

# Distinguished Essay: Reflections on the Intellectual History of the International Regulation of Monetary Affairs

**“Those who do not remember history are bound to repeat it.”**

Cynthia Crawford Lichtenstein

## Introduction

The European Yearbook of International Economic Law, in its 2010 issue, published a piece written by Wolfgang Bergthaler and Wouter Bossu entitled “Recent Legal Developments in the International Monetary Fund”.<sup>1</sup> The piece, an excellent and informative one, is factual: it lays out the present legal structure (and a then future amendment of the treaty agreed upon but not at the time implemented) of the International Monetary Fund (“IMF” or “Fund”), an international “financial” organisation whose “purpose”... according to the authors and the treaty creating the organisation, “...is to promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems”.<sup>2</sup> The authors, quite understandably as they are civil servants employed by the organisation, avoid mentioning anything in their piece that would suggest that any clause in this treaty (for the document creating the Fund is indeed a treaty with the force of law behind it) or in the statement of its purpose is in the least controversial. (How can “consultation and collaboration” be controversial?) Page 392 of the piece lists the “Challenges Faced by the IMF”, but only the first one listed (“...execut[ing] in a meaningful way its mandate to promote exchange system stability and to avoid competitive exchange depreciation”) suggests that the Fund has any authority that goes beyond “promot[ing] international monetary cooperation”.

---

<sup>1</sup> Bergthaler/Bossu, Recent Legal Developments in the International Monetary Fund, in: Herrmann/Terhechte (eds.), *European Yearbook of International Economic Law (EYIEL) Volume 1*, 2010, p. 391.

<sup>2</sup> Article I (i) of the IMF’s Articles.

C.C. Lichtenstein (✉)

Boston College Law School, Winters 700 John Ringling Blvd E109, Sarasota, FL 34235, USA  
e-mail: [cynthia.lichtenstein@bc.edu](mailto:cynthia.lichtenstein@bc.edu)

Indeed, one of the most controversial aspects of the Fund, the conditions imposed upon members in need to receive its financial help, so-called conditionality, is referred to correctly but most briefly and in the most neutral language only in notes 15 and 16 on p. 396. Moreover, the authors do not note that they are describing the Fund not as it was originally created but as its Articles read after the adoption (in 1976) of the long-negotiated Second Amendment to the Fund Agreement abolishing both the link to gold and the par value system for setting currency exchange rates. One would think from the piece that exchange rates had always been “floating”. Moreover, it was with the adoption of the Second Amendment that the language regarding the “purpose” of the organisation became so anodyne.

The purpose of this essay is quite different: to explore the conceptual (and often political) debates that have surrounded the attempt through the law of the IMF to subject international monetary relations to international, if not control, monitoring and Dutch uncle talk. In particular, two subjects on which there has been, and continues to be, considerable controversy will be discussed. The first is that of the demand for reform of the internal economic structure and governance of members that receive the Fund’s aid. The second is the subject of capital flows and the permissibility of sovereign control thereof. As we shall see before this essay is concluded, the two topics may be interconnected in that in latter years, a good deal of sovereign borrowing in a currency other than that issued by the sovereign (thus possibly occasioning on the part of the borrowing sovereign the need for aid in repayment of those borrowings) has been in the form of the issuance of bonds (such borrowing being referred to in modern parlance as “accessing the international capital markets”).

Although the Fund and international monetary law in general have received far less attention in the legal academy than the subject of international trade and the Fund’s sister international organisation, the World Trade Organization, the matters that the Fund is authorised to deal with in its constitutive document, the Articles of Agreement signed in Bretton Woods in 1944 and inaugurated in Savannah in 1946, are of immense importance to the health of international economy.<sup>3</sup> Yet it is only now, since the financial crisis of 2007–2009, that the words “contagion”, global financial stability, and, above all, financial crisis and the connection between the health (or lack thereof) of so-called systemically important financial institutions and global financial stability have come into vogue.

