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IS THE BRICS NEW DEVELOPMENT BANK A FLEDGLING ALTERNATIVE TO THE WORLD BANK?

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In 2001, the world began talking about BRIC – Brazil, Russia, India and China – as a potential powerhouse in the world economy. After the 2008 international financial crisis, BRIC gained prominent momentum and the world saw them as a serious actor to be watched. Today, BRICS (South Africa became a member of the bloc in 2010) are being closely watched because there is no certainty as to their future.

The Shanghai-based New Development Bank was launched in this context and in answer to the institutional crisis that the world observed with concern when US-guided international economic institutions could not lead the way out of the 2008 crisis and into recovery.

While each country around the globe lives its own domestic reality, the Trump phenomenon in the United States has erupted on the international stage and is proving to lead the still largest economy in the world onto the opposite path of the one set by the United Nations in its 2030 Agenda for Sustainable Development.

These events as well as the roles played by the UN and the G20 are the subject of this article. They are analyzed in order to provide a framework from which to answer the following questions: Is the Shanghai-based New Development Bank a fledgling alternative to the World Bank, and are the BRICS a possible alternative to a more cooperative future?

Keywords: sustainable development; New Development Bank; World Bank; IMF.

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Introduction

In 2001, the world began talking about BRIC – Brazil, Russia, India and China – as a potential powerhouse in the world economy. Today, BRICS (South Africa became a member of the bloc in 2010) and their activities are one of the most discussed issues in global economics and international politics.

The global financial meltdown witnessed in 2008 prompted calls for a second Bretton Woods-type conference to overhaul the international financial architecture and create a robust international financial regulatory mechanism.

At that time, there were very large unmet needs in the emerging and developing countries, most clearly in the fields of infrastructure and more environmentally sustainable forms of development. Moreover, there was the disappointment of promises left unfulfilled with regard to the Millennium Development Goals, with the identified deficit in investment reaching around US$1 trillion annually.

That was the context in which the G20 convened in Washington D.C. in November 2008 to assess the impact of the global economic crisis and consider international measures in response. The future of the world was in jeopardy as the general crisis and such a major deficit in investment would constrain the future growth of emerging and developing economies. In population terms, this implied that a large proportion of the world's population would continue not to have access to electricity and clean water.[1]

A communiqué issued by the G20 after the meeting called for both immediate and long-term actions to stabilize the global financial system, stimulate domestic demand, help emerging and developing economies battered by the crisis and strengthen the regulatory framework.

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[1] As pointed out in WWAP (United Nations World Water Assessment Programme). 2015. The United Nations World Water Development Report 2015: Water for a Sustainable World. Paris, UNESCO (Aug. 10, 2017), available at http://unesdoc.unesco.org/images/0023/002318/231823E.pdf.

According to Kirton and Guebert, by calling and hosting the summit U.S. President George W. Bush admitted that America alone could not solve the problem and that it required more than the broadly multilateral International Monetary Fund it controlled or even the exclusive G7 or G8 clubs to craft an effective response.[2]

This crisis was the factual background that caused emerging powers to help America, as it was clear that the solution to the crisis was beyond the G8 partners' combined capabilities and that the full global community was being molded around this new context.

In fact, the G20 acknowledged this situation and issued a communication saying:

> We have taken strong and significant actions to date to stimulate our economies, provide liquidity, strengthen the capital of financial institutions, protect savings and deposits, address regulatory deficiencies, unfreeze credit markets, and are working to ensure that international financial institutions (IFIs) can provide critical support for the global economy.
>
> But more needs to be done to stabilize financial markets and support economic growth. Economic momentum is slowing substantially in major economies and the global outlook has weakened.
>
> Many emerging market economies, which helped sustain the world economy this decade, are still experiencing good growth but increasingly are being adversely impacted by the worldwide slowdown.
>
> Against this background of deteriorating economic conditions worldwide, we agreed that a broader policy response is needed, based on closer macroeconomic cooperation, to restore growth, avoid negative spillovers and support emerging market economies and developing countries.[3]

Since then the global landscape has changed. The G20 bear particular responsibility, because their countries represent three-quarters of global economic output. There was, nevertheless, a rise in protectionist measures in subsequent years that went against the very spirit of the existence of the G20 and development commitments made by BRICS countries.

In opposition to this situation, certain powerful voices were raised: the global economic crisis which began to unfold in 2007 demonstrated very clearly, according

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2 John J. Kirton & Jenilee M. Guebert, *Global Environmental Diplomacy: Comparing and Sharing* in *Global Health Diplomacy: Concepts, Issues, Actors, Instruments, Fora and Cases* 141–154 (I. Kickbusch et al. (eds.), New York: Springer, 2012).

3 Geoffrey Garrett, *G2 in G20: China, the United States and the World after the Global Financial Crisis*, 1(1) Global Policy 29 (2010). G20 Declaration of the Summit on Financial Markets and the World Economy, Washington D.C., 15 November 2008 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2008/2008declaration1115.html.

to German Chancellor Angela Merkel, that no single country in the world could stop such undesirable developments and their domino effect. "And no country can on its own effectively prevent such a crisis ever happening again," she added.

What was needed, the Chancellor asserted, was a common regulatory framework so that countries could benefit from the opportunities globalization presented and at the same time minimize its risks. But certain basic decisions first needed to be taken to set the right course and give everyone medium- and long-term orientation, thus reducing the risk of the crisis repeating itself.

These words seem quite close to the spirit of the New Development Bank, which committed itself to work towards putting into place measures to mitigate global risks. That involved promoting global economic stability and resilience, strengthening institutions and delivering on common standards for global public goods.

But living in the age of an Internet economy brings both opportunities and challenges to global growth. It was not until September 2016 that G20 countries understood the seed that had been planted when BRICS countries took the early initiative eight years earlier to unite their efforts in order to cooperate in a changing economy that is transforming the world as we know it.

While the United States was struggling to retain control over the institutions that it had managed in the past, China was heading towards a capitalistic development path and accelerating its financial internationalization.[4]

1. New Development Bank, Old Scope

The 2008 financial crisis was seen as an opportunity by China: America was showing incredible weakness by trying to build up again their damaged financial system while China had not suffered very much. Both being major players on the world economic stage with non-complementary objectives, a collision of interests was inevitable.[5]

Between 2008 and 2013 the financial crisis did not fail to affect even the most remote places on earth. During that period America was a super power facing its most serious economic issues since the crisis of the 1930s and thus not paying as much attention to its foreign policy as it was focusing on its domestic economic and financial issues.

The fact that in 2013 emerging and developing countries had the necessary savings and foreign exchange reserves was clearly the prime condition for them to think of financing a new development bank that could contribute to finance

4 Rich Marino, *The Future BRICS: A Synergistic Economic Alliance or Business as Usual?* 131–148 (London: Palgrave Macmillan, 2014).

5 In fact, this situation was predicted by Philip Bowring for the New York Times in his article "How America's Interests Collide in Asia" (Aug. 10, 2017), available at http://www.nytimes.com/2005/03/22/opinion/philip-bowring-how-americas-interests-collide-in-asia.html.

investments that up to then were funded by the established development organizations such as the World Bank and the Inter-American Development Bank.

The BRICS countries began their association by formalizing their will to work together towards shared goals during the 2009 Russia Meeting.

