THE ADAPTIVE MANDATE OF THE INTERNATIONAL MONETARY FUND: CHALLENGES AND OPPORTUNITIES IN THE TIME OF COVID-19

Andrew Giddings and Clifford Blair[*]

ABSTRACT

The COVID-19 crisis has highlighted how drastically the world can change in a short time and the economic and financial systems with it. Change will continue at a breathtaking pace as new challenges emerge, from climate change to inclusive growth, along with new developments from innovations in financial technology to changing global power dynamics. These changes are inevitable regardless of how the COVID-19 pandemic evolves.

The International Monetary Fund ("IMF"), the organization designed to oversee the functioning of the international monetary system and promote economic growth and financial stability, has experienced change since its creation. Indeed, contemporary events and global conditions have always affected the IMF. The IMF is designed to support its membership in times of need. This one of those times.

The debate over the IMF's role and mandate is not new either, but it is resurfacing with increased frequency in the context of "new realities." Thus, it is worth looking in-depth at the legal rationales that support the IMF's work in areas that are not traditionally considered to be part of its institutional mandate. This article will examine the development of the IMF's role and adaptability through historical and unprecedented world changes. It identifies specific economic, geopolitical, environmental, and technological factors that present opportunities for the Fund to promote international monetary stability, including the COVID-19 crisis, social spending, gender equality issues, fintech, and climate change. These fractured realities have proven that a flexible and resilient IMF, in cooperation with its members, can help the world weather the storm of economic turmoil to create a more sustainable and resilient international economic system.

---

[*] The authors work with the Legal Department of the International Monetary Fund. The views expressed herein are those of the authors and should not be attributed to the IMF, its Executive Board, or IMF management. The authors would like to thank Katharine Christopherson and Yan Liu for their support and suggestions and Ioana Luca and Audrey Yiadom for their inputs. This article reflects the status as of November 2020, unless specified otherwise. It should also be noted that, by necessity – and in many ways due to the lack of economic expertise by the authors – the myriad of issues raised herein should be viewed as for further discussion and not as conclusive views. The authors fully welcome and support further discussion on these issues.

TABLE OF CONTENTS

INTRODUCTION

The International Monetary Fund ("IMF" or "the Fund") is an international organization with its own legal personality, its own privileges and immunities, and its own regulatory, financial, and advisory powers delegated to it by sovereign member states.[1] It originated at Bretton Woods in 1944, and has played a key role in the global economy ever since.[2] However, it is important to understand and determine how the IMF has legally exercised its changing role during its nearly 80-year history. This paper addresses several issues: first, how the IMF legally adapts its work within the Fund's mandate; second, when and how that mandate has to change to accommodate new developments; and third, how much change is too much, at least without the process of an amendment to the IMF's core charter, its Articles of Agreement.

Part I of this paper explores the IMF's traditional functions and obligations created through its mandate. Noting that the IMF is legally bound by its Articles of Agreement, this section explains that it is the IMF's members who truly define the organization's power and functions. The section concludes that, while the IMF's functions may expand beyond earlier understandings of its mandate, it should not go too far beyond those lines. Part II presents a historical analysis of the IMF, including significant instances that opened opportunities for adaptation. This section examines key evolutions, such as amendments to the IMF's Articles due to the collapse of the Bretton Woods system as originally conceived, changes in member country oversight, governance reforms, and the organization's response to the 2008 Global Financial Crisis. Part III extrapolates from the IMF's historical discourse to address "new realities" that currently impact global financial stability. Looking to issues, such as the COVID-19 crisis, climate change, globalization, gender inequality, corruption, and fintech—the link between finance and technology—this section analyzes the ways that the IMF has adapted in recent years. Part IV analyzes whether these adaptions are in line with the IMF's mandate by addressing the issue of "mission creep," and whether working on "new realities" undercuts the Fund's mandate, finding that, on balance, these new areas can be accommodated into the Fund's role. There is, indeed, a lot of flexibility in the Fund's legal mandate that allows the IMF to adapt to new world conditions.

---

[1] IMF, *Current Developments in Monetary and Financial Law*, Vol. 1, 656 (1999).
[2] Articles of Agreement Art. I.

I. THE FUND'S ARTICLES AND OBJECTIVES

History has always shaped institutions and the IMF is no different. Three key historical events—the Paris peace conference of 1918 and its ultimate failure, the Great Depression, and the Second World War—were key in setting the stage for the IMF's creation.[3] The Articles of Agreement of the International Monetary Fund were initially adopted in 1944 and took effect on December 27, 1945. As an international agreement, its interpretation is governed by the rules of interpretation of treaties.[4] But commentators have noted that the Fund's Articles were constructed with "exquisite ambiguity,"[5] which allows discretion in the interpretation and implementation of the IMF's work. This section explains how the Articles frame the power and limitations of the IMF, ultimately providing room for "new realities," the conditions that emerge in our rapidly changing and uncertain world, to fit within the scope of the IMF's mandate.

Article I of the Articles of Agreement directs the IMF to build a stable international monetary system. It sets forth the purposes of the Fund and instructs the IMF to be "guided in all its policies and decisions by the purposes set forth in this Article."[6] In essence, the IMF must seek to build a prudent, stable, and well-supported international monetary system where global trade and investment can grow.[7]

---

[3] James M. Boughton, *The IMF and the Force of History: Ten Events and Ten Ideas That Have Shaped the Institution*, IMF Working Paper WP/04/75, May 2004.

[4] *See generally* François Gianviti, *Decision Making in the International Monetary Fund*, in CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW, Volume 1, 31, 55 (International Monetary Fund, 1999).

[5] Daniel D. Bradlow, *International Law and the Operations of the IFIs*, in INTERNATIONAL FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW, 1-30, 29 (Kluwer Law International, 2010).

[6] Articles of Agreement Art. I.

[7] Ross Leckow, *The IMF's Legal Instruments to Promote Financial Stability,* in CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW, Volume 5, 3-14, 5 (International Monetary Fund, 2008); Articles of Agreement Art. I "The purposes of the International Monetary Fund are: (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems. (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy. (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation. (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade. (v) To give confidence to members

At its core, the IMF has three basic functions to support and oversee the international monetary system: it offers financial assistance to members to help address balance of payments problems; it conducts "surveillance" to oversee the international monetary system and the compliance of each member with its obligations under the IMF Articles; and it serves as a research center and source of technical assistance and institutional capacity development to its membership. The evolutions of the IMF's role occur within the context of an underlying legal framework that is flexible enough to permit the Fund to embrace new realities. For instance, one could assume that Article IV, titled "Obligations on Exchange Arrangements," has an exclusive monetary/exchange rate emphasis. However, Article IV provides a wider focus: to oversee the "monetary system" and advise countries. This is the basis for the Fund's surveillance function that can cover a range of issues (though foreign exchange arrangements remain an important component).

In addition, Article V, under which the IMF provides financing (colloquially called lending, though it is technically a currency swap), requires the IMF to apply safeguards to ensure repayment.[8] Consequently, when a member of the IMF seeks to use the IMF's resources, the IMF can look into the conduct of domestic monetary, financial, and fiscal policies and develop, together with the member, measures that will bring about macroeconomic stability and debt sustainability.[9]

---

by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity. (vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members."

[8] *See generally* Ross Leckow, *The IMF's Legal Instruments to Promote Financial Stability*, in CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW, Volume 5, 6-14 (International Monetary Fund, 2008). In its lending function, the IMF is the center of the global financial safety net for its member countries. *See, e.g.* IMF, *Adequacy of the Global Financial Safety Net—Considerations for Fund Toolkit Reform,* ¶ 1, available at https://www.imf.org/-/media/Files/Publications/PP/2017/pp12917-AdequacyOfTheGFSN.ashx (last visited Mar. 30, 2021). Sometimes the IMF is colloquially referred to as a "lender of last resort" for its member countries, but legally and technically lenders of last resort would be central banks and monetary authorities in each member's country.

[9] *Protecting IMF Resources - Safeguards Assessments of Central Banks*, IMF, https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/43/Protecting-IMF-Resources-Safeguards (last visited Feb. 19, 2021); As noted in Dimitri G. Demekas et al., Mandatory Financial Stability Assessments Under the Financial Sector Assessment Program: Update, International Monetary Fund (Nov. 15, 2013): "Article IV, Sections 1(i) and (ii) provide that each member shall (i) 'endeavor to direct its economic and financial policies toward the objective of fostering orderly

The borrowing member must take such measures, often called "conditionality"[10] to help ensure that resources are available to pay back the IMF in due course so that they can be available for future use by other members when needed.[11] While this understanding of conditionality has evolved to consider more nuanced situations, including the role of private financial actors in ensuring stability, IMF legal policies place boundaries on conditionality, limiting it to measures that are (i) critical for meeting program objectives or monitoring the program's implementation, or (ii) necessary for implementing specific provisions of the Fund's Articles of Agreement or policies adopted under them.[12]

In addition to its surveillance and financing roles, the IMF also provides, at the specific request of members, "technical assistance" under Article IV, Section 2(b) including developing institutional capacity in member countries, the Financial Sector Assessment Program discussed below, and adopting and/or encouraging compliance with international standards and codes in the financial sector. Under its surveillance and technical assistance functions, the IMF can discuss a wide range of issues and policies, so long as they relate back to the Fund's mandate in some way. Indeed, the IMF is often encouraged to discuss a range of topics and be a convening power.[13]

The scope of the Fund's activities, although flexible is limited. The IMF takes its mandate seriously and seeks to avoid any actions that would be *ultra vires*.[14] Accordingly, the Fund does not take actions that go beyond the authority vested by member states. The IMF's members—acting through its decision-making bodies[15]

---

economic growth with reasonable price stability, with due regard to its circumstances;' and (ii) 'seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to product erratic disruptions.' One combines this with Article IV, Section 3(a), where the IMF shall 'oversee the international monetary system to ensure its effective operation and shall oversee the compliance of each member with its obligations under Section 1 of this Article.'"

[10] Such as cuts in spending to get the fiscal "house in order."

[11] *Id*.

[12] *Id.* at ¶ 7(a).

[13] *See* Robert P. Delonis, Note, *International Financial Standards and Codes: Mandatory Regulation Without Representation*, 36 N.Y.U. J. Int'l L. & Pol. 563, 571-572 (2004).

[14] One of the fundamental principles underlying developed legal systems is that public authorities can only exercise the powers assigned to them. In fact, under the legal doctrine of "ultra vires," actions taken by a public authority that are beyond the scope of its powers can be nullified.

[15] *Id*. *See generally* François Gianviti, *Decision Making in the International Monetary Fund*, in CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW, Volume 1, 31, 55 (International Monetary Fund, 1999). Gianviti describes the basic decision-making hierarchy at the IMF, with the

—must ultimately define the IMF's functions and how far its vested powers extend;[16] thus, questions related to the Fund's mandate can be difficult. In making such decisions, it is always important to know what purpose of the Fund is being furthered and which of the three key functions—surveillance, financial support, or technical assistance—is being undertaken in order to understand the scope of the IMF's mandate. For instance, surveillance is mandatory for the Fund and member countries; the Fund is obligated to conduct multilateral and bilateral surveillance, while member countries are required to engage in that bilateral surveillance process and provide information to the IMF.[17] This surveillance enables the IMF to continuously monitor fiscal policies and economic conditions of member states and identify present or future threats to global economic stability.[18] Having identified such risks, the IMF produces surveillance recommendations that include policy adjustments to mitigate perceived triggers of economic instability.[19]

However, the scope for surveillance engagement is limited by macro-criticality. A structural issue is macro-critical in surveillance if it affects, or has the potential to affect, external or domestic stability, such as economic growth and inflation. Further, the actions recommended by the Fund under its surveillance mandate are non-binding, thus, member countries are not obligated to implement specific advice in practice.[20] Former IMF General Counsel François Gianviti notes that "neither the principles for surveillance over exchange rates policies nor the standards and codes that may be used in surveillance over domestic policies constitute obligations for members. The Fund can provide guidance, but the obligations of members can

---

Board of Governors as the highest decision-making body, an Executive Board responsible for "conducting the business of the Fund," and a Managing Director responsible for the "ordinary business" of the IMF. For a brief overview of the governance structure of the IMF, *see* Wolfgang Bergthaler and Andrew Giddings, Recent Quota and Governance Reforms at the International Monetary Fund, in EUROPEAN YEARBOOK OF INTERNATIONAL ECONOMIC LAW, Vol. 4, 371-389, 373-375 (2013).

