Seven Deadly Sins: An Assessment of Criticisms Directed at the International Monetary Fund

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SYNOPSIS

This Article describes, classifies, and evaluates key criticisms that are directed at the International Monetary Fund ("IMF"). Some of these criticisms are substantive in character, claiming that the IMF prescribes economic and financial policies that hurt, not help, its borrowing member countries, or that IMF operations place crushing burdens on the poor and cause serious non-economic injury (for example, environmental degradation). Some of the criticisms are institutional or constitutional in character, denouncing the IMF for a lack of transparency and accountability, or arguing that the IMF perceives its role more broadly than its charter allows, or complaining that it exempts its rich and powerful member countries from the very kinds of performance requirements that it demands of its poorer borrowing member countries. The author examines these criticisms and explains why some are valid but others are misplaced or outdated and may therefore be dismissed. The valid criticisms, he says, could form a basis for further reforms in the IMF. In

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particular, he calls for two types of initiatives: (i) adopting structural reforms that will bring more accountability, legitimacy, and equity to the IMF and its operations; and (ii) adopting substantive reforms that will strengthen the IMF’s role in improving the competence of national governments to handle the economic challenges of an interconnected world.

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I. INTRODUCTION

A. Scrutinizing the Global Economic Organizations

This Article is the last in a series of three that I have written, all published here in the Kansas Law Review, examining the major global economic organizations. The first installment in the series, published in 2002, focused on the World Trade Organization ("WTO").\(^1\) The second installment, published earlier this year, focused on the multilateral development banks ("MDBs")—that is, the World Bank and the four regional development banks.\(^2\) In those earlier articles, I undertook to identify and evaluate key criticisms that had been leveled at those global economic organizations. Now, with a similar aim, I turn to the International Monetary Fund ("IMF"), an institution in which I have a deep interest both professionally and personally, having worked for several years with the IMF Legal Department as a staff member and on special assignments.

Many of the criticisms directed at the IMF are identical, or nearly so, to the criticisms leveled at the MDBs and (to a lesser degree) at the WTO. Accordingly, my task in this Article is somewhat easier than it might otherwise be, as I need not repeat my full analysis of those same criticisms. My overall approach in this Article, however, follows the pattern set in the earlier installments in this series: I shall distill the various complaints leveled at the IMF into a short list, explain each complaint, and offer my own views on it.

From another perspective, my task in this Article is more difficult than it was when I was examining the WTO and the MDBs. Of all the global economic organizations, the IMF is the most complex and the least amenable to easy understanding by the population at large. Monetary policy, exchange rate movements, government debt, currency convertibility, capital markets, structural adjustment—these are not matters that most people knowingly deal with in their daily lives. Yet people all over the world, in rich and poor countries alike, are deeply affected in their daily lives by the policies pursued on these matters by the IMF and by the national authorities that the IMF influences. Now

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that the IMF has become the subject of broad popular scrutiny—some of it influenced by writings that offer more heat than light, such as Joseph Stiglitz’s book, *Globalization and its Discontents*\(^3\)—a sticky problem arises: how can a public debate be carried out over the future of an institution whose field of operations has a level of complexity that most people do not understand?

My answer: illuminate the issues and entreat people to address them intelligently. We live in complex times, and there is no substitute for a well-informed citizenry capable of dealing with that complexity. In the context of the IMF, and indeed all the global economic institutions, this means that people have an obligation to become conversant with at least the fundamentals of international economic affairs.

Fortunately, the last few years have produced a healthy crop of serious literature about the IMF, and several excellent explanations of that institution’s history and functions are available.\(^4\) Therefore, I shall

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not attempt here to provide a comprehensive summary of the IMF. I would, however, offer in the following paragraphs a few highlights and reminders of some specific factual points that need to be borne in mind in order to evaluate various criticisms and recommendations discussed later in this Article.

B. The IMF in a Nutshell

The IMF, formed near the close of World War II along lines proposed by leading U.S. and U.K. economists and politicians, was originally designed to manage a system of fixed exchange rates. Under that system, currencies of all (or most) countries were to be made freely convertible, and the values of the currencies would be unchangeable, except within a narrow range or with prior IMF approval. This system

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5. The details in this paragraph and the ten other paragraphs of this “nutshell” account of the IMF are drawn principally from two sources: Head, Throwing Eggs at Windows, supra note 1, at 747–48, and IMF SURVEY SUPPLEMENT, supra note 4, at 7–9 (discussing IMF involvement in economic and financial surveillance), 10–11 (on economic crisis resolution), 13–15 (on IMF financial facilities), 16–17 (on IMF conditionality), 20–22 (on debt relief), 22–23 (on IMF technical assistance), 25–26 (on IMF financial resources), and 29–30 (on IMF structure). With the kind permission of the Kansas Law Review editorial staff, I have largely dispensed with specific footnote citations to authority for the rather elementary descriptive points made in these paragraphs (although I have provided citations to some pertinent provisions of the IMF Charter and a few other specific points) and would ask that the reader wanting substantiation or further information refer to the sources cited supra note 4, and to other public sources on these topics, including the additional explanatory material available on the IMF’s website, http://www.imf.org.

6. Articles of Agreement of the International Monetary Fund, July 22, 1944, art. IV, 60 Stat. 1401, 2 U.N.T.S. 39 (entered into force Dec. 27, 1945). The IMF Charter has been amended three times, as explained in Head, Suspension of Debtor Countries' Voting Rights, supra note 4, at 592 nn.2–3. The first amendment, which dates from the late 1960s, introduced the special drawing right (SDR). Amendment of Articles of Agreement of the International Monetary Fund, approved May 31, 1968, 20 U.S.T. 2775, 726 U.N.T.S. 266 (entered into force July 28, 1969). For an explanation of the SDR, see infra note 10 and accompanying text. A second amendment to the IMF Charter, much more far-reaching than the first, was adopted in the late 1970s. Second Amendment of Articles of Agreement of the International Monetary Fund, approved Apr. 30, 1976, 29 U.S.T. 2203, 15 I.L.M. 546 (entered into force Apr. 1, 1978). The third and most recent amendment to the Charter, which took effect in 1992, added a new sanction that could be imposed on a member country for failing to pay its arrears to the IMF. Third Amendment of the Articles of Agreement of the International Monetary Fund, approved June 28, 1990, 31 I.L.M. 1307, 1309–10 (entered into force Nov. 11, 1992). A proposed fourth amendment, under which a special one-time allocation of SDRs would take place, has not yet become effective. IMF ANNUAL REPORT 2003, supra note 4, at
was favored by the countries that formed and joined the IMF because predictability in the convertibility and value of currencies would help foster trade, which itself was seen as a means of improving the international economy and, ultimately, of contributing toward peaceful relations. The fixed-value system of currency exchange rates was particularly attractive compared with an inter-war period in which countries competitively manipulated the values of their currencies in an effort to gain short-term trade advantages.

In order to make the system work, the IMF Charter authorized the IMF to make short-term loans available to member countries having temporary balance-of-payments difficulties, as could occur when a bad crop year reduced a country’s export revenues. The IMF used this authority when necessary, and the United States borrowed from the IMF for that reason as recently as the late 1970s.

The par value system of fixed exchange rates broke down in the early 1970s when the United States announced that it would no longer abide by some of its IMF Charter obligations on currency convertibility. The IMF’s members radically amended the IMF Charter accordingly, and the IMF’s operations were correspondingly reduced. However, when the 1982 debt crisis broke out (upon the announcements by Mexico and Brazil that they would no longer be able to service their debt obligations), the IMF took a lead role that has set the stage for its operations ever since. Now its credit operations (some of which are not technically loans but coincident unilateral undertakings) focus mostly on member countries with persistent balance-of-payments problems, and occasionally on responding to crises that threaten the international monetary system as a whole. The Asian financial crisis of the late 1990s is an example of the latter; the IMF lent unprecedented amounts of money to Thailand, Indonesia, and Korea to stop that crisis from spreading further in Asia and elsewhere.

The IMF has several different mechanisms or facilities by which it provides financing to its member countries. The most common type is a stand-by arrangement (first used in 1952), under which the IMF assures a member country that it can draw up to a specified amount of money, usually over twelve to eighteen months, to deal with a short-term balance-of-payments problem. Closely related to the stand-by arrangement is funding through the Extended Fund Facility (dating from

75. All references hereinafter to the IMF Charter reflect the text as it stands following the third amendment, unless otherwise specified.
7. IMF Charter, supra note 6, arts. 1(v), V, § 3(a).
1974), which allows a member country to draw up to a specified amount over a longer term—usually three or four years—to help it tackle structural economic problems that are causing weaknesses in its balance of payments. A third source of IMF financing is the Poverty Reduction and Growth Facility, which gives low-interest financing to help the poorest member countries facing protracted balance-of-payments problems. This facility (created in 1999) replaced the earlier Enhanced Structural Adjustment Facility (created in 1987) and, like that earlier facility, is financed with resources raised through past sales of IMF-owned gold and with loans and grants provided to the IMF for this purpose, mainly by wealthy countries. A fourth source is the Supplemental Reserve Facility (created in 1997), which provides additional short-term financing to a member country experiencing exceptional balance-of-payments difficulty because of a sudden and disruptive loss of market confidence reflected in capital outflows—as was the case in the Asian financial crisis of the late 1990s. And a fifth source, also of recent origin, is the Contingent Credit Line (dating from 1999), by which the IMF provides a precautionary line of defense enabling a member country that is pursuing strong economic policies to obtain financing on a short-term basis when faced by a sudden and disruptive loss of market confidence because of contagion from difficulties in other countries. The IMF also has some other less-used financing mechanisms.

In providing financing to its members under the various mechanisms and facilities enumerated above, the IMF almost always engages in "conditionality." Under conditionality, the IMF disburses money to a borrowing country only on a piecemeal basis (rather than in a single lump sum) and only if the country can demonstrate that certain economic and financial policies that the borrowing country’s government committed to in advance with the IMF are in fact being implemented and having the desired results. The types of policies that IMF conditionality often focuses on include such rather obvious things as (i) a reduction in government spending and foreign borrowing, (ii) regulation of the money supply to stop or forestall inflation, and (iii) steps to strengthen banking supervision in order to protect depositors from being bilked out of their savings by dishonest or incompetent bank managers.

Conditionality also can, depending on the circumstances, reflect policies for liberalizing a country’s trade and investment laws, encouraging privatization of government-owned entities or operations, and strengthening tax laws and collection—all with an eye to improving a country’s overall economic stability and performance. Since the late 1990s, “in growing recognition of the adverse impact of poor governance
(and the resulting corruption) on economic efficiency and growth, the IMF has turned its attention to a broader range of institutional reforms and governance issues in the reform programs it supports," and therefore in its use of conditionality. Measures to improve governance include strengthening legal frameworks and applying international standards of accounting and auditing.9

Where does the IMF get the money to make its loans? Mainly from a pool of resources formed by its members' subscriptions to the IMF's capital. The level of each member's subscription is equal to its "quota" in the IMF, and a member's quota—denominated in special drawing rights ("SDRs") created by the IMF following the first amendment to the IMF Charter10—is largely determined by its economic and financial position relative to the other members. The United States, by virtue of its dominant economic strength in the world, has the largest quota, so its subscription to the IMF's capital is the largest. In addition to this source of capital, the IMF also maintains two standing borrowing arrangements with official lenders; but the IMF has not had to draw upon either of these arrangements for several years. Furthermore, the IMF is empowered to borrow from private markets but has not done so.

The IMF does more than just make loans. Two other activities in particular warrant mention: surveillance and technical assistance. Although surveillance can take several forms, the most important form is that of country surveillance. The IMF conducts regular consultations, normally once a year, with each member country about its economic and financial policies. These consultations—referred to as "Article IV consultations" because they are required under Article IV of the IMF

9. WOLF & GÜRGEN, supra note 8.
10. The SDR is an international reserve asset created in 1970 by the IMF following the first amendment to the IMF Charter, referred to supra note 6. The SDR is valued on the basis of a basket of key international currencies—currently the euro, the Japanese yen, the pound sterling, and the U.S. dollar—and serves as the unit of account of the IMF and a number of other international organizations. The SDR's value as a reserve asset derives from the commitments of member countries to hold and accept SDRs and to honor various obligations connected with the operation of the SDR system. The IMF allocates SDRs to its members in proportion to their IMF quotas. For further details, see IMF SURVEY SUPPLEMENT, supra note 4, at 25; International Monetary Fund, Special Drawing Rights (SDRs)—A Factsheet (Sept. 2003), at http://www.imf.org/external/np/ext/facts/sdr.htm (last visited Feb. 15, 2004).
Charter\textsuperscript{11}—typically culminate in the issuance of observations and recommendations by the IMF of each member country’s economic and financial policy performance. In addition, of course, the IMF undertakes frequent monitoring of economic and financial factors in those countries that have borrowed funds from the IMF.

Technical assistance is another key feature of IMF operations that attracts little attention from the public at large. Representing about a quarter of the IMF’s total administrative budget, IMF technical assistance helps member countries design and implement financial policies, draft and review legislation, and build institutional capacity. In fiscal year 2003, the IMF provided over 350 person-years of such technical assistance.\textsuperscript{12}

The structure of the IMF—that is, its system of internal governance, membership, capitalization, voting rights, and so forth—closely resembles that of the World Bank. Overall authority over the IMF’s activities is vested in a Board of Governors, which is composed of ministers of finance or heads of central banks from each of the IMF’s member countries, of which there were 184 as of mid-2003. The Governors gather officially as a body only once a year, as the day-to-day work of the IMF is conducted by a staff and a Managing Director acting under the supervision of the Executive Board. Under some changes initiated in late 1999 that will give “greater direct involvement of governments in the policy-making process” in the IMF,\textsuperscript{13} a group of twenty-four Governors—the International Monetary and Financial Committee—gathers twice a year.\textsuperscript{14} The Executive Board, based at the IMF’s headquarters in Washington, D.C., consists of twenty-four Executive Directors appointed or elected by the IMF’s member countries. The Executive Board meets about three times a week in formal session. At present, five Executive Directors are appointed by the members with the largest IMF quotas—the United States, Japan, Germany, France, and the United Kingdom—and each of the other

\textsuperscript{11} IMF Charter, supra note 6, art. IV, § 3(b). This provision requires that the IMF “adopt specific principles for the guidance of all members with respect to [exchange rate] policies” and that “[t]hese principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members.” \textit{Id.}

\textsuperscript{12} IMF ANNUAL REPORT 2003, supra note 4, at iv.

\textsuperscript{13} François Gianviti, \textit{The Reform of the International Monetary Fund (Conditionality and Surveillance)}, 34 INT’L LAW. 107, 115 (2000).

\textsuperscript{14} The predecessor to the International Monetary and Financial Committee (“IMFC”) was the Interim Committee. When the Interim Committee was transformed in 1999 into the IMFC, “it was agreed that meetings of its members, who are finance ministers or central bank governors, could be preceded by meetings of their deputies,” and because of this decision the effective role of the Executive Board “is declining.” \textit{Id.}
nineteen Executive Directors is elected by one country or a group of countries. The Executive Board rarely makes its decisions on the basis of formal voting, relying instead on the formation of consensus among its members.

When formal voting is conducted, however, it reflects a "weighted voting" system that places most of the voting power in a handful of countries. A member country has, according to the IMF Charter, "two hundred fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand special drawing rights."\(^\text{15}\) Under this formula, the five countries mentioned in the previous paragraph control just under forty percent of the total voting power in the IMF.\(^\text{16}\) If the other two countries in the Group of Seven ("G-7")\(^\text{17}\) are included in the calculation, the aggregate voting power is over forty-five percent of the total.\(^\text{18}\)

II. SEVEN DEADLY SINS—PRINCIPAL CRITICISMS DIRECTED AT THE IMF

Having offered that thumbnail sketch of the IMF, I now turn to a summary of the various complaints that have been directed against that institution. I have distilled them into seven key criticisms—hence my title Seven Deadly Sins—and divided them into two broad categories: (a) criticisms of the IMF’s policies and operations; and (b) criticisms of the IMF’s character, control, and reach.

Of course, some of my line-drawing efforts—that is, dividing the complaints into seven specific criticisms and placing them in two categories—are artificial. As is true of the attacks on other global economic institutions, the anti-IMF attacks as expressed in the streets, in the popular press, and in the more sophisticated literature of law and

\(^{15}\) IMF Charter, supra note 6, art. XII, § 5(a).

\(^{16}\) For a listing of the voting power for each member of the Executive Board as of August 2003, see IMF SURVEY SUPPLEMENT, supra note 4, at 30. As indicated there, the percentages of overall voting power for those Executive Directors representing the United States, Japan, Germany, France, and the United Kingdom are 17.14%, 6.15%, 6.01%, 4.96%, and 4.96%, respectively. Id. For the most recent voting power information, see International Monetary Fund, IMF Members’ Quotas and Voting Power, and IMF Board of Governors [hereinafter IMF Members’ Quotas], at http://www.imf.org/external/np/sec/memdir/members.htm (last updated Feb. 17, 2004).

