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Redesigning the Architecture of the Global Financial System: Implications for Asia

Douglas W. Arner*

Abstract:
Following the Second World War, countries agreed an overall design for the international economic system. This structure, based fundamentally on open trade flows, fixed exchange rates and closed capital flows, was embedded in a series of international treaty-based institutions and established a formal arrangement for interaction between sovereign nation-states. However, despite the fact that the nature of the international economy has changed fundamentally over the past 60 years, not least due to the advent of floating fiat currencies, liberalised capital markets, emergence of new economic powers (especially in Asia) and generally liberalised trade, the international economic architecture has not to date been redesigned to address with the new reality of globalisation. At the international level, the general elements which need to be addressed have not changed fundamentally, although their context has: (1) economic policy cooperation, coordination and surveillance; (2) trade in goods and services liberalisation; (3) financial stability and development arrangements; and (4) sustainable development coordination and assistance. The paper argues that each of these issues must be addressed, with appropriate mandates and structures, and argues for possible arrangements at the international and regional levels, focusing on the needs of Asia and its interactions with developing international arrangements.

I. Introduction

Following the Second World War, countries agreed an overall design for the international economic system. This structure, based fundamentally on open trade flows, fixed exchange rates and closed capital flows, was embedded in a series of international treaty-based institutions and established a formal arrangement for interaction between sovereign nation-

* Director, Asian Institute of International Financial Law (www.AIIFL.com); Director, LLM (Corporate & Financial Law) Programme & Associate Professor, Faculty of Law, University of Hong Kong; Co-Director, Duke-HKU Asia-America Institute in Transnational Law; and Visiting Research Fellow, University of New South Wales.

states in four main areas: economic coordination and cooperation (through the United Nations); trade liberalisation (through the International Trade Organisation); monetary arrangements (through the International Monetary Fund); and reconstruction and development finance (through the International Bank for Reconstruction and Development). As capital flows were to be restricted, there was no international treaty-based organisation designed to address such issues (and the existing organisation, the Bank for International Settlements was to be closed).

As is well-known, for a range of reasons, only the Bretton Woods monetary system centred on the IMF and the US dollar actually functioned according to the original design and this ended in 1971. However, despite this fact, the international economic architecture has not to date been redesigned to address with the realities of an international economy which has changed fundamentally in the past 60 years, not least due to the advent of floating fiat currencies, liberalised capital markets, emergence of new economic powers (especially in Asia) and generally liberalised trade. Although certain changes were made following the collapse of the Bretton Woods international monetary system over three decades ago and following the Asian financial crisis over a decade ago (especially in the area of finance, with the establishment of the Financial Stability Forum and related arrangements), the current global financial crisis has shown in stark relief the limitations of the existing arrangements.

This paper discusses the implications of the current global financial crisis for reform of the international financial architecture, arguing that a fundamental redesign is necessary and that this redesign will have important implications for the future of financial and economic arrangements in Asia. At the international level, the general elements which need to be addressed have not changed fundamentally, although their context has. To date, the outlines of a system of sorts appear to be emerging: (1) economic policy cooperation and coordination through the Group of 20 (G20), though with some role for the UN in the context of development and climate change, but with macroeconomic assessment and surveillance with the IMF; (2) trade in goods and services liberalisation and dispute resolution through the World Trade Organisation, although questions remain about financial services; (3) financial stability arrangements through the Financial Services Board and the IMF; and (4) sustainable development coordination and assistance through the UN and multilateral development banks, however with questions remaining regarding financial sector issues, macroeconomic restructuring, trade finance, climate change and food security issues. At the same time, major issues exist with respect to crisis management, both for liquidity and resolution of sovereign and global financial institution crises. In the context of liquidity, domestic arrangements have been supplemented with bilateral arrangements (through the US Federal Reserve, the European Central Bank and the People's Bank of China), regional arrangements (in Europe and Asia), with international liquidity support through the IMF. Major issues however remain with respect to crisis resolution, with the current IMF-centred structure subject to major criticisms. At the same time, no arrangements exist for resolving crises of global financial institutions, such as Lehman Brothers.

The paper argues that each of these issues must be addressed, with appropriate mandates and structures, and argues for possible arrangements at the international and regional levels, focusing on the needs of Asia and its interactions with developing international arrangements.

