AfSDJN

GLOBAL ECONOMIC GOVERNANCE AND IMF GOVERNANCE REFORM: A PROPOSAL

PAPER III OF THE
AFRICAN SOVEREIGN
DEBT JUSTICE PAPER SERIES

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AfronomicsLAW

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FOREWORD

Welcome to the second paper in the African Sovereign Debt Justice Network Paper Series. The African Sovereign Debt Justice is a coalition of citizens, scholars, civil society actors and church groups committed to exposing the adverse impact of unsustainable levels of African sovereign debt on the lives of ordinary citizens.

The African Sovereign Debt Justice Paper Series has four primary goals:

I. To provide insightful and highly accessible analysis of key sovereign debt issues;

II. To create awareness about and elevate public attention to the sovereign debt crisis;

III. To contribute significantly to the menu of reform options for the sovereign debt crisis;

IV. To promote and build capacity among African academics on sovereign debt issues.

The African Sovereign Debt Justice Network is delighted to have been able to work with the experts to produce this paper series. This paper series, written against the background of the ongoing sovereign debt crisis, has been exacerbated by the COVID19 pandemic. AfSDJN believes there continues to be pathways towards reforming many aspects of the global financial architecture and we hope that this series will speak authoritatively to the types of challenges involved in definitively addressing the sovereign debt crisis.

Introduction[1]

The International Monetary Fund (IMF) was created at the 1944 Bretton Woods Conference to oversee an international monetary system consisting of stable exchange rates and a fixed link between the US dollar and gold.[2] Its governance arrangements were designed to support this function and the states that were expected to participate in the system.

It lost this responsibility in 1971 when President Nixon broke the link between the US dollar and gold and initiated the process that led to today's market based global monetary system.[3] This action forced the IMF to develop a new role helping its member states deal with the challenges of market driven exchange rates and free capital flows. In addition, it had to accommodate the needs of its enlarged membership, which, by 1971, had increased from the original 39 states to 117 member states.[4] Many of the newer member states had only recently gained their independence and had different concerns and needs from the original IMF members.

The IMF responded forcefully to the first challenge by amending its Articles of Agreement and changing the scope of its interactions with its member states to better help them manage the challenges of a market based international monetary system.[5] In addition to focusing on monetary policy and balance of payments in its engagements with its member states, the IMF began to raise any economic issue that it though could affect the member's exchange rate or balance of payments. Consequently, the IMF has become more of a macro-economic development financing institution than a specialized monetary institution. Given its financial

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[2] E Conway, *The Summit Bretton Woods, 1944 J.M. Keynes and The Reshaping of The Global Economy* (2014) 12-14. See also, B Steil, *The Battle of Bretton Woods: John Maynard Keynes, Harry Dexter White, and the Making of a New World* (2013) 1-2

[3] JE Garten, *Three Days at Camp David: How a Secret Meeting in 1971 Transformed the Global Economy* (2021) 15-16

[4] International Monetary Fund Annual Report of The Executive Directors for The Fiscal Year Ended April 30 1971 155, https://www.imf.org/external/pubs/ft/ar/archive/pdf/ar1971.pdf accessed 31 July 2021.

[5] The Second Amendment, adopted in 1978, eliminated the role of gold in the international monetary system, allowed for floating exchange rates and amended Article IV of the IMF Articles of Agreement which governs the scope of the IMF's annual surveillance of each of its member states. See, J Gold, *The Second Amendment of the IMF Articles: A General View* (1978) 9-10 https://www.elibrary.imf.org/view/books/054/14098-9781451920857-en/14098-9781451920857-en-book.xml accessed 31 July 2021.

resources and relations with both sovereign debtors and their creditors, it also began to play an important role in sovereign debt renegotiations.

Its response to its growing membership and their diverse needs, the IMF also increased the size of its Board of Executive Directors, and the number and national diversity of its staff.

