[Vanderbilt Journal of Transnational Law](https://scholarship.law.vanderbilt.edu/vjtl)

Volume 25
Issue 2 *Issue 2 - 1992*

Article 4

5-1992

International Monetary Law: The Next Twenty-Five Years

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ABSTRACT

In this Article, Professor Edwards considers possible developments in international monetary law over the next twenty-five years. The author begins by discussing some formative events for international monetary law throughout the last twenty-five years, and he notes that unforeseen political developments can have a dramatic effect on monetary policy, and, therefore, make predicting future policy risky. The author does suggest, however, some policy changes that respond to current issues such as the trend toward currency consolidation, the need to improve public confidence in monetary processes, the need to stabilize the currencies of the states of the former Soviet Union, and the strengthening of international monetary institutions.

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I. INTRODUCTION

This issue celebrates the twenty-fifth anniversary of the *Vanderbilt Journal of Transnational Law.* The editors in soliciting this Article wrote that they desired an article that "would have a prospective point of view" and would comment "on how the next twenty-five years may affect international monetary law." They went on to say that what they wanted was a comment on "what the future may hold," rather than a "typical" law review article. With some trepidation, this author accepted the invitation.

Very few rules of international monetary law are customary norms.[1] Most of the rules have their sources in international agreements and decisions of international organizations. Also, relatively few issues in international monetary law are litigated, and those that are litigated usually are done in national courts.[2] The lawyer's role as an advocate is relatively marginal. The lawyer's primary roles are as counselor and architect in institutional development and adaptation.

What kinds of institutional changes in the next twenty-five years can be predicted? When thinking of institutional changes in the monetary sphere, the roles of lawyers, economists, and policy-makers become blurred. While the author is a lawyer, the thoughts expressed here are not confined necessarily to that discipline.

II. THE PAST

When one surveys the changes in international monetary law and institutions during the past twenty-five years, one realizes the difficulty of making accurate future predictions in international economic affairs. At the close of World War II, the dominant economic concerns were post-war reconstruction in Europe; the avoidance of a then widely-predicted post-war worldwide depression brought on by the massive debts and economic imbalances accumulated during the war; the laying of foundations for international economic cooperation and growth; and the end of nationalistic beggar-thy-neighbor policies that contributed to World War

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1. The author has argued that customary international law prohibits states from deliberately disrupting the international monetary and banking system and that an affirmative duty of a general character exists, independent of treaty obligations, to consult and collaborate in international monetary matters. RICHARD W. EDWARDS, JR., INTERNATIONAL MONETARY COLLABORATION 647-55 (1985); *cf.* Stephen Zamora, *Is Their Customary International Economic Law?*, 1989 GER. Y.B. INT'L L. 9, 29-31.

2. *See generally* JOSEPH GOLD, THE FUND AGREEMENT IN THE COURTS (vol. 1, 1962; vol. 2, 1982; vol. 3, 1986). The extraterritorial application of national exchange controls appears to be the monetary issue litigated most frequently.

II. The International Monetary Fund (IMF) was designed as an institution for multinational cooperation and collaboration in the monetary sphere.[3] The Articles of Agreement of the Fund, adopted at Bretton Woods in July 1944 while World War II was still being fought, entered into force in December 1945.[4]

By 1960, the major concerns present at the end of World War II had been addressed. The reconstruction of Europe following the war had been accomplished to an amazing degree. Exchange controls had been liberalized in Western Europe, both for current transactions and for many capital transactions. Exchange markets were active. The international economy was vibrant.[5]

New strains, however, had developed in the system devised at Bretton Woods. With the growth of the world economy and the liberalization of exchange controls, national monetary authorities found it more difficult to influence effectively, let alone control, the value of money and the terms of credit. Academic economists and officials raised questions about the long-term viability of the Bretton Woods par value system in which gold and the United States dollar were at the center of a system of relatively stable currency exchange rates. At the same time, officials were reluctant to rethink the fundamental premises of the Bretton Woods system that overall had functioned well in the period after World War II.[6] In the early 1960s, the central banks of the larger free-market industrial

3. *See generally* KENNETH W. DAM, THE RULES OF THE GAME: REFORM AND EVOLUTION IN THE INTERNATIONAL MONETARY SYSTEM 41-87 (1982); 1 J. KEITH HORSEFIELD, THE INTERNATIONAL MONETARY FUND, 1945-1965: TWENTY YEARS OF INTERNATIONAL MONETARY COOPERATION 3-118 (1969).