II. The Architecture of the International Financial System

A. The Post-War Design

In August 1941, Franklin D. Roosevelt and Winston Churchill met on a battleship near Nova Scotia in the Atlantic Ocean and laid down their vision of a peaceful world order after the Second World War in the Atlantic Charter.[1] This document was essentially based on three pillars: peace, financial stability and trade between equal nations. The second and third pillars (discussed in 1944 under the auspices of the United States and the United Kingdom) focused on preventing international economic instability of the sort seen in the interwar period (1914-1944) and supporting economic development through reintegration of domestic economies.

The design encompassed three fundamental features. First, its structure was formal and institutional, based on an interlinked set of international treaties and institutions. Second, it assumed closed national financial markets, with limited capital flows, but open markets for trade in goods. Third, relationships among closed national systems were structured through an international institutional framework.[2] Under the design, overall political coordination in respect of economic affairs was meant to take place through the United Nations (established in 1945), with the UN Economic and Social Council (EcoSoc) at the centre.[3] Monetary arrangements, based on currencies fixed to the US dollar which was in turn fixed to gold,

[1] See S.I. Rosenman (ed.), *The Public Papers and Addresses of Franklin D. Roosevelt, New York 1938-1950* (1941), vol. 10, at 314.
[2] See Proceedings and Documents of the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, Jul. 1-22, 1944, Washington D.C., U.S. Governmental Printing Office (1948).
[3] See UN Charter (1945), chs IX-X, esp. 57, 63; www.un.org/ecosoc/.

were to be maintained through the IMF (established in 1945).[4] Responsibility for finance for and coordination of reconstruction and development was placed with the World Bank (established in 1945).[5] Liberalisation of trade was the responsibility of the ITO. As global capital flows were to be limited, the Bank for International Settlements (BIS) was to be abolished.[6]

However, the international economic architecture as designed never actually functioned: the ITO was still-born[7] (though ultimately reincarnated as the WTO in 1994 after fifty years in the limbo of the General Agreement on Tariffs and Trade) and Cold War politics quickly rendered EcoSoc ineffective.[8] Likewise, the role of the World Bank was quickly usurped in many ways first by the bilateral efforts of the United States through the Marshall Plan and related reconstruction initiatives, complemented later by the European Community with its aid programmes for Southern and Eastern European countries, and in competition with the efforts of the Soviet Union in building alternative arrangements. This left the World Bank to focus on developing (often post-colonial) countries – the role it continues to play today. Nonetheless, the design for monetary relations, with the IMF at the centre of a system of fixed exchange rates based on the US dollar and its link to gold, did function – arguably quite well – until the early 1970s. Finally, the BIS was not abolished – and continues to function today much as it functioned since its established in the interwar period.

B. The International Financial Architecture in Practice

Since the end of the Bretton Woods international monetary system in 1973, financial markets have changed dramatically through a process of liberalisation, internationalisation and globalisation, undergirded by incredible technological changes. In the 1990s, the deficiencies of the existing international institutions and arrangements (the "international financial architecture") to deal with these changes came dramatically to light through the Mexican,

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[4] The IMF Articles of Agreement were adopted at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire on Jul. 22, 1944 and entered into force Dec. 27, 1945. They have subsequently been amended three times: (1) Board of Governors Resolution No. 23-5, adopted May 31, 1968 and effective Jul. 28, 1969; (2) Board of Governors Resolution No. 31-4, adopted Apr. 30, 1976 and amended effective 11 Nov. 1992; and (3) Board of Governors Resolution No. 45-3, adopted Jun. 28, 1990 and effective Nov. 11, 1992. See www.imf.org.

[5] World Bank Agreement; www.worldbank.org.

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[7] See J. H. Jackson, *The Jurisprudence of GATT and the WTO, Insights on Treaty Law and Economic Relations* (2000), at 21-22.

[8]

East Asian and other financial crises which followed. Since that time, the IMF, World Bank and WTO gradually have been forced to come to grips with the increasingly globalised nature of finance. Discussions both in these institutions and elsewhere during the 1990s focused on whether there is a need to reform the existing international institutional arrangements – whether there is a need for a "new international financial architecture".[9] Two specific areas received the greatest attention: crisis prevention and crisis resolution. Both of these issues largely arose due to the transformation of the international financial system through the process of globalisation.

Following the Asian financial crisis, a number of actions were taken to address these issues and to build on the initiatives undertaken after the Mexican financial crisis, centring on the IMF (transparency and liquidity), the World Bank (technical assistance) and international financial standards.