The early history of the Fund, as laid out in the seminal international economic law chapters of the American international law casesbook, *International Legal Process*,<sup>4</sup> and subsequently published separately as *The International Monetary*

<sup>3</sup> Bergthaler/Bossu, Recent Legal Developments in the International Monetary Fund, in: Herrmann/Terhechte (eds.), *European Yearbook of International Economic Law (EYIEL) Volume 1*, 2010, p. 391 (391), only says that it does not discuss Art VIII of the Articles, “so-called IMF jurisdiction”.

<sup>4</sup> Chayes/Ehrlich/Lowenfeld, *International Legal Process: Materials for an Introductory Course*, 1968.

*System*<sup>5</sup> first and second editions makes students aware of the profound difference in concept of what the IMF should be between the two chief architects of the Articles of Agreement, the great British economist, John Maynard Keynes, and the American bureaucrat, Harry Dexter White. Keynes initially thought of the Fund as a bank that would be a kind of lender of last resort, which would lend freely (and possibly at a penalty rate if following Bagehot), and indeed, the Fund Articles refer to “drawings”—and to this day a borrowing State may draw freely upon the first portion of its “quota” as if it were a checking account—without any mention of the need to demonstrate to the Fund its proposed “reform” of its economic system. In addition, Keynes envisioned the Fund not as a vehicle for cooperation among States in their monetary affairs but as the enforcer of the rules of good international monetary behaviour that were set out in the Articles.<sup>6</sup>

I quote here from a talk that was given in 2006 by the Governor of the Bank of England who has just stepped down, Sir Mervyn King, at the Indian Council of Research in International Economic Relations (ICRIER) describing Keynes’ own talk at the inaugural meeting of the Fund in 1946 in Savannah in the United States:

In his speech at this first meeting of the Fund, Keynes drew an analogy with the christening – party in *The Sleeping Beauty*, which, as Chairman of Covent Garden, he had seen danced at the reopening of the Garden only two weeks earlier. He hoped that the Bretton Woods twins, Master Fund and Miss Bank, would receive three gifts from their fairy-godmothers: first, a many – coloured coat “as a perpetual reminder that they belong to the whole world”; second, a box of vitamins to encourage “energy and a fearless spirit, which does not shelve and avoid difficult issues, but welcomes them and is determined to solve them”; third, “a spirit of wisdom . . . so that their approach to every problem is absolutely objective”. Keynes warned the delegates that this was asking a great deal: “there is scarcely any enduringly successful experience yet of an international body which has fulfilled the hopes of its progenitors”. So he hoped that the malicious fairy would not bring its curse upon the twins: “you two brats shall grow up politicians; your every thought and act shall have an *arrièrepensée*; everything you determine shall not be for its own sake or on its own merits but because of something else”. And if the IMF were to become politicised then, Keynes said, it would be best for the twins “to fall into an eternal slumber, never to waken or be heard of again in the courts and markets of Mankind”.<sup>7</sup>

Sir Mervyn’s 2006 talk was entitled “The Reform of the International Monetary Fund”, and after laying out his vision of how the international economy had changed since Keynes’ day (the development of extreme global imbalances), King urged the Fund to “speak truth to power”, meaning, I would think, that it should fulfil Keynes’ vision of an impartial arbiter of economic relations exhibiting a “fearless spirit” in confronting member nations with their failings. The thrust of the speech is the failure to recognise the spillover effects of individual macroeconomic policy, and the reforms King urged in 2006 would help the Fund to voice those effectively—or rather let what Sir Mervyn calls the “extraordinarily talented

<sup>5</sup> Lowenfeld, *The International Monetary System*, 1984.

<sup>6</sup> Kenneth Dam, *The Rules of the Game: Reform and Evolution in the International Monetary System*, 1982.

<sup>7</sup> Available at <http://www.bis.org/review/r060222a.pdf>, page 1. Footnote 2 omitted.

and committed people who work for the Fund” make those judgment calls. The importance of the quality of Fund staff will become clear subsequently in this essay.