\(^{17}\) The Group of Seven, or G-7, consists of the United States, Japan, Germany, the United Kingdom, France, Italy, and Canada. Head, Suspension of Debtor Countries’ Voting Rights, supra note 4, at 637 n.207. In recent years, the Russian Federation has been invited to G-7 meetings, and the group is often now referred to as the G-8, as reflected on its website, http://www.g8.fr.

\(^{18}\) Canada’s voting power in the IMF is 2.95% of the total, and Italy’s is 3.26%. IMF Members’ Quotas, supra note 16.
policy spill across the lines I have drawn. Indeed, many of those attacks extend beyond a criticism of the institutions themselves to condemn the larger international economic environment of globalization of which they are a part. However, my purpose here is to provide a general survey and assessment of the principal criticisms directed at the institutions themselves. If I have lumped together (or arbitrarily distinguished between) certain points, or declined to raise more fundamental ones, I do so with apologies and with this reminder of my purpose.

I list below, in their barest formulation, the Seven Deadly Sins—that is, the key criticisms leveled against the IMF:

- Criticisms of the IMF’s policies and operations

  Criticism #1—Bad medicine. The IMF prescribes economic and financial policies that fail to cure, and that indeed often make sicker, its borrowing member countries and the entire world economy.

  Criticism #2—Distributional and social injustice. The economic and financial policies that the IMF insists on create distributional inequities and ignore the social aspects of a country’s well-being.

  Criticism #3—Trampling of national sovereignty. In imposing conditionality on its loans, the IMF tramples on national sovereignty—not just in economics but increasingly in other areas of state autonomy.

- Criticisms of the character, control, and reach of the IMF

  Criticism #4—Secrecy and opaqueness. The IMF is a closed, non-transparent organization that operates in secret, despite its insistence on transparency in the governments of its members.

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secret, despite its insistence on transparency in the
governments of its members.

Criticism #5—The democracy deficit. Controlled by a handful
of rich countries, the IMF is an unaccountable
autocracy in which the people most affected by
its operations have no chance to participate.

Criticism #6—Mission creep. As both a legal and a practical
matter, the IMF has overstepped its authority
and its competence in providing bailouts and
adopting policies on a proliferation of topics.

Criticism #7—Asymmetry in obligations. The rich member
countries who insist that the poor borrowing
member countries follow certain policies are
under no real pressure to follow those policies
themselves.

Having provided this list of the Seven Deadly Sins, I now briefly
explain each one. In doing so, I express each criticism in what I consider
to be its most forceful terms. As discussed in detail below in Part III, I
do not agree with several of these criticisms, nor with some of
the assumptions and value judgments on which several of them rest.
Therefore, my attempt to state the criticisms persuasively in the
following paragraphs should not be taken at this stage as any
endorsement of them on my part.

A. Criticisms of the IMF’s Policies and Operations

1. Criticism #1—Bad medicine

This is one of the most pervasive of all the criticisms leveled at the
IMF, and it has taken many forms. Perhaps the most common is that

20. For examples in the literature of some criticisms along these lines, see Joseph E. Stiglitz, 
some of the IMF’s policies “actually contributed to instability,” in that the IMF’s premature call for
“capital and financial market liberalization throughout the developing world” has been “a central
factor not only behind the most recent set of crises but also behind the instability that has
classified the global market over the past quarter century”); Arthur MacEwan, *Economic
(asserting that the IMF makes a policy mistake in telling governments to balance budgets in times of
crisis, and to provide unrestricted access for imports and foreign investment, and to give highest
priority to repaying their countries’ international debts); Graham Bird, *Reforming the IMF: Should
the Fund Abandon Conditionality?*, 7 New Econ. 214, 215 (2000) (reporting the consensus among
academic studies that IMF programs do seem to be associated with balance-of-payments
improvements, but that they have little impact on, or might even discourage, economic growth, increases in investment, or reductions in inflation); Gopal Garuda, Lender of Last Resort: Rethinking IMF Conditionality, 20 HARV. INT’L L. REV. 36, 38 (1998) (referring to a 1990 IMF study concluding that IMF programs tend to reduce economic growth); Jason Morgan-Foster, Note, The Relationship of IMF Structural Adjustment Programs to Economic, Social, and Cultural Rights: The Argentine Case Revisited, 24 MICH. J. INT’L L. 577, 583 (2003) (citing studies showing that structural adjustment lending by the World Bank and the IMF in the 1980s failed to improve growth and investment); Mark Weisbrot, Another IMF Crash, THE NATION, Dec. 10, 2001, at 6, 7–8 (claiming that "the neoliberal program of the IMF and the World Bank . . . has contributed to a substantial decline in economic growth over the past twenty years throughout the vast majority of low- and middle-income countries"); David Moberg, How to Fix the IMF; First, Do No Harm, IN THESE TIMES, May 15, 2000, at 9, 10 (asserting that "[t]he overall record of countries under IMF structural adjustment programs—the policies imposed as a condition for loans—has ranged from unimpressive to disastrous"); Martin Khor, IMF Policies Make Patient Sicker, Say Critics, THIRD WORLD ECON. NO. 176, n.p. (Jan. 1–15, 1998), at http://www.twinside.org.sg/title/sick-cn.htm (last visited Feb. 17, 2004) ("Just as a patient can have his condition worsened, or even be killed, by a bad doctor or by the wrong medicine, a country whose finances have already been weakened . . . can have its economic prospects and long-term development crippled further by the IMF."). Numerous expressions of the "bad medicine" criticism came in the wake of the Asian financial crisis. See, e.g., Ross P. Buckley, A Tale of Two Crises: The Search for the Enduring Reforms of the International Financial System, 6 UCLAJ. INT’L L. & FOREIGN AFF. 1, 42–43 (2001) (referring to the IMF’s bailouts of Asian debtors as "highly counterproductive" because the bailouts "rewarded creditors for investing in the most destabilizing form of debt," and concluding that "[t]he IMF made the wrong call" in providing the bailouts "because it was viewing the situation from the wrong perspective"); Stiglitz, supra, at 15 (referring to a "general consensus that the IMF pursued excessively contractionary fiscal policies" in responding to the Asian crisis, "and that the manner in which it handled financial-sector restructuring, at least in Indonesia, was a dismal failure"); Frontline, The Crash: Views and Comments on the IMF (1999) [hereinafter Frontline] (quoting Jeffrey D. Sachs’s assertion that in emphasizing the seriousness of financial conditions in Asia, "the IMF helped to detonate the Indonesian crisis" and took "the same kinds of provocative steps" in Korea, and overall "made a bad mistake"), at http://www.pbs.org/wgbh/pages/frontline/shows/crash/imf/views.html (last visited Feb. 10, 2004); Istvan Dupai, Criticism of the IMF and the World Bank (Oct. 4, 2000) (endorsing the view that "the IMF increased panic [in the crisis-hit Asian countries] with its public announcements that everything was wrong" and that more generally "IMF programs often incite financial panics"), at http://www.dupai.com/allforstudents/docs/00000004.html (last visited Feb. 10, 2004); Kevin Watkins, Oxfam International, The IMF: Shot By Both Sides (Apr. 2000) (referring to "the disastrous impact of IMF programmes in East Asia," attributable to the fact that "IMF budget targets and their counterpart of high interest rates can have the effect of undermining the investment on which long-run growth and poverty reduction depends"), at http://www.caa.org.au/oxfam/advocacy/debt/imfbrief.html (last visited Feb. 17, 2004); Khor, supra, endorsing the view that "by imposing a tough economic squeeze in affected [Asian] countries, the IMF risks undermining, not restoring, investor confidence," that "by insisting on faster liberalisation of capital inflows, the IMF may exacerbate financial vulnerability," and that the IMF-led "bailouts may encourage further folly, mainly by lenders"). Other expressions of the "bad medicine" criticism came during and after economic crises in Argentina and Russia. See, e.g., Weisbrot, supra, at 7 (condemning the IMF in each of those crises for "burden[ing] a country with billions of dollars of debt in order to prop up an overvalued currency" and for proving itself "incapable of learning from repeated failures"); John V. Paddock, Comment, IMF Policy and the Argentine Crisis, 34 U. MIAMI INTER-AM. L. REV. 155, 158–59 (2002) (complaining that "the conditions imposed by the IMF on Argentina did not address the causes of the crisis, but . . . served to encourage the nation to adopt the Washington Consensus," a formula of economic and financial policies that amounts to a "one-size-fits-all program" that the IMF has applied to Argentina, Mexico, Russia, and Asian countries despite differences in the crises faced by all those countries). For a very recent assessment of IMF policy prescriptions, based on detailed economic analysis, see generally JAMES RAYMOND VREELAND, THE
the economic and financial policies that the IMF prescribes for countries that come to it for financial assistance do little or no good, and often do great harm, to those countries—not just to certain segments of the population, such as the poor, within those countries (that is the subject of Criticism #2—"distributional and social injustice") but to those countries' overall economic health. More specifically, according to this criticism, IMF-prescribed policies—following a "Washington Consensus" recipe that "typically consists of reducing budget and balance of payments deficits, raising interest rates, reducing inflation, privatizing state assets, and reducing trade barriers and regulation on capital flows in and out of the country"—discourage economic growth and drag down new investment. Another related version of the criticism is that the IMF serves as a collection agency for major financial institutions that are creditors either of the governments or of private-sector actors in the less-developed, debt-ridden countries.

Critics voicing these views have offered as evidence the Asian financial crisis that struck in the latter part of 1997 and more recent crises in Argentina and Russia. Although the specific circumstances differed, the IMF took action in all these cases that critics found to be inadequate, ill-suited for the circumstances, and harmful. The Asian financial crisis in particular was a flashpoint for complaints, with numerous commentators charging that the IMF totally mishandled the Asian financial crisis by prescribing economic and financial policies that needlessly worsened the crisis.

A form of this criticism centers on the notion of "moral hazard." Moral hazard has been explained this way:

IMF AND ECONOMIC DEVELOPMENT (2003). That assessment concludes that IMF programs “hurt economic growth and exacerbate income inequality.” Id. at 152.

21. The term “Washington Consensus” was used by John Williamson in 1989, in a background paper for a conference on dealing with economic policy in Latin America, as a label for ten types of reforms that Williamson said “almost everyone in Washington thought were needed in Latin America as of that date”: fiscal discipline, reordering public expenditure priorities, tax reform, liberalization of interest rates, a competitive exchange rate, trade liberalization, liberalization of inward foreign direct investment, privatization, deregulation, and property rights. John Williamson, From Reform Agenda to Damaged Brand Name, FINANCE & DEVELOPMENT, Sept. 2003, at 10, 10. Williamson himself now calls for a new generation of reforms that will focus on (among other things) institutional reforms and income redistribution. Id. at 12–13. He also urges that the term “Washington Consensus” should be dropped from the vocabulary, in part because “there is no longer any agreement on the main lines of economic policy between the current U.S. administration and the international financial institutions.” Id. at 11–12 (citing recent IMF criticism of U.S. fiscal policy and the Bush administration’s disdain for concern about income distribution). For other observations on the “Washington Consensus” and future reforms, see generally Jeremy Clift, Beyond the Washington Consensus, FINANCE & DEVELOPMENT, Sept. 2003, at 9; Guillermo Ortiz, Overcoming Reform Fatigue, FINANCE & DEVELOPMENT, Sept. 2003, at 14.

22. Paddock, supra note 20, at 158.
Moral hazard is a term often used when analyzing the effects of insurance. It refers to the idea that the very provision of insurance raises the likelihood of the event being insured against taking place. This is because insurance reduces the incentives for the insured party to take preventive actions. . . . In the financial context, economists and policy makers debate whether the availability of financial support from institutions like the [IMF] leads to moral hazard. That is, does the IMF’s role as a lender to countries in financial crisis actually encourage borrowers and lenders to behave in ways that makes a crisis more likely?23

According to many critics, the answer is yes—that is, the IMF, in providing bailouts in Asia, Russia, and other countries, has created moral hazard in two ways: (i) by signaling to the governments engaging in poor economic management that their bad performance will have no penalty (because the IMF will bail them out); and (ii) by signaling to financiers investing in those countries that they can invest without risk (because the IMF will bail them out as well).

2. Criticism #2—Distributional and social injustice

According to this criticism, IMF operations hurt the poor, spoil the environment, and generally undermine social values.24 All of those


24. For examples in the literature of some criticisms along these lines, see MacEwan, supra note 20, at 24 (claiming that “IMF policies . . . often lead to . . . growing inequality” and “have a severe negative impact on low-income groups” because they increase unemployment and gut social programs); Moberg, supra note 20, at 10 (complaining that “[t]he IMF pays no attention to the distribution of income and wealth” despite studies that show a link between lower levels of income inequality and higher levels of growth in nations around the world); Frontline, supra note 20 (quoting Jeffrey D. Sachs’s assertion that the IMF’s action in the Asian financial crisis “shift[ed] the attention away from the real facts and from the real world that people live in” and that the IMF is “not understanding that . . . [its] actions are having such a disastrous effect on the real economy, on the jobs, the production, the exports, and the living standards of the people”); id. (quoting Jeffrey Garten’s assertion, in evaluating the IMF’s handling of the Asian financial crisis, that “the social cost, the cost in terms of unemployment and, you know, the sheer human misery that is created—it was too much”); Sarah Anderson, The IMF and World Bank’s Cosmetic Makeover, DOLLARS & SENSE, Jan./Feb. 2001, at 30, 30–31 (claiming that the IMF and the World Bank “have thrown millions of people deeper into poverty by promoting the same harsh economic reforms to various countries . . . regardless of local culture, resources, or economic context,” offering specific examples of how IMF-imposed policies have hurt education, health, and environmental protection” in Haiti and Brazil, and referring to “a harsh IMF reform program [in Ecuador] that shifts the country’s economic crisis onto the backs of the poor”), available at http://www.dollarsandsense.org/archives/2001/0101anderson.html (last visited Feb. 11, 2004); Carol Welch, What’s Wrong with the
results could flow, of course, from policies that hurt the economy as a whole, as Criticism #1—"bad medicine"—alleges. But Criticism #2—"distributional and social injustice"—claims that even if the austerity

*International Monetary Fund*, *in Citizen's Guide to International Financial Institutions* 1 (CEE Bankwatch Network ed., n.d.) [hereinafter Welch-I] (asserting that IMF policies "hurt the poor and exacerbate social inequality" by requiring governments to cut spending on social programs and increase charges for social services, and that IMF policies "also hurt workers around the world" by leading to an abolition of minimum wage and collective bargaining laws), available at http://www.bankwatch.org/vademecum/ftis/wbgrp/cgimf.pdf (last visited Mar. 11, 2004); G. Pascal Zachary, *IMF: Kill it or Keep it?*, *In These Times*, May 15, 2000, at 8, 9 (criticizing "the IMF's notorious practice of conditioning loans on the imposition of cuts in welfare, wages and credit"), available at http://www.inthesetimes.com/issue/24/12/zachary2412.html (last visited Feb. 11, 2004); Watkins, *supra* note 20 (claiming that "the IMF has a disastrous record in sub-Saharan Africa" in that "[c]onditions attached to its loans have destroyed livelihoods on an epic scale, and placed basic health and education services beyond the reach of millions of poor households," and citing a recent IMF survey showing that twelve of sixteen African countries implementing IMF programs "had cut spending on basic education"); Garuda, *supra* note 20, at 38 (citing a study concluding that IMF-supported adjustment programs "tended to increase the percentage of people below the poverty line in sub-Saharan Africa by 10 to 15 percent"); Heiner Thiesen, *Running on Empty*, *Ecologist*, Nov. 2002, at 39, 41 (stating that the IMF's structural adjustment programs adopted by Senegal at the insistence of the IMF has "driven most of [Senegal's] small farmers out of business," has "undermined food security," has caused hunger and malnutrition to rise, has driven the unemployment rate from 25% to 44%, and has caused a rise in disease and mortality rates); Weisbrot, *supra* note 20, at 7 (claiming that under IMF bailouts, "the people, especially the poor, are tossed overboard"); Michael O. Folorunso, *IMF: The Big Bad Wolf*, at http://www.gamji.com/NEWS2154.htm (last visited Feb. 11, 2004) (contending that the IMF and the World Bank "want to impoverish the people," that IMF policies contribute to the fall of school attendance and healthcare, and that wherever the IMF has intervened, it has "left a giant foot print of a destroyed economy, joblessness [and] more poverty than when they came in"); Morgan-Foster, *supra* note 20, at 646 (asserting that the IMF is, by imposing structural adjustment requirements, preventing states from meeting some of the obligations they have under human rights treaties to provide for the economic, social and cultural rights of their people). Some critics emphasize other types of social damage, including environmental damage, allegedly done under IMF-imposed policies. *See, e.g.,* Dupa, *supra* note 20 (citing a study claiming that programs supported by the IMF and the World Bank led to over-exploitation of forests in Ghana); Welch-I, *supra* (asserting that "[t]he IMF turns a blind eye to the economic and social value of natural resources" and that its policies lead countries to liquidate natural resources, to cut back on conservation programs, and to lower environmental standards); Jason Toopkman, *Am. Lands Alliance*, *The IMF: Funding Deforestation* 3 (Nov. 2001) (stating that IMF operations "have caused extensive deforestation" in numerous countries). For an assertion that the IMF's policy prescriptions are founded on an ignorant misunderstanding of cultural differences between societies, see Theissen, *supra*, at 39 (explaining that "Muslim life in sub-Saharan Africa involves a constant series of financial sacrifices, which peg individuals back to a natural state of cashlessness" and that IMF pressure on Senegal "to turn more and more of its agricultural land over to the production of cash crops for export" has created a cash economy that "has caused a new sense of poverty and marginalisation"). Some critics view the IMF as dismissive of non-Western values not because of ignorance but because of an actual intention to subjugate peoples of other cultures. *E.g.,* Timothy A. Canova, *Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, 33 U.C. Davis L. Rev. 1547, 1549, 1562 (2000) (arguing that the IMF "systematically subordinates entire nations of color" and urging that "[t]he IMF's structural adjustment punishment should be seen as a direct threat to Latin American cultural values"). For a wide-ranging set of attacks on the IMF, including several focusing on social concerns, see generally *Democratizing the Global Economy* (Kevin Danaher ed., 2001).
programs that the IMF pressures its borrowing member countries to adopt do in fact provide net overall economic and financial benefits to those countries—by helping them to restore economic stability or to avoid defaulting on foreign debts, for example—they win those overall benefits at the expense of the poor. Specifically, IMF-mandated measures to balance a government’s budget by cutting spending and raising revenues force that government (so the criticism runs) to eliminate public funding for social programs and to increase the price of social services, making health care and education unaffordable for the poor. Similarly, IMF-mandated policies to encourage foreign investment can lead to the abolition of minimum wage and collective bargaining laws.

