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A Speculation on the Future of the Bank for International Settlements

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A Speculation on the Future of the Bank for International Settlements*

Carl Felsenfeld** and Genci Bilali***

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I. INTRODUCTION

Financial crises around the globe place countries at risk. Not only do less developed countries like Mexico and Argentina tremble from the inadequacies of their banking systems, but large and developed economies such as Japan suffer similar apprehension. As a result, national financial authorities find themselves looking for a type of international financial entity that can coordinate the efforts of these authorities in maintaining safety and soundness in their respective financial and banking sectors. This being the case, financial markets need the

* The ideas in this essay are more fully explored in an article by the same authors. *See generally* “*The Role of the Bank For International Settlements in Shaping the World Financial System*,” 25 U. PA. J. INT’L ECON. L. 945 (2004).

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assistance of an international institution that can regulate national banking systems and, in return, can avoid any future financial crisis.

Many ideas regarding the form and mission of a new international financial architecture already exist. Out of all the suggestions presented to the world financial community, the most appealing is creating a new “World Financial Authority.” However, attempts to develop a World Financial Authority proved unsuccessful, and this goal remains unfeasible. Because the world is composed of scores of independent regulatory regimes, it is unrealistic to expect nations to unite behind a singular government or multinational entity. Therefore, this article addresses one of the most difficult questions facing the Twenty-First Century: what is the degree of regulation that should be imposed upon a free enterprise society that will yield the benefits of economic freedom and control?

It will be argued that unlike creating a new organization, for which conditions seem unripe at the present or near future, the transformation of current international financial and banking institutions into a World Financial Authority presents a realistic opportunity. The authors believe that the Bank for International Settlements (“BIS”) is the proper institution to further consolidate international financial stability.

II. THE BANK FOR INTERNATIONAL SETTLEMENTS (“BIS”)

A. Creation and Overview of the BIS

During the 1930s, the BIS, gradually, and even by default or destiny, found its position in the international banking world as a crisis manager. In particular, Member States of the Convention of the Hague wanted to establish a financial organization, not necessarily a “real” bank, that would tackle the burden of arranging the reparation payments owed by Germany to various countries. In 1929, the BIS was founded in Basel, Switzerland, and, in response to the Convention’s Member States’ desire, the organization positioned itself as an advisor in the bank regulatory process by providing a place for central banks to meet and deliberate.

In addition, the BIS undertook the role of acting as a trustee for international loans issued to finance Germany’s reparations costs. Since the BIS officials considered managing this national financial crisis as achieving safety and soundness in the international banking and financial system, they encouraged the central banks to unite and manage the international financial crises of the 1930s, specifically through using current loan and debt defaults. When the problems surrounding German reparations were resolved by BIS officials, it was commonly believed that the BIS had fulfilled its functions and would be dissolved. This action seemed appropriate when the Bretton Woods Conference created the International Monetary Fund (“IMF”). Located in Washington D.C., it was assumed the IMF would have primary jurisdiction over managing the

world's future financial problems. As a result, the final declaration of the Bretton Woods Conference liquidated the BIS.

However, this liquidation never occurred. On the contrary, surrounded by mysticism and sheer luck, the BIS gradually became the center of the world banking system (the "central bank" of the central banks), the primary keeper of records, the situs for international banker meetings, and the source for regular reports on the financial condition of the world's governments and banks. As a result, the BIS became vital in deciding the ongoing issue of whether all national central banks, which were regularly accepted as the monitor of their own domestic money supply, should also have a bank regulatory function. The United States answered this question affirmatively by creating the Federal Reserve System to regulate many U.S. banks, particularly the largest banks. In contrast, England stripped its government's authority to regulate English commercial banks through the creation of the Financial Service Authority in 1997.