At that summit the four major national emerging economies – Brazil, Russia, India, China – concurred with Richard Duncan who argued that the cause of the crisis lay in the fact that, "The 37-year experiment with fiat money and floating exchange rates has failed catastrophically." According to Duncan, "The time has come to convene a forum of the world's leaders to hammer out and begin the transition to a new rule-based international monetary system predicated on sound money and balanced trade. Current Group of 20 efforts fall well short of what is required."[6]

The same was expressed by the BRIC group, which went a bit further: as three of the BRIC members were developing countries, the question was how they could become more involved in global affairs.[7]

One of the outcomes of this meeting was that the BRIC nations announced the need for a new global reserve currency, which would have to be "diverse, stable and predictable."[8]

Although the statement was not released as the bloc's perceived criticism of the "dominance" of the U.S. dollar,[9] it left no room but that American dominance as an economic super power was being questioned in its own backyard.

In 2013, the efforts of BRICS had developed sufficiently along the institutional pathway: due to the 2008 crisis and little coordinated response from the G20, BRICS made a clear case for a new institution to be created.

This institution was meant be a complement to, not a substitute for, existing financial institutions both in the public and in the private sector. Its existence would strengthen the voices of emerging and developing economies in the development financial architecture as those would be the major contributors to fund the project.

In this context, it was observed with amazement that in March 2013 the leaders of the BRICS countries (now including South Africa) approved the creation of a new development bank to finance investment in infrastructure and more sustainable development in BRICS and other emerging and developing countries.

This was the first time since Bretton Woods that the world financial architecture was designed again from the common will of major states, and two major world institutions – the International Monetary Fund and the World Bank – were being seriously challenged.

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6 Richard Duncan, *Bring Back the Link between Gold and the Dollar*, Financial Times, 23 November 2008 (Aug. 10, 2017), available at https://www.ft.com/content/ba673d22-b977-11dd-99dc-0000779fd18c.

7 Francesca Beausang, *Globalization and the BRICs: Why the BRICs Will Not Rule the World For Long* 51–67 (Basingstoke: Palgrave Macmillan, 2012).

8 Ramesh Thakur, *How Representative are BRICS?*, 35(10) Third World Quarterly 1791 (2014).

9 Except for Russia, which had in fact criticized the dominance of the U.S. dollar.

2. When the Financial Architecture Started to Crumble

International monetary law may be conveniently divided into three periods according to Professor Lowenfeld: before Bretton Woods, the Bretton Woods regime and post-Bretton Woods. It should be useful here to describe briefly the first period so as to understand the changes brought about by the Articles of Agreement of the International Monetary Fund, as well as to describe the regime of the original Articles of Agreement, both for the substantial body of law developed thereunder that remains in effect, and to understand the significance of the changes brought about by the Second Amendment (1976), which gave *de jure* recognition to the demise of much of the original Agreement in the early 1970s, when the post-Bretton Woods era began.

However, the system created after the Second World War was not designed to operate in a world ruled by the weight of globalization, trade disputes and the ambitions of rising economic powers in Asia and elsewhere.

The World Bank and its sister institution the International Monetary Fund (IMF) were established in 1944 at Bretton Woods, New Hampshire, United States to secure the international economy. The World Bank was supposed to rebuild Europe and reduce poverty elsewhere with grants and loans.

The IMF would enable states to achieve financial stability with growth by making its resources available to them for purposes consistent with the Articles of Agreement. The monetary fund tries to avert financial meltdowns by monitoring the economic policies of member states. Additionally, a new international trade organization, the General Agreement on Tariffs and Trade, of 1947, sought to ensure the smooth flow of goods and services that keeps the world economy growing.

Article XII of the Articles of Agreement of the IMF established a three-tiered organization consisting of a Board of Governors, an Executive Board and a Managing Director, who presides over the staff and also functions as a non-voting chairman of the Executive Board.

The managing director and the staff owe their duty entirely to the IMF and have a non-political character that has stood the institution in good stead. However, they have made unpopular recommendations to member states, and because of this member states have regarded the staff as inflexible, insensitive "to political realities" and too inflexibly tied to a standard remedy for economic difficulties.[10]

A great deal of this insensitivity was perceived during short-term balance of payment crises when the IMF would offer funding that was often insufficient or tied to inappropriate conditionality. According to Woods, by the 1980s not only the IMF

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[10] As of 2007, the Managing Director of the IMF has always been a national of a European state; by an unwritten understanding, the President of the World Bank has always been a national of the United States.

but also the World Bank had become heavily involved in conditionality and policy-based lending.

This same criticism was raised by Lowenfeld, who recalls:

> Since mid-1970s when fundamental problems with the international monetary system became apparent, the perception has grown up that the Executive Directors are not sufficiently close to the governments they represent to provide the kind of high-level interchanges necessary for major decisions.[11]

This criticism continued over the decades. Then, at the IMF's Annual Meeting in 2006, as a part of a "medium-term strategy" announced by the Managing Director to rethink the role and governance of the Fund, the assembled Governors debated proposals to revise the voting formulas, with a view to proposing an amendment to the Articles of Agreement in 2007.

While there was general agreement that quotas (and, therefore, voting power) were most seriously out of line for China, the Republic of Korea, Mexico and Turkey, it was not clear that agreement could be reached on a general realignment, as the United States, the European Union and developing countries had differing interests and proposals.[12]

It was in that 2006 meeting that the controversy about the European Union being represented by seven Directors on the Executive Board arose – and especially when compared to one for the United States and twelve for the 161 developing countries. And that controversy was one of the causes that founded the need for a broad-based, southern hemisphere-led monetary fund, one that could be led by the BRICS countries, and one that builds on the experience of and complements existing regional southern-hemisphere institutions.

Part of the criticism was also aimed at the World Bank. It was born with constitutional guarantees against political interference, and yet its role was questioned when asked not whether human rights are relevant to development, but whether its mandate – as defined and limited by its Articles of Agreement – can cover the promotion and protection of all human rights.

On this point, Shihata has suggested that international financial institutions – especially the World Bank – should be measured by their overall objectives, by how many people they help.

Experience has proven the value of the insight of these institutions' founders, who insisted on their insulation from political considerations which had no direct

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11 Andreas F. Lowenfeld, *International Economic Law* 603 (2nd ed., New York: Oxford University Press, 2008).

12 For more details on voting powers in the IMF, *see* Leo van Houten, *Taking the IMF's Governance Reform Forward*, 35(21) IMF Survey 338 (2006).

relevance to their mandate of promoting economic development. Present practice also shows that depriving the unfortunate people of countries under predatory and despotic regimes of financial assistance might only add further injury to the insult imposed by their governments. In my view, the continuance of assistance to such countries will be more humanitarian so long as such funds are used only to improve the lot of the people.[13]

The World Bank has undergone a process of fundamental transformation since its creation and sometimes its objectives seem far removed from their usual course.

In the 1960s, with post-war reconstruction nearly completed, the World Bank started shifting its focus to newly independent, developing countries.

According to the World Bank:

> Development projects reflected people-oriented objectives rather than exclusively the construction of material structures. Projects related to food production, rural and urban development, and population, health and nutrition were designed to reach the poor directly. Bank operations also expanded to identify and encourage policies, strategies, and institutions that helped countries succeed. The Bank initiated sectorial and structural adjustment loans deemed necessary for the success of its projects.[14]

However, in the 1970s the World Bank was criticized for adopting a lending policy without much scrutiny of the policies adopted by the recipient countries. Money was lent to countries on terms which were akin to commercial lending. For example, the World Bank's cumulative lending to China provoked some serious questioning of the institution.

