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The Political Economy of International Standard Setting in Financial Reporting: How the United States Led the Adoption of IFRS Across the World

Zehra G. Kavame Eroglu[*]

Abstract: Historically, every country had its own accounting standards, each merging to some extent with its local corporate, labor, and tax laws. No matter how undesirable, it was natural to expect differences among nations. Globalization made these differences so impractical that from corporate leaders to accountants to government officials, many pushed for harmonized accounting standards.

Pursuing this goal, a private international organization was created to set standards for the world. Currently around 120 countries require or permit International Financial Reporting Standards (IFRS), however, the United States is yet to make a decision to adopt these international standards.

The adoption of IFRS in the United States would, in theory, be easier compared to the experience of the European Union. The EU mandated that all publicly traded firms use IFRS in their consolidated financial statements from 2005 onwards. Several issues are yet to be resolved, but Europe managed to achieve what was once thought to be an insuperable task in coordinating a common standard for its Member States.

If the adoption of IFRS in the United States would be easier than the EU experience, why has the United States not adopted IFRS? With this paper, I argue that IFRS are a set of U.S. supported Anglo-American accounting standards. Further, that the reason for creating IFRS was not necessarily for the United States to adopt them but to convert the patchwork of accounting standards around the world into a single system that is similar to U.S. GAAP.

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I. INTRODUCTION

A harmonized set of accounting standards has been a major step in the process of integrating capital markets, however, half a century passed without achieving the goal.[1] Historically, every country had its own accounting standards, each merging to some extent with its local corporate, labor, and tax laws. Even culture is said to affect national accounting standards.[2] No matter how undesirable, it is natural to expect differences among nations. This variance is sometimes described as a "chaotic patchwork of diverging rules."[3]

As a consequence, corporate leaders, accountants, government officials, and others worked to harmonize accounting standards to enable international comparability of corporate financial statements. The International Accounting Standards Committee (IASC) was founded in 1973. The scope of its role was to help "small developing countries with no accounting standards of their own to develop accounting rules."[4] Over time, however, it transformed into the most powerful organization in the setting of international accounting standards. By 2001, IASC renamed itself the International Accounting Standards Board (IASB) of the International Financial Reporting Standards Foundation (IFRS Foundation). It was registered in the United States as a Delaware corporation.

In its rise to become the most influential organization of this type, the IASB successfully deposed the United Nations (and other organizations) to set standards in this domain. It became the premier organization setting international accounting standards – at a time when many nations, stock exchanges, and listed companies were striving for harmonization. Approximately 120 countries now require or permit International Financial Reporting Standards (IFRS).[5] This figure will likely rise to 150 countries in the near future. However, the United States is yet to decide whether to allow

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[1] Leonardo Martinez-Diaz, *Strategic Experts and Improvising Regulators: Explaining the IASC's Rise to Global Influence, 1973-2001*, 7(3) BUS. & POL., Dec. 2005, at 1 (this is article 3 within the issue, but the articles are not consecutively paginated, so each article starts again at 1).

[2] Neal F. Newman, *The U.S. Move to International Accounting Standards – A Matter of Cultural Discord – How do we Reconcile?*, 39 U. MEM. L. REV. 835, 841 (2009).

[3] Martinez-Diaz, *supra* note 1, at 1.

[4] *Id*.

[5] Throughout the paper, IFRS could mean a set of standards, a specific standard, or multiple standards. Therefore, the use of is/are should not surprise the reader. Also, the use of "IFRS" for all should not be confusing to the reader because which one is referred to will be obvious from the sentence.

or adopt IFRS for U.S. issuers.[6]

In an earlier paper with Martin Gelter, we argued that the adoption of IFRS in the United States would, in theory, be easier compared to what was required of the EU to harmonize their standards.[7] Both IFRS and U.S. Generally Accepted Accounting Principles (U.S. GAAP) developed within the Anglo-American accounting tradition, whereas, until the adoption of IFRS, accounting in Europe had not.[8] Yet, a brave decision was made and a major step was indeed taken when the EU Parliament approved the adoption of IFRS:[9] the EU mandated that all publicly traded firms use IFRS in their consolidated financial statements starting in 2005.[10] There are several issues yet to be resolved, but, all in all, Europe managed to achieve what was once thought to be an insuperable task in coordinating and harmonizing the set of standards for its Member States.

If the adoption of IFRS in the United States would, in principle, be much easier than the EU experience, why has the United States not adopted IFRS? The standard setters have been converging U.S. GAAP and IFRS for more than a decade; however, the process has yet to come to an end. Further, there is no consensus on whether it is beneficial for the United States to adopt IFRS. Scholars researching the adoption of IFRS in the United States have argued that IFRS are not a good fit for the United States because IFRS are principles-based, whereas U.S. GAAP are rules-based,[11] or that they are not a good cultural fit.[12] Others argued such an adoption would eliminate the

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[6] See the IFRS Foundation's website for which countries adopted IFRS for publicly traded firms. IFRS Foundation, *Jurisdiction Profiles*, IFRS.ORG, http://www.ifrs.org/Use-around-the-world/Pages/Jurisdiction-profiles.aspx (last updated Aug. 30, 2016); Sir David Tweedie, Chairman, International Accounting Standards Board, Prepared Remarks at Empire Club of Canada at the Toronto Conference 7 (Apr. 25, 2008), http://www.ifrs.org/News/Announcements-and-Speeches/Documents/Sir_David_Tweedie_Empire_Club_Speech.pdf; *see* Lawrence A. Cunningham, *The SEC's Global Accounting Vision: A Realistic Appraisal of a Quixotic Quest*, 87 N.C. L. REV. 1 (2008).

[7] Martin Gelter & Zehra G. Kavame Eroglu, *Whose Trojan Horse? The Dynamics of Resistance against IFRS*, 36 U. PA. J. INT'L L. 89 (2014).

[8] *Id.*

[9] *Id.*

[10] Commission Regulation 1606/2002, 2002 O.J. (L 243) 1 (EC) [hereinafter IAS Regulation] (mandating all companies governed by the law of a Member State and listed on a regulated market in a Member State to report their consolidated financial statements applying IFRS. The requirement applies to Member States of the European Economic Area (EEA), which consists of the 27 EU Member States plus Iceland, Liechtenstein, and Norway).

[11] *See, e.g.*, William W. Bratton, *Heedless Globalism: The SEC's Roadmap to Accounting Convergence*, 79 U. CIN. L. REV. 471 (2010); William W. Bratton & Lawrence A. Cunningham, *Treatment Differences and Political Realities in the GAAP-IFRS Debate*, 95 VA. L. REV. 989 (2009).

[12] *See, e.g.*, Newman, *supra* note 2.

competition between U.S. GAAP and IFRS.[13] Still others argued that the Securities and Exchange Commission (SEC) does not have the authority to adopt the standards set by an international organization.[14] In sum, scholars compared the differences between IFRS and U.S. GAAP, or focused on the fact that it is an international organization that sets the standards. None of these arguments are convincing.

With this paper, I argue that IFRS is a set of U.S.-supported Anglo-American accounting standards, and the reason for creating IFRS was to convert the patchwork of accounting standards of multiple jurisdictions into a single system that resembles U.S. GAAP. From its initiation, IFRS were not necessarily designed for the U.S. listed companies to adopt them but for the rest of the world to adopt a set of standards that resembles US GAAP. It was clear that the world was not going to adopt U.S. GAAP as there has always been resistance to any one country's standards being chosen as the world's common denominator.[15] In light of this, I argue that the United States, with its multiple actors and institutions – such as SEC and FASB – successfully managed an international organization to conform to a set of standards similar to U.S. GAAP.

The article proceeds as follows: Part II situates IFRS in the law and economics discussion about mandatory disclosure, and the comparative corporate governance literature. It reviews the patchwork of national accounting standards used before the adoption of the IFRS and explains how those differences were linked to diverging corporate governance regimes around the world. It also evaluates whether the adoption of IFRS is signaling

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[13] *See, e.g.*, Shyam Sunder, *IFRS Monopoly: The Pied Piper of Financial Reporting* 41 ACCT. & BUS. RES. 291 (2011); Shyam Sunder, *IFRS and the Accounting Consensus*, 23 ACCT. HORIZONS 101 (2009); Karim Jamal & Shyam Sunder, *Monopoly or Competition: Standard Setting in the Private and Public Sector* (Univ. Alberta Sch. Bus. Research Paper No. 2013-1005, 2007), http://ssrn.com/abstract=1075705; Shyam Sunder, *Uniform Financial Reporting Standards: Reconsidering the Top-Down Push*, THE CPA J., Apr. 2007, at 6; Ronald Dye & Shyam Sunder, *Why Not Allow FASB and IASB Standards to Compete in the U.S.?*, 15 ACCT. HORIZONS 257 (2001).

[14] *See, e.g.*, Lawrence A. Cunningham, *The SEC's Global Accounting Vision: A Realistic Appraisal of a Quixotic Quest*, 87 N.C. L. REV. 1, 28–33 (2008); Questions from Senator Carl Levin for Mary Schapiro, Nominee to be Chair of the Securities and Exchange Commission 4 (Jan. 8, 2009), http://www.law.du.edu/documents/corporate-governance/sec-and-governance/ShapiroResponsesTo SenatorLevin012009.pdf (asking whether the Sarbanes-Oxley Act allows "the SEC to delegate the development of U.S. accounting standards to the IASB"); Jacob L. Barney, Note, *Beyond Economics: The U.S. Recognition of International Financial Reporting Standards as an International Subdelegation of the SEC's Rulemaking Authority*, 42 VAND. J. TRANSNAT'L L. 579 (2009) (questioning the SEC's authority to recognize standard-setters besides FASB). *But see* Sarbanes-Oxley Act § 108, 15 U.S.C. § 77s(b) (reaffirming the SEC's role in establishing accounting standards to be used by public companies).

[15] Stephen Haswell & Jill Mckinnon, *IASB Standards for Australia by 2005: Catapult or Trojan Horse*, 13 AUSTL. ACCT. REV. 8, 8 (2003).

the end of this divergence, or whether a capital market-oriented set of standards can coexist with different corporate governance regimes. Part III reviews the historical context (including the rise of multinationals and the desire of stock exchanges to attract foreign issuers) and seeks to explain how the IFRS Foundation became the standard-setter for the world. Part IV envisions the direction of the IFRS Foundation and a possible SEC decision on the adoption of IFRS for U.S. issuers.

II. THE PATCHWORK OF NATIONAL ACCOUNTING STANDARDS

A. The Road Towards Mandatory Disclosure Regulation

Every company, big or small, listed or not, and located anywhere in the world, produces some sort of financial report to better understand itself, estimate its capabilities and, when necessary, inform outsiders of its profits or losses. Beyond a basic desire to inform and understand of profits or losses, financial reports help corporations do business with each other, build trust in the market, evaluate themselves (in comparison to competitors), invest capital, pay dividends, raise capital, and so on. Without a financial report, a company has no direction, no mechanism for self-evaluation, and no basis to compare itself with its competitors. That all companies voluntarily produce some sort of a financial report is one of the universal characteristics of corporations. Indeed, history's oldest writing system, Sumerian cuneiform, developed out of the accounting technology created by farmers of the Fertile Crescent.[16] They used "simple shapes for accounting purposes, such as recording numbers of sheep and amounts of grain" which developed into a writing system.[17] Voluntary production of financial reports precedes the development of a writing system itself.

Voluntary disclosure is no surprise. Nonlisted companies in the United States, for instance, are not required to prepare financial reports in compliance with U.S. GAAP, but they do so voluntarily– their creditors most likely ask for them, or they would need these reports if they go public. When this is the case even for nonlisted companies, there are more benefits when listed companies voluntarily disclose financial reports. A Leftwich, Watts, and Zimmerman study from 1981 revealed that managers exceed minimum reporting requirements as "it is in the interest of the manager to provide these

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[16] JARED DIAMOND, GUNS GERMS, AND STEEL: THE FATES OF HUMAN SOCIETIES 218 (1999).
[17] *Id.*

reports voluntarily."[18] Many corporations provided interim reports even in the 1920s–before the establishment of the SEC.[19]

Agency theory implies economic incentives for managers, such as good reputation, as reporting profits ultimately enhances compensation of the managers.[20] Voluntary disclosure plays a critical role for firms when competing to raise capital in markets where limited capital is available.[21] Voluntary disclosure also serves to enhance monitoring as many information asymmetries among investors are eliminated by making financial reports available in the public domain.[22] Disclosure may ultimately decrease the cost of capital and increase firm value.[23]

Each firm's disclosure, in the aggregate, makes it easier for investors to evaluate and compare firms, "lower the estimation risk"[24] and "eliminate duplicative efforts of information intermediaries and investors."[25] Yet, it gets more complicated when negative effects and firm-specific costs are considered. Preparation and dissemination of the financial reports are direct costs and can be substantial, to say nothing of indirect costs.[26] For instance, the information provided to raise capital may be used by competitors (i.e., profitability of a specific business), employees (including the managing team when calculating bonuses) or tax authorities.[27]

Just as firms that disclose more information can attract investors to the detriment of their competitors, the same is true for competition among capital markets. Leuz and Wysocki explain "high transparency in one capital market can siphon off investors and lower the price efficiency in other capital

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[18] Richard W. Leftwich, Ross L. Watts & Jerold L. Zimmerman, *Voluntary Corporate Disclosure: The Case of Interim Reporting*, 19 J. ACCT. RES. 50, 51, 57 (1981).

[19] *Id*. at 51.

[20] Ross L. Watts, *Corporate Financial Statements, A Product of the Market and Political Processes*, 4 AUSTL. J. MGMT. 1, 4–8 (1977); HARRY I. WOLK, JAMES L. DODD & JOHN J. ROZYCKI, ACCOUNTING THEORY: CONCEPTUAL ISSUES IN A POLITICAL AND ECONOMIC ENVIRONMENT 90–91 (7th ed. 2008); *see also* Leftwich, Watts & Zimmerman, *supra* note 18, at 56–59.

[21] This is called signaling theory. *See* ROSS L. WATTS & JEROLD L. ZIMMERMANN, POSITIVE ACCOUNTING THEORY 156, 163–66, 168 (1985); *see also* WOLK ET AL. *supra* note 20, at 91.

[22] Christian Leuz & Peter Wysocki, *Economic Consequences of Financial Reporting and Disclosure Regulation: A Review and Suggestions for Future Research* (UNIV. CHI. & MIT SLOAN SCH. OF MGMT., Working Paper No. 1, 2008), at 6; WOLK ET AL. *supra* note 20, at 91; Leftwich, Watts & Zimmerman, *supra* note 18, at 58.

[23] Leuz & Wysocki, *supra* note 22, at 29.

[24] *Id.* at 12.

[25] *Id.* at 12–13; *see also* John Coffee, Jr., *Market Failure and the Economic Case for a Mandatory Disclosure System*, 70 VA. L. REV. 717 (1984).

[26] Leuz & Wysocki, *supra* note 22, at 10–11.

[27] *Id.*

markets."[28] This could explain why NYSE is the largest stock market in the world by market capitalization–its value is more than the next three combined.[29] However, misreporting activities "have negative spillovers to related firms, governments, and investors," and can cause marketwide negative effects.[30] Such a marketwide effect was seen in the Enron and WorldCom examples.[31]

Cost-benefit analysis tells us that financial reporting and disclosure have many firm-specific and marketwide benefits; thus, that firms voluntarily disclose some information is no surprise. However, the optimal level of disclosure to raise capital while avoiding the aforementioned costs is unique to each firm, and would vary from company to company in the absence of a common standard.[32] This dynamic gives rise to question of whether voluntary disclosure is desirable and sufficient both for firms and the market, or whether requiring and regulating disclosure will better serve those interests.[33]

It has been argued that "anyone who genuinely desires information about a firm can obtain it" by privately contracting with someone with access to it (i.e., the firm itself, stock analysts, etc.).[34] Yet, it would be prohibitively costly and inefficient if firms bargained for the information to be provided to its shareholders, debt holders, employees, customers, and suppliers at the start of each contract negotiation.[35] This inefficiency would multiply when these stakeholders sought to compare the disclosures with information

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[28] *Id.* at 13.

[29] Gelter & Kavame Eroglu, *supra* note 7, at 117.

[30] Leuz & Wysocki, *supra* note 22 at 13–14; *see also* J. Gregory Sidak, *The Failure of Good Intentions: The Worldcom Fraud and the Collapse of American Telecommunications After Deregulation*, 20 YALE J. ON REG. 207 (2003).

[31] *See generally* JOHN C. COFFEE, JR., GATEKEEPERS: THE PROFESSIONS AND CORPORATE GOVERNANCE (2006) (investigating how WorldCom and Enron occurred and analyzing gatekeepers' role in those incidents); *see also* Sidak *supra* note 30 (arguing WorldCom's fraud had real negative effects on other telecom firms, governments and capital markets); Jeffrey N. Gordon, *Governance Failures of the Enron Board and the New Information Order of Sarbanes-Oxley*, 35 CONN. L. REV. 1125, 1127, 1138 & note 29 (2003) ("as demonstrated by widespread market reaction to the problems at Enron, a disclosure regime that is seen as permitting the inflation of financial results adds systematic risk."); Jeffrey N. Gordon, *What Enron Means for the Management and Control of the Modern Business Corporation: Some Initial Reflections*, 69 U. CHI. L. REV. 1233 (2002); William W. Bratton, *Enron, Sarbanes-Oxley and Accounting: Rules Versus Principles Versus Rents*, 48 VILL. L. REV. 1023 (2003), William W. Bratton, *Enron and the Dark Side of Shareholder Value*, 76 TUL. L. REV. 1275 (2002).

[32] Leuz & Wysocki, *supra* note 22, at 14.

[33] *Id.* at 4–10; *see also* Robert E. Verrecchia, *Information Quality and Discretionary Disclosure*, 12 J. ACCT. & ECON. 365 (1990).

[34] WOLK ET AL. *supra* note 20, at 93.

[35] *See, e.g.*, *id.* at 94 (defining this as a "waste of resources for everyone to be buying the same private information about the firms."); *see also* Leftwich, Watts & Zimmerman, *supra* note 18, at 59–60.

provided by other companies (and, particularly if the credibility and reliability with voluntary disclosure is in question).

