June 21, 2010

2010 Seoul Summit and Future of FSB as the Fourth Pillar

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Canadian Finance Minister Paul Martin
"[policies to promote development] work only if the developing countries and emerging markets help shape them, because inclusiveness lies at the heart of legitimacy and effectiveness."[1]

Abstract

G-20 schedules Seoul Summit in Nov. 2010 two years after Nov. 14-15, 2008 Washington Summit adopted five principles and 26 action items. The most significant action item to be completed by March 2009 was to reinvent the FSF with expanded membership as the FSB -- the focal arena to find solutions to the crisis. It was accomplished through the charter at the Plenary Meeting in Jun. 2009. However, all the other pending matters were not moved forward as desired. London, Pittsburgh and Toronto Summits repeat the same story: the systematic risks should be worked out; new accounting standards be established; macro-prudential policies be monitored; early warning exercises be developed; international cooperation and coordination be expedited, etc. I argue Seoul Summit would be the right venue to establish the FSB as the international institute to design and implement the new international financial regulatory system. As the fourth pillar, the FSB should be able to coordinate ISSBs to the effect that more effective international standards are developed and standards are steered into international treaties.

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[1] Paul Martin, *Notes for an Address to the Royal Institute of International Affairs* (Jan. 2001) available at http://www.collectionscanada.gc.ca/webarchives/20071122090216/http://www.fin.gc.ca/news01/01-009e.html (visited Jun. 14, 2010).

I. Introduction

Within a decade since a New International Financial Architecture has been discussed after the Asian Financial Crisis ("AFC"),[2] the global financial crisis ("GFC") launched from the Wall Street hit the international financial community. This time, the focal venue for discussing immediate solutions and long term reform plan was not G-7 and the International Monetary Fund ("IMF"), but G-20 and the Financial Supervisory Board ("FSB"). G-20 is scheduled to have Seoul Summit in November 2010. FSB is 2009 reinvention of Financial Supervisory Forum ("FSF") with a significantly enhanced mandate.[3] FSF was the invisible established in 1999 immediately after the AFC because the IMF failed to enhance cooperation in the area of financial market supervision and surveillance among national and international supervisory bodies and international financial institutions. Today the FSB has more members[4] and more ambitious goals. Nonetheless, the FSB is still an inchoate, amorphous body to find its place through further discussions.[5] Rather some "annouceables" and numbers, G-20 Seoul Summit ought to be a place to draw a map for the FSB through which a set of immediate goals, action plans, and operational details are targeted for the construction of the continuing international regulatory reform. G-20 Seoul Summit in Nov. 2010 should be a landmark for the future international financial regulatory structure by at least formally establishing the FSB. FSB then should be able to implement the mandates of G-20 for the new international financial regulations although G-20 is neither law-based nor governance-focused.[6] It would be necessary now for the global financial system to have a build-in connection with G-20 via the FSB.

The Korean government organized a huge G-20 Presidential Committee ("PC") touting the two day summit on Nov. 11-12, 2010 as the greatest event since *Dangun*, the legendary founder of the first kingdom of Korea, established *Gojoseon.* Although this self-aggrandizement may be a reflection of the feeling "that the world has consigned it to the shadows of its big neighbors, China and Japan,"[7] it would without doubt center-stage Korea in the world economic scene. For a more successful meeting, the PC is composed of several departments staffed by a number of high-ranking public officials including the agenda development department. The department lists six major discussion topics: 1) long term framework for strong, sustainable and balanced growth, and short term exit strategy; 2) financial safety nets; 3) supports for developing countries; 4) financial regulatory reform; 5) IMF; and 6) climate change finance, energy subsidy reduction, food security and other development issues.[8] However, discussions at the summit should be monumentalized in the form of leaders' statements,[9] joint statements, communiqué,[10] declarations,[11] etc.[12] to be

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[2] *E.g.,* Joseph J. Norton, *A New International Financial Architecture? – Reflections on the Possible Law-Based Dimension,* 33 INT'L. LAW. 891 (1999).

[3] Art. 2 of the FSB Charter (hereinafter the "Charter").

[4] Id., Art. 4 and Annex A.

[5] Enrique R. Carrasco, *Crisis and Opportunity: How the Global Financial Crisis May Give Emerging Economics Greater Voice in International Finance via the Financial Stability Board,* University of Iowa Legal Studies Research Paper No. 09-43 (Dec. 2009).

[6] David Zaring, *International Institutional Performance in Crisis,* 10 CHI. J. INT'L. L. 475 (2010).

[7] Alan Wheatley, *Reinventing for Success in S. Korea,* INT'L HERALD TRIB., June 8, 2010, 20.

[8] Hee-Nam Choi, *Paradigm for Global Economic Cooperation* , http://www.g20.go.kr/04news/news03_read.jsp (Jan. 14, 2010).

[9] London Summit and Pittsburgh Summit have respective Leaders' Statement. *See* http://www.g20.org/pub_communiques.aspx.

effective. The most urgent and but the initial issue is the regulatory reform via the FSB.

The global financial market cannot go back to the parochial economy although the speed and pattern of the globalization can be controlled.[13] Thus, a solution should be contrived before the next wave of another crisis, regardless of whether it would come from Wall Street, Pantheon, or Shanghai River. FSB is the gateway to the solution chosen by G-20. Without the success of the FSB, no sustainable prosperity of international financial markets will be ensured. US Treasury Secretary Geithner made the wishful comments by naming FSB "in effect, a fourth pillar" of the architecture of global economic governance, alongside the IMF, the World Bank and the World Trade Organization ("WTO").[14] However, many express doubts[15] about FSB's future. Even doomsday scenarios are presented based on historical experience in the past such as the ineffective League of Nations' Economic and Financial Organization. GFC, however, demonstrated the catastrophic and costly harms from lacking regulations that the global financial community cannot afford another futility of the rescue efforts including the institutionalization of FSB.[16] The global financial community should not talk about another financial stability forum, board or group in a decade.

This article is to envision the future of the FSB by considering the possible institutionalization mechanism at 2010 Seoul Summit. Section II describes the current status of the FSB in terms of organizations, mandates, as well as operations. Section III analyses the pitfalls of the current status, especially enforcement and relationship with the IMF, with further proposals on the ways to convert the soft network and standards-based regulatory system into firmer institution and treaty-based international financial regulatory system. FSB's conversion into a treaty-based international organization, refinement of standard-settings mechanism, and selective treaty-making process are the courses to be taken.[17] Section IV is a review of Korea's compliance with international standards and cooperative and coordinated responses to the GFC as a leading country by example. It is also about the promising courses of action for the purpose of establishing a new international financial regulatory system called the FSB. Section V concludes Seoul Summit should be

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[10] Since the London Summit, Finance Ministers and Central Bank Governors had four meetings: London (5 Sept. 5, 2009); St. Andrews (Nov. 7, 2009); Washington (Apr. 23, 2010); and Busan (Jun. 5, 2010). Each meeting had one communiqué.

[11] After the London Summit, two Declarations were made. On Sept. 5, 2009 London meeting of finance ministers and central bank governors, was the Declaration on Further Steps to Strengthen the Financial System made. Since London Summit, the FSB released three progress reports on Sept. 5 and 25, and Nov. 7, 2009, respectively.

[12] As for the Pittsburgh Summit 2009 (the third), *see* http://www.pittsburghsummit.gov/. As for the 2008 G-20 Washington Summit (the first) and the 2009 G-20 London Summit (the second), *see also* http://www.g20.org/pub_communiques.aspx.

[13] As to the meaning of globalization and national currency, Nigel Dodd, *Globalization of Money?* in NATION-STATE AND MONEY 182-198 (Emily Gilbert and Eric Helleiner eds., 1999).

