Do not cite without the permission of the author

Do we need a World Financial Organization?

Rosa M. Lastra[1]

Abstract

International trade law under WTO is a mature field of international economic law (IEL). In contrast, international monetary and financial law is still emerging as a discipline within IEL. With the exception of the International Monetary Fund (IMF), international monetary and financial law is still characterised by the predominance of soft law, soft obligations and an informal institutional structure. Financial markets have become much more international in recent decades, while their regulation, supervision and - if necessary - resolution remain constrained by the domain of domestic jurisdictions. The global financial crisis has taught us several lessons. One of them is that banking crises often lead to sovereign debt crises because of the vicious link between bank debt and sovereign debt (the so-called 'doom loop', the catalyst for the adoption of banking union in the EU). Another lesson is that financial institutions retrench to national frontiers when things turn sour (they live globally, but die nationally). This state of affairs has to change if financial institutions and markets can remain credibly global. It is urgent and important to devise adequate international structures and international norms to govern financial markets and to control systemic risk in finance. The debate about the need for a World Financial Organization (WFO) ought to be understood in this context.

Introduction

[1] Rosa M. Lastra is Professor of International Financial and Monetary Law at Queen Mary University of London. The first draft of this paper was prepared for the Symposium held in Washington D.C. on 16 November 2012 in honour of Professor John H. Jackson and is due to be published in a Special Issue of the Journal of International Economic Law. The paper draws on the ideas that led the book edited by John Jackson, Thomas Cottier and myself, entitled *International Law in Financial Regulation and Monetary Affairs* (2012) and upon the ideas presented in my Inaugural Lecture on 23 March 2011. I would also like to acknowledge the comments received from the participants in the Second Annual Bank of England-CCLS/QMUL Conference on Financial and Monetary Law held at the Bank of England on 16 May 2014.
I admire John Jackson's vision, his fresh original approach to international economic law and his enthusiasm for exploring new legal issues; and I also greatly appreciate his humanity, friendship and the warm hospitality that he and Joan have always extended to me.

The quest for international financial regulation looks into the future of finance by considering both the present and the past. The past, because history matters; institutions and laws are creatures of their times. [In the words of Jorge Santayana, 'those who cannot remember the past are condemned to repeat it'[2]]. Economists refer to this as path dependency. The present, because the issues surrounding banking and financial reform are no longer only the domain of the specialist: after the financial crisis, they have come to the forefront of economic and policy debate.

Confidence and trust are preconditions for a market economy to function efficiently (the term credit comes from the Latin *credere*: to trust, to believe), and such trust that underlies all transactions, that is the foundation of enterprise and development, is supported by a legal framework. That markets need rules to function well has been argued by Ronald Coase[3] and Douglass North[4], both Nobel Laureates. But long before Coase and North, the importance of the law for functioning markets had been recognised. Adam Smith, the founding founder of Economics as an autonomous subject, wrote in 1776:

> Commerce (...) can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by the law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay.[5]

The law, after all, is about setting boundaries for personal and collective behaviour. But beyond the basic laws that support a market economy and provide stability, continuity and predictability of contract and property rights, the case for banking and financial regulation requires additional justification. It is the existence of market failures and deficiencies, notably negative externalities and information asymmetries that provides the rationale of regulation.[6]

---

[2] Jorge Santayana, *Reason in Common Sense*, volume 1 of *The Life of Reason* (1905, repr. by Charles Schribners' Sons, New York, 1920).

[3] See Ronald H Coase, *The Firm, the Market and the Law*, (Chicago: The University of Chicago Press, 1988). This book is a collection of Coase's main papers, including his two seminal articles: 'The Nature of the Firm' (1937) and 'The Problem of Social Cost' (1960).

[4] See Douglass C North, *Institutions, Institutional Change and Economic Performance*, (Cambridge: Cambridge University Press, 1990).

[5] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Book V, III 'Of Public Debts', (repr. in 2009 by Digireads.com Publishing, p. 546.

[6] Externalities are the costs to society of banking failures. And, indeed, the costs to society of a crisis are very large – as we know from recent experience – and, by far, exceed the private costs to individual financial institutions; that is a why a key aim of regulation should be to internalize these externalities. Information asymmetries or deficiencies – a feature of the services industry in general – refers to the fact that the provider of

The remainder of this paper is organized as follows: first, we examine the rationale of international regulation and discuss the inadequacy of the principle of sovereignty for the regulation of cross border financial institutions. Then, we survey the current status quo, characterised by the coexistence of national law & institutions and global financial markets. Finally, we consider the emerging *lex financiera* and debate the need for a WFO.

Why international regulation?

The quest for international law in money and finance is a logical response to the increasing globalization of financial markets. It is also a response to the need to prevent and contain contagious systemic risk, a risk that does not respect geographic boundaries. The crisis showed that national financial markets cannot be looked in isolation. A fragmented global regulatory and accounting regime gives rise to regulatory arbitrage ('forum shopping'), loopholes and shadow institutions and markets; it also increases transaction costs and can lead to financial protectionism. Incompatible or conflicting rules from country to country increase the regulatory costs and can create new risks. Regulatory competition can also lead to a race to the bottom. And since international problems emerged as a consequence of domestic failures, an extra argument for international regulation is that it can be a backstop to domestic regulation.

Globalization has changed the traditional understanding of financial markets and has led to the emergence of multinational banks, financial groups and new instruments and markets that operate across jurisdictions. Financial globalization was fostered by financial innovation, the technological revolution, the integration and liberalization of markets, the mobility of people and capital and other factors.

But the global financial market is not a huge global homogenous market. It is more like a spider's web or a radial web with multiple interconnections and linkages,[7] in which local

---

the service knows much more than the consumer of the service. In banking these problems are particularly acute and the phenomenon of bank runs is well known. The aim of banking and financial laws is to protect individuals (depositors, investors, policy-holders), to ensure the smooth conduct of the business (fair, efficient and transparent markets) and to safeguard the payment system and the stability of the financial system at large, preventing and containing systemic risk and systemic crises.

