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An Opening for Voice in the Global Economic Order: The Global Financial Crisis and Emerging Economies

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The global financial crisis of 2008 has had a profound impact on the conceptions that have informed economic and financial frameworks on the national and global level. Policymakers now believe that unregulated financial innovation is highly suspect. Economic and financial deregulation no longer enjoys an exalted

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status. The efficient market hypothesis has come under fire.¹ The flaws of global standard setting, such as the capital adequacy standards promulgated by the Basel Committee on Banking Supervision, have been exposed.²

The crisis has also ruptured the global economic order. The United States and Europe, the rulers of the order since World War II, have struggled to recover from the crisis. By contrast, most emerging and developing economies rebounded relatively quickly over the past year.³ More importantly, as the title of this Symposium suggests, the crisis created an opportunity for emerging economies to join the table where global economic policy is decided. As the Symposium's title also suggests, this opportunity is about "voice"—i.e., effective and meaningful representation of emerging and developing economies at the table (actually "tables"—the various fora that discuss and agree upon global economic and financial policy).

One might quibble, however, with the Symposium title's reference to "new" voices. While it is true that the voices of emerging economies are new to the extent that no such voices existed when the International Monetary Fund (IMF) was established in 1944, developing countries were present at the negotiations that led to the creation of the IMF and the World Bank (Bretton Woods Institutions). Moreover, developing countries were the instigators of the push for a New International Economic Order (NIEO) in the 1970s. Thus, prior to the global financial crisis, industrialized countries heard the voices of developing countries. But they ignored them. So to the extent that developing and emerging economies lacked effective and meaningful voice in the global economic order, they were voiceless.

This Article provides an account of the evolution of developing and emerging economies' voice, focusing primarily on the IMF. Part I addresses the role of developing countries in the establishment of the Bretton Woods Institutions in 1944 at the Bretton Woods Conference, noting that the main players at the conference, the United

¹ See generally JUSTIN FOX, *THE MYTH OF THE RATIONAL MARKET: A HISTORY OF RISK, REWARD, AND DELUSION ON WALL STREET* (2009).

² See generally DANIEL K. TARULLO, *BANKING ON BASEL: THE FUTURE OF INTERNATIONAL FINANCIAL REGULATION* (2008).

³ The difference between emerging and developing economies is often blurred. For purposes of this Article, an emerging economy differs from a developing country to the extent that the former has undertaken significant economic reforms that are transforming it into a fast-growing, dynamic economy with a regional and even global economic presence. See Chuan Li, *What Are Emerging Markets?*, in *E-BOOK ON INTERNATIONAL FINANCE & DEVELOPMENT* (Enrique Carrasco ed., 2010), http://www.uiowa.edu/ifdebook/faq/faq_docs/emerging_markets.shtml.

States and the United Kingdom, marginalized development issues. Part II focuses on the NIEO, an unsuccessful post-decolonization movement that sought to give developing countries a meaningful voice in international economic matters, including demands to give developing countries more influence in the Bretton Woods Institutions. Part III chronicles the rise of IMF structural conditionality in the 1980s, a tool the Fund used to impose neoliberal reforms on developing and transitioning countries. The Fund's use of structural conditionality reached absurd levels in the Asian financial crisis of the late 1990s, triggering criticisms that countries borrowing from the IMF lacked ownership over the reforms—i.e., they were voiceless. Although the Fund revised the conditionality guidelines in 2002 to require “parsimony,” the revisions were ineffective.

Part IV explains how the global financial crisis of 2008 has finally given “emerging economies”—which did not exist in 1944—at least an opportunity to acquire what could become a significant voice in international monetary and financial law and policy. This is reflected in the debate during the crisis over whether emerging economies have “decoupled” from developed economies—i.e., that the plight of emerging economies is no longer tightly linked to what may happen in the economies of developed economies. Moreover, the crisis gave emerging economies a platform to build upon the “governance and accountability” movement that resulted in proposed IMF voice-related reforms in April 2008. As the crisis worsened in the fall of 2008, the leaders of the G-20 embarked upon a series of summits that resulted in promising voice reforms. Specifically, the IMF announced that it would rely on ex-ante conditionality where appropriate, which is reflected in a new lending instrument called the Flexible Credit Line. It also announced that it is discontinuing the use of structural performance criteria in all Fund arrangements, a decision that may give countries borrowing from the Fund more “ownership” over reform programs. At the London Summit, the G-20 leaders agreed, among other things, to triple the resources available to the IMF to \$750 billion, and to support a new special drawing rights (SDR) allocation of \$250 billion. They also agreed to expand the membership of the FSF (later renamed the Financial Stability Board) to include emerging economies, giving them an opportunity to play an important role in strengthening the global financial system. At the Pittsburgh Summit, the leaders agreed that the G-20, which includes emerging economies, will be the “premier forum” for international economic cooperation. Moreover, they pledged to modernize the IMF's governance by, among other things, implementing a shift in

quota share to emerging and developing countries of at least five percent, addressing changes to the composition of the Executive Board, and committing to a merit-based process for selecting the head of the IMF and World Bank. The Seoul Summit resulted in further advances in IMF governance reform via commitments to increase the quota shift to over six percent, a doubling of quotas, lowering the advanced European representation on the IMF Executive Board by two seats, and moving to an all-elected Board.⁴

Part V concludes this Article, noting that while the global financial crisis provides emerging economies (and to a lesser extent developing economies) an important opportunity to develop a voice in global economic and financial matters, change will remain incremental and many questions remain relating to how emerging economies will take advantage of this opportunity.

I

DEVELOPING COUNTRIES' VOICE AT BRETTON WOODS

The primary purpose of the Bretton Woods Conference in July 1944 was not, of course, to improve the plight of developing countries. Instead, it was to fashion institutions that would supervise a “transition from a war-time economy to a peace-time economy in the United Nations.”⁵ Invoking universalist themes embedded in the narrative of liberalism, U.S. Treasury Secretary Henry Morgenthau Jr. captured the essence of the task when he spoke at the inaugural plenary session of the conference:

We are to concern ourselves here with essential steps in the creation of a dynamic world economy in which the people of every nation will be able to realize their potentialities in peace; will be able, through their industry, their inventiveness, their thrift, to raise their own standards of living and enjoy, increasingly, the fruits of material progress on an earth infinitely blessed with natural riches. This is the indispensable cornerstone of freedom and security. All

⁴ The G-20 held a summit in Toronto in June 2010, but, other than endorsing the World Bank shareholders' agreement to increase the voting power of developing and transitioning countries by 4.59% since 2008, the summit leaders made no major decisions regarding the issues addressed in this article—it was seen as a stepping stone to the Seoul summit in November 2010.

⁵ Victor L. Urquidi, *Reconstruction vs. Development: The IMF and the World Bank*, in *THE BRETTON WOODS-GATT SYSTEM: RETROSPECT AND PROSPECT AFTER FIFTY YEARS* 30, 38 (Orin Kirshner ed., 1996) [hereinafter *THE BRETTON WOODS-GATT SYSTEM*] (quoting Dr. White's April 1942 proposal).

else must be built upon this. For freedom of opportunity is the foundation for all other freedoms.⁶

Accordingly, “an International Monetary Fund and possibly a Bank for Reconstruction and Development”⁷ would be created in order to advance liberalism’s twin goals of postwar peace and prosperity. The IMF would promote international monetary cooperation and stability by enforcing a rule-based system of fixed but adjustable exchange rates (the “par value system”), promoting currency convertibility, and providing members with temporary (short-term) resources to cope with balance-of-payments adjustment.⁸ In addition to coordinating private investment, the World Bank would provide (long-term) loans, initially for use in postwar reconstruction of war-torn Europe.⁹

The main players at the conference were the United States and the United Kingdom. The U.S. delegation faced isolationist sentiments in the U.S. Congress. In the United Kingdom, many feared the proposed system would jeopardize U.K. ties with the Commonwealth as well as import future U.S. deflation (1930s-style). Thus, both the U.K. and U.S. delegations concentrated on creating an international monetary system that would be acceptable in their respective domestic political arenas.¹⁰ The deliberations focused almost exclusively on complicated matters that were vital to such a system—e.g., rules relating to an international currency and multilateral clearing mechanism, drawing rights, par values, a transition period during which restrictions could be maintained on current account transactions, and the governance of the IMF.¹¹

⁶ U.S. DEP’T OF STATE, 1 PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE 80 (1948) [hereinafter 1 PROCEEDINGS] (remarks of Henry Morgenthau, Jr., U.S. Treasury Secretary).

⁷ Margaret Garritsen de Vries, *The Bretton Woods Conference and the Birth of the International Monetary Fund*, in THE BRETTON WOODS-GATT SYSTEM, *supra* note 5, at 9 (quoting U.S. Secretary of State).

⁸ Edward M. Bernstein, *The Making and Remaking of the Bretton Woods Institutions*, in THE BRETTON WOODS-GATT SYSTEM, *supra* note 5, at 92–93.

⁹ Urquidi, *supra* note 5, at 38. According to Richard Gardner, “[I]n the early planning for the postwar economy, the Bank came almost as an afterthought. Virtually all the attention of the British and U.S. Governments was focused on the International Monetary Fund.” Richard N. Gardner, *Establishing a Vision for Promoting Economic Development*, in FIFTY YEARS AFTER BRETTON WOODS: THE FUTURE OF THE IMF AND THE WORLD BANK 63, 65 (James M. Boughton & K. Sarwar Lateef eds., 1995). *See also* Garritsen de Vries, *supra* note 7, at 15 (“Since work for the Bank was much less advanced beforehand than work on the Fund, the Fund’s articles were used as a model for those of the Bank So, in many respects, the Bank became the mirror image of the Fund.”).

¹⁰ Gardner, *supra* note 9, at 64–66.

¹¹ *See* Raymond F. Mikesell, *Some Issues in the Bretton Woods Debates*, in THE BRETTON WOODS-GATT SYSTEM, *supra* note 5, at 19–29; *see also* Bernstein, *supra* note

Not surprisingly, then, the Conference treated development issues (e.g., structural impediments facing developing countries) “peripherally,” at best.¹² The slight treatment of development and developing countries was not due to inattentive participants from developing countries—a good number of them attended the Conference.¹³ The Indian delegation, for instance, led a campaign to include references to developing countries throughout the IMF’s charter.¹⁴ Its efforts culminated in an unsuccessful attempt to add a phrase to the IMF’s purposes that would have required the IMF “to assist in the fuller utili[z]ation of the resources of economically under-developed countries.”¹⁵ The compromise limited development to an indirect purpose, making it a consequence of the IMF’s direct

8, at 89–92; Sir Alexander Cairncross, *A British Perspective on Bretton Woods*, in THE BRETTON WOODS-GATT SYSTEM, *supra* note 5, at 70–81; HAROLD JAMES, INTERNATIONAL MONETARY COOPERATION SINCE BRETTON WOODS 27–57 (1996); *see generally* KENNETH W. DAM, THE RULES OF THE GAME: REFORM AND EVOLUTION IN THE INTERNATIONAL MONETARY SYSTEM 101–14 (1982); ARMAND VAN DORMAEL, BRETTON WOODS: BIRTH OF A MONETARY SYSTEM (1978); RICHARD W. EDWARDS, JR., INTERNATIONAL MONETARY COLLABORATION 4–23 (1985); RICHARD N. GARDNER, STERLING-DOLLAR DIPLOMACY 11–13 (1969); 4 ANDREAS F. LOWENFELD, THE INTERNATIONAL MONETARY SYSTEM 13–18 (2d ed. 1984); GEORG SCHILD, BRETTON WOODS AND DUMBARTON OAKS: AMERICAN ECONOMIC AND POLITICAL POSTWAR PLANNING IN THE SUMMER OF 1944 (1995).

