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Global Implications of the Asian Financial Crisis: Banking, Economic Integration, and Crisis Management in the New Century

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GLOBAL IMPLICATIONS OF THE ASIAN FINANCIAL CRISIS: BANKING, ECONOMIC INTEGRATION, AND CRISIS MANAGEMENT IN THE NEW CENTURY†

John W. Head††

I. INTRODUCTION 940
II. THE CRISIS IN ASIA—MID-1997 TO MID-1998 941
A. *Thailand—Boom, Bust, and Bailout* 941
B. *Indonesia—Scrutiny, Disaster, and More IMF Funding* 942
C. *Korea—the Biggest Tiger Falls* 945
III. THE IMMEDIATE AFTERMATH—RECOVERY, DESPAIR, CONTAGION 946
A. *Thailand and Korea Recover* 947
B. *Indonesia's Despair* 947
C. *Contagion: Japan, Brazil, and Beyond* 949
IV. ENHANCED DISCIPLINE IN BANKING LAW 951
A. *Central Bank Independence* 951
B. *Imposing International Banking Standards* 952
C. *"Exit Policy"—Dealing with Insolvent Banks* 953
V. A CHALLENGE TO GLOBAL ECONOMIC INTEGRATION 954
A. *A New World of Currencies* 954
B. *Who Wants the Millennium Round?* 957
VI. CRISIS CONTROL AND THE IMF 958
A. *The IMF's Performance in the Asian Crisis* 959
B. *A New International Financial Architecture* 960

† This is the prepared text of a presentation that Professor Head made at William Mitchell's March 15, 1999 "Public Square" forum on "the Asian Financial Crisis and Its Global Implications." Although his presentation took the form of a speech rather than an article, Professor Head has added some footnotes for purposes of publishing his remarks in the Law Review, in order to cite sources of some of the quoted material and factual assertions and to direct readers to related literature on several of the topics he discussed.

†† Professor of Law, University of Kansas. I wish to thank Cathleen Hull for her assistance in preparing this article. Support from the University of Kansas General Research Fund is also gratefully acknowledged.

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I. INTRODUCTION

My remarks for tonight's Public Square forum focus on three global implications of the Asian financial crisis that I consider most important as we move into a new century. They relate to certain legal aspects of banking, global economic integration, and financial crisis management.

You will see that the word "crisis" appears twice in the title of my presentation, and appropriately so. It has been a crisis for millions of people in Asia in terms of their household economies, businesses, savings, education, health, and futures. President Clinton, in his state of the union address in January, called it "the most serious financial crisis in a half a century."[1] A leading economist has referred to it as "something that has no parallel in human history."[2] For millions of people, it has increased unemployment, prices, and poverty, while cutting opportunities for education, health, and other social programs.[3]

Why the Asian financial crisis arose, how it affects us all, and what it means in the years ahead, are topics too big to cover fully in this evening's forum. But we can at least scratch the surface. To get us started in that effort, I will take a few minutes to recount briefly the economic tragedy that struck Asia starting in mid-1997 and the immediate aftermath of that tragedy. I will then summarize my views regarding its longer-term implications.

My thesis, in a nutshell, is this: the Asian financial crisis has revealed some deep fault lines in our international economy, and for years to come we shall look back on it as a turning point in economic history. The crisis will have repercussions far into the new century, especially in three areas. First, the Asian financial crisis will bring an enhanced discipline in banking laws for much of the world (especially in less developed countries), with a view to making national financial systems stronger, more resilient, and better able to withstand the rigors of international market forces.

Second, the Asian financial crisis throws a new light on global economic integration, on at least two fronts: currency regimes and trade regulation. By highlighting so dramatically how fragile a na-

1. Nicholas D. Kristof & Edward Wyatt, *Who Went Under in the World's Sea of Cash*, N.Y. TIMES, Feb. 15, 1999, at A1.
2. *Id.*
3. *See* Ernesto Pernia & James C. Knowles, *Assessing the Social Impact of the Financial Crisis in Asia*, 30 ASIAN DEV. BANK REV., No. 4 1998, at 20, 20-21.

tional currency can be, the Asian financial crisis will trigger a new search for better currency exchange arrangements in the world. Further, by highlighting the susceptibility of a national economy to global economic forces, the Asian financial crisis will undercut support for the kind of trade liberalization that has prevailed for half a century and that now prompts the U.S. and European governments to press for a new Millennium Round of trade and investment negotiations.

Third, I believe the Asian financial crisis marks a turning point in global economic crisis management—that is, the mechanisms we have, or should have, for dealing with the threat of national or regional economic collapse. Which way we will turn on that issue of global economic crisis management is now up in the air and needs, in my view, a careful, intelligent, and imaginative debate.

II. THE CRISIS IN ASIA—MID-1997 TO MID-1998 [4]

The Asian economic crisis that struck in 1997 supports the old adage that bad things come in threes. The crisis surfaced first in Thailand in July 1997, moved to Indonesia beginning in October 1997, and hit Korea in late November of that year. In each case, the International Monetary Fund ("IMF") reacted with a bailout package involving its own funds and pledges from various countries to provide backup financing. I shall quickly describe what happened in those three countries.

A. *Thailand—Boom, Bust, and Bailout*

Thailand had a boom economy in the 1980s, but from 1993 onward, Thailand's economic progress of the previous decade started to unravel, with external debt reaching fifty percent of gross domestic product ("GDP")—and forty percent of that debt was

4. The description of the Asian financial crisis offered in the following paragraphs draws heavily from John W. Head, *Lessons from the Asian Financial Crisis: The Role of the IMF and the United States*, 7 KAN. J.L. & PUB. POL'Y 70, 71-74 (1998). Citations to authority and related reading appear there. The Asian financial crisis has been described in many other articles as well. For a useful overview and analysis, see the four-part series of articles appearing in the *New York Times*: Kristof & Wyatt, *supra* note 1; Nicholas D Kristof & David E. Sanger, *How U.S. Wooed Asia to Let Cash Flow In*, N.Y. TIMES, Feb. 16, 1999, at A1; Nicholas D. Kristof & Sheryl WuDunn, *Of World Markets, None an Island*, N.Y. TIMES, Feb. 17, 1999, at A1; Nicholas D. Kristof, *World Ills Are Obvious, the Cures Much Less So*, N.Y. TIMES, Feb. 18, 1999, at A1.

short-term.[5] Most ominous, in my view, were the weaknesses that started appearing in the financial system, especially in banks and finance companies. These institutions borrowed heavily in dollars and used those resources to pump money into the economy, creating a bubble. The bubble burst, and the weaknesses in the financial system became obvious to lenders and investors in the first half of 1997. Confidence in Thailand's currency, the baht, dropped quickly, forcing the government in July 1997 to abandon its attempts to keep the value of the baht "pegged" to the U.S. dollar.[6] The value of the baht fell sharply, as did values on Thailand's stock market.[7]