[7] Andrew Haldane of the Bank of England has looked at the lessons that ecology, epidemiology and genetics provide in order to understand financial networks and complex financial systems. See e.g. http://www.bankofengland.co.uk/publications/Documents/speeches/2009/speech386.pdf

markets permeate each other and in which a few players dominate the scene. The size or importance of some of these players (the term SIFIs or systemically significant financial institutions is now in vogue) is a source of concern globally and nationally[8]. The dangers of SIFIs remind me of the image of the baobabs in The Little Prince:

> *There were some terrible seeds on the planet that was the home of the little prince, and these were the seeds of the baobab. (...) A baobab is something you will never be able to get rid of if you attend to it too late. It spreads over the entire planet. (...) And if the planet is too small and the baobabs are too many, they split it into pieces. (...)* After explaining how he cleaned the seeds of the baobabs everyday he added: *'Sometimes, there is no harm in putting off a piece of work until another day. But when it is a matter of baobabs, that always means a catastrophe. I knew a planet that was inhabited by a lazy man. He neglected three little bushes...' So, as the little prince described it to me, I have made a drawing of that planet. I do not much like to take the tone of a moralist. But the danger of the baobabs is so little understood, and such considerable risks would be run by anyone who might get lost on an asteroid, that for once I am breaking through my reserve. (...) I say plainly, 'watch out for the baobabs'.*
>
> *'The Little Prince' by Antoine du Saint-Exupéry*

Globalization has magnified the impact and geographic outreach of systemic risk. And the globalization and liberalization of financial markets have proceeded at a much faster pace than the development of an appropriate international legal and institutional framework.

Though the financial crisis was global, the solutions to the mounting problems were mostly national. Some of these solutions – including unprecedented liquidity assistance and massive government support and intervention – have been quite extraordinary and, in the absence of adequate laws, emergency legislation or new rules were expeditiously introduced in several countries. Using an analogy with fire departments, while every effort was made to extinguish the fire during the crisis, in the aftermath of the financial crisis we need to re-examine the fire regulations and to consider how well (or how badly) the institutions did. In many cases we may conclude that the adequate response is not necessarily more regulation, but better supervision and enforcement or greater transparency or better international coordination. We should also beware of the excesses of regulation and the dangers of over-regulating a given sector or type of institutions, creating incentives for businesses to move outside the regulatory

---

[8] If banks are able to borrow at artificially low rates because creditors do not believe that they will be allowed to fail, this encourages moral hazard. See generally Rosa Lastra, "Systemic Risk, SIFIs and Financial Stability", *Capital Markets Law Journal*, Vol. 6, No. 2, April 2011, pp.197-213.

framework. Any regulatory perimeter brings its own shadows and loopholes. We must also be mindful of the question of competition. Regulation and liberalization are not always companions; at times, they are antagonists.

Sovereignty and International Financial Markets

In order to understand what making rules international means, and why such rules are needed, we should review the evolution of the notion of sovereignty.[9]

Sovereignty is the supreme power within a territory, the territory of the nation state. Thus, sovereignty has a territorial dimension, and the government is the political institution in which sovereignty is embodied. Sovereignty forms part of the fundamental principles of international law and is a key organizing concept of international relations. But it is a principle rooted in history. The modern understanding of the attributes of sovereignty was developed in the Renaissance. Indeed, politics operated without this organizing principle in the Middle Ages.

When it comes to modern financial markets, sovereignty is an inadequate principle to deal with financial conglomerates, complex groups and, generally, with cross border institutions and markets. It is not a good principle to deal with crisis management either, nor with the home/host country divide. Indeed, like a tsunami that does not respect territorial borders, the effects of a financial crisis spread beyond geographic frontiers. You cannot fight it only with national measures. In some parts of our modern life we need to move beyond national sovereignty.

A different view is held by Dani Rodrik, who argues that we cannot have 'deep economic integration' (he uses the terms 'hyper-globalization'), national sovereignty (nation state) and democratic politics all at once.[10] We can have at most two out of three. Since democracy

[9] See generally John Jackson, "Sovereignty - Modern: A New Approach to an Outdated Concept", 97 Am. J. Int'l L. 782-802 (2003), reprinted in Georgetown, The Scholarly Commons, 2003, available at http://scholarship.law.georgetown.edu/facpub/110/ See also Lastra, *Legal Foundations of International Monetary Stability* (Oxford: Oxford University Press, 2006), chapter 1, Dan Sarooshi, *International Organizations and Their Exercise of Sovereign Powers* (Oxford: Oxford University Press, 2005) and Claus Zimmermann, *A Contemporary Concept of Monetary Sovereignty* (Oxford, Oxford University Press, 2013).

[10] See Dani Rodrik, *The Globalization Paradox. Democracy and the Future of the World Economy* (New York & London: W.W. Norton & Company, 2011), pp. 200-201. See Rosa Lastra, Book Review of Dani Rodrik's "The

cannot be compromised, and he rejects the 'global governance' option, he proposes a return to national sovereignty. He considers that 'global standards and regulations are not just impractical; they are undesirable. The democratic legitimacy constraint ensures that global governance will result in the lowest common denominator, a regime of weak and ineffectual rules'.[11] Interestingly Rodrik contends (in chapter 11) that markets need other institutions to support them, notably courts of justice, legal arrangements to enforce property rights, and regulations to rein in abuse and fix market failures, since 'markets do not create, regulate, stabilize or sustain themselves' and he points out that 'what is true of domestic markets is true also of global ones'. The logical extension of his argument (which would contradict a basic tenet of the book, Rodrik's choice to solve the 'trilemma') is that if national markets need adequate national rules, international markets need adequate international rules. This would mean that national sovereignty, rather than global governance, should be sacrificed in order to solve the 'trilemma'. And, in my opinion, this is the best solution to the trilemma.

Financial markets transcend national boundaries (though in the last four years we have been experiencing a substantial de-globalization or renationalization of financial markets), and so do financial stability and systemic risk. It may actually be in the best interests of countries to pool sovereignty in this area. Drawing on the lessons of history, it was in the context of World War II that countries were ready to make the sacrifices needed in terms of sovereignty by signing a number of international treaties that gave rise to international organizations such as the United Nations, the International Monetary Fund and the World Bank. John Maynard Keynes had wisely stated that in order to win the war we needed to 'win the peace'. It was this understanding that also inspired Henry Morgenthau (then US Treasury Secretary) to proclaim in the opening remarks of the Bretton Woods conference in New Hampshire in July 1944 that 'prosperity like peace is indivisible'.[12] Neither Keynes nor Morgenthau were thinking only in territorial/national terms: they were thinking in international terms.

