INTERNATIONAL MONETARY LAW COMMITTEE

WORKING SESSION

Wednesday, 29 August 2012

Chair: David Wyld (HQ)

The Chair welcomed the audience and commended the excellent report of the Committee and each of its seven individual parts. He then introduced Sir William Blair, the Chair of the Committee.

Sir William Blair (UK) thanked the audience for coming to the session and expressed his gratitude for the great honour of chairing the Committee. He introduced Mr Thomas Baxter Jr and Mr Antonio Sáinz de Vicuña y Barroso, vice-chairs of the Committee, and Mr David Gross, secretary of the Committee.

He then introduced the structure of the report, which consisted of seven sections:

1. Resolution of Financial Institutions
2. Sovereign Debt
3. An Update on Regulatory Issues
4. European Banking Regulation
5. Special Drawing Rights
6. Extraterritorial Impact in Relation to Iran
7. Attachment and Turnover of Accounts in Foreign Bank Branches

Sir William Blair noted that each head in charge of a section of the report would speak on his respective section and that after each speaker there would be discussion on the specific issue.

Mr Marcus Jewett (Canada) started his presentation on recent developments in relation to the resolution of financial institutions by highlighting that one of the key lessons of the financial crisis was the need to improve the capacity of authorities to resolve failing financial institutions in a way that did not cause severe systemic disruption or expose taxpayers to loss.

This was commonly referred to as the "too big to fail" problem – one of the most challenging problems for those concerned with financial stability. It had made sense during the global financial crisis of 2008 for governments to use taxpayers' funds to rescue financial institutions rather than allowing them to undergo a value-destroying bankruptcy process and be liquidated at fire-sale prices. While these bail-outs with taxpayer funds restored stability in the short-run, the downside was that it came at the cost of increasing incentives for risk-taking in the long run. A "no bail-out policy" would require that there be in place resolution procedures that can be applied without creating systemic disruptions.

The FSB had developed standards and criteria for these procedures that were referred to in the Committee's Report. These were endorsed by the G20 at the Cannes Summit in November 2011. Mr Jewett noted that the need for resolution arises when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so. That was the point where it would be essential to have available resolution tools, or

a combination of them. The Key Attributes document set out 12 essential features that needed to be part of resolution regimes in all jurisdictions.

Mr Jewett recalled that in November 2011 the FSB released a list of 29 institutions that had been identified as globally systemically important financial institutions (G-SIFIs). These firms were subject to specific resolution planning requirements that included mandatory recovery and resolution plans (RRPs), regular resolvability assessments, the establishment of Crisis Management Groups (CMGs), and institution-specific cross-border cooperation agreements.

Regarding implementation, he stated that legislative changes would be necessary in many if not all jurisdictions to implement the Key Attributes. Although much had been done, much remained. In his own country, Canada, several measures had already been taken, notably the capacity to create bridge banks.

In order to assist in measuring progress, the FSB was developing an assessment methodology, with the involvement of the IMF, the World Bank, and the standard setters (IOSCO, IAIS, BCBS). This methodology was being designed so that it could be used in multiple contexts, including self-assessments of existing resolution regimes and reforms to those regimes adopted to implement the Key Attributes; peer reviews conducted within the FSB framework for monitoring implementation; IMF and World Bank assessments of the quality of resolution regimes, for example in the context of Financial Sector Assessment Programs and Reports on the Observance of Standards and Codes; and reviews conducted by private third parties such as consulting firms.

In July 2012, FSB members began the first of an iterative series of peer reviews on the implementation of the Key Attributes. This review was expected to provide a fuller picture of progress in implementing the Key Attributes.

Mr Jewett then moved on to his conclusions. He believed that the G20 endorsement (Agreement on the Key Attributes) had been a very significant step towards putting in place a cooperative framework that could achieve an orderly resolution of failing cross-border firms. However, he thought that in order to effectively implement the Key Attributes in their national legal and regulatory frameworks and to remove remaining obstacles to cross-border cooperation, authorities and firms would have considerable work to do.