As Coffee explains, in a capital market-oriented system, voluntary disclosure will not be reliable when one considers agency costs as it may be "sheltering opportunistic managerial behavior."[36] Voluntary disclosure would enable managers to withhold critical information or disclose some the way they prefer and at a time they see it beneficial. When, for instance, managers oppose a takeover, voluntary disclosure would help managers delay the downward adjustment in stock price.[37] Thus, mandatory disclosure seems to be a healthier way to respond to such problems. [38]

From negotiating disclosures to comparability, from limiting the private benefits of controlling insiders to providing ease of access to capital markets, bank loans, and investment alternatives for investors, regulation has various marketwide and firm-level cost savings.[39] Mandatory disclosure could be optimal even for creditors such as banks, as they will find it more reliable and efficient to gather information relying on a standardized set of disclosure rules. Regulation provides unification over implementation, enforcement, and sanctioning in a way that is cheaper and more efficient than voluntary disclosure.[40] In addition, mandatory disclosure regulations ensure the reliability and accessibility that allows financial markets to flourish. A philosophical justification is that in an "open and democratic society," regulating disclosure would be the reasonable road to constant improvement of accounting standards.[41]

Finally, the concept of information as a public good plays a critical role for financial reporting standards, financial accounting information provided in the capital markets, and information from non-issuer sources (such as information provided by securities analysts.)[42] There are two main reasons why these are seen as public goods. First, one can access and use accounting

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[36] Coffee, *supra* note 25, at 747.

[37] *Id.*

[38] *Id.*

[39] Rene M. Stulz, *Securities Laws, Disclosure, and National Capital Markets in the Age of Financial Globalization*, 47 J. ACCT. RES. 347, 377–83 (2009) (showing that mandatory disclosure and enforcement decrease agency costs and impact investment decisions and welfare of a country); Leuz & Wysocki, *supra* note 22, at 18–22; Christian Leuz, *Different Approaches to Corporate Reporting Regulation: How Jurisdictions Differ and Why*, 40 ACCT. & BUS. RES. 229, 231 (2010); REINIER KRAAKMAN ET AL., THE ANATOMY OF CORPORATE LAW 279 (2d ed. 2009); WOLK ET AL. *supra* note 20, at 94–98.

[40] Leuz & Wysocki, *supra* note 22, at 14–17.

[41] WOLK ET AL., *supra* note 20, at 94, 99 ("the focus of accounting regulation is not on mandatory reporting per se; it is on improving the quality of reported information.").

[42] WATTS & ZIMMERMANN, *supra* note 21, at 164–65, 167; Coffee, *supra* note 25, at 722, 725–26.

standards, financial reports, and the securities analyst reports without paying for them.[43] Second, the value of these goods does not diminish with usage, regardless of whether they are available for, and used by, others.[44] However, if public goods are unregulated, they tend to be underprovided–due to externalities. Moreover, these circumstances suggest the presence of free riders and the inability to charge all users.[45] Regulation and standardization improves efficiency (and lowers cost) by providing a basis from which to validate information for accuracy.[46] For this reason, mandatory regulation is viewed as the best alternative in the case of disclosure of financial information in the capital markets. There is widespread agreement that regulation is beneficial for the development of financial markets.[47]

With the acknowledgment that mandatory disclosure is more beneficial than a voluntary regime, the discussion turns to who will regulate. One country may choose a private standard-setter to regulate, while another might envision disclosure requirements as the product of a formal legislative process–and would not allow it to remain in the hands of private parties. Some would prefer a public agency to enforce the rules, while others may find such an agency cumbersome and inefficient. Further, there may be regulation at the country level, state level, or exchange level. Yet, as new trends show, standard setting could also occur at the international level, unifying the disclosure regulations of adopting countries and increasing network effects.[48]

Choosing among the aforementioned alternatives, and accounting

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[43] Coffee, *supra* note 25, at 725–26. This is called non-excludability which brings up the free-riding problem. As to free-riders problem for accounting standards, think about the nonlisted companies using U.S. GAAP in spite of the fact that these standards are designed for listed companies and with capital markets in mind. Also note, even many listed companies were free riders until the Sarbanes Oxley Act as not all listed companies were contributing to the standard setters. Listed companies started to pay an annual accounting support fee to the SEC and these funds in turn are being transferred to FASB after approval of their annual budget by the SEC. Yet, such a funding/general fee payment to the SEC is not a direct payment in return to the standards used by those companies and thus accounting standards can still be categorized as public good in which uses do not directly pay for it. *See* Sarbanes Oxley Act, 15 U.S.C. § 7219 (2010); *see also* OFFICE OF THE CHIEF ACCOUNTANT, WORK PLAN FOR THE CONSIDERATION OF INCORPORATING INTERNATIONAL FINANCIAL REPORTING STANDARDS INTO THE FINANCIAL REPORTING SYSTEM FOR U.S. ISSUERS: FINAL STAFF REPORT (July 13, 2012) [hereinafter SEC FINAL STAFF PAPER, July 13, 2012.]; Cunningham, *supra* note 6, at 27.

[44] Coffee, *supra* note 25, at 725 (giving public goods examples such as public parks and public television); WOLK ET AL., *supra* note 20, at 96 (giving the example of highways and National Public Radio).

[45] Coffee, *supra* note 25, at 722, 726; WOLK ET AL., *supra* note 20, at 96.

[46] Coffee, *supra* note 25, at 722, 726.

[47] Andrei Shleifer, *Understanding Regulation*, 11 EUR. FIN. MGMT. 439, 442 (2005).

[48] Leuz & Wysocki, *supra* note 22, at 21–22.

regulation itself, is a political activity.[49] It is not possible, even for regulators, to determine the optimal level of disclosure.[50] To further complicate the political process of regulation is the potential presence of regulators who may be incompetent, corrupt, or captured by the industry to be regulated.[51] Moreover, regulation in accounting affects income and wealth distribution and will be "benefitting one group at the expense of another."[52] As Perry and Nölke put it,

> Resolution of social conflict over resources is not simply recorded by accounting after the event; rather, accounting numbers themselves form the basis for such resolutions. Accounting impacts the lives of everyone in the society, even (or perhaps especially) those who know very little about the subject and have never set eyes on a financial statement.[53]

In light of these considerations, mandatory disclosure is the subject of political decisions rather than an outcome of a pure economic analysis.[54]

B. Divergent Financial Accounting Systems Until the Worldwide Adoption of IFRS

Economic analysis is inevitable where governments or private actors set accounting standards, yet a purely economic analysis may not reveal the underlying reasons of a chosen set of standards. Almost every nation had its own accounting system until the worldwide adoption of IFRS, because accounting was seen as a national matter. To the extent markets were closed, there was no necessity to understand other counties' accounting standards nor was there a desire to look at the financial reports of companies located in other countries. At the national level, it was—and it still is—mandatory to have some sort of financial reports for some or all companies incorporated in that jurisdiction, but these financial reports were (and still are) not necessarily used for the same purpose or prepared for the same audience. Nor the standards or the standard setters resembled one another.

In some countries, financial accounting has been closely connected to tax accounting, which is why standard-setting has sometimes been seen as a

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[49] *See e.g.*, WOLK ET AL., *supra* note 20, at 101–07.
[50] *Id.*; Leuz & Wysocki, *supra* note 22, at 16.
[51] *See e.g.*, Shleifer, *supra* note 47, at 440–41.
[52] Leuz & Wysocki, *supra* note 22, at 16.
[53] James Perry & Andreas Nölke, *The Political Economy of International Accounting Standards*, 13 REV. INT'L. POL. ECON. 559, 560 (2006).
[54] WOLK ET AL., *supra* note 20, at 101.

legislative task. In such countries, accounting has been regulated as part of their company law and tax law. In other countries, however, tax accounting and financial accounting are separate; in this case, private actors, such as a group of experts, generally set financial reporting standards.

This patchwork has been fading away, to some extent, as more countries adopt IFRS for public firms. But does it really mean that the world of financial accounting is now harmonized for listed companies no matter where they trade? It is important at this point to note that most countries are adopting IFRS for publicly traded firms, not necessarily for small or nonlisted ones. The EU for instance, has mandated IFRS since 2005, but only for consolidated accounts of listed companies.[55] Company level accounts and nonlisted companies fall under national accounting laws—at least so long as the Member State does not require or permit IFRS for other accounts.[56]

With the trend to harmonize accounting standards across nations, the question becomes whether all companies should be viewed the same way when it comes to disclosure, or should various corporate governance regimes be taken into account (and have companies disclose differently)? In other words, does it make sense to treat all companies the same for accounting purposes? Recent developments allow us to answer a portion of this question, as public firms are already treated differently. IFRS are not designed for small or nonlisted companies–IASB promulgated separate standards for small and medium sized enterprises (SMEs) called "IFRS for SMEs"; however, these are at an early stage in terms of adoption, compared to IFRS.[57]

However, the question goes beyond an SMEs versus multinationals discussion. Should divergent corporate governance regimes be taken into account, or should they be disregarded under the assumption that IFRS are right for all public firms–no matter where they are located and irrespective of their governance structure?

1. Differences Among National Economies

The existence of financial markets depends on accessible and

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[55] *Id.*

[56] *See e.g.*, Gelter & Kavame Eroglu, *supra* note 7, at 96, 153–56.

[57] IFRS Foundation, *About the IFRS for SMEs*, IFRS.ORG, http://www.ifrs.org/IFRS-for-SMEs/Pages/IFRS-for-SMEs.aspx (last visited Dec. 19, 2016). Among the most recent adopters of IFRS for SMEs are relatively small sized countries such as Kosovo and Uruguay. SMEs in both countries are required to use the IFRS for SMEs starting January 1, 2015. For Kosovo, see IFRS Foundation, *IFRS for SMEs Update*, IFRS.ORG (Apr. 2015), http://media.ifrs.org/2015/SME/April/IFRS%20for%20SMEs%20UpdateApril%202015v2.pdf. For Uruguay, see IFRS Foundation, *IFRS for SMEs Update*, IFRS.ORG (Jan. 2015), http://media.ifrs.org/2015/SME/January/IFRS-for-SMEs-Update-January-2015.pdf.

trustworthy information.[58] Mandatory disclosure is essential for capital markets and is beneficial both for listed companies and investors in capital markets. Yet, not all national financial systems are capital market-oriented. When it comes to capital market-oriented regimes, the world closely watches U.S. capital markets. However, others argue to discredit it. Among those, Doidge, Karolyi, and Stulz point to a record number of foreign companies delisting from U.S. capital markets and argue that the U.S. capital markets have a "listing gap" (meaning they do not have as many listed companies as they should.)[59] Nevertheless, the United States, with NYSE and NASDAQ, has the largest capital market in the world by market capitalization. The United States is followed by the UK, Japan, and China, but the size of all three of the latter combined does not match the size of the U.S. capital market.

Aside from a handful of developed capital markets across the globe, however, the majority of countries do not have developed capital markets. Many countries were not interested in developing capital markets until the 1990s. Academics have examined the underlying reasons for capital markets to operate less well in certain countries. In a series of papers, LLS et al., linked it to "good" or "bad" corporate laws.[60] In those papers, LLS et al. argued that financial development is linked to "legal origin" such as common law versus civil law, and concluded that common law rules are more market friendly and thus superior, while French civil law rules are the least desirable.[61]

The World Bank, the IMF, and the very countries these academics researched, used these studies to push for better-functioning capital markets and changing laws to resemble the capital market-oriented systems.[62] At the

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[58] Katharina Pistor, *Rethinking the "Law and Finance" Paradigm*, 2009 BYU L. REV. 1647, 1651.

[59] *See e.g.*, Craig Doidge, G. Andrew Karolyi, & René M. Stulz, *The U.S. Listing Gap* (Fisher C. Bus., Working Paper No. 2015-03-07, 2016), http://ssrn.com/abstract=2605000 (on listing gap); *see also* Craig Doidge, G. Andrew Karolyi, & René M. Stulz, *Why Do Foreign Firms Leave U.S. Equity Markets?* 65 J. FIN. 1507, 1507–08, 1512 (2010) (on foreign company delistings).

[60] LLS et al. refers to Andrei Shleifer, Rafael La Porta, Florencio Lopez-de-Silanes and their co-authors in different papers such as Robert Vishny, and Simeon Djankov.

[61] *See* Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *Law and Finance*, 106 J. POL. ECON. 1113 (1998); Simeon Djankov, Edward Glaeser, Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *The New Comparative Economics*, 31 J. COMP. ECON. 595 (2003); Rafael La Porta et al., *The Economic Consequences of Legal Origins*, 46 J. ECON. LITERATURE 285 (2008).

[62] La Porta et al. (2008), *supra* note 61, at 325 ("the data collection project has made substantial strides through a World Bank Doing Business initiative, which assembles and updates much of the information on laws and regulations discussed in this paper"); Fauvarque-Cosson & Kerhuel, *Is Law an Economic Contest, French Reactions to Doing Business and Economic-Analysis of Law*, 57 AM. J. COMP. L. 811,

same time, globalization increased the ease of investing in capital markets internationally–with just clicks from a computer with an internet connection. These forces started to change the classical understanding of competition among countries to attract such investors, and the way corporations seek financing.

When LLS et al. argued that common law provided better investor protection rights and better property rights, and thus is a better fit for financial development, international organizations, especially the World Bank, started to develop policies that advised the creation of institutions and the implementation of laws that resembled those of common law economies.[63] However, the IMF and the World Bank seemed to disregard the harsh criticism LLS et al. faced since the publication of their original paper, *Law and Finance*.[64] In that paper, LLS et al. linked the development of stock markets to firm level investor protection, focusing on corporate law and then

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820 (2009) ("Although it initially appeared to be scientific in nature, the aim behind the study emerged to be a biased promotion of *common law* countries to conquer the law market at the expense of the other great legal family, referred to as the French civil law tradition in the reports."); id. at 823 ("their methods, their questionnaires, and modification of certain indicators. Because they were drafted by economists and because the greatest influence in economics emanates from the United States, these questionnaires appeared skewed in favor of the common law from the start."); Ronald J. Gilson, *Catalysing Corporate Governance: The Evolution of the United States System in the 1980s and 1990s*, 24 COMPANY & SEC. L.J. 143, 143 (2006) ("By the close of the 1990s, the United States corporate governance system . . . was treated as the end point in the burgeoning convergence literature and was the template for the reform efforts of major NGOs, like the World Bank, the OECD and the International Monetary Fund"); Maria Pargendler, *The Corporate Governance Obsession* (Stan. L. & Econ., Olin Working Paper No. 470, 2015), http://ssrn.com/abstract=2491088; *see generally* Alvaro Santos, *Labor Flexibility, Legal Reform, and Economic Development*, 50 VA. J. INT'L L. 43 (2009) ("develop insights gained from comparative law and legal theory to challenge the World Bank project's theoretical assumptions, pointing out its methodological flaws and showing its potentially misleading recommendations for legal reform."); Catherine Valcke, *The French Response To The World Bank's Doing Business Reports*, 60 U. TORONTO L.J. 197 (2010).

[63] WORLDBANK, DOING BUSINESS IN 2004: UNDERSTANDING REGULATION (2004) (subsequent annual reports can also be reviewed); *see e.g.*, Pistor, *supra* note 58, at 1656–57 ("The failure to explain the link between legal origin and specific legal institutions is particularly disconcerting when this framework is used for policy purposes. After all, most of the LLS et al. studies were sponsored by the World Bank and the World Bank has used the indicators for assessing countries' legal systems and to motivate policy advice (Doing Business Project)."). Interestingly, even Wikipedia mentions La Porta et al. at their page on the Doing Business Report. *Ease of Doing Business Index*, WIKIPEDIA, https://en.wikipedia.org/wiki/Ease_of_doing_business_index#Doing_Business_Report (last visited Dec. 19, 2016) ("The Doing Business Report has its origins in a paper first published in the Quarterly Journal of Economics by Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer called 'The Regulation of Entry' in 2002.").

[64] Even further, they seem to have disregarded the criticism about their policies relying on the research of La Porta et al. *See generally* Pistor, *supra* note 58. For further articles with a criticism towards the World Bank's Doing Business Reports, see *supra* note 62.

on securities law, but never banking law, which itself suggests a preference for capital market-oriented financial systems.[65] Moreover, developments in the law generally follow economic developments, as it grows to address new situations or react to crises.[66] However, LLS et al. treated the presence of particular laws as a precondition of economic development.[67] Securities law in the United States, for instance, is a response to the Great Depression; the Sarbanes-Oxley Act came only after the Enron scandal; and the Dodd-Frank Act could have never been enacted if the 2008 financial crisis had not occurred.[68]

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[65] Pistor, *supra* note 58, at 1651 (citing Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *What Works in Securities Laws?*, 61 J. FIN. 1 (2006)).

[66] Roberta Romano, *Regulating in the Dark and a Postscript Assessment of the Iron Law of Financial Regulation*, 43 HOFSTRA L. REV. 25, 25 (2014) ("foundational financial legislation tends to be enacted in a crisis setting"); Roberta Romano, *Further Assessment of the Iron Law of Financial Regulation A Postscript to Regulating in the Dark* (Euro. Corp. Gov. Inst., Working Paper No. 273, 2014), http://ssrn.com/abstract=2517853, ("[T]here is a systemic pattern in major U.S. financial regulation: (i) enactment is invariably crisis driven . . . ."); Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521, 1523–29 (2005) (explaining the aftermath of Enron and others and how high profile corporate scandals pawed the way for the enactment of SOX); *id.* at 1528 ("SOX was emergency legislation, enacted under conditions of limited legislative debate, during a media frenzy involving several high-profile corporate fraud and insolvency cases"); *see also* Stephen M. Bainbridge, *Dodd-Frank Quack Federal Corporate Governance Round II*, 95 MINN. L. REV. 1779, 1780 (2011) ("In response to public outrage prompted by stock market losses and seemingly rampant fraud, Congress passed the Sarbanes-Oxley Act of 2002"); Peter T. Muchlinski, *Enron and Beyond: Multinational Corporate Groups and the Internationalization of Governance and Disclosure Regimes*, 37 CONN. L. REV. 725, 745 (2005) ("[T]he main thrust of post-Enron reform has been to establish a stronger regime for the oversight of auditors and of the auditing process. This has been led by the Sarbanes-Oxley Act . . . ."); id. at 759 ("Sarbanes-Oxley can be seen as a reactive measure that sought to 'plug' the gaps in corporate governance systems and accounting and auditing practices that were identified as key to the Enron crisis."); Gerald F. Seib, *The President's Agenda: Rahm Emanuel Discusses What He Expect to Pass (Everything)*, WALL ST. J., Nov. 23, 2009, R 10 (citing President Barak Obama's chief of staff, Rahm Emanuel, saying "never let a serious crisis go to waste").

In line with regulating after the crisis, Romano tells how, in the absence of the crisis, the legislative process will slow down. Roberta Romano, *Does the Sarbanes-Oxley Act Have a Future*, 26 YALE J. ON REG. 229, 233 (2009) ("Notwithstanding a slow-moving legislative process in the absence of the crisis environment that gave rise to SOX, the widespread criticism of SOX has had a discernible effect, causing the SEC to revisit its implementation in order to take preemptive action that could deflect and drain the energy behind efforts by Congress and business interest groups to revamp the legislation.").