¹² JAMES, *supra* note 11, at 120; *see also* Roberto Campos, *Fifty Years of Bretton Woods*, in THE BRETTON WOODS-GATT SYSTEM, *supra* note 5, at 99 (“In regard to the World Bank, the fear of the underdeveloped countries was that its resources would be almost completely absorbed by the task of reconstruction, with precious little left for development”); *see also* Gardner, *supra* note 9, at 65 (“There was simply no conception of the vast needs of the developing countries and of the role the Bank should play in meeting them.”); Urquidi, *supra* note 5, at 43 (“the concept of *development* was practically absent”); *id.* at 47 (White and Keynes “did not seem to have a clear idea of the usually quite different structural problems of the less developed countries.”). The drafters of the World Bank’s charter included “the encouragement of the development of productive facilities and resources in less developed countries as a purpose of the Bank.” *Articles of Agreement of the International Bank for Reconstruction and Development*, Dec. 7, 1945, art. I(i), 60 Stat. 1440, 2 U.N.T.S. 134, as amended, 16 U.S.T. 1942, (Dec. 17, 1965) [hereinafter IBRD Articles].

¹³ Developing countries constituted a numerical majority at the Conference. The bulk of such countries were Latin American. *See* Garritsen de Vries, *supra* note 7, at 13–14; *see also* J. KEITH HORSEFIELD, 1 THE INTERNATIONAL MONETARY FUND, 1945–1965: TWENTY YEARS OF INTERNATIONAL MONETARY COOPERATION 93–108 (1969).

¹⁴ Joseph Gold, “. . . To Contribute Thereby To...Development”: *Aspects of the Relations of the International Monetary Fund with its Developing Members*, 10 COLUM. J. TRANSNAT’L L. 267, 271 (1971).

¹⁵ 1 PROCEEDINGS, *supra* note 6, at 23; *see* Indian delegation recording additional attempts, *id.* at 131, 184, 335–36, 424–26, 1171–73, *see* DEP’T OF STATE, 2 PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE 1171–73, 1180–81 (1948) [hereinafter 2 PROCEEDINGS].

purpose to “facilitate the expansion and balanced growth of international trade”¹⁶

The Mexican delegation experienced a similar result when it urged the drafters of the Bank’s charter to consider “development” as well as “reconstruction.”¹⁷ The Mexicans offered an amendment to the proposed language for Article III, Section 1 that would have required the Bank not only to “give equal consideration to projects for development and to projects for reconstruction” but also to “always” make “its resources and facilities . . . available to the same extent for either kind of project.”¹⁸ The drafters ultimately adopted a softened version of the amendment, requiring the Bank to give “equitable consideration to projects for development and projects for reconstruction alike.”¹⁹

Brazil also attempted to stress developing country concerns at the conference. Because erratic commodity prices caused havoc with developing countries’ balance-of-payments, the Brazilian delegation pressed for a conference “to promote stability of prices of raw materials and agricultural products and to formulate recommendations for attainment of a more balanced growth of international trade.”²⁰ The Brazilian’s resolution, though adopted,²¹ took a back seat to the central issues identified above.²²

The treatment of development issues at the Bretton Woods Conference suggests that success was achieved in part by marginalizing the interests of developing countries.²³ By doing so, the IMF and World Bank treaties clearly enshrined a “universal”

¹⁶ Article I(ii) reads:

The purposes of the International Monetary Fund are:

(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, art. I(ii). The phrase “and to contribute thereby” converts the remaining portion of the clause into indirect consequences of growth in trade. Gold, *supra* note 14, at 275–76.

¹⁷ Urquidi, *supra* note 5, at 40.

¹⁸ 1 PROCEEDINGS, *supra* note 6, at 373–74.

¹⁹ IBRD Articles, *supra* note 12, art. III, § 1(a).

²⁰ Campos, *supra* note 12, at 100.

²¹ See 1 PROCEEDINGS, *supra* note 6, at 941 (Resolution VII).

²² Campos, *supra* note 12, at 100.

²³ Marginalization could be described another way: the refusal to distinguish formally between member countries—i.e., developing versus developed countries. See Gold, *supra* note 14, at 277–82 (discussing “[f]ormal [e]quality” embodied in the IMF’s charter).

proposition that motivated the conference in the first place—that an open international economy was the best prescription for global prosperity, which, in turn, would help maintain international peace.²⁴ Economic growth was at the heart of postwar liberalism. The Bretton Woods Institutions (BWIs), along with the General Agreement on Tariffs and Trade (GATT),²⁵ were charged with promoting growth via international economic law governing trade and investment.²⁶

II THE VOICE OF THE NIEO

Decolonization after World War II raised expectations among developing countries that industrialized countries would recognize the importance of, and financially support, development in the South.²⁷ Assistance from the North was not forthcoming, however.²⁸ Increasingly frustrated, developing countries claimed the prevailing global order perpetuated economic inequality among nations.²⁹ They therefore called for a NIEO, a highly controversial effort to effectuate the principle of sovereign equality of States by reforming

²⁴ The following is illustrative:

[T]he proposal for . . . the Fund . . . was based on the premise that international financial cooperation and the establishment of conditions conducive to international trade are imperative to the economic welfare of the peoples of the world and to world peace Proposals for the establishment of the Bank were based on the premise that postwar reconstruction and development are essential to the general economic interest [and] that a program for reconstruction and development would aid political stability and foster peace among all nations.

Introduction to 1 Proceedings, *supra* note 6, at viii.

²⁵ See generally KENNETH W. DAM, *THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION* (1970); JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* (1989).

²⁶ Dam, *supra* note 11, at 3 (“International rules today arise largely out of international organizations.”).

²⁷ See ERVIN LASZLO ET AL., *THE OBJECTIVES OF THE NEW INTERNATIONAL ECONOMIC ORDER* xv, xviii (1978) [hereinafter *OBJECTIVES OF NIEO*] (“Desires for rapid social and economic growth were soon translated by the governments into ambitious plans and programmes of national development. Most of the plans envisaged a quick repetition of the industrial growth processes of the developed world. . . . [S]ome of the original strategies underwent modification, but hardly ever surrendered the goal of rapid economic growth.”).

²⁸ *Id.* at xix.

²⁹ Robert S. Jordan, *Why a NIEO? The View from the Third World*, in *THE EMERGING INTERNATIONAL ECONOMIC ORDER* 59, 63 (Harold K. Jacobson & Dusan Sidjanski eds., 1982).

international economic law and policy.³⁰ In May 1974, the U.N. General Assembly adopted two resolutions that would form the basis of the NIEO: the “Declaration on the Establishment of a New International Economic Order,”³¹ and the “Programme of Action on the Establishment of a New International Economic Order.”³² In December of the same year, the General Assembly adopted a re-articulation of the Declaration and Programme in a resolution titled, “Charter of Economic Rights and Duties of States.”³³ It passed by a vote of 120 for, 10 abstentions, and 6 against—Belgium, Denmark, the German Federal Republic, Luxembourg, the United Kingdom, and the United States.³⁴

The NIEO called for negotiations with industrialized countries to modify the philosophical, juridical, and institutional structures of the prevailing international economic order.³⁵ Among other things, the Charter, which elaborated on the Declaration and Programme of Action,³⁶ stated that:

All States are juridically the equal and . . . have the right to participate fully and effectively in international decision-making process[es] in the solution of world economic, financial and monetary problems, *inter alia*, through the appropriate international organizations in accordance with their existing and evolving rules.³⁷

Every State has the sovereign and inalienable right to choose its economic . . . political, social and cultural systems in accordance with the will of its people;³⁸ [e]very State has . . . full permanent

³⁰ It was controversial in part because developing countries demanded preferential, non-reciprocal treatment. See RUMU SARKAR, *INTERNATIONAL DEVELOPMENT LAW* 217 (2009).

³¹ See generally G.A. Res. 3201 (S-VI), U.N. Doc. A/RES/5-6/3201 (May 1, 1974) (adopting the “Declaration on the Establishment of a New International Economic Order”).

³² See generally G.A. Res. 3202 (S-VI), U.N. Doc. A/RES/5-6/3202 (May 1, 1974) (adopting the “Programme of Action on the Establishment of a New International Economic Order”).

³³ See G.A. Res. 3281 (XXIX), U.N. Doc. A/RES/29/3281 (Dec. 12, 1974) [hereinafter Charter of Economic Rights and Duties of States] (adopting the Charter of Economic Rights and Duties of States after “[b]earing in mind the spirit and terms of . . . the Declaration and Programme of Action on the Establishment of a New International Economic Order”).

³⁴ Burns H. Weston, *The Charter of Economic Rights and Duties of States and the Deprivation of Foreign-Owned Wealth*, 75 AM. J. INT’L L. 437, 437–39 (1981).

³⁵ See TYRONE FERGUSON, *THE THIRD WORLD AND DECISION MAKING IN THE INTERNATIONAL MONETARY FUND* 7–46 (1988).

³⁶ See Charter of Economic Rights and Duties of States, *supra* note 33.

³⁷ *Id.* at 52–53.

³⁸ *Id.* at 52.

sovereignty . . . over all its wealth, natural resources and economic activities.³⁹

It is the right and duty of all States, individually and collectively, to eliminate colonialism . . . neo-colonialism and all forms of . . . domination, and the economic and social consequences thereof[.]⁴⁰

Monetary and financial issues were important items on the agenda. Developing countries demanded effective participation in the decision-making of international financial organizations and greater access to financial resources from the North to meet their development needs.⁴¹ With respect to quotas, the NIEO stressed the need “[t]o take fully into account the requirements of developing countries for, and their ability to contribute to, balance-of-payments finance [and] to increase the over-all participation of developing countries in the decision-making process of the Fund.”⁴² The Manila Declaration by the Group of 77 stated that “the system of voting in the IMF and the World Bank should be reformed so as to accord developing countries greater representation and weight in decision-making in these institutions.”⁴³ The Group of 77 also argued that “the conditionality attached to drawings from the IMF by developing countries should take fully into account the structural problems of economies of the developing countries.”⁴⁴ The NIEO Programme of Action called for increased liquidity in the international monetary system through an additional allocation of SDRs and it also stipulated that there should be an “[e]arly establishment of a link between special drawing rights and additional development financing in the interest of developing countries.”⁴⁵ Noting the IMF’s “zeal for universalism,” Albert Fishlow called upon the IMF to establish an international bankruptcy court for debtor developing countries.⁴⁶ He also argued that a NIEO should require the IMF to adopt “sets of [conditionality] rules appropriate to different classes of countries—

³⁹ *Id.*

⁴⁰ *Id.* at 53.