Such results as these contribute to what these critics would identify as a particular evil: enlarging the gap between rich and poor within a society. Likewise, other evils of a social nature can also flow (according to this criticism) from IMF operations. Prominent among these is environmental degradation, because budget cuts can prevent a government from funding the enforcement of environmental protection laws.

In sum, this criticism claims that whatever good effects IMF policy prescriptions might have for a country in aggregate economic terms, they do so at a cost that no society should have to bear. Particularly in African countries, the toll exacted by IMF-required austerity measures has brought an increase in poverty, a gutting of education and health programs, and social ruin.

3. Criticism #3—Trampling of national sovereignty

Expressed most briefly, this criticism claims that IMF conditionality encroaches on a country’s rightful autonomy. Observers voicing this

25. For examples in the literature of some criticisms along these lines, see Dupai, supra note 20 (claiming that the IMF “intervenes into the internal affairs of [its member] countries” and that most developing countries “have given up too much of their autonomy”); Mary C. Tsai, Globalization and Conditionality: Two Sides of the Sovereignty Coin, 31 LAW & POL’Y INT’L BUS. 1317, 1318, 1329 (2000) (asserting that “globalization and [IMF and World Bank] conditionality represent a threat to state sovereignty” and positing that IMF and World Bank conditionality, when coupled with global economic integration, have placed “sovereignty... in a more precarious position than ever before”); Saladin Al-Jurf, Good Governance and Transparency: Their Impact on Development, 9 TRANSNAT’L L. & CONTEMP. PROBS. 193, 206 (1999) (recounting, in the context of anti-corruption initiatives, the criticisms that “the World Bank and IMF are perpetuating ‘new colonialism,’ where Western economic and cultural values are imposed upon emerging economies at the price of their sovereignty” and that “the World Bank and the IMF have failed to recognize that their programs cross the bounds of simple economic reform and encroach upon the sovereignty of member
criticism typically invoke a cluster of related doctrines that international lawyers are familiar with, but are hard-pressed to define satisfactorily. These include the doctrine of sovereignty itself as well as the principles of self-determination, non-interference, anti-colonialism, and the like. Most of these doctrines or principles have their foundations in treaties and other international legal instruments. Critics of the IMF stand on those foundations to condemn the IMF’s interference in the affairs of their borrowing member countries.

Typically, the critical attention regarding sovereignty falls most squarely on IMF conditionality, which is seen as the vehicle or instrument by which the IMF permits (or wants) its operations to encroach on and steal away a country’s autonomy and self-governance. This illustrates a relationship between Criticism #3—“trampling of national sovereignty”—and Criticism #6—“mission creep.” Most of the alleged undermining of sovereignty occurs (according to the critics) because of the IMF’s eagerness to impose its own will on matters not only of economic and financial policy but of social and cultural policy as well, such as human rights, military spending, social programs, government corruption, and environmental protection.

B. Criticisms of the Character, Control, and Reach of the IMF

1. Criticism #4—Secrecy and opaqueness

According to this criticism, the IMF is a secretive organization that operates behind closed doors and refuses to disclose documents

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27. As I explained in my recent article on the MDBs, the same sorts of claims are raised against those institutions. See Head, For Richer or For Poorer, supra note 2, at 258–59 (citing U.N. Charter and ICCPR provisions invoked by critics alleging that the MDBs violate state sovereignty).

28. From this perspective, Criticism #2 (“distributional and social injustice”) may be regarded as the converse of Criticism #3 (“trampling of national sovereignty”): activists emphasizing the first criticism want the IMF to pay more attention to social, non-economic matters; activists emphasizing the second criticism want the IMF to pay less attention to such issues.
describing its policies or its operations. 29 These two types of secretiveness—what I referred to in my recent article about MDBs as “operational secretiveness” and “documentary secretiveness” 30—make the IMF opaque to the rest of the world, except perhaps to the few government officials in finance ministries or central banks with whom the IMF has its formal contacts. In maintaining this opaqueness, the IMF is (according to the critics) profoundly hypocritical, given the fact that the IMF demands openness and transparency from its borrowing member countries in terms of economic information and policies.

29. For examples in the literature of some criticisms along these lines, see Stiglitz, supra note 20, at 16 (saying “the IMF conducts much of its business behind closed doors, without transparency”); Doupai, supra note 20 (endorsing the view that “all IMF documents, instead of being confidential, should be made public and thereby open to public scrutiny and debate” and that “[p]ast IMF programs should be formally reviewed and evaluated by independent experts”); Welch-I, supra note 24 (complaining that although “the IMF makes more information about its programs publicly available than it used to, it remains secretive” and that “Board of Directors deliberations are secret and many staff reports and assessments are private”); Marijke Torfs, Reining in the IMF: The Case for Denying the IMF New Funding and Power, MULTINATIONAL MONITOR, Jan.—Feb. 1998, at 21, 23 (pointing out that a substantial change in IMF disclosure policies, occurring after the enactment of 1994 legislation in the U.S. Congress regarding the U.S. contribution to the IMF’s Enhanced Structural Adjustment Facility, represents “progress, but not a panacea,” as the available documents provide only “a flavor of the nature of the program[s]” promoted by the IMF); CAROL WELCH, THE IMF AND GOOD GOVERNANCE 2 (Interhemispheric Res. Ctr. & Inst. For Policy Studies, Foreign Policy in Focus No. 33, Oct. 1998) [hereinafter WELCH-II] (claiming that “the IMF itself is still too secretive” and that because “[m]ost of the loan documents that the IMF negotiates with its borrowing members are not available to the public . . . the citizens of an affected country have little way of knowing which policies the IMF is prescribing and which policies are coming from their government”), available at http://www.fpi.org/pdf/vol3/33ifimd.pdf (last visited Feb. 16, 2004); id. at 3 (complaining that “[t]he IMF Executive Board essentially operates behind closed doors and makes agreements by consensus” rather than by formal, transparent voting, and that “board minutes are made available only after a 30-year time lag”); Ian Vasquez, The IMF: Bad Watchdog with a Bad Attitude (Mar. 16, 1998) (complaining that “even as the IMF insists on full and accurate information [from Asian governments], it remains one of the world’s most secretive bureaucracies”), at http://www.cato.org/dailyaf/3-16-98.html (last visited Feb. 16, 2004); Khor, supra note 20 (criticizing the IMF for “work[ing] in secret, drawing up policies for the 80 countries under its control, largely without their participation and without the knowledge of the world,” and operating with an “almost total lack of ‘transparency’ in decisions and decision-making process”); Folorunso, supra note 24 (complaining that the IMF and World Bank require nations “to sign secret agreements”).

30. Head, For Richer or For Poorer, supra note 2, at 259–60. As I described these forms of secretiveness there, “operational secretiveness” means that the institution “conduct[s] business in closed meetings that exclude the public from observing [it] in action,” as well as making some or most important decisions through informal meetings. id. “Documentary secretiveness” means that an institution “typically do[es] not disclose documents that describe [its] governing policies, [its] decisions, and [its] plans”—and is exacerbated if the documents that the institution does disclose “are usually self-serving and biased, simply whitewashing over any negative aspects of [its] operations.” Id. at 259.
2. Criticism #5—The democracy deficit

Although this criticism takes many forms, its essence is that the IMF, controlled through the weighted voting system by a handful of rich countries, is an unaccountable autocracy in which the people most affected by its operations have no chance to participate and against whose practices no interested party may raise a legal challenge or appeal.31 The same criticism has been leveled at the MDBs, as I explained in my recent article regarding those institutions.32

Evidence of the IMF’s “democracy deficit” appears (i) in the weighted voting system, which places a preponderance of power in the hands of a handful of countries (none of which borrows from the IMF),33 (ii) in the IMF Charter provision that empowers the institution itself to determine the legality of its own actions,34 (iii) in the absence of any genuinely independent tribunal or other panel in which IMF action can be challenged, and (iv) in the difficulty or impossibility of any participation in decision-making by NGOs, purported beneficiaries, or any other groups outside the official government service. In this last respect, Criticism #5—“democracy deficit”—is related to Criticism #4—“secrecy and opaqueness.”

Another point related to the “democracy deficit” criticism looks beyond the IMF to its member countries, many of which are themselves

31. For examples in the literature of some criticisms along these lines, see Anderson, supra note 24, at 31 (reporting that NGOs trying to enter into consultations with the IMF and the World Bank have found “either a complete lack of public consultation or mere public relations stunts that excluded groups more critical of Bank and Fund policies”); Stiglitz, supra note 20, at 17 (complaining that the IMF’s “leaders are seldom held accountable” for the policies they pursue); Welch-I, supra note 24 (criticizing the IMF because it “only responds to a select group of interests in its borrowing countries” and “negotiates programs with a handful of government officials” that “excludes environmental ministries and members of parliament,” and concluding that “[t]his process is fundamentally undemocratic”); Watkins, supra note 20 (asserting that “the Fund’s ‘one dollar, one vote’ constitution” results in a “democratic deficit of staggering proportions” and asserting that “it is outrageous for the US and other industrial countries to preach the virtues of democracy and accountability in poor countries, while practicing the vices of oligarchy in the IMF”); Dupai, supra note 20 (pointing out that “India and China have smaller votes than the Netherlands, although . . . their population is about 60 times larger”).

32. See Head, For Richer or For Poorer, supra note 2, at 266–68 (explaining several grounds on which the MDBs are criticized “because they lack, as a structural or constitutional matter, any meaningful form of accountability”).

33. As noted above in my “nutshell” account of the IMF, the G-7 countries hold over 45% of the total voting power in the IMF. Supra text accompanying notes 16–18.

34. IMF Charter, supra note 6, art. XXIX (providing that “[a]ny question of interpretation of the provisions of this Agreement . . . shall be submitted to the Executive Board for its decision” and may then, if a member country so requests, “be referred to the Board of Governors, whose decision shall be final”). For an early analysis of this provision, see generally JOSEPH GOLD, INTERPRETATION BY THE FUND (Int’l Monetary Fund, Pamphlet Series No. 11, 1968).
undemocratic in character. For those countries, there is no guarantee (and often little likelihood) that a government’s participation in IMF decision-making will in fact reflect the views of the country’s people, including in particular those persons most directly affected by those IMF decisions.

3. Criticism #6—Mission creep

This criticism, which has attracted a great deal of attention just in the past five years or so, reflects some historical points summarized in my “nutshell” account of the IMF, in Part I.B of this Article. As noted there, the IMF underwent a fundamental change in its mission (and its Charter was amended accordingly) in the 1970s when the par value system of fixed exchange rates collapsed. Further changes in course, although less drastic, were made in the 1980s with the emergence of the debt crisis and in the 1990s when the IMF started giving direct attention to “governance” issues and crisis management (most dramatically with the Asian financial crisis). As a result of these developments, the IMF

35. For examples in the literature of some criticisms along these lines, see Stiglitz, supra note 20, at 16–18 (observing that the IMF’s mandate has changed from that of proving liquidity to “that of a bill collector for lending nations,” and recommending that the IMF “be restricted to crisis management” and that “[i]ts other functions should be given to other institutions”); Moberg, supra note 20, at 11 (noting that “there is growing clamor . . . to drastically scale back the IMF to focus on its original mission of managing short-term currency problems” instead of “acting as enforcers for global capital”); Watkins, supra note 20 (criticizing IMF “mission creep,” and observing that now the IMF’s loan conditions cover everything from monetary policy to rapid trade liberalisation, financial deregulation, and privatisation); WELCH-II, supra note 29, at 1 (complaining that the IMF’s “mission creep” into the area of “good governance, tackling up the issues of corruption, transparency, tax reform, and other domestic concerns” represents another example of “the IMF’s power grab of the last several decades and entrenches the IMF in the position of giving development and stabilization advice even when its qualifications are highly dubious”); James Tobin & Gustav Ranis, Flawed Fund: The IMF’s Misplaced Priorities, The New Republic, Mar. 9, 1998, at 16, 17 (arguing that “the IMF should stick to its original mission, saving its members from disasters due to short-term illiquidity” and not getting involved in “long-run structural and developmental issues”); Morgan-Foster, supra note 20, at 631–32 (asserting that the international financial institutions should not have a role in protecting human rights, because the subject of human rights “is not mentioned in the institutions’ statutes, and promotion of human rights will require a much more active human rights policy operation than the institutions have been set up to handle”); Celeste Boeri, How to Solve Argentina’s Debt Crisis: Will the IMF’s Plan Work?, 4 Chi. J. Int’l L. 245, 245–47 (2003) (criticizing a proposal for the IMF to establish a sovereign bankruptcy system because assuming such a role could, as a practical matter, conflict with its other functions).

36. Bob Hockett, now at Cornell Law School and formerly a Tutor and Senior Research Fellow at Yale Law School, has offered this summary of how the IMF’s mission expanded in the 1990s: “Property law, contract rights, judicial reform, and other market-facilitating legal and institutional arrangements . . . occupied the IMF’s attention [following the breakup of the former Soviet empire, and more recently] . . . in the wake of the Asian financial crisis, the IMF has concerned itself with the laws of bankruptcy, corporate governance, and even political governance (via a concern with corruption).” Robert Hockett, From Macro to Micro to “Mission-Creep”: Defending the IMF’s
now, according to many of its critics, has extended its operations into areas in which it has no authority and no competence.

In order to appreciate fully the "mission creep" criticism, it is important to see the distinction, illuminated by Professor Daniel Bradlow of American University, between (i) those critics who argue that "the major problem with the IFIs [international financial institutions, including the IMF] is the way they have gone about expanding their mission rather than the mere fact that they have chosen to expand their mission"—this is a battle over the direction and content of the mission creep—and (ii) those critics who oppose any mission creep—that is, who "argue that the IFIs 'mission creep' is tending to politicize the organizations in ways that will ultimately undermine their efficacy" and who believe "that the IFIs are now actively engaged in activities that require making judgments that rightfully belong to the sovereign member states." Perhaps this distinction could be abbreviated as separating those critics who say "not this mission creep" from those who say "not any mission creep."

As a practical matter, of course, these two sets of mission creep critics agree on many points. It seems that most or all of them would strip the IMF of the crisis-bailout function that it assumed in the late 1990s beginning with the Asian financial crisis and would cut down the volume, scope, and intrusiveness of IMF conditionality, especially in those areas that seem furthest removed from the IMF's domain of exchange rate collaboration and balance-of-payments stability.

4. Criticism #7—Asymmetry in obligations

This criticism, which I emphasized also in my recent article on MDBs, highlights the disparity between rich industrialized countries and economically less developed countries ("LDCs") in terms of the

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38. Id. at 710.
39. The critics who say "not any mission creep" might be further divided into those who complain that mission creep is wrong as a matter of law and those who complain that mission creep is wrong as a policy or practical matter. I develop this distinction further in my assessment of the "mission creep" criticism. See infra Part III.A.4.
40. Head, For Richer or For Poorer, supra note 2, at 262, 293–95.
obligations that their participation in the IMF entails. The criticism emerges from two legal and institutional features of the IMF that are central to some of the criticisms already described above. The first of these features is the IMF's use of conditionality. As explained in the "nutshell" account of the IMF appearing at Part I.B of this Article, lending by the IMF to its member countries is typically conditioned upon their adherence to certain economic and financial policies approved by the IMF.

