IMF Governance, the Asian Financial Crisis, and the New International Financial Architecture

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I. Introduction

The International Monetary Fund (IMF) was created over 50 years ago as a key pillar of the Post World War II international economic order. The ultimate goal of the international financial institutions (IFIs) of that era was to create a more open and global economy. Now that a high degree of economic globalization has been achieved, a new “international financial architecture” is needed.

The Asian Financial crisis of 1997-1999 was in many ways a turning-point. It provided dramatic proof that the globalization of capital flows has left national economies more vulnerable than ever to panics and other external developments. The crisis also raised questions about the role of the IMF in the newly globalized economy. The IMF’s original role was principally to manage the fixed exchange rate system which collapsed in the 1970s. It has adapted itself into an organization that makes loans to developing countries and provides them with economic policy advice often unrelated to exchange rate stability. By conditioning its loans upon compliance with its policy advice the IMF has evolved into the international financial policeman of the world economy. As the Asian crisis dawned, the Fund offered advice and formulated new programs of conditional financial assistance to Thailand, Indonesia, and other affected Asian states. Some aspects of these IMF programs have been criticized for contributing to the panic, adding fuel to the calls for a new international financial architecture.

As its influence has grown, the IMF has resisted adapting its policies to changed conditions and challenges. Following the example of the World Bank, the Fund now monitors the compliance by states with fundamental principles of good “governance.” Unlike the World Bank, however, the IMF has resisted pressures to respect these principles in its own operations. This is no longer acceptable. The IMF must accept that economic globalization entails a new set of

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* The views expressed herein are solely the author's.
1 See IMF ANNUAL REPORT 1999, 33.
responsibilities for those international institutions entrusted with the stewardship of the global economy.

II. **The Bretton Woods Framework**

   **II.A. The Post World War II Vision of Economic Globalization**

   The present system of multilateral economic institutions was established after World War II, as part of a very forward-looking Anglo-American vision of international economic globalization. The period preceding that war had been characterized by protectionist high tariffs, exchange rate manipulations, and other economic policies reflecting a narrowly nationalistic perspective. These policies had contributed to global economic stagnation by choking off international trade. Recalling the international economic chaos which had preceded the war, the leading economic powers of the time decided to construct a postwar system of international economic organizations which would structure international economic relations along more positive and cooperative lines. Economic globalization, via more open international trade and a more stable and predictable international monetary system, was the goal.

   At first, only two international institutions were contemplated as pillars of the post-War international economic order: an International Trade Organization (ITO), and an International Monetary Fund (IMF). A third pillar, the International Bank for Reconstruction and Development (IBRD) was created along with the IMF at the 1944 Bretton Woods Conference.

   An ambitious ITO agreement, designed to bring about the progressive elimination of all tariffs, was negotiated in Havana in 1948. This part of the structure was abandoned, however, when the US and other states failed to ratify the treaty. The limited framework of the General Agreement on Tariffs and Trade (GATT), originally intended to function only as an interim arrangement pending ITO ratification, remained in place for almost 50 years. Only when the Marrakesh agreement brought the WTO into existence in 1994, would the international community begin to realize a true globalization of trade.

   The IMF was intended to be the second major pillar of the international economic order, maintaining exchange rate stability, helping its members to deal with short-term balance of payments disequilibria and, in general establishing a reliable international payments system. The Bretton Woods fixed exchange rate system completely collapsed in 1973 leaving the IMF in search of a new

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mission. In adapting to the developing country debt crisis of the 1980s the IMF found a new niche as the designated advisor to heavily indebted developing countries. This occurred largely during the thirteen-year mandate of Michel Camdessus as Managing Director of the Fund. On the surface, the Fund’s two major activities remain the same: surveillance of national economic policies, and providing financial support for adjustment programs when necessary. Now, however the Fund’s advice concerns not only fiscal policy but also banking, competition policy and a broad range of economic policy matters, including governance.\(^4\) Heavily indebted countries generally have little choice but to accept the Fund’s austere policy directives.

Fund surveillance is facilitated by the extensive economic information that members are required to divulge to the Fund. Every year or so, pursuant to Article IV of the IMF’s Articles of Agreement, the IMF sends a staff team to visit each member country to hold bilateral discussions. The team visits the country to collect economic and financial information and to discuss the country’s economic developments and policies with national officials. After returning to headquarters, the staff prepares a report, which is used by the Executive Board as the basis of discussion.

