

Committee on International Monetary Law of the International Law Association
(MOCOMILA)

A brief history: 1952 - 2023

On the occasion of the ILA's 150th Anniversary Conference 2023 held in Paris

Sir William Blair¹

MOCOMILA – the International Monetary Law Committee of the International Law Association – is, as stated in its name, a committee of the International Law Association (ILA), and a long established one. This is a short account of the history of the Committee, and in particular, its place within the International Law Association, one of the oldest continuing organisations in the field of international law in the world.

The story of MOCOMILA traces many of the developments in monetary and financial law since it was set up in 1952, an area of the law that continues to face the challenges posed by the immense expansion of the financial system itself. It draws on earlier histories by Prof. Mario Giovanoli² and Lee Buchheit³ which are gratefully acknowledged.

There are other challenges now rightly recognised in the ILA and its committees, around colonialism, gender bias and unlawful discrimination of different kinds, and these too must be acknowledged.

Sincere thanks are expressed to the members of MOCOMILA for their comments on and contributions to this history, and to all individuals and institutions who have generously hosted meetings of MOCOMILA (details of which are set out in MOCOMILA's reports to the ILA posted on its website from 1990 on⁴).

The establishment of the Association

The ILA was founded in Brussels in 1873. It appears to have been the first time that lawyers had set up an organisation devoted to the advancement of international law. It was initially called the “*Association for the Reform and Codification of the Law of Nations*” – which were its objects as stated in its Constitution⁵.

As it is put by Christine Chinkin, Chair of the ILA World Wide Executive Committee interviewed in 2022⁶, the founders “... could never have envisaged the seismic changes in the world order reflected in the ongoing evolution of the substance, procedures and

¹ Honorary Chair of MOCOMILA. Since 2021, the Chair of MOCOMILA is Prof. Chiara Zilioli and the Vice-Chair is Prof. Rosa Lastra. The Academic Coordinator is Prof. Christos Gortsos, and the Rapporteur/Secretary is Dr Michael Ioannidis.

² *International Monetary Law, Issues for the New Millennium*, ed. Mario Giovanoli, Oxford University Press, 2000, “*About MOCOMILA: Fifty years of contributions to international monetary law*”, page v.

³ Lee Buchheit, An early history of MOCOMILA: Notes for the 100th Meeting of MOCOMILA in Berlin, September 4-5, 2015: <https://www.mocomila.org/about/history.pdf>.

⁴ <https://www.mocomila.org/publs/index.htm>

⁵ Article III.

⁶ <https://www.ilaparis2023.org/wp-content/uploads/2022/01/NL-N4-v05.pdf>

institutions of international law, nor the corresponding spread of the ILA, which has grown from its European roots to become a global body with branches in every continent except (unsurprisingly) Antarctica”.

What brought these lawyers together in the first place? One commentator sees it in the context of a movement inspired in part by journalists’ reports of the suffering of war. These reports could now be sent to their newspapers by telegraph, and so had the impact of descriptions of immediate events. She writes: “With the birth of war reporting, news of battlefield conditions began to permeate civilian homes half a world away, giving rise to a new sense of interconnectedness – and accountability – in public discourse”⁷. This movement led to developments such as the formation in 1863 of the Red Cross, and in 1864 to the Geneva Convention regarding “the rules of international law for the protection of the victims of armed conflicts”.

From very early days, the Association kept meticulous records in the form of published Reports of the Conferences which were held initially annually and then generally biennially. These Reports contain details of their deliberations running into hundreds of pages, and unsurprisingly became influential in international law circles. They are available online.⁸

The first participants saw the Association primarily as a means to encourage the peaceful resolution of disputes. One delegate called it “the offspring of the last great Arbitration settlement between Great Britain and the United States” – this is a reference to the Award in favour of the United States made in the *Alabama Claims* arbitration in Geneva in 1872⁹.

Much credit goes to an American lawyer, David Dudley Field, who applied his passion for the codification of New York law to a conviction “that a Code of International Law must precede any general resort to International Arbitration, and that the want of such a Code was the great obstacle which hindered the general substitution of Arbitration for War”¹⁰.

Arbitration has indeed been an ongoing theme of the Association: in 1873, the following resolution was adopted unanimously:

“This Conference declares that it regards Arbitration as a means essentially just and reasonable, and even obligatory on all nations, of terminating international differences which cannot be settled by negotiations. It abstains from affirming that in all cases, without exception, this mode of solution is applicable, but it believes that the exceptions are rare, and it is convinced that no difference ought to be considered insoluble until after a clear statement of

⁷ Ruth Frendo, *The Archives of the International Law Association*, Published online by Cambridge University Press: 29 June 2017, p. 97.

⁸ At Heinonline under <https://heinonline.org/HOL/Index?index=ilarc/ilarc&collection=ilarc>

⁹ Remarks made at the 16th Conference held in London in 1893, see the Report at pp 40-41, <https://archive.org/details/reportconferenc06confgoog/page/n8/mode/2up>.

¹⁰ Herbert Whittaker Briggs, *David Dudley Field and the Codification of International Law*, Institut de Droit International, <https://www.idi-iil.org/app/uploads/2017/06/Dudley-field-p67-73-livre-du-centenaire-1873-1973-Briggs.pdf>.

complaints and reasonable delay, and the exhaustion of all pacific methods of accommodation.”¹¹

The early years of the Association

The 1873 resolution places the Association in the sphere of public international law, but the resolutions adopted at various meetings show an emphasis on private law, and in particular on systemising the law governing maritime trade.

This emphasis on commerce is shown by the participation of commercial judges, an example being Sir William Kennedy, at one time a judge of London’s Commercial Court¹², who was President of the Association from 1908-1910.¹³

The law governing bills of exchange, which were the main means of financing international trade at the time, featured from the 4th Conference in Bremen in 1876 culminating in Rules for the Unification of Bills of Exchange Law proposed at the 25th Conference in Budapest in 1908.

The original membership was largely European and American, but there were some interesting exceptions. A Japanese delegate is shown as attending the 5th Conference in Antwerp in 1877, and the report of the 6th Conference in Frankfurt in 1878 shows the Heads of Mission to Britain of both Japan and China listed as Honorary Vice-Presidents, as well as delegates from Egypt then part of the Ottoman empire.¹⁴ Membership was, however, exclusively male.

The Association becomes the ILA

The name “International Law Association” was adopted in 1895, when its members convened in Brussels for its 17th Conference¹⁵. The Report shows that one reason for the change was the ease of abbreviation – “*ILA*”.

The first meeting of the ILA in France was the 19th ILA Conference which took place in Rouen in 1900, the same year as the World Exhibition held in Paris. A full list of conferences is published on the ILA website.¹⁶ This shows that after Rouen there have been three ILA conferences in France, all in Paris.

War, instability, and the emergence of monetary issues

From 1913 to 1920, the ILA’s conferences were interrupted by WW1. The end of the war saw widespread financial instability, including hyperinflation in Germany in 1922-3,

¹¹ Report of the 1st Conference, p. 39, and at p. 43 for the resolution in French (the language in which it was finally adopted). Both the French and English languages are languages of the ILA and are used interchangeably at these meetings. The Reports of the 1st and 2nd Conference (held in Geneva in 1874) were published from contemporary notes in 1903 since lack of funds precluded their publication at the time.

¹² Set up in 1895.

¹³ <https://www.commercialcourt.london/wr-kennedy#:~:text=William%20Rann%20Kennedy%20secured%20a,Henn%20Collins%20were%20all%20Irish.>

¹⁴ Report pp 2-3.

¹⁵ Olmstead, C.J. (1973): *The International Law Association: a World-Wide Organization for Development and Promotion of International Law*. In: Bos, M. (eds) *The Present State of International Law and Other Essays*. Springer, Dordrecht. The discussion is at pp 282 to 285 of the Report of 17th Conference.

¹⁶ https://www.ila-hq.org/en_GB/documents/record-of-ila-conferences-1873-to-date.

perceived competitive devaluations, and protectionist trade barriers. Monetary law now seemed to have an importance that it had not assumed in the past.

The story is taken up by Lee Buchheit in “*An early history of MOCOMILA*” posted on MOCOMILA’s website¹⁷ describing a growing discussion of monetary law during the inter-war period. He writes:

“The records show that on at least four occasions the ILA discussed issues of monetary law before MOCOMILA was formed in 1951.

The 31st Conference of the ILA in 1922 (held, appropriately enough, in Buenos Aires) discussed the Negotiation of External Loans with Foreign Governments. After a lengthy presentation by Charles Cheney Hyde, the Chairman of the meeting endorsed the opinion of the British representative that loans to foreign governments – because they were not then enforceable in legal proceedings – were “not a matter for our International Law Association at all”. Although the Minutes of this meeting endeavor to lay a soft blanket over the points of disagreement, it is clear that some participants had a strong negative reaction to the view that loans to foreign governments were not a fit subject for lawyers to discuss. They reminded their colleagues of the pernicious consequences that can follow from the non-payment of such loans, and of the views of the Argentine jurist, Dr Luis Drago¹⁸, on the use of force to compel payment of foreign loans.

In 1926, at the 34th Conference in Vienna, one of the topics was “Rules Relating to the Rate of Exchange.” At the 38th Conference in Budapest in 1934, the ILA considered “Payments in Gold and in Foreign Currencies” (this was one year after the U.S. Congress, as a matter of public policy, abrogated the gold clause in obligations subject to U.S. jurisdiction). At both the 39th and 40th Conferences (1936 and 1938), Gold Clause issues were also discussed.

To give you some idea of priorities, however, over this same period the ILA considered matters of divorce law at five separate Conferences.”

War again interrupted the work of the ILA between 1938 and 1946. But planning for global financial stability once peace returned produced what was, in retrospect, an incredibly ambitious model. It was based on the fixed convertibility of currencies against the US dollar which was itself to be convertible to gold at a fixed rate. Another important, and as it turned out more lasting, aspect of the Bretton Woods agreement of 1944 was the setting up of the IMF and the International Bank for Reconstruction and Development (IBRD), now part of the World Bank Group.

¹⁷ Lee Buchheit, *An early history of MOCOMILA: Notes for the 100th Meeting of MOCOMILA in Berlin*, September 4-5, 2015: <https://www.mocomila.org/about/history.pdf>.

¹⁸ The author of the Drago Doctrine, which opposed the forcible collection of debts through military intervention in any South American republic. Prof. Julio Ernesto Curutchet later continued the tradition of Argentinian scholarship as a member of MOCOMILA.

MOCOMILA's first two decades

The work of the ILA is conducted through its committees, and since there was now a new monetary regime, the time was ripe for the creation of a committee dedicated to monetary law.

The 45th Conference of the ILA was held in Lucerne in 1952, and the mandate of the Monetary Law Committee dates from the time of that meeting. The formal inception of MOCOMILA was on 1 May 1952, and its first Chair was Professor Max Gutzwiller, Professor of International Private Law at the University of Fribourg.

Dr F. A. Mann, whose classic book the “The Legal Aspect of Money”, is now continued by Dr Charles Proctor, was the original rapporteur and was a member until his death in 1991.

The new committee was active from the start and regularly attended by representatives of the IMF and the Bank for International Settlements (which hosts MOCOMILA's website). Its work is described by Prof. Mario Giovanoli writing in 2000¹⁹ as “evolving with the developments of the markets, from early discussions on exchange restrictions in the infancy of the Bretton Woods institutions to the development of eurocurrency markets and the international debt crisis and the internationalization and interdependence of the financial markets and the growth of the electronic age”.

The new Committee regularly met between the biennial ILA Conferences, usually twice yearly. These were (and are) described in the Committee's reports to the Conference. In his history²⁰, Lee Buchheit explains what preoccupied its members at this time, including (in the tradition of the ILA) searching for a “comprehensive scheme for international legislation on monetary matters” – this scheme was never achieved of course.

But much intellectual light was shed on particular aspects of monetary matters. In its second report to the 46th Conference of the ILA held in Edinburgh in 1954, MOCOMILA took its stand on “practical questions rather than matters of academic interest”. (This may have owed something to Dr Mann, who was a successful partner in a London law firm.)

The issues it identified are primarily (but not exclusively) monetary in nature: (i) the conflict of laws relating to exchange controls, (ii) the law of protective clauses (gold clauses, index clauses, etc.) “with special reference to their efficacy in the event of legislative interferences”, (iii) the determination of the money of account with special reference to certain types of contracts such as insurance, sale, agency and negotiable instruments, (iv) international investments and their protection by international monetary law, (v) the enforcement of foreign currency obligations, and (vi) international cooperation in monetary matters²¹.

Each of these was followed up by the Committee in subsequent years. To give an example, as reported in 1966 to the 52nd ILA Conference in Helsinki, MOCOMILA began weighing the possibility of establishing uniform rules on the place of payment of monetary

¹⁹ *International Monetary Law, Issues for the New Millennium*, ed. Mario Giovanoli, Oxford University Press, 2000, “About MOCOMILA: Fifty years of contributions to international monetary law”, page v.

²⁰ <https://www.mocomila.org/about/history.pdf>

²¹ Report at p.285-6.

obligations. The text proposed by the Committee formed the basis of the European Convention on the Place of Payment of Money Liabilities.²²

A pivotal part of the IMF Articles of Agreement at this time of fixed exchange rates was Article VIII(2)(b) which provides that “Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.” This became a perennial source of litigation in the courts of various countries in the years that followed particularly as to the meaning of “exchange contracts”, a phrase which had a number of possible interpretations. The implications of Article VIII(2)(b) occupied the attention of the Committee well into the 1960s.

The end of Bretton Woods

At the first meeting of MOCOMILA in 1952, a delegate observed that whether Bretton Woods proved to be temporary or permanent would depend on “*which way the cat will jump*”.²³ The answer came on August 15, 1971, when in “*a dramatic radio and television address*”²⁴, President Nixon took the United States off the gold standard. This was a turning point in monetary law that would lead ultimately to the complete dematerialisation of money in the form of digital currencies. As Lee Buchheit puts it, “Unmoored from gold, commercial parties looked for ways to ‘maintain value in real terms’ in international payments”.

This subject preoccupied the Committee’s attention during the 1970s. MOCOMILA meetings considered the use of “value clauses”, Special Drawing Rights as a unit of account in international conventions, European Currency Units (ECU) and “real value” (compensatory purchasing power) clauses.

The global sovereign debt crisis that started in August 1982 with Mexico’s default set much of the agenda for the Committee’s meetings in the 1980s. MOCOMILA’s report to the 61st ILA Conference in Seoul in 1984 contains a lucid account of the problem of State insolvency much of which still remains valid.

The first female member of MOCOMILA was Prof. Cynthia Lichtenstein, who joined the Committee in 1986. She had been with a Wall Street law firm, but because she could not commit to working full-time because of family commitments, her firm would not make her a partner. She went on to become a distinguished academic at Boston College Law School, their second female professor²⁵, and was a Vice Chair of the Executive Council of the ILA for many years until 2016.

The 1990s

At the beginning of the 1990s, the Chair of MOCOMILA was Prof. Hugo J. Hahn, and a Rapporteur (along with Prof. Tullio Treves) was Prof. Dominique Carreau, who later

²² Council of Europe ETS No 75, Basel, 16 May 1972.

²³ N. E. Mustoe QC: his remarks are at p.263 of the Report. To “see which way the cat jumps” is an Australian idiom meaning to put off deciding until you have seen how things are going.

²⁴ As it was described by a member of MOCOMILA in the Report of the 55th Conference in New York in 1972, p 214.

²⁵ <https://plymouthharbor.org/zest-for-life-cynthia-lichtenstein-and-charles-miller/>

became a Vice-Chair. From 1990, MOCOMILA's reports to the biennial ILA Conference are on its website²⁶ and provide an account of its work. This includes reference to the meetings of the Committee held in between ILA Conferences (not all of which can be mentioned in this history). The work of the Committee tended to be predominantly occupied with problems of a private international legal nature, which was understandable considering the interests of its members²⁷.

In 1995, the Chair was assumed by Prof. Mario Giovanoli, who was General Counsel of the Bank for International Settlements in Basel. The BIS was to play a central role in the work of the Committee under him and his successor as General Counsel, Diego Devos, who succeeded him in 2009.

By now, the increase in the size and interconnectedness of the financial markets was leading to a transformation in the supervision of financial institutions, particularly banks. As from 1990, the new capital standards for international banks were on the agenda.²⁸ As from 1994, the topic was extended to the international harmonization of banking supervision and regulation, including financial services²⁹ and derivative instruments.³⁰

This shows how the agenda of the Committee was gradually expanding from a narrow view of monetary matters, to take account of the broader financial law picture. This is shown by a lecture in Würzburg in 1997 given by Prof. Hugo Hahn, then Honorary Chairman of MOCOMILA, titled "Virtual Money and Global Financial Market". This lecture is further referenced in the Committee report to the 68th ILA Conference 1998 in Taipei, a meeting in which Prof. Syue-Ming Yu³¹ became a member.

A natural area of interest was the legal aspects of European monetary integration which were closely followed by MOCOMILA from 1992 onwards.³² At the time, some considered that the legal problems which seemed to be inherent in such a project would slow if not prevent its attainment. The fact that they did not is due to the exceptional skill and dedication of the lawyers associated with the project, particularly Antonio Sáinz de Vicuña³³ and other members of MOCOMILA, one of whom, Prof. Chiara Zilioli, is now the Chair³⁴.

²⁶ <https://www.mocomila.org/publs/index.htm>

²⁷ A point made by C.D. van Boeschoten of the of the *De Brauw* law firm speaking in November 1985 at a meeting of the Nederlandse Vereniging voor Internationaal Recht (Dutch Branch of the International Law Association): *Netherlands International Law Review*, Volume 33, Issue 2, August 1986, 204. It was through Mr van Boeschoten that Prof. René Smits became a member of MOCOMILA.

²⁸ Report of the 64th ILA Conference (Queensland, 1990), pp 479-488.

²⁹ Report of the 66th ILA Conference (Buenos Aires, 1994), pp 184-193.

³⁰ Report of the 67th ILA Conference (Helsinki, 1996), pp 558-563.

³¹ Professor of Law at National Taiwan University.

³² Report of the 65th ILA Conference (Cairo, 1992), pp 222-230 and 246-250; not surprisingly, this subject featured in all subsequent reports of MOCOMILA to the Conference, at least until the euro was well established, and novelty ceased to apply.

³³ General Counsel of the European Monetary Institute and later of the European Central Bank during the euro's formative years from 1994 to 2013, and a Vice-Chair of MOCOMILA until 2021.

³⁴ Particular mention should be made of Prof. Jean-Victor Louis, who made authoritative contributions, and other *current* members of MOCOMILA who played an important role in the development of the euro including Prof. René Smits, who was General Counsel of the Netherlands Central Bank (DNB), Bernd Krauskopf who was General Counsel of the Deutsche Bundesbank from 2000 to 2015, Prof. Christos Gortsos, Prof. Christos Hadjiemmanuil, Prof. Rosa Lastra and Dr Klaus Peter Follak.

The age of the euro

The first book by the Committee as a body, *International Monetary Law, Issues for the New Millennium*, was edited by Prof. Mario Giovanoli and published by the Oxford University Press in 2000. This was a year after the launch of the euro as an electronic currency, and two years before the bank notes were rolled out. The book includes a section he wrote “*About MOCOMILA*” setting out its history from which (as noted above) some of the material in this history up to the year 2000 is drawn.

Prof. Giovanoli described the main topic areas as being reform of the international financial architecture, the impact of European Monetary Union – which not surprisingly dominated many of the discussions in the early years of the century - new technologies, and “a fresh look at the ever faithful MOCOMILA topic of international monetary obligations”. As he summarised it:

“The evolution of the issues discussed reflects the transition from an institutionalized monetary system, where exchange restrictions were still in place, to a market-led global financial system, the impact of the technological advances on currency, banking and financial transactions, and the emergence of a very significant supranational currency area in Europe, which promises to be a major feature of the monetary landscape in the twenty-first century.”

The year 2000 saw the 69th ILA Conference meet in London, opening with much ceremony in Westminster Hall. On the substantive side, subjects discussed by MOCOMILA included standard setting, harmonisation of supervision, monetary union and electronic money, which marked a renewed interest by the Committee in payment systems.

At the 2002 New Delhi 70th ILA Conference, MOCOMILA discussed international standard setting and the seemingly inexorable rise of soft law. The use of a currency as the legal currency of a State other than the State of issue of the currency, such as dollarisation in Ecuador, and later use of various currencies in Zimbabwe, and elsewhere the use of the euro by non-member States, raised issues of specific monetary law interest.

A pressing subject for discussion by now was anti-money laundering and especially the expanded mandate of FATF³⁵ in combatting the financing of terrorism. Thomas Baxter (General Counsel of the Federal Reserve Bank of New York³⁶) was central to the urgent stabilisation of the markets after the 9/11 attacks, a task made physically more difficult because the New York Fed’s offices are close to the World Trade Centre site.

This subject was further dealt with in some detail in the report to the 2004 Berlin 71st ILA Conference which noted³⁷ that the Chairman of the Basel Committee on Banking Supervision identified terrorism as a threat to financial stability. Other topics in 2004 included a detailed examination of sovereign debt restructuring issues, as well as continued presentations on payment systems.

³⁵ Financial Action Task Force.

³⁶ The successor as GC to Ernest Patrikis. Mr Patrikis played an important role in negotiating the Algiers Accords which resolved the Iranian Hostage Crisis of 1979-81, facilitating the transfer of blocked assets to the Bank of England pending resolution of claims by the Iran-US Claims Tribunal.

³⁷ At p. 8.

MOCOMILA's 2004 report also contained details of meetings at Athens and Linz. The Tokyo International Monetary Law Seminar jointly organised by the Committee was held at the Bank of Japan in February 2004. Prof. Hideki Kanda noted in his remarks that the issue of *lex monetae* had not been referred to in any Japanese academic literature within the last 20 years, giving rise to an examination of the extent to which traditional monetary law doctrine remains valid.

In 2005, Prof. Giovanoli – respected the world over in monetary law matters – stepped down as Chair of MOCOMILA, and William Blair succeeded him. Antonio Sáinz de Vicuña and Thomas Baxter became Vice-Chairs. The agenda of the Committee continued to expand into new areas of study, the meeting of the Committee in London that year being dedicated to Islamic finance.

At the 72nd ILA Conference in Toronto in 2006, subjects considered included legal and regulatory developments relating to clearing and settlement (which was followed up in a meeting organised at SWIFT and Euroclear Bank in 2007 by Diego Devos) and regulatory liability for bank failures. The Governor of the Bank of Canada³⁸ addressed MOCOMILA on monetary matters, pointing to the importance to its economy of Canada's role as a primary producer of strategic minerals.

In February 2007, the Committee met in Pretoria (its first in sub-Saharan Africa³⁹) hosted by the South African Reserve Bank and concentrating, appropriately, on the legal issues of sovereign debt.

The Global Financial Crisis of 2007-8

In the summer of 2007, the financial world was taken up with the loss of confidence in the banking system known as the “credit crunch”. This was the subject of a meeting in the University of Salamanca⁴⁰ in April 2008 at which David Gross (of the New York Federal Reserve Bank) became Secretary of the Committee. He took over from James H Freis Jr, who in 2007 had become the US Department of the Treasury's Director of the Financial Crimes Enforcement Network (FinCEN)⁴¹ , and presented on the emerging international consensus in fighting financial crime also becoming more closely associated with financial stability.

Shortly afterwards, the 73rd ILA Conference was held in Rio de Janeiro in August 2008, the last chaired by the UK and European judge, Lord Slynn.

The failure of the vastly overleveraged investment bank Lehman Brothers in September 2008 led to a fully blown crisis which put the global financial system at risk. Some of MOCOMILA's members were centrally engaged in the efforts to contain the crisis, which were ultimately successful. The first meeting following these events was held in Paris in March 2009, where MOCOMILA was addressed by M. Jacques de Larosière, one of the

³⁸ Mark Jewett KC was General Counsel at the time.

³⁹ The Committee had a link to the African Development Bank through its former General Counsel, Adesegun Akin-Olugbade.

⁴⁰ Prof. Rosa Lastra who became a member the previous year has personal connections with the University of Salamanca, considered to be Spain's oldest university.

⁴¹ Mr Freis had succeeded Christos Hadjiemmanuil, Professor of International and European Monetary and Financial Institutions at the University of Piraeus.

leading figures in European finance, on EU reforms of financial supervision. In September 2009, the Committee was hosted by Bank Negara Malaysia⁴². Governor Zeti Akhtar Aziz in her address gave the Committee the opportunity to look at problems of financial stability from an Asian perspective.

The crisis shook the financial world in a way that had not been seen since the Wall St Crash of 1929. Novel steps such as quantitative easing by central banks were used to avoid a depression such as followed the 1929 Crash with all the disastrous associated consequences – but no one was quite sure how they would work out.

The legal aspects of the crisis were the subject of the second book produced by MOCOMILA as a Committee, *International Monetary and Financial Law: The Global Crisis*, edited by Prof. Mario Giovanoli and Diego Devos, and published by the Oxford University Press in 2010.

Inevitably, this subject dominated MOCOMILA's report to the 74th ILA Conference in The Hague in 2010, which was the first to be chaired by Lord Mance, another distinguished judge in a long line of chairs, who described in his Preface to the Report the “astonishing revival of public international law as a subject of everyday importance”.

For MOCOMILA, a contentious subject emerged from monetary union which had not been anticipated – it affected different countries in different ways, leading to excessive borrowing at low euro rates. Prof. René Smits points out that what was considered in origin a banking crisis became a sovereign debt crisis.⁴³ Greece, Portugal, and Ireland had their sovereign debt downgraded to junk status. For a while, there was debate within the Committee as to the appropriate way forward. The crisis even threatened the viability of the euro itself until in 2012 ECB President Mario Draghi gave his famous “whatever it takes”⁴⁴ speech, widely considered as the turning point.

Over the next two years the Committee met in New York and Rome, and in the Caribbean hosted by the Eastern Caribbean Central Bank and in Riyadh hosted by the Saudi Arabian Monetary Authority⁴⁵. The resolution of financial institutions which had received much regulatory attention was by now an important topic of discussion. Special drawing rights at the IMF were also on the agenda.

The latter subject was revisited in the 55th ILA Conference in Sofia in 2012 in a paper co-written by Sean Hagan⁴⁶ and Dr Li Bo⁴⁷. Concerns about extraterritoriality led to a resolution proposed by MOCOMILA drafted by Prof. Georges Affaki concerning the “Principles of Jurisdiction Over Foreign Bank Branches in the Matter of Extraterritorial Attachment and Turnover” (which formalized articulation of the principles that had long governed international monetary law).⁴⁸

⁴² Gopala Krishnan K Sundaram was General Counsel at the time.

⁴³ Report of the Washington Conference, p788.

⁴⁴ “Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough”.

⁴⁵ Dr Mohammed Alsheaibi was General Counsel at the time.

⁴⁶ General Counsel of the International Monetary Fund.

⁴⁷ People's Bank of China.

⁴⁸ For the text, see p. 27 of the Report (English) and p. 29 (French).

In 2013, the Committee met in Madrid, Frankfurt and in Lima, the latter at the Banco Central de Reserva del Perú⁴⁹. This meeting focused on issues of monetary law affecting Latin America and mobile payments. It was honoured by a presentation by the Governor of the BCRP.

A collaborative biennial conference

In 2014, the ILA held its first collaborative biennial conference shared with another organisation, the American Society of International Law (ASIL), in Washington D.C. It was the ILA's 76th biennial and ASIL's 108th annual conference and it "witnessed a remarkable synergy of interests and individuals"⁵⁰.

There were plenty of new items on the MOCOMILA agenda including Bitcoin and other cryptocurrencies. These were the subject of a report by Prof. Benjamin Geva who in subsequent meetings led on it. As to its mystique, a member shrewdly remarked that "Bitcoin appeals to our emotions with a romanticization of private, unregulated money"⁵¹. MOCOMILA's evening function at the IMF was attended by Christine Lagarde, IMF Managing Director.

At the working session, Sir William Blair said that after the global financial crisis there was a loss of public trust in the financial system, and pointed to what was now a commonly held understanding that financial regulation alone would be insufficient to restore it. Banks themselves had maintained that they believe in a more ethical banking culture – a good business case could be made out for cultural change because there was a need to restore trust in financial institutions themselves.⁵²

This subject was subsequently taken forward by Thomas Baxter at the 77th ILA Conference in Johannesburg in 2016 in meetings organised by Prof. Engela Schlemmer. MOCOMILA proposed to the Conference a Resolution on the "Ethical Culture of Financial Services" encompassing four simple steps designed to restore trust⁵³. The New York Fed notably instituted and has since continued its Governance and Culture Reform Initiative⁵⁴.

MOCOMILA met in Vienna in 2014 and was addressed by Governor Ewald Nowotny of the Oesterreichische Nationalbank (OeNB), and by Prof. Franz Zehetner of the Technische Universität Wien. Issues around European Banking Union, which gave the ECB supervisory duties, were discussed. Financial sanctions were a new and ominous subject of study – the focus was on sanctions on Russia following its annexation of Crimea.

The Beijing meeting, hosted by the People's Bank of China (PBOC) in April 2015 focused on the potential international role of the RMB. It featured remarks by Governor Zhou Xiaochuan, and contributions from Dr Li Bo who had founded MOCOMILA's

⁴⁹ Dr Manuel Monteagudo was General Counsel at the time: he now serves as a judge of the Tribunal Constitucional del Perú (Peru's Constitutional Court).

⁵⁰ Lord Mance, Preface to the Report.

⁵¹ Cristiano Cozer, General Counsel at Banco Central do Brasil; Mr Cozer's remarks are in the report of the working session, p. 7.

⁵² Report pp 147-8 (page 9 of the report of the working session on the MOCOMILA website).

⁵³ The text is at pp 38 (English) and 39 (French) of the Report of the 77th ILA Conference.

⁵⁴ James Hennessy, Key Learnings remarks given on March 7, 2023:

<https://www.newyorkfed.org/newsevents/speeches/2023/hen23030>

relations with the PBOC, and Liu Xiangmin (who was subsequently Director-General of the Legal Department at the PBOC, and FATF President 2019-2020). The discussion among many others seems to have had its effect, and in October 2016, the RMB joined the IMF's SDR basket.

MOCOMILA's 100th meeting in Berlin

In September 2015, MOCOMILA held its 100th meeting. This notable moment in the history of the Committee was aptly – given its long association with German scholarship – held in Berlin. It was hosted by the Deutsche Bundesbank at the Berlin-Brandenburg Academy of Sciences and Humanities, and included Lee Buchheit's retrospective on the work of the committee since its founding. It focused on issues surrounding payment and settlement, including addresses by Bernd Krauskopf and Executive Board Member Carl-Ludwig Thiele responsible for cash, payment transactions and settlement systems.

The Athens meeting in June 2016 was organised under the auspices of the Hellenic Bank Association and the Bank of Greece and was held at the premises of the European Public Law Organization (EPLO). It was addressed by Prof. John Mourmouras, Deputy Governor of the Bank of Greece. Among the issues discussed was sovereign debt, addressed by Lee Buchheit and Sean Hagan. Commentary on EU issues was provided by Prof. Christos Gortsos and Prof. Christos Hadjiemmanuil, and by a future member, Prof. Emilius Avgouleas.

The Committee met in London in 2017⁵⁵ at the Bank of England, the meeting being jointly hosted with Queen Mary University of London (Centre for Commercial Law Studies). The meeting focused on the theme of Accountability, and featured remarks by Deputy Governors Ben Broadbent and Sam Woods. The responsibilities of the Bank's legal group and its evolution from its beginning with one lawyer in 1992 were described by Sonya Branch.⁵⁶

By now, it seemed inevitable following the 2016 referendum that the UK would leave the EU. In Spring 2018, MOCOMILA met in Barcelona at the IESE Business School sponsored by CaixaBank and confronted this subject. A vast amount of work had been done to ensure that it would not cause market disruption – Sonya Branch described the measures that were being put in place by the Bank of England, the Treasury and the FCA. But it would inevitably give rise to questions of UK access to the single market. Prof. Luc Thévenoz explained the position of a third country from the perspective of Switzerland and discussed the equivalence requirement. On a separate topic, discussion of fintech, an ever more relevant issue, was led by Dr Eva Hüpkes of the FSB (then Secretary-General of the International Association of Deposit Insurers (IADI)) and Prof. Takashi Kubota of Waseda University Law School.

The 78th ILA Conference held in Sydney in 2018 was the first attended by Prof. Chiara Zilioli in her capacity as a Vice-Chair of MOCOMILA. Catherine Parr, General Counsel of the Reserve Bank of Australia, hosted the Committee, and has since become a

⁵⁵ A meeting planned in Mexico City for 2017 hosted by Banco de México, Luis Urrutia and Javier Arrigunaga had to be cancelled because of an earthquake in Mexico the month before.

⁵⁶ General Counsel of the Bank of England and Executive Director for the Legal Directorate.

member. MOCOMILA's report to Conference shows the wide range of issues under consideration by the Committee at that time⁵⁷.

So as to organise the increasing academic significance of this considerable output, Prof. Christos Gortsos kindly accepted to become MOCOMILA's Academic Co-ordinator.

In Spring 2019, MOCOMILA met in Hong Kong, China, at the Hong Kong Monetary Authority. Subjects for discussion included regulation of cryptoassets, chaired by Stefan Gannon.⁵⁸ Other issues included regulation and oversight of payment systems, fraud in bank payments⁵⁹, the new retail payment mechanism at the Banco de México which opened up the payment system to anyone with a smartphone⁶⁰, and instant payments in the EU⁶¹. Rhoda Weeks-Brown who had been appointed General Counsel of the IMF at the end of 2018⁶² spoke on the broad principles on fintech issues that the IMF and World Bank Boards approved in the Bali Fintech Agenda.

Reflecting increasing concern about the urgent need for finance to fund the transition to net zero, the Committee discussed a Framework for Sustainable Finance involving international cooperation, including official sector cooperation and private sector initiatives, SMEs and green financing, green credit and green bonds, and fiscal policy⁶³. The meeting also heard a Malaysian perspective⁶⁴ on sustainable finance starting with a Green Technology Financing Scheme to provide soft loans to companies utilising green technology in the energy, building, water and waste management, and transportation sectors.

The Covid-19 Pandemic

As noted, the BIS has always played a special role in MOCOMILA, which returned to Basle in November 2019 for a very well attended meeting (its 107th) led by Diego Devos and Dr Eva Hüpkes. It focused on the BIS as an international organisation, the international standard-setting process, the FSB policy agenda, reform of international financial architecture⁶⁵, the EU after Brexit, institutional evolution of the IMF, and the legal steps being put in place for the end of LIBOR (and other IBORs). The meeting also considered the significant subject of currency manipulation and trade rules.⁶⁶

⁵⁷ Judicial Control of ECB Monetary Policy (Bernd Krauskopf), Finalization of Basel III (Édouard Fernandez-Bollo), Addressing Corruption: Enhanced IMF Engagement (Sean Hagan), Regulatory Developments Related to European Banking Union (Prof. Christos Gortsos), Cross-Border Resolution (Dr Eva Hüpkes), International Law of Sovereign Debt Restructuring (Prof. Régis Bismuth), Recent Developments in Sovereign-Debt Restructuring (Mark Jewett QC), "Direct Delivery" Model for UK's High-Value Payment System (Sonya Branch), Central Bank Digital Currencies (CBDC) Tokenized Schemes (Prof. Benjamin Geva), Current Regulatory State of Fintech in the EU (Dr Klaus Peter Follak).

⁵⁸ Special Adviser to the Chief Executive, Commissioner of the Resolution Office from 2017 to 2021, and General Counsel of the HKMA from 1993 to 2017.

⁵⁹ Prof. John Taylor of Queen Mary University of London.

⁶⁰ Luis Urrutia, Director General Jurídico en Banco de México: from 2022 a Deputy General Counsel at the IMF.

⁶¹ Prof. Christoph Ohler of the Friedrich-Schiller University of Jena.

⁶² Rhoda Weeks-Brown succeeded Sean Hagan who in turn had succeeded Prof. François Gianviti as IMF General Counsel. All three appeared together in a unique presentation on the evolution of the IMF at the BIS in Basel in November 2019. In 2021 Dr Li Bo assumed the role of Deputy Managing Director at the IMF.

⁶³ By Dr Li Bo and Liu Xiangmin.

⁶⁴ By Alvin Ong.

⁶⁵ Jointly presented by Prof. Rosa Lastra and Prof. Peter Conti-Brown.

⁶⁶ Presented by H.E. Jonathan T Fried.

The meeting discussed the arrangements for 2020, being a meeting in Luxembourg in March focusing on sustainable finance to be hosted by Clearstream⁶⁷, and the 79th ILA Conference in Kyoto in Japan, in the course of which MOCOMILA would meet at the Bank of Japan. The outbreak of the Covid-19 pandemic caused the cancellation of the Luxembourg meeting, and the postponement of the Kyoto conference to a virtual format between 29 November and 13 December 2020. MOCOMILA's meeting at the Bank of Japan in Tokyo was eventually rescheduled for December 2023.

The pandemic and the accompanying restrictions on daily life have aptly been described as an *extreme stress event*, the effects being mitigated by cuts in interest rates already close to the zero lower bound and liquidity measures including quantitative easing in the form of central bank purchases of massive amounts of debt securities. The legal aspects of the crisis featured in a virtual meeting held by MOCOMILA on 28 November 2020 which also approved MOCOMILA's report to the Kyoto Conference.

The report discussed the impact of the pandemic on European Banking Union, and interest rate issues in view of the end of the IBORs. Among other contributions, it included a study by Prof. Rosa Lastra and Prof. Jason Grant Allen on *Lex Cryptographica Financiera*, which they defined as a body of norms – sourced from various “levels” from private networks to governments and intergovernmental organisations – that rely on or incorporate automatic enforcement mechanisms in the digital information systems architecture of the financial system.

Sir William Blair told the virtual meeting that he and two of the Vice-Chairs and the Secretary would be standing down in 2021, so that the Committee would have the opportunity to refresh its leadership.

The Committee presented its report to the ILA Conference virtually on 11 December 2020, the meeting being joined by Mr Masaki Bessho, Associate Director-General Payment, and Settlement Systems Department, Bank of Japan.

On 17-18 June 2021, MOCOMILA held its 109th meeting virtually hosted by the ECB in Frankfurt considering climate litigation and central banks and supervisors, wire transfer fraud, cryptoassets and LIBOR transition. In something of a record, it welcomed five new members⁶⁸, who would have joined earlier but for the pandemic. At this meeting, the Committee voted unanimously to elect its new leadership, with Prof. Chiara Zilioli and Prof. Rosa Lastra as incoming Chair and Vice-Chair respectively. Prof. Zilioli registered her preference for in-person meetings, but noted that there were 46 participants in this meeting at one point, which was very good.

In June 2022, the ILA held its 80th Conference in Lisbon, chaired by Prof. Christine Chinkin. The report by MOCOMILA to the Conference covered a variety of topics⁶⁹,

⁶⁷ James Freis had been Chief Compliance Officer of Deutsche Börse and its subsidiary Clearstream Group.

⁶⁸ Prof. Emiliios Avgouleas, Hannah Cao, Jonathan Maphosa, Prof. Saule Omarova, and Catherine Parr. In April 2023, Prof. Omarova tweeted that it's time to reconfigure our financial system, so that public goods are provided publicly - and private finance is free to thrive on true free-market terms.

⁶⁹ Climate Change Litigation in Financial Cases (Sir William Blair), Financial Stability-Related Measures Adopted in the EU Amidst the Pandemic Crisis (Prof. Christos Gortsos), Central Counterparty Resilience, Recovery and Resolvability (Dr Eva Hüpkas), Regulation of Crypto Assets: The EU Perspective (Dr Klaus Peter Follak), Options

including the announcement of the upcoming publication of the next book of MOCOMILA “International Monetary and banking Law post COVID-19”. A joint meeting with the International Securities Committee took place covering sustainable finance. The Law Faculty of the University of Lisbon hosted a meeting on “Recent Developments in the Sovereign Debt Markets and the Banking Sector in the Euro Area and Worldwide” moderated by Prof. Luís Morais, a leading practitioner and academic.

A dinner hosted by Lisbon University at Grémio Literário included gracious remarks about the outgoing Chair, Vice-Chairs and Secretary – it should particularly be recorded that David Gross made an outstanding contribution to MOCOMILA since the meeting in Salamanca 15 years previously and continues as a member. The new Secretary is Dr Michael Ioannidis, Lead Legal Counsel at the European Central Bank, and Senior Research Fellow at the Max-Planck-Institute for Comparative Public Law and International Law in Heidelberg.

MOCOMILA’s meeting at the Banco de Portugal considered the legal issues raised by the unprecedented financial sanctions imposed on Russia following its attack on Ukraine. It was noted that besides the humanitarian consequences, this had also caused a temporary energy crisis and a rise in inflation. The ILA’s 150th anniversary symposium in Paris in June 2023 includes a session on sanctions chaired by Prof. Régis Bismuth. It is anticipated that this subject will be dealt with further in a book edited by Prof. Chiara Zilioli, Prof. Luc Thévenoz and Prof. Bismuth.

MOCOMILA’s 110th meeting took place at the Bank of England in December 2022 led by Sonya Branch and Prof. Rosa Lastra, and addressed by Sir Dave Ramsden (Deputy Governor), Sarah Breedon (Executive Director) and Seb Walsh (Secretary to the Bank of England). The main subjects discussed were cryptoassets and CBDCs⁷⁰, climate change and sustainability⁷¹, and accountability⁷². The Committee heard a report from the incoming Chair of the Membership Committee, H.E. Jonathan T Fried, who took over from the outgoing Chair, Sir Ross Cranston, a member of the Committee since 1994⁷³, and to whom the Committee expressed warm thanks.

The broader world of international law

Prior to the pandemic, MOCOMILA planned a third book in its series, led by its Academic Coordinator and leading scholar, Prof. Christos Gortsos. The interpolation of the pandemic and its aftermath has had consequences for the international monetary system which have yet to be fully assessed. The book has been able to take account of some of

for Regulation of Systemic Stablecoins in the UK (Sonya Branch and David Geen), Bitcoin as Legal Tender: What Did El Salvador Get Wrong in Going CBDC? (Prof. Benjamin Geva).

⁷⁰ Diego Devos, James Freis, Klaus Peter Follak, Prof. Agasha Mugasha, and Prof. Benjamin Geva.

⁷¹ Rhoda Weeks-Brown, Sarah Breedon, Édouard Fernandez-Bollo, Lee Buchheit, Joana Setzer, and Prof. Chiara Zilioli.

⁷² Sonya Branch, Prof. Rosa Lastra, Dr Sebastian Walsh, Prof. Christos Gortsos and Prof. Michael Waibel.

⁷³ His most recent book, *Making Commercial Law Through Practice, 1830-1970*, Cambridge University Press, 2021, contains an analysis of bank finance for trade over much of the period covered by this paper – see section 6.

these, and *International Monetary and Banking Law Post COVID-19* (ed. Blair, Zilioli and Gortsos⁷⁴) was published by the Oxford University Press in May 2023.

Part I considers the response of international financial fora and some major central banks to the Covid crisis. Parts II and III examine (i) the digitalisation of money and finance and (ii) sustainable finance. Part IV includes central banks' independence and accountability, unconventional monetary policies, comparative aspects of central banking and banking failures, legal aspects of monetary integration, and the legal nature of financial standards. All the individual chapters are written by members of MOCOMILA.

In June 2023 the Committee will hold its 111th meeting in Paris as part of the 150th Anniversary celebrations of the ILA thanks to the members of the French branch of the ILA, Prof. Georges Affaki, Prof. Régis Bismuth, and Édouard Fernandez-Bollo.

In December 2023, the Committee will hold its long postponed meeting at the Bank of Japan, thanks to Prof. Hideki Kanda and Prof. Takashi Kubota. It will be the 112th meeting of the Committee since its foundation in 1952.

In the first book by the Committee, *International Monetary Law, Issues for the New Millennium*, Prof. Mario Giovanoli wrote that "... the major challenge for the specialists of monetary law is no doubt the strengthening of the international financial architecture with a view to promoting international financial stability". That challenge has eluded specialists of monetary law and everyone else – the history of the Committee over the last three quarters of a century shows how despite best intentions financial stability has been blown off course by events. It also shows a deep commitment to financial stability, and a preparedness to take difficult steps when required.

There are presently 15 committees mandated by the ILA covering a range of issues in international law, but MOCOMILA is unique because of its longevity. The committee has changed to meet new challenges over time and has been at the cutting edge of those changes. Its place lies within the broader ILA world of international law, and what albeit imperfectly, it is seeking to achieve.

Sir William Blair

May 2023

⁷⁴ Chiara Zilioli and William Blair would like sincerely to thank Prof. Gortsos for carrying the major part of the editing work.

MOCOMILA Membership as at the ILA Conference in Paris in June 2023

Members

Professor Chiara Zilioli (Italy): Chair
Professor Rosa Lastra (Spain): Vice-Chair
Sir William Blair (UK): Honorary Chair
Professor Christos Gortsos (HQ, Greece): Academic Coordinator
Dr Michael Ioannidis: Rapporteur/Secretary (from 2022)
Dr Georges Affaki (France)
Dr Adesegun Akin-Olugbade (HQ, Nigeria)
Mr Javier Arrigunaga (Mexico)
Professor Emilios Avgouleas (HQ, Greece)
Mr Thomas Baxter, Jr (USA)
Professor Régis Bismuth (France)
Ms Sonya Branch (UK)
Mr Lee Buchheit (USA)
Ms Hannah Cao (HQ, People's Republic of China)
Professor Dominique G Carreau (France)
Professor Peter Conti-Brown (USA)
Mr Cristiano Cozer (Brazil)
Sir Ross Cranston (UK)
Mr Julio Ernesto Curutchet (Argentina)
Mr Diego Devos (Switzerland)
Mr Édouard Fernandez-Bollo (France)
Dr Klaus Peter Follak (Germany)
Mr James H Freis, Jr (USA)
H.E. Jonathan T Fried (Canada)
Mr Stefan M Gannon (Hong Kong SAR, China)
Professor Benjamin Geva (Canada)
Professor François Gianviti (France)

Mr David Gross (USA)⁷⁵
Professor Christos Hadjiemmanuil (HQ, Greece)
Mr Sean Hagan (USA)
Dr Eva Hüpkes (Switzerland)
Mr Marcus Jewett, KC (Canada)
Professor Hideki Kanda (Japan)
Mr Bernd Krauskopf (Germany)
Professor Takashi Kubota (Japan)
Dr Li Bo (HQ, People's Republic of China)
Professor Cynthia Lichtenstein (USA)
Mr Liu Xiangmin (HQ, People's Republic of China)
Mr Jonathan Maphosa (South Africa)
Dr Manuel Monteagudo Valdez (HQ, Peru)
Professor Agasha Mugasha (HQ, Uganda)
Professor Christoph Ohler (Germany)
Professor Saule Omarova (USA)
Ms Catherine Parr (Australia)
Mr Ernest Patrikis (USA)
Dr Charles Proctor (UK)
Professor Engela Schlemmer (South Africa)
Professor René Smits (Netherlands)
Mr Gopala Krishnan K Sundaram (HQ, Malaysia)
Mr John L Taylor (Australia)
Professor Luc Thévenoz (Switzerland)
Mr Luis Urrutia Corral (Mexico)
Ms Rhoda Weeks-Brown (USA)
Professor Syue-ming Yu (Taiwan, China)
Professor Franz Zehetner (Austria)

⁷⁵ Secretary until June 2022.

Observers⁷⁶

Professor Michael Waibel

Professor Seraina Grünwald

Mr Richard Ostrander

Members with Emeritus status

Dr Mohammed Alsheaibi (HQ, Saudi Arabia)

Professor Jean-Victor Louis (Belgium)

Professor Mario Giovanoli (Switzerland)

Mr Antonio Sáinz de Vicuña y Barroso (Spain)

⁷⁶ This is the precursor to membership of the Committee.