China is now an export superpower with more than US$1 trillion in reserves and is so wealthy that it recently announced its own US$20 billion program of loans and credits to Africa.[15] Many question whether the World Bank should be lending to China at all.

Furthermore, when the World Bank came under criticism for not adhering to its own policies, an Inspection Panel was established in 1993 to investigate complaints against it. In the face of criticism from civil society, the World Bank embarked on a series of reform policies throughout the 1990s. Consequently, it began to listen to the concerns of civil society, but it did not do enough in the matter of transparency. In 2007 the World Bank witnessed the premature departure of its president, Paul Wolfowitz, after

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[13] Ibrahim F.I. Shihata, *The World Bank's Protection and Promotion of Children's Rights*, 4 International Journal of Children's Rights 383 (1996).

[14] World Bank Group Archives, History (Aug. 10, 2017), available at http://www.worldbank.org/en/about/archives/history.

[15] Ben Blanchard, *China Strengthens Africa Ties with $20 Billion in Loans*, Reuters, 19 July 2012 (Aug. 10, 2017), available at http://www.reuters.com/article/us-china-africa-idUSBRE86I03O20120719.

allegations of inappropriate conduct on his part. This shook the very foundations of the World Bank's efforts to curb corruption among its member countries.

Both the World Bank and the IMF were established to address the situation that existed in the mid-1940s. The world has gone through a huge economic and monetary transformation since then; but both institutions seem to have not overcome the criticism for their conditionality and for getting involved in areas not originally mandated by their member states.

This leads to the question, Was this situation considered when thought was given to creating a new financial institution?

3. The UN Role

As with the Congress of Vienna of 1815 and the Treaty of Versailles of 1919, at the end of the Second World War the victorious powers had an opportunity to redraw the political and economic map of the world.[16]

The United Nations was established as an intergovernmental umbrella body designed to address the overarching political, economic and social issues of the day, while the Bretton Woods institutions were designed to address specific economic issues.

The idea was to create three institutions responsible for:

– Financing reconstruction and development (i.e. the International Bank for Reconstruction and Development, known as the World Bank);

– Ensuring monetary stability (i.e. the International Monetary Fund);

– Regulating international trade (i.e. the International Trade Organization – ITO, which was to replace the General Agreement on Tariffs and Trade (GATT), established in 1947, but in fact never came into being).

The basic architecture of the international economic order that was laid at the end of the Second World War has served as the foundation of international economic law and influenced the subsequent development of the law governing international economic relations.[17]

However, it came under severe criticism beginning in the mid-1970s, and this continues up to today, because neither the IMF nor the World Bank could provide what were perceived as proper answers by everyone concerned.

In this regard, much was hoped for from the first UN International Conference on Financing for Development that was held in Monterrey, Mexico in March 2002.[18]

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16 Thomas G. Weiss et al., *The United Nations and Changing World Politics* 424 (8^{th} ed., Philadelphia: Westview Press, 2016).

17 Thomas G. Weiss, *Governance, Good Governance and Global Governance: Conceptual and Actual Challenges*, 21(5) Third World Quarterly (2000).

18 Barry Munslow & Patrick Fitzgerald, *South Africa: The Sustainable Development Challenge*, 15(2) Third World Quarterly 227 (1994).

The object of the conference was to adopt a new global approach to financing development in the twenty-first century, to find ways of enabling developing countries to have more say in the future of the global economy. At the top of the agenda was reform of the world's financial structures.

Split into five segments, the agenda of the conference included:

– Mobilizing domestic resources for development;

– The role of foreign direct investment;

– The impact of international trade on development of official development assistance;

– Debt relief;

– International financial systems.

The Monterrey Conference differed in many respects from other previous UN conferences. For the first time in the history of UN-hosted international conferences, it allowed for the direct four-way exchange of views on global economic issues between government, civil society, the business community and institutional stakeholders. This was a significant departure from the traditional practice, and a welcome development.[19,20,21]

The most important outcome of the conference was the Monterrey Consensus. This was adopted unanimously and outlined the vision for financing development in the twenty-first century.[22]

In 2000, world leaders set eight objectives, commonly known as the Millennium Development Goals (MDGs). These included ending extreme poverty and hunger, achieving universal primary education, promoting gender equality, improving maternal health and promoting sustainable development.[23]

The Monterrey Consensus emerged out of the 2002 meeting of the International Conference on Financing for Development. With more than fifty heads of state in attendance, along with representatives from the World Bank, the International Monetary Fund and the World Trade Organization (WTO), a new partnership for global development was conceived. The Monterrey Consensus is described by the UN as a "landmark framework for global development partnership in which the developed and developing countries agreed take joint actions for poverty reduction."

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19 Jeffrey D. Sachs & John W. McArthur, *The Millennium Project: A Plan for Meeting the Millennium Development Goals*, Vol. 365(9456) The Lancet 347 (2005).

20 Inaamul Haque & Ruxandra Burdescu, *Monterrey Consensus on Financing for Development: Response Sought from International Economic Law*, 27(2) Boston College International & Comparative Law Review 219 (2004).

21 Trevor A. Manuel, *Africa and the Washington Consensus: Finding the Right Path*, 40(3) Finance & Development 10 (2003).

22 Frank Barry et al., *Policy Coherence for Development: Five Challenges*, 21 Irish Studies in International Affairs 207 (2010).

23 These objectives came as the continuation of the World Bank agenda after its first years, when it turned to being a "development" bank and not just a "reconstruction for" credit vehicle.

The Monterrey Consensus is distinguished by its recognition of both the need for developing countries to take responsibility for their own poverty reduction and the necessity for rich nations to support this endeavor with more open trade and increased financial aid.

The UN highlights five distinctive elements of the Monterrey Consensus:

First, the consensus is a commitment to a broad-based development agenda that takes into account poverty reduction and environmental sustainability as well as economic growth.

Second, the consensus makes a distinction between developing countries that rely on official development assistance (ODA) and those that already have adequate infrastructure and human capital. ODA is recognized as a critical component of development for countries with the least capacity to attract investment.

Third, trade is emphasized as the "critical engine of growth." Poor countries need both improved market access and financial investment to enhance their potential for increased trade.

Fourth, the consensus highlights certain regions of the world that require particular attention. For many of the least developed countries in Africa, small island developing states and landlocked developing countries ODA is essential to achieving the Millennium Development Goals.

Fifth, it is recognized that a substantial increase in aid is necessary if developing countries are to achieve the goals of the UN Millennium Declaration and that donor countries should be committed to the target of allocating 0.7 percent of gross national income (GNI) to ODA.

Though many of the key commitments of the Monterrey Consensus remain unfulfilled, it is still a valuable framework for international action on poverty reduction and underpins much of the current and on-going discussions about ODA and the MDGs.

However, all these efforts were useless when the 2008 financial crisis struck the world. The Consensus which called for sustainable, gender-sensitive and people-centered development contained no clear financial commitment to achieve these objectives; and thus the BRICS countries got the opportunity to launch their own financial institution alternative.[24]

Again, concrete measures or specific action plans to achieve the development goals were left unaddressed.

Following the 2008 crisis, the UN took the initiative once again, at the Third International Conference on Financing for Development (2015), commonly known as the Addis Ababa Meeting. The aim, in the words of the outcome document of the conference, was

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24 Sakiko Fukuda-Parr, *Theory and Policy in International Development: Human Development and Capability Approach and the Millennium Development Goals*, 13(1) International Studies Review 122 (2011).