The basic financial resource of the IMF consists of funds from member states, each of which is required to contribute according to a “quota” reflecting the size and strength of its economy. Members are entitled to draw freely upon a first “reserve tranche” of these resources representing their contribution in gold and convertible currencies in excess of this quota. The Fund allows member countries to draw upon additional “credit tranches” of its resources only if they comply with IMF “conditionality”, making financing available to debtors only if they promise to comply with IMF-determined conditions concerning their national economic policies and performance. After initial approval, the Fund continues to act as a sort of international financial policeman, monitoring compliance with the promises it has exacted from debtor countries and giving a creditworthiness green light to the international financial community.\(^5\) Supplementing the basic financial support it makes available to its members, the Fund has developed an array of special “facilities” in response to the persistent economic problems of debtor countries. These will be discussed in greater detail below.

In 1945, many countries did not share the enthusiasm of the US and the UK for an IMF to support monetary and financial discipline. Creation of the International Bank for Reconstruction and Development (IBRD), the third pillar of international economic cooperation, broadened the appeal of the proposed system of international financial institutions by offering something concrete to the economically disadvantaged

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regions of the world. The IBRD was established in 1945 to finance the reconstruction of countries devastated by World War II and the development of more traditionally impoverished areas of the world. The Marshall Plan, introduced in June of 1947, eventually assumed the burden of financing reconstruction in Europe leaving the Bank free to devote its resources to the development task. Today, the IBRD is the central institution in what is known as the World Bank Group.

The Bank's role goes beyond providing development financing, since it has always provided borrowers with advice on development as well. There is at times a fine line between giving advice on development and giving general advice on economic policy, and the Bank now shares with the IMF responsibility for inducing debtor countries to make much needed macroeconomic reforms.

II.B. Voting and Decision-Making Procedures at the IMF

The Bank and the Fund are organized along much the same lines. The business of the Fund is conducted by an Executive Board. The relative economic strength of the various member countries is reflected in the composition and voting of that Board. As a result, five members of the Fund wield 40% of the total voting power. This weighted voting formula has never been popular with the developing countries since, in effect, it institutionalizes within the IFIs the inequality between the economically strong countries and the economically weak ones. The desire of these latter countries for greater equality has led the UN General Assembly to adopt resolutions calling for the reform of the decision-making procedures in international economic and financial institutions.

Though it may seem to conflict with notions of "sovereign equality," the weighted voting procedure has the virtue of being a practical solution to a very real problem. The major contributors to the Bank and the Fund are naturally concerned about how the contributed funds are used. Weighted voting answers these concerns and thereby assures the participation of donor countries.

While there is a certain logic to weighted voting, that system is subject to abuse. The power it concentrates in the hands of the principal contributor countries, especially the US, raises the possibility that this power could be used for purposes unrelated to the Fund’s goals. This could constitute a politicization of the Fund and a violation of its Charter.

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6 The percentage of total voting power in the IMF for each of the five is presently as follows: US: 17.53%, Japan: 6.29%, Germany: 6.15%, UK: 5.08%, France: 5.08%. IMF ANNUAL REPORT 1999, 194.

7 See, for example, Article 10 of the Charter of Economic Rights and Duties of States, adopted by the UN General Assembly as Resolution 3281 (XXIX) on 12 Dec. 1974.

8 Article 2 (1) of the UN Charter states that “The Organization is based on the principle of sovereign equality of all its Members.”
II.C. The Concept of Politicization

The term “politicization” refers to an organizational dysfunction in which actions or decisions relating to technical or "non-political" matters are influenced by "political" considerations unrelated to the agreed purposes of the organization.\footnote{The term “politicization” as used in this study cannot be applied in any meaningful way to an organization such as the United Nations whose primary function is political, i.e. the maintenance of international peace and security.}

The concept of politicization can best be understood in relation to the functionalist theory of international organization that was prevalent in the 1940s. The theory holds that the process of international organization should begin with the creation of “non-political” international agencies dealing with specific economic, social, technical, or humanitarian functions upon which state actors can most easily agree, leaving more ambitious political goals until later.\footnote{See, B. Brown, The United States and the Politicization of the World Bank: Issues of International Law and Policy (1992), 14.}

According to this theory, only later, after states have developed habits of effective international co-operation, that it will be possible for them to co-operate in resolving high-level political problems.\footnote{See D. Mitrany, A Working Peace System (4th ed., 1946).}

The fact that certain IGOs are referred to as non-political is a reflection of this theory. In stressing that international organizations must be built upon the consensus of states, this theory helps to clarify the link between the agreed purposes of an IGO and the notion of politicization.

A legal approach to the issue of politicization has been well-developed in the law and practice of the World Bank, and that experience is directly relevant to the Bank’s sister institution, the IMF.

II.C.1. The World Bank's Articles of Agreement

The World Bank's Articles of Agreement are a logical place to look for principles applicable to the governance of the Bank. Article IV section 10, entitled "Political activity prohibited," sets out a clear rule that the Bank and its officers are not to be influenced by “the political character of the member or members concerned” and that “only economic considerations shall be relevant to their decisions.”\footnote{Inis L. Claude Jr. calls this the "separability-priority" thesis, I. Claude, Jr., Swords Into Plowshares: The Problems and Process of International Organization (4th ed., 1971), 384.}

This section \footnote{Articles of Agreement of the International Bank for Reconstruction and Development, Article IV(10), reads as follows: The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.}
has been interpreted as a prohibition on the politicization of the Bank.