⁴¹ *See id.* at 52.

⁴² G.A. Res. 3347 (XXIX), 29 U.N. GAOR, Supp. (No. 31) 74, 75 U.N. Doc. A/9631 (1974).

⁴³ MANILA DECLARATION AND PROGRAMME OF ACTION: REPORT ON MINISTERIAL MEETING OF THE GROUP OF 77, Doc. 77/MM(III)/4a at 28 (1976).

⁴⁴ OBJECTIVES OF NIEO, *supra* note 27, at 228.

⁴⁵ G.A. Res. 3202, *supra* note 32, at § II, (f) (given the depreciating dollar, the reserve asset, the Group of 77 argued that SDRs should become the principal reserve asset); *see also* OBJECTIVES OF NIEO, *supra* note 27, at 228.

⁴⁶ Albert Fishlow, *International Monetary and Financial Issues from a National Perspective: a Comment*, in *LATIN AMERICA AND THE NEW INTERNATIONAL ECONOMIC ORDER* 41, 47 (Ricardo Ffrench-Davis & Ernesto Tironi eds., 1982).

depending, among other factors, on their financial structure, the composition of trade and its price responsiveness, and the flexibility of internal production and factor prices.”⁴⁷

There is no doubt that developing countries acquired a loud, even strident, voice through the NIEO agenda. However, the rich countries would not listen. This is not surprising in light of the dispute over the legal significance of the NIEO. In response to claims that the NIEO reflected customary international law,⁴⁸ critics argued the nonbinding resolutions were merely moral or political statements, at best constituting “soft law.”⁴⁹ The deep divisions between the North and South left much of the NIEO’s business unfinished. It met a quiet death (or lapsed into a coma) after the late 1970s.⁵⁰

III

THE RISE OF IMF STRUCTURAL CONDITIONALITY

In the wake of the NIEO’s death came the rise of neoliberalism in the 1980s, a global phenomenon that promoted a development paradigm based on free markets and a greatly reduced role for the State. In most cases, developing countries did not initiate the neoliberal transformation of their economies—i.e., unlike the NIEO, the voice of the South did not articulate the neoliberal agenda. Instead, in a mockery of the NIEO principles, the IMF imposed neoliberal reform via conditionality, particularly structural conditionality.⁵¹

⁴⁷ *Id.* at 47.

⁴⁸ See Amr A. Shalakany, *Arbitration and the Third World: A Plea for Reassessing Bias Under the Specter of Neoliberalism*, 41 HARV. INT’L L.J. 419, 460-61 (2000) (stating that “the NIEO documents, were denied the status of customary law . . . and thus the Charter was declared to be a ‘political rather than a legal declaration’”) (citations omitted).

⁴⁹ See *id.*

⁵⁰ See Michael P. Ryan et al., *International Governmental Organization Knowledge Management For Multilateral Trade Lawmaking*, 15 AM. U. INT’L L. REV. 1347, 1372 (2000) (“The GATT’s attempts to solve the economic problems of developing countries in the 1960s and 1970s [through the NIEO] were largely feeble.”).

⁵¹ Conditionality is based on various provisions of the IMF’s Charter. See International Monetary Fund, *Articles of Agreement*, art. I (v) (“To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards); IMF, *Articles of Agreement*, art. V § 3(a) (“The Fund shall adopt policies on the use of its general resources . . . that will establish adequate safeguards for the temporary use of the general resources of the Fund.”); IMF, *Articles of Agreement*, art. V § 3(c) (“The Fund shall examine a request for purchase to determine whether the proposed purchase would be consistent with the provisions of this Agreement.”).

The collapse of the Bretton Woods fixed exchange rate system in the early 1970s set the stage for the IMF's role in implementing market-based reforms globally. Until President Nixon closed the "gold window," in 1971,⁵² the IMF's principal function was to ensure global financial stability by overseeing fixed exchange rates that were tied to the U.S. dollar (with the dollar tied to gold at thirty-five dollars an ounce).⁵³ After the system's collapse, the IMF's relevance came into question. With the adoption of the Second Amendment to the Articles of Agreement in 1978, IMF members were free to choose their own exchange arrangements, and the IMF sought to maintain its relevance by assuming surveillance powers.⁵⁴

It was not long thereafter that the IMF found its new mission: neoliberal transformation of developing countries involved in the debt crisis of the 1980s.⁵⁵ The IMF's transformational tool was conditionality, which refers to the policies and adjustments borrowing

⁵² Joseph Gold, *Strengthening the Soft International Law of Exchange Arrangements*, 77 AM. J. INT'L L. 443, 447 (1983). Under the Bretton Woods system, the U.S. dollar functioned as the reserve currency and member countries were entitled to exchange dollars for U.S. gold. *See id.*

⁵³ *See id.*; *see also* Chantal Thomas, *Balance-of-Payments Crises in the Developing World: Balancing Trade, Finance and Development in the New Economic Order*, 15 AM. U. INT'L L. REV. 1249, 1261 (2000) ("The first version of the agreement establishing the IMF required all members to commit to a 'par value' system to establish values for their currencies in terms of gold or the U.S. dollar, and maintain their currencies within fairly narrow margins of those values.").

⁵⁴ Second Amendment to the Articles of Agreement of the International Monetary Fund, 29 U.S.T. 2203, 15 I.L.M. 546 (adopted April 30, 1976) (entered into force April 1, 1978). Surveillance requires, *inter alia*, each member to notify the IMF of any change in their exchange arrangements. Robert M. Barnett, *Exchange Rate Arrangements in the International Monetary Fund: The Fund as Lawgiver, Adviser, and Enforcer*, 7 TEMP. INT'L & COMP. L.J. 77, 87 (1993). The IMF does not, however, have the power to veto these decisions. *Id.* Under Article IV of the Fund's charter, "each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates." International Monetary Fund, Articles of Agreement, Art. IV § 1; *see Factsheet: IMF Surveillance—The 2007 Decision on Bilateral Surveillance*, INTERNATIONAL MONETARY FUND (2010), <http://www.imf.org/external/np/exr/facts/surv.htm>.

⁵⁵ *See* Enrique R. Carrasco, *The 1980s: The Debt Crisis & the Lost Decade*, in E-BOOK ON INTERNATIONAL FINANCE & DEVELOPMENT (E. Carrasco ed., 2010), <http://www.uiowa.edu/ifdebook/ebook2/contents/part1-V.shtml>; Enrique R. Carrasco, *Law, Hierarchy, and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a Neoliberal World*, 30 STAN. J. INT'L L. 221, 244–61 (1994) [hereinafter *Law, Hierarchy, and Vulnerable Groups*]; Henk Overbeek, *Neoliberalism and the Regulation of Global Labor Mobility*, 581 ANNALS 74, 80 (2002); Kenneth J. Vandavelde, *Investment Liberalization and Economic Development: The Role of Bilateral Investment Treaties*, 36 COLUM. J. TRANSNAT'L L. 501, 502 (1998).

member countries must follow in exchange for Fund loans.⁵⁶ Traditionally, Fund conditionality involved short-term stabilization measures that addressed aggregate demand via budgetary and monetary adjustments.⁵⁷ However, in the 1980s the Fund's conditionality increasingly addressed longer-term structural reforms.⁵⁸ Structural conditionality evolved into a range of measures that included, *inter alia*, reforms of the financial sector and capital markets, privatization of public enterprises, trade liberalization, restructuring of the labor market and civil service, pension reform, as well as corporate governance reform.⁵⁹ The structural approach to conditionality was applied with special vigor in "transitioning economies"—i.e., centrally planned economies transitioning to free markets, such as the former Soviet Union and the communist bloc countries of Europe.⁶⁰ The Fund's market-based structural reform mission emphasizing privatization and deregulation became so pervasive that it was labelled the "Washington Consensus."⁶¹

Structural conditionality reached a crescendo in the Asian financial crisis of the late 1990s. For instance, at the height of the crisis, IMF arrangements with Korea, Thailand, and Indonesia included a staggering 94, 73, and 140 structural conditions, respectively.⁶² The structural conditions for Indonesia included removing VAT

⁵⁶ See generally ERIK DENTERS, *LAW AND POLICY OF IMF CONDITIONALITY* (1996).

⁵⁷ See *Law, Hierarchy, and Vulnerable Groups*, *supra* note 55 (Part II discusses IMF stabilization measures).

⁵⁸ The Fund employed structural conditionality prior to the 1980s. In 1974, it established the Extended Fund Facility for countries with protracted balance-of-payments problems. It established similar facilities in the 1980s: the Structural Adjustment Facility (1986), and the Enhanced Structural Adjustment Facility (1987). For a discussion regarding possible reasons for the evolution and expansion of structural conditionality, see Ariel Buira, *An Analysis of IMF Conditionality*, 16–17 (G-24 Discussion Paper Series, Paper No. 22, August 2003); MORRIS GOLDSTEIN, *IMF STRUCTURAL PROGRAMS* 64–68 (Oct., 2000), available at <http://www.iie.com/publications/papers/goldstein1000.pdf>. It is important to note that the World Bank also engaged in structural adjustment lending. See *Law, Hierarchy, and Vulnerable Groups*, *supra* note 55, at 247–50.

⁵⁹ See generally INDEPENDENT EVALUATION OFFICE, *STRUCTURAL CONDITIONALITY IN IMF-SUPPORTED PROGRAMS* (2007) [hereinafter IEO CONDITIONALITY REP.]; GOLDSTEIN, *supra* note 58, at 4.

⁶⁰ See generally Robert P. Delonis, *International Finance Standards and Codes: Mandatory Regulation Without Representation*, 36 N.Y.U. J. INT'L L. & POL. 563, 574–75 (2004) (stating that in 1991, the G-7 countries decided that "the IMF should take the lead in assisting the transition of the former Soviet bloc states, particularly Russia, from socialist to market economies").

⁶¹ See generally John Williamson, *What Washington Means by Policy Reform*, in *LATIN AMERICAN ADJUSTMENT: HOW MUCH HAS HAPPENED?* 7 (John Williamson, ed., 1990).