[16] *Id*.

[17] *See id*. at 605-606.

[18] Bretton Woods Project, IMF Surveillance, Dec. 6, 2018.

[19] *Managing Director Christine Lagarde's Statement on the 2014 Triennial Surveillance Review*, (Sept. 25, 2014), https://www.imf.org/-/media/Websites/IMF/imported-full-text-pdf/external/np/pp/eng2014/_092514.ashx.

[20] Bretton Woods Project, *supra* note 18.

only be prescribed in the Articles."[21] As such, "a recommendation by the staff does not imply the existence of an obligation under the Articles."[22]

This lack of enforcement authority, however, does not diminish the weight of advice issued by the IMF. The IMF's surveillance advice is critical for many actors, including country authorities who may need the IMF's independent and expert advice to support what might otherwise be difficult political reforms.[23] The cliché of "what gets measured, gets done" plays a role. By providing data, expert advice, and analyses of financial options, the IMF impacts its members' policies even if Fund statements are not binding obligations imposed on member states.[24]

In a strictly legal sense, conditionality on any IMF program is non-binding.[25] A member can choose not to meet those targets and thus, not receive, or risk not receiving, access to Fund resources, though there is an expectation that the member will comply with its commitments under a Fund arrangement, particularly with respect to program conditionality.[26] Of course, when a country relies on such funding to balance its payments, its options may be limited. But while there may be practical consequences,[27] there are no cases brought against the member for failure to meet those conditions.[28]

How far the IMF's mandate can extend is a matter of debate. Some feel that the International Financial Institutions ("IFIs"), including the IMF, should not venture beyond their historical mandates and should respect the limits of their mandates by "defer[ing] to other international organizations with greater authority and competence."[29] This may involve, effectively, a narrow reading of the provisions

---

[21] François Gianviti, *Evolving Role and Challenges for the International Monetary Fund*, 35 INT'L L 1371, 1381 (2001).

[22] Robert P. Delonis, *International Financial Standards and Codes: Mandatory Regulation Without Representation*, 36 N.Y.U. J. INT'L L. & POL. 563, 571-72 (2004).

[23] *Id.*

[24] *Id*.

[25] *See id*. at 605-06.

[26] *See* Article V, Section 5. *See generally* Joseph Gold, *The Legal Character of the Fund's Stand-by Arrangements and Why It Matters*, International Monetary Fund Pamphlet Series No. 35 (1980).

[27] Failure to observe conditionality that also reflects obligations under the Articles of Agreement would, of course, result in a breach of such obligations.

[28] Robert P. Delonis, *International Financial Standards and Codes: Mandatory Regulation Without Representation*, 36 N.Y.U. J. INT'L L. & POL. 563 (2004).

[29] Daniel D. Bradlow, *International Law and the Operations of the IFIs*, IN INTERNATIONAL FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW 16, 1-30 (Daniel D. Bradlow and David B. Hunter, eds., 2010), citing *Head, Law and Policy in International Financial Institutions: The Changing Role of Law in the IMF and the Multilateral Development Banks*, KANSAS JOURNAL OF

in the Articles of Agreement. Others are willing to take a more expansive view of its authority, so long as it operates under the direction of member states.[30]

We believe the IMF has room to address "new realities" within the scope of its purposes. However, the IMF must address emerging issues without straying from its mandate or imposing new *ultra vires* obligations on its members. The following historical examples of changes that have required a formal amendment to the Fund's mandate—and thus to its Articles—provides context for the outer limits outside of the IMF's existing mandate.

II. CHANGING THE IMF ARTICLES OF AGREEMENT: HISTORICAL EXAMPLES OF KEY EVOLUTIONS

This section looks at examples of key pivot points in the international monetary system where the Fund played a role and how the Fund's role was viewed vis-à-vis the Fund's mandate. Before the Global Financial Crisis of 2008, IMF historian James Boughton wrote about seven post-Bretton Woods events that help frame the IMF's work.[31] More can be added to the list since then. While this section is high-

---

LAW & PUBLIC POLICY 17 (2007), in turn citing Mary C. Tsai, *Globalization and Conditionality: Two Side of the Sovereignty Coin*, LAW & POLICY INTERNATIONAL BUSINESS 31 (2000): 1317, 1318, 1329, and citing Saladin Al-Jurf, *Good Governance and Transparency: Their Impact on Development*, TRANSNATIONAL LAW & CONTEMPORARY PROBLEMS 9 (1999): 193, 206.

[30] *Statement from Kristalina Georgieva on Her Selection as IMF Managing Director*, IMF (Sept. 25, 2019), https://www.imf.org/en/News/Articles/2019/09/25/pr19352-statement-by-kristalina-georgieva-on-her-selection-as-imf-managing-director. It should be noted that there are, in turn, obligations for Fund members under the Articles of Agreement. There are a range of things that are required, principally in the area of exchange restrictions. Under Article VIII, without the approval of the IMF, members are not allowed to impose restrictions on the making of payments and transfers for current international transactions (i.e., current account payments), discriminatory currency arrangements, or "multiple currency practices" (official acts causing artificial differentials in exchange rates; though the Articles do permit transitional arrangements under Article XIV with respect to exchange restrictions and multiple currency practices, and the IMF works with member country authorities as they seek to remove these). Other obligations include the provision of information to the Fund (in conjunction with surveillance), while still others are more practical in nature in order to implement the Articles such as, for example, honoring the IMF's immunities. There are of course debates at times about whether a member may be violating a particular obligation, and what should be done about such violations. But the formal process for considering such questions is an elaborate one and has only been invoked in very rare circumstances.

[31] The post-Bretton Woods events he cites are the rise of multiple economic centers (including Europe generally and Germany in particular, Japan, and Saudi Arabia), the Cold War, the African independence movement, the Vietnam War, Globalization of financial markets, the 1980s international debt crisis, and the dissolution of the Soviet Union. James M. Boughton, *The IMF and*

level by design, covering issues on which innumerable books and papers have been written, it also presents a narrow focus on a few key events that merit scrutiny for how the concomitant changes aligned with the Fund's mandate.

A. The Gold Standard and the Par-Value System

The Gold Standard—basing the international financial system on gold reserves—had its "halcyon days" from 1870 to 1914, when the gold reserves backing currencies were "quite stable."[32] Between 1914 and 1973, the Gold Standard had a volatile history with major setbacks, and ultimately, it ended between 1971-1973.[33] An early setback along this path was Germany's suspending money's convertibility into gold on July 31, 1914. Over the years that followed, from World War I through the Great Depression and World War II, multiple countries, including the United States, suspended the Gold Standard when they needed to print money to boost their economies.[34] Following World War I, governments had difficulty determining how to "reset the system" after the inflationary pressures caused by currency printing during the war. The subsequent deflationary pressures created by the Great Depression forced countries to "abandon, or greatly adjust, their peg to gold."[35]

In the Bretton Woods system of exchange rates, the dollar was at the center. A "Par-Value" system, where countries submitted a valuation of their currency in terms of the U.S. dollar as a stand-in for gold, was a central goal of the United

---

the Force of History: Ten Events and Ten Ideas That Have Shaped the Institution, IMF Working Paper WP/04/75, May 2004, 7-13. The pre/concurrent events (summing to ten) were the Paris Peace conference of 1918, the Great Depression, and World War II. *Id.* at 4-7.

[32] *See* International Monetary Fund, *The End of the Bretton Woods System* (1972-81) (noting President Nixon's 1971 "temporary" suspension of the dollar's convertibility into gold and, after a failed attempt to revive fixed rates, the beginning of the floating exchange rate system in March 1973 as essentially dissolving the Bretton Woods gold-based exchange system.) The reasons behind the US actions are complex. The basic answer is that large US trade deficits were putting heavy pressure on the fixed but adjustable exchange rate system and President Nixon felt action had to be taken. *See* Bretton Woods at 74: Has the system reached its limits? Deutsche Welle, July 23, 2019.

[33] *See* KENNETH S. ROGOFF, THE CURSE OF CASH 28 (2016).

[34] *E.g.*, the United Kingdom suspended the convertibility of gold on Sept. 21, 1931, followed rapidly by Sweden and Norway (Dalio at 73-74); the US did the same on March 13, 1933 through 1934.

[35] Rogoff, CURSE OF CASH 29.

States and reflected its new central position on the world stage.[36] Moreover, though the dollar was still linked to gold, this was "only for official purchasers."[37] The Par-Value System was explicitly formalized in the IMF Articles of Agreement, established at Bretton Woods.[38] The IMF was tasked with prescribing a margin above and below Par-Value for transactions in gold, and members were prohibited from buying gold outside that margin.[39]

As inflation made the dollar less valuable relative to gold, countries became concerned that they could not convert their large U.S. dollar holdings into gold.[40] Ultimately, the world recognized this reality, and the IMF abandoned the Par-Value System. Then, by 1973, "[t]he world had come full circle to the pure fiat money [government-issued currency that is not backed by a commodity such as gold] of the late Mongol rule in China."[41] The original Bretton Woods system was also effectively over by 1973, ending "without almost anyone realizing it."[42]

Because the IMF had not yet formally recognized the demise of the gold-based Par-Value System, an amendment of the Articles was clearly needed. The basic principles of the original Articles were premised on gold convertibility and the role of gold as an anchor, notwithstanding the crucial role of the dollar. Once exchange rates and the dollar were no longer tied to gold, the Fund could not continue under

---

[36] *See* MICHEL AGLIETTA, MONEY: 5,000 YEARS OF DEBT AND POWER 316, (2018). The other key goal, on which the US was also successful, was to base the IMF in Washington, DC. The dollar started to become the de facto reserve currency since "each country had to declare its parity in gold or in a currency convertible into gold at the weight and fineness in force on 1 July 1944. Given that most of the countries lacked gold, they declared their parity in dollars." Then following 1965, it became increasingly a pure dollar standard in practice with the rise of the euro-dollar market. *Id.* at 317-20.

[37] ROGOFF, CURSE OF CASH 30.

[38] *See* Article IV. *See also* "Expression of Par-Values—(a) The Par-Value of the currency of each member shall be expressed in terms of gold as a common denominator or in "terms of the United States dollar of the weight and fineness in effect on July 1, 1944. (b) All computations relating to currencies of members for the purpose of applying the provisions of this Agreement shall be on the basis of their Par-Values."

[39] Members were prohibited from buying gold "at a price above the Par-Value plus the prescribed margin or sell gold at a price below Par-Value minus the prescribed margin." National Advisory Council on International Monetary and Financial Policies (U.S.), Annual Report to the President and to the Congress -pg 74 – 1945.

[40] ROGOFF, CURSE OF CASH 30. *See generally* Sean Hagan, *The Evolving Role of the International Monetary Fund, Presentation at UNC School of Law*, Feb. 16, 2016, available at: https://vimeo.com/155031668.

[41] *Id.* (alteration in original) (further noting: "That is where things still stand today.").

[42] Ed Conway, THE SUMMIT: BRETTON WOODS, 1944, J.M. KEYNES AND THE RESHAPING OF THE GLOBAL ECONOMY, 385, 453 (2014).

the Articles as they existed.[43] An interpretive or lower-level change to the Articles was insufficient to address such a fundamental change, and thus the adoption of an amendment was imperative.

B. The Second Amendment

An extensive process was ultimately put in place to amend the Articles, which required a significant degree of buy-in from the membership.[44] The Second Amendment to the IMF's Articles of Agreement took effect in April 1978, several years after the changes to the underlying reality of the Bretton Woods system.[45] Notwithstanding the delay, the Second Amendment was key in cementing this new reality worldwide and setting up the current international monetary system. It "fundamentally changed the role of gold in the international monetary system by eliminating its use as the common denominator of the post-World War II exchange rate system and as the basis of the value of the Special Drawing Right," a reserve asset issued by the IMF (as described further below).[46] While the Gold Standard was long gone, the Second Amendment to the Articles helped formalize its absence and solidify how the system would work going forward.

---

[43] In some ways, being forced to adopt an amendment relatively early in its history has strengthened the Fund's adherence to the Articles of Agreement.