The first part of Article IV(10) is clearly designed to protect member states from interference in their internal political affairs. The second part\textsuperscript{14} sets out a positive definition of how the Bank, its organs, and its officers are to exercise their discretion in decision-making. Both the General Counsel of the Bank, and the Bank's EDs, have endorsed the view that section 10 “is no more than a reflection of the technical and functional character of the Bank as it is established under its articles of agreement.”\textsuperscript{15}

\textbf{II.C.2. The IMF's Articles of Agreement}

While the IMF's charter does not contain language similar to Article IV(10) of the Bank's articles,\textsuperscript{16} the Fund has nonetheless taken the position that it is prohibited from making decisions based upon political considerations. Sir Joseph Gold, former General Counsel of the Fund, argued that such a prohibition results from the last sentence of Article I of the Fund’s Articles of Agreement,\textsuperscript{17} which lists the purposes of the IMF and states that “[t]he Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.”\textsuperscript{18} In his view, “[d]omestic policies are ‘social’ or ‘political’ if they do not fall within the scope of the purposes of the Fund as set forth in Article I, and the Fund may not base its decisions on political considerations of this character.”\textsuperscript{19} Thus a political activity prohibition such as that explicitly set out in the Bank’s charter applies to the Fund as well.

Although the Fund, like the World Bank, is to act solely on the basis of economic considerations, this is more easily said than done. Despite the neat verbal distinction between the aspects of governance that are economically significant and the those that are not, the IMF concedes that “in practice there is seldom a clear separation between such economic and noneconomic aspects.”\textsuperscript{20} The consensus among member states as to the definition of a legitimate economic consideration is also subject to

\textsuperscript{14} The second clause of that Article's first sentence mandates that the Bank and its officers shall not “be influenced in their decisions by the political character of the member or members concerned.” This clause serves a dual purpose, providing some protection for the internal affairs of states while also setting out a "functionalist" definition of how the Bank is supposed to reach its decisions.

\textsuperscript{15} From a letter dated 5 May 1967 from the IBRD General Counsel to the UN Secretariat, cited in UNJY (1967), 121.

\textsuperscript{16} See Y. Yokota, \textit{Nonpolitical Character of the World Bank, Japanese Annual of International Law} (1976), 45 (“For the Americans who [at Bretton Woods] held a view that economics cannot be separated from politics, it was perhaps easier to accept a non-political Bank than a non-political Fund”).

\textsuperscript{17} See J. Gold, \textit{Political Considerations are Prohibited by Articles of Agreement when the Fund Considers Requests for Use of Resources}, 12 IMF SURVEY (No. 10, 23 May 1983), 146.

\textsuperscript{18} Virtually identical language appears in Article I of the Bank's charter. After listing the Bank's purposes that Article states that “[T]he Bank shall be guided in all its decisions by the purposes set forth above.”

\textsuperscript{19} Gold, n. 17 above, 146.

\textsuperscript{20} \textit{The Role of the IMF in Governance Issues: Guidance Note} (Approved by the IMF Executive Board, July 25, 1997), para. 22.
IMF Governance

Recently there has been some debate as to whether IMF support for Russia should be terminated in response to the Russian government’s indiscriminate use of force against civilians in Chechnya. Russia’s policy raises fundamental issues of human rights, and must surely have disastrous economic effects. So far, US Secretary of State Madeleine Albright has nonetheless argued for maintaining a separation between the economics of IMF funding and this humanitarian issue. In a radical break from past practices, the Fund's outgoing Managing Director, Michel Camdessus suggested that this separation will be difficult if not impossible to maintain because "this war (in Chechnya) has given Russia a very negative image internationally." The Russian government’s response was to condemn this statement as inconsistent with the Fund’s basic policies.

II.C.3. Types of Politicization

In an earlier study, I examined legal issues raised by the “negative politicization” of the World Bank. “Negative politicization” generally involves the use or abuse of a multilateral institution by one of its member states in an attempt to punish another member state for political reasons inconsistent with the agreed purposes of the institution. In general, attempts at the negative politicization of the Fund have been unsuccessful.

Disputes over the “positive politicization” of the Fund have emerged in recent years. These allegations have taken two forms. The first concerns cases where IMF financing has allegedly been provided to members even though the economic rationale for that assistance was dubious at best. The financing provided to Russia amid allegations that it had lied to the IMF about its financial situation, and allowed past disbursements to be stolen is a good example. The IMF insists that its decisions on lending to Russia have been economically justified.