In August 1997, the IMF arranged a financial bailout package totaling about $17 billion.[8] That package included $4 billion from the IMF itself, $1.5 billion from the World Bank, $4 billion from Japan, and a few billion from other countries and institutions.[9]

The bailout money was not, of course, given freely to Thailand merely out of a sense of neighborliness. The money was pledged in large part to prevent Thailand's crisis from spreading to other countries, and the money had strings attached. Specifically, the government of Thailand had to accept IMF prescriptions on several economic and financial goals, such as increasing taxes, cutting government expenditures, and—most important in my view—suspending or restructuring non-viable financial institutions and implementing other reforms in the financial sector.[10]

B. Indonesia—Scrutiny, Disaster, and More IMF Funding

I will say more in just a moment about those reforms. First, let me pick up the story with how Thailand's troubles spread to Indonesia. The steep depreciation of the Thai baht naturally posed threats to Thailand's trade competitors, as Thai exports became cheaper to buy in terms of other currencies.[11] This led to declines

5. *See* International Monetary Fund, *IMF Approves Stand-by Credit for Thailand* (Aug. 20, 1997) <http://www.imf.org/external/np/sec/pr/1997/pr9737.htm>.

6. *See id.* (stating that on July 2, 1997, "authorities introduced a managed float of the baht, which subsequently depreciated about 20 percent against the U.S. dollar during July").

7. *See id.*

8. *See id.*

9. *See id.* (providing further details of the Thailand bailout package).

10. *See id.*

11. *See* W. Christopher Walker, *Contagion: How the Asian Crisis Spread*, 30 ASIAN DEV. BANK REV., No. 4 1998, at 10, 11.

in the values of some of the currencies in other Asian countries, which in turn made it more expensive for borrowers in those countries to service their debts, many of which were short-term, foreign currency debts.[12] Also, more generally, problems in the Thai economy prompted investors to scrutinize other Asian economies more closely, to see if they showed similar problems.[13]

This added scrutiny illuminated serious weaknesses in Indonesia's economy, including, in particular, its banking sector. Indonesian banks, like those in Thailand, had borrowed heavily from abroad, and had also made loans to domestic companies that were heavily exposed to similar foreign borrowings.[14] As the Indonesian rupiah fell in value in the weeks following the Thailand disaster, it became more likely that Indonesian borrowers would default on their short-term foreign borrowings. In short, the Indonesian banking system was threatened with collapse.

Once again the IMF stepped in. In early November, the IMF arranged a bailout package totaling $40 billion.[15] The $40 billion for Indonesia came from about the same places as the money for Thailand had come from—$10 billion from the IMF, $3 or $4 billion each from the World Bank and the Asian Development Bank, $5 billion from Japan, and several billion from other countries.[16]

Like the bailout package for Thailand, the one for Indonesia had strings attached. Indonesia's government was required to adopt several economic austerity measures, to restructure its financial sector, and to open its economy to foreign trade and investment.[17] Indonesia could get access to the money in the IMF bailout package only if it took certain prescribed steps to achieve these goals.

Let me pause here to take a short detour. I'll come back to talk about Korea in just a minute. But first, what kind of an animal is this IMF bailout package? What is in the package? First of all, it is a package of loans. These bailouts are not grants. The centerpiece of the bailout package is a loan from the IMF. The IMF usually does not call it a loan, but instead refers to its financing as a

12. *See id.* at 11-12.

13. *See id.*

14. *See* International Monetary Fund, *IMF Approves Stand-by Credit for Indonesia* (Nov. 5, 1997) http://www.imf.org/external/np/sec/pr/1997/PR9750. htm>.

15. *See id.*

16. *See id.*

17. *See id.*

William Mitchell Law Review, Vol. 25, Iss. 3 [1999], Art. 2

"stand-by arrangement."[18] For our purposes, though, it is close enough to a loan to call it a loan. Typically, an IMF loan has to be repaid about three to five years after it is disbursed.[19] In the meantime, the loan carries interest on it, and the interest rate is tied to market rates. The interest rate on these IMF loans for last year was a little under five percent,[20] or, in special cases, around eight percent.[21] There are some types of IMF loans that do not carry interest and that have longer maturities,[22] but these were not the type of loans that Thailand and Indonesia received as part of their bailout packages.

What are the chances of these loans being repaid? Judging from the past, the chances are pretty good. For its 1997-98 fiscal year, the IMF reported total credit outstanding to its member countries of about $65 billion.[23] It reported a total amount of overdue obligations—unpaid loans—of about $3 billion.[24] That works out to a default rate of less than five percent. Put differently, the IMF has a loan repayment rate of over ninety-five percent. I imagine there are a lot of commercial banks that would enjoy having loan

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18. For an account of IMF financing through "stand-by arrangements" and other means, see John W. Head, *Suspension of Debtor Countries' Voting Rights in the IMF: An Assessment of the Third Amendment to the IMF Charter*, 33 VA. J. INT'L L. 591, 594-95 (1993). For a general description of IMF financing and other aspects of IMF operations, see the articles contained in 27 IMF SURV. SUPP. 1 (1998).

19. *See IMF Financing Helps Members Pursue Sound Policies*, 27 IMF SURV. SUPP. 16, 16 (1998). The IMF loan to Korea required repayment beginning after one year. *See* Michel Camdessus, *Economic and Financial Situation in Asia: Latest Developments* (Jan. 16, 1999) <http://www.imf.org/external/np/speeches/ 1999/011699.htm>. It was the first loan made under the Supplemental Reserve Facility established by the IMF in December 1997. *See id.*; *see also IMF Financing, supra*, at 17 (discussing the Supplemental Reserve Facility as a "new lending window" and stating that it was first activated when it loaned money to Korea).

20. *See IMF Sets Annual Net Income Target to Add to Reserves*, 27 IMF SURV. SUPP. 27, 27 (1998) (showing the average rate of charge as 4.65% for regular borrowing).

21. *See IMF Financing, supra* note 19, at 17 (noting the "surcharge of 300 basis points" applicable to loans from the Supplemental Reserve Facility).

22. *See id.* at 17-18 (referring to the IMF's Extended Fund Facility and various concessional facilities).

23. *See id.* at 16 (showing credit outstanding at about SDR 50 billion). The SDR, or Special Drawing Right, is a special reserve asset created by the IMF. Its value is based on a "basket" of five strong currencies—the U.S. dollar, the Japanese yen, the Deutsche mark, the Pound sterling, and the French franc—and it is currently worth about $1.30. *See SDR Supplements Existing Reserves*, 27 IMF SURV. SUPP. 26, 26 (1998). The IMF's fiscal year runs from May 1 through April 30. *See IMF Financing, supra* note 19, at 16 n.1.