[67] Pistor, *supra* note 58, at 1653–54; John C. Coffee, Jr., *The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control* 111 YALE L.J. 1, 7 (2001) ("Much historical evidence suggests that legal developments have tended to follow, rather than precede, economic change").

[68] *See supra* note 66 and accompanying text; *see also* Coffee, *supra* note 67, at 24–39 (giving historical examples from the U.S. experience on how U.S. laws followed the economic change.).

In addition, in today's complex world where various laws were transplanted into national legal systems and influenced by multiple economies at different times, it is not black or white to determine a country's "legal origin."[69] Siems, for instance, points out the difference between transplanted and origin economies and criticizes the arbitrary way LLS et al. determine countries' legal origin.[70] For instance, Lithuania belongs to the French legal family whereas Latvia, together with China and Japan, belongs to the German legal family.[71] Also, Armour & Lele show how making a judgment on the basis of legal origin can mislead, such as an assumption that Indian laws are 'good' because of their common law origin.[72]

Both Roe and Coffee have collected historical evidence and shown that neither "legal origin" nor "rules that provide better investor protection" boost national economies, noting various reasons why countries have different legal origins.[73] Economic choices cannot possibly lead to the desired outcome if national differences are disregarded. To better understand how and why capital markets evolved in common law countries but not in Continental Europe, there is a need for further consideration of politics and the different needs that arose after World War I and II; moreover, the effects of colonization on both origin and transplanted economies need to be evaluated.[74]

When Hall and Soskice's pathbreaking work *Varieties of Capitalism* came out, the differences among developed economies became clearer and, more importantly, it became evident that there is more than one path to economic success.[75] Paralleling the civil law vs common law discussion of

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[69] Pistor, *supra* note 58, at 1652–54; s*ee* Mathias M. Siems, *Legal Origins: Reconciling Law & Finance and Comparative Law*, 52 MCGILL L.J. 55 (2007).

[70] Siems, *supra* note 69, at 65.

[71] *Id.*

[72] *See e.g.*, John Armour & Priya Lele, *Law, Finance, and Politics: The Case of India*, 43 L. & SOC. REV. 491, 491 (2008) ("[P]olitical economy explanations have more traction in explaining the case of India than do theories based on 'legal origins.'").

[73] *See* Coffee, *supra* note 67; Siems, *supra* note 69; Mark J. Roe, *Legal Origins, Politics, and Modern Stock Markets*, 120 HARV. L. REV. 460 (2006) (arguing that ownership structures and the depth of stock markets across economies are divergent because of the different political goals of the nations, not by the legal origins.).

[74] *See generally* Coffee, *supra* note 67; Roe, *supra* note 73.

[75] VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE (Peter A. Hall & David Soskice eds., 2001); *see also* Chris Howell, *Varieties of Capitalism - And Then There Was One?*, 36 COMP. POL. 103, 107 (2003) (book review) ("Countries have different sets of institutions to manage such coordination problems as accessing capital, motivating employees, ensuring appropriate skill levels, and bargaining over wages. No one set has obvious advantages that are consistent over time and across all productive activities. The data presented on economic performance do not show one cluster of countries, the liberal market economies for example, as consistently outperforming another.

LLS et al., Hall & Soskice distinguish between coordinated market economies (CMEs) and liberal market economies (LMEs), with LMEs being common law countries and CMEs being civil law countries.[76] They do not claim one economy's superiority but examine the institutional complementarities and show comparative institutional advantages of each type of economy.[77] After all, "each system produces its own costs and benefits in economic, social, and political terms, and the relative costs and benefits may change over time."[78] Since more and more scholars agree that there is no single recipe for economic success, one would suspect that different varieties of capitalism would necessitate different varieties of accounting standards. But, as the next Part shows, varieties of accounting standards are fading away in the name of harmonization and for the sake of global comparability.[79]

From a comparative corporate law perspective, however, it is problematic to assume that a capital market-oriented system or any *one* system would be the best choice for the world, irrespective of how corporations function in that specific economy, and how interrelated institutions operate therein. No matter how global the world is, locality is still an important aspect for every corporation.[80] Put differently, a German company might seek ways to raise capital and thus decide to be listed in the NYSE, yet this does not change the fact that the company is German and it may well maintain German characteristics such as employee representation on its boards in a way that would not be normal for a Delaware corporation

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Rather, each interlocking institutional set does different things with different degrees of success.").

[76] *See, e.g.*, Katharina Pistor, *Legal Ground Rules in Coordinated and Liberal Market Economies*, *in* CORPORATE GOVERNANCE IN CONTEXT: CORPORATIONS, STATES, AND MARKETS IN EUROPE, JAPAN AND THE U.S. 249, 249–52 (Klaus Hopt et al. eds., 2005).

[77] *See e.g.*, Howell, *supra* note 75, at 106. ("a crucial part of the theoretical framework of Varieties of Capitalism is the specification of two ideal-types, liberal market economies and coordinated market economies, each with a distinctive set of institutions that solves the coordination problems of firms in quite different ways."). For a detailed explanation of institutional complementarities, see Peter A. Hall & David Soskice, *An Introduction to Varieties of Capitalism*, *in* VARITIES OF CAPITALISM, *supra* note 75, at 17–18 ("The returns from a stock market trading in corporate securities, for instance, may be increased by regulations mandating a fuller exchange of information about companies.").

[78] Pistor, *supra* note 76, at 249.

[79] *See e.g.*, Yuan Ding, Jacques Richard & Herve Stolowy, *Towards an Understanding of the Phases of Goodwill Accounting in Four Western Capitalist Countries: From Stakeholder Model to Shareholder Model*, 33 ACCT. ORG. & SOC. 718 (2008) (making such a point about goodwill accounting).

[80] *See, e.g.*, Paul L. Davies & Klaus J. Hopt, *Corporate Boards in Europe–Accountability and Convergence*, 61 AM. J. COMP. L. 301, 302 (2013) ("The overall result is an unstable balance between convergence and divergence, shareholder and stakeholder influence, as well as European v. national rulemaking.").

in the United States.[81]

The same is true with a companies' percentage of listed shares in any exchange. It is not surprising to see, for instance, an Italian listed company controlled by a single shareholder or a family holding the majority of the shares of a listed firm. The fact that an Italian firm is listed does not transform its structure into dispersed ownership, nor does it change the way it is controlled. Therefore, it is not clear why, via the mandatory usage of IFRS, all listed companies should be treated as if they have a dispersed ownership structure and a shareholder primacy feature as the main goal of financial reporting.

It is necessary to understand corporate structures around the world before one can focus on whether setting financial reporting standards rooted in the classical Berle-Means corporation (dispersed ownership structure allowing the separation of ownership and control) would be beneficial all around the world. More precisely, it is crucial to understand whether such standard setting would be beneficial even for economies with concentrated ownership (where there is agency conflict between controlling and minority shareholders), and for economies where other stakeholders (such as banks, states, and employees) have a stronger voice compared to their counterparts in capital market-oriented systems.

When corporate governance structures are not the same, but the same standard is implemented, the outcome might well be different. For this reason, implementation incentives need to be different for dispersed ownership and concentrated ownership, which implies a difference in the IFRS practice across corporate governance regimes. For example, in dispersed ownership, shareholders often rely on financial reports where incentives for the implementation of IFRS would arguably be higher. Yet, increasing disclosure requirements and higher standards for transparency will diminish private benefits of control and a decrease in managerial discretion that may not be what a board of directors would want.[82] In other words, in

[81] *See, e.g.*, Martin Gelter, *The Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance*, 50 HARV. INT'L L.J. 129 (2009). Moreover, even if there are some German companies interested in cross-listing, a bulk of German companies, especially the small and medium-size enterprises most likely have no such interest.

[82] *See* Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert Vishny, *Investor Protection and Corporate Governance*, 58 J. FIN. ECON. 3, 3 (2000) (explaining the differences among countries in ownership structures by looking at "how well investors, both shareholders and creditors, are protected by law from expropriation by the managers and controlling shareholders of firms."); *see also* Hollis Ashbaugh, *Non-U.S. Firms' Accounting Standard Choices*, 20 J. ACCT. & PUB. POL'Y. 129, 130–32, 149–150 (2001) (finding that firms are more likely to use IAS when they will issue additional shares of stock and when their shares trade in more foreign equity markets. Ashbaugh defines this as firms attempt to lower information asymmetry component of their cost of capital); Hollis Ashbaugh & Morton

countries with dispersed ownership, investors would want IFRS implementation, while some managers may oppose due to the fact that corporate managers in dispersed ownership may engage in "earnings manipulation."[83]

An analogous argument could be for outside investors versus controlling shareholders in a concentrated ownership where outside investors want IFRS implementation while some controlling shareholders oppose it. In countries with dispersed ownership disclosure requirements, one should arguably find more supporters as the pool would include almost all shareholders, whereas in concentrated ownership, supporters would be limited to minority shareholders. As this example shows, IFRS may be effective when the governance structure of a company is dispersed ownership; however, this will not be the case in every country because private benefits of control are smaller in countries with extensive investor protection.[84] Also, it has been argued that the reduction in private benefits after IFRS adoption is larger in countries with weak investor protection where company insiders have a higher cost of adopting IFRS.[85]

Looking at the current approach in the global accounting standard setting process for IFRS, the focus is not on the differences among corporations in different economies. Instead, IASB looks at firms from a

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Pincus, *Domestic Accounting Standards, International Accounting Standards, and the Predictability of Earnings*, 39 J. ACCT. RES. 417, 417 (2001) ("IAS are a set of financial reporting policies that typically require increased disclosure and restrict management's choices of measurement methods relative to the accounting standards."); *id. at 419* ("We posit that IAS adoption is part of a concerted effort by managers to satisfy the increased demand for information that typically occurs as firms issue additional equity."); Alexander Dyck & Luigi Zingales, *Private Benefits of Control: An International Comparison*, 59 J. FIN. 537, 537–40, 575 (2004) (stating that the degree of accounting disclosure allows minority shareholders to identify abuses.); Craig Doidge, G. Andrew Karolyi, Karl V. Lins, Darius P. Miller & Rene M. Stulz, *Private Benefits of Control, Ownership, and the Cross-Listing Decision*, 64 J. FIN. 425, 426, 432 (2009); Craig Doidge, G. Andrew Karolyi & Rene M. Stulz, *Why Do Countries Matter So Much for Corporate Governance?*, 86 J. FIN. ECON. 1 (2007) (investigating how governance and disclosure are related to firm characteristics); Lin Peng & Ailsa Roell, *Managerial Incentives and Stock Price Manipulation*, 69 J. FIN. 487 (2014) (on managers' capability to manipulate and how corporate governance and disclosure can help); *see generally* Gunter Storbl, *Earnings Manipulation and the Cost of Capital*, 51 J. ACCT. RES. 449 (2013).

[83] Looking at scandals such as Enron and WorldCom would tell us much about it and Coffee names these two as "iconic examples" of fraud in dispersed ownership regimes. John C. Coffee, *A Theory of Corporate Scandals: Why The USA and Europe Differ*, 21 OXFORD REV. ECON. POL'Y 198, 199 (2005).

[84] *See, e.g.*, Annelies Renders & Ann Gaeremynck, *The Impact of Legal and Voluntary Investor Protection On the Early Adoption of International Financial Reporting Standards (IFRS)*, 155 DE ECONOMIST 49, 49–52 (2007); Dyck & Zingales, *supra* note 82, at 538–41, 589–90.

[85] Renders & Gaeremynck, *supra* note 84, at 49–52.

capital market-oriented perspective, calling it "global." Such a perspective assumes that these differences are more or less like the "variation in corporate strategies inside all economies."[86] In spite of raised concerns and widespread warnings from academia arguing that harmonizing accounting standards would not necessarily stop the implementation disparities among nations,[87] the current approach is not focused on whether, for instance, European economies or East Asian countries are capital market-oriented or not. Instead, for IFRS, it seems to matter whether financial reports will be prepared by a listed company or a nonlisted one. Interestingly, if the company is nonlisted, which set of standards they are expected to use is not clear. Since there is a set of standards for small or medium size enterprises (SMEs) one might argue that if it is nonlisted, then it is a SME. Yet, there are nonlisted giants that are definitely neither small- nor medium-sized. A classification assuming all listed companies should be treated equally is problematic and assumes that investors would want them all to produce financial reports under equal terms no matter how different they are. In addition, putting all nonlisted firms together in a different league–no matter how big they are–appears to be equally problematic.

At times, scholars argue that the Anglo-American model, i.e. the shareholder-oriented model, will eventually prevail.[88] Even when writing "*End of History for Corporate Law*" over a decade ago, Hansmann & Kraakman saw the upcoming worldwide adoption of international accounting standards as an example of legal convergence to the shareholder-oriented model.[89] The developments since then (such as increased state ownership in

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[86] VARITIES OF CAPITALISM, *supra* note 75, at 15.

[87] For an excellent article on why disparities will continue, see Christian Leuz, *Different Approaches to Corporate Reporting Regulation: How Jurisdictions Differ and Why*, 40 ACCT. & BUS. RES. 229 (2010) (showing the complementarities among countries' institutions and persistent enforcement differences around the world. Argues "that reporting practices are unlikely to converge globally, despite efforts to harmonize reporting standards."). *See also* Holger Daske, Luzi Hail, Christian Leuz, & Rodrigo Verdi, *Adopting a Label: Heterogeneity in the Economic Consequences Around IAS/IFRS Adoptions*, 51 J. ACCT. RES. 495, 495–500 (2013) (showing "firms have considerable discretion in how they implement the new standards"); Hans B. Christensen, Luzi Hail & Christian Leuz, *Mandatory IFRS Reporting and Changes in Enforcement*, 56 J. ACCT. & ECON. 147, 147–150 (2013) (looking at the jurisdictions that adopted IFRS and this adoption's impact on liquidity, they find that changes in reporting enforcement play a critical role rather than IFRS adoption); CHRISTOPHER NOBES & ROBERT PARKER, COMPARATIVE INTERNATIONAL ACCOUNTING, 161 (12th ed. 2008); Ross L. Watts & Jerold L. Zimmermann, *Towards a Positive Theory of the Determination of Accounting Stan*dards, 53 ACCT. REV. 112 (1978).

[88] Henry Hansmann & Reinier Kraakman, *End of History for Corporate Law*, 89 GEO. L. J. 439 (2001).

[89] *Id*. at 439, 455–57, 465–66.

some countries[90] and the dominance of institutional investors[91]) imply that there will not be *one* winning model, though there has been a tendency toward such a model among *some* firms. More precisely, these are firms that go public, still need to raise more capital, and go global (and cross-list) to raise that capital. Yet, the question is still valid: Does the fact that *some* public firms are being cross-listed in multiple jurisdictions and have a tendency towards a more dispersed ownership structure mean that it will be the case for all firms? Should we see the worldwide adoption of IFRS as a means of designing a capital market-oriented system for the world?

2. Different Accounting Systems in Different Economies

As Cunningham puts it, "[the] goal of any accounting standard is to treat

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[90] In spite of all the privatization of state-owned entities (SOEs) that took place towards the end of the twentieth century, SOEs are still major players in the corporate world. While in some countries such as China, SOEs were and still are inevitable, in other countries such as India and Brazil, state ownership seems to be rising. *See, e.g.*, Przemyslaw Kowalski, Max Büge, Monika Sztajerowska & Matias Egeland, *State-Owned Enterprises: Trade Effects and Policy Implications*, 147 OECD TRADE POL'Y PAPERS 1, 5–6 (2013) (emphasis added) ("Among the emerging countries considered in this paper, *state presence in the economy remains significant, and has in some cases even increased in recent years*. . . . Of the 2000 largest companies, 204 have been identified as majority SOEs in the business year 2010-2011 with ownership spread across 37 different countries. The numbers vary significantly by country, with China leading the list (70 SOEs), followed by India (30), Russia (9), the United Arab Emirates (9) and Malaysia (8). The combined sales of the 204 SOEs amount to USD 3.6 trillion in the business year 2010-2011, representing more than 10% of the aggregate sales of the 2000 largest companies and exceeding the 2010 Gross National Incomes (GNIs) of countries like the UK, France or Germany. The value of sales (USD 327 billion) of these SOEs is equivalent to almost 6% of world GDP. Their combined market value (USD 4.9 trillion) corresponds to 11% of global market capitalisation of all listed companies. China, the United Arab Emirates, Russia, Indonesia, Malaysia, Saudi Arabia, India, Brazil, Norway and Thailand are the ten countries with the highest Country SOE Shares. . . ."); *see also* Mariana Pargendler, *State Ownership and Corporate Governance*, 80 FORDHAM L. REV. 2917, 2917 (2012) (emphasis added) ("State ownership of publicly traded corporations remains pervasive around the world and *has been increasing in recent years*.").

[91] Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863, 863 (2013) ("Equity ownership in the United States no longer reflects the dispersed share ownership of the canonical Berle-Means firm. Instead, we observe the reconcentration of ownership in the hands of institutional investment intermediarie"); *see infra* note 103 and accompanying text; Stulz, *supra* note 39, at 365 ("throughout the world, the growing importance of institutional investors and the increasing ease with which pools of funds from these investors can be assembled make private solutions easier as firms can choose to bypass the public markets and use private equity financing with contractual arrangements"); William W. Bratton & Michael L. Wachter, *Shareholder Primacy's Corporatist Origins: Adolf Berle and The Modern Corporation*, 34 J. CORP. L. 99, 145 (2008) ("Institutional shareholders emerged as active governance players, disrupting power relationships.").

like companies and transactions alike and to treat different companies and different transactions differently. The purpose of these treatments is to provide comparability, meaning that users of financial statements can readily compare the performance of alternative businesses."[92] But what if we are treating different companies alike via IFRS?

The Anglo-American way of financial reporting did not dominate until the widespread adoption of IFRS. However, cross listed firms were publishing multiple sets of financial reports for the same year/quarter, each set with different standards and having different numbers for the same year, which was complicating the process. U.S. capital markets, meanwhile, were looking for ways to expand and reach investors and companies beyond North America. By then, corporations from various jurisdictions were also envisioning access to the world's capital markets to raise more capital.[93]

On the other side of the Atlantic, the European Union has long offered new elements to almost every aspect of the daily lives of Europeans. From the new currency to the new court of the EU, people gradually adapted to an increasingly harmonized region. The new, harmonized rules also offered a new way to establish a company—an EU company.[94] In addition, new laws facilitated business throughout Europe irrespective of which Member State the companies are incorporated in.[95] Freedom of establishment, among the core features of the EU, was "necessary for shareholders as well as third parties interacting with corporations, such as creditors and contracting parties, to be able to rely on a certain level of minimum standards."[96] After these developments, it became easier for a UK company, for instance, to do business in Belgium. As third parties from one Member State interacted with companies incorporated in another, it was reasonable to think of harmonizing the accounting standards these companies were bound by.