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21 See National Public Radio, (USA) ALL THINGS CONSIDERED, Secretary of State Madeleine Albright Wants to Keep Economic Aid Going to Russia Regardless of its Internal Affairs, 24 Nov. 1999 (available on LEXIS/NEXIS Library NEWS, File: ALLNEWS).
24 Brown, note 10 above, 22.
26 See, IMF comes under scrutiny over disbursal of funds: John Thornhill on whether the institution should have kept a sharper eye on the $4.8bn it lent to Russia, FINANCIAL TIMES (London), 10 Sept. 1999, Section: World News - Europe, 2.
officially complained of those donor/creditor governments who decide, for political reasons, to continue to provide bilateral financial assistance to countries without regard to economically significant defects in governance.\textsuperscript{28}

Of greater relevance here, however, is a second form of positive politicization. This would occur if the power of the IMF, including the promise of its financing and/or its economic imprimatur, were used to promote in member states policies or policy changes which go beyond the agreed purposes of the IMF. Some of the Fund’s policy prescriptions to Asian states went beyond the consensus of its members and contributed to the severity of the Asian financial crisis.

\textbf{D. The Emergence of Governance as an Issue}

The IMF was slow to address the issue of governance, and has only done so in recent years. In these matters the Fund generally takes the lead of the World Bank which over the last decade has evolved an elaborate set of practices and procedures for assessing and addressing the governance of potential borrowers. The law and practice of the World Bank and its member states now recognize that the strict prohibition upon political activity found in the Bank’s Charter does not preclude it from considering matters of governance which may touch upon the political order within a state.\textsuperscript{29} Issues of governance are considered relevant to the Bank’s decision-making to the extent that they produce economic consequences.

The World Bank applies the following definition in evaluating the impact of “governance” upon the economic performance of states.

\begin{quote}
We define governance as the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them.\textsuperscript{30}
\end{quote}

This definition can be accepted as that of the IMF as well since, in matters of governance, the IMF defers to the superior expertise of the

\begin{footnotes}
\item[28] See n. 20 above.
\item[29] See Brown, n. 10 above, 156.
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World Bank. Both the Fund and the Bank walk a fine line when evaluating the governance of member countries. They must be wary of crossing the critical boundary between considering the economic implications of national governance and improperly interfering in the political affairs of a member. The IMF has acknowledged the need to find and respect the proper boundaries to its involvement in governance, and has reiterated the standard of the political activity prohibition.

During its periodic Article IV consultations with member states, IMF policy advice is supposed to be based on the principles of transparency, simplicity, accountability and fairness, which are essential aspects of good governance. The irony here, as will be discussed further below, is that the IMF itself has not traditionally observed these principles of good governance.

E. Oversight on Structural Issues

NGO critics of the Fund stress that the IMF “does not have the expertise to provide the far-reaching policy prescriptions that it ties to its loans,” and that multilateral consultation about economic development policy is better left to the World Bank. Concerns about politicization have grown as the IMF has assumed an increasingly broader role in prescribing national economic policy.

Under the Fund’s Enhanced Structural Adjustment Facility (ESAF), the world’s poorest developing countries are eligible for special economic assistance if they commit to a three-year comprehensive macroeconomic and structural adjustment program. The financial terms of the assistance are quite favorable, but the conditions are tough. As of February 1999, over 50 developing countries had received funds under ESAF concessional arrangements. Each such arrangement involves the formulation of a detailed macroeconomic and structural reform framework suitable to the IMF’s staff of economists.

In 1986 the IMF and World Bank jointly developed a special debt relief initiative for the Heavily Indebted Poor Countries (HIPC), many of which suffer under an especially crushing burden of international debt. The goal is to reduce the debt to

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32 Ibid., para. 7.
33 Id., para. 13.
36 Id.
sustainable levels by coordinating and requiring the participation of all bilateral, multilateral and commercial creditors.\textsuperscript{37} Taken together, these various facilities have led to an unprecedented level of IMF influence over national economic policies.

### III. The Asian Financial Crisis and Lessons for the New International Financial Architecture

#### III.A. The IMF and the Asian Financial Crisis

In 1997 a devastating financial crisis hit Thailand. After trying in vain to defend the Thai baht the government reluctantly decided to let it float. The result was a 40 percent drop in the value of the currency over the next eight months, causing foreigners to lose confidence and withdraw their assets from Thailand. Foreign capital stopped flowing into the country, foreign exchange reserves dwindled, and Thailand had to go to the IMF for help.\textsuperscript{38} The crisis spread quickly within the region to the Philippines, Indonesia, Malaysia and South Korea, and ultimately affected economies around the world.\textsuperscript{39}