24. *See IMF Strategy Stresses Prevention, Cooperation*, 27 IMF SURV. SUPP. 28, 28 (1998) (showing overdue obligations for 1997-98 of about SDR 2.3 billion).

repayment rates that high. Why do countries pay back their IMF loans so religiously? Because IMF loans are very high-profile loans. If a country fails to pay one back, or to pay interest on one, its chances of getting financing from any other sources go way down.[25]

Let me make one more point about the IMF loans, and then I will end this detour and return to the story of the Asian financial crisis. In making a loan, the IMF does not hand over all the money to the government at once. Instead, the loan is made available in several disbursements, with all disbursements after the first one being conditional on the government's performance.[26] Specific economic targets are set in some areas, such as targets for reducing the country's inflation through a squeeze on the money supply, or reducing the country's budget deficit by cutting the number of employees on the government's payroll. In other areas, of course, the conditions take on a different character—for example, whether the country has enacted legislation to reform its system of banking supervision. If a government fails to meet any of these conditions—the quantifiable ones or the non-quantifiable ones—the IMF will typically refuse to release the next disbursement under the loan.[27] This has happened many times in many countries, including Indonesia and Russia in recent years.[28]

C. *Korea—the Biggest Tiger Falls*

I'll have more to say about the IMF later on. But now let me pick up again with the story of the Asian financial crisis as it unfolded in the latter half of 1997. On the heels of disaster in Indonesia came the biggest news of all. Korea, one of the Asian "tigers,"

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25. Many commercial and official creditors condition the disbursement of funds under a loan agreement with a developing country on approval of a loan from the IMF, or on the continued effectiveness of such a loan. *See* Head, *supra* note 18, at 594 n.5.

26. For explanations of the "conditionality" that applies to IMF lending, see *Fostering Sustained Policy Implementation,* 27 IMF SURV. SUPP. 14, 14-15 (1998). *See also* John W. Head, *Environmental Conditionality in the Operations of International Development Finance Institutions,* 1 KAN. J.L. & PUB. POL'Y 15, 21-22 (1991).

27. *See* Head, *supra* note 26, at 21.

28. *See, e.g., Indonesia Reform Program Not Yielding Results: Suharto,* AGENCE FRANCE-PRESSE, Mar. 12, 1998, *available in* 1998 WL 2240407 (stating that the IMF withheld Indonesia's second disbursement of its funds as it had refused to enact many of the reforms it promised it would); *World Bank Takes Itself to Task for Indonesia Lapses,* CHICAGO TRIB., Feb. 12, 1999, *available in* 1999 WL 2843489 ("The IMF has periodically withheld small amounts of money from Russia and other nations that have refused to live up to their financial agreements . . . .").

William Mitchell Law Review, Vol. 25, Iss. 3 [1999], Art. 2

saw its economy stumble and fall.[29]

In recent decades, the Korean economy had grown rapidly. Its per capita GDP in recent years had risen on average nearly seven percent a year, turning a poor agrarian economy into the eleventh biggest economy in the world.[30] However, Korea's economy had problems—in particular, an inefficient financial sector, where banks lacked a commercial orientation.[31] They made risky loans to companies that, as in Thailand and Indonesia, had incurred a lot of short-term foreign debt. Many of these companies went into bankruptcy starting in early 1997, both because of over-investment in some sectors of the economy (such as real estate) and because of a general cyclical downturn.[32] Those company bankruptcies resulted, of course, in a big increase in banks' non-performing loans. Korea's financial system was soon on the ropes.

Faced with the risk of total economic collapse, the Korean government accepted an IMF bailout package in early December 1997, amounting to $57 billion—the size of the Thailand and Indonesia packages combined.[33] Of that $57 billion, $21 billion came from the IMF.[34] It was the largest loan ever made by the IMF. As with the bailout packages for Thailand and Indonesia, the financing for Korea had strings attached—economic and financial policy prescriptions, and a requirement that Korea restructure its financial sector.[35]

III. THE IMMEDIATE AFTERMATH—RECOVERY, DESPAIR, CONTAGION

I have just given a thumbnail sketch of how the Asian financial crisis erupted and how the international community reacted. Let me turn now to the immediate aftermath of the crisis.

29. For an account of how the Asian financial crisis spread to Korea, see Head, *supra* note 4, at 73-74.

30. *See* International Monetary Fund, *IMF Approves SDR 15.5 Billion Stand-by Credit for Korea* (Dec. 4, 1997) <http://www.imf.org/external/np/sec/pr/1997/pr9755.htm>.

31. *See id.*

32. *See id.*

33. *See id.*; *see also supra* notes 11 and 18 and accompanying text.

34. *See id.*

35. *See id.* (providing the details of the Korea bailout package).

A. Thailand and Korea Recover

By the middle of 1998, Thailand and Korea had largely moved out of the crisis stage and into the recovery stage. Since that time, both the Thai baht and the Korean won have strengthened and stabilized,[36] and their stock markets have risen substantially from a year ago.[37]

In short, I think we can be confident that although Thailand and Korea were seriously injured by the financial crisis, they will rebuild and recover. The long-term effects of the economic crisis in those countries are profoundly troubling, especially at the level of individual citizens and families, but at least the short-term crisis for those countries' economies has largely passed.[38]

B. Indonesia's Despair

Indonesia is a different story. The financial crisis there combined with bigger economic and political factors: a dictator in power for over thirty years; a form of "crony capitalism" that concentrated much of the country's wealth in that man and his family; a strong undercurrent of resentment and resistance nurtured by years of repression; and an awkward agglomeration of islands, dialects, and cultures, sprawling across four time zones.[39] As you know, President Suharto was forced to step down in mid-1998, and his successor, President Habibie, has struggled to steer the country away from political and economic chaos ever since.[40] The last nine

36. *See, e.g., The Darkest Hour Comes Just Before Dawn*, ECONOMIST, Oct. 17, 1998, at 85, 85 (noting that the baht had risen to a seven-month high against the dollar); *IMF Approves $500M Credit Boost for Thailand*, NATION, Dec. 18, 1998, *available in* 1998 WL 21410419 (quoting the IMF's Managing Director as saying that Thailand's "exchange rate has strengthened and stabili[z]ed").

37. *See* Kristof, *supra* note 4, at A1. In another tenuous sign of economy recovery, Korea's imports rose in January 1999, the first such rebound in 16 months. *See* James Lim, *South Korea Imports Up 15.4 Percent in January, First Rebound in 16 Months*, 16 INT'L TRADE REP. 229, 229-30 (1999).

38. In a vote of optimism, *Economist* asserted several months ago that East Asia "offers the first glimmer of hope," and that "there are grounds for being cautiously optimistic: the bottom of the market may have been passed." *Darkest Hour, supra* note 36, at 85.

39. *See, e.g., Indonesia: Teetering*, BUS. ASIA, Apr. 19, 1999, *available in* 1999 WL 10768566 (describing many of the current and past problems facing Indonesia).