> to adopt an ambitious and transformative post-2015 development agenda, including sustainable development goals. This agenda must be underpinned by equally ambitious and credible means of implementation. We have come together to establish a holistic and forward-looking framework and to commit to concrete actions to deliver on the promise of that agenda. Our task is threefold: to follow-up on commitments and assess the progress made in the implementation of the Monterrey Consensus and the Doha Declaration; [and] to further strengthen the framework to finance economy sustainability.

With the MDGs set to expire at the end of 2015, a new post-2015 development agenda was designed.

The 2030 Agenda for Sustainable Development is the result of today's global realities and development challenges requiring both ambition and effectiveness. But how to reach these goals? By understanding the need to have an interconnected agenda, with a more comprehensive vision of development that embraces economic, social and environmental dimensions.

By setting seventeen new Sustainable Development Goals (SDG), the UN intends that states will achieve them by targeting 169 associated, smaller goals. The goals and targets will stimulate action over the coming years in areas of critical importance for humanity and the planet:

People: Ending poverty and hunger, in all their forms and dimensions, is the first step to ensure that all human beings can fulfill their potential in dignity and equality, and in a healthy environment.

Planet: By implementing sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, the UN intends to provide for both present and future generations.

Prosperity: the UN is determined to ensure that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature.

Peace: The main objective of this item is to foster peaceful, just and inclusive societies which are free from fear and violence.

Last but not least, the UN designed this Agenda taking into account the failure of achieving all of the objectives of Agenda 2000. Partnership is understood as the only way to mobilize the means required to implement this Agenda, based on a spirit of strengthened global solidarity and focused in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people.

But, what was the situation in the world thus far? According to the UN, the situation was "developing."

> Globally, economic activity and financing flows have increased substantially. We have made great progress in mobilizing financial and technical

> resources for development from an increased number of actors. Advances in science, technology and innovation have enhanced the potential to achieve our development goals. Many countries, including developing countries, have implemented policy frameworks that have contributed to increased mobilization of domestic resources and higher levels of economic growth and social progress. Developing countries' share in world trade has increased and, while debt burdens remain, they have been reduced in many poor countries. These advances have contributed to a substantial reduction in the number of people living in extreme poverty and to notable progress towards the achievement of the Millennium Development Goals.

The conference underpinned the expected adoption of the SDGs at the UN Special Summit for Sustainable Development in New York in September 2015. This trajectory continued with the World Bank Group and International Monetary Fund Annual Meetings in Lima in October, and with the 21st Conference of the Parties (COP21) to the United Nations Framework Convention on Climate Change in Paris in December, that rendered the Paris Covenant on Climate Change: the long-sought international agreement on the matter.

In short, 2015 saw the creation of a platform to support global development aspirations for the next fifteen years, but as administrations around the globe changed their political orientation, certain objectives were more supported than others as politically convenient in domestic affairs in order gain governance in a number of countries.[25,26]

The Third International Conference on Financing for Development was summoned by the General Assembly resolutions 68/204 and 68/279 and it gathered high-level political representatives, including heads of state and government, and ministers of finance, foreign affairs and development cooperation.

The conference resulted in a negotiated outcome which provided:

– A new global framework for financing sustainable development that aligns all financing flows and policies with economic, social and environmental priorities;

– A comprehensive set of policy actions by Member States, with a package of over 100 concrete measures that draw upon all sources of finance, technology, innovation, trade and data in order to support mobilization of the means for a global transformation to sustainable development and achievement of the Sustainable Development Goals.

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[25] David E. Sanger & Jane Perlez, *Trump Hands the Chinese a Gift: The Chance for Global Leadership*, The New York Times, 1 June 2017 (Aug. 10, 2017), available at https://www.nytimes.com/2017/06/01/us/politics/climate-accord-trump-china-global-leadership.html?mcubz=0&_r=0.

[26] Gordon Brown, *Theresa May is Creating an Epidemic of Poverty. Don't Give Her a Free Hand*, The Guardian, 12 May 2017 (Aug. 10, 2017), available at https://www.theguardian.com/commentisfree/2017/may/12/theresa-may-poverty-tories-children-labour-gordon-brown.

This conference starting by stating that:

> To meet the investment needs of the SDGs, the global community needs a paradigm shift to move the discussion from "billions" in overseas development assistance (ODA) to the "trillions" in investments of all kinds: public and private, national and global, in both capital and capacity.

Globally, achieving the proposed SDGs will require the best possible use of each available grant dollar, beginning with US$135 billion in ODA from governments and also including philanthropy, remittances, South-South flows, other official assistance and foreign direct investment.[27]

The Economic and Social Council (ECOSOC) meeting of 24 May 2017 also rendered interesting statements in this sense: The Economic and Social Council Forum on Financing for Development follow-up opened its expert segment by saying that to reach the needed trillions, additional flows must come from two main pillars: public domestic resources, where the most substantial development spending happens, and private sector finance and investment, the largest potential source of additional funding.[28]

In the same way, the Deputy Director-General of the World Trade Organization said that governments should work together to resist inward-looking and protectionist pressures. While trade generated higher productivity, inadequate attention to those left behind by globalization had raised concerns. The policy response should recognize that trade was only one factor contributing to economic change, along with technology and innovation.

The need for collaborative transdimensional work was also highlighted by Siddharth Tiwari, Director, Strategy Policy and Review Department (IMF), who said that there was no silver bullet that would "get us to the end" of the 2030 Agenda.

> Following the 2008 financial crisis, public and private investment in infrastructure had fallen. Yet infrastructure was vital for sustaining growth in many countries. In more than half of low-income countries, the revenue-to-gross domestic product (GDP) ratio hovered around 15 per cent, which was generally inadequate to provide even basic services, minus wage and other payments. Thus, a key focus moving forward would be to raise domestic revenues. The Fund had increased support for doing that by one fifth since 2015. While "easier said than done," it required the most attention.[29]

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[27] In this regard, *see* the World Bank opinion (Aug. 10, 2017), available at http://www5.worldbank.org/mdgs/post2015.html.

[28] ECOSOC press release (Aug. 10, 2017), available at https://www.un.org/press/en/2017/ecosoc6838.doc.htm.

[29] *Id*.

All in all, the UN seems to be keeping to its usual course of action of setting high priorities that are not only feasible, but urgent to address an ongoing complex social reality that continues without relief around the globe.

4. G20 Attitude towards Development: Ignoring a New Reality?

The Group of Twenty (G20) was established in reaction to the Asian financial crisis of 1998/1999. The new body held its inaugural meeting in Berlin in 1999 and was introduced as a forum for finance ministers and central bank governors to have informal dialogue within the framework of the Bretton Woods system.[30] In subsequent years, the activities of the G20 were relatively limited. As a reaction to the outbreak of the financial crisis in 2007/2008, this forum was "duplicated" by creating a new body, the G20 leaders.[31] In fact, the G20 was not designed to replace any existing institution, but rather to enable informal discussions and as a forum for debates where opinions could be exchanged between the formal international organizations. Its key purpose can be seen in the attempt to offer opportunities for dialogue on international cooperation.

The G20 comprises nineteen countries, namely Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, the Republic of Korea, Turkey, the United Kingdom, and the United States of America. The 20th member is the European Union, represented by the rotating Council Presidency and the European Central Bank. Representatives of the IMF and the World Bank participate in the G20 meetings on an *ex officio* basis, but without voting rights.

