was a bank-centered system. But, the reality is that, over the past couple of decades, the system has moved more-and-more toward a capital market system, where bank and securities markets (and insurance markets through the offering of a range of financial products and through the "insurance" of various securitized derivative products) are linked increasingly through the asset securitization processes; where the banks themselves were engaging more and more in universal banking and financial conglomerate activities; where new unregulated (or lightly regulated) financial players (e.g., mortgage and finance companies, credit rating agencies, hedge funds, private equity firms, off-balance sheet special investment vehicles—SIVs, and sovereign wealth funds-SWFs) entered the global markets; where global capital flows accelerated most rapidly, but were highly volatile; where financial innovation was giving rise to increasingly complex (and opaque) new financial products/instruments (particularly in the derivatives area); where there was an expanding economic and financial importance of the emerging market countries; where financial risk management was pushed more toward forms of qualified self-regulation, with reliance on what often turned out to be faulty internal computer stress-test models and on external credit rating agencies that also were utilizing faulty computer models; where the global financial system was resting on an unsustainable leveraged base; and where there were unperceived high-risk interconnections between and among a whole range of financial institutions and intermediaries that found their way into and throughout the global financial system (what I call "stringing risks", in large part "counterparty risks"). Further, fundamental macro-economic global imbalances were magnifying, while at the top of the international regulatory pyramid, there was really no institutional mechanism in place that could take a full and clear view of the total global financial landscape and have a true regulatory impact in a timely manner.[25]

3. In addressing this new international/global financial arena, we really do *not* have international financial regulators in any strict sense. Primarily, we have *domestic regulators* dealing with each other on a bilateral, plurilateral, or multilateral basis—often through informal groupings/networks. These regulators remain part of and accountable to their respective domestic regulatory system. We have some international civil servants for various IFIs and RFIs germane to the networks being discussed in this article, but, essentially, the relevant networks are comprised of domestic regulators/officials/representatives acting as to international/global subject-matter.[26]

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25. *Cf.* Douglas Arner, Financial Stability, Economic Growth and the Role of Law (2007).

26. On the international level, what we have are a few treaty-based, formal multilateral institutions such as the International Monetary Fund (a monetary organization), the World Bank Group (a development and reconstruction group), and the OECD (an economic think-tank for the major industrialized countries). On a regional basis, we do have a treaty-based regional economic community, the European Union, that has a highly sophisticated institutions structure including the European Commission and the European Central Bank. And, also regionally, we have various regional development banks. *None* of these formal institutions are international financial regulators as such, though most have become enmeshed as facilitators with several of the GFRNs in the setting and assessment of various international standards. We do see that in a limited way the IMF and OECD have become themselves international standard-setters on certain specific matters that have come under NIFA-I, as well as serving other global financial regulatory purposes.

4. Further, we have *no* formal international financial regulations notwithstanding an increased need for international collaboration: what we have are international standard-setting and a few evaluation/assessment/enforcement tools. We do have various non-binding international standards/best practices, joint statements, positions papers, joint recommendations, and bilateral and multilateral Memoranda of Understandings (MOUs/ MMOUs) that have come about over the past two to three decades largely by and through informal networks often coming to act as international standard-setters. Much of this might be viewed as "soft" international regulations as they often get filtered down into domestic regulatory systems through a variety of means and dynamics. Some even may conjecture that this "soft" international law/regulation represents an incipient form of global administrative law (GAL).[27] But, at the end of the day, what comes out of the international "sausage-grinder" still are domestic policies, regulations, and administrative practices, shaped to varying degrees by the GFRNs but to be implemented and enforced by domestic regulators.

5. The regulation (i.e., management of the applicable "rules of the road") as to our current international/global financial system effectively is being and will be conducted through a patchwork, probably a maze, of rather ad hoc network arrangements. As to this global governance of financial systems, we will see that this involves the interaction of state policies and regulations that apply to financial institutions and markets and will be dependent on how state policymakers and international civil servants interact with domestic regulators and private sector bodies through international bodies and arrangements to develop standards and rules viewed as being of mutual self-interest in order to enhance financial stability, to improve competition in the financial services industry, and to support equitable and sustainable development.[28]

III. Historical Perspectives on Basel Committee and NIFA-I Evolvement

My selection of the Basel Committee for illustrative purposes as a transnational network may seem rather discrete and arcane. But, as alluded to above, from a rather limited and obscure network venture in the mid-1970s has evolved a core component of a much broader set of interconnecting networks that have come to comprise NIFA-I and that, in some reconfigured way, will form the basis of the impending Bretton Woods II-NIFA-II. These interconnections link the banking, securities, insurance, payment, and clearing systems and "shadow banking" areas and, under NIFA-II, will most likely generate further linkages and network coverage but probably no new formal MIs.

A. The Beginnings

We see in place, as of the mid-1960s, with the formation of the Group of Ten (G-10) Finance Ministers and Central Bank Governors for a specific IMF purpose, several essential components of what will become NIFA-I: the IMF and the Finance Ministers and the Central Bank Governors of a limited group of major Western countries acting collabora-

27. *See generally* Joseph J. Norton, Devising International Bank Supervisory Standards (Martinus Nijhoff 1995).

28. *Cf.* Anne-Marie Slaughter, A New World Order (2004).

tively on an ad hoc basis.[29] From this beginning, we have, in the mid-1970s, the random and reactive formation of the informal Basel Committee by the G-10, which introduced the bank regulators and supervisors of major Western nations into the equation. It is significant to note and to keep in mind that the G-10 and Basel Committee representatives are national civil servants addressing international subject-matter and are not international civil servants as would be employees of the MIs. Also, it is important to keep in mind that the G-10 provided an informal, discrete, and flexible forum/meeting place for the major central bank governors and finance ministers and their deputies to meet annually (and the deputies more frequently) for purposes of considering not only IMF-GAB matters but also others matters of common concern as they may arise.[30] Thus, we have a limited, collaborative "network" or "club" of domestic finance ministers and central bank governors, acting internationally, in place by the early 1960s. This meeting together of leading country finance ministers and central bankers on international matters of common interests and within different informal fora has become a central feature of the regulatory side of the international financial architecture over at least the past four decades—whether in the context of the G-10, G-7/8, G-20, or in ad hoc situations.

In the mid-1970s, there was the separate, unconnected formation of the predecessor of the International Organization of Securities Regulators (IOSCO itself was formed in 1984), an informal global network for domestic securities regulators and certain relevant private parties.[31] As discussed by Professor Zaring in his aforementioned essay, the Basel Committee and IOSCO had their separate and different form of organization, agenda, and methods of operations. These two GFRNs (in addition to others formed subsequently, separately, informally, and on an ad hoc basis) came to be international standard-setters (starting with the Basel Committee's Basel Capital Accord of 1988- Basel I)[32] in

29. The IMF, in the early 1960s, established an informal grouping of Finance Ministers and Central Bank Governors of major Western countries to support and to oversee the Fund's General Arrangement on Borrowing (GAB). The GAB is a special IMF fund financed by the G-10 countries to be used when the IMF's own resources are insufficient. The G-10 countries comprise the United States of America, the United Kingdom, Japan, France, Germany, Canada, the Netherlands, Italy, Belgium, and Sweden, with Switzerland, a non-IMF member until 1992, joining in 1984. It should be noted that the governmental mandates of a Finance Ministry and of a Central Bank are not necessarily the same (particularly if the Central Bank is guided by the principle of independence). For information about the G-10, see Group of Ten, http://www.bis.org/publ/g10.htm (last visited Mar. 12, 2009).

30. By aside, it is also interesting to note that, internal to the IMF, in 1972, largely from U.S. Treasury pressure to have a group broader than the largely Western European G-10 negotiate the post-par value system, the IMF Executive Board created a "temporary" Committee of Twenty (which included some developing countries) to work on post Smithsonian Agreement monetary system restructuring. As this Committee bogged down, the IMF then came to create by internal Resolution and not by formal Amendment of its Articles the so-called Interim Committee in 1974 (later revamped in 1999 into the IMF's International Monetary and Financial Committee-IMFC). In effect, we see the Fund itself creating an internal administrative network (i.e., the IMFC) to collaborate with the informal external G-10 network and later also with the G-7 and G-20 networks.

31. *See* IOSCO, *supra* note 22.