Harmonizing accounting rules had been on the EU agenda, as there were substantial benefits. Yet there was no one set of standards that all EU

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[92] Cunningham, *supra* note 6, at 7.

[93] *See infra* Part III.C.1.

[94] *See, e.g.*, Martin Gelter, *Centros, the Freedom of Establishment for Companies, and the Court's Accidental Vision for Corporate Law 2* (ECGI - Law Working Paper No. 287, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2564765http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2564765.

[95] *Id.* ("In the three cases [Centros (1999), Überseering (2002), and Inspire Art (2003)], a Member State refused the recognition of a firm set up in another Member State, or attempted to apply some of its laws to it. In each case, the ECJ found the host State to be in violation of the freedom of establishment. . . . States cannot use special laws to protect their own corporate law policies from circumvention by foreign incorporation. Founders of companies can in principle "pick and choose" the best legal form from all Member States.").

[96] *Id*. at 5–6.

members would agree upon. Europe had a strong desire to harmonize accounting standards across Member States, but there was no strong or feasible option originating in Europe. Germany, for instance, were not going to adopt French accounting, and France would not adopt German accounting (and the British would not even consider either).[97]

The EU's Fourth and the Seventh Directives tried to harmonize accounting across Europe but were not successful. However, something "international" seemed to be the ideal solution because many European companies were interested in raising capital outside of Europe.[98] Of course that cannot be the only reason for the EU to adopt IFRS. The compelling reason was that IFRS offered an international setting that was more appealing than what accounting standards of Continental Europe, mainly the German one, could offer. While Continental European standards were not useful for capital markets, IFRS were designed specifically for listed companies.

Adopting IFRS would provide European corporations a set of standards that would facilitate cross-listings and allow them to raise capital beyond a country's borders in a cost-effective way. Companies with a desire to go global pushed for this change, and governments were inclined to meet the desires of such "giants." Consequently, in 2000 the European Commission mandated the use of IFRS starting from 2005 for consolidated accounts of all publicly traded companies.[99]

However, the EU decision was made without considering whether it was right for all Member States.[100] IFRS originate from an Anglo-American accounting culture where the purpose is to provide timely, useful, and material information for decision-making by participants of the capital markets (namely, investors).[101] This goal perfectly overlaps with the aims of U.S. GAAP, but it does not necessarily meet the goals of financial reporting within the EU countries where protecting the rights of creditors and

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[97] *See, e.g.*, John Flower, *The Future Shape of Harmonization: The EU Versus the IASC Versus the SEC*, 6 EUR. ACCT. REV. 288 (1997) (telling how the draft accounting directive resembled German law and practice and how the UK was not willing to accept such a directive. "The British accountancy profession was horrified at the thoughts of being obliged to accept alien accounting principles consequent on Britain's entry into the European Union.").

[98] *See infra* Part III.C.1.

[99] *See* IAS Regulation, *supra* note 10.

[100] *See, e.g.*, Cunningham, *supra* note 6, at 27 ("[C]urrent demand for global standards rejects historical national standards competition. This rejection is epitomized by the European Union's mandate to replace dozens of competing national standards with the single set of IFRS for all members. Specifically, the European Union favors a single set to promote comparability for the sake of global capital flows and to expand capitalism into places as unlikely as China and Russia.").

[101] Gelter & Kavame Eroglu, *supra* note 7, at 106, 148.

employees had historically been equally important—if not more.

For an Italian public firm, for example, it would not be surprising to be controlled by a shareholder or a family, or a group of shareholders. Whereas the proportion of such public firms controlled by a shareholder or a group of shareholders would be much smaller in the United States in spite of the trend to create super-voting shares[102] in companies such as Facebook and Google, and the rise of institutional investors.[103] In the case of a U.S. public firms, financial reports are among the main documents that shareholders want whereas for the Italian company the blockholder would not necessarily rely on the financial reports as the controlling shareholder can access the information independently. There are also creditors, the banks, who have an interest. Indeed, not all public firms produce financial reports to the same audience and for the same goal. Tax accounting, creditors, employee benefits, long term investments, and short term profitability: all will play a role in financial reports.

For EU countries, financial reports are used for more than informing the investors in a capital market; information gathered from financial reports are used as the basis for computing corporate tax and calculating the distributable profits.[104] A close look at IFRS would however reveal that it is not the right

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[102] *See, e.g.*, Tian Wen, *You Can't Sell Your Firm and Own It Too: Disallowing Dual-Class Stock Companies from Listing on the Securities Exchanges*, 162 U. PA. L. REV. 1495 (2014); Miriam Gottfried, *Investors Beware the Super Powers of Supervoting Shares*, WALL ST. J. (Dec. 31, 2012), https://www.wsj.com/articles/SB10001424127887324296604578179861900450542; Steven Davidoff Solomon, *New Share Class Gives Google Founders Tighter Control*, N.Y. TIMES DEALBOOK (Apr. 13, 2012), http://dealbook.nytimes.com/2012/04/13/new-share-class-gives-google-founders-tighter-control/?_r=0. Arguably Google and Facebook shares with special rights are circumstantial and they exist due to certain individuals who are very powerful but will disappear over time, i.e., after their lifetime. LYNN STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC 114 (2012); *see generally* Randall Smith, *Global Finance: One Share, One Vote? Groupon and Zynga Founders Get Extra Clout Before IPOs*, WALL ST. J., Oct 28, 2011, at C.3.

[103] *See, e.g.*¸ Gilson & Gordon, *supra* note 91, at 865. ("In 2011, for example, institutional investors owned over 70% of the outstanding stock of the thousand largest U.S. public corporations."). It should be noted that institutional investors as a group do own the majority of the outstanding shares yet they do tend to diversify among public corporations rather than acquiring the majority in one corporation. So, each institutional investor owns a minority of the shares and when the institutional investors are combined, they are the majority of the investors.

[104] Gelter & Kavame Eroglu, *supra* note 7, at 166.; *see also* Bratton (2010), *supra* note 11, at 483–84 ("[B]lockholder governance systems . . . having control or influence over internal decision-making, suffer diminished problems of agency and information asymmetry. . . . Accounting principles accordingly matter less than they do, given the separation of ownership and control that prevails in the U.S."); Stefano Cascino, Mark Clatworthy, Beatriz Garcia Osma, Joachim Gassen, Shahed Imam & Thomas Jeanjean, *Who Uses Financial Reports and for What Purpose? Evidence from Capital Providers*, 11 ACCT. EUR. 185 (2014) (arguing different interest groups use financial reports for different purposes.).

fit when it comes to tax accounting. Tax accounting and financial accounting are largely separate in Anglo-American accounting systems. Similarly, distributable profits and legal capital have never been an issue in Anglo-American systems akin to Continental Europe and this is among the reasons why the EU Member States continue to use their traditional accounting standards for entity-level accounts of listed and nonlisted firms.[105] Meeting country level requirements demands something that is not specified in the international level.[106]

Considering that the majority of companies in the world, including the subsidiaries of the listed companies, are not listed, most accounting is done without the use of IFRS.[107] So long as these companies are not using IFRS, IFRS are not truly global for accounting purposes and they are not actually harmonizing accounting standards across nations.[108] On the contrary, the use of IFRS creates a disparity at the national level between listed and nonlisted companies for the sake of having international uniformity among financial reports of all listed companies.

From an Anglo-American perspective, such a disparity between listed and non-listed firms is not a problem. In the United States, U.S. GAAP is mandatory for listed companies and there is no such requirement for nonlisted U.S. companies, including nonlisted subsidiaries of listed companies.[109] In other words, U.S. GAAP is not binding for the majority of companies in the United States, and there are no publication or audit requirements beyond the consolidated financial statements of companies listed in a U.S. stock exchange. That IFRS are not binding for the majority of the firms in the EU is not an issue from a capital market-oriented view, as long as the listed companies are using IFRS.

This example of treatment disparity towards listed and nonlisted companies is among many instances that show how IFRS are designed similar, or even identical, to U.S. GAAP. The similarity of IFRS and U.S. GAAP goes beyond a mere resemblance of some or most standards; it is rooted in the Anglo-American culture of doing business—call it common law origin, liberal market economies, shareholder primacy model, capital market-

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[105] *Id.* at 166.

[106] Gelter & Kavame Eroglu, *supra* note 7, at 151–52, 166.

[107] CHRISTOPHER NOBES & ROBERT PARKER, COMPARATIVE INTERNATIONAL ACCOUNTING 297–98 (12th ed., 2008); *see also* Christopher Nobes, *On Researching into the Use of IFRS by Private Companies*, 7 ACCT. EUR. 213 (2010).

[108] That's why the IFRS Foundation is relentlessly working on IFRS for SMEs and trying to convince the nations to use it.

[109] *See* NOBES & PARKER, *supra* note 107, at 297–300.

oriented model, or something else, but the focus is solely on listed companies with diffused shareholders.

The similarity of IFRS and U.S. GAAP has been the main reason for criticism and resistance in the EU and it is long argued that adoption of IFRS disregards varieties of capitalism and pushes a capital market-oriented model of "small, short-term investors with little to no long-term interaction with the firm."[110] Moreover, under the traditional Continental European approach, employees, banks, and even governments are considered along with shareholders.[111]

As Walker warns, "[m]andating a single set of accounting standards designed to accommodate the needs of liberal stock market economies, risks doing harm to the alternative forms of capitalism that may be necessary for the long-term development of the world."[112] The possibility that a capital market-oriented setting (such as IFRS in this case) may harm alternative forms of capitalism was also raised in law and finance literature, and was among the strongest criticisms of LLS et al., as it could be devastating for developing countries whose economies are fragile.[113] A better word for the world's adopting of IFRS instead of "harmonization" of accounting standards would be "transplantation" of these standards in different economies. Indeed, the literature on the transplantation of laws may better explain the hurdles of IFRS adoption.[114]

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[110] *See, e.g.*, Gelter & Kavame Eroglu, *supra* note 7, at 161 & n.284.

[111] *See, e.g.*, NOBES & PARKER, *supra* note 107, at 42–43 ("For example, the importance of banks in Germany may be a reason for greater conservatism in reporting. It is widely held that bankers are more interested in 'rock-bottom' figures in order to satisfy themselves that long-term loans are safe"); *see also*, Flower, *supra* note 97, at 288–89 ("the IASC's standards have reflected the Anglo-American approach to financial reporting and have completely ignored the traditional approach of Continental Europe.").

[112] Martin Walker, *Accounting for Varieties of Capitalism: The Case Against a Single Set of Global Accounting Standards*, 42 BRIT. ACCT. REV. 137, 150 (2010) ("Imposing a single form of accounting, designed for a particular form of capitalism, runs the risk of preventing alternative forms of financial, economic, and legal governance from evolving.").

[113] *See, e.g.*, Pistor, *supra* note 58, at 1660–61 ("[T]he relentless pursuit of pro market reforms in fragile countries may have exacerbated latent political and ethnic conflicts and further destabilize them.") (citing Amy L. Chua, *Markets, Democracy and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L.J. 1 (1998)); KARL POLANYI, THE GREAT TRANSFORMATION (1944); ROBERT H. BATES, PROSPERITY AND VIOLENCE: THE POLITICAL ECONOMY OF DEVELOPMENT (2001). Beyond law and finance literature many scholars criticized this. *See, e.g.*, Andreas Nölke & James Perry, *The Power of Transnational Private Governance: Financialization and the IASB*, 9 BUS. & POL. 1 (2007) (having an LMEs versus CMEs discussion especially at 10–11); *see also* Perry & Nölke, *supra* note 53.

[114] *See, e.g.*, Katharina Pistor, *The Standardization of Law and its Effect on Developing Economies*, 50 AM. J. COMP. L. 101 (2002); Dan Berkowitz, Katharina Pistor & Jean-Francois Richard, *Economic Development, Legality, and the Transplant Effect*, 47 EUR. ECON. REV. 165 (2003); *see also* Amir N. Licht, *The Mother of All Path Dependencies: Toward a Cross-Cultural Theory of Corporate Governance Systems*, 26 DEL. J. CORP. L. 147, 205 (2001).

Arguably, the Continental European method of accounting, combined with the governance and financing structure of coordinated market economies, granted companies in Continental Europe a competitive advantage by allowing them to "follow long-term strategies such as investing heavily in production and human resource development."[115] Similarly, Grossfeld argues that different corporate governance structures may need different accounting standards.[116]

If indeed "there is a real possibility that international movements of capital will even out national factor endowments," then harmonization of accounting standards towards a capital market-oriented system may signal that nations are already going in that direction.[117] However, a better approach could be to realize that "there is more than one way of doing business" and "in order to accommodate different varieties of capitalism, we may need to allow accounting standards to reflect the type of economic system."[118] As Mattli & Büthe put it, accounting traditions depend on the business and legal cultures of a given country and, when it comes to finding the "best" approach, "[t]here is no right or wrong answer. . . . It's like religion – Christianity or Buddhism."[119]

For that reason, the EU has not mandated IFRS for nonlisted companies and entity-level accounts of listed companies. By leaving the decision to Member States on whether to adopt IFRS beyond the consolidated accounts of listed companies, the EU allows different economies to decide on the extent they want to keep their traditional accounting system, and the extent to which these economies want to align with liberal market economies.[120]

IFRS for SMEs, however, could be the next step towards eliminating the varieties of capitalism. While eliminating the disparity between listed and unlisted firms, IFRS for SMEs could spell the end of varieties of capitalism and setting the shareholder primacy model as the ideal one.[121] Interestingly,

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[115] Andreas Nölke, *A Political Economy Explanation for Country Variation in IFRS Adoption*, 3 ACCT. ECON. & L. 69, 72 (2013).

[116] Bernhard Grossfeld, *Comparative Corporate Governance: Generally Accepted Accounting Principles v. International Accounting Standards?*, 28 N.C. J. INT'L L. & COM. REG. 847, 858 (2003) ("We find similar origins but different locations. However, when 'location, location, location' is the core of business, the same might be true for accounting.").

[117] VARITIES OF CAPITALISM, *supra* note 75, at 36.

[118] Walker, *supra* note 112, at 149–50.

[119] TIM BÜTHE & WALTER MATTLI, THE NEW GLOBAL RULES: THE PRIVATIZATION OF REGULATION IN THE WORLD ECONOMY 11 (2011).

[120] To see what each Member State chose to do, see the table and accompanying text in our earlier paper; Gelter & Kavame Eroglu, *supra* note 7, at 163–67.

[121] Among others, Nölke & Perry are also cautious about IFRS for SMEs. They explain of how

right at the same time with the IASB, the United States, after decades of apathy, is now, interested in developing a simplified version of US GAAP for nonlisted firms.[122]

3. The Myth of Harmonization

Expecting harmonization simply by switching to the same accounting standard is misplaced. Harmonizing standards does not necessarily mean that implementation disparities will erode over time.[123] When it comes to implementation of IFRS, it is not common law or civil law that makes the difference, but how these standards are interrelated with other local circumstances including social norms, national laws and regulations. Accounting quality is a function of a firm's overall institutional setting, including the legal and political system of the country in which the firm resides. Different implementation of the same accounting standards across countries contributes to this.[124] Implementing and enforcing consistency of international standards is encumbered when national institutions have varying capability levels (strong or weak, experienced or not, etc.) and varying priorities. Thus, path dependency plays an important role; accountants make decisions in light of their preconceptions and the

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devastating it could be for German SMEs. *See* Nölke & Perry, *supra* note 113, at 12–13 ("these standards . . . threaten the key competitive advantages of the Rhenish model of capitalism"); *see generally*, Perry & Nölke, *supra* note 53.

[122] *See, e.g.*, FINANCIAL ACCOUNTING STANDARDS BOARD, PRIVATE COMPANY DECISION-MAKING FRAMEWORK: A FRAMEWORK FOR EVALUATING FINANCIAL ACCOUNTING AND REPORTING GUIDANCE FOR PRIVATE COMPANIES (2012), http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176160210366&acceptedDisclaimer=true ; *see also* THE AMERICAN INSTITUTE OF CPAS, FINANCIAL REPORTING FRAMEWORK FOR SMES, http://www.aicpa.org/INTERESTAREAS/FRC/ACCOUNTING FINANCIALREPORTING/PCFR/Pages/Financial-Reporting-Framework.aspx ("The AICPA has issued its Financial Reporting Framework for Small- and Medium-Sized Entities. The FRF for SMEs accounting framework is designed for America's small business community."); *see also* THE AMERICAN INSTITUTE OF CPAS, COMPARISONS OF THE FRF FOR SMES REPORTING FRAMEWORK TO OTHER BASES OF ACCOUNTING (2014), http://www.aicpa.org/InterestAreas/FRC/AccountingFinancialReporting/PCFR/DownloadableDocuments/FRF-SME/FRFforSMEs_Comparison_OCBOAs.pdf.

[123] *See supra* note 87.

[124] S*ee generally*, Naomi S. Soderstrom & Kevin Jialin Sun, *IFRS Adoption and Accounting Quality: A Review*, 16 EUROPEAN ACCOUNTING REV. 675 (2007); *see also* Christian Leuz & Peter Wysocki, *Economic Consequences of Financial Reporting and Disclosure Regulation: A Review and Suggestions for Future Research* 6 (Univ. of Chi. & MIT Sloan Sch. of Mgmt., Working Paper No. 1, 2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105398 ("[W]e highlight the importance of market forces in influencing firms' disclosure and reporting choices, both in isolation as well as the interactions with regulatory acts. . . . We also point to significant complementarities between the elements of a country's institutional infrastructure. Given these complementarities, we highlight that unilateral changes in disclosure and accounting rules are unlikely to yield the desired outcomes.").

institutional settings in which they operate. Harmonization requires more than just adopting the same standards.

Different priorities among economies combine with "discretion" or "professional judgment" when preparing and approving financial statements. Thus, even when the standards are the same, the results can be different. As Nobes and Parker says, "although, there is always a set of rules that accountants follow, no set can possibly cover every detail."[125] Accountants use professional judgment which inevitably depends on circumstances, and circumstances often differ across economies.[126]

It is a long believed phenomenon that profits would be consistently lower in Continental European countries than in the United States or the UK due to conservatism in Continental European accounting.[127] So long as entity level accounts are prepared under the principle of conservatism and aligned with tax accounting, while consolidated accounts instead use principles such as fair value and report to the capital markets,[128] there exists a problematic duality in financial reporting.[129] Flower commented on this suboptimal solution in the late 1990s, even before the mandatory adoption of IFRS (which was then the IAS) in the EU, and when negotiations were still going on.[130] He believed that separate standards for consolidated and individual accounts would damage the credibility of accounts and confuse the general public, including shareholders.[131] Nobes and Parker give examples from the UK and Germany on how national laws and regulations (on taxable income, distributable profits, asset impairments, and recognition and measurement of intangible assets) find their way into financial reports under IFRS.[132]

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[125] NOBES & PARKER, *supra* note 107, at 4.