⁶² Buira, *supra* note 58, at 9.

exemption arrangements, introducing a single taxpayer registration number, providing autonomy to state banks to adjust interest rates on credit and deposit liabilities, requiring all banks to prepare audited financial statements, lifting restrictions on branching by foreign banks, closing non-viable banks and transferring weak banks to a newly formed Indonesia Bank Restructuring Agency, drafting legislation to enable privatization of state banks, abolishing local content requirements on dairy products, abolishing export taxes on leather, cork, ores and waste aluminum products, removing restrictions on foreign investment in palm oil plantations, and taking action to allow “free competition in: (i) importation of wheat, wheat flour, soybeans and garlic; (ii) sale or distribution of flour; and (iii) importation and marketing of sugar.”⁶³

Of course, the IMF’s use of structural conditionality was controversial.⁶⁴ NGOs argued that structural conditionality prevented borrowing countries from developing a sense of ownership of the adjustment programs⁶⁵—which ultimately resulted in significant program failure rates.⁶⁶ Moreover, borrowing countries gamed conditionality by complying with the conditions during the program and thereafter dropping or reversing the reform policies.⁶⁷ Critics also claimed that structural conditionality reflected ideology without addressing the actual conditions in the borrowing countries.⁶⁸

⁶³ GOLDSTEIN, *supra* note 58, at tbl.8.

⁶⁴ See generally Thomas D. Willet, *Understanding the IMF Debate*, 5 INDEP. REV. 593 (2001).

⁶⁵ See EURODAD, WORLD BANK AND IMF CONDITIONALITY: A DEVELOPMENT INJUSTICE, EURODAD REPORT 3 (June 2006), http://www.eurodad.org/uploaded/Files/Whats_New/Reports/Eurodad_World_Bank_and_IMF_Conditionality_Report.pdf (stating that conditions often “contravene developing countries’ wishes, an acknowledged prerequisite for successful development”); see also GOLDSTEIN, *supra* note 58, at 6 (“[S]tructural remedies . . . undermines local ‘ownership’ of Fund programs.”); ANGELA WOOD & MATTHEW LOCKWOOD, THE “PERESTROIKA OF AID”? NEW PERSPECTIVES ON CONDITIONALITY 1 (Mar. 1999), <http://www.brettonwoodsproject.org/topic/governance/poa2.pdf>.

⁶⁶ See Buira, *supra* note 58, at 9 (“[T]he high and increasing proportion of program failures gave rise to questions as to the point of having ever more comprehensive and ambitious programs that were not complied with.”); see also Michael Mussa & Miguel Savastano, *The IMF Economic Approach to Stabilization*, 1999 NBER MACROECONOMICS ANNUAL 79, 105; see IEO CONDITIONALITY REP., *supra* note 59, at 8.

⁶⁷ WOOD & LOCKWOOD, *supra* note 65, at 1; see David Dollar & Jakob Svensson, *What Explains the Success or Failure of Structural Adjustment Programmes?*, 110 ECON. J. 894 (2000).

⁶⁸ ACTION AID, MONEY TALKS: HOW AID CONDITIONS CONTINUE TO DRIVE UTILITY PRIVATIZATION IN POOR COUNTRIES (2004), available at http://www.actionaid.org.uk/_content/documents/money_talks.pdf; see EURODAD, *supra* note 65, at 3.

Furthermore, the agreed adjustment programs suffered from a democratic deficit in that key sectors of society were not consulted or included in program negotiations.⁶⁹

The proliferation of structural performance criteria led to a streamlining initiative that commenced in 2000 and led to revised conditionality guidelines in 2002.⁷⁰ Those guidelines sought to rein in structural conditionality by requiring “parsimony” when setting conditions and by requiring that such conditions be “critical” to the achievement of the program’s goals.⁷¹ The revisions, however, had little effect on the IMF’s use of structural conditionality.

This led to an evaluation of IMF conditionality by the Independent Evaluation Office (IEO) in 2007. The report found that despite the Streamlining Initiative, IMF loans continued to be plagued with structural conditions—an average of seventeen per program year—that were “very detailed, not obviously critical, and often felt to be intrusive and to undermine domestic ownership of programs.”⁷² Among other things, the IEO recommended a notional cap on the number of structural conditions per program-year, which would force the Fund to justify the “criticality” of the conditions.⁷³

In sum, after the demise of the NIEO, advanced economies that controlled the IMF used structural conditionality to fundamentally restructure developing and transitioning economies. Although certain constituencies in some borrowing member countries favored structural conditionality,⁷⁴ the IEO report confirmed that the borrowers had little ownership in the adjustment programs. Put another way, developing and transitioning countries had little voice within the IMF, and, therefore, little voice with respect to the economic restructuring of their economies.⁷⁵

⁶⁹ See OXFAM INTERNATIONAL, FROM “DONORSHIP TO OWNERSHIP?” MOVING TOWARDS PRSP ROUND TWO, OXFAM BRIEFING PAPER 51 at 1 (2004).

⁷⁰ See generally INTERNATIONAL MONETARY FUND, INTERNATIONAL MONETARY FUND GUIDELINES ON CONDITIONALITY (Sept. 25, 2002), available at <http://www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.pdf>; see also MARTIN A. WEISS, CRS REPORT FOR CONGRESS, NEW IMF CONDITIONALITY GUIDELINES 3 (Nov. 19, 2002), http://sitemaker.umich.edu/ipe2007/files/crs_conditionality_guidelines.pdf.

⁷¹ INTERNATIONAL MONETARY FUND, *supra* note 70, at 8–9.

⁷² IEO CONDITIONALITY REP., *supra* note 59, at vii.

⁷³ *Id.* at 20.

⁷⁴ See Buira, *supra* note 58, at 31 (noting that in some developing countries U.S.-educated technocrats favored market-based reforms).

⁷⁵ *Id.* at 4–5.

IV THE GLOBAL FINANCIAL CRISIS

Just one year after the IEO issued its report on structural conditionality, the world experienced the worst financial and economic crisis since the Great Depression. Throughout history, calls for reform have followed in the wake of major financial or economic crises. The extent and nature of reforms depend, of course, on the players that control the discourse over establishing the new order. In 1944, in Bretton Woods, New Hampshire, the controlling players were the United States and the United Kingdom. Developing countries were on the sidelines and “emerging economies” did not exist. The global financial crisis of 2008 occurred in a vastly different world, a world where the economic power of (white) Americans and Europeans is being challenged by (non-white) non-Western countries such as China and India.⁷⁶ Consequently, as this Part will show, in the Summits that occurred during the crisis, new players demanded to be included in the discourse regarding the post-crisis financial and economic order. First, I briefly address the impact of the crisis on emerging economies.

A. Emerging Economies and the Crisis

The global financial crisis was triggered by subprime loans in the United States and, due in part to lax or no regulation over certain financial instruments and institutions, spread throughout the world via securitization.⁷⁷ At the outset of the crisis, most observers believed that emerging economies would not be significantly affected by the crisis, which appeared to be concentrated in the United States and Europe. This is because most emerging economies did not hold toxic assets. Moreover, after the economic/financial crises in the 1980s and 1990s, many emerging economies engaged in significant reform of their financial sectors, including significant increases in foreign

⁷⁶ See THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (2005).

⁷⁷ See Alexandra Basak Russel, *What Gave Rise to the Global Financial Crisis?*, in *E-BOOK ON INTERNATIONAL FINANCE & DEVELOPMENT* (E. Carrasco ed., 2010), <http://www.uiowa.edu/ifdebook/ebook2/contents/part5-I.shtml>; see also Stijn Claessens et al., *Lessons and Policy Implications from the Global Financial Crisis* (IMF Working Paper No. 10/44, 2010), <http://www.imf.org/external/pubs/ft/wp/2010/wp1044.pdf>; Adam J. Levitin et al., *Securitization: Cause or Remedy of the Financial Crisis?* (Georgetown Law and Econ. Research Paper No. 1462895, Univ. of Pa., Inst. for Law & Econ. Research Paper No. 09-31, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1462895.

exchange reserves, which would make them less vulnerable to external shocks. Thus, they were becoming “decoupled” from developed countries’ economies and not dependent on them for economic growth and stability.⁷⁸ Indeed, in the midst of the financial crisis in the summer of 2008, it appeared that growth in emerging economies, amounting to half of all global economic growth in a given year, could help avert a global meltdown.

Nevertheless, emerging economies were not immune from the crisis. Despite their progress, they still depend greatly on foreign capital and investment, which is problematic when, during a crisis, foreign investors withdraw their money to perceived safer investments. Moreover, much of the double-digit growth seen throughout the developing world has depended on the availability of foreign credit, a stable currency, and sustainable global demand for exports, all of which were put in jeopardy because of the crisis. Thus, emerging economies experienced decreased capital and investment flows, currency depreciation, stock market crashes, and drops in exports and commodity prices.⁷⁹

Still, while emerging and developing countries were not spared from the global financial crisis, for the most part their economies recovered more quickly in 2009 than the economies of the United States and Europe.⁸⁰ Therefore, the concept of decoupling cannot be summarily dismissed, and the possibility of it has at least one very significant impact: it has given emerging economies a voice that, unlike the NIEO of the 1970s, is capturing the attention of the developed world.

⁷⁸ INTERNATIONAL MONETARY FUND, GLOBAL FINANCIAL STABILITY REPORT: FINANCIAL STRESS AND DELEVERAGING, MICROFINANCIAL IMPLICATIONS AND POLICY 44 (2008); M. Ayhan Kose & Eswar Prasad, *The Financial Crisis and Emerging Markets*, BROOKINGS INSTITUTION, Sept. 24, 2008, http://www.brookings.edu/opinions/2008/0924_emerging_markets_prasad.aspx; see M. Ayhan Kose, Christopher Otrok & Eswar Prasad, *Global Business Cycles: Convergence or Decoupling?* 25 (IMF Working Paper No. 08/143, 2008) (concluding that there is evidence of business cycle divergence or decoupling between industrial economies and emerging market economies). *But see* Michael Dooley & Michael Hutchison, *Transmission of the U.S. Subprime Crisis to Emerging Markets: Evidence on the Decoupling-Recoupling Hypothesis*, 28 J. INT’L MONEY AND FIN. 1331 (2009) (arguing that policy measures adopted by emerging economies to insulate them from the global financial crisis proved inadequate).

⁷⁹ Enrique R. Carrasco, *Crisis and Opportunity: Emerging Economies and the Financial Stability Board 199–207*, in INTERNATIONAL ECONOMIC LAW, GLOBALIZATION & DEVELOPING COUNTRIES (Julio Faundez & Celine Tan, eds.) (forthcoming) (manuscript on file).

⁸⁰ *Id.* at 207–08; INTERNATIONAL MONETARY FUND, WORLD ECONOMIC AND FINANCIAL SURVEYS: REGIONAL ECONOMIC OUTLOOK, ix (April 2010), available at <http://www.imf.org/external/pubs/ft/reo/2010/apd/eng/areo0410.pdf>.