32. It also should be noted that, with Basel I's formulation, we see the interconnection of the Basel Committee with private bodies (networks) of international accountants such as the International Federation of Accountants (IFAC) and its standard-setting subcommittee, the International Auditing and Assurance Board (IAASB). Also, there came to be an International Accounting Standards Board (IASB). *See generally* International Accounting Standards Board, http://www.iasb.org (last visited Mar. 12, 2009), which is the international standard-setter for International Financial Regulatory Standards (IFRS).

their respective financial-related areas and to collaborate on an increasing basis during the 1990s and 2000s, including the issuance of Joint Statements.[33]

Thus, by the time the NIFA-I came to the forefront of bank/financial system policy concern in the mid-to-late 1990s, a broad foundation for international bank and other financial supervisory standards was in place.[34] From the bank regulatory side, this foundation was all based on the concerns of the G-10 industrialized country Central Bank Governors and banking institutions regulators/supervisors.[35] Thus, by the mid-1990s, the Basel Committee, a G-10 subcommittee, was well on its way in formulating international banking standards in an industrialized country context, which in the latter half of the 1990s became transported substantially to the developing country world.[36]

As will be discussed later, one tool for achieving the NIFA objectives has been the development, dissemination, and implementation of international standards and best practices or principles with respect to a number of financial-related areas. Particularly relevant for present purposes are the various banking standards, principles, and guidelines formulated by the Basel Committee over the past quarter-century: in effect, the Basel Committee is the forerunner for an array of other international-standard-setters under NIFA-I.[37]

B. IFI/RFI Intervention

By the late 1980s and into the 1990s (as accelerated by the collapse of the Soviet Empire and the move of the new C.E.E. countries to market-oriented democracies), we see the intervention of the IMF, World Bank Group, and various regional development banks in

33. *See e.g.*, Basel Committee, Framework for Supervisory Information About the Derivatives Activities of Banks and Securities Firms (May 1995), *available at* http://www.bis.org/publ/bcbs19.htm (last visited Mar. 12, 2009). This was a joint report by the Basel Committee on Banking Supervision and the Technical Committee of the IOSCO.

34. *See* Norton, *supra* note 27.

35. It is true that, in the late 1970s, a biennial International Conference of Bank Supervisors was initiated by the Basel Committee for the purposes of informing the bank supervisors and regulators from non-G-10 countries, including from the Developing World, with a view toward globally promoting the efforts of the Committee. In addition, beginning in the early 1980s, but more so in the early1990s, regional, sub-regional, and special groups of national bank supervisors and regulators were formed informally to consider how Basel Committee-based pronouncements could be translated into the particular region, sub-region, or grouping.

36. *See* Basel Committee, History of the Basel Committee and Its Membership 5 (Jan. 2007), *available at* http://www.bis.org/bcbs/history.pdf (last visited Mar. 12, 2009).

37. In addition to the Basel Committee and IOSCO, a separate informal international standard-setting network for insurance, the International Association of Insurance Supervisors (IAIS) was formed in 1994. *See generally* International Association of Insurance Supervisors, http://www.iaisweb.org, (last visited Mar. 12, 2009). Another international standard-setting network for deposit insurers, the International Association of Deposit Insurers (IADI) was formed in 2000. *See generally* International Association of Deposit Insurers, http://www.iadi.org (last visited Mar. 12, 2009). Further, a supervisory framework for dealing with financial conglomerates also was developed in the mid-1990s by creating a cooperative, informal network of networks called the Joint Forum, comprising the Basel Committee, IOSCO, and IAIS. In addition, it needs to be noted that in 1999, the G-7 created the informal Financial Action Task Force (FATF) for dealing with money laundering and subsequently also terrorism financing; FATF is now an international standard-setters in these areas. *See generally* Financial Action Task Force, http://www.fatf-gafi.org/ (last visited Mar. 12, 2009). Also, incidentally, the FATF itself has given rise to two other interlinking networks: one public (the Egmont Group of domestic Financial Intelligence Units) and one private (The Wolfsburg Group, an association of eleven global banks).

getting into the business of financial sector development and related law reform through conditionality and/or technical assistance.[38] In effect, these bodies became informal transmitters of the standards/best practices being developed by the Basel Committee and the other international financial standard-setters. This role would become even further broadened by the reform needs created by the Asian Financial Crisis and subsequent financial crises (e.g., Russia, Argentina, Brazil, Turkey, etc.) of the later 1990s and early 2000s.[39] These bodies became part of a reconfigured set of networks.[40]

C. G-7/8 Policy Direction:

Significantly, beginning in the mid-to-late 1990s, the evolving GFRNs (along with the IMF, World Bank, and OECD) came under the purview, coordination, and policy direction of the G-7 (and now with Bretton Woods II, also the G-20 Leaders and Finance Ministers). The G-7, relying heavily on the G-7 Finance Ministers and Central Bank Governors, endeavored to establish NIFA-I in the mid-to-late 1990s, centering on a group of international standard-setters, the promotion of an effective macroeconomic surveillance system, the development of an early warning system (EWS) to prevent financial crises, and greater coordination and collaboration among the IFIs and the GFRNs.

While some might discount the role and effectiveness of the G-7 in recent years in setting out the "rules of the road" for the international/global financial system, I would take the position that beginning in the mid-1990s, the G-7 becomes the key coalescing and policy-directive informal intergovernmental forum/network for the fleshing out and direction of NIFA-I. The driving factors here were the perceived fragility of the financial systems of the emerging markets and transitioning countries and the search for crises and contagion prevention. As it came to be, there was the 1994-1995 Mexican financial crisis, which was followed by the Asian financial crisis in 1997-1998 (Thailand, South Korea, and Indonesia). In addition there were subsequent financial crises in Brazil, Russia, Turkey, and Argentina, and a series of lesser country financial crises.[41] In fact, the G-7 can be said to have invented the notion of a "New International Financial Architecture" in the mid-1990s.[42] It really was with the 1995 G-7 Halifax Summit and the 1996 G-7 Lyon Summit that the foundations for NIFA were laid and with the Denver (1997), Birmingham (1998), and Cologne (1999) G-7 Summits that NIFA began to be fleshed out more fully.[43] An

38. *See generally* Norton-EM, *supra* note 21.

39. For more on the Asian Financial Crisis, *see, inter alia*, Financial Crises in the 1990s: A Global Perspective pt. 2 (Douglas Arner et al. eds., BIICL 2001).

40. In addition, the European Community/Union, through its elaborate "acquis communitaire" program for the C.E.E. countries to become associated with or to join the European Union, transmit their Basel-compliant financial sector standards to these countries and to other EU "associating countries" in the Wider Europe and the Mediterranean Region.

41. *See generally* Norton-EM, *supra* note 21.

42. Beginning in the mid 1990s, the G-7 (now G-8) began to focus on what it referred to as the "international financial architecture." The first use of the specific term "New International Financial Architecture" is often attributed to Mr. Michel Camdessus, former Managing Director of the IMF, who first began to regularly use this term in 1998. *See e.g.*, Michel Camdessus, former Managing Dir., IMF, Address at the Royal Inst. of Int'l Affairs: Toward a New Financial Architecture for a Globalized World (May 8, 1998), *available at* http://www.imf.org/external/np/speeches/1998/050898.HTM.

43. *See generally*, Basel Committee, *supra* note 7; G8 Information Center, *supra* note 8; Hajnal, *supra* note 8. In particular, *see* G-7, *Strengthening the Internatioanl Financial Architecture: Report of the G-7 Finance Ministers*

integral dimension of all this G-7 attention would be a significant law-based dimension evolving around global principles and standards setting.[44]

Thus, the NIFA-I picture that begins to unfold by 1999, as discussed above, is one driven by the G-7 and its Finance Ministers (and also its Central Bank Governors). The NIFA-I became largely concerned with financial crisis prevention and *financial stability* primarily through enhanced surveillance, transparency, information sharing, and EWSs. A sound financial sector legal infrastructure centering around evolving international financial-related standards and codes and increased IFI involvement on a cooperative basis also became key.

IV. NIFA-I Since 1999: All Is Well?

As to the further maturation of NIFA-I, of particular significance from 1999 to the present have been the following:

A. The FSF- The Guardian of the International Standards

As a direct response to the Asian Financial Crisis, in 1999, the G-7 created the umbrella overseer of the standard-setters, the Financial Stability Forum (FSF), with the FSF's pri-

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to the Köln Summit (June 18-20, 1999), *available at* http://www.mofa.go.jp/policy/economy/summit/1999/g7econo.html (last visited Mar. 13, 2009). As noted above, much of the work in the area of the international financial system was dealt with by the G-7 Finance Ministers and Central Bank Governors Group.