[14] US Treasury Secretary Tim Geithner, Press Briefing on the G-20 Pittsburgh Summit (Sept. 24. 2009). http://www.whitehouse.gov/the_press_office/Press-Briefing-by-Treasury-Secretary-Geithner-on-the-G20-Meetings/

[15] Louis W. Pauly, *The Financial Stability Board in Context,* in THE FINANCIAL STABILITY BOARD: AN EFFECTIVE FOURTH PILLAR OF GLOBAL ECONOMIC GOVERNANCE? (Stephany Griffith-Jones, Eric Helleiner and Ngaire Woods eds., 2010).

[16] David Zaring, *Supra* note 6, 495-498.

[17] Douglas W. Arner & Michael W. Taylor, *The Global Financial Crisis and the Financial Stability Board: Hardening the Soft Law of International Financial Regulation?,* Asian Institute of International Financial Law Working Paper No. 6 (Jun. 2009).

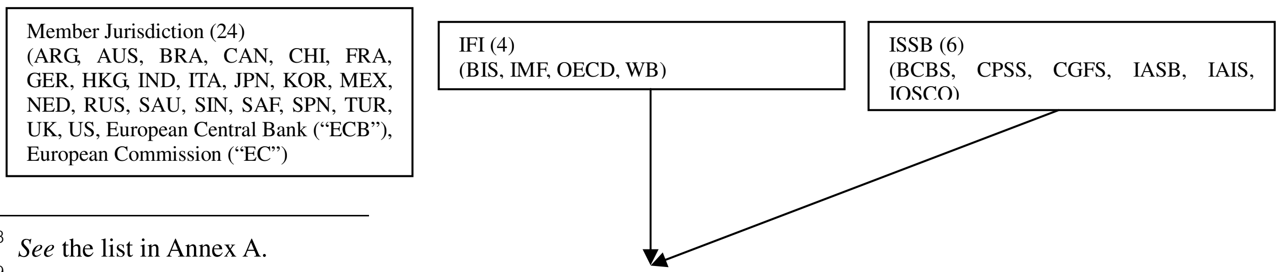
the place for the treaty establishing the FSB if G-20 wished to work on the future international financial regulatory reform.

II. FSB – Present

1. Organization

FSB is founded on Art. 16 of the Charter, which provides that "[t]his Charter is not intended to create any legal rights or obligations." No international treaty has been signed or local incorporation procedure has been implemented to create the FSB. FSB is a nexus of membership which is shared by Regulatory, Supervisory and Central Bank Bodies of certain countries,[18] international financial institutions ("IFIs"),[19] and international standard-Setting bodies ("ISSBs").[20] FSB, harbored on BIS office, budget, staff and research supports,[21] has Chairperson, Secretariat, Steering Committee, Standing Committees, Working Groups and Plenary Meetings.[22] There are three Standing Committees: the Standing Committee for Vulnerabilities Assessment, the Standing Committee for Supervisory and Regulatory Cooperation, and the Standing Committee for Standards Implementation. There are four working groups: Cross-border Crisis Management Working Group under the Standing Committee for Supervisory and Regulatory Cooperation; Expert Group on Non-Cooperation Jurisdictions under the Standing Committee for Standards Implementation; and Working Group on Compensation and the Working Group for OTC Derivatives under the Steering Committee. While Steering Committee is chaired by Chairperson, chairs of three Standing Committees were elected at the inaugural Plenary in Jun. 2009. At least two Plenary Meetings for every calendar year shall be convened to decide by consensus on the manner in which the Plenary conducts its affairs.[23] Since Jun. 2009 inaugural Plenary in Basel, it has September 2009 Plenary in Paris as the second,[24] and Jan. 2010 in Basel as the third.[25] Its structure is diagramed in Diagram 1 below.

Diagram 1: Organization Chart



[18] *See* the list in Annex A.

[19] Bank for International Settlement ("BIS"), IMF, Organization for Economic Co-operation and Development ("OECD") and World Bank ("WB").

[20]. Basel Committee on Banking Supervision ("BCBS"), Committee on Payment and Settlement Systems ("CPSS"), Committee on the Global Financial System ("CGFS"), International Association of Insurance Supervisors ("IAIS"), International Accounting Standards Board ("IASB"), and International Organization of Securities Commissions ("IOSCO").

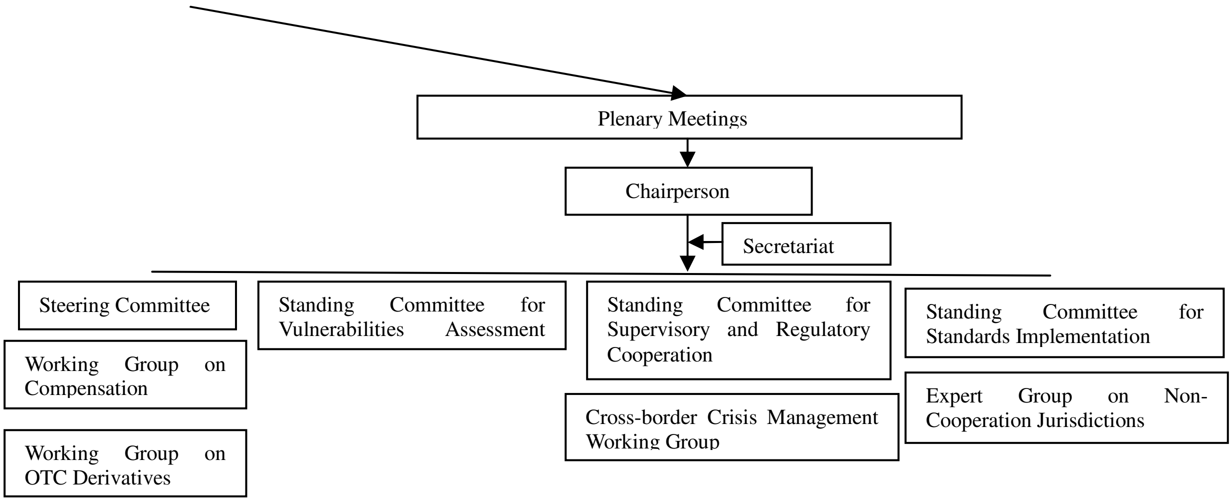
[21] Louis W. Pauly, *Supra* note 15, Eight professional economists in the secretariat will increase to 12 and eventually 16, however, none of them would be made permanent.

[22] Art. 6. et seq. of the Charter. Annex B of the Charter and FSB Press Release, Financial Stability Board held its inaugural meeting on 26-27 June in Basel, Switzerland (Jun. 2009) http://www.financialstabilityboard.org/list/fsb_press_releases/index.htm.

[23] *Id.*, Art. 9, et seq.

[24] FSB Press Release Ref. no: 37/2009, Financial Stability Board meets in Paris (Sept. 15, 2009).

[25] FSB Press Release Ref. no: 03/2010, Financial Stability Board meets on the Financial Reform Agenda (Jan. 9, 2010).



The members of the Steering Committee and three Standing Committees are not disclosed. Neither the member of three Working Group is known to the public. The FSB apparently created Working Group for OTC Derivatives under the Steering Committee.[26] The Senior Supervisors Group,[27] although not one of the official Working Groups, seems to have worked for FSB.[28]

2. Operations

Based on the broadened mandate by and the call from Declaration on Strengthening the Financial System at London Summit,[29] the FSB Charter lists eight mandates and tasks. The Charter mandates the FSB to: (a) assess vulnerabilities affecting the global financial system and identify and review on a timely and ongoing basis the regulatory, supervisory and related actions needed to address them, and their outcomes; (b) promote coordination and information exchange among authorities responsible for financial stability; (c) monitor and advise on market developments and their implications for regulatory policy; (d) advise on and monitor best practice in meeting regulatory standards; (e) undertake joint strategic reviews of the policy development work of the international standard setting bodies to ensure their work is timely, coordinated, focused on priorities and addressing gaps; (f) set guidelines for and support the establishment of supervisory colleges; (g) support contingency planning for cross-border crisis management, particularly with respect to systemically important firms; (h) collaborate with the IMF to conduct Early Warning Exercises; and (i) promote and help coordinate the alignment of the activities of the ISSBs to address any overlaps or gaps and clarify demarcations in light of changes in national and regional regulatory structures relating to prudential and systemic risk, market integrity and investor and consumer protection, infrastructure, as well as accounting and auditing. The list, however, is a mixture of diverse

[26] E-mail reply from Atsushi Mimura, FSB Secretariat, to the author (Jun. 16, 2010).