The post-Asian crisis international strategy for the development of financial stability was a system of international financial standards. Most generally, this system can be described as having four levels, incorporating both existing and new international institutions and organisations. At the first level, there is a structure which has mainly been established through political processes. The second level is international standard-setting, largely of a technocratic nature. At the third level is implementation of standards – in principle a domestic process but with technical assistance through a variety of international, regional and bilateral sources. The fourth level focuses on monitoring implementation of standards.[10]

The only new institution to emerge from discussions of the international financial architecture was the Financial Stability Forum (FSF).[11] The FSF was established to serve the role of the coordinator in the system of international standards and to promote standards. At the political level, prior to the current global financial crisis, the G-7 industrialised countries generally took the lead in establishing an operating framework for the process. In addition,

[9] For an overview, see R. H. Weber, "Challenges for the New Financial Architecture," 31 Hong Kong L. J. 241 (2001); M. Giovanoli, "A New Architecture for the Global Financial Market: Legal Aspects of International Financial Standard Setting", in M. Giovanoli (ed.), *International Monetary Law: Issues for the New Millennium* 3 (2000); J. J. Norton, "Qualified Self-Regulation in the New Financial Architecture", J. Int'l Bnkg. Reg. 9 (Jul. 2000).

[10] This essential structure was affirmed by the G-7 Finance Ministers in the Communiqué from their Köln summit in 1999 (G-7 Finance Ministers, *Report of the G7 Finance Ministers to the Köln Economic Summit*, Cologne, Germany, Jun. 18-20 1999).

[11] See http://www.fsfforum.org.

the G-10 initiated efforts to elaborate the details. Finally, other groups such as the Group of Twenty (G20)[12] were also involved in various aspects.

In addition to the various organisations discussed above, foreign participation in domestic financial services is dealt with largely through bilateral, regional and international negotiations, with the latter centered on the WTO. The WTO provides the international framework for foreign participation in financial services. However, unlike areas such as trade in goods, in the area of financial services, commitments made by members are exclusive rather than inclusive. Therefore liberalisation is at the discretion of individual WTO members and remains quite limited in most cases. The framework is an important starting point in supporting foreign competition in financial services, but needs to be extended through further negotiations in order to provide greater benefits. It also should be explicitly incorporated into the system of international financial standards. At the same time, it needs to be carefully considered in the context of the relationship between financial liberalisation and financial stability.

While not directly related to the Asian financial crisis, the United Nations agreed an overall set of objectives to guide development in 2000: the Millennium Development Goals (MDGs).[13] The are significant not so much for their content (which is as might be expected somewhat general and frequently at best aspirational) than for the fact that for the first time, they provide an agreed set of guidance for multilateral development agencies and banks – a set of guidelines to which, following their various constituent treaties, all of the various MDBs have explicitly agreed to pursue. While aspirational, the MDGs thus provide the most concrete basis for cooperation and coordination amongst the various multilateral development agencies yet. In addition to the MDGs and their significant coordinative and aligning function, the WTO also launched the Doha development round of trade talks.

C. The Global Financial Crisis and the International Architecture

[12] The G20 includes the finance ministers and central bank governors of 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom and the United States. It also includes the European Union (Council President) and the European Central Bank (ECB), as well as (on an ex officio basis) the Managing Director of the IMF, the President of the World Bank, and the chairs of the International Monetary and Financial Committee and Development Committee of the IMF and World Bank.

[13] UN, *United Nations Millennium Declaration*, General Assembly Resolution 55/2, 8 Sep. 2000. See UN General Assembly, Fifty-sixth Session, *Road Map Towards the Implementation of the United Nations Millennium Declaration: Report of the Secretary General*, A/56/326, 6 Sep. 2001. See also www.developmentgoals.org.

In the current global financial crisis,[14] unlike in the Asian financial crisis, the majority of activity has taken place at either the domestic level or at the European regional level through the European Union. At the international level, coordination initially took place through the G-7 and at a multilateral level through FSF and the world's major central banks. However, this has quickly shifted towards the G20 from late 2008. During the initial phases which mainly affected developed countries, the IMF, MDBs and WTO played a limited role. Only as the crisis began to spread beyond the G-7, did the IMF and MDBs begin to be involved, albeit largely on the margins. Throughout, the WTO has remained largely on the sidelines, mentioned only in terms of aspirational completion of Doha. At the same time, over the years since the agreement of the MDGs, a new international economic issue has emerged which has begun to take a higher role: climate change.