44. The following depicts the FSF's original, designated twelve *core* international financial standards and codes:

Macroeconomic policy and data transparency
Code of Good Practices on Transparency in Monetary and Financial Policies (IMF)
Code of Good Practices on Fiscal Transparency (IMF)
Special Data Dissemination Standard (SDDS)/ General Data Dissemination System (GDDS) (IMF)

Institutional and market infrastructure
Principles and Guidelines for Effective Insolvency and Creditor Rights Systems 45
Principles of Corporate Governance (OECD)
International Accounting Standards (IASB)
International Standards on Auditing (IFAC)
Core Principles for Systemically Important Payment Systems (CPSS)
The Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF)

Financial regulation and supervision
Core Principles for Effective Banking Supervision (BCBS)
Objectives and Principles of Securities Regulation (IOSCO)
Insurance Core Principles (IAIS)

See Financial Stability Forum, 12 Keys to Sound Financial Systems, http://www.fsforum.org/cos/key_standards.htm (last visited Mar. 13, 2009).

Most recently, the guidance established by the International Association of Deposit Insurers on deposit insurance schemes has been added to this chart, with the IADI now being considered an international standard-setter. On a more informal basis, the "principles" and "sound practices," respectively, by the World Bank on corporate insolvency also become relevant as to international standards in the financial sector area. These standards and codes have evolved and continue to be refined and revised on the basis of global and industrial country experiences and expectations. They may be utilized for multi-purposes. The FSF has compiled the series of key standards and codes into a working *Compendium*. *See also* World Bank, Database on International Financial Architecture, http://www.worldbank.org/ifa / (last visited Mar. 13, 2009).

mary global regulatory policy focus being on global financial stability. The main purpose of the FSF is "to promote international financial stability through information exchange and international co-operation in financial supervision and surveillance."[45] In effect, the FSF established a new forum (a network of networks) wherein an array of relevant separate bodies could meet and exchange views on systemic issues. The FSF participants include the G-7 members, plus Australia, Hong Kong, The Netherlands, Singapore, and Switzerland; the representatives of the five MIs (BIS, ECB, IMF, OECD, and World Bank); and six of the international standard-setters (Basel Committee, IOSCO, IAIS, IASB, CGFS, and CPSS).

Through the analyses and reports of its working groups, the FSF considers specific policy initiatives. The importance and political significance of the FSF will depend on the contribution of valuable recommendations and its use in times of systemic problems. If the international financial community does not rely on the vehicle provided by the FSF when contingency is required, the objective of the Forum will be defeated. Hence, in my considered view, the real contribution of the FSF will depend on its transformation into a broader representative (G-20 based) policy-recommending body with a set procedure to address financial instabilities and, otherwise, to provide ongoing and meaningful oversight and coordination in the international standard-setting arena. Achieving this objective will require a substantial restructuring and enhancement of the current FSF "umbrella" framework.

B. IMF FSAP Assessements

In the early 2000s, the G-7/8 encouraged the IMF and World Bank to undertake formal country financial sector assessment programs (FSAPs) and the IMF to increase the use of its voluntary Article IV member consultation process for member country evaluation purposes. From its inauguration, in order to accommodate the differing institutional missions of the IMF and the World Bank, the FSAP initiative has been articulated in terms of bifurcated objectives: (i) financial crisis prevention and financial stability and (ii) economic development and poverty reduction. Functionally, an FSAP is requested voluntarily by a country and is normally affected over several joint IMF-World Bank team missions. Upon completion, the team prepares an *aide-memoire* presenting the findings. This non-published, confidential document will be used by the IMF to prepare a Financial Sector Stability Assessment (FSSA) for presentation to its Executive Board, and is often used also in connection with the Fund's surveillance role under its biennial Article IV consultations. The FSAP is a flexible data gathering and assessment process that most probably can be enhanced and more broadly utilized in evaluating, revising, and prioritizing its financial sector reform policy objectives and related technical assistance.[46] The FSAP mechanism has broad potential in serving as a detection and assessment tool of the fragilities of country financial systems.

45. *See* Financial Stability Forum, History, http://www.fsforum.org/about/history.htm (last visited Mar. 13, 2009).

46. *See* World Bank, Financial Sector Assessment Program, http://www1.worldbank.org/finance/html/fsap.html (last visited Mar. 13, 2009); on IMF's comparable FSAP site, see also IMF, Financial Sector Assessment Program, http://www.imf.org/external/np/fsap/fsap.asp (last visited Mar. 13, 2009) (IMF's comparable FSAP site).

C. ADVENT OF THE G20

In September 1999, the G-7 Finance Ministers formally announced the establishment of the current Group of Twenty (G-20) (Finance Ministers and Central Bank Governors and their Deputies).[47] The final composition of the G-20 was to be as follows: the G-7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States), plus Argentina, Australia, Brazil, China, India, Indonesia, Korea, Mexico, Russia, Saudi Arabia, South Africa, and Turkey. In addition, the following four institutional representatives are *ex officio* members of the G-20: the IMF Managing Director, the Chair of the IMF's IMFC, the Chair of the IMF's Development Committee, and the President of the World Bank, thus connecting the G-20 with the Bretton Woods institutional framework but not putting these IFIs at the helm of the Group's policy-making process. The nineteen member countries are drawn from the "systemically important" industrialized countries and emerging economies, and represent approximately two-thirds of the World's population, 80 percent of World trade, and 90 percent of World's GDP.[48]

The G-20's mandate is to be "an informal forum that promotes open and constructive discussion between industrial and emerging-market countries on key issues related to global economic stability."[49] By contributing to the strengthening of the international financial architecture and providing opportunities for dialogue on national policies, international co-operation, and international financial institutions, the G-20 helps to support growth and development across the globe. The G-20 was created as a response both to the financial crises of the late 1990s and to a growing recognition that key emerging-market countries were not adequately included in the core of global economic discussion and governance.[50] Ironically, it appears that although financial stability (i.e., crisis prevention and resolution) was a main focus of the G-20 during its first four years, this focus seems to have run its course by 2004-2005, when broader financial and economic issues came to dominate the Group's agenda. Now, with the GFC and the holding of the Bretton Woods II November 2008 Summit meeting within the rubric of the G-20 (though on a Heads of State-Leader level), the focus shifts back to financial stability in a much more intense and broader fashion.[51] The G-20 was conceived as a complement to the G7, not as a replacement.[52]

So, with the G-20, we have a new transnational network that is created by another network (the G-7); that comprises the members of the creating network but also a broader range of other countries, along with IFIs; that becomes initially linked to the global concerns on financial stability; that is mandated to cooperate with other networks such as the FSF; that proactively seeks the input of private sector interests; and that is firmly linked into global developmental concerns.

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47. *See* G-7, *Statement of G-7 Finance Ministers and Central Bank Governors at Washington, D.C.* ¶ 19 (Sept. 25, 1999), *available at* http://www.g7.utoronto.ca/finance/fm992509state.htm (last visited Mar. 13, 2009).

48. *See generally* G-20, *supra* note 8; See also HAJNAL, *supra* note 8.

49. G-20, About G-20, http://www.g20.org/about_what_is_g20.aspx (last visited Mar. 12, 2009).

50. *Id.*

51. *See infra* Part V of this *Comment.*

52. *See* G-20, THE GROUP OF TWENTY: A HISTORY (2008), *available at* http://www.g20.utoronto.ca/g20history.pdf (last visited Mar. 13, 2009); *see also id.* at Annex CC.C.

D. IMF Reforms: Surveillance and EWSs

The three current-day, primary functions of the IMF are surveillance, lending, and technical assistance.[53] Over the years, these functions have been revised from time to time, consistent with the IMF's mandate under its Articles of Association.[54] Under Bretton Woods I, the primary focus of the IMF was on macro-economic matters, primarily related to balance of payments, exchange rates, and other issues of international monetary concerns. But, subsequent to the breakdown of Bretton Woods I in the early 1970s, particularly during the 1980s with an array of sovereign debt crises and during the 1990s with certain C.E.E. crises; the 1994-1995 Mexican crisis; the Asian crisis; the Brazil, Turkey, Russian, and Argentine crises, it became apparent that microeconomic institutional and structural issues had considerable impact on a country's abilities to effect sound macroeconomic and exchange policies. It is during these past three decades and currently that the IMF has been adrift in search of a relevant mission(s).[55]

As a result, the IMF has become a multi-product/service MI. For example, the IMF has created a distinct place in the areas of financial sector reform, financial stability, and crisis prevention.[56] In this connection, since 1994, with the Mexican financial crisis and particularly with the subsequent Asian Financial Crisis, one area where the G-7 Finance Ministers (and now also the G-20) have consistently pressed the IMF to provide enhanced surveillance for purposes of providing an effective EWS and otherwise, more generally, for crisis prevention.[57]

The IMF's surveillance role under its Bretton Woods I mandate pursuant to Article IV of the IMF's articles was rather narrow and limited to macroeconomic matters and monetary matters, such as balance of payments and exchange rate issues. As this role has expanded into the financial sector and financial crisis prevention areas, we see the IMF developing and enhancing a series of tools.[58] The joint IMF/World Bank FSAP program and the IMF's ROSC initiative are geared more to promoting longer-term financial sector reform than to crisis anticipation. As to crisis anticipation, the IMF relies on bilateral country consultations and surveillance,[59] a range of financial soundness indicators (FSI, included as part of FSAP program),[60] multilateral surveillance involving ongoing analysis

53. *See* IMF, Our Work, at www.imf.org/external/about/ourwork.htm (last visited Mar. 13, 2009).