[27] Members of the Senior Supervisory Group are Office of the Superintendent of Financial Institutions (Canada), Banking Commission (France), Federal Financial Supervisory Authority (Germany), Financial Services Agency (Japan), Financial Market Supervisory Authority (Switzerland), Financial Services Authority (UK), Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, Office of the Comptrollers of the Currency and Securities and Exchanges Commission (USA).

[28] FSB, Risk Management Lessons from the Global Banking Crisis of 2008 (Oct. 21, 2009) available at http://www.financialstabilityboard.org/publications/r_0910a.pdf.

[29] Para. 15 of the official communiqué of London Summit. http://www.londonsummit.gov.uk/resources/en/news/15766232/communique-020409.

methods and goals with different time frames. Mandates (b), (d), (e), (f) and (i) are relating to traditional standard setting ("Mandate I") while (a), (c), (g) and (h) are to establish the prescient system ("Mandate II") for the future financial crisis. FSB is also requested to submit status reports to Summits.

As for the last function, FSB released several progress reports along with the IFIs or ISSBs[30] and produced some special issue reports upon thematic reviews.[31] Mandate II is a daunting task in light of the futile human and institutional efforts in the past. This requires global political will, time, resources and creativity. FSB, while producing some reports on information gathering,[32] can be an early warning signaling body at most with the current organization, but should the crisis management functionary be delegated to the IMF.

Mandate I has been the core of the FSF, which was materialized as the Compendium of Standards including 12 Key Standards for Sound Financial Systems. FSB should be able to continue and coordinate this line of work. As the coordinating nexus, FSB should amplify the scope and nature of the standards. Standards may be classified by their scope as sectoral (the government and central bank, banking, securities, insurance industries and the corporate sector). Standards may have different functions (principles, practices and methodologies/guidelines). They also cover broader subject areas (financial regulation and supervision; institutional and market infrastructure; and macroeconomic policy and data transparency). Finally, the ISSBs are as diverse as the standards themselves. In addition to IMF, OECD and six ISSBs of the FSB, they include Financial Action Task Force on Money Laundering ("FATF"), International Auditing and Assurance Standards Board ("IAASB"), and CPSS-IOSCO Task Force on Securities Settlement Systems, and BCBS Transparency Group and IOSCO TC Working Party on the Regulation of Financial Intermediaries.[33] As numerous standards are compiled as compendium, 12 key standards for sound financial systems in table 1 have been designated deserving of priority implementation depending on country circumstances.[34]

Table 1: 12 Key Standards

Area	***Standard (Principles 5;Practices 3; Misc. 4)***	***Issuing Body***
Macroeconomic Policy and Data Transparency (3)		
Monetary and financial policy transparency	Code of Good **Practices** on Transparency in Monetary and Financial Policies	IMF
Fiscal policy transparency	Code of Good **Practices** on Fiscal Transparency	IMF
Data dissemination	Special Data Dissemination **Standard** / General Data Dissemination System [1]	IMF
Institutional and Market Infrastructure (6)		
Insolvency	Insolvency and Creditor Rights[2]	WB
Corporate governance	**Principles** of Governance	OECD
Accounting	International Accounting **Standards** (IAS)	IASB
Auditing	International **Standards** on Auditing (ISA)	IFAC
Payment and settlement	Core **Principles** for Systemically Important Payment Systems/	CPSS

[30] *E.g.,* Progress since the Pittsburgh Summit in Implementing the G20 Recommendations for Strengthening Financial Stability (Nov. 7, 2009) and Progress since the St Andrews meeting in Implementing the G20 Recommendations for Strengthening Financial Stability (Apr. 19, 2010).

[31] *E.g.,* Guidance to Assess the Systematic Importance of Financial Institutions, Markets and Instruments: Initial Considerations (Oct. 2009).

[32] *E.g.,* The Financial Crisis and Information Gaps – Progress Report Action Plans and Timetables (May 2010).

[33] http://www.financialstabilityboard.org/cos/wssb.htm.

[34] Issue Paper of the Task Force on Implementation of Standards, Meeting of the Financial Stability Forum (Mar. 25-26, 2000).

	Recommendations for Securities Settlement Systems	CPSS/IOSCO
Market integrity	The Forty **Recommendations** of the Financial Action Task Force/ 9 Special Recommendations Against Terrorist Financing	FATF
Financial Regulation and Supervision (3)		
Banking supervision	Core **Principles** for Effective Banking Supervision	BCBS
Securities regulation	Objectives and **Principles** of Securities Regulation	IOSCO
Insurance supervision	Insurance Core **Principles**	IAIS

1. Economies with access to international capital markets are encouraged to subscribe to the more stringent SDDS and all other economies are encouraged to adopt the GDDS.
2. The World Bank, working with UNCITRAL and internationally recognized experts, has completed and implemented the Insolvency and Creditor Rights ("ICR") Report on the Observance of Standards and Codes ("ROSC") Assessment Methodology. The ICR ROSC Methodology is based on the current Creditor Rights and Insolvency Standard (ICR Standard), derived from the World Bank's Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, and the recommendations included in the UNCITRAL's Legislative Guide on Insolvency Law .

3. Enforcement

Enforcement of the standards has been the source of discontent and even ridicule. Thus, in addition to simple surveillance,[35] the FSB has stepped up four new mechanisms to encourage compliance with international standards.[36] First, member jurisdictions commit to, among other things, implement international financial standards.[37] The consequences of a failure for member jurisdiction to fulfill such commitment are not clear from the Charter itself, though. Second, member jurisdictions commit to undergo periodic IMF/World Bank public Financial Sector Assessment Program ("FSAP") reports.[38] Although it is remarkable that developed countries which brought in the GFC to the world economy agreed to take the FSAP, it is still voluntary without any sanction on non-application or non-compliance.[39] Third, member jurisdictions commit to undergo periodic peer reviews.[40] Pursuant to such agreement to undergo both thematic and country peer reviews, the Standing Committee on Standards Implementation will take a substantive review and its report will be approved by the Plenary.[41] Finally, as called by London Summit,[42] the FSB is finalizing the procedures by identifying non-cooperative jurisdictions and assisting them to improve their adherence, especially in the prudential, tax and AML/CFT areas.

III. FSB – Repositioning

Almost every commentator agrees that IFIs and policy networks again failed to meet the challenges of GFC while G-20 Summit has been effective and prompt.[43] However, this does not mean G-20 would be of limited life for GFC. Nor must this be accepted as an absolute proposition that the legal institutionalization of the FSB be of little importance in

[35] Andrew Walter, *Can the FSB Achieve Effective Surveillance of Systematically Important Countries?* in *Supra* note 15.
[36] Eric Helleiner, *Governance Issues Relating to the FSB and International Standard* in *Supra* note 15.
[37] Art. 5 (1) (c).
[38] *Id.*, Art. 5 (1) (d). For more details, http://www.imf.org/external/np/fsap/fsap.asp.
[39] Andrew Walter, *Supra* note 15, G20 ROSC/FSAP Modules Published table indicates 58% compliance rate.
[40] Art. 5 (1) (c).
[41] FSB, Framework for Strengthening Adherence to International Standards 2 (Jan. 9, 2010).
[42] Declaration on Strengthening the Financial System at London Summit 4 (Apr. 2, 2009).
[43] David Zaring suggests "an improvement in the performance of the international financial regulatory architecture will require an internationalization process, which in turn requires an increasing degree of confidence in these institutions." *Supra* note 6, 502.

preventing another financial crisis. To the contrary, G-20 should take a lead in initiating and iterating international financial regulatory reform by way of institutionalization of the FSB.