Finally, we should note here that the most significant words in Keynes’ own initial talk are the words “. . .absolutely objective”.<sup>8</sup> Since Keynes’ vision of the Fund was one of a quasi-lender of last resort, aiding freely (as in Bagehot’s “lending freely”) in a financial crisis, it was (and is) critical to the Fund’s function as a lender of last resort (to the extent it now once again with the Euro crisis has one) that it be an objective decider on the question of the need for liquidity. “Freely”, of course, means just that: the extension of aid without conditions (or lessened conditions) when the situation, in an objective, non-politicised determination, warrants.

Nonetheless, on this, our first topic, that is, of freely lending when a member of the Fund is in financial difficulties, from the very beginning of the Fund’s work was not to be the interpretation of the Articles of Agreement. As this essay is written, a huge debate among both economists and politicians is taking place in the West concerning the financial crisis in the countries of the European Union sharing a single currency, the euro, and also concerning the recessions in both the United Kingdom and the U.S. and the role that government deficit spending should play in aiding recovery from the euro crisis and the respective recessions. Lord Keynes was fully of the view that in bad times, the government should aid freely and without conditions and not stop, in effect, printing money until the area concerned had good signs of economic recovery.<sup>9</sup>

Today’s debate between the so-called austerians—a kind of possibly a joke as the original theorist warning Cassandra like against government aid and its effects on the “Road to Serfdom” was Friedrich von Hayek, an Austrian—who urge austerity, meaning the act of trying to cut governmental deficits as the proper economic path, and the latter day followers of Keynes, who believe that the only answer to recession at what is called the “zero bound” (meaning that the central bank cannot lower interest rates past zero) is for the fiscal authorities to pour money into the ailing economy despite the effect on the deficit until the economy moves onto a clear path to growth bears, to the mind of the author, a startling resemblance to the initial debate concerning the terms on which the Fund should lend.

Since, in 1946, it was the Americans who had all the money (like Germany in Euroland today), the Americans felt that a country in need of IMF financing should have to justify how it would use the money and what reforms it would take to get out its difficulties, whatever they might be.<sup>10</sup> The Americans won, and the IMF has

---

<sup>8</sup> Moggridge (ed.), *The collected writings of John Maynard Keynes, Volume XXVI: Activities 1941–1946 - Shaping the Post-War World: Bretton Woods and Reparations*, p. 216.

<sup>9</sup> Of course, from the beginning, the Fund could only be a quasi-lender of last resort because it does not have access to a printing press: its resources are given to it by its members in the form of their “quotas”, which also put limits on how much an individual member may borrow under Fund rules. In an essay of this length, it is not possible to go into the story of an Amendment to the Articles of Agreement providing for Special Drawing Rights (“SDR’s”), but the basic idea was to permit the Fund to have resources to lend out beyond the currencies contributed by members.

<sup>10</sup> The story is well told in Lowenfeld, *The International Monetary System*, 1984.

imposed its conditionality (at least on drawings from the “general account”)<sup>11</sup> ever since, not without extreme controversy. That controversy was made very evident during the so-called Asian crisis that began in the late 1990s. One remembers the pictures in the Western press of rioters in Thailand and Korea as the governments imposed the IMF conditions to attempt to deal with the problems caused, on one theory, by excessive foreign currency borrowing. Indeed, it has been suggested that one of the reasons for the large global imbalances accumulated up to 2006, when Sir Mervyn was giving his ICRIER talk, was that the countries concerned, having experienced the price (in imposed “conditions”) of Fund aid, were determined to never have to go to the Fund again and to work very hard to accumulate reserves. Of course, in terms of the global welfare, the accumulation of reserves rather the spending of earnings from international trade constitutes a drag on the international economy and the welfare of the whole.