[126] *Id.* at 4, 161.

[127] *Id.* at 43. But as the Daimler-Benz example shows, there could be incidents where a Europe-based cross-listed company could end up showing less profits when switched to U.S. GAAP (more specifically, from German GAAP to U.S. GAAP in the case of Daimler-Benz). For a brief explanation of how and why Daimler-Benz showed less profits when switched to U.S. GAAP, see Stephen A. Zeff, *The Evolution of the IASC into the IASB, and the Challenges It Faces*, 87 ACCT. REV. 807, 817–18 (2012). *See also* Axel Berger, *The Development and Status of Enforcement in the European Union*, 7 ACCT. IN EUR. 15, 16 (2010).

[128] *See generally* Nölke & Perry, *supra* note 113; *see also* Perry & Nölke, *supra* note 53.

[129] *See, e.g.*, Flower, *supra* note 97, at 297 ("The general public would expect the consolidated accounts to be the sum of the accounts of the individual companies that make up the group; it would surely harm the credibility of the accounts if a group were to report profits of, say, $100 million when according to the accounts of the individual companies in the group, profits totalled only $50 million.").

[130] *Id.*

[131] *See, e.g.*, Flower, *supra* note 97, at 297.

[132] NOBES & PARKER, *supra* note 107, at 162. National choices find its way either because there is

When criticizing the use of fair value accounting (FVA), Nölke and Perry argue that FVA is more appropriate when measuring financial assets rather than manufacturing activity, and that the value of capital assets will always be ambiguous if they are calculated with a "subjective vision of the future" where the "future is inherently unknowable"[133] "Accounting is thus an inherently political act."[134] With so much criticism and so many issues to overcome, why and how did the IFRS Foundation become the sole international standard setter?

III. FINANCIAL REPORTING STANDARDS FOR THE WORLD

A. A Framework for Viewing the Process of Global Standard Setting

Law-making at the international level historically meant state involvement from the beginning to the end. Thus, international law often looks at bilateral or multilateral agreements among states in which signatory states often need additional approval from their parliament, senate, etc. One step further, an international organization can be created in a way such that sovereign states give their consent for it to coordinate initiatives on their behalf. Multilateral investment treaties or bilateral tax agreements are examples of the first type; the United Nations (UN), the World Trade Organization (WTO), and the World Bank are examples of international organizations created by way of states' ex ante consent. These two classical ways of making law in the international arena are deemed legitimate so long as either (1) the states approve the international agreement as being the law, or (2) they give away their law-making power by creating these international organizations upfront.

However, a relatively new approach to making international law has emerged and the adoption of IFRS is the most significant example of this model. IASB, a private international organization initially created by (mostly

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room for judgment in IFRS or often, consolidated accounts (under IFRS) use the same accounting policies as group statements; *see also* Maria Gee, Axel Heller & Christopher Nobes, *The Influence of Tax on IFRS Consolidated Statements: the Convergence of Germany and the UK*, 7 ACCT. EUR. 97, 97 (2010) ("The literature on the links between tax and financial reporting suggests that the strength of those links varies over time and from one jurisdiction to another.").

[133] Nölke & Perry, *supra* note 113, at 3, 6, 8 ("Assets are always a compression of future social relations into the present"); Perry & Nölke, *supra* note 53, at 562 ("[F]uture is inherently unknowable, any precise value placed on an asset is ultimately an estimation of the future rather than a simple fact.").

[134] Nölke & Perry, *supra* note 113, at 3 ("[A]ccounting numbers are both an ex-post validation of prior economic resource allocation, and at the same time central to the construction of the economic reality upon which future resource allocation decisions will be based. Accounting is thus an inherently political act.").

Anglo-American) accounting bodies, is now setting international accounting standards. States that have adopted these standards, and made them binding for corporations (mostly for listed corporations), have done so only after the standard setting process is nearly finalized. Some states knew they would adopt these standards eventually. However, many states do not have influence on the content of these standards. It is deemed more appropriate to let "the experts" be in charge of setting standards on such a "technical" matter.

The first impression is that states are mere adopters, not standard-setters. However, a close look at the IASB and the standards per se reveal an undeniable fact: some states get to say a lot, if not everything. As a result, there is a startling resemblance between IFRS and U.S. GAAP.[135] The single most influential economy on this standard setting body has been the United States, despite that it has not yet adopted IFRS.

Looking at how IFRS have spread around the world indicates that the EU decision mandating that all listed companies use IFRS (starting from 2005) triggered widespread adoption. Yet, even the EU has not been successful enough to influence the International Accounting Standard Board (IASB) as much as it desired.[136] The United States's hegemony in international lawmaking was identified over a decade ago by many who observed that U.S. agencies such as the SEC had turned into "international lawmakers."[137] Thinking about the smaller economies, it is noteworthy that they remain convinced that this adoption process will benefit them despite their inability to influence the standard-setting board.

B. Formation and Evolution of the Private International Standard

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[135] Stuart H. Deming, *International Financial Reporting Standards: Their Importance to U.S. Business and Legal Practice*, 84 MICH. BAR J., Dec. 2005, at 14, 17; OFFICE OF THE CHIEF ACCOUNTANT, U.S. SEC. & EXCH. COMM'N WORK PLAN FOR THE CONSIDERATION OF INCORPORATING INTERNATIONAL FINANCIAL REPORTING STANDARDS INTO THE FINANCIAL REPORTING SYSTEM FOR U.S. ISSUERS (2011), https://www.sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-final-report.pdf.

[136] *See, e.g.*, BÜTHE & MATTLI, *supra* note 119, at 99–101 ("A telling example is IFRS 8, adopted by the IASB on 30 November 2006 . . . against vehement opposition from European interests, including investors and civil society groups"); *see also* PHILIPPE MAYSTADT, SHOULD IFRS STANDARDS BE MORE "EUROPEAN"? 5 (2013), http://ec.europa.eu/finance/accounting/docs/governance/reform/131112_report_en.pdf (pointing to the fact that North America is most influential and the EU influence is reduced because it is diffuse).

[137] *See, e.g.*, David Zaring, *Informal Procedure, Hard and Soft, in International Administration*, 5 CHI. J. INT'L L. 547, 549 (2005); *see also* Martinez-Diaz, *supra* note 1 (showing U.S. hegemony on accounting standard setting).

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The 1970s mark the start of the new era of accounting standard-setting. The Financial Accounting Standards Board (FASB), the standard setter of the United States, was created in 1973.[138] The Accounting Standards Steering Committee, the first national standard setter of the UK, was created in 1970.[139] The EU's accounting harmonization plan came out by 1978 as the Fourth Directive.[140] The UN created a Group of Experts on International Standards of Accounting and Reporting (GEISAR) in 1976.[141] The OECD, becoming aware of attempts to set accounting standards under the aegis of the UN, quickly formed an Ad Hoc Accounting Committee and showed interest in setting standards for Multinational Enterprises (MNEs) in 1978.[142] The International Federation of Accountants (IFAC) was formed in 1977.[143] This era also marks the beginning of the global financial regulation with the establishment of the Basel Committee on Banking Supervision in 1974.[144]

The International Accounting Standards Committee (IASC), the predecessor of the IASB, was also created in the 1970s. It was launched after an informal meeting between the representatives of the British and American profession during the 1972 World Accounting Congress.[145] During this meeting, the formation of a new international body was "discreetly discussed" though the IASC initiative was not made public until the committee was formally founded.[146] By 1973, with the invitation of the

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[138] *Facts about FASB*, FASB.ORG, http://www.fasb.org/facts/ (last visited Dec. 19, 2016).

[139] *Knowledge Guide to U.K. Accounting Standards*, ICAEW.COM, http://www.icaew.com/en/library/subject-gateways/accounting-standards/knowledge-guide-to-uk-accounting-standards (last visited Sept. 2, 2016).

[140] 1978 O.J. (L 222).

[141] Sheikh F. Rahman, *International Accounting Regulation by the United Nations: A Power Perspective*, 11 ACCT., AUDITING & ACCOUNTABILITY J. 593, 599–601 (1998). After GEISAR an Ad Hoc Group was created in 1979 by the resolution 1979/44. ISAR as today was formed in 1982 with the ECOSOC Resolution 1982/62 dated Oct. 27, 1982. In that Resolution, ECOSOC refers to the resolution 1979/44 setting out the terms of reference for the former Ad Hoc ISAR. Caroline Aggestam-Pontoppidan, *From an Idea to a Standard: The UN and the Global Governance of Accountants' Competence*, RESEARCHGATE.NET, http://www.researchgate.net/publication/228541804_From_an_Idea_to_a_Standard_The_UN_and_the_Global_Governance_of_Accountants%27_Competence; *see also* NOBES & PARKER, *supra* note 107, at 98.

[142] WOLK ET AL., *supra* note 20, at 320; NOBES & PARKER, *supra* note 107, at 97.

[143] *History*, IFAC.ORG, http://www.ifac.org/about-ifac/organization-overview/history.

[144] Bank for International Settlements, *History of the Basel Committee*, BIS.ORG, http://www.bis.org/bcbs/history.htm.

[145] *See* PETER WALTON, AN EXECUTIVE GUIDE TO IFRS: CONTENT, COSTS AND BENEFITS TO BUSINESS (2011) ("the creation of the IASC . . . came about almost as an accident.").

[146] KEES CAMFFERMAN & STEPHEN A. ZEFF, FINANCIAL REPORTING AND GLOBAL CAPITAL

accounting bodies of the UK and the United States, nine national accounting bodies together created the IASC.[147] Starting from the formation of IASC, U.S. dominance was evident and U.S. GAAP users were assured that the new standards would be similar to theirs. A *Wall Street Journal* article published in 1973, for instance, stated that the IASC standards to be produced would not be inconsistent with U.S. GAAP.[148]

In addition to (and because of) the enormous size of the U.S. securities markets, the United States enjoys the benefits of being the first mover as a co-creator of the IASC.[149] Applying game theory, Mattli and Büthe, for instance, argue that the first mover acquires great benefits and sets the international standard agenda while the switching cost would be absorbed by the followers.[150] When looking at the determinants of the first mover, they find certain institutions play a critical role. Calling it "institutional complementarities," they show how a strong national standard setting body made the United States a first mover.[151] It is not just the expert-driven standard setter at the national level that made the United States a first mover. The United States also had the largest and most sophisticated capital market in the world.[152] As Simmons and later Martinez-Diaz explain in their respective papers, "global power [was] unusually concentrated in the sphere of international finance" providing the United States a hegemonic position in international standard setting and later on the endorsement of the standards set.[153] Simmons defines the United States as a hegemonic power that will always be the first mover as "it is costlier to alter its preferred regulatory

MARKETS: A HISTORY OF THE INTERNATIONAL ACCOUNTING STANDARDS COMMITTEE 1973 – 2000 43, 54 (2006).

[147] The nine founding national accounting bodies of IASC are United Kingdom (with Ireland), United States, Canada, Australia, Mexico, Japan, France, Germany, Netherlands. *See, e.g.*, BRUCE MACKENZIE ET AL., WILEY IFRS 2014: INTERPRETATION AND APPLICATION OF INTERNATIONAL FINANCIAL REPORTING STANDARDS 4 (2014); NOBES & PARKER, *supra* note 107, at 85; *see also* Martinez-Diaz, *supra* note 1, at 7.

[148] Richard F. Janssen, *Panel Aims to Unify Accounting Methods Across Globe, Sees Strong Effect by 1983*, WALL ST. J., July 2, 1973, at 14; *see also* CAMFFERMAN & ZEFF, *supra* note 146, at 54.

[149] *See, e.g.*, Martinez-Diaz, *supra* note 1, at 5; Beth A. Simmons, *The International Politics of Harmonization: The Case of Capital Market Regulation*, 55 INT'L ORGANIZATION 589, 595 (2001).

[150] Walter Mattli & Tim Büthe, *Setting International Standards: Technological Rationality or Primacy of Power?* 56 WORLD POL. 1, 4, 10–11 (2003). This game-theoretic approach is often described by the "battle of sexes." *See* Martinez-Diaz, *supra* note 1, at 5.

[151] Mattli & Büthe, *supra* note 150, at 10.

[152] Martinez-Diaz, *supra* note 1, at 4–5.

[153] *Id.* at 2, 5; *see also* Simmons, *supra* note 149, at 595.

innovation than try to change the policies of the rest of the world."[154] Martinez-Diaz points out that "those who diverge from the hegemonic standard will be excluded from the world's largest and richest financial markets, at great cost to themselves."[155] These studies explain why and how the United States, together with the UK, initiated and supported IASC/B and show why the rest of the world followed this initiation despite many hurdles they faced at the national level.

Having the support of a major economy such as the United States did not immediately turn the IASC into an influential body. As a *Wall Street Journal* article noted at the initiation of the standard-setting board, the effects of IASC were anticipated by 1983.[156] For over a decade the IASC was not dominant in setting accounting standards, let alone the sole international body for accounting standards. For instance, surveys on European and American firms conducted in 1979 and 1981 respectively revealed that references to IAS were rare.[157] Even among U.K.-based multinationals, IAS had little influence according to surveys conducted in 1984.[158]

The first step in the rise of the IASC came with the start of negotiations with the International Organization of Securities Commissions (IOSCO) in 1987.[159] During these negotiations, IOSCO and IASC agreed to work together to facilitate cross-listing of companies in the jurisdiction of IOSCO members.[160] This collaboration was commonly called the creation of an international "passport" as it would allow a company listed in one stock exchange to be listed in another simply by presenting the same financial reports, rather than using the accounting rules of the cross-listed jurisdiction.[161]

1. IOSCO Endorsement

Before moving into further evidence showing the role of the U.S. in getting IOSCO endorsement, it is important to understand the purpose of IOSCO and of an IOSCO endorsement. That IOSCO was created in 1983, a decade after IASC, yet has authority to approve what IASC produces, is

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[154] Simmons, *supra* note 149, at 595.
[155] Martinez-Diaz, *supra* note 1, at 5.
[156] Janssen, *supra* note 148, at 14.
[157] Martinez-Diaz, *supra* note 1, at 10.
[158] *Id.*
[159] MACKENZIE ET AL., *supra* note 147, at 4.
[160] *Id.*
[161] *Id.* at 4–5; *see generally* Douglas W. Arner, *Globalisation of Financial Markets: An International Passport For Securities Offerings?* 35 INT'L LAWYER 1543 (2001).

indicative of the powerful role of IOSCO. According to their website, "IOSCO develops, implements and promotes adherence to internationally recognized standards for securities regulation. . . . Its membership regulates more than 95% of the world's securities markets in more than 115 jurisdictions . . . ." [162] Among the members of IOSCO are national stock exchange regulators such as the U.S. SEC, and non-governmental organizations, such as the Financial Industry Regulatory Authority (FINRA), the largest non-governmental regulator of securities firms doing business in the United States.[163]

In the beginning of negotiations to create the *passport*, IOSCO became a member of the IASC's Consultative Group, and representatives from IOSCO were "invited to comment on all of the IASC exposure drafts and draft statements of principles."[164] When created in 1983, IOSCO had members only from North and South America.[165] Other national securities regulators joined only after the initiation of this international body.[166]

With the establishment of IOSCO, the highly influential role of the U.S., and more precisely the SEC, became evident. For instance, when Richard Breeden became the Chair of the SEC, he attended IOSCO meetings himself rather than sending his staff; when he was not satisfied with the work of their Technical Committee, the SEC wrote a Strategic Assessment recommending (successfully) that it be reorganized.[167] With the reorganization, Breeden became the Chair, while the Director of the SEC's Division of Corporation Finance became the Chair of the working party on "Multinational Disclosures and Accounting."[168]

For IASC to boost the adoption (among national regulators) of the then International Accounting Standards (IAS) (currently IFRS), it seemed logical to convince IOSCO. But convincing IOSCO meant getting approval from the U.S. SEC. As Simmons notes, IASC knew that its standards would not have credibility without IOSCO and SEC support.[169] Further, the SEC would not

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[162] *About IOSCO*, IOSCO.ORG, https://www.iosco.org/about/?subsection=about_iosco (last visited Dec. 19, 2016).

[163] *Id.* For a detailed list of IOSCO members, *see IOSCO Membership*, IOSCO.ORG, https://www.iosco.org/about/?subsection=membership&memid=1 (last visited Dec. 19, 2016).

[164] CAMFFERMAN & ZEFF, *supra* note 146, at 324.

[165] *About IOSCO*, *supra* note 162.

[166] *Id.*

[167] CAMFFERMAN & ZEFF, *supra* note 146, at 306.

[168] *Id.*

[169] Simmons, *supra* note 149, at 611.

accept standards that do not resemble U.S. GAAP.[170] However, gaining approval from the SEC was not easy; with its size and the capacity of its technical staff, the SEC was known to be "undeviatingly attentive [to] the setting of, and compliance with, accounting standards."[171] Rejection from the SEC would end the adoption of these standards by other national regulators.[172]

Starting in 1987, this produced a core standards work plan (in 1995) where IOSCO was allowed to monitor the IASC's standard setting process. In return, IOSCO would "consider" endorsing IAS.[173] The SEC supported the process, and in 1996 announced that, "if the IASC successfully completes the agreed-upon work plan, and if those standards satisfy the conditions for acceptance described by the Commission in its April statement, the Commission would consider accepting the core standards in securities offerings by foreign registrants."[174]

In the early 1990s, standard setting bodies from the United States, UK, Canada, and Australia, created a think-tank whose meetings IASC attended as an observer (this group was later referred to as G4+1).[175] During these meetings, FASB and IASC discussed controversial accounting issues and future steps which could impact the IASC and the IASB.[176] G4 style Anglo-American study groups on international accounting matters were not uncommon. Even before the creation of IASC, in 1966 the professional bodies of Canada, the UK, and the United States formed the Accountants' International Study Group (AISG) to examine their differences (it issued twenty studies).[177] When AISG disbanded in 1976, the IASC "had effectively taken over the study group's mantle."[178]

Anglo-American study groups such as AISG and the G4 were believed

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[170] *Id.*

[171] CAMFFERMAN & ZEFF, *supra* note 146, at 295.