Both the outbreak of this crisis and its severity are linked to the “unprecedented move towards financial market globalization”\textsuperscript{40} in recent years. The crisis was generated by excesses within the private sector rather than by government policy. Governments contributed to the problem by remaining inactive in terms of supervising and controlling the financial and corporate sector.\textsuperscript{41} Proper regulation was complicated by the fact that, generally speaking, East Asian economies were lacking transparency in business and financial dealings.\textsuperscript{42}

The IMF played a role as well. Just prior to the start of the crisis, the Fund’s Directors had “praised Thailand’s remarkable economic performance and the authorities’ consistent record of sound macroeconomic fundamentals.”\textsuperscript{43} When the crisis began, the Fund formulated new programs for Thailand, Indonesia, and other affected Asian states, and these programs have been criticized for contributing to the panic in several ways. The IMF ordered sudden bank closures and, when these were


\textsuperscript{39} Ibid.

\textsuperscript{40} IMF Annual Report 1999, 33.


\textsuperscript{42} See n. 38 above.

\textsuperscript{43} Summary of a July 1996 IMF Board discussion on Thailand, in Steven Radelet and Jeffrey Sachs, The Onset of the East Asian Financial Crisis (30 Mar. 1998), 33 (appendix). The IMF did warn, however, that “the level of short term capital inflows and short-term debt were somewhat high.” Id.
implemented without a more comprehensive plan for financial sector reform, the effect was to deepen the panic.\textsuperscript{44} The Fund also contributed to the severe credit crunch by pushing banks to recapitalize within an unrealistic time frame and by recommending contractionary fiscal and monetary policies.\textsuperscript{45} Much of this advice was similar to past IMF prescriptions for debtor countries in the throes of overspending and inflation. Many doubt that this advice was an appropriate response to problems largely attributable to the volatility of private capital flows.\textsuperscript{46} In any case, the IMF’s lending rose to record levels during the crisis.\textsuperscript{47}

The IMF has not publicly acknowledged making errors during the crisis, but there are reports that a confidential IMF review concluded that the Fund’s policy on bank closures did indeed exacerbate the crisis.\textsuperscript{48} Despite the IMF’s lack of official public contrition, several of its Directors have acknowledged that mistakes were made. The Fund reports without elaboration that some Directors expressed concern that Fund policies had liberalized capital movements before appropriate regulatory regimes were in place\textsuperscript{49} or that the IMF had overreacted by loading the first stage of its programs with too many structural reforms.\textsuperscript{50}

\textit{III.B. The Need for a New Consensus}

The multiple roles of the IMF leave it near the center of the new globalizing economy, and vest it with a great deal of power. This, in itself, is not a problem. When it acts according to the consensus of member states that created it the IMF makes legitimate use of its power and influence, but the use of that same authority for other purposes lacks legitimacy.

In the wake of the Asian financial crisis, there is clearly a lack of agreement concerning the appropriate role of the IMF in encouraging adjustment. Among economists there is a lack of technical consensus,\textsuperscript{51} among governments there is a lack of political consensus. Thus, the IMF exercises a growing influence over debtor states even as support for its policies has eroded.

The lack of agreement on multilateral economic policy is in stark contrast to the strong international consensus on genocide, crimes

\textsuperscript{44} See IMF Now Admits Tactics in Indonesia Deepened Crisis, NY TIMES (14 Jan. 1998), 1.
\textsuperscript{45} Steven Radelet and Jeffrey Sachs, n. 43 above, 24-30.
\textsuperscript{47} The total credits drawn from the IMF accounts during the years 1997/1998 reached a total of $75.4 billion, $20.1 billion more than the previous year. IMF \textit{ANNUAL REPORT} 1998, 13 (Overview - Asian Financial Crisis Propels IMF Activity to New Levels in 1997/98).
\textsuperscript{48} See n. 44 above.
\textsuperscript{49} See IMF \textit{ANNUAL REPORT} 1999, 36.
\textsuperscript{50} Ibid.
\textsuperscript{51} See P. Passell, Economic Scene: \textit{The I.M.F. Must Go, Critics Say, But Who Will Cope with Crises?}, NY TIMES (12 Feb. 1998), D2.
against humanity and war crimes. The successful negotiation of the Rome Statute of the International Criminal Court in 1998 proved that there is broad agreement upon both the fundamental values embodied in the definition of these international crimes, and also on the precise details of international mechanisms to ensure their prosecution. In contrast, the international consensus on the role of the IMF has eroded in recent years, and is seriously vague and outdated. It is strained, if not outright exceeded, by the IMF’s efforts to restructure national economies around the world on the model of the western industrial democracies.