[44] Amendments to the Articles of Agreement must first be approved (by simple majority) by the IMF Board of Governors. Member countries must then submit their formal acceptance of the proposed amendment (often after undertaking a domestic ratification process for a treaty amendment). An amendment takes effect when three-fifths of members who represent 85% of the Fund's economically weighted voting power accept the proposed amendment. With a few enumerated exceptions, the amendment then becomes binding on all IMF members, regardless of their acceptance. *See* Article XXVIII. The Articles have been amended a total of seven times, with the most recent amendment entering into force in 2016.

[45] International Monetary Fund, *Factsheet: Gold in the IMF*, Oct. 2017, http://www.imf.org/external/np/exr/facts/gold.htm.

[46] International Monetary Fund, Factsheet: Gold in the IMF, Oct. 2017, http://www.imf.org/external/np/exr/facts/gold.htm. As the factsheet notes, the Second Amendment "also abolished the official price of gold and ended its obligatory use in transactions between the IMF and its member countries. It also required the IMF, when dealing in gold, to avoid managing or fixing its price." *Id.* This factsheet might be a bit behind the curve in that the role of gold had, arguably, *already* fundamentally changed. But the importance of having widespread acknowledgement of this new reality as essentially a seemingly permanent change should not be overlooked.

The Second Amendment also gave "members more latitude in the conduct of their exchange rate policies," a concept that still exists.[47] The Second Amendment expanded the Fund's role, giving the IMF the broad mandate to "oversee the international monetary system to ensure its effective operation."[48] The amendment also directs the IMF to oversee its members' compliance with their new obligations to cooperate with each other and the IMF "in the conduct of their economic, financial, and exchange rate policies."[49] This responsibility of assessing member's exchange rate policies—that the IMF "exercise firm surveillance over exchange rate policies of members"[50]—evolved to become an overall assessment of a country's economy.[51] As Gianviti notes, "[t]he replacement of the par value system by the exercise of surveillance has given greater latitude to the Fund to define the scope of its involvement in its members' external and domestic policies."[52] Yet this flexibility was limited; it was not to be abused to create an "unfair competitive advantage."[53]

Another modification at the time of the Second Amendment allowed the IMF to provide concessional assistance (i.e., low or zero-interest rate financing) for developing countries to be funded from the sale of gold held by the IMF, which significantly bolstered the IMF's role.[54] Changes to the role of the Special Drawing

---

[47] Sean Hagan, *10 Years of the Euro: A Perspective from the IMF*, IMF (Jan. 29, 2009), https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp012909. Hagan notes: "This latitude is not unlimited, however. While members currently have the freedom to choose whatever exchange arrangements they wish, they may not exercise this freedom in a manner that undermines the stability of the overall system. As specified in the Articles, members are required to 'collaborate with the Fund to promote a stable system of exchange rates.' The Fund, for its part, is charged with conducting periodic consultations with members to ensure that they are adhering to this obligation, a process that is referred to as Fund surveillance."

[48] *Id*.

[49] *Id*.

[50] *Id*.

[51] *See* Sean Hagan, *The Evolving Role of the International Monetary Fund*, Presentation at UNC School of Law, Feb. 16, 2016, available at: https://vimeo.com/155031668, at 22-23 minutes.

[52] Gianviti, *supra* note 21.

[53] *Id*.

[54] *Id*. This is often referred to as "second amendment gold" within the Fund. Gold sales have also been permitted to help the finance the IMF's participation in the Heavily Indebted Poor Countries (HIPC) Initiative in 1999 and the available pool of resources for concessional financing was increased with "windfall gold sales profits" in 2012. *See generally*, *Gold in the IMF*, IMF (Mar. 16, 2021), https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/14/42/Gold-in-the-IMF.

Right (SDR), which is used as the IMF unit of account in addition to being a reserve asset, was one of many Second Amendment adjustments.[55]

The Second Amendment's replacement of the Par-Value System with its present surveillance mission and the "recognition of the Fund's authority to adopt different policies on the terms and conditions of its financial assistance" established two of the three current core functions of the IMF.[56] Still, a significantly revised IMF mandate did not cover all possible challenges. After the Second Amendment, the creation of international capital markets transformed international finance in the late 1970s and 80s.[57] Due to increasingly large capital inflows and, in a crisis, outflows, the IMF was often called upon to provide large amounts of financing to enable a country to repay creditors in exchange for an economic adjustment to restore sound footing and address over-indebtedness, whether due to too much debt, not enough growth, or both.[58] While this power was available in the Articles, it was being used in more significant ways than originally imagined, including with the Latin American Debt Crisis, the Asian Financial Crisis, and even through the Global Financial Crisis of 2008. Though addressing these crises was not specifically envisioned by the Second Amendment, its language provided flexibility to do so.

The 2008 Financial Crisis and the IMF's COVID-19 response further show how existing legal authority in the Articles can be used in different and innovative arenas. Since actionable powers were already present, they could be employed rapidly without requiring changes to the Fund's Articles. Likewise, the modifications to the surveillance functions of the IMF have relied on the flexible wording of the Second Amendment.[59]

The Second Amendment has also been criticized for failing to expand the mandate far enough to allow the IMF the bandwidth needed to operate at its greatest

---

[55] *See*, *e.g.*, CHRISTOPHER WILKIE, SPECIAL DRAWING RIGHTS (SDRS): THE FIRST INTERNATIONAL MONEY, Oxford Scholarship Online, Jan. 2012, https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199606467.001.0001/acprof-9780199606467-chapter-6?print=pdf.

[56] Gianviti, *supra* note 21.

[57] *See* Sean Hagan, The Evolving Role of the International Monetary Fund, Presentation at UNC School of Law, Feb. 16, 2016, available at: https://vimeo.com/155031668, at 23-24 minutes.

[58] *Id.* at 26-27 minutes.

[59] As Gianviti notes, the use of rather vague terms in Article IV in particular – "sound," "orderly," "reasonable" – provides "ample room to the Fund, when implementing this provision, to define the obligations of its members either in general terms or on a case-by-case basis." Gianviti, *supra* note 21.

potential.[60] Though the Second Amendment provided for stronger surveillance, it failed in "adapting [the Fund's] crisis role to a changed financial system," and it was left to the IMF to determine how to adapt on its own.[61]

While the Fund's Articles contain obligations concerning current account transactions, they contain only very narrow limitations on the capital account.[62] This has often been interpreted as denying the IMF jurisdiction over the capital account generally.[63] In the context of explaining why an amendment of the Fund's Articles would be required were the IMF to impose obligations on capital controls, former IMF General Counsel Sean Hagan explained this limitation. Hagan said an amendment to the Articles would be required, and any such amendment would have to specify the objective clearly, rather than simply delegate to the Fund the authority to set such objectives.[64] He noted that this requirement can be explained by contrasting the Fund with the Organization for Economic Cooperation and Development (OECD), where the relatively small membership and the requirement for unanimity help ensure that members do not surrender sovereignty even when the OECD Convention—with the objective of liberalizing capital movements—delegates the authority to its Council to specify obligations. In contrast, in the case of treaties of near-universal membership such as the IMF's Articles, "a conferral of authority to an organ would, in fact, constitute a surrender of sovereignty."[65] Due to the nature of the IMF's decision-making bodies, a "blank check" would impose new obligations based on decisions that do not generally require unanimity or (at the Executive Board level) direct representation of Fund members.[66] Instead, these obligations would have to be openly accepted via an amendment.

---

[60] *See, e.g.*, CHRISTOPHER WILKIE, SPECIAL DRAWING RIGHTS (SDRS): THE FIRST INTERNATIONAL MONEY, Oxford Scholarship Online, Jan. 2012, https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199606467.001.0001/acprof-9780199606467-chapter-6?print=pdf.

[61] EVA RIESENHUBER, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 71, (2001).

[62] Trevor Manuel et al., "Committee on IMF Governance Reform: Final Report" (Washington: International Monetary Fund, 2009).

[63] The IMF could, however, include provisions on capital controls as part of its conditionality in a Fund program, again as this is not, strictly speaking, an obligation of the member.

[64] Sean Hagan, *The Design of the International Monetary Fund's Jurisdiction over Capital Movements*, in CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW 1, 68-77, 69 (International Monetary Fund, 1999).

[65] *Id*.

[66] *Id*. Note also that amendments to the Fund's Articles of Agreement (with a few exceptions), while requiring a supermajority, nevertheless become binding on all Fund members, even those that did not support the amendment. *See* Article XXVIII.

Critics have questioned the Fund's adjusted and expanded role. Economics journalist Ed Conway notes that after the collapse of the Bretton Woods system, the IMF "egged on" the shift toward a more liberalized financial and economic system, particularly after the fall of the Berlin wall, ultimately forming the "Washington Consensus."[67] As he notes:

> Far from shriveling into obscurity after the death of the system of fixed exchange rates it was originally set up to monitor, the Fund became still more influential. International economic organizations rarely expire–they simply find new ways to occupy themselves. So, like the BIS (originally set up to monitor German First World War reparations) and the OECD (set up to regulate the Marshall Plan), the IMF reinvented itself as an international economic consultant and adviser.[68]

One may counter that the IMF's membership was well aware of the scope of the changes proposed in the Second Amendment and still approved them, so it was the member countries of the IMF—not the IMF itself—that ultimately validated this new role. The debate continues, with some calling for further large structural changes and adaptations to the core of the financial system, such as expanding the role of the IMF's SDR to effectively become the world's fiat currency,[69] though with varying degrees of skepticism about how realistic this might be.

C. Ministerial Engagement

Over the last fifty years, there have been various attempts to increase ministerial engagement in Fund decision-making. Engagement by top-level policymakers from member countries gives the IMF increased legitimacy, as it reflects the will of its constituent member states. By the time of the first annual meeting of the Fund, the exact modalities for the Fund's Executive Board—the second tier of governance—had not yet been determined. John Maynard Keynes, the revolutionary English economist and intellectual father of modern macroeconomics, advocated for a Board comprised of senior officials from the member counties. However, Keynes's suggestion posed logistical challenges. Such a board could not meet frequently due

---

[67] Ed Conway, THE SUMMIT: BRETTON WOODS, 1944, J.M. KEYNES AND THE RESHAPING OF THE GLOBAL ECONOMY, 398, 453 (2014).
[68] *Id.*
[69] *I.e.,* A singular base currency for the world and for international transactions.

to the difficulties of travel at the time, nor could its members easily step away from responsibilities in their national capitals.

Harry Dexter White, an architect of the international financial system and the inaugural U.S. representative at the IMF Executive Board, argued in favor of a resident Board in Washington. Out of necessity, this type of board could not be made up of officials with other duties in their home countries. Ultimately, as he had so many times at Bretton Woods, White prevailed. The creation of a resident Executive Board may have reflected a desire for the member countries to have more oversight over the management and staff of the IMF by giving the Executive Board broad authority over the day-to-day operations of the Fund. However, it also meant less direct engagement by the senior political leaders from the member states whose role was limited to the Board of Governors, the top-tier decision-making organ, which generally met only once a year.[70]

Especially following the Fund's identity crisis resulting from the end of the Par-Value System and the link to gold in the 1970s, there has been a drive both within and outside the organization (including advocacy groups and county authorities themselves) to increase the engagement by those senior leaders who more directly represent the will of the IMF's member countries. As the Fund's membership grew, so did the Board of Governors. As a result, the full Board of Governors was no longer a suitable forum for discussion and negotiation; it was not only too large, but attendance at the infrequent business sessions was poor.[71] Furthermore, the activities of the Group of Ten,[72] which was increasingly encroaching on the Fund's business of negotiating international monetary subjects, also gave impetus to find an alternative, more inclusive forum for negotiation and discussion, to allow the Fund to reassert its position.[73] A smaller group that could meet more frequently to discuss key policy questions and take interim recommendations would both enhance the work of the Executive Directors and IMF staff as well as better serve the functions of the Fund.

---

[70] *See generally* J. Keith Horsefield, *The International Monetary Fund, 1945-1965: Twenty Years of International Monetary Cooperation* 1:130-134 (International Monetary Fund, 1969).
[71] *See* Margret Garritsen De Vries, *The International Monetary Fund, 1972-1978: Cooperation on Trial* 1:141-144, (International Monetary Fund 1985).
[72] Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom, and the United States.
[73] *Id*.; Margret Garritsen De Vries, *The International Monetary Fund, 1972-1978: Cooperation on Trial* 1:141-144, (International Monetary Fund 1985).