[172] Martinez-Diaz, *supra* note 1, at 11 ("[R]ejection of the package of standards by the IOSCO—and by its most powerful member, the U.S. SEC—would severely limit the future of IASC standards.").

[173] CAMFFERMAN & ZEFF, *supra* note 146, at 295.

[174] Michael H. Sutton, Chief Accountant, Office of the Chief Accountant, U.S. Sec. & Exch. Comm'n, International Accounting Standards: Progress and Challenges (Nov. 10, 1997), https://www.sec.gov/news/speech/speecharchive/1997/spch196.txt.

[175] Later New Zealand joined as well. MACKENZIE ET AL., *supra* note 147, at 9; NOBES & PARKER, *supra* note 107, at 95.

[176] *See, e.g.*, Donna L. Street, *The G4's Role in the Evolution of the International Accounting Standard Setting Process and Partnership with the IASB*, 15 J. INT'L ACCT., AUDITING & TAXATION 109, 125 (2006).

[177] NOBES & PARKER, *supra* note 107, at 95; CAMFFERMAN & ZEFF, *supra* note 146, at 57–58.

[178] CAMFFERMAN & ZEFF, *supra* note 146, at 58.

to produce results more effectively. It was also easier to convince other countries once the common-law countries expressed a mutual position. Moreover, having such a group readily available proved an effective means of leverage with other nations and international organizations who might be inclined to move in a different direction. With such study groups, the United States had the option to proceed with alternative organizations over the IASB. In one instance, this dynamic helped the United States convince the IASC to follow an SEC proposal over a European one.[179] The SEC had proposed a structure with an expert-based board similar to that of the FASB (in the United States), whereas the European Commission proposed a representative model that would be "independent of any national standard setter or any group of national standard setters."[180] The United States threatened to empower the G4 and move forward without European input, if this was to happen.

In May of 2000, IOSCO provided its endorsement, and approved thirty standards set by the IASC and recommended its member jurisdictions to allow multinational issuers use these standards.[181] The SEC was among the IOSCO members that approved and recommended the standards, though their consent was based upon the condition that IASC would restructure according to the SEC's preferences. After receiving conditional IOSCO approval and continued SEC pressure, IASC restructured in 2001 with a full-time standard-setting body, the IASB.[182] Soon after the formation of the

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[179] SEBASTIAN BOTZEM, THE POLITICS OF ACCOUNTING REGULATION: ORGANIZING TRANSNATIONAL STANDARD SETTING IN FINANCIAL REPORTING 97–98 (2012) (citing CAMFFERMAN & ZEFF, *supra* note 146).

For Strategy Working Party (SWP)'s 1998 and 1999 Reports, see STRATEGY WORKING PARTY, INT'L ACCOUNTING STANDARDS COMM., SHAPING IASC FOR THE FUTURE (1998), http://www.iasplus.com/en/binary/restruct/1998swp_1.pdf; STRATEGY WORKING PARTY, INT'L ACCOUNTING STANDARDS COMM., RECOMMENDATIONS ON SHAPING IASC FOR THE FUTURE (1999), http://www.iasplus.com/en/binary/restruct/1999swpfinal.pdf. Right after the publication of the final SWP report, the SEC showed its support. Press Release, Lynn E. Turner, Statement of SEC Chief Accountant Lynn E. Turner on IASC Board Decision to Support Restructuring Plan (Nov. 17, 1999), https://www.sec.gov/news/press/pressarchive/1999/99-152.txt ("This proposal balances calls for a structure based upon geographic representativeness and those based on technical competence and independence.").

[180] STRATEGY WORKING PARTY, INT'L ACCOUNTING STANDARDS COMM., RECOMMENDATIONS ON SHAPING IASC FOR THE FUTURE 96–97 (1999), http://www.iasplus.com/en/binary/restruct/1999swpfinal.pdf.

[181] Press Release, IOSCO, IASC Standards (May 17, 2000), http://www.iosco.org/news/pdf/IOSCONEWS26.pdf; *IOSCO Resolutions*, IOSCO.ORG, https://www.iosco.org/about/?subsection=resolutions (last visited Dec. 19, 2016); *see also* Arner, *supra* note 161, at 1575; CLARE ROBERTS ET AL., INTERNATIONAL CORPORATE REPORTING: A COMPARATIVE APPROACH 340–41 (4th ed. 2008).

[182] *See, e.g.*, NOBES & PARKER, *supra* note 107, at 96, 103 ("IOSCO and the SEC were important

IASB, the G4 announced that they would no longer meet; most of the Anglo-American standard setters became IASB members.[183]

In June 2000, shortly after the IOSCO's endorsement in May of that year, the European Commission published an outline strategy on financial reporting. With it, the European Commission proposed to mandate the use of IFRS by all listed companies by 2005.[184] To implement this strategy, in 2002 the European Commission passed a regulation mandating IAS/IFRS by 2005 for consolidated reports of all listed companies in the Member States of the European Economic Area.[185] At the time, Europe faced internal pressure to adopt international standards to facilitate multinationals' cross-listings, especially in the United States.

In 2001, International Financial Reporting Standards Foundation (IFRSF or IFRS Foundation) replaced IASC. Since then, IFRSF operates as a not-for-profit corporation incorporated in the State of Delaware and the board sits in London where the Foundation is registered as a foreign company, an American one.

2. IASB Cooperates with FASB

Even after the IASC restructured and the EU mandated the use of IAS/IFRS, seven years passed (until 2007) before the SEC allowed foreign companies to cross-list in the U.S. using IFRS. U.S. regulators did not let foreign issuers convert to those standards without a "heavy guiding hand."[186] However, even with the heavy resemblance and strong SEC guidance, U.S. multinationals still do not have the option to use IFRS. U.S. listed firms must use U.S. GAAP.[187]

The IASB restructuring in 2001 strengthened relations between FASB

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contributors to the discussions that led to the creation of the IASB in 2001.").

[183] Street, *supra* note 176, at 109; NOBES & PARKER, *supra* note 107, at 95.

[184] COMM'N OF THE EUROPEAN COMMUNITIES, EU FINANCIAL REPORTING STRATEGY: THE WAY FORWARD (2000), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0359:FIN:EN:PDF.

This publication is mentioned even in IAS Regulation that later mandated the use of IAS/IFRS. IAS Regulation, *supra* note 10 ("On 13 June 2000, the Commission published its Communication on 'EU Financial Reporting Strategy: the way forward' in which it was proposed that all publicly traded Community companies prepare their consolidated financial statements in accordance with one single set of accounting standards, namely International Accounting Standards (IAS), at the latest by 2005."); *see also* ROBERTS ET AL., *supra* note 181, at 438.

[185] IAS Regulation, *supra* note 10; *see also* ROBERTS ET AL., *supra* note 181, at 439.

[186] Martinez-Diaz, *supra* note 1, at 6.

[187] For further comments on U.S. listed firms using GAAP but not allowed to use IFRS a discussion on whether there should be an option, *see* Gelter & Kavame Eroglu, *supra* note 7, at 166–89.

and IASB; further, the two boards signed the Norwalk Agreement in 2002 that led to regular meetings and ongoing work on the convergence of their standards.[188] For many, the structural similarities, the convergence project, and strong SEC monitoring turned the IASB into a "carbon copy" of FASB–only with global power.[189] IASC had already approved the "Framework for the Preparation and Presentation of Financial Statements" in April 1989 which heavily relies on the Statements of Financial Accounting Concepts (SFACs), a series published in 1980s by FASB.[190] This framework was formally re-adopted by the new board, the IASB, in April 2001 and has been revised several times since then. In spite of revisions the 1989 framework is still in effect.[191] The revisions on the Conceptual Framework of the IFRS over time brought it even closer to that of the FASB.

The "three-tier governance structure" of IFRS is copied from the U.S. model of FASB. Both FASB and IASB have trustees of their respective foundations appointing the members of the standard setting boards and both have an advisory council.[192] In addition to U.S. representation in each "tier," the U.S. SEC is among the members of the monitoring board (together with the European Commission, IOSCO, as well as the securities regulators of Japan, Brazil, Korea, and China).[193] Since the most powerful member of the IOSCO is the SEC, arguably SEC dominance is even stronger at the monitoring level. A good example for the dominance of the United States and of a capital market-oriented regime is the IFRS Interpretations

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[188] MACKENZIE ET AL., *supra* note 147, at 9.

[189] Bratton, *supra* note 11, at 476 ("IASB is a carbon copy of the FASB except with a larger cast of characters and geographic distribution requirements."); *see also* Leuz, *supra* note 87, at 250 ("[E]ven if U.S. decides not to adopt IFRS or not to permit U.S. firms to use IFRS, one can argue that IFRS and U.S. GAAP are close enough so that standards are not the issue.").

[190] ROBERTS ET AL., *supra* note 181, at 387.

[191] *The Conceptual Framework for Financial Reporting*, IFRS FOUNDATION (2012), http://www.ifrs.org/IFRSs/IFRS-technical-summaries/Documents/English%20Web%20Summaries%20 2013/Conceptual%20Framework.pdf ("The IASB Framework was approved by the IASC Board in April 1989 for publication in July 1989, and adopted by the IASB in April 2001. In September 2010, as part of a bigger project to revise the *Framework* the IASB revised the objective of general purpose financial reporting and the qualitative characteristics of useful information. The remaining of the document from 1989 remains effective.").

[192] Gelter & Kavame Eroglu, *supra* note 7, at 114 ("First, IASB consists of fifteen independent experts, four of whom are American. Second, five out of the twenty-two Trustees of the IFRS Foundation are from the United States. Third, the Monitoring Board is made up of five securities regulators including the SEC. In other words, U.S. influence is perceptible at all levels of the institutional structure associated with the IFRS.").

[193] *Monitoring Board*, IFRS FOUNDATION, http://www.ifrs.org/About-us/Pages/Monitoring-Board.aspx (last visited Sept. 18, 2016).

Committee (former IFRIC) liaising with the U.S. Emerging Issues Task Force. In addition to this liaison, it has fourteen representatives out of which currently only two members are from all Continental European countries combined while the United States and the UK have three members each. If one member each from Canada, Australia, and South Africa added, there are nine members from common law countries reviewing the implementation of IFRS and providing authoritative guidance.[194] "[T]he FASB-IASB joint project has resulted in changes both in U.S. GAAP and IFRS to the extent that they are now far more similar than they are different. In fact, IFRS mirror U.S. GAAP in many respects."[195] Simmons argues that, IASC/IASB "has provided the cover of multilateral legitimacy to mostly U.S. standards."[196]

The situation was best described in 2007 by the IASB Chair, Sir David Tweedie. When asked about the convergence project, Sir Tweedie explained the new program between the IASB and FASB as jointly writing new standards replacing outdated ones.[197] When asked about the reaction of the rest of the world, he replied: "They're jealous, frankly, because, they see two gorillas out there and they are in danger of getting squashed between them. . . . Sorry. Not many people are following your standards. A lot of people are following U.S. GAAP and a lot of people are following IFRS."[198]

3. Due Process and Accountability Becomes Critical

The Foundation tried to overcome its democratic legitimacy deficiencies by reviewing its constitution periodically. Subsequently, it has (1) required a geographic quota for the appointment of Trustees and board members, (2) added a consultative mechanism called due process, and (3) included a monitoring board. Yet the success of these additions is questionable.

First, although geographic quotas for IFRS Foundation Trustees have been used since 2001, it was only in 2010 when slots were given to Africa and South America did those extend outside of North American and European countries.[199] Also in 2010, the IFRS Foundation extended the

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[194] *Members of the IFRS Interpretations Committee (formerly IFRIC)*, IFRS FOUNDATION, http://www.ifrs.org/About-us/IASB/Members-of-IFRS-IC/Pages/Members-of-the-IFRS-IC.aspx (last visited Sept. 18, 2016).

[195] Gelter & Kavame Eroglu, *supra* note 7, at 114.

[196] Simmons, *supra* note 149, at 611.

[197] Geoffrey Pickard, *Simplifying Global Accounting*, 204 J. ACCT. 36 (2007).

[198] *Id.* at 38.

[199] BOTZEM, *supra* note 179, at 168; *see also* IFRS Foundation, *Trustees of the IFRS Foundation*, IFRS.ORG, http://www.ifrs.org/About-us/IFRS-Foundation/Oversight/Trustees/Pages/Trustees.aspx (last

geographic quota to board members as well.[200] However, a closer look reveals that a membership quota by geographical origin does not bring "diversity" to the board as required by the IFRS Foundation Constitution.[201] The expertise necessary to be appointed to the board includes an auditing background or an Anglo-American accounting education.[202] The Big Four global accounting firms benefit as a result, as they have extensive expertise in these areas. Further, the technical expertise required for board membership favors Anglo-Americans, who often have extensive capital market expertise.[203] Botzem sees the addition of a geographic quota as an "attempt at enhancing the IASB's credibility in emerging markets while securing the supremacy of Anglo-American actors."[204]

For many countries to build capacity to the proficiency level needed would take years of intensive training, except for people with experience working for the Big Four. The technical expertise needed for board membership was also supplied substantially by these firms, creating a powerful network within the IFRS Foundation.[205] Additionally, the Big Four fund the IFRS Foundation generously–each contributes $2.5 million annually.[206] The total contribution from the international accounting firms is

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visited Dec. 19, 2016).

[200] BOTZEM, *supra* note 179, at 168.

[201] The Constitution itself states the "diversity" requirement. IFRS FOUNDATION, IFRS FOUNDATION CONSTITUTION (2013), http://www.ifrs.org/The-organisation/Governance-and-accountability/Constitution/Documents/IFRS-Foundation-Constitution-January-2013.pdf (Section 6 for Trustees states "[t]he mix of Trustees shall broadly reflect the world's capital markets and diversity of geographical and professional backgrounds." Section 25 states "[t]he main qualifications for membership of the IASB shall be professional competence and practical experience. […] it will comprise a group of people representing, within that group, the best available combination of technical expertise and diversity of international business and market experience in order to contribute to the development of high quality, global financial reporting standards." Section 39 governing IFRIC membership and Section 45 regarding the Advisory Council both requiring diversity.).

[202] *See, e.g.*, IFRS Foundation, *Members of the IASB*, IFRS.ORG, http://www.ifrs.org/About-us/IASB/Members/Pages/Members-of-the-IASB.aspx (last visited Dec. 19, 2016) ("The International Accounting Standards Board (IASB) is an independent group of 14 experts with an appropriate mix of recent practical experience in setting accounting standards, in preparing, auditing, or using financial reports, and in accounting education. Broad geographical diversity is also required."); IFRS Foundation, *supra* note 199 ("Each Trustee is expected to have an understanding of, and be sensitive to, international issues relevant to the success of an international organisation responsible for the development of high quality global accounting standards for use in the world's capital markets and by other users.").

[203] BOTZEM, *supra* note 179, at 103.

[204] *Id.* at 168.

[205] *See generally* BOTZEM, *supra* note 179.

[206] IFRS FOUNDATION, ANNUAL REPORT 2014 44–48 (2015), http://www.ifrs.org/About-us/IFRS-Foundation/Oversight/Annual-reports/Documents/IFRS-Foundation-Annual-Report-2014-

more than the annual contribution of the European Commission and the United States combined.[207] With the widespread presence of the Big Four at every level of the Foundation, their undeniable influence suggests that "diversity" requires more than a geographic quota.

Second, due process is viewed as an essential part of standard setting. Due process helps create accountability and is a valuable tool to create legitimacy for accounting standard-setting at the international level.[208] IFRS rely extensively on this process for that reason. In 2006, the Foundation Trustees approved publication of the first Due Process Handbook for the IASB, which has been revised several times since.[209] Like many other components of the IFRS Foundation, the use of due process was adopted from FASB of the United States.[210] The Handbook establishes mandatory and voluntary steps for the IASB, and the Interpretations Committee, to comply with principles of due process (which is mainly a consultation process).[211] Three principles included are (a) transparency, (b) full and fair consultation, and (c) accountability. Accountability is defined as "analys[ing] the potential effects of its proposals on affected parties and explains the rationale for why it made the decisions it reached in developing or changing a Standard".[212]

However, the meaning of due process and accountability in this context are puzzling. For instance, accountability includes analyzing and explaining the rationale for board decisions. But, this alone would not normally meet an

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[207] *Id.* If individual contributions from each of the European countries were added to the number (i.e., France £792,016, Germany £802,401), the EU would be by far the largest contributor yet this is another striking point considering the U.S. dominance and EU's' constant complaints of this fact. Even the funding through EU is multi-channeled which is a hurdle when there is a desire to dominate the institution as the EU.

[208] *See* Alan J. Richardson & Burckard Eiberlin, *Legitimating Transnational Standard Setting: The Case of the International Accounting Standards Board*, 98 J. BUS. ETHICS 217 (2011).

[209] The most resent revision to the Handbook was approved by the Trustees on January 2013. IFRS FOUNDATION, DUE PROCESS HANDBOOK (2013), http://www.ifrs.org/DPOC/Documents/2013/Due_Process_Handbook_Resupply_28_Feb_2013_WEBSITE.pdf.

[210] Interestingly, the once so much praised "due process" is now criticized by the ones who encouraged the implementation of it at the global level. Former SEC Chair Cox, for instance, criticizes the IFRS "due process" in his 2014 Speech arguing their "due process" is not beneficial for "American stakeholders" as it is "global" and therefore, U.S. stakeholders are heard less. *See* Christopher Cox, President, Bingham Consulting LLC, How America's Participation in International Financial Reporting Standards Was Lost (June 5, 2014), http://www.uscsecconference.com/assets/Keynote-Address-to-SEC-and%20Financial-Reporting%20Institute-2014.pdf; *see generally infra* Part IV.

[211] IFRS FOUNDATION, *supra* note 209, § 1.7. (a) ("The formal due process procedures for the IASB and its Interpretations Committee specify the minimum steps they must take to ensure that their activities have benefited from a thorough and effective consultation process").

[212] *Id.* § 3.1.

accountability requirement—especially if there are no further steps (unless it is viewed solely as a transparency mechanism, which is distinct from accountability under the three principles identified above). The idea of due process is also problematic. Botzem finds that IASB's due process is often "misunderstood as a participatory process."[213] Due process relies on consultation and it is basically a tool to inform interested parties and get their comments on IASB's proposed standards.[214]

Yet, informing and receiving comments does not mean the commentators are fully participating in the standard setting process. The IFRS Foundation Constitution states that the IASB has "complete responsibility for all IASB technical matters including the preparation and issuing of IFRS" and "full discretion in developing and pursuing its technical agenda."[215] In other words, the due process does not remove any authority from the Board's "full discretion" and "complete responsibility." Instead, it creates a reciprocal channel of communication–the Board informs the public about the drafts and the commentators inform the board about their view. This parallels the notice-and-comment procedure for administrative rule-making in the United States. Although sending comment letters is not an effective means to influence the draft standards, it is hard to identify a more feasible alternative, and asking stakeholders for input before a standard is drafted may be inefficient if not wasteful.