III.C. Key Aspects of the Needed Reforms

Many proposals for a new international financial architecture call for little, if any, change in the functioning of the IMF itself.\(^52\) A new IMF facility, the Contingent Credit Line (CCL), has already been created to arm the IMF with the means to help “deserving”\(^53\) countries withstand financial pressures caused by external developments. The Fund stands ready, as always, to create new “facilities” which operate within the same institutional context. Not surprisingly, some of the changes suggested by the Managing Director of the Fund would increase the authority of that institution more than they would reform its policies. Perhaps the most radical of these is the idea that the IMF might be endowed with the legal authority to declare a stay on legal action by “dissident creditors” when this is needed to prevent disruptions of ongoing negotiations on rescheduling debts.\(^54\)

Some critics of the IMF call for its abolition, or for folding it into another existing organization such as the World Bank. Others take the position that the Fund should be strengthened with additional financial resources so that it can do more to help developing countries deal with balance of payments and exchange rate crises.\(^55\)

Even some of the more traditional proposals for reform acknowledge that certain IMF policies need to be modified in light of the lessons of the Asian Financial Crisis.

\(^{52}\) Alan Blinder’s eight principles for a new financial order, for example, are (1) Don’t fix your exchange rate (allow them to float), (2) Borrow less in foreign currency, (3) Don’t rush to open capital markets, (4) Follow sound macroeconomic and financial policies, (5) Austerity is not always the right medicine, (6) Devote more resources to protecting innocent bystanders, (7) agree on procedures for orderly debt settlement, and (8) Prevention is better than cure. See A. Blinder, Eight Steps to a New Financial Order, FOREIGN AFFAIRS (Sept./Oct. 1999), 50.


\(^{55}\) Mikesell, n. 2 above, 6.
One analyst blames three IMF
policies, in particular, for promoting and aggravating that crisis. These are: (1) pushing all states to open capital markets; even before adequate supervisory structures are in place: (2) simplistic reliance by the IMF upon austerity as the right medicine for all financial crises: and (3) inadequate attention by the IMF to the social effects of economic policy.  

This essay proposes that three types of reform, in particular, will be essential to restoring the credibility of the IMF. These would: (1) increase the transparency and accountability of the IMF; (2) pay closer attention to the social effects of IMF operations; and (3) formalize IMF consultations with NGOs.

**III.C.1. Increasing IMF Transparency and Accountability**

The IMF, in publicizing its own formulation of the lessons of the Asian financial crisis, has focused upon the things that states need to do to avoid such crises in the future. But in stressing the importance of transparency in both debtor and creditor countries, the Fund notes in passing that “[g]reater transparency of the IMF itself is an integral part of this agenda.” Any institution as powerful as the IMF should be subject to a high degree of accountability, but this will be impossible until the Fund operates with greater transparency.  

Although it lags far behind the World Bank in this regard, the IMF has recently implemented changes intended to increase the transparency and the accountability of the Fund’s own operations. When requested by the state concerned, the IMF website now posts key documents such as Public Information Notices (PINs) following Article IV consultations, Letters of Intent, and Policy Framework Papers underpinning programs supported by the Fund. The Fund needs detailed information from its members as a basis for its economic and policy analysis. By encouraging its members to agree to the public release of these documents the Fund reconciles the need for confidentiality with the pressing need for greater transparency.

Releasing these documents is a necessary step towards greater transparency, but it is far from sufficient. Because of its reputation as one of the world’s most secretive

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56 See, A. Blinder, n. 52 above, 54-62.
57 Timothy Lane, *The Asian Financial Crisis: What Have We Learned?*, 36 FINANCE & DEVELOPMENT (1 Sept. 1999), 44.
58 See Carol Welch, n. 38 above.
59 Those on the political right have also complained of the IMF’s secrecy and lack of accountability. See, Prepared Testimony of Ian Vasquez, Director, Project on Global Economic Liberty, Cato Institute Before the House Committee on Banking and Financial Services General Oversight and Investigations Subcommittee. Subject - The International Monetary Fund, Federal News Service, (United States), 21 Apr. 1998, available on Lexis/Nexis Library NEWS, File ALLNWS.
60 “The Fund may require members to furnish it with such information as it deems necessary for its activities.” ARTICLES OF AGREEMENT OF THE IMF, Article VIII(5)(a).
organizations,61 the IMF must become more transparent in the way it reaches its decisions as well. The IMF Board generally makes its decisions by consensus, rarely taking a formal vote.62 This procedure may promote collegiality within the Board, but it reduces the transparency of the decision-making process. Expanding formal IMF consultations with NGOs would help open up that process and make it easier to hold the Fund and its staff accountable for decisions and policies.

III.C.2. Increased Attention to Social Effects and Human Rights

The IMF was established in 1945, a full three years before the adoption of the Universal Declaration of Human Rights began a revolution in international law.63 Although the primary focus of the IMF should remain economic, the work of the IMF should also respect the fundamental values of international human rights law. The practice of the IMF and its members in this regard has been evolving.