Following John Jackson's notion of 'sovereignty-modern', we should "disaggregate and (...) break down the complex array of 'sovereignty' concepts and examine particular aspects in

---

Globalization Paradox: Democracy and the Future of the World Economy", International Journal of Constitutional Law (OUP), Vol. 11 No. 3, 809–812, 2013.

[11] Rodrik, ibid at p. 204.

[12] See generally Lastra, *Legal Foundations of International Monetary Stability* (Oxford University Press 2006), Chapter 12. For a recent study see Ben Steil, *The Battle of Bretton Woods: John Maynard Keynes, Harry Dexter White, and the Making of a New World Order* (Council on Foreign Relations Books, Princeton, Princeton University Press, 2013).

detail and with precision to understand what is actually at play. A major part of this approach is to understand the pragmatic functionalism of the allocation of power as between different levels of governance entities in the world. To the extent feasible, this should be done in a manner not biased either in favor of or against international approaches".[13]

The doctrine of multi-layered governance, which discusses the allocation of powers at the national, regional and international levels, provides a template to address some of these issues. The challenge is to identify the criteria under which financial regulatory powers should be allocated (who decides what) and the different layers that are needed as well as the links between the different international and supranational structures and spillover effects. For example, in the context of the extraordinary measures undertaken by central banks to combat the crisis (national measures with cross border effects) the debate about 'currency wars' has been recently rekindled.[14]

Financial markets need to rely on different levels of governance. An analogy with football (soccer) can be instructive in this regard. There are domestic leagues, ruled by national football associations, there is in Europe a Champions League governed by UEFA, and finally – though this is a competition among countries not clubs – there is FIFA and the World Cup. Some institutions play locally, while others compete in the European or global stage.

Banking union in the EU is a recognition of this need at a regional level. Banking union is based upon three pillars. The first pillar is 'single supervision', with the establishment of the Single Supervisory Mechanism (SSM). 'Single supervision' in the context of banking union means European supervision (conferred upon the ECB) for credit institutions of eurozone

[13] Above note 9, p. 801.

[14] The phrase 'currency war' was coined by Brazilian Minister of Finance Guido Mantega in 2010. The issue however is not new. Competitive currency devaluations have pernicious effects upon the economic relations between states, in particular upon their trading relations. Through the abandonment of the par value regime (original Article IV) the IMF lost the jurisdictional power over exchange rates: Since the entry into force of the Second Amendment, the Fund has no substantive legal rights with respect to the choice of exchange rate arrangements of its members. But exchange rates were and are a key focus of Article IV consultations and Article IV prohibits currency manipulation. Article XV of GATT provides the legal link between the IMF and WTO (and it was not amended following the collapse of the par value regime). Article XV establishes that 'the contracting parties shall not, by exchange actions, frustrate the intent of the provisions of this agreement, nor by trade action, the intent of the provisions of the Articles of Agreement of the IMF'. See generally Vera Thorstensen, Daniel Ramos and Carolina Muller, "The 'missing link' between the WTO and the IMF", Journal of International Economic Law 16(2), 353–381. In a working paper 2013 entitled 'The (Mis)Alignment of the Trade and Monetary Legal Orders', Gregory Shaffer and Michael Waibel claim that 'While trade in goods, and to a lesser extent trade in services, are highly regulated by legal rules backed by an enforcement mechanism, currency valuation is now determined by the discretionary activities of central banks and treasury departments run largely by economists with little to no guidance from law".

Member States and of non-eurozone EU Member States that choose to become part of the SSM.[15] The second pillar is 'single resolution', with a Single Resolution Mechanism (SRM)[16] - which should be aligned with the EU Bank Recovery and Resolution Directive (BRRD) [17] - and a Single Resolution Fund. The third pillar is 'common deposit protection'.[18] The jurisdictional area of banking union comprises the eurozone Member States and those other Member States that establish close cooperation arrangements.[19][20]

We need to identify the functions (or sub-functions) that require a supra-national or international structure and the functions that are best left at the national level. When it comes to financial markets, there are three key functions that are necessary to achieve the elusive goal of financial stability and these are: regulation (or rule-making), supervision (risk control, monitoring and compliance) and crisis management (lender of last resort, deposit insurance, resolution and insolvency). A global banking and financial system requires some binding international rules, efficient supervision, and an international system for the resolution of conflicts and crises. Effective enforcement though remains the greatest challenge at the international level, since enforcement mechanisms have traditionally been nationally based, a logical extension of the principle of sovereignty. But we need to seek new ways of enforcement. In the current process of globalisation, the state is finding it increasingly difficult to enforce its laws against global actors such as multinational corporations and criminal organisations; tax laws are a case in point. Resolving conflicts is also diverging from the state's judicial machinery to private bodies through the increasing popularity of

---

[15] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. [2013] OJ L287/63, commonly referred to as SSM Regulation.

[16] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

[17] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, Text with EEA relevance.

[18] Although a single deposit guarantee scheme shall not be established for the time being (we will continue to rely upon the existing networks of national deposit guarantee schemes) a new Directive on Deposit Guarantee Schemes repealing Directive 94/19/EC was adopted by the Council and the European Parliament in April 2014, Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast), Text with EEA relevance

[19] For an analysis of the uneasy coexistence between banking union and single market see Rosa Lastra, "Banking Union and Single Market: Conflict or Companionship?" *Fordham International Law Journal*, Vol. Volume 36, No. 5, 2013. See also Eilis Ferran, "European Banking Union and the EU Single Financial Market: More Differentiated Integration, or Disintegration?" (April 18, 2014). University of Cambridge Faculty of Law Research Paper No. 29/2014. Available at SSRN: http://ssrn.com/abstract=2426580.

[20] See

arbitration as an alternative dispute resolution mechanism. Even in the area of policing, the state is enlisting the private sector in the fight against crime. Money laundering control systems and the reporting duties they impose on financial institutions are examples of this shift towards private policing.

The other major challenge to advance towards international solutions is, of course, the fiscal issue, in particular the establishment of adequate ex ante burden sharing arrangements in a crisis.