B. The Drumbeat for Governance and Accountability Reform

Even prior to the global financial crisis and the decoupling debate, there was a post-NIEO “governance and accountability reform” movement to give developing and emerging economies greater voice in international monetary affairs. The movement’s roots can be traced to 1994, when the World Bank and the International Monetary Fund marked the fiftieth year of their existence. The anniversary prompted hundreds of religious, labor, human rights, and environmental organizations across the globe to declare that “Fifty Years Is Enough.”⁸¹ Critics claimed the two institutions contributed to human rights abuses, social injustice, and environmental degradation in developing countries.⁸²

Only a few years following the controversial anniversary, the IMF and the World Bank had to cope with the outbreak of the Asian financial crisis. The Fund’s handling of the crisis gave critics yet another opportunity to denounce it. Among other things,⁸³ critics claimed the Fund was an opaque institution that suffered from a “democratic deficit”—i.e., that member countries most affected by the Fund’s programs had little voice in an institution controlled by a handful of industrialized countries.⁸⁴ In particular, the Fund’s Board of Directors has been dominated by members of industrialized countries.⁸⁵ Moreover, its quota-based weighted voting system has given the G-7 countries approximately forty-five percent of the voting power in the Fund.⁸⁶ Industrialized-country domination of the Fund

⁸¹ Enrique R. Carrasco et al., *50th Anniversary of the World Bank and IMF Prompts Criticisms*, in E-BOOK ON INTERNATIONAL FINANCE & DEVELOPMENT 1 (Enrique Carrasco ed., 2010), <http://www.uiowa.edu/ifdebook/ebook2/contents/part2-II.shtml>.

⁸² See *id.*

⁸³ For a stinging critique of the Fund’s adjustment policies in the Asian financial crisis, see JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (W.W. Norton & Co., 2003) (2002).

⁸⁴ John W. Head, *The Asian Financial Crisis in Retrospect-Observations on Legal and Institutional Lessons Learned After a Dozen Years*, 5 E. ASIA L. REV. 31, 63 (2010); see REFORMING THE GOVERNANCE OF THE IMF AND THE WORLD BANK (Ariel Buira ed., 2005); NGAIRE WOODS, *THE GLOBALIZERS: THE IMF, THE WORLD BANK, AND THEIR BORROWERS* (2006); Ngaire Woods, *Making the IMF and the World Bank More Accountable*, 77 INT’L AFF. 83 (2001); Daniel D. Bradlow, *Rapidly Changing Functions and Slowly Evolving Structures: The Troubling Case of the IMF*, 94 AM. SOC’Y INT’L L. PROC. 152 (2000).

⁸⁵ Head, *supra* note 84, at 77.

⁸⁶ See Head, *supra* note 84 at 77. The IMF assigns a quota to a member country based on the economic size of each country. INTERNATIONAL MONETARY FUND, IMF QUOTAS FACTSHEET 2 [hereinafter IMF QUOTAS], <http://www.imf.org/external/np/exr/facts/pdf/quotas.pdf>. Quotas, denominated in Special Drawings Rights (SDR), determine each

has also been reflected in the tradition that has allowed the Europeans to name the institution's managing director (whereas the United States has traditionally named the president of the World Bank).

The Fund responded to its critics with a number of limited measures. Among other accountability-related measures,⁸⁷ in July 2001, it established the Independent Evaluation Office to perform "objective and independent" evaluations of issues relating to the Fund's mandate.⁸⁸ As to voice-related governance measures, in 2006 the Fund made an *ad hoc* quota adjustment for China, Turkey, Korea, and Mexico.⁸⁹ In April 2008, it proposed a series of voice-related reforms, which included, *inter alia*, adopting a revised quota

member country's voting power. *Id.* In addition to 250 "basic votes," a member has more votes depending on its quota (one vote for each 100,000 SDR of quota). *Id.*

⁸⁷ See Head, *supra* note 84, at 88–89 (describing broader authority given to the IMF's International Monetary and Financial Committee to give member governments more direct involvement in the Fund's policymaking, in efforts to make the Fund's Poverty Reduction Strategy Paper process more participatory).

⁸⁸ INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, ABOUT IEO, <http://www.ieo-imf.org/about/> (last visited Jan. 10, 2011). The IEO was established with a mission to enhance the effectiveness of IMF by 1) fostering the learning culture of the IMF, 2) enhancing the external credibility, 3) providing independent evaluation reports, and 4) promoting a better understanding the IMF's work. *Id.* Every year, the IEO publishes about two evaluation reports. See INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, EVALUATION REPORT <http://www.ieo-imf.org/pub/evalreports.html> (last visited Jan. 10, 2011) (making available all prior evaluation reports). As of Jan. 2011, it has produced 17 reports including a report regarding the governance of the IMF. *Id.* According to the IEO's Terms of References, the IEO operates independent from the IMF's management. INDEPENDENT EVALUATION OFFICE OF THE INT'L MONETARY FUND, ABOUT IEO, <http://www.ieo-imf.org/about/> (last visited Jan. 10, 2011). However, some question the independence of the IEO. See, e.g., Head, *supra* note 84, at 88; Kate Weaver, *The Political Paradox of IO Performance: The Curious Case of the International Monetary Fund* (2009), <http://mershoncenter.osu.edu/events/09-10%20events/Nov09/Weaver.Political.Paradox.of.IO.Performance.pdf>.

⁸⁹ In September 2006, the IMF member countries adopted a series of plans to reform quotas and voices. INT'L MONETARY FUND, *Reform of IMF Quotas and Voice: Responding to Changes in the Global Economy*, <http://www.imf.org/External/NP/EXR/ib/2007/041307.pdf> [hereinafter *Reform of IMF Quotas and Voice*]. As the first step of the reform plans, quotas for four "dynamic economies"—China, Turkey, Korea, and Mexico were increased by SDR 3.81 billion to SDR 216.75 billion. *Id.* at 1–2. Prior to the voice measures, about twenty-four developed member countries wielded sixty percent of the voting power. Jane Ro & Michael Sarabia, *Governance and Accountability at the International Monetary Fund*, in ISSUES ON INTERNATIONAL FINANCE & DEVELOPMENT, http://www.uiowa.edu/ifdebook/issues/accountability/Governance_&_Accountability-IMF.pdf. In 2002, the voting power of the EU was approximately thirty percent, whereas the Asian countries, including China, had a mere eighteen percent voting share. Diwa C. Guinigundo, *The IMF and Its Governance: Focus on Practising and Preaching*, BANGKO SENTRAL REV. 52 available at http://www.bsp.gov.ph/downloads/publications/2003/BSR2003_05.pdf (Jan. 2003).

formula,⁹⁰ a second round of *ad hoc* quota increases for “dynamic economies,”⁹¹ and a tripling of basic votes intended to increase the voice of low-income countries.⁹² As to the selection of the IMF’s Managing Director, a consensus has developed that the Fund should abandon the tradition of allowing the Europeans to choose the Managing Director behind closed doors and instead adopt a process of appointment that is “open, transparent, and merit-based.”⁹³ The G-20

⁹⁰ The new formula is a weighted average of four variables—“GDP, openness, variability, and reserves—weights of 50 percent, 30 percent, 15 percent, and 5 percent, respectively.” International Monetary Fund, *Reform of Quota and Voice in International Monetary Fund—Report of the Executive Board to the Board of Governors 2* (Mar. 28, 2008), available at <http://www.imf.org/external/np/pp/eng/2008/032108.pdf> [hereinafter *Report of the Executive Board*]. By using this formula, emerging economies are expected to have higher quota shares. For the existing five quota formulas, see IMF QUOTAS, *supra* note 86, at 1.

⁹¹ The Executive Board recommended a second round of *ad hoc* quota increases to enhance quotas for underrepresented countries under a revised quota formula. *Report of the Executive Board*, *supra* note 90, at 1. A second round of increases is expected to further increase the “voting share[s] of emerging market and developing countries as a whole.” *Id.* at 4. *Ad hoc* quota increases only change the relative quota shares among member countries. IMF QUOTAS, *supra* note 86, at 2. In contrast, a general quota increase raises actual quotas for all members. *Id.* See Head, *supra* note 84, at 94–95 (listing quota share adjustments).

⁹² A member country is entitled to have 250 “basic votes.” *Reform of IMF Quotas and Voice*, *supra* note 89, at 5. While the share of basic votes was eleven percent when the IMF was established, the current basic votes only represent two percent. *Id.* Increasing the number of basic votes will enhance the voting power of member countries whose voting power is “below the average voting power for Fund membership as a whole, and thereby to allow the smallest members to have an increased measure of influence in the Fund’s decision-making process.” *Id.* The reforms also call for an additional Alternate Executive Director for Executive Directors who represent a large number of members, a measure intended to help the two African constituencies on the Executive Board. *Id.*; Head, *supra* note 84, at 96. As of this writing, the 2008 proposed reforms, which require an amendment of the Fund’s Charter, have not taken effect. INTERNATIONAL MONETARY FUND, ACCEPTANCES OF THE PROPOSED AMENDMENTS OF THE ARTICLES OF AGREEMENT (July 1, 2010), <http://www.imf.org/external/np/sec/misc/consents.htm#a1>. Amending the Articles of Agreement requires acceptance by 112 member countries (eighty-five percent of the total voting power). *Id.* As of July 1, 2010, eighty-four countries have approved the proposed amendment. *Id.* For critical views of the proposed reforms, see Ralph C. Bryant, *Reform of IMF Quota Shares and Voting Shares: A Missed Opportunity* (April 8, 2008) available at http://www.brookings.edu/~media/Files/rc/papers/2008/0409_imf_bryant/0409_imf_bryant.pdf; Charles L. Vehorn & Nozar Hashemzadeh, *The International Monetary Fund: Part of the Problem or Part of the Solution?* 3 J. GLOBAL BUS. ISSUES 137, 141–42 (2009).

⁹³ *Committee on IMF Governance Reform, Final Report* 4 (Mar. 24, 2009); see INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, GOVERNANCE OF THE IMF: AN EVALUATION 22 (2008), available at http://www.ieo.imf.org/eval/complete/eval_05212008.html (“The selection process for the Managing Director should be reformed Candidates’ qualifications and likely effectiveness should be the main criteria used in the selection, and the competition should be open to candidates of all

endorsed this proposition in the summits held during the global financial crisis,⁹⁴ which I turn to next.

C. *The Summits*

A key voice that arose during the global financial crisis was the G-20,⁹⁵ a forum created in the wake of the Asian financial crisis in which finance ministers and central bank governors from systemically important industrialized and developing countries discuss issues relating to the global economy.⁹⁶ In November 2008, April 2009, September 2009, and November 2010, the G-20 held summits in Washington, D.C., London, Pittsburgh, and Seoul respectively, to address the global crisis.⁹⁷ The summits resulted in a number of decisions that reflected the increased voice of emerging and developing countries within the IMF and in global financial governance generally.