1. Legal Standing of FSB

FSB is an umbrella over three different categories of entities: (i) government agencies such as financial supervisory authorities and central banks; (ii) international institutions based on international treaties such as IMF; and (iii) business associations such as IOSCO. FSB, however, has no substance. Without any substance, it has no permanent staff other than chairperson and secretary general, no space other than the BIS building, no expense other than BIS accounts, and no independent economist other than the seconded from other agencies.[44] As it secured broader mandates from London Summit, it seems feasible and desirable for Seoul Summit to consider adopting the founding treaty for FSB. Even after it has a legal basis, the FSB need to be helped by the IFIs to discharge new assignments. Within the institutionalized framework of the FSB based on the treaty, however, ISSBs and ultimately the FSB should be able to enhance the level of compliance and legitimacy.[45] No one would have to face the intellectual challenge to understand the informal structure of FSB.[46] Global administrative law[47] or transnational governmental networking,[48] although enticing, does not fit into the legal existentialism any more. There is no doubt that legal foundation based on a treaty would improve FSB functioning as an international coordinator, standard-setter, and enforcer.

2. Membership – More?

The membership issue is directly linked to the scope of mandates, midterm and long term institutional goals and strategies. In the past, many criticized the restrictive membership of the FSF for legitimacy reasons.[49] Even after the expansion of the FSB membership to G-20, covering 70 percent of the world population and 90 percent of the GDP, a partial representation is pointed out a less than optimal status because of the political accountability of transnational financial networks, captured interest of member jurisdiction, restrictive focus on agenda and need for more comprehensive regulations.[50] Considering the

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[44] Mario Giovanoli, *The Reform of the International Financial Architecture After the Global Crisis,* 42 NYU J. INT'L L. & POL'Y 81, 109 (2009). "cannot legally act in its own name in relations with third parties.. unclear how the FSB can ensure its external representations."

[45] Barbara C. Mattews, *Emerging Public International Banking Law? Lessons From the Law of the Sea Experience,* 10 CHI. J. INT'L L. 539, 555 (2010).

[46] Mario Giovanoli, *Supra* note 44, 110.

[47] Benedict Kingsbury, *The Concept of 'Law' in Global Administrative Law*, 20 EUR. J. INT'L L. 23 (2009).

[48] Anne-Marie Slaughter, *Global Government Networks, Global Information Agencies, and Disaggregated Democracy*, 24 MICH. J. INT'L. L. 1041, 1046-47 (2003).

[49] *See* Robert Delonis, *International Financial Standards and Codes: Mandatory Regulation Without Representation,*36 NYU J. INT'L. L. & POL'Y. 563, 631-633 (2004).

[50] Alejandro Vanoli, *FSB: Current Structure and Proposals for a More Balanced Integration, Supra* note 15; Eric Helleiner & Tony Porter, *Making Transnational Networks More Accountable* in RE-DEFINING THE GLOBAL ECONOMY (Sara Burke ed., 2009) available at http://library.fes.de/pdf-files/iez/global/06293.pdf.; Joseph Stiglitz, *Global Public Goods and Global Finance: Does Global Governance Ensure that the Global Public Interest is Served?*in ADVANCING PUBLIC GOODS (Jean-Philippe Touffut ed., 2004) available at http://www.world-governance.org/IMG/pdf_Stiglitz_-_Global_public_goods_and_global_finance._Does_global_governance_ensure_that_the_global_public_interest_is_served-3.pdf.

recently expanding inclusiveness of the FSB, however, it seems more appropriate to work on the mechanism of institutionalization for now with the current member jurisdiction. If the mandates are thinly spread too widely with every developing nation on board, not a single issue would be addressed in depth. As to the ISSBs, IFAC should be added to the list of members as one of the issuing bodies for 12 key standards. After the FSB has been shaped up in terms of legal formality, G-20 member jurisdiction would be able to be expanded as widely as that of the WTO and IMF. Ultimate needs, however, cannot justify the probable chaos and possible delay arising from overly broad inclusion. Furthermore, it is not clear whether all the developing countries should place their priority policy goals in financial stability which ought to be settled prudently but promptly. Their priority might have to be placed on financial developments as opposed to financial stability.

3. Mandates – Broad Enough

With the current FSB structure, none of these mandates is achievable even upon numerous Summits because they are too broad to be achieved within a short time frame. With immediate legal incorporation granted, the mandates are to be prioritized and reclassified. As to the scope of mandates, I would suggest several courses. First, FSB cannot be responsible for everything that G-20 wants to be resolved on this planet. Supports for developing countries, climate change finance, energy subsidy reduction, food security and other development issues should be discussed in more appropriate venues such as UN. The FSB should be more focused on financial stability-related issues. Second, FSB, as the network of networks, should continue sticking to formulation of international standards and information exchanges theretofore based on Mandate I, despite many criticisms about international standards process. Third, FSB should secure cooperation from the IMF, WB and other IFIs to address the macro-prudential policy goals and even might have to totally rely on them for the time being especially for Mandate II.

4. Standards – Process Streamlined

Lack of transparency, certainty and political accountability seems most conspicuous, let alone the ineffective assessment and enforcement mechanism. It was never clear what action will follow or indeed who will act.[51] Furthermore, the international standards set up by the Basel Committee and the IOSCO did not work out at all.[52] They simply revealed the weakness of such standards. Despite the loss of their vibrancy, however, no better alternatives would be available other than making them more transparent and effective. The only possible option available is to streamline and improve the coordination process of standard setting in a more transparent manner, to assess the compliance level more objectively, and to enforce the standards with more effect by institutionalization. Ultimately, it would be most desirable for the international financial community to sign new treaties incorporating well-observed international standards.

It is true that"[e]verything happens behind the scenes, away from the glare of the press and the inconvenience of serious questions."[53] Although descriptive, however,

[51] Mads Andenas, *Publication Review - Global Governance of Financial Systems: The International Regulation of Systematic Risk by Kern Alexander, Rahul Dhumale & John Eatwell,* 55 INT'L. & COMP. L. Q. 993-994 (2006).

[52] David Zaring, *Supra* note 6, 479.

[53] Cally Jordan, *Does 'F' Stand for Failure: The Legacy of the Financial Stability Forum* 20, Melbourne Law

standard-setting processes have been patterned and analyzed with more transparency and clarity. One exemplary procedural analysis is: i) networking and lobbying by potential standard setters; ii) support through the G-7 or other bodies; iii) an international process of awareness building and discussion issues; iv) multilateral technocratic cooperation in drafting; v) support from the governing body of the standard-setting organizations; vi) testing the use of standards in monitoring and implementation; vii) finalization of guidance and supporting materials; and (viii) approval by the governing body and referral to other bodies.[54] Based on these analyses the FSB now can and should make things clear by setting up bylaws about the process of selecting issues, designation of the competent standard-setting organization with specific time line and authority, and formal adoption or endorsement of standards at the ISSBs and later at the Plenary.

The consensus procedure for the Plenary, although the Basel Committee has been studied,[55] raises some concerns. It could prevent the FSB from performing the coordination of standard-setting functions effectively because countries may stifle or dilute the urgent issues. Thus, a bar is suggested where vetos can be exercised over specific findings or messages only when a critical number of states is opposed. A reverse consensus rule deployed for accepting the adjudication of disputes in the WTO where rejection requires consensus is also being proposed.[56] As the FSB is of expanded membership, these suggestions should be taken seriously when the treaty to establish the FSB is discussed at Seoul Summit.