From an international perspective, he drew attention to some special challenges that arise regarding the effect of resolution actions in a cross-border context. Firstly, with regard to mutual recognition, he noted that resolution powers, such as debt write-downs and conversions, and suspensions of termination rights, would not necessarily be effective with respect to contracts governed by foreign laws or assets located in other jurisdictions in the absence of a mutual recognition regime.

Mutual recognition of such powers in different legal systems would require broad agreement between different jurisdictions as to how such powers would operate so that courts in a foreign jurisdiction would not allow enforcement of claims in defiance of the resolution powers exercised in the country administering the resolution. Alternatively, cross-border effectiveness could be achieved by relying on a foreign jurisdiction's own resolution authority and the exercise by this authority of its powers in support of the

resolution administered by a foreign authority. A pre-condition for this would be that the foreign resolution authority needed to have the necessary powers and the capacity to act in support of a foreign resolution proceeding.

Mr Jewett thought that legal certainty and predictability would undoubtedly be enhanced by appropriate provisions in contract documentation whereby counterparties agreed to be bound by resolution actions taken by a foreign resolution authority. Existing differences in the treatment and ranking of creditor claims across jurisdictions could affect incentives of authorities to agree to cooperative solutions if as a result of deference to a foreign authority, local creditors would be treated less favourably.

Secondly, he argued that impediments to information sharing between members of a CMG could also pose obstacles to joint resolution planning work and hamper effective cooperation in a crisis. Resolution planning needed to be stepped up significantly to address these and other issues so that cross-border cooperation would materialise in times of crisis.

Finally, Mr Jewett noted that the shadow banking system was described by the FSB as "credit intermediation involving entities and activities outside the regular banking system". Institutions that engaged in "shadow banking activities" not only operated outside of the safety net and regulatory perimeter; they also tended to be outside of the special resolution regime perimeter. It was therefore important to ensure that they do not trigger systemic problems and that there were effective resolution arrangements in place for them when they fail.

The Chair made three organisational remarks before opening the floor to contributions.

Sir William Blair enquired about the international implementation of the standards.

Mr Jewett responded that implementation had been uneven, with some good progress in certain areas. Smaller countries and jurisdictions were waiting for larger players, like the US, to decide on how to progress so that they could follow suite.

Mr Thomas Baxter Jr (USA) remarked that Title II of the US Dodd-Frank Act, which provided for orderly resolution of systemically important institutions, was one example of a resolution mechanism for a "too big to fail" institution. With regard to "shadow banking", he noted that Title I of Dodd-Frank Act had provisions for non-bank financial institutions that were determined to be systemically important. Those were to be supervised by the Federal Reserve. This constituted a new style of supervision for institutions that were systemically important and fell into that "shadow bank" category.

Sir William Blair declared that the second subject to be addressed would be sovereign debt and introduced the next speaker, Sir Ross Cranston.

Sir Ross Cranston (UK) reminded that the two members of the Committee who wrote the section of the report could not be there. The section on sovereign debt in the report discussed the basic methods for restructuring. The "carrots", used to entice a creditor into giving debt relief to a sovereign borrower, comprised of a variety of techniques like the increase of the interest rate on the debt. The discussion in the report of "sticks" to induce participation in a sovereign debt restructuring covered default (both real or threatened), exit consents, collective action clauses, and local law.

In relation to exit consents, Sir Ross Cranston noted that participating bondholders tendered their existing bonds into an exchange, thereby giving the sovereign a proxy to vote at a bondholders' meeting to strip away features of the old bonds in a way that renders those instruments less attractive to prospective holdout creditors. For example, these voting proxies could permit the sovereign to strip out clauses in the old bonds such as the waiver of sovereign immunity, the choice of foreign governing law, the submission to foreign court jurisdiction, the acceleration provision, and the requirement to keep the bonds listed on an exchange. Because many bonds permitted modifications of this kind to non-payment terms with only a bare majority of the holders consenting, this approach could be an effective coercive technique.

He clarified that collective action clauses (CACs) were contractual provisions that permitted a majority or supermajority of creditors to make changes in the debt instrument, including its payment terms, with the consequence that the change was binding on any dissenting minority of the holders. He reminded that CACs had been used in English law bonds since 1879 and that they were reintroduced into New York law-governed sovereign bonds in 2003 and thereafter appeared in most sovereign bonds governed by New York law. He emphasized that, according to Article 12 of the ESM Treaty, CACs were compulsory in all new euro area government securities.

He then discussed how local law could be an instrument for facilitating debt restructuring. This would not be possible in many places, but could be possible in Greece or Ireland. He thought that the main point of this section was that legal solutions were not going to be at the forefront for rescheduling.

Sir Ross Cranston then addressed the lessons that could be learned from history. These were the following:

(i) don't let a sovereign debt problem to become a banking sector problem;
(ii) if it can't be avoided, don't try;
(iii) keep track;
(iv) ask for enough debt relief;
(v) be ruthlessly efficient; and
(vi) be even handed

He also pointed out that work of the Committee fed into some UN initiatives, which had run seminars on sovereign debt restructuring. The background papers that had been prepared for these meetings identified a whole range of issues. It was important to recognise that there was a real division amongst the experts as to how to address these problems of sovereign debt restructuring. He noted that there was a body of opinion stating that a rule based or even statutory approach should be adopted.

Sir Ross Cranston concluded by reiterating that the work of the Committee resonated with international moves to try to address this problem.

Dr John Taylor (Australia) wanted to comment on lesson 6 of section II of the report – be even handed. He noted that lesson 6 urged sovereign debtors to minimise discrimination among creditor groups. It recognised the appropriateness of treating trade and supplier debt differently and excluding that debt from rescheduling/restructuring. Other

types of debt had historically also been excluded, namely the debt of international financial institutions (e.g. of IMF, the World Bank Group, and regional development banks). He believed that there were very sound reasons to continue to accord "preferred creditor" status to those institutions.

Sir Ross Cranston responded that the essence of lesson 6 was a matter of the sovereign not picking favourites. He agreed that there could be a rational case for treating some differently, but stressed that the general approach was to try to address all evenly.

Mr Antonio Sáinz de Vicuña y Barroso (Spain) stated that the PCIJ had decided in the *Serbian Loans* case, followed by the *Brazilian* and *Norwegian Loans* cases, that these kinds of issues remained in the domain of national law and not of international law. He was wondering whether, in view of the globalisation of markets, it was now time for international law to settle this issue, which was so relevant to mankind. He found it necessary to reconsider whether there should be an international approach. IMF had carried out in 2003 an interesting project on creating a global method of solving debt rescaling in an orderly manner. This project had failed because at the time it had not been possible to reach agreement with the main powers in the IMF. He commended the effort nonetheless and considered it an interesting project for the near future; an organised method for high judicial control which would address these issues in a fair manner.

Sir Ross Cranston believed this to be the aim of the specialist meetings being held by the UN. There should be a more rational, transparent, open approach. He suspected that, at the end of the day, politics would come into it and that it would be a very messy negotiation to bring about restructuring. He thought that it could be something that they as a Committee should or could look at as there was international law on the issue.

Mr Sáinz de Vicuña noted the experience of the last debt rescalings in the Latin American cases, and also the Greek case recently. He asserted that from a legal perspective it would be very beneficial to have a framework in place to carry out an orderly procedure.

Mr Jeremiah S. Pam (US) made a comment in response to a suggestion by Mr Sáinz de Vicuña about the value of further committee work on more law-based approaches to resolving sovereign debt crises. He noted that the ILA had for the last two years had a study group on the subject, the sovereign insolvency study group (sharing some members with the Committee), and that some members of the Study Group (especially Brian Hunt) had done some work towards a possible treaty or statutory approach.

The Chair recollected that part of the activity of the Committee was working towards international solutions. He believed that any solution that would involve giving up sovereignty would be controversial. He wondered whether there were any particular ways how to encourage States to agree to that.

Sir Ross Cranston agreed that that was the difficulty but believed that the issue could be taken further.

Sir William Blair introduced Dr Peter Follak who would be speaking next.

Dr Klaus Peter Follak (Germany) started by recollecting that, as the Committee had reported at the Hague conference, there would be a few broad continuous issues dominating the discussion during the next few years:

(i) there were the lessons to be drawn from the global financial crisis;
(ii) the scope of global harmonisation had to be taken care of; and
(iii) the rule of law in financial regulation might have to be re-considered.

As far as the lessons to be drawn from the credit crisis were concerned, significant progress had been made or was under way in the field of technical regulatory issues. In particular, the Basel III package had been carved out, as well as macro-prudential components. The details were in the report. However, he wanted to comment on the issues where there had been recent developments.

Both the US and the EU had re-structured their systems of regulatory authorities – the US by implementing the Dodd-Frank Act and the EU by implementing the so-called De Larosiere Report with the establishment of the European Financial Supervisors. On 30 May 2012, the Commission had indicated that it would initiate a process to "map out the minimum steps towards full economic and monetary union (including), among other things, moving towards a banking union including an integrated financial supervision and a single deposit guarantee scheme." The interference with the existing supervisory structure had not yet been carved out in detail. In particular, it was unclear whether the Banking Union should be restricted to systemically important financial institutions (SIFIs). So it was to be hoped that it would not delay the other projects, in particular the draft Directive on the resolution of financial institutions.

The inclusion of so-far unregulated financial entities known as "shadow banks" was not yet finalised. The FSB had supplied definitions, and had laid down high-level principles and recommendations. The EU had issued a Directive on Alternative Fund Managers, and consultation processes were under way in the US and the EU.

Dr Follak thought that it might be necessary to reconsider the rule of law in financial regulation. The crisis had brought to light the limits of soft law regulation. There was still heavy reliance on voluntary coordination via multiple non-treaty-based fora, such as the Financial Stability Board, the Basel Committee etc. There was a new soft law harmonisation tool brought to life by the Basel Committee and the FSB: peer review. The idea was to create processes that could motivate national legislators to enact necessary changes. The Basel Committee had established a regular review process in respect of the implementation of its banking standards across member countries, which recently had been extended to the non-members of the Committee worldwide. It comprised of a regulatory consistency assessment of individual jurisdictions. A similar review process by the FSB was in place in respect of the Key Attributes of Effective Resolution Regimes. Nevertheless, as long as soft law principles had not been implemented by binding legislation, courts would apply national law only (as far as resolution of financial institutions was concerned, subject to the general principles of international insolvency law). The success of any harmonisation of banking resolution would depend on the proper implementation by national jurisdictions.

The Chair asked for comments on Section III.

Mr Jeremy Carver (UK) declared that Committee had correctly emphasised the importance of harmonised bank regulation across financial centres. The recent conduct of the New York Department for Financial Service Regulation concerning Standard Chartered

Bank marked a serious deterioration in harmonisation of financial institutions, even within a single financial centre, New York. A new department with questionable jurisdiction over US extraterritorial sanctions against Iran failed to coordinate its actions with other regulation and law enforcement agencies in the USA; let alone with other financial centres where the bank occupied a prominent role. He called upon the committee to express its disapproval of such irresponsible conduct.

Dr Follak remarked that the recent issue had not been an issue of general banking regulation, but instead a specific issue which had to do with sanctions and the implementation of sanctions.

Mr Baxter noted that the Federal Reserve had been involved in the matter. He emphasised that it was important to look at the conduct of the institution. In this particular case the conduct of the institution had not been disputed – the institution had been involved in the invasion of economic sanctions that were imposed in the US and that affected transactions in the dollar which were clearing through the US. The case was about an institution that was violating economic sanctions, which by itself was a subject worthy of discussion from an international law perspective. The efficacy of economic sanctions was very important. If economic sanctions did their work, they constituted an alternative to other, more drastic actions that sovereigns might take with respect to a rogue State.

Dr Follak believed the heart of the problem to be the extraterritorial application of national law.

Mr Baxter disagreed with the characterisation that it was an extraterritoriality problem. He asserted that the issue concerned the clearing of dollars in New York at a New York licence branch, thereby making it an exercise of territorial jurisdiction.

Sir Ross Cranston inquired about the advantages of a soft law approach. A treaty based approach would take a long time. He considered quick response to be the advantage of the soft law approach.

Dr Follak agreed that speedy response was an advantage of soft law.

Sir William Blair noted that soft law could easily find its way into hard law. National systems currently incorporated a large amount of soft law.

Dr Follak remarked that the EU directive would be implemented speedily by national legislation next year.

Mr Jernej Sekolek (Slovenia) observed that the discussion had shown that the so called "soft law" approach to bank instability and insolvency was not sufficient, while a treaty approach, as effective as it might be, was not realistic and, to the extent it might be realistic, it would take too long to construct it. He believed that solutions that lie between the soft law and the treaty approach needed to be explored. He also thought that they could be informed by the experience in the area of cross-border corporate restructuring and insolvency, where a coordinated national statutory approach had yielded not a perfect but a workable solution. That experience was based on the coordinated national enactments of the UNCITRAL Model Law on Cross-Border Insolvency. The EU initiatives, as useful as they were, were not sufficient because they did not apply in trans-Atlantic context and globally.

Mr Carver commented that, on the aspect of prudential regulation of financial institutions, considerable progress had been made in terms of harmonising anti-money laundering rules. Yet it was manifestly not working as the FATF recommendations dictate. The flow of illicit or questionable funds on behalf of politically exposed persons (PEPs) was growing exponentially. Latest World Bank/NGO estimates exceeded 2.5 trillion dollars per annum. He wondered whether the Committee could call upon governments to ensure more effective enforcement of AML regulation across financial centres.

Dr Follak thought that money laundering had been dealt with in a harmonised manner. He considered that the problem was not liquidity but money which was moved by official financial institutions. He commented on new fronts or types of money claims which were not moved by traditional channels, such as e-money instruments. He believed these had not yet been completely regulated.

Sir William Blair introduced the next speaker, Professor Louis, who would speak on the fourth section.

Professor Jean-Victor Louis (Belgium) addressed current developments in European banking law. He considered the subject to be a moving target on which new perspectives had recently been opened by the conclusions of the European Council and the Euro area Summit of 28–29 June 2012 on the report presented by the president of the European Council in association with the presidents respectively of the European Commission, the European Central Bank and the Euro-group (called the Van Rompuy report). The Van Rompuy report included the prospect of four building blocks – a banking union, a fiscal union, an economic union and a political union.

The Euro area Summit concluded that it was necessary to give priority to the building of a banking union and, in particular, to the creation of a European banking supervisor. The European Council requested from the group of four presidents an interim report for October and a final report by December, which would allow adopting a programme for the progressive realisation of the proposed objectives.

Next to centralised microprudential supervision, banking union would have to include other elements to be defined, such as a resolution fund and a neutral deposit guarantee authority. The EU Commission would present its proposals for a banking union on September 11 for adoption in December. This priority to the banking union was partly due to the recognised need to break the vicious cycle between sovereign debt and financial crisis.

Furthermore, the report described the progress achieved up to now in the field of banking regulation in order to adopt the legislation to the requirements of the G20, the FSB and the Standard Setting Bodies (like the Basel Committee). The report underlined the progress realised in the field of micro-prudential, macro-prudential regulation, and macro-prudential oversight (ESRB).

Many problems were raised for the practical implementation of the reform, which was decided by the Euro area Summit in June 2012. Article 127(6) TFEU contained an enabling clause for the ECB in the field of financial supervision (except for insurance companies). Enhanced cooperation could be built on this basis, if it was impossible to have all 27 member States agreeing. Professor Louis then posed several questions, which

would arise in this context, such as which banks would be submitted to centralised control – only SIFIs or, in principle, every bank in the euro area? What would be the role of the European Banking Authority in this context?

He contemplated how the ECB's independence in monetary policy could be preserved. The traditional question of conflict of interests between monetary policy and supervisory responsibility could also be raised. He asked which kind of political accountability was needed for such new prerogatives for the ECB, especially if enhanced cooperation within the Euro area had to be devised.

He commented on whether the other "building blocks" mentioned earlier would require revision of the EU Treaties. He noted the possibility of creating a parallel international treaty, though he thought that solution to be far from ideal.

The Chair asked for contributions on Professor Louis' presentation.

Mr Bernd Krauskopf (Germany) inquired about the legal implications of the involvement of the ECB as the single Euro-area banking supervisory authority.

Mr Sáinz de Vicuña recollected that the European banking union had three legs – the single supervision, the European recapitalisation fund/authority, and the European system of deposit guarantee schemes. Regarding supervision, there was pressure to act quickly. The Commission was the body responsible for making the proposals in September. The issues to be addressed were, first, how this could be done without impinging on internal markets. Should it be only for the Euro area or all of the 27 member States? If for the Euro area only, then there would be no need to reform the treaty as, in principle, there was an article in the treaty allowing this. If it would be for all member States, then there would be the question of whether treaty reform was necessary.

Another question to be answered was about the perimeter of banks to be supervised – all of the around 6500 banks of the euro area or a specific determined class of banks? This choice had a lot to do with the timing in which this could be put in place. And also the possible tasks. What would be the tasks that needed to be conferred to the single supervisor? There had to be a basic commonly agreed framework. A single rulebook was still far away; a single supervisor would have to apply 17 or 27 different implementations of the current banking directives. The main areas of discussion were the perimeters, tasks and timing and the model, which would be applied.

He considered January 2013 to be a very ambitions date. If it would be done as it had been promised by the politicians then it would have to be a minimal series of tasks. This needed to be supplemented with a timeline, which would allow the putting in place of the total framework. This could not be fully deployed before 2014.

Dr Manuel Monteagudo Valdez (HQ) raised the question of the extent to which the European Banking Union would affect or modify the principle of Central Bank's independence.

Mr Baxter did not believe that the independence of the Central Bank would be impaired by the supervisory role. He thought it would not be difficult to separate these functions. With the separation of functions it was possible to address the independence issues.

Where he did see issues with respect to independence was with the financial stability function that was being added in many central banks. In the US there were three core functions in the central bank – payment system operation and supervision, banking supervision, and monetary policy. Overarching these core functions in a kind of umbrella capacity was the financial stability function. One of the new features of regulation of the financial system was involving this financial stability function. The Dodd-Frank Act added in the US a financial stability oversight council. With respect to the financial stability analysis there was a concern that financial stability could erode some the independence of the central bank.

Mr Sáinz de Vicuña added that if use was made of Article 127(6), the ECB could be conferred some supervisory tasks if this were done within the parameters of the treaty. Central Bank independence was comprised of functional, institutional, personal, financial independence of the decision-making bodies. Bank supervisors also needed to be operationally independent. The objectives of the Central Bank could not be changed. Supervisory objectives could not override the primary objective of financial stability. It had been recognised that there had to be complete separation in the decision-making process between the monetary and supervisory parts.

Professor Luc Thevenoz (Switzerland) noted that while the ECB appeared to be the likely candidate as single banking supervisor, it was uncertain which was goiug to be the single resolution authority for the banks supervised by the ECB. The exercise of resolution power required long term proactive supervision. It also required the capacity to interact with the fiscal authority when recapitalisation by the public hand is required. How was it going to be organised in a Euro-zone of 17 members?

Mr Sáinz de Vicuña clarified that the project to have a European resolution fund and authority had a different timeline compared to supervision. Supervision was desired soon and the other schemes would follow in one or two years. If things would go as planned then there would be a period in which the single supervisor, the ECB, would have to deal with the lack of a European resolution fund. It would have to deal with 17 different resolution fund, harmonised by a directive that was about to be adopted. National treasuries would be involved and the ECB would have to deal with them.

The Chair asked Sir William Blair to summarise the last 3 sections of the report.

Sir William Blair noted that there were three very interesting sections left: the capacity of Special Drawing Rights to become a currency, the extraterritorial impact in relation to Iran, and the draft resolution relating to attachment and turnover of accounts in foreign bank branches.

Dr Li Bo (China) started his presentation by recollecting that the Special Drawing Right (SDR) was an interest-bearing international reserve asset created under the First Amendment of the Articles of Agreement of the International Monetary Fund in 1969. It was introduced to supplement existing reserve assets, in recognition of the inherent constraints on the supply of reserve assets (gold and the US dollar) under the Bretton Woods system of fixed exchange rates. The SDR was a potential claim on the freely usable currencies of IMF members. SDRs are part of member countries' international reserves and members can voluntarily exchange them for freely usable currencies among themselves. In addition, IMF members with a balance of payments need had the right to

exchange their SDRs for freely usable currencies to be provided by IMF members with strong external positions that were designated by the Fund to purchase the SDRs. Under the current valuation rules, the value of the SDR was based on a basket of four currencies consisting of the US dollar, euro, Japanese yen, and pound sterling.

Under its Articles of Agreement, the IMF could create unconditional liquidity through "general allocations" of SDRs to member countries participating in the SDR Department in proportion to their quotas in the Fund. SDR allocations had to have the broad support of SDR Department participants. General SDR allocations had only been made three times. Cancellations of SDRs were allowed, but had never been decided.

Dr Bo noted that a number of recent developments had occurred in relation to the SDR. In August 2009 the Board of Governors of the IMF approved a general allocation of Special Drawing Rights for an amount of SDR 161.2 billion to provide liquidity to the global economic system by supplementing Fund member countries' foreign exchange reserves. It was the largest general SDR allocation so far, done in response to the call by the G20 Heads of State and the IMFC at their respective meeting in April of 2009. He also pointed out that the Fourth Amendment to the IMF Articles of Agreement provided for a special allocation of SDRs to raise the ratios of members' cumulative allocations relative to quota to a common benchmark ratio.

In November 2010 the IMF completed a review and concluded that the value of the SDR would continue to be based on a weighted average of the values of a basket comprising the U.S. dollar, euro, pound sterling and Japanese yen and approved revised weights for each of these currencies as follows: the US dollar 41.9 percent, the euro 37.4 percent, the pound sterling 11.3 percent, and the Japanese yen 9.4 percent. The review left unchanged the criterion for the selection of currencies established in 2000 by the IMF Executive Board. Under this criterion, the currencies included in the SDR basket were the four currencies that (i) were issued by Fund members, which were the biggest exporters, and (ii) had been determined to be freely usable. A freely usable currency was a member's currency that the Fund determined to be (i) widely used to make payments for international transactions, and (ii) widely traded in the principal exchange markets. The Executive Board concluded that despite China's prominent share of global exports, the Reminbi would not be included in the SDR basket, as it did not yet meet the condition of being a freely usable currency.

Prominent policy makers have advocated for a more central role for the SDR arguing that it should play an important role, so as to eventually become a reserve currency that would be beneficial to global financial stability and economic growth. The G20 Cannes Summit in November 2011 declared that the G20 had committed to working towards a more representative, stable, and resilient international monetary system, and the SDR basket composition should continue to adjust to reflect the changing role of currencies in the global trade and financial system.

Dr Bo emphasised that the SDR was not a currency, but rather a right to access freely usable currencies of IMF members. Although it had the potential to play a more central role in the international monetary system, there were a number of factors restricting such an expanded role. First, the current allocation mechanism did not support a currency-style circulation. In addition, the quota-based allocation was not a perfect match to the

demand distribution. Second, the restricted use of SDR limited its attractiveness. The use of SDR was restricted to IMF member countries, the IMF, and official "designated holders," excluding the private sector. The appeal of SDR as a reserve asset had been limited by the absence of a deep and liquid SDR market. The third factor was the lack of market mechanisms and infrastructure. Under the current allocation and trading mechanism, the IMF played an important role in the conversion and clearing between SDRs and other currencies, which in essence was still bilateral clearing. For SDRs to play a central role, it was necessary to develop an SDR market with sufficient depth and liquidity.

The Chair asked for contributions on the fourth topic.

Dr Brian Hunt (Canada) inquired which advantages the Sovereign Drawing Rights would have over reserve currencies held at the same proportion as the make-up of SDR's.

Dr Bo responded by referring to the Triffin dilemma in economic theory. If dependence were only on one currency, the domestic monetary objectives of the issuing country and its international obligations could come into conflict. The traditional Triffin theory said that, for example, for the US dollar to become a reserve currency the US needed to create a currency deficit, which was not conducive to a stable financial environment. This was why a lot of people were advocating for an alternative, which could help resolve the Triffin dilemma. Many economists believed that the Triffin dilemma was partly to blame for the financial crisis, because of unlimited supply of liquidity to the US market. Dr Bo agreed that it would be good to have a super-sovereign currency to solve this problem.

Sir William Blair thanked Dr Bo and introduced the next speaker, Professor Takashi Kubota.

Professor Takashi Kubota (Japan) mentioned two cases in connection with the topic of extraterritorial impact in relation to Iran. Firstly, the EU/SWIFT sanctions on Iranian banks. In order to deprive Iran of funds needed to develop nuclear weapons, the EU had sanctioned rendering money transfer communication services to Iranian banks. In March 2012, the EU broadened its existing ban regarding financial transactions with Iranian financial firms by banning money transfer communication services for inadmissible financial transactions for such institutions, and the SWIFT responded by discontinuing all its global money transfer communications services to Iranian financial institutions. As the majority of international interbank messages used the SWIFT network, the SWIFT could be considered as a global public infrastructure. It was governed by the SWIFT Board of Directors (out of 25 directors, 17 are Europeans, and there is no PRC representative). It was mainly regulated by the Belgian central bank.

Secondly, Professor Kubota addressed the New York State Court Order that required the Bank of Tokyo-Mitsubishi UFJ (BTMU), which handled most of Japan's payments for oil imports from Iran, to freeze transactions with Iranian banks. This was done in May 2012. The Court ordered the BTMU to disclose details of the accounts that the Iranian Government and central bank had at its branches, not only in the US but also in its Tokyo headquarters, and to freeze up to 2.6 billion dollars. This was in connection with a damage suit launched by survivors and victims' family members of the 1983 bombing of US Marine barracks in Lebanon. There was a court decision in 2007 that ordered Iran to pay damages to the plaintiffs but Iran had so far failed to comply, prompting a seizure of Iran's assets in support of the damages order in favour of the plaintiffs.

Foreign court orders were only recognized and executed within Japan when they were judged by the Japanese courts to meet the requirements under the Article 118 of Civil Procedure Act and the Article 24 of Civil Execution Act. The BTMU filed an objection in Federal District Court for the Southern District of New York to the New York State Court ruling on freezing accounts within Japan on the ground that it contradicted Japanese laws. In fact, the federal court decided three weeks later that the order was void, and it was understood that the BTMU had resumed transactions with Iranian banks.

If the order had stood, Japanese industry could have faced serious problems in importing oil. Iranian oil accounts were the fourth largest of all oil imports into Japan the previous year, and some worried that this would affect the nation's energy policy. The Japanese Minister of Economy, Trade and Industry, said at a press conference after a Cabinet meeting that "What's happened is clearly wrong because a U.S. court decision isn't supposed to apply outside the United States."

Mr Carver added that if the Japanese court had had to rule on the effect of the New York order in Japan, it would probably have cited the reasons given by the English High Court in the Westinghouse – RTL Case 40 years ago: it was not the function of a court to give effect to the extraterritorial orders of a foreign court.

He also commended the statement of the Japanese Finance Ministry criticising the order of the New York Court. This was in marked contrast to the weakness of European Finance Ministers in failing to check the excesses of the courts and regulators in New York.

The Chair announced that Sir William Blair would introduce the last section of the report and the resolution which was attached to it.

Sir William Blair introduced the resolution concerning the "Principles of Jurisdiction Over Foreign Bank Branches in the Matter of Extraterritorial Attachment and Turnover". This resolution would apply in the following situation: there was a lawsuit for arbitration against another party, and the claimant succeeded and got a monetary award; the standard for enforcing this would be to try to attach a monetary deposit at the beginning of the proceedings, which the bank was then obliged to pay to the successful party at the end of the proceedings.

This resolution stated what they as a Committee thought was the rule recognised in the international community – that the courts of one country should not make an attachment/ turnover order against a bank of another State.

He noted that they had not tried to pass judgment over the issue whether courts in one country should exercise freezing powers over assets in another country.

He then read out the operative part of the resolution.

The Chair asked for any additional comments, before putting the resolution to a formal vote. As no ILA members were opposed to the resolution, the resolution was adopted.

The Chair then thanked everyone for participating and brought the session to a formal end.

Sir William Blair thanked the Chair.

Reporters: Dr Tiina Pajuste and Mohamad Janaby