Today, the IMF is again facing the need to change. First, it must help its member states address the macro-economic impacts of such complex issues as climate change, public health challenges such as the COVID19 pandemic, inequality and discrimination. Second, it must adapt its policies and operations to accommodate the increasing diversity of sources from which its developing country member states are raising financing and the increasing.

complexity of the instruments used to raise these funds and the challenges and risks that this creates for African countries. Third, it must respond to the challenge that central banks and financial markets are posing to its role as the lead actor in global financial governance.[6]

This paper argues that responding to these three challenges requires the IMF to reform its own governance arrangements. In order to make this case, the paper is divided into three parts. The first part describes the evolution in the IMF role in global economic governance. The second part discusses why the current governance arrangements are no longer fit for purpose. The final part will recommend some governance reforms that the IMF should undertake to remedy this situation. Given space limitations, the paper focuses on those reforms that the IMF can implement in the short term on its own and that do not require specific actions by its member states.

I. The Evolution in IMF operations

In order to demonstrate how the IMF's role in global governance has changed, this section compares the IMF's response to the current COVID-19 pandemic with its response to the sovereign debt crises of the 1980s.[7] While there are many obvious and important differences

[6] See DD Bradlow & SK Park 'A Global Leviathan Emerges: The Federal Reserve, COVID-19, and International Law' (2020) 114 *AM. J. INT'L L*. 2-3

[7] See H James*, International Monetary Cooperation Since Bretton Woods* (1996) 347-348. The global financial crisis of 2007-08, of course, was another historically significant event with important implications for the subsequent governance of financial and monetary affairs, including the international response to the financial and monetary impacts of the COVID-19 pandemic. Given space constraints, this paper therefore focuses on the more recent crisis.

between these two events, both posed systemic challenges requiring strong response from the key actors in global financial governance.

1980s Sovereign Debt Crisis

In 1982, Latin American sovereign borrowers were in danger of defaulting on debts totaling approximately US$327 billion. This threatened global economic stability because their debts equaled about 176% of the total capital and reserves of their most important creditors, which were the systemically most significant US banks.[8] Both debtors and creditors turned to the IMF for help. It responded by providing financing to the debtor states on condition that they adopt certain policy reforms and that their creditor banks provide new financing and renegotiate their debts. The IMF's financing gave it sufficient bargaining power to force both parties to accept this arrangement.

For example, in 1982 Mexico owed its creditors US$10.8 billion, which it could not pay.[9] The IMF agreed to provide Mexico with US$3.4 billion in exchange for the country substantially cutting its budget deficit, implementing structural reforms and obtaining support from its other creditors.[10] The commercial banks agreed to extend US$1.5 billion in new financing and to reschedule payments due on debts of US$23 billion. In addition, the US government provided US$2 billion in support.[11]

The COVID-19 Pandemic

In March 2020, investors, panicked by the onset of the COVID-19 pandemic, withdrew from domestic and international financial markets thereby reducing access to credit for sovereigns, corporations and households. The major central banks responded swiftly by injecting over US$10 trillion in dollars and other convertible currencies into financial markets, activating swap lines to support select central banks, and, in the case of the US Federal Reserve, creating a special repo facility for other central banks in need of US dollars and with holdings of US

[8] J Sims & J Romero, 'Latin American Debt Crisis of the 1980s (1982-1989) Federal Reserve History Essay https://www.federalreservehistory.org/essays/latin-american-debt-crisis accessed 31 July 2021.
[9] Mexico's total debts in 1982 were equal to about $80 billion. See RaboResearch, 'The Mexican 1982 debt crisis' Economic Report 2013 https://economics.rabobank.com/publications/2013/september/the-mexican-1982-debt-crisis/ accessed 1 August 2021.
[10] International Monetary Fund Annual Report 1983 p78.
[11] RaboResearch, *supra* note 10

Treasuries.[12] These actions provided support to commercial banks and other financial institutions who, in turn, decided how to allocate the trillions of additional liquidity among their many sovereign, corporate, and household clients.[13]

The IMF also responded. However, while central banks pumped trillions into international and national financial markets, the IMF provided billions to its member states. From the advent of the pandemic until June 30, 2021, the IMF has provided financial support equal to about $113 billion to 85 countries[14] To date, 38 African countries have received support equal to US$26,39 billion from a variety of IMF financing facilities.[15] The IMF also provided $726,75 million in debt relief to 29 low-income member countries, of which 23 are African countries.[16] It is important to note that many of these countries were reluctant to seek debt relief from their official creditors because their commercial creditors intimated that doing so could be interpreted as a sign of weakness with adverse consequences of their credit ratings and access to international finance.[17]