54. *See* IMF, Articles of Agreement, *available at* http://www.imf.org/external/pubs/ft/aa/aa.pdf. (last visited Mar. 13, 2009) (particularly Article I (Purposes).

55. *See, inter alia*, Reforming the IMF for the 21st Century: Special Report No. 19 (Edwin M. Truman ed., 2006).

56. *See, e.g.*, Stanley Fischer, First Deputy Managing Director, IMF, Introductory Remarks at the IMF Seminar on Financial Risks, System Stability, and Economic Globalization: The IMF and the Financial Sector (June 2000), *available at* http://www.imf.org/external/np/speeches/2000/060500.HTM (last visited Mar. 13, 2009).

57. See the various G-7 Communiques and related reports since 1995 at G8 Information Center, G7/8 Summits, http://www.g7.utoronto.ca/summit/index.htm (last visited at March 13, 2009). In particular, see G-7 Finance Ministers, *Strengthening the International Financial System and the Multilateral Development Banks* pt. C (July 7, 2007), *available at* http://www.g7.utoronto.ca/finance/fm010707.htm.

58. *See generally* IMF, Factsheet: IMF Surveillance, http://www.imf.org/external/np/exr/facts/surv.htm (last visited Mar. 13, 2009).

59. *See* IMF, *Bilateral Surveillance over Members' Policies*—Executive Board Decision (June 15, 2007), *available at* http://www.imf.org/external/np/sec/pn/2007/pn0769.htm#decision.

60. *See* IMF, Financial Soundness Indicators (FSIs) and the IMF, http://www.imf.org/external/np/sta/fsi/eng/fsi.htm (last visited Mar. 13, 2009).

of global and regional trends,[61] multilateral consultations on global imbalances,[62] various EWS models,[63] and data quality and dissemination frameworks.[64] While the IMF has significant capacities in providing enhanced surveillance and EWS models, the efficacy of these remain problematic.[65] Certainly, no one realistically conceives of the IMF as providing data, information, and analyses that will prevent all future crises.

V. Concluding Remarks: A Bretton Woods II-NIFA-II Agenda?

As can be discerned from the above remarks, since the G-7/8 became the paramount coordinator, policy determinate, and general director for NIFA-I (á la the 1995 Halifax and 1999 Cologne Summits), these international administrative efforts of the various informal GFRNs and collaborating IFIs in fleshing out NIFA-I initially focused on the formulation of international standards and on domestic financial sector and related legal infrastructural reforms of domestic emerging, transitioning, and developing economies. The driving policy concerns were the prevention of financial crisis and related contagion. As we turned the corner into the current millennium, this NIFA-I process also began to address more intensely (through FATF, IMF, World Bank, and FSF) anti-money laundering and counter-terrorism financing concerns and went from standard-setting to a greater focus on implementation and assessment and to an enhanced role for the IMF (e.g., as to EWS) and for the FSF as to dealing with *financial stability* concerns. In effect, NIFA-I indicates largely an ad hoc evolution that has in fact produced a relatively extensive global financial sector reform framework, albeit, admittedly, an incomplete and not entirely coherent one.[66] As mentioned above, central to all this evolution has been the creation of a range of international standard-setters, mostly through informal networks and networks interconnecting with networks (GFRNs).

But, as with much of the international, regional, and domestic financial sector/markets reform over the past several decades, it takes a major crisis for serious reform to occur, with the reform being largely reactive. So it is today, with our current Global Financial Crisis of 2008, and the ensuing call by French President Sarkozy and British Prime Minis-

61. *See* IMF, Office of Independent Evaluation, *An Evaluation of the IMF's Multilateral Surveillance*, *available at* http://www.imf.org/external/np/ieo/2006/ms/eng/index.htm (last visited Mar. 13, 2009). Two of the main outputs are the IMF's annual World Economic Outlook and the semi-annual Global Financial Stability Report.

62. *See Multilateral Consultation on Global Imbalances*, 2007 IMF Issues Brief 3, *available at* http://www.imf.org/External/NP/EXR/ib/2007/041807.pdf (last visited Mar. 13, 2009).

63. *See* A. Berg et al., Assessing Early Warning Systems: How Have They Worked? (IMF, Working Paper No. 04/52, March 2004), *available at* http://www.imf.org/external/pubs/ft/wp/2004/wp0452.pdf (last visited Nov. 5, 2008).

64. *See* IMF, Data Quality Assessment Framework, http://dsbb.imf.org/Applications/web/dqrs/dqrsdqaf/ (last visited Mar. 13, 2009).

65. *Cf.* Dominique Straus-Kahn, Chairman of the Executive Bd. and Managing Dir., IMF, Remarks to the Board of Governors of the IMF at the Joint Annual Discussion, 2008 Annual Meetings of the IMF and the World Bank Group (Oct. 13, 2008), *available at* http://www.imf.org/external/np/speeches/2008/101308.htm (last visited Mar. 13, 2009).

66. It should also be noted, as to NIFI-I as we enter the new Millennium, that we see greater dependency on the IMF-WB (and also the OECD) as "knowledge banks" for specific purposes—the IMF for monitoring and reporting on financial stability and EWS matters (e.g., its biannual *Global Financial Stability Reports*); the World Bank for pursuing financial sector reform initiatives in the Development World, with a new focus on issues of access and equity; and the OECD as to transnational investment matters.

ter Brown for a Bretton Woods II conference. The ultimate objective of this conference (actually a series) would be to come up with a set of agreed principles for the management of global financial system. Originally conceived as a G-7/8 venture, it became apparent that other "systemically important" countries needed to be participants. Initial talk was about the "G-7 plus", possibly another seven countries.[67]

Although resisted initially on the rationale that the larger the group size, the harder to gain a consensus, the G-20 framework ultimately was chosen by the United States and then the G-7 as the negotiation framework; as was mentioned above, the thrust of the G-20's mandate is "promote international financial stability." The G-20 countries (Heads of State and Finance Ministers and Central Bank Governors), along with the European Union Presidency, the IMF, and the World Bank (regular participants in G-20 meetings), the U.N. Secretary General, and the Chairman of the FSF were the invited guests for a November 15, 2008, Summit on Financial Markets and the World Economy, called by and to be chaired by President Bush.[68] Immediately preceding this Summit, the G-20 was to hold its Annual Meeting of Finance Ministers and Central Bank Governors on November 8-9, 2008, in Sao Paolo, Brazil.[69] Thus, as we conclude our own SMU conference on Transnational Networks on November 7, 2008, we need to realize that over the next eight days, two most important high-level intergovernmental network events will occur that could have a most significant impact respecting a reconfiguration of existing networks being molded by the G-7, through the G-20, to address the GFC and other pressing global financial and economic matters. In effect, informal networks, most likely, will be the basis of the upcoming Bretton Woods Summit and the ensuing follow-up Summit meetings.

In his October 22, 2008 invitation, President Bush stated the following:

> The leaders will review progress being made to address the current financial crisis, advance a common understanding of its causes, and, in order to avoid a repetition, agree on a common set of principles for reform of the regulatory and institutional regimes for the world's financial sectors. These principles can be further developed by working groups for consideration in subsequent summits. In addition, we expect that the leaders will discuss the effects of the crisis on emerging economies and developing nations. The summit will also provide an important opportunity for leaders to strengthen the underpinnings of capitalism by discussing how they can enhance their commitment to open, competitive economies, as well as trade and investment liberalization.[70]

This being said, it appears the United States (to be represented by President Bush and Treasury Secretary Paulson) may be having second thoughts on the agenda and may seek a

67. *See* THE G-20 LEADERS SUMMIT ON FINANCIAL MARKETS AND THE WORLD ECONOMY (J. Kirton ed., Nov. 14-15, 2008) http://www.g20.utoronto.ca/g20leadersbook/index.html (last visited Mar, 13, 2009).