At the time of the Second Amendment, the Articles of Agreement saw additions that permitted the Board of Governors, by an 85 percent majority, to establish a Council as an intermediate organ between the Board of Governors and the Executive Board, filling this perceived gap in ministerial engagement.[74] The proposal for the Council grew out of the "Committee of Twenty."[75] The Committee was a high-level political body organized primarily by the U.S. to negotiate the Second Amendment and reflected the number of Board constituencies at that time. It was expected that the Council would become the permanent incarnation of the Committee of Twenty.[76] One specific impetus for increased ministerial engagement was the new approach of having the IMF exercise "firm surveillance" over members' exchange rate policies, discussed above, to safeguard against abuse of the inherent flexibility in the new system. Key Fund shareholders thought that the proposed Council would be "better fitted to debate and decide issues," as members of the Council would be "bolder in their judgments" than Executive Directors.[77]

In 1974, while the Second Amendment's adoption was still in process, the Board of Governors created the Interim Committee.[78] This committee was also modeled after the Committee of Twenty, which was expected to be replaced by the Council once the Second Amendment was ratified.[79] The Interim Committee was to have an advisory role in the areas in which the Council was to have decision-making powers and have similar composition and procedures.[80] The terms of

---

[74] Article XII, Section 1 and Schedule D.

[75] The Committee consisted of the governors for Argentina, Australia, Belgium, France, Germany, Greece, Guyana, Ivory Coast, Japan, Jordan, Kuwait, Lebanon, Peru, the Philippines, Somalia, Sri Lanka, Sweden, Tanzania, the United Kingdom, and the United States. *See* THE COMMITTEE OF TWENTY: THE ORIGINS, EVOLUTION, AND PROCEDURES OF THE COMMITTEE ON MONETARY REFORM (International Monetary Fund, External Relations Dept. 1974). https://www.elibrary.imf.org/view/IMF022/12450-9781616353179/12450-9781616353179/12450-9781616353179_A007.xml?language=en&redirect=true.

[76] *See* Joseph Gold, *Continuity and Change in the International Monetary Fund*, LEGAL AND INSTITUTIONAL ASPECTS OF THE INTERNATIONAL MONETARY SYSTEM: SELECTED ESSAYS 29 (International Monetary Fund 1979).

[77] *See* Joseph Gold, EXCHANGE RATES IN INTERNATIONAL LAW AND ORGANIZATION, 122,123 (1988); Joseph Gold, 2 LEGAL AND INSTITUTIONAL ASPECTS OF THE INTERNATIONAL MONETARY SYSTEM: SELECTED ESSAYS 540, 541 (1984).

[78] *See* IMF Board of Governors Resolution No. 54-9 (1999).

[79] *See, e.g.*, CHRISTOPHER WILKIE, SPECIAL DRAWING RIGHTS (SDRS): THE FIRST INTERNATIONAL MONEY, Oxford Scholarship Online, Jan. 2012, https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199606467.001.0001/acprof-9780199606467-chapter-6?print=pdf.

[80] *See* Resolution (No. 29-8) of the IMF Board of Governors on Establishment of an Interim Committee of the Board of Governors on the International Monetary System, Preamble.

reference for the Interim Committee reflected the fact that it arose out of the crisis following the end of dollar convertibility. These terms included: "supervising the management and adaptation of the international monetary system,"[81] in relation to the end of the Par-Value System; "considering proposals for amendments to the Articles of Agreement,"[82] in particular, what would become the Second Amendment; and finally, "[d]ealing with sudden disturbances that might threaten the system,"[83] such as the end of convertibility.

However, the Council has never been activated.[84] In 1999, the Board of Governors transformed the Interim Committee into the International Monetary and Financial Committee's (IMFC).[85] The IMFC maintained the structure, functions, and powers of the Interim Committee and, thus, like the Interim Committee before it, could be replaced by the Council if it was ever called into existence. Although the transformation of the Interim Committee to the IMFC occurred in very different circumstances from the creation of the original committee, the original terms of reference for the Interim Committee were retained verbatim for the IMFC.[86] Today, the IMFC meets twice a year to provide ministerial-level guidance for the coming six months of the IMF's work program, general views about the state of the world economy, and other matters of significance for IMF operations. Studies in 2008 by the Fund's Independent Evaluation Office and in 2009 by an independent

---

[81] *Id*.
[82] *Id*.
[83] *Id*. at ¶ 3. *See also generally* Margaret De Vries, *The IMF in a Changing World, 1945-85*, Ch. 15 (International Monetary Fund, 1986).
[84] The fact that the Council has never been activated reflects concerns about the relationship between the Council and the Executive Board (where would the center of decision-making lie?) as well as the fact that some member countries preferred the voting structure of the Board of Governors (where each member casts their votes separately) to the constituency structure of the Council or Executive Board, where some members may have to accede to the views of other countries in their constituency. That the Council was organized based on constituencies also engendered disagreements among members about which countries would be represented as Council members. In any case, developing members were successful in negotiating that the Council should begin to function only when a decision was taken to call it into existence, and, because the Interim Committee had already been operational for several years prior to the entry into force of the Second Amendment, developed nations that favored activating the Council (primarily to provide a more politically-powerful decision-making body to put pressure on members to adjust their exchange rates) were willing to accept the Interim Committee as an alternative instead.
[85] *See* Resolution (No. 54-9) on International Monetary and Financial Committee of the Board of Governors.
[86] *Id.* at ¶ 3.

committee[87] found that ministerial engagement in the IMF, particularly with respect to oversight and strategic decisions, was still missing. However, a 2018 report by the Independent Evaluation Office found no support among the Fund's membership for activation of the Council.[88]

Just as ministerial engagement with the Fund arose during the end of the Par-Value System outside the formal structures of the IMF in the Group of Ten, in the present—although the role of the IMFC has been formalized—a parallel structure of ministerial engagement has once again arisen outside of the IMFC.[89] This began during the 2008 Global Financial Crisis with the increased importance of the G20.[90] Although first organized in 1999, it came to prominence in 2008 with its first meeting at the level of heads of state/government.[91] As Christopher Legg, a former IMF Executive Director, puts it: "While the IMF constitutes the mainstay of the formal at international economic governance efforts—built on legal and technocratic foundations—the G7/8, and latterly G20, represent the importance of leadership firmly founded in the real politic of international economic relations."[92] The complex and sometimes uncomfortable interplay between these two dimensions is central to understanding the IMF's work, particularly during the recent years following the Global Financial Crisis.[93]

The drive to increase ministerial engagement therefore reflects bold attempts to amend the governance structure of the Fund by creating entirely new governing organs not foreseen by its founders. It also shows the incremental evolution resulting from necessary compromise when those bold initiatives were

---

[87] Trevor Manuel et al., "Committee on IMF Governance Reform: Final Report" (Washington: International Monetary Fund, 2009); Independent Evaluation Office of the IMF (IEO), *Governance of the IMF: An Evaluation* (Washington: International Monetary Fund, 2008).
[88] Independent Evaluation Office of the IMF (IEO), *Governance of the IMF: Evaluation Update* (2018) at 20.
[89] For example, *see* the list of "Committees, Groups, and Clubs" on the IMF website that includes the G7, G10, G15, G20, G24, G77 and the historical G5, G22, and G33. Available at https://www.imf.org/en/About/Factsheets/A-Guide-to-Committees-Groups-and-Clubs#G20.
[90] Some reasons for the rise of informal parallel structures outside the legal framework of the IMF include the IMFC's broader membership, procedures that are viewed as "pro-forma," and the perception that it cannot operate independently of IMF management. *See* Leonardo Martinez-Diaz, "The G20 after Eight Years: How effective a Vehicle for Developing Country Influence" Global Economy and Development Working Paper no. 12, (The Brookings Institute, 2007).
[91] *See* Christopher Legg, *International Cooperation in a Time of Transition: The IMF, G20, and the Global Financial Crisis*, 38-42, 72-76 (Wilson Center, 2013).
[92] *Id*.
[93] *Id.* at 2.

unsuccessful in the face of divided opinions among the membership, and the use of informal structures outside the IMF's legal framework to compensate.

D. IMF Governance Reforms: Changing the IMF Articles of Agreement

A modern example of the Fund adapting to "new realities" is the quota and governance reform that began in 2008.[94] Unlike most international organizations, where a one-member-one-vote principle reflects the concept of the equal sovereignty of states, the voting power in IMF decision-making bodies is largely determined by Fund quotas.[95] Besides voting power, a member's quota also determines its capital subscription to the Fund as well as the amount it can borrow.[96] Quotas have always been a fraught subject, as members' quotas in the Fund are a key source of their representation and reflect on the legitimacy of the institution as an international organization carrying out a mandate from its member countries.[97]

However, realigning quota shares to reflect changing economic realities has been a difficult task. Throughout the Fund's history, the relative economic weight of the Fund's membership has shifted, initially to Japan and Western European nations, and more recently to Brazil, Russia, India, China, South Africa, (the "BRICS"), and other emerging economies.[98] While the Fund's legal architecture includes a mechanism for regularly updating quota allocations,[99] the political nature of such questions has been tied in with the related matters of "voice," how members are represented at the Fund, and "governance," specifically, members' role in the governing structures of the Fund. Further, while the Articles of Agreement provide for regular review of quota, changes to the governance structure connected to voice

---

[94] *See generally* Wolfgang Bergthaler & Andrew Giddings, "Recent Quota and Governance Reforms at the International Monetary Fund," in, EUROPEAN YEARBOOK OF INTERNATIONAL ECONOMIC LAW 371 *Vol. 4 (*C. Herrmann et al., eds., *2013).*

[95] Just over 5 percent of total votes are distributed equally among all member states (the "basic vote") in recognition of equal sovereignty. *See* Article XII, Section 5(a).

[96] *See IMF Financial Operations* (Washington: International Monetary Fund, 2016) at 13-16.

[97] "The [Bretton Woods] conference had an official Quota Committee, which was a matter of proper form only. The substance of quota allocations was controlled entirely by the Americans. [Harry Dexter] White and the Americans hammered out successive drafts of quota tables behind closed doors, raising some allocations and lowering others as the need or compulsion arose." Benn Steil, THE BATTLE OF BRETTON WOODS 231 (2013).

[98] *See* Harold James, *Unlearnt lessons of the Great Depression*, FIN. TIMES (Jan. 3, 2010), https://www.ft.com/content/4ac86302-f895-11de-beb8-00144feab49a.

[99] The Articles of Agreement require the Board of Governors to conduct a "general review" of quotas every five years and to make appropriate adjustments. Ad hoc increases are also permitted outside of the regular reviews. Article III, Section 2.

and representation issues require amendments to the Articles. In practice, changes to both quotas and amendments to the Articles require an 85 percent supermajority of the members. However, amendments often require domestic legislative approval, in addition to a second threshold of three-fifths of IMF members, making amendments more difficult. In contrast, the assignment of quotas requires only an 85 percent majority of the Board of Governors.[100]

In 2007, the IMF changed the quota formula,[101] which is the starting point[102] for determining quotas; it then increased quotas for fifty-four member countries whose existing quota significantly diverged from the new formula's application.[103] The Fund also amended the Articles to increase the "basic votes" distributed equally among all member countries.[104] These votes were originally expressed as a fixed number of votes, and as a result, had eroded over time as new members joined the Fund and the number of total votes increased.[105] After the change, the basic vote is expressed as a percentage of the total vote, preventing future erosion of the basic

---

[100] Article XXVIII(a).

[101] Currently, the quota formula is a weighted average of GDP (50 percent), openness (i.e., current account flows, 30 percent), economic variability (i.e., standard deviation of current account inflows and net capital flows, 15 percent), and international reserves (5 percent). GDP is measured by a blend of market exchange rate GDP (60 percent) and PPP exchange rates (40 percent). IMF, A New Quota Formula-Additional Considerations, Statistical Appendix, and Statement by the Managing Director, 2007, available at: http://www.imf.org/external/np/pp/2007/eng/031407.pdf.

[102] In 1947, at a meeting of the IMF's Executive Board, Harry Dexter White explained the origins of the quota formula: "As a result of discussion and comment it had been recognized that no single formula could possibly accommodate all of the considerations involved in fixing quotas for forty-four nations. Furthermore, in some cases even the factual data which the formula would reflect were either unavailable or of questionable accuracy. Hence there was general agreement that the formula could only be useful as a point of departure for discussion and negotiation." Executive Board Meeting Minutes, Apr. 24, 1947. The original quota formula was concocted by a U.S. Treasury official, who was ordered by White to create a formula that would give the U.S. a quota of $2.9 billion (conveniently the size of the U.S.'s Exchange Stabilization Fund, which could be expended without Congressional authorization), with the U.K. having a quota of about half that and all the Commonwealth countries combined having less than the U.S., to prevent any bloc from outvoting the U.S. *See* Conway at 223-24.