The second feature is the weighted voting system under which the IMF operates. As also explained in Part I.B, the G-7 countries hold over forty-five percent of the total voting power in the IMF. Perhaps more telling, though, than this percentage is the percentage of voting power held by all the countries that have relatively strong economies and that do not borrow from the IMF. By adding to the total G-7 votes the votes of just ten such other countries—Australia, Austria, Belgium, Denmark, Finland, Netherlands, Norway, Spain, Sweden, and Switzerland—the percentage of voting power increases to about fifty-eight percent.

Because these ten countries, like the G-7 countries, do not borrow from the IMF, they do not face the same policy obligations that IMF conditionality imposes on those LDCs that borrow from the IMF.

Combined, these two features of conditionality and weighted voting create an asymmetry in obligations that allows the rich industrialized countries controlling the IMF to force LDCs to adopt economic and financial policies that the rich countries themselves can disregard if they like. This asymmetry, it is alleged, is fundamentally unfair and perhaps illegal.

41. For examples in the literature of some criticisms along these lines, see Alan Beattie, Raw Deal for Poor Nations Limits Backing for Free Trade, FIN. TIMES, Apr. 12, 2002, n.p. (noting that "while the [International Monetary] Fund and [World] Bank have the ability via their lending programs to encourage—if not compel—liberalization in poor countries, they lack a similar lever with the Group of Seven leading industrial nations"), http://www.financialtimes.com and 2002 WL 18765849; An Unequal World: Fair Trade is Needed to Eradicate Poverty, GUARDIAN (London), Apr. 13, 2002, n.p. (noting that "[w]hile goods from the developing world are kept out of western markets, poor nations are pressed by the International Monetary Fund and World Bank to open their markets too rapidly"), http://www.financialtimes.com and 2002 WL 18762058.

42. See supra text accompanying notes 16–18.

43. See IMF Members' Quotas, supra note 16 (showing the voting power percentage for Australia of 1.50%, Austria 0.87%, Belgium 2.13%, Denmark 0.77%, Finland 0.59%, Netherlands 2.39%, Norway 0.78%, Spain 1.42%, Sweden 1.11%, and Switzerland 1.61%).

44. For representative lists of countries that do borrow from the IMF, see the pertinent tables appearing in the 2002 and 2003 IMF annual reports. INTERNATIONAL MONETARY FUND, 2002 ANNUAL REPORT 58 (2002) (showing the twenty-three countries for which IMF financial assistance was approved in fiscal year 2002), available at http://www.imf.org/external/pubs/ft/ar/2002/eng/index.htm (last visited Feb. 16, 2004); IMF ANNUAL REPORT 2003, supra note 4, at 66 (showing the twenty-seven countries for which IMF financial assistance was approved in fiscal year 2003).
III. ASSESSING THE CRITICISMS—ARE THEY DEADLY OR DAFFY?

I have summarized above what I consider to be the seven key criticisms leveled at the IMF. Some critics regard one or more of these as deadly sins, in the sense that they should lead to the death of the IMF.\(^{45}\) I disagree with that view. I believe some of the criticisms are unpersuasive and that the others, while persuasive and serious, should lead to the reform, not the death, of the IMF. In the following paragraphs I offer my analysis of the seven criticisms, before turning in Part IV of this Article to an outline of recommendations I would offer for reforming the IMF.

A. Criticisms I Largely Dismiss

1. Criticism #1—Bad medicine

I find this criticism of the IMF unpersuasive, just as I have found unpersuasive the corresponding criticism as directed against the MDBs.\(^{46}\) Four main reasons lead me to this conclusion.

First, experts disagree about the fundamental issue of whether, on balance, countries adopting IMF-prescribed economic and financial policies have shown improvement or deterioration. For example, although numerous claims have been made of the disastrous economic repercussions suffered in several Asian countries that adopted IMF-prescribed policies during the financial crisis that gripped the region in the late 1990s, credible counter-claims have been made as well—

45. For examples of some calls for the IMF to be abolished, see Stiglitz, supra note 20, at 17 (noting that “[i]t is simplest and most straightforward reform—one advocated by many economists on both the left and the right—is the abolition of the IMF” and suggesting that most of its functions could be performed by other groups); Zachary, supra note 24, at 8 (stating that killing the IMF “has an immediate appeal” and “would send a powerful message,” and that “[r]espected analysts of the world economy are starting to question whether the IMF is indeed essential”). See also Fidel Castro, We Either Unite or We Die, in DEMOCRATIZING THE GLOBAL ECONOMY, supra note 24, at 74, 77 (“It is high time for the Third World to strongly demand the removal of an institution [the IMF] that neither provides stability to the world economy nor works to deliver preventive funds to the debtors to avoid their liquidity crises.”); Sebastian Edwards, Abolish the IMF, FIN. TIMES, Nov. 13, 1998, n.p. (recommending that the IMF “be replaced by three specialized institutions”), http://www.financialtimes.com and LEXIS; Steve H. Hanke, Abolish the IMF, FORBES, Apr. 17, 2000, at 84, 84 (suggesting that we “pull the plug” on the IMF); George P. Shultz et al., Who Needs the IMF?, WALL. ST. J., Feb. 3, 1998, at A22 (calling the IMF “ineffective, unnecessary, and obsolete” and recommending its eventual abolishment).

46. See Head, For Richer or For Poorer, supra note 2, at 277–80 (explaining grounds for largely rejecting the criticism that the MDBs promote bad economic and financial policies and projects).
pointing out, for instance, that currency values in those countries did stabilize after IMF-prescribed policies were put in place, and that those countries thereby escaped a “permanent burden in terms of the amount of dollars they [would have] had to pay abroad relative to the local value of the currency.” And more generally (that is, taking IMF operations in many countries and regions), serious statistical studies have reached mixed results, suggesting that while there is a correlation between IMF-prescribed policies and either neutral or negative performance “in terms of encouraging economic growth, raising investment and reducing inflation,” in those countries following the IMF prescription, such policies “do seem to be associated with a statistically significant improvement in the current account of the balance of payments or the overall balance of payments.” Significantly, most or all of the statistical studies—both those favorable to and those unfavorable to IMF-prescribed policies—rely on old data. Even a very recently published analysis critical of IMF programs “uses data that end in 1990”—hardly representative of IMF operations today.

Second, even if it were to be accepted, for the sake of argument, that countries adopting IMF-prescribed policies have taken a nose-dive economically, it is illogical to conclude simply from this fact that IMF-prescribed policies caused the nose-dive. For one thing, as one scholar points out, such a conclusion is “particularly troublesome because of the problem of defining the counter-factual; in other words, determining what would have happened in the absence of [an IMF-prescribed] program. For another thing, it is unfair to conclude that the IMF-prescribed policies themselves were faulty if the country did not implement those policies fully. And of course national economic

47. Frontline, supra note 20 (quoting Stanley Fischer). See also Dhanestwar Ghura, Building Financial Stability, 29 IMF Survey 77, 77 (Mar. 6, 2000) (“[T]he Korean economy is again growing rapidly and output is now above its pre-crisis level. The won has strengthened substantially after losing half its value soon after the crisis erupted, and the stock market has registered large gains propelled in part by purchases by foreign investors.”).
49. Id.
50. See Vreeland, supra note 20, at 152 (finding that “[IMF] programs hurt economic growth and exacerbate income inequality”).
51. Id. at 160.
52. Garuda, supra note 20, at 38. See also Bird, supra note 20, at 214 (“Numerous academic studies examining whether IMF programs work suggest this is a very difficult question to answer. . . . largely because while the outcome is known in countries that adopted Fund programmes, what might have happened if agreement had not been reached cannot be known—the so-called counter-factual problem.”).
53. See Garuda, supra note 20, at 38 (noting that “borrower countries may not be implementing the programs as completely as the IMF expects”); Bird, supra note 20, at 215 (stating that “the
fortunes and misfortunes have momentum—"[i]t is both unfair and economically unsound for a borrower to blame the IMF for economic difficulties that originated before the Fund's intervention began."\(^{54}\) Likewise, little guidance as to the effects of IMF-prescribed policies can be gained by comparing the performance of countries that participate in IMF programs with those that do not, "[s]ince countries that participate in Fund programs tend to face worse economic conditions than those that do not."\(^{55}\)

A third reason I find the "bad medicine" criticism unpersuasive focuses on the specific issue of "moral hazard." I question whether the financial assistance packages arranged by the IMF during the Asian financial crisis would be interpreted either by national governments or by foreign investors as an assurance that they need not be prudent in their policies or their investments. As for governments, I agree with the view expressed by the then-Deputy Managing Director of the IMF, Stanley Fischer: "To think that [government] policymakers pursue risky courses of action because they know the IMF safety net will catch them if things go badly is far-fetched. Countries try to avoid going to the [IMF]; policymakers whose countries end up in trouble generally do not survive politically."\(^{56}\) Fischer's view on moral hazard for investors is also persuasive: "foreign equity investors had lost nearly three-quarters of the value of their equity holdings in some Asian markets . . . [and] the crisis has been costly for foreign commercial banks"; in short, "[i]nvestors have been hit hard, as they should have been, for lending unwisely."\(^{57}\) Given this, I think the moral hazard complaint is overstated.

A fourth reason I largely dismiss the "bad medicine" criticism is that the prescription has in fact been changed rather dramatically in just the last few years. The IMF has responded to its experience in the Asian financial crisis and to the criticisms that its intervention there and in Argentina and Russia have attracted. I would highlight two particular aspects of that IMF response: changes in its approach to crisis management and changes in its conditionality practices. 

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54. Garuda, supra note 20, at 38.
55. Id.
57. Id. For an extensive discussion of the moral hazard question, see generally LANE & PHILLIPS, supra note 23. These authors conclude that "moral hazard's role may have been seriously overstated by some observers." Id. at 13.
As for crisis management, the IMF has taken several initiatives that aim to prevent crises from breaking out in the first place, such as (i) creating (in 1999) the Contingent Credit Line, described in the “nutshell” account in Part I.B of this Article, to recognize a member country’s good economic policies by giving it special protection against the contagion of economic troubles in other countries,\(^58\) (ii) developing a system for better assessing crisis vulnerabilities in countries that could suffer rapid capital flight,\(^59\) to provide for early warning against possible crises, and (iii) enhancing the usefulness of economic data from and about member countries and the dissemination of these data to the public.\(^60\) In addition to these initiatives on crisis prevention, the IMF has taken several steps recently for the resolution of crises that do occur. Several of these steps respond to the insistence by some critics that principal responsibility for handling crises should remain with the governments and the markets—“[e]volving reforms of the framework for crisis resolution have been designed to reinforce incentives for countries and their creditors to reach voluntary, market-oriented solutions to their financing problems”\(^61\)—rather than counting on an IMF bailout.\(^62\)

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58. For details on the Contingent Credit Line, see IMF Annual Report 2003, supra note 20, at 26 (describing it as providing “a better safety net for good performers”).

59. Id. at 21.

60. Id. at 21–22, 23–24. Recently, special attention has been given to the mechanisms by which the IMF can best provide signals to official or private creditors regarding the strength of a country’s economic policies. Id. at 25–26. The importance accorded to these and other aspects of “crisis prevention” is reflected in the fact that an entire chapter of the IMF’s most recent annual report is dedicated to such topics. See id. at 21–28 (describing IMF crisis prevention policy).

61. Id. at 29. For details about such reforms, including (i) increasing the selectivity of IMF lending to countries in crisis, (ii) the inclusion of collective action clauses in sovereign bond contracts, and (iii) the possible establishment of a new Sovereign Debt Restructuring Mechanism (SDRM), see id. at 29–33. For an assessment of the proposed SDRM, see generally Boeri, supra note 35. See also Susanne Soederberg, The International Dimensions of the Argentine Default: The Case of the Sovereign Debt Restructuring Mechanism, 28 Canadian J. Latin Am. & Caribbean Stud. 97, 113–20 (2003) (describing debates over, and offering criticisms of, the proposed mechanism); Deepak Gopinath, The Debt-Crisis Crisis, Institutional Investor, Aug. 2002, at 72, 73–76 (describing the SDRM proposal and concerns it has raised with private sector critics). For the IMF’s description of its efforts at designing an SDRM “to create a framework for an equitable debt restructuring that restores sustainability and growth, without including incentives that unintentionally increase the risk of default,” see generally International Monetary Fund, Proposals for a Sovereign Debt Restructuring Mechanism (SDRM)—A Factsheet (Jan. 2003), at http://www.imf.org/external/np/exr/facts/sdrm.htm (last visited Feb. 16, 2004).

62. This increased emphasis on private sector involvement in crisis management began in 1998. See Ross B. Leckow, The International Monetary Fund and Strengthening the Architecture of the International Monetary System, 30 Law & Pol’y Int’l Bus. 117, 126–28 (1999) (describing how initiatives emerging from the IMF’s October 1998 annual meeting “identify the need to more effectively involve the private sector” in resolving balance-of-payments crises). Leckow, a good friend of mine at the IMF, also describes other initiatives that focus on crisis prevention, including strengthening of IMF surveillance, strengthening of member countries’ financial systems, and promoting greater transparency. Id. at 118–25.
The IMF’s change in conditionality policies has been equally significant. The IMF’s guidelines on conditionality, which had remained unchanged for many years since their adoption in 1979, were changed in 2002 to reflect four principles: (i) the need to enhance the borrowing country’s “ownership” of the policy reforms, (ii) the need to reduce the number of conditions, (iii) the need to tailor the policy programs (and hence the content of the conditionality) more closely to the borrowing country’s circumstances, and (iv) the need to improve clarity in the specification of conditions.

An IMF “Staff Statement” appended to the new guidelines on conditionality elaborates on those four principles as follows:

National ownership refers to a willing assumption of responsibility for a program of policies, by country officials who have the responsibility to formulate and carry out those policies . . . . [National ownership] is a key determinant of success, and the guidelines aim to promote ownership by ensuring that conditionality is well designed and is formulated through a mutually acceptable process led by the member. . . . [The policies covered by conditionality will pay] due regard to the domestic social and political objectives . . . of the member.

Parsimony means that program-related conditions should be limited to the minimum necessary to achieve the goals of the Fund-supported program or to monitor its implementation and that the choice of conditions should be clearly focused on those goals. . . . [One of those goals involves] fostering sustainable economic growth . . . [which] is linked to the pursuit of higher living standards and a reduction of poverty.

Tailoring of programs implies a recognition that the causes of balance of payments difficulties and the emphasis to be given to


various program goals may differ among members. . . . [Although] most Fund-supported programs will include certain common elements [and] . . . must be applied consistently so as to maintain the uniform treatment of members . . . the specification and timing of policy adjustments and the appropriate mix of financing and adjustment will reflect the member's circumstances . . . .

Clarity means that program-related conditions should be transparently distinguished from other elements of the authorities' program both in staff reports and in the member's program documents. 65

The adoption of these changes, like some of the other initiatives referred to above regarding crisis management, 66 demonstrates that the IMF is not—or at least wishes not to be seen as—the immovable object, stubbornly mired in an outmoded ideology, that some critics portray it to be. How the IMF will follow through on these new initiatives, of course, remains to be seen. For the moment, however, I believe the IMF should be viewed favorably for updating its approach on both crisis management and conditionality to respond to its critics and recent experience.

Taken together, these four reasons prompt me to dismiss the "bad medicine" criticism. I have seen no persuasive evidence, based on recent data, that IMF "medicine," when actually taken as prescribed, has generally made its borrowing member countries worse off than they would have been without the IMF's involvement—which, it must be remembered, includes infusions of funds as well as policy prescriptions. Moreover, the very large infusions of such funds in Asia and elsewhere cannot, I believe, be seen as having created as much moral hazard as many critics would have us think. And in any event the "bad medicine" criticism is anachronistic because the IMF has changed course in important ways in the past five years.

2. Criticism #3—Trampling of national sovereignty

I find this criticism of the IMF unpersuasive for several of the same reasons that I offered in dismissing the corresponding criticism in the context of the MDBs. 67 I shall not repeat those reasons in full here but merely summarize the most pertinent ones.

65. IMF GUIDELINES ON CONDITIONALITY, supra note 64, at 8–11 (emphasis in original).
66. See supra text accompanying notes 58–62.
67. See Head, For Richer or For Poorer, supra note 2, at 280–83 (explaining the grounds for largely rejecting the criticism that the MDBs trample on national sovereignty of their member countries).
First, states are under no legal obligation to accept the conditions of an IMF loan, for the simple reason that they are under no legal obligation to seek such a loan in the first place—or, for that matter, to become or remain IMF members. While it is true that an approval of IMF financing often triggers other official and private sector financing for a country, it is also true that if a government is dead-set against adopting the economic and financial policies prescribed by the IMF, that government can reject them by rejecting IMF involvement. Proposals to do just that have emerged recently in some countries.