4. Articles of Agreement of the International Monetary Fund [hereinafter IMF Agreement or the Articles] *adopted* July 22, 1944, *entered into force* Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39. The Articles were amended first, effective July 28, 1969, at the time the provisions respecting the special drawing right (SDR) were introduced. Amendment of Articles of Agreement of the International Monetary Fund, *approved* May 31, 1968, 20 U.S.T. 2775, 726 U.N.T.S. 266. A second comprehensive amendment entered into force April 1, 1978. Second Amendment to the Articles of Agreement of the International Monetary Fund, *approved* Apr. 30, 1976, 29 U.S.T. 2203, 15 I.L.M. 546 [hereinafter Second Amendment to the IMF Articles]. A third amendment, relating primarily to loss of voting rights for failure to observe financial obligations to the Fund, has been submitted by the Board of Governors to member states for acceptance, but has not yet entered into force. For the text, see Annex to Board of Governors Resolution No. 45-3 (June 29, 1990), 1990 INTERNATIONAL MONETARY FUND, SUMMARY PROCEEDINGS at 286.

5. *See generally* 1 HORSEFIELD, *supra* note 3, at 474-601.

6. *See generally* DAM, *supra* note 3, at 175-87; 1 MARGARET G. DEVRIES, THE INTERNATIONAL MONETARY FUND, 1966-1971: THE SYSTEM UNDER STRESS 401-530 (1976).

states entered into an elaborate system of "swap arrangements" to make currencies available for market interventions to maintain agreed exchange rates in order to keep the system working.[7]

A widespread view in the 1960s among academic economists and officials was that a need existed for an international procedure for increasing and controlling liquidity. The idea was to devise a system for expanding monetary reserves that did not depend upon monetary authorities outside the United States accumulating larger holdings of gold or increasing their dollar holdings (claims against the United States economy) in their reserves. Thus was born the special drawing right (SDR), a reserve unit, usable only by monetary authorities, whose value and volume are determined by decisions taken within the International Monetary Fund. The design of the SDR, and the related first amendment to the Articles of Agreement of the International Monetary Fund, was a creative task in which lawyers played critical roles.[8] After the Articles of Agreement of the IMF were amended to provide for the SDR in 1969, three sets of allocations of SDRs have occurred; no such allocations have taken place since 1981. The idea that international liquidity should be regularly and deliberately expanded and that the expansion should be done under multinational control remains idea rather than reality.

The devaluation of the pound sterling by the United Kingdom in 1967 sent tremors through the Bretton Woods par value system.[9] Following turmoil in the exchange markets that began in May 1971, the United States announced in August 1971 that it would no longer commit itself to redeem its dollars held by foreign monetary authorities and provide gold in exchange based on a price of thirty-five dollars per ounce. The United States authorities also refused to commit themselves to maintain exchange rates between the dollar and other currencies within required margins of their official parity relationships, as then required by the IMF Agreement.[10] In December 1971, new exchange rate relationships among the currencies of the Group of Ten countries[11] were agreed at a

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7. These arrangements had interesting legal features, but they are beyond the scope of this Article. *See generally* EDWARDS, *supra note* 1, at 135-64.

8. *Id.* at 167-221. *See also* 1 DEVRIES, *supra* note 6, at 9-250.

9. For a brief sketch of the Bretton Woods par value system, see EDWARDS, *supra note* 1, at 491-95. The devaluation of the British pound sterling is discussed, *id.* at 494 and sources cited therein.

10. *Id.* at 495-98 and sources there cited.