[103] *See* IMF, Reform of Quota and Voice in the International Monetary Fund- Report of the Executive Board to the Board of Governors, 2008, available at: http://www.imf.org/external/np/pp/eng/2008/032108.pdf.

[104] *Id.; See also* IMF, Proposed Amendment of the Articles of Agreement Regarding Basic Votes-Preliminary Considerations and Chairman's Summing Up, 2006, available at: http://www.imf.org/external/np/pp/eng/2006/122206a.pdf.

[105] IMF, Reform of Quota and Voice in the International Monetary Fund- Report of the Executive Board to the Board of Governors, 2008, at ¶ 16, available at: http://www.imf.org/external/np/pp/eng/2008/032108.pdf.

vote, and tripling the size of the basic vote.[106] The Fund also took related governance amendments to the Articles to address the issue of "voice," by permitting Executive Directors representing many countries[107] to appoint more than one Alternate Executive Director.[108]

As part of the regularly contemplated quota reviews under Article III, Section 2, the 14th General Review of the Fund's quotas embraced these reforms in 2010 by providing a shift of quota shares to emerging market and developing countries.[109] Specifically, the Fund's members agreed to double the size of the Fund's capital through a 60 percent selective increase and a 40 percent ad hoc increase.[110] The ad hoc increases, which effectively transferred quota share from over-represented to under-represented countries, were based on differences between existing quota and the GDP component of the formula.[111] As part of the quota increases, Fund members also agreed to protect the voting power of the poorest Fund members by maintaining their quota shares relative to other members.[112]

In connection with the 14th Review, and following on the 2008 voice reforms, the IMF Board of Governors also approved a reform to representation by changing to an all-elected Executive Board, eliminating the automatic right of the five largest shareholders to an individual seat.[113] The European membership of the Fund also committed to reduce their number of Board members by two[114] within two years

---

106 *Id.* at ¶ 11.

107 IMF, Board of Governors Resolution No. 63-2 of 28 Apr. 2008 and Board of Governors Resolution No. 66-2 of Dec. 15, 2010.

108 IMF, Proposed Amendment of the Articles of Agreement Regarding Basic Votes- Preliminary Considerations and Chairman's Summing Up, 2006, available at: http://www.imf.org/external/np/pp/eng/2006/122206a.pdf; IMF, Reform of Quota and Voice in the International Monetary Fund- Report of the Executive Board to the Board of Governors, 2008, available at: http://www.imf.org/external/np/pp/eng/2008/032108.pdf. The Sixth Amendment was adopted by the Board of Governors Resolution No. 63-2 effective April 28, 2008 and entered into force on March 3, 2011.

109 *See IMF Financial Operations* at 15. "Selective" quota increases indicate those that are distributed in accordance with the quota formula, as opposed to "equiportional" increases distributed according to existing quota share or "ad hoc" increases distributed to only some members.

110 *Id.*

111 *Id.*

112 38 IMF, Board of Governors Resolution No. 66-2 of Dec. 15, 2010.

113 *See id.*

114 This was not a formal decision of the Executive Board or Board of Governors, but rather a political "commitment," consistent with the understanding that representation at the Executive Board is a result of voluntary constituency formation. Board of Governors Resolution No. 66-2 on

after the reforms took effect. The purpose of this commitment was to open the Board to greater diversity in representation. Prior to this, as many as nine of the twenty-four members were European.[115] The move to an all-elected Board was thought to create more flexibility in forming the constituencies or groupings of Fund members that elect a single Executive Director, as Germany, the U.K., and France were all among the five largest Fund members by quota, and each appointed a director.[116] Since the U.K. and France have historically had identical quotas, and their quota before the 2010 increases was the fourth largest, this change also allowed China to leapfrog over them into the top five shareholders without having to address the difficult situation of six members having the five largest quotas.[117] The governance amendments demonstrate that some changes, even if seemingly marginal, require an amendment to the Articles to make structural modifications in the decision-making bodies prescribed by the Articles.

E. *Adaptive Change Within the Mandate: The Global Financial Crisis of 2008*

The IMF's adaptability was exhibited in various ways when the Fund responded to the 2008 Global Financial Crisis. While there is some debate as to whether the IMF could have done more to better predict or help prevent the crisis, it is valuable to review what the IMF did during the crisis, what it proposed, and the legal bases of its actions.[118] This overview will show why an amendment to the Articles was not needed even for significant modifications of lending policies, as opposed to the changes in the Gold Standard or Par-Value System.

---

the Fourteenth General Review of Quotas and Reform of the Executive Board ("Resolution") took note of "the commitment to reduce, as a means of achieving greater representation of emerging market and developing countries, the number of Executive Directors representing advanced European countries by two no later than the first regular election of Executive Directors after the conditions [for the effectiveness of quota increases under the 14th General Review] are met" (¶ 17).

[115] IMF, *Making the Global Economy work for all*, https://www.imf.org/en/Publications/AREB/Issues/2016/12/31/Annual-Report-of-the-Executive-Board-for-the-Financial-Year-Ended-April-30-2007.

[116] *Id*. at 68.

[117] Similar situations had occurred previously on a temporary basis, when a member's quota changed and thus became one of the 5 largest, in order not to deprive a member of their representation at the Board between Board elections.

[118] This review is by no means exhaustive. There are many books that take a broad view of the crisis and indeed address the IMF's role in it.

With the benefit of time, some commentators view the events of 2008-2012 not as two distinct events—a 2008 U.S. financial crisis and a 2010-2012 eurozone crisis—but as essentially one event.[119] The IMF's involvement in the initial 2008 crisis was limited, at least in the United States, the center of the crisis, due to the roles the IMF can and cannot play. For example, the Fund has a limited mandate and role in the private sector, where the 2008 crisis began as a debt crisis in the United States. When the subprime losses, the Lehman bankruptcy, and the cascading results reached the level of a systemic crisis, the U.S. Federal Reserve (Fed) took unprecedented—and still controversial—steps to shore up the system. The Fund's role was secondary, but important nonetheless, as other areas also felt the impact of the 2008 crisis. The crisis spread outside the private sector, where even non-U.S. banks relied on the Fed's credit line.[120] The Fund assisted other countries that were deeply and immediately impacted, beginning in 2008 with an explosion in the number of IMF lending arrangements and the amounts involved.[121] While this assistance highlighted the key role of the Fund, it also revealed some weaknesses in the Fund's lending framework. As the crisis in the eurozone grew larger, the Fund noticed that its existing facilities were not adequate for the task at hand.

Some controversy surrounds the IMF's decision in 2010 to modify its lending criteria as it prepared to provide Greece exceptional access to greater financing. This level of financing was essential to support Greece, but under the then-existing criteria set out by the Board, there needed to be a "high probability" that Greece's debt was sustainable without a restructuring, which the IMF staff and Board declined to find.[122] Thus, the criterion was changed to allow an exception to that

[119] *See, e.g.*, ADAM TOOZE, CRASHED: HOW A DECADE OF FINANCIAL CRISES CHANGED THE WORLD 7 (2018) (noting, "Contrary to the narrative popular on both sides of the Atlantic, the eurozone crisis is not a separate and distinct event, but follows directly from the shock of 2008.").

[120] The Fed swap lines went up to almost $600 billion in 2008. *See* ERIC HELLEINER, THE STATUS QUO CRISIS: GLOBAL FINANCIAL GOVERNANCE AFTER THE 2008 MELTDOWN, Oxford Scholarship Online, 6 (2014).

[121] Examples of the major financing programs in 2008-2009 included: Ukraine – Nov. 2008 – $16.9 billion; Hungary – Nov. 2008 – $16.2 billion; Iceland – Nov. 2008 – $2.1 billion; Pakistan – Nov. 2008 – $11 billion (increased to $14.3 billion); Sri Lanka – July 2009 – $2.5 billion; Dominican Republic – Nov. 2009 – $1.7 billion. Source: IMF.org.

[122] For a critique of the manner in which this decision was made, while acknowledging that there was a risk of contagion that fed the decision-making process, *see* Independent Evaluation Office of the International Monetary Fund, The IMF and the Crises in Greece, Ireland, and Portugal, 2016, p. 15 stating: "Perhaps no other IMF decision connected with the euro area crisis has received more criticism than that of providing exceptional access financing to Greece when its sovereign debt was

"high probability" requirement if a crisis presented a significant risk of adverse systemic spillover effects.[123] In May 2010, the IMF Executive Board approved providing exceptional access to Greece by introducing a "systemic exemption clause" to the Fund's policy on exceptional access.[124] This decision had implications beyond Greece, as the systemic exemption clause was invoked again in other cases of exceptional access support in Europe.[125]

As noted above, the IMF espouses an overarching principle of uniformity in the treatment of members. Thus, a special carve-out cannot be provided for one member that is not available for all members who meet the same criteria. While one can take exception with creating a new rule to fit the circumstances of the particular member country being considered by the Board, Greece was not the only beneficiary; Ireland and Portugal both used the systemic exemption clause to get exceptional access financings in 2010 and 2011, respectively.[126] This policy change was controversial, but there was some precedent for it. For example, when the IMF provided Mexico with $17.8 billion in 1995, which was at that point the largest amount of financing ever provided by the IMF, it raised complaints that the IMF was not following its policies on the process for approving financing and the size limitations.[127]

---

not deemed sustainable with a high probability." However, it does note that "The Managing Director's decision was to go along with the decision already reached by European policymakers, and to take a chance on the possibility, however uncertain, of restoring Greece to financial and macroeconomic stability through official financing, fiscal adjustment, and structural reforms—and thereby to avoid any direct fallout from a preemptive debt restructuring." The decision was so controversial that ultimately it was largely reversed.

[123] To the requirement that "A rigorous and systematic analysis indicates that there is a high probability that the member's public debt is sustainable in the medium term," the following text was added: "However, in instances where there are significant uncertainties that make it difficult to state categorically that there is a high probability that the debt is sustainable over this period, exceptional access would be justified if there is a high risk of international systemic spillovers."

[124] *See* Independent Evaluation Office of the International Monetary Fund, The IMF and the Crises in Greece, Ireland, and Portugal, 2016, p. 15. Ultimately the "systemic exception" was eliminated and replaced by a narrower exception allowing exceptional access "where the member's debt is considered sustainable but not with high probability" if there is sufficient financing from other sources than the Fund to sufficiently improve sustainability to enhance the safeguard of IMF resources. Decision No. 14064, para. 3(b), as amended.

[125] *Id*.

[126] *Id.* at 13-15.

[127] *See, e.g.*, Guy Brucceleri, *A Need to Refocus the Mandate of the International Monetary Fund and the World Bank*, 17 WINDSOR REV. LEGAL & SOC. ISSUES 53, 59-60 (2004) (citing to Eva Riesenhuber, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 58 (2001) and the Joint Economic Committee, Meltzer Report, at 25-26, https://www.gpo.gov/fdsys/pkg/CHRG-106shrg66721/pdf/CHRG-106shrg66721.pdf.

In many ways, the allowance for flexibility in the requirements and the limits highlights the political nature of IMF decision-making through its Executive Board. As an organization of members and for its members, the IMF ultimately determined that the Greece program was sorely needed. However, because of the legal principle of uniformity of treatment, a similar allowance had to then be open to other qualifying members going forward.[128] One could argue that this change is unfair to prior members that did not have similar access,[129] but the IMF is forward-looking and operates in an evolving political and economic environment.

Legally, how can the IMF have this flexibility in the design of its programs? After all, providing funding to the IMF is an "obligation" of membership, where members are obligated to provide quota payments to the IMF. The key is that, in the Articles, member countries delegate authority to the Fund to decide on Fund lending. Under Article V, Section 3, the Fund "shall adopt policies on the use of its general resources," including deciding what constitutes "adequate safeguards for the temporary use of the general resources of the Fund."[130] Here, the members ceded direct control to allow the Fund to make decisions regarding lending, and while members could vote against a proposal before the Board, individual members have no veto in cases where decisions are made by simple majority.[131] This area of decision-making, under the Articles, ceded member country control to allow flexibility in how the Fund lends its resources, including the flexibility to change the criteria for lending if the other major legal principles, like uniformity of treatment, are upheld.