40. *See Suharto Does Not Believe in Democracy: Electoral Commission Official*,

months have seen student riots in many major cities, ethnic attacks against Chinese, Christians burning mosques, Muslims burning churches, a breakdown in military discipline, food riots, and even starvation.[41]

The picture in Indonesia is not entirely negative—the rupiah has now recovered to a value of 9,000 to the dollar, compared with over 16,000 to the dollar in June 1998[42]—but any such progress is necessarily fragile and tentative. The social, political, and economic infrastructure of Indonesia has been badly damaged, like a building torn apart by a terrible storm. It will not be rebuilt soon, if ever.

Let me take that image of a terrible storm and build it into a metaphor that I think captures the significance of the Asian financial crisis. Let's assume that I team up with Professor Downs (the William Mitchell faculty member who invited me to speak tonight) to open a travel agency specializing in South Pacific vacation packages. He and I travel to Fiji, Tonga and Vanuatu, and we encourage local residents there to build tourist hotels along the beaches in those South Pacific countries. "You build the beach resorts," we tell them, "and we will send tourists your way." It is a great idea: the tourists will be happy spending time and money at the beach resorts, the local residents will be happy earning the money the tourists spend, and Professor Downs and I will be happy with the fees and commissions we receive. In short order, a big beach resort is built in each of those three island countries, and a modest flow of tourists go there in the first year or two. Everybody is happy. The beach resorts are, to tell the truth, a little rickety, a little dirty, a little amateurish, but that is all part of their appeal.

After about five years, Professor Downs and I have seen our business grow like topsy. The beach resorts are always filled to capacity, and more resorts are being built not only on Fiji, Tonga, and Vanuatu, but now also in Samoa, the Solomon Islands, and other South Pacific island countries. Professor Downs and I think this is great.

There is, however, a problem: typhoons. Typhoons are getting

AGENCE FRANCE-PRESSE, Apr. 15, 1999, *available in* 1999 WL 2583998 (stating Suharto was ousted in May 1998, and replaced as President of Indonesia by Habibie).

41. *See* Kristof, *supra* note 4, at A1; *A Dum-Dum Too Many*, ECONOMIST, Nov. 28, 1998, at 42, 42; Mark Landler, *Grim Assessment by U.N. of Economic Slide in Asia*, N.Y. TIMES, Dec. 3, 1998, at A18.

42. *See* Kristof, *supra* note 4, at A1.

more frequent and more forceful in the South Pacific. Nobody knows whether to blame El Niño or global warming, but every year brings more typhoons. Unfortunately, the beach resorts are not built to be very sturdy. Professor Downs and I had never really looked too closely at their construction or their overall safety, although we did tell the owners to make sure the beach resorts were relatively safe. It turns out that they aren't strong enough to withstand anything more than a normal storm.

Then, one dark day in Paradise a terrible "signal III" typhoon—a real whopper—sweeps across the South Pacific, hitting several of the island countries and their beach resorts. Gale-force winds and punishing tidal waves leave some of the resorts in ruins, killing dozens of tourists and hundreds of local staff workers.

Professor Downs and I are distraught, and we decide to take action immediately. Even while the typhoons are still raging, we organize relief efforts where the storms have already brought death and destruction, and we help arrange financing to rebuild the beach resorts already damaged and to strengthen the foundations and walls and roofs of the resorts that the typhoons still threaten to strike.

Why are Professor Downs and I involved? For a mix of reasons: we encouraged the building of the beach resorts in the first place, we sent the tourists there, and we have already booked more tourists to go there in coming months. We have built a business that depends on the beach resorts.

In this metaphor, the South Pacific island countries represent the less economically developed countries around the world. The beach resorts represent their legal and financial systems, welcoming foreign investors. The tourists are those foreign investors. The typhoons represent the massive flow of funds and information and confidence that characterize today's global financial markets. And of course Professor Downs and I represent the IMF and the major industrial economies that have urged all countries, including especially developing countries, to adopt liberal trade and investment policies.

C. Contagion: Japan, Brazil, and Beyond

The Asian financial crisis is still with us. It is now in the longer-term "contagion" stage. Having moved from Thailand to Indonesia to Korea in the second half of 1997, it then started eating at Japan. That country is now suffering through its biggest recession since

World War II, and its economic policies and institutions—and especially its banking system—have been scrutinized and found deficient in many respects.[43]

This contagion effect has not been confined to Asia. Most recently, Brazil has been in the news because of its financial crisis.[44] Indeed, the Asian crisis has prompted investors to scrutinize many less developed countries—the so-called "emerging markets"—and to move away from the risks that those countries now appear to have. In Brazil's case, investor confidence dropped, the currency dropped, the economy faced disaster, and the IMF once again stepped in with a bailout package.

This "contagion" problem can also be illustrated by my typhoon metaphor. Even after the first wave of typhoons has passed, tourists (that is, investors) are wary of *all* beach resorts (that is, emerging markets). And the trouble might continue to spread. According to a recent World Bank report, there is still a danger of world recession as an after-effect of the Asian financial crisis.[45] Although the United States economy is still strong, it is by no means immune to the Asian contagion. In Kansas, the overall merchandise exports to Asia have dropped substantially in the past year or so.[46] And the overall U.S. trade deficit with Asia for 1998 rose to about $160 million—the biggest annual regional trade deficit in

43. Among those calling for Japan to fix its banking system is the IMF's First Deputy Managing Director, Stanley Fischer. *See* Stanley Fischer, *Lessons from a Crisis*, ECONOMIST, Oct. 3, 1998, at 23, 27; *see also Lessons from Argentina's 1995 Financial Crisis May Be Applicable to Other Countries*, 28 IMF SURV. 8, 8-9 (1999) (discussing "Japan's banking crisis" and noting the need "to restore solvency and lending capacity to the core banking system"). The United States has been sharply critical of Japan's financial system and has insisted that Japan undertake extensive reforms. *See* Mark Felsenthal & Toshio Aritake, *Clinton Urges Japan to Act on Reforms; Cites Slowdown of U.S., Asian Economies*, 15 INT'L TRADE REP. 1366, 1366-67 (1998). Japan began 1999 "with a record low of 3 percent negative economic growth from last year, a record high unemployment rate of 4.4 percent, a record number of corporate failures, . . . a record high government deficit, . . . and the lowest tax revenues in more than 20 years." Gary G. Yerkey et al., *1999 Outlook: International Trade*, 16 INT'L TRADE REP. 103, 110 (1999).

44. *See, e.g.*, Kristof & Wyatt, *supra* note 1, at A1 (noting that "the Brazilian crisis . . . underscores that the storm has not necessarily passed").