Initially, as in the Asian financial crisis, international activity focused on the G-7, the centre of global economic and financial policy coordination for the previous two decades and also the forum comprising the major economies initially affected by the systemic financial crisis in the global financial system. Likewise, the FSF appeared to be playing its designated coordinative role in regulatory affairs.[15]

Following the initial G-7 / FSF-centred approach, in November 2008, the G20 emerged as the new global coordinating mechanism. At its first meeting (the first at the heads of government level) in November 2008,[16] attention focused on economic and regulatory responses. At its second heads of government meeting in April 2009,[17] the G20 built upon agreed principles with a series of concrete proposals, focusing mainly on regulation but also on economic responses. It appears that the third heads of government meeting scheduled to take place in September 2009 will focus on issues relating to the reform of the international financial architecture.

Unlike the G20, the IMF was largely absent from the crisis until late 2008. Since then (and excluding poverty reduction and growth facilities), first, it has made a range of traditional standby arrangements, including one to a developed country (Iceland), a range of Central and Eastern European states, including both EU Member States and non-members and others. Second, it has made use of its Exogenous Shocks Facility. Third, following G20

[14] This paper does not discuss the causes and related matters. For discussion of these and related issues, see D. Arner, "The Global Credit Crisis of 2008: Causes and Consequences", 43 The International Lawyer 91 (2009).
[15] Issues of actual regulatory responses to the crisis are beyond the scope of this article. For discussion, see Arner (2009), above n. [ ].
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[17] G20, The Global Plan for Recovery and Reform, London (2 Apr. 2009), available at www.g20.org/Documents/final-communique.pdf ("G-20 Leaders' Statement (Apr. 2009)").

discussions, it has expanded its lending arrangements to include a new contingency line (which unlike its predecessor, has actually been actively utilised with lines extended to Mexico, Poland and Colombia). Finally, once again following G20 arrangements, it has also changes to funding arrangements, including expanded bilateral borrowing arrangements,[18] and new note issuance facility[19] and an additional allocation of US$ 250 billion SDR.[20]

Likewise, the World Bank and other MDBs played a relatively limited role until the economic impact of the crisis began to be felt in emerging market and developing countries around the world. Since that time, all have rapidly expanded activities to meet demand. At the same time, the WTO has been largely dormant at the policy level, although disputes appear to be escalating. At the same time, issues relating to climate change and sustainability have been rising to increasing prominence.

III. An Architecture for the Global Financial System?

From the discussion above, the question emerges: is there a need for a new design for the international financial architecture? On balance, one can say with some level of clarity that the arrangements put in place following the Asian financial crisis were neither effective in preventing a global systemic financial crisis nor (with the possible exception of the G20) effective in dealing with such a global systemic financial crisis when it actually occurred. One can say at the very least that the fundamental features underlying the original post-war design (open trade, fixed money, domestic finance, centralised development) no longer hold true. Instead, our world is one of largely open trade, generally floating fiat currencies, global finance and decentralised development. The implications are well known: financial and monetary instability resulting in economic crises.

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[18] IMF, "IMF Signs US$100 Billion Borrowing Agreement with Japan", IMF Press Rel. No. 09/32 (13 Feb. 2009); IMF, "IMF Signs US$4.5 Billon Borrowing Agreement with Norway's Central Bank", IMF Press Rel. No. 09/253 (6 Jul. 2009); IMF, "IMF Signs US$10 Billion Borrowing Agreement with Government of Canada", IMF Press Rel. No. 09/257 (8 Jul. 2009).

[19] IMF, "IMF Approves Framework for Issuing Notes to the Official Sector", IMF Press Rel. No. 09/248 (1 Jul. 2009). China, Russia and Brazil have each announced their intention to invest (US$ 50 billion, US$ 10 billion and US$ 10 billion, respectively). IMF, " IMF Managing Director Dominique Strauss-Kahn Welcomes China's Intention to Invest Up to US$50 billion in Notes Issued by the IMF", IMF Press Rel. No. 09/204 (9 Jun. 2009); IMF, "IMF Managing Director Dominique Strauss-Kahn Welcomes the Russian Federation's Intention to Purchase the First-Ever Notes Issued by the IMF", IMF Press Rel. No. 09/187 (27 May 2009); IMF, "IMF Managing Director Dominique Strauss-Kahn Welcomes Brazil's Intention to Invest Up to US$10 Billion in Notes Issued by the IMF", IMF Press Rel. No. 09/207 (10 Jun. 2009).

[20] IMF, "IMF Executive Board Backs US$250 Billion SDR Allocation to Boost Global Liquidity", IMF Press Rel. No. 09/264 (20 Jul. 2009).

Certainly, one possibility (little discussed) would be a return to the post-war design: finance does not have to be global and currencies can be fixed, an idea which China sometimes supports (and certainly has followed in its own domestic practice, with seemingly great benefits to date). At the same time, assuming that finance will remain global (and the research does generally suggest that this is beneficial over the long term[21]) and that there continues to be general support for open trade (the economic benefits of which are largely unquestioned[22]), then it makes sense to develop international arrangements which are supportive of these objectives.