11. The members of the Group of Ten are: Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom, and the United States. *Id.* at 72.

conference at the Smithsonian Institution.[12] The agreed rates between the United States dollar and the United Kingdom pound sterling and between the United States dollar and the Italian lira held for only a few months. In March 1973, the Bretton Woods system of stable exchange rates between the United States dollar and actively-traded currencies collapsed.[13]

In 1973 and the immediately-following years, world oil prices increased dramatically. A dramatic redistribution of the world's wealth resulted.[14] Some of the poorest nations remain burdened by the effects of debts and by changes in the terms of trade, originating with these oil price increases.

In April 1978, the Second Amendment of the Articles of Agreement of the IMF entered into force.[15] In place of the former system in which the IMF had a formal role, its concurrence being required when member states changed the par values of their currencies, the new article IV puts the IMF primarily in a surveillance role. The Fund has certain long-term responsibilities for the exchange rate system. It is directed to adopt principles for the guidance of members in their exchange rate policies and is given authority to provide for general exchange rate arrangements and even to institute a new par value system.

Article IV places general obligations on the member states of the Fund to consult and collaborate, to promote monetary stability, and to avoid manipulating exchange rates to prevent effective balance-of-payments adjustment or to gain an unfair competitive advantage over others.[16] At

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12. EDWARDS, *supra* note 1, at 498-99.

13. *Id.* at 499-501.

14. Khodadad Farmanfarmaian et al., *How Can the World Afford OPEC Oil?*, 53 FOREIGN AFF. 201 (1974-75).

15. *See supra* note 4.

16. The full text of article IV, section 1, entitled "General Obligations of Members," states:

> Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates. In particular, each member shall:
>
> (i) endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;
>
> (ii) seek to promote stability by fostering orderly underlying economic and finan-

the present time, members are given great latitude in choosing the exchange rate arrangements for their currencies. Article IV, section 2(b) provides:

> Under an international monetary system of the kind prevailing on January 1, 1976, exchange arrangements [to be applied by IMF member countries] may include (i) the maintenance by a member of a value for its currency in terms of the special drawing right or another denominator, other than gold, selected by the member, or (ii) cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, or (iii) other exchange arrangements of a member's choice.[17]

While most IMF members maintain stable exchange rates between their currencies and the currency of a major trading partner or the SDR, the larger industrial states have chosen more flexible arrangements. Each member of the exchange rate system of the European Community (European Monetary System) declares an official rate in relation to the European currency unit (ECU) and maintains stable cross-rates in the markets with the other currencies participating in the system. The United States, Japan, Canada, and a number of other states "float" their currencies in the exchange markets. In other words, rates fluctuate with changes in supply and demand for the different currencies with authorities intervening in the markets from time to time to counter disorderly conditions or to influence rates without declaring a specific stable rate over time.[18] Viewed over all, the present regime has experienced and tolerated wide swings in exchange rates.[19]

During the 1980s, a major problem that preoccupied monetary au-

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cial conditions and a monetary system that does not tend to produce erratic disruptions;

(iii) avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and

(iv) follow exchange policies compatible with the undertakings under this Section.

Second Amendment to the IMF Articles, *supra* note 4, art. IV, sec. 1, 29 U.S.T. at 2208.

17. *Id.* at 2208-09, 15 I.L.M. at 548-49.

18. *See generally* 1991 INTERNATIONAL MONETARY FUND, ANNUAL REPORT ON EXCHANGE ARRANGEMENTS AND EXCHANGE RESTRICTIONS, at 85, 265, 522 [hereinafter 1991 IMF REPORT ON EXCHANGE ARRANGEMENTS]; EDWARDS, *supra* note 1, at 521-54.