It would be most effective if the standards provide for the most basic skeletons. On the other hand, the standards should be something to be reached, not something to be assumed. If so, it ought to have reachable portions in addition to the current status quo. As such, there should be considerations about legal remedies, guarantees of due process and methods of conflict resolution[57] when international standards are set up. The standards should not be domestics of one country imposed upon other countries as international,[58] but true to international as well as legitimate differences.[59] Otherwise, international standards would have no legitimacy.

5. Assessment and Enforcement

School Legal Studies Research Paper No. 429 (Oct. 2009). He also pointed out the fallacy of responsiveness of soft law.

[54] Arner & Taylor, *Supra* note 17, 8. See also Mario Giovanoli, *A New Architecture for the Global Financial Market: Legal Aspects of International Financial Standard Setting,* 3 in INTERNATIONAL MONETARY LAW: ISSUES FOR THE NEW MILLENNIUM (Mario Giovanoli ed., 2000).

[55] As to the BIS consensus process, see Kevin Alexander, *Global Financial Standard Setting, the G10 Committees, and International Economic Law,* 34 BROOK. J. INT'L. L. 861 (2009). BCBS still has not published documents on its internal structure and functioning.

[56] Andrew Baker, *Mandate, Accountability and Decision-Making Issues to be Faced by the FSB, Supra* note 15, 19, 22.

[57] Mario Giovanoli, *Supra* note 44, 122.

[58] Cally Jordan, *Supra* note 53, 22.

[59] Ann-Marie Slaughter, *Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks,* 39 GOVERNMENT & OPPOSITION 160, 177-179 (2004). She also points out several potential problems with government networks such as global technocracy, distortion of national political processes, unrepresentative input into national juridical decision-making, unrepresentative input into global political process, and the ineradicability of power. *Id.,* 164-170.

FSAP was established in 1999 by IMF along with the WB.[60] Since its inception, however, it has been subject to diverse criticisms ranging from its methodology to the effecacy of such exercise. In addition to its voluntariness and overlapping, duplicative and inconsistent standards themselves, they include: the methodology is in a flux; the teams are varied in expertise and sophistication; *querelles de chapelle* between the IMF and the WB; asking wrong questions; failure to identify the operative initial conditions; the parachute approach, check-the-box mentality, gaming the system by enacting legislation without necessarily being of any effect; certain countries' hubris, a misguided conviction; and ignorance on cross-border contagion effect.[61] In response to these self-criticisms and the upending GFC, the IMF is in the process of improving its scope and modalities of oversight such as prioritization of standards,[62] integrating FSAP assessments into surveillance[63] and analyzing networking effects.[64]

As mentioned above, based on the FSAP material, the FSB Charter requires member jurisdiction to undergo periodic peer reviews. The role of peer reviewing procedures as one of compliance regime has been tested in various global organizations such as the OECD,[65] the UN family,[66] the WTO,[67] the EU[68] and the African Union.[69] As a workable instrument of global governance, peer reviewing procedures should balance two aspects thereof: i) the exercise of power and accountability; and ii) the development of linkages with actors and institutions external to the peer review process.[70] As the FSB membership corresponds to the most powerful group of states, G-20, instead of one country providing external incentives, selective choice of thematic topics and periodic renewal of membership status is being

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[60] For a discussion of the legal basis for surveillance under Article IV, see Appendix I of the *Biennial Review of the Implementation of the Fund's Surveillance and of the 1977 Surveillance Decision—Modalities of Surveillance* (SM/04/212, Supplement 1, July 2, 2004). As for the IMF's legal framework in general, see IMF, *The Fund's Mandate – The Legal Framework* (Feb. 2010).

[61] Independent Evaluation Office (IMF), *Report on the Evaluation of the Financial Sector Assessment Program* (Jan. 2006).

[62] IMF, *Revised Approach to Financial Regulation and Supervision Standards Assessments in FSAP Updates* (Aug. 2009).

[63] IMF, *Integrating Financial Sector Issues and FSAP Assessments into Surveillance – Progress Report* (Jan. 2009).

[64] IMF, *Financial Sector Surveillance and the Mandate of the Fund* (Mar. 2010)

[65] *E.g.*, OECD Global Forum on Information and Exchange for Tax Purposes.

[66] DAC/UNEG, *Framework for Professional Peer Reviews of Evaluation Functions in Multilateral Organisations* (2007).

[67] As to WTO's trade policy review mechanism, see http://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm#introduction. As for a comparison of WTO with OECD, *see* Thomas Conzelmann, *Beyond the Carrot and the Stick: The Authority of Peer Reviews in the WTO and the OECD,* paper at the workshop Peer Review as an Instrument of Global Governance (Apr. 9/10, 2010).

[68] *E.g.,* Peer review in Social Protection and Social Inclusion and Assessment in Social Inclusion. More information available at http://ec.europa.eu/social/main.jsp?langId=en&catId=750 (visited Jun. 15, 2010). *See also* Charles F. Sabel and Jonathan Zeitlin, *Learning from Difference: The New Architecture of Experimentalist Governance in the EU* in EXPERIMENTAL GOVERNANCE IN THE EUROPEAN UNION: TOWARDS A NEW ARCHITECTURE 1-28 (Charles F. Sabel and Jonathan Zeitlin eds., 2009); Niels Thygesen, *Comparative Aspects of Peer Reviews: OECD, IMF and the European Union* in SHAPING POLICY REFORM AND PEER REVIEW IN SOUTHEAST ASIA: INTEGRATING ECONOMIES AMID DIVERSITY (Kensuke Tanaka ed., 2008).

[69] *See generally* http://www.aprm.org.za/.

[70] Tony Porter, *Making the FSB Peer Review Effective,* at *Supra* note 15, 39.

proposed.[71] As a way to address the learning side of peer reviewing, a strong secretariat of the FSB[72] and open procedures are also suggested.[73]

As a general matter, in designing the peer review procedure, the FSB should be able to learn a lot from other international organizations' experience in the past. Especially, Financial Action Task Force ("FATF") Mutual Evaluation Program ("MEP") and IOSCO Multilateral Memorandum of Understanding ("MMoU") are cited successful cases.[74] FATF, an inter-governmental body established in 1989 by the G-7 Summit in Paris, produced Recommendations that have been enforced by MEP. MEP is guided by the Methodology, a detailed tool book for assessors as well as for the member countries. It has, under each Recommendation, a list of essential criteria and additional elements. In the end, for each Recommendation, there are four possible levels of compliance ratings based only on the essential criteria.[75] IOSCO is an international standard-setter for securities markets created in 1983. After IOSCO adopted a comprehensive set of Objectives and Principles of Securities Regulation in 1998[76], the MMoU was taken in 2002. In 2003, IOSCO also published Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation, which lists key issues, key questions, benchmarks, and explanatory notes for each principle. While each governmental regulatory body is eligible to apply to sign the MMoU, once signed, its membership is subject to monitoring[77] and potential enforcement by expulsion.[78]

As opposed to the international financial system based on soft law, several hardening options are proposed based on precedents or grand ideas. Hard laws can relate to three aspects: foundation, norm setting and enforcement. As discussed above,[79] it would be desirable for an international body to be founded on a formal international treaty for various reasons However, this might be a matter of convenience and structuring. A more significant legal distinction is whether the international body set up norms based on treaties or international standards. The most significantly and final part of compliance discussions is whether the international organization can enforce the obligations over sovereignties. The final destination, although it might be most desirable, has to face the political and practical hurdles to reach.

A grand idea has been proposed repeatedly. Immediately after the AFC, for example, a World Financial Authority ("WFA") was proposed exactly for the functions assigned to the FSB by 2009 London Summit.[80] If no appetite to create a new international

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71 *Id.,* 40.

72 With accountability, of course. *See* Bessma Momani, *IMF Staff: Missing Link in Fund Reform Proposal,* 2 REV. INT'L. ORG. 39, 50 (2007).