The consultation process starts only after a standard has been developed, and the Board and the staff debate the issues before drafting a standard.[216] Research, discussion, drafting and revising is conducted by the "highly skilled and capable technical staff."[217] Since it is unlikely that comment letters would influence the standard setting process after this point (unless they raise issues or perspectives not previously considered), the IRFS seems as though it is a portal disseminating drafts and preparing users for upcoming changes, and in this way "legitimizing the standard setting". [218] Therefore, the due process in this context is not a tool to provide for public participation in the standard setting process. That said, standard setting is a political process. [219] As Botzem argues, lobbying starts long before due process and

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[213] BOTZEM, *supra* note 179, at 120.
[214] IFRS FOUNDATION, *supra* note 209, § 3.43, 3.44, 3.45.
[215] IFRS FOUNDATION, *supra* note 201, § 37.
[216] BOTZEM, *supra* note 179, at 120.
[217] *Id.* at 121.
[218] *Id.* at 120–23 (According to Botzem, IFRSF laid out the due process in order to legitimize the private standard setting).
[219] *Id.* at 120–21.

most probably takes place where technical expertise is the most valuable asset.[220]

Third, a 2008 revision to the IFRS Foundation Constitution established the Monitoring Board to improve accountability "by providing a formal link between the Trustees and public authorities."[221] Yet whether the Monitoring Board improved accountability is open to debate. Until the creation of the Monitoring Board, the IASB was criticized due to lack of accountability. A Monitoring Board was created in 2009, with an aim to link the standard setters to public authorities and overcome the accountability deficit while protecting its "independent" structure.[222]

With the creation of the Monitoring Board, the IASB claims to have public accountability. However, its powers are limited. Members of the IASB are accountable to the Trustees who appoint them and can terminate the appointment.[223] Trustees are selected in coordination with the Monitoring Board, but removal of a Trustee is determined through a vote of the Trustees themselves.[224] The Monitoring Board does not have power to terminate the appointment of an IASB member or a Trustee.[225] Further, the Monitoring Board "shall reach decisions to approve the appointment of Trustees and establish any common positions by consensus."[226] The effectiveness of the Monitoring Board thus depends upon the "consensus" they need to reach.[227]

According to the IFRS Foundation Constitution, accountability of the Trustees is ensured by "their" commitment to act in the public interest, "their" commitment to engage with the Monitoring Board, "their" review of the entire structure of the IFRS Foundation, and "their" undertaking a review every five years.[228] These provisions suggest that the Trustees are

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[220] *Id.* at 121.

[221] IFRS Foundation, *Monitoring Board*, IFRS.ORG, http://www.ifrs.org/About-us/Pages/Monitoring-Board.aspx (last visited Dec. 19, 2016).

[222] The intention to create such a board was declared in 2007 in a combined statement of several capital market regulators including the SEC. *See* Press Release, U.S. Sec. & Exch. Comm'n, Authorities Responsible for Capital Market Regulation Work to Enhance the Governance of the IASC Foundation (Nov. 7, 2007), http://www.sec.gov/news/press/2007/2007-226.htm.

[223] IFRS FOUNDATION, *supra* note 201, § 16. Termination can only be on the on grounds of poor performance, misbehavior, incapacity or other failure to comply with contractual requirements.

[224] *Id.* §§ 9, 14. Termination can only be on grounds of poor performance, misbehavior or incapacity and a 75 per cent majority of all Trustees shall be required.

[225] MEMORANDUM OF UNDERSTANDING TO STRENGTHEN THE INSTITUTIONAL FRAMEWORK OF THE INTERNATIONAL FINANCIAL REPORTING STANDARDS FOUNDATION (2014), http://www.ifrs.org/The-organisation/Governance-and-accountability/Documents/Monitoring_Board_Mou_October-2014.PDF.

[226] IFRS FOUNDATION, *supra* note 201, § 23.

[227] *Id.*; for a criticism of the consensus requirement see, for instance, BOTZEM, *supra* note 179, at 109 (sees the Monitoring Board more like a paper tiger).

[228] IFRS FOUNDATION, *supra* note 201, § 17.

accountable only to themselves. Personal accountability may well be an ethical and psychosocial standard but it does not add much to the democratic accountability deficit of the Foundation. The Foundation says they "provide public accountability through the transparency of their work, the consultation with the full range of interested parties in the standard-setting process, and their formal accountability links to the public"[229] However, neither consultation via due process nor the formal accountability link through the Monitoring Board appear to enhance accountability to the Foundation as desired. In addition, Foundation's commitment to transparency and reviving its constitution every five years strengthens the Foundation's standing and shows how "legitimacy is not a stable condition but 'must be repeatedly created, recreated, and conquered.'"[230]

C. Global Players and Pressure Towards Harmonization

A close examination of global players reveals how and why the world switched to IFRS. Corporations with a desire to go global, stock exchanges seeking to attract companies, and capital market investors played an important role alongside international organizations such as the IMF, the World Bank, and forums such as the G8 and the G20. While U.S. involvement was instrumental to the rise of IFRS, pushing the world to adopt an accounting standard similar to U.S. GAAP was not without self-interest.

In many countries, pressure to adopt IFRS originated with major companies that wanted to be listed abroad and stock exchanges that tried to attract them. By the 1990s, companies in developed economies such as Germany pressured their governments to adopt or allow U.S. GAAP or IAS. With the Asian financial crisis, the IMF and the World Bank added IFRS to their political goals. Their efforts helped IFRS reach many small nations. However, among these included nations without a stock exchange or a publicly traded firm, who adopted IFRS to receive loans from the IMF. More recently, G8 and G20 governments provided support. After the 2008 financial crisis, the G20 urged IASB and FASB to conclude the convergence

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[229] IFRS Foundation, *Governance and Oversight*, IFRS.ORG, http://www.ifrs.org/About-us/IFRS-Foundation/Oversight/Pages/Oversight.aspx (last visited Dec. 19, 2016); IFRS Foundation, *Glossary*, IFRS.ORG, http://www.ifrs.org/About-us/IASB/Pages/Glossary.aspx (last visited Dec. 19, 2016).

[230] Sebastian Botzem & Leonhard Dobusch, *Standardization Cycles: A Process Perspective on the Formation and Diffusion of Transnational Standards*, 33 ORG. STUD. 737, 742 (2012) (quoting KRISTINA TAMM HALLSTRÖM & MAGNUS BOSTRÖM, TRANSNATIONAL MULTI-STAKEHOLDER STANDARDIZATION: ORGANIZING FRAGILE NON-STATE AUTHORITY 160 (2010)).

projects.[231]

1. The Rise of Multinationals and Emerging Desire for Global Standards

Using international or American accounting standards and support for harmonization among multinationals is correlated to the increase in cross-border transactions. For instance, in the 1970s, cross-border transactions in bonds and equities (also called "portfolio investments") as a percentage of GDP were as low as 4% and 5% in the United States and Germany respectively; however, this number constantly increased since then.[232] It rose to 35% in 1985, to 135% in 1995, to over 200% by the 2000s in the United States.[233] As German companies increasingly invested abroad, portfolio investments as a percentage of GDP rose to 33% by 1985, 172% by 1995, and 483% in 2000s.[234] The percentages were higher in Italy, where portfolio investments were 1% of GDP in 1975, but reached 253% by 1995 and 1126% by the 2000s.[235]

Unprecedented growth in cross-border capital transactions signaled a move to harmonize accounting standards, yet continental European governments did not adopt international standards in financial reporting until the Daimler-Benz case. With the cross-listing of Daimler-Benz on the NYSE, Continental European governments began to witness companies switch from bank financing to capital market (stock exchange) financing; national accounting laws no longer met the demands of a major firm that sought alternative sources of capital.[236] For such firms, to switch to stock exchange financing was reasonable as financing from European banks became more limited.

At the same time, privatization emerged and increased demand for

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[231] *See* LEADERS OF THE GROUP OF 20, DECLARATION OF THE SUMMIT ON FINANCIAL MARKETS AND THE WORLD ECONOMY (2008), http://www.un.org/ga/president/63/commission/declarationG20.pdf; LEADERS OF THE GROUP OF 20, LEADERS' STATEMENT: THE PITTSBURGH SUMMIT (2009), https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

[232] BANK OF INTERNATIONAL SETTLEMENTS, 69TH ANNUAL REPORT 118 (1999); *see also* CAMFFERMAN & ZEFF, *supra* note 146, at 194; SHIRIN RATHORE, INTERNATIONAL ACCOUNTING 6 (2008); SASKIA SASSEN, THE GLOBAL CITY: NEW YORK, LONDON, TOKYO 118–19 (2001).

[233] BANK OF INTERNATIONAL SETTLEMENTS, *supra* note 232, at 118.

[234] *Id.*

[235] *Id.*

[236] *See* Perry & Nölke, *supra* note 53, at 579.

capital–starting with the UK and spreading throughout the world.[237] From 1991 to 1996, assets totaling U.S. $370 billion switched hands from governments to private investors.[238] The collapse of former socialist countries also heightened competition for capital.[239] German banks, for instance, were preoccupied with lending to companies from the former East Germany following reunification in 1990.[240] The interest rates charged by European banks became higher than the cost of stock exchange financing in the United States.[241] For major firms not financed via banks, the only alternatives were to raise capital in their national capital markets, or list their shares on another stock exchange. When Deutsche Telekom listed shares (in Germany), over two million Germans bought the securities; when it listed shares on the NYSE in 1996, it was the largest IPO in history.[242] Here, U.S. stock exchanges were the most attractive but presented impediments for foreign issuers that would potentially confuse investors, such as switching or reconciling to U.S. GAAP (which is also expensive).

The Daimler-Benz cross-listing demonstrated that firms interested in raising capital by way of cross-listing were eager to do so in the United States; moreover, the ones that could reconcile to U.S. GAAP would do so. Firms who did not want to deal with U.S. GAAP did not enter the U.S. capital market in spite of meeting the listing requirements otherwise. For the EU this meant that if a harmonized set of standards was not provided in the EU, U.S. GAAP would likely become the global accounting standard.[243] In most cases, large firms first prepared financial statements of their subsidiaries in compliance with the national laws where the subsidiaries were located, then creating entity-level and consolidated accounts under their respective national laws, in addition to preparing additional financial or reconciliation statements for the jurisdiction where they cross-listed.[244]

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[237] Richard A. Grasso, *Globalization of Equity Markets*, 20 FORDHAM INT'L L. J. 1108, 1110 (1996).

[238] *Id*. at 1110.

[239] *See, e.g.*, Roberta S. Karmel, *Living with U.S. Regulations: Complying with the Rules and Avoiding Litigation*, 17 FORDHAM INT'L L.J. S152, S154 (1994).

[240] Zeff, *supra* note 127, at 817–18. Many of those differences could not be eliminated to date. *See, e.g.*, Kate Connolly, *German Reunification 25 Years On: How Different are East and West Really*, THE GUARDIAN (Oct. 2, 2015), http://www.theguardian.com/world/2015/oct/02/german-reunification-25-years-on-how-different-are-east-and-west-really.

[241] Karmel, *supra* note 239, at S154–55.

[242] Richard A. Grasso, *Globalization of Capital Markets*, 21 FORDHAM INT'L L. J. 390, 392 (1997).

[243] *See, e.g.*, Perry & Nölke, *supra* note 53, at 579 (citing Ian P. Dewing & Peter O. Russell, *Accounting, Auditing and Corporate Governance of European Listed Countries: EU Policy Developments Before and After Enron*, 42(2) J. COMMON MKT. STUD. 289, 293–94 (2004)).

[244] Berger, *supra* note 127, at 16–17.

But the surfeit of financial statements caused confusion. When Daimler-Benz listed on the NYSE, it had to reconcile financial statements prepared pursuant to the German commercial code to U.S. GAAP. However, the 1993 financial statements of Daimler-Benz showed a *profit* of U.S. $354 million under German commercial code, but a *loss* of U.S. $1 billion under the U.S. GAAP.[245] Such a tremendous disparity contradicted the general belief that profits would be lower in Continental European countries (mainly due to the principal of conservative accounting) than in the United States or the UK.[246] Such incidents suggested that without elimination of such discrepancies, investors would not know which statements to rely to inform their decisions.

At a time when people easily invested across borders and when companies listed on multiple stock exchanges, both companies and investors desired a common "passport" of global standards to ease comparison of financial statements. Harmonization of accounting standards sought to ease comparability of financial reports and accelerate international access to capital markets and investment opportunities. As companies sought global access to capital markets, the discussion of accounting disparities forced policy makers to consider the harmonization and international comparability of financial reports. In turn, IFRS enabled public multinationals to use the same financial statements no matter whether they listed in London, New York or Hong Kong.

Stock exchanges with a desire to attract multinationals also persistently tried to convince their governments to ease listing requirements for foreign firms. The NYSE, for instance, pressured the SEC to ease accounting requirements for foreign multinationals to list without reconciling to U.S. GAAP.[247] "[T]here was an absolute rise in the German and Japanese market, and the London Stock Exchange was outpacing Nasdaq and New York."[248] Competition among stock exchanges was so fierce that SEC reports started

[245] James D. Cox, *Regulatory Duopoly in U.S. Securities Markets*, 99 COLUM. L. REV. 1200, 1203 (1999).

[246] Many researchers had found that profits figures would be consistently lower in France, Germany, Netherlands, and Sweden compared to the United States or the UK as companies in those continental European countries are more "conservative" or "pessimistic" especially in their inventory and depreciation practices. *See, e.g.*, NOBES & PARKER, *supra* note 107, at 43–44.

[247] *See generally* Richard C. Breeden, *Foreign Companies and U.S. Securities Markets in a Time of Economic Transformation*, 17 FORDHAM INT'L L.J. S77 (1994) (explaining that the SEC was facing pressure coming from the U.S. capital markets in addition to the foreign – mostly German – companies and their governments and justifying the SEC's response to such pressure); *see also* Martinez-Diaz, *supra* note 1, at 3 (explaining how U.S. stock exchanges saw the existence of multiple accounting standards around the world as a negative externality and lobbied their government toward harmonization).

[248] CAMFFERMAN & ZEFF, *supra* note 146, at 604 n.113 (citing their interview with then SEC Chief Accountant Edmund Coulson on September 12, 2003).

with a comparison between U.S. and international capital markets. A 1992 SEC report, for instance, included a comparison of the London Stock Exchange in its second paragraph and emphasized that U.S. capital markets were the largest and, while others markets were growing, they were not even close.[249]

Indeed, U.S. capital markets (and the NYSE primarily) were experiencing "extraordinary growth" in trading volume and "becoming increasingly global."[250] In 1991, the trading volume of non-U.S. securities in U.S. capital markets was U.S. $267 billion, and quadrupled to U.S. $1 trillion by 1996.[251] Moreover, there were said to be over 2,500 foreign companies that could list on NYSE.[252] Richard Grasso, the then-Chair & CEO of the NYSE, estimated that if only the top third of these eligible firms were added, it would double the market value of NYSE.[253] If the state-owned entities soon to be privatized were added, the numbers would get even higher.[254] To increase market volume, the NYSE hired lobbyists to pressure Washington and the SEC.[255] The Exchange got what it wanted in 1996 when the National Securities Markets Improvement Act mandated the SEC to allow foreign firms listed in the U.S. markets to use international accounting standards.[256]

The SEC was not interested in country-specific treatments. It had not given a "free pass," even to Canadian firms listed in the United States, despite that Canada had the largest number of companies listed in the United States.[257] Canadian firms at one point amounted to more than half of the total non-U.S. firms listed in the United States.[258] Even today, the countries with

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[249] DIVISION OF INVESTMENT MANAGEMENT, U.S. SEC. & EXCH. COMM'N, PROTECTING INVESTORS: A HALF CENTURY OF INVESTMENT COMPANY REGULATION, at iv (1992), https://www.sec.gov/divisions/investment/guidance/icreg50-92.pdf ("Today, more than 3,500 investment companies in the United States hold over $1.5 *trillion* in assets on behalf of over 68 million accounts. To put that in perspective, the assets of these investment companies are approximately 50% greater than the total value of *all* the stocks traded in London, one of the world's largest capital markets.").

[250] Grasso, *supra* note 242, at 390.

[251] Grasso, *supra* note 237, at 1114.

[252] Jonathan Fuerbringer, *World Markets; S.E.C. Says No on German Stocks*, N.Y. TIMES (Apr. 26, 1992), http://www.nytimes.com/1992/04/26/business/world-markets-sec-says-no-on-german-stocks.html; *see also* Grasso, *supra* note 237, at 1114 (according to Grasso, the number of foreign companies that meet the NYSE listing requirement is 2,300).

[253] Grasso, *supra* note 242, at 392.

[254] Grasso, *supra* note 237, at 1114–15.

[255] Martinez-Diaz, *supra* note 1, at 14.

[256] National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416.

[257] *See infra* Table 1.

[258] SHAHROKH M. SAUDAGARAN & L. MURPHY SMITH, INTERNATIONAL ACCOUNTING: A USER PERSPECTIVE 2–61 (4th ed. 2013).

the second and third largest number of listed companies in the United States amount to less than Canada.[259] The SEC attitude did not change when U.S. listings of the European countries peaked.

However, the SEC was continuously considering ways to ease the process because an unprecedented number of foreign issuers were entering the U.S. markets.[260] In 1993, more than a hundred foreign firms entered the U.S. capital markets, raising the total number of foreign firms listed in the United States to over 500.[261] "That is an average of two or three new companies entering the United States for the first time every week."[262] By 1998, the total number of foreign firms listed in the United States had doubled, rising into the 1,100s.[263] The NYSE used complaints from these firms, and prospective ones, to push the SEC.[264] The SEC first issued an initiative to slightly ease the process for foreign issuers on November 3, 1993.[265]

But for additional costs in financial reporting, multinationals—mostly from continental Europe—were ready to cross-list in the United States. The IASC worked around the clock to make the international standards ready and available for companies to list in the United States. However, only with SEC approval would multinationals be listed in the United States using a set of standards other than U.S. GAAP.