There is an obvious tension in concluding that the ceding of authority over capital movements is a problematic surrendering of sovereignty, while authority over lending requirements of contributed resources is not. By design, the use of the Fund's pool of resources was to provide financing to members, even where some

---

[128] Independent Evaluation Office of the International Monetary Fund, *supra* note 122.
[129] *See id*.
[130] Pursuant to By-Law 15, the Board of Governors delegated all powers to the Executive Board, "except those conferred directly by the Articles of Agreement on the Board of Governors." Therefore, unless there is further specification, generic references to "the Fund" in the Articles refer to the Executive Board.
[131] Under the Articles, some decisions require a super-majority of 70% or 85%. As the US's voting position is more than 15% of voting power, it holds an effective veto over decisions requiring an 85% majority. *See* Article III(2)(c); Article V(7)(c) and (d); Article V(12)(b) and (e); Article XII(3)(b).

members might not agree.[132] In substance, the imposition on the members is limited. For example, the financing might not be one that members agree with, even if their currency might be used. Aside from financing in a situation that members might not fully support, no new obligations are imposed, as the resources have already been contributed. As the case of Greece demonstrates, the trade-off for whenever the next crisis may occur is whether to rigidly adhere to precedent or to be more flexible and adaptable to address urgent situations while keeping an eye on the basic principles involved.

Ultimately, the IMF's role, however valuable, is limited by various factors including its legal mandate. Scholars debate which transformations in global financial governance that were put in place due to the crisis were the most significant. Political Science Professor Eric Helleiner identifies these transformations as the creation of the G20 leaders' forum, the policy discussion over the role of the U.S. dollar, the G20's "extensive agenda for international regulatory reforms," and the creation of the Financial Stability Board as a "novel 'fourth pillar' of the global economic architecture, alongside the International Monetary Fund, World Bank, and World Trade Organization."[133] However, Helleiner argues that "none of these developments look as significant as it initially appeared."[134] In contrast with the major amendments to the Articles that followed the collapse of the Par-Value System and the U.S. suspension of the dollar's convertibility into gold, here, the system was not fundamentally revised. This finding does not mean the IMF members did not benefit from these developments, or that they were not key at the time.[135]

---

[132] David Driscoll, *The IMF and the World Bank, How do they Differ?*, IMF, https://www.imf.org/external/pubs/ft/exrp/differ/differ.htm#:~:text=To%20help%20nations%20abide%20by,institution%20as%20is%20the%20Bank (last visited Apr. 15, 2021).

[133] Eric Helleiner, THE STATUS QUO CRISIS: GLOBAL FINANCIAL GOVERNANCE AFTER THE 2008 MELTDOWN 3, Oxford Scholarship Online, Aug. 2014. One of the main initiatives of the G20 was committing to the "massive increase in the lending capacity" of the IMF. *Id.* at 5. The "fourth pillar" concept has been attributed to Timothy Giethner: Press Briefing by Treasury Secretary Tim Geithner on the G20 Meetings. Pittsburgh Convention Center, Pittsburgh, Pennsylvania. Sept. 24, 2009. Retrieved from http://www.whitehouse.gov/the-press-office/press-briefing-treasury-secretary-geithner-g20-meetings.

[134] *Id.* He notes that the G20's contribution was limited, the dollar remained as "the dominant international currency," international financial standards were not significantly changed, and the FSB's capacity to become a "fourth pillar" "turned out to be very limited."

[135] *See, e.g.*, Daniel W. Drezner, *The System Worked: Global Economic Governance during the Great Recession*, 66 WORLD POL. 123, 139 (2014) (citing Joseph Joyce, THE IMF AND GLOBAL FINANCIAL CRISES 168 (2013)).

One key crisis-measure adopted by the IMF that has received less public attention was re-invigorating a tool known as the Financial Sector Assessment Program (FSAP). The FSAP was created in 1999 following the Asian Financial Crisis, in which the financial sector played a critical role.[136] The program was designed to be joint between the World Bank and the IMF for developing and emerging market countries, but the IMF operated alone in advance economies.[137] It was significantly modified in 2009 to address the global financial crisis.[138] Old debates reemerged about whether getting involved in financial sector issues was really at the core of the IMF's work. Despite opposition, those debates were resolved in favor of allowing the institution the flexibility to consider these issues in-depth. Many other tools were also developed during the crisis, in the recognition that the crisis caught many unprepared. These tools included an Early Warning Exercise ("EWE") between the IMF and the Financial Stability Board, as called for by the G-20 Finance Ministers in 2009.[139] Another modification of the IMF's surveillance focused on key "spillovers" and how events in one economy can influence another, with a focus on incorporating this information into IMF surveillance more broadly.[140]

The IMF's involvement in the 2008 Global Financial Crisis was significant. The argument surrounding the flexible approach of the Fund ultimately shows that the majority is in favor of such approach due to the changing economic and political environment. Ultimately, amendments to the Articles were not necessary, and

---

[136] *Financial Sector Assessment Program (FSAP)*, THE WORLD BANK https://www.worldbank.org/en/programs/financial-sector-assessment-program#:~:text=The%20Financial%20Sector%20Assessment%20Program,severity%20of%20financial%20sector%20crises (last visited Apr. 15, 2021).

[137] *See id*.

[138] *Financial Sector Assessment Program (FSAP)*, IMF (Mar. 16, 2021), https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/14/Financial-Sector-Assessment-Program, (last visited Apr. 15, 2021).

[139] *See* Global Plan Annex: Declaration on Strengthening the Financial System, Statement Issued by the G20 Leaders London, Apr. 2, 2009, http://www.g20.utoronto.ca/2009/2009ifi.html.

[140] *See* "Spillover Reports," www.imf.org/en/Publications/SPROLLs/Spillover-Reports#sort=%40imfdate%20descending ("As part of its broader efforts to strengthen its surveillance, the IMF adopted an Integrated Surveillance Decision (ISD) in 2012, which calls for more systematic coverage of spillovers from members' economic and financial policies in Article IV consultations and better integrates bilateral and multilateral surveillance. The Decision allows the IMF to discuss with its members the full range of spillovers from their policies, on domestic but also global stability, and encourage discussion of spillovers issues at multilateral forums to foster policy attention and multilateral dialogue.").

decision-making regarding the crisis response was left to simple majorities of the IMF's Executive Board.

III. NEW REALITIES

The Fund has moved into several areas previously viewed as outside of its core domain. This expansion began under the prior Managing Director, Christine Lagarde, and continues to be a high priority for Kristalina Georgieva, who became Managing Director on October 1, 2019.[141] These efforts have been incorporated into the major functions of the IMF: its surveillance/monitoring function, its technical advice/services function, and its financing function.

Currently, the issue of absolute priority for the Fund is addressing the COVID-19 crisis and the resulting economic fallout. However, the IMF noted that other issues cannot be ignored and are interconnected with COVID-19's impacts. The issues addressed below—climate change, inclusive growth and social spending, gender equality, governance and anti-corruption (including Anti-Money Laundering/Countering Financial Terrorism ("AML/CFT") and fintech—are not the only issues the IMF is addressing. Many changes to address new realities have been proposed from different corners, ranging from increasing the lender-of-last-resort role,[142] significant new governance and quota reforms (e.g., further increasing representation of emerging market and developing countries), greater linkages with regional financing arrangements,[143] having an increased role (or at minimum an increased allocation) for the IMF's currency, the SDR,[144] and reviving

---

[141] *See* Statement by Kristalina Georgieva on Her Selection as IMF Managing Director, www.imf.org, Sept. 25, 2019 (noting "our immediate priority is to help countries minimize the risk of crises and be ready to cope with downturns. Yet, we should not lose sight of our long-term objective – to support sound monetary, fiscal and structural policies to build stronger economies and improve people's lives. This means also dealing with issues like inequalities, climate risks and rapid technological change.").

[142] *See* Helleiner, *supra* note 133, at 167 (Arguing that one option would be to empower the IMF to swap SDRs with leading central banks in return for unlimited amounts of their national currencies, citing to the idea as coming from Edwin Truman during the height of the financial crisis.).

[143] *See* Helleiner, *supra* note 133, at 173 (referring to "cooperative decentralization," citing to https://www-oxfordscholarship-com.libproxyimf.imf.org/view/10.1093/acprof:oso/9780199973637.001.0001/acprof-9780199973637-bibliography-1#acprof-9780199973637-bibItem-218.)

[144] *See, e.g.*, The Stiglitz Commission Report; Chinese central bank governor Zhou Xiaochuan, "Reform the International Monetary System," Mar. 23, 2009, noting the SDR's weakness but calling for it gradually take on a larger role (as cited in Helleiner, p. 69); Helleiner, The Status Quo Crisis, at 168.

a sovereign debt resolution framework/international bankruptcy court.[145] Still, the following issues are at the top of the list for the IMF and warrant immediate attention.

A. The COVID-19 Crisis

The impact of the COVID-19 crisis, in terms of its human and economic toll, has been enormous and is ongoing at the time of writing. As a global pandemic, the economic shocks resulting from COVID-19—"a crisis like no other"—has created more uncertainty than have other crises.[146] The IMF has attempted to tackle the crisis both in its traditional role providing financial assistance to sovereigns, as well as through intellectual leadership in thinking about the effects of the pandemic and how to address them.[147] The IMF has made massive efforts to address the COVID-19 crisis and the accompanying economic fallout, having received requests for financing from 102 countries, and having made over $250 billion available to its members.[148]

Like many institutions, the IMF needed to adapt quickly to the changing circumstances of a global pandemic. The IMF has done so by quickly revising and updating existing policies and adopting new policies based on existing legal authority. However, from a legal standpoint, the Fund's response has been very much within its existing mandate, much the same as with respect to the Global Financial Crisis. Specifically, changes to existing policies to tackle the COVID-19 crisis have included several modifications to increase the amount of money member countries can borrow, referred to collectively as the Fund's "access policies."[149]

---

[145] This is a topic that has been extensively debated, and indeed came a long way toward fruition at different times in the IMF's existence.

[146] Kristalina Georgieva, *A Crisis Like No Other Needs a Global Response Like No Other*, IMF Blog (Apr. 20, 2020), https://blogs.imf.org/2020/04/20/a-global-crisis-like-no-other-needs-a-global-response-like-no-other/.

[147] While the IMF is not hiring, for example, epidemiologists, it has recommended that member countries prioritize the pandemic response and health care generally when it comes to fiscal expenditures.

[148] *COVID-19 Financial Assistance and Debt Service Relief*, IMF, https://www.imf.org/en/Topics/imf-and-covid19/COVID-Lending-Tracker (last visited Feb. 19, 2021).

[149] *IMF Executive Board Approves a Temporary Increase in Annual Access Limits to Financial Support*, IMF (July 22, 2020), https://www.imf.org/en/News/Articles/2020/07/21/pr20267-imf-executive-board-approves-temporary-increase-annual-access-limits-financial-support.