68. *See* U.S. White House, Statement by Press Secretary Dana Perino (Oct. 22, 2008), *available at* http://www.g7.utoronto.ca/g20/2008-leaders-081022.htm (last visited March 13, 2009)) [hereinafter White House Statement].

69. *See* JENILEE GUEBERT, G-20 RESEARCH GROUP, G-20 PLANS FOR THE MEETING OF FINANCE MINISTERS AND CENTRAL BANK GOVERNORS ON NOV. 8-9, 2008, *available at* http://www.g20.utoronto.ca/g20plans/g20plans081107.pdf.

70. *See* White House Statement, *supra* note 68.

more limited and less ambitious mandate for this network/group, as they come to realize how more broadly the French, British, and others wish to proceed.[71] Thus, there are a broad range of views as to what the Bretton Woods agenda should be. When one digs under the surface, there really is, pre-Summit, no common agreement at this point among the United States, United Kingdom, France, and European Union, never mind the other G-20 participating countries.

It would be way too pretentious for me to speculate, in advance, on what will come out of Bretton Woods II, but let me make a few concluding observations for present purposes of this Comment:

1. While the NIFA-I framework obviously was not adequate in forecasting and managing the GFC (though, in truth, if one reads the IMFs biannual *Financial Stability Reports* from 1994-1997, one could argue that the IMF had pointed out most of the root problems of the impending global crisis), NIFA-I did produce virtually all the important components for building NIFA-II.[72] As to the current GFC, it is not so much that there was not an international financial architecture in place that was geared to global financial stability objectives, but that this architecture proved incomplete and ineffective in identifying, appreciating, managing, and mitigating the current GFC. It needs to be kept in mind the NIFA-I focus on *financial stability* pertained largely to the emerging and transitioning economies, but the GFC came out of the industrialized world (particularly as to its capital markets), where it was thought that the relevant financial systems were well-designed, though never really having a sound prudential component and not factoring

2. My initial reaction to the calls for a Bretton Woods II was that this initiative was more hubris and fanfare on the part of certain G-7 members, than substance and that the United States would rein in the over-enthusiasm of Sarkozy, Brown et al., keeping close and primary focus on the immediate financial crisis at hand. But, on further reflection, it is, indeed, remarkable that the United States would go forward with a G-20 Heads of State format (not a G-7/8 and not just meetings at the Ministerial level) series of Summits on financial markets and the world economy. Obviously, the immediate priority of this

71. President Sarkozy, along with Chancellor Merkel, have proposed that this Bretton Woods II Summit should address "genuine, all-encompassing reform of the international financial system." Presidency Conclusions, Brussels European Council (Oct. 16, 2008). Prime Minister Brown, in a mid-October speech, appeared to be seeking a range of common principles such as transparency (internationally agreed accounting standards, credit insurance market standards), integrity (credit agencies, executive pay), responsibility (board member competency and expertise), and sound banking practice (protecting against speculative bubbles). Even more broadly, Prime Minister Brown proffers: "We need an international monetary system where you have an early warning system, where you have a crisis prevention system, where you have proper surveillance of what is happening, where the systems that we have to build where local economies became national economies have now got to be built as national economies become part of global economies." Gordon Brown, Prime Minister of England, Speech to Business Leaders in London (Oct. 27, 2008), *available at* http://www.number10.gov.uk/Page17303.

72. Examples would be: the range of international financial standard-setters and their coordination through and under the FSF umbrella; the development of a financial sector assessment program by the IMF/WB; the underpinnings for a sophisticated surveillance and related EWS system; a reasonably well-developed Article IV consultation framework; and a range of special lending support facilities, including a new expedited Emergency Facility. Also, most important will be the ongoing issues of financial conglomerate risks addressed by the JF, particularly as the GFC is bringing about a major restructuring and consolidation, across and within industry lines, of financial institutions. More broadly, NIFA-I provided a base of the prior work on capital adequacy, operational risk, and HLIs, though these areas will certainly have to be revisited.

G-20 grouping will be for evaluating the root causes of our current GFC and for coming up with some form of a common plan of action. But, the potential for addressing broader global financial and economic objectives at the subsequent Summits over the course of the coming two years or so is significant. It appears that the Second Summit Meeting will be in London in April 2009.[73]

3. Throughout all this, it will be interesting how the relationship between the established G-7/8 network format and the new G-20 (Leader/Ministers) format will mesh. One could conceive of the G-7/8 giving way to the G-20, over time, as to global financial system and other global economic policy responsibilities. In a sense, the cat has been let out of the bag as to including the major emerging economies in the global policy-direction arena that had been coveted by the G-7 for over three decades. This move to greater representational inclusion will most likely also spill-over to the IMF, Work Bank, and FSF internal processes.

4. Merely conjecturing, I would anticipate that there will not be created any new formal international institutions under a Bretton Woods II framework, but that existing international, regional, and domestic institutions will continue to be utilized in an enhanced manner, along with the array of existing informal networks and groupings. Reconfigured networks and possibly new networks will come to exist, and there most probably will be increased uses of MOUs and MMOUs among domestic regulatory authorities.[74]

5. As with the most recent *Santiago Principles* for Sovereign Wealth Funds (SWFs),[75] new standards and standard-setters may well come into existence as to the currently unregulated financial institutions and financial instruments of global significance (e.g., hedge funds and other HLIs, mortgage firms, credit-rating agencies, and derivative products). Also, considerable substantive regulatory enhancements most likely will come about as to

73. Editor Note: This article speaks as of November 2008. On the April 2, 2009, London Second Summit, see The London Summit 2009, http://www.londonsummit.gov.uk/en/ (last visited March 21, 2009).

74. For example, the Basel Committee itself sometimes operates with an expanded group of supervisors from sixteen other countries called the "Core Principles Liason Group" (CPLG), and in 2008, there appears to have informally come into being a "Group of Senior Supervisors" from five to seven countries (France, Germany, Switzerland, UK, and the United States, with Canada and Japan apparently also joining in) for specific report preparation purposes on risk management in an attempt to support and to facilitate the FSF April 2008 recommendations. .

75. This represents another example of networking respecting the upcoming NIFA-II. Beginning in the Summer of 2007, when China and Russia announced the establishment of Sovereign Wealth Funds (SWFs), which had existed since the 1940s, the U.S. Treasury and other Finance Ministers from the major EU countries expressed concerns over SWFs and their role in the global financial system. Treasury saw that the SWFs got on the G-7 Finance Ministers agenda. The G-7, in turn, requested the IMF to conduct a study of the matter and to meet with the various SWFs to see if some form of common principles could be agreed to with respect to such issues as to transparency and accountability. In addition, the G-7 directed the OECD to consider the SWF issue from the perspective of the OECD's foreign direct investment standards. After a year's study, the International Working Group (IWG) of SWFs assembled under the auspices of the IMF presented to the G-7 in September 2008 a set of twenty-four voluntary "Generally Accepted Principles and Practices" (GAPP—the "Santiago Principles"). The IWG will be transformed into a Standing Group of SWFs that will continue to meet periodically among themselves and with the IMF and other parties as may be appropriate. So, we see here a series of networks employed in arriving at the Santiago Principles. What is interesting is that the G-7 has inadvertently created a new network of the subjects themselves (SWF), which should turn out to give the SWF "community"/network considerable more collective clout. *See generally* International Working Group of Sovereign Wealth Funds, http://www.iwg-swf.org (last visited Mar. 14, 2009).

financial conglomerates and affiliate groups/arrangements, and as to Basel II and current approaches to financial institutions risk management.

6. While there are differing views as to a major overhaul of the IMF and World Bank Group, particularly as to their mandates, decision-making processes, and accountability, common agreement should be able to be arrived at, through this series of Summits, as to how best to employ the knowledge and technical resources of the IMF and the World Bank in any NIFA-II. It would appear that the role of the IMF (and probably also of the BIS) would be enhanced at least in the areas of global monitoring and developing better EWS systems/models and emergency facilities, while the World Bank will take greater efforts in linking the development/Developing Country side into the new Bretton Woods-II framework as it unfolds. In making this observation, I would make the further related observation that, if the IMF is to be a central institutions in ensuring global financial stability, it will also need to be given substantially increased financial resources, will need to be given greater independence in its surveillance and reporting process, will need to have a broader FSAP program (of note, the US has recently agreed to subject itself to its first FSAP), and its recommendations will need to be given far greater weight, as to implementation, by certain of the major Western member countries (e.g., the US) and various of the BRIC countries (e.g., China).