In looking at this question, then, if the objective is sustainable global development based upon economic growth supported by liberal trade and global finance, how could an effective international design look and how could it be realistically organised?

As one example, Zhou Xiaochuan, Governor of China's central bank, the People's Bank of China, has suggested the following lessons from the current financial crisis and the resulting elements of a design to address the issues which have arisen.[23] In "On Savings Ratio", he focuses on the question of global imbalances at the heart of the global economy. In this respect, he highlights four points. First, comprehensive prescriptions are required, with the United States stimulating consumption now and rebalancing its economy later, while East Asia undertakes structural reform to reduce savings. Second, countries and international organisations must strengthen and intensify regulation of international speculative capital flows, including reinforcing regulation, enhancing transparency, developing early warning systems and other preventive measures for developing countries, increasing aid, providing mechanisms to address temporary balance of payments problems that are swift and with limited conditionality. Third, there must be appropriate measures to channel more savings into developing countries and emerging markets to redirect savings to developing countries and emerging markets as the future growth engines of the world economy. Fourth, reform of the international monetary system away from reliance on the US dollar is necessary.

Overall, this is a good start but not in fact a comprehensive prescription, except for the specific issues of global imbalances and currency instability, which it addresses rather well. Instead, the present paper suggests a more comprehensive approach, focusing on the aspects which have proven necessary in the context of the global economy. First, there is a clear need for some sort of mechanism to support economic cooperation and coordination, the

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23 X. Zhou, "On Savings Ratio" (Mar. 2009), available at www.pbc.gov.cn.

role originally intended for EcoSoc and now being filled by the G20. Second, trade arrangements are at the heart of the design, with special needs for financial liberalisation and cross-border provision of services. Third, there is a need for some system of macroeconomic policy standard-setting and monitoring, to some extent the role that the IMF has come to play most of the time. This would include monetary arrangements. Fourth, there is a clear necessity if finance remains global for appropriate financial stability and development arrangements to both prevent financial crises and to resolve those crises which to do occur, both at the sovereign level and at the level of global financial institutions and markets. Fifth, sustainable development is now no longer just a domestic issue but one with global implications – positive and negative.

In looking at these issues, from the overall objective and specific needs, one can turn to questions of organisation and allocation of responsibilities, mandates and powers and only then to questions of the design of individual organisations, including membership, governance, funding, independence and accountability.

IV. Financial Cooperation in Asia

Overall, much of this already appears to be happening. Details in some areas may be clearer in the aftermath of the September G20 meeting. At the same time, it is unlikely that an effective international design will emerge. As a result, while international arrangements will continue to be significant, it is likely that certain aspects which are not realisable at the global level may instead be dealt with at the regional level. In this context, the European Union provides the leading example but also highlights the very real difficulties involved for other regions. As another example and one in which the political and sovereignty issues are even more problematic is Asia.

Asian financial integration has been subject to considerable but equivocal attention. Four factors have encouraged discussions and initiatives concerning Asian financial cooperation, integration and governance in the last decade. These relate especially to the 1997-98 financial crisis, but also to growing economic integration, developmental issues, and certain political influences. The means by which these factors encouraged integration are relevant to the policy formation processes customarily used by Asia’s regional bodies.

Initiatives to encourage financial integration have in particular addressed trade in financial services, cooperation in external monetary operations and capital market reform.[24]

In relation to trade in financial services, limited growth has occurred in regional trade in financial services and any improvement is likely to occur only slowly. This sub-section discusses cooperation in financial services liberalisation, the structure of the ASEAN Free Trade Area (AFTA) and APEC's interest in an international framework for financial services liberalisation. It also examines one aspect of a proposed Asian Economic Community (often labelled ASEAN+6) embracing ASEAN+3, Australia, India and New Zealand, that may become a framework for wider cooperation. It does so in the context of governance issues and does not test the extent of AFTA usage, or tariffs and non-tariff barriers maintained for declared reasons of national interest.[25]

A. Monetary affairs

In relation to monetary affairs, regional monetary cooperation is mainly evidenced by ASEAN+3 short-term credit lines. An Asian Monetary Fund was mooted during the 1997-98 crisis when several Asian states required sudden infusions of credit to but was abandoned upon intense US opposition.[26] Nonetheless, the objectives of a putative regional fund were raised in ASEAN+3 in April 2006 in discussions of a possible long-term currency alliance and monetary union and recently have arisen again in the context of the current global financial crisis.