Since the start of the Euro crisis with Greece’s difficulties in 2010, the IMF has been working with the European Commission and the European Central Bank, the so-called Troika, to determine upon what terms Euroland economic sufferers (Greece, Cyprus, etc) will receive aid from the special funds set up by those countries of the European Union using the currency and from the Fund itself. The Greek “rescue” (if the ultimate sovereign debt restructuring may be called that) was a very slow process to first get aid to Greece and eventually to work out how to lessen Greece’s debt burden, which finally all parties concerned recognised as “unsustainable”. Equally, the “austerity” imposed upon Greece as the condition of the initial aid before the ultimate recognition of the need for debt restructuring is widely recognised as extremely harsh and, at least in the present opinion of the staff of the Fund, counterproductive.

We note here, just as this essay is being finalised, that the Fund has released (April 26, 2013) a Policy Paper, “IMF Report on Sovereign Debt Restructuring” (“Report on Sovereign Debt Restructuring” or “Report”),<sup>12</sup> as well as, as of May 20, 2013, the IMF Country Report No 13/156, June 2013, entitled “Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement” (“Greek Country Report 2013”).<sup>13</sup> The Report on Sovereign Debt Restructuring is specifically stated by its authors as being intended not to make policy but only to reflect upon the debt restructurings that have taken place in the last 7 years and to set out areas where additional research and reflection might be warranted. No doubt this

---

<sup>11</sup> Bergthaler/Bossu, Recent Legal Developments in the International Monetary Fund, in: Herrmann/Terhechte (eds.), *European Yearbook of International Economic Law (EYIEL) Volume 1*, 2010, p. 391.

<sup>12</sup> International Monetary Fund, April 26, 2013, Sovereign debt restructuring - Recent developments and implications for the Fund’s legal and policy framework, IMF Policy Paper. Available at: <http://www.imf.org/external/np/pp/eng/2013/042613.pdf>.

<sup>13</sup> Available at <http://www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf>. The paper is referred to by the Financial Times commentator John Dizard as the “IMF get[ting] tetchy over Greek bailout”, John Dizard, “Egyptian test looms after IMF gets tetchy over Greek bailout”, Financial Times, June 8, 2013, p. 13.

statement by the staff writers helped this Policy Paper get approval from the Fund's Executive Board. As the Greek Country Report 2013 has just been written by staff, it has not yet been discussed by the Executive Board (at least as this essay is being completed) and represents only the views of the staff so eloquently complimented by Sir Merwyn in his 2006 speech discussed above. Both of these papers are fascinating because they seem to the author to hint for (at least by IMF staff) the acceptance that in some cases of sovereigns whose default would result in system-wide contagion, the Fund for better or worse must take up its Keynes projected role of lender of last resort.

Before, however, discussing these two papers, the author would like to note how the subject matter of this essay at this point has moved from conditions imposed by the Fund as the price of its lending to a member in difficulty (so-called adjustment in internal macroeconomic policy) to a discussion of "sovereign debt restructuring", which means a scheme to enable a member country to either reduce the total nominal amount of debt (whether external or both external and internal, the cases cited in the Report differ) owed by it or extend the maturity dates of its outstanding debt issuance so as to give the sovereign more time to deal with its economic problems. In the twenty-first century, the nature of sovereign financial problems has changed profoundly.

When the Fund was first set up, after the general devastation of World War II was dealt with by the Bretton Wood twins (the IMF and the World Bank), the kind of financial difficulties into which a member country might fall consisted of such events as, in the case of what was then called a "developing" country with a single crop being the largest share of its export earnings, a freeze devastating its coffee crop. At the end of World War II, the IMF was the only lending game in town for needy sovereigns.

By the 1970s, the major international banks such as Chase Manhattan, Barclays, and, most famously, Citibank (it was Citibank's then Chairman, Walter Wriston who famously said "countries don't fail") were making sovereign loans and setting up consortiums of banks to do so.