In addition, the IMF, in August 2021, issued the equivalent of $650 billion in Special Drawing Rights, to be distributed among all IMF member states according to their IMF quotas rather than their needs.[18] As a result, Sub- Saharan African countries received approximately 3,6% of the total, equal to about $23,4 billion.[19]

[12] Bradlow & Park (n 7 above) 4-5.
[13] (In fact, year on year, US dollar credit to borrowers outside the US grew by 6% to US$12.7 trillion and credit to borrowers outside the Euro area grew by 4% to Euro 3.5 trillion by end of June 2020. (BIS, 2020)
[14] IMF COVID-19 Financial Assistance and Debt Service Relief https://www.imf.org/en/Topics/imf-and-covid19/COVID-Lending-Tracker accessed 3 August 2021.
[15] Id.
[16] See IMF COVID-19 Financial Assistance and Debt Service Relief https://www.imf.org/en/Topics/imf-and-covid19/COVID-Lending-Tracker#CCRT accessed 3 August 2021.
[17] It is important to note that it is difficult to establish to what extent this concern was valid. Even in the case of those countries that did receive credit downgrades, it is hard to know to what extent this was due to them seeking to take advantage of the debt relief offered to them by their official creditors and to what extent due to other factors. In addition, it is hard to establish if, on the contrary, the debt relief was seen as a positive contribution to the country's capacity to manage its debt. See, for example, N. Kearse, "The DSSI, Defaults and Credit Ratings: A Primer" ALSF Blog 26 June 2020, available at: https://alsf.academy/blog/dssi-defaults-and-credit-ratings-primer (last visited 16 September 2021)
[18] IMF PRESS RELEASE NO. 21/208 'IMF Managing Director Kristalina Georgieva Welcomes the Executive Board's Backing for a New US$650 Billion SDR Allocation' July 9, 2021 https://www.imf.org/en/News/Articles/2021/07/08/pr21208-imf-managing-director-kristalina-georgieva-executive-board-backing-new-us650b-sdr-allocation accessed 3 August 2021.
[19] See, M. Liewerscheidt & A. Frühauf, "Sub-Saharan Africa: IMF SDRs- Trickle Down or Redistribution?", Teneo 26 Auugst 2021 available at: https://www.teneo.com/sub-saharan-africa-imf-sdrs-trickle-down-or-redistribution/

This comparison highlights how the role of the IMF in global economic governance is changing. In the case of the 1982 crisis, the IMF provided a significant share of the financing to the countries in crisis and their credibility helped encourage others to contribute financing and the creditors to agree to restructure the sovereign debt. In the current COVID- pandemic, central banks moved quickly and pumped so much liquidity into financial markets that, even though conditions were more difficult than before the onset of the pandemic, emerging markets and developing countries, including some African sovereign borrowers, were able, within a relatively short period of time after the advent of the crisis, to obtain enough resources to avoid debt crises and, in many cases, to increase government expenditures.[20] This means that the fortunes of many countries during the pandemic have been more influenced by the actions of the key central banks in the world and by private investors than by the IMF. In addition, the IMF no longer has sufficient bargaining power to compel private creditors to provide debt relief to their vulnerable sovereign debtors. Unlike in 1982, it is limited to imploring them to provide such relief—so far with limited success.[21]

II. IMF Governance Arrangements are no longer fit for purpose

The above comparison illustrates how much both the international financial system and the IMF's role in its governance has evolved since the IMF was created. However, the IMF's own governance arrangements have not fully adapted to these changes. The incomplete governance adaptation is adversely affecting the IMF's relations with its various stakeholders and its legitimacy and efficacy. Originally, the annual consultations that the IMF conducted in each member state, pursuant to Article IV of its Articles of Agreement[22], focused on those variables that influenced the ability of the country to maintain its currency's exchange rate.[23] In addition, the conditions that the IMF would attach to the financing it offered its member countries

[20] See, for example, p1-2, Sub-Saharan African Economic Outlook October 2020, IMF, available at: file:///Users/dannybradlow/Downloads/text.pdf

[21] IMF Press Release No 21/211 'IMF Managing Director Kristalina Georgieva Urges Continued Action to Address Two-Track Recovery' July 10, 2021, https://www.imf.org/en/News/Articles/2021/07/10/pr21211-g20-md-statement accessed 3 August 2021. See also K Georgieva, C Pazarbasioglu & R Weeks-Brown 'Reform of the international debt architecture is urgently needed' IMF Blog 1 October 2020 https://blogs.imf.org/2020/10/01/reform-of-the-international-debt-architecture-is-urgently-needed/

[22] Art IV International Monetary Fund Article of Agreement 1944.

