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# International Financial Institutions (IFIs) and Sovereign Wealth Funds (SWFs) as instruments to combat corruption and enhance fiscal discipline in Developing States

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## ABSTRACT

Especially since the start of the second decade of the twenty-first century, once more we have seen more focused interest in the use of SWFs by home states—less as a means of projecting sovereign financial power outwards and more as a means of internal financial management, and development. What makes this interesting from the perspective of SWF development is the role of International Financial Institutions (IFIs) in SWF development. This article takes a first look at the way in which IFIs have also begun to use SWFs in their interactions, with a emphasis on developing states. A review of some recent efforts to establish SWFs with a stabilization or development focus suggests the way in which these funds now may better serve the project of fiscal and governance internationalization, and the development of global policy coherence around the fiscal ideologies of IFIs, rather than as an instrument of national policy. Part II briefly sketches the IFI's interest in and approach to SWFs as a part of their investment, capacity building and rule of law toolkits. Part III then reviews the manifestation of this approach in the development of SWFs in a number of developing states. The article suggests ways in which stabilization and development SWFs may better serve financial globalization than the particular interest of states establishing them precisely by transposing global standards of fiscal and governance behavior into the internal workings of states. In this sense, development and stabilization SWFs serve as an instrument of globalization from the top down (through IFI policy operationalization) perhaps as effectively as SWFs that seek to project national financial power through private market investments abroad. But it also creates the possibility of divergence in SWF character as the consequences of the use of SWFs as governance devices may produce substantial deviation from the traditional organizational parameters of SWFs as instruments of macroeconomic policy.

*Keywords:* International Financial Institutions, Sovereign Wealth Funds, corruption, fiscal discipline

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## I. INTRODUCTION

Sovereign Wealth Funds (SWFs) have emerged, especially from the start of the twenty-first century, as important players in global finance.<sup>1</sup> They represent a marked departure from the traditional roles of states and permit political entities, public institutions, to engage in private market transactions beyond their national borders as private market participants. They underline an important element in the development of institutions and systems beyond the state.<sup>2</sup> They also implicate a number of factors in the role of states as structures for the management of economic policy, and as a participant in those markets.<sup>3</sup>

SWFs incarnate and replicate the collisions between two tectonic forces that are grinding their way to a new normative framework of governance and power. On the one side is the state system, grounded in principles of sovereignty and of the fundamental distinction between the state and everything else, founded on formal structures and the respect for territorial borders. On the other side is the emerging system of societally constituted functionally distinct governance organs, grounded in principles of free movement of capital and investment, founded on systems of functional structures in which territory boundaries reference the functional boundaries of self constituted groups.<sup>4</sup>

Though SWFs attract less attention in the popular press than they did before the events of the Arab Spring and related events distracted the media and political elites, they remain an important and increasingly significant actor in the evolution of economic globalization and its consequences for the role of states and non-state enterprises in economic markets.<sup>5</sup> SWFs have become an integral part of interlocked and network economic relations that in the aggregate give globalization its form.<sup>6</sup> Developed states continue to encourage inbound investment by SWFs,<sup>7</sup> though constrained by their national interests,<sup>8</sup> and sometimes fearful of the political effects of the exportation of financial power.<sup>9</sup>

In recent years, SWFs have evolved significantly as investors.<sup>10</sup> SWFs are not an inconsiderable source of foreign direct investment and are investing in a broad spectrum of assets including farmland, airports, energy, finance, real estate, equity markets and have strengthened global economic links by entering into partnerships and joint ventures with private entities and other SWFs.

<sup>1</sup>See, e.g., Joel Slawotsky, *Sovereign Wealth Funds as Emerging Financial Superpowers: How U.S. Regulators Should Respond*, 40 GEO. J. INT'L L. 1239, 1239, 1246–48 (2009).

<sup>2</sup>See Larry Catá Backer, *The Structural Characteristics of Global Law for the 21st Century: Fracture, Fluidity, Permeability, and Polycentricity*, 17(2) TILBURG L. REV. 177 (2012).

<sup>3</sup>Udaibir S. Das, Yinqiu Lu, Christian Mulder & Amadou Sy, *Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations* 5 (International Monetary Fund, Working Paper WP/09/179, 2009) available at <https://www.imf.org/external/pubs/ft/wp/2009/wp09179.pdf> (“Created by the general government for macroeconomic purposes, SWFs hold, manage, or administer financial assets to achieve financial objectives, and employ a set of investment strategies which include investing in foreign financial assets.”).

<sup>4</sup>Larry Catá, *Review Essay: Taking a Step Toward a Law for Sovereign Wealth Funds* (Consortium for Peace Ethics Working Paper No. 2012-9/1, 2012) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2143452](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143452).

<sup>5</sup>See, e.g., *Nigeria To Start \$1B Sovereign Wealth Fund*, ASSOCIATED PRESS (Aug. 28, 2012, 1:18 PM), <http://bigstory.ap.org/article/nigeria-start-1b-sovereign-wealth-fund> (“Nigerian authorities pushed for the creation of a sovereign wealth fund as a means to better save the billions of dollars the nation annually earns from oil revenues. Opaque budgeting and corruption sees much of the money siphoned away.”).

<sup>6</sup>Cf. JOSEPH STIGLITZ, *MAKING GLOBALIZATION WORK* (W. W. Norton & Company 2007); MARWAN M. KRAISDY, *HYBRIDITY OR THE CULTURAL LOGIC OF GLOBALIZATION* (2005).

<sup>7</sup>Rebecca Blumenstein & Laura Meckler, *Chinese Firms Set Sights on U.S. Investments*, WALL STREET JOURNAL, Jan. 27, 2011, <http://online.wsj.com/articles/SB10001424052748704062604576105952027426880> (“At the meeting, President Barack Obama and the head of China’s Investment Corp., the country’s \$300 billion sovereign-wealth fund, talked about the Chinese investing in infrastructure projects in the US “The United States is open for investment and would welcome it,” Mr. Obama told the group, which included four Chinese CEOs, 14 American CEOs and Chinese President Hu Jintao.”).

<sup>8</sup>In the United States, this interest review is undertaken by the Committee on Foreign Investment in the United States (CFIUS), an inter-agency committee authorized to review “covered transactions” (transactions that could result in control of a US business by a foreign person), in order to determine the effect of such transactions on the national security of the United States. This system of review is undertaken pursuant to Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (section 721) and as implemented by Executive Order 11858, as amended, and regulations at 31 C.F.R. Part 800. See, e.g., U.S. DEP’T TREASURY, THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (CFIUS) (2012), <http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx>. The political effects can be significant. See, e.g., Ziad Haider, *China Inc. and the CFIUS National Security Review*, THE DIPLOMAT, Dec. 5, 2013, <http://thediplomat.com/2013/12/china-inc-and-the-cfius-national-security-review/>.

<sup>9</sup>See, e.g., Edwin Truman, PETERSON INST. FOR INT’L ECON., *SOVEREIGN WEALTH FUNDS: THREAT OR SALVATION?* (2010).

<sup>10</sup>See, e.g., Massimiliano Castelli & Fabio Scacciavillani, *THE NEW ECONOMICS OF SOVEREIGN WEALTH FUNDS* (2012).

It is no surprise, then, that SWFs have become objects of intense and systematic study.<sup>11</sup> This academic and policy engagement is generally divided among those with an interest in governance structure, fund management, and investment objectives, strategy and implementation.<sup>12</sup> Of particular importance to lawyers and policy analysts are those issues touching on an exploration of emerging governance issues of sovereign wealth funds.<sup>13</sup> Of particular interest to economists have been the effects of sovereign investing on extraterritorial markets.<sup>14</sup>

But SWFs are not merely of concern to host states,<sup>15</sup> or to home states as a means of strategic sovereign investing,<sup>16</sup> or as a method of leveraging power in international governance.<sup>17</sup> Especially since the start of the second decade of the twenty-first century, once again we have seen more focused interest in the use of SWFs by home states—less as a means of projecting sovereign financial power outwards and more as a means of internal financial management,<sup>18</sup> and development.<sup>19</sup> They have also been seen as vehicles for regional development.<sup>20</sup> Indeed, SWFs have been increasingly seen as important instruments of internal macroeconomic policy.<sup>21</sup> They are both deeply embedded within and outside their home states.<sup>22</sup>

International Financial Institutions (IFIs) have also begun to consider the value of SWFs in their own activities. The International Monetary Fund (IMF) was a facilitator in the development of the institutional architecture<sup>23</sup> that led to the development of the influential soft law standards of SWF

<sup>11</sup>See, e.g., Fabio Bassan, *THE LAW OF SOVEREIGN WEALTH FUNDS* (2011); Gordon L. Clark, Adam D. Dixon & Ashby H.B. Monk, *SOVEREIGN WEALTH FUNDS: LEGITIMACY, GOVERNANCE, AND GLOBAL POWER* (2013).

<sup>12</sup>See, e.g., Abdullah Al-Hassan, Michael G. Papaioannou, Martin Skancke & Cheng Chih Sung, *Sovereign Wealth Funds: Aspects of Governance Structures and Investment Management* (International Monetary Fund, Working Paper No. WP/13/231, 2013), available at <https://www.imf.org/external/pubs/ft/wp/2013/wp13231.pdf>; *Foreign Government Investment in the U.S. Economy and Financial Sector, Testimony Before the Subcomm. on Domestic and Int'l Monetary Pol'y, Trade, and Tech. and the Subcomm. on Capital Markets, Insurance, and Gov't Sponsored Enterprises of the Comm. on Fin. Services*, 110th Cong. 24–28 (2008) (statement of Martin Skancke, Director General, Asset Management Department of the Ministry of Finance in Norway) available at <http://www.gpo.gov/fdsys/pkg/CHRG-110ohrg41725/html/CHRG-110ohrg41725.htm>.

<sup>13</sup>See, e.g., THE POLITICAL ECONOMY OF SOVEREIGN WEALTH FUNDS (Xu Yi-chong & Gawdat Bahgat eds., 2010); cf. Eliot Kalter and Thomas F. Holt, Jr., *Key International Issues for Sovereign Wealth Funds*, THE FLETCHER SCHOOL SOVEREIGN WEALTH FUND INITIATIVE (2010), available at [http://fletcher.tufts.edu/CEME/~media/Fletcher/Microsites/CEME/newpdfs/SWFI\\_Key\\_Issues.ashx](http://fletcher.tufts.edu/CEME/~media/Fletcher/Microsites/CEME/newpdfs/SWFI_Key_Issues.ashx); Gawdat Bahgat, *Sovereign Wealth Funds, An Assessment, Global Policy*, 1 GLOBAL POL'Y 162 (2010), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1758-5899.2010.00008.x/pdf>. For an application in the context of a subordinate governmental unit, see CHAMBER OF COMMERCE AND INDUSTRY OF WESTERN AUSTRALIA, EXAMINING THE ISSUES OF SOVEREIGN WEALTH FUNDS 10–12 (2012) (suggesting that SWFs are on balance, not of benefit to developed states or their subordinate units), available at [http://www.cciwa.com/docs/advocacy/sovereign-wealth-paper\\_final.pdf?sfvrsn=2](http://www.cciwa.com/docs/advocacy/sovereign-wealth-paper_final.pdf?sfvrsn=2).

<sup>14</sup>See, e.g., Tao Sun & Heiko Hesse, *Sovereign Wealth Funds and Financial Stability—An Event Study Analysis* (International Monetary Fund, Working Paper No. WP/09/239, 2009), available at <http://www10.iadb.org/intal/intalcdi/PE/2009/04299.pdf>.

<sup>15</sup>See, e.g., *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A common European approach to Sovereign Wealth Funds*, COM (2008) 0115 final (Feb. 27, 2008), available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=dq3pTLMJtQgJhfggjqYskf86r2WT9ppzGXhSwkJNHvVMQ7gkZp2v!-1639360510?uri=CELEX:52008DC0115>.

<sup>16</sup>Cf. Larry Catá Backer, *Sovereign Investing in Times of Crises: Global Regulation of Sovereign Wealth Funds, State Owned Enterprises, and the Chinese Experience*, 19 TRANSNAT'L & CONTEMP. PROBS. 3 (2010).

<sup>17</sup>Cf. Larry Catá Backer, *Sovereign Investing and Markets-Based Transnational Rule of Law Building: The Norwegian Sovereign Wealth Fund in Global Markets*, 29 AM. U. L. REV. 1 (2013).

<sup>18</sup>See, e.g., JOHN SHIELDS & MAURICIO VILLAFUERTE, SOVEREIGN WEALTH FUNDS AND ECONOMIC POLICY AT HOME, IN ECONOMICS OF SOVEREIGN WEALTH FUNDS: ISSUES FOR POLICYMAKERS (Udaibir Das et al., eds., 2010); see also, Håvard Halland, Alan Gelb & Silvana Tordo, *Sovereign Wealth Funds Investing at Home: Opportunity Fraught with Risks*, available at Otaviano Canuto, *Sovereign Wealth Funds Are Coming Home*, WORLD BANK INST. GROWTH & CRISIS BLOG (Jan. 15, 2014), <http://blogs.worldbank.org/growth/sovereign-wealth-funds-are-coming-home>.

<sup>19</sup>See, e.g., ALAN GELB, SILVANA TORDO & HÅVARD HALLAND, THE WORLD BANK, SOVEREIGN WEALTH FUNDS AND DOMESTIC INVESTMENT IN RESOURCE-RICH COUNTRIES: LOVE ME, OR LOVE ME NOT? (2014), available at <http://siteresources.worldbank.org/EXTPREMNET/Resources/EP133.pdf>.

<sup>20</sup>See, e.g., Asim Ali & Shatha Al-Aswad, *SWFs and Egypt: A Fresh Look at Infrastructure Funding and Investments*, THE FLETCHER SCHOOL SOVEREIGN WEALTH FUND INITIATIVE (2012), available at <http://fletcher.tufts.edu/SWFI-OLD/~media/Fletcher/Microsites/swfi/pdfs/2012/Asim-Shatha-SWFI-Egypt%20Final2.pdf>.

<sup>21</sup>See Al-Hassan et al., *supra* note 12 (discussing, among other things, SWF roles in macroeconomic management and the need for close coordination with other macroeconomic and financial policies as well as their role in global financial stability).

<sup>22</sup>Cf. Michel Aglietta, *Sovereign Wealth Funds in the Mutation of Global Finance*, CSAF INTERNATIONAL CONFERENCE (2013), available at [http://economix.fr/pdf/seminaires/crise/ABUDHABL\\_MA\\_2013.pdf](http://economix.fr/pdf/seminaires/crise/ABUDHABL_MA_2013.pdf).

<sup>23</sup>That institutional architecture, the International Working Group of Sovereign Wealth Funds, “met at IMF Headquarters in Washington, D.C. The meeting facilitated a useful exchange of views among the SWFs, recipient countries, and representatives from the Organization for Economic Cooperation and Development (OECD) and the

behavioral principles,<sup>24</sup> the Santiago Principles.<sup>25</sup> Especially in the form of stabilization and savings funds,<sup>26</sup> and development funds,<sup>27</sup> and for fiscal disciplinary purposes,<sup>28</sup> SWFs have been taken up with the IMF's technical assistance and lending projects for some time.<sup>29</sup> It now appears that IFIs may come to view SWFs as a useful part of the IFI's lending and capacity building toolkits for developing states that meet certain criteria. At the same time, SWFs have come to view IFIs, like the World Bank, as a potential investment aggregator and conduit.<sup>30</sup>

This article takes a first look to the way in which IFIs have also begun to use SWFs in their lending and technical assistance programs, with an emphasis on developing states. It focuses specifically on the effects of IFI leadership in shaping SWF organization and operation as it might relate, generally, to the broad governance themes of climate change, corporate governance of portfolio companies, environmental protection, ethical investing, global financial regulation, human rights, regulation of SWFs, renewable energy and sustainable development.<sup>31</sup> The object is to consider the way that SWFs serve important institutional objectives in addition to the macro economic objectives traditionally at the heart of SWF function. Part II briefly sketches the IFI's interest in and approach to SWFs as a part of their investment, capacity building and rule of law toolkits. Part III then reviews the manifestation of this approach in the development of SWFs in a number of developing states. The central insight of this analysis, and the thesis of this article is this: a functional examination of SWFs established in developing states (whether or not

*Footnote continued*

European Commission . . . . The IWG is comprised of representatives from 25 IMF member countries, and is co-chaired by a senior representative of the Abu Dhabi Investment Authority (ADIA) and the Director of the IMF's Monetary and Capital Markets Department who were selected by the participating SWFs." Press Release, International Working Group of Sovereign Wealth Funds, International Working Group of Sovereign Wealth Funds is Established to Facilitate Work on Voluntary Principles (May 1, 2008) available at <http://www.iwg-swf.org/pr/swfpro801.htm>.