The end result was the sovereign debt crisis of the 1980s where, if their sovereign loans were marked to market, the nine New York money centre banks would have been insolvent.<sup>14</sup> No one forced those banks to mark those loans to market (the acknowledged insolvency of the nine New York City money centre banks would have been an inconceivable disaster for the international economy since by then those banks were owning (and still do) the international dollar payments system called "CHIPS"), and the crisis was resolved through such arcane initiatives as the Brady (former U.S. Secretary of the Treasury) plan. It is notable, however, that the IMF was very little involved in these workouts of bank sovereign

---

<sup>14</sup> This, of course, was the beginning of Paul Volcker's work with the Bank of England and ultimately the other Basel countries to force internationally significant banking institutions to hold more capital.

lending, and it was the U.S. Treasury that issued the specially formatted T-bills to be used as collateral for an exchange issue of bonds for the bank debt.

However, the nature of “international banking” changed profoundly in the 1980s and 1990s: rather than putting together consortiums of commercial banks to make sovereign loans, the investment banking side of the large international institutions saw the profit in acting as bond salesmen and as investment bankers to sovereigns having grown sufficiently mature (and now called “emerging market” rather than “developing” countries) to issue sovereign bonds on the international capital markets. Essentially, this was the beginning of so-called private sector finance as opposed to public sector finance, or sovereign-to-sovereign lending. Even the IMF found a new function for itself, developing a meta-set of sovereign financials and, as part of its “surveillance” work under Art IV of the Articles, helping emerging markets disclose their financial condition in a way that would meet the disclosure requirements for the sovereign bond sales. The result was that external debt other than such traditional lending as trade finance now came in the form of issuance of sovereign bonds. Indeed, as the Greek Country Report 2013 recounts,<sup>15</sup> Greece after its admittance to EMU largely financed its economic expansion through the issuance of its bonds that, because they could be (before Greece’s dodgy financial accounting was publicly disclosed) discounted at the European Central Bank at the same discount rate as German bonds, allowed Greece very cheap financing.<sup>16</sup> Sovereign borrowing, at least for those sovereigns with capital market access, was off to the races.

Unfortunately, however, for the international economy, and as the private sector is all too aware, there is no internationally applicable sovereign bankruptcy scheme. Thus, if a sovereign has multiple creditors, including trade finance, bank debt, and a number of bond issues on the international capital markets (to say nothing of arbitral awards against it under its BITs), and the debt is held not only by the foreign investors but by its own banks, and the financial markets begin to whisper of the country’s growing financial difficulties, the country is apt to experience very sudden capital outflows and its banks suffer bank runs. As the general guardian of the international monetary and financial system’s stability, the Fund is, of course, concerned to avoid the general economic disruption that can follow.

The Asian crisis had demonstrated that “contagion” is very real.<sup>17</sup>

---

<sup>15</sup> IMF Country Report No 13/156, June 2013, Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement, p. 5. Available at: <http://www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf>.

<sup>16</sup> The author has never discovered why the ECB, which must have known that Greek sovereign bonds could not be discounted in private markets at the same rate as German bonds, adopted this policy, which would seem to have permitted Greece’s profligacy in the first place.

<sup>17</sup> There is no space in this essay, unfortunately, to discuss the Fund’s failed initiative, the Sovereign Debt Restructuring Mechanism, to deal with this problem of disorderly runs on sovereign debtors when confidence is lost in the country’s capacity to meet its obligations as they become due.



Moreover, the Fund remains an international organisation with limited resources, without the capacity of a central bank to print a currency. One of the express justifications for its conditionality requirements has always been ensuring the repayment of “drawings” by its members.<sup>18</sup> Thus, the excellent and experienced (from yearly surveillance exercises, the design of meta-statistical analysis for disclosure, and other economic exercises) Fund staff began to work out methodologies of trying to determine when a sovereign’s debt burden, including its bond issues, might be “sustainable” and when the sovereign (and repayment of borrowings from the Fund) was at severe risk because the burden was “unsustainable” and default might be imminent. The Report in its discussion of sovereign restructurings recounts the in-depth sustainability analytic methodology developed over time by Fund staff and referred to as “DSA”, rigorous debt sustainability analysis. Whatever the need of the sovereign in difficulty for funding, the Fund established a policy that it would not extend so-called exceptional access to its resources unless the particular DSA indicated a “high probability” that under the proposed program the debt burden of the sovereign would be sustainable.