The IMF has two types of limits on access: the total amount of financing outstanding to a member at any given moment (the total limit)[150] and the amount of borrowing in a given annual period (the annual limit).[151] Early on in the crisis, the IMF significantly increased the access limits for its emergency financing mechanisms, which allow for loans with a single disbursement, as opposed to tranched loans, where each tranche comes with conditionality.[152] These mechanisms are the Rapid Financing Instrument ("RFI")[153] (non-concessional) and Rapid Credit Facility ("RCF")[154] (concessional). On April 9, 2020, the IMF Executive Board doubled emergency financing available under the RFI and RCF to 100 percent of a member's quota (annual limit) and increased the total access limit by 50 percent to one and a half times a member's quota.[155]

As a second step, in July 2020, the IMF temporarily increased all annual access limits for emergency financing and for both concessional and non-concessional IMF lending.[156] This change permitted all member countries to borrow up to nearly two and a half times their IMF quota in any given year in non-concessional resources and, for low-income countries, one and a half times their quota in concessional resources.[157] While total limits for non-concessional resources were left unchanged, the upper bound on concessional resources was increased to over 180 percent of a member's quota.[158] At the same time, the IMF temporarily suspended the limit on RCF disbursements, the concessional emergency financing mechanism, which are normally limited to two per year.[159] Applying these policy changes, the IMF was able to provide emergency financing to sixty countries in

---

[150] *See id*.
[151] *See id.*
[152] *See* discussion of IMF conditionality, *supra* note 15.
[153] *See generally The IMF's Rapid Financing Instrument*, IMF (Mar. 23, 2021), https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/19/55/Rapid-Financing-Instrument.
[154] *See generally IMF Rapid Credit Facility*, IMF (Mar. 30, 2021), https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/08/Rapid-Credit-Facility.
[155] Enhancing the Emergency Financing Toolkit—Responding to the COVID-19 Pandemic (IMF Policy Paper, Apr. 9, 2020), available at https://www.imf.org/~/media/Files/Publications/PP/2020/English/PPEA2020018.ashx.
[156] *IMF Executive Board Approves a Temporary Increase in Annual Access Limits to Financial Support*, IMF (July 22, 2020), https://www.imf.org/en/News/Articles/2020/07/21/pr20267-imf-executive-board-approves-temporary-increase-annual-access-limits-financial-support.
[157] *Id.*
[158] *Id.*
[159] Temporary Modification to the Fund's Annual Access Limit (IMF Policy Paper, July 22, 2020), available at https://www.imf.org/~/media/Files/Publications/PP/2020/English/PPEA2020036.ashx.

ninety days, and as of March 16, 2021, had provided over $107 billion in financial assistance to eighty-five countries.[160]

In addition to increasing the amount of financial assistance available to its member countries, the IMF revamped existing lending policies to address the new challenges arising from the COVID-19 pandemic. For example, in 2010, the IMF established a trust to provide debt relief in cases of natural disaster, where Haiti benefited by having its entire IMF debt paid off following its catastrophic earthquake.[161] In 2015, the trust was restructured to become the Catastrophe Containment and Relief Trust ("CCRT") to cover epidemics in addition to natural disasters.[162] Debt relief was then provided to Guinea, Liberia, and Sierra Leone during the Ebola crisis.[163] Now, in response to COVID-19, the CCRT has again been enhanced to better address pandemics, in addition to epidemics. Under the revised CCRT, low-income countries can request debt service relief for up to two years once a pandemic has been declared.[164] Besides its own CCRT debt relief mechanism, the Fund has also played an important role, with the World Bank, in addressing debt relief from other creditors.[165] The Debt Service Suspension Initiative ("DSSI"), championed by the Fund and the Bank, provides for suspending debt payments to sovereign and other creditors through the end of 2020, covering up to 12 billion dollars in debt owed by developing countries.[166] Finally, the IMF has also been raising additional money to cover these ambitious initiatives, with a

---

[160] *See COVID-19 Financial Assistance and Debt Service Relief*, IMF, https://www.imf.org/en/Topics/imf-and-covid19/COVID-Lending-Tracker (last visited Aug. 27, 2020).

[161] As the IMF's legal framework does not permit it to forgive debt, donors contribute to the separate trust, managed by the IMF, which then covers debt payments to the Fund that fall due or pays off stock of debt to the IMF. *See* Factsheet: Catastrophe Containment and Relief Trust, *available at* https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/49/Catastrophe-Containment-and-Relief-Trust (last accessed Aug. 27, 2020).

[162] *Id.*

[163] *Id.*

[164] *See* "IMF Enhances Debt Relief Trust to Enable Support for Eligible Low-Income Countries in the Wake of the COVID-19 Pandemic," Mar. 27, 2020, available at https://www.imf.org/en/News/Articles/2020/03/27/pr20116-imf-enhances-debt-relief-trust-to-enable-support-for-eligible-lic-in-wake-of-covid-19.

[165] "Joint Statement World Bank Group and IMF Call to Action on Debt of IDA Countries," (Mar. 25, 2020), available at https://www.imf.org/en/News/Articles/2020/03/25/pr20103-joint-statement-world-bank-group-and-imf-call-to-action-on-debt-of-ida-countries.

[166] *See* Reuters, "Poorest countries to save $12 billion in 2020 debt relief: World Bank," (June 19, 2020), available at https://www.reuters.com/article/us-worldbank-debt-dssi/poorest-countries-to-save-12-billion-in-2020-debt-relief-world-bank-idUSKBN23Q34H.

goal, for example, to raise 17 billion dollars to increase its concessional lending power.[167]

Besides amending substantive policies, the IMF also modified procedural policies to accelerate the delivery of financial assistance during the crisis. For example, just weeks into the crisis, the IMF Executive Board adopted the "Pandemic Emergency Procedures" that set a four-day default for the Board to consider emergency financing requests,[168] while the IMF staff implemented streamlined procedures to increase efficiency in bringing such requests to the Board for approval.[169]

In addition to updating or enhancing existing policies, the IMF has adopted new policies in the wake of the pandemic while still working within its existing mandate. For instance, in April 2020, the IMF adopted a new lending facility, the Short-term Liquidity Line ("SLL"). The SLL is the first new lending facility[170] created by the IMF since the Flexible Credit Line and the Precautionary and Liquidity Line were developed during the 2008 Financial Crisis.[171] The SLL has innovative features that have not been used in other IMF facilities.[172] One of these features is the SLL's measurement of access according to "stock," the total amount of outstanding credit from the IMF, in contrast with "flow," the standard measurement of the amounts disbursed from the IMF. As soon as a member country begins to repay the IMF, its

---

[167] "How the IMF Can Help Countries Address the Economic Impact of Coronavirus," available at https://www.imf.org/en/About/Factsheets/Sheets/2020/02/28/how-the-imf-can-help-countries-address-the-economic-impact-of-coronavirus (last accessed Aug. 27, 2020).

[168] The Executive Board always has discretion to agree to even shorter periods for consideration.

[169] Streamlining Procedures for Board Consideration of the Fund's Emergency Financing During Exceptional Circumstances Involving a Pandemic (IMF Policy Paper, Apr. 9, 2020), available at https://www.imf.org/~/media/Files/Publications/PP/2020/English/PPEA2020019.ashx.

[170] The IMF created a non-financing instrument (no IMF money is available), the Policy Coordination Instrument, in 2017 for countries that wish to use an IMF economic reform program to unlock financing from other sources or that do not require financing but wish to use such an economic program to signal their commitment to reforms. *See* "Factsheet: IMF Policy Coordination Instrument (PCI)," available at https://www.imf.org/en/About/Factsheets/Sheets/2017/07/25/policy-coordination-instrument (last accessed Aug. 27, 2020).

[171] These were adopted in 2009. *See* "Factsheet: IMF Flexible Credit Line (FCL)," available at https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/20/40/Flexible-Credit-Line (last accessed Aug. 27, 2020) and "Factsheet: IMF Precautionary and Liquidity Line (PLL)," available at https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/20/45/Precautionary-and-Liquidity-Line (last accessed Aug. 27, 2020).

[172] The SLL was created as a "special facility" to avoid the application of some generally applicable policies that govern standard non-concessional lending. (usually, IMF arrangements are designed to be drawn down until there is no further access under the approved arrangement).

available access under the approved arrangement increases proportionally, which allows repeated use of the same credit line, if necessary.[173]

Moreover, the IMF has also addressed the crisis through intellectual leadership in its policy advice to member countries. For instance, in addition to its recommendation to prioritize health and other pandemic-related spending, the IMF Managing Director advised countries to "spend as much as you can. But keep the receipts."[174] In other words, ensure that the spending is used to respond to the pandemic and is not diverted for corrupt uses. The IMF has also had to consider the implications of unprecedented actions by central banks and the limits of monetary policy.[175] The IMF's advice has built upon work that it had already begun, for example, in the area of social protection and inclusive growth.

Due to the COVID-19 crisis, the IMF has created new and updated policies surrounding financial assistance. Incorporating previous work done during earlier crises, the IMF has both increased its emergency lending and financial assistance and updated existing policies, such as restructuring the CCRT.

B. Climate Change

As frightening a thought as it is, the COVID-19 crisis may be a harbinger of the future effects of climate change, with the potential for climate change to have an even more significant and longer-reaching impact.[176] While the IMF has noted that

---

[173] *Id.*

[174] "Spend More, Keep Receipts," Agence France Presse, June 15, 2020. The reference to receipts underlines the IMF's recent work in the area of governance and anti-corruption, *see IMF Executive Board Approves New Framework for Enhanced Engagement on Governance*, IMF (Apr. 22, 2018), https://www.imf.org/en/News/Articles/2018/04/21/pr18142-imf-board-approves-new-framework-for-enhanced-engagement-on-governance. This has taken on heightened significance due to the increased government spending and procurement during the crisis. *See* "Factsheet: How the IMF is Promoting Transparent and Accountable Use of COVID-19 Financial Assistance," available at https://www.imf.org/en/About/Factsheets/Sheets/2020/04/30/how-imf-covid19-financial-help-is-used (last accessed Aug. 27, 2020).

[175] *See, e.g.*, "Monetary and Financial Policy Responses for Emerging Market and Developing Economies" (IMF, June 8, 2020), available at https://www.imf.org/~/media/Files/Publications/covid19-special-notes/enspecial-series-on-covid19monetary-and-financial-policy-responses-for-emerging-market-and-developin.ashx.

[176] *See, e.g.*, Sarah Breeden, *Leading the Change: Climate Action in the Financial Sector, Speech, UK Finance Webinar held during London Climate Action Week*, 1 July 2020: https://www.bis.org/review/r200717h.pdf (On calling climate change the defining issue of our time, she states "I realize that this may seem an odd claim for a central banker to make in the middle of a

the COVID-19 crisis is the fiscal priority for countries, it does not alter the fundamental reality of climate change. Accordingly, the IMF has stated that "decisions taken now to address the COVID-19 crisis may shape the climate and human health, for decades," and it has called for fiscal policymakers to "green" their response to this crisis to prevent one crisis leading right into another.[177]

Climate change is a classic example of how an issue comes to the forefront of the IMF, as its macro-critical implications are recognized. The path of recognizing a new issue would begin with initial research and publications addressing the costs of climate change and the potential systemic importance of climate-related issues. The IMF would then work to solidify its position and note the parameters of its involvement. Next, the IMF targets work on particular areas such as small states and specific countries. And now the IMF fully recognizes that in order to sustain any recovery from the COVID-19 crisis, the IMF's work must take climate change into account.[178]

The IMF clarified its climate role in 2015, stating "the Fund is not an environmental organization, but climate change poses significant risks for macroeconomic performance and several of the appropriate policy responses lie within the Fund's expertise."[179] The IMF described how it would draw on the analysis of others to "focus on practical design and administration of fiscal instruments for climate policy and broader energy policy."[180] The Fund then discussed the areas in which it is involved, including:

1. Analytical work, citing to its extensive work on energy pricing reform and proposals for the removal of subsidies for energy, and its intention to have staff analyze the growth impacts of transitioning to a less carbon-intensive economy;

---

global pandemic that has already led to the largest fall in UK growth in over three hundred years. But our economy and financial system, with the right support, should eventually recover from Covid-19. In contrast, climate change, left unchecked, will lead to irreversible harm for generations to come. That demands our continued attention even as we deal with the current crisis.").

[177] IMF *Special Series Note: Fiscal Policies to Respond to COVID-19: "Greening the Recovery,"* Apr. 20, 2020, https://www.imf.org/~/media/Files/Publications/covid19-special-notes/en-special-series-on-covid-19-greening-the-recovery.ashx?la=en. (last visited Apr. 10, 2021).

[178] *Id.*; *see, also*, Tao Zhang, *Opening Remarks— COVID-19: Opportunities for a Green Recovery*, Organization for Security and Cooperation in Europe, Parliamentary Web Dialogue, May 22, 2020, https://www.imf.org/en/News/Articles/2020/05/22/sp052220-opening-remark-zhang.

[179] The Managing Director's Statement on the Role of the Fund in Addressing Climate Change, SM/15/271, Revision 2, p. 10, Nov. 25, 2015 (available to the public at IMF.org).

[180] *Id*.