19. *See generally* JOSEPH GOLD, LEGAL EFFECTS OF FLUCTUATING EXCHANGE RATES 12-21, 420-28 (1991); JOSEPH GOLD, EXCHANGE RATES IN INTERNATIONAL LAW AND ORGANIZATION 89-136, 369-413 (1988); EDWARDS, *supra* note 1, at 507-68, 605-07.

thorities was the servicing of international debt taken on by developing states, including large developing states like Mexico and Brazil.[20] A related problem was the liquidity and solvency of the commercial banks that had made loans to developing states upon which the developing states defaulted.[21] The attention required in managing one crisis after another preoccupied official attention, and taking a long-term perspective was difficult.

During the past twenty-five years, significant changes have occurred in the relative roles of particular nations. Japan and Germany have become major actors in international monetary affairs. The roles of France and the United Kingdom have declined in relation to the two former nations. The role of the United States remains prominent, but not as dominant as it was in 1945. The Soviet Union did not become a member of the International Monetary Fund, and its currency remained inconvertible up to the time of its dissolution. As this is being written, the IMF is considering the requests of states, formerly constituent republics of the Soviet Union, to join the Fund.[22]

The above summary recital of major monetary events in the last twenty-five years should raise caution flags to anyone who tries to predict future developments in international monetary law and institutions. Predicting that the institutional system in place today will be similar to the system twenty-five years from now would appear to be highly risky. On the opposite side, if one assumes that radical changes will occur, the historical experience suggests that predicting the nature of those changes is loaded with uncertainty. Perhaps the best one can do is to note issues of enduring significance and to make related policy suggestions. This is what this Article will attempt.

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20. *See generally* PROSPECTS FOR INTERNATIONAL LENDING AND RESCHEDULING (John J. Norton, ed., 1988); *International Debt: How Can Developing Countries Regain Creditworthiness?* 1989 PROCEEDINGS, AMERICAN SOCIETY OF INTERNATIONAL LAW 87; STEPHEN A. SILARD, *International Law and the Conditions for Order in International Finance: Lessons of the Debt Crisis*, 23 INT'L LAW. 963 (1989); and the series of papers published twice a year by the International Monetary Fund entitled "World Economic Outlook."

21. *See* EDWARDS, *supra* note 1, at 619-26; J.J. NORTON, *The Work of the Basle Supervisors Committee on Bank Capital Adequacy and the July 1988 Report on "International Convergence of Capital Measurement and Capital Standards,"* 23 INT'L LAW. 245 (1989).

22. *See* GEORGE GRAHAM, *Former Soviet Union States Near Entry into IMF*, FIN. TIMES, Mar. 25, 1992, at 6.

III. The Future

A. *Exchange Rate Arrangements*

Experience with the Bretton Woods par value system of exchange rates and the present regime of IMF article IV with its minimal specific rules indicates that, while rules alone cannot assure a viable and stable system, international rules nonetheless have a place. The present system allows excessive discretion to national authorities. The author has argued elsewhere that section 2(c) of IMF article IV provides authority to the Fund, which it should exercise, to put in place a more rational and stable system of exchange rates.[23] That subsection provides:

> To accord with the development of the international monetary system, the Fund, by an eighty-five percent majority of the total voting power, may make provision for general exchange arrangements without limiting the right of members to have exchange arrangements of their choice consistent with the purposes of the Fund and the obligations under Section 1 of this Article.[24]

Perhaps, without waiting unduly long, the Fund will use the authority of IMF article IV, section 2(c), to provide for general exchange arrangements, rather than the present "non-system." The general arrangements might specify a number of discrete categories of arrangements among which IMF members would be expected to choose. The categories should make a distinction between arrangements that are governmentally administered—when the government or its central bank requires commercial banks in its territory to buy and sell foreign currencies in transactions with their customers at rates set by the government—and arrangements that are market-based. In the case of the latter group, pegging to another national currency or to a composite unit like the SDR or ECU and, alternatively, floating rates, with related central bank intervention policies that are appropriate, should be specified as choices. The idea would be to move toward a more rational and harmonized system of exchange rates.[25]

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23. Richard W. Edwards, Jr., *An "Interesting" Provision Concerning Exchange Rate Arrangements*, 23 INT'L LAW. 827 (1989), *reprinted in* FESTSCHRIFT IN HONOR OF SIR JOSEPH GOLD 101 (W. Ebke & J. Norton, eds., 1990).