The first meeting at which the leaders of the G20 countries gathered was the Summit on Financial Markets and the World Economy held in Washington D.C. in November 2008.[32] The subsequent London Summit of April 2009 produced the "Global Plan for Recovery and Reform" and discussed the strengthening of the Financial Stability Board. Thereafter, further summits were convened on a half-yearly or yearly basis.[33]

The leaders of the G20 do not pass legislation and do not make laws, but instead issue declarations and other documents that express objectives in view of

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30 Brian Winchester, *Emerging Global Environmental Governance*, 16(1) Indiana Journal of Global Legal Studies 7 (2009).

31 Rolf H. Weber, *Multilayered Governance in International Financial Regulation and Supervision*, 13(3) Journal of International Economic Law 683 (2010).

32 G20 Declaration of the Summit on Financial Markets and the World Economy, *supra* note 3.

33 *Overcoming the Crisis: Economic and Financial Developments in Asia and Europe* (S. Bojnec et al. (eds.), Koper: University of Primorska Press, 2012).

a political perception, not of a legal framework.[34] Nevertheless, with the change in G20 representation from finance ministers to leaders in 2008, the importance of the body's declarations and documents has also undergone a certain change. From a mere coordination instrument, the G20 has become a "soft decision-making body" issuing statements that fall into the category of "output informality."[35]

Partially, the increasing influence can be seen in the stronger wording used in G20 documents; as well, specific resolutions and concrete actions are agreed upon by the G20 leaders. Therefore, the question arises as to what legal quality can be attributed to documents released by an international body that is *de jure* not an international organization with delegated state authority.[36]

The 2008 financial crisis underscores a shift in global power that has been taking place since the 1990s, when America influenced the international institutions that coordinated the responses to financial crises all over the world, notably in Mexico, East Asia,[37,38] Russia, Brazil and Argentina.[39]

In 2009, the United States and the IMF largely ceded agenda-setting power to the G20, which, in an ad hoc manner, acquired greater responsibility for coordinating regulatory responses to the crisis, as well as securing commitments to triple IMF resources. Yet most of the developing world continues to ignore IMF money, despite the easing of conditionality on lending.[40]

Following the global financial turmoil of the late 1990s, most of G20 leading economies have amassed international reserves rather than ceding economic sovereignty to the IMF. This preventative "self-insurance" has largely replaced global monetary cooperation, at least for countries with sufficient foreign exchange inflows.[41]

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[34] José Antonio Ocampo & Joseph E. Stiglitz, *From the G20 to a Global Economic Coordination Council*, 2(2) Journal of Globalization and Development (2012).

[35] Colin I. Bradford & Wonhyuk Lim, *Introduction: Toward the Consolidation of the G20: From Crisis Committee to Global Steering Committee* in *Global Leadership in Transition* (C. Bradford & W. Lim (eds.), Seoul and Washington D.C.: Brookings Institution Press with the Korean Development Institute, 2011).

[36] Joost Pauwelyn et al., *When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking*, 25(3) European Journal of International Law 733 (2014).

[37] Wing Thye Woo, *What Form Should An Asian Economic Union Take?*, 67 Japan Economic Currents 1 (2007).

[38] Christopher Kilby, *Donor Influence in Multilateral Development Banks: The Case of the Asian Development Bank*, 1(2) Review of International Organizations 173 (2006).

[39] Wesley C. Marshall & Louis-Philippe Rochon, *Financing Economic Development in Latin America: The Banco del Sur*, 32(2) Journal of Post Keynesian Economics 185 (2009).

[40] Cheryl Payer, *The Debt Trap: The International Monetary Fund and the Third World* (New York: Monthly Review Press, 1975).

[41] José Antonio Ocampo & Daniel Titelman, *Subregional Financial Cooperation: The South American Experience*, 32(2) Journal of Post Keynesian Economics 249 (2009).

According to Desai and Vreelad, in 2003, for the first time since the nineteenth century, the share of the global economy held by the twenty-one richest countries fell below 50 percent (Figure 1).

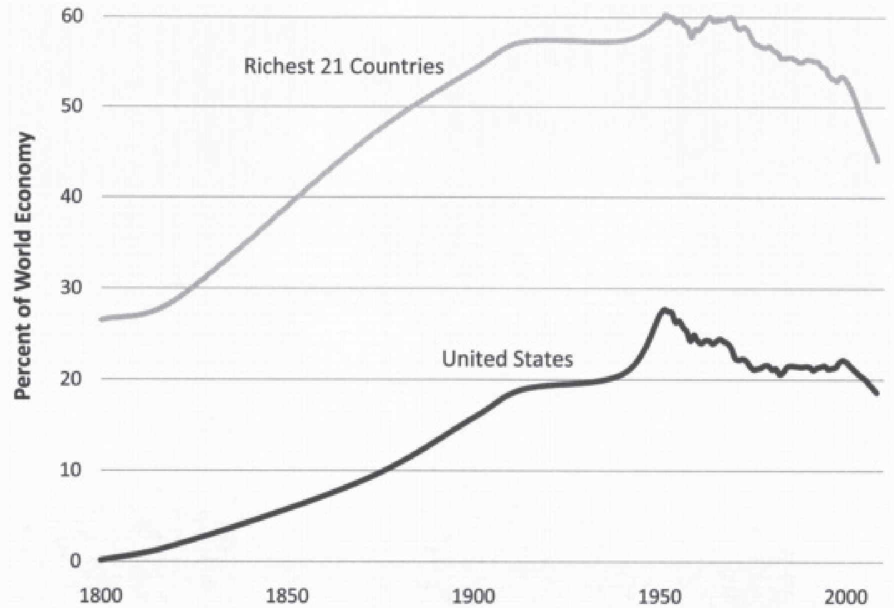

FIG 1. Share of Global GDP Held by the World's Richest Economies, 1800–2008. (*Notes.* Richest economies are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, and United States). Maddison, Statistics on World Population, GDP and Per Capita GDP, 1–2008 AD).

The U.S. share has fallen below 20 percent, and so for the most developed economy. However, change at the IMF has not kept pace (Buira 2005; Woods 2005). Although the wealthiest countries' voting shares on the IMF's Executive Board are now roughly on par with their economic power (which is about 41%), there are notable imbalances.

Well before the economic shocks of September-October 2008, a deeper structural crisis was inherent in the existing international political system. The so many times described gap between rule-makers and rule-takers had widened. In terms of legitimacy, there was an appreciable decline in the perception of the system as being fair – and in the willingness to work by its fundamental organizing principles.[42,43]

[42] Anthony Payne, *The G8 in a Changing Global Economic Order*, 84(3) International Affairs 519 (2008).

[43] John G. Ruggie, *Multilateralism: The Anatomy of an Institution*, 46(3) International Organization 561, 567 (1992).

Unlike traditional international actors, the logic of the G20 is bound up not so much with norms as with process and delivery. Not only does it stress the need for diplomatic and procedural skill, but also it thinks in terms of "doing."

The G20 is representative of one of the many consequences of the 2008 crisis, namely, where a stereotypical state-centric project, acting in accordance with global diplomacy, was put under scrutiny.[44]

One of the many opportunities that the G20 introduced is to provide the idea of collaborative transnational work that is not only feasible, but currently in action.

Although at its core the composition of the G20 is a concentrated club of states, the majority of its work is generated by committees where experts are summoned to discuss a variety of topics. While this is not new regarding international financial institutions, it really provides new hope for the integrated work that the 2030 Agenda highlighted.

The intensity of the G20's style presents a mixed picture as well. The technical orientation of the G20 necessitates a painstaking and detailed approach, with participation through a number of working groups that require impressive expertise and stamina.