1. *The November Summit*

On November 15, 2008, leaders of the G-20 met in Washington, D.C., to address what had become the worst global financial and economic crisis since the Great Depression.⁹⁸ There was some initial anticipation that the meeting, dubbed by some as “Bretton Woods

nationalities.”); The G-20 London Communiqué, *The Global Plan for Recovery and Reform* ¶ 20 (Apr. 2, 2009) [hereinafter G-20 London Communiqué], available at <http://www.g20.org/Documents/final-communication.pdf>; The G-20 Pittsburgh Communiqué, *Leaders’ Statement, The Pittsburgh Summit*, 11 (Sept. 24–25, 2009) [hereinafter G-20 Pittsburgh Communiqué], available at http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

⁹⁴ G-20 London Communiqué, *supra* note 93, at ¶ 20; G-20 Pittsburgh Communiqué, *supra* note 93, at 11.

⁹⁵ G-20 is an informal forum made up of finance ministers and central bank governors created in the wake of the Asian financial crisis to address the lack of emerging and developing economy membership in the Group of Seven leading economies (G-7). G-20.org, About G-20: What is the G-20? [hereinafter What Is the G-20?], http://www.g20.org/about_what_is_g20.aspx (last visited Jan. 10, 2011).

⁹⁶ The G-20 countries are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, the United Kingdom, and the United States. The European Union is the twentieth member. *Id.*

⁹⁷ The G-20 held a summit in Toronto in June 2010, but, other than endorsing the World Bank shareholders’ agreement to increase the voting power of developing and transitioning countries by 4.59% since 2008, the summit leaders made no major decisions regarding the issues addressed in this article—it was seen as a stepping stone to the Seoul summit in November 2010.

⁹⁸ See G-20, *Declaration: Summit on Financial Markets and the World Economy*, ¶ 1 (Nov. 15, 2008) [hereinafter G-20, *Declaration*], http://www.g20.org/documents/g20_summit_declaration.pdf.

II,”⁹⁹ would produce a framework of fundamental reforms of the global financial system created in July 1944 during a three-week conference in Bretton Woods, New Hampshire.¹⁰⁰ However, while G-20 leaders took “immediate steps” to stabilize the financial system, to use fiscal measures as appropriate to stimulate domestic demand, and to help emerging and developing countries gain access to finance; reform efforts were limited to agreement upon a set of principles that would guide future reform of the financial markets.¹⁰¹

One of the principles was reforming international financial institutions.¹⁰² The summit’s leaders declared they were committed to reforming the Bretton Woods Institutions in order to give emerging and developing countries greater voice and representation.¹⁰³ Moreover, the FSF (as well as other major standard-setting bodies) had to be expanded “urgently to a broader membership of emerging economies.”¹⁰⁴ The leaders also called upon the IMF, in collaboration with the expanded FSF and other bodies, “to better identify vulnerabilities, anticipate potential stresses, and act swiftly to play a key role in crisis response.”¹⁰⁵ The Action Plan accompanying the Declaration set forth measures to be implemented by March 31, 2009, as well as in the medium term.¹⁰⁶ With respect to reforming international financial institutions, the Action Plan, *inter alia*, called upon the FSF and the IMF to conduct “early warning exercises” by the March deadline.¹⁰⁷

⁹⁹ See, e.g., Michael P. Dooley et al., *Bretton Woods II Still Defines the International Monetary System* (Nat’l Bureau of Econ. Research, Working Paper No. 14731, 2009).

¹⁰⁰ See, e.g., Howard Davies, *Five Ways to Fix Our Financial Architecture*, WASH. POST, Oct. 23, 2008, at A19 (discussing expectations of reform for the IMF and World Bank and principles for regulatory reform); *World Leaders Call for New Global Financial Architecture*, XINHUA FIN. NETWORK NEWS, Oct. 20, 2008 (discussing calls for a new financial architecture leading up to the summit); see also Agence France-Presse, *World Needs New Bretton Woods System, Says UK PM*, AUSTRALIAN, Oct. 14, 2008 (discussing talk of a new Bretton Woods).

¹⁰¹ G-20, *Declaration*, *supra* note 98, at 2.

¹⁰² *Id.* at 3. The other principles that would guide policy implementation were: 1) strengthening transparency and accountability, 2) enhancing sound regulation, 3) promoting integrity in financial markets, and 4) reinforcing international cooperation. *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See generally G-20, *Action Plan to Implement Principles for Reform* (Nov. 15, 2008), http://www.g20.org/Documents/g20_summit_declaration.pdf.

¹⁰⁷ *Id.* at 5. This collaboration anticipates that the IMF will assess macro-financial risks and systemic vulnerabilities, while the FSF will assess financial system vulnerabilities, drawing on the analyses of its member bodies, including the IMF. See *id.* Where appropriate, the IMF and FSF may provide joint risk assessments and mitigation reports.

The Declaration's reference to the FSF was an important one. Created in 1999 in the wake of the Asian financial crisis, the FSF mandate was to address vulnerabilities in the international financial system, identify and oversee action needed to address these vulnerabilities, and improve cooperation and information exchange among authorities responsible for financial stability.¹⁰⁸

The FSF's initial members consisted of the finance minister, central bank governor, and a supervisory authority from each of the G-7 countries, as well as representatives from the IMF, World Bank, Bank for International Settlements, Organization for Economic Cooperation and Development, Basel Committee on Banking Supervision, International Accounting Standards Board, International Association of Insurance Supervisors, International Organization of Securities Commissions, Committee on Payment and Settlements Systems, and Committee on the Global Financial System.¹⁰⁹ After its creation, the FSF added the European Central Bank, and additional national members Australia, Hong Kong, the Netherlands, and Switzerland.¹¹⁰

A persistent criticism of the FSF was that it excluded developing or emerging economies.¹¹¹ FSF's chairman Crockett's explanation for this lack of representation was that the FSF could be more effective if it was "homogeneous."¹¹² While that explanation was arguably

Letter from Dominique Strauss Kahn, IMF Managing Dir. & Mario Draghi, FSF Chairman, to G-20 Ministers and Governors (Nov. 13, 2008), *available at* http://www.financialstabilityboard.org/publications/r_081113.pdf.

¹⁰⁸ See George Walker, *A New International Architecture and the Financial Stability Forum*, in *THE REFORM OF THE INTERNATIONAL FINANCIAL ARCHITECTURE* 119, 130 (Rosa M. Lastra ed., 2000) (discussing the creation of the FSF). The FSF's mandate and its organizational structure grew out of a report commissioned by the G-7 in 1998 written by Bundesbank President Dr. Hans Tietmeyer. See HANS TIETMEYER, *INTERNATIONAL COOPERATION AND COORDINATION IN THE AREA OF FINANCIAL MARKET SUPERVISION AND SURVEILLANCE I* (1999), *available at* http://www.financialstabilityboard.org/publications/r_9902.pdf. Tietmeyer presented his report to the G-7 finance ministers and central bank governors in February 1999, and the FSF convened for the first time in April 1999 under Chairman Andrew Crockett. See Walker, *A New International Architecture and the Financial Stability Forum*, at 128–29 (discussing the creation of the FSF).

¹⁰⁹ Walker, *A New International Architecture and the Financial Stability Forum*, *supra* note 108, at 129.

¹¹⁰ See Rolf H. Weber & Douglas W. Arner, *Toward a New Design for International Financial Regulation*, 29 U. PA. J. INT'L L. 391, 413 n.63 (2007) (listing member states of the FSF as of 2007).

¹¹¹ See Jason Liberi, Comment, *The Financial Stability Forum: A Step in the Right Direction . . . Not Far Enough*, 24 U. PA. J. INT'L ECON. L. 549, 571–74 (2003) (discussing criticisms of the FSF).

¹¹² *Id.* at 573.

defensible in 1999, it clearly lacked legitimacy nearly a decade later in the context of a global crisis that emanated from the United States and significantly affected emerging and developing economies. Thus, the November summit's leaders understood that emerging economies could no longer remain voiceless in matters relating to the international financial system.

2. *IMF Announcements Prior to the London Summit*

Given the November summit's March 31, 2009, deadline for implementation of various measures to address the crisis and the deepening of the crisis itself, constituencies throughout the world greatly anticipated the April G-20 summit in London. However, just prior to the summit, two developments, both related to IMF conditionality, drew considerable attention.

First, the IMF announced reforms to its conditionality regime, reforms that responded to the critiques of conditionality addressed above.¹¹³ Recognizing that IMF loans were overloaded with conditions that did not focus on the IMF's core areas of expertise,¹¹⁴ it announced that it would rely on "pre-set qualification criteria (ex-ante conditionality) where appropriate rather than on traditional (ex-post) conditionality."¹¹⁵ This change in the Fund's approach to conditionality is embodied in a new lending instrument: the Flexible Credit Line (FCL). As stated by the IMF, the FCL is intended for

countries with very strong fundamentals, policies, and track records of policy implementation FCL arrangements would be approved for countries meeting pre-set qualification criteria. Access under the FCL would be determined on a case-by-case basis. Disbursements under the FCL would not be phased or conditioned to policy understandings as is the case under a traditional Fund-supported program.¹¹⁶

Thus far, Mexico,¹¹⁷ Colombia,¹¹⁸ and Poland¹¹⁹ have secured FCL arrangements.

¹¹³ See *supra* notes 4–16 and accompanying text.

¹¹⁴ See Delonis, *supra* note 60, at 577 (stating that the expansion of the IMF's conditionality, surveillance, and consultations "has generated many criticisms of excessive IMF 'mission creep' . . .").

¹¹⁵ Press Release, International Monetary Fund, IMF Overhauls Lending Framework, (Press Release No. 09/85) (Mar. 24, 2009), <http://www.imf.org/external/np/sec/pr/2009/pr0985.htm>.

¹¹⁶ *Id.*

¹¹⁷ Press Release, International Monetary Fund, IMF Executive Board Approves US\$47 Billion Arrangement for Mexico Under the Flexible Credit Line (Press Release No. 09/130) (Apr. 17, 2009), <http://www.imf.org/external/np/sec/pr/2009/pr09130.htm>.

Second, in addition to announcing the creation of the FCL, the Fund announced that it is discontinuing the use of structural performance criteria in all Fund arrangements, opting instead to monitor structural policies via program reviews.¹²⁰ The Fund stated, “[w]hile structural reforms will continue to be integral to Fund-supported programs where needed, their monitoring will be done in a way that reduces stigma, as countries will no longer need formal waivers if they fail to meet a structural reform by a particular date.”¹²¹

As the IMF’s carefully crafted language indicates, while these developments do not eliminate Fund involvement in structural transformations of member countries’ economies,¹²² they do hold promise that borrowers will gain more ownership of reform measures.