[23] MG de Vries, *The IMF in a Changing World 1945-1985* (1986)14-20. See also DD Bradlow 'The World Bank, the IMF, and Human Rights,' (1996) 6 *TRANSNAT'L L. & CONTEMP. PROBS.* 47, 68- 69.

focused on those macro-economic and monetary issues that were directly relevant to the restoration of a sustainable balance of payments and the currency's par value. This focus limited the IMF's intrusion into the policy-making process of its member states because, given their macro focus, they, in principle, let the recipient state choose the specific policy measures for meeting these conditions.

This changed after the par value system ended. It was no longer clear what the IMF was supposed to be monitoring in its annual consultations, if the member states were free to choose their own exchange rate policy. The IMF's amended Article IV provides only limited guidance. It requires each member state to "endeavour to direct its economic and financial policies toward...fostering orderly economic growth..."; to "seek to promote stability by fostering orderly underlying economic and financial conditions"; and to "follow exchange rate policies compatible with the undertakings" of Article IV.[24] This lack of specificity has resulted in the IMF addressing any aspect of the member state's economic and financial policies and policy making arrangements that could affect its "orderly economic growth", its external balance of payments and the value of its currency.

In other words, the IMF dramatically expanded the scope of its Article IV consultations and the range of conditions that it attaches to its financing. There is no clear limit on the range of issues that the IMF may consider in these engagements. For example, these issues are now expanding beyond macro-economic issues, including debt sustainability, to include such important topics as climate change, public health and social and economic inequality.[25] This expansion, while economically justifiable and not inconsistent with the IMF's Articles, inevitably means that the IMF is taking positions on issues that are inherently political. They also implicate the IMF in the policy making processes of its member states.

It is important to note that the Articles of Agreement stipulate that the IMF, when conducting its annual consultations with its member states, "shall respect" each country's social and political polices and pay "due regard" to its circumstances.[26] The IMF has historically

[24] (n 20 above).
[25] IMF Comprehensive Surveillance Review 'Times are changing and the Comprehensive Surveillance Review takes a broad and long view to adapt the IMF's policy advice' 20 May 2021 https://www.imf.org/en/Topics/Comprehensive-Surveillance-Review accessed 3 August 2021
[26] Art IV Section 3 (b) International Monetary Fund Article of Agreement 1944.

interpreted this requirement as prohibiting it from being influenced by political considerations in its dealings with its member states.[27]

This interpretation made sense when the IMF's operations were limited to monetary issues. However, it is neither prudent nor principled for an organization that attaches conditions to its funding that relate to governance, corruption, budgetary allocations and privatization – and possibly in the future, climate and inequality-- to pretend that it does not consider political factors in its operations. The only function that the current interpretation serves is to obscure what political considerations the IMF does view as relevant to its operations, what principles it applies in making its decisions, and what process it follows in reaching them. It also leaves undefined the outer limits of the IMF's specialized economic mandate. This results in IMF decisions appearing arbitrary or influenced by the interests of its richer and more powerful member states, which impairs confidence in its fairness and objectivity.[28] It also undermines the IMF staff and management's credibility when they advocate accountability as an aspect of good governance in its member states but do not apply the principle to themselves.

Another relevant issue is that the IMF originally did not formally distinguish between its member states on the basis of their wealth or level of development. It reasoned that, since all states were participants in the same monetary system, their currency's value was influenced by the same variables, and so they should all be treated in a "uniform" manner. In fact, the IMF made uniformity one of its key operating principles, even though it is not expressly required by its Articles of Agreement.[29] This meant that the IMF's annual consultations with each member state covered essentially the same issues and it offered all member states access to its financing facilities on the same terms and conditions. In fact, during this period many of the rich countries did draw on the IMF's financing facilities.[30]