24. 29 U.S.T. at 2269. Section 1 of article IV is quoted *supra* note 16.

25. The ideas summarized here are developed in EDWARDS, *supra* note 23.

B. *National Currencies and Common Currencies*

The period since World War II has seen a dramatic increase in the number of states and the number of national currencies. Perhaps the next twenty-five years will witness a consolidation of currencies. In a few cases, states—usually small ones—now share a common central bank and a common currency. Examples are Belgium and Luxembourg, which have a monetary association, and the states served by the East Caribbean Central Bank, the Banque Centrale des Etats de l'Afrique de l'Ouest, and the Banque des Etats de l'Afrique Centrale. In most cases, though, each state has its own unique currency.[26]

The implementation of the Treaty on European Union, signed at Maastricht on February 7, 1992,[27] which contemplates a common currency and shared monetary policy among the member states of the European Community, will be watched for the lessons that it will teach. One can predict that during the next twenty-five years, not only in the European Community but elsewhere, movements at regional levels toward shared monetary policies and common currencies will occur. Lawyers will be challenged to design effective institutions to carry out the shared policies.

C. *Balance-of-Payments Financing*

What can be predicted about balance-of-payments financing? Obviously, a need for financing will continue to exist. One also can expect a continued blurring of the distinction between the concepts of balance-of-payments financing and development assistance as these relate to developing states. The very concept called "balance of payments" may need to

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26. *See generally* 1991 IMF REPORT, *supra* note 18.

27. Treaty on European Union, signed at Maastricht Feb. 7, 1992, not yet in force [hereinafter Maastricht Treaty]. The signatories are Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. The text has been published as a book by the Office for Official Publications of the European Communities, 1992, ISBN 92-824-0959-7.

See id. at 11-44 and 148-95. These pages contain the new and revised texts of articles 102a-109m of the Treaty Establishing the European Community and the following protocols: Protocol on the Statute of the European System of Central Banks and the European Central Bank, Protocol on the European Monetary Institute, Protocol on the Excessive Deficit Procedure, Protocol on the Convergence Criteria Referred to in Article 109j of the Treaty Establishing the European Community, Protocol Amending the Protocol on the Privileges and Immunities of the European Community, Protocol on the Transition to the Third Stage of Economic and Monetary Union, Protocol on Certain Provisions Relating to the United Kingdom of Great Britain and Northern Ireland, and Protocol on Certain Provisions Relating to Denmark.

be rethought. The system in which data are collected, organized, and presented regarding national accounts, however, will likely require change. One does not think in terms of balancing payments among the constituent states of the United States. One makes economic comparisons, but balance-of-payments language is not used. With a trend toward regional monetary unions, new tools will be needed to assess the economic performance of the constituent units.

Implementation of the Maastricht Treaty that contemplates a common currency may require different thinking, data assembly, and presentation compared to the present methods that focus on national accounts. One question that must be answered will be: how should data best be presented and interpreted relating to trade, invisibles, and capital movements?

D. *Assuring Public Confidence in the Monetary Instrument*

Some of the most fundamental issues concern assuring long-term public confidence in the monetary instrument itself. Most elementary economics textbooks point out that money performs several functions: a means of payment, a standard of value, and a store of purchasing power. Perhaps money's most important role is as a standard and means of deferred payment, which combines the three functions. It is a standard not only for assessing current exchanges, but also for bargaining relating to future activities. All national currencies today are essentially nominal units. Because of an historical inflationary bias, their functioning as standards of value enduring into the future is not satisfactory. Currencies can be used to acquire real goods and services, but no direct legal link exists that defines the value of a currency in relation to the goods and services it can command. The values of currencies and the credit terms related to them are managed or, perhaps more accurately, are influenced directly by the decisions of official monetary authorities.[28] The national and international rules under which monetary authorities manage or influence the values and credit terms of the currencies they issue presently provide an extraordinarily wide range of discretion to the national authorities. While a direct binding link between a currency and commodities is unwise because it may become simply a price control on the commodity, national authorities need to be guided by more than platitudes in seeking to adjust rationally the volume of money to avoid destabilizing the price levels in a society.