National Institutions and International Financial Markets

We still rely to a large extent upon national institutions. Amongst them, the central bank continues to play a key role in the monetary and financial system. I have written elsewhere that central banks inhabit a 'world of policy' and that the law has generally played a limited role in central bank operations.[21]

Central banking has evolved significantly throughout its relatively short history, from the time in which the Swedish Riksbank (1668) and the Bank of England (1694) were set up, to central banks in contemporary times. While the original rationale for the establishment of the first central banks was to be a bank that was awarded privileges by the Government to issue currency and that was expected to finance the Government needs (mostly in war time), this rationale has changed over time. The Federal Reserve System (the Fed) was founded in 1913, following the banking crisis of 1907, to safeguard the soundness of banks and to fulfil other objectives. The twin mandate of central banks has typically been stable money and sound banking (today we say monetary stability and financial stability), though the vicissitudes of history have given a greater emphasis to some functions and objectives in response to economic circumstances. The Bundesbank was set up in 1957 primarily as a monetary institution to preserve price stability (hyperinflation during the inter-war period had left a long-lasting dislike for inflation amongst the German public and politicians). The advent of central bank independence as a means to achieve price stability consolidated the role of central banks as monetary institutions in the 1990s and beginning of the XXIst century. The

[21] Rosa Lastra, Chapter 2 ("Central Banking") of *International Financial and Monetary Law* (forthcoming in 2014, to be published by Oxford University Press). This will be the second edition of *Legal Foundations of International Monetary Stability.*

Bundesbank model of the central bank as a monetary policy institution became the functional model for the European System of Central Banks when it was established in 1999. The ECB was conceived in the Maastricht Treaty as a monetary authority and the treaty provisions are clear both as to the primacy of the price stability mandate and as to the independence of the institution.

The financial crisis 2007-2009 – a rude awakening in so many areas – brought the importance of the financial stability mandate of central banks back to the fore, in particular their lender of last resort role.[22] And in the European context, the events of the last few years stretched to the limit what the European Central Bank can do under the Treaty and exposed the deficiencies of institutional design.[23] For example, with the adoption in May 2010 of the controversial Securities Markets Programme to purchase government bonds, the ECB entered into unchartered territory. The no-bail out clause, the sovereign debt problems in Greece and other peripheral EU Member States, fiscal constraints, uncoordinated national measures, and other banking and financial problems - from Iceland to Ireland, from Portugal to Spain - have resulted in a number of measures, reform packages and initiatives trying to address the weakness of the 'E' of EMU, the weakness of its economic/fiscal pillar.[24] These changes are also symptomatic of an underlying trend, the federalisation of financial supervision and of crisis management. This process of federalisation requires adequate coordination between different levels of governance and a careful analysis of which functions should remain at the national level (in accordance with the principle of subsidiarity) and which functions should be federalised.

The problems of coordination between federal and national (state) structures and organizations are not new; indeed, they have characterised the design of financial regulation and supervision in the US. Federal law prevails in securities, while insurance has traditionally been a matter of state law and banking offers a mix of federal and state powers. Over the

[22] The financial crisis also exposed the limitations of too narrow a focus. In line with Goodhart's law (any observed statistical regularity will tend to collapse once pressure is placed upon it for control purposes), the measurement of inflation largely ignored asset prices, in particular house prices, thus being unable to identify and combat the 'elephant in the room', that is a large asset price bubble that eventually burst in August 2007.

[23] They have also exposed the deficiencies in terms of legitimacy and accountability. Institutions and laws cannot survive without societal legitimacy, without the support of the general public. This is the greatest challenge for the goal of European integration.

[24] See generally Rosa Lastra and Jean Victor Louis, "European Economic and Monetary Union: History, Trends and Prospects", *Yearbook of European Law* (2013), pp. 1-150, at http://yel.oxfordjournals.org/content/early/2013/03/27/yel.yet003.full.pdf

years, however, there has been a process of federalisation in the supervision and crisis management of financial institutions, with the latest addition, the Dodd Frank Act of 2010, substantially increasing federal powers for any financial institution that is deemed to be systemically significant. Lender of last resort was federalised in 1913 with the Federal Reserve Act, while the Federal Deposit Insurance Corporation (FDIC) was established in 1933. The experience in the US offers interesting lessons for the EU, with the centralization of banking policy (via banking union) and the increasing federalisation of financial supervision in other sectors of the financial system.[25]

The *Emerging Lex Financiera*

Globalization and regionalization (the latter in particular in the EU) have challenged the traditional law-making process. The financial crisis exposed the limitations of relying upon a loose network of soft-law standard setters and an inadequate system of resolution of financial crises. In order to understand the development of the emerging *lex financiera* it is useful to offer some reflections about the evolution of law.

Formal law has often been born out of the development of informal law. This is not a new phenomenon. It is a recurrent feature in the history of law. The evolution of international law and of commercial law, to cite two relevant examples, provides clear evidence in this regard. The primary sources of international law are conventional law (treaty law), customary law and the general principles of law, as recognised by Article 38 of the Statute of the International Court of Justice. Customary international law results when states follow certain practices generally and consistently. Customary law, however, can evolve into conventional law. Indeed, important principles of customary international law have become codified in the Vienna Convention of the Law of the Treaties, thus acquiring the characteristic of ‘conventional law’.

The birth and development of formal commercial law was influenced by the medieval *lex mercatoria*, that is by the mercantile codes and customs which reflected the usages of trade,

[25] See generally chapter 4 in Thomas Cottier Rosa Lastra, Christian Tietje and Lucia Satragno (co-edited book), *The Rule of Law in Monetary Affairs,* (Cambridge, Cambridge University Press, 2014).

the international maritime and commercial practice at the time. Many of the uncodified usages of trade that constituted the *lex mercatoria* eventually became formal law.[26]

The emerging *lex financiera* is similar to the *lex mercatoria* in its international character. The development of international financial law has been a slow and patchy phenomenon because of three reasons: (1) the lack of a clear legal mandate; (2) a reactive rather than a proactive character; and (3) the vested interests national governments have in the supervision and regulation of their financial sectors. The lack of a clear legal mandate raises important issues of legitimacy and accountability. The reactive nature, the fact that we appear to always be fighting the last war haunts regulation. And the national vested interests are again behind the reluctance to further liberalise and integrate financial markets.