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[27] J Gold "Political" Bodies in the International Monetary Fund (1977) 11(2) Journal of International Law and Economics 237-286.
[28] See, for example, Bradlow, Daniel David, The World Bank, the IMF, and Human Rights (1996). Journal of Transnational Law and Contemporary Problems, Vol. 6, pp. 47-90, 1996, Available at SSRN: https://ssrn.com/abstract=1710636
[29] J Gold, 'Legal and Institutional Aspects of the Int'l Monetary System: Selected Essays I, (1979) 469-519 [hereinafter Gold I].
[30] For example, in 1978, the US drew the equivalent of $3 billion in Deutsche Marks and Yen from the IMF to defend the dollar in international markets. See, CF Bergsten 'The International Monetary Fund and the National Interests of the United States' *Peterson Institute for International Economics* February 24, 1998 https://www.piie.com/commentary/testimonies/international-monetary-fund-and-national-interests-united-states accessed 4 August 2021

The principle of uniformity made sense when the IMF functioned purely as a monetary institution and all its member states were utilizing its financial services. However, it does not make sense when its services are overwhelmingly being utilized by its developing country member states. For example, uniformity precluded the IMF from using its general resources to create a special fund for the benefit of its poorest and most vulnerable member states. Instead, it had to rely on dedicated contributions from member states to create the Poverty Reduction and Growth Facility.[31] The need for the IMF to formally distinguish between the different categories of its member states and their stakeholders is also evident in the following discussion of its relations with its member states.

A. Relations Between the IMF and the Rich Countries

Since the adoption of the Second Amendment, the rich countries, in fact, have almost always, relied on their own resources and private financial markets to meet their financial needs.[32] The fact that these countries do not use the IMF's financing facilities has freed them from any need to defer to the IMF regarding any advice it may offer them in their annual consultations. In other words, they have regained much of the sovereignty that they surrendered to the IMF in 1944.[33]

Nevertheless, they retain their dominant role in the governance of the IMF. In addition to having the largest votes in the organization, they benefit from the fact that the number of IMF Executive Directors has grown more slowly than the number of IMF member states. The original 39 member states were represented by a 12-member board of directors.[34] Today the 190 members are represented by 24 executive directors.[35] Originally, only the 5 biggest

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[31] IMF Factsheet 'IMF Support for Low-Income Countries' February 16, 2021. https://www.imf.org/en/About/Factsheets/IMF-Support-for-Low-Income-Countries accessed 4 August 2021.

[32] Since the adoption of the Second Amendment to the Articles in 1978, the only industrialized countries to take IMF financing are Greece, Ireland, Portugal and Iceland. They all did so during the European debt crisis in 2012. See F Seitz & T Jost 'The role of the IMF in the European debt crisis' (2012) *32 HAW Discussion Paper* 4- 14

[33] This does not, however, mean that they have regained full monetary sovereignty. The world's economy has become too integrated for that. Instead these countries, particularly the G-7 have used an alternate set of international fora to resolve all monetary and financial issues that may arise between them. These fora include the G-7, the G20, and the Financial Stability Board and the International Standard Setting bodies. See E Helleiner, 'The Contemporary Reform of Global Financial Governance: Implications of and Lessons from the Past (2009) 55 *UNCTAD G-24 Discussion Paper Series* 4-15

[34] See Art XII Section 3 (a)(b)(c) & (d) of the International Monetary Fund Articles of Agreement 1944.

[35] See IMF Governance Structure https://www.imf.org/external/about/govstruct.htm. See also IMF Senior Officials 'Senior Officials of the International Monetary Fund' https://www.imf.org/en/About/senior-officials accessed 4 August 2021.

shareholders had their own executive directors. The remaining 34 member states were represented by the other 7 directors, so that each executive director represented on average 4.9 states. Today, in addition to the 5 executive directors representing the five largest shareholders another 3 directors effectively represent single countries. This leaves 16 directors to represent the remaining 182 member states, so that each director represents on average 11.4 states. In fact, there is considerable variation in the size of the constituencies represented by each director. For example, the two directors representing sub-Saharan Africa each represent more than 20 states.

This development gives the states that have permanent representation on the Board a distinct advantage. It is unlikely that the two African Executive Directors can advocate for the views of each of the states they represent as effectively as a director who only represents one state. In addition, those countries with a permanent presence on the Board, are able to develop institutional memories and expertise in how to function in the IMF. This enhances their ability to negotiate effectively and to shape the issues and the decisions taken by the Board.