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[259] *See infra* Table 1. What is striking is the change in the top three nations with the highest number of listed companies in the United States during this period. Up until 2006, Canada, the UK, and Israel were the top three respectively. By 2007, the UK and Israel switched due to the increasing delistings of the UK firms. British Airways, for instance, delisted in that time frame, together with Air France and Bayer. In 2007, the Cayman Islands had more listed firms than the UK in the United States. Today, firms from tax havens such as the Cayman Islands, and the British Virgin Islands find U.S. capital markets more attractive while the number of European firms listed in the United States, including the ones from Germany and the UK, continue to decrease. *See, e.g.*, Serena Y. Shi, *Comment, Dragon's House of Cards: Perils of Investing in Variable Interest Entities Domiciled in the People's Republic of China and Listed in the United States*, 37 FORDHAM INT'L L.J. 1265 (2014).

[260] *See, e.g.*, J. Carter Beese, Jr., Commissioner, U.S. Sec. & Exch. Comm'n, The New Capital Order: American Competitiveness and Global Capital Flows (Apr. 19, 1993), https://www.sec.gov/news/speech/1993/041993beese.pdf; J. Carter Beese, Jr., Commissioner, U.S. Sec. & Exch. Comm'n, Keeping America's Markets Competitive (May 25, 1993), https://www.sec.gov/news/speech/1993/052593beese.pdf; J. Carter Beese, Jr., Commissioner, U.S. Sec. & Exch. Comm'n, Market 2000 and the Future of U.S. Capital Markets (Oct. 24, 1993), https://www.sec.gov/news/speech/1993/102493beese.pdf.

[261] *See, e.g.*, Karmel, *supra* note 239, at S152.

[262] *See, e.g.*, Breeden, *supra* note 247, at S82–83.

[263] *International Registered and Reporting Companies*, SEC.GOV, https://www.sec.gov/divisions/corpfin/internatl/companies.shtml (last modified June 24, 2016).

[264] *See, e.g.*, M. Shane Warbrick, *Practical Company Experience in Entering U.S. Markets: Significant Issues and Hurdles from the Issuer's Perspective*, 17 FORDHAM INT'L L.J. S112 (1994).

[265] Richard Kosnik, *The Role of the SEC in Evaluating Foreign Issuers Coming to U.S. Markets*, 17 FORDHAM INT'L L.J. S97, S103–10 (1994); Karmel, *supra* note 239, at S153.

Overall, there was hardly any discussion in the 1990s (at the SEC level) on whether to adopt IFRS for domestic issuers and eliminate U.S. GAAP. To the contrary, until allowing foreign issuers to use IFRS, the SEC faced pressure to ease requirements for foreign issuers in order to keep U.S. capital markets competitive. Clearly, SEC involvement ensured that accounting standards for foreign issuers listing in U.S. capital markets were "equally tough." Even those who pushed international standards, such as the Chair of NYSE, made it clear that international standards would not "abolish" U.S. GAAP.[266] To the contrary, U.S. GAAP was serving well the millions of Americans investing in the capital markets. Yet, international standards were expected to "satisfy the needs of international investors" and "allow some companies the opportunity to come to the United States."[267] In 2007, the SEC eliminated the reconciliation requirement for foreign issuers and gave them the option to use financial statements prepared using IFRS.

2. Preferring an International Private Standard Setter Over UN

Research on international accounting standards often draws attention to the character of the IASB as a private international standard-setter. What made the world prefer an international private organization over classical international organization such as the UN? The UN was interested in setting standards as multinationals[268] became more common and many nations grew unsatisfied with the corresponding financial reporting requirements.[269] The first UN Group of Experts on International Standards of Accounting and Reporting (GEISAR) was created in 1976.[270] GEISAR soon converted into an Ad Hoc Group[271] and later became ISAR. Throughout the course of these

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[266] Grasso, *supra* note 237, at 1119–20.

[267] *Id.* at 1120.

[268] MNEs or Transnational Corporations (TNCs) as UN had called it then.

[269] When a twenty-member group of eminent persons from diverse backgrounds across the world prepared a report on MNEs as per the inquiry of the Economic and Social Counsel of the UN, they showed that "there was a serious lack of financial and nonfinancial information necessary to effectively assess the commercial and operating affairs of TNCs." Rahman, *supra* note 141, at 599 (citing U.N. Dep't of Econ. and Soc. Affairs, *The Impact of Multinational Corporations on Development and on International Relations*, at 55, U.N. Doc. E/5500/Rev. 1 (1974).

[270] Rahman, *supra* note 141, at 599–601. After GEISAR an Ad Hoc Group was created in 1979 by the resolution 1979/44. ISAR as today was formed in 1982 with the ECOSOC Resolution 1982/62 dated 27 Oct. 1982. In that Resolution, ECOSOC refers to the resolution 1979/44 setting out the terms of reference for the former Ad Hoc ISAR. *See* Aggestam-Pontoppidan, *supra* note 141; NOBES & PARKER, *supra* note 107, at 98.

[271] Not to be confused with the OECD Ad Hoc Committee of the OECD. OECD created, with a similar

changes, it became an observer, or perhaps a county-by-country reporter, but never played a role in the standard-setting it was created for. Why was the UN largely unsuccessful in positioning itself to set those standards for the world?

Rahman's excellent piece points out that developed countries are not comfortable with the "sovereign equality" principle of the UN–where developing countries get to say as much as developed ones–when it comes to disclosure requirements of multinationals.[272] The UN Charter gives equal voting rights to each member nation.[273] When there is a one-nation-one-vote principle with decisions made by simple majority, it is logical to expect smooth decision making so long as there is a majority. In the case of GEISAR, developing countries were the majority. Developed nations held at most 20% of the votes while the developing nations held about 75%.[274] Yet, decision making was not smooth.[275]

Multinationals were often based in developed countries, but invested in developing ones. Different priorities and conflicting interests created tension between them. Developed nations preferred comparable financial reports of multinationals to better serve capital markets—harmonization was the motto. Developing nations viewed corruption and the impact of multinationals on economic development and political stabilization as a priority. The debate on disclosure requirements of the multinationals became heated when a U.S. Senate Subcommittee published a report confirming the involvement of a major U.S. multinational in destabilizing Chile during the 1973 coup (where Augusto Pinochet overthrew the democratically elected president Salvador Allende).[276] Upon the publication of this report, a "comprehensive investigation" of all activities of multinationals across national borders was demanded.[277]

Developing nations pressed to have more information about the subsidiaries and affiliates of multinationals. As a result, GEISAR and others recommended having "[s]eparate financial statements for the parent company and for each individual subsidiary company to be published at each

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name and task, an Ad Hoc Committee right after the UN got interested in setting accounting standards for the MNEs.

[272] Rahman, *supra* note 141, at 594, 603.

[273] U.N. Charter art. 2. For UN, there is another step as there is a Security Council equipped with veto power.

[274] Rahman, *supra* note 141, at 595, 604 fig.2. The remaining 5 per cent of the votes belonged to the socialist nations.

[275] *See generally*, *id.* at 603–18.

[276] *Id.* at 594–95, 618 n.3.

[277] *Id.* at 595.

subsidiary level, and not at the group headquarters level."[278] The list of disclosure recommendations (the Report) were unanimously adopted and would have been implemented after ratification, but it failed to get approval despite the absolute majority of supporters. Instead, GEISAR turned into an Ad Hoc Group tasked with "reviewing" the Report and "formulating priorities" rather than setting standards.[279] This effectively silenced the developing nations' attempts to have the UN set standards on accounting and disclosure matters. After dissolution of the Ad Hoc Group, the developing nations pressed for another group, but it was also tasked only with issuing annual reports intended to review developments.[280]

As this example shows, having a "majority" can be meaningless in a "democratically constituted organization" such as the UN. In spite of a general rule of decision-making by simple majority, in this case the minority group sought unanimity to support implementation of the Report.[281] Without support from developed nations, developing nations could not force multinationals to comply with the requirements of the Report. The minority group had additional leverage in that those nations could cut financial support to the UN, which would endanger the initiative.[282] The relatively powerless majority had little choice but to adopt the unanimity requirement for decision-making. [283] The unanimity requirement gave the power of the majority to the minority–without the minority's consent, the majority was unable to make a decision.[284] A decision on disclosure requirements for multinationals could not be made at the UN level thereafter, which gave the standard setting seat to the IASC/IASB.

IV. UNITED STATES HESITANCE CONCERNING IFRS

After the SEC allowed foreign issuers to report using IFRS, discussions started on whether they should allow the same option to U.S. issuers. In 2008, the SEC published a Roadmap proposing the use of IFRS by U.S. issuers

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[278] *Id.* at 600 (including a list of the group's unanimous recommendation as the minimum items of disclosure for TNCs); *see also* U.N. Secretary-General, *International Standards of Accounting and Reporting for Transnational Corporations*, U.N. Doc. E/C.10/33 (1977).

[279] *See* Rahman, *supra* note 141, at 600–01; *see also* Economic and Social Council Res. 1979/44 (May 11, 1979) (for the terms of reference of the Ad Hoc Group.

[280] Rahman, *supra* note 141, at 608.

[281] *Id.* at 615.

[282] *Id*.

[283] *Id*.

[284] *Id*.

beginning in 2014.[285] With this proposal, the SEC officially said that U.S. issuers might use IFRS as early as 2014. At the time, SEC Chair Christopher Cox openly and passionately supported international standards. For Cox, pursuing this goal was important to fulfil the SEC's mission of protecting investors and facilitating capital formation at a time when two-thirds of U.S. investors owned securities issued by foreign companies.[286]

With the global financial crisis, the adoption of IFRS found its place in the G20's agenda. The G20 supported collaboration between the IASB and FASB, urged them to conclude the convergence project by 2011 and to have a single set of global standards in place.[287] According to the Roadmap, whether the United States would adopt IFRS would be decided by 2011. The boards of the IASB and the FASB worked on convergence to eliminate disparities. In 2011, the SEC postponed the decision to 2012 (and later, yet again) to allow the two boards to work further. By 2014, U.S. issuers were still not allowed to use IFRS and there was no SEC decision in sight. The convergence project came to an end when the two boards declared to have different approaches in lease accounting.[288]

The current situation is likely as far as IFRS can go in the United States. The SEC has primarily been interested in international standards that foreign companies could use instead of U.S. GAAP, and declared the possibility of dropping the reconciliation requirement if international standards met U.S. expectations. The possibility for U.S. issuers to adopt IFRS was discussed only after the 2008 SEC Report when Christopher Cox was the Chair of the SEC.[289] By asking for comments on this proposal, the SEC was trying to evaluate whether there was such a demand.[290] Until the 2008 Report, there

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[285] Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers, Securities Act Release No. 8982, Exchange Act Release No. 58,960, 73 Fed. Reg. 70,816 (Nov. 21, 2008).

[286] Press Release, U.S. Sec. & Exch. Comm'n, SEC Proposes Roadmap Toward Global Accounting Standards to Help Investors Compare Financial Information More Easily (Aug. 27, 2008), http://www.sec.gov/news/press/2008/2008-184.htm.

[287] LEADERS OF THE GROUP OF 20, DECLARATION OF THE SUMMIT ON FINANCIAL MARKETS AND THE WORLD ECONOMY (2008), http://www.un.org/ga/president/63/commission/declarationG20.pdf; LEADERS OF THE GROUP OF 20, LEADERS' STATEMENT: THE PITTSBURGH SUMMIT (2009), https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

[288] David M. Katz, *The Split Over Convergence: FASB and the IASB back away from the goal of a single global accounting language*, CFO.COM (Oct. 17, 2014), http://ww2.cfo.com/gaap-ifrs/2014/10/split-convergence/; Russell G. Golden, *From The Chairman's Desk*, FASB.ORG, http://www.fasb.org/cs/ContentServer?c=Page&pagename=FASB%2FPage%2FSectionPage&cid=1176166231321 (last visited Dec. 19, 2016).

[289] U.S. Sec. & Exch. Comm'n, *supra* note 286.

[290] *Id*.

was little evidence of an SEC intention to adopt IFRS for U.S. issuers.

However, Christopher Cox later indicated that IFRS would not be an option for U.S. issuers.[291] At an event in June 2014, the former SEC Chair indicated that "the SEC had not made any policy decision on whether to allow IFRS to be used in the U.S. Nor had it developed any plan on how this would occur if such a decision were to be made."[292] Cox said, "everyone realized the bride and groom would never wed."[293] The possibility of a "wedding" that was spelled out in his term in the Roadmap was null. The world's leading economy is, in Cox words, "without sufficient incentive or reward . . . to abandon what it's got."[294]

One can observe similar shifts among other SEC staff–though not as blunt. SEC Chairs often chose to state commitment yet did little beyond such statements. The SEC Chair White, for instance, said in 2014 that "considering whether to further incorporate IFRS into the U.S. financial reporting system has also been a priority . . . . And, it continues to be."[295] Before her, Chair Schapiro said, they are "looking closely at the question of incorporating IFRS into the financial reporting system for U.S. domestic companies."[296] But both hesitated to make a decision–neither allowing IFRS for U.S. issuers nor putting it off the table.

This hesitance is discernable at other levels of the SEC. For instance, James Schnurr, the Chief Accountant of the SEC, stated that he would make a recommendation to the SEC Chair within a couple of months (of starting his duty at the SEC) and end the uncertainty investors are faced on this matter.[297] Initially he proposed that the SEC give U.S. companies the option to report to the SEC using IFRS.[298] However, Schnurr backed away from the

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[291] *See infra* Part IV.

[292] Cox, *supra* note 245, at 9–10.

[293] *Id*. at 10.

[294] *Id*. at 13.

[295] Mary Jo White, Chair, U.S. Sec. & Exch. Comm'n, Remarks at the Financial Accounting Trustees Dinner (May 20, 2014), http://www.sec.gov/News/Speech/Detail/Speech/1370541872065.

[296] Mary L. Schapiro, Chairman, U.S. Sec. & Exch. Comm'n, Remarks Before the Financial Accounting Foundation's 2011 Annual Board of Trustees Dinner (May 24, 2011), http://www.sec.gov/news/speech/2011/spch052411mls.htm.

[297] James Schnurr, Chief Accountant, Office of the Chief Accountant, U.S. Sec. & Exch. Comm'n, Remarks Before the 2014 AICPA National Conference on Current SEC and PCAOB Developments (Dec. 8, 2014), http://www.sec.gov/News/Speech/Detail/Speech/1370543609306 ("[A]ny continued uncertainty around IFRS results in uneasiness for investors across the globe. Therefore, it is a priority of mine to bring a recommendation to the Commission in the near future with the hope of resolving, or at least lessening, this uncertainty.").

[298] Michael Cohn, *SEC Considers Supplemental Use of IFRS by US Companies*, ACCT. TODAY (Dec.

proposal within a couple of months because of lack of support for IFRS in the United States, stating that "for the foreseeable future, continued collaboration is the only realistic path."[299] "Continued collaboration" or "international collaboration" is often mentioned by other SEC members such as Commissioner Kara Stein, yet, the vagueness of the expression only creates uncertainty in spite of its positive character.[300] Despite claiming that a recommendation on IFRS remains a "priority," the SEC continues to hesitate–neither taking it off the table nor deciding to allow usage.

V. CONCLUSION

In this article, I demonstrate how the IASB turned into the sole standard setter of global accounting standards, and show how influential the United States was in this process. In spite of pushing these standards internationally, the United States does not allow U.S. listed companies to report using IFRS. The United States neither openly rejected nor accepted adoption of IFRS, and it looks like there will be no decision in the near future. Whether the United States should adopt or allow IFRS for U.S. issuers has been debated, but decision-makers in the United States nonetheless failed to reach an agreed-upon next step. Rather than focusing on whether the United States should or would adopt IFRS, I show that the push to adopt IFRS, initiated and promoted by the United States, led the world to adopt Anglo-American accounting standards at a time when such a global initiative was crucial for multinationals. Although U.S. capital markets appear to have benefited most from the initiative, the United States did not lead it so that U.S. issuers would eventually adopt IFRS. Widespread adoption of a set of standards similar to U.S. GAAP allowed the United States got what it wanted out of IFRS. A

8, 2014), http://www.accountingtoday.com/news/accounting-news/sec-considers-supplemental-use-of-ifrs-by-us-companies-72966-1.html; *SEC May Propose a New Approach to IFRS in the United States*, IASPLUS.COM (Dec. 4, 2014), http://www.iasplus.com/en/news/2014/12/schnurr.

[299] James Schnurr, Chief Accountant, Office of the Chief Accountant, U.S. Sec. & Exch. Comm'n, Remarks Before the 2015 Baruch College Financial Reporting Conference (May 7, 2015), http://www.sec.gov/news/speech/schnurr-remarks-before-the-2015-baruch-college-financial-reporti.html; Michael Cohn, *SEC Chief Accountant Backs Away from IFRS Proposal*, ACCT. TODAY (May 7, 2015), http://www.accountingtoday.com/news/audit-accounting/sec-chief-accountant-backs-away-from-ifrs-proposal-74553-1.html; James Schnurr, Chief Accountant, Office of the Chief Accountant, U.S. Sec. & Exch. Comm'n, Remarks at the 34th Annual SEC and Financial Reporting Institute Conference (June 5, 2015), https://www.sec.gov/news/speech/remarks-34th-sec-financial-reporting-institute-conference.html.

[300] *See, e.g.*, Kara M. Stein, Commissioner, U.S. Sec. & Exch. Comm'n, International Cooperation in a New Data-Driven World (Mar. 26, 2015), https://www.sec.gov/news/speech/2015-spch032615kms.html.

rejection of IFRS by the SEC might endanger what has been achieved so far and yet an adoption is not necessary. Hence the hesitance.

[301] U.S. Sec. & Exch. Comm'n, International Registered and Reporting Companies, https://www.sec.gov/divisions/corpfin/internatl/companies.shtml

Table 1: Number of Foreign Companies Registered and Reporting with the U.S. Securities and Exchange Commission [301]

	1994		1998		2000		2004		2005		2006		2007		2008		2009		2010		2014	
Total	657		1,116		1,310		1,240		1,236		1,145		1,058		1,024		966		970		912	
Top 3	CA	296	CA	423	CA	481	CA	497	CA	515	CA	491	CA	451	CA	423	CA	377	CA	347	CA	295
	UK	62	UK	109	UK	143	UK	107	UK	88	IS	82	IS	88	IS	83	CI	93	CI	125	CI	121
	IS	51	IS	90	IS	101	IS	86	IS	86	UK	63	CI	70	CI	78	IS	78	IS	74	IS	83
Other																			BVI	49	BVI	36
	CI	4	CI	10	CI	17	CI	26	CI	33	CI	43	UK	48	UK	44	UK	42	UK	38	UK	33
	GE	2	GE	16	GE	26	GE	22	GE	20	GE	20	GE	13	GE	13	GE	10	GE	6	GE	7

CA: Canada

IS: Israel

CI: Cayman Islands

GE: Germany

BVI: British Virgin Islands