Some may argue that certain national laws can be exported or transplanted into other jurisdictions on the basis of their intrinsic superiority (the case for common law is often made in finance). That is surely one way in which the *lex financiera* can progress. But there are other ways of achieving legislative convergence, such as rule harmonization via conventions, model laws, soft-law rules or standards, or the centralization of regulatory functions in a common authority to which responsibility in this area is transferred.

International financial regulation so far has proceeded through the harmonization route, and has done so via soft law. Soft law is law[27] though, as opposed to hard law, it is informal and does not rely on traditional mechanisms of enforcement. Typically soft law standards must be adopted into national law (or other hard law legislative instruments such as EU Directives and Regulations) in order to become enforceable. Observance is to soft law what enforcement is to hard law. Yet, the imposition of 'sanctions' in the case of non-observance

---

[26] Sir Roy Goode recalls in his writings that the *lex mercatoria* or law merchant (which was international rather than English and which was administered by its own mercantile courts) was given full recognition by the common law courts (absorbed in the common law itself). The fertility of the business mind and the fact that a practice which begins life by having no legal force acquires over time the sanctity of law are key factors to which the commercial and financial lawyer must continually be responsive. Roy Goode, *Commercial Law*, 2nd edition (London: Penguin Books,1995), 3.

[27] As explained in Chapter 14 of Legal Foundations of International Monetary Stability (Oxford: Oxford University Press, 2006):

"Soft law is indeed law (rules of an informal nature, but yet rules). International financial soft law is often well suited to the changing needs and rapidly evolving structures that characterize the workings of financial markets. It would be wrong to dismiss it because of its 'softness' (…). Indeed, one can argue that there is hard 'soft law' (eg, the international standards on money laundering, ie, the Forty Recommendations on Money Laundering and the Nine Special Recommendations on Terrorist Financing by the Financial Action Task Force, with specific measures that countries should have in place covering their criminal justice, law enforcement, and financial regulatory systems) and soft 'hard law' (eg, treaties dealing with economic integration in West Africa, such as the 1975 and 1993 ECOWAS Treaties, notorious for their lack of enforcement)."

remains a formidable challenge. One way of tackling this problem could be the conditioning of market access on the basis of compliance with some international rules.

Over time though we should also expect a degree of formalisation of the emerging *lex financiera* in line with the evolution of law generally.

Do we need a WFO?

Institutions and laws are creatures of their times. In the words of Justice Oliver Wendell Holmes, a page of history is worth a volume of logic.[28] The debate about the need for a WFO is based upon the premise that our times need a new order. We live in a family of nations and we have public international law to regulate the relations between nation states as well as a set of international organizations to govern such relations.[29] Some areas of international law are quite developed, for example the law of the sea. In the field of international economic law, the three main pillars of economic relations between States – money, trade and foreign investment – are supported by a different legal regime. The regime in trade is multilateral with the WTO (World Trade Organization) providing an adequate system of international rules and dispute settlement. The regime in foreign investment is mostly bilateral (and what glues it together is arbitration). The regime in finance still relies mostly on national law and soft law.

In finance we have a 'black hole' with few formal international rules and no adequate system to deal with cross border crisis or conflicts. We may think there has been a proliferation of rules, but in fact we have very few formal international rules. Why this 'black hole'?[30] This is due, in part, to the belief – widespread before the crisis – that financial markets are best left to their own devices and that therefore soft law was sufficient. Indeed, the fact that the legal

---

[28] New York Trust Co. v. Eisner - 256 U.S. 345 (1921)

[29] The 'School of Salamanca' (Salamanca being my home town in Spain) is the name applied to a group of Spanish jurists, theologians and philosophers who created a body of doctrine on natural, international and economic law, rooted in the intellectual work of Francisco de Vitoria, who started teaching in Salamanca in 1526 on the *catedra de prima*, the most important chair of theology at the University. The role of the School of Salamanca in the development of early monetary theory has been documented in the work of Marjorie Grice-Hutchinson. While at the LSE, Marjorie came under the influence of Friedrich von Hayek, who urged her to study the manuscripts of this group of Spanish scholars from the 16th and early 17th century. Her monograph, 'School of Salamanca. Readings in Spanish Monetary Theory, 1544-1605', was published by Clarendon Press, Oxford in 1952.

[30] As explained in the special issue of the *Journal of International Economic Law* of 2010 (co-edited with John Jackson and Thomas Cottier) on "The Quest for International Law in Financial Regulation and Monetary Affairs", Vol. 13, No. 3, September 2010,

framework appeared to be lagging behind or even not to play a major role in the development of international finance was considered by many as a rather good state of affairs pre 2007 (even though at the national level, financial markets are heavily regulated). And this ‘black hole’ is also due to the reticence that Nation States have to make the sacrifices that are needed in terms of national sovereignty to agree upon international solutions. Additionally, there are also serious legal and fiscal constraints, notably the lack of *ex ante* burden sharing arrangements at the international level. And lest us forget, ‘he who pays the piper calls the tune’.

But things can change very rapidly. Indeed, events such as the ‘Arab spring’ remind us of how the wind of change can topple regimes and structures in a matter of weeks. It took a major debacle – the great financial crisis of 2007-2009 – to shatter some of the pre-existing assumptions. However, the window for change closes quickly once a crisis no longer seems acute.

In order to address the challenges of our times, we must design an appropriate international institutional framework. As stated above, a global banking and financial system requires some binding international rules (regulation), efficient supervision or surveillance, and an international system for the resolution of conflicts and crises. These are the functions for which we need a WFO.

The functional debate is particularly important because a WFO (or several WFOs) should not become some sort of global regulatory Leviathan. For example, if we agree that we need rules on cross-border resolution, or rules with regard to capital movements, or guidance on renumeration, who is going to enforce such rules? We lack an effective mechanism to ensure the consistent application of global financial rules.