<sup>24</sup>In 2008, the OECD Secretary General explained the nature of the facilitation and the involvement of IPO and IFIs:

A year ago, the G7 called on the IMF and the OECD to explore how sovereign wealth fund investments fit into the global economy. Following that call, in April of this year, the OECD Investment Committee sent the message that recipient countries welcome investment from SWFs, and that they will treat such investments the same as any other foreign investment. Today, the Sovereign Wealth Funds and the IMF have delivered a set of Agreed Principles and Practices about their own transparency and governance.

IMF Ministerial-level Roundtable on the "Santiago Principles" for Sovereign Wealth Funds, remarks by OECD Secretary-General, OECD, Oct. 11, 2008, <http://www.oecd.org/daf/inv/investment-policy/imfministerial-levelroundtableonthesantiagoprinciplesforsovereignwealthfundsremarksbyoecdsecretary-general.htm>.

<sup>25</sup>INT'L WORKING GRP. OF SOVEREIGN WEALTH FUNDS, GENERALLY ACCEPTED PRINCIPLES AND PRACTICES (GAPP) (2008) [hereinafter SANTIAGO PRINCIPLES], available at <http://www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf>.

<sup>26</sup>"Stabilization funds aim to reduce the impact of volatile revenue on the government and the economy. Savings funds seek to create a store of wealth for future generations." Jeffrey Davis, Rolando Ossowski, James Daniel & Steven Barnett, *Stabilization and Savings Funds for Nonrenewable Resources Experience and Fiscal Policy Implications*, INTERNATIONAL MONETARY FUND OCCASIONAL PAPER No. 205 (2001), available at <http://www.imf.org/external/pubs/nft/op/205/>.

<sup>27</sup>For a brief definition, see, e.g., *Sovereign Wealth Fund Institute*, STRATEGIC DEVELOPMENT SOVEREIGN WEALTH FUND (SDSWF), <http://www.swfinstitute.org/statistics-research/strategic-development-sovereign-wealth-fund/> (last visited Sept. 30, 2014) (identifying a domestic stabilizer scenario, an industry job creator scenario, a country-corporate alliance scenario, and a resource transfer scenario).

<sup>28</sup>"The general justification for such funds is that some share of government revenues derived from the exploitation of a nonrenewable resource should be put aside for when these revenues decline, because the price of the resource has fallen, or the resource has been depleted or both." *Id.*

<sup>29</sup>The approach was described in *IMF Intensifies Work on Sovereign Wealth Funds*, IMF SURVEY MAGAZINE ONLINE (Mar. 4, 2008), <http://www.imf.org/external/pubs/ft/survey/so/2008/polo3408a.htm>.

<sup>30</sup>See Howard Schneider, *World Bank gets help from sovereign wealth funds to invest in developing nations*, WASHINGTON POST, Apr. 18, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/17/AR2010041702921.html>.

<sup>31</sup>See, e.g., Eva van der Zee, *Sovereign Wealth Funds and Socially Responsible Investing: Do's and Don'ts*, 9 EUROPEAN COMPANY L. 141 (2012); Benjamin J. Richardson, *Sovereign Wealth Funds and Socially Responsible Investing: An Emerging Public Fiduciary*, 1:2 GLOBAL J. OF COMP. L. 125 (2013). The United Nations Conference on Trade and Development sponsored a roundtable in October 2014 entitled "Sovereign Wealth Fund Round Table Promoting long-term sustainable investment" as part of the UNCTD World Investment Forum, Palais des Nations, Geneva "policy makers, executives of SWFs and public pension funds and investment experts examined opportunities and challenges for mobilizing more investment by sovereign wealth and public pension funds in SDG sectors, and how governments and sovereign and public investors can work together to facilitate these investments and magnify their contributions to sustainable development." *Sovereign Wealth Fund Roundtable*, WORLD INVESTMENT FORUM 2014 (Oct. 15, 2014, 14:30), <http://unctad-worldinvestmentforum.org/programme/sessions/promoting-long-term-sustainable-investment/>.

resource rich) suggests that the expansion of the *use* of SWFs, driven in part by IFIs, may be creating a fundamental tension as the consequences of operating SWFs to enhance governance reforms and serve as a tool of governance capacity building may begin to make it more difficult to achieve, in substantial respects, the use of SWFs as instruments of macroeconomic policy.

## II. IFIS AND SWFS—FROM NATIONAL TO TRANSNATIONAL FINANCIAL INSTRUMENT IN THE SERVICE OF A STABLE GLOBAL ORDER

One could understand the rationale for IMF involvement in the stabilization of the transnational governance structures and principles of operations of SWFs in the first decade of the twenty-first century. SWFs are large pools of savings, savings that can be used for a variety of investment purposes, both within and outside the owning state. Thus, they are inherently a potentially significant tool of economic policy, and of institutional discipline with respect to both internal financial governance and external policy protective of the viability of domestic political economy (however specifically or segmented these objectives may be understood in the context of these funds). SWFs could be understood as an important element in the construction and viability of a global system grounded on the free movement of capital and investment, one that the IMF was perhaps at pains to protect. It is in that context that IFIs, like the World Bank and IMF, took seriously any efforts by states to close their borders to capital inflows of any kind (outside of a narrow national security related set of exceptions). To protect the private, commercialized investment activities of states outside of their borders was to protect the central premises of the emerging globalized economic (and especially financial) order. And, indeed, SWF home states did their best to conform to at least a minimum level of “good conduct” expectations through the development of behavior norms, and an organization of state actors to serve as an international institutional mechanism for meeting objections to their behaviors.<sup>32</sup> In that respect, it has been substantially supported by a critical IFI, the IMF, in whose offices the International Forum of Sovereign Wealth Funds (IFSWF) Secretariat operated through 2014.<sup>33</sup> SWFs also proved reliable in making their funds available to the service of global finance.

SWFs, then, did not initially present themselves as having an inherent character that might lend themselves to be used primarily as instruments of policy, beyond the broad stabilization and pension obligation objectives of some funds.<sup>34</sup> Indeed, the initial focus of SWFs was confined to what was understood as the distinguishing characteristic of the SWF—the scope and character of outbound investment.<sup>35</sup> In these senses they did not necessarily touch those other core activities of IFIs—lending to and support of developing states and their macroeconomic policies, especially development.

<sup>32</sup>Thus, the IFSWF, was constituted as a “voluntary group of Sovereign Wealth Funds (SWFs), which will meet, exchange views on issues of common interest, and facilitate an understanding of the Santiago Principles and SWF activities.” *About*, IFSWF, <http://www.ifswf.org/> (last visited Sept. 30, 2014).

<sup>33</sup>See Press Release, International Forum of Sovereign Wealth Funds, IFSWF Secretariat to relocate to the City of London (Mar. 5, 2014) available at <http://www.ifswf.org/pr/pr15.pdf> (“The Secretariat currently operates from premises at the International Monetary Fund (IMF) in Washington, D.C. The decision to move to London, and establish a permanent Secretariat, was taken by the Board and endorsed by IFSWF members in February 2014. The decision further reinforces IFSWF’s position as a significant global institution.”).

<sup>34</sup>Though I have previously argued that even the commercial activities of these funds, especially that of Norway, clearly evidenced a blending of private and public interests effectuated through private market investment. See, e.g., Larry Catá Backer, *Sovereign Wealth Funds as Regulatory Chameleons: The Norwegian Sovereign Wealth Funds and Public Global Governance Through Private Global Investment*, 41 *Geo. J. Int’l L.* 425 (2010).

<sup>35</sup>Indeed, consider in this light the definition of the SEF from the International Working Group of SWFs, the organization responsible for the development of the Santiago Principles:

SWFs are defined as special purpose investment funds or arrangements, owned by the general government. Created by the general government for macroeconomic purposes, SWFs hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies which include investing in foreign financial assets. The SWFs are commonly established out of balance of payments surpluses, official foreign currency operations, the proceeds of privatizations, fiscal surpluses, and/or receipts resulting from commodity exports.

SANTIAGO PRINCIPLES, *supra* note 25, at Appendix I, 27. The Santiago Principles emphasize three critical elements of the definition: ownership by a general government, investment strategies that include ownership of foreign financial assets, and their establishment for macroeconomic purposes to achieve financial objectives. *Id.*

But this changed as the scope of SWF objectives both broadened and changed. By 2008, influential actors were asking publicly and more often whether it was financially responsible for the SWFs of developing states to invest abroad, especially in Organization for Economic Cooperation and Development (OECD) state economies.<sup>36</sup> The possibility of broadening SWF objectives to include a role as sovereign development funds was considered. “Firstly, SWFs are, for the most part, emerging market institutions . . . Secondly and even more interestingly, SWF have not only become major development finance institutions in their own countries, but are also becoming major players of development throughout the developing world.”<sup>37</sup>

SWFs investing domestically are not as unusual as one might expect . . . . But domestic infrastructure investment remains uncharted territory for most SWFs. In light of the pressing infrastructure needs, several resource-rich developing countries have established, or are in the process of establishing, SWFs with an expanded role as a national investor. Angola, Mongolia, Nigeria, and Papua New Guinea are among the most recent examples of this apparent trend. Experts suggest that 20 SWFs are already mandated to invest domestically . . . <sup>38</sup>

This movement recently toward an embrace of inward focused SWFs, in the form of stabilization or development funds, is neither necessarily a movement forward, nor has it arrived uncontested. Some have argued that it ought to be remembered that stabilization funds in some senses developed independently of what might have been considered the precursors of SWFs, or the several forms of SWFs merged in the first years of the twenty-first century.<sup>39</sup> And in any case, the scope of the definition of SWFs—as narrowly or broadly understood—remains highly contested.<sup>40</sup> Yet this is important to remember as SWFs continue to evolve. What emerges from the examination of some of the developing state SWFs considered below<sup>41</sup> is precisely that SWFs are growing in fact beyond any effort to contain them formally within any sort of definition structures. And indeed, the central insight that may be derived from a functional examination of SWFs in developing states (whether or not resource management related), is that the expansion of the *use* of SWFs may be creating a fundamental tension within the current formal analytic framework, as the consequences of the form and function of SWFs established as a governance device may begin to deviate in substantial respect from the more traditional SWFs established as an instrument of macroeconomic policy.

Thus, while for the purposes of this article, those controversies about the scope of SWF definition and the efforts to distinguish SWF typologies by objectives do not affect the focus of analysis, it does suggest points of tension. Whether one is inclined to distinguish among governmentally created facilities empowered to invest funds for particular purposes, the important (and unifying) characteristic of all of them is the formation of the autonomous facility itself. As funds, these facilities play an important role in structuring governance in those developing states in which they are deployed. And the point here is that, however characterized, these funds are both important for their fiscal effects as they are for their instrumental effects in disciplining governance in the developing states in which they tend to be applied, in an important number of instances, at the instance of IFIs.<sup>42</sup>

The World Bank has a long history of interest with stabilization funds, starting with the Chilean stabilization fund it helped to organize in the 1980s.<sup>43</sup> It has deep interests in consulting on these funds, especially for client developing states.<sup>44</sup> The IMF has long been interested in “nonrenewable

<sup>36</sup>Lawrence Summers, *Opportunities in an era of large and growing official wealth*, in SOVEREIGN WEALTH MANAGEMENT 15 (Jennifer Johnson-Calari & Malan Rietveld, eds., 2008).

<sup>37</sup>Javier Santiso, SOVEREIGN DEVELOPMENT FUNDS: KEY FINANCIAL ACTORS OF THE SHIFTING WEALTH OF NATIONS (2008), available at <http://www.oecd.org/dev/41944381.pdf>.

<sup>38</sup>Gelb, Tordo & Halland, *supra* note 19, at 1–2 (“and more are in the making, for example, Colombia, Morocco, Mozambique, Sierra Leone, Tanzania, Uganda, and Zambia. Many of the most recently created and planned SWFs with a domestic investment mandate are in resource-rich countries”) (citing Ashby Monk, *The Rise of Sovereign Development Funds*, INSTITUTIONAL INVESTOR (Apr. 10, 2013, 1:00 PM), <http://www.institutionalinvestor.com/blogarticle/3189172/Blog/The-Rise-of-Sovereign-Development-Funds.html>).

<sup>39</sup>See, e.g., Christopher Balding, SOVEREIGN WEALTH FUNDS: THE NEW INTERSECTION OF MONEY AND POLITICS 18–20 (2012).

<sup>40</sup>*Cf.* Bassan, *supra* note 11.

<sup>41</sup>See *infra* Part III.

<sup>42</sup>See, e.g., Das, Lu, Mulder & Sy, *supra* note 3.

<sup>43</sup>See Balding, *supra* note 39, at 14–15.

<sup>44</sup>See e.g., *infra* Section III.B (discussing the World Bank’s involvement in the Mongolian SWF planning).

resource funds (NRFs) to help in the implementation of fiscal policy.”<sup>45</sup> Indeed, it was possible to discern some substantial disciplinary potential in the device. “Such funds may help the government to resist spending pressures if there are constraints on borrowing. These may reflect explicit fiscal rules or may arise from political difficulties in issuing debt. In this case, by formally limiting the resources available to the budget during upswings, funds could help to prevent large increases in spending.”<sup>46</sup> At least one later IMF sponsored study suggested the positive role of stabilization funds as a component of fiscal discipline projects.<sup>47</sup> Earlier studies had also suggested the disciplinary effect of stabilization funds on resource rich countries.<sup>48</sup> Development funds serve a similar purpose, though they are more specifically targeted toward inbound investment, rather than generally toward macroeconomic policy.<sup>49</sup> They are now used to achieve a variety of internal development and investment objectives, once the province of general government policy.<sup>50</sup>

The difficulty for these funds are similar to those that touch on stabilization and pension funds, that is, with funds whose objectives are not merely revenue protective or enhancing, but which have other targeted objectives as well. For these funds, the issue touches both on efficiency concerns (coherent macroeconomic policy) and legitimacy (policy and corruption issues).<sup>51</sup> That report, however, warned that the move toward development of internal investment SWF stabilization funds will have little positive effects and might have negative effects on internal macro-fiscal policy.<sup>52</sup> The warnings included fragmentation of public investment programs, the weakening or bypassing of democratic institutions, a lack of oversight by market actors or institutions, the exacerbation of the effects of asset price cycles, the weakening of the local commercial banking sector, the potential for policy or objectives incoherence with the government’s macro-fiscal policy, the redundancy with national development banks (especially poorly run ones) and other institutions (causing inter-administrative competition, and reducing incentives for reform of the development banking sector).<sup>53</sup>

Indeed, the connection between macro-financial policies and the legal and structural environments of home states appear central to the operation of SWFs. “SWFs exist in their own

<sup>45</sup>Davis et al., *supra* note 26, at Overview.