B. Original Members of the BIS

The original central bank members were the then major industrialized countries: France, Germany, Belgium, Italy, Japan, and the United Kingdom. Although the international banking community desperately desired to include the United States, the new U.S. central bank, the Federal Reserve Board ("Federal Reserve"), declined the invitation to this "central banker's club." Initially, the U.S. Congress had an unfounded fear and hesitation in allowing the Federal Reserve to play an integral part of the BIS forum. Most likely, Congress was not ready to release the authority and power it had to regulate both the domestic and international financial markets over to the BIS, the world's most powerful and influential bank regulatory agency. Nevertheless, in 1994, the Federal Reserve decided to join the BIS. Interestingly enough, the Federal Reserve's timing in joining the BIS corresponded with the European member countries establishing their own "central bank" named the European Central Bank. Perhaps the United States believed it was time to fill the empty shoes left by the founding European central bank members (U.K., Germany, France, Italy, etc).

C. Organizational Structure of the BIS

The BIS's organizational structure consists primarily of three bodies: the General Meeting, Board, and Management of the bank. The General Meeting is comprised of the BIS central bank members. The principal duties of the General Meeting include: approving the annual financial documentation of the BIS, appointing members to the Board, and amending the by-laws. The Board, headed by a Chairman, consists of governors of the BIS central bank members. The Board has authority to act on behalf of the BIS with third parties in various banking and financial transactions. A President, Vice President, a General

Manager, and various department heads run the daily business activity of the BIS Management.

Shares owned by central banks around the world represent almost eighty percent of the BIS's capital. Shares owned by private investors who are mainly major international financial institutions represent approximately fourteen percent. However, of the shareholders, only central bank members have the right to participate in the BIS organizational structure, such as General Meeting, Board and Management.

Estimates of BIS assets have totaled at over \$180 billion in U.S. dollars, and its capital and reserves at approximately \$10 billion in U.S. dollars. Due to its unique position among central banks, the BIS holds substantial reserves in foreign exchange currency, which are heavily deposited with the BIS by central banks. Central banks comfortably store their money with the BIS and allow the organization to invest these assets.

D. Role of the BIS

In order to ensure safety, soundness, and a safety net for the international banking system, the BIS works closely with international banks, financial institutions, and other entities. For example, in 1999, through the initiative of the BIS, the international banking community formed the Financial Stability Forum. The Forum has significantly improved national financial authority surveillance and supervision. In addition, the BIS forms standing committees such as the Committee on Banking Supervision ("CBS"), Committee on Payment and Settlement Systems, and Committee on Global Financial System to coordinate the BIS efforts and energies in improving the international financial system. Furthermore, the BIS coordinates with the World Bank and International Monetary Fund to provide international financial supervision. BIS's coordination often overlaps with these allied international institutions in extinguishing fires quickly in risky financial markets.

Among its other activities, the BIS holds and trades central banks' gold, buys and sells various securities (principally short-term), and tenders loans to central banks. The loans are usually guaranteed by governments or backed with gold deposited at the bank. The BIS's careful approach to lending, topped with extensive research into the international financial markets, usually enables the BIS to avoid entering into troubled loans. In addition, the BIS is heavily involved in foreign exchange currency trading.

One of the BIS's best-kept secrets is its ability to conduct business for its own interest, as well as the interests of central banks. The BIS takes advantage of the fact that central banks conduct their financial affairs independent from their governments. Furthermore, the BIS retains autonomy through various international conventions and treaties. Therefore, by trading on the independence of the central banks and its own independence, the BIS is able to enter into financial transactions which remain unaccounted for in the public records. Due to close relationships

with central banks and other financial institutions around the world, the BIS is able to give particularly close attention to the money it manages. Overall, the BIS is granted high scores in its management of the central banks' money.

Despite the BIS's vast successes during the almost seventy-five years since its creation, it has been criticized for some of its activities. For example, the BIS has yet to clear allegations that it collaborated with the Nazis in laundering the gold stolen by the Germans in the Second World War. However, it remains the duty of historians to reveal the truth about these allegations.