The dramatic decline of short-term interest rates of the United States

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28. *See generally* EDWARDS, *supra* note 1, at 663-71.

dollar in the closing months of 1991 and early months of 1992 was engineered by the United States Federal Reserve System. These changes resulted in dramatic shifts of the relationships of creditors and debtors and in the wealth of holders of short-term monetary assets compared to those holding assets with long maturities. The transfer of wealth from creditors to those debtors who were able to refinance their debts was in some respects as dramatic as a formal confiscation and redistribution of property.[29] Housing prices rose dramatically within a few weeks in some parts of the United States. A general decline in the dollar's purchasing power is likely to follow from these actions.

Many nations hold United States dollars in their reserves—dollars that will earn less interest than they would have formerly and whose purchasing power in relation to goods and services also is likely to decline as a result of the Federal Reserve's recent actions. Yet, the changes were tolerated, by and large, both within the United States and internationally. Virtually no effective international restraints on actions by the Federal Reserve in lowering interest rates on the dollar exist, and few restraints are present even in domestic law. One of the long-term questions is whether national monetary authorities should be allowed this wide discretion or whether they should be subject to a regime with more stringent domestic and international rules.

This matter is not as academic as it may seem. The drafters of the new treaty that contemplates a single currency in the European Community included some rather stringent criteria that must be met before a national currency can be merged into the single European currency. New article 109j of the Treaty Establishing the European Community, which is further elaborated in a protocol, sets forth, *inter alia*, the following criteria:

> - the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability;
> - the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104c(6);
> - the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the currency of any other Member State;
> - the durability of convergence achieved by the Member State and of its

29. Michael Quint, *Credit Markets: Effort Seen to Lower Prime Rate*, N.Y. TIMES, Dec. 9, 1991, at D1.

participation in the exchange-rate mechanism of the European Monetary System being reflected in the long-term interest-rate levels.[30]

At the present time, a considerable amount of skepticism is being expressed about the new treaty. Critics predict that the criteria will be interpreted liberally because strict observance of the criteria will prevent, in their judgment, a common currency from becoming an economic reality—a matter in which many public officials have invested their reputations.[31] Article IV, section 1(i), of the IMF Agreement provides that each member shall "endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth *with reasonable price stability* . . .,"[32] but at present no effective mechanism exists to assure that the purchasing power of national currencies, in terms of goods and services—real resources—is maintained through time.

E. *Valuation of the SDR*

During the next twenty-five years, will an effort be made through rules to assure a tighter relationship between a currency's nominal value and the real goods and services that it will command? While it may be wishful thinking on the author's part, perhaps the International Monetary Fund will set an example by reconsidering the principle on which the SDR is valued. Presently, the value of the SDR is set by rule to a basket containing portions of five national currencies—the United States dollar, the Japanese yen, the German mark, the United Kingdom pound sterling, and the French franc. The German mark and French franc are expected by the Maastricht Treaty to be merged into the new common European currency by 1999, and perhaps the United Kingdom pound sterling also will be merged into the common currency. This situation will force the International Monetary Fund to reconsider the principle for valuing the SDR.

Perhaps the value of the SDR should not be defined in relation to national currencies, the purchasing power of which the Fund has little ability to control. The SDR cannot be expected to become the principal

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30. Maastricht Treaty, *supra* note 27, at 41.

31. Otmar Issing, a member of the Board of the German central bank, the Bundesbank, and head of the bank's economics division, on March 6, 1992, predicted that Belgium, Greece, Ireland, and Italy would not comply with Article 109j's state debt and public sector deficit criteria required for their participation in a single European currency. He predicted that there would later be strong political pressure to relax the criteria or their application. Quentin Peel, *Kohl Faces Double Challenge on ECU*, FIN. TIMES, Mar. 7-8, 1992, at 2.