The 2000 ASEAN+3 Chiang Mai Initiative (CMI) was intended to promote regional cooperation by means of bilateral currency swap agreements among central banks.[27] The current network of sovereign bilateral credit lines has two roots:[28] collaborative foreign exchange swap lines set up by ASEAN's five original members, and a series of securities

[24] Japan's strategies for financial cooperation including reforming taxation through a web of new treaties are beyond the scope of this analysis.
[25] Entrenched state protectionism will limit the use of AFTA agreements, see Baldwin, "Multilateralising Regionalism", above n. [ ] at 36-37.
[26] See above s. III.A & n. [ ]. A regional monetary fund was discussed again within ASEAN+3 in April 2006 in terms of benefits associated with a long-term currency alliance and monetary union.
[27] See *Joint Ministerial Statement of the ASEAN+3 Finance Ministers Meeting*, 6 May 2000, online: <http://www.aseansec.org/635.htm>.
[28] Counterparty risk is taken here as sovereign whether it involves a central bank or finance ministry.

repurchase (repo) lines initiated by the Executives' Meeting of East Asia-Pacific Central Banks (EMEAP) as a precautionary reaction to the 1994 Mexican financial crisis.[29]

More recently between May 2008 and February 2009, ASEAN+3 finance ministers agreed the outline of a new accord to pool additional international reserves on a more considerable scale. Known as the Multilateralised Chiang Mai Initiative (CMIM), this would involve administrative resources separate from those of participating states and is currently planned to total US$120 billion in commitments. China, Japan and South Korea would together provide 80 per cent of the total and ASEAN members the remainder.[30]

At inception, 20 per cent of the aggregate amount available for drawing under CMIM by a user state would be "de-linked" from specific IMF conditionality but subject to rules to be developed by ASEAN+3 members.[31] However, the arrangement would "supplement the existing international financial arrangement",[32] which suggests rules for usage that would be sufficiently robust and well understood so as not to erode market confidence in either the scheme or a user in need of temporary liquidity. ASEAN+3 stresses that usage would be subject to "rigorous principles".[33] As part of the proposal, ASEAN+3 intends that:

> [A] regional surveillance mechanism should be further strengthened into a robust and credible system which will facilitate prompt activation of the CMIM. An independent regional surveillance unit will be established to promote objective economic monitoring.[34]

No details of the mechanisms for usage or surveillance have been published, nor what will be regarded as "independent" by ASEAN+3. It may be assumed that severing connectivity with IMF consents is one objective in this respect, for the ministers state that when:

> the […] surveillance mechanism becomes fully effective in its function, the IMF de-linked portion [of the CMIM] may be increased above the current limit of 20 percent.[35]

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[29] Reported by Ramon Moreno, "Dealing with Currency Speculation in the Asian Pacific Basin", *Fed. Reserve Bank San Francisco Econ. Letter*, (11 April 1997), 97-10. See also below s. IV.C.2.
[30] *Joint Ministerial Statement of the 11th ASEAN+3 Ministers Meeting*, 4 May 2008, online: <http://www.aseansec.org/21502.htm>, and *Report from the Finance Ministers of the ASEAN+3 to Heads of States/Governments*, 22 February 2009, online: <http://www.aseansec.org/22158.htm>.
[31] *Joint Ministerial Statement of the 11th ASEAN+3 Ministers Meeting, above* n. 105.
[32] *Ibid.*
[33] *Report from the Finance Ministers of the ASEAN+3 to Heads of States/Governments, above* n. 105.
[34] *Ibid.*
[35] *Ibid.*

The introduction of CMIM is unlikely to be completed quickly, however important it may be to policymakers. Not only are details of its operating mechanics and specific purposes yet to be decided, but the concept is far more demanding than previous ASEAN or ASEAN+3 financial initiatives by being both multilateral in character and substantive in terms of resource requirements.

B. Capital market development

Post-crisis attention to regional capital market development initially focused on the debt and money markets but has recently begun to consider wider securities market reform.[36] Work on debt market development has comprised three collaborative efforts: the ASEAN+3 Asian Bond Market Initiative (ABMI), APEC's efforts in developing securitisation, and work by members of the Asia Cooperation Dialogue (ACD).[37] It also includes EMEAP central banks' pooling of international reserves in two Asian Bond Funds in 2004 and 2005, with additional funds under discussion. As in similar matters, success has been limited due to the reluctance of state actors to cede national governance to create regional policy capital. This has been most evident in the supremacy of national currency policies, to the detriment of collaborative market reform and constraining initiatives on regional trade in financial services or monetary cooperation. Little effort has been made to sanction non-bank financial intermediaries holding foreign regional assets, although they typically enjoy far greater freedom to acquire higher rated OECD investments.