E. The Committee on Banking Supervision ("CBS")

In 1974, three major international banks collapsed: the Herstatt Bank in West Germany, the British-Israel Bank of London, and the Franklin National Bank in the United States. In addition to a generally deteriorating international banking climate, these failures caused the leading central bankers to desire some form of effective global bank control. As a result, the Committee on Banking Supervision was established at the BIS headquarters in Basel. The CBS creation, a cooperative effort of the Group of Ten countries (the "Group") and Switzerland, sparked subsequent committee groups to effectively improve many aspects of banking operations.

From its inception, the CBS's international influence has grown steadily. Originally a creation of the Group, the CBS expanded its influence to countries and large banking organizations outside the Group. As a result, it has become the leading international influence for cooperation among countries, regulators, and banks, and has undoubtedly been a prime reason for keeping the banking system generally stable. Bank failures that occurred since CBS's founding strengthened world opinion that an international governing body is necessary, and, therefore, have added to the force and effectiveness of the CBS.

A growing number of separate committees have expanded on the work of the CBS. For example, in 1990, the Committee on Interbank Netting Schemes was established by the CBS to study electronic payment systems among banks and how these systems may be supervised internationally for the safety of the banks and for those that use their services. The Joint Forum on Financial Conglomerates was established in 1996 by the CBS and two other international financial service committees: the International Organization of Securities Commissions and the International Association of Insurance Supervisors. Large international banking organizations formed as holding companies bring together traditional banking, securities activities, and insurance. This combination received a major boost in 1999 with the enactment of the Gramm-Leach-Bliley Act in the United States. This empowered banks and their holding company affiliates to enter into the securities and insurance businesses. As a result, the Gramm-Leach-Bliley Act stimulated a rapid growth in mergers combining the field of traditional banking, securities activities, and insurance. The three international committees dealing with these fields joined

forces separately to regulate the new international offerings of banking, securities, and insurance.

F. BIS Rules, Recommendations, and Publications

The BIS issues various publications concerning improving bank activities and consolidating financial markets. However, the rules, recommendations, and any related publications produced by the BIS are not binding upon banks and national financial authorities. Even central bank members of the BIS, as well as banks and other financial institutions under their supervision, are not required to adopt the BIS's recommendations. These non-mandatory rules are often called "soft-law" because they lack legal force and compliance requirements.

Nevertheless, due to the BIS's long-standing tradition of prudence and strictly approaching the international banking system, the BIS is greatly respected amongst the national financial authorities and banks under their supervision. Therefore, regardless of the fact that the BIS's recommendations and rules are "soft-law," national financial authorities increasingly view adopting these recommendations as a necessity for conducting their activities.

The most significant of the BIS's documents, in terms of its long range effect upon the international banking system, is the Basel Concordat ("Concordat") issued in 1975. The Concordat deals principally with banks that expand across borders. Specifically, the Concordat establishes the relationship between the home state, where the bank is organized, and the host state(s), where the bank conducts business outside its home state.

The Concordat decrees that the home state shall be primarily responsible for the financial health, safety, and soundness of the institution and the host state bears responsibility for the powers and functions of the bank. As a result, the principles of the Concordat have been translated into banking laws of numerous countries, including the laws of the United States. Where adopted, the Concordat assures that an international bank is subjected to home state supervision.

In addition, the financial crises of the 1930s and 1970s stimulated the BIS to increase its efforts to provide financial stability to the global financial markets. In particular, following the financial crises of the 1970s, the United States and the United Kingdom entered into a joint initiative regarding risk management systems between the respective countries. As a result, in 1988, the BIS via the BIS, issued a "soft-law" titled "Basel Capital Adequacy Accord" ("Basel Accord").

Of the reports issued by the BIS, the Basel Accord receive the most global attention. In essence, the Basel Accord is a globally agreed upon standard under which national financial authorities calculate and set capital charges for all internationally active banks. The Accord principally addresses commercial banking with a focus on bank credit and market risk. Initially, under the Basel Accord, banks were required to hold capital equal to eight percent of the risk weighted value of assets. However, in 1996, the Basel Accord was amended to

permit banks and other financial institutions to use internal models to calculate their market risk capital charges.