32. Section 1 of the article IV is quoted in *supra* note 16.

reserve asset of the international monetary system when its exchange value is derived from a basket composed of portions of several national currencies.[33] Perhaps the exchange value of the SDR should be managed by the Fund with an aim of a relatively stable purchasing power of the SDR in relation to an identified basket composed of a few widely-traded and used goods and services rather than national currencies. This can be done without returning to a gold standard, but it does assume the development of markets in which SDR-denominated monetary instruments are priced against national currencies on the basis of appraisals by governmental and private participants in the market who are willing to buy and sell the instruments. Moreover, change in the principle of valuation of the SDR can be made without amending the Articles of Agreement.[34]

F. *Currencies in the Republics of the Former Soviet Union*

An immediate task is the development of the monetary instruments that will serve as the medium of exchange and standard of value in the states that were formerly constituent republics of the Soviet Union. At the time this Article is being written, the Russian ruble is being used as the medium of exchange and standard of value in the several states, even though the volume of this fiat currency is determined by the central bank of Russia over which the other states have no effective control. The Ukraine is issuing coupons that serve as a parallel currency.[35] Currently, the Russian ruble does not function well as a store of value. A rapid monetary inflation in late 1991 and early 1992 has made the ruble's future purchasing power unpredictable and also has affected the functioning of the ruble as a standard of value and medium of exchange.

33. The valuation of the SDR is explained and discussed in EDWARDS, *supra* note 1, at 176-94. *See* E.B. Decision No. 6631 (80/145) G/S (1980), E.B. Decision No. 6709 (80/189) S (1980), E.B. Decision No. 8160 (86/186) G/S (1985), and E.B. Decision No. 9549 (90/146) G/S (1990), *printed in* INTERNATIONAL MONETARY FUND, SELECTED DECISIONS AND SELECTED DOCUMENTS OF THE INTERNATIONAL MONETARY FUND 376-80 (16th issue, 1991); and E. B. Decision No. 9619 (91/1) G/S (1990), *printed in* 1991 INTERNATIONAL MONETARY FUND: ANNUAL REPORT OF THE EXECUTIVE BOARD 115.

34. A change in the principle used in valuing the SDR requires an 85% majority of the voting power of the participants in the Special Drawing Rights Department of the Fund and an 85% majority of the total voting power of the members of the Fund (whether or not members of the Special Drawing Rights Department). Second Amendment to the Articles, *supra* note 4, art. XV, sec. 2, art. XXI(a)(iii), 29 U.S.T. at 2238, 2248, 15 I.L.M. at 565, 571.

35. *See* Frederik Eliason, *Business Diary*, N.Y. TIMES, Feb. 16, 1992, sec. 3, at 2. The Parliament of Ukraine on March 24, 1992, approved in principle a Ukranian currency separate from the Russian ruble. FIN. TIMES, Mar. 25, 1992, at 2.

Before the end of the Soviet Union, the Soviet Union's ruble and the "transferrable ruble" used in international transactions served primarily as an accounting unit in a command economy and only secondarily as a medium of exchange.[36] Whatever moorings the Russian ruble had as a dependable standard of value have now been cut. To function effectively as a currency, the volume of rubles issued must be controlled and the potential users must be given confidence in the issuing authority.[37]

A question that must be addressed is whether each state will establish and develop its own finance ministry and central bank issuing its unique national currency, or whether institutions will be shared. If institutions are to be shared, control arrangements must be established among the several states. This is true because an arrangement in which Russia simply does it for all, without external oversight and control, is unlikely to endure. The development of national or regional monetary institutions is a prerequisite to the achievement of longer-term goals of currency convertibility and economic growth in a market environment.