Second, to the extent that this “trampling of sovereignty” criticism relies on the principle of self-determination—by claiming that the IMF interferes with a right of people within a borrowing member country to “freely determine their political status and freely pursue their economic, social and cultural development”—or on some purported “right to development,” the criticism rests on a legal misperception about those principles. Even if the principle of self-determination amounts to something more than just a slogan, it surely cannot mean that a government can demand IMF loans to help it overcome the ill effects of economic and financial policies that the IMF regards as unproductive or counterproductive. Likewise, international law contains no generally accepted “right to development assistance” under which a country would be legally entitled to receive financial assistance from another country or from the IMF.

In short, I find the appeals to sovereignty very weak in this context. Certain elements of the “trampling of sovereignty” criticism—those that complain about conditionality or that bemoan “mission creep”—are worthy of serious attention as separate issues (and are considered in my

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68. For an explanation of this “triggering effect,” see Head, Suspension of Debtor Countries’ Voting Rights, supra note 4, at 594 n.5. See also TREASURER’S DEPARTMENT, FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF 13 (Int’l Monetary Fund, Pamphlet Series No. 45, 2d ed., 1991) (explaining that “commercial banks have generally been more willing to extend loans to a debtor country if the Fund has approved an arrangement for that country” and noting that this is one way in which the Fund serves “as a catalyst in generating additional international credit and capital for its members”).

69. See, e.g., Indonesian NGOs Ask Gov’t to Cut Ties with Int’l Organisations, ASIA PULSE, Jan. 23, 2003, LEXIS (reporting that “[v]arious non-governmental organizations (NGOs) urged the government [of Indonesia] to cut off relations with the International Monetary Fund” and other organizations on grounds that “those international institutions could only exacerbate the plight of the Indonesian economy”).

70. ICCPR, supra note 26, art. 1(1).

71. For my assessment of the principle of self-determination in the context of MDB operations, see Head, For Richer or For Poorer, supra note 2, at 282.

72. For my assessment of the purported “right to development” in the context of MDB operations, see id. at 280–81.
assessments of Criticism #1 and Criticism #6). Standing alone, however, the claim that IMF operations impinge on sovereignty packs no serious punch.

3. Criticism #4—Secrecy and opaqueness

The IMF has already responded to this criticism. Over the past three years in particular, the IMF has undertaken an impressive project to provide more information on its operations.\textsuperscript{73} For example, between January 2001 and March 2003, information was published on Executive Board action in over eighty percent of all Article IV consultations, the “Letters of Intent for 93 percent of countries’ requests” for (or review of) the use of IMF resources were released, and “57 percent of stand-alone reports on IMF-supported programs were published.”\textsuperscript{74} The IMF now posts information on its website about each member’s financial position with the IMF, quarterly IMF financial statements, and other information about administrative and operational aspects of the IMF.\textsuperscript{75}

I find these responses satisfactory. That is, I believe the IMF now provides adequate information to permit interested parties to know enough about IMF operations to evaluate and criticize those operations.


\textsuperscript{74} \textit{Transparency at the IMF}, supra note 73. As explained in the “nutshell” account in Part LB of this Article, Article IV consultations are the annual discussions that the IMF holds with each of its member countries regarding economic and financial developments, problems, and policies. See supra text accompanying note 11. To see letters of intent and similar documents by which borrowing member countries enumerate economic and financial policies that they intend to implement, see International Monetary Fund, Country’s Policy Intentions Documents, at http://www.imf.org/external/np/loi/mempub.asp (last visited Feb. 17, 2004). It is worth noting that the IMF itself is prohibited by its Charter from broadcasting official IMF views on a member country’s economic performance. See IMF Charter, supra note 6, art. XII, § 8 (requiring approval by a seventy percent majority of total voting power in order to “publish a report made [by the IMF] to a member regarding its monetary or economic conditions and developments which directly tend to produce a serious disequilibrium in the international balance of payments of members”). For a discussion of how this provision bears on IMF transparency practices, see Gianviti, supra note 13, at 109.

\textsuperscript{75} Gianviti, supra note 13, at 109.
No doubt some further improvements in IMF transparency are warranted and will be made in coming years as pressure intensifies for yet more transparency among all public international institutions. But for now I largely dismiss the "secrecy and opaqueness" criticism as it applies to the IMF.

In this regard, I depart somewhat from the conclusions I have drawn in my earlier articles about the WTO and the MDBs—institutions that I believe should do more than they have to facilitate public understanding of how they operate and what they plan to do. While this difference in my views on the IMF versus my views on those other institutions partly reflects differences in the way I have characterized and packaged the criticisms, it also reflects differences in the character of the information at issue. In the case of the MDBs, whose main business is to help propose, design, and finance specific projects in the territories of member countries, both "operational secretiveness" and "documentary secretiveness" are highly objectionable because they restrict input by members of the public who could be directly affected by, and who could offer the MDBs knowledgeable and helpful views on, the proposed projects. In the case of the IMF, however, which operates at the policy level—designing not physical projects but rather programs of economic and financial policy that it urges a member country to implement—there is less scope for helpful input from the general public into the deliberations of the IMF itself, and relatively more need for input from the general public into the policy decisions of their own national governments.

76. See Head, For Richer or For Poorer, supra note 2, at 292–93 (calling for more openness of meetings and records of the governing boards of MDBs); Head, Throwing Eggs at Windows, supra note 1, at 764–65 (urging that the WTO, "[i]nstead of being seen as a faceless bureaucracy that holds secret meetings for clandestine purposes . . . [should take such steps as] adopting a transparency or disclosure policy [and] making publicly available a wide range of documents on policy and operational matters").

77. In my articles on the MDBs and the WTO, I included issues of accountability and access with the issue of transparency. See, e.g., Head, For Richer or For Poorer, supra note 2, at 292, 304 (characterizing a key criticism leveled against the MDBs as being their "[l]ack of transparency and access" and proposing that the MDBs formally adopt a set of institutional principles that included, among other aspects, transparency, participation, and accountability); Head, Throwing Eggs at Windows, supra note 1, at 764, 769 (characterizing a key criticism leveled at the WTO as being that it "is opaque in its operations, inappropriately hidden from scrutiny and insulated from external criticism and involvement" and urging that the WTO "[i]ntroduce further transparency and accountability into [its] operations"). In this Article, by contrast, I have defined the "secrecy and opaqueness" criticism (Criticism #4) against the IMF more narrowly and relegated all issues of accountability and access to the "democracy deficit" criticism (Criticism #5). See supra text accompanying notes 29 and 31.

78. See supra note 30 and accompanying text.
The essence of this difference might be captured in what I shall call the “input-information ratio”: the greater the potential value and importance of the public’s input into the operations of an international institution, the greater should be the volume and detail of the information made public about those operations. In my view, the recent increase in IMF transparency (regarding its own operations, that is), creates an “input-information ratio” for the IMF that is adequate.

The same is not true about the transparency of many national governments. I hasten to add this point because the term “transparency” has been used both (i) in referring to the openness of the IMF itself and (ii) in referring to the openness of its member governments regarding their own operations. In my view, there is far too little of the latter—openness of national governments regarding their own operations. This point appears in my observations about some of the other criticisms—particularly those complaining of “mission creep” (Criticism #6) and the “democracy deficit” (Criticism #5)—and I shall return to it also in outlining recommendations in Part IV.B of this Article.

4. Criticism #6—Mission creep

I addressed this issue also in my recent article assessing criticisms leveled against the MDBs. In doing so, I drew a distinction between two related complaints: (i) that mission creep is wrong as a legal matter because the MDBs have “acted outside their charters (ultra vires) by expanding their purview” into such areas as environmental protection, indigenous peoples, involuntary resettlement, governance, corruption, and so forth; and (ii) that mission creep, whatever its legal legitimacy, is wrong as a matter of ideology and policy.

In the context of the IMF, I believe the first of these two complaints—that the IMF acts ultra vires in delving into such areas as “governance” issues and crisis management—is satisfactorily laid to rest by the analysis that Bob Hockett has given in discussing the IMF’s move “from macro to micro.” Hockett explains how the IMF has expanded its agenda to include microeconomic and structural issues—encompassing, he says, “market-facilitating legal and institutional

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79. See, e.g., Transparency at the IMF, supra note 73 (treating transparency as involving both “greater openness on the part of member countries” and “greater openness and clarity by the IMF about its own policies and the advice it provides to members”).
80. Head, For Richer or For Poorer, supra note 2, at 269–76.
81. Id. at 271.
82. See generally Hockett, supra note 36 (discussing the IMF’s change in mission).
arrangements” and, most recently, “laws of bankruptcy, corporate governance, and even political governance.”

But Hockett rebuts the “mission creep” claim on several grounds, including the fact that the pertinent IMF Charter provisions are quite broad in their formulation—the result, Hockett explains, of an intentional effort by the persons drafting it “to incorporate a good deal of ‘creative ambiguity’ into the [Charter’s] final draft in order to provide for future contingencies and to secure agreement.”

I find Hockett’s analysis unassailable; from a legal perspective, the “mission creep” criticism fails.

Hockett also addresses the second of the two “mission creep” complaints: that mission creep, whatever its legal legitimacy, is wrong as a matter of ideology and policy. According to Hockett, the IMF’s expansion of its agenda to include structural and microeconomic matters is not only right as matter of necessity but indeed “an entirely foreseeable consequence of floating exchange rates and the globalization of foreign exchange markets since the 1970s.”

He states his point more fully in this manner:

The pragmatic case for the Fund’s shift of attention to microeconomic variables can . . . be reduced, with some perhaps regrettable crudity, to a simple “equation”: floating currencies (Second Amendment), plus globally liberalized currency markets (arbitrage unimpeded by technological or regulatory limitation) and the potential cross-border “spillover” or “contagion” effects of financial panic equal a colossal heightening of the global regulatory importance of domestic microeconomic or “structural” variables. Sustained market confidence and the avoidance of global panic behavior simply demand attention from monetary authorities.

The IMF is not alone, of course, in recognizing the practical necessity of expanding its attention to include structural issues, including issues of governance. As I explained in my recent article on the MDBs, those institutions have expanded their attention in the same manner—recognizing thereby the important bearing that governance and other

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83. Id. at 156. See also supra note 36.
84. Hockett, supra note 36, at 178.
85. Id. at 158.
86. Id. at 176. For a shorter treatment by Hockett of the same subject, see generally Robert Hockett, Legally Defending Mission Creep, 13 INT’L LEGAL PERSP. 34 (2002).
87. Head, For Richer or For Poorer, supra note 2, at 252, 270, 272 (noting the MDBs’ involvement in matters of governance and other policy issues).
policy issues have on economic well-being. The IMF has explained this connection in developing its own policy on governance.\textsuperscript{88}

Hockett’s assessment should silence the mission creep critics from both a legal and a practical perspective. And it addresses both sides of the distinction Bradlow draws between those critics who say “not any mission creep” and those who say “not this mission creep.”\textsuperscript{89} That is, Hockett has explained both (i) why it is appropriate for the IMF to adapt to changing circumstances in general, and (ii) why the specific direction that the IMF has taken in expanding the scope of its attention is both legal and necessary.

This analysis prompts a follow-up question: has the IMF gone far enough? Has it expanded and adapted the scope of its attention to include all the issues that it should take into account in order to fulfill its functions? I believe not. In particular, I believe the IMF needs to place more emphasis on social aspects of its operations, a matter that I discuss in my analysis of Criticism #2—“distributional and social injustice.” That discussion follows immediately below, as I turn to those criticisms that I generally endorse.

\section*{B. Criticisms I Generally Endorse}

\subsection*{1. Criticism #2—Distributional and social injustice}

As noted above, this criticism can be summarized as follows: the economic and financial policies that the IMF insists on create distributional inequities and ignore the social aspects of a country’s well-being. Expressed in such a blunt manner as that, this criticism strikes me as inaccurate because it both overstates and understates the IMF’s role. It overstates the IMF’s role by suggesting that the IMF-prescribed policies are so detailed as to dictate specific budgetary decisions by the governments of borrowing countries. A survey of the actual documentation of those policies belies that suggestion. For example, the

\textsuperscript{88} See James, supra note 63, at 46 (explaining that the IMF’s willingness to take social and political matters into account in its operations “was a consequence of reflections on the collapse of communism and on the links between political and economic reform” and reflected the view “that economic efficiency depends on a functioning civil society, on the rule of law, and on respect for private property”). The IMF’s guidance note on governance, adopted by its Executive Board in July 1997, asserted that “it is legitimate for management to seek information about the political situation in member countries as an essential element in judging the prospects for policy implementation.” INTERNATIONAL MONETARY FUND, GOOD GOVERNANCE: THE IMF’S ROLE 5 (Aug. 1997), available at http://www.imf.org/external/pubs/ft/expm/govern/govern.pdf (last visited Feb. 17, 2004).

\textsuperscript{89} See supra note 39.
letter of intent submitted by the government of Indonesia in late October 1997, when the Asian financial crisis had hit that country, did not dictate specific budget cuts.90 It did, however, specifically state that “it is imperative that the adjustment program does not result in a worsening of [the] economic and social conditions [of the poor]. . . . Measures necessary to achieve fiscal targets will protect expenditures on health and education . . . [and] budgetary allocation for social spending will be increased.”91

In addition to overstating the IMF’s role, the blanket criticism that the IMF insists on financial policies that create distributional inequities and ignore the social aspects of a country’s well-being is inaccurate in another way: it understates the degree of attention that the IMF has given in recent years to the social aspects of a country’s well-being. For well over a decade, numerous IMF-supported programs have been designed to provide specific protections for the poorest consumers and workers in borrowing member countries.92 In urging governments to provide such protections, the IMF has advanced the view that one of the elements in a “strategy of high-quality growth” for a country is “sound social policies, including social safety nets to protect the poor during the period of economic reform, cost-effective basic social expenditures, and

90. Letter of Intent and Memorandum on Economic and Financial Policies from Government of Indonesia, to Michael Camdessus, Managing Director, IMF (n.p.) (Oct. 31, 1997) [hereinafter Indonesia Letter of Intent], at http://www.imf.org/external/np/loi/103197.htm (last visited Feb. 17, 2004). The letter of intent, or more precisely the “Memorandum of Economic and Financial Policies” attached to the letter of intent, simply refers to the government’s “intentions to cut spending” by postponing “major state enterprise infrastructure projects and development expenditures.” Id. ¶ 10. See also Garuda, supra note 20, at 36 (noting the IMF’s assertion that “it does not dictate the specific details of reform programs, such as specifying the exact source of budget cuts”).

91. Indonesia Letter of Intent, supra note 90, ¶ 45. Similarly, the letter of intent submitted by the government of Indonesia in mid-January 1998, when the crisis had deepened, did not indicate particular budget cuts, and specifically called for the removal of subsidies to include exemptions “for prices of kerosene and diesel fuel, where increases will be kept to a minimum so as to protect the poor.” Government of Indonesia, Indonesia—Memorandum of Economic and Financial Policies (Jan. 15, 1998), at http://www.imf.org/external/np/loi/011598.htm (last visited Feb. 17, 2004).

92. See, e.g., INTERNATIONAL MONETARY FUND, SOCIAL DIMENSIONS OF THE IMF’S POLICY DIALOGUE 16 (Int’l Monetary Fund, Pamphlet Series No. 47, 1995) (describing policies in Jordan in 1990 to target consumer subsidies for basic food items more narrowly through a food coupon system that retained the subsidies on sugar, rice, and powdered milk for the poorest people); id. at 17 (describing a program of phased increases in bread prices in Kyrgyz Republic in the early 1990s that "replaced the consumer subsidy for bread with targeted cash transactions to pensioners and families with three or more children under the age of 16" in order to reduce the fiscal deficit by driving down the “benefits to the better-off” people in the country); id. at 18 (describing a program in Ghana to reduce the size of the civil service by ten percent but to provide severance payments, retraining, credit, and food-for-work opportunities in order to alleviate the financial impact on those losing their civil service jobs).
employment-generating labor market policies. In its most recent annual report, the IMF offered this description of how social issues bear on its operations:

The IMF is committed to integrating poverty and social impact analysis in programs supported by lending under the [IMF's Poverty Reduction and Growth Facility]. The purpose of this analysis is to assess the implications of key policy measures on the well-being of different social groups, especially the vulnerable and the poor.

When analysis indicates that a particular measure (for example, currency devaluation) may harm the poor, the impact is addressed through the choice or timing of policies, the development of countervailing measures, or social safety nets.

In short, the IMF does in fact pay a great deal of attention today to social issues and distributional fairness. That being the case, why do I place Criticism #2—"distributional and social injustice"—in the category of criticisms that I generally endorse? Because I believe the IMF still is not doing enough in these areas. In other words, although I believe the criticism is inaccurate when expressed in its bluntest form (that the IMF forces inequity and ignores social issues), I do believe a more nuanced version of the criticism is valid: the IMF still does not give enough attention to issues of distributional and social justice.