7. It appears that the FSF, under a Bretton Woods II-NIFA-II scenario, will become a central component of a NIFA-II- will become a sort of global financial stability global overseer Most likely, it will come to have an expanded membership and role in the global financial stability area. For example, in April 2008, the FSF issued a comprehensive report on the GFC that contained over sixty specific recommendations for regulatory reform.[76] This report was requested by the G-7; its preparation was vetted with a broad range of IFA/IFAs and private market sector participants;[77] and its recommendations are being given considerable follow-up by the G-7/8 and G-20 Finance Ministers and Central Bank Governors through the most recent Bretton Woods II initiative. As such, a revamped and expanded membership FSF most probably will be a central network of networks under NIFA-II and will conduct itself proactively in collaboration with other networks and institutions/arrangements. However, it must be born in mind that, in its present structure, the FSF is basically a loose, informal "umbrella" network of networks. To achieve any meaningful, central role in Bretton Woods II-NIFA-II, there would have to be a very substantial institutional reconfiguration of and financial, permanent staff and other resource enhancements (possibly through an enhanced BIS).

8. The GFC itself has given rise to a related rash of ad hoc domestic, regional, and global networking of Central Bank and Treasury officials, IFI officials, domestic legislators, and private sector parties and institutions for the purpose of trying to deal with the unseen vagaries of this dramatic global financial crisis. For example, in trying to develop first a U.S. approach and then a more global approach to the GFC, as the global implications of this crisis began to unfold itself, the U.S. Treasury Secretary and Federal Reserve

76. FSF, Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience (Apr. 7, 2008), *available at* http://www.fsforum.org/publications/r_0804.pdf [hereinafter FSF Report]. *See also*, FSF, Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience: Follow-up on Implementation (Oct. 10, 2008), *available at* http://www.fsforum.org/press/pr_081009f.pdf.

77. FSF Report, *supra* note 76, at Foreword.

Board Governor engaged in informal meetings and consultation among themselves and with other members (e.g., Chairman of the SEC and of the CFTC) of the President's Working Group on Financial Markets and often involved heads of major financial institutions. They then met with relevant Congressional leaders (Senate and House) who were needed for finalization and passage of a bailout bill. Further, there was considerable informal consultations among the Federal Reserve and the major European Central Banks and then worldwide. In retrospect, the processes leading up to the ultimate formal legislative enactment of the U.S. Emergency Economic Stabilization Act of 2008[78] were, in large part, the product of a series of informal networking.

9. It is most likely that NIFA-II will embody some form of informal "College" of leading Central Banks and bank supervisors , along with the IMF, to oversee the global financial system in terms of financial stability and systemic financial crisis prevention. In fact, this type of collaboration goes back to the G-10 formation and was de facto exemplified in various aspects of the response processes to the current GFC and the unfolding of NIFA-II. Whether a Bretton Woods-II-NIFA-II would use this "College" concept more discretely as to globally significant financial institutions (not just for traditional banking institutions) or more broadly on a global systemic basis remains to be seen.[79]

10. When looking at possible new subject matter areas for considerations under the upcoming Bretton Woods II process, such as with respect to counterparty risk in derivative arrangements, and treatment of hedge, equity funds, SIVs and credit rating agencies, one needs to realize that considerable foundational work in these areas has already been laid by private network groups.[80] Thus, we could well see the G-20 reach out for the intervention and input of major private networks as a part of the debate and discussion on specific subject-matter that will come under NIFA-II.

In conclusion, I believe my public international law and administrative law colleagues have an increasing fertile but complex field of networks and informal groupings to sift through as Bretton Wood II-NIFA II unfolds over the coming several years.[81] Whether the maze I have presented can be better rationalized and streamlined, made more account-

78. *See* H.R. 1424, 110th Cong. (2008). (It is now law: Emergency Economic Stabilization Act of 2008, 12 U.S.C. § 5201 (2008).) .

79. For example, an expanded use of the College concept was called for by the FSF in its April 2008 Report, *supra* note 25.

80. For example, we now have, as part of the NIFA-II discussion, the impressive private Group of Thirty directed August 2008 Report (CRMPG III) on *Containing System Risk: The Road to Reform* (Counterparty Risk Management Policy Group headed by Gerald Corrigan, former head of the Basel Committee and of the N.Y. Federal Reserve Bank), which report supplements work by the FSF and which has been well-received by the FSF. COUNTERPARTY RISK MANAGEMENT POLICY GROUP, CONTAINING SYSTEM RISK: THE ROAD TO REFORM, *available at* http://www.crmpolicygroup.org/docs/CRMPG-III.pdf (last visited Mar. 14, 2009). Also of note is the recent January 2008 Report of the industry-led Hedge Fund Working Group on *Hedge Fund Standards: Final Report*. HEDGE FUND WORKING GROUP, HEDGE FUND STANDARDS: FINAL REPORT, *available at* http://www.pellin.co.uk/HFWG/Final-Report.pdf (last visited Mar. 14, 2009).

81. For the relevant academic, policy-making, and professional communities concerned with NIFA-II and its implications, I also would suggest that a companion educational infrastructure needs to be forged among the relevant legislative, bureaucratic, judicial, practitioner, academic, business, financial ,and civil society components of a country, a region, and internationally in order to ensure that a sound educational base and fora comes into being and should become an integral part of the overall NIFA-II processes. Perhaps, toward this goal, the World Bank Institute, the Financial Stability Institute, and OECD could coordinate such educational activities/objectives.

able, representative, legitimate, transparent, and effective remains to be seen. At minimum, the G—20's Bretton Woods II-NIFA-II series of Summit Meetings should provide fertile ground over the next several years for major substantive policy debates on how best to reconfigure a transparent, representative, effective, and accountable global regulatory framework (based on a "higher realism" of multilateral collaboration and mutual national self-interest)[82] to help secure and to maintain global financial stability as a global public good. Certainly, increased and enhanced international cooperation and coordination will be required. But I suggest that (for the foreseeable future), at the start and the end of the day, the ultimate regulatory reforms to be generated under NIFA II will need to sound within, to be implemented within, and to find their legitimacy within the respective national jurisdictions—with national policy-makers, lawmakers, and regulators being ultimately responsible.[83]

82. On the notion of "higher realism" in U.S. foreign policy generally, *see* SEYOM BROWN, HIGHER REALISM: A NEW FOREIGN POLICY FOR THE UNITED STATES (2009).

83. *See supra* note 17 concerning the *sui generis* nature of the European Union financial structure. Also in terms of follow-up on the upcoming April 2, 2000, Second G-20 (Leaders) Summit in London, *see supra* note 73.

Appendix

Editor's Note: Subsequent to the SMU November 7, 2008 Transnational Networks Conference, The G 20 (Leaders), at the invitation of President Bush, held the first of a series of "Bretton Woods II Conferences on November 15, 2008 in Washington D.C. Below is the official "Declaration" issued at the end of this Summit meeting.[84] Source: www.whitehouse.gov/news/releases/2008/11/20081115-1.html. (accessed November 17, 2008).

Declaration of the Summit on Financial Market and the World Economy

1. We, the Leaders of the Group of Twenty, held an initial meeting in Washington on November 15, 2008, amid serious challenges to the world economy and financial markets. We are determined to enhance our cooperation and work together to restore global growth and achieve needed reforms in the world's financial systems.

2. Over the past months our countries have taken urgent and exceptional measures to support the global economy and stabilize financial markets. These efforts must continue. At the same time, we must lay the foundation for reform to help to ensure that a global crisis, such as this one, does not happen again. Our work will be guided by a shared belief that market principles, open trade and investment regimes, and effectively regulated financial markets foster the dynamism, innovation, and entrepreneurship that are essential for economic growth, employment, and poverty reduction.

Root Causes of the Current Crisis

3. During a period of strong global growth, growing capital flows, and prolonged stability earlier this decade, market participants sought higher yields without an adequate appreciation of the risks and failed to exercise proper due diligence. At the same time, weak underwriting standards, unsound risk management practices, increasingly complex and opaque financial products, and consequent excessive leverage combined to create vulnerabilities in the system. Policy-makers, regulators and supervisors, in some advanced countries, did not adequately appreciate and address the risks building up in financial markets, keep pace with financial innovation, or take into account the systemic ramifications of domestic regulatory actions.

4. Major underlying factors to the current situation were, among others, inconsistent and insufficiently coordinated macroeconomic policies, inadequate structural reforms, which led to unsustainable global macroeconomic outcomes. These developments, together, contributed to excesses and ultimately resulted in severe market disruption.