As a result, these countries, primarily the G-7, have disproportionate influence over the IMF's policy agenda, even though these policies may not directly affect their citizens. In other words, these rich IMF member states can drive policies that directly affect people in developing countries who have no ability to hold them accountable. This situation of decision makers having power without accountability is a situation ripe with potential for abuse.

B. Relations Between the IMF and Its Consumer Member States

The consumer states are those emerging market and developing countries who use the IMF's services. For present purposes they can be divided into two groups. One group consists of those countries that, under normal circumstances, have access to private financial markets. They use the IMF's support primarily to persuade private investors that they are "suitable" for private investment. Thus even though these countries only use IMF funding when they are facing a crisis and cannot raise sufficient funds from other sources, they need the IMF to give their economic policy performance a favourable review. This in turn influences how they view the advice the IMF gives them in their annual consultations.

The second group consists of those countries which because of their poverty or unstable conditions are substantially dependent on official sources of funds. These countries also require IMF approval of their policies because their other official funders tend to rely on the IMF's advice in making their funding decisions.

While there are significant differences between these two groups, they all share a common characteristic. Their macroeconomic problems are primarily caused by the structure of their local economies, the structure of the global economy and the governance of their societies. Increasingly they are also caused by environmental factors, such as climate change.[36] Consequently, as indicated above, the IMF may address all these issues in its interactions with these member states. Moreover, this means, given its influence over these countries access to financing, that, in effect, the IMF has become an active participant in their policy making processes. In fact, because of its influence over their access to external financing, the IMF is often the decisive voice in these processes.

However, these states cannot easily hold the IMF accountable for its role in their policy making processes. As indicated, they are inadequately represented on the Board of Executive Directors, which is the entity that should be overseeing the management's and staff's engagements in the member states. Furthermore, although they are represented on the Board of Governors[37] this is not the appropriate body in which to challenge individual operational decisions. . These are more appropriately raised by the member states at the IMF's Board of Executive Directors. In addition, when applicable, they could be raised by other stakeholders through operational level independent accountability mechanisms.[38] Consequently, it is not realistic to assume that a member state's IMF Governor would raise specific operational issues during the infrequent meetings of the IMF Governors.

The expanding range of issues raised in the IMF interactions with its member states has also changed the range of actors with whom it must directly engage. In the days of the par value

[36] See, for example, "Climate Change is an Increasing Threat to Africa" United Nations Climate Change, 27 October 2020 available at: https://unfccc.int/news/climate-change-is-an-increasing-threat-to-africa
[37] See IMF Governance Structure https://www.imf.org/external/about/govstruct.htm/ . For the List of Governors, see IMF Factsheet Members' Quotas and Voting Power, and IMF Board of Governors https://www.imf.org/en/About/executive-board/members-quotas accessed 4 August 2021.
[38] It is important toe that currently the IMF, unlike the multilateral development banks, does not have such an independent accountability mechanism.

system, the IMF could realistically limit its direct interactions to the Central Banks and the Ministries of Finance of its member states.[39] Today, however, if the IMF does not interact with a broader range of both governmental and non-governmental actors, it is unlikely to obtain all the information it needs about the member state's economic situation to fulfil its mandate. To date, the IMF, utilizing informal procedures has consulted with these actors. However, it has not yet developed formal procedures for ensuring that all relevant stakeholders are consulted.

C. IMF Relations with Non-state Actors in its Member States

The creators of the IMF, like the creators of most international organizations, believed that it was not necessary for the IMF to have any direct formal interactions with non-state actors. They assumed that the IMF would merely provide advice and support to the relevant policy makers in each state. Consequently, it would be sufficient for the IMF to interact with its member states through their Ministries of Finance and Central Banks and their representatives on the IMF's Board of Governors and Executive Board. The creators also assumed that these officials would consult with all the relevant stakeholders in their own societies and would be accountable to them through the political process and relevant administrative procedures.