I see two reasons for this shortcoming. First, any efforts by the IMF to wade into issues of poverty, social justice, or distribution of wealth run the risk of being rebuffed by the governments that the IMF is supposed to serve. Second, any such efforts can expose the IMF to claims that it is biased toward some groups and their interests and dismissive of others. This possibility of double attack has been described in this way:

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93. Id. at 1.
94. IMF ANNUAL REPORT 2003, supra note 4, at 44. The report goes on to list some of the safety nets built into IMF-supported programs: "subsidies or cash compensation for particularly vulnerable groups; improved distribution of essential commodities, such as medicines; temporary price controls on some essential commodities; severance pay and retraining for public sector employees who have lost their jobs; and employment through public works programs." Id.
Almost paradoxically, the Fund faces a great deal of opposition when it tries to mitigate the effects of adjustment programs on the poor. Many countries resent a perceived violation of national sovereignty, viewing external involvement in sensitive issues of poverty and income distribution as paternalistic gestures by the West. On the IMF’s side, some staff members are hesitant to move away from their traditional posture of neutrality toward distributional issues, since involvement can lead to accusations of bias in favor of specific groups. This dilemma is especially evident when the Fund is pressured to consider issues ranging from environmental degradation to human rights.\footnote{Garuda, supra note 20, at 39. Garuda also emphasizes how difficult it is to know exactly what effects IMF-prescribed policies will have on the poor. The elimination of food subsidies, for example, might actually help the poor, or at least many of them, “by increasing the incomes of rural farmers,” which make up a large fraction of the poor in many developing countries. \textit{Id.} at 36.}

In my view, the IMF should wade more robustly into these issues than it has so far, mainly by placing more pressure on borrowing governments to implement IMF prescriptions for economic discipline in a way that provides solid protection of the poor, the disadvantaged, the working class, and the human and physical environment in which they live. I offer some details in this regard—why such an approach is appropriate, how it could be accomplished, and what relation it bears to recommendations I have made in the areas of trade and development—in Part IV.B of this Article.

2. Criticism #5—The democracy deficit

Some of the most insightful observations about this criticism—and about others mentioned above—come from Professor Daniel Bradlow of American University. I would emphasize two specific points he makes about how the structure and management of the IMF contribute to a democracy deficit in that institution. First, Bradlow draws an important distinction between two groups of IMF member states: “IMF supplier states” and “IMF consumer states.”\footnote{Daniel D. Bradlow, \textit{Rapidly Changing Functions and Slowly Evolving Structures: The Troubling Case of the IMF}, 94 AM. SOC’Y INT’L L. PROC. 152, 153 (2000) [hereinafter Bradlow-II].} The IMF supplier states are “those countries which, because of their wealth, their access to alternative sources of funds, and for political reasons, have no intention of using the IMF’s services in the foreseeable future, and so do not need to pay particular attention to the views of the IMF,” whereas the IMF consumer states are those “that need or know they may need IMF financing in the foreseeable future” and therefore “must pay careful attention to the views
of the IMF because these views will influence the conditions the IMF will attach to the funds it disburses."98

This fact would not in itself make the IMF unaccountable or undemocratic but for another fact: the IMF supplier states dominate decision-making in the IMF, and their domination has in fact increased over the years.99 Bradlow points out the pernicious result of this situation:

The result is that, de facto, the G-7 countries control the policy agenda in the IMF even though they do not have to live with the consequences of the policies they make for the IMF’s operations. This means that they make policy that is only of limited interest to their own citizens. The policy is, of course, of immense interest to people in developing countries who have no ability to hold the G-7 countries accountable for their decisions or actions. This situation of decision makers having power with accountability to people who do not have to live with the consequences of their decisions but without accountability to those most affected by their decisions is a situation ripe with potential for abuse.100

This form of unaccountability, emanating from voting-and-control aspects of the IMF’s structure, also bears importantly on another of the alleged “seven deadly sins” that I have identified in this Article: Criticism #7—“asymmetry in obligations.” I assess that criticism below in Part III.B.3.

Bradlow also explains other forms of unaccountability in IMF operations. For one thing, he says, the IMF “has not established any mechanism through which the citizens of its consuming countries can hold the IMF or its management accountable for their actions as decision makers” in helping develop policies in those countries.101 If part of the IMF’s insistence on good governance requires its borrowing member countries to make their own policy-makers accountable for their actions,

98. Id.
99. Id. at 154. In explaining the source and growth of this domination, Bradlow emphasizes these factors: (i) the number of IMF Executive Directors has grown more slowly than the number of IMF member states, resulting in an increase in the number of “consumer states” that must be represented by shared Executive Directors, and thus diluting (in relative terms) the effective voice of those countries relative to the “supplier states,” several of which have their own unshared Executive Director; (ii) those shared Executive Directors who represent both consumer states and supplier states are always from supplier states, so that eleven of the IMF’s 24 Executive Directors are from industrialized countries; and (iii) the permanency of supplier state representation on the Executive Board gives those states negotiating and agenda-setting advantages. Id.
100. Id. at 155.
101. Id. at 156.
Bradlow reasons, there is “no obvious reason why the IMF, when it ‘descends’ into the national policy-making process, should be less accountable to those people affected by its decisions than [are] other actors in this process.” But such accountability is almost totally lacking for two related reasons: (i) “the IMF does not have a set of publicly available operating rules and procedures,” and (ii) even if there were some established standards against which to challenge IMF operations, there is no effective process or entity through which such a challenge could be mounted.

It is worth noting that the IMF has taken some important steps recently in addressing this particular aspect of the “democracy deficit” criticism. Two stand out.

First, an Independent Evaluation Office (“IEO”) was established in July 2001 (after Professor Bradlow’s views, excerpted above, were published) in order “to conduct objective and independent assessments of issues of relevance to the mandate of the IMF.” The IEO has already undertaken several evaluation projects, including an evaluation of the IMF’s role in the economic crises in Brazil, Indonesia, and Korea. Although it is too early to assess the long-term impact of the IEO’s work, its very creation does signal a willingness on the part of the IMF to provide increased public accountability. In its current formulation, the IEO is largely an internal organ of the IMF, given the fact that the Director of the IEO is appointed by the IMF Executive Board, may be

102. Id.
103. Id. The Executive Board, Bradlow says, would theoretically be an appropriate forum for challenging the actions of the IMF’s management, but it is unrepresentative for reasons discussed above; and the Board of Governors would be neither an appropriate nor an effective forum at which to raise such a challenge. Id.
104. IMF ANNUAL REPORT 2003, supra note 4, at 60.
106. Id. For the text of the IEO Evaluation Report on the IMF’s operations in those three countries, see generally INTERNATIONAL MONETARY FUND, IMF AND RECENT CAPITAL ACCOUNT CRISIS: INDONESIA, KOREA, BRAZIL (2003), available at http://www.imf.org/external/np/ieo2003/cac/pdf/all.pdf (last visited Feb. 17, 2004). For a summary of the report, see Findings and Recommendations, 32 IMF SURVEY 220, 220–21 (Aug. 4, 2003) (noting, for example, the IEO’s finding that “the IMF’s response was inadequate in some respects” in responding to the crisis in Indonesia during the Asian financial crisis, and the IEO’s recommendations for specific improvements in IMF surveillance, in program flexibility, and in crisis coordination). For a synopsis of recommendations emerging from that evaluation and the response of the IMF Executive Board to those recommendations, see IEO ANNUAL REPORT 2003, supra note 105, at 38–40.
dismissed at any time by the Executive Board, hires other IEO officers on terms and conditions determined by the Board, depends on the Executive Board for budgetary funding, and reports to the Board.\textsuperscript{107} Although the IEO's terms of reference call for it to "be independent of Fund management and staff\textsuperscript{108}"—a requirement that is given some force by (i) requiring that a majority of IEO personnel come from outside the IMF and (ii) prohibiting the IEO Director from being appointed to a regular IMF staff position at the end of his or her term of office\textsuperscript{109}—the IEO nevertheless falls short of being an external organ broadly representative in character, empowered to exercise a fully objective review of IMF operations and to issue binding orders if it judges those operations to be improper or ultra vires.

A second recent IMF initiative—or, more precisely, a cluster of related initiatives—to increase the institution's accountability to the citizens of IMF consumer countries centers on the notion of "voice." In order to increase the "voice" (without tampering with voting strengths) of member governments in IMF deliberations—and hence presumably reducing the relative influence of the IMF's management and staff—the International Monetary and Financial Committee has been given broader authority,\textsuperscript{110} thereby providing "greater direct involvement of governments in the policy-making process within the Fund."\textsuperscript{111} In a similar effort to strengthen the "voice" of developing countries, the IMF's Executive Board is continuing to develop the IMF's Poverty Reduction Strategy Paper ("PRSP") process,\textsuperscript{112} introduced in 1999, by which written plans for reducing poverty "are prepared by low-income countries through a participatory process involving domestic stakeholders and external development partners, and are endorsed by the IMF and the World Bank."\textsuperscript{113} As another effort to strengthen the "voice" of the most thinly-represented countries, the IMF's Executive Board is undertaking efforts to "address staffing and technological constraints of the two sub-Saharan African constituencies" on the Executive Board.\textsuperscript{114}

\textsuperscript{107} See IEO ANNUAL REPORT, supra note 105, at 27 (setting forth the terms of reference of the IEO). Indeed, the Executive Board has authority to quash the publication of IEO reports. \textit{Id}.

\textsuperscript{108} \textit{Id}.

\textsuperscript{109} \textit{Id} at 2 (enumerating various aspects of IEO independence).

\textsuperscript{110} See supra note 13 and accompanying text (discussing the increasing role of the International Monetary and Financial Committee).

\textsuperscript{111} Gianviti, supra note 13, at 115.

\textsuperscript{112} IMF ANNUAL REPORT 2003, supra note 4, at 61.

\textsuperscript{113} \textit{Id} at 40. For further details on the PRSP process, including its introduction in 1999, see International Monetary Fund, Poverty Reduction Strategy Papers—A Factsheet (Sept. 2003), at http://www.imf.org/external/np/ext/facts/prsp.htm (last visited Feb. 17, 2004).

\textsuperscript{114} IMF ANNUAL REPORT 2003, supra note 4, at 61.
In sum, the IMF has taken some steps recently that respond in part to the complaint that it is unaccountable to the citizens of IMF consumer countries. These steps, although rather modest in scope so far, are laudable.

Another form of unaccountability emerges from the IMF’s legal authority to interpret its own Charter. One self-described “third-world scholar” has offered the following critical description of that authority:

[Under the pertinent provision,] an essentially legal question is decided by a non-legal body which appears to be under no obligation to decide the matter according to legal considerations. Furthermore, given that it is action by the Executive Directors that is most often in dispute, this system provides little remedy at all for the situation. In fact, the provision . . . represents a fundamental departure from the “rule of law”—a basic premise of which is that executive actions should be subject to review by an independent judicial process.

Another thoughtful, recent discussion of the “democracy deficit” comes from Ngaire Woods, a Fellow in Politics and International Relations at University College, Oxford (where, coincidentally, I first studied law in the 1970s). Ms. Woods examines several aspects of the problem, which she calls, probably more aptly, the “accountability deficit,” and traces it to several factors.

First, she says, the representation of member countries on the Executive Board of the IMF (and on that of the World Bank) is too unequal now, partly because of changes in members’ quotas: whereas the proportion of “basic votes” to total votes in the IMF in earlier years provided some equality among the members (that proportion was fourteen percent, for example, in 1955), now the “basic votes” amount to a tiny proportion (about three percent, according to Ms. Woods).

115. For the text of the IMF Charter provision granting this authority, see supra note 34.
116. Anglie, supra note 19, at 270–71. Although the specific provision to which Anglie refers is Article IX(a) of the charter of the International Bank for Reconstruction and Development (IBRD), that provision is virtually identical to Article XXIX of the IMF Charter. That Anglie intends for his comments to apply both to the IBRD and to the IMF is evident from the next sentence in the passage quoted above: “Basically, then, the IFIs [international financial institutions] appear not to be subject to any external scrutiny as to their adherence to the rule of law.” Id. at 271.
118. Id. at 100.
119. Id. at 87. Professor Bradlow has also emphasized the importance of this decline in the importance of “basic votes.” Bradlow-II, supra note 97, at 155 (giving proportions for 1946, 1982, and 2000 as 11.3%, 5.6%, and 2.2%, respectively). As explained above in my “nutsandshell” account of the IMF, supra Part I.B, each IMF member country has an allotment of 250 basic votes plus one
Second, Ms. Woods says, the Executive Board does not adequately hold staff and management to account, for several reasons, including the rapid rotation of Executive Directors, their protectiveness toward the countries they represent, the tendency of the staff and management not to divulge internal disagreements to the Executive Board, and the practice of reaching decisions prior to Executive Board meetings.¹²⁰

Third, Ms. Woods explains that the heads of both the Bretton Woods institutions—the Managing Director of the IMF and the President of the World Bank—"are selected by a non-transparent process which excludes most member countries"¹²¹ because of a long-standing compromise by which "the head is appointed by convention according to the wishes of the United States (in respect of the World Bank) or western Europe (in respect of the IMF)."¹²²

A fourth element of the democracy deficit, or accountability deficit, that Ms. Woods highlights relates to the "mission creep" criticism. According to Ms. Woods, "[t]he role of the IMF and World Bank has expanded; their accountability has not."¹²³ Indeed, she says, "the IMF and the World Bank were neither created nor structered to undertake or to be accountable for such far-reaching activities."¹²⁴

I have identified in the preceding paragraphs a variety of important factors that contribute to the IMF's "democracy deficit." They are important enough to warrant a brief summation: (i) control over the IMF by the supplier states (G-7 countries and other industrialized countries) results in policies that the people in consumer states have no ability to influence; (ii) likewise, people in consumer states have no adequate mechanism for holding the IMF itself (as distinct from the IMF's controlling states) accountable for its decisions, because the IMF has neither an adequate set of publicly-available operating rules against which to challenge its actions nor an adequately independent process or

additional vote for each part of its quota equivalent to 100,000 SDRs. As of late August 2003, the IMF had 184 member countries, and the total voting power of those member countries was 2,168,501 votes. IMF SURVEY SUPPLEMENT, supra note 4, at 30. With 250 basic votes per member, the total number of basic votes for all members would be 250 x 184 = 46,000 basic votes. Thus the current proportion of "basic votes" (46,000) to total votes (2,168,501) is 2.1%. For details about each member country's voting power, see generally IMF Members' Quotas, supra note 16.

¹²¹ id. at 88.
¹²² id.
¹²³ id. Ms. Woods refers to two points already mentioned above: (i) the broadened scope of policy matters in which the IMF involves itself (noting that "both the IMF and the World Bank now embrace areas of policy it was inconceiveable they would touch prior to the 1980s"); and (ii) the increase in the number of conditions placed on IMF loans (averaging, by one survey, "between 6 and 10 measures in the 1980s, as contrasted with around 26 measures in the 1990s"). id.
¹²⁴ id. at 89.
entity through which a challenge could be mounted (although the IEO must be regarded as a good start in that direction); (iii) the power of the IMF’s Executive Board to interpret the IMF Charter (and hence to judge the legality of its own actions thereunder) also prevents any formal external accountability or democratic influence; (iv) representation of member countries on the IMF’s Executive Board has actually become progressively more unequal in recent years because of the dilution of “basic votes”; (v) the Executive Board is not in a position to hold IMF staff and management adequately accountable for their actions, because of (among other things) the rapid rotation of directors; (vi) the IMF’s Managing Director is selected by a non-transparent process that excludes most member countries; and (vii) the effects of all these aspects of unaccountability are only aggravated by the IMF’s expansion into a broader range of activities.

Given these various factors, it should come as no surprise that the “democracy deficit” criticism has emerged. I find it generally valid. I believe that although it would be impossible to overcome all aspects of an IMF “democracy deficit” in a world composed of countries that are dramatically unequal in economic terms,125 and although we should not lose sight of the important efforts the IMF has already made to overcome some aspects of the “democracy deficit,”126 much remains to be done to make the IMF itself, and the countries that control it, more accountable to all people whose lives the IMF affects—or, expressed in simple terms, to bring a much greater measure of democracy to the IMF.

How can this be done? I believe the answer lies in expanding several existing forms of IMF accountability and inventing new ones. I outline some specific recommendations in this regard in Part IV.A of this Article.

3. Criticism #7—Asymmetry in obligations

In a sentence, this criticism complains that a handful of rich countries, whose control over the IMF allows them to insist (through conditionality) that the poor borrowing member countries follow certain

125. See Gianviti, supra note 13, at 116 (noting “how difficult it is for a monetary institution to reconcile the principle of equality of nations under international law with the reality of their unequal economic and financial weights”).

126. See supra notes 104–14 and accompanying text. IMF efforts to address some aspects of the “democracy deficit” complaints are acknowledged by outside observers. See, e.g., Garuda, supra note 20, at 39 (noting the IMF “has improved its coordination with non-governmental organizations . . . , donor countries, and other institutions”).
economic and financial policies, are under no real pressure to follow those policies themselves. This criticism—which attaches both to the IMF’s rich controlling members themselves for insisting on the one-sided obligations and to the IMF for permitting itself to be used as the enforcer of such obligations—is less widely voiced than many others I have discussed in this Article, perhaps because it is rather complex in character, resulting as it does from a combination of elements that attract plenty of attention on their own: conditionality and weighted voting.