C. The Role of the ADB?

The ADB mixes regional interests and elements of regional governance. While its operations focus on regional development, 18 of the Bank's 65 shareholders are non-Asian OECD members that together account for 34.75 per cent of votes in the bank's supervisory Board of Governors. Members of the G-7 group hold 39.9 per cent of votes in the Board of Governors, the latter electing a 12 person Board of Directors, four of whom represent non-Asian members. China, Japan and the United States each nominate a director to serve their sole interests. As with other Asian organisations, the regional interests of ADB policy may not

[36] ASEAN+3 is studying cooperation among exchanges and regulators to encouraging cross-border trading.
[37] Thailand initiated the ACD in 2002 among ASEAN+3, India and fourteen other central Asian states to explore regional cooperation to encourage capital market activity. The group's visibility fell after the end of Thailand's APEC chairmanship in 2004.

coincide with the aims of all shareholders. Asian policymakers have been supportive of ADB efforts because of the weak institutional basis of other bodies, including ASEAN and APEC.

At the same time, the ADB has given material support to financial sector cooperation, and policymakers may welcome its efforts because of a lack of resources and institutional weaknesses in ASEAN and APEC. For example, it became involved in a coordinating function with the CMI in 2005, and established six groups in 2002 to support market development with funding and technical assistance at the same time as the launch of the ABMI by ASEAN+3.[38] The Bank also views its own local currency funding transactions as developmental, although they rely more on the structuring resources of private law than reforms in national policy, and hopes to widen the availability of market information through a web portal more comprehensive than many commercial or national sources.[39]

More significantly, an Office of Regional Economic Integration (OREI) was established in 2005 to seek to promote economic cooperation and integration among the bank's developing members and contribute to the region's "harmonious economic growth".[40] This is part of the agenda of the current ADB president, placing emphasis on regional integration, financial integration, and providing resources and funding for research and related technical assistance projects and investments. A successful OREI may ameliorate the ADB's generally agreed lack of coherent objectives compared to the World Bank, which has a focus on domestic market development. As a reflection of the potential of this role, a 2007 study by an ADB Eminent Persons Group found agreement with these reforms.[41]

V. Designing an Asian Financial Architecture

Could the current global financial crisis provide an incentive to financial sector development and integration in the region? East Asia's financial systems have so far been less systemically affected than certain developed countries in Europe or North America, although Asian banks

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38 Khempheng Pholsena, ADB Vice President (Finance and Administration), "Opening Remarks at the Asian Bond Markets Initiatives" (Address to Seminar on Local Currency Bond Issuance by Foreign Multinational Corporations, Shanghai, 5 August 2004), online: <http://www.asiandevbank.org/Documents/Speeches/2004/ms2004049.asp>.

39 See <http://asianbondsonline.adb.org>.

40 Haruhiko Kuroda, ADB President, "Opening Remarks" (Address at the Governors' Seminar on a Roadmap for Asia's Economic Cooperation and Integration, ADB 2005 Annual Meeting, Istanbul, 3 May 2005), online: <http://www.adb.org/AnnualMeeting/2005/Speeches/president-kuroda-speech-roadmap.html>. OREI was created in April 2005.

41 Eminent Persons Group, *Towards a New Asian Development Bank in a New Asia: Report of the Eminent Persons Group to the President of the Asian Development Bank*, (Manila: Asian Development Bank, 2007). The group comprised Supachai Panitchpakdi, Isher Judge Ahluwala, Nobuyuki Idei, Caio Koch-Weser, Justin Yifu Lin and Lawrence Summers.

and other intermediaries have suffered losses in capitalisation and confidence in a similar, though less dramatic, fashion to their western competitors.

The region's response to the global financial crisis has been limited. First, the ADB is seeking a capital increase from its shareholders, intended to finance additional resources to weakened economies in the region.[42]. Second, in February 2009 ASEAN+3 committed itself in principle to CMIM, although work is needed to examine the function and purpose of the exercise and a new organisation likely to be required to allow it to take effect.

The global financial crisis has hastened changes to the setting for international economic and financial cooperation, chiefly a migration from the G-7 and G-10 mechanisms to the G20, which includes China, India, Indonesia and Japan from Asia and the enlargement of the FSB. As a result of the crisis and the view that the participation of major developing countries especially from Asia is central to its resolution and also to necessary reforms to the international financial architecture, Asian states are being asked to assume a new prominence at the international level, with China's role becoming increasingly prominent.