One aspect of this issue concerns the effect of Fund policies upon the basic human needs of impoverished individuals. With its new focus upon poverty-reduction programs such as the HIPC initiative,64 the Fund has implicitly acknowledged the need for attention to the social effects of its policies. The Finance Ministers of the G7 countries have endorsed the idea of “a strengthened link between debt relief and poverty reduction” through the enhancement of the HIPC Initiative.65 In a largely symbolic gesture, the Managing Director of the IMF announced that the successor to the Enhanced Structural Adjustment Facility (ESAF) will be named the Poverty Reduction and Growth Facility.66 These developments indicate a limited trend towards IMF attention to social issues, but the IMF’s member states may require a significant acceleration of this trend in the future.

In July of 1999 the IMF announced its plan to auction off 10% of its gold

61 “Though it is concerned with neither military nor intelligence matters, the International Monetary Fund is one of the most secretive organizations in Washington.” C. Farnsworth, I.M.F.: Unveiling a Secretive Agency, NY TIMES (10 June 1986), Late City Final Edition, A24.

62 The U.S. Executive Director to the IMF testified before Congress that, during her tenure, there had been only 12 formal votes out of more than 2,000 decisions made by the Board. See, Karin Lissakers, U.S. Executive Director of the IMF, in Review of the Operations of the International Monetary Fund, Testimony before the Subcommittee on General Oversight and Investigations, Committee on Banking and Financial Services, U.S. House of Representatives, 105th Cong., 2nd Sess., 21 Apr. 1998, 27, 46, and 47.

63 See, W.M. Reisman, Sovereignty and Human Rights in Contemporary International Law, 84 AJIL (1990), 866, 873.

64 See n. 37 above and text thereto.


reserves (300 tons) to raise $2 Billion for HIPC debt relief for the poorest countries.\textsuperscript{67} Gold-exporting countries such as Ghana and South Africa protested that the sale would further depress gold prices and send more miners into unemployment. Members of the US Congress from gold-producing states also opposed the sale.\textsuperscript{68} The Fund eventually conceded that the plan could have “an adverse social and economic impact” and decided to sell the gold to central banks instead of on the open market.\textsuperscript{69} If the IMF can respond to social concerns in conducting its gold sales, it can incorporate them into its lending decisions as well if its members so demand.

More controversial than the issue of social effects is that of human rights. Should the IMF refuse support to a government responsible for gross violations of human rights, or should human rights be considered a political issue extraneous to the IMF’s economic mission?\textsuperscript{70} Some IMF members, such as the US, now accept that human rights concerns can be relevant to Fund decision-making.\textsuperscript{71} In keeping with the Fund’s Charter and the practice of its members, human rights considerations are legitimately relevant insofar as these may have tangible economic effects. This threshold needs further definition based on the general agreement of the Fund’s members.

\textit{III.C.3. Formalizing Consultations with NGOs and Civil Society}

The very limited exchanges between the IMF and civil society (including NGOs) have for the most part developed only in the 1990s, and even now these exchanges have been only “weakly institutionalized and haphazardly sustained.”\textsuperscript{72} There are a number of reasons for this state of affairs.

IMF relations with NGOs touch upon three of the bugbears of the IMF: the IMF’s traditional aversion to dealing with non-state actors, the IMF’s “institutional culture of secrecy,” and the reluctance of the IMF, as an institution focused on macroeconomic policy, to address the social issues of primary concern to NGOs.

\begin{footnotesize}
\begin{enumerate}
\item Ghébali refers to one type of organizational dysfunction within the UN specialized agencies as “extraneity”, i.e. “the systematic insertion of extraneous issues into agendas, debates and work programmes ... exemplified by the intrusion of the Middle East question into the debates of virtually all the agencies since 1973.” V. Ghébali, \textit{The Politicisation of UN Specialized Agencies: A Preliminary Analysis}, 14 \textit{Millennium: J. International Studies} (1985), 322.
\end{enumerate}
\end{footnotesize}
Civic organizations are some of the harshest critics of the IMF, and the Fund has been reluctant to enter into a dialogue with these critics. Concerns about maintaining the confidentiality of sensitive information (which is necessary to some degree despite the overall need for increased transparency), and the fear of being diverted into a non-constructive and “uncivil”73 dialogue have contributed to this reluctance. The generalized fear of NGOs is an aspect of an institutional culture of secrecy at the IMF.74 This culture will have to change both because it is inconsistent with principles of good governance espoused by the Fund, and because (like any failure of governance) it is an obstacle to progress in improving performance.

The IMF has been criticized for relying too much upon the same formulas and approaches in dealing with a diverse group of borrowing countries.75 Indeed, even former IMF Managing Director Michel Camdessus has acknowledged that the IMF must make more of an effort to tailor its policy advice to the local situation of debtor states.76 An improved dialogue between the IMF and representatives of civil society in borrowing countries will be an indispensable step in achieving this goal.