<sup>46</sup>*Id.* (though the report also notes that such funds themselves may give effect to positive spending pressure). A 2014 World Bank Report noted the importance of SWF structuring to reduce opportunities for corruption and the politicization of macro economic policy. Alan Gelb, Silvana Tordo, Håvard Halland, Noora Arfaa & Gregory Smith, *Sovereign wealth funds and long-term development finance: risks and opportunities* (The World Bank Poverty Reduction and Economic Management Network Public Sector Governance Unit & Sustainable Development Network Oil, Gas and Mining Unit, Policy Research Working Paper No. 6776, 2014), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2014/02/11/000158349\\_20140211115309/Rendered/PDF/WPS6776.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2014/02/11/000158349_20140211115309/Rendered/PDF/WPS6776.pdf). The authors suggested a three prong anti corruption approach—domestic investment projects and foreign assets ought to compete for funds, the SSWFs ought to be partnered with well reputed international investors, and investment decisions ought to be protected from the political process. But this approach also requires some monitoring from host states. In early 2015, reports began circulating of U.S. government investigation of corruption by large banks relating to their engagement with SWFs. See Nate Raymond and Aruna Viswanatha, *BNY Mellon May Face Bribery Charges Over Sovereign Wealth Funds: Filing*, REUTERS, Jan. 27, 2015. Available <http://www.reuters.com/article/2015/01/27/us-bank-of-ny-melln-corruption-sec-idUSKBN0Lo2HM20150127>.

<sup>47</sup>Naotaka Sugawara, *From Volatility to Stability in Expenditure: Stabilization Funds in Resource-Rich Countries* (International Monetary Fund, Working Paper No. WP/14/43, 2014), available at <http://www.imf.org/external/pubs/ft/wp/2014/wp1443.pdf> (“Using a panel data set of 68 resource-rich countries over 1988–2012, the results find that the existence of stabilization funds contributes to smoothing government expenditure. The spending volatility in countries that have established such funds is found to be 13 percent lower in the main estimation, and similar impacts are found in robustness tests.”).

<sup>48</sup>See, e.g., Ugo Fasano, *Review of the Experience with Oil Stabilization and Savings Funds in Selected Countries* (International Monetary Fund, Working Paper No. WP/00/112, 2000); Jeffrey Davis, Rolando Ossowski, James Daniel & Steven Barnett, *OIL FUNDS: PROBLEMS POSING AS SOLUTIONS? FINANCE AND DEVELOPMENT* 38 (2001), available at <https://www.imf.org/external/pubs/ft/fandd/2001/12/davis.htm>.

<sup>49</sup>Nicely described in Monk, *supra* note 38.

<sup>50</sup>Monk, *supra* note 38.

<sup>51</sup>See, e.g., Alan Gelb, Silvana Tordo, Håvard Halland, Noora Arfaa & Gregory Smith, *Sovereign wealth funds and long-term development finance: risks and opportunities* (The World Bank Poverty Reduction and Economic Management Network Public Sector Governance Unit & Sustainable Development Network Oil, Gas and Mining Unit, Policy Research Working Paper No. 6776, 2014), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2014/02/11/000158349\\_20140211115309/Rendered/PDF/WPS6776.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2014/02/11/000158349_20140211115309/Rendered/PDF/WPS6776.pdf).

<sup>52</sup>*Id.* (discussed in *Mideast SWFs look within borders for opportunities*, ZAWYA, Apr. 2, 2014, [https://www.zawya.com/story/Mideast\\_SWFs\\_look\\_within\\_borders\\_for\\_opportunities-ZAWYA20140402114827/](https://www.zawya.com/story/Mideast_SWFs_look_within_borders_for_opportunities-ZAWYA20140402114827/)).

<sup>53</sup>*Id.*

domestic regulatory environments to conform to the broader political and economic ecology and advance the investment objectives of home governments.”<sup>54</sup> Put another way, SWFs contribute to and are constrained by the governance environment of their home jurisdictions. Where these are strong, SWFs may contribute positively to the rule of law and macro-finance policies of states; but the opposite may also be true, that SWFs may contribute instrumentally to stronger governance in weak governance states where IFI involvement in states which develop SWFs may also produce SWF institutions that have a positive effect on governance.<sup>55</sup> Thus, it is precisely these “deficiencies” in the domestic sphere that, in states with weak governance or that may be subject to corruption and lack of institutional discipline, but which are engaged with international norms and standards through their connection with IFIs, might be viewed as states where the disciplinary strengths of SWFs might serve internal governance and development objectives positively.

As the next section suggests, it is the ability to divert financial policy, and fiscal governance, from the administrative or political institutions of the state into a self contained unit, that IFIs sometimes view as a means of effecting fiscal discipline, internal development and reduce the drag of institutionalized corruption. What makes this interesting from the perspective of SWF development, is the role of IFIs in SWF development. A review of some recent efforts to establish SWFs with a stabilization or development focus suggests the way in which these funds now may better serve the project of fiscal and governance internationalization, and the development of global policy coherence around the fiscal ideologies of IFIs, rather than as an instrument of national policy. As such, stabilization and development SWFs may better serve financial globalization than the particular interest of states establishing them precisely by transposing global standards of fiscal and governance behavior into the internal workings of states. In this sense, development and stabilization SWFs serve as an instrument of globalization from the top down (through IFI policy operationalization) perhaps as effectively as SWFs that seek to project national financial power through private market investments abroad.

### III. DEVELOPMENT AND STABILIZATION FUNDS IN DEVELOPING STATES, IFI SOCIALIZATION AND DISCIPLINARY TECHNIQUES

The movement toward the adoption of a set of common operational principles for SWF conduct, the Santiago Principles, suggests a broader theme—the importance of building coherence within the community of SWF states. That coherence might be developed from shared experiences from the bottom up—as SWF states come together to develop common norms and expectations,<sup>56</sup> and as they increasingly engage in economic transactions.<sup>57</sup> That is the essence of organizations like the International Forum of Sovereign Wealth Funds and its predecessor organization, the International Working Group of Sovereign Wealth Funds.<sup>58</sup> But coherence and socialization also has a top down character, grounded in the nature of SWFs as intimately connected with global finance. These top down efforts can be private,<sup>59</sup> or public, the latter bound up in the institution

<sup>54</sup>Cf. Shai Bernstein, Josh Lerner & Antoinette Schoar, *The Investment Strategies of Sovereign Wealth Funds*, 27 J. ECON. PERSPECTIVES 219 (2013) (greater involvement by political leaders results in greater propensity to adopt short term value maximizing macroeconomic policies).

<sup>55</sup>See Truman, *supra* note 9, at 98–99.

<sup>56</sup>In a sense, that is the expectation of the organization of SWFs through the International Working Group of Sovereign Wealth Funds and its Santiago Principles, as well as its successor organization the International Forum of Sovereign Wealth Funds, “which will meet, exchange views on issues of common interest, and facilitate an understanding of the Santiago Principles and SWF activities.” INTERNATIONAL FORUM OF SOVEREIGN WEALTH FUNDS, <http://www.ifswf.org/>. See also Larry Catá Backer, Remarks presented at Chatham House for Conference, Africa’s Sovereign Wealth Funds: Demand, Development and Delivery, The Royal Institute of International Affairs, London, United Kingdom: International Monitoring and Oversight: Africa’s Increasing Presence (Sept. 5, 2014) (transcript available at <http://www.backerinlaw.com/Site/podcasts/speeches-and-remarks/international-monitoring-and-oversight-africas-increasing-presence-larry-cata-backer-remarks-presented-at-chatham-house-for-conference-africas-sovereign-wealth-funds-demand-deve/>).

<sup>57</sup>See, e.g., Scott E. Kalb, *The Growing Trend of Cooperation among Sovereign Wealth Funds*, in SOVEREIGN ASSET MANAGEMENT FOR A POST CRISIS WORLD (Donghyun Park ed., 2011), available at [https://www.kic.kr/\\_custom/kic/\\_common/board/download.jsp](https://www.kic.kr/_custom/kic/_common/board/download.jsp).

<sup>58</sup>Indeed, the IWG served as a basic target population for studies of SWF community behaviors. See, e.g., Cornelia Hammer, Peter Kunzel & Iva Petrova, *Sovereign Wealth Funds: Current Institutional and Operational Practices* (International Monetary Fund, Working Paper No. WP/08/254, 2008), available at <http://www.imf.org/external/pubs/ft/wp/2008/wp08254.pdf>. For the IFSWF, see <http://www.ifswf.org/>.

<sup>59</sup>See, e.g., Edwin M. Truman, *A Blueprint for SWF Best Practices*, 9 REVUE D’ÉCONOMIE FINANCIÈRE 429 (2009), available at [http://www.persee.fr/web/revues/home/prescript/article/ecofi\\_1767-4603\\_2009\\_hos\\_9\\_1\\_5526](http://www.persee.fr/web/revues/home/prescript/article/ecofi_1767-4603_2009_hos_9_1_5526).



building and macro-finance objectives of IFIs.<sup>60</sup> This section examines a number of the smaller and more recent SWF structures to understand the way that IFI interests and SWF objectives have come to interact in SWF operationalization. It also suggests the tensions generated by the consequences of SWF objectives, particularly as between stabilization and development objectives. At their limits, they have suggested the need to examine the utility of the SWF device itself,<sup>61</sup> though it is not clear whether the most important quality of the SWF goes to its macro-finance elements or its disciplinary power in weak governance states. Though the focus is global—the current effects are mostly felt in developing African states.

### A. Chilean Pension Reserve Fund and Economic and Social Stabilization Fund<sup>62</sup>

Like other states whose funding for their SWFs are derived from the exploitation of natural resources, Chile has developed two funds for distinct purposes: a Pension Reserve Fund and an Economic and Social Stabilization Fund.<sup>63</sup> Unlike many SWFs established to create a disciplinary fiscal structure around the exploitation of petroleum, the foundation of Chile's funds was copper and related extractives.<sup>64</sup> The Pension Reserve Fund (PRF) (*Fondo de Reservas de Pensiones* or FRP) was created in 2006.<sup>65</sup> This was followed shortly thereafter in 2007 by the establishment of the Economic and Social Stabilization Fund (ESSF) (*Fondo de Estabilización Económica y Social* or FEES).<sup>66</sup> Both fall under the jurisdiction of the Chilean Ministry of Finance (*Ministerio de Hacienda*).

<sup>60</sup>It is important to remember in the discussion that follows that IFIs had been involved in sovereign investment for development and in the context of fiscal stabilization long before the possibilities of using SWFs in aid of these objectives arose in this century. Some states have always sought use of SWFs as governance/discipline instruments, for example Azerbaijan, Norway, and Russia, even without the prompting of IFIs. For Russia, see, e.g., Larry Catá Backer, *Part 17 Russian SWFs—Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Mar. 1, 2014, 11:09 AM), <http://lcbackerblog.blogspot.com/2014/03/part-17-russian-swfs-reimagining-state-in.html>. States have also long turned to the SWF as an appropriate form through which they could structure domestic/regional development, for example, the Russian and some Gulf state SWFs and the Korean SWF. On the latter, see, e.g., Larry Catá Backer, *Part 12: Korea Investment Corporation—Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Feb. 23, 2014, 10:50 PM), <http://lcbackerblog.blogspot.com/2014/02/part-12-korea-investment-corporation.html>. Initially though, and still among many students of the subject, a purely domestic fund would not count as an SWF. See, e.g., discussion in GAPP, *supra* note 25, at 28.

<sup>61</sup>"Resource-rich African countries are busy setting up sovereign wealth funds, but critics say the funds may not serve the long-term interests of poor countries that still need to invest in basics such as schools and roads." *African Countries Race To Build Sovereign Wealth Funds*, AFRICAN GLOBE, Feb. 14, 2014, <http://www.africanglobe.net/business/african-countries-race-build-sovereign-wealth-funds/>.

<sup>62</sup>Further discussed in Larry Catá Backer, *Part 3: Chile Pension Reserve Fund and Economic and Social Stabilization Fund—Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Feb. 4, 2014, 7:12 PM), <http://lcbackerblog.blogspot.com/2014/02/part-3-chile-pension-reserve-fund-and.html>.

<sup>63</sup>See Ley 20.128 (*Sobre Responsabilidad Fiscal*) (Fiscal Responsibility Law of 2006), available at <http://www.hacienda.cl/fondos-soberanos/legislacion/ley-20-128-sobre-responsabilidad-fiscal.html>. The FRL has been modified, supplemented and amended since 2006. These changes may be accessed at <http://www.hacienda.cl/fondos-soberanos/legislacion.html>.

<sup>64</sup>See Erling Steigum, *Sovereign wealth funds for macroeconomic purposes*, RAPPORT TILL FINANSPOLITISKA RÅDET 2013/4 6, <http://www.finanspolitiskaradet.se/download/18.11165b2c13cf48416debd70/1380290120811/Underlagsrapport+2013-4+Steigum.pdf>.

<sup>65</sup>Per the Ministry of Finance:

The Pension Reserve Fund (PRF) was . . . set up in response to Chile's new demographic scenario characterized by an increase in life expectancy and the growth of senior citizen population . . . . The PRF's objective is to support financing of government obligations arising from the government's guarantee to basic old-age and disability solidarity pensions and solidarity pension contributions arising from the pension reform . . . . Pursuant to the Responsibility Law, PRF's capital increases each year by an amount equivalent to 0.2% of the previous year's gross domestic product (GDP). If the actual fiscal surplus exceeds 0.2% of GDP, the PRF receives a contribution equivalent to said surplus, up to a maximum of 0.5% of GDP. This accumulation rule allows for new resources to be allocated to the fund in any given year regardless of the fiscal situation facing the country each year.

*Pension Reserve Fund*, GOBIERNO DE CHILE MINISTRY OF FINANCE, <http://www.hacienda.cl/english/sovereign-wealth-funds/pension-reserve-fund.html> (last visited Oct. 7, 2014).

<sup>66</sup>The Ministry of Finance describes its ESSF as follows:

The Economic and Social Stabilization Fund (ESSF) was . . . derived from the old Copper Stabilization Fund, which was replaced by the ESSF. The Economic and Social Stabilization Fund allows financing of fiscal deficits and amortization of public debt. Thus, the ESSF provides fiscal spending stabilization

But these funds are the products of a longer history, one in which free market advocates within Chile joined forces with a powerful IFI, the World Bank, to create and manage a SWF instrumentally to achieve economic and governance objectives. Christopher Balding relates the origins of the Chilean funds in the Chilean Social and Economic Stabilization Fund.<sup>67</sup> The CSESF was created in 1985 and funded in part with a loan from the World Bank.<sup>68</sup> It was designed instrumentally as a disciplinary mechanism insulated from internal political pressure with the objective of attaining clear macro-fiscal stabilization goals. “Despite SEFs’ reputation as economic nationalists, the Chilean economic reformers who helped establish the CSESF were committed economic libertarians. Coming from the Chicago school of free market economics and having studied with Milton Friedman, they felt that a stabilization fund provided a path both to restrain government largesse and control money.”<sup>69</sup>

The disciplinary objectives were grounded in the focus of the fund itself. “The CSESF was not intended to expand government control of the economy or assets but rather to restrain its influence.”<sup>70</sup> The Chilean experience was to serve as a model, first for the World Bank, and then for the IMF in its own conditional lending programs.<sup>71</sup> And the instrumental purposes of stabilization funding would also carry over to development funds, which were expected to serve similar purposes. But the experience was not without some drawbacks. Principal among them was that, while the fund served to discipline government, it was not autonomous enough of the political order to avoid less disciplined drawdowns.<sup>72</sup> In some states, weak governance culture could not be overcome through the operations of a fund.<sup>73</sup> Still, by 2000, it was possible for some to conclude that “stabilization schemes have been more successful in countries with a strong commitment to fiscal discipline and sound macroeconomic management.”<sup>74</sup> The question, thereafter, was whether these funds could be used to build commitment to fiscal discipline and sound macroeconomic management.

It was this ideology, updated to reflect the changes in global markets brought about since the 1980s, that framed the modern incarnations of Chilean sovereign investing. From the start, the objectives of these SWFs were to provide fiscal discipline and restraint as well as to serve as a source for funding future public wealth transfer payments in the form of pensions and related obligations.<sup>75</sup> Instead, like its sister fund in Ghana, the SWFs are viewed as externally financed disciplinary means of effecting macroeconomic policy by meeting the internal financial and development needs of Chile—the protection against adverse effects of global cycles and the need to ensure the financing of social welfare obligations.<sup>76</sup> In the Funds’ 2012 Annual Report the Finance Minister noted:

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*Footnote continued*

since it reduces its dependency on global business cycles and revenue’s volatility derived from fluctuations of copper price and other sources . . . ESSF receives each year the positive balance resulting from the difference between the effective fiscal surplus and the contributions to the Pension Reserve Fund and to the Central Bank of Chile, discounting the payment of public debt and advances made the year before.

