1-1-1992

The Bank for International Settlements: Keeping a Low Profile

G. Boyd Tarin

University of the Pacific; McGeorge School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/globe

Part of the International Law Commons

Recommended Citation


Available at: https://scholarlycommons.pacific.edu/globe/vol5/iss2/10

This Comments is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Global Business & Development Law Journal by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.
# The Bank for International Settlements: Keeping a Low Profile?

## Table of Contents

I. **Introduction** ................................... 840

II. **History of the Bank for International Settlements** 840  
   A. **Impetus for an International Bank** ............. 840  
   B. **The BIS under the Bretton Woods System** ........ 842  
      1. **The BIS' Relationship with the IMF** ........... 843  
      2. **The BIS' Relationship with the World Bank** .. 845  
   C. **Interaction with the EEC Central Banks** ........ 846  
   D. **The BIS' Role in Banking Stability** ............ 850  
   E. **The Basle Committee on Banking Supervision** ... 852

III. **The Modern Functions and Framework of the BIS** 856  
    A. **The Central Banks' Bank** ...................... 857  
    B. **Legal Structure** ................................ 857  
    C. **Legal Character** ................................... 859  
    D. **Support for the International Banking Community** 861  
    E. **Administrative Support** .......................... 862  
    F. **Fiduciary Support** ................................. 864

IV. **The Future of the BIS** ........................... 864  
    A. **An Apparent Move Towards A Central Bank?** ...... 864  
    B. **Advantages** ....................................... 867  
    C. **A Question of Intent** .............................. 868

V. **Conclusion** ..................................... 870
I. INTRODUCTION

The world's oldest international financial organization is the Bank for International Settlements (BIS).\(^1\) Despite its age, many practitioners know little about the BIS. The BIS' relative obscurity is due primarily to the bank's desire to keep a low profile. This comment is designed to introduce the reader to the intricate structure of the BIS, to alert practitioners to the changing role of the BIS in international finance, and to allay any fears that the BIS is becoming or has become the world central bank. Part one of this comment presents the historical development of the BIS.\(^2\) Part two explores the complex framework of the bank and its intricate web of committees and functions.\(^3\) Part three comments upon speculation that the BIS will become the world central bank and whether such a departure from the bank's low profile is either prudent or likely.\(^4\)

II. HISTORY OF THE BANK FOR INTERNATIONAL SETTLEMENTS

A. Impetus for an International Bank

World War I was the primary impetus for the creation of the BIS. In fact, prior to the BIS' formation, war was the primary impetus of international lending.\(^5\) Although some consideration had been given to the creation of a central banks' bank prior to the war,\(^6\) no action was taken until the aftermath of that war presented problems clearly calling for such a bank.

---

1. The Bank for International Settlements: A Profile of an International Institution (BIA/Profile, Basle, Switzerland), June 1991, at 1 [hereinafter A Profile].
2. See infra notes 5-133 and accompanying text (discussing the history of the BIS).
3. See infra notes 134-200 and accompanying text (discussing the modern framework and functions of the BIS).
4. See infra notes 201-29 and accompanying text (discussing the future posture of the BIS).
6. A Profile, supra note 1, at 1.
Before World War I, the world economy applied the gold standard to convert currency. However, the outbreak of the war caused such widespread disruption of trade and finance that many in the world financial community found themselves unable to convert their currencies into gold. As a result, the international community was no longer able to rely on the gold standard. Additional complications arose because the Western Allies had amassed a considerable amount of debt to the United States, and the system of German reparations payments had broken down.

The BIS was formed pursuant to an agreement at The Hague Conference on January 20, 1930 (Convention respecting the BIS). The Constituent Charter, the instrument founding the BIS, was signed in Rome on February 27, 1930. That Charter named Belgium, France, Germany, Great Britain, Italy, Japan, and [a] financial institution of the United States as founders of the bank. The Bank was chartered in Switzerland and, since its creation, has been located in Basle.

The Bank’s stated objectives were: “to promote the cooperation of central banks and to provide additional facilities for international
financial operations,"17 such as German war reparations payments. However, the promise of overseeing reparations payments was short-lived as these payments ceased some fourteen months after the BIS was formed.18

The world-wide depression and World War II diminished the already minor role the BIS played in international banking.19 Thus, it was not until post-war reconstruction that the BIS emerged as a noteworthy entity.20

B. The BIS under the Bretton Woods System

Since it was clear that World War II would leave Europe in a state of political instability and economic bankruptcy,21 the Western Allies met in Bretton Woods, New Hampshire during the last year of World War II to form an international payments system for the post-war world.22 Europe’s political and economic prosperity depended upon mutual cooperation towards its economic, social, and political development.23 However, the fact that Europe’s individual currencies were not fully convertible with one another hindered monetary coordination.24 The central banks were faced with an immediate need to restore currency convertibility and decided on a solution based on fixed exchange rates.25

18. Todd, supra note 5, at 16 (noting that U.S. bankers and bond investors lent $2.5 billion to Germany from 1924-31 to aid Germany in meeting its reparation obligations).
19. Id.
20. Id.; Cf. A Profile, supra note 1, at 3 (noting the BIS’ important role in intra-European arrangements from 1947-1958).
22. JAFFEE, supra note 7, at 551.
23. Works, supra note 21, at 485 (commenting that Western Europe’s future depended on an ability to develop “common bases toward a solution”); Norton & Hausen, supra note 21, at 252 (noting that many Europeans believed that the problem was common throughout Europe and should be solved by “European” means).
24. Works, supra note 21, at 485.
The Bretton Woods System introduced a fixed currency scheme indexed in U.S. dollars which were valued at $35 per ounce of gold. Hence, during the period of the Bretton Woods System, all currencies were fixed in terms of the U.S. dollar.

To foster mutual cooperation towards Europe's economic, social, and political development and to ensure that Europe's individual currencies were fully convertible with one another, the Bretton Woods Agreement created three important financial institutions: (1) The International Monetary Fund (IMF); (2) the World Bank; and (3) the General Agreement on Tariffs and Trade (GATT). The close relationship BIS has had with the former two organizations deserves discussion because these relationships support an argument that the BIS may become the world central bank.

1. The BIS' Relationship with the IMF

Hailed by some as a marker for the beginning of a new era of worldwide monetary stability, the IMF was designed to bring stability to a war-torn world, to promote world trade, and to speed up the world economic recovery. One of the original tasks of the IMF was to set fixed exchange rates among foreign currencies. All rates of exchange were keyed to the U.S. dollar.

In order to carry out its function, the IMF sold reserves for those countries which had a surplus balance of payments and lent reserves

---

27. JAFFEE, supra note 7, at 551.
28. MISHKIN, supra note 7, at 692.
29. JAFFEE, supra note 7, at 552 (discussing the fact that GATT and the World Bank were two important components to the Bretton Woods Agreement); MISHKIN, supra note 7, at 692 (commenting on the creation of IMF and its role under Bretton Woods). “GATT was designed to provide reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and to the elimination of discriminatory treatment in international commerce.” JAFFEE, supra note 7, at 552.
31. MISHKIN, supra note 7, at 692.
32. JAFFEE, supra note 7, at 551.
33. Id.
to countries which had a deficit balance of payments.\textsuperscript{34} If a participating nation experienced a continued deficit,\textsuperscript{35} the IMF would devalue the currency of that country.\textsuperscript{36}