As discussed above, these assumptions are inapplicable to the IMF's current range of operations. Given that its operations directly affect the citizens of its member states, the basic principles of good governance which the IMF advocates so eloquently to the governments of its member states should guide its own conduct. After all, there is no obvious reason why the IMF, when it "descends"[42] into the national policy-making process, should be less accountable to those people directly affected by its decisions than other actors in this process. It is no longer sufficient for the IMF to rely on indirect forms of accountability to these non-state actors. The fact that the IMF's existing formal channels of accountability are insufficient has three important operational implications for the IMF. The first is that the IMF staff and management are effectively operating without any accountability. The original expectation was that the IMF's Board of Executive Directors would exercise firm control over the IMF's management and staff. Initially, this expectation was realistic because the scope of IMF surveillance was limited and there were relatively few IMF financing programmes each year for the Board to

[39]See Art V Section 1 of the International Monetary Fund Articles of Agreement 1944 that states that the IMF will interact with members through the Ministry of Finance of Central Banks.

oversee. However, today the IMF staff are engaging with 190 member states each year and are providing many of them with financial support and/or technical assistance. In addition, the complexity of many of these engagements has grown substantially.[40] As a result, the Board, has become more dependent on IMF management and staff for information about its activities and less able to hold them accountable.

The second is that the IMF does not provide adequate guidance to the staff on how they should perform their responsibilities when they act in this policy-making capacity. Unlike the World Bank[41], the IMF does not have a publicly available operational manual that contains the operational policies and procedures that its staff should follow in the conduct of their duties. For example, it does not give them formal guidance on such issues as what obligations they owe to those affected by its policies and how they should collect the information they need in their engagements with the member states. The lack of such guidance results in IMF management and staff exercising great discretion in their operations.

Third, the IMF is performing its policy-making functions without establishing any formal mechanisms through which those non-state actors most affected by its actions can communicate directly with the IMF. This, in effect, means that the IMF, in consultation with the government of the member state, is choosing with which non state actors it communicates and is setting the terms for this communication. A more formal procedure for communication with these non-state actors -- such as an explicit requirement that all IMF missions hold a public hearing in the country they are visiting or an explicitly recognized right to make written submissions -- would ensure that many more interested non-state actors have a meaningful opportunity to communicate with the IMF. The IMF's failure to establish such procedures contradicts the principles of participation and the need for transparent governance procedures that it advocates to its member states. It also suggests that the IMF is often making policy or deciding how much support to provide to a member state in difficulty without having access to all the relevant information.

[40] See IMF Factsheet IMF Surveillance https://www.imf.org/en/About/Factsheets/IMF-Surveillance . For figures, see IMF Documents Related to the Triennial Surveillance Reviews https://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Initial-Steps-in-Implementing-the-Managing-Directors-Action-Plan-for-the-2014-Triennial-PP4951 accessed 5 August 2021.

[41] See World Bank Group Operational Policies Manual https://policies.worldbank.org/en/policies/operational-manual accessed 5 August 2021.

V. Recommendations for Solving the IMF's Governance Problems

These recommendations are based on two assumptions. First, the IMF should conform to the principles of good administrative governance that are applicable to all national and international public institutions. These principles are[42]:

1. *transparency*, which means that there should be reasonable access to information for all interested parties so that they are able to see and understand the decision-making process in the institution,
2. *predictability*, which means that the decisions and actions taken by the institution should be based on understandable principles and processes that are applied in a consistent manner,
3. *participation,* which means that all interested stakeholders should be able to have some input into the decision-making process of the institution,
4. *reasoned decision-making*, which means that the institution should, when appropriate, provide a rationale for its decisions, and
5. *accountability,* which means that those affected by the decisions and actions of the IMF, its staff, and management should be able, when they have been adversely affected by their decisions and actions to make them explain and accept responsibility for these decisions and actions.

Second, that it is not politically feasible to amend the IMF's Articles of Agreement in the short to medium term. Consequently, the following recommendations for reform are limited to those that can be implemented by the IMF management and Executive Board acting on their own authority within the constraints of the existing Articles.

[42] See generally B Kingsbury, N Krisch, Nico & RB Stewart 'The Emergence of Global Administrative Law' (2004) *1 IILJ Working Paper Global Administrative Law* 4-47 https://ssrn.com/abstract=692628 or http://dx.doi.org/10.2139/ssrn.692628

1) Actions to Make the IMF More Responsive to Its Developing Country Member States

a) Make formal the informal practice that a member state's governor to the IMF or his/her representative can participate in any discussion in the Executive Board on the member state. This reform is analogous to the situation in the United Nations Security Council, where states that have a direct interest in the matter being considered by the Council but are not members of it can ask to participate, without voting, in the Security Council discussions. For many countries the issues being discussed about the country in the IMF Executive Board can be as momentous as those that can arise in the U.N. Security Council. This reform will enhance the channels of communications between the IMF and its member states, particularly those that do not have direct representation on its Board.