Furthermore, in the summer of 2004, the CBS revised the Basel Accord by issuing recommendations for a new capital adequacy framework commonly known as Basel II. Basel II offers a new set of standards for establishing minimum capital requirements for banks and other financial institutions. Basel II is aimed at promoting the adequate capitalization of banks, as well as encouraging banks to improve risk management in the course of their activities. This is based on three "pillar" initiatives: "Pillar 1" revises the minimum capital requirements under the 1988 Basel Accord to align more closely to specific bank's actual risk of loss; "Pillar 2" provides for the efficient supervision of financial institutions' internal assessments of their risks, ensuring that management exercises sound judgment and provides adequate capital; and "Pillar 3" provides for market discipline by requiring adequate and revealing public disclosure.

Basel II is also responsible for a doctrine many consider counter-intuitive: "a bank's capital should not be established by regulatory fiat; rather, it should be created by the bank's own evaluation of its financial structure." The heart of Basel II is that the government regulators evaluate a bank's management structure. The drafters of Basel II believed that a bank's own sense of its solvency and risk should determine its capital, which requires a well-run bank by competent managers. The CBS recommends that national financial authorities implement Basel II by no later than 2007. The United States has delayed implementation of Basel II to 2012. However, the general belief is that Basel II's sophistication makes it appropriate for only the largest banks. Furthermore, when it becomes local regulation, Basel II will only be adopted by approximately fifteen banks.

The Accord has, with appropriate local amendments, been adopted as the capital standard of most sophisticated banking economies. This is, of course, the direct result of the people who worked in the CBS and the stature it has achieved with the local bank regulators and legislatures. Considering that it has no legal binding force, the success of the Accord is remarkable.

In addition, the CBS has issued other papers, including papers on risk management and electronic banking, the latter of which was published in 2003. In general, the papers were accepted in concept by the local banking regulators and imposed an increased consistency to international banking.

G. Implementation of BIS Rules, Recommendations and Publications

The significance and importance of BIS recommendations in the national banking systems around the world is illustrated by the 100 to 120 countries that have already implemented the 1988 Basel Accord. For example, from 1988 to 1996, almost ninety-two percent of banks and other financial institutions increased their capital requirements. In addition, seventy-six percent of banks

raised their risk-weighted assets base. Furthermore, between 1988 and 1996, banks increased their risk based capital ratios from approximately 9.3 percent up to 11.2 percent.

In 1990, the United States implemented the 1988 Basel Accord in accordance with the International Lending Supervision Act of 1983. Since its implementation, the U.S. banking authorities—consisting of the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation—have worked closely to implement the Basel Accord's recommendations harmoniously amongst U.S. banks and other financial institutions. Nevertheless, the U.S. regulatory officials, notably U.S. Comptroller Hawke, as well as leading scholars in the banking industry, for example, Carter Golembe, have voiced recent dissent against the 1988 Basel Accord. Specifically, they believe the minimum capital adequacy requirements are heavy handed, verbose, and often appear confusing. A corresponding tendency is to permit local markets and banks to regulate such matters as capital structure, capital adequacy, credit risk modeling, and asset liquidity.

Nevertheless, similar to the U.S. banking regulatory institutions, European Union authorities have generally implemented the essence of the Basel Accord. The European Union passed various directives in compliance with the Basel Accord including: the EU Directive on Investment Services; the EU Directive on Capital Adequacy; the EU Directive on Solvency Ratio; the EU Directive on Own Funds; and the EU Directive on Deposit Guarantee Scheme. Upon passage of these Union-wide directives, each European member country adopted them into its national law.

Among the world's industrialized countries, Japan's adoption of the Basel Accord derived the most positive results. Nevertheless, the Accords are not a panacea for financial problems. The Japanese banking system must continue its restructuring process in order to liberalize the banking sector and relieve the pressure of current problems, particularly those resulting from foreign capital investments.