2. Technical assistance, surveillance and training;
3. Promoting dialogue;
4. Integrating natural disaster risks and preparedness strategies in macroeconomic forecasting and debt sustainability analyses;
5. Helping countries incorporate adaptation strategies into their medium-term budget frameworks; and
6. Working closely with other institutions to include climate-related disclosures, prudential requirement, and stress testing for the financial sector.[181]

The IMF can play a unique role in addressing climate change[182] by "advis[ing] on the implications of climate commitments for macro and fiscal policy given its expertise, universal membership, and close relationship with finance ministries."[183] The IMF has put this work into practice, including a renewed focus by the Managing Director. It has incorporated climate science and expertise into the economic realm to provide an alternative approach to climate change.[184] It has also used the platform of its flagship publications to highlight climate change and to offer suggestions and proposals from an economic perspective.[185]

Substantively, the primary focus has been in an area of the IMF's core: fiscal policy. In many ways, the IMF sought to justify and explain its climate change work through this focus on fiscal policy. For instance, according to the Fiscal Monitor, which the IMF's Fiscal Affairs Department publishes, a cornerstone publication of the IMF, a global agreement to make fossil fuels more expensive would be the most

---

[181] *Id*. at 10-12.
[182] Michael Keen, Ian Parry, Matt Davies, Victor Mylonas, and Martin Cihak, *Fiscal Policies for Paris Climate Strategies*, IMF Policy Paper, Executive Summary (Feb. 2019).
[183] *Id*.
[184] *See* for example, Ralph Chami, Thomas Cosimano, Connel Fullenkamp, and Sena Oztosun, *Nature's Solution to Climate Change, Finance and Development* (Online edition), https://www.imf.org/external/pubs/ft/fandd/2019/12/natures-solution-to-climate-change-chami.htm.
[185] *See, for example, International Monetary Fund, Mitigating Climate Change—Growth- and Distribution-Friendly Strategies*, World Economic Outlook, Oct. 2020, https://www.imf.org/-/media/Files/Publications/WEO/2020/October/English/ch3.ashx; International Monetary Fund, *Fiscal Monitor, How to Mitigate Climate Change*, 2-4 (Oct. 2019). https://www.imf.org/external/pubs/ft/fandd/2019/12/pdf/fd1219.pdf; International Monetary Fund, Fiscal Monitor, How to Mitigate Climate Change, 2-4 (Oct. 2019).

efficient way to fight global climate change.[186] However, this has also expanded into broader macroeconomic analysis and looking at "policy packages."[187]

Further, the IMF is positioned to provide a unique perspective on climate change issues due to its focus on macro and fiscal policies, as well as its near-universal membership. The Fund's ability to add value at the country level in delivering economic projections and the implications of emissions, its ability to evaluate the impacts of mitigation policies from a fiscal and economic perspective, and its ability to analyze progress on NPCs[188] all contribute to this unique perspective. Additionally, the Fund has the capacity to evaluate broader energy price reform and track commitments, including on carbon pricing.[189] The IMF can draw on the expertise of other institutions such as the World Bank or the UN. The IMF is also uniquely positioned to be an advocate for the opportunities of green and climate-resilient economies, including productivity gains from emerging energy-efficient and renewable technologies, health benefits of lower fossil fuel use, and efficient use of carbon tax gains. The IMF's Work Program[190] would include "capacity development, policy development, program work, and surveillance" as well as analytical work on a range of issues, incorporating natural disaster climate risks into fiscal frameworks, and standardizing analysis of mitigation policies in bilateral and multilateral surveillance.[191] Standardization would ensure that fair comparisons are made in economic debates regarding climate change.

---

[186] International Monetary Fund, *Fiscal Monitor, How to Mitigate Climate Change*, 2-4 (Oct. 2019). *See also* Chris Mooney and Andrew Freedman, *The World Needs a Massive Carbon Tax in 10 Years to Limit Climate Change – IMF,* WASH. POST, Oct. 10, 2019.).

[187] International Monetary Fund, *World Economic Outlook, Mitigating Climate Change*, *supra* note 186, 93-94.

[188] *See* Michael A. Mehling, Harro van Asselt, Katsuri Das, Susanne Droege, and Cleo Verkuijl, *Designing Border Carbon Adjustments for Enhanced Climate Action,* 113 AM. J. OF INT'L. L., 3 (July 2019), 433-481, 437. As the authors note, the fact that the NPCs were largely up to each country to determine allows for flexibility but offers little guaranty that the aggregate pledges will be sufficient. As noted by Keen et al., 140 of the NPCs have included physical adaptation investment plans, and there are a wide range of aspects that the IMF can help monitor and track. Keen et al. at 12.

[189] Michael Keen, Ian Parry, Matt Davies, Victor Mylonas, and Martin Cihak, *Fiscal Policies for Paris Climate Strategies*, IMF Policy Paper, pp 41-42 (Feb. 15, 2019).

[190] The Work Program translates strategic directions and policy priorities into an Executive Board agenda.

[191] Michael Keen, Ian Parry, Matt Davies, Victor Mylonas, and Martin Cihak, *Fiscal Policies for Paris Climate Strategies*, IMF Policy Paper, pp 41-42 (Feb. 15, 2019).

One immediate benefit of the IMF's response to climate change is in how much of the existing discussion is focused on the climate impacts of trade.[192] Fiscal and monetary policies tend to be less well-reviewed and discussed.[193] Consequently, the IMF has taken up this mantle, including fiscal policy that incorporates environmental taxation and energy subsidy reform.[194]

The IMF has focused much research and policy advice on the possibilities of carbon taxation and trading systems, providing expert modeling on its possible costs, and developing proposals for how to share such costs across an economy. For example, the IMF has published highly technical books that can serve as key references for authorities.[195] In the fall 2019 Fiscal Monitor, the Fund reported that increases in energy prices due to carbon taxes would not be shared evenly between countries nor within individual countries.[196] However, this issue can be addressed with carbon taxes that are progressive in nature. As the Fiscal Monitor notes, "On balance, carbon pricing approaches seem to be the most promising [of mitigation policies], although mitigation through other approaches is better than inaction."[197] Many commentators have noted that the IMF's carbon tax proposals are not new.[198] However, the role that the IMF plays is of great importance, due to its influence with central banks and ministries of finance that is founded in its highly respected intellectual capital.[199]

---

[192] This is in no way intended to undermine the absolutely essential nature of that work and indeed the IMF is also heavily invested in discussions on trade policy. And, of course, there are fiscal implications of trade policy, for example the effects of proposed BCAs (Border Carbon Adjustments) which are a tariff on non-domestic carbon for countries that do not tax carbon emissions. For a thorough discussion on BCAs *see, e.g.*, Michael A. Mehling, Harro van Asselt, Katsuri Das, Susanne Droege, and Cleo Verkuijl, *Designing Border Carbon Adjustments for Enhanced Climate Action*, 113 AM. J. OF INT'L. L. 3, (July 2019), 433-81.

[193] The reasons for this are numerous and beyond the scope of this article.

[194] *See* Ian Parry, *The Case for Carbon Tax, IMF,* https://www.imf.org/external/pubs/ft/fandd/2019/12/the-case-for-carbon-taxation-and-putting-a-price-on-pollution-parry.htm;

[195] Examples include: Ian Parry, Dirk Heine, Eliza Lis, and Shanjun Li, Getting Energy Prices Right: From Principle to Practice, International Monetary Fund (July 2014); Ian Parry, Implementing a US Carbon Tax: Challenges and Debates, International Monetary Fund (Mar. 2015); and Ruud Mooij, Michael Keen, and Ian Parry, Fiscal Policy to Mitigate Climate Change: A Guide for Policymakers, International Monetary Fund (Sept. 2012).

[196] IMF, *Fiscal Monitor, How to Mitigate Climate Change*, 2-4 (Oct. 2019).

[197] *Id*. at 7.

[198] *See* Chris Mooney and Andrew Freedman, *The World Needs a Massive Carbon Tax in 10 Years to Limit Climate Change – IMF,* WASH. POST, Oct. 10, 2019.

[199] *Id.* quoting Noah Kaufman, Center on Global Energy Policy, as stating "[t]he question is how to spur action, and a group like the IMF has a role to play in making that happen."

On energy subsidy reform, the IMF has contributed its intellectual capital—both in publications and in direct advice with authorities.[200] Reform of energy subsidies has been a longstanding issue, and in many ways, was more of a fiscal and trade policy concern than a climate change concern. However, there is a growing awareness of and focus on the climate change benefits of subsidy elimination or reform, and the need for tailored advice regarding impact reduction on the poorest populations when energy subsidies are reduced or eliminated. The Fund also aims to shift the mindset of current and future economists, who may be traditionally reluctant to look at non-economic or political issues. As the Fund has noted, the uncertainty regarding exactly how much impact climate change will have in each region or the variations in potential temperature changes are a call to do more, not less.[201]

Another approach has been to focus on long-term development and investment in green infrastructure in particular. Regarding financial policies, the IMF's 2019 Global Financial Stability Report discussed sustainable finance that would incorporate environmental, social, and governance ("ESG") principles.[202] The report looked at several ESG-related issues, and proposed several policies to further develop sustainable finance, ranging from:

1. Standardization of terminology and definitions;
2. Consistent reporting (including consideration of mandatory minimum; ESG reporting requirements); and
3. Regulatory clarification of the role of ESG factors in investment governance, to regulators and central banks "fostering awareness and offering intellectual leadership" on ESG issues.[203]

---

[200] For publications *see e.g*., Benedict Clements, David Coady, Stefania Fabrizio, Sanjeev Gupta, Trevor Alleyne, and Carlo Sdralevich, *Energy Subsidy Reform: Lessons and Implications*, IMF (Sep. 2013).
[201] *See* IMF, *Chapter 3, The effectx of Weather Shocks on Economic Activity: How Can Low-Income Countries Cope? World Economic Outlook*, (Oct. 2017).
[202] IMF, Sustainable Finance, Global Financial Stability Report (Oct. 2019).
[203] *Id*. at 90-91.

The report also called upon credit rating agencies and ESG data providers to further integrate ESG information into reports and scores.[204] It noted that the IMF "will continue to incorporate ESG-related considerations, in particular related to climate change, when critical to the macroeconomy."[205]

Similarly, in a 2019 discussion on whether and how central banks can address climate change issues, IMF Managing Director Kristalina Georgieva noted the "non-controversial" work that needs to be done—including by the IMF—to standardize reporting, determine relevant data on climate change issues, and to conduct stress testing. This testing must take into account climate change risks, including the increased risks of natural disasters.[206] Georgieva noted that, in contrast, central banks potentially proactively using tools to encourage green investment and mandatory climate-change-related disclosures is "very controversial" (although the debate has shifted).[207] The IMF has noted it could consider the possible uses of "Green QE," which concerns whether and how central banks should invest in green industries when engaged in bond-buying economic stimulation programs commonly called quantitative easing ("QE").[208] The IMF has, through its role as a key interlocutor with, and advisor to, central banks, stressed the need for a "green recovery."[209] The Managing Director has also recommended that central banks begin to develop climate-related "stress tests" to help identify "the likely impact of a severe adverse climate-driven shock on the solvency of financial institutions and the stability of the financial system."[210] The Managing Director has stated that the role of the IMF was and is not to make these decisions

[204] *Id.* at 97.
[205] IMF Blog, *Connecting the Dots between Sustainable Finance and Financial Stability*, (Oct. 9, 2019), https://blogs.imf.org/2019/10/10/connecting-the-dots-between-sustainable-finance-and-financial (last visit Apr. 12, 2021).
[206] *See* IMF, *Can Central Banks Fight Climate Change?* (Oct. 16, 2019), https://meetings.imf.org/en/2019/Annual/Schedule/2019/10/16/imf-seminar-climate-change-and-central-banks.
[207] Kristalina Georgieva and Rajiv J. Shah, *How Governments Can Create a Green, Job-rich Global Recovery*, IMF Blog (Dec. 4, 2020), https://blogs.imf.org/2020/12/04/how-governments-can-create-a-green-job-rich-global-recovery/ (last visited Apr. 12, 2021).
[208] Signe Krogstrup and William Oman, *Macroeconomic and Financial Policies for Climate Change Mitigation: A Review of the Literature*, Sept. 2019, https://www.imf.org/~/media/Files/Publications/WP/2019/wpiea201985-print-pdf.ashx.
[209] IMF, *supra* note 139.
[210] Kristalina Georgieva, *The Adaptive Age, Finance and Development 20-21*, IMF Blog Dec. 2019.

for central banks, but to be at the forefront of the discussion and provide relevant tools.[211]

Georgieva has also stated that the plan was not to hire climate scientists directly at the IMF, which would arguably stretch the IMF's mandate and expertise—much the same way as the IMF is not hiring epidemiologists to address COVID-19.[212] Rather, the plan was to take the advice of climate scientists (and in the case of COVID-19, epidemiologists) and then use the IMF's expertise to help propose solutions.[213] The climate discussions have continued in the context of COVID-19, with