I view this criticism as one of the most serious facing the IMF. It also faces the MDBs, and I offered my views on it in my recent article on those institutions.\(^{127}\) I ask the reader’s indulgence while I apply most of those same observations to the IMF.

Independently, both the weighted voting system and conditionality strike me as appropriate in the context of IMF operations. After all, why shouldn’t those countries providing the most financial backing for an institution have the most control over its policies; and why shouldn’t a financial institution that depends on repayments of loans in order to stay alive be permitted (indeed, required) to ensure that the borrower takes action likely to enable that borrower to repay the loan?

However, although each of the two features (weighted voting and conditionality) standing alone is legal and desirable, the two of them combined in the context of actual IMF operations can be nettlesome. Why? Because they result in asymmetrical obligations: the countries that control (through the weighted voting system) the IMF’s policies in imposing conditionality are the very countries that do not borrow from the IMF and to whom the policies prescribed by the IMF do not apply. Thus, the actual operation of conditionality smacks of unfairness and hypocrisy. What is sauce for the goose should, it seems, be sauce for the gander.

The sense of unfairness and hypocrisy gets stronger when the two countries that have the most votes in the IMF—the United States and Japan\(^{128}\)—regularly engage in behavior that seems inconsistent with the economic and financial policies on which the IMF insists. Those economic and financial policies that the IMF insists on include such

\(^{127}\) See Head, For Richer or For Poorer, supra note 2, at 293–95. I have raised this concern before. See Head, Suspension of Debtor Countries’ Voting Rights, supra note 4, at 642 (noting the perceived unfairness in the fact that “whereas LDCs are obliged to follow IMF economic policy prescriptions because of their need for external financing, the United States can continue to disregard such prescriptions”).

\(^{128}\) As noted above, the United States controls 17.14\% of total voting power in the IMF, and Japan controls 6.15\%. See supra note 16.
things as avoiding large budget deficits, imposing tough supervision of financial institutions to avoid sharp or imprudent practices, closing or restructuring troubled financial institutions, liberalizing trade policies, and opening up investment opportunities for foreigners.\textsuperscript{129} Some policies and developments in the United States and Japan in recent years—the U.S. savings-and-loan crisis of the 1980s, lax standards on corporate governance more recently, accounting and auditing scandals, Japan's much-criticized handling of its banking institutions, both countries’ frequent budget deficits, and trade protectionism in steel and agriculture\textsuperscript{130}—would almost surely have run afoul of IMF conditionality had either of those countries sought to borrow from the IMF.

Indeed, U.S. economic practices recently received intense criticism in an IMF staff report that gained front-page headlines in \textit{The New York Times}.\textsuperscript{131} The \textit{Times} article offered this summation:

\begin{quote}
With its rising budget deficit and ballooning trade imbalance, the United States is running up a foreign debt of such record-breaking proportions that it threatens the financial stability of the global
\end{quote}


\textsuperscript{130} For examples of critical discussions within the IMF of economic and financial policies followed by the United States and Japan, see the reports of IMF Article IV consultations with those countries, available on the IMF website: International Monetary Fund, \textit{United States and the IMF}, at http://www.imf.org/external/country/USA/index.htm (last updated Feb. 17, 2004); International Monetary Fund, \textit{Japan and the IMF}, at http://www.imf.org/external/country/JPN/index.htm (last updated Jan. 7, 2004).

economy, according to a report released [on January 6, 2004] by the International Monetary Fund.

Prepared by a team of I.M.F. economists, the report sounded a loud alarm about the shaky fiscal foundation of the United States, questioning the wisdom of the Bush administration’s tax cuts and warning that large budget deficits pose “significant risks” not just for the United States but for the rest of the world.

[Many international economists said they were pleased that the report raised the issue.]

If such a report were issued about a country wishing to borrow from the IMF, that country’s government would obviously need to change its policies. However, “White House officials dismissed the report as alarmist.”

I believe it is important to find ways of reducing this asymmetry in obligations. I outline some suggestions for this in Part IV.A of this Article.

IV. THE FUTURE OF THE IMF—A SUMMARY OF SUGGESTED REFORMS

I have identified in Part III of this Article three criticisms that I generally endorse. They focus on “distributional and social injustice” (Criticism #2), the “democracy deficit” (Criticism #5), and “asymmetry in obligations” (Criticism #7). While it is not my aim in this Article to offer detailed recommendations, I shall outline below the general nature of changes that I believe would help respond to and overcome those three criticisms.

Before proceeding to that summary of suggested reforms, however, it is worth pausing to note the various types of work that the IMF does that have not attracted substantial criticism. As noted above in my “nutshell” account of the IMF, although its lending operations are the most visible aspect of the institution’s activities, the IMF carries out numerous other functions. These include providing technical assistance and

133. Id.
134. I hope to offer more detailed recommendations in a book scheduled for publication by Transnational Publishers in 2005, tentatively titled Damning the Global Economic Organizations: An Evaluation of Criticisms Leveled at the IMF, the Multilateral Development Banks, and the WTO.
135. See supra Part I.B.
conducting Article IV consultations, as well as undertaking an enormous volume of valuable research. These activities should continue (with ongoing scrutiny, of course, as to how they might be improved). Indeed, under the reforms I outline below, each of them would assume a somewhat more prominent place in IMF operations.

It is also important to bear in mind the very substantial transfer of resources from rich countries to poor countries that the IMF has encouraged and presided over. A first example of this came in the 1970s. A political compromise struck in the negotiations of the Second Amendment to the IMF Charter provided that the IMF would sell fifty million ounces of gold, with the profit from half that amount earmarked for less developed countries. Part of the profit was to be remitted to each such country directly, and part was to be set aside for the benefit of specified, especially needy less developed countries. To that end, the IMF established a Trust Fund separate from its other holdings. Loans made by the IMF from that Trust Fund carried "[a] highly concessional interest rate, equal to one-half of 1 percent." In the late 1970s and early 1980s a total of SDR 2.9 billion was made available to less

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138. For a description of the aims and scope of the IMF’s research program, and the information coming out of it to aid policy-makers, regulators, and other researchers, see the list of Staff Papers and similar publications available from the IMF. International Monetary Fund, Research at the IMF, at http://www.imf.org/external/pubs/res/index.htm (last updated Feb. 1, 2004). For an evaluation of the IMF’s track record in one aspect of its research work (forecasting government deficit for each of the G-7 countries), see generally Michael Artis & Massimiliano Marcellino, Fiscal Forecasting: The Track Record of the IMF, OECD and EC, 4 ECONOMETRICS J. S20 (2001).

139. For a critical assessment of what I consider one of the most important forms of IMF technical assistance—helping prepare banking legislation—see generally Gary A. Gegenheimer, Technical Assistance or Excessive Technicality? A Critique of the International Monetary Fund’s Model Commercial Banking Law for Transition Economies, 20 ANN. REV. BANKING L. 143 (2001). According to that assessment, the model banking law that has been developed by the IMF and used in helping authorities in various transition economies write national banking legislation “is seriously flawed” because it emphasizes form over substance and grants excessively broad authority to banking supervisory authorities to shut down banks. Id. at 145.

140. EDWARDS, supra note 4, at 294–95. See also INTERNATIONAL MONETARY FUND, PROPOSED SECOND AMENDMENT TO THE ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND 42–43 (Mar. 1976) (describing the proposed sale of gold and distribution of part of the proceeds to less developed countries, and the establishment of a Trust Fund to facilitate this process); Joseph Gold, Trust Funds in International Law: The Contribution of the International Monetary Fund to a Code of Principles, 72 AM. J. INT’L L. 856, 860–61 (1978) (referring to the sale of gold and the establishment of the Trust Fund, with the aim of assisting countries with low per capita income).

141. FINANCIAL ORGANIZATION AND OPERATIONS, supra note 4, at 113.
developed countries from that Trust Fund. In a similar vein, special funding was made available again beginning in the late 1980s for the benefit of less developed countries. The Structural Adjustment Facility ("SAF") and the Enhanced Structural Adjustment Facility ("ESAF") were established in March 1986 and December 1987, respectively, to provide assistance on concessional terms to low-income IMF member countries facing protracted balance-of-payments problems. Between 1987 and 2003, a total of SDR 12.3 billion was disbursed by the IMF in loans made under the SAF or the ESAF—or under the Poverty Reduction and Growth Facility ("PRGF"), which in the late 1990s became the successor to the ESAF. Combining these figures for Trust Fund loans (SDR 2.9 billion) and SAF/ESAF/PRGF loans (SDR 12.3 billion) and expressing them in U.S. dollars at the current SDR value yields a total of over $22 billion that has been provided to less developed countries on very attractive terms—illustrated by the current PRGF terms of 0.5 percent interest rate and repayment stretched over about five years with repayment starting five and one-half years after disbursement.

In short, the IMF has performed several functions that are largely uncontroversial and that have inured to the benefit of the less developed countries that make up the bulk of its membership. It is partly to strengthen the ability of the IMF to perform those important functions, as well as to overcome some of the shortcomings in its structure and its lending operations, that I outline below some suggestions for bringing reform both (i) to the IMF itself and (ii) to the relations the IMF has with its member countries.

A. Structural and Operational Changes in the IMF

The following list of possible reforms emerges from my analysis in Part III.B of the criticisms that I generally endorse regarding the IMF. The list also draws in part from the valuable work done by Professor

142. Id. at 84. For a year-by-year breakdown of the disbursements from Trust Fund loans, see IMF ANNUAL REPORT 2003, supra note 4, at 106.
143. FINANCIAL ORGANIZATION AND OPERATIONS, supra note 4, at 78, 80. For more details on the ESAF, see International Monetary Fund, IMF Concessional Financing through ESAF (Sept. 5, 1999), at http://www.imf.org/external/np/exr/facts/esaf.htm (last visited Feb. 17, 2004).
144. See IMF ANNUAL REPORT 2003, supra note 4, at 106 (showing year-by-year disbursements under various types of ADB arrangements).
145. For some details on the PRGF, see IMF SURVEY SUPPLEMENT, supra note 4, at 17–18.
146. The value of the SDR, expressed in U.S. dollars, was about $1.49 as of late January 2004. The current value of the SDR may be found on the IMF’s website at http://www.imf.org/external/fin.htm (last visited Feb. 17, 2004).
147. IMF SURVEY SUPPLEMENT, supra note 4, at 15.
Bradlow and Ms. Woods referred to earlier, as well as a few others. All of the changes outlined below would address the “democracy deficit” criticism; the last change suggested below would also address the “asymmetry in obligations” criticism.

- The IMF management could create, and submit to the Executive Board for formal approval, a relatively comprehensive Operational Manual, similar to that in the World Bank, compiling in one place the various policies that have been adopted by the Executive Board and the Board of Governors. These would most effectively appear in two categories: (i) policies governing the IMF’s internal operations; and (ii) policies that IMF members are expected to follow in their own financial, economic, and structural matters and in their relations with the IMF. The first category would include IMF policies on transparency (of the IMF itself), the terms applicable to various types of financial facilities available to member countries, the new guidelines on conditionality, rules on consulting with civil society groups, procedures for carrying out regional and global surveillance, policies on collaborating with the World Bank and other institutions, and so forth. The second category would include policies of the sort I enumerate more fully in Part IV.B of this Article.

- The Executive Board could adopt, after consultation and an opportunity for public comment, formal decisions (i) defining the scope of the IMF’s mandate, so it will be easier “for outsiders to understand why the IMF is willing to address certain issues but not other issues,” and (ii) construing the meaning of Article IV, Section 3(b) of the IMF Charter, which provides that in its surveillance activities the IMF shall “respect the domestic social and political policies of members.”

- The IMF management could put in place formal procedures to ensure that IMF staff working with government authorities interact with a range of persons and agencies—that is, that IMF

148. See generally Bradlow-II, supra note 97; Woods, supra note 117.
150. Bradlow-II, supra note 97, at 159.
151. Id. at 157.
152. Id. at 157, 159.
153. IMF Charter, supra note 6, art. IV, § 3(b).
staff not limit such interactions only to authorities of the central bank or ministry of finance in those countries requesting financial assistance from the IMF. The formal procedures might call for consultations with “government ministries whose budgets will be affected by the specific actions [the IMF] is advocating, with the legislators who will need to pass the laws [if any] that follow from the IMF’s proposed policies, and with [certain relevant] actors in civil society.”

• The Board of Governors could revise the structure of the Independent Evaluation Office to make the IEO more genuinely independent of the IMF Executive Board. For example, modifications that might be considered at the upcoming review of the IEO’s first three years of operation, could include: (i) providing for appointment of one or more IEO panel members by some entity (or entities) other than the IMF Executive Board; (ii) providing procedures by which cases alleging IMF breach of its own policies or Charter could be brought more directly before the IEO without review of the IEO’s work program by the IMF Executive Board; (iii) creating (perhaps for that purpose) a position of ombudsman “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”, (iv) requiring that the IEO’s hearings (although not all of its meetings) be open to the public and that records of its proceedings be available to the public (subject to valid confidentiality concerns); and (v) requiring that either the IMF’s management or its Executive Board must issue a public response to each recommendation emerging from an IEO evaluation.

154. Bradlow-II, supra note 97, at 155. See also Welch-II, supra note 29, at 3 (asserting that “discussions between the IMF and a borrowing country, to the greatest extent possible, must involve the full range of cabinet ministers and parliamentary leaders” and that there should be “consultation with the public by the government through regular interactive meetings, hearings, and workshops”).

155. For details about the degree of control that the Executive Board can exercise over the IEO, see supra note 107 and accompanying text.

156. The IEO’s terms of reference provide that the IMF Executive Board “should initiate an external evaluation of IEO to assess its effectiveness and to consider possible improvements to its structure, mandate, operational modalities, or terms of reference.” IEO ANNUAL REPORT 2003, supra note 105, at 28.

157. For several of these points I draw liberally from Welch-II, supra note 29, at 3.

158. Bradlow-II, supra note 97, at 158.

159. The Executive Board did issue responses to each of the first three evaluation reports issued by the IEO. See IEO ANNUAL REPORT 2003, supra note 105, at 34-43 (outlining pertinent IEO recommendations, the Executive Board responses, Staff Task Force recommendations, and any follow-up). However, such responses do not appear as requirements in the IEO’s terms of reference.
• The Board of Governors could continue to place more responsibilities with the International Monetary and Financial Committee—beyond those already given to it recently—to transform it even more "into a decisionmaking council for the major strategic orientations of the world economy" and might, in addition, expand its membership to enhance further its ability to reflect the broad interests of its shareholders.

• The membership of the IMF could revise the IMF Charter "to increase the basic votes to at least their original proportion" of the total voting strength in the IMF, in order to restore the degree of equality among members (despite the weighted voting system) that was envisioned by the IMF's creators.

• The IMF could "mov[e] . . . away from its current practice of making decisions on the basis of consensus to making decisions on a basis that better reveals the preferences of those states which will be most affected by the decisions."

• In order to help address the "symmetry in obligations" criticism, the membership could revise the IMF Charter to link some portion of each member's voting power to its economic and financial policies and performance, in much the same way as I have proposed in the context of the MDBs. Under this approach, if an IMF member country were to depart substantially and chronically from economic and financial policies agreed to with the IMF (probably during Article IV consultations), that

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See id. at 27–28 (describing the IEO's duties and the flexibility the Executive Board has in issuing responses). Indeed, those terms of reference require that the publication of IEO evaluations "will be accompanied by . . . conclusions reached by the Board in considering the evaluation report." Id. at 28. This suggests that IEO evaluations cannot be published without such Executive Board conclusions.

160. For a description of the IMFC and its functions, see supra notes 13–14 and accompanying text.


162. Bradlow-II, supra note 97, at 158.

163. For an explanation of "basic votes" and their purpose, see supra note 119 and accompanying text.

164. Bradlow-II, supra note 97, at 158. Bradlow suggests that the IMF might "require separate votes by those executive directors who represent consumer countries and those who represent supplier countries," and then "[a]ny decision would only be adopted if it commanded a majority of both groups." Id. Some assumptions on which this suggestion rests—that the "consumer countries" are more affected by IMF decisions than "supplier countries" and that the former are entitled to equal, or more, influence over such decisions—warrant further consideration, which I hope to give them in further writings on this subject. I am indebted to Bob Hockett for raising this point with me.

165. See Head, For Richer or For Poorer, supra note 2, at 309–11 (proposing the use of standardized economic and financial criteria for this purpose).
member’s voting power could be partially suspended until the member corrects its behavior.\textsuperscript{166}

\textbf{B. Enhancing Competence in National Governance}

A second set of suggested reforms would focus not on the IMF itself but instead on the IMF’s relationship with its member countries—and, in particular, on how the IMF can help enhance economic stability in the world by (i) demanding more of its member countries and (ii) providing more to them in the way of technical assistance.

My views regarding the role of the IMF vis-a-vis its member countries rest on three related points. First, today’s world requires dramatically more competent national governance, especially in the areas of economics and finance, than it ever has before. Second, today’s world has many national governments that are corrupt and incompetent. Third, the best hope for rectifying this mismatch—that is, the mismatch between (i) the need for better national governance and (ii) the reality of wretched national governance—lies in cooperative action through multilateral institutions.