China also shows signs that it will implement the Basel Accord's recommendations. Specifically, it will implement the recommendations relating to asset quality evaluation procedures, adequacy of loan loss reserves standards, and the adoption of bank internal rating systems. However, due to China's financial market structure, which is subject to heavy government regulation, particularly with regard to utilizing foreign capital, the effects of the Basel Accord's rules in China is unknown.

Furthermore, many non-BIS member national financial authorities (and banks under these authorities), mostly from developing countries, voluntarily embraced the Basel Accord's rules and the BIS's recommendations. Such authorities realized they cannot exist isolated from the international banking community. Because less developed countries' banking systems are particularly susceptible to banking crises, they provide a test tube for evaluating the Basel Accord's success and development.

BIS recommendation's are headed for global adoption. The BIS recommendations have a tendency for adoption by national financial authorities within particular regions. Regional authorities increasingly rely upon one another in absorbing the BIS proposals into regulatory regimes. In addition, major international banks with large exposure in multiple regions assist local authorities to understand and implement the financial ideas promulgated by the BIS. Therefore, it is expected that the BIS will have growing importance in the regulation of the international banking system. For example, as the banking system globalizes and, therefore, becomes more reliant upon advanced technology, and as local banking systems increasingly integrate, BIS advice and supervision become more significant.

III. LACK OF AN INTERNATIONAL FINANCIAL ORGANIZATION

The BIS and its related committees offer international banking regulation to an industry that is generally subjected to high levels of local supervision, but essentially no regulation from abroad. While each bank is probably regulated to some degree in both its home country and in the host countries where it conducts business, the international aspect of the industry indicates that there are areas where regulation may be nonexistent or, even when it exists, insufficient.

For example, the massive and expensive failure of the Bank of Credit and Commerce International ("BCCI") indicates that a home country like Luxembourg may lack the power necessary to control a massive international bank. BCCI, financed with Arab oil money, selected Luxembourg (one suspects) precisely because of its inability to impose real regulation. The BIS undoubtedly has the power, which is derived from its Member States, to supply meaningful international regulation to a host country-bank scenario like Luxembourg-BCCI. However, what the BIS lacks is international legitimacy; more specifically, it lacks the force of binding law.

A. International Financial Organization

Most of the world has adopted the free market system as the model for economic progress. With the end of the Union of Soviet Socialist Republics, Cuba and North Korea are the only two countries that continue to adhere to Communism as an economic ideal. In other newly-formed countries (most notably post-communist Russia) where free enterprise is adopted as a model, communism is quickly perceived as only the beginning of an effective system. The question which remains (one of the most difficult facing the twenty-first century) is: what degree of regulation should be imposed upon a free enterprise society that will yield the benefits of economic freedom and control?

In the United States and Great Britain, citizens have an appropriate mix of freedom and control. Therefore, the United States expects other countries to adopt versions of the U.S. Securities and Exchange Commission, the U.S.

Federal Trade Commission, and various U.S. banking regulators. With regard to banking, it is generally accepted that regulation is essential to a well-functioning system. For example, benefits such as “deposit insurance” make some form of underlying regulation a virtual necessity. Such underlying regulation is illustrated by the U.S. Federal Deposit Insurance Corporation (“FDIC”). The FDIC is more than an insurance agency. It is a regulator that constantly reviews the banking system to see that its assets are not at undue risk. However, the FDIC’s functions must be monitored to increase its efficiency and its solvency.

B. Scope of An International Financial Organization

National financial authorities desire a type of international financial entity that has the legal authority to maintain safety and soundness in world financial banking sectors. Because no attempt to accomplish this goal has succeeded, an alternative is creating an international financial organization, which would serve as a formal world regulator and, perhaps also, a lender of last resort. The IMF, and in particular central banks and the BIS, have served such a function. However, they have failed to manage and administer properly economic and financial reforms, while at the same time lending monies to countries in need.