*Economic and Social Stabilization Fund*, GOBIERNO DE CHILE MINISTRY OF FINANCE, <http://www.hacienda.cl/english/sovereign-wealth-funds/economic-and-social-stabilization-fund.html> (last visited Oct. 7, 2014).

<sup>67</sup>See Balding, *supra* note 39, at 14–15.

<sup>68</sup>Balding, *supra* note 39, at 14.

<sup>69</sup>Balding, *supra* note 39, at 14.

<sup>70</sup>Balding, *supra* note 39, at 15.

<sup>71</sup>“Impressed with the results, the World Bank advised its country clients to copy the Chilean stabilization fund model.” Balding, *supra* note 39, at 15.

<sup>72</sup>See, e.g., Fasano, *supra* note 48, at 9 (used to repay foreign debt to the Chilean central bank and subsidize domestic gasoline prices).

<sup>73</sup>See Nina Budina et al., *Nigeria’s Growth Record: Dutch Disease or Debt Overhang?* (World Bank Policy Research, Working Paper No. 4256, 2007); Davis, Ossowski, Daniel & Barnett, *supra* note 48.

<sup>74</sup>Fasano, *supra* note 48, at 19.

<sup>75</sup>For an analysis, see, e.g., Teresa Dabán, *Strengthening Chile’s Rule-Based Fiscal Framework* (International Monetary Fund, Working Paper No. WP/11/17, 2010), available at <http://www.imf.org/external/pubs/ft/wp/2011/wp1117.pdf>.

<sup>76</sup>See Andrew Ang, *The Four Benchmarks of Sovereign Wealth Funds*, COLUMBIA BUSINESS SCHOOL 11 (Oct. 10, 2010), <http://www8.gsb.columbia.edu/sites/financialstudies/files/files/The%20Four%20Benchmarks%20of%20Sovereign%20Wealth%20Funds.pdf> (“Recently in 2010, Chile used proceeds from its SWF to help rebuild earthquake-damaged areas.”).

One of Chile's most important reputational assets is its fiscal policy, which is anchored in a structural income rule in which current expenditures are determined as a function of long-term revenue, not current revenue. This rule, which has received wide international recognition, makes public spending sustainable while also providing a series of virtuous effects at the macroeconomic level: it generates countercyclical public spending, is naturally aligned with monetary policy, contributes to exchange rate stability and sets a de facto limit on public debt.<sup>77</sup>

It is in this sense that the SWF global objectives can be understood: "The sovereign wealth funds are the property of all Chileans. They are a national asset that provides stability in social spending and public investment."<sup>78</sup> That stability is understood as producing macroeconomic benefits through fiscal discipline. "The Chilean government maintains favorable access to debt markets and remains a net creditor due to low debt levels and large balances in sovereign wealth funds."<sup>79</sup>

Both the PRF and the ESSF are organized as an account in the Central Bank of Chile. The SWFs investment is not principally index driven, but involves active management by third parties through the Central Bank and subject to oversight by the Finance Ministry. The investment guidelines for the pension fund<sup>80</sup> are quite conservative.<sup>81</sup> Most of its assets have been invested in public bonds, though there is movement into equities.<sup>82</sup> More interesting for the purposes of this article are the investment guidelines for the ESSF.<sup>83</sup> "In keeping with the ESSF's objectives, the main aim of its investment policy is to maximize the fund's accumulated value in order to partially cover cyclical reductions in fiscal revenues while maintaining a low level of risk."<sup>84</sup> In other respects, the investment guidelines for both funds are substantially similar. Both funds may be operated through arrangements with paid third party service providers to handle investments.<sup>85</sup> The Ministry of Finance has overall control of investment policy and the administration of the Funds.<sup>86</sup> Responsible investment focused outward from Chile, on the Norwegian model, does not appear to play a large role in SWF management. Indeed, the SWFs are either conservatively administered or inwardly turned. Instead, the benefits of the use of SWFs as part of the disciplinary fiscal policy of Chile is emphasized.<sup>87</sup>

<sup>77</sup>*Annual Report Sovereign Wealth Funds 2012*, GOBIERNO DE CHILE MINISTRY OF FINANCE 6 (Dec. 31, 2012), <http://www.hacienda.cl/english/sovereign-wealth-funds/annual-report/annual-report-sovereign-wealth-funds-525723.html> (last visited Oct. 7, 2014) (forward by the Minister, Felipe Larraín).

<sup>78</sup>*What is the policy on transparency for Chile's sovereign wealth funds?*, GOBIERNO DE CHILE MINISTRY OF FINANCE, <http://www.hacienda.cl/english/sovereign-wealth-funds/frequently-asked-questions/what-is-the-policy-on-transparency-for.html> (last visited Oct. 7, 2014).

<sup>79</sup>*International Monetary and Financial Committee Twenty-Ninth Meeting*, INTERNATIONAL MONETARY FUND 10 (Apr. 12, 2014), <http://www.imf.org/External/spring/2014/imfc/statement/eng/chl.pdf> (statement by the Honorable Rodrigo Vergara, Governor, Central Bank of Chile on behalf of Argentina, Bolivia, Chile, Paraguay, Peru, Uruguay).

<sup>80</sup>*Investment Guidelines (in Spanish)*, GOBIERNO DE CHILE MINISTRY OF FINANCE Ord. 1925, Oficio No. 1637 de 2011, IBR/FVM/LCI E6114/2013 (Aug. 13, 2013), <http://www.hacienda.cl/english/sovereign-wealth-funds/pension-reserve-fund/investment-policy/investment-guidelines-in-spanish.html> (last visited Oct. 7, 2014).

<sup>81</sup>*Annual Report Sovereign Wealth Funds 2011*, GOBIERNO DE CHILE MINISTRY OF FINANCE 45 (Dec. 31, 2011), <http://www.hacienda.cl/english/sovereign-wealth-funds/annual-report/annual-report-sovereign-wealth-funds-483.html> (last visited Oct. 7, 2014).

<sup>82</sup>

The new scheme moves closer to a Type D fund (15% in equities), which is more in line with the return objectives and risk profile identified for the PRF. In sum, the risk tolerance remains low, while the investment policy is more consistent with the underlying liability that needs to be financed in the future.

*Id.* at 46.

<sup>83</sup>*Investment Guidelines (in Spanish)*, GOBIERNO DE CHILE MINISTRY OF FINANCE Ord. 1267, Oficio No. 433 de 2011, IBR/FVM/LCI E6114/2013 (June 4, 2013) [ESSF Investment Guidelines], <http://www.hacienda.cl/english/sovereign-wealth-funds/economic-and-social-stabilization-fund/investment-policy/investment-guidelines-in-spanish.html> (last visited Oct. 7, 2014).

<sup>84</sup>*Investment Policy*, GOBIERNO DE CHILE MINISTRY OF FINANCE, <http://www.hacienda.cl/english/sovereign-wealth-funds/economic-and-social-stabilization-fund/investment-policy.html> (last visited Oct. 7, 2014) ("Its risk aversion is reflected by the choice of an investment portfolio with a high level of liquidity and low credit risk and volatility, thereby ensuring the availability of the resources to cover fiscal deficits and preventing significant losses in the fund's value.").

<sup>85</sup>Chile, ESSF Investment Guidelines, *supra.*, § 1.2.

<sup>86</sup>*Id.*, § 1.3

<sup>87</sup>Thus, for example, in its 2013 Consultation, the IMF noted:

Gross assets include the two sovereign wealth funds (SWFs) as well as other instruments. The stabilization fund (ESSF) currently stands at about  $5\frac{1}{2}$  percent of GDP and represents a flexible fiscal buffer that can be used to cover deficits and amortizations. The pension reserve fund (PRF) stands at about  $2\frac{1}{4}$  percent and is earmarked to cover a fraction of pension related outlays starting in 2016.

The Chilean SWFs are important as a template tool for macro-finance governance. They also serve as important instruments for institutional discipline in states where there is reason to build a measure of distance between the organs of state, and institutions driving fiscal policy. Its origins in Washington Consensus premises are clear.<sup>88</sup> That, in itself, makes the SWF device, as a stabilization, savings and development instrument, particularly attractive to IFIs seeking to broaden their governance toolkits in ways that advance their political and investment ideologies. And over the last several years, it appears that IFIs, and especially the IMF, have again turned to the SWF device as a tool for fostering fiscal discipline, insulating macroeconomic policy from the vagaries of the institutions of developing democracies (shifting it toward administrative rather than political governance), and as a tool for fostering good governance patterns in the state sector (especially as an anti-corruption tool).

### B. Mongolia Fiscal Stability Fund (MFSF)<sup>89</sup>

The Mongolia Fiscal Stability Fund (MFSF) was established in 2010 under the terms of a Fiscal Stability Law passed that year by the Mongolian Parliament. It succeeded and to some extent supplemented earlier legislation developed pursuant to a Comprehensive National Development Strategy<sup>90</sup> that had “created a Human Development Fund (HD Fund) with the ambitious goal of bringing Mongolia’s human development status to the same level as that of the developed countries by 2020.”<sup>91</sup> The MFSF was created, like those of other developing states with few government resources and large deposits of exploitable natural resources, to promote fiscal stability, especially in the face of swings in commodity prices (principally copper and gold), and to promote good governance.<sup>92</sup> Outside analysts, at the time of the creation of the MFSF were not convinced that the state was stable enough and its governance cultures deep enough to implement its plans for the MFSF.<sup>93</sup> These analysts do recognize the appeal of

<sup>88</sup>And, indeed, the term Washington Consensus, without its disparaging neo-liberal additions, may well have its origins in the development of global free market and rule of law premises by Washington based IFIs directed toward reform in Latin America in the late 1980s. See, e.g., John Williamson, *Did the Washington Consensus Fail?*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS, Nov. 6, 2002, <http://www.piie.com/publications/papers/paper.cfm?ResearchID=488>; John Williamson, *What Should the World Bank Think About the Washington Consensus?*, 15 INT’L BANK FOR RECONSTRUCTION AND DEV. 251, available at <http://elibrary.worldbank.org/doi/abs/10.1093/wbro/15.2.251>.

<sup>89</sup>Further discussed in Larry Catá Backer, *Part 23 Mongolia Fiscal Stability Fund (MFSF)–Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Mar. 19, 2014, 9:01 PM), <http://lcbackerblog.blogspot.com/2014/03/part-23-mongolia-fiscal-stability-fund.html>.

<sup>90</sup>*Endorsement of the Millennium Development Goals (MDGs)-based Comprehensive National Development Strategy of Mongolia*, MOF, Feb. 12, 2008, [http://mofa.gov.mn/coordination/images/stories/resource\\_docs/nds\\_approved\\_eng.pdf](http://mofa.gov.mn/coordination/images/stories/resource_docs/nds_approved_eng.pdf).

<sup>91</sup>See Alicia Campi, *Opinion: Mongolia’s Quest to Balance Human Development in its Booming Mineral-Based Economy* Brookings, BROOKINGS (Jan. 2012), [http://www.brookings.edu/research/opinions/2012/01/10-mongolia-campi#\\_ftn13](http://www.brookings.edu/research/opinions/2012/01/10-mongolia-campi#_ftn13). The Human Development Fund was itself a successor to an earlier fund.

The Mongolian Development Fund (MDF) was set up by law in 2007. The Human Development Fund (HDP) was established by law, and replaced the MDF, in 2009. The main purpose of these funds were to accumulate the excess revenues from mining sector, and to target the resource for the economic/human development of the country.

Khuyagtsogt Ognon, Director, Wealth Fund Division, MOF: Sovereign Wealth Fund: Case of Mongolia, High Level Policy Seminar on Managing Revenues and Optimizing the Benefits of Coal and Gas Resources in Mozambique, African Development Bank Group Presentation (Feb. 19, 2013), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Presentation%20-%20Sovereign%20Wealth%20Fund%20-%20Case%20of%20Mongolia.pps>.

<sup>92</sup>As one commentator noted:

A Fiscal Stability Law, passed by parliament in 2010, should begin to exert some much-needed discipline on the government’s budgetary policies. The law . . . created a stabilization fund, to be financed by mining revenues, intended to help the government cushion the impact of commodity price swings on the Mongolian economy. Even more important, the government is considering the creation of a sovereign wealth fund that would safeguard some of the country’s mineral windfall for future generations.

Press Release, Loch Adamson, Institutional Investor via Origo Partners, Mongolia Aims to Join the SWF Ranks (2011) available at <http://www.origopl.com/press/institutional-investor-mongolia-aims-to-join-the-swf-ranks/>.

<sup>93</sup>*Id.*

what they call resource nationalism,<sup>94</sup> and its manifestation in the techniques of sovereign wealth funds.<sup>95</sup>

The MFSF is among the smaller global SWFs. It was reported in 2012 that “Mongolia’s Fiscal Stability fund, is believed to have less than \$10m after being founded last year.”<sup>96</sup> And despite the rhetorical flourishes and good intentions with which it was created, to date the SWFs has not produced much savings. “The money accumulation to the Fund has been reducing year after year since 2012, due to mining sector’s hardship and coal’s lowering prices.” In 2012, when the fund was set up by the law on Budget stability, a total of 94.7 billion Togrog was accumulated, but this sum reduced to 49 billion in 2013. The money, accumulated so far in the fund, has not been used yet.<sup>97</sup>

As in many states in similar economic and resource circumstances, the Mongolian approach to SWFs produced a move toward fund specialization. “In addition to the stabilization fund, the government has been preparing legislation for the creation of a national pension reserve fund, akin to Chile’s \$4 billion Pension Reserve Fund and Norway’s mammoth \$612 billion Government Pension Fund Global.”<sup>98</sup> This pension fund would also derive its income from commodity derived income and then invested to ensure adequate financing of Mongolia’s social programs. To that end, the Mongolian state sought counsel from the World Bank.<sup>99</sup> But internal development in Mongolia is also meant to be funded through its recently established Development Bank.

In 2011 the Mongolian government created a state-owned development bank with a mandate to finance railroads, roads, power plants, and water supply . . . . The government guarantees the debt issued by the development bank, which is now a contingent liability that will have to be backed by future mining revenues.<sup>100</sup>

Further impetus for the establishment of a SWF came from the International Monetary Fund, which, as in the cases of its investment in other developing states, viewed with favor the establishment of such a fiscal disciplinary device.

Directors emphasized the need for a clear policy to ensure that the Development Bank of Mongolia (DBM) can help meet the long-term infrastructure needs of Mongolia in a macro-economically sustainable manner with minimal fiscal risks. In particular, public investment projects financed by the DBM should be taken into account when setting the path of fiscal policy, consistent with the new fiscal framework. Directors welcomed efforts to explore the establishment of a sovereign wealth fund, which could be an important complement to the fiscal framework.<sup>101</sup>

The IMF Staff Report also noted “Implementation of the [2012 Social Welfare Law] should be a priority and the establishment of a sovereign wealth fund would be an important complement to the FSL’s counter cyclical fiscal policy framework.”<sup>102</sup> Indeed, in order to understand the

<sup>94</sup>Jessica Morris, *Why Resource Nationalism Could be Increasing*, CNBC NEWS (Feb. 7, 2014, 9:46 AM) <http://www.cnn.com/id/101399000> (“Resource nationalism describes a government’s effort to gain greater benefit from its natural resources — sometimes to the detriment of private companies. This can range from outright expropriation — when a government takes away a company’s assets — to more creeping forms of appropriation, such as higher taxation or more arduous regulation.”). *But see* Nick Holland, *Resource nationalism can mean growth and prosperity*, BUSINESS DAY LIVE (Aug. 16, 2013, 8:53 AM) <http://www.bdlive.co.za/opinion/2013/08/16/resource-nationalism-can-mean-growth-and-prosperity>.