The quest for international law in finance should commence with an appropriate system for cross border resolution and insolvency of financial institutions on the one hand, and a mechanism for the resolution of sovereign debt crises. In the aftermath of Lehman Brothers, no one wishes another chaotic resolution. The alternative, a ‘bail-out’ package, is equally unpalatable. There is however, a viable solution between chaos and bail-out and that is an orderly resolution, as proposed in the FSB Key Attributes of Effective Resolution Regimes

for Financial Institutions of October 2011[31] and in the EU Bank Directive on Recovery and Resolution.[32]

As regards the resolution of sovereign debt crises there is no international bankruptcy court nor a transnational sovereign bankruptcy regime or code that will permit sovereign borrowers to obtain debt relief when their financial obligations outstrip their ability to pay without worrying about hostile creditor actions. In order solve this problem, four policy options have been put forward:[33] (1) a voluntary contractual regime based on collective action clauses; (2) a limited statutory regime based on a model law/statute, a treaty or an amendment to the IMF Articles of Agreement; (3) a wider statutory regime, akin to the Sovereign Debt Restructuring Mechanism (SDRM) proposals,[34] possibly giving a role to the IMF and (4) a less protective regime strengthening creditors positions and diluting protections for insolvency states. The eurozone debt crisis and the Argentine litigation evidenced the need for clear rules in this field.

In addition to an adequate dispute resolution to provide predictability and consistency in the management of cross-border banking crises and sovereign debt crises, we also need better macro-prudential supervision (monitoring the health of the forest and not just the health of individual trees) to identify systemic risk.[35] Such macro-prudential supervision requires effective coordination between the different regional or national committees or councils in charge of financial stability.

The regulatory function at the international level is currently shared by a variety of actors, including formal international organizations (such as the IMF), informal groupings of an

---

[31] http://www.financialstabilityboard.org/publications/r_111104cc.pdf

[32] Above note 17.

[33] See generally Rosa Lastra and Lee Buchheit, *Sovereign Debt Management* (Oxford, Oxford University Press, 2014) which extensively deals with all these issues. See also the Report presented by the Sovereign Insolvency Study Group – chaired by Philip Wood - to the ILA Hague Conference (August, 2010) on 'State Insolvency: options for the way forward' (co-rapportuers: Michael Waibel and Brian Hunt).

[34] *See* Ann Krueger, *International Financial Architecture for 2002: A New Approach to Sovereign Debt Restructuring* (Nov. 26, 2001), *at* http://www.imf.org/external/np/speeches/2001/112601.htm; See generally, Sean Hagan, "Designing a Legal Framework to Restructure Sovereign Debt", *36 Georgetown J. Int'l Law* 299 (2005).

[35] Peter Cooke wrote: 'Outside the supervisor's window, there is a kaleidoscope of financial markets and institutions and range of services – all interlinked to a greater or lesser degree. Each regulator, national or sectoral, only sees a part of this kaleidoscope and cannot be sure he controls all that he can see.' See Preface to *The Reform of the International Financial Architecture* (edited by Lastra) published by Kluwer Law International in 2001.

international character such as the Financial Stability Board, the Basel Committee on Banking Supervision, the International Organization of Securities Regulation (IOSCO) and the International Association of Insurance Supervisors (IAIS), professional associations – such as the International Swaps and Derivatives Association, ISDA – and other entities. International financial soft-law is often a 'top-down' phenomenon with a two-layer implementation scheme. The rules (e.g., the Basel capital rules) are agreed by international financial standard setters and national authorities must implement them in their regulation of the financial industry. The financial intermediaries are the 'final' addresses of those rules. Standards and uniform rules, however, can also be designed by the financial industry itself. Self-regulation, by definition, has a 'bottom-up' character, comprising rules of practice, standards, master agreements, usages as well as rules and principles agreed or proposed by scholars and experts.[36]

We need to foster better observance of the standards to preserve competitive equality amongst nations; we need a mechanism for ensuring the consistent application of global financial rules; and we need a forum to bring disputes when standards are not observed, which brings us back to the institutional debate.

Having identified the key functions, let us look at the candidates for the WFO job (or jobs) given that there are different functions which require a different 'skill set' each. In addition to this functional analysis we also need to address the issues of accountability, legitimacy, expertise (adequate personnel) and resources.

The top candidates for the WFO job (or jobs) are the IMF, the BIS, the WTO, the Financial Stability Board and other standard-setters, such as the Basel Committee on Banking Supervision, IOSCO and IAIS.

Standard-setters, as discussed above, are adept at the regulatory function, though the rules that emanate from them are of a soft-law nature. However, when it comes to the supervisory and crisis management function the IMF is uniquely qualified in my opinion.

[36] On soft law see generally Chris Brummer, "Soft Law and the Global Financial System. Rule-making in the twenty-first century", (Cambridge: Cambridge University Press, 2012).

The International Monetary Fund was conceived in the 1940s as an international monetary authority with a very particular and rather narrow remit; once the fixed exchange regime (the so-called 'par value system') was abandoned in the 1970s, the IMF lost a large part of its original role. Nonetheless, the IMF has become the 'master of reinvention'. Like a Phoenix bird resurrecting out of its own ashes, following the abandonment of what had been its *raison d'être* - the par value regime - the IMF has been singularly adept at finding new roles (as arbiter in negotiations between debtor and creditor countries, as gatekeeper of stability and creditworthiness - via conditionality and surveillance - and as international lender of last resort). Why? Colloquially we would answer: 'because there is no other institution in town'. The IMF has survived because its role is indispensable when it comes to solving countries' external payments and debt problems, as the experience in the 1980s, 1990s and first thirteen years of the XXIst century have confirmed.

The challenges faced by the IMF have changed since the collapse of the Bretton Woods regime. The IMF played a leading role in the sovereign debt restructuring of the LDC countries in the 1980s, in the transition to a market economy of formerly communist countries in the early 1990s and in the resolution of financial crises in Mexico and Asia, Russia and Brazil in the mid to late 1990s. And then there are the challenges of today, following the global financial crisis and the Eurozone debt crisis. With minimum amendments to the IMF Articles of Agreement, the IMF has been called to respond to all these issues: financial reform, financial crises, financial stability, and sovereign debt crises with its array of tools, namely surveillance, conditional financial assistance and technical assistance. The IMF has become the de facto international financial authority.