Descriptions of an ideal world financial regulator often seem to be describing the BIS and its affiliated committees. The proposed duties of an international financial organization would ideally include: researching markets and economic policies; regulating the flow of capital movement in international financial markets; preventing currency crises and undue speculations in foreign currency exchange trading; managing risk when domestic macroeconomic policies are implemented; closely observing national financial market deregulation; and taking responsibility for handling economic issues outside the scope of national governments and their national financial authorities.

C. Proposal for An International Financial Organization

Normally, discussions regarding the solution to a problem occur only after the problem has arisen. This is exactly what happened during the financial crisis of the 1990s, particularly with the Asian crisis of 1997. The most industrialized countries of the West, which were concerned about the Asian financial crisis rapidly spreading into Western markets, debated the need to reform international financial architecture. As a result, various distinguished international banking field bankers and scholars proposed ideas concerning changing the form and mission of international financial architecture. The most relevant approaches, among many, filtered down to three.

The first proposal was that the international financial community should let market forces decide on the method and timing necessary to intervene into a financial crisis. Although most economists generally support free market autonomy, there was little sincere acceptance of the first proposal.

The second proposal to avoiding international financial crises by making fundamental changes was supported by leading economic scholars John Eatwell and Lance Taylor. They encouraged creating a super-regulator (or as they called it, a “World Financial Authority”). According to Eatwell and Taylor, the World Financial Authority would be an independent international financial institution in charge of maintaining order in the international financial and banking system. This proposal appeared closest to meeting the real needs for reform of the international financial architecture.

The third proposal, known as the “step by step initiative,” consisted of dealing with specific crises as they occur. Recently, this concept of dealing with “one crisis at a time” seems to be the idea endorsed by most in the international banking field. For example, when particular crises in Russia, Brazil, Argentina, and Asia occurred, the international banking community tackled each individually. As a result, different financial package aids were provided for different crises.

Furthermore, central bankers and financial ministers of the most industrialized economies formed the Financial Stability Forum (the “Forum”) as a cornerstone for building the international financial architecture. The Forum was expected to become a quasi-World Financial Authority. However, it felt short of creating a permanent and independent financial institution. It became evident that something more was necessary to establish a large and permanent role in regulating the international banking system and to achieve recognition from the national financial authorities worldwide.

In addition, there were suggestions to grant the IMF broader power and authority, so it could properly supervise and manage the international financial market. This suggestion as well as others (for example, merging of the IMF with the World Bank) calling for a “New Bretton Woods” initiative, etc., remained simply ideas on paper.

1. Disagreements Relating to a New World Financial Authority

Out of all the approaches and suggestions presented to the world financial community after the Asian crisis of 1997, the most appealing was Eatwell’s and Taylor’s proposal to create a new World Financial Authority. The new World Financial Authority would assist the existing national financial authorities in issuing and implementing a library of new rules and regulations. Since the barrier between international and domestic markets has become almost imperceptible, simultaneous changes in national financial structures seemed appropriate to reflect changes in the international architecture.

There have been considerations in the past of a World Financial Authority. It seems that the concept, though good, may be impracticable. The world is composed of scores of independent regulatory regimes that are likely to remain autonomous. Nevertheless, proposals have been made to transform current international financial and banking institutions into a World Financial Authority.

Some institutions have been rejected as prospects. The IMF, the World Bank, and many other smaller international institutions, were all seen as too entrenched in their present tasks and too specialized to carry out the role of a World Financial Authority. Out of the existing international financial organizations, the BIS has been increasingly recognized as the model for a World Financial Authority. However, it has also been suggested that rather than transforming the BIS into a World Financial Authority, the BIS should continue carrying on its current course. Whether this evolved through coincidence or a well-conceived strategy is not particularly relevant. In all actuality, since its creation in 1929, the BIS has achieved the role of a quasi-soft law World Financial Authority. Due to its reputation and prestige among the international financial community, national financial authorities take notice when the BIS recommends implementation of its directives. The clear example was the implementation of the Basel Accords from more than 120 national financial authorities around the world.