<sup>95</sup>Adamson, *supra* note 92.

<sup>96</sup>William Hutchings, *Sovereign wealth firepower tops \$5 trillion*, FINANCIAL NEWS, May 8, 2012, <http://www.efinancialnews.com/story/2012-05-08/sovereign-wealth-funds-firepower-five-trillion?ea9c8a2de0ee11045601abo4d673622>.

<sup>97</sup>Sugirragchaa, *Stabilization fund to receive 29.8 billion togrog*, MONTSAME, Jan. 17, 2014, <http://www.montsame.gov.mn/en/index.php/economics/item/3978-stabilization-fund-to-receive-29-8-billion-togrog>.

<sup>98</sup>Adamson, *supra* note 92.

<sup>99</sup>See WORLD BANK, MONGOLIA - POLICY OPTIONS FOR PENSION REFORM (2011), available at <http://documents.worldbank.org/curated/en/2011/01/16662950/mongolia-policy-options-pension-reform>.

<sup>100</sup>

The inventory of possible projects is large by any standard. Mongolia scores 118 out of 142 countries in quality of infrastructure, as rated by the Global Competitiveness Report 2011–2012 (in comparison, other countries with large mining sectors like Chile rank 41st, Peru 88th, and Botswana 92nd). The majority of roads are unpaved. The funding requirements for rail lines alone run in the multibillion dollar range, in comparison to Mongolian GDP of \$3 billion in 2010.

Theodore H. Moran, *Avoiding the “Resource Curse” in Mongolia*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS 3, July 2013, <http://www.iie.com/publications/pb/pb13-18.pdf>.

<sup>101</sup>INTERNATIONAL MONETARY FUND, IMF COUNTRY REPORT No. 12/230 3 (2012), available at <http://www.imf.org/external/pubs/ft/scr/2012/cr12320.pdf>.

<sup>102</sup>*Id.* at ¶ 57.

establishment of the MFSF, one must understand the *intermeshing* of international financial institutions (World Bank and International Monetary Fund), their development of fiscal management principles, and their coordination of client states in the implementation of these principles across the globe. This was noted in a recent World Bank related report:

As part of its reform efforts and with the assistance of the World Bank and the International Monetary Fund (IMF), the government began an intensive south-south exchange, notably with Chile, another major copper producer, on strengthening the policy environment. The dialogue proved critical in the passage of several landmark laws within the space of a few years, including a fiscal stability law modeled after Chile, and the accompanying integrated budget and procurement and social welfare laws.<sup>103</sup>

It is in this sense that the MFSF can be understood as a disciplinary tool and as an anti-corruption measure. The MFSF facility was also meant to incorporate international standards and norms, both as to objectives and governance. It was a product of socialization of Mongolian political economy and governance frameworks within the premises for fiscal and governance management championed by IFIs, incorporating the standards and behavior premises of the community of SWFs and IFIs.<sup>104</sup>

Mongolia's leaders, some educated at Harvard and Cambridge, say they are determined to avoid this syndrome, known as "Dutch Disease" – a sudden surge in wealth that ultimately hampers expansion. Working with the Washington-based World Bank, they are dispatching officials to nations such as Chile, which successfully harnessed its copper resources to help drive growth. They are also leveraging their democratic system to build support for policies including greater investment in transportation and a new budget law aimed at curbing the impact of volatile metals prices.<sup>105</sup>

And in the process of socialization, Mongolia's SWF architecture is also meant to save it from its own internal and democratic politics, by taking away the temptation to overspend.<sup>106</sup> The MFSF was modeled on the Chilean Stabilization Fund,<sup>107</sup> It was established after substantial transnational consultation, and with the advice of IFIs.<sup>108</sup>

Intermeshing is an important notion in the construction of "cultures" of sovereign wealth funds common to states understood as occupying similar socioeconomic sovereign space. The concept was developed by the German academic, Gunther Teubner in the context of theorizing the development of governance systems in globalization.<sup>109</sup> For Teubner, intermeshing involves the

<sup>103</sup>See Rogier van den Brink, Arshad Sayed, Steve Barnett, Eduardo Aninat, Eric Parrado, Zahid Hasnain & Tehmina Khan, *THE WORLD BANK, SOUTH-SOUTH COOPERATION: HOW MONGOLIA LEARNED FROM CHILE ON MANAGING A MINERAL-RICH ECONOMY* (2012), available at [http://www.mad-mongolia.com/wp-content/files\\_mf/southsouthcooperationhowmongolialearnedfromchileontradeandthecompetitiveness.pdf](http://www.mad-mongolia.com/wp-content/files_mf/southsouthcooperationhowmongolialearnedfromchileontradeandthecompetitiveness.pdf); see also Adam B. Robbins, *THE WORLD BANK, CASE STUDY: WORLD BANK ENGAGEMENT WITH MONGOLIA'S SOVEREIGN WEALTH FUND* (2014), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/13/000442464\\_20140313112629/Rendered/PDF/858180BRloREPLooBox382147BooPUBLIco.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/13/000442464_20140313112629/Rendered/PDF/858180BRloREPLooBox382147BooPUBLIco.pdf).

<sup>104</sup>This communalization of SWF operationalization and normative structures occurs outside the International Forum of Sovereign Wealth Funds as well as within it. See, e.g., Ebrima Faal, Director, Southern Africa Resource Center (SARC), High Level Policy Seminar on Managing Revenues and Optimizing the Benefits of Coal and Gas Resources in Mozambique - Conclusions and the Way Forward, African Development Bank Group (Feb. 20, 2013), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/High%20Level%20Policy%20Seminar%20on%20Managing%20Revenues%20and%20Optimizing%20the%20Benefits%20of%20Coal%20and%20Gas%20Resources%20in%20Mozambique%20-%20Conclusions%20and%20the%20Way%20Forward.pdf>.

<sup>105</sup>Michael Forsythe, *Mongolian Harvard Elites Aim for Wealth Without 'Dutch Disease'*, BLOOMBERG, (Feb. 15, 2010, 16:01), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aONmVLraqtO8>.

<sup>106</sup>Sanjaasuren Oyun, a 12-year parliamentary veteran with a doctorate in earth sciences from Cambridge University in the U.K., said she is pushing the government to avoid politically popular cash dividends for citizens and focus on infrastructure improvements and job growth. "Because poverty and unemployment are still the most pressing issues in this country, it is easy to win the vote by promising cash," Oyun said in an interview. "But members of both parties in parliament are saying that in the future, these promises should not be made."

*Id.*

<sup>107</sup>See Campi, *supra* note 91.

<sup>108</sup>See, e.g., *IMF Executive Board Concludes 2012 Article IV Consultation and Third Post-Program Monitoring with Mongolia*, Public Information Notice (PIN) No. 12/131, Nov. 21, 2012.

<sup>109</sup>See Gunther Teubner, *The Corporate Codes of Multinationals: Company Constitutions Beyond Corporate Governance and Co-Determination*, in *CONFLICT OF LAWS AND LAWS OF CONFLICT IN EUROPE AND BEYOND: PATTERNS OF SUPRANATIONAL AND TRANSNATIONAL JURIDIFICATION* (Rainer Nickel ed., 2009).

Europeanization of multinational regulatory enterprises. Just as the member states of the European Union together might create broader and more powerfully effective cross-state norms, so too might multinational “states” do the same within cooperative regulatory communities. Thus he notes “the emergence of inter-company networks as an extension of the corporate code onto an entire production network. Global commodity chains have developed, which constitute neither market relationships nor integrated multinationals.”<sup>110</sup> These are “networks of independent companies, which have generated their own governance structures.”<sup>111</sup> In the context of SWFs, intermeshing involves the internationalization of sovereign investing through the nexus institutions of the IMF and World Bank. These serve to create regulatory communities bound together through the economic power of the IFIs.

It is in this context that one can understand the inter-connectedness, the intermeshing, of the Mongolian Fiscal Stability Law of 2010, the IFIs and the establishment of the MFSF under the tutelage of the Chilean SWF managers. “Mongolia passed its Fiscal Stability Law in 2010 as part of its Stand By Agreement with the IMF which expired on the 30th of September 2010.”<sup>112</sup> Beyond the IMF, the World Bank has also supplied its technical assistance capacity in the service of socialization and conformity of Mongolian planning to international norms.<sup>113</sup> “The World Bank has been supporting the Mongolian government to improve the design of their sovereign wealth fund. The MTAP [Multi-Sectoral Technical Assistance Project] and Governance Partnership Facility provided funds to support the Ministry of Finance with this task. Central to support has been involvement of experts from Chile and in organizing an international conference on SWFs.”<sup>114</sup>

### C. Fundo Soberano de Angola (Angola SWF)<sup>145</sup>

The *Fundo Soberano de Angola* (Angola SWF) (FSA)<sup>116</sup> represents an interesting effort to use SWF forms to discipline spending. Yet, it is also one in which the almost picture perfect formal organization has been undermined in function by intimations of corruption. This may then represent a case where IFI and state efforts to construct an autonomous disciplinary facility might not be sufficient to overcome the structural patterns of politics that produce weak governance.

FSA is also notable for making explicit the agenda of international development and lending organizations, like the International Monetary Fund, to use SWFs instrumentally as a disciplinary tool that ought to be in the toolkit of developing states with large reserves of natural resources, especially petroleum.<sup>117</sup> These efforts were directly tied to consultations in connection with IMF lending.

Angola, Africa’s second-biggest oil producer, is starting a sovereign wealth fund with \$5 billion in assets to ease the impact of commodity price volatility that prompted an International Monetary Fund loan three years ago . . . . The IMF promoted setting up a fund and cutting the quasi- fiscal operations of the state oil company Sonangol when it loaned the nation \$1.3 billion after crude prices fell in 2008.<sup>118</sup>

<sup>110</sup>*Id.* at 9.

<sup>111</sup>*Id.*

<sup>112</sup>Richard Dutu, *Managing Mongolia’s Wealth: Constructing and Stimulating a Formula for the Fiscal Stability Fund, 2nd Report, 5-8-2012 § 4.4.1*, MOF, <http://mof.gov.mn/wp-content/uploads/resource/MANAGING%20MONGOLIA%27S%20WEALTH.pdf> (last visited Sept. 27, 2014).

<sup>113</sup>Robbins, *supra* note 103, at 3, 4. Robbins, *supra* note 103, at 1 (“Beginning in 2008, the World Bank and Mongolia have worked together to improve the country’s mineral revenue management framework, drafted and passed a rule-based fiscal policy law, maintained dialogue of fiscal policy, and pursued the design of an effective Sovereign Wealth Fund (SWF).”).

<sup>114</sup>Robbins, *supra* note 103, at 3 (“Policy dialogue was extended to discussion of the objectives of the fund and its governance . . . . Panama, Colombia, and other countries have also adopted rule based fiscal policies with integrated SWFs that perform counter-cyclical functions.”).

<sup>115</sup>Discussed more fully in Larry Catá Backer, *Part 18 Fundo Soberano de Angola (Angola SWF) – Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Mar. 2, 2014, 8:19 PM), <http://lbackerblog.blogspot.com/2014/03/part-18-fundo-soberano-de-angola-angola.html>.

<sup>116</sup>Official website may be accessed at <http://www.fundosoberano.ao/language/en/>.

<sup>117</sup>See INTERNATIONAL MONETARY FUND, IMF COUNTRY REPORT NO. 12/215 19, 38 (2012), available at <http://www.imf.org/external/pubs/ft/scr/2012/cr12215.pdf>.

<sup>118</sup>Candido Mendes & Colin McClelland, *Angola Starts Sovereign Wealth Fund With \$5 Billion*, BLOOMBERG (Oct. 17, 2012, 10:42 AM), <http://www.bloomberg.com/news/2012-10-17/angola-starts-sovereign-wealth-fund-with-5-billion.html>.

By 2011 Angola was reporting to the IMF about its efforts to establish what it then called an Oil for Infrastructure Fund.<sup>119</sup> This fund was to serve as the basis for a stabilization Fund.<sup>120</sup>

Building on this, the IMF proposed that this facility be used as a fiscal buffer to protect the Angolan government from itself.<sup>121</sup> The IMF Report noted that “under an OIF-like mechanism, Angola would be able to set aside excess revenues in a stabilization fund while gradually scaling up investment. In the event of a repeat of the 2008 oil price shock, investment program could go forth uninterrupted by drawing on the resources set aside in the stabilization fund.”<sup>122</sup> The global investment community viewed this possibility positively.<sup>123</sup> In November 2008, President José Eduardo dos Santos announced the establishment of a commission to establish a SWF that would target internal development, and the *Fundo Soberano de Angola* was formally constituted in 2011.<sup>124</sup>

The FSA is formally structured to conform to international standards. Indeed, Angola is a member of the International Forum of Sovereign Wealth Funds.<sup>125</sup> And the FSA has worked hard to construct a set of formal structures that appear to implement most of the core requirements of the Santiago Principles.<sup>126</sup> The FSA’s organizational structure is unexceptional and conforms generally to the Santiago Principles for autonomous organization under the guidance of the state.<sup>127</sup>

The FSA is meant to serve as a stabilization fund, development facility and a mechanism for fiscal discipline. While the FSA is empowered to invest globally, it has indicated a preference for local investment. Under some definitions, this would make this something other than a SWF, but the form has now outgrown definitions that though relatively new (back in 2005), are now outpaced by the changes in the SWF universe.<sup>128</sup> Among projects initially identified for promotion are a dedicated Hotel Fund to promote the hospitality sector and projects to finance infrastructure

<sup>119</sup> In the medium term, we see a need to enact policies that avoid the disruption caused by the boom-bust cycles associated with oil price volatility . . . . For the time being, an Oil for Infrastructure Fund was set up in February 2011 (but is not yet operational) in order to secure financing for very high priority investments, mainly in water and energy.

INTERNATIONAL MONETARY FUND, IMF COUNTRY REPORT No. 11/346 ¶ 31 (2011), available at <https://www.imf.org/external/pubs/ft/scr/2011/cr11346.pdf>.

<sup>120</sup>“We are continuing to consider alternative fiscal rule, perhaps to be formalized in legislation for a stabilization fund, which would help to smooth public spending over the oil price cycle and prevent the disruptive and sharp contraction of investment spending recorded in 2009–10.” *Id.* at ¶ 31.

<sup>121</sup> The OIF should be used as a fiscal buffer. To be effective in this regard, the OIF would need to be fully funded, and withdrawals judiciously managed until absorption capacity is strengthened. This would allow a gradual scaling up of investment, and protect priority projects from detrimental stops and starts. The OIF could also help sterilize liquidity.

IMF COUNTRY REPORT No. 12/215, *supra* note 117, at ¶ 56.

<sup>122</sup>IMF COUNTRY REPORT No. 12/215, *supra* note 117, at ¶ 6.

<sup>123</sup>“Angola’s decision to set up a sovereign wealth fund is positive news, Fitch Ratings says. It reaffirms our view that government policies are reducing the economy’s exposure to movements in the oil price, and laying a foundation for sustainable growth.” *Sovereign Wealth Fund Plan Positive for Angola*, FITCH RATINGS, Oct 23, 2012), [https://www.fitchratings.com/gws/en/fitchwire/fitchwirearticle/Sovereign-Wealth-Fund?pr\\_id=765930](https://www.fitchratings.com/gws/en/fitchwire/fitchwirearticle/Sovereign-Wealth-Fund?pr_id=765930). It was reported at the time of its establishment that the “money will target domestic agriculture, water, power generation and transportation to attract foreign investment to Angolan infrastructure projects, according to fund documents. Hotel projects including a hospitality school in Angola are part of the fund’s plans.” Mendes & McClelland, *supra* note 118.

<sup>124</sup>*Overview*, FUNDO SOBERANO DE ANGOLA, <http://www.fundosoberano.ao/about-fsdea/>.

<sup>125</sup>The FUNDO SOBERANO DE ANGOLA website explains:

The Fundo Soberano de Angola was established in accordance with international governance standards and best practices as stated in the Santiago Principles and in the future the Fund will be rated by the Linaburg-Maduell Transparency Index. The Fundo Soberano de Angola is committed to operating transparently, responsibly and in full compliance with the laws and regulations of Angola and the countries where it will make future investments.