The first of these three points, that national governments have a higher duty of care now than ever before to manage their economies competently, was expressed by former IMF Managing Director Michel Camdessus a couple of years ago:

\begin{quote}
Whether a country is large or small, \textit{[economic] crises can now become systemic through contagion. Domestic economic policy must take into account its potential worldwide impact; a duty of universal responsibility is incumbent, making each country responsible for the stability and quality of world growth.\ldots}

This adds a new dimension to the duty of excellence and rectitude that is required of every government in the management of its economy. Globalization is a prodigious factor in accelerating and spreading the international repercussions of domestic policies. Thus, the IMF emphasizes three points [in dealing with its member states]:
\end{quote}

\textsuperscript{166} This possible remedy—suspension of voting power—has a clear precedent in the IMF. The third amendment to the IMF Charter, forced on most of the membership by the United States in the early 1990s, calls for a suspension of a member country’s voting rights in certain cases of its failure to repay loans to the IMF on time. See\textit{ Head, Suspension of Debtor Countries’ Voting Rights, supra} note 4, at 630–35 (explaining the details of the third amendment); \textit{id.} at 639–40 (noting the only grudging acceptance of the third amendment by most less developed countries).
rigor and transparency, growth centered on human development, and government reform.\footnote{167}

The second of the three points I mentioned above, that many national governments are either corrupt or incompetent (or both), is reflected in this scathing broadside attack (issued by a Ghanian) on the quality of governance in much of Africa:

[G]overnment, as it is understood in the West, does not exist in many parts of Africa. What exists is a Mafia state—government hijacked by crooks, thugs, and gangsters, who use the instruments of state power to enrich themselves, their cronies, and their tribesmen. All others are excluded from the government. The ruling elite perceives government, not as a vehicle for reform or as a way to serve the people, but as a way to fleece the people. The institutions of the state have been taken over by the ruling elites, corrupted, and their functions perverted to serve the interests of the elite. Practices such as meritocracy, rule of law, property rights, transparency, and administrative capacity have vanished.\footnote{168}

What, then, is to be done? If both of these points are correct—(i) that our world needs, more than ever before, national governments that are competent, and (ii) that our world suffers from many incompetent or corrupt national governments—what can be done to remedy the situation? I cast my vote for multilateral solutions. In my view, the best hope for the future in terms of preventing global economic storms, or at least limiting the damage they cause, lies with global efforts to improve the competence and effectiveness of national governments. I endorse the views expressed by Professor Harold James of Princeton. After tracing the IMF’s gradual expansion of emphasis into four new areas—military spending, corruption, democracy, and transparency of national governments—James makes this observation:

\footnote{167} Camdessus, supra note 161, at 364. I might qualify the point M. Camdessus makes in the first sentence quoted above by suggesting that economic crises could probably always become systemic through contagion. The new aspect that places national governments a higher duty of care now than ever before is the speed with which contagion spreads, thanks to modern technologies of communication. I am indebted to Bob Hockett for noting this important point.

\footnote{168} George B.N. Ayittey, How the Multilateral Institutions Compound Africa’s Economic Crisis, 30 L. & Pol’y INT’L BUS. 585, 589 (1999). Ayittey, highly critical of IMF and World Bank operations in Africa, calls for these institutions to support indigenous initiatives of the people (not the governments) of Africa, on grounds that political change must precede economic and institutional reform there. Id. at 597–600.
The gradual extension of the IMF into these areas [of military spending, corruption, democracy, and transparency] is an immediate result of the new consensus about economic practice and of a new world political order that it has helped to produce. But it reflects something more profound—a realization increasingly shared throughout the world that the world economy, and world institutions, can be a better guarantee of rights and of prosperity than some governments, which may be corrupt, rent-seeking, and militaristic. Economic reform and the removal of corrupt governments are preconditions both for the effective operation of markets and for greater social justice. Indeed, these two results, far from being contradictory as some critics imagine, are complementary.\(^{169}\)

In my view, these three points—the increased need for competent governance, the prevalence of incompetent national governments, and the possibility of relying on multilateral solutions and institutions—yields the following principle to guide the IMF in coming years: the IMF should serve as a vehicle by which the international community (i) insists on the adherence by all countries to certain minimal standards and (ii) provides help for those countries whose governments cannot or will not make the grade.

In my recent article on the MDBs, I recommended that those institutions impose minimum standards on their members in a variety of areas, including good governance, environmental protection, human rights, financial prudence, and investment guidelines.\(^{170}\) I believe the same recommendation should be considered for the IMF. Such minimum standards already exist, of course, either in the form of treaties that scores of countries have already expressly accepted or in the form of guidelines developed by international entities with recognized expertise. An abbreviated list of such treaties and guidelines would include the following:\(^{171}\)

\(^{169}\) James, supra note 63, at 47.
\(^{170}\) Head, For Richer or For Poorer, supra note 2, at 312–14.
\(^{171}\) Many of the treaties listed below, along with information about the number of states participating in them, may be found in Burns H. Weston et al., Supplement of Basic Documents in International Law and World Order app. (3d ed. 1997). For information on, and citations to, the Basel guidelines and principles, the OECD guidelines, and the foreign direct investment guidelines listed below, see Head, For Richer or For Poorer, supra note 2, at 314. For information about the last three items on this list, see International Monetary Fund, Standards and Codes: The Role of the IMF—A Factsheet (Apr. 2003), at http://www.imf.org/external/np/exr/facts/sc.htm (last visited Feb. 17, 2004).
• Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)
• Vienna Convention for the Protection of the Ozone Layer (1985), and pertinent provisions of the Protocols thereto and of the Amendments to those Protocols
• Convention on Biological Diversity (1992)
• Kyoto Protocol on Global Warming (1998)
• International Covenant on Civil and Political Rights (1967)
• International Covenant on the Elimination of All Forms of Racial Discrimination (1966)
• Convention on the Elimination of All Forms of Discrimination Against Women (1979)
• Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984)
• OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)
• Basel guidelines on capital adequacy
• Basel core principles on banking supervision
• OECD guidelines on corporate governance
• Guidelines for treatment of foreign direct investment, adopted by the Development Committee of the World Bank
• Special Data Dissemination Standard (IMF)
• Code of Good Practices in Fiscal Transparency (IMF)
• Code of Good Practices on Transparency in Monetary and Financial Policies (IMF)

I believe the IMF should have some role in encouraging its member countries to accept and abide by the core obligations set forth in these treaties and guidelines and in other standards designed to promote distributional and social justice. I think I am not alone in this view. In a speech delivered at Oxford University shortly after leaving his position as IMF Managing Director, Michel Camdessus offered a long list of objectives that the IMF should focus on, through its surveillance
activities and through programs it designs, to help countries "realize their global responsibilities."\textsuperscript{172} In addition to calling for "high-quality growth [that] . . . emphasizes equity, poverty alleviation, and empowerment of the poor . . . [and that also] stresses protection of the environment and respects national cultural values,"\textsuperscript{173} Camdessus enumerated the following issues with which the international financial institutions should concern themselves:

- encouraging participatory democracy
- encouraging transparency, openness, and accountability
- combating collusion, corruption, and nepotism
- suppressing arms transfers and military expenditures
- emphasizing poverty alleviation as the "centerpiece of economic policy"
- promoting free markets and trade liberalization
- providing for social safety nets
- devoting public spending to education and health care\textsuperscript{174}

Camdessus did not specify in his speech how the IMF should encourage its member countries to pursue these objectives. I would offer the following ideas, which I hope to explore more fully in another setting.\textsuperscript{175}

- First, it is worth considering making it a requirement of IMF participation—through an additional protocol or through an amendment to the IMF Charter if necessary—\textsuperscript{176} that a country accept the core obligations in all the treaties and guidelines I listed above, along with standards designed to promote distributional and social justice. Under this approach, any country that is not already an IMF member would be barred from membership until it accepted those core obligations; and each current member country would have its

\textsuperscript{172} Camdessus, \textit{supra} note 161, at 364.
\textsuperscript{173} \textit{Id.} at 364–65.
\textsuperscript{174} \textit{Id.} at 365–67.
\textsuperscript{175} See \textit{supra} note 134 (noting a book scheduled for publication in 2005).
\textsuperscript{176} As the IMF General Counsel has pointed out, the IMF Charter imposes some constraints on how much the IMF can insist, through conditionality, that borrowing member countries adhere to other international agreements. See Gianviti, \textit{supra} note 13, at 115 (discussing constraints on conditionality).
membership suspended until it did so as well. I made a similar suggestion in my assessment of the MDBs.\textsuperscript{177}

- Second, in designing mechanisms by which the IMF could encourage its member countries to abide by the obligations set forth in those treaties, guidelines, and standards, policy-makers should take note of the distinction Professor Bradlow has made between implementation and enforcement.\textsuperscript{178} The scope of "implementation," under Bradlow's distinction, involves having international financial institutions "us[e] their technical assistance and information gathering capacity"\textsuperscript{179} to collect data and share it with specialized agencies having subject-matter competence.\textsuperscript{180} An "enforcement" role, by contrast, would be much broader—involving, for example, loan conditionalities that would result in a suspension of financial assistance if the country acted in breach of its commitments.\textsuperscript{181}

- Using that distinction between implementation and enforcement, I would then suggest a bifurcated role for the IMF. In respect of all the core obligations referred to above, the IMF could have an implementation role—that is, a role that would involve collecting information, making it public, sharing it with other specialized agencies having competence in the subject-matter of the treaty, guidelines, or standards at issue, and thereby bringing the pressure of public opinion (favorable or unfavorable, as the case may be) on how well a country has honored its obligations in those respects. But the IMF would also have an enforcement role with respect

\textsuperscript{177} See Head, For Richer or For Poorer, supra note 2, at 307 (proposing "that the MDB membership requirements be expanded, in much the same way that participation in the GATT . . . was made subject to the 'single package' approach agreed upon in the Uruguay Round of trade negotiations" so that "membership in an MDB would require that a country accept certain specified obligations in basic (existing) multilateral treaties relating to environmental protection, human rights, and good governance"). For this purpose, I identified certain core obligations of such treaties. Id. at 323–24.

\textsuperscript{178} See Bradlow-I, supra note 37, at 728 (distinguishing between enforcement and implementation of international legal obligations in examining how, if at all, international financial institutions should deal with issues of international humanitarian law).

\textsuperscript{179} Id. at 729.

\textsuperscript{180} Id. at 715–16.

\textsuperscript{181} Id. at 726–27 (discussing the possibility of using loan conditions to enforce international humanitarian law).
to those few treaties, guidelines, and standards that bear most directly on the economic well-being of the member country—including, for example, the OECD anti-bribery convention and the Basel principles on banking supervision and capital adequacy.\textsuperscript{182}

- Lastly, what would the enforcement role of the IMF involve? I suggest consideration of two types of such an enforcement role. The first is familiar: condition a member country’s access to IMF financial assistance on the country’s performance of its obligations. The second, which would be novel, would be to give more teeth to the IMF’s surveillance function by linking Article IV consultations to voting power: in those cases where the IMF found in the course of Article IV consultations that a member country has departed substantially and chronically from its obligations under the specified treaties, guidelines, and standards, or from other economic and financial policies agreed to earlier with the IMF, the member country’s voting power would be partially suspended until the country corrects that shortcoming. I proposed a similar linkage also in my recent examination of MDBs\textsuperscript{183} and explained that it would result in a modification of the weighted voting system, so that a member’s usable voting power would be based on its subscription to capital, as under current rules, unless (and to the extent that) the member’s failure to abide by its obligations triggered a partial suspension of that voting power.

The points sketched out above have suggested how the IMF might get more insistently in encouraging its member countries to live up to the minimum standards that are increasingly recognized as essential for competent governance in an interconnected world. But there is also

\textsuperscript{182} It is conceivable that the IMF could also, at some point in the future, have an enforcement role with respect to those treaties and guidelines as to which another specialized agency had requested the IMF to exert influence over a member country that had, in the expert view of that other specialized agency, failed to abide by its obligations under the treaty or guidelines at issue. But such a role for the IMF would not seem appropriate until what Camdessus calls “a new sense of world citizenship” has emerged. Camdessus, supra note 161, at 369.

\textsuperscript{183} See Head, For Richer or For Poorer, supra note 2, at 309–11. I also noted that a partial suspension of voting power for poor performance has analogs in domestic laws governing corporate entities. Id. at 310.
another approach that I believe should be considered to achieve this end: authorizing the IMF to get more generous in encouraging its member countries to live up to those minimum standards. Such generosity could come in the form of substantially increased technical assistance funded by the wealthy industrialized countries that control the IMF’s operations.

Such an increase in technical assistance would permit the IMF to do much more than it does now in the way of training and assisting government officials in a range of areas where many countries fall short, such as planning of budgets, setting tax policy, collecting taxes, writing economic legislation, supervising banks and other financial institutions, establishing deposit insurance systems, managing foreign reserves, issuing and trading in government securities, managing monetary policy, implementing programs of social insurance or public welfare, keeping and auditing government accounts, and conducting government procurement operations. The IMF already undertakes an extensive and varied program of technical assistance to its member countries, but “[a]s the IMF intensifies its efforts to help countries strengthen their economic policy and financial management capacities, the pressure of demand on its technical assistance resources is likely to increase further,” especially under a relatively new initiative to carry out wide-ranging Technical Cooperation Action Plans, the implementation and financing of which “will greatly exceed the technical assistance resources and instruments [currently] available to the IMF.” The provision of such technical assistance funding by wealthy countries would be akin to the transfers of wealth that have already taken place within the context of the IMF through the Trust Fund and the ESAF and PRGF, noted above, and that have taken place in other contexts through the Global

185. Id.
186. See supra text accompanying notes 141–47.
Environment Facility\textsuperscript{187} and the International Development Association.\textsuperscript{188}

In short, I believe a one-two punch could be designed to encourage IMF member countries to take seriously the obligations that all countries must honor in today's world in order to meet the minimal standards of competence: the IMF would both (i) become more \textit{insistent} by enforcing such obligations through conditionality and new suspension-of-voting-power rules and (ii) become more \textit{generous} by providing technical assistance that would be funded by the wealthy countries. And underlying both approaches would be a shared understanding that the economic growth and well-being of every national economy depends on competent governance, and competent governance requires meeting a wide range of challenges—not only those of a purely economic and financial nature but also those involving distributional and social justice, environmental protection, fundamental human freedoms, and participatory decision-making.

V. CONCLUDING OBSERVATIONS

In this Article, I have attempted to contribute to the great debate now being waged over the performance and future of the IMF. In reflecting on numerous criticisms directed at the IMF, I have dismissed several on grounds that they are factually unproven or unprovable, or that they rest on a misinterpretation of the IMF's legal authority, or that the IMF has already taken action to correct earlier shortcomings. For the criticisms that I have generally endorsed, I have suggested why they should be taken seriously and have very briefly outlined some possible reform measures that the IMF and its members should consider.

\textsuperscript{187} Under the Global Environment Facility ("GEF"), the costs of using environmentally friendly technology and techniques in development activities can be offset with resources contributed by the richer, more industrially advanced countries. For details about the GEF, see Global Environment Facility, About the GEF, at http://www.gefweb.org/What_is_the_GEF/What_is_the_gef.html (describing the functions and purposes of the GEF) (last visited Feb. 17, 2004). A similar theme—having economically developed countries provide financial wherewithal to less developed countries in order to protect the environment—appears in the establishment of the Ozone Trust Fund under the Montreal Protocol on Substances that Deplete the Ozone Layer. See Gerhard Loibl, \textit{The World Bank Group and Sustainable Development, in INTERNATIONAL ECONOMIC LAW WITH A HUMAN FACE} 528–29 (Friedl Weiss et al. eds., 1998) (describing the Ozone Trust Fund).

\textsuperscript{188} As I explained in my recent article on the MDBs, the International Development Association was established in 1960 "as a companion to the IBRD . . . to provide a mechanism for making much cheaper money ("soft loans") available to the less developed countries . . . by relying on contributions from rich member countries to finance projects" in those poorer countries. Head, \textit{For Richer or For Poorer}, supra note 2, at 250.
In considering such reforms to the IMF—especially those that would require Charter amendments—I believe a balance must be struck between consensus and urgency. On the one hand, it is important to recognize the importance of careful deliberations in order to achieve a consensus about how to reform the IMF. One observer offered this view in 1998:

Rapid institutional change may be necessary, but such measures could hurt the organization’s credibility with both borrowers and lender governments if a consensus is not first reached. More radical changes in the IMF’s operations have been proposed, such as revising voting procedures . . . . However, these ideas have yet to gain the widespread support they would need to merit serious consideration. ¹⁸⁹

On the other hand, the cacophony of criticisms directed at the IMF in recent years has injected an urgency to the deliberations. Careful deliberations over the IMF’s future should not wait. My underlying purpose in writing this Article has been to contribute to those careful deliberations.

¹⁸⁹. Garuda, supra note 20, at 39.