By working together at various levels, the IMF and the BIS continue to facilitate monetary cooperation.\textsuperscript{37} In 1974, the BIS became the first non-member institution to be granted Special Drawing Rights (SDRs), the currency unit of the IMF.\textsuperscript{38} The IMF deposits SDRs\textsuperscript{39} into the BIS and the BIS extends credit to the IMF.\textsuperscript{40} The BIS observes both the work of the Interim Committee for the Board of Governors of the IMF on the International Monetary System, and meetings of the Finance Ministers and the central bank Governors of the Group of Ten (G-10) countries\textsuperscript{41} and their deputies.\textsuperscript{42}

Despite their similar roles in monetary cooperation,\textsuperscript{43} there are five key differences between the IMF and the BIS: (1) The IMF involves governments whereas the BIS involves Central Banks;\textsuperscript{44} (2) the BIS approach is "pragmatic" whereas the IMF approach is institutional;\textsuperscript{45} (3) financial assistance provided by the BIS is in accordance with generally accepted banking principles whereas the IMF concerns itself with conditions tied to economic and monetary

\begin{thebibliography}{99}
\bibitem{34} Mishkin, supra note 7, at 692-93.
\bibitem{35} Since 1970, the deficit or surplus amounts are measured in terms of Special Drawing Rights (SDRs) \textit{Id.} at 697 (noting SDRs operate as a paper substitute for gold).
\bibitem{36} \textit{Id.} at 692 (explaining that this doctrine was known as fundamental disequilibrium). See Jaffee, supra note 7, at 551-52 (providing a discussion of the workings of the equilibrium system).
\bibitem{37} Giovanoli, supra note 15, at 843. See notes 75-94 and accompanying text (discussing \textit{Fonds Européen de Coopération Monétaire} (FECOM) and its relationship to the BIS and noting that FECOM is also in the field of monetary cooperation).
\bibitem{38} Giovanoli, supra note 15, at 842.
\bibitem{39} \textit{Id.}
\bibitem{40} \textit{Id.}
\bibitem{41} The G-10 countries are: United States, United Kingdom, Canada, France, Germany, Italy, Netherlands, Belgium, Sweden and Japan.
\bibitem{42} Giovanoli, supra note 15, at 842.
\bibitem{43} \textit{Id.} (noting that the BIS and the IMF are joined by other Bretton Woods institutions, and of the European Monetary Cooperation Fund (EMCF) in the field of monetary cooperation, who also serve differing functions).
\bibitem{44} Giovanoli, supra note 15, at 842-43.
\bibitem{45} \textit{Id.} at 842-43. But see infra notes 110-33 and accompanying text (discussing the Basle Supervisory Committee which as an extension of the BIS has in effect attempted to impact standards for international banking).
\end{thebibliography}
The Bank For International Settlements

policy; the IMF is strictly an international organization whereas the BIS is a bank, holding 10-15% of the world's monetary reserves; and (5) the IMF is essentially global in membership, as opposed to the BIS membership, which is composed of only the central banks of leading industrial countries. Additionally, the IMF's currency unit is the SDR while the unit of measure for the BIS is the gold franc.

Although criticized as one of the Bretton Woods institutions which has outlived its usefulness, the IMF has demonstrated a capacity to respond effectively to the changing needs of the world economy. Currently, the IMF cooperates with GATT and the BIS. In 1981 and 1984, the BIS provided financial facilities to the IMF.

2. The BIS' Relationship with the World Bank

The World Bank, also known as the International Bank for Reconstruction and Development, was established under the Bretton Woods Agreement to facilitate the postwar redevelopment of Europe. It was essentially this agreement that rejuvenated the BIS. Beginning in 1947, the BIS became instrumental in

---

47. Id.
48. Id.
49. The gold franc is equivalent to 0.29032258 grams fine gold. Statutes of the BIS, supra note 17, at 11 n.2. The gold franc is also known as the franc germinal of 1803, the franc of the Latin Monetary Union (1865-1926), and the pre-1936 Swiss franc.
52. A Profile, supra note 1, at 7.
53. JAFFE, supra note 7, at 552.
54. Id. But see Todd, supra note 5, at 16 (criticizing the IMF's international loans format as typically resulting in uncollectible debt which is harmful to economic development).
55. Interestingly, the Bretton Woods Agreement called for the elimination of the BIS. Flexible Mystique, supra note 13, at 94 (pointing out that the United States wanted to close the BIS and a resolution was passed at the "Bretton Woods conferences in July 1944 . . . to do just that."). Even without such a resolution, BIS reduced operations before World War II, because of the Great Depression of the thirties and without its new role with the World Bank might have closed its doors.
establishing and operating various intra-European payment arrangements, most of which were created under the redevelopment scheme of the World Bank.\textsuperscript{56} In particular, the BIS assisted in the European Payments Union from 1950 to 1958; the BIS was the Depository for loans issued by the European Coal and Steel Community between 1954 and 1961; and the BIS assisted with the European Monetary Agreement (EMA) from 1958 to 1972.\textsuperscript{57}

During the past two decades, the BIS has worked with the World Bank in an informational capacity by offering statistics and assisting the World Bank, the Organization for Economic Corporation and Development (OECD), and the IMF in creating a publication on external debt.\textsuperscript{58} The BIS interacts with the OECD primarily in terms of publication, information exchange, and discussions regarding the international financial markets.\textsuperscript{59} In conjunction with the OECD, the BIS publishes semi-annual reports on foreign debt which includes trade-related nonbank credits, as well as lending information.\textsuperscript{60} The BIS has been collecting and distributing statistical data, concerning the financing of external surpluses and deficits of the G-10 countries, to the OECD since 1964.\textsuperscript{61}

\textbf{C. Interaction with the EEC Central Banks}

An overview of the BIS-European banking relationship is essential to understanding the views of those who believe the BIS will become the world central bank. For obvious reasons, there is a substantial rapport between the BIS and the banks of the EEC. Thus, it is helpful to become familiar with several European organizations

\begin{itemize}
  \item \textsuperscript{56} A Profile, supra note 1, at 3; Giovanoli, supra note 15, at 853.
  \item \textsuperscript{57} A Profile, supra note 1, at 8.
  \item \textsuperscript{58} Giovanoli, supra note 15, at 844-45. See Economic Developments and International Finance; Economic Briefs, 58 BNA BANKING REP. 327 (1992) (noting that IMF membership is a prerequisite to World Bank membership). Thus, the discussion regarding the relationship between the BIS and the IMF is also relevant as to the discussion regarding the World Bank discussion; Giovanoli, supra note 15, at 856 (commenting on a recent joint report on external debt statistics).
  \item \textsuperscript{59} Giovanoli, supra note 15, at 853.
  \item \textsuperscript{60} Id. at 856.
  \item \textsuperscript{61} Id.
\end{itemize}
and their relationships with the BIS to understand the future posture of these institutions as they move towards regulatory convergence.62

The current efforts of the European banking community may be traced to the Treaty of Rome which created the European Economic Community (EEC) in 1958.63 Pursuant to the Treaty, several Financial Committees were formed, the foremost of which was the Committee of Governors of the Central Banks of the Member States.64 The Committee of Governors was created to adopt procedures and compulsory consultations prior to exchange-rate changes and to refer questions of common interest on international monetary relations to the Monetary Committee.65

The BIS has hosted the Secretariat of the Committee of Governors of the Central Banks of the EEC Member States since 1964.66 The importance of the Committee has grown since the implementation of the European Monetary System (EMS)67 in March of 1979.68 Recently, the BIS restructured to accommodate its expanding duties69 by establishing three sub-committees: The