It is unknown how much closer the BIS will get to a World Financial Authority. It is, however, indisputable that reality is not ready for a truly established World Financial Authority because governments are not yet ready to give up their national supervision and regulatory powers. However, by voluntarily implementing BIS recommendations, governments have, in essence, transferred at least some authority to the BIS. National authorities cannot afford to ignore the BIS recommendations because doing so might result in isolating their markets.

U.S. regulators and banks are opposed to creating a World Financial Authority. They believe that due to the strong and influential financial position of the United States in the world economy, the United States is able to carry out a *de facto* role as leader. In particular, the U.S. Congress points to the results and bureaucratic functioning of the World Bank and IMF as negative examples. In fact, many members of Congress view the two organizations as irrelevant institutions that create more problems than they solve in the international financial markets. Furthermore, one suspects that a World Financial Authority would lose touch with reality because of its overwhelming scope of authority. In particular, the World Financial Authority, as a lender of last-resort, would require large sources of liquidity that, at best estimate, would be virtually inconceivable to create and maintain.

2. *The BIS as the Proper Institution to Further Consolidate International Financial Stability*

The authors believe that the BIS is the proper institution to further consolidate international financial stability. The rapid change in the financial markets today further complicates creating a new regulatory institution. The volatility makes it difficult to establish an entirely new model. Therefore, for the time being, it would be safest and most practical to transform an existing financial institution. In the meantime, international financial institutions must

remain alert and increase their own surveillance in maintaining the safety and soundness of the international financial and banking systems.

The idea that the BIS or its affiliated institutions led by the CBS might become a true international bank regulator contains the basic ideal that a unified international banking law will exist. If accomplished, there would be a bank operation consistency absent in today's far flung and unorganized financial maelstrom. This proposal must deal with two basic problems.

The first is the inescapable fact that a multitude of different banking regimes exist globally. Therefore, to reduce them to one regime has the flavor of putting Humpty Dumpty back together. Can a model meld a single banking system (which most nations utilize) with the dual-banking approach of the United States (the world superpower)? Nevertheless, at the United Nations, the United Nations Commission on International Trade Law ("UNCITRAL") division has frequently addressed difficult and apparently insoluble problems stemming from conflicting international approaches. UNCITRAL provides hope that no problem is too difficult to be resolved.

Assuming that a single set of regulations acceptable to the family of banking countries is discovered, there may be a deeper problem: abdicating sovereignty. Accepting any international body's directions over domestic law is often a bitter pill for any country accustomed to its own sovereignty to swallow. On the one hand, the United Nation's Security Council has achieved such authority through the veto given and retained by the dominant international countries. On the other hand, no judicial body has been able to defeat local bias by domestic courts that simply do not want to lose judicial independence.

Whether countries, their citizens, and their legislative bodies will ever voluntarily accord ultimate control over their banking systems to some form of supra-national body remains to be seen. It certainly is questionable, especially because the United States is reluctant to accord ultimate control over its banking systems to some form of supra-national body. Realistically, there is no likelihood of success of a bill or regulation that proposes the Federal Reserve Board, the Comptroller of the Currency, and the FDIC cede authority to some higher authority located in Basel, Switzerland. If a single international banking authority is a desirable ideal, it is only achievable another way.

IV. CONCLUSION

For those favoring the supra-national authority, there is cause for optimism. The CBS has gradually taken some supra-national banking control by force of its own stellar performance. Regulations without any legal force have been adopted around the world because they are excellent and important. To refuse a proposal solely because it derives from a foreign institution is faulty vanity. However, the fault is compounded if the institution includes one's own countrymen.

Rules and recommendations released by the BIS (mainly by the CBS) are now actually called “soft law” because, while they do not have the binding quality of actual law, they do often show the way and are likely to morph into “hard” local rules. As these proposed rules and recommendation receive acceptance in local countries, the prestige of the BIS and its affiliated institutions expand. One can start to imagine the BIS in place as a real regulator. While this situation is still some years ahead, it does not seem impossible or even unlikely.