The IMF is the only institution (other than the Bank for International Settlements and the World Trade Organization) that has international legitimacy, an array of tools (surveillance, conditional financial assistance and technical assistance), appropriate financial resources and staffing to assume a formal role as global financial authority.[37] Other 'informal' international

[37] See chapter 13 of Lastra (2006), above note 12. The main functions performed by the IMF in relation to its members are surveillance (Article IV of the IMF Articles of Agreement), financial assistance (Article V, Section 3) and technical assistance (Article V Section 2 (b)). The Fund uses surveillance, financial assistance and technical assistance as instruments to accomplish its objectives or purposes as defined in Article I. From the point of view of the member states, they constitute the main 'services' that the Fund provides to them. From the Fund's perspective, its powers can be broken down into three categories: (i) regulatory (jurisdiction), comprising Article VIII Section 2 and Article IV; (ii) financial (Article V, Section 3), and (iii) advisory (technical assistance, Article V Section 2(b)).

standard setters, such as the Financial Stability Board, [38] the Basel Committee on Banking Supervision or IOSCO, can continue with their rule-making role, but only the Fund can effectively contribute to the enforcement of those standards through its surveillance function. The IMF can play a role similar to that played by the Financial Action Task Force (FATF) with regard to AML/CFT (anti-money laundering/countering the financing of terrorism) standards. In the same way as the FATF seeks partnership with the IMF, World Bank, FATF regional bodies, national financial intelligence units (FIUs) and even the financial industry itself[39] to verify the observance of AMF/CFT standards and to ensure that every country in the world is assessed using the same methodology, the IMF can also seek to further develop partnerships with other national, regional and international bodies to ensure adequate implementation of adequate standards for supervision, regulation and resolution of financial institutions.

The IMF is thus uniquely placed to monitor the compliance with standards and rules through its function of surveillance and through its assessment of the health of the financial sector (via the Financial Sector Assessment Program, FASP, and the Reports on the Observance of Standards and Codes, ROSCs) and to provide countries with the incentive to observe those standards through the design of conditionality (carrots and sticks). The IMF also has the know-how when it comes to sovereign debt workouts [indeed, it is now inserted in the EU process], as well as the financial capacity to act as international lender of last resort, and also has the experience in understanding the relationship between banking crises and sovereign debt crises, as well as adequate resources and personnel.

Therefore, the IMF should have an enhanced role in the prevention of future crises and in the development of appropriate tools and frameworks for the resolution of both cross border financial crises and sovereign debt crises (often intertwined). However, from a legal

[38] Since January 2013 the FSB is an association under Article 60 of the Swiss Civil Code. See Financial Stability Board, 'Meeting of the Financial Stability Board in Zürich' Press Release 28 January 2013, available at <https://www.financialstabilityboard.org/press/pr_130128.htm> and 'Articles of Association of the Financial Stability Board (FSB)', 28 January 2013, at <http://www.financialstabilityboard.org/publications/r_130128aoa.pdf>. The FSB Articles of Association complements the Charter and are binding under Swiss law and not internationally where the Charter continues as a non-binding agreement between members.
For a brief summary of the functions of the FSB see chapter 8 of the House of Lords' Report at <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldeucom/106/106i.pdf>.

[39] See James Fries, 'Global Markets and Global Vulnerabilities: Fighting Transnational Crime Through Financial Intelligence', prepared remarks for the MOCOMILA meeting in Salamanca on 25 April 2008, available at http://www.mocomila.org/meetings/2008-freis.pdf

perspective, under the current Articles of Agreement, the IMF cannot supervise financial institutions. The supervisory function it exercises is the 'surveillance of financial sector policies', i.e., the super-vision of how country comply with standards, and what type of procedures and tools they have in place for resolution, supervision, regulation and others. Surveillance is key to the understanding of the role of the IMF in the XXIst century.

In February 2010, the IMF released a document entitled 'The Fund's Mandate – The Legal Framework' to accompany an earlier document, 'The Fund's Role and Mandate – An Overview', published on 22 January 2010.[40] The aim of this February 2010 document is to survey the constraints and flexibilities that exist under the current legal framework to expand the role of the Fund with regard to financial sector issues and to confer upon it a clear mandate for 'systemic surveillance', as a form of 'multilateral surveillance':

> Just as national regulatory oversight after the crisis is shifting from the risks in individual institutions to the risks in the financial system as a whole, the Fund's oversight too must shift from a sum of its parts (bilateral surveillance of countries) to the system as a whole (multilateral surveillance).[41]

The Fund somehow appears to be struggling to try to sort out how the international financial system relates to the international monetary system (as well as differentiating between what is public and what is private).[42] The February 2010 document claims that the Articles provide sufficient flexibility to accommodate reforms (with the limits imposed by Articles 31-33 of the Vienna Convention of the Law of Treaties[43]) and that the drafters of the Articles conferred upon the Fund 'enabling authority' in key areas that can facilitate an updated or expanded mandate for the Fund with regard to financial sector issues ('... the operational content of the Fund's mandate has been updated over time by Executive Board decision').[44]

[40] The document 'The Fund's Mandate – The Legal Framework' of 22 February 2010 is available at http://www.imf.org/external/np/pp/eng/2010/022210.pdf
The document, 'The Fund's Role and Mandate – An Overview' of 22 January 2010, is available at http://www.imf.org/external/np/pp/eng/2010/012210a.pdf
[41] Ibid (document of 22 January 2010).
[42] The IMF is both at the centre of the international monetary system and at the centre of the international financial system. The phrase 'international monetary system' covers the official arrangements relating to the balance of payments—exchange rates, reserves, and regulation of current payments and capital flows, while the 'international financial system' encompasses the international financial institutions – formal and informal – and the various public and private actors in the so-called 'global financial market'.
[43] 'And while these powers [conferred upon the Fund] are often expressed in general terms, the degree to which their interpretation can evolve is limited by the plain meaning of the text, as supplemented by the *travaux preparatoires* (legislative history)'. See page 3 of document of 22 February 2010.
[44] Ibid.

The document also acknowledges that the option of amending the Articles of Agreement would be a difficult one. [45]

In my opinion, a creative interpretation of Article I and Article IV of the IMF Articles of Agreement provides sufficient legal basis for the Fund to exercise the role of 'global sheriff'.[46] [A sheriff does not make rules, but enforces and makes sure individuals comply with the rules. By analogy, a global sheriff is not expected necessarily to make the rules, but to monitor countries' observance with such rules].