4.1. Regulatory Topics of the G20 Summits

During the first seven G20 summits, many action plans, recommendations and resolutions covering a wide range of topics were adopted, partly in the form of general commitments and partly in the form of specific actions. The following overview shows the substantive topics addressed.

Relevant topics of the Washington D.C. Summit of November 2008.[45]

The first G20 summit released the basic G20 Action Plan encompassing a general regulatory framework for international financial markets, including:

– Transparency and accountability;
– Sound regulation;
– Oversight;
– Risk management;
– Integrity in financial markets;
– International cooperation;
– Reforming international financial institutions.

Relevant topics of the London Summit of April 2009:[46]

– Financial Stability Board (FSB);

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44 Paul Cammack, *The G20, the Crisis, and the Rise of Global Developmental Liberalism*, 33(1) Third World Quarterly 1 (2012).

45 *See* G20 Declaration of the Summit on Financial Markets and the World Economy, *supra* note 3.

46 *See* Declaration G20 Leaders Summit, London 2009 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/summits/2009london.html.

– Extended scope of regulation and oversight;
– Principles on pay and compensation;
– Tax transparency;
– Credit-rating agencies;
– Additional resources for the IMF.

Relevant topics of the Pittsburgh Summit of September 2009:[47]
– Framework for strong, sustainable and balanced global growth;
– Coordinated exit from state support;
– Strengthening the international financial regulatory system;
– Modernizing global institutions (IMF and Multilateral Development Banks);
– The G20 as the premier forum for international economic cooperation.

Relevant topics of the Toronto Summit of June 2010:[48]
– Recovery from the ongoing global recession and the European debt crisis;
– Evaluating the progress of financial reform;
– Developing sustainable stimulus measures;
– Debating global bank tax;
– Promoting open markets;
– Different approaches for different economies;
– EU: Focus on austerity to cut deficits;
– U.S.: Maintain economic stimulus spending to encourage growth.

Relevant topics of the Seoul Summit of November 2010:[49]
– Several mid- and long-term policy issues;
– Ensuring global economic recovery;
– Framework for strong, sustainable and balanced global growth;
– Strengthening the international financial regulatory system;
– Global financial safety nets;
– Risk of a currency war;
– Outcome: only limited progress;
– Intention to work on indicative guidelines to set maximum limits for current account surpluses and deficits;
– Seoul Development Consensus.

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47 *See* Declaration G20 Leaders Summit, Pittsburgh 2009 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2009/2009communique0925.html.

48 *See* Declaration G20 Leaders Summit, Toronto 2010 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2010/to-communique.html.

49 *See* Declaration G20 Leaders Summit, Seoul 2010 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2010/g20seoul.html.

Relevant topics of the Cannes Summit of November 2011:[50]
– Reform of international monetary system;
– More representative;
– More stable;
– More resilient;
– Action plan for growth and jobs;
– Further topics;
– Guiding the management of capital flows;
– Cooperation between IMF and regional financial arrangements;
– Global governance;
– Poverty mitigation;
– Eurozone crisis.

Relevant topics of the Los Cabos, Mexico, Summit of June 2012:[51]
– Supporting economic stabilization and the global recovery;
– Employment and social protection (e.g., "The Los Cabos Growth and Jobs Action Plan");
– Strengthening the international financial architecture;
– Reforming the financial sector and fostering financial inclusion;
– Enhancing food security and addressing commodity price volatility;
– Promoting longer term prosperity through inclusive green growth;
– Intensifying the fight against corruption.

Relevant topics of the St. Petersburg Summit of September 2013:[52]
– Growth through quality jobs;
– Financing for investment;
– Enhancing multilateral trade;
– Addressing base erosion and profit shifting;
– Tackling tax avoidance and promoting tax transparency and automatic exchange of information;
– International financial architecture;
– Financial regulation;

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50 *See* Declaration G20 Leaders Summit, Cannes 2011 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2011/2011-cannes-communique-111104-en.html. *See also* Wonhyuk Lim & Francoise Nicolas, *The G20 from Seoul to Cannes: Towards a Global Governance Committee* (April 2011) (Aug. 10, 2017), available at https://www.ifri.org/en/publications/enotes/g20-seoul-cannes-towards-global-governance-committee#sthash.1xBLHG6V.dpbs.

51 *See* Declaration G20 Leaders Summit, Los Cabos, Mexico, 2012 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2012/2012-0619-loscabos.html.

52 *See* Declaration G20 Leaders Summit, St. Petersburg 2013 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2013/2013-0906-declaration.html.

– Achievements to date and a road ahead;

– Towards a financial system that supports strong, sustainable and balanced economic growth;

– Building resilient financial institutions and ending "too-big-to-fail";

– Promoting transparent, continuously functioning financial markets;

– Addressing risks posed by shadow banking;

– Tackling money laundering and terrorism financing;

– Financial inclusion, financial education, consumer protection;

– Promoting development for all;

– Sustainable energy policy and resilience of global commodity markets;

– Pursuing the fight against climate change;

– Intensifying the fight against corruption.

Relevant topics of the Brisbane Summit of November 2014:[53]

– Acting together to lift growth and create jobs;

– Building a stronger, more resilient global economy;

– Strengthening global institutions.

Issues for further action (announced following the summit):

The FSB (Financial Stability Board) proposal for an internationally agreed standard requiring global, systemically important banks (G-SIBs) to hold additional loss absorbing capacity in resolution will be subject to public consultation, a rigorous quantitative impact assessment and further refinement before any final measure is agreed by the 2015 Summit. The impact analyses will include consideration of the consequences of this requirement on banks in emerging markets, G-SIBs headquartered in EMEs (emerging market economies), and state-owned banks.

Given the challenges litigation poses and in order to strengthen the orderliness and predictability of the sovereign debt restructuring process, we welcome the international work on strengthened collective action and *pari passu* clauses. We call for their inclusion in international sovereign bonds and encourage the international community and private sector to actively promote their use. We ask our Finance Ministers and Central Bank Governors to discuss the progress achieved on this and related issues.

If the U.S. does not ratify the 2010 IMF reforms by end-2014, we ask the IMF to discuss options for next steps shortly thereafter and we ask our Finance Ministers and Central Bank Governors to work with the IMFC to schedule a discussion on these options in their next meeting.

53 *See* Declaration G20 Leaders Summit, Brisbane 2014 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2014/2014-1116-communique.html.

Relevant topics of the Antalya, Turkey, Summit of November 2015:[54]
– Strengthening the recovery and lifting potential;
– Enhancing resilience;
– Buttressing sustainability.

Relevant topics of the Hangzhou, China, Summit of September 2016:[55]
– Strengthening policy coordination;
– Breaking a new path for growth;
– More effective and efficient global economic and financial governance;
– Green financing;
– Robust international trade and investment;
– Inclusive and interconnected development;
– Further significant global challenges affecting the world economy.

Relevant topics of the Hamburg Summit of September 2017:[56]
– Sharing the benefits of globalisation;
– Building resilience;
– Improving sustainable livelihoods;
– Assuming responsibility.

This presentation of the manifold topics addressed by the G20 shows quite a clear development from the financial markets issues dealt with at the Washington D.C. and London Summits to general concerns of economic stability as well as topics of employment, social and environmental protection, and the fight against corruption.

This development also leads to adapted regulatory trends, which were main concerns when BRICS countries stated they were discussing the New Development Bank idea.