---

64. Works, supra note 21, at 485. Articles 103 through 108 constitute the framework through which several Financial Committees were formed. Id. Article 105 created the Consultive Monetary Committee. Acting under Article 107, the Consultive Monetary Committee created the Committee on Short-Term Economic Policy in 1960, and the Committee of Governors of the Central Banks of the Member States on May 8, 1964. Id. at 485-86. The Consultive Monetary Committee set out to form an Economic & Monetary Union (EMU) but, economic and political conditions prevented the EMU from achieving greater coordination of economic policies and monetary integration. Id. at 487-88.
65. Id. at 488; Giovanoli, supra note 15, at 854.
66. A Profile, supra note 1, at 5.
67. The EMS replaced the failing Economic and Monetary Union (EMU). Works, supra note 21, at 485. The EMU was to occur in three stages: Stage one (from 1970-71) fluctuations among EEC currencies would be reduced and co-ordination of economic policy would start; stage two (from 1972-75) limited fluctuation to one percent and taxes harmonized; and stage three (1976-78) EEC central bank and central reserves would be created, tax frontiers would be removed and parities would become totally locked. Id. at 484-85. In short, the EMU began to fail within months and never proceeded to stage two. Id. at 485.
68. Giovanoli, supra note 15, at 854.
69. One of the tasks of the Committee of Governors of the Central Banks is to gather information for the Monetary Committee. A Profile, supra note 1, at 4. For instance, the BIS set up a Euro-currency Standing Committee in 1971. Several issues regarding European currency developed during this time: (1) placement of central banks' reserves in the market (1971); (2) apparent lack of
Foreign Exchange Policy Sub-Committee, the Monetary Policy Sub-Committee, and the Banking Supervisory Sub-Committee.\textsuperscript{70}

As the Bretton Woods system was breaking down,\textsuperscript{71} and in response to the United States' abandonment of the gold standard, the Smithsonian Agreement by the IMF, in December 1971, provided for temporary suspension of stated par values for the currencies of the respective European states and provided that each nation could instead declare central rates for their currencies.\textsuperscript{72} For its part, the BIS played host to the European community in currency exchange discussions which resulted in the Basle Agreement of April 24, 1972. This Agreement created what has been called the "snake," or "snake in the tunnel," to provide narrower currency fluctuations between member states.\textsuperscript{73} The snake was developed as an effort to provide greater currency stability and to encourage intra-European trade.\textsuperscript{74}

In 1973, the EEC created the \textit{Fonds Européen de Coopération Monétaire} (FECOM),\textsuperscript{75} known in English as the European Monetary Cooperation Fund (EMCF), and subsequently established lines of credit and rules for the settlement of debts among participating countries.\textsuperscript{76} FECOM set forth the obligation of participating countries to coordinate their economic policies to the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{70} A Profile, \textit{supra} note 1, at 5.
\item \textsuperscript{71} See \textit{infra} notes 95-101 and accompanying text (describing the circumstances of the Bretton Woods System's collapse).
\item \textsuperscript{72} See Works, \textit{supra} note 21, at 488 (citing E.B. Decision No. 3463 (126/71) (Dec. 18, 1971), in Selected Decisions of the I.M.F. 14).
\item \textsuperscript{73} \textit{Id.} at 489. "if the exchange rates between each ... currency and the U.S. dollar were charted over time and the charts superimposed, the image of a snake would appear. The exchange rates among the snake currencies would fluctuate within the 2\% band to form its body while the body would squirm up and down over time in relation to the 4\% band of the dollar to form the tunnel." \textit{Id.} n.28.
\item \textsuperscript{74} \textit{JAFFEE, supra} note 7, at 553.
\item \textsuperscript{75} Giovanoli, \textit{supra} note 15, at 844 (citations omitted).
\item \textsuperscript{76} \textit{Id.} at 860-61; see generally Works, \textit{supra} note 21, at 497-98 (providing a general discussion of FECOM).
\end{itemize}
\end{footnotesize}
extent necessary for a smooth function of these arrangements.\textsuperscript{77} FECOM is a regional institution organized by the European Economic Community\textsuperscript{78} and a catalyst in creating a European economic and monetary union with a single currency and a European central bank.\textsuperscript{79}

FECOM originally created the snake\textsuperscript{80} as a chain of fixed exchange rates to encourage intra-European trade.\textsuperscript{81} However, by 1979 the snake had exceeded its usefulness and was superseded by the EMS.\textsuperscript{82} Under the EMS, fixed but adjustable exchange rates apply between member states.\textsuperscript{83} The advent of the EMS brought about cooperation between the BIS, the Committee of Governors, and FECOM.\textsuperscript{84}

The EMS created the European Currency Unit (ECU).\textsuperscript{85} The BIS administers the borrowing and lending operations adopted by the Community.\textsuperscript{86} In other words, the BIS currently acts as clearing agent for the ECU under the EMS.\textsuperscript{87} The BIS has held the private ECU settlement and clearing function since 1986.\textsuperscript{88}

\textsuperscript{77} Works, supra note 21, at 489.
\textsuperscript{78} Giovanoli, supra note 15, at 844.
\textsuperscript{79} Id.
\textsuperscript{80} See A Slow Wriggle, ECONOMIST, July 15, 1978, at 51 (noting that the Snake was launched in April 1972) [hereinafter Slow Wriggle]. Even though Britain, along with Denmark, joined soon after the launching of the Snake, it withdrew several months later, and by July of 1978 only Belgium, Germany, the Netherlands, Luxembourg & Denmark remained members. Id.
\textsuperscript{81} JAFFEE, supra note 7, at 553.
\textsuperscript{82} Works, supra note 21, at 483 (commenting that the 1979 enactment of the EMS has been argued to be one of the most outstanding events in the EEC's history; and that the principal objective of the EMS is to promote harmonization and integration of the economies of the member states through exchange-rate stability vis-a-vis the joint management of exchange rates); Giovanoli, supra note 15, at 860.
\textsuperscript{83} Giovanoli, supra note 15, at 854.
\textsuperscript{84} A Profile, supra note 1, at 5.
\textsuperscript{85} Giovanoli, supra note 15, at 858 (stating that the ECU is the successor to several prior methods of accounting for the European Communities which is analogous to the SDRs measurement used by the IMF) (citations omitted). See Works, supra note 21, at 484 (reporting that some have suggested that the ECU could soon become a rival to the U.S. dollar and the Japanese yen as a vehicle for international credit and finance).
\textsuperscript{86} Giovanoli, supra note 15, at 861 (noting that the BIS administers the ECU in accordance with the Regulations adopted by the Council of the EEC in February 1975 and March 1981).
\textsuperscript{87} Geert Linnebank, EMS Approaches 5th Anniversary Hailed as Success but Amid Some Disappointment, Reuters, Mar. 9, 1984, available in LEXIS, Nexis Library, Reuters.
\textsuperscript{88} Giovanoli, supra note 15, at 858. Cf. Linnebank, supra note 87 (noting that the BIS accepted the private clearing function only after considerable debate).
Measures taken in July of 1985 provide that ECUs may be used as swap collateral for intervention purposes. Additionally, the central banks of non-EEC countries may now hold ECUs. The BIS is among several international monetary institutions that may hold official ECUs, again demonstrating its unique posture among international banking institutions.

In summary, the BIS is extensively involved with the EEC Central Banks. The BIS: (1) Acts as Secretariat of the Board of Governors; (2) acts as FECOM’s agent; and (3) performs the principal function of FECOM, which is the settling of debts among the central banks of member states. Considering these roles, it is not difficult to envision the BIS as the central bank of the European community.