Actions Taken and to Be Taken

5. We have taken strong and significant actions to date to stimulate our economies, provide liquidity, strengthen the capital of financial institutions, protect savings and deposits, address regulatory deficiencies, unfreeze credit markets, and are working to ensure that

84. London Summit 2009, Washington Declaration, http://www.londonsummit.gov.uk/en/summit-aims/washington-follow-up/washington-declaration1/ (last visited March 21, 2009).

international financial institutions (IFIs) can provide critical support for the global economy.

6. But more needs to be done to stabilize financial markets and support economic growth. Economic momentum is slowing substantially in major economies and the global outlook has weakened. Many emerging market economies, which helped sustain the world economy this decade, are still experiencing good growth but increasingly are being adversely impacted by the worldwide slowdown.

7. Against this background of deteriorating economic conditions worldwide, we agreed that a broader policy response is needed, based on closer macroeconomic cooperation, to restore growth, avoid negative spillovers and support emerging market economies and developing countries. As immediate steps to achieve these objectives, as well as to address longer-term challenges, we will:

* Continue our vigorous efforts and take whatever further actions are necessary to stabilize the financial system.
* Recognize the importance of monetary policy support, as deemed appropriate to domestic conditions.
* Use fiscal measures to stimulate domestic demand to rapid effect, as appropriate, while maintaining a policy framework conducive to fiscal sustainability.
* Help emerging and developing economies gain access to finance in current difficult financial conditions, including through liquidity facilities and program support. We stress the International Monetary Fund's (IMF) important role in crisis response, welcome its new short-term liquidity facility, and urge the ongoing review of its instruments and facilities to ensure flexibility.
* Encourage the World Bank and other multilateral development banks (MDBs) to use their full capacity in support of their development agenda, and we welcome the recent introduction of new facilities by the World Bank in the areas of infrastructure and trade finance.
* Ensure that the IMF, World Bank and other MDBs have sufficient resources to continue playing their role in overcoming the crisis.

Common Principles for Reform of Financial Markets

8. In addition to the actions taken above, we will implement reforms that will strengthen financial markets and regulatory regimes so as to avoid future crises. Regulation is first and foremost the responsibility of national regulators who constitute the first line of defense against market instability. However, our financial markets are global in scope, therefore, intensified international cooperation among regulators and strengthening of international standards, where necessary, and their consistent implementation is necessary to protect against adverse cross-border, regional and global developments affecting international financial stability. Regulators must ensure that their actions support market discipline, avoid potentially adverse impacts on other countries, including regulatory arbitrage, and support competition, dynamism and innovation in the marketplace. Financial institutions must also bear their responsibility for the turmoil and should do their part to overcome it including by recognizing losses, improving disclosure and strengthening their governance and risk management practices.

9. We commit to implementing policies consistent with the following common principles for reform.

* Strengthening Transparency and Accountability: We will strengthen financial market transparency, including by enhancing required disclosure on complex financial products and ensuring complete and accurate disclosure by firms of their financial conditions. Incentives should be aligned to avoid excessive risk-taking.

* Enhancing Sound Regulation: We pledge to strengthen our regulatory regimes, prudential oversight, and risk management, and ensure that all financial markets, products and participants are regulated or subject to oversight, as appropriate to their circumstances. We will exercise strong oversight over credit rating agencies, consistent with the agreed and strengthened international code of conduct. We will also make regulatory regimes more effective over the economic cycle, while ensuring that regulation is efficient, does not stifle innovation, and encourages expanded trade in financial products and services. We commit to transparent assessments of our national regulatory systems.

* Promoting Integrity in Financial Markets: We commit to protect the integrity of the world's financial markets by bolstering investor and consumer protection, avoiding conflicts of interest, preventing illegal market manipulation, fraudulent activities and abuse, and protecting against illicit finance risks arising from non-cooperative jurisdictions. We will also promote information sharing, including with respect to jurisdictions that have yet to commit to international standards with respect to bank secrecy and transparency.

* Reinforcing International Cooperation: We call upon our national and regional regulators to formulate their regulations and other measures in a consistent manner. Regulators should enhance their coordination and cooperation across all segments of financial markets, including with respect to cross-border capital flows. Regulators and other relevant authorities as a matter of priority should strengthen cooperation on crisis prevention, management, and resolution.

* Reforming International Financial Institutions: We are committed to advancing the reform of the Bretton Woods Institutions so that they can more adequately reflect changing economic weights in the world economy in order to increase their legitimacy and effectiveness. In this respect, emerging and developing economies, including the poorest countries, should have greater voice and representation. The Financial Stability Forum (FSF) must expand urgently to a broader membership of emerging economies, and other major standard setting bodies should promptly review their membership. The IMF, in collaboration with the expanded FSF and other bodies, should work to better identify vulnerabilities, anticipate potential stresses, and act swiftly to play a key role in crisis response.

Tasking of Ministers and Experts

10. We are committed to taking rapid action to implement these principles. We instruct our Finance Ministers, as coordinated by their 2009 G-20 leadership (Brazil, UK, Republic of Korea), to initiate processes and a timeline to do so. An initial list of specific measures is set forth in the attached Action Plan, including high priority actions to be completed prior to March 31, 2009.

In consultation with other economies and existing bodies, drawing upon the recommendations of such eminent independent experts as they may appoint, we request our Finance

Ministers to formulate additional recommendations, including in the following specific areas:

* Mitigating against pro-cyclicality in regulatory policy;

* Reviewing and aligning global accounting standards, particularly for complex securities in times of stress;

* Strengthening the resilience and transparency of credit derivatives markets and reducing their systemic risks, including by improving the infrastructure of over-the-counter markets;

* Reviewing compensation practices as they relate to incentives for risk taking and innovation;

* Reviewing the mandates, governance, and resource requirements of the IFIs; and

* Defining the scope of systemically important institutions and determining their ap propriate regulation or oversight.

11. In view of the role of the G-20 in financial systems reform, we will meet again by April 30, 2009, to review the implementation of the principles and decisions agreed today.

Commitment to an Open Global Economy

12. We recognize that these reforms will only be successful if grounded in a commitment to free market principles, including the rule of law, respect for private property, open trade and investment, competitive markets, and efficient, effectively regulated financial systems. These principles are essential to economic growth and prosperity and have lifted millions out of poverty, and have significantly raised the global standard of living. Recognizing the necessity to improve financial sector regulation, we must avoid over-regulation that would hamper economic growth and exacerbate the contraction of capital flows, including to developing countries.

13. We underscore the critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports. Further, we shall strive to reach agreement this year on modalities that leads to a successful conclusion to the WTO's Doha Development Agenda with an ambitious and balanced outcome. We instruct our Trade Ministers to achieve this objective and stand ready to assist directly, as necessary. We also agree that our countries have the largest stake in the global trading system and therefore each must make the positive contributions necessary to achieve such an outcome.

14. We are mindful of the impact of the current crisis on developing countries, particularly the most vulnerable. We reaffirm the importance of the Millennium Development Goals, the development assistance commitments we have made, and urge both developed and emerging economies to undertake commitments consistent with their capacities and roles in the global economy. In this regard, we reaffirm the development principles agreed at the 2002 United Nations Conference on Financing for Development in Monterrey, Mexico, which emphasized country ownership and mobilizing all sources of financing for development.

15. We remain committed to addressing other critical challenges such as energy security and climate change, food security, the rule of law, and the fight against terrorism, poverty and disease.

16. As we move forward, we are confident that through continued partnership, cooperation, and multilateralism, we will overcome the challenges before us and restore stability and prosperity to the world economy.

Action Plan to Implement Principles for Reform

This Action Plan sets forth a comprehensive work plan to implement the five agreed principles for reform. Our finance ministers will work to ensure that the taskings set forth in this Action Plan are fully and vigorously implemented. They are responsible for the development and implementation of these recommendations drawing on the ongoing work of relevant bodies, including the International Monetary Fund (IMF), an expanded Financial Stability Forum (FSF), and standard setting bodies.

Strengthening Transparency and Accountability

Immediate Actions by March 31, 2009

* The key global accounting standards bodies should work to enhance guidance for valuation of securities, also taking into account the valuation of complex, illiquid products, especially during times of stress.
* Accounting standard setters should significantly advance their work to address weaknesses in accounting and disclosure standards for off-balance sheet vehicles.
* Regulators and accounting standard setters should enhance the required disclosure of complex financial instruments by firms to market participants.
* With a view toward promoting financial stability, the governance of the international accounting standard setting body should be further enhanced, including by undertaking a review of its membership, in particular in order to ensure transparency, accountability, and an appropriate relationship between this independent body and the relevant authorities.
* Private sector bodies that have already developed best practices for private pools of capital and/or hedge funds should bring forward proposals for a set of unified best practices. Finance Ministers should assess the adequacy of these proposals, drawing upon the analysis of regulators, the expanded FSF, and other relevant bodies.