As discussed above, any redesign of the international architecture should have a number of central elements: (1) economic policy cooperation, coordination and surveillance; (2) trade in goods and services liberalisation; (3) financial stability and development arrangements (including prevention, management and resolution); and (4) sustainable development coordination and assistance.[43] Assuming that these issues will not entirely be addressed at the international level, it is important for discussions in Asia to look to address necessary elements on a regional basis.

At present, economic policy cooperation and coordination in Asia takes place through ASEAN/+3/+6 Finance Ministers meetings and EMEAP; surveillance is largely limited to the ADB and IMF. Looking forward, these arrangements may be sufficient for coordinative purposes; however, surveillance arguably requires a higher level of attention, with the CMIM having the potential to provide an appropriate framework, if effectively designed and implemented.

Trade in goods is being addressed to date through ASEAN/+3/+6 treaty-based arrangements. However, based on the WTO experience, as these develop, it is likely that a more effective dispute resolution framework may become necessary, although at the moment the international arrangements through the WTO seem to be fulfilling this function. In

[42] ADB, General Capital Increase V, online: <http://www.adb.org/GCI/default.asp>.
[43] See generally Arner, *Financial Stability*, above n. [ ]; Arner & Weber, above n. [ ]; Douglas Arner & Ross Buckley, "Redesigning the Architecture of the Global Financial System", (2009) AIIFL Working Paper 6 (forthcoming), online: <http:www.aiifl.com>.

financial services, because of the interaction between liberalisation and stability, these issues are likely to become more problematic, as has been the case in the EU during the current global financial crisis. While liberalisation may proceed especially as Chinese financial institutions seek greater market access, it would appear best for countries for the foreseeable future to adopt arrangements for cross-border provision on the basis of separately capitalised and regulated subsidiaries rather than following the passport system which has been adopted in the EU.

In relation to sustainable development, this is largely the role of the ADB, perhaps to increase with the recent decision to dramatically increase its capitalisation. At the same time however climate change discussions have largely yet to develop at the regional level, though this is perhaps a logical development following any international agreement at Copenhagen.

In relation to financial stability, initial discussions have now taken place regarding the possibility of establishing a sort of Asian Financial Stability Forum, with a standard-setting and surveillance mandate similar to that of the FSB but operating in the regional context – in this context, EU experiences are likely to be highly relevant. Such an arrangement could have significant benefits not only in enhancing financial stability but also in providing guidance and direction for financial sector development in the region.

The CMIM now provides the outline of a potential crisis management structure, though its eventual effectiveness will largely depend upon the design of its implementation arrangements. It does however provide a potentially important liquidity mechanism in the region. However, even under the CMIM, crisis resolution at the sovereign level – as in the Asian financial crisis – remains with the IMF, with support from ADB and the World Bank. As is the case generally, there are no arrangements to deal with resolution of individual financial intermediaries other than at the domestic level,[44] nor with the contagion impact of systemic losses of confidence that affect several or all states in a region.

If CMIM were to evolve into an AMF, it would seem logical to combine liquidity provision and macroeconomic standard-setting and monitoring with more formalised arrangements for developing and monitoring regional financial regulatory standards, based on the experiences of the FSF and the European Union, with arrangements of a firmer nature than those of the FSF currently but not of the same level as those in Europe. One model is

[44] International and domestic arrangements for addressing financial intermediary failure are an issue of current concern for the G20, see Douglas Arner & Joseph Norton, "Building a Framework to Address Failure of Complex Global Financial Institutions", Hong Kong Law Journal (2009).

IOSCO's Multilateral Memorandum of Understanding, with a self-regulatory structure applying to standard-setting and monitoring, with support for implementation from the ADB.

This highlights the important link between the macroeconomic and financial stability standard-setting and monitoring arrangements in the operations of the liquidity mechanisms of any AMF. The division between liquidity issues and sovereign financial crises is not always clear; and both this issue and the supporting mechanisms merit the greatest design attention. As this article has shown, CMIM will itself require dedicated resources to be effective and give confidence, even if the preparatory development work can be accommodated by a collaborative arrangement to which the member states are most accustomed. Institutional developments of this kind also provide an opportunity to consider the proper organisation of the functions outlined here, whether or not formalised into a new AMF, including purposes, extent of non-Asian involvement if any, conditions for usage, and whether any single state will lead the initiative.