D. The BIS’ Role in Banking Stability

The Bretton Woods System set the stage for speculation and futures trading in foreign currencies. The BIS played a crucial role in countering the instability in the financial markets which resulted from speculation by: (1) Playing a key role in coordinating swap arrangements between U.S. monetary authorities and a number of central banks to reinforce confidence in the dollar and to provide emergency short-term liquidity to the system; (2) from 1960 to

---

90. Id.
91. Id.
92. A Profile, supra note 1, at 5; See infra notes 186, 189 and accompanying text (expanding on the BIS’ role as secretariat).
93. See infra notes 196, 197 and accompanying text (discussing FECOM and its relationship to the BIS).
94. Slow Wriggle, supra note 80, at 51.
95. Mishkin supra note 7, at 693-94 (using the term “speculative attack” to describe the trends of selling weak currency and buying strong currency which hastened changes in currency rates). The “speculative attack” which occurred in November of 1967 with the devaluation of the British pound is highlighted as an example. Id. at 693-95.
96. A Profile, supra note 1, at 4 (stating that the origins of these swaps began in 1962 within the framework of the BIS); Giovanoli, supra note 15, at 854 (discussing the network of swap arrangements and its origins in 1962 within the BIS’ framework). But see Henry T. D. Hu, Swaps, the Modern Process of Financial Innovation and the Vulnerability of a Regulatory Paradigm, 138 U. PA. L. REV. 333, 363 (1989) (suggesting that such swaps were first introduced secretly in the late
1992 / The Bank For International Settlements

1971, influencing monetary policy relating to currency valuation;\(^97\) (3) between 1961 and 1968, assisting the G-10 central banks' intervention and stabilization of the world gold markets;\(^98\) and (4) making liquid resources available to central banks in the form of credits, stand-by credits, marketable securities, swaps against gold,\(^99\) and guarantees.\(^100\) However, by 1971, the Bretton Woods fixed-rate system collapsed in the face of recurrent waves of speculation against a number of different currencies. The early swap arrangements were simply too few or inadequate for the task. Thus, the Bretton Woods System collapsed by May of 1971 due primarily to the system's inadequate method of compensating for massive sales of weak currency and massive purchases of strong currencies.\(^101\)

The collapse of the Bretton Woods System did not abrogate the Bretton Woods Agreement.\(^102\) The method of indexing currencies to gold, and the U.S. dollar, changed to a floating exchange rate system.\(^103\) Despite conversion to a floating system, the BIS maintained a gold pool until 1986, ensuring that prices on private markets corresponded to official gold prices according to the directives issued by the Governors of G-10 central banks.\(^104\) However, during the post Bretton Woods era the actions of the BIS can be characterized as reactive rather than preventative measures.\(^105\)

\(^97\) A Profile, supra note 1, at 3.
\(^98\) Id. (noting that the G-10 countries "co-ordinated their interventions in the gold markets through the so-called gold pool").
\(^99\) See supra note 96 and accompanying text (discussing swaps against gold).
\(^100\) Giovanoli, supra note 15, at 852.
\(^101\) MISHKIN, supra note 7, at 693.
\(^102\) Brady Remarks, supra note 50, at 239. The Bretton Woods Committee continues to meet on an annual basis and despite continued criticism that the Agreement has outlived its usefulness, appears to occupy a permanent position in world financial affairs. Id.
\(^103\) MISHKIN, supra note 7, at 697-98; JAFFEE, supra note 7, at 555-56.
\(^104\) Giovanoli, supra note 15, at 853-54. 
\(^105\) See infra notes 110-19 and accompanying text (discussing several financial disasters and the corresponding reactions by the BIS).
The Transnational Lawyer / Vol. 5

The shift to floating exchange rates in March of 1973 highlighted the need for coordination among central banks of major trading countries, and for regular exchanges of information about the exchange markets and about central banks' interventions in those markets.\textsuperscript{106} The BIS membership was concerned with potentially damaging fluctuations in exchange rates.\textsuperscript{107} Furthermore, the internationalization of financial markets, particularly in the seventies and eighties, called for a greater degree of cooperation between the central banks.\textsuperscript{108} To cope with these needs, the BIS established a Standing Committee of the G-10 central banks (G-10 Standing Committee).\textsuperscript{109} The G-10 Standing Committee meets regularly to address current issues in international banking. Its actions, including the formation of various committees, and the adoption of statements, concordats, and accords, raises the question of whether the BIS is a de facto world central bank.

E. \textit{The Basle Committee on Banking Supervision}

The early seventies were marked by considerable financial instability and tremendous growth in international banking.\textsuperscript{110} The breakdown of the Bretton Woods System was perhaps a by-product of increased international trade, and a forewarning of financial troubles to come. In 1974, the largest bank in Germany, Bankhaus Herstatt, collapsed due primarily to its international operations.\textsuperscript{111}

\begin{itemize}
\item \textsuperscript{106} \textit{A Profile}, supra note 1, at 4.
\item \textsuperscript{107} Giovanoli, \textit{supra} note 15, at 854.
\item \textsuperscript{108} See, Mishkin, \textit{supra} note 7, at xii-xiii; \textit{A Profile}, supra note 1, at 4 (citing need for deeper cooperation and understanding among central banks). See generally Todd, \textit{supra} note 5 (providing a detailed historical view of the financial difficulties of the '70's and '80's).
\item \textsuperscript{109} \textit{A Profile}, supra note 1, at 4.
\item \textsuperscript{110} Todd, \textit{supra} note 5, at 21-29.
\item \textsuperscript{111} Ulrich Hess, \textit{The Banco Ambrosiano Collapse and the Luxury of National Lenders of Last Resort with International Responsibilities}, 22 N.Y.U. J. INT'L L. & POL. 181, 186-87 nn.18-20 (1990) (commenting that the Herstatt affair resulted in large part from fraudulent bookkeeping as well as speculation in foreign currency).
\end{itemize}
Later in 1974, Franklin National Bank failed due primarily to its inability to adapt to changing international markets.112

Before December 1974, there was no international organization to coordinate international banking regulation.113 In response to this void, and to the failures of Bankhaus Herstatt, Hessische Landesbank Girozentrale, Westdeutsche Landesbank Girozentrale, and Franklin National, the central bank governors of the G-10 countries and Switzerland established the Basle Committee on Banking Supervision (Committee)114 at the close of 1974.115


114. At the outset of this discussion it should be noted that in theory the BIS is distinct from the Committee (except for the fact that the BIS acts as secretariat to the Committee). Id. at 355. However, the members of the Committee, with the exception of the representatives of Canada, Luxembourg, the Netherlands, and Sweden, are identical to the charter members of the BIS. Compare supra note 13 and accompanying text with infra note 115 (giving founder nations of the BIS and member nations of the Committee).

115. Cane & Barclay, supra note 112, at 355-56 (indicating that the creation of the Committee was a response to the fact that the primary cause of bank failure was due to international banking operations); A Profile, supra note 1, at 4 (noting that the Secretariat of the Committee is provided by the BIS). The name of the Committee has changed to the Basle Committee on Banking Supervision and is often referred to as the Cooke Committee, named after its former chairman, Peter Cooke of the Bank of England. Cane & Barclay, supra note 112, at 355-56 n.322. See, Hess, supra note 111, at 186-87 nn.18-20 (discussing the Herstatt affair as prompting the establishment of the Committee).