*Id.*

<sup>126</sup>*Discussed in id.*

<sup>127</sup>*Described in Organizational Structure*, FUNDO SOBERANO DE ANGOLA, <http://www.fundosoberano.ao/governance/>.

<sup>128</sup>The Fundo Soberano de Angola “considers investing across Africa and globally, it has a strong focus on investments in the domestic market, building Angola’s infrastructure and creating opportunities for the citizens of Angola.” *Investment Strategy*, FUNDO SOBERANO DE ANGOLA, <http://www.fundosoberano.ao/investments/>.



projects in Sub-Saharan Africa.<sup>129</sup> Interestingly, it also includes a social charter that, were it to be operationalized to any significant degree, would serve as an innovative and useful mechanism for economic progress among the poorer segments of a political community.<sup>130</sup> “Through the Social Charter, the *Fundo Soberano de Angola* supports social programs and partners with aid agencies through its social impact program that is set out to reach the communities across Angola and other jurisdictions it invests directly.”<sup>131</sup> On the other hand, the embrace of a central planning model by FAS raises substantial questions about the direction and value of its investments. In this case, FAS has determined, on the basis of an assessment of the market and its potential effects in Angola, to focus on the hospitality sector. That effectively draws the state into the business of subsidizing training for one economic sector—dependent on market forces it does not control, and unable, in any nimble way, to respond to market changes. As a consequence, any change in the direction of economic opportunity, for example away from hospitality to small manufacturing of consumer goods, would produce a large crop of ill-trained workers whose condition would be all the worse for a bad centrally planned economic decision. There is neither reason nor justification for this movement of FAS, other than perhaps to provide a reassuring appearance of action, or the echo of political habits of bygone eras. Yet, it might have been better if the FAS had been turned toward investment in market enhancing investments (infrastructure, improvements in the regulatory climate, anti-corruption efforts, and the like) that might have made it easier for private investors to exploit market opportunities in Angola more nimbly.

Indeed, even as it begins its operations, the FAS has also begun to be mired in accusations of corruption. It has been reported that the FSA “is widely seen as a way of bolstering his son’s patronage base, possibly in preparation for him to succeed to the presidency.”<sup>132</sup> But beyond the suggestion of nepotism was the allegation of misuse of FSA funds for personal benefit.

The son of Angolan President José Eduardo dos Santos is again at the centre of controversy following reports that the Angolan Sovereign Wealth Fund he effectively controls has invested R3-billion in a “trophy” property in London’s Mayfair district . . . . There has been much adverse comment on Dos Santos’ junior conflicted role in the wealth fund. In addition, he has been criticized for presiding over a fund that answers only to the president, not to Angola’s Parliament, which is constitutionally responsible for such oversight.<sup>133</sup>

But the allegation of corruption extended beyond that, going as well to the appointment to the FSA advisory board of a friend of the President of Angola with hiring of an investment manager with a questionable past.<sup>134</sup> These produced a weak set of responses from the IMF. They suggested that FSA reporting be sent periodically to the legislature (and not just the president),<sup>135</sup> and that the FSA would not serve well as a facility for macroeconomic stabilization, a suggestion, perhaps, that the FSA was not living up to expectation.<sup>136</sup>

<sup>129</sup>*Id.*

<sup>130</sup>*Social Charter*, FUNDO SOBERANO DE ANGOLA, <http://www.fundosoberano.ao/social-charter/>.

<sup>131</sup>“As a part of this commitment, the Fund dedicates 7.5 percent of its endowment to social development and socially responsible projects in the areas of education, income generation and off-the-grid access to clean water, healthcare and energy.” *Id.*

<sup>132</sup>Aristides Cabeche, *Angola: President’s son dips into sovereign fund for ‘trophy’ Savile Row office*, MAIL AND GUARDIAN (Nov. 15, 2013, 00:00) <http://mg.co.za/article/2013-11-14-presidents-son-dips-into-sovereign-fund-for-trophy-savile-row-office>; see also *Angola names president’s son to chair \$5 bln sovereign wealth fund*, REUTERS (June 21, 2013, 9:43 AM) <http://www.reuters.com/article/2013/06/21/angola-fund-idUSL5NoEX29o2013o621>.

<sup>133</sup>Cabeche, *supra* note 132.

<sup>134</sup>Cabeche, *supra* note 132.

<sup>135</sup>

Staff is of the view that quarterly reports to the National Assembly (similar to the process of reporting for budget execution) are necessary for preserving transparency, and the resources with which the FSDEA will be funded have to be decided as part of the regular budgeting process to preserve the principles of unity and universality of the budget.

INTERNATIONAL MONETARY FUND, IMF COUNTRY REPORT No. 14/81 19 (2014), available at <http://www.imf.org/external/pubs/ft/scr/2014/cr1481.pdf>.

<sup>136</sup>

In this regard, the investment strategy announced in June 2013 confirmed that the FSDEA’s funds will not be allocated towards assets which could provide liquidity in case of sudden balance of payments or financial needs, so that the extent to which FSDEA will provide a stabilization role is unclear. Given that the Oil for Infrastructure Fund (OIF) was envisioned as an important instrument for reducing the

Effectively, the IMF suggested Angola start again.<sup>137</sup> The Angolan experiment and its failure is not unique.<sup>138</sup>

#### **D. Mauritania National Fund for Hydrocarbon Reserves (Fonds National des Revenus des Hydrocarbures (FNRH))<sup>139</sup>**

The FNRH was established in 2006 as both a stabilization fund and a fund to amass savings for future generations. It falls, then, as do many smaller funds of developing states, into the category of macroeconomic disciplinary technique to remove temptation from current governmental leaders. As the name implies, it is funded from revenues received from royalties and other payments connected with the extraction of hydrocarbons from Mauritania. It was recently reported that the fund had deposited about \$90 million (US) for the 2013 fiscal year,<sup>140</sup> but had total assets in 2014 of about \$113 million.<sup>141</sup>

Like other SWFs established in developing states, IFI technical assistance, and efforts to internationalize standards through the development of institutionalized facilities to strengthen government plays a significant role. This was apparent, for example, in the decision of Mauritania to accede in 2005 to the Extractive Industries Transparency Initiative (EITI), launched at the World Summit on Sustainable Development in Johannesburg in September 2002. The application of these principles of this initiative fosters transparency in the use of revenues from the mining and oil industries.<sup>142</sup> To operate the SWF, “government revenues from hydrocarbons are therefore deposited into an open account held with a reputable banking establishment” and a National Council on Extractive Industry Transparency (CNTIE) was established, “with a membership comprising representatives of government agencies and civil society.”<sup>143</sup>

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#### *Footnote continued*

impact of oil revenue volatility on the public investment program, in its absence this function will need to be taken up by additional foreign exchange reserves and other foreign-currency Treasury deposits at the BNA.

*Id.* at 18.

<sup>137</sup>As currently designed, the FSDEA does not have a stabilization mandate, placing a greater burden on international reserves. In this context, the authorities should consider reestablishing a dedicated stabilization mechanism to reduce the fiscal impact of oil revenue volatility.” *Id.* at 22.

<sup>138</sup>It was recently noted:

Available information suggests that African SWFs have been subject to regular capital withdrawals to balance governments’ budgets and repay external debt. For instance, the balance of Nigeria Excess Crude Account (ECA) decreased from USD 20 billion in 2008 to less than USD 3 billion in 2010 while Sudan almost wiped out its Oil Revenue Stabilization Fund (ORSF) (Medani, 2010). Similarly, Algeria has been using its Fonds de Regularisation des Recettes (FRR) to repay public debt.

Thouraya Triki & Issa Faye, *Africa’s Quest for Development: Can Sovereign Wealth Funds help?* 9 (African Development Bank, Working Paper No. 142, 2011) available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/WPS%20No%20142%20Africas%20Quest%20for%20Development%20%20Can%20Sovereign%20Wealth%20Funds%20help%20AS.pdf>.

<sup>139</sup>Discussed more fully in Larry Catá Backer, *Part 4: Mauritania National Fund for Hydrocarbon Reserves – Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Feb. 5, 2014, 2:41 PM), <http://lbackerblog.blogspot.com/2014/02/part-4-mauritania-national-fund-for.html>.

<sup>140</sup>*Fonds national de revenus des hydrocarbures mauritaniens : Plus de 90 millions \$ encaissés*, NOORINFO, Jan. 21, 2014, [http://www.noorinfo.com/notes/Fonds-national-de-revenus-des-hydrocarbures-mauritaniens-Plus-de-90-millions-encaisses\\_b6250145.html](http://www.noorinfo.com/notes/Fonds-national-de-revenus-des-hydrocarbures-mauritaniens-Plus-de-90-millions-encaisses_b6250145.html).

<sup>141</sup>*Mauritanie/Pétrole : 113 millions de dollars dans le fonds National de Revenus des Hydrocarbures (FNRH)*, POINTS CHOUD.INFO, May 2, 2014, <http://www.pointschauds.info/fr/2014/05/02/mauritaniepetrole-113-millions-de-dollars-dans-le-fonds-national-de-revenus-des-hydrocarbures-fnrh/>. Accounts vary, see, e.g., *Mozambique plans sovereign wealth fund*, PM NEWS, May 29, 2014, <http://www.pmnewsnigeria.com/2014/05/29/mozambique-plans-sovereign-wealth-fund/> (\$300 million but hard to gauge reliability).

<sup>142</sup>*Islamic Republic of Mauritania: Poverty Reduction Strategy Paper*, WORLD BANK RESOURCES 37 (June 7, 2011), [http://siteresources.worldbank.org/INTPRS1/Resources/Mauritania\\_PRSP%28June7-2011%29.pdf](http://siteresources.worldbank.org/INTPRS1/Resources/Mauritania_PRSP%28June7-2011%29.pdf) (last visited Oct. 7, 2014) (“Mauritania joined this initiative in a global context of government measures taken in recent years to institute transparent regulations in the management of mining and hydrocarbons and to help those sectors better contribute to securing economic growth, distributing the revenues, and reducing poverty, which still affects approximately 42 percent of Mauritians. In so doing, the government authorities are seeking to forestall the missed opportunities that other countries have experienced in making effective use of their natural resources.”).

<sup>143</sup>*Id.* The CNTIE was charged with preparing public reports, hiring an outside reviewer, drafting action plans, and ensuring civil society participation “actively throughout the entire process and that it contributes to the public debate.” *Id.*

The ability of Mauritania to adhere to the disciplinary structures of its SWF may have already been tested. Mauritania has had recourse to its SWF for short-term needs; “Mauritania withdrew USD 45 million from its Fonds National des Revenus des Hydrocarbures leaving a balance of USD 34.25 million as of March 2009.”<sup>144</sup> But as noted above, the SWF has recovered some of its assets. However, it remains small. It is a small fund. It was reported that “the national oil revenue fund (FNRH) is credited with more than US\$ 55 million. The fund, managed by the central bank of Mauritania (BCM), keeps all revenue from the oil sector activities – exploration, development and exploitation.”<sup>145</sup> The viability and relevance of the SWF may be tested as the price of petroleum declines significantly, as it did in 2014. The resulting decline in revenues will make it more difficult for the FNRH to play a significant role in national macro-economic policy, whether directed inbound or outbound.<sup>146</sup>

Mauritania is neither a signatory of the Santiago Principles nor does its transparency rating appear high (Linaburg-Maduell Transparency Index of 1).<sup>147</sup> It is not a member of the International Forum of Sovereign Wealth Funds. It is not clear whether this fund will succeed in its objectives. It is not clear how its investments are directed; it does not appear that the Mauritanian state plans to use this as anything other than a rainy day fund, at least for the short term. Much more work is necessary to get a better sense of the operation of this SWF in an environment in which, in 2013, the World Bank noted a weak rule of law environment generally.<sup>148</sup> Here again, the SWF has appeared more useful in theory than in fact, though it remains an IFI instrument in the absence of any other. And in the absence of transparency, and without any marker of a willingness to do much other than accede to what it seems its lenders might want, there is little to suggest that Mauritania may make much use of its fund. This is particularly true given Mauritania’s record on slavery, abolished officially only in 1981 (though the government does maintain that the practice as defined by it does not exist).<sup>149</sup>

### **E. Venezuela Macroeconomic Stabilization Fund (Fondo para la Estabilización Económica (FEM) and the National Development Fund (Fonden)<sup>150</sup>**

The Venezuela Macroeconomic Stabilization Fund (*Fondo para la Estabilización Económica* or FEM) is one of the most opaque funds in Latin America. Its genesis and evolution are tied closely to the substantial political transformations and economic shocks that have roiled Venezuela in the first decades of the twenty-first century, and especially its move toward a fairly unique blend of socialist regionalism centered on Cuban-Venezuelan relations.<sup>151</sup> Venezuela’s funds represent the

<sup>144</sup>Triki & Faye, *supra* note 138, at 9.

<sup>145</sup>*Id.*

<sup>146</sup>It was noted in mid 2014 that:

Oil production from Mauritania’s offshore field of Chinguetti brought in US\$ 1.3 million to the public treasury in July 2014, official sources told PANA Wednesday. The receipts, however, sharply dropped compared to US\$ 12 million revenue recorded in June. Chinguetti is presently the only operating oil field in Mauritania.

*Mauritania: Oil revenue drops to US\$1.3 million in July 2014*, PANAPRESS, Aug. 20, 2014, [http://www.panapress.com/Mauritania-Oil-revenue-drops-to-US\\$1.3-million-in-July-2014-3-925564-0-lang2-index.html](http://www.panapress.com/Mauritania-Oil-revenue-drops-to-US$1.3-million-in-July-2014-3-925564-0-lang2-index.html).

<sup>147</sup>Triki & Faye, *supra* note 138, at 11.

<sup>148</sup>See *Islamic Republic of Mauritania: Financial Sector Development Strategy and Action Plan 2013–2017*, WORLD BANK RESOURCES ¶ 132 (2013), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSF/IB/2013/07/10/000333037\\_20130710104935/Rendered/PDF/793310ESWoMRoPooPUBLIBox0377373B.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSF/IB/2013/07/10/000333037_20130710104935/Rendered/PDF/793310ESWoMRoPooPUBLIBox0377373B.pdf) (last visited Oct. 7, 2014) (“Accordingly, the law of contract, commercial law, the civil procedure and investment law have been completely reviewed over the past ten years. However, the regulatory texts required for implementing these laws have not all been adopted, the institutions created have not been financed, the new texts have not been disseminated and popularized, and magistrates have been trained only very recently. The new texts are not respected by the players themselves, and the sanctions stipulated by the texts are not applied.”).

<sup>149</sup>See, e.g., John D. Sutter, *Slavery’s Last Stronghold*, CNN, Mar. 2012, <http://edition.cnn.com/interactive/2012/03/world/mauritania.slaverys.last.stronghold/index.html> (last visited Dec. 7, 2014). Slavery was not criminalized in Mauritania until 2007. See *id.*

<sup>150</sup>Discussed further in Larry Catá Backer, *Part 19 Venezuela SWFs (Stabilization (FEM) and Development (Fonden))—Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Mar. 3, 2014, 12:08 PM), <http://lcbackerblog.blogspot.com/2014/03/part-19-venezuela-fem-macroeconomic.html>.

<sup>151</sup>See Larry Catá Backer & Augusto Molina, *Cuba and the Construction of Alternative Global Trade Systems: ALBA and Free Trade in the Americas*, 31 U. PA. J. INT’L ECON. L. 679 (2010).

two extremes of modern SWF instrumentalization—one grounded in IFI globalization and the other on Cuban Marxist-Leninist principles.