3. *The London Summit*

Like the November summit, participants had high hopes during the lead up to the London summit. U.K. Prime Minister Gordon Brown claimed the summit would launch a “grand bargain” among countries that would help end the global recession and set in motion reforms that would prevent future crises.¹²³ However, after a reality check, particularly with respect to differences between the United States and

¹¹⁸ John Lipsky, First Deputy Managing Dir., IMF, Remarks at the Seminar, Reshaping the Global Financial Landscape: Implications for Asia: Systemic Challenges for Global Finance and Priorities for Reform (May 18, 2010) (“Mexico, Columbia, and Poland have used the FCL successfully to help stabilize their financial markets during the crisis.”).

¹¹⁹ Press Release, International Monetary Fund, IMF Executive Board Approves US\$20.58 Billion Arrangement for Poland Under the Flexible Credit Line (Press Release No. 09/153) (May 6, 2009), <http://www.imf.org/external/np/sec/pr/2009/pr09153.htm>.

¹²⁰ INTERNATIONAL MONETARY FUND, FACTSHEET: IMF CONDITIONALITY, 2 (Apr. 2010) available at <http://www.imf.org/external/np/exr/facts/pdf/conditio.pdf>. “Program reviews provide a framework for the Executive Board to assess periodically whether the IMF-supported program is broadly on track and whether modifications are necessary for achieving the program’s objectives Reviews normally entail monitoring whether agreed targets (conditionality) have been met.” *Id.*

¹²¹ Press Release, International Monetary Fund, IMF Overhauls Lending Framework, *supra* note 115.

¹²² See Bob David et al., *The Word on IMF’s Task in Greece: Herculean*, WALL ST. J., May 29, 2010, at A8 (“For the International Monetary Fund and its allies . . . the €10 billion . . . Greek rescue package is an unprecedented opportunity to remake one of Western Europe’s most shuttered and regulated economies.”).

¹²³ Prime Minister Gordon Brown, Monthly Press Conference (Feb. 19, 2009), available at <http://www.londonsummit.gov.uk/en/media-centre/latest-news/?view=Speech&id=13785689> (describing the “grand bargain”).

Europe over additional stimulus measures, participants lowered their expectations.¹²⁴

Nevertheless, participants concluded the London summit with great fanfare, with a number of “announceables” of significance to emerging and developing countries. Through a creative use of numbers, the summit leaders declared that, in addition to a fiscal stimulus of \$5 trillion, they had agreed upon “an additional \$1.1 trillion programme of support to restore credit, growth and jobs in the world economy.”¹²⁵ Recognizing that global recovery must include emerging and developing economies—the engines of recent world growth—the leaders agreed 1) to triple the resources available to the IMF to \$750 billion, 2) to support a new SDR allocation of \$250 billion,¹²⁶ 3) to support at least \$100 billion of additional lending by the multilateral development banks, 4) to ensure \$250 billion of support for trade finance, and 5) to use additional resources from agreed IMF gold sales for concessional finance for the poorest countries.¹²⁷ The leaders also reiterated that they were “determined” to reform international financial institutions, such as the IMF, to ensure that emerging and developing economies have greater voice

¹²⁴ See, e.g., Henry Chu, *Finance Ministers Promise Action on Global Crisis but Not Increased Spending*, L.A. TIMES, Mar. 15, 2009, available at <http://articles.latimes.com/2009/mar/15/world/fg-europe-economy15> (discussing differences between the United States and the United Kingdom leading up to the summit); Associated Foreign Press, *G20 Needs to Act: Action on Global Financial Crisis: Analysts*, WA TODAY (Austl.), Apr. 1, 2009, available at <http://www.watoday.com.au/world/g20-needs-to-act-action-on-global-financial-crisis-analysts-20090401-9jor.html> (discussing the divide between United States and Europe); Steve Richards, *Woolly Words Expose Weakness of Leaders' Convictions*, INDEP., Apr. 2, 2009, <http://www.independent.co.uk/opinion/commentators/steve-richards/steve-richards-woolly-words-expose-weakness-of-leaders-convictions-1659990.html> (discussing Brown's and Obama's uncertainties going into the summit).

¹²⁵ G-20 London Communiqué, *supra* note 93, at ¶ II.

¹²⁶ This was followed by an additional \$33 billion allocation, amounting to a ten-fold increase in the outstanding stock of SDRs. Press Release, International Monetary Fund, IMF Governors Formally Approve US\$250 Billion General SDR Allocation (Press Release No. 09/283) (Aug. 13, 2009), <http://www.imf.org/external/np/sec/pr/2009/pr09283.htm>. Approximately \$110 billion was allocated to emerging markets and developing countries, including over \$20 billion to low-income countries. INTERNATIONAL MONETARY FUND, THE IMF AND CIVIL SOCIETY: LOW INCOME COUNTRIES TO BENEFIT FROM IMF ALLOCATION OF SDRs (Aug. 31, 2009), <http://www.imf.org/external/np/exr/cs/news/2009/CSO82.htm>. SDRs are an important part of a member country's official reserves because, through trading arrangements between IMF member countries, they can be exchanged for hard currencies, such as the U.S. dollar, euro, yen, or pound sterling. *Id.*

¹²⁷ G-20, *Declaration on Delivering Resources Through the International Financial Institutions*, 1-2 (2009), http://www.g20.org/Documents/Fin_Deps_IFI_Annex_Draft_02_04_09_-_1615_Clean.pdf.

and representation.¹²⁸ The declaration, however, lacked any newly agreed upon reforms.

By contrast, with respect to strengthening financial supervision and regulation, the leaders agreed to establish a new Financial Stability Board (FSB) as a successor to the FSF.¹²⁹

The purpose of the change was to give the FSF “a stronger institutional basis,” so that it could more effectively assist and collaborate with national authorities, standard setting bodies, and international financial institutions in addressing vulnerabilities and implementing strong regulatory, supervisory, and other policies in the interest of financial stability.¹³⁰

Importantly, the membership of the FSB’s Plenary, the decision-making organ of the body,¹³¹ includes the current FSF members, in addition to the rest of the G-20, Spain, and the European Commission.¹³² This means that in addition to the FSF’s mandate to assess vulnerabilities affecting the financial system, identify and oversee action needed to address them, and promote coordination and information exchange among authorities responsible for financial stability, emerging economies that are members of the FSB will:

- Monitor and advise on market developments and their implications for regulatory policy;
- Advise on and monitor best practice in meeting regulatory standards;
- Undertake joint strategic reviews of the policy development work of the international standard setting bodies to ensure their work is timely, coordinated, focused on priorities, and addressing gaps;
- Set guidelines for, and support the establishment . . . of . . . , supervisory colleges;
- Support contingency planning for cross-border crisis management, particularly with respect to systemically important firms; and

¹²⁸ G-20 London Communiqué, *supra* note 93, at ¶ 20.

¹²⁹ *Id.* at ¶ 15.

¹³⁰ G-20, *Declaration on Strengthening the Financial System*, 1 (2009), http://www.g20.org/Documents/Fin_Deps_Fin_Reg_Annex_020409_-_1615_final.pdf.

¹³¹ *Bank for International Settlements, Financial Stability Forum Re-Established as the Financial Stability Board*, available at <http://www.bis.org/press/p090403.htm>.

¹³² *London Communiqué*, *supra* note 93, at ¶ 15.

- Collaborate with the IMF to conduct Early Warning Exercises.¹³³

Thus, emerging economies now have the potential to play an integral role in strengthening the global financial system in the context of international cooperation (e.g., developing a framework for cross-border bank resolution arrangements), prudential regulation (e.g., working with accounting standard setters to implement recommendations to mitigate pro-cyclicality), and broadening the scope of regulation (e.g., developing effective oversight of hedge funds).¹³⁴

4. *The Pittsburgh Summit*

At the Pittsburgh summit held in September 2009, the participants declared that, because of the globally coordinated efforts to stem the crisis, the world's economy was in the "midst of a critical transition from crisis to recovery."¹³⁵ Accordingly, the summit's leaders agreed to a number of measures of importance to both developed and developing countries. They ranged from "a Framework for Strong, Sustainable and Balanced Growth,"¹³⁶ to "Strengthening the International Financial Regulatory System,"¹³⁷ to "Energy Security and Climate Change."¹³⁸

They also agreed to measures specifically intended to increase the voice of emerging and developing countries international financial and economic matters. First, in recognition of the multipolar economic world that has developed since the collapse of the Bretton Woods system, the leaders agreed to abandon the G-7/8 as the principal forum for discussion global economic and financial issues. Henceforth, the G-20 will be the "premier forum" for international economic cooperation.¹³⁹

Second, in response to the drumbeat for governance reform at the IMF, the summit leaders made the following statement:

Modernizing the IMF's governance is a core element of our effort to improve the IMF's credibility, legitimacy, and effectiveness. We recognize that the IMF should remain a quota-based organization and that the distribution of quotas should reflect the relative weights

¹³³ *G-20, Declaration on Strengthening the Financial System*, *supra* note 128, at 1.

¹³⁴ See *G-20 London Communiqué*, *supra* note 93, at ¶ 15.

¹³⁵ *G-20 Pittsburgh Communiqué*, *supra* note 93, at 1.

¹³⁶ *Id.* at 2.

¹³⁷ *Id.* at 7.

¹³⁸ *Id.* at 13.

¹³⁹ *Id.* at 19.

of its members in the world economy, which have changed substantially in view of the strong growth in dynamic emerging market and developing countries. To this end, we are committed to a shift in quota share to dynamic emerging market and developing countries of at least five percent from over-represented to under-represented countries using the current IMF quota formula as the basis to work from. We are also committed to protecting the voting share of the poorest in the IMF. On this basis and as part of the IMF's quota review . . . we urge an acceleration of work toward bringing the review to a successful conclusion. As part of that review, we agree that a number of other critical issues will need to be addressed, including: the size of any increase in IMF quotas, which will have a bearing on the ability to facilitate change in quota shares [and] the size and composition of the Executive Board As part of a comprehensive reform package, we agree that the heads and senior leadership of all international institutions should be appointed through an open, transparent and merit-based process. We must urgently implement the package of IMF quota and voice reforms agreed in April 2008.¹⁴⁰

This is a significant statement. But it does not represent a revolution in IMF governance. As to the quota shift, the BRIC (Brazil, Russia, India, and China) countries pushed for a seven percent shift, which would have given developing countries, currently holding about forty-four percent of the quotas, a majority share.¹⁴¹ The proposed shift hardly indicates that the United States and European nations have agreed to cede control of the IMF. Changing the composition of the Executive Board is key to giving emerging and developing countries greater voice in the Fund's governance, but actually accomplishing a change, such as reducing the over-representation of European countries on the Board,¹⁴² is easier said than done. And while it is significant that there is now a consensus

¹⁴⁰ *Id.* at 11. The leaders also "stressed the importance of adopting a dynamic formula at the World Bank which primarily reflects countries' evolving economic weight and the World Bank's development mission, and that generates an increase of at least 3% of voting power for developing and transition countries, to the benefit of under-represented countries." *Id.* at 3.