The Committee consists of:

<table>
<thead>
<tr>
<th>Country</th>
<th>Representative Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>National Bank of Belgium</td>
</tr>
<tr>
<td></td>
<td>Banking commission</td>
</tr>
<tr>
<td>Canada</td>
<td>Bank of Canada</td>
</tr>
<tr>
<td></td>
<td>Office of the Inspector General of Banks</td>
</tr>
<tr>
<td>France</td>
<td>Bank of France</td>
</tr>
<tr>
<td></td>
<td>Banking Commission</td>
</tr>
<tr>
<td>Germany</td>
<td>Deutsche Bundesbank</td>
</tr>
<tr>
<td></td>
<td>Federal Banking Supervisory Office</td>
</tr>
<tr>
<td>Italy</td>
<td>Bank of Italy</td>
</tr>
<tr>
<td>Japan</td>
<td>Bank of Japan</td>
</tr>
<tr>
<td></td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Luxembourg Monetary Institute</td>
</tr>
<tr>
<td>Netherlands</td>
<td>The Netherlands Bank</td>
</tr>
<tr>
<td>Sweden</td>
<td>Sveriges Riksbank</td>
</tr>
<tr>
<td></td>
<td>Royal Swedish Banking Inspectorate</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Swiss National Bank</td>
</tr>
<tr>
<td></td>
<td>Swiss Federal Banking Commission</td>
</tr>
</tbody>
</table>
The theory behind the formation of the Committee was to provide banking authorities of the major industrialized nations a regular forum for cooperative discussion and common efforts in the prudential supervision area.\textsuperscript{116} During 1975 the Committee promulgated its first set of supervisory guidelines, often referred to as the original Basle Concordat.\textsuperscript{117} The Committee’s efforts were aimed at initiating a steady progression in international supervisory practices to achieve a standard model.\textsuperscript{118} The Committee adopted a very low profile and the 1975 Concordat was not intended to have a significant legal impact.\textsuperscript{119}

Although the 1975 Concordat managed to keep a low profile,\textsuperscript{120} it became a legally significant document since it formed guidelines for the international banking community.\textsuperscript{121} The Concordat’s first test came in the summer of 1982 when the largest bank in Italy, Banco Ambrosiano, collapsed and defaulted on loans from 250 of the world’s leading banks.\textsuperscript{122} The international banking community became critical of the Concordat and by the spring of 1983, efforts at

---

<table>
<thead>
<tr>
<th>U.K.</th>
<th>Bank of England</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>Federal Reserve Board</td>
</tr>
<tr>
<td>United States</td>
<td>Federal Reserve Bank of New York</td>
</tr>
<tr>
<td>United States</td>
<td>Office of the Comptroller of the Currency</td>
</tr>
<tr>
<td>United States</td>
<td>Federal Deposit Insurance Corporation</td>
</tr>
<tr>
<td>Secretariat</td>
<td>Bank for International Settlements</td>
</tr>
</tbody>
</table>


\textsuperscript{116} Norton, \textit{supra} note 115, at 1301 n.6.


\textsuperscript{118} Norton, \textit{supra} note 115, at 1336-37.

\textsuperscript{119} \textit{id.} at 1337 n.198, 1338 (noting that the 1975 Concordat was not publicized outside of the banking community until 1981 and not widely distributed until 1983).

\textsuperscript{120} See \textit{supra} note 119 and accompanying text (discussing Concordat’s low profile).

\textsuperscript{121} \textit{id.} at 1337 (expressing view that Concordats were implemented to lend legitimacy to potentially questionable extensions of jurisdiction by either parent or host countries’ banking authorities over nondomestic entities or subject matter).

a revision were in motion.123 Completed in May of 1983,124 the revised Concordat represented an additional effort by the Committee to coordinate international bank supervision.125 The original Concordat disappointed some in the international banking community because it failed to consider issues regarding lenders of last resort (LLR).126

In December of 1987, the Committee began work on what would become the Basle Accord.127 The purpose of the Accord was to develop an international risk-based capital framework.128 The
Committee distributed a consultative paper, *Proposals for International Convergence of Capital Measurements and Capital Standards*, otherwise known as the Basle Proposal. The risk-based capital requirements set forth in the Proposal represented a substantial increase in the reserve requirements of several countries, and was very restrictive in defining reduced risk weighings in capital calculations. The final draft of the Accord was completed in July of 1988 after considerable objection. The Basle Proposal was adopted with little modification despite dissatisfaction among many Committee nations, notably Japan.

### III. THE MODERN FUNCTIONS AND FRAMEWORK OF THE BIS

As one realizes from the foregoing discussion, the BIS is a complicated organization. Because the BIS has such a broad purpose, to promote the cooperation of central banks, a clear definition of its structure is elusive at best. This section describes the BIS’ function as the central banks’ bank. Further, it explains the formal structure of the bank, its legal character, and the mechanisms by which the BIS offers support to the international banking community.

---


130. Alexander Nicoll, *BIS Maps Out a Sounder Base for Banking*, *London Fin. Times*, Dec. 11, 1987, at 34, (indicating that Belgium, France and Japan would clearly be affected as they are viewed as having the lowest-capitalized banks).

131. *Id.* See David Lascelles, *U.S. Banks Win Rule Change on Capital*, *London Fin. Times*, July 12, 1988, at 44 (noting that U.S. lobbying efforts to broaden the definition of capital under the Accord prevailed).


134. *See supra* note 17 and accompanying text (explaining the purpose for the creation of the BIS).

135. *Flexible Mystique*, *supra* note 13, at 94 (noting the BIS' role has changed repeatedly over the years to meet the evolving needs of international banking).
1992 / The Bank For International Settlements

A. The Central Banks’ Bank

The BIS conducts general banking operations by assisting central banks in managing and investing reserves. At times, the Bank also lends to various countries, central banks, and national banks. Over eighty of the world’s central banks have deposits with the BIS. Funds not earmarked for loans to central banks are placed in highly liquid market investments such as deposits with commercial banks and purchases of short-term negotiable paper including Treasury bills.

The BIS acts as a lender to the world’s central banks in two ways. First, the BIS makes surplus liquid resources available to member central banks. Second, the BIS provides bridge financing, acting as a source of credit for central banks. Recently, bridge financing was provided in eastern Europe. Additionally, the bank trades on the foreign exchange and gold markets.

B. Legal Structure

The BIS is unique in that it is organized as a private bank but is owned and operated by the central banks of 29 countries. Although it is possible for an individual to own stock in the bank

136. A Profile, supra note 1, at 7.
137. Id. See David Buchan, West Ready to Extend Financial Aid for East Europe, LONDON FIN. TIMES, Dec. 14, 1989, at 12 (discussing willingness of industrial countries to use IMF to extend aid to Eastern Europe).
139. Id.
140. Id. (stating that these funds may be made available in such forms as “swaps against gold; covered credits secured by means of a pledge of gold or marketable short-term securities; credits against gold or currency deposits of the same amount and for the same duration held with the BIS; unsecured credits in the form of advances or deposits; or standby credits, which in individual instances are backed by guarantees given by member central banks.”).
141. Buchan, supra note 137, at 2; Giovanoli, supra note 15, at 852.
143. A Profile, supra note 1, at 2. Those countries include: Australia, Austria, Belgium, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States and Yugoslavia. Id.
(approximately 16% of the Bank’s stock is privately held), only bank members may vote their shares. Akin to a standard bank, the BIS is administered by the Board of Directors, the management, and the members who choose to exercise their authority at the general meeting.

Currently, there are three segments making up the Board of Directors. In the first segment, the ex officio directors consist of the Governors of the central banks of Belgium, France, Germany, Italy, the United States, and the United Kingdom. Each ex officio member appoints another member representative of finance, industry or commerce of the same nationality to serve on the Board. The final segment consists of not more than nine persons elected by the Board from the Governors of the central banks of countries in which shares have been subscribed, but excluding those countries with ex officio members.

The power to manage the BIS is vested in the bank President and the Chairman, both of whom are appointed by the Board. Traditionally, the president is selected from a smaller industrial country with less interest in international monetary affairs.