45. *See* David E. Sanger, *U.S. and I.M.F. Made Asia Crisis Worse, World Bank Finds*, N.Y. TIMES, Dec. 3, 1998, at A1 (quoting a report of the World Bank that warns "there is still a substantial risk that the world economy will plunge into recession in 1999").

46. *See* John W. Head, *International Trade Law at the Close of the Century*, J. KAN. BAR ASS'N, Apr. 1999, at 26.

the history of the world.[47]

I have quickly surveyed the Asian financial crisis and its immediate repercussions, including some in our own hemisphere. Why should we care? Why not just treat this crisis as an isolated tragic incident and move on? Because I believe many things will be different now. The Asian financial crisis will have lasting implications in at least three areas. I turn now to the first of those: banking law.

IV. ENHANCED DISCIPLINE IN BANKING LAW

For the last several years, I have spent some of my summers and vacations as a legal consultant trying to help develop sound banking systems in various countries that are in economic transition. I have worked most in Mongolia, but also in three of the former Soviet republics and in countries in Africa and the Middle East. I suppose nothing I have said or written as part of those efforts has been nearly as persuasive as the Asian financial crisis has been in prompting government officials to strengthen their banking rules. Let me explain what I mean.

In my work overseas, I have been preaching a three-part sermon about the legal framework for a national financial system. The details of my three-part sermon are guaranteed to put most people to sleep. You can see some of those details, if you wish, in an article that I wrote last year.[48] For present purposes, let me simply make the following assertions, as a stripped-down survey of these three areas of enhanced discipline in banking law.

A. *Central Bank Independence*[49]

It is widely thought today that a central bank—which in most countries of the world is an entity owned by the government but set up as a separate unit both administratively and financially—should have price stability as its main goal. Why? Because inflation can bring such damage to a country's economy. In order to achieve that goal of price stability, it is widely thought that a central bank must have a high degree of independence—that is, insulation from short-term political pressures. Time and time again governments have interfered with the efforts of central banks to carry out sound

47. *See* Yerkey et al., *supra* note 43, at 111.

48. *See* Head, *supra* note 4.

49. For a more detailed discussion of central bank independence, see Head, *supra* note 4, at 85-87.

monetary policy because the government wanted to spur economic activity or finance its own budget deficits by ordering the central bank to print money.

In recent years, many countries have amended their central banking laws to provide for greater independence.[50] The IMF has strongly supported these revisions and it insisted that similar changes be made in Korea's central banking law as part of its bail-out deal.[51] The Asian financial crisis highlights the need for central bank independence, and I think that is a good thing.

B. *Imposing International Banking Standards*[52]

Likewise, I think it is a good thing that the Asian financial crisis has highlighted the need for national banking systems to apply international banking standards, to force commercial banks to behave prudently in their operations, so as to protect depositors and thereby guard against the kind of crisis of confidence that can create a banking panic. These well-tested international standards already exist—on capital adequacy, on insider lending, on connected lending, on banking supervision, on accounting and auditing, and so forth.[53]

Who cares about these rather dull issues of central bank independence and international banking standards? I can tell you that in the aftermath of the Asian financial crisis, a lot of central bankers and government officials and commercial bankers are now talking about these principles of banking law, at least in the countries I have been working in. Why? Because they know that what happened in Thailand, Indonesia, and Korea can happen to them. The sudden evaporation of confidence in a financial system, as oc-

50. *See* IMF/MONETARY & EXCHANGE AFFAIRS DEPARTMENT, ELEMENTS OF CENTRAL BANK AUTONOMY AND ACCOUNTABILITY (IMF/MAE Operational Paper), Feb. 1998, at 34-36. For a discussion of some criticisms of central bank independence, and the likelihood that those criticisms will gain popular support in coming years, see *The Central Banker as God*, ECONOMIST, Nov. 14, 1998, at 23, 24-26.

51. *See International Monetary Fund*, *supra* note 30.

52. For a more detailed discussion of international banking standards, see Head, *supra* note 4, at 80-85.

53. For key guidelines on banking supervision and some of the other standards mentioned here, see Basle Committee on Banking Supervision, *Core Principles for Effective Banking Supervision* (Sept. 1997), *available at* <http://www.bis.org/publ/index.htm>. The Basle Committee on Banking Supervision is a committee of banking supervisory authorities established in 1975 that consists of representatives from several economically developed countries. *See* Head, *supra* note 4, at 95, n.83.

curred in those countries, can occur anywhere.

And because it can happen anywhere, I think the coming years will bring an increasing discipline in national financial systems around the world. This is a silver lining to the dark cloud of the Asian financial crisis.

C. *"Exit Policy"—Dealing with Insolvent Banks*[54]

I want to cover one more base on the subject of banking law: "exit policies." When a country's banks do not follow prudential standards in their operations, they can become insolvent. How should insolvent banks be handled? In most cases, they should be closed and restructured—or, if necessary, liquidated—under rules that protect depositors first and foremost. This is best for the depositors in that bank, of course, and best for the financial system as a whole because it gives depositors in other banks confidence that they will be protected. This is especially important in countries that do not have any effective form of deposit insurance.

However, in some countries where I have worked, insolvent banks are allowed to stay open, letting incompetent or dishonest managers and owners continue to bleed them dry of all the depositors' money. Why? Because of cozy relations between the owners, the borrowers, and the regulators. In the wake of the Asian financial crisis, countries are being forced to recognize the importance of having tough, efficient procedures for ushering insolvent banks out of the financial system—in other words, for imposing an "exit policy."

Overall, then, I believe the Asian financial crisis marks a turning point in banking law and discipline. It has demonstrated the pitfalls of allowing fast-and-loose banking practices to continue. Leaders in business, government, and finance recognize the need for stronger banking systems, not just in Thailand, Indonesia, and Korea, but in all countries.[55]

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54. For a more detailed discussion of "exit policy" rules, see Head, *supra* note 4, at 75-78.

55. A September 1998 meeting of leading lawyers from across Asia emphasized the need to undertake reforms in the regulation of banks and other financial institutions. *See A Meeting at the Bank's Manila Headquarters Identified Three Areas of Concern, Says Nigel Page*, FIN. TIMES (LONDON), Dec. 22, 1998, at 14. For a summary of the IMF's view on "financial sector soundness," see *Camdessus Stresses Sound Banking System Requires Strong and Transparent Framework*, 27 IMF SURV. 375, 375 (1998).

Let me put this in the context of my metaphor about beach resorts and typhoons: because the typhoon (that is, the Asian financial crisis) was so severe, the owners of beach resorts all over the world (that is, national governments) recognize the need to make the buildings at their resorts (that is, their banking systems) strong enough to withstand the increasing violence of the storms coming their way.

V. A CHALLENGE TO GLOBAL ECONOMIC INTEGRATION

A second implication of the Asian financial crisis that I wish to mention concerns global economic integration. For the last fifty years or so, the world has seen a dramatic change in the level of economic interaction among countries—international commerce has grown exponentially, corporations have global operations, financial transactions take place all over the world around the clock. Along with this crescendo of business activity has come an expanding set of legal and regulatory regimes that are global in character.[56] I wish to talk briefly about two of them. One concerns national currencies and the other concerns international trade.