Medium-term actions

* The key global accounting standards bodies should work intensively toward the objective of creating a single high-quality global standard.
* Regulators, supervisors, and accounting standard setters, as appropriate, should work with each other and the private sector on an ongoing basis to ensure consistent application and enforcement of high-quality accounting standards.
* Financial institutions should provide enhanced risk disclosures in their reporting and disclose all losses on an ongoing basis, consistent with international best practice, as appropriate. Regulators should work to ensure that a financial institution' financial statements include a complete, accurate, and timely picture of the firm's activities (including off-balance sheet activities) and are reported on a consistent and regular basis.

Enhancing Sound Regulation

Regulatory Regimes

Immediate Actions by March 31, 2009

* The IMF, expanded FSF, and other regulators and bodies should develop recommendations to mitigate pro-cyclicality, including the review of how valuation and leverage, bank capital, executive compensation, and provisioning practices may exacerbate cyclical trends.

Medium-term actions

* To the extent countries or regions have not already done so, each country or region pledges to review and report on the structure and principles of its regulatory system to ensure it is compatible with a modern and increasingly globalized financial system. To this end, all G-20 members commit to undertake a Financial Sector Assessment Program (FSAP) report and support the transparent assessments of countries' national regulatory systems.

* The appropriate bodies should review the differentiated nature of regulation in the banking, securities, and insurance sectors and provide a report outlining the issue and making recommendations on needed improvements. A review of the scope of financial regulation, with a special emphasis on institutions, instruments, and markets that are currently unregulated, along with ensuring that all systemically-important institutions are appropriately regulated, should also be undertaken.

* National and regional authorities should review resolution regimes and bankruptcy laws in light of recent experience to ensure that they permit an orderly wind-down of large complex cross-border financial institutions.

* Definitions of capital should be harmonized in order to achieve consistent measures of capital and capital adequacy.

Prudential Oversight

Immediate Actions by March 31, 2009

* Regulators should take steps to ensure that credit rating agencies meet the highest standards of the international organization of securities regulators and that they avoid conflicts of interest, provide greater disclosure to investors and to issuers, and differentiate ratings for complex products. This will help ensure that credit rating agencies have the right incentives and appropriate oversight to enable them to perform their important role in providing unbiased information and assessments to markets.

* The international organization of securities regulators should review credit rating agencies' adoption of the standards and mechanisms for monitoring compliance.

* Authorities should ensure that financial institutions maintain adequate capital in amounts necessary to sustain confidence. International standard setters should set out strengthened capital requirements for banks' structured credit and securitization activities.

* Supervisors and regulators, building on the imminent launch of central counterparty services for credit default swaps (CDS) in some countries, should: speed efforts to reduce the systemic risks of CDS and over-the-counter (OTC) derivatives transactions; insist that market participants support exchange traded or electronic trading platforms for CDS contracts; expand OTC derivatives market transparency; and ensure that the infrastructure for OTC derivatives can support growing volumes.

Medium-term actions

* Credit Ratings Agencies that provide public ratings should be registered.

* Supervisors and central banks should develop robust and internationally consistent approaches for liquidity supervision of, and central bank liquidity operations for, cross-border banks.

Risk Management

Immediate Actions by March 31, 2009

* Regulators should develop enhanced guidance to strengthen banks' risk management practices, in line with international best practices, and should encourage financial firms to reexamine their internal controls and implement strengthened policies for sound risk management.

* Regulators should develop and implement procedures to ensure that financial firms implement policies to better manage liquidity risk, including by creating strong liquidity cushions.

* Supervisors should ensure that financial firms develop processes that provide for timely and comprehensive measurement of risk concentrations and large counterparty risk positions across products and geographies.

* Firms should reassess their risk management models to guard against stress and report to supervisors on their efforts.

* The Basel Committee should study the need for and help develop firms' new stress testing models, as appropriate.

* Financial institutions should have clear internal incentives to promote stability, and action needs to be taken, through voluntary effort or regulatory action, to avoid compensation schemes which reward excessive short-term returns or risk taking.

* Banks should exercise effective risk management and due diligence over structured products and securitization.

Medium-term actions

* International standard setting bodies, working with a broad range of economies and other appropriate bodies, should ensure that regulatory policy makers are aware and able to respond rapidly to evolution and innovation in financial markets and products.

* Authorities should monitor substantial changes in asset prices and their implications for the macroeconomy and the financial system.

Promoting Integrity in Financial Markets

Immediate Actions by March 31, 2009

* Our national and regional authorities should work together to enhance regulatory cooperation between jurisdictions on a regional and international level.

* National and regional authorities should work to promote information sharing about domestic and cross-border threats to market stability and ensure that national (or regional, where applicable) legal provisions are adequate to address these threats.

* National and regional authorities should also review business conduct rules to protect markets and investors, especially against market manipulation and fraud and strengthen their cross-border cooperation to protect the international financial system from illicit actors. In case of misconduct, there should be an appropriate sanctions regime.

Medium-term actions

* National and regional authorities should implement national and international measures that protect the global financial system from uncooperative and non-transparent jurisdictions that pose risks of illicit financial activity.

* The Financial Action Task Force should continue its important work against money laundering and terrorist financing, and we support the efforts of the World Bank - UN Stolen Asset Recovery (StAR) Initiative.

* Tax authorities, drawing upon the work of relevant bodies such as the Organization for Economic Cooperation and Development (OECD), should continue efforts to promote tax information exchange. Lack of transparency and a failure to exchange tax information should be vigorously addressed.

Reinforcing International Cooperation

Immediate Actions by March 31, 2009

* Supervisors should collaborate to establish supervisory colleges for all major cross-border financial institutions, as part of efforts to strengthen the surveillance of cross-border firms. Major global banks should meet regularly with their supervisory college for comprehensive discussions of the firm's activities and assessment of the risks it faces.

* Regulators should take all steps necessary to strengthen cross-border crisis management arrangements, including on cooperation and communication with each other and with appropriate authorities, and develop comprehensive contact lists and conduct simulation exercises, as appropriate.

Medium-term actions

* Authorities, drawing especially on the work of regulators, should collect information on areas where convergence in regulatory practices such as accounting standards, auditing, and deposit insurance is making progress, is in need of accelerated progress, or where there may be potential for progress.

* Authorities should ensure that temporary measures to restore stability and confidence have minimal distortions and are unwound in a timely, well-sequenced and coordinated manner.

Reforming International Financial Institutions

Immediate Actions by March 31, 2009

* The FSF should expand to a broader membership of emerging economies.

* The IMF, with its focus on surveillance, and the expanded FSF, with its focus on standard setting, should strengthen their collaboration, enhancing efforts to better integrate regulatory and supervisory responses into the macro-prudential policy framework and conduct early warning exercises.

* The IMF, given its universal membership and core macro-financial expertise, should, in close coordination with the FSF and others, take a leading role in drawing lessons from the current crisis, consistent with its mandate.

* We should review the adequacy of the resources of the IMF, the World Bank Group and other multilateral development banks and stand ready to increase them where necessary. The IFIs should also continue to review and adapt their lending instruments to ade-

quately meet their members' needs and revise their lending role in the light of the ongoing financial crisis.

* We should explore ways to restore emerging and developing countries' access to credit and resume private capital flows which are critical for sustainable growth and development, including ongoing infrastructure investment.

* In cases where severe market disruptions have limited access to the necessary financing for counter-cyclical fiscal policies, multilateral development banks must ensure arrangements are in place to support, as needed, those countries with a good track record and sound policies.

Medium-term actions

* We underscored that the Bretton Woods Institutions must be comprehensively reformed so that they can more adequately reflect changing economic weights in the world economy and be more responsive to future challenges. Emerging and developing economies should have greater voice and representation in these institutions.

* The IMF should conduct vigorous and even-handed surveillance reviews of all countries, as well as giving greater attention to their financial sectors and better integrating the reviews with the joint IMF/World Bank financial sector assessment programs. On this basis, the role of the IMF in providing macro-financial policy advice would be strengthened.

* Advanced economies, the IMF, and other international organizations should provide capacity-building programs for emerging market economies and developing countries on the formulation and the implementation of new major regulations, consistent with international standards.