The general meeting is, in essence, an annual meeting of shareholders and generally takes place on the second Monday in June. The general meeting is distinguishable from a corporate

144. Giovanoli, supra note 15, at 849 (stating that the 16 percent represents the whole of the American issue and almost half of the Belgian and French issues).
145. A Profile, supra note 1, at 2. Chapter II of the Statutes of the Bank for International Settlements contains no section which excludes private ownership in the shares of the bank. Statutes of the BIS supra note 17, at 11-14. However, Article 12 does grant the BIS the power to decline to accept any person as the transferee of a share. Id. at 13.
146. A Profile, supra note 1, at 2.
147. See A Profile, supra note 1, at 2 (noting that “the United States does not occupy the two seats on the Board of Directors to which it is entitled under the Statutes”); Flexible Mystique, supra note 13, at 95 (indicating that the United States has never occupied its positions on the board in an attempt to eliminate the political interference of Congress).
148. Statutes of the BIS, supra note 17, ch. IV, art. 27, at 17.
149. Id.
150. Id.
151. Id.
152. Peter Montagnon, Belgian Elected to Head BIS, LONDON FIN. TIMES, July 11, 1984, at 12.
153. Id. at 19; A Profile, supra note 1, at 3.
annual meeting in that the only shareholders permitted to attend are BIS member central banks.  

C. Legal Character

To understand the legal makeup of the BIS it is helpful to recognize that the Bank has a dual character. First, the Bank is clearly an international organization, with the consequent international legal personality, privileges, and immunities customarily conferred on intergovernmental organizations. Second, the BIS is also a bank which is capitalized with issued stock. The legal structure of the BIS, however, is distinguishable from general corporate law in that it is controlled by the member central banks. Thus, the BIS is both an international organization and an international bank.

There are several views as to the legal character of the BIS. Prior to World War II, the popular view held that the BIS was a corporation. This interpretation recognized that the BIS was incorporated under Swiss law, and had certain special, but limited rights. However, this view seems to be of historic import only. A minority of commentators have chosen a more simplistic view of the Bank. That is, that the BIS is an association of central banks.

156. Id. (pointing out that the BIS has entered into several international treaties) These treaties included: (1) with France, the United Kingdom & the United States in 1948, Exchange of Letters Constituting an Agreement, 140 U.N.T.S. 187-95; (2) with Germany in 1953 & 1966, 1953 Bundesgesetzblatt [GBG1.] II 331, 380 (W.Ger.); 1966 GBG1. II 209, 436; and (3) the Headquarters Agreement with Switzerland in 1987, Accord entre le Conseil fédéral suisse et la Banque des Règlements Internationaux en vue de déterminer le statut juridique de la Banque en Suisse, du 10 février 1987, Recueil officiel des lois fédérales [RO] 8 (Mar. 3, 1987); Systematisehe Sammlung des Bundesrechts [SR] 0.192.122.971.3 (Switz.), reprinted in English in BANK FOR INTERNATIONAL SETTLEMENTS, BASIC TEXTS 29-30, (1989 reprint) (1987).
158. Id.
159. Id. at 844-45.
160. Id. at 845.
161. Id. (citation omitted).
162. Id. at 845 n.11 (explaining that since World War II, this view has only been upheld by Sereni).
banks, so exceptional as to be an organization *sui generis*.\textsuperscript{163}

Current doctrine suggests that the BIS is an international organization possessing an international legal personality similar to any intergovernmental organization, even though its members are not governments but central banks.\textsuperscript{164}

The Restatement of Foreign Relations Law offers an additional way to characterize the BIS. According to the Restatement, “an organization that is created by an international agreement and has a membership consisting entirely or principally of states” is, by definition, an international organization.\textsuperscript{165} The BIS would seem to meet this definition but for the fact that its membership is primarily composed of the central banks of member states.\textsuperscript{166} The comments to the Restatement distinguish an international organization from an international public corporation.\textsuperscript{167} According to the Restatement, the BIS is considered to be an international public corporation.\textsuperscript{168}

In terms of jurisdiction, the BIS enjoys considerable independence by and through its 1930 charter.\textsuperscript{169} The Arbitral Tribunal, established under The Hague Agreements of January 20, 1930, has jurisdiction to hear BIS disputes.\textsuperscript{170} Additionally, the Bank enjoys immunities pursuant to the Brussels Protocol of 1936.\textsuperscript{171} However, to ensure its credit standing, the BIS may be proceeded against, for disputes arising out of its regular banking operations, in any court of competent jurisdiction and its own assets

\textsuperscript{163} *Id.* at 845 (citations omitted).

\textsuperscript{164} *Id.* at 845-46.

\textsuperscript{165} *RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW* § 221 (1987) [hereinafter ].

\textsuperscript{166} See *supra* notes 143-45 and accompanying text (describing the membership of the BIS).

\textsuperscript{167} *RESTATEMENT*, *supra* note 165 at § 221 cmt. d (stating that “states have by agreement created entities for economic activities, known as ‘international public corporations,’ ‘intergovernmental corporations of private law,’ or ‘multinational public enterprises.’ Unlike international organizations as here defined, which are governed by international law or agreements, Comment a, international public corporations are subject to some regimen of private commercial law or to mixed international and private law.”).

\textsuperscript{168} *RESTATEMENT supra* note 165, at § 221 n.3.

\textsuperscript{169} Giovannoli, *supra* note 15, at 847.

\textsuperscript{170} *Id.*

(not the assets entrusted to the bank) may be subject to measures of compulsory execution.172

D. Support for the International Banking Community

Consistent with its 1930 charter, the BIS promotes cooperation among central banks by acting as a meeting place for the central bank Governors of the leading industrialized nations.173 Pursuant to its general mandate, the BIS offers a forum for bankers to meet, contemplate, and discuss the problems affecting international banking.174 The general nature of this function, coupled with the lavish BIS facilities, has earned the BIS a reputation as "a cultured talking shop, with little to show in the way of policy initiatives."175

Despite this criticism, concrete policy initiatives have developed from the BIS meetings. For example, because of discussions at the BIS meetings, the Basle Committee on Banking Supervision, the Basle Concordat, the Basle Accord, and several international supervisory organizations came to life.176 Additionally, the Basle meetings have offered regular opportunities for exchanges of views among most of the central banks of the OECD countries.177 Additionally, the meetings offer contacts with over eighty of the world's central banks including several from countries of the centrally-planned economies in eastern Europe.178

The BIS now provides assistance to the central banks of several former Easter block countries: Bulgaria, Czechoslovakia, Hungary, Poland, and Romania. Further, the BIS has provided bridging loans to facilitate IMF credits and pending World Bank financing.179

172. Statutes of the BIS, supra note 17, art. 55, at 25-27; Giovanoli, supra note 15, at 851.
174. Statutes of the BIS, supra note 17, ch. I, art. 3, at 11; Flexible Mystique, supra note 13, at 95; A Profile; supra note 1, at 3.
176. See supra notes 113-33 and accompanying text (setting forth the history of the Committee, Concordat, and Accord).
178. Id.
179. A Profile, supra note 1, at 2; Buchan, supra note 137, at 2.
members of the BIS understand that without credit assistance, a weak-currency country would have little to gain from a venture to stabilize its exchange rates because of the risks and costs involved. Thus, the BIS was instrumental in introducing the eastern European bankers to the mainstream of the West, but may have lagged behind the IMF in providing the necessary assistance.

The Committee on Banking Supervision has been a catalyst to the creation of other international supervisory banking organizations. The Committee has been associated with the creation of a commission of Latin American and Caribbean banking and inspection organizations and an organization of banking supervisors from Southeast Asia, New Zealand and Australia.