¹⁴¹ *Five Per Cent Share in IMF is a Compromise Figure: PM*, *ECON. TIMES* (India), (Sept 26, 2009), available at <http://economictimes.indiatimes.com/5-share-in-IMF-compromise-figure/articleshow/5059158.cms>.

¹⁴² "Euro zone member states face pressure to lower their representation at the IMF [to just one single IMF seat] to make more room for China and other emerging economies, which are playing an increasingly important role in financing the Fund." Marcin Grajewski, *Update 3-Euro Zone Ministers Disagree Over Single IMF Seat*, *REUTERS* (July 6, 2009), available at <http://www.reuters.com/article/idUSL621322220090706>. However, "[e]uro zone finance ministers [disagree] . . . over whether they should have a single representation at international financial institutions despite being increasingly willing to speak with one voice." *Id.*

that choosing the leaders of the IMF and World Bank should be accomplished in a transparent and merit-based procedure, it is not clear how the process will work in practice.¹⁴³

5. *The Seoul Summit*

In November 2010, leaders of the G-20 summit went to Seoul to tackle global trade imbalances, currency values—particularly the value of the yuan, and financial regulation. The summit took place amid observations that global cooperation to solve economic problems had weakened considerably since the first summit and that the G-20 was in “serious difficulties.”¹⁴⁴ Not surprisingly, then, the leaders made little progress with respect to the first two issues, which are particularly important to emerging and developing countries. The United States sought to reach agreement on numerical limits for current account deficits and surpluses (no more than four percent of gross domestic product), but the most the leaders could agree on was to formulate “indicative guidelines” to measure “large imbalances that require preventive and corrective actions to be taken.”¹⁴⁵ Regarding currency values and the United States’ view of the undervaluation of the yuan, the leaders made the tepid commitment to move “toward more market-determined exchange rate systems,” enhance exchange rate flexibility, and avoid competitive devaluations.¹⁴⁶ As to the last

¹⁴³ See INTERNATIONAL MONETARY FUND, EXECUTIVE BOARD PROGRESS REPORT TO THE IMFC: THE REFORM OF FUND GOVERNANCE, 3 (Apr. 21, 2010), available at <http://www.imf.org/external/np/pp/eng/2010/042110a.pdf> (noting that while the 2007 Fund decision on selection of the Managing Director represented an important step in establishing a transparent and merit-based process, “the Executive Board recognizes that the extent to which a revised framework for the selection of the Managing Director succeeds . . . will depend on whether the Fund’s membership is willing to take full advantage of it”).

¹⁴⁴ Chris Giles & Christian Oliver, *Leaders Pressed to Close Policy Rifts*, FIN. TIMES, (London), Nov. 10, 2010, available at http://www.ft.com/cms/s/0/6a0d3fba-eb8a-11df-bbb5-00144feab49a,dwp_uuid=a922e026-ebb5-11df-bbb5-00144feab49a.html#axzz1Bc12RrvN.

¹⁴⁵ The G20 Seoul Summit Leaders’ Declaration, November 11–12, 2010, at ¶ 9 [hereinafter Seoul Summit Declaration] available at http://www.g20.org/Documents2010/11/seoulsummit_declaration.pdf.

¹⁴⁶ *Id.* The United States, in fact, was on the defensive because of the U.S. Federal Government’s attempt to stimulate the economy by engaging in a \$600 billion quantitative easing program. China and other nations blamed the stimulus program for downward pressure on the dollar, resulting in destabilizing capital flows to emerging economies. See Norbert Wagner & Michal Machnowski, *The G20-Summit in Korea—Reactions from the U.S.*, Konrad-Adenauer-Stiftung, Nov. 19, 2010, <http://www.kas.de/usa/en/publications/21170/>. Accordingly, the summit communiqué stated: “Advanced economies, including those with reserve currencies, will be vigilant against excess volatility and disorderly movements in exchange rates. These actions will help mitigate the risk of excessive

issue, however, the leaders claimed success in endorsing a “landmark agreement reached by the [Basel Committee on Banking Supervision] on the new bank capital and liquidity framework”¹⁴⁷ Dubbed “Basel III,” the framework addresses the weaknesses of Basel II that became evident as a result of the global financial crisis.¹⁴⁸ Although Basel III is not currently of great significance to the Global South, the rules on capital adequacy and liquidity will become increasingly important as the banking sectors of emerging and developing countries become more sophisticated.

Although giving emerging and developing economies greater voice in global economic and financial affairs was not high on the agenda, the Seoul summit resulted in what appeared to be further gains on this critical issue, especially with respect to IMF governance. The gains included 1) a shift “in quota shares to dynamic emerging market and developing and to under-represented countries of over 6% while protecting the share of the poorest,”¹⁴⁹ 2) a “doubling of quotas, with a corresponding rollback of the New Arrangements to Borrow (NAB) preserving relative shares,”¹⁵⁰ 3) “[g]reater representation for emerging market and developing countries at the Executive Board through two fewer advanced European chairs, and the possibility of a second alternate for all multi-country constituencies,”¹⁵¹ and 4) “[m]oving to an all-elected Board, along with a commitment by the IMF’s membership to maintain the Board size at 24 chairs”¹⁵²

Dominique Strauss-Kahn, the IMF’s Managing Director, declared that summit leaders’ commitments constituted “the most important reform in the governance of the institution since its creation.”¹⁵³ He also stated: “We put an end to a discussion which has been in the headlines for decades about the legitimacy of the institution.”¹⁵⁴

volatility in capital flows facing some emerging countries.” Seoul Summit Declaration, *supra* note 145, at ¶ 9.

¹⁴⁷ The G-20 Seoul Summit 2010, The Seoul Summit Document, at ¶ 29 (Nov. 12, 2010), available at <http://www.g20.utoronto.ca/2010/g20seoul-doc.html>.

¹⁴⁸ For text of Basel III, see Bank for International Settlements, *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (2010), available at <http://www.bis.org/publ/bcbs189.pdf>.

¹⁴⁹ Seoul Summit Document, *supra* note 147, at ¶ 16.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Sewell Chan, *I.M.F. Gains Sway but Its Authority is Uncertain*, N.Y. TIMES, Oct. 24, 2010, available at http://www.nytimes.com/2010/10/25/business/global/25_imf.html?ref=groupof20.

¹⁵⁴ *Id.*

India's finance minister was more circumspect: "The legitimacy of the IMF is increasing."¹⁵⁵ The increased legitimacy is reflected in the voting power of important emerging economies. China will become the third largest shareholder, behind the United States and Japan.¹⁵⁶ Russia, India, and Brazil will be among the top ten shareholders.¹⁵⁷

Although the reforms are important, one must be cautious about claiming that a profound change in favor of emerging economies is about to occur at the IMF. The United States, with approximately seventeen percent of the IMF's voting power, still retains the veto over key decisions, which require an eighty-five percent vote. Moreover, two-thirds of the six percent quota shift comes from developing countries, resulting in only a two percent shift to developing countries.¹⁵⁸ Ultimately, the proof will be in the pudding. The question remains whether the IMF's operations will reflect the voices of emerging and developing countries, even when decisions may run contrary to the interests of the United States and other developed member countries.¹⁵⁹

CONCLUSION

As a result of the global financial crisis, emerging economies are on the verge of acquiring voice—i.e., meaningful and effective representation in discourse at key "table[s]" relating to global economic and financial affairs. This has led some to exclaim that we are at the threshold of a new New International Economic Order!¹⁶⁰

Part of this new NIEO envisions a reformed IMF. Prior to the crisis, the IMF took steps to improve its governance and accountability vis-à-vis emerging and developing economies. The measures were limited, however. Consequently, the Fund's clients abandoned it. The Fund was once again on the brink of irrelevance. In August 2008, IMF lending totaled SDR 11.65 (approximately

¹⁵⁵ Sewell Chan, *G-20 Vows to Avoid Currency War*, N.Y. TIMES, Oct. 23, 2010, available at http://www.nytimes.com/2010/10/24/business/global/24g20.html?_r=1&ref=groupof20.

¹⁵⁶ *Id.*

¹⁵⁷ Chan, *supra* note 153.

¹⁵⁸ Statement of Jomo Kwame Sundaram, United Nations Webcast, (Nov. 16, 2010) available at <http://www.unmultimedia.org/tv/webcast/2010/11/general-assembly-media-stakeout.html>.

¹⁵⁹ See Chan, *supra* note 153 (quoting Jeffrey Chwieroth).

¹⁶⁰ See *Brazilian President Calls for New International Economic Order*, PEOPLE'S DAILY ONLINE, Jan. 30, 2010, <http://english.people.com.cn/90001/90777/90852/6883285.html>.

\$16.65 billion) as compared to SDR 76.84 (approximately \$116 billion) in September 2003, resulting in a significant drop in income (because of a drop in interest payments).¹⁶¹ The crisis not only revived the IMF, but it also created an opening for emerging economies to demand greater voice within the institution. Moreover, emerging economies demanded and obtained representation in fora that determine global economic and financial policy, as reflected in the shift in global economic policymaking from the G-7 to the G-20 and the expansion of the Financial Stability Forum (FSF) membership to include emerging economies.

These developments must not be overblown, however. As this Article has demonstrated, change in favor of emerging and developing countries has come only incrementally. Much work remains for the IMF to achieve governance reforms that will persuade its borrowers (and many critical observers) of its legitimacy.¹⁶² Moreover, not all observers believe the reforms are in the best interests of emerging and developing countries.¹⁶³ Even if the reforms are worthy, we have yet to see whether they will be effective in practice. For instance, will emerging economies and the G-20 generally be able to articulate economic policy coherently or is the forum too unwieldy?¹⁶⁴ And even if emerging economies such as China and India exercise their newfound voice, will they represent the interests of developing countries or will they be co-opted by the rich countries in the club? Only time will tell.

¹⁶¹ JONATHAN E. SANFORD & MARTIN A. WEISS, *THE GLOBAL FINANCIAL CRISIS: INCREASING IMF RESOURCES AND THE ROLE OF CONGRESS*, CONGRESSIONAL RESEARCH SERVICE, 7 (June 5, 2009), <http://www.usembassy.it/pdf/other/R40578.pdf>.

¹⁶² See COMMITTEE ON IMF GOVERNANCE REFORM, FINAL REPORT (Mar. 24, 2009), <http://www.imf.org/external/np/omd/2009/govref/032409.pdf>.

¹⁶³ See Paul Cammack, *All Power to Global Capital!*, 10 PAPERS IN THE POL. OF GLOBAL COMPETITIVENESS (2009) (reforms being pursued by international financial institutions and G-20 are dangerous and threaten to exploit the poor), <http://ssrn.com/abstract=1526227>.

¹⁶⁴ See Stephen Fidler, *WTO's Lamy: G-20 Yet to Fill Regulatory Gap*, WALL. ST. J., May 16, 2010.