b) Establish formal procedures for how the IMF will consult with non-state actors during its article IV consultations with its member countries and when developing a financing program for any member state. This procedure should create a meaningful opportunity for non-state actors to submit information and express their views to the IMF. This procedure should enable such actors to make written submissions to the IMF. It should also provide a mechanism for communication with non-state actors in those states in which the government will not allow the IMF to meet with interested non-state actors.

c) The IMF should follow the example of the World Bank, and create a third African chair on the Board.[43] This will reduce the size of the two current African constituencies and reduce the burden on the two African Executive Directors.

2) Actions to Make the IMF More Transparent

a) The citizens of all member states process should be eligible for all senior positions in IMF management, including Managing Director.[44] The selection process for these positions should be transparent. This means, for example, that the current informal arrangement under which

[43] World Bank Group 'Boards of Directors' https://www.worldbank.org/en/about/leadership/directors. See also World Bank Group 'World Bank Group Leadership' https://www.worldbank.org/en/about/leadership/managers accessed 5 August 2021.
[44] Currently, pursuant to custom, the Managing Director of the IMF is always a European. See MG de Vries 'IMF History (1972-78) Volumes 1, 2, And 3' (2007). See H James, International Monetary Cooperation Since Bretton Woods (1996) 779.

the Managing Director of the IMF comes from the EU and the President of the World Bank from the US, would end.

b) The IMF needs to develop and make publicly available a manual for all its operating policies and procedures.[45] This publication would be analogous to the World Bank's operating manual. While such a manual may not have been necessary when the IMF was operating under the par value system, the increased complexity of its operations makes such a manual a necessary requirement. This publication would detail the responsibilities of the IMF staff and the procedures that they should follow in each situation. The publication of this information would help those people affected by the IMF's actions understand how IMF policy is made and whether the IMF has acted in conformity with these policies in all cases.

3) Actions to Make the IMF More Accountable

a) Establish an ombudsman at the IMF who has the power to receive and investigate complaints from any person, organization, or state, that feels that the IMF has not been acting in conformity with its mandate.[46] This official should be required to publish an annual report that discusses the investigations he/she has conducted and to make recommendations to the Board of Directors on how to improve the functioning of the IMF.

b) An independent review panel should evaluate the policies of the IMF to assess their impacts on poverty, inequality, and the environment. This panel should also be charged with making recommendations on how the IMF, acting consistently with its mandate could improve its policies so that their potential to have a positive effect on poverty and the environment is maximized. The IMF Evaluation Office may be the appropriate office to perform this role.[47]

4) Legal Actions

a) The Board of Directors, after a notice and comment period, should issue a decision defining the scope of the IMF's specialized mandate. This decision, which would be part of the

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[45] The IMF currently only has a few applicable policies. See B Fritz-Krockow &P Ramlogan *International Monetary Fund Handbook: Its Functions Policies and Operations* (2007) 24-84. See also IMF Standards and Codes https://www.imf.org/external/standards/index.htm accessed 5 August 2021.

[46] See DD Bradlow 'Operational Policies and Procedures and an Ombudsman in eds B Carin & A Wood *Accountability of The International Monetary Fund* (2005) 1-18 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=805805 accessed 5 August 2021.

[47] Information on the Independent Evaluation Office https://ieo.imf.org/ accessed 5 August 2021.

operational manual referred to above, would help define the meaning of the constraints in the Articles of Agreement on the IMF taking political considerations into account in its operations. The resulting clarity about the IMF's mission will enhance both the transparency and accountability of the IMF.

b) The Board of Directors should abandon the principle of uniformity and should explicitly categorize countries according to their wealth and level of economic development.

III. Conclusion

The IMF is suffering from serious governance problems that have slowly developed since the Second Amendment to the Articles of Agreement. These problems undermine the effective functioning of the IMF. While a full solution to these issues would require action by member states and amendments to the IMF's Articles, they can be substantially mitigated by the IMF itself through a series of relatively easily implemented reforms. Without undertaking this reform program, it is unclear if the IMF will ever be able to effectively contribute to solving the complex problems of poverty, inequality, cycles of unsustainable borrowing, and inadequate governance which plague developing countries today.

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