However, the Greek situation presented the Fund with a serious dilemma. By 2010, Greece’s financial situation was so tenuous that not only did it need to receive help from the other countries in the monetary union of the euro, but also it applied to the Fund for a program that was the largest Fund program ever relative to quota, Euro 30 billion or 3,212 percent of quota.

In the words of the Greek Country Report 2013<sup>19</sup>:

To justify exceptional access, four criteria had to be met: (1) exceptional balance of payments pressures; (2) a high probability that public debt is sustainable in the medium term; (3) good prospects of regaining access to private capital markets; and (4) a reasonably strong prospect of the program’s success. The sticking point for staff was Criterion 2: even with implementation of agreed policies, uncertainties were so significant that staff was unable to vouch that public debt was sustainable with high probability. But staff favoured going ahead with exceptional access because of the fear that spillovers from Greece would threaten the euro area and the global economy. A proviso was therefore added to Criterion 2 that where debt was not sustainable with high probability, a high risk of international spillover effects provided an alternative justification for exceptional access. Unusually, although this is entirely legal, this change in Fund policy was made in the context of the Greece SBA Board meeting.

Note the justification for the change of policy: the same justification that has been used in the United States for the administering of the rescue of the investment

---

<sup>18</sup> We shall not go into the claim of some so-called behavioral economists that lenders hope the fear of harsh conditions will prevent immediate profligacy. One does wonder about the frequent repetition of the term “moral hazard” to justify objection to following Bagehot’s advice for dealing with crises.

<sup>19</sup> IMF Country Report No 13/156, June 2013, Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement, p. 10. Available at: <http://www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf>.



bank Bear Stearns by the Federal Reserve, the central bank of the U.S., which at the time did not provide the safety net for or regulatory authority over stand-alone investment banks: systemic risk and the fear of the impact of a failure on the international economy. But should an international organisation that does not have the funding behind it of a central bank (at least a central bank with access to its sovereign's treasury, unlike the ECB) make lending decisions on the basis of systemic risk? That is one of the questions that the Report on Sovereign Restructuring says must be explored.

In the end, of course, Greek public debt was not sustainable: the Fund had pretended to itself that market access could be regained in 2012; it was not. The debt to GDP ratio had soared; as indicated in para. 35 at p. 20 of the Country Report, "Sizable deposit outflows began in the second half of 2011, fanned by fears of a Greek euro exit". By the time of the writing of the Greek Country Report, Fund staff has begun trying to "speak truth": as was reported in the *Financial Times* commentary cited above, the IMF has admitted that "the depth of ownership of the program and the capacity to implement structural reforms were overestimated". What is "ownership of the program"? It means, essentially, the willingness and capacity of the government of the sovereign to impose upon its people the austerity demanded by the Troika.

Equally, the Country Report is trying to be upfront about the results of not having insisted upon a restructuring of Greek debt ab initio: the entire Section H of the Greek Country Report 2013 is devoted to the question of "Should debt restructuring have been attempted at the outset?"<sup>20</sup> with the staff quite clearly, if untactfully, criticising the other members of the Troika for having refused to consider the possibility until much later in the crisis. Indeed, in reporting on the Troika process, the Greek Country Report 2013 says outright: "However, the EC tended to draw up policy positions by consensus, had enjoyed limited success with implementing conditionality under the Stability and Growth Pact, and had no experience with crisis management. The Fund's program experience and ability to move rapidly in formulating policy recommendations were skills that the European institutions lacked." As the Report notes forcefully, the delay in facing up to the need for restructuring permitted private investors, unhindered by exchange controls in the Greek case, to withdraw and thus increased the need for the public sector to step in. Footnote 18 adds: "The recent paper on sovereign debt restructuring agrees that delay in resolving an unsustainable debt situation serves to depress investment and growth in the debtor country and prolong financial uncertainty (see IMF, 2013)."<sup>21</sup>

<sup>20</sup> IMF Country Report No 13/156, June 2013, Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement, pp. 26 ff. Available at: <http://www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf>.