E. Administrative Support

In order to comply with the current rules of procedure, the Committee of Governors reorganized the BIS' internal structure. The Governors revised working procedures and formed three sub-committees to support the EEC central banks. These committees are the Foreign Exchange Policy Sub-Committee, the Monetary Policy Sub-Committee, and the Banking Supervisory Sub-Committee.

In addition to its other roles, the BIS performs secretariat functions for FECOM, the Committee of Governors of the EEC central banks, and the Basle Committee. A secretariat is the

---

181. Marsh, supra note 175, at 2 (suggesting that the BIS has responded with discussion and little action).
183. Id.
184. A Profile, supra note 1, at 5 (explaining the BIS' mandate is to provide additional support to the banking members of the European Monetary System).
185. Id.
186. See supra notes 75-94 and accompanying text (describing FECOM).
187. See supra notes 64-70 and accompanying text (describing the Committee of Governors of the EEC central banks).
188. See supra notes 111-33 and accompanying text (describing the Committee on Banking Supervision).
administrative department of an organization. The fact that the BIS is seen as a technical organization rather than a political organization emanates largely from its secretariat function.

As a result of its secretariat function, the BIS is in a position to influence greatly the decisions of three of the most influential organizations in the banking community. Additionally, the BIS has a member on both the Committee of Governors and the Basle Committee of Banking Supervision (which consists primarily of the same members that founded the BIS). Thus, the BIS may exert considerable influence over the organizations to which it serves as secretariat.

The goals of the BIS require consideration of a great deal of financial information. In response, the Monetary and Economic Department of the BIS conducts research, collects and publishes data on international banking developments, and runs an intra-central bank economic data bank. The research department has also produced: (1) The Cross Report; (2) a group of computer experts; (3) a group of experts on payment systems established by the central banks of G-10 countries; (4) a group of experts on monetary and economic data bank questions; and (5) expert assistance to eastern Europe. Additionally, the BIS supports its various committees, study groups, and departments with statistical research, financial data, and published reports from its Monetary and Economic Department. Further, the Bank is considered a reporting center for statistics on international banking.

189. CHAMBERS ENGLISH DICTIONARY 1330 (7th ed. 1988).
190. Giovanoli, supra note 15, at 850 (noting that the modern perception of the BIS is that of technical and bank oriented rather than political and institutional).
191. A Profile, supra note 1, at 6.
192. Id.
193. The Cross Report is also known as Bank for International Settlements, Recent Innovations in International Banking. Giovanoli, supra note 15, at 855. See supra note 69 (discussing the events leading up to the report).
194. Buchan, supra note 137, at 2; Giovanoli, supra note 15, at 855.
F. Fiduciary Support

The agent-trustee function is one of the statutory objectives of the BIS. In the past, the BIS has acted as an agent during the following situations: The multilateral payments agreements from 1947 to 1950; the European Payments Union (1950-58); the OECD Exchange Guarantee Agreement (1972-78); and the Act of Pledge for secured loans issued by the European Coal and Steel Community between 1954 and 1961. The BIS also acted as agent under the European Monetary Agreement (EMA) between 1958 and 1972. The BIS has been the agent for FECOM since the organization's creation in 1973. Since October of 1986, the Bank performed separate agency functions in connection with the operation of the private ECU clearing and settlement system. Pursuant to an agreement with the ECU Banking Association (EBA), the BIS took over administration from the Mutual ECU Settlement Account (MESA) banks consisting of Belgium, England, France, Italy, and Luxembourg.

IV. THE FUTURE OF THE BIS

A. An Apparent Move Towards A Central Bank?

The question of whether the BIS is becoming or has become the world central bank is of vital interest internationally as well as a domestically. Analogous to the Federal Reserve Bank of the United States, the formation of a world central bank would necessarily
involves banking regulation in areas such as liquidity. Hence, international interest rates and lending operations would be affected as a consequence. At least one commentator currently considers the BIS the “World Central Bank.” Indeed, the BIS may be at a juncture in its existence. But, is the BIS already the de facto world central bank?

The BIS acts as the agent for FECOM, which has been touted as an embryonic European central bank. Not only is the BIS the agent for FECOM, it actually performs FECOM’s principal function, which is the settling of debts among the central banks of member states. Although FECOM is clearly a regional institution organized by the EEC (as opposed to the BIS membership which covers five continents), FECOM is the driving force behind the creation of a European economic and monetary union, the creation of a single currency, and a European central bank. The BIS is deeply involved in these developments. Therefore, the BIS could appear to be functioning as the European central bank.

In understanding the de facto creation of an international organization, it is helpful to briefly discuss the concept of soft law. Soft law is recognizable by such titles as guidelines or declarations of principles (e.g., concordats and accords). The essential premise for effective soft law is an expectation that the states accepting these instruments will take their content seriously

203. Slow Wriggle, supra note 80, at 51.
204. Id. But see Giovanoli, supra note 15, at 844 (stating that the BIS is distinguishable from FECOM in several respects).
206. Giovanoli, supra note 15, at 844 n.10 (explaining that the European Council entrusted to a committee which included the General Manager of the BIS, the task of studying and proposing concrete stages leading towards the realization of economic and monetary union).
207. See Joseph Gold, Strengthening the Soft International Law of Exchange Arrangements, 77 AM. J. INT’L L. 443 (1983) (providing a discussion of soft law and its impact on international economies). Four elements tend to explain the concept of soft law: (1) common intent is implicit in the soft law as formulated and it is this common intent, when elucidated, that is to be respected; (2) the legitimacy of the soft law as promulgated is not challenged; (3) soft law is not deprived of its quality as law because failure to observe it is not in itself a breach of obligation; and (4) conduct that respects soft law cannot be deemed invalid. Id.
208. Id.

865
and give them some measure of respect.\textsuperscript{209} It has been strongly suggested that the soft law which applies to international economic relationships also applies to exchange arrangements.\textsuperscript{210} If this is a viable and prophetic observation, then over time one should expect the guidelines and declarations set out by the BIS and by the Committee on Banking Supervision to take the form of positive international law.\textsuperscript{211} In support of the argument that the BIS is the de facto world central bank, the BIS has been regulating international banking as would a world central bank, at least to the extent that the Concordat and Accord are recognized as affirmative obligations.

A world central bank would require the authority to enforce its regulations. Currently, there are two examples of the BIS enforcing its regulations. First, the Basle Accord is an enforceable agreement (not mere guidelines for cooperation)\textsuperscript{212} which sets liquidity standards for international banking.\textsuperscript{213} Under the Accord, the

\begin{verbatim}
209. Id. (noting that legal norms can also fall within meaning of soft law if the legal norm is not absolutely firm).
210. Id. at 444.
211. Gold, supra note 207, at 481. The author cautions the international lawyer not to always relying on this assumption, since by training, he is predisposed to find a transformation of soft law into firm legal obligations. Id. 481-82.
213. Bank for International Settlements, Committee on Banking Regulations and Supervisory Practices' Consultative Paper on International Convergence of Capital Measurement and Capital Standards, 30 I.L.M. 967, 994 (1991) (noting that the core capital element must be at least 4 per cent and stating that the text of the Accord sets a target standard ratio of capital to weighted risk at 8 per cent, and details a simple definition of capital and risk weights). The paper also sets forth the general considerations in the index:
I. THE CONSTITUENTS OF CAPITAL
  (a) Core capital (basic equity)
  (b) Supplementary capital
     (i) Undisclosed reserves
     (ii) Revaluation reserves
     (iii) General provisions/general loan loss reserves
     (iv) Hybrid debt capital instruments
     (v) Subordinated term debt
  (c) Deductions from capital
II. THE RISK WEIGHTS
  (i) Categories of risk captures in the framework
  (ii) Country transfer risk
  (iii) Claims on non-central-government, public-sector entities (PSEs)
  (iv) Collateral and guarantees
  (v) Loans secured on residential property
\end{verbatim}
Committee on Banking Supervision will continually monitor its application of the agreement. Additionally, it is the intent of the national authorities who are parties to the Accord to provide a fixed basis for promulgating national law or regulation. Switzerland has gone so far as to enforce the Accord judicially, the U.S. has promulgated regulations, and the EEC has created positive obligations under the Second Banking Directive.