The experience of the World Bank proves that NGO contacts are the best way to introduce proper concern for social policies and good governance to the internal operations of the IMF. Unlike the IMF, the Bank has moved aggressively over the last 15 years to institutionalize a strong cooperative relationship with NGOs.77 One of the most forward-looking elements of this evolving relationship was the creation of the World Bank Inspection Panel in 1993.78 This three-member body of independent experts receives requests from private citizens alleging actual or likely harm resulting from the Bank’s failure to follow its own policies and procedures. So far, twelve requests for inspection have been filed, and only two of the five investigations recommended by the Inspection Panel have been approved by the World Bank’s Board.79 While these numbers don’t sound very impressive, the very creation of the Inspection Panel was a landmark in the development of international institutions. It has established the principle that international organizations can be held accountable to the public, and will surely inspire new and better mechanisms of this kind in the future.

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73 Ibid.
74 Ibid.
75 See, Hawkins, n. 46 above.
D. Building the New Consensus

A new consensus on IFIs is needed, but how can this be achieved? The technocrats of the IMF and the World Bank have struggled to adapt IFI policies to the conditions of the rapidly-evolving global economy but their efforts can only take things so far. An important lesson from the 1940s is relevant here. The IMF cannot take its members beyond the consensus of its members any more than the GATT of 1945 could take the states to the free trade promised land of the proposed ITO. A new round of international negotiations will be needed before the IMF can act with legitimacy to break such new and radical ground.

In recent years the need to modify existing international institutions, or to create new ones, has been the occasion for intensive rounds of international negotiations. The transformation of the old GATT framework into the new World Trade Organization was painstakingly negotiated in diplomatic conferences held over several years. The sometimes violent demonstrations at the 1999 Seattle WTO meeting complicated efforts to start another phase of trade negotiations. In matters of international justice, it took years of periodic negotiations hosted by the United Nations, and a five-week diplomatic conference in Rome before the Statute of the International Criminal Court could be adopted in 1998.80

The failure of the international consensus on macroeconomic policy and governance issues indicates that a diplomatic conference will ultimately be needed to address these issues. Some details of international cooperation are too important to be left for decision by faceless international technocrats. As always, the political and diplomatic process will take some time. There has been far too little informed81 and realistic public debate on the IMF and its future at either the national or the international levels.

IV. Conclusions

The Asian financial crisis did not create the problems at the IMF, but did serve to bring them to light at a critical moment. Economic globalization leaves national economies more vulnerable to external developments, and the need for a viable international monetary system is greater than ever. But to be both effective and

81 Hundreds of protesters chanted against free trade at the annual assembly of foreign ministers from the OAS in June of 2000. This is evidence both of the high level of fear and concern about the effects of economic globalization, and of the unwillingness of these particular protesters to distinguish between the international organizations responsible for economic globalization, such as the IMF, and those which are not, such as the OAS. See, Trade Protesters Descend on Hemisphere Meeting, NY TIMES (5 June 2000), A4.
legitimate that system must be based upon a more solid technical and political consensus.

There is usually a lag between the crumbling of an old framework and agreement upon the specifics of the new one. In a time of such shifting norms, it is especially important to maintain a principled approach to the development of the needed reforms.

A new consensus on the IMF, reflecting the lessons of the recent crisis, should be founded upon a few key legal principles. In responding to the Asian crisis the IMF overreacted in the short run, and compounded the mistakes made at the national level with policy errors of its own. The first principle is therefore that the IMF should follow the physician’s rule of "First, do no harm." Another principle, which is essentially a corollary of the first, is that the IMF itself must be held accountable for its errors. This goal can only be achieved if there is greater transparency in IMF governance, so as to facilitate monitoring and accountability. No hidden agenda of the managers or staff of the IMF or of any individual member, should be allowed to subvert the power and influence of that institution. The IMF must also be more sensitive to the social effects of its operations and should be informed by direct formal consultations with NGOs. Finally, the principles originally designed to protect the Fund from politicization should be maintained. The economic ramifications of political factors are properly relevant to the IMF’s decisions.

The renewed debate about the political parameters of IMF decision-making shows once again that the old international consensus has become obsolete. In the past, member-countries have allowed the IMF itself to decide how that institution should adapt, but they no longer have that kind of confidence in the Fund. Only an open transnational debate and a round of high-level political negotiations can clarify the future of the IMF, but this will not be possible until that institution achieves greater transparency. The future of the IMF cannot be properly debated behind a curtain of secrecy. To be viable, the new international financial architecture must be built upon a democratic foundation. There is a strong need at present for an open, informed and public debate about the proper role of the IMF.