<sup>21</sup> IMF Country Report No 13/156, June 2013, Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement, fn. 18, p. 28. Available at: <http://www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf>.

It would seem that since the resolution of the Greek crisis, the Fund staff at least has ceased its passivity and unwillingness to speak out. The large thrust of the Report on Sovereign Debt Restructuring is the insistence that “Allowing an unsustainable debt situation to fester is costly to the debtor, creditors and the international monetary system”.<sup>22</sup> The Report is forthright in its recommendation that Fund policy needs “stricter requirements to prevent the use of Fund resources to bailout private creditors”.<sup>23</sup> So far as the Fund is concerned, there is no more kicking the can down the road in the hope that things will get better on their own.

We turn now to the other area of debate concerning the Fund and its jurisdiction, the subject matter mentioned at the beginning of this essay: capital flows and the permissibility of sovereign control thereof. At the inception of the Fund, as we have seen, the conceptual debate in the interpretation of the provisions of the Articles of Agreement concerned “drawings” from the Fund by nations in need. However, the remainder of the Articles at the inception of the Fund in 1946 were not controversial. The Treaty set certain quite firm “rules of the road” for exchange relations in the case of exchange for current transactions. Given that Nazi Germany had used currency manipulation as a weapon of war and that between the two World Wars the nations involved in the then unregulated international trading system had competed with one another to lower their currencies to gain trade advantage, helping to lead, with the imposition by the U.S. of the Smoot Hawley tariff wall, to the Great Depression in the 1930s, everyone agreed that rules should be set in the Agreement with respect to exchange controls on “current transactions” and with respect to exchange rates among currencies. All understood that the trade rules being drafted to go into the Havana Agreement (which became the GATT 1944 because that Agreement was never ratified by the U.S. Senate and came into force for the United States as an international agreement signed by the President and implemented in the United States by legislation) had to be accompanied by monetary rules encouraging the war torn nations to give up exchange controls as soon as possible and move to free convertibility. All agreed at that time that the way to multinational exchange stability was to not permit devaluations except initially and thereafter with the concurrence of the Fund. At the time, it seemed to be generally agreed that the path to restoration of the international trading system in goods and services and consequent mutual economic growth was liberalisation of trade in goods<sup>24</sup> accompanied by freed-up convertibility of currencies.

---

<sup>22</sup> International Monetary Fund, April 26, 2013, Sovereign debt restructuring - Recent developments and implications for the Fund’s legal and policy framework, IMF Policy Paper, para. 24 at p. 20. Available at: <http://www.imf.org/external/np/pp/eng/2013/042613.pdf>.

<sup>23</sup> International Monetary Fund, April 26, 2013, Sovereign debt restructuring - Recent developments and implications for the Fund’s legal and policy framework, IMF Policy Paper, para. 30, p 25. Available at: <http://www.imf.org/external/np/pp/eng/2013/042613.pdf>.

<sup>24</sup> Relaxation of barriers to trade in services came only in 15th April 1994 with the inclusion of the General Agreement on Trade in Services (GATS) in the WTO treaties resulting from the Uruguay Round.

<http://www.springer.com/978-3-642-40912-7>

European Yearbook of International Economic Law  
2014

Herrmann, C.; Krajewski, M.; Terhechte, J.P. (Eds.)

2013, XIX, 534 p. 4 illus., Hardcover

ISBN: 978-3-642-40912-7