WHY THE DOLLAR SHOULD NO LONGER BE THE WORLD RESERVE CURRENCY: SOLVING GLOBAL ACCOUNT IMBALANCES THROUGH STRUCTURAL REFORM

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ABSTRACT

This Note's premise is simple: the dollar should no longer be the world's reserve currency. Because of the global imbalance of trade, the hoarding by "saving" countries of foreign currency, and the reliance on the Federal Reserve to set global monetary policy, the financial system is unacceptably unstable. To better regulate and manage the risks of global financial markets, some have proposed creating a global central bank—a "clearing union." This paper proposes, by contrast, an 1) international reserve currency that would be 2) indexed to gold and 3) placed under the regulatory sweep of the WTO, an already stable and efficient regulatory body. This system would not be dissimilar from the "par value system" that emerged from the Bretton Woods Conference—a system that pegged all currencies to fixed exchange rates relative to the U.S. dollar, which in turn was fixed to gold. The original Bretton Woods system failed when the United States faced looming domestic trade deficits. Because growing deflation was unacceptable domestically, the United States abandoned the gold standard. A global currency would correct the problem, and might finally achieve much desired stability in global financial markets. For context, Part II of this paper describes the global financial crisis. Part III outlines the ways global account imbalances both contributed to, and then exacerbated, that crisis. It further discusses previous proposed solutions to global account imbalances that, in one way or the other, fail to provide adequate reforms. Part IV then defends, respectively, the three elements of this proposal: 1) an international currency 2) indexed to gold 3) regulated by the WTO. Finally, Part V argues why this model is, in fact, desirable and beneficial for the United States, no less than any other nation.

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I. INTRODUCTION

"Recent years," as one astute commentator has noted, "have challenged the international order to a degree not seen since World War II—and perhaps the Great Depression."[1] The U.S. housing crisis, which ultimately spread to every corner of the globe, has prompted economists, investors, and politicians to question the first principles of the world economic order.

For the last seven decades, the world economic order has been characterized by two trends: growing dependence on the U.S. dollar (dollar) as the world reserve currency and simultaneous widening of the gap between trade deficit and trade surplus countries. These trends converged during the financial crisis. Leverage points of the crisis were systemic and must be carefully scrutinized if a similar crisis is to be avoided down the road. The spread of the crisis has "turned the analytical spotlight on the international regulatory framework and its ability to act to exert control over an increasingly consolidated financial

1. Robert B. Ahdieh, *Introduction-After the Fall: Financial Crisis and the International Order*, 24 Emory Int'l L. Rev. 1, 1 (2010).

market in products and services."[2] Reform requires some so-called "institutional soul-searching."[3]

The thrust of this Note is to reexamine the operation of international monetary policy and the regulatory mechanisms that oversee, or fail to oversee, its workings. There are several triggers that have contributed to instability, but the common thread running through all of them is this: no world hegemon, new national currency, or the regulatory system in the International Monetary Fund (IMF) can, alone, solve the global account imbalances that contributed to the most recent financial crisis. Many prior proposals have addressed these triggers in isolation, with more thoroughness than is possible here. But only in combination, this Note argues, can these triggers fully address instability. Just as importantly, only in combination may they win the support of the key player—the United States—as they provide an opportunity for a controlled exit from the dollar to a long-term sustainable reserve currency.

Of course, there have already been reforms domestically[4] and internationally,[5] but those reforms have failed to fully address the fundamental flaws in the financial system—namely, a national reserve currency and flexible exchange rates. This Note will do just that. Challenging the most basic presumptions of the global economic order is a necessary, if painful, step to realizing those reforms needed to ensure greater economic security for future generations.

Thus, this Note proposes an international reserve currency indexed to gold—in place of the U.S. dollar—to bring much needed stability to exchange rates. As this fixed rate currency will require few discretionary adjustments, control of it should be placed in a sub-agency of the

2. Yesha Yadav, *The Specter of Sisyphus: Re-Making International Financial Regulation After the Global Financial Crisis*, 24 EMORY INT'L L. REV. 83, 85 (2010).

3. *Id.*

4. In the United States, regulators moving to regulate financial markets sought to reintroduce a strict line of separation between banking and speculation. *See, e.g.*, Volcker Rule, *FSOC Releases Chairman's Study on Volcker Rule*, Fed. Banking L. Rep. (CCH), ¶¶ 97-471 (Jan. 18, 2011) (discussing this segment of larger Dodd-Frank reforms after the crisis). It is worth noting that the SEC has yet to implement several of the regulations. *See, e.g.*, Devin Thorpe, *Grassroots Lobbying Effort Asks SEC to Issue Final Crowdfunding Rules,* FORBES (Sept. 9, 2014), http://www.forbes.com/sites/devinthorpe/2014/09/09/grassroots-lobbying-effort-asks-sec-to-issue-final-crowdfunding-rules/.

5. Internationally, not only was the International Monetary Fund (IMF) strengthened with capital inflows, *see infra* note 12, but the G-20 also expanded membership in the Financial Stability Forum, renaming it the Financial Stability Board, and expanding its mandate. Ahdieh, *supra* note 1, at 7.

World Trade Organization (WTO)—an already well-subscribed and effective international institution with several of the characteristics critical to successful reform.

II. Global Financial Crisis

The recent financial crisis demonstrates the need for fundamental reform, both from an international and a U.S. perspective. Global imbalances have political, as well as economic, consequences.

The tale of the financial crisis is, by now, notorious. What began as a domestic "trigger"—subprime housing loans— quickly proved a canon that disrupted the entire international system. Because the risk on these loans spread across the market through securitization (mortgage-backed securities) and derivatives (credit default swaps), the crisis in the United States was wide and deep.

Even with a government bailout, stock markets plummeted, followed by a credit crunch and massive deleveraging. Throughout the first half of 2009, economists and investors thought the dollar might even lose its status as the world's reserve currency by as early as 2015.[6] The fact that the financial crisis subsequently spread to the Eurozone was, in the words of some, a "lucky break" for the dollar.[7]

The more complicated and interesting story is, of course, how the financial crisis became an international problem. Because of their ties to the U.S. financial system, global financial markets crashed around the world and "investors withdrew capital, causing foreign reserves and currency values to fall precipitously."[8] All currencies fell against the dollar, causing a deep recession in export-heavy countries like Japan.[9] And, subsequently, there was a worldwide economic contraction as consumer demand plunged.[10] In sum, a loss of confidence in the biggest reserve currency in the world (the dollar) led to deleveraging, expanding the recession to other countries as their currencies fell against the dollar. Simultaneously, demand dropped in the biggest consumer base in the world (the U.S. economy). The one-two punch threatened to cripple the world economy.

6. Francis E. Warnock, *How Dangerous Is U.S. Government Debt?*, COUNCIL ON FOREIGN RELATIONS, June 2010, at 1-2, http://www.cfr.org/financial-crises/dangerous-us-government-debt/p22408 (last visited May 16, 2015).

7. *Id.*

8. Thomas J. Schoenbaum, *The Global Financial Crisis and Its Impact on World Trade and the World Economy—An Overview*, 42 UCC L. J. 375 (2009).

9. *Id.*

10. *Id.*

Going forward, imbalances in the system remain, making it every bit as volatile as before, if not more so.[11] The international system, as a whole, needs a balancing mechanism. And there are many reasons why the United States, even in its own self-interest, should support a controlled exit from the current system. Many expected that countries with massive dollar reserves might start dumping them on the market, leading to overliquidation and a drop in the value of the dollar.[12] Fortunately for the United States, the direst predictions of the crisis did not quite come to pass. But the possibility remains. Critical surplus countries piled into gold after the financial crisis, presumably as protection against a declining dollar.[13] There is no reason countries will not flock to gold again in the future, or to another national reserve currency—perhaps, this time, the *renminbi*.[14]

III. Global Macro Imbalances & The Need For a Coordinated International Response

A. *Global Account Imbalances*

"From a monetary perspective," the crisis has shown the "tendency of a system in which the U.S. dollar is the dominant reserve and trading currency to generate ever-growing imbalances between countries with trade surpluses and those with deficits."[15] There are thus two arguments to be made about the connection between global account imbalances and the financial crisis. The first is that global account imbalances contributed to the cause of the financial crisis. The second is that those imbalances subsequently exacerbated the crisis' effects.

Over the last thirty years, a dramatic transformation has occurred in the creditor-debtor relationship of the United States and the rest of the

11. Dr. C. Fred Bergsten, *The Need for A Robust Response to Chinese Currency Manipulation—Policy Options for the Obama Administration Including Countervailing Currency Intervention*, 10 J. Int'l Bus. & L. 269, 272 (2011).

12. Juscelino F. Colares, *Global Imbalances and Liquidity-Induced Bubbles: Reflections on the Great Recession and the Need for International Monetary Reform*, 60 Syracuse L. Rev. 603, 604 (2010).

13. *Chinese Demand for Gold, Silver Exploded in 2013*, Forbes (Mar. 11, 2014), http://www.forbes.com/sites/kitconews/2014/03/11/chinese-demand-for-gold-silver-exploded-in-2013-fia/.

14. In the upcoming 2015 IMF review, China will likely satisfy the IMF's economic benchmarks and get the support of the other 187 member countries to become part of the SDR currency basket. *See* Andrew Mayeda & Fion Li, *Yuan Has Real Shot at IMF Blessing on Reserve Status,* Bloomberg (Dec. 11, 2014), http://www.bloomberg.com/news/2014-12-11/yuan-has-real-shot-at-imf-blessing-on-reserve-status.html.

15. Aldo Caliari, *Updating the International Monetary System to Respond to Current Global Challenges: Can It Happen Within the Existing Legal Framework?,* 20 Minn. J. Int'l L. 588, 589 (2011).

world. The United States has shifted from being the world's largest creditor in 1980[16] to its largest debtor, at least in absolute terms, with debts in excess of $14 trillion.[17] The major holders of that debt are other countries. China alone held $1.269 trillion in U.S. treasury securities as of August 2014.[18] This global account imbalance "reflected and magnified the ultimate causal factors behind the recent financial crisis."[19] The connection between the crisis and macro imbalances is, admittedly, still debated,[20] but has been recognized by scholars[21] and even the Federal Reserve Chairman during the recession. As Ben Bernanke stated, "it is impossible to understand this [financial] crisis without reference to the global imbalances in trade and capital flows that began in the latter half of the 1990s."[22] Or, put another way, "the global imbalances did not cause the leverage and housing bubbles, but they were a critically important co-determinant."[23]

Some have observed that the United States, over the last several decades, was able to put off difficult decisions regarding fiscal policy, monetary policy, housing policy, and more, "because of its ability to borrow cheaply from abroad, due in part to the increase in world savings and in part to the reserve currency role of the dollar."[24] Using China as a foil for savings countries—or countries with high foreign reserves—those same scholars have observed that China was likewise able to "put off difficult policy choices because of its ability to keep its large reserve inflows from affecting its monetary policy."[25] Had savings

16. *See* Robert Z. Aliber, *The Global Savings Tsunamis*, 33 WILSON Q. 56, 56 (2009).

17. Dan Alexander, *The World's Largest Debtor Governments, 2013*, FORBES (Nov. 8, 2013), http://www.forbes.com/sites/danalexander/2013/11/08/worlds-largest-debtor-governments-2013/.

18. U.S. DEP'T OF THE TREASURY, MAJOR FOREIGN HOLDERS OF TREASURY SECURITIES (IN BILLIONS OF DOLLARS) HOLDINGS 1/ AT END OF PERIOD (2015), https://www.treasury.gov/ticdata/Publish/mfh.txt.

19. *See* Maurice Obstfeld & Kenneth Rogoff, *Global Imbalances and the Financial Crisis: Products of Common Causes,* U. CAL. BERKELEY ECONOMETRICS LAB. 4 (2009), http://eml.berkeley.edu//obstfeld/santabarbara.pdf.

20. *See id.* at 2.

21. Carl J. Dahlman et. al., *The U.S., China, and Global Imbalances: What Has Happened and What Should Be Done? Economics Department of the Communist Central Party School and the China Delegation from Georgetown University*, 15 GEO. PUB. POL'Y REV. 89, 89 (2010).

22. Ben Bernanke, Chairman, Fed. Reserve, Address Before the Council on Foreign Relations: Financial Reform to Address Systemic Risk (Mar. 10, 2009), http://www.federalreserve.gov/newsevents/speech/bernanke20090310a.htm.

23. Obstfeld & Rogoff, *supra* note 19, at 1.

24. Dahlman, *supra* note 21, at 89.

25. *Id.*

countries not had the option to put off rebalancing their own economies, "the subsequent crisis might have been mitigated, if not contained."[26] Savings countries like China are motivated, presumably, by "a desire to build up reserves to forestall or mitigate future crises and a desire to pursue growth strategies that rely heavily on exports."[27] Since, up to this point, reserves have been largely denominated in dollars, U.S. interest rates and the value of the dollar are affected by large foreign holdings of dollar-denominated assets.[28]

Macro imbalances are clear not only in trading on the dollar, but also in trade itself through account deficits. Before the financial crisis, exchange rate and other asset-price movements kept U.S. liabilities abroad growing at a rate below the cumulative current account deficit.[29] Many, including Alan Greenspan, ignored the domestic financial fragility caused by the U.S. current account deficit.[30] Others, like Bernanke, saw the risk and argued that the deficit could ultimately lead to a disorderly adjustment in financial markets.[31]

And that it did. The global savings glut, combined with the rapid pace of dollar reserve accumulation, arguably contributed to lower interest rates in the United States,[32] which, in turn, "fed into a powerful multiplier mechanism based on unrealistic expectations, asset-market distortions, and agency problems, notably in markets for housing finance."[33] In the words of then Canadian Central Bank Governor—and current Governor of the Bank of England—Mark Carney:

> While there were many causes of the crisis, its intensity and scope reflected unprecedented disequilibria. Large and unsustainable current account imbalances across major economic areas were integral to the buildup of vulnerabilities in many asset markets. In recent years, the international monetary sys-

26. Obstfeld & Rogoff, *supra* note 19, at 3.

27. Dalhman, *supra* note 21, at 94.

28. Ben Bernanke, Governor, Fed. Reserve, Sandridge Lecture, Virginia Association of Economists, Richmond, Virginia: The Global Saving Glut and the U.S. Current Account Deficit (Mar. 10, 2005), http://www.federalreserve.gov/boarddocs/speeches/2005/200503102/ ("For example, the dollar probably strengthened more in the latter 1990s than it would have if it had not been the principal reserve currency, enhancing effects on the U.S. current account.").

29. Obstfeld & Rogoff, *supra* note 19, at 3.

30. *Id.* at 6.

31. *Id.*

32. *Id.* at 22-23.

33. *Id.* at 23.

tem failed to promote timely and orderly economic adjustment.[34]

The rest of the story is well known. It is difficult to pinpoint the beginning of the financial crisis in the United States. Some date it to July 2007, when two hedge funds run by Bear Sterns that had invested in subprime mortgages through collateralized debt obligations (CDOs) failed suddenly.[35] The collapse of both the subprime loan market and connected securities markets triggered alarm that the financial system might be at risk.[36] Bear Sterns itself subsequently faced a crisis collapse, forcing the firm to go through $15 billion in cash reserves.[37] JPMorgan later agreed to help the Federal Reserve bail out Bear Sterns, assuming $1 billion of the risk.[38] Others date the true collapse at the bailout of AIG in September 2008.[39] The AIG case is, arguably, a more appropriate jumping off point for the discussion in this Note, as it highlights the global shifting of risk among investors, seemingly "with little heed paid to the geographical locations of the players."[40]

The crisis at first seemed confined to financial markets. But because international trade, financial markets, and money markets have become more intertwined than ever, there was a ripple effect. Financial instability spread globally from the United States "because of international financial linkages among highly leveraged institutions as well as the global nature of the housing bust."[41]

During the crisis, global account imbalances shrunk somewhat, due to a decrease in both surpluses and deficits in roughly equal size.[42] In the post-crisis recovery, however, external imbalances reappeared.[43] Some predict that these imbalances will rise to even higher levels than

34. Caliari, *supra* note 15, at 589-90.

35. David A. Skeel, Jr., *Governance in the Ruin*, 122 HARV. L. REV. 696, 734 (2008) (reviewing CURTIS J. MILHAUPT & KATHARNIA PISTOR, LAW AND CAPITALISM: WHAT CORPORATE CRISES REVEAL ABOUT LEGAL SYSTEMS AND ECONOMIC DEVELOPMENT AROUND THE WORLD (2008)).

36. *Id.*

37. Kate Kelly, *Fear, Rumors Touched Off Fatal Run on Bear Stearns*, WALL ST. J., May 28, 2008, at A1.

38. *Id.*

39. *AIG Gets Access to $20.9 Billion in Fed's Commercial Paper Program*, TRANSFORMING NETWORK INFRASTRUCTURE INDUSTRY NEWS (Nov. 1, 2008), http://www.transformingnetworkinfrastructure.com/news/2008/11/01/3752337.htm.

40. Yadav, *supra* note 2, at 101.

41. Obstfeld & Rogoff, *supra* note 19, at 28.

42. Bergsten, *supra* note 11, at 272.

43. *Id.*

before.[44]

B. *Other Proposals For Reform*

Many have argued "[t]his linkage between exchange rates, international trade and the international monetary system must be understood if one wants to reduce the likelihood of more international finance-induced boom and bust cycles."[45] Due to the role risk-taking played in the crisis, both domestically and internationally, "proposals for regulatory reform have so far focused, understandably, on measures that would promote better risk management."[46]

Yet the need for a more robust and coordinated international response that also addresses the foreign currency exposure is widely recognized. After all, domestic policy externalities affect the whole system. Furthermore, if imbalances in trade are indeed at the root of the problem, then tightening regulations on the financial markets alone will not prevent future crises, and may even exacerbate those imbalances, to say nothing of possibly stifling investment and economic growth. Most of the proposals to this point have been flawed due to their failure to address one or the other of these systemic concerns. The following discussion addresses each in turn.

1. Supervisory Approach

One category of proposals, among them the Basel III Accord (Basel), adopts the assumption that the global harmonization of bank capital requirements and administrative supervision could serve to contain systemic risk.[47] Basel itself aims for the supervision of international capital movement and allocation of credit by the Group of Twenty (G20), using the IMF as a safety net.[48] Several other supranational groups have modeled or incorporated Basel standards into their supervisory reviews of member-country financial systems.[49]

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44. *Id.*

45. *See, e.g.*, Colares, *supra* note 12, at 610.

46. *Id.* at 604.

47. Roberta Romano, *For Diversity in the International Regulation of Financial Institutions: Critiquing and Recalibrating the Basel Architecture*, 31 YALE J. ON REG. 1, 8, 20 (2014).

48. *Id.* at 20. For an earlier iteration of this approach, termed the "Fannie Mae" approach, see Edieth Y. Wu, *Recent Developments in the Currency War: The Euro, The Dollar, The Yen, and the BEMU,* 15 CONN. J. INT'L L. 1, 19 (2000).

49. *See, e.g.*, DUNCAN WOOD, GOVERNING GLOBAL BANKING: THE BASEL COMMITTEE AND THE POLITICS OF FINANCIAL GLOBALISATION 1 (John J. Kirton et al. eds., 2005) (arguing that the Basel

Yet these models focus too much on regulation—a superficial tool at best—and not enough on the systemic flaws in the current world economic order. For one, "the current state of economic knowledge does not permit us to predict with confidence what the optimal capital requirements or other regulatory policies are to reduce systemic risk."[50] In fact the 2008 financial crisis was caused, in part, by the homogenization of the wrong regulatory policies under the Basel II Accord, which failed to prevent banks from taking on systemic risk.[51] More fundamentally, even if policymakers possessed the omniscience needed to regulate in this manner, command-type solutions would, at best, treat the symptoms and not the disease. Regulation of this type can only prohibit broad classes of conduct deemed to pose systemic risk. But, as discussed in Part IV of this Note, it would surely be better to fundamentally refashion the system such that fewer risks are, themselves, systemic. That would help to cabin losses to those market actors engaged in risky behavior, while preserving space for others to pursue efficiency-maximizing activity. Once the base disease is cured and the fundamental system sound, in other words, market discipline itself proves the most effective regulator of risky behavior.

Finally, in practice, "[t]he experience of the [European Union] suggests that harmonization of financial regulation is necessarily a slow and incremental endeavor even in an environment where states have made treaty commitments to harmonization."[52] Unsurprisingly, "no clear consensus on the definition, parameters, and focus of macroprudential regulation has yet to be reached by participating nation states," except the consensus that "one size does not fit all."[53] The Eurozone crisis demonstrated the breakdown in macroeconomic coordination: Greece borrowed too much, and the failure to coordinate a response "helped cause and sustain the financial crisis in Europe and plunged much of the continent into a deep recession."[54]

It may seem counterintuitive that the more radical paradigm shift to an international reserve currency could also prove more achievable.

Committee "has become one of the central organs of global economic governance" as it has "play[ed] an integral role in shaping the rules of the international financial system").

50. Romano, *supra* note 47, at 5.

51. *Id.*; Eric A. Posner & Alan O. Sykes, *International Law and the Limits of Macroeconomic Cooperation*, 86 S. CAL. L. REV. 1025, 1026 (2013).

52. Caroline Bradley, *Breaking Up Is Hard to Do: The Interconnection Problem in Financial Markets and Financial Regulation, A European (Banking) Union Perspective*, 49 TEX. INT'L L.J. 271, 273 (2014).

53. Miriam F. Weismann, *The Prospects for A New Global Macroprudential Reform Paradigm*, 37 SUFFOLK TRANSNAT'L L. REV. 289, 292 (2014).

54. Posner & Sykes, *supra* note 51, at 1026.

But the key to its feasibility, as discussed in Part IV, is fixed exchange rates, and those would not require comprehensive and substantive supervision by an international body. That is to say, without the need for coordinated fiscal policy across countries to secure financial stability, that stability might be easier to achieve.

2. Cooperative Exchange Rate Adjustments

To resolve current account imbalances, others have suggested exchange rate adjustments—pressuring private agents to import less and export more by making home goods cheaper relative to foreign goods.[55] Adjustments could be achieved, some have suggested, through a multilateral international monetary agreement.[56]

Advocates of this approach agree on the flaws inherent in the current international financial system—namely, the "destabilizing effect that accumulation of massive reserves in one currency has produced."[57] Rather than a massive overhaul of the reserve currency system itself, they remain confident that "adjustments could be achieved through different cooperative mechanisms . . . requiring different countries to accept certain short-term monetary, budgetary and geopolitical trade-offs if they wish to forestall the rise of protectionism and promote a stable international economic environment in the long run."[58]

Yet they fall short of the drastic and fundamental recalibration of the financial system their own theory suggests—an "inevitable currency realignment" that shifts away from reliance on the dollar as the reserve currency.[59] As such, these reforms fall victim to the critiques above.[60]

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55. Dahlman, *supra* note 21, at 96.

56. *See* Colares, *supra* note 12, at 603.

57. *Id.* at 605.

58. *Id.*

59. *Id.* "[I]t is this willingness to take on trade deficits that explains the dominance of the dollar in reserve accumulation. Of course, this willingness is based on the United States' ability to continue running large deficits and adding to its debt. As this debt grows and reaches unprecedented levels in the next few years, this situation is likely to change as foreign central banks reduce their dollar exposure and the dollar will lose its status as the single dominant currency for reserve accumulation. In this sense, the impact of the latest financial crisis cannot be overstated. It did bring us closer to the inevitable currency realignment because the U.S. government's rescue of the financial system and dealing with the consequences of an economic slump greatly added to its debt. Yet, other noneconomic factors may also contribute to this transformation. For instance, the political implications of a long, drawn out U.S. jobless recovery appear to have aggravated simmering trade and exchange-rate tensions between the United States and China, which might accelerate the pace of international currency reform." *Id.* at 609.

60. *See* Bergsten, *supra* note 11, at 613.

Furthermore, rebalancing currencies against the dollar would have unwelcome consequences both for creditor and debtor nations, as these critics admit. For the United States, in particular, a downward slide in the dollar relative to other countries would increase the value of the United States' international debt.[61] This would likely prove politically intolerable for U.S. domestic politics.

3. Multi-polar Currency Blocs

The next pair of proposals forms two sides of the same coin. Proposals for both multi-polar currency blocs and a multi-currency reserve are flawed by the same presumption: too much of a bad thing—reliance on a national currency—is a good thing.

Proposals for multi-currency blocs in the face of the dollar's waning influence pre-date even the financial crisis. And observations of their benefits and downsides are equally applicable after the crisis. Concluding the dollar is declining as the world's leading reserve currency,[62] some scholars have posited that instead of U.S. hegemony, the world economic order will soon break into "at least four extremely strong competitive currency zones or leading currencies . . . because 'ten big markets [Mexico, Brazil, Argentina, South Africa, Poland, Turkey, India, Indonesia, China, and South Korea], located in every part of the world, will change the face of global economics and politics.'"[63] These ten markets are referenced as Big Emerging Markets (BEMs) and currency formed in them as Big Emerging Market Units (BEMUs). BEMUs will prove viable, some scholars posit, because "the current monetary-economic crisis has eroded the legitimacy of the idea of a single, integrated world market system."[64]

Perhaps the greatest flaw in this model is the likelihood of a "currency war," as indicated by the title of an article by a leading proponent of multi-polar currency blocs. Also, "[m]onetary blocks could potentially fuel protectionist trade tendencies, especially if exchange rates between regional blocks, such as the euro and the dollar, fluctuate wildly."[65] In other words, BEMUs might make the international finan-

61. *Id.*

62. Wu, *supra* note 48, at 14 (citing reasons for the decline: "[T]he dollar shortage and the unwillingness of others to hold it as a reserve currency, balance of payment deficits, the drop in American gold holdings in relationship to the growing foreign-held dollars, and [probably most telling] the massive transnational movement of capital.").

63. *Id.* at 29.

64. *Id.* at 33.

65. *Id.* at 34.

cial system more volatile than it already is. The IMF, in considering such a multi-polar currency system, admitted that "volatility among reserve currencies, both short and long term, is likely to be high, posing costs for trade and investment."[66] Others posit that "sudden swings in preferences among different currencies might generate substantial instability."[67]

"Moreover, a system where several domestic currencies can operate as reserves is what we have today."[68] This system has failed to prevent or absorb the shocks of financial recession. The quintessential regional currency—the euro—has, instead, proven deeply flawed:

> Proponents thought eliminating multiple currencies would also end balance-of-payments crises. But credit crises and long-running traumas of external adjustment emerged instead. Proponents thought providing a single currency would ensure the beneficial integration of cross-border finance. But national banking crises emerged instead. Proponents thought the act of creating a single currency would eliminate the fear of break-up. But the survival of national politics ensured this remained a live question instead. Proponents thought that creating a currency union would bring the peoples of the Eurozone closer together. Crises divided them into contemptuous creditors and resentful debtors instead. This has been a march of folly.[69]

Of course, some might argue that BEMUs form a more diverse basket than the euro, and would be better balanced. But on a macro-scale, if organized in regional blocks, BEMUs would run the risk of polarizing savings and debtor countries into separate units, and only exacerbating existing imbalances.

In short, the proliferation of multi-currency reserve blocks would likely fail to respond to global imbalances because they would hold the same potential as the euro for coalescence and imbalance, with little structure to enforce coordination. The remedy to coordination, "strong central regulation and supervision and, in particular, strong macropru-

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66. Caliari, *supra* note 15, at 600 (citing R. Baqir et al., *How Did Emerging Markets Cope in the Crisis?* INTERNATIONAL MONETARY FUND 18 (2010), http://www.imf.org/external/np/pp/eng/2010/061510.pdf).

67. MARTIN WOLF, THE SHIFTS AND THE SHOCKS: WHAT WE'VE LEARNED—AND HAVE STILL TO LEARN—FROM THE FINANCIAL CRISIS 347 (2014).

68. Caliari*, supra* note 15, at 609.

69. WOLF, *supra* note 67, at 291-92.

dential regulation",[70] the supervisory model, discussed in Part III.B.1. of this Note, is difficult even in the Eurozone, "in view of the great differences in the economic structure of these countries, in their economic culture and in their politics."[71] Such challenges would surely persist on a global scale.

4. Multi-Currency Reserve/Enhanced Special Drawing Rights (SDRs)

A multi-currency reserve, perhaps in the form of existing SDRs, remains another popular alternative for solving global account imbalances. Its proponents often accept the same starting premise as this Note: "the adequacy of the existing legal framework regarding the global monetary system" is flawed.[72] What is more, it recognizes similar challenges:

> A first challenge is to foster an orderly exit from global monetary imbalances. A second challenge is to reduce currency volatility, with its consequent negative implications for trade flows. The third challenge is to create a mechanism for more symmetric adjustments between surplus and deficit countries, while avoiding recessionary impacts. Finally, as development and climate finance needs continue to grow, the potential of the [Special Drawing Rights] SDRs to provide development finance may no longer be an item that can be sidelined from the debate.[73]

There are two major reasons why the SDR itself is uniquely ill equipped to correct global trade imbalances. First, SDRs are allocated to IMF members based on their quota contribution to the Fund.[74] The SDR was originally created by the IMF in 1969 to support the Bretton Woods fixed exchange rate system, once the "international supply of two key reserve assets—gold and the U.S. dollar—proved inadequate

70. *Id.* at 314.

71. *Id.* at 316.

72. *See* Caliari, *supra* note 15, at 588.

73. *Id.* at 588-89.

74. Robert Hockett, *Bretton Woods 1.0: A Constructive Retrieval for Sustainable Finance,* 16 N.Y.U. J. LEGIS. & PUB. POL'Y 401, 472 (2013). *See also* Carlos Mauricio S. Mirandola, *Solving Global Financial Imbalances: A Plan for A World Financial Authority,* 31 NW. J. INT'L L. & BUS. 535, 585 (2011) (asserting that low-income countries "nurture grudges against the IMF's quota-based voting system; besides being supposedly tweaked towards certain European countries, it oppresses minority quota holders, and is thus hijacked by bigger quota holders").

for supporting the expansion of world trade and financial development that was taking place."[75] The SDR has gone largely unused since the switch to the floating exchange rate regime.[76] The IMF has made only three general allocations since the SDR's inception: once in 1970-72, once in 1979-81, and then a third time in 2009 to help mitigate the effects of the financial crisis.[77] A special one-time allocation of SDRs was made in 2009 as well, intended to finally give an allocation to IMF members who joined after 1981.[78] Because SDRs are allocated in proportion to countries' existing IMF quotas, most of these SDR allocations end up in the hands of already reserve-rich countries.[79]

Second, the SDR is still susceptible to unilateralism—one dominant currency dictating its value. The SDR's value is based on a basket of four key international currencies, which is reviewed every five years by the Executive Board of the IMF to adjust the weight each currency is given in the SDR basket.[80] Currently, the major currencies in the basket are the dollar, the pound, the yen, and the euro.[81] "As the relative values of currencies change, so does that of the SDR in terms of each of them."[82] The United States is still by far the biggest contributor to the IMF, followed by Japan at a distinct second.[83] Thus, instabilities in the dollar, though slightly diluted, still roll over to the SDR basket.

The idea of a multi-currency reserve, whether in the form of SDRs or something else, suffers from one further dramatic flaw: "[t]he SDR is not a currency, which makes conversion into a currency for any payments or foreign exchange interventions necessary."[84] Some have suggested diluting the SDR currency basket further by making it more inclusive, including "the Chinese renminbi, the Indian rupee, the Swiss franc, and the Australian and Canadian dollars."[85] As explained at

75. *Factsheet: Special Drawing Rights (SDRs)*, INTERNATIONAL MONETARY FUND (Oct. 3, 2014), http://www.imf.org/external/np/exr/facts/sdr.htm.

76. *Id.*

77. *Id.*

78. *Id.*

79. Mark J. Wolff, *Failure of the International Monetary Fund & World Bank to Achieve Integral Development: A Critical Historical Assessment of Bretton Woods Institutions' Policies, Structures & Governance*, 41 SYRACUSE J. INT'L L. & COM. 71, 83 (2013).

80. *Id.*

81. Hockett, *supra* note 74, at 472.

82. *Id.*

83. *Factsheet: IMF Quotas*, INTERNATIONAL MONETARY FUND (Oct. 3, 2014), http://www.imf.org/external/np/sec/memdir/members.aspx.

84. Caliari, *supra* note 15, at 601.

85. Hockett, *supra* note 74, at 472.

more length below, however, this would still allow the dominant quota holder, be it the United States or another country in the future, to influence the relative value of the SDR. True reform requires a more fundamental overhaul of the current monetary system.

5. International Reserve Currency

"On the other hand, taking the path of a *sui generis* global currency, distinct from the SDR, has as its main advantage, creation of actual currency."[86] An international reserve currency would correct both account imbalances and exchange rate volatility. John Maynard Keynes advocated for such a reserve unit—the "bancor"—during the creation of the Bretton-Woods system seventy years ago.[87] "Under the Keynes plan, backing would consist not of currencies held by his proposed International Clearing Union, but of the promises of member nations to accept ICU balances in settlement of international debts."[88] Confidence in this system would require balances "to be acceptable at par value, and there would have to be some assurance account balances would not increase indefinitely"—a problem Keynes solved by tying the bancor to gold.[89] The SDR basket, at least as it exists today, is thus critically different from Keynes' original bancor.[90]

After the most recent recession, some did propose lesser versions of these systemic reforms, but they were seen as radical at the time.[91] Other "emerging economies" similarly called for a "global economic order less dominated by US."[92] Russia proposed a resurgent IMF-issued currency, dubbing the current world economic order "obsolescent"

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86. Mirandola, *supra* note 74, at 85.

87. *See* INTERNATIONAL MONETARY FUND, *Proposals for an International Clearing Union*, *in* 3 THE INTERNATIONAL MONETARY FUND 1945-1965: TWENTY YEARS OF INTERNATIONAL MONETARY COOPERATION 19 (J. Keith Horsefield ed., 1969).

88. Thomas Ehrlich et. al., *Legal Problems of International Monetary Reform*, 20 STAN. L. REV. 870, 938 (1968).

89. *Id.*

90. *See Factsheet: Special Drawing Rights (SDRs)*, *supra* note 75 ("The SDRs were used in three ways: first, to obtain convertible currency from a participant designated by the IMF as obligated to purchase SDRs; second, to obtain equivalent amounts of a member's own currency held by another participant; and third, to make repurchases of a member's currency from the IMF and to pay charges levied for drawings on the IMF's resources."); Jeanne Asherman, *The International Monetary Fund: A History of Compromise*, 16 N.Y.U. J. INT'L L. & POL. 235, 276 (1984).

91. *See* Zhou Xiaochuan, *Reform the International Monetary System*, BANK FOR INTERNATIONAL SETTLEMENTS 1 (Mar. 23, 2009), http://www.bis.org/review/r090402c.pdf.

92. Andrew Batson, *China Takes Aim at Dollar*, WALL ST. J., (Mar. 24, 2009), http://online.wsj.com/articles/SB123780272456212885.

and "unipolar."[93]

China called for the creation of a new currency to eventually replace the dollar as the world standard shortly before a G20 meeting in London in the early days of the financial crisis.[94] Its proposal mentioned an enhanced role for SDRs, but its proposal was by no means limited to the current SDR model. China advocated, much like this Note, a move to a reserve currency that belongs to no individual nation, arguing such a currency would give nations more freedom to shift monetary policy and exchange rates, and would be a more equitable way to finance the IMF.[95] China's concern with the current system stemmed from frustration with financial dependence on U.S. government holdings, meaning "the value of the national rainy-day fund is mainly driven by factors China has little control over, such as fluctuations in the value of the dollar and changes in U.S. economic policies."[96] In other words, China was concerned that U.S. domestic monetary policy had negative externalities that affected the whole system: "Because other nations continued to park their money in U.S. dollars, the argument goes, the Federal Reserve was able to pursue an irresponsible policy in recent years, keeping interest rates too low for too long and thereby helping to inflate a bubble in the housing market."[97] As Zhou Xiaochuan put it, "the costs of such a system to the world may have exceeded its benefits."[98]

International relations scholars abroad described the Chinese proposal as a product of dissatisfaction with the current system, "in which the dominant country currency issuer, the United States, runs fiscal and external deficits, and there is no effective mechanism for bringing about adjustments between reserve-issuing and surplus countries."[99] Similarly,

> "[t]he value of China's massive foreign exchange reserves, the fortunes of exporters and the flows of hot money into the country are all shaped by the [U.S. dollar/renminbi] USD/

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93. *Russian Proposals to the London Summit*, PRESIDENT OF RUSSIA (Mar. 16, 2009), http://archive.kremlin.ru/eng/text/docs/2009/03/213995.shtml. *See also* Douglas W. Arner & Ross P. Buckley, *Redesigning the Architecture of the Global Financial System,* 11 MELB. J. INT'L L. 185, 237 (2010).

94. Batson, *supra* note 92.

95. *See* Zhou, *supra* note 91, at 2.

96. Batson, *supra* note 92.

97. *Id.*

98. *See* Zhou, *supra* note 91, at 1.

99. Gregory Chin & Wang Yong, *Debating the International Currency System: What's in a Speech*, 6 CHINA SECURITY 1, 3 (2010).

RMB exchange rate and the international currency system. China has a greater stake in the dollar system than many other countries because of its massive foreign currency reserve and heavy reliance on trade-related growth. China has found itself constrained by the enduring systemic power of the United States and the centrality of the dollar in the international monetary system."[100]

Others, such as John Lipsky—the IMF's deputy managing director at the time—were seemingly receptive to China and Russia's radical proposals,[101] Yet, the possibility of international reserve asset has continued to be dismissed by many.[102]

Nevertheless, as this Note argues, a freestanding international reserve currency, indexed to gold, is the only cure to global account imbalances. Even aside from Keynes, this proposal is not entirely new. Scholars have, for some time, considered international reserve currencies in various forms. Yet other iterations of this recommendation by scholars have suffered either from overly ambitious new international institutions with wide regulatory power,[103] or floating exchange rates that will, over time, make the reserve currency just as volatile as the dollar today.[104] Keynes' bancor "assumed a world with strong capital account controls, pegged currencies, and stable exchange rates."[105] If such an international reserve currency is to work, it must demonstrate similar characteristics.

The scholar who has come closest to this result is Robert Hockett, a law professor at Cornell University. He makes a compelling case for fully monetizing the SDR itself, making it into an international reserve currency, "enabling us at long last to take ourselves off the horns of the 'Triffin dilemma.'"[106] His approach would reform the IMF and the Bank for International Settlements into one "Global Clearing Union"

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100. *Id.* at 3-4.

101. Batson, *supra* note 92.

102. Dahlman, *supra* note 21, at 100 n.12 ("[T]here are two ways that a country can increase it international reserves without running a current account surplus. One way is to borrow long-term and hold the proceeds in short-term assets. Another is to receive a share of a distribution of an international reserve asset like the SDR. However, many countries cannot borrow except perhaps at exorbitant rates. Also, there is little likelihood of a distribution of an international reserve asset anytime soon.").

103. *See, e.g.*, Mirandola, *supra* note 74.

104. *See, e.g.*, Caliari, *supra* note 15.

105. Mirandola, *supra* note 74, at 553.

106. Hockett, *supra* note 74, at 480.

(GCU)—a central bank that would issue global money credit and set monetary policy. Rather than the "IMF's current sporadic reevaluations, the GCU's adjustment mechanism [would] operate 'automatically,' according to a formula" and would therefore, he argues, be "predictable."[107] His suggested reform, though strong on a number of counts, does not go far enough. And it ignores the political resistance such a global central bank would almost certainly face. Even with a "rule-based" approach, the United States—the most critical player in achieving effective reform—would likely oppose any plan that vests an international institution with such a large degree of discretionary authority.[108]

This Note proposes a model that would not only coordinate international currency markets, but also bring much-needed stability to exchange rates. These dual objectives would be achieved by reintroducing fixed exchange rates and housing authority over the reserve currency in a sub-agency of the WTO, an international institution with broad membership and proven track record of effectiveness. The remainder of the Note will be dedicated to explaining the three aspects of this proposal: an international reserve currency, fixed exchange rates, and WTO regulatory authority. Most importantly, it will explain why the United States should sign-off on, and support, this new global financial order.[109]

IV. Proposed Structural Reform

A. *Why We Need An International Reserve Currency To Correct Global Account Imbalances*

The main concern raised by the 2008 financial crisis was that the dollar is both the dominant reserve and trading currency, generating ever-growing imbalances among those countries with surpluses and those with deficits.[110] The problem, however, was not the dollar itself, but the use of any national currency as a reserve currency.[111]

For the last decade, scholars and practitioners have predicted that the renminbi or the euro would overtake the dollar as the world reserve

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107. *Id.*

108. *Id.*

109. *See* Roger L. Torneden, *Will Devaluation of the Dollar Pull the U.S. Out of Depression Once Again?*, 15 Nexus 67 (2009-2010).

110. *See, e.g.*, DeAnne Julius, *A Roadmap for SDR Evolution*, *in* Beyond the Dollar: Rethinking the International Monetary System 36-42 (Paola Subacchi & John Driffill eds., 2010).

111. Caliari, *supra* note 15, at 588.

currency, or at least create a multi-polar money market.[112] As discussed above, many have alternatively predicted, and even advocated for, regional currency blocs similar to the euro in the North American Free Trade Agreement (NAFTA) zone and Asia.[113] A multi-polar currency system would reduce reliance on the dollar, but potentially make global markets even more unstable. If, for instance, regional currency blocs were organized in current geographic concentrations, deficit and surplus countries would be lumped separately, increasing volatility.

Leaving aside the unique problems with multi-currency blocks, economists and scholars have long recognized the instability of using national reserve currencies in the first place.[114] A 2008 United Nations (UN) Committee on Reforms of the International Monetary and Financial System, chaired by Nobel Prize-winner economist Joseph Stiglitz, stated, for instance:

> One of the main problems of the Bretton Woods system was identified by Robert Triffin in the 1950s: the use of a national currency (the US dollar) as the international reserve currency. This generated a difficult dilemma since the dollar deficits necessary to increase global liquidity eroded confidence in the dollar as a reserve currency and created doubt about the ability of the U.S. to maintain dollar-gold parity. Abandonment of dollar convertibility and the acceptance of flexible exchanges rates eliminated some of these problems but at the same time created new ones. Instead of uncertainty over the ability to maintain dollar-gold parity, the "Triffin dilemma" has been reflected in large swings in U.S. current account imbalances and associated volatility of the dollar exchange rate and, in the long-run, with the risk of loss in the value of foreign exchange reserves held in dollars as U.S. external deficits increased.[115]

Replacing one national currency with another, then, will only reinitiate the cycle of boom and bust in global liquidity, perpetuating an endless "Triffin dilemma" game in which no one wins—least of all the new reserve currency holder.

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112. *See, e.g.*, Judy Shelton, *Currency Chaos: Where Do We Go From Here?,* WALL ST. J. (Oct. 16, 2010), http://www.wsj.com/articles/SB10001424052748704361504575552481963474898.

113. *See* Wu, *supra* note 48, at 1.

114. *See* Caliari, *supra* note 15, at 588.

115. *Id.* at 590 (quoting Joseph E. Stiglitz et al., THE STIGLITZ REPORT: REFORMING THE INTERNATIONAL MONETARY AND FINANCIAL SYSTEMS IN THE WAKE OF THE GLOBAL CRISIS 157 (2010)).

B. *Fixed v. Floating Rates: Why The New Currency Should Be Indexed To Gold*

An international reserve currency alone, however, would be an incomplete remedy to the problem of global account imbalances. When asked whether a stable exchange rate is more favorable to trade, renowned economist Robert Mundell replied that "[t]he whole idea of having a free trade area when you have gyrating exchange rates doesn't make sense at all. It just spoils the effect of any kind of free trade agreement."[116] A fixed exchange-rate system is more conducive to global free trade and global economic recovery.[117]

This logic follows from Keynes' assumptions for the bancor,[118] and has long been followed within the European Union (EU), as Europeans have eliminated exchange-rate fluctuations among trade partners.[119] In fact, many regard fixed exchange rates among euro countries—which lowered transaction costs and made pricing more transparent—as one of the euro's greatest successes.[120] Any lessened confidence in the euro is arguably due not to fixed rates, but rather to the diversification of EU membership and uncoordinated domestic fiscal policies.[121]

Fixed exchange rates were likewise desirable at the beginning of the Bretton Woods scheme because they minimized currency fluctuations and ensured liquidity.[122] The gold standard introduced monetary stability because it prevented countries from printing currency and thus fanning inflation: if a currency is linked to gold, authorities are deterred from over-issuing currency because it can be redeemed for gold at any time.[123] The gold standard also provided informal international coordination over exchange rates.[124]

What made the gold standard unsustainable were growing account

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116. Shelton, *supra* note 112.

117. The decentralized discretion of separate central bankers contributes to the instability of floating exchange rates. *But see* Birgir T. Petursson & Andrew P. Morriss, *Global Economies, Regulatory Failure, and Loose Money: Lessons for Regulating the Finance Sector from Iceland's Financial Crisis*, 63 ALA. L. REV. 691, 720 (2012) (arguing that the risks of floating exchange rate regimes do not mean that they are the wrong policy, but simply that central bankers must be attentive to exchange-rate risk, something they did not do prior to the financial crisis).

118. Mirandola, *supra* note 74, at 553.

119. *See* Wu, *supra* note 48, at 7.

120. *See id.*

121. WOLF, *supra* note 67, at 29-92.

122. *Id.* at 15.

123. Posner & Sykes, *supra* note 51, at 1051.

124. *Id.*

deficits in the United States. In 1933, the United States made an emergency decision to abandon the gold standard and nullify contractual gold clauses. A divided Supreme Court later upheld the U.S.'s decision in what became known as the "*Gold Clause Cases*."[125] Yet, the dissenters in those cases warned that "[l]oss of reputation for honorable dealing will bring us unending humiliation; the impending legal and moral chaos is appalling."[126] Indeed, the original Articles of Agreement of the IMF ("IMF Agreement") required the United States to maintain the dollar at a fixed rate in relation to gold; after the United States abandoned this commitment,[127] the Agreement was amended in 1978.[128] It bears emphasis, however, that "the termination of USD-gold convertability in 1971 was done more as an act of expedience than as a foundational break with the Bretton Woods system."[129] In other words, the problem was not the fixed rate per se, but the domestic policy concerns, namely growing account deficits, that overtook it.

A currency fixed to gold would have many benefits on an international scale. Most notably, it would require minimal regulation and oversight from international institutions. Currency could not be printed, but would only be available on the surrender of domestic currencies. Some have proposed that, in a short-term window, countries might be able to exchange reserve currencies in addition to their own currency.[130] Fixed exchange rates could thus ensure a smooth transition to an international reserve currency, as countries like China would exchange dollars, enabling them to dispose of current reserves without flooding the currency market, and thus protecting the United States as well.[131]

Of course, a fixed-exchange rate system, tied to a gold standard, is not without its critics. So long as currency is taken to be nothing more

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125. *See, e.g.*, Perry v. United States, 294 U.S. 330 (1935).

126. Norman v. Baltimore & O.R. Co., 294 U.S. 240 (1935) (McReynolds, J., dissenting).

127. Detlev F. Vagts, *International Economic Law and the American Journal of International Law*, 100 AM. J. INT'L L. 769, 779-80 (2006).

128. *Compare* Articles of Agreement of the International Monetary Fund, *opened for signature* Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39 (entered into force Dec. 27, 1945), *with* Amendment of Apr. 30, 1976, 29 U.S.T. 2203 (entered into force Apr. 1, 1978).

129. Tayyab Mahmud, *Is It Greek Or Déjà vu All Over Again: Neoliberalism and Winners and Losers*, 42 LOY. U. CHI. L.J. 629, 659 (2014) (citing Joanne Gowa, CLOSING THE GOLD WINDOW: DOMESTIC POLITICS AND THE END OF BRETTON WOODS 147, 166 (1983)).

130. Mirandola, *supra* note 74, at 571.

131. *See* Paul Krugman, *China's Dollar Trap*, N.Y. TIMES, (Apr. 3, 2009), http://www.nytimes.com/2009/04/03/opinion/03krugman.html.

than a measurement of discrete market values—a tool for the predictable reduction of transaction costs in a market otherwise governed by barter—a fixed standard, such as gold, makes perfect sense. But if currency is to be manipulated by policymakers as a form of veiled market regulation, an increasingly common tactic employed by governments to increase exports, then a floating currency—governed by centralized banks—becomes the most natural conception.

Some critics note that the gold supply is finite, which will inevitably result in tension with economic growth.[132] Yet even under the gold standard in the original Bretton Woods system, the price of gold was fluid. As with other goods, when demand rises so, presumably, will the price. The international body holding regulatory authority over the new international reserve currency will, therefore, adjust its value against domestic currencies. This may not avoid fluctuation altogether, but it will insulate exchange rates from the unpredictability of domestic politics and monetary policy in any single country. Currency values would adjust to market forces just as any other good would.

The prospect of a gold standard, despite its many critics, has not been entirely forsaken. Many conventions still use gold to determine value. The Rome Convention, for example, still measures the value of damages for air carrier liability in gold francs.[133] Furthermore, prominent nations have recently begun stockpiling gold in lieu of the dollar and the euro. China, the largest surplus country in the world, and Russia, both dramatically increased their gold reserves after the financial crisis.[134]

C. *The Case For The WTO As A Regulatory Mechanism*

The question remains as to what sort of international organization should oversee the new international reserve currency. A new international institution, such as a global central bank like some have proposed, is as ambitious as it is controversial.[135] Of the institutions that already exist, the IMF would seem the most natural choice, having overseen currency regulation and managed its own variant of an international reserve currency, in the form of SDRs, for the last seventy

132. WOLF, *supra* note 67, at 344.

133. Kevin Kyser, *Tarnished but Still Valuable: A History and Present State of the Gold Franc*, 16 CURRENTS: INT'L TRADE L.J. 82, 86 (2007).

134. Leonid Bershidsky, *Putin is the Biggest Gold Bug*, BLOOMBERG (Nov. 13, 2014), http://www.bloombergview.com/articles/2014-11-13/putin-is-the-biggest-gold-bug.

135. *See, e.g.*, Mirandola, *supra* note 74, at 535.

years. The design flaws discussed below, however, make the IMF an unattractive candidate. The WTO, on the other hand, would be uniquely positioned to coordinate international trade and monetary policy in a way that will hopefully "reduce the likelihood of more international finance-induced boom and bust cycles."[136]

Predictions of the IMF's decline predate the current financial crisis.[137] Critiques of its structure and effectiveness fall along several dimensions. For one, "[b]oth IMF member countries and critics of the IMF have attacked the IMF's voting structure, characterizing it as outdated."[138] The quota-system determines who appoints members to the Executive Board, "how much that country initially pays to the IMF, the country's voting power, and the country's access to funding."[139] Many developing countries protest the static nature of the quota system, as the quota assigned a member does not necessarily adjust to reflect the member's economic size, and changes in either the initial or subsequent quota allotment must be approved by an 85 percent majority of votes allocated by preexisting quotas.[140] In part because of the difference in the level of drawings allowed to members relative to their quotas, the result is different levels of access to IMF assistance for industrialized and non-industrialized members.[141]

As the structural legitimacy of the IMF is often called into question, so too is its effectiveness in practice. Critics challenged the IMF's terms on the assistance it offered in the wake of the Asian and Mexican financial crises.[142] Some have even posited that IMF advice exacerbated the crises themselves.[143] And in terms of overall effectiveness, the IMF's

136. *See, e.g.*, Colares, *supra* note 12, at 610.

137. Ahdieh, *supra* note 1, at 5 (taking a somewhat more optimistic view of the IMF's resurgence after the financial crisis). Some have argued that the infusion of capital into the IMF and an increase in special drawing rights led to the resurgence of the IMF. *See id.* But that only tells half the story. Many still criticize the retroactive nature of IMF policy even in this crisis, in connection with the bailout of Greece. *See* Mahmud, *supra* note 129, at 639-54.

138. Wolff, *supra* note 79, at 87.

139. Aaron Bloom, *The Power of the Borrower: IMF Responsiveness to Emerging Market Economies*, 43 N.Y.U. J. INT'L L. & POL. 767, 775 (2011); *Factsheet: IMF Quotas*, *supra* note 83.

140. *Id. But cf.* John W. Head, *The Global Financial Crisis of 2008-2009 in Context-Reflections on International Legal and Institutional Failings, "Fixes," and Fundamentals*, 23 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 43, 73 (2010) (noting the "the recent increase in voting power of China, Korea, Mexico, and Turkey"). This is not an overhaul of the quota system, so legitimacy remains an issue.

141. Asherman, *supra* note 90, at 272.

142. Arner & Buckley, *supra* note 93, at 199.

143. Mahmud, *supra* note 129, at 697 (noting that contractionist policies advocated by the IMF "exacerbated the contagion, the spread of the downturn from one country to the next).

advice seems to be followed in a low percentage of cases.[144] Of interest here, the IMF's own Independent Evaluation Office (IEO) has critiqued the IMF's effectiveness "in reducing imbalances and currency manipulation by prominent members, resulting in lost credibility for the IMF" in fulfilling the function it was originally assigned.[145] Recent attempts at reform have not sufficiently allayed either the structural or efficiency concerns surrounding the IMF.[146]

Generally speaking, the WTO would prove a better mechanism for regulation of an international reserve currency, predominantly because it provides precisely the structure and legitimacy the IMF lacks. The WTO embodies some of the key elements needed to prevent future crises: structural reflection of the interconnectedness of trade and finance,[147] legitimacy, and equal status for all stakeholders.

Existing provisions of the WTO Agreement already integrate the balance of global accounts and the balance of trade, as it provides the "only existing multilateral framework requiring countries to consult [now] with IMF on 'problems concerning monetary reserves, balances of payments or foreign exchange arrangements occurs within the WTO trade system."[148] That requirement could be extended to reach account imbalances under the new proposed system by way of reference to a sub-agency of the WTO rather than the IMF.

The WTO also enjoys comparative legitimacy among international institutions. This legitimacy is derived, most significantly, from its enforcement mechanisms, including "its secretariat, its rules and its dispute settlement mechanisms."[149] State consent to the WTO nevertheless also contributes to its legitimacy and increases the likelihood of

144. Daniel Heath, *International Coordination of Macroprudential and Monetary Policy*, 45 GEO. J. INT'L L. 1093, 1126 (2014) ("One report . . . asking staff members to estimate the traction of Article IV advice . . . found that IMF advice was followed twenty percent of the time, and was agreed to by countries with a slower pace for implementation twelve percent of the time. It also confirmed that advanced economies tend not to follow IMF advice while borrowing countries do.").

145. For example, the IMF responded to the G-20's call to create and allocate an additional $250 billion in SDR's, seeking capital from Japan and the EU, among others. Head, *supra* note 140, at 73. Yet infusion of cash alone does not solve the inability of the IMF to take proactive action or the questionable legitimacy it holds in the eyes of many sovereign beholders.

146. *See id.*

147. *See* Colares, *supra* note 12, at 616.

148. *Id.* at 615.

149. Joshua Meltzer, *The Challenges to the World Trade Organization: It's All About Legitimacy*, THE BROOKINGS INSTITUTION, at 12 (2011).

WTO resolutions being put into practice by member states.[150] Unlike the IMF quota system, "each WTO member has one vote, and votes are not weighted (for instance, according to a member's share of world trade)."[151] The WTO decision-making process is characterized by consensus, requiring that no member formally oppose the proposal in question.[152] If consensus is impossible, in theory different majority votes are required, depending on the issue. But consensus is the preferred and dominantly practiced mode of decision-making.[153]

Consensus is bolstered further by the WTO's single-undertaking principle: negotiations must be treated as part of a package, facilitating compromise and giving every WTO member an equal chance to veto proposals.[154] The drive for consensus, of course, means a slow and steady slog towards policy change. Sometimes negotiations fail altogether, as in the current Doha Round.[155] But with a fixed rate international reserve currency, such slow deliberation is precisely what is needed. Many countries trusting the regulation of such a currency to an international institution would likely prefer that its authority be restrained. Consensus, after all, guarantees on some level that where policy changes are made, they are made because they are good for the world economy as a whole—for debtor and creditor, deficit and surplus, developed and developing nations.

The selection of the WTO is not necessarily critical to this Note's proposed model. It is merely emblematic of the type of regulatory oversight necessary to make a reserve currency work— equal representation by member states, conservative and limited regulatory authority, and institutional respect.

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150. *See generally* Joshua Meltzer, *State Sovereignty and the Legitimacy of the WTO*, 26 U. PA. J. INT'L ECON. L. 693, 693 (2005).

151. Katharina Gnath et. al., *G20, IMF, and WTO in Turbulent Times*, STIFTUNG WISSENSCHAFT UND POLITIK: GERMAN INSTITUTE FOR INTERNATIONAL AND SECURITY AFFAIRS, 26 (2012), http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2012_RP10_Gnath_mdn_Schmucker.pdf

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* The Doha Round would have given the global economy a strong boost during the crisis. *Id.* at 32. The failure to conclude negotiations in the wake of the financial crisis is, admittedly, a mark against the WTO. But the point is that the WTO, as a model, maintains several of the characteristics necessary to an international institution likely to successfully oversee the proposed international reserve currency.

V. Conclusion: Why The United States Should Embrace An International Reserve Currency

An international reserve currency is the antidote to global account imbalances, and is, at least in principle, globally attractive:

> [B]oth surplus and deficit countries share an interest in reform, even if the path to such reform might be a difficult one. This shared interest arises from the realization that the economies of each (surplus and deficit countries) are exposed to detrimental effects of liquidity-induced bubbles, even if the legal and economic infrastructure through which liquidity connects with excessive risk-taking in their economies might differ.[156]

The United States in particular should embrace the proposed international reserve currency for several reasons: it would reduce dollar liquidity (which has proven a political liability), rebalance the domestic economy, encourage responsible government spending, and slowly devalue the dollar, spurring U.S. exports and, hopefully, the United States' manufacturing infrastructure.[157] But in the end, the United States' most compelling rationale for supporting an international reserve currency is this: the impending loss of the dollar's reserve currency status and the incentive to make a controlled exit while the United States can control the terms.

Many argue that, as U.S. debts balloon, foreign banks will likely "reduce their dollar exposure and the dollar will lose its status as the single dominant currency for reserve accumulation."[158] Even in the absence of another economic crisis, "simmering trade and exchange-rate tensions between the United States and China . . . might accelerate the pace of international currency reform."[159]

The fact is, the United States has been facing a "hegemon's dilemma" for decades, with deleterious effects on the U.S. economy.[160] While providing benefits, reserve-currency status also inevitably precipitates debtor status, as it has with the United States.[161] This dilemma,

156. Colares, *supra* note 12, at 610.

157. Torneden, *supra* note 109, at 85.

158. *Id.*

159. *Id.*

160. Arthur Stein, *The Hegemon's Dilemma: Great Britain, the United States, and the International Economic Order*, 38 Int'l Org. 355, 384 (1984).

161. Warnock, *supra* note 6.

described above, *supra* at 23, is known as the "Triffin paradox" and posits that to

> supply the world's risk-free asset, the center country must run a current account deficit and in doing so become ever more indebted to foreigners, until the risk-free asset that it issues ceases to be risk free. Precisely because the world is happy to have a dependable asset to hold as a store of value, it will buy so much of that asset that its issuer will become unsustainably burdened. The endgame to Triffin's paradox is a global, wholesale dumping of the center country's securities. No one knows in advance when the tipping point will be reached, but the damage brought about by higher interest rates and slower economic growth will be readily apparent afterward.[162]

While the "dollar's status as the world's reserve currency has become a facet of U.S. power," allowing the United States to borrow effortlessly,[163] "capital inflows associated with the dollar's reserve-currency status have created a vulnerability, too, opening the door to a foreign sell-off of U.S. securities that could drive up U.S. interest rates and render the nation's formidable stock of debt far more expensive to service."[164] Indeed, precisely "because the United States allows the dollar to function as a global reserve and exchange unit, it must run persistent balance-of-payments deficits to supply the world with liquidity. Doing so, however, undermines not only the competitiveness of U.S. exports but also the confidence of markets and central banks in

162. *Id.*

163. Many tout the benefits of such status. Michael Beckley, *China's Century? Why America's Edge Will Endure*, 36 INT'L SEC. 41, 50 (Winter 2011-2012) ("The dollar's global role may handicap American exports, but it also comes with perks including seigniorage, reduced exchange rate risks for U.S. arms involved in international commerce, competitive advantages for American banks in dollarized financial markets, and the ability to delay and deflect current account adjustments onto other countries. More important, foreign governments that hold dollar reserves depend on U.S. prosperity for their continued economic growth and are thus "entrapped," unable to disentangle their interests from those of the United States. Rather than seeking to undermine the American economy, they invest in its continued growth."). Benjamin J. Cohen estimates that the United States earns $20 billion annually from seigniorage. *See* BENJAMIN J. COHEN, GLOBAL MONETARY GOVERNANCE 258 (2008). On the benefits of reserve currency status, *see* David P. Calleo, *Twenty-First Century Geopolitics and the Erosion of the Dollar Order*, *in* THE FUTURE OF THE DOLLAR (Eric Helleiner & Jonathan Kirshner eds., 2009).

164. Warnock, *supra* note 6.

the dollar, thereby increasing the risk of a dollar collapse."[165] This phenomenon, in turn, has an impact on U.S. foreign policy,[166] because "foreign creditors can wield their dollars as weapons, manipulating U.S. policy by threatening to sell their reserves."[167] And "[e]ven if foreigners hold on to their dollar-denominated assets, the United States' rising deficits trigger higher interest rates and, as a consequence, slower rates of economic growth."[168]

Admittedly, despite all the deficiencies in the current system, the United States will be reticent to give up its reserve currency status. This is understandable. Monetary sovereignty is as old a concept as the nation state itself—older even than political sovereignty.[169] The proposed regime, however, would not deprive nations of monetary sovereignty. Countries would still be free to set monetary policy to the extent they would like, and would not have to cede control or commit to coordination through a central authority such as a Clearing Union. And because an international reserve currency—fixed to gold and with minimal regulatory oversight—would be a far cry from such an international institution, it might make the United States, among others, more comfortable placing its faith in it.

165. Beckley, *supra* note 163, at 47.

166. The general impact on U.S. foreign policy of the nation's now being a "debtor empire" is explored in NIALL FERGUSON, COLOSSUS: THE PRICE OF AMERICAN EMPIRE 279 (2004).

167. Beckley, *supra* note 163, at 47.

168. *Id.*

169. *See* Robert A. Mundell, *Monetary Unions and the Problem of Sovereignty*, 579 ANNALS AM. ACAD. POL. & SOC. SCI. 123, 130 (2002).