The FEM was established as a tool of International Monetary Fund financial reforms for Venezuela, similar to those that resulted in the establishment of the Angolan SWF in 2012. “In 1998 the ‘Macroeconomic Stabilization Fund,’ also known as FEM was established as a result of advice from the IMF . . . FEM . . . is a fund created by the authority of the Presidency of the Republic. The regulation of the fund by the Board of the Central Bank of Venezuela - BCV began in December of 1999. The fund serves to hedge the fluctuation of income generated by crude oil.”<sup>152</sup> The FEM has been inward looking. It is governed by the board of the Central Bank of Venezuela. The President of the Republic has a substantial role in the governance of the FEM but the legislature does not. FEM does not have a substantial autonomy from the government, nor are its funds well protected from use by government as it needs them for short term projects or to make up budgetary shortfalls.

Its role as a stabilization fund, however, was substantially transformed during the first decade of the twenty-first century, when it was redirected to the objective of contributing toward national development goals in line with the socialist character of Chavez’s administration. In 2003, the original objectives of the FEM were attempted to be reformed by the Parliament, though these efforts were unsuccessful.<sup>153</sup> By 2005, however, change came when it was determined to set the annual contribution to the FEM of about 20 percent of petroleum net revenues. But this contribution level was abandoned in 2006 and the government of Hugo Chavez attempted to eliminate the FEM via constitutional change, but that was rejected by voters in 2007 and never achieved.<sup>154</sup> Instead of abandonment, the FEM has been used increasingly as a development fund under the discretion of the President.<sup>155</sup> Thus, the FEM in recent years has both suffered substantial depletion, and also a substantial change in its objectives as a rainy day and development fund.

“Where does Venezuela go from here? . . . We tried to get an assessment of Venezuela’s total national wealth including its sovereign wealth fund Fonden (the National Development Fund), but the accounting is very opaque; the Sovereign Wealth Fund Institute gives Venezuela its lowest transparency score, along with Libya, Algeria and Mauritania.”<sup>156</sup> But these are political choices (development versus stabilization; wealth protection versus institution for the management of its expenditure, etc.) with which outsiders need not quibble, but which have effects on the use and viability of the FEM for purposes other than as a conduit for national spending. At its extreme, it suggests that the Venezuelan funds have been transformed from SWF classic funds to something else—more akin to the Palestine fund,<sup>157</sup> as a conduit for internal development

<sup>152</sup> It receives revenues above a reference price, currently \$9 per barrel, that is based on the average oil price of the last five years. Oil revenues above the reference price are transferred to the fund. If oil prices drop below the reference price, the fund transfers revenues to the treasury to substitute the revenues it would otherwise have received if oil prices had been stable.

Venezuela, SWF INVESTGUIDE, <https://www.swfinvestguide.com/Venezuela.html> (last visited Oct. 9, 2014).

<sup>153</sup>*Gobierno venezolano utiliza últimos recursos del FEM*, AMÉRICA ECONÓMICA, Nov. 1, 2011, <http://www.americaeconomia.com/economia-mercados/gobierno-venezolano-utiliza-ultimos-recursos-del-fem>.

<sup>154</sup>*Id.*

<sup>155</sup>President Hugo Chavez requested US\$ 500 million from the FEM accounts in order to finance projects that will respond to the emergency caused by the rains and specifically for housing construction. *Gobierno venezolano utiliza últimos recursos del FEM*, *supra* note 153.

<sup>156</sup>Michael Cembalest, *What’s Next for Venezuela*, ZEROHEDGE.COM (Mar. 8, 2013, 20:53) <http://www.zerohedge.com/news/2013-03-08/whats-next-venezuela> (“Despite all the challenges, Venezuela’s economic model may well survive given how high oil prices are. The budget deficit and growth in domestic debt in Bolívares is explosively high, but so is inflation . . .”).

<sup>157</sup>Discussed in Larry Catá Backer, *Part 10: Palestine Investment Fund—Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Feb. 14, 2014, 11:58 AM), <http://lbackerblog.blogspot.com/2014/02/part-10-palestine-investment-fund.html>. In the case of Palestine, it is the European Union rather than IFIs that are the principle sponsors and socialization agents of the fund.

In a sense, then, the PIF begins to acquire the character more as a vehicle for the disbursement of foreign aid than as a means of channeling sovereign wealth. The context may make this inevitable in this time in Palestinian history. But in a sense, the PIF is most interesting for the possibilities it offers as a means of serving as a “reverse” SWF.

based on political goals, than as an investment vehicle for the outward projection through private markets of internal wealth.

Yet, Venezuela also has a development fund. The FEM is one of two funds maintained by Venezuela. The other is a National Development Fund. But these have been utilized interchangeably under the presidency of Hugo Chavez and his successors.

Fonden is the largest of a handful of secretive funds that put decisions on how to spend tens of billions of dollars in the hands of Chavez, who has vowed to turn the OPEC nation's economy into a model of oil-financed socialism. Since its founding seven years ago, Fonden has been funneling cash into hundreds of projects personally approved by Chavez but not reviewed by Congress – from swimming-pool renovations for soldiers, to purchases of Russian fighter jets, to public housing and other projects with broad popular appeal.<sup>158</sup>

The Venezuelan state paints Fonden differently, as a successful facility for wealth transfer and development within Venezuela. “FONDEN's resources are in bolivares and foreign currency and it is at the service of the Executive for what the Bolivarian Government decides to.”<sup>159</sup>

Two principal points are relevant here. The first is that the NDF is meant to serve internal investment administered by the Venezuelan government. The second, is that the NDF is neither autonomous from the state nor are its operations transparent. This later point has raised issues of accountability.

About two weeks ago, I told the story of Deputy Carlos Ramos of the National Assembly who provided us with an Excel spreadsheet of the projects financed by Fonden – the “development” fund that President Hugo Chávez created and uses as his sort of petty cash fund for immediate needs – after I wrote to him.<sup>160</sup>

This does not make it unique but it does suggest that the fund will have limited reach in private global markets except perhaps indirectly. Yet, this is consonant with the moves to embrace a state to state ideology of trade that is reflected in the construction of the ALBA (*Alianza Bolivariana para los Pueblos de Nuestra América*) regional trade association.

And indeed, even as the Venezuelan state has starved FEM, it has continued to fund NDF for local development (abandoning in effect the stabilization function of the FEM—which is viewed ideologically as contrary to the socialist ideology of the current government). “Despite a fitful US dollar flow, the Venezuelan government has instructed both the Central Bank of Venezuelan [sic] (BCV) and oil giant Pdvs to transfer USD 11.7 billion to the National Development Fund (Fonden) this year.”<sup>161</sup> This suggests that Venezuela has also joined the growing number of states that have functionally differentiated their SWFs among stabilization, development, investment and other functions, but also that in Venezuela's case, these funds appear to be operated more as facilities for budgeting than as investment vehicles. For purists, the question then becomes, is this a SWF? And if so what does that tell us about the evolution of the concept, or has it become so broad that it ceases to have meaning? For those interested in the use of SWFs as an instrument of global socialization and governance building along global consensus lines, it suggests the scope and nature of outlier funds.

*Footnote continued*

*Id.* And this characteristic focuses very precisely on the important role of SWFs not as a means of fiscal policy but as a facility for overcoming the limits of weak governance institutions in recipient states.

<sup>158</sup>

The fund now accounts for nearly a third of all investment in Venezuela and half of public investment, and last year received 25 percent of government revenue from the oil industry. All told, it has taken in close to \$100 billion of Venezuela's oil revenue in the past seven years.

Brian Ellsworth & Eyanir China, *Special Report: Chavez's oil-fed fund obscures Venezuela money trail*, REUTERS (Sept. 26, 2012, 7:16 AM) <http://www.reuters.com/article/2012/09/26/us-venezuela-chavez-fund-idUSBRE88PoNo20120926>.

<sup>159</sup>Venezuelan National Development Fund has invested over \$100 billion since 2005, THE EMBASSY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA IN THE UK AND IRELAND, <http://embavenez.co.uk/?q=content/venezuelan-national-development-fund-has-invested-over-100-billion-2005> (last visited Oct. 9, 2014).

<sup>160</sup>Miguel Octavio, *Is \$29 billion missing from Hugo Chavez's Fonden development fund?*, CHRISTIAN SCIENCE MONITOR, Aug. 30, 2011, <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2011/0830/Is-29-billion-missing-from-Hugo-Chavez-s-Fonden-development-fund>.

<sup>161</sup>Mayela Armas H., *Central Bank of Venezuela to transfer USD 3.7 billion to Fonden*, EL UNIVERSAL (Jan. 24, 2014, 11:21 AM), <http://www.eluniversal.com/economia/140114/central-bank-of-venezuela-to-transfer-usd-37-billion-to-fonden> (“The move may have an impact on Venezuela's international reserves, currently at USD 20.8 billion, a level that is not sufficient to meet the country's economic needs.”).

## F. Sovereign Wealth Fund of Gabon<sup>162</sup>

The Sovereign Wealth Fund of Gabon (*Fonds Souverain de la Republique Gabonaise* or FSRG) is another of the recently created African SWFs. Its purpose, like that of other African SWFs, represents an emerging pattern of fiscal discipline for developing states. They all serve to detach and perhaps make more difficult, the ability of a state to dip into its wealth for current spending except as permitted under the framework established for the operation of this “special” account. The SWFs (stabilization and development oriented) were meant to resolve Gabon’s traditional “trouble with insufficient fiscal management, overinflated public sector operating costs, and payment delays on public building projects.”<sup>163</sup>

Thus, the purpose of these SWFs may well be to increase or preserve national wealth, but the principal objective was directed inward rather than outward as a means of leveraging private power for public aims beyond national borders. And, indeed, it is sometimes understood as a means of constraining corruption.

It is my considered argument that in nations such as Nigeria, Equatorial Guinea, Congo [Kinshasha] Gabon, Angola among others whereby natural resources endowed to those entities are explored and the revenue accruable from the export of those rare resources stolen by successive political administrations and diverted to private pockets, it would be imperative for such countries to consider establishing Sovereign Wealth Funds and for strong institutional and legal frameworks to be enforced for the national assets saved in form of sovereign wealth funds used to build functional infrastructure to promote better life for the greatest number of the citizenry.<sup>164</sup>

As in other cases, Gabon presents an instance where IFIs suggest deployment of the forms of the SWF as a toolkit for fiscal discipline in developing states.<sup>165</sup> But this approach has been subject to criticism. “[C]ritics say Africa could reap more from its resources by investing in education, energy, and transport to feed other industries, rather than parking the money in liquid but low-yield assets in safe havens, as sovereign funds tend to do.”<sup>166</sup>

In any case, Gabonese policy determined that the establishment of a SWF was in its interests as a means of managing its oil related revenues. “Gabon’s fund will be called the *Fonds Souverain de la Republique* and is targeted to raise €760 million. Once 25% of this target is reached, investment returns and surplus oil revenues will be used to hit the target.”<sup>167</sup> But the story of FSRG is not one of creation out of whole cloth. Gabon began to use precursors to its SWF in 1998 with the creation of a “future generations” fund as a special account at the Bank of Central African States (BEAC), which it converted to a SWF in 2010, with “10 million and the understanding that it was to be controlled by the Gabonese President as he liked.”<sup>168</sup> The development side of the SWF project was commenced in 2011 with the establishment of a stimulus fund as a disciplinary tool for the management of development projects in line with an “Emerging Gabon” economic agenda.<sup>169</sup>

<sup>162</sup>Discussed further in Larry Catá Backer, *Part 21 Sovereign Wealth Fund of Gabon (Fonds Souverain de la Republique Gabonaise)–Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, LAW AT THE END OF THE DAY (Mar. 9, 2014, 10:40 PM), <http://lcbackerblog.blogspot.com/2014/03/part-21-sovereign-wealth-fund-of-gabon.html>.

<sup>163</sup>*Gabon: Partnered for growth*, LE GABON.ORG, Aug. 15, 2012, <http://www.en.legabon.org/news/657/gabon-partnered-growth>.

<sup>164</sup>Emmanuel Onwubiko, *Is Sovereign Wealth Fund a Right?*, THE NIGERIAN VOICE (Jan. 14, 2013, 22:42), <http://www.thenigerianvoice.com/nvnews/105496/1/is-sovereign-wealth-fund-a-right.html>.

<sup>165</sup>Das, Lu, Mulder & Sy, *supra* note 3.

<sup>166</sup>*African Countries Race To Build Sovereign Wealth Funds*, *supra* note 61.

<sup>167</sup>*Gabon Creates Latest Oil-Fueled SWF*, CHIEF INVESTMENT OFFICER, Feb. 7, 2012, [http://ai-cio.com/channel/NEWSMAKERS/Gabon\\_Creates\\_Latest\\_Oil-Fueled\\_SWF.html](http://ai-cio.com/channel/NEWSMAKERS/Gabon_Creates_Latest_Oil-Fueled_SWF.html). See also ROMUALD YONGA, GUIDES DE FONDS SOUVERAINS AFRICAINS (2012), available at [http://www.african-markets.com/pdf/fr/Guide\\_des\\_Fonds\\_Souverains\\_Africains\\_FR.pdf](http://www.african-markets.com/pdf/fr/Guide_des_Fonds_Souverains_Africains_FR.pdf).

<sup>168</sup>U.S. DEPARTMENT OF STATE, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, REPORT—2012 INVESTMENT CLIMATE STATEMENT - GABON (2012), available at <http://www.state.gov/e/eb/rls/othr/ics/2012/191151.htm>.

In an effort to better utilise income for economic growth, the government remodelled the Fund for Future Generations and launched a new sovereign wealth fund (SWF) in February, which will henceforth be managed exclusively by the newly created Strategic Investment Fund (FGIS). The FGIS will also be responsible for managing all of the government’s stakes.

*Gabon: Partnered for growth*, *supra* note 163.

<sup>169</sup>U.S. DEPARTMENT OF STATE, *supra* note 168.

Despite the evolution, the governance features of the now multiple funds remain troubling from a rule of law perspective, though in a way that mimics Venezuela's current approach. The FSRG is placed under the direct control of the President of the Republic.<sup>170</sup> The investment objectives of the FSRG is to diversify economic development in Gabon, rather than to project Gabonese wealth outside the state through investments in foreign state markets. It is managed by the BEAC. The principle objective of the SWF is to make money.<sup>171</sup> However, it appears that the Gabonese President has broadened the investment scope of the FSRG to include some strategic investments abroad in clearly identified strategic industries.<sup>172</sup> This affects the disciplinary potential of the FSRG, something noted by the IMF in a recent review of Gabon's petroleum fund management.<sup>173</sup> Indeed, for the IMF, the critical issue for Gabon is the balance between its stabilization and development objectives.<sup>174</sup>

### G. Palestine Investment Fund<sup>175</sup>

The Palestine Investment Fund (PIF)<sup>176</sup> is a small strategic development sovereign wealth fund created through the transfer of assets managed by the Palestinian National Authority to an administrative apparatus set up for that purpose. It has also been described as a "private equity and venture capital firm specializing in investments in start-ups, early stage, growth capital, spin-off, and capital raising or business development investments."<sup>177</sup> PIF suggests the way that the form of use of SWFs may be evolving, and may well test the limits of the use of the device as a disciplinary tool.

The PIF is organized as a limited public company, with a juridical personality autonomous of the state apparatus in Palestine. It is overseen by a board of directors charged with the management of investment portfolios and enterprises that are involved in development projects, and a general assembly with about thirty members.<sup>178</sup> Thus, PIF's operations may be conducted either directly or through operating subsidiaries or investment partners.<sup>179</sup> The political apparatus is involved in the selection and removal of the PIF's leadership.<sup>180</sup> The size of the PIF Board may be modified by

<sup>170</sup>Frédéric Maury, *Gabon : le fonds souverain doté de 500 milliards de francs CFA*, JEUNE AFRIQUE, Feb. 6, 2012, <http://economie.jeuneafrique.com/regions/afrique-subsaharienne/7590-gabon-le-fonds-souverain-dote-de-500-milliards-de-f-cfa.html> ("Il est placé sous l'autorité du président de la République Ali Bongo Ondimba.")

<sup>171</sup>

In other words, the mission of Serge Mickoto the head of FGIS is to return a profit through the strategic investment of resources that the Gabonese government transfers annually to FSRG and which comes mainly from oil revenues (about 10%). Suffice it to say that the former CFO of BGFIBank first banking group in Central Africa, is one of the key people in the strategy of diversification of the Gabonese economy initiated by President Ali Bongo Ondimba (ABO).