Second, based on the European Communities’ plan to develop a comprehensive program for the financial sector, the EEC’s Second Banking Directive places the Committee on Banking Supervision in a powerful position regarding capital standards. In essence, the standards to be adopted by the Community will be set by the Committee. Thus, Credit Suisse, the United States Federal Reserve’s promulgation of regulations, and the Second Banking Directive have illustrated that the creation of enforceable law may merely require unilateral agreement among the members of the BIS.

B. Advantages

There are considerable advantages in establishing the BIS as the world central bank. As the world central bank, the BIS could capitalize upon its diverse experiences, practices, and mechanisms.

---

(vi) Off-balance-sheet engagements).
Id. at 980-84.
214. Hayward, supra note 212, at 791; Liechtenstein Introduction, supra note 127, at 967.
215. Compare William Dullforce, Seeking to Assure Analysts, LONDON FIN. TIMES, May 23, 1990, at 28 (stating Credit Suisse’s position that the Accord’s reserve requirements do not apply to holding companies) with Liechtenstein Introduction, supra note 127, at 967 (stating that Credit Suisse lost its case against the Federal Banking Commission and was ordered by the Swiss Federal Supreme Court, Second Public Law Division, to apply the capital rules to the holding company on December 11, 1990).
217. Liechtenstein Introduction, supra note 127, at 967. See Key, supra note 62, at 591 n.9 (stating that based on the European Communities’ plan to develop a comprehensive program for the financial sector, the Second Banking Directive of the Treaty of Rome places the Committee in a powerful position regarding capital standards, and that in essence, the standards which will be adopted by the community will be set by the Committee); George S. Zavvos, Banking Integration and 1992: Legal Issues and Policy Implications, 31 HARV. INT’L L.J. 463 (1990) at 466, 466-67.
218. Key, supra note 62, at 591 n.9.
219. Id. Zavvos, supra note 217, at 466.
Experience is the most important advantage. As has been detailed, the BIS:

(1) is world’s oldest international financial organization;
(2) has been involved in a considerable list of world banking problems;
(3) has provided bridge financing in critical economic times throughout the world, most recently in eastern Europe;
(4) under its Monetary and Economic Department, conducts research, collects and publishes data on international banking developments, and runs an intra-central bank economic data bank;
(5) enjoys a unique relationship with the World Bank, OECD and has Special Drawing Rights with the IMF;
(6) acts as clearing house for the public and private ECU;
(7) is well positioned to become the European Central Bank when a central bank is established pursuant to the Treaty of Rome; and
(8) has, through the Committee on Banking Supervision, promulgated the Basle Accord which has become an enforceable standard in world capital markets.

Additionally, one unexplored advantage of the BIS is the potential of using the dispute resolution mechanism set forth in The Hague Convention to resolve international banking disputes. For example, this mechanism could have been used to address the difficulties encountered by the lack of a lender of last resort in the Banco Ambrosiano and BCCI cases.220

C. A Question of Intent

In light of the preceding discussion, it would certainly appear that the BIS is the de facto world bank. However, the question remains as to whether the BIS intends to become the world central bank. This question has escaped those who currently view the BIS as the de fact

220. Statutes of the BIS, supra note 17, art. 54, at 22.
world central bank. Despite the functions performed by the BIS, there is little to show that its governors ever intended to make it the world central bank. First, the BIS plays no role in institutionalizing a monetary order; therefore, the creation of a European central bank and a single currency are objectives which are completely alien to it. Second, although the BIS performs the clearing house function of the ECU (both public and private), its governors hesitated for years at the prospect of accepting the responsibility. Finally, in order for the BIS to become the world central bank it would have to alter its fundamental purpose.

The BIS' purpose is to act as a forum for the exchange of information. The Bank is located in Basle, a considerable distance from any nation's capital, to avoid political pressures. The United States supported the political independence of the BIS by refusing to fill the two seats on the Board of Directors to which it is entitled under the BIS statutes. Thus, the power to regulate banking would in effect politicize the Bank, a result that the founders hoped to avoid.

The actions of the BIS alone should not be interpreted as an attempt to become the world central bank. To become the world central bank, the Committee and the general membership must resolve to accept this responsibility. In the past, the BIS has been reluctant to accept additional responsibility. Although it has been pointed out that the BIS "is not concerned with establishing . . . a set of rules to govern the international monetary system . . .," the Basle Committee on Banking Supervision seems to do just that.

221. Giovanoli, supra note 15, at 844.
222. Linnebank, supra note 87.
223. *Flexible Mystique*, supra note 13, at 95 (stating that the BIS was located in Basle, far from the political pressures of any national capital).
224. See supra note 147 (explaining that the United States' seats on the Board of Governors of the BIS are vacant).
225. Linnebank, supra note 87.
V. CONCLUSION

Has the BIS shed its low profile? To some extent it has not. The inner workings of the BIS remain mysterious. Bank governors seem to come and go under a cloak of secrecy. Yet, the actions of the BIS are no longer passive and reactive. The BIS has de facto control over the Committee on Banking Supervision through its secretariat function, and the bank's Board of Governors is virtually identical to the membership of that Committee. The advent of the Committee on Banking Supervision changed the BIS from its predominantly reactive posture to a position of leadership in the international banking community. The ever increasing involvement of the Committee suggests that this change has been taking place over the last decade. However, the Bank's move away from a low profile position is not tantamount to a move towards becoming the world central bank. It merely means that the Bank is exercising its paternal obligation in a more productive manner.

Although the BIS has been criticized as being a cultured talking shop, it has afforded the world banking community a politically neutral forum to discuss banking issues. Moreover, the BIS has provided the swing financing necessary to avoid several major banking crises. This would not have been possible if the institution would have been subject to the command of central governments as opposed to central banks.

Much has changed since the formation of the BIS. The internationalization of financial markets, the vast expansion of capital markets, and the widespread lack of bank supervision has led to major bank failures during the last three decades. These events have compelled the BIS to take actions which appear inconsistent with a

---

227. See supra notes 111-33 and accompanying text (setting forth the history of the Committee, Concordat, and Accord).

228. See supra note 175 and accompanying text (discussing criticism of the BIS).

229. See e.g., note 137 (noting the Eastern European example); Basle is back: the Controversy over IMF Gold Sales has Pushed the BIS back into the Headlines, ECONOMIST, Feb. 14, 1976, at 87 (describing the role the BIS played in bolstering the economy of the United Kingdom in 1961 by providing assistance of $900 million).
low profile. In short, it is not possible to maintain a low profile in today’s complex and high-tech international banking environment.

Although the BIS is in a unique position to bring together the European banking community as well as the world banking community, the move is neither compelling nor prudent. The BIS Governors are most certainly aware that the BIS best serves world banking interests by virtue of its flexibility. This flexibility emanates from the discretion the bank possesses; unfettered by political baggage.

In essence, many have failed to understand the place the BIS occupies in world financial circles. The BIS gives the world banking community a free forum for expressing concerns regarding financial stability. Its members, though regulators themselves, should be reluctant to relinquish the regulatory powers they now possess in order to establish a universal regime subject to the political forces of national self interest.

G. Boyd Tarin