As far as regulating financial markets is concerned, the G20 has partly adjusted its policies to reflect the aforementioned developments (tackling more general economic issues), leading to new regulatory perspectives in which financial regulation started to be molded around macroeconomic regulation while international organizations were under scrutiny.

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54 *See* Declaration G20 Leaders Summit, Antalya, Turkey, 2015 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2015/151116-communique.html.

55 *See* Declaration G20 Leaders Summit, Hangzhou, China, 2016 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2016/160905-communique.html.

56 *See* Declaration G20 Leaders Summit, Hamburg 2017 (Aug. 10, 2017), available at http://www.g20.utoronto.ca/2017/2017-G20-leaders-declaration.html.

Regarding this last point, the G20 has been the main forum addressing the reform of the IMF and the World Bank Group.[57]

In this context, specific topics are:

– Increasing the resources available to the IMF, and new policies in the lending field (New Arrangements to Borrow (NAB));

– Coordinating the reform of IMF quota and voting rights by supporting the respective amendments to the Articles of Association of the IMF;

– Protecting the voting share of the poorest countries in the IMF, encompassing

(i) the size of increases in IMF quotas,

(ii) the composition of the Executive Board,

(iii) the improvement of the Board's effectiveness, and

(iv) the strategic oversight of the IMF activities. In the meantime, some reforms are on the way to being implemented, even while it cannot be overlooked that the realization of new approaches requires time and political effort to convince a large number of countries.

Nevertheless, the roles of the IMF and World Bank during the last three years have been interpreted more broadly than during the first fifty years of their existence.[58] Obviously, the appropriateness of some requests directly made by the G20 of the Bretton Woods institutions remains contested, and the legitimacy aspects need further attention.[59]

From an organizational point of view, at the London Summit in April 2009 the G20 established the Financial Stability Board as the successor to the Financial Stability Forum. The Financial Stability Board has an expanded membership and a broadened mandate including the promotion of financial stability, the elaboration of criteria for compensation schemes and the establishment of a framework for the resolution of financial institutions. Additionally, global financial governance also means that the different institutions entrusted with different roles in the financial markets must improve their cooperation. Financial supervisory authorities need to strengthen collaboration and the exchange of information, particularly regarding the supervision of financial conglomerates.

Furthermore, the above enumeration shows that the G20 as presently organized and acting suffers from major governance deficits. Therefore, that the situation must

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57 Robert H. Wade, *Emerging World Order? From Multipolarity to Multilateralism in the G20, the World Bank, and the IMF*, 39(3) Politics & Society 347 (2011).

58 Barry J. Eichengreen et al., *The IMF in a World of Private Capital Markets* (Aug. 10, 2017), available at http://www.frbsf.org/economic-research/files/wp05-12bk.pdf.

59 This topic was also addressed in the Economist Editorial "What Was Decided at the Bretton Woods Summit?" (Aug. 10, 2017), available at http://www.economist.com/blogs/economist-explains/2014/06/economist-explains-20.

be remedied is obvious. Principles of a good system of global governance from an economic perspective should encompass:[60]

– Leadership. In a healthy multilateral system, leadership involves delegating functions; permanent appropriation of those functions is not adequate;[61]

– Effectiveness. Cooperation is to be structured in such a way that the envisioned results can be adequately achieved;

– Representation. Inclusiveness is a basic source of legitimacy; in the context of the G20, the tension between legitimacy and effectiveness requires mixing participation in decision-making by systemically important countries with representation of all members of the international community;

– Structured system. Global governance requires clear structures that avoid "spillovers";

– Independent secretariat. This secretariat should provide neutral technical support and have the capacity to implement and independently monitor the approved decisions. These economic and political requirements are to be mirrored against the background of an appropriate legal framework providing sufficient legitimacy to the governing bodies.

4.2. Winners and Losers of the G20: How Do They Reflect in the BRICS Countries?

If one were to think in terms of maintaining the status quo, the G20 project proposes a contradictory role for the designer of the international financial architecture as we have previously described.

There are the major actors across the North-South constellation that attract the bulk of attention. In the North this brings the debate back to the role of the United States.

At first glance, the opening of the "concert" to the big countries of the global South would indicate that the United States is the biggest loser. After all, the United States was the prime underwriter of the older order – speaking of the world as we have known it since the Second World War. The mortgage meltdown, the collapse of Lehman Brothers, the controversial role of the country in the Arab Spring and the major shift that it is currently undergoing with its new administration reinforce the idea.[62]

Conversely, China appeared to be the big winner in respect of the G20 ascendancy. And the notion of a "G2" inside the G20 started to gain ground in the political analysis of this forum.[63]

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[60] Ocampo & Stiglitz 2012.

[61] Colin I. Bradford & Johannes F. Linn, *A History of G20 Summits: The Evolving Dynamic of Global Leadership*, 2(2) Journal of Globalization and Development 1 (2012).

[62] Andrew F. Cooper, *The G20 as an Improvised Crisis Committee and/or a Contested "Steering Committee" for the World*, 86(3) International Affairs 741 (2010).

[63] Andrew F. Cooper & Ramesh Thakur, *The Group of Twenty (G20)* (Abingdon, Oxon; New York, NY: Routledge, 2013).

Yet, as in the case of the United States, any simplistic conclusion must be tempered. Viewed within the realist framework, Beijing's moves inside the "concert" have accentuated the image of China as a "demander" inside the system, either by itself or in combination with India and Brazil.[64]

The number of countries involved in the G20 is highly salient to the question of winners and losers.[65] The Vienna settlement of 1814–1815 was mainly negotiated by Great Britain, Austria, Prussia and Russia, although "lesser" powers also played some part.

The Paris Peace Conference of 1919 played to a similar formula, with a big three or four (according to whether Italy is included with the United States, Great Britain and France). Yalta and Potsdam in 1945 were owned completely by a big three: the United States, Great Britain and the Soviet Union.

If it is true that the other major meetings were open to a wider cast, the decision to institutionalize the permanent five members in the UN Security Council revealed the power equation.

From this point of view, the G20 is quite different, as it was designed with a sense of equality among the core members that allows for some distribution of convening/hosting functions.

Significantly, within the G20 there is a second tier of states that can be considered "rising" as well.[66]

One of the key elements of the Obama Administration's strategic vision before the Pittsburgh Summit was to be seen as rewarding regional allies. In geopolitical terms this meant including countries such as South Korea, Indonesia, Australia, Turkey and Saudi Arabia in the forum, instead of leaving them out in the G14 constellation proposed by French President Nicolas Sarkozy.[67]

The Pittsburgh Summit seems to have been planned as an intended commonplace in the post-crisis atmosphere, to unite, in the aftermath of the great crisis that was still threatening, countries that – not so long before – were considered "rising stars" by international financial institutions. UK Prime Minister Gordon Brown, host to the G20 in London, was one strong advocate of the Pittsburgh design and – when addressing the UN General Assembly – declared: "We've got this one chance to make a huge success of international economic cooperation."[68]

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64 *See supra* note 61.

65 Armin Steinbach, *The Trend towards Non-Consensualism in Public International Law: A (Behavioural) Law and Economics Perspective*, 27(3) European Journal of International Law 643 (2016).

66 Gregory T. Chin & Hugo Dobson, *China's Presidency of the G20 Hangzhou: On Global Leadership and Strategy*, 1(2) Global Summitry 151 (2015).

67 Patrick Wintour & Andrew Clark, *G20 Leaders Map Out New Economic Order at Pittsburgh Summit*, The Guardian, 26 September 2009 (Aug. 10, 2017), available at https://www.theguardian.com/world/2009/sep/25/g20-summit-economy-bonuses-deficits.

68 Gordon Brown Staked Reputation on G20 Summit in London, The Guardian, 16 June 2013 (Aug. 10, 2017), available at https://www.theguardian.com/world/2013/jun/16/gordon-brown-reputation-g20-london.

Conclusion

The traditional principles of international law – in particular the notion of sovereignty known since the Peace of Westphalia of 1648 – are no longer suitable to cope with the present needs of an international order.[69]

Nation states can no longer exclusively regulate legal issues on a territorial basis, since the cross-border effects of businesses require increased cooperation. Furthermore, the often-cited phrase that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time"[70] hardly seems a convincing assertion anymore. Moreover, the increasingly dense framework of rules with different legal qualities leads to uncertainties in respect of the compliance with rules by their addressees.

The Inter-American, Asian and African Development Banks reflect major underlying forces in the postwar international system. The banks were created because third world states were disappointed with the existing major public international financial institutions, the World Bank and the International Monetary Fund.

The Asian Development Bank has generated substantial resources, but its policies have closely followed the preferences of its major donor, Japan.[71] Japanese officials seem to have been much more interested in specific Japanese economic interests and, thus, acted similarly to the United States… but on a different scale.

The differences between the behavior of Japan and the United States reflect their positions in the international system. Because basic interests are not threatened, a hegemonic power can pursue a long-term strategy only imprecisely related to specific economic goals. An ordinary power does not have this luxury. It is compelled by external circumstances to gear its policies to the accomplishment of objectives that are clearly related to tangible, short-term national interests.

On the other hand, the African Development Bank has achieved more autonomy than either of its counterparts. But its ability to secure resources has been limited. Only by creating a separate entity, the African Development Fund, were the African states able to get significant contributions from the rest of the world. The magnitude of these donations has been modest.[72] Absent any effective control over the daily operations of the International Monetary Fund, developed countries were reluctant to make any serious commitments.

Of the three regional development banks the Asian Development Bank is the one most under the control of industrialized nations, in particular Japan.

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69 Rolf H. Weber, *New Sovereignty Concepts in the Age of Internet?*, 14(8) Journal of Internet Law 12 (2010).

70 Quoted by Louis Henki (Aug. 10, 2017), available at http://www.law.columbia.edu/louis-henkin/quotable-louis-henkin.

71 Stephen D. Krasner, *Power Structures and Regional Development Banks*, 35(2) International Organization 303 (1981).

72 *A Note on the Contribution of the African Development Bank to Economic Knowledge and Policy in Africa*, 13(1) African Development Review 145 (2001).

A different case proposes the Cooperación Andina de Fomento in Latin America. The CAF was founded in 1966 following the historic signing of the Declaration of Bogotá and in the presence of the presidents of Peru, Chile, Colombia and Venezuela. In April 2012, the "Financial Times" reported that for infrastructure projects, CAF now provides more funding to Latin America than the World Bank and the Inter-American Development Bank combined.[73] This is partly related to the CAF's less restrictive regulations, especially in regard to the environmental impact of projects.

The creation of the latest development bank by the five big emerging economies of Brazil, Russia, India, China and South Africa was welcomed, but raised critical questions by recalling heterogeneous experiences with development banks around the world.

While the BRICS countries have in principle agreed to create a development bank to provide initial funding for infrastructure projects worth US$4.5 trillion, this alternative to Western-dominated financial institutions is still fruitless. Many countries around the globe – and especially its founding members – expect it to work in order to meet massive infrastructure needs that have been left unattended by the traditional institutions.

In 2016, the board of directors of the New Development Bank met to approve its first set of loans; the first tranche of funding will support renewable energy projects across the BRICS countries including two solar energy projects in India and China, and a hydropower dam in Russia. For Brazil, it created a credit line worth US$300 million for renewable energy projects such as solar and wind power.[74]

But apart from stating that sustainable development will be linked to the financing of particular kinds of infrastructure projects, namely "green" or renewable energy projects, the New Development Bank has so far not been clear about how green it wants these projects to be.

Also unclear is whether and how they will be linked to the implementation of the internationally agreed Sustainable Development Goals. While the New Development Bank has officially opened for business, addressing these questions will be critical for the next phase of its operation.

But let us just for a moment forget about the financial dimension.

Does the BRICS bloc still matter?

According to author Marcos Degaut, the BRICS group remains primarily rhetorical, not tangible, and lacks palpable achievements leading to its survival and dominance in the global arena.

When considering G7 and BRICS economic results, namely GDP annual growth rates in 2003–2008, the BRICS figures are impressive when compared to the weak economic performance of G7 nations.

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73 Alan Beattie, *World Bank: An Exercise of Influence*, Financial Times, 2 April 2012 (Aug. 10, 2017), available at https://www.ft.com/content/15b9d4d8-7ca6-11e1-8a27-00144feab49a.

74 *See* BRICS Bank Gives $811 Million in First Round Green Energy Loans, Bloomberg, 18 April 2016 (Aug. 10, 2017), available at https://www.bloomberg.com/news/articles/2016-04-18/brics-bank-gives-first-china-loan-to-solar-project-daily-says.

Indeed the BRICS countries seem to have a "remarkable opportunity to coordinate their economic policies and diplomatic strategy not only to enhance their position as a grouping in the international economic and financial system, but also to be a stabilization factor in the world economy as a whole."[75] However, their results when examined for progress regarding UN goals in sustainable development have been poor.[76]

So far, the BRICS countries have proved to be far away from the right path to reaching sustainable development. United Nations goals to end poverty and inequality, core goals of the BRICS's development bank, seem to have not been at the center of the agenda in the past year.

Russia fared the best within the BRICS countries, ranking 47th on the UN Sustainable Development Solutions Network list, while India in 110th place was the worst BRICS performer on the list.

Moreover, as social turmoil began to unfold in Brazil, China was faced with new challenges regarding the American position on the WTO, cybersecurity issues and, lately, military issues under the Trump Administration, and Russia has been more focused on its interests in the Middle East.

Certainly, not much progress seems to have followed the BRICS group towards building collective identity. Not only has it not created an institutional body, it still lacks meaningful legal mechanisms aimed at regulating specific activities and target actions to achieve set goals.

The Russian military escalation in Syria and the poor performance of India in the UN evaluation regarding sustainable development are only some aspects of a more complex scenario, wherein Brazil is shaken by a tremendous political crisis while China seems to have forgotten its BRICS partners and is more concerned in contesting the United States for world supremacy.

Despite the efforts to create an institutional framework that facilitates cooperation among the BRICS countries – as seen with the launching of the New Development Bank – the grouping remains primarily rhetorical, not concrete. And the lack of tangible achievements does not bode well for the group's long-term survival.

Is the "BRICS" concept starting to crumble? One may hope it does not, as it started as a promising new actor in the international arena where development projects were beginning to be taken more seriously and there seemed to be some hope for a new international design where balanced interests would lead the way into a new era of inclusive development.

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75 Elena Gladun, *BRICS Global Perspectives*, 4(1) BRICS Law Journal 100 (2017).

76 Report for Tracking UN Goals Progress: BRICS Face Tough Challenges, The BRICS Post, 14 July 2016 (Aug. 10, 2017), available at http://thebricspost.com/report-for-tracking-un-goals-progress-brics-face-tough-challenges/#.WTOndhOGP3A.

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