Stéphane Ballong, *Gabon : Serge Mickoto prépare l'après-pétrole*, JEUNE AFRIQUE, April 23, 2012.

<sup>172</sup>

To achieve this objective, FSRG has invested both in Gabon and abroad in companies in the infrastructure, mining, port management and other key areas identified by the policies of President Ali Bongo. In this respect, the FGIS was one of the sources used for government involvement in public-private partnership (PPP) with the Singapore Aman Resorts, for an investment of at least \$ 70 million over five years.

Biggie Malouana, *Le Fonds gabonais d'investissements stratégiques s'adjuge 8% d'Oragroup*, GABON REVIEW, Oct. 8, 2013 (the FSRG also took an 8 percent interest in Oragroup a pan-African banking group).

<sup>173</sup>"Oil revenue management has been strengthened with the revision of the legal framework for the sovereign wealth fund, to make it more consistent with Santiago Principles. Transparency in the oil revenue management was improved with the publication of annual EITI reports for the years 2007 to 2010." INTERNATIONAL MONETARY FUND, IMF COUNTRY REPORT No. 13/55 ¶ 2 (2013), available at <http://www.imf.org/external/pubs/ft/scr/2013/cr1355.pdf> (statement by Mr. Assimaidou on Gabon).

<sup>174</sup>*Id.* at 37. Development initiatives are also effectuated in concert with the World Bank. See *id.* at 6.

<sup>175</sup>Discussed further in Part 10: *Palestine Investment Fund—Reimagining the State in the Global Sphere: An Inventory of Sovereign Wealth Funds as Regulator and Participant in Global Markets*, *supra* note 157.

<sup>176</sup>The PIF website may be accessed at <http://www.pif.ps/index.php?lang=en>.

<sup>177</sup>*Company Overview of Palestine Investment Fund PLC*, BLOOMBERG BUSINESS WEEK <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=62147909> (last updated Feb. 14, 2014).

<sup>178</sup>Omar Shaban, *Palestinian Investment Fund Needs Reform*, AL-MONITOR, May 14, 2013, <http://www.al-monitor.com/pulse/originals/2013/05/palestinian-investment-fund-reform.html#ixzz2tjXdTTYv>.

<sup>179</sup>See *About PIF*, PALESTINE INVESTMENT FUND, <http://www.pif.ps/index.php?lang=en&page=124402202521> (last visited Sept. 27, 2014).

<sup>180</sup>Currently Dr. Mohammad Mustafa is the Chairman of the PIF and joined the PIF in 2005. Members of the Board serve three year terms and are appointed by the President. "Mr. Mustafa is said to be a trusted aide to Mr. Abbas, and replaced Salam Fayyad in mid 2013 in this role." Roger Cohen, *Fayyad Steps Down, Not Out*, N.Y. TIMES, May 3, 2013, <http://www.nytimes.com/2013/05/04/opinion/global/Roger-Cohen-Fayyad-Steps-Down-Not-Out.html?pagewanted=all>.

presidential decree,<sup>181</sup> and the general assembly is supposed to include stakeholders from critical actors in Palestinian political and economic society.<sup>182</sup> PIF, then, is meant to operate the business of Palestinian development as devolved to it, but in a way that is insulated from the political apparatus and subject to conventional business and financial standards. It represents an effort to adopt the forms of private management to a public enterprise.

PIF originated in 2000 and became operational in 2003. But it continues to be subject to modification of its internal order and investment-operational objectives.<sup>183</sup> As of December 31, 2012, PIF controlled roughly \$800 million for its activities.<sup>184</sup> Those holdings might have been reduced thereafter by about \$200 million as the PIF sought greater transparency and monitoring of its internal accounting.<sup>185</sup> Both PIF's mission<sup>186</sup> and vision<sup>187</sup> are complicated by the issues relating to the Palestinian-Israeli Wars and the shifting objectives of the parties.<sup>188</sup>

As a vehicle for development as well as governance discipline, the focus of PIF's activities are investment within Palestine.<sup>189</sup> The object is to provide, through PIF, a structure through which money received can be devoted to a core set of development missions. "In 2012, PIF started implementing its three year corporate social plan which focuses on supporting specific initiatives and programs with clear developmental impact and potential for sustainability. Programs to develop the Palestinian youth and to prepare them for the job market are in the core of PIF CSR strategy."<sup>190</sup> That has translated into investments that focus on telecommunications, power, tourism, real-estate and hospitality, trade and industry, energy, manufacturing, services, infrastructure sector, capital markets sector, and financial services.<sup>191</sup> One of the most interesting projects of PIF involves investment in areas of Palestinian settlement within the region.<sup>192</sup>

It comes as no surprise that a SWF like PIF, established as a disciplinary tool insulated from the emerging political and governance constraints of the political sector, would be most susceptible to monitoring in those areas. Thus, for example, the independence and functioning of PIF has been subject to some controversy, especially within the United States, as a donor nation.<sup>193</sup> While a bit

<sup>181</sup>*Board of Directors*, PALESTINE INVESTMENT FUND, <http://www.pif.ps/index.php?lang=en&page=124402287954> (last visited Sept. 27, 2014). See also *Annual Report 2012*, PALESTINE INVESTMENT FUND 12–13 [http://www.pif.ps/resources/file/annual\\_report/EnglishAnnualReport.pdf](http://www.pif.ps/resources/file/annual_report/EnglishAnnualReport.pdf) (last visited Sept. 27, 2014).

<sup>182</sup>*Annual Report 2012*, *supra* note 181, at 10, 14–15.

<sup>183</sup>PIF reported on its website, for example, that "At present, PIF is well-prepared to maximize the assets' value for its shareholders. Toward this end, PIF is intensifying its efforts to support the transformation of promising investment portfolios in order to restructure itself as a dynamic organization with high institutional standards." *Palestine Investment Promotion Agency*, THE PALESTINE INVESTMENT FUND, <http://www.pipa.gov.ps/pif.asp> (last visited Sept. 27, 2014).

<sup>184</sup>See *Annual Report 2012*, *supra* note 181, at 50.

<sup>185</sup>See Maher Abukhater, *Palestinian Authority Reveals \$600 Million Investments*, Democracy Council 2013 available <http://www.democracycouncil.org/media-events/press/600.html> ("Revealing the results of a 345-page report prepared by the Los Angeles, California-based Standard & Poor's (S&P) consultants and the Democracy Council, Fayyad stressed that publication of the report "is a major step forward" on the road toward full financial reforms." *Id.*) David Bogoslaw, *Icahn's new megaphone for shareholder activism*, N.Y. TIMES, Oct. 25, 2013, <http://www.corporatesecretary.com/articles/proxy-voting-shareholder-actions/12567/icaohns-new-megaphone-shareholder-activism/>.

<sup>186</sup>PIF's mission is to promote a strong, sustainable and independent Palestinian economy, that will be a cornerstone of the independent Palestinian State with Jerusalem as its capital." *Annual Report 2012*, *supra* note 181, at 9.

<sup>187</sup>PIF's vision is to promote sustainable growth in Palestine through in-country investment. *Annual Report 2012*, *supra* note 181.

<sup>188</sup>*Annual Report 2012*, *supra* note 181, at 10 ("Palestine has been experiencing serious financial and economic challenges, predominantly caused by Israeli occupation that has been and remains to be the single largest obstacle inhibiting sustained economic growth, and forcing its reliance on foreign aid.").

<sup>189</sup>

The firm prefers to invest in Palestine region with a focus on Jerusalem, Jordan Valley, and Dead Sea. It also manages portfolio for its clients. The firm invests in the public equity and fixed income across the globe. It can take both direct majority and minority stakes in its portfolio companies.

*Company Overview of Palestine Investment Fund PLC*, *supra* note 177.

<sup>190</sup>*Corporate Social Responsibility*, PALESTINE INVESTMENT FUND, <http://www.pif.ps/index.php?lang=en&page=124412111424> (last visited Sept. 27, 2014). An interactive map of its current investments may be accessed at <http://www.pif.ps/map.php?lang=en>.

<sup>191</sup>*Company Overview of Palestine Investment Fund PLC*, *supra* note 177.

<sup>192</sup>*Annual Report 2012*, *supra* note 181, at 46 (empowerment program, which aims to benefit Palestinian refugees in Lebanon. The program endeavors to improve the standard of living of Palestinian refugees by improving their economic and social conditions and by decreasing unemployment rates).

<sup>193</sup>See, e.g., Rick Richman, *Who Owns the Palestine Investment Fund?*, COMMENTARY MAGAZINE (Sept. 15, 2011), <http://www.commentarymagazine.com/2011/09/15/palestine-investment-fund-congress/> (noting corruption, cronyism and questionable transactions).



of the testimony might be read with some suspicion as posturing before the US Congress strategically driven within the context of the Palestinian-Israeli Wars and the renewed pressures for negotiation of settlement originating in the United States, the issue of corruption and of the autonomy of the PIF remains one that will likely trouble it in the future. More concrete proposals for reform have been made as well—including structural, monitoring, conflict of interest, and autonomy reforms that are meant to strengthen the ability of the PIF to function as an effective disciplinary unit within the Palestinian framework.<sup>194</sup>

The connection with its sponsors is to some extent singular and important for the operational viability of PIF, one which is complicated by the unsettled nature of its relationship with Israel.<sup>195</sup> This reliance on donors and sponsors<sup>196</sup> is one which makes it much more sensitive to the views and expectations of those outside institutions that fund PIF. Indeed, PIF must be careful to maintain close relationships with sponsors, usually abroad. In a sense, this suggests an inversion of the usual arrangement of relationships between SWF home and host states. The World Bank plays a critical role as a coordinator and sponsor of funds inflow.<sup>197</sup> This is supplemented by public and private sponsors in Europe, where PIF periodically engages in road shows for sponsors.<sup>198</sup>

In a sense, then, the PIF begins to acquire the character more as a vehicle for the disbursement of foreign aid than as a means of channeling sovereign wealth. The context may make this inevitable in this time in Palestinian history. But, in another sense, the PIF is most interesting for the possibilities it offers as a means of serving as a “reverse” SWF. If the PIF is able to build string institutional structures, it might then well serve the state of Palestine as it seeks to arrange its economy and find a means of both internal development and avoid the corruption that sometimes attends to the inbound flow of aid funds.

#### IV. CONCLUSION

Considering Sovereign Development Funds as a SWF subset, Ashby Monk was right to suggest that with these funds “there’s a remarkable opportunity—in fact it’s a requirement—to re-root investment organizations in the “real”, and to take a limited pool of capital and create wealth in general terms . . . . Their extra-financial mandates are, in a way, a license to think outside the box and to take on big problems.”<sup>199</sup> I have suggested that:

<sup>194</sup>*Described in* Shaban, *supra* note 178.

<sup>195</sup>

Donor funded flows had increased government-funded services but that growth model was unsustainable . . . . Large-scale foreign investments being invited will require significant relaxation of restrictions by Israel, which remain the major impediment to sustainable economic growth . . . . The Palestinian Authority also has a significant responsibility to maintain its substantial achievements on institution building. It will need to stay the course on reforms that are within its control—to strengthen its fiscal position and deliver essential public services—even while transitions are ongoing within.

INGER ANDERSEN, VICE PRESIDENT FOR MIDDLE EAST AND NORTH AFRICA, THE WORLD BANK (2013), available at <http://siteresources.worldbank.org/WESTBANKGAZAEXTN/Resources/AHLCSeptember2013StatementbytheWorldBank.pdf>.

<sup>196</sup>The World Bank published a donor list for 2012. See WEST BANK AND GAZA COUNTRY MANAGEMENT UNIT MIDDLE EAST AND NORTH AFRICA REGION, THE WORLD BANK, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND INTERNATIONAL DEVELOPMENT ASSOCIATION AND INTERNATIONAL FINANCE CORPORATION INTERIM STRATEGY, NOTE FOR THE WEST BANK AND GAZA 2012–2014 35 (2012), available at <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/ISO412.pdf>.

<sup>197</sup>See *id.* at ¶¶ 22–24. This included work on government building efforts generally. “Support for the PA’s public financial management, civil service reform and anti-corruption initiatives were the main areas of focus at the apex level.” *Id.* at 26.

<sup>198</sup>

The Road Show is part of a strategic drive to increase exports of the Palestinian services sector by promoting potential investment opportunities in the Palestinian economy and portraying success stories of listed companies. It also aims at attracting institutional investors to stocks listed on the Palestine Exchange (PEX), building long term relationships with UK companies, and demonstrating the promising trading environment that Palestine represents.

*Senior Delegation To Visit London To Promote Palestine Investment Opportunity - National Export Body (PalTrade) And Palestine Stock Exchange To Lead Mission*, MONDOVISIONE, Dec. 23, 2013, <http://www.mondovisione.com/media-and-resources/news/senior-delegation-to-visit-london-to-promote-palestine-investment-opportunity/>.

<sup>199</sup>Ashby Monk, *The Financial Value of Extra-Financial Motives, Avenue of Giants*, INSTITUTIONAL INVESTOR (Nov. 24, 2014: 12:00 PM), [http://www.institutionalinvestor.com/blogarticle/3402495/blog/the-financial-value-of-extra-financial-motives.html#.VG\\_ZHifj7VQ](http://www.institutionalinvestor.com/blogarticle/3402495/blog/the-financial-value-of-extra-financial-motives.html#.VG_ZHifj7VQ).

There is a need now to reframe our thinking. If nothing else, the imperatives of the emerging realities of accepted behaviors now requires a focus on strategies that are firstly coherent with the ideology of globalization (free movements of goods, capital, and services, through non-state ordered private markets, based on open textured, borderless, states); and that secondly can leverage the structures of globalization (creating structures to take advantage of opportunities coherent with porous border markets systems by states and private actors).<sup>200</sup>

These insights acquire greater power as SWF investment strategies become increasingly connected to IFI lending and macroeconomic policies.

This article examined the way in which changes in the objectives of SWFs have begun to affect their operation and their character as part of the toolkit for macro-finance. It suggested the growing importance of development (and stabilization to some extent), of internal finance policy utility, of these funds. It has also suggested that at least in some developing states, SWFs may be increasingly viewed as important for incubating governance behaviors as it serves the economic policy of states. Both of these objectives have been utilized by IFIs in their lending and technical assistance capacities as they have sought to socialize states into international norms and expectations. A review of some recent efforts to establish SWFs with a stabilization or development focus suggests the way in which these funds now may better serve the project of fiscal and governance internationalization, and the development of global policy coherence around the fiscal ideologies of IFIs, rather than as an instrument of national policy.

Part II considered the IFI's interest in and approach to SWFs as a part of their investment, capacity building and rule of law toolkits. The focus was around the argument that SWFs are governance tools deployed to discipline developing countries in line with the Washington Consensus/IFI ideology. Within the structures of that ideology, SWFs could serve as important instruments for institutional discipline in states where there is reason to build a measure of distance between the organs of state, and institutions driving fiscal policy. Its origins in Washington Consensus premises are clear. Part III then reviewed the manifestation of this approach in the development of SWFs in a number of developing states. Starting from a template SWF, it looked at a number of recently established SWFs in Africa, tied to resource wealth management, and also the somewhat unique case of a SWF that serves as a conduit for inbound aid. This examination suggested the ways that stabilization and development SWFs might better serve financial globalization than the particular interest of states establishing them precisely by transposing global standards of fiscal and governance behavior into the internal workings of states. Consequently, development and stabilization SWFs might be understood to serve as an instrument of globalization from the top down (through IFI policy operationalization) perhaps as effectively as SWFs that seek to project national financial power through private market investments abroad. But, it also creates the possibility of divergence in the fundamental character of SWFs that follows when SWFs are used as governance devices. In this disciplinary role, its utility as an instrument of macro economic policy may be impaired.

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<sup>200</sup>Backer, *supra* note 56 (suggesting nine strategies that African SWFs might consider in structuring and operating their SWFs within a globalized economic order).