G. *Regulation of Commercial Bank Activities*

Worldwide, the relationship of official monetary authorities, both national and international, to private financial entities is bound to be of increasing concern in future years. The idea that national governments must enjoy great freedom in regulating the conduct of private financial institutions within their borders and that international organizations, like the International Monetary Fund and the Bank for International Settlements, should deal only with member governments or related government central banks—but should not have direct regulatory control over private entities—deserves rethinking. National monetary authorities, even when they cooperate among themselves, have difficulty regulating, or even influencing, the conduct of financial entities that operate transnationally.[38] Perhaps the next twenty-five years will see the emergence of direct regulatory powers by international or regional institutions over private financial institutions. Can simple, easily-enforced rules be designed or must an international regulatory regime be complex? What

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36. *See generally* Edwards, *supra* note 1, at 347-50.

37. *See* David Wessel & Gerald F. Seib, *U.S. Says Work on Ruble Fund is Accelerating*, WALL STREET JOURNAL, Mar. 25, 1992, at A3; Adi Ignatius, *New Russian Economics Minister Expects the Ruble to Continue Getting Stronger*, WALL STREET JOURNAL, Feb. 25, 1992, at A10.

38. *See* Panel, *New Frontiers in the Regulation of International Money Movement in the Wake of BCCI*, 1992 PROCEEDINGS, AMERICAN SOCIETY OF INTERNATIONAL LAW ____.

would be desirable relationships among national and international official bodies and commercial banks and other private financial entities?

H. *Public Understanding of Monetary Processes*

In the end, the concern is with the nature of money, an instrument not easily understood. The managers of money are in too many respects like priests and magicians. In some respects, they receive greater respect and awe. What they do, as compared to the prayers of priests, clearly has effects that are easily seen. While the effects can be seen, the process remains a mystery to many. Few persons understand how the United States Federal Reserve System, by waiving some sort of magic wand, is able to reduce interest rates on both short-term funds and even long-term home mortgages. The author recalls a comment of a Federal Reserve official after reading the author's draft of a description of the currency swap arrangements between the United States Federal Reserve System and other central banks: "You have taken the mystery out of what we do," the official said.[39] The tone of voice indicated that the speaker had doubts that this effect was good. Sometimes officials would like the public to see the results, but not know "how the sausage is made." The educated publics of the world are likely during the next twenty-five years to become much more knowledgeable about monetary processes and more critical of manipulative actions.

I. *Institutional Adaptation*

The International Monetary Fund likely will be the central world institution in international monetary affairs twenty-five years from now, as it is today. The Fund's role as that central institution, however, is not enough. More important is the competence of its staff and the quality and vision of its leadership. At the present time, the closest counterparts to the Fund are the Bank for International Settlements, based in Basle, Switzerland, and the emerging central bank of the European Community.

A need exists for a public international institution somewhat comparable to the Council of Europe in political affairs—a place where creative thinking can occur without too much attention to immediate implementation. So much of the attention of the International Monetary Fund and the Bank for International Settlements is focused on the crises of the day that considering the longer term sometimes is difficult. The Interim Committee of the International Monetary Fund was intended both to

39. The description appears in EDWARDS, *supra* note 1, at 135-36.

take a long-term approach to international monetary reform and to coalesce the political will for change. Increasingly, however, the Interim Committee has become a body with which the Executive Board of the Fund consults before making policy decisions to assure political consensus. The Committee has, to this observer, become overly emeshed in the details of short-term decisions. Perhaps the Interim Committee should be replaced or its membership, structure, and responsibilities re-evaluated.

IV. CONCLUSION

The most basic question is whether the world will be a better place for its inhabitants twenty-five years from now compared to today. Monetary law and policy can make a difference, but it is unlikely to be the decisive factor. An interesting and never-to-be-forgotten aspect of international monetary relations is that they are for the most part "a clear example of a mixed-motive, nonzero-sum game."[40] Institutions must be designed and regularly adapted to assure that a net gain is accomplished and that this gain is fairly shared.

40. BENJAMIN J. COHEN, ORGANIZING THE WORLD'S MONEY: THE POLITICAL ECONOMY OF INTERNATIONAL MONETARY RELATIONS 50 (1977).