In terms of the official interpretation of the Articles of Agreement, the Board of Governors at its first meeting in 1946 made a broad delegation of powers to the Executive Board, in accordance with the possibility foreseen in Article XII, Section 2(b). According to the current text of Section 15 of the IMF's By-Laws: 'The Executive Board is authorised by the Board of Governors to exercise all the powers of the Board of Governors, except for those conferred directly by the Articles of Agreement on the Board of Governors'. The Executive Board does indeed have the power of interpretation, though this power has to be exercised consistent with general principles of interpretation, including those set forth in the Vienna Convention on the Law of Treaties.[47]

The BIS could also assume an enhanced role in crisis management, since it acts as a bank for central banks, and could also play a role in the formalisation of the standard setting process. According to Peter Cooke[48]

> 'My own view, not least because of an involvement with the organisation for over 40 years, is to believe that the BIS is likely to play a critical role in this whole area of work. There are a number of reasons for this. First and foremost, it is there. It also has a measure of independence (despite being

[45] An amendment to the IMF Articles of Agreement requires the approval by three-fifths of the members, holding eighty five percent of the total voting power (the USA – with close to 17% of the voting power – has an effective veto). The UNCTAD draft principles on promoting responsible sovereign lending and borrowing also constitute a step in the right direction. See http://unctad.org/en/Docs/gdsddf2011misc1_en.pdf

[46] Lord Eatwell and Lancey Taylor proposed the creation of a World Financial Authority in their book *Global Finance at Risk: the Case for International Regulation* (Wiley, 2008). See also *Global Governance of Financial Systems. The International Regulation of Systemic Risk* by Kern Alexander, Rahul Dhumale and John Eatwell, published by Oxford University Press, 2005, and 'International Regulation and Supervision of Financial Markets After the Crisis' by Christoph Ohler in C. Herrman and J.P.Terhechte (eds), *European Yearbook of International Law 2010,* Springer-Verlag, Berlin, Heidelberger, 2010, pp. 3-29.

[47] See http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, in particular Articles 31 and 32 (Section 3, 'Interpretation of Treaties'). See Annex at the end of this paper.

[48] Above note preface 35, xxiv

> subject to the ultimate authority of its central bank shareholders). It has, for many year, been a forum where the macro-economic, macro-prudential issues have been discussed (…). The BIS has widened its membership over the past few years to embrace a much more representative group of countries around the world than its original shareholders. It has also become a little more comfortable in allowing Ministries of Finance to participate in bodies spawned by what has traditionally been a Central Bankers club. It already houses the secretariats of the major international bodies working on banking and insurance regulation. If the securities regulators could be persuaded to establish themselves in Basel [they were not!] sic (…), then the ongoing capacity in and around the BIS to pursue a continuing regulatory and supervisory debate internationally would be unparalleled'.

The WTO has 'know-how' with regard to financial services liberalization and dispute settlement. As such its powers in this area could be enhanced. However, WTO lacks expertise when it comes to issues of financial regulation, monetary and financial stability (which have been traditionally the domain of the IMF and the BIS and, of course, of national central banks).

As for the FSB, though it is singled out as the pillar of the emerging international financial architecture by many experts, the FSB remains an international standard setter and not a formal international organization.[49] Its role in international financial stability and in the process of setting international standards has been endorsed by the G-20. However, it still lacks 'real' powers. In terms of resources, personnel, formal legitimacy and accountability, it has some way to go before it could act as a formal WFO.

Concluding observations

The crisis has shown that the pursuit of the private interest is at times greatly misaligned with the pursuit of the common good and that, with cross border banks and financial institutions, national solutions alone or uncoordinated national solutions are not enough to combat systemic risk. International solutions are needed for international problems.

Philip Wood once wrote: 'Financial law is our creature and we tell it what to do'. What should we tell it? First, the future of financial law and regulation should reflect the overlapping jurisdictions that represent the reality of international finance: the national, the European (or regional) and the international dimensions. Secondly, though soft-law rules

[49] Above note 36.

have filled the vacuum left by the absence of formal international law in this area, greater formalisation of the emerging *lex financiera* is needed over time. Thirdly, in the quest for international financial regulation we need a combination of general principles (such as non discrimination or transparency) – which represent a mix of ethics and efficiency that withstand the passage of time – with more prescriptive technical rules that can be adjusted to new circumstances with flexibility. There are a number of concepts – credibility, confidence, fairness – that should permeate through different layers of regulation and influence the behaviour of bankers and financiers.

Regulation should be designed in good times, when rapid credit expansion and exuberant optimism cloud the sound exercise of judgment in risk management, rather than in bad times, in response to a crisis. The biblical story of Joseph (behind dynamic provisioning) offers instructive lessons in this regard. We must also remember that markets are part of the solution since it is well functioning markets that generate growth.

Capitalism relies on the lure of wealth and the discipline imposed by the fear of bankruptcy. As Lee Buchheit put it in his testimony to the House of Lords on 20 January 2009[50]:

> The fundamental principle of the capitalist system is that within the constraints of the law, and regulation if it is a regulated entity, every enterprise is free to pursue its affairs as it sees fit. No one guarantees that you will not fail, but by the same token, no one places any artificial constraint on your ability to succeed. The sanction that capitalism imposes on imprudence, incompetence, some times bad luck, is failure. It is the brooding presence of that sanction that keeps managers on their toes, that keeps them acting in a prudent way.

The financial crisis has triggered a revolution in regulatory thinking. For markets to prosper, markets need rules and international financial markets need international rules. We need an effective system for the cross border resolution of banks and other financial institutions, and in order to achieve it, we need international law. We also need an effective system for the resolution of sovereign debt crises.

In my opinion, the International Monetary Fund, the institution at the centre of the international monetary and financial system, is best placed to adopt a role as a 'global sheriff'

[50] http://www.publications.parliament.uk/pa/ld200809/ldselect/ldeucom/106/9012002.htm

(echoing the words of George Soros in the 2010 Davos meeting) with regard to international financial stability.[51]

[51] See generally Lastra, 'The Role of the IMF as a Global Financial Authority', book chapter in *European Yearbook of International Economic Law (*EYIEL), edited by Christoph Herrman and Jörg Philipp Terhechte, Springer, Vol 2 (2011), pp. 121-136.