73 *Id.,* 41. Tony Porter mentions FSB peer review on compensation as a successful one.

74 Arner & Taylor, *Supra* note 17, 13-14.

75 *See generally* http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236836_1_1_1_1_1,00.html. (visited Jun. 14, 2010).

76 IOSCO Public Document No. 125, *Objectives and Principles of Securities Regulation,* IOSCO Presidents' Committee (as updated, Feb. 2003).

77 Appendix B, III of the MMoU.

78 *Id.,* Para. 16 (b). The list of signatories is available at http://www.iosco.org/library/index.cfm?section=mou_siglist.

79 *See* note 43 and accompanying text.

80 John Eatwell & Lance Taylor, GLOBAL FINANCE AT RISK 208-229 (2000).

bureaucracy is found, developing the BIS committees into the WFA or to place the WFA function with the IMF was discussed.[81] They argue the WFA also should have the authority to sanction standstills to avoid moral hazards while the IMF's resources should be enlarged as an international lender of last resort.[82] Should the FSB be developed into an international organization based on an international treaty, which appears to be desirable and necessary for the future of the international financial system, it would function exactly as the WFA. WFA, however, would not overcome all the differences between the truly international financial system and national system[83] unless it has the capability to impose binding arbitration proceedings for cost-bearing in case of death.[84] FSB, even if established based on multilateral treaties among G-20 as the de facto WFA, would have choices in terms of norm setting and enforcement: (i) providing the general obligations of the members in the foundation treaty and/or in the treaties in the formation; and (ii) bi-lateral dispute resolution mechanism and/or surveillance.

In terms of norm-setting, a couple of international organizations based on treaties built up cases. The IMF, as the international institutional structure on finance matters based on almost universal membership, provides the commitment of its members in Arts. IV and VIII. While the IMF's surveillance power is extensive and effective, its aim has been limited to monetary stability and balance of payment. Its institutional failure was also demonstrated by the AFC and GFC. Thus, it is not clear whether the treaty establishing the FSB should provide basic but general commitments of G-20 within the founding treaty itself. It is also unclear whether even G-20 wishes to establish another international bureaucracy only for global financial stability in addition to the IMF.[85] On the other hand, WTO is the closest to the proposed WFA in terms of global governance as it is an umbrella agreement under which incorporates many separate agreements such as the General Agreement on Trade in Services ("GATS").[86] WTO also includes a dispute resolution mechanism ("DRM") as well as a trade policy review mechanism.[87] However, the monitoring power is limited while compliance is more relying on individual member's DRM. As the GATS focuses on liberalization with the DRM, however, it is not an ideal modus operandi that can address the global financial stability issue.[88] However, FSB can start in the same format as WTO did with the similar hopes and authorities to agree on international treaties for specific subject matters such as rating agencies or hedge funds. FSB also should be able to upgrade the international standards established by standard-setters such as BCBS or IOSCO into international treaties at least among its members. It might be too ambitious for FSB to have the DRM at the beginning. As a matter of fact, as the FSB at its incipiency has no

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[81] *Id.*, 235-236. White House, *Economic Report of the President,* 286 (1999).

[82] London Summit's greatest achievement was to expand the IMF credit.

[83] Ross P. Buckley, *How the International Financial System, to its Detriment, Differs from National Systems, and What We Can Do About It,* 34 H.K.L.J. 321-338 (2004). A global sovereign bankruptcy system is the final hurdle. *See generally* Hal S. Scott, *A Bankruptcy Procedure for Sovereign Debtors?* 37 INT'L LAW. 103-136 (2003).

[84] Financial Services Authority, THE TURNER REPORT, 36 (2009). "..as the Governor of the Bank of England, Mervyn King has put it – is that global banking institutions are global in life, but national in death."

[85] Bessma Momani, *The IMF and the FSB: Intractable Political Reality and Organizational Mismatch, Supra* note 15, 37. She argued IMF's political nature does not fit into the need to regulate the global financial system efficiently.

[86] ANNEX 1 to the Agreement Establishing the World Trade Organization.

[87] ANNEX 2 and ANNEX 3 to the Agreement Establishing the World Trade Organization.

[88] Arner & Taylor, *Supra* note 17, 18.

international treaties to be enforced, but key international standards, DRM is too premature to become part of the treaty to establish the FSB.

As to the process of converting international standards into international treaties, EU's experience would be of help. EU has developed an alternative approach to the WTO or the IMF in developing hard laws among disparate regulatory and legal systems. The Lamfalussy Report, although limited to securities markets, stipulates four levels for regulatory convergence: i) agreement on framework principles; ii) adoption of measures; iii) transposition and implementation; and iv) monitor and enforcement.[89] Within three year time frame, it also had a recommended timetable.[90] This so-called Lamfalussy process[91] can be analogously applied to the FSB in developing international standards established by the ISSBs into international treaties. The FSB could develop international treaties for the possible adoption at the Plenary which would have their own enforcement mechanisms such as dismemberment. Certain standards on financial regulation and supervision have been adopted by most of G-20. Thus, the agreement to establish FSB should consider the process of upgrading and the priority among international standards.[92]

6. Early Warning System Development for Mandate II

In addition to strengthening the policy network among the regulatory agencies of G-20, the FSB is now to create a new early warning catch mechanism. As was clear from the AFC and many reports on the GFC,[93] a financial crisis in one country may spread to other parts of the world at a rapid speed. Thus, each country should implement macro-prudential policies as a way to prevent the outbreak of another financial crisis. Such systematic risk should be assessable by the global financial community and preferably an international organization. Once such risk is realized, it should be contained promptly and responded effectively. What is the most effective policy should be thought through beforehand. However, the first step would be for the FSB to devise the mechanism to measure the systematic risks free from politics. As a matter of fact, in 2005, the IMF, publishing its Medium-Term Strategy, stressed the need to make surveillance more effective, focusing on globalization, regional aspects, and standards and codes assessments focused on "macro-criticality."[94] The excerpts below from the IMF Global Financial Stability Review ("GFSR") in 2006, demonstrates the intellectual challenges the FSB is facing to develop a new parameter: ".. growing recognition that the dispersion of credit risk by banks to a broader and more diverse group of investors,.. has helped make the banking and overall financial

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[89] The Committee of Wise Men, *Final Report of the Committee of Wise Men on the Regulation of European Securities Markets* (Feb. 2001), 6.

[90] *Id.,* ANNEX 2 (RECOMMENDED TIMETABLE), 45.

[91] Elliot Posner, *The Lamfalussy Process: Polyarchic Origin of Networked Financial Rulemaking in the EU* in *Supra* note 68, 43-60.

[92] As to the implementation of FSF international standards on banking and non-bank financial institutions, *see* Douglas W. Arner, FINANCIAL STABILITY, ECONOMIC GROWTH, AND THE ROLE OF LAW, 195-261 (2007).

[93] Group of Thirty, *Financial Reform: A Framework for Financial Stability* 37 (2009). .."develop the means for joint consideration of systematic risk concerns.."; The de Larosière Group, *The High-Level Group on Financial Supervision in the EU: Report* 63 (2009).."Beyond the strengthening of the IMF's existing macroeconomic surveillance mechanisms one of the priorities in crisis prevention should be the strengthening of international early warning mechanisms building on the swift identification of systematic vulnerabilities.."; FSA, *Supra* note 82, 85 (2009)…"The failure to identify growing system wide risks was a global one.."

[94] IMF, *The Managing Director's Report on the Fund's Medium-Term Strategy* 5-7 (2005).

system more resilient."[95] The GFC was due to the dispersion of credit risk by skewed means.

As an extension of early warning exercises, it is also part of the mandate to coordinate regional and global policies addressing the prudential and systematic risks.[96] This, however, would require some time as each country that witnessed the systematic risks contagious, is still in the process of formulating politically feasible policies. As they are settled down, each country can start to discuss about the bottom line for the possibility of international standards. Seoul Summit seems to be too early for G-20 to agree on the specifics against systematic risks.

IV. Korea – Leadership by Example and Initiative at 2010 Seoul Summit

1. Compliance with Standards

Although it is still arguable whether the IMF has jurisdiction to prescribe,[97] on Dec. 3, 1997 a Letter of Intent was signed between the IMF and the Korean government in the context of its request for financial support. It describes the policies that Korea intended to implement.[98] On Dec. 4, the IMF Board approved SDR 15.5 Billion stand-by credit for Korea. On Feb. 7, 1998 Korea signed another Letter of Intent with the IMF which stipulated specific economic program for 1998.[99] The most important question in retrospect might be "whether the program addresses the underlying causes of the crisis."[100] It did, although painful.[101]

In addition to the annual Art. IV consultation notice and selected issues papers,[102] in Mar. 2003, the IMF released the comprehensive ROSC on Monetary and Financial Policy Transparency, Banking Supervision, Securities Regulation, Insurance Regulation, Corporate Governance, Payment Systems and AML/CFT as part of the Financial System Stability Assessment.[103] Prior to this, in Jan. 2001, the IMF also produced the ROSC on Fiscal Transparency.[104] In May 2003, the ROSC on Data Module and Data Assessments Using

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95 IMF, *Global Financial Stability Report* 51 (Apr. 2006).

96 Hal S. Scott, *The Reduction of Systematic Risk in the United States Financial System,* 33 HARV. J. L. PUB. POL'Y 671 (2010); Jeffrey N. Gordon and Christopher Muller, *Avoiding Eight-Alarm Fires in the Political Economy of Systematic Risk Management,* European Corporate Governance Institute Finance Working Paper No. 277/2010 available at SSRN.org.

97 Andreas F. Lowenfeld, *Jurisdiction to Prescribe and the IMF* in INERNATIONAL ECONOMIC LAW 313, 325 (Colin B. Picker, Isabella D. Bunn and Douglas W. Arner eds., 2008).

98 Available at http://www.imf.org/external/np/loi/120397.htm.

99 Available at http://www.imf.org/external/np/loi/020798.htm#memo.

100 S. Fischer's response to M. Feldstein's contention in *Refocusing the IMF,* 77 FOREIGN AFF. 20, *see The IMF and the Asian Crisis,* Address at UCLA (Mar. 1998) available at http://www.imf.org/external/np/speeches/1998/032098.htm.

101 Bang Nam Jeon, *From the 1997-98 Asian Financial Crisis to the 2008-2009 Global Economic Crisis: Lessons from Korea's Experience,* 5 E. ASIA L. REV. 103, 119-130 (2009).

102 Most recent 2009 Art. IV Consultation, IMF, Country Report No. 09/262 available at http://www.imf.org/external/pubs/cat/longres.cfm?sk=23206.0. On the same day, the IMF also released Selected Issues report on Korea. Available at http://www.imf.org/external/pubs/cat/longres.cfm?sk=23207.0.

103 Available at http://www.imf.org/external/pubs/cat/longres.cfm?sk=16436.0. In late 2010, the FSAP update is envisaged. IMF, Country Report No. 09/262, 21.

104 Available at http://www.imf.org/external/np/rosc/kor/fiscal.htm.

Data Quality Assessment Framework was released.[105] These ROSCs were all satisfactory. As to the remaining challenges such as "adopting a new insolvency framework," "reform[ation of] auditing and accounting practices," and "improve[ment of] corporate disclosure,"[106] the new Law on Debtor Recovery and Bankruptcy and the Law on Capital Market and Finance Investment Business have been implemented in Apr. 1, 2006[107] and Feb. 4, 2009,[108] respectively. While the IFRS will be effective for listed companies from the fiscal year starting from Jan. 1, 2011,[109] it would be expanded to government-invested enterprises soon. Most recently, Korea signed the MMoU at the IOSCO 35th Annual Conference.[110] As for the ICR, no independent ROSC has been produced for Korea because the Insolvency and Creditor Rights ROSC Methodology is still at the draft discussion phase.[111] Thus, among the 12 key standards, Korea is in full compliance with them.

2. Coordinated and Cooperative Response to GFC

In response to the GFC, the Korean government stabilized the market by government guarantees of banks' external liabilities, which was immediately welcomed by the IMF.[112] The Korean government also established temporary reciprocal currency arrangements with the Federal Reserve Board[113] and subsequently with Japan and China.[114] A bank recapitalization fund and a toxic asset fund were established to shield the banking sector from the downturn and prevent major deleveraging. Nonetheless, its open economy was severely affected by the GFC during the fourth quarter of 2008.[115] In 2009, the Korean government, based on well-capitalized banking system, low non-performing loans and strong balance sheets of corporate sectors, has undertaken consistent initiatives by adopting counter-cyclical fiscal policy and loosened monetary policy.[116] In the end, Korea outperformed expectations by dramatic amounts.[117] IMF projects 4.5% and 5.0% Real GDP growth for 2010 and 2011, respectively, as part of Asia which is staging a vigorous and balanced recovery.[118]

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105 Available at http://www.imf.org/external/pubs/cat/longres.cfm?sk=16546.0.

106 See *Supra,* note 102, 2.

107 Law No. 7428.

108 Law No. 8635.

109 The Law on Outside Auditing of Stock Companies ("LOA"), Art. 13; Enforcement Decree under the LOA, Art. 7-3; K-IFRS most recently revised on Dec. 30, 2008 available on http://www.kasb.or.kr/.

110 Korean Financial Services Commission Press Release (Jun. 8, 2010).

111 ROSC has been produced for a limited number of jurisdictions, though. *See* http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/LAWANDJUSTICE/GILD/0,,menuPK:146210~pagePK:264057~piPK:263913~theSitePK:215006,00.html. As to the World Bank Principles for Effective Insolvency and Creditor Rights Systems and the UNCITRAL Legislative Guide on Insolvency Law, *see* http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/LAWANDJUSTICE/GILD/0,,contentMDK:20196839~menuPK:146205~pagePK:64065425~piPK:162156~theSitePK:215006,00.html.

112 IMF Press Release No. 08/251 (Oct. 19, 2008).

113 Board of Governors of the Federal Reserve System Press Release (Oct. 29, 2008). On the same date, the IMF also created Short-Term Liquidity Facility for market-access countries such as Korea. OMF Press Release No. 08/262 (Oct. 29, 2008).

114 William Shim and Nipa Piboontanasawat, *South Korea, China, Japan Agree on Currency Swaps for Stability,* BLOOMBERG.COM, Dec. 12, 2008.

115 IMF, *Supra* note 102, 9.

116 Anoop Singh, *Korea, Navigating through the Global Headwinds,* YONHAP NEWS AGENCY, Feb. 2, 2009.

117 White House, Economic Report of the President, 105 (Feb. 2010).

118 IMF, World Economic Outlook 49 (Apr. 2010).

3. Initiative for Agenda Setting

2010 Seoul Summit is a continuation of Washington Action Plan, London Summit , Pittsburgh Summit and Toronto Summit.[119] To take hold of the whole picture and formulate the right agenda, it is helpful to look them back first.

Chart 1: Agenda for Past Summits

		Immediate actions by Mar. 31, 2009	Medium-term actions
Washington Action Plan Five Principles	Strengthening Transparency and Accountability	● Valuation of securities (ISS) ● Off-balance sheet vehicles (ISS) ● Disclosure of complex fin. instru. (Reg.*& ISS) ● Enhance membership (ISS) ● Best practices for private pool of capital and/or hedge funds (Priv.**)	● Single-high quality global standard (ISS) ● Consistent app. and enforcement (Reg. & ISS) ● Enhanced risk disclos. (Reg.)
	Enhancing Sound Regulation: Regulatory Regimes Prudential Oversight Risk Management	Recomm. to mitigate pro-cyclicality incl. leverage, bank capital, exec. comp. and provisioning practices (IMF, FSB, Reg.)	● FSAP (G-20) ● Recomm. regulations on Systematically-important institutions (appropriate bodies)
		● Standards for credit rating agencies (IOSCO) ● Adequate cap. requirements for structured credit and securitization activities (IOSCO)	● Registration of credit rating agencies ● Liquidity supervision of cross-border banks (Reg. & C. Banks)
		● Guidance strengthen practices (Reg.) ● Develop proc. to ensure liquidity risk management policies (Reg.) ● Develop proc. to measure risk concentration and counterparty risk positions (Reg.) ● Models to guard against stress (Priv.) ● Develop stress test model (Basel) ● Incentive to promote stability (Priv.) ● Due diligence over structured products (Priv.)	● Respond rapidly to evolution and innovation (ISS) ● Monitor changes in asset prices (Reg.)
	Promoting Integrity in Financial Market	● Cooperation (Reg.) ● Information sharing (Reg.) ● Against mkt. manipulation and fraud (Reg.)	● Protect fro uncooperative and non-transparent jurisdiction (Reg.) ● FATF ● tax information exchange (OECD)
	Reinforcing International Cooperation	● supervisory colleges (Reg.) ● cross-border crisis management (Reg.)	● collect information (Reg.) ● temp. measures (Reg.)
	Reforming International Financial Institution	● reinvent FSF as FSB (WE) ● integrate regulatory and supervisory responses into the macro-prudential policy framework and conduct early warning exercise (IMF/FSB) ● draw lessons (IMF/FSB) ● increase resources (IMF/WB/MDB) ● restore emerging and developing countries' access (WE) ● support countries with limited access (MDB)	● reform Bretton Woods Institutions ● Vigorous and even-handed surveillance (IMF) ● Capacity building programs (IMF, international organizations)
London Summit	● $1.1 T credit: IMF SDR Money/trade finance package/MDB lending ● Six Pledges: 1) restore confidence, growth, and jobs; 2) repair the financial system to restore lending; 3) strengthen financial regulation to rebuild trust; 4) fund and reform our international financial institutions to overcome this crisis and prevent future ones; 5) promote global trade and investment and reject protectionism, to underpin prosperity; and 6) build an inclusive, green, and sustainable recovery ● Declaration, Strengthening the Financial System ■ Establish FSB ■ FSB should collaborate with IMF ■ Macro-prudential risks ■ Bring the shadow banking system, including hedge funds, with the global regulatory net ■ Regulate systematically important financial institutions ■ New principles on pay and compensation ■ Improve consistent of capital ■ End to tax havens ■ Common approach to deal impaired or toxic assets ■ New international accounting standard ■ Regulate credit rating agencies ● Strengthening Global Financial Institutions ■ Reform IMF and WB quota, voice, selection process..		
Pittsburgh Summit	● Review the progress ● Framework for Strong, Sustainable, and Balanced Growth ● Strengthening the International Financial Regulatory System		

[119] When this paper is prepared, June 26-27 Toronto Summit has yet to be convened.

	■ Build high quality capital and mitigate pro-cyclicality ■ Reform compensation practices to support financial stability ■ Improve over-the-counter derivatives market ■ Address cross-border resolutions and systematically important financial institutions by end-2010 ● Modernize Global Institutions to Reflect Today's Global Economy ● Reform the Mandate, Mission and Governance of the IMF ● Reform the Mission, Mandate and Governance of Development Banks ● Energy Security and Climate Change ● Strengthen Support for the Most Vulnerable ● Put Quality Job at the Heart of the Recovery ● An Open Global Economy

* Regulators include governmental authorities and supervisors. Central Banks
** Privates include banks, firms and financial institutions.

While the Washington Action plan elaborated the list of immediate and mid-term action items and the London Summit reinvented the FSB, specifics for the improved international financial regulatory system are missing, while more broad items such as climate changes and energy security are added to the agenda for G-20. The institutional supports for the future FSB cannot be delayed any more. Before many countries run for their own way to address the apparently waning economic problems, the FSB should be institutionalized. Thus, Seoul Summit is the venue to discuss the agreement to establish the FSB, which must provide for the governance of the FSB, the mechanism to legalize international standards developed by ISSBs as international treaties, and relationship with the IMF. The current four committees without any permanent researchers cannot discharge the coordination work with ISSBs, let alone developing mid-term policy goals. It should be enforced in terms of the legal foundation as well as by the resources available. As discussed above, this is not a daunting task, but a possible and necessary task for the establishment of the strong, sustainable and balanced international financial regulatory system. UAE and Greek incidents indicate not much time left.

V. Conclusion

Washington Action Plan set up five principles and 26 action items by Mar. 2009. London Summit completed several action items. They include expansion of the FSF with a broader membership, IMF's leading role in close coordination with the FSB, and credit availability to support growth in emerging market and developing countries. Although the FSB released several progress and thematic reports and peer reviews,[120] it seems far behind the initial schedule that Washington Action Plan anticipated the FSB to meet. Among 26 actions items, more than a half are to be completed by ISSBs, regulatory agencies or authorities of member jurisdiction.[121] Not many jurisdictions are still debating the policy directions. Even if the time line cannot be met, these efforts should be coordinated and cooperated via the FSB. Thus, the FSB has a lot of assignment to be discharged.

However, the FSB is basically one man international group: Chairperson. It has

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[120] *The Financial Crisis and Information Gap (May 2010); Thematic Review on Compensation: Peer Review Report (Mar. 2010); Framework for Strengthening Adherence to International Standards (Jan. 2010); Progress since the Pittsburgh Summit in Implementing the G20 Recommendations for Strengthening Financial Stability (Nov. 2009); Exit from Extraordinary Financial Sector Support Measures (Nov. 2009); Guidance to Assess the Systematic Importance of Financial Institutions, Markets and Instruments: Initial Considerations (Nov. 2009); The Financial Crisis and Information Gaps (Nov. 2009).*

[121] The ISAB has been exceptionally responsive to G-20's call. *See* ISAB, *Response to G20 Conclusions* (Mar. 2010) available at http://www.iasb.org/NR/rdonlyres/4BC4EEC0-00F2-4B69-A6E3-C7A08D1AADF2/0/G20_response_March_2010.pdf.

four committees and four working groups, none of which has permanent personnel. It of course has full supports from the IMF and the WB. However, with the current governance and resources, it cannot work as it is expected to do. The FSB should be founded on an international treaty. It should be financed and staffed based on an international treaty. It should be furnished with minimum compliance mechanism such as peer review and surveillance as part of its founding documents. It should be authorized to convert international standards into international treaties, which should not be obstructed by the consensus process.

As G-20 Summit has more gatherings, its agenda tends to increase. The most urgent topic was to cooperate and coordinate to put the GFC behind. London Summit was almost exclusively about the GFC. Pittsburgh Summit statement then includes much broader topics such as climate change and energy security. Toronto Summit has its own adds-on. Seoul Summit seems to add food security and green development.[122] These issues are all important. However, international financial regulatory reform still needs immediate attention of global leaders now and here: 2010 Seoul Summit. It is of course more desirable for G-20 to agree on how to attach pro-cyclicality of financial institutions such as bank stability fee or tax on risky bank activities in the form of an international treaty. It is possible and not unlikely. As a better option, however, the bottom line for the Seoul Summit is to set the path for the FSB. Without a sound legal foundation and the agreed guideposts for the future, the FSB can wither out. "A sense of normalcy should not lead to complacency."[123] This might be the last chance that G-20 can set up the international institute to coordinate the way to the stable international financial system. The FSB should be set up as the fourth pillar.

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[122] Choi, *Supra* note 8.
[123] Leaders' Statement: The Pittsburgh Summit, Preamble point 8.