A. *A New World of Currencies*

Let me offer first a quick history lesson that applies both to currencies and to trade.[57] At the close of World War II, leading economists and politicians in the Allied countries, especially the United States and Great Britain, identified three problem areas that needed solutions if a third world war was to be avoided. The first involved currencies. In the inter-war years, countries had engaged in competitive devaluations of their currencies, in order to boost their own exports and restrict imports. The second problem area involved trade. In the inter-war years, countries had engaged in competitive increases in tariff levels, again to keep out foreign

56. For a discussion of the growth of multilateral sets of rules and international organizations to implement them, see John W. Head, *Supranational Law: How the Move Toward Multilateral Solutions is Changing the Character of "International" Law*, 42 U. KAN. L. REV. 605 (1994).

57. For more complete descriptions of the historical background of the IMF, the World Bank, and the GATT regime, see ANTONIO CASSESE, INTERNATIONAL LAW IN A DIVIDED WORLD 325-26 (1986); RICHARD W. EDWARDS, JR., INTERNATIONAL MONETARY COLLABORATION 4-5 (1985); and John W. Head, *Making International Trade Less Foreign: A "Nutshell" for Nonspecialists on the Changing Rules Governing International Trade*, J. KAN. BAR ASS'N, Dec. 1992, at 42, 43-44.

imports and thereby protect their own industries. The third problem area was reconstruction of Europe, which lay in ruins at the close of the war.

For these three problem areas, three new international organizations, with countries as members, were envisioned: the IMF, to handle currency matters; the International Trade Organization, to handle trade matters; and the World Bank, to handle the reconstruction of Europe and economic development elsewhere. The first and third of these institutions—the IMF and the World Bank—were created at Bretton Woods, New Hampshire, in the summer of 1944. The International Trade Organization was not created, largely because of emerging Cold War tensions, but the General Agreement on Tariffs and Trade ("GATT") gradually took on the role of global trade liberalization.

Just how was the IMF to deal with the problem of competitive devaluations of currencies? By managing a newly established par value system, under which the exchange rate between the dollar and the pound and the franc and so forth would all be fixed, so that buyers and sellers in different countries could trade without much concern about currency matters. This would, in turn, increase international trade, which was seen as a good thing. From the perspective of international traders, the par value system would not be as satisfactory perhaps as having just one global currency, but it went a long way toward realizing what has been referred to as mankind's "dream of monetary unity."[58]

That par value system lasted a quarter of a century, until it crumbled in the early 1970s.[59] You might see this as a battle: the dream of global monetary unity versus the reality of national sovereignty. And national sovereignty won.

How does this relate to the Asian financial crisis? That crisis has highlighted the fragility of national currencies and has opened up the same old debate about currencies. It is a debate between global solutions and national solutions. On the one hand, there

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58. At a July 1994 meeting marking the fiftieth anniversary of the Bretton Woods conference, which created the IMF and the World Bank, a former IMF managing director made a remark about "the dream of monetary unity" of all mankind. Jacques de Larosiére, Remarks Prepared for Delivery at the Bretton Woods Commission Plenary Session, Washington, D.C. (July 21, 1994) (on file with author). For press accounts of the conference, see Rich Miller, *Policymakers Ponder How to Tame Dollar, Spur Growth*, REUTERS WORLD SERV., July 21, 1994.

59. For a detailed account of the breakdown of the par value system, see EDWARDS, *supra* note 57, at 491-501.

have been proposals recently for a regime something like the old par value system, involving the yen, the dollar, and the euro. President Jacque Chirac of France in February urged that the United States, Japan, and Europe cooperate to manage the exchange rates of their currencies, keeping them within specific target zones; and Germany and Japan have showed some support for that proposal.[60] Of course, such a regime would not have been possible even a year ago, before the introduction of the euro. With that new currency—which promises, by the way, to challenge the position of the U.S. dollar as the principal currency of world trade and investment[61]—I predict we will see more proposals along these lines, although the United States has rejected them so far.[62] Even the top American official at the IMF has predicted that if the euro succeeds, "there probably will be a shift toward . . . more currency unions and fewer currencies."[63] As possible evidence of a move in this direction, Argentina has been considering whether to discard its national currency, the peso, and just use U.S. dollars instead.[64]

There is, however, an important counter-trend. In the tug-of-war between international economic integration versus national sovereignty, some countries are considering new rules—especially controls on capital movements—that would protect their national currencies against sudden attack. Some of these moves pre-date the Asian financial crisis, but the crisis has brought new urgency to the question of currencies. Some countries like the approach suggested by Chile a few years ago to tax short-term capital in-flows, to protect against the chaos of quick capital flight. Malaysia, for example, imposed limits on capital movements in September of last year, and some commentators see that policy as having worked, at least in the short run.[65] Perhaps such controls can be analogized to

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60. *See* David E. Sanger, *Chirac, in U.S., Offers Alternative Approach to Economic Crises,* N.Y. TIMES, Feb. 19, 1999, at A5.

61. *See, e.g.,* C. Fred Bergsten, *America and Europe: Clash of the Titans?,* FOREIGN AFF., Mar.-Apr. 1999, at 20, 20 (noting that "[t]he euro is likely to challenge the international financial dominance of the [U.S.] dollar").

62. *See* Sanger, *supra* note 60, at A5.

63. *Passing the Buck: Argentina Considers a Radical Peso Defense: Use Dollars Instead,* WALL ST. J., Jan. 18, 1999, at A1.

64. *See id.*

65. *See* Kristof, *supra* note 4, at A1. Last summer a prominent economist usually favoring economic liberalization indicated support for some forms of currency controls. *See* Jagdish Bhagwati, *The Capital Myth: The Difference Between Trade in Widgets and Dollars,* FOREIGN AFF., May-June 1998, at 7, 12. Similar views appear in an Asian Development Bank publication. *See* ABD Economic Analysis & Research

the safety airbags in automobiles. They are effective if they are put in place for a very short time, to guard against disaster, but then they must be removed immediately afterward to avoid another disaster.

In short, we enter the new century full of uncertainties about national currencies and about what form of international integration, if any, there should be in this area. For many years, the western countries have been pressing for more and more liberalization and now many developing countries are starting to resist that liberalization in the area of currencies—and much more emphatically in the aftermath of the Asian crisis.

B. *Who Wants the Millennium Round?*

I believe the same kind of uncertainty exists in the area of international trade and investment. Recall my brief history lesson of a few minutes ago. The ITO was to be established in the 1940s, as a complementary institution to the IMF and the World Bank, but the ITO was not created and instead the GATT carried the load of trade liberalization for about forty-five years. Then, with the Uruguay Round of trade negotiations, the Americans and other industrialized governments pressed for bold new initiatives to liberalize not only trade in goods but also trade in services, trade in agricultural products, and investment. From the Uruguay Round emerged the World Trade Organization ("WTO") as a new international organization to facilitate the liberalization and economic integration promised in a score of new agreements. This amounts to a stunning victory for free trade, foreign investment, and globalization.

Now, building on that victory, the United States and other industrialized countries have proposed a new Millennium Round of trade negotiations.[66] But there is much concern over this, especially given the experiences flowing from the Asian financial crisis. Several developing countries are resisting any further liberalization

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Division et al., *Exchange Controls: The Path to Economic Recovery in Asia?*, 30 ASIAN DEV. BANK REV., No. 4 1998, at 14; *see also* Robert Wade & Frank Veneroso, *The Gathering Support for Capital Controls?*, CHALLENGE, Nov. 1, 1998, *available in* 1998 WL 15400060.

66. For a synopsis of the background to the Millennium Round and issues it will address, see Yerkey et al., *supra* note 43, at 103-05. President Clinton endorsed the new round of negotiations in his January 1999 State-of-the-Union address. *See id.* at 103.

of trade and investment,[67] and indeed there are signs of resistance also within this country.[68]

I am not ready to offer a prediction about how this debate will come out. But I do predict that the debate—over whether to open a new round of global trade negotiations and, if so, over what further liberalizing steps countries should take toward foreign investment in particular—will be much more heated than ever before, largely because of the Asian financial crisis.

VI. CRISIS CONTROL AND THE IMF

In my brief history lesson a few minutes ago, I explained how the IMF was established to manage the par value system of fixed exchange rates, and how that system collapsed in the early 1970s. The IMF amended its charter in the late 1970s to reflect the new circumstances, and for about five years, until 1982, the IMF was not nearly as busy as it had been before. But then the debt crisis hit.[69] You probably know the background to the debt crisis. It begins with the oil crisis in the 1970s when the OPEC countries raised oil prices. The money that flowed into the OPEC countries was deposited in Western banks, mainly American banks, who used it to make large loans to less developed countries, especially in Latin America. Many of these had variable interest rates. The borrowing countries were hit with a double whammy when interest rates rose and commodity prices fell. So in 1982 Mexico, and then Brazil, announced that they were unable to service their debts. Enter the debt crisis.

The IMF rose to the occasion. It took the lead in moving the world back from the brink of a meltdown of the world's economic system. The IMF lent much bigger sums of money than it ever had

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67. *See* Judy Shelton, *Time for a New Bretton Woods*, WALL ST. J., Oct. 15, 1998, at A22 (noting that "developing nations are opting to withdraw from the global economy and abandon free-market capitalism"). For a reference to "global and domestic 'attitudinal shifts' toward protectionism," see Gary G. Yerkey, *Next Round of WTO Services Talks Likely to be Difficult, EU Official Says*, 16 INT'L TRADE REP. 235, 235 (1999).

68. *See* Yerkey et al., *supra* note 43, at 104 (noting legislative grounds for a possible U.S. withdrawal from the WTO) and 112 (stating that "[t]he Asian economic crisis and its legacy of burgeoning trade deficits and antidumping cases are expected to stoke protectionist sentiments in Congress" and thereby frustrate efforts at "fast track" negotiating authority for trade agreements); *see also The Risks to Free Trade*, ECONOMIST, Jan. 30, 1999, at 19 (noting that "protectionism is on the up even in an American boom").

69. For a brief account of the debt crisis and its causes, see Head, *supra* note 18, at 597 n.19.

before.[70]

In a sense, then, the debt crisis of the early 1980s gave the IMF a new lease on life. In the same sense, the Asian financial crisis did the same thing. The bailouts arranged by the IMF in Thailand, Indonesia, and Korea were by far the biggest to date. In the past two years the IMF has solidified its position as the bailout king.

Is that a good thing? Do we want the IMF, or any institution, providing bailouts to weak countries? Let me try to address that question briefly in the final few minutes of my presentation.

A. *The IMF's Performance in the Asian Crisis*

In order to decide whether the IMF should have a bailout function of the sort it has taken on most recently in Asia, perhaps we should first evaluate how it performed there. The literature on this issue is already quite rich and quite inconsistent. Some commentators criticize the IMF harshly, saying it made serious mistakes in handling the crisis. Indeed, a critical report emerged recently from the IMF's sister institution, the World Bank.[71] Other commentators identify particular shortcomings in the IMF's bailout work but credit it, sometimes grudgingly, with having made the crisis shorter and less severe than it might have been.[72] The disagreement among these commentators revolves mainly around the question of whether IMF efforts to bolster confidence in the economies of Thailand, Indonesia, and Korea to save them from total meltdown caused more harm than good.

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70. For a discussion of the IMF's huge increase in lending following the emergence of the debt crisis, see Head, *supra* note 18, at 597-98.

71. *See* Sanger, *supra* note 45, at A1. For other views critical of the IMF, see Robert Wade & Frank Veneroso, *The Resources Lie Within*, ECONOMIST, Nov. 7, 1998, at 19, 20; Wade & Veneroso, *supra* note 65; Philip Bowring, *Will Asia Get a Euro?*, TIME, Feb. 1, 1999, at 19 (referring to "the IMF's wrong-headed policies in Asia"); Jeffrey E. Garten, *Lessons for the Next Financial Crisis*, FOREIGN AFF., Mar.–Apr. 1999, at 76, 82 (noting several specific criticisms).

72. *See, e.g.*, Garten, *supra* note 71, at 81 (noting that many of the IMF's defenders "say that it did the best it could with the information available at the time, particularly given the fact that countries came to it late in the game and agreed to its programs only well after the crisis became advanced"). A government minister in Indonesia recently said the IMF had succeeded in its reform program in that country. *See IMF Program Has Succeeded in Indonesia: Economy Minister*, ASIA PULSE, Feb. 4, 1999, *available in* 1999 WL 5083786. For the IMF's self-criticism of its own performance in the Asian financial crisis, see Timothy Lane et al., *IMF-Supported Programs in Indonesia, Korea and Thailand: A Preliminary Assessment* (Jan. 1999) <http://www.imf.org/external/pubs/ft/op/opasia/ index.htm>.

My own view about the IMF's performance has two sides to it—one positive and one negative. On the positive side, I return to the "silver lining" point I made earlier: the IMF has insisted on important financial sector reforms in the countries it helped bail out. These reforms focused on strengthening central banks, imposing international banking standards, and enforcing "exit policy" rules against insolvent banks, for the good of depositors and the economy as a whole. As I mentioned earlier, I think these reforms are good things.

On the other hand, I see two negative aspects of the IMF's performance in Asia recently. Both of them relate to what is being referred to now as the "new international financial architecture." That is my last topic, and I turn to it now.

B. A New International Financial Architecture

It appears that the IMF has focused most of its attention so far on the beach resorts and very little on the storms. By that, I mean that the IMF has helped countries survive the immediate danger of the Asian financial crisis and has required that they strengthen their financial structures. But should the IMF also be focusing its attention on the storm itself—that is, on preventing or at least predicting the external international economic shocks that devastated Thailand, Indonesia, and Korea?

Yes and no. I doubt there is anything the IMF can do to *prevent* the storms. There are too many players with too many interests and too much money to be controlled by the IMF or anyone else. In a typical day, $1.5 trillion in currency changes hands every day—about as much as total world trade for four months.[73] It seems impossible to control the movement of so much money enough to *prevent* economic shocks. But *prediction* might be possible. I think the IMF failed in Asia to issue adequate warnings about the weaknesses and risks in Thailand, Indonesia, and Korea.

Some work is going on in that area now. A recent IMF research paper identified a set of leading indicators for a banking crisis,[74] and major economic powers recently pledged to strengthen the "early warning system for financial crises."[75] Any meteorologist

73. *See* Kristof & Wyatt, *supra* note 1, at A1; Garten, *supra* note 71, at 76-77.

74. *See In Asian Crisis, Macroeconomic Indicators Provided Limited Advance Warning*, 27 IMF SURV. 259, 259 (1998).

75. Sanger, *supra* note 60, at A5.

will tell you that predicting storms is a tricky business. The same is true of economic storms. But surely it would be cost-effective for the IMF to pour a lot more resources into that effort than it has in the past.

The more important question mark in my mind about the IMF's role in the Asian financial crisis centers on something that has been called the "moral hazard" problem. The idea of "moral hazard," in this context at least, is that bailing out governments, even with big strings of conditionality attached to the bailout, merely encourages governments to act imprudently in the future. Look at the sequence of events: Thailand has a crisis, and the IMF provides a bailout package; Indonesia has a crisis, and the IMF provides a bailout package; Korea has a crisis, and the IMF provides a bailout package. What lesson will government leaders in other countries learn from this? "If I have a crisis here, the IMF will provide a bailout package." Even if you believe, as I do, that the IMF's bailout efforts had some good effects—financial sector reforms—surely you would still have to acknowledge that there is an unfortunate message being conveyed.

Many people have struggled with this "moral hazard" problem. The way the IMF and the U.S. Treasury addressed it during the crisis itself was like this: the risk that a total economic meltdown in Asia might occur and might spread all around the world is so great as to outweigh the "moral hazard" concerns.[76] Some commentators have agreed with that judgment in the case of Asia but have said that this should be the last time for bailouts.[77] Others have downplayed the "moral hazard" issue, saying that the Asian bailouts do

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76. *See Fischer Presents IMF Perspective on Origins, Implications of Asian Crisis*, 27 IMF SURV. 21, 22 (1998). Stanley Fischer, the First Deputy Managing Director of the IMF, made the following comments when discussing the Asian crisis:

> In effect, we face a trade-off. Faced with a crisis, we could allow it to deepen and possibly teach international lenders a lesson in the process; alternatively, we can step in to do what we can to mitigate the effects of the crisis on the region and the world economy in a way that places some of the burden on borrowers and lenders, although possibly with some undesired side effects. The latter approach—doing what we can to mitigate the crisis—makes more sense.

Id.

77. *See* Martin Feldstein, *Refocusing the IMF*, FOREIGN AFF., Mar.–Apr. 1998, at 20, 30 (asserting that the IMF should "provide the guarantees needed to keep current creditors engaged while swearing that it is the last time that such guarantees will be provided").

not encourage any reckless behavior, since governments usually avoid going to the IMF at nearly all costs, and investors do in fact lose a great deal of money when a crash comes like the one in Asia.[78]

This is a tough nut to crack. On the one hand, the risks of a total meltdown of a major country—for example, Korea or Brazil—is very troubling for the people who live there and for people in other countries whose economies would suffer from such a meltdown. How can the IMF stand by with its hands in its pockets and watch such a country go down the drain? On the other hand, the "moral hazard" of bailout after bailout does appear to be a losing proposition in the long run.

This conundrum, this riddle, strikes me as one of the most important issues we face in the new century. Several commentators have suggested partial solutions to it, and to other problems in the existing global financial architecture. Some urge the establishment of a special fund that the IMF would use to bail out countries that had pre-qualified by meeting some requirements about banking supervision, bankruptcy laws, transparent reporting, and the like.[79] If a country had *not* prequalified, the IMF bailout facility would presumably be unavailable to it. But I question whether any set of rules can be applied against countries that are considered "too big to fail"—that is, too important for economic reasons or political reasons or security reasons to let them collapse entirely.[80] And if the rules only apply to those countries that are below the top tier, are the rules worth the effort?

The "moral hazard" question, and other problems that the Asian financial crisis have highlighted so dramatically, have triggered a landslide of proposals for reforming the international financial system. The proposals focus on such matters as the need for better division of labor among the various international financial institutions involved—the IMF, the World Bank, the Bank for International Settlements, the Asian Development Bank, and so on—the need for more and better information about financial flows and policies, the need to establish effective bankruptcy and

78. *See* Fischer, *supra* note 43, at 27.

79. For a description of such a plan, as espoused by Mr. Fischer, see *Frequency of Global Crises Highlights Need to Consider International Lender of Last Resort*, 28 IMF SURV. 6, 6-8 (1999).

80. The bailout of Mexico in 1995, led by the United States, tended to "convince[] investors that some countries were too strategically important to be allowed to fail." Kristof & Sanger, *supra* note 4, at A1.

other key financial laws in emerging markets, the need for those countries to hold much larger foreign currency reserves, the need for increased IMF resources, the need to abolish the IMF altogether, and many, many more.[81]

I predict we will see debate raging over these issues in the new century. In a weird sort of way, maybe this is also a beneficial result of the Asian financial crisis. Policymakers and lawmakers, including our own Congress, really *must* study and evaluate carefully the economic and legal foundations of our world, with an eye to guarding against the sort of disaster that the Asian financial crisis has already brought and that its aftershocks threaten to continue bringing for years to come.

I close, then, as I began, by saying that the Asian financial crisis will have heavy implications far into the new century, in at least three areas: a push for banking reform, a debate over economic integration in terms of currencies, trade, and investment, and a huge challenge in finding a way to manage the economic typhoons that will undoubtedly strike again.

81. For an array of critiques and proposals regarding the new global financial architecture, see generally Garten, *supra* note 71; Martin Feldstein, *A Self-Help Guide for Emerging Markets,* FOREIGN AFF., Mar.–Apr. 1999, at 93; and *Time for a Redesign?,* ECONOMIST, Jan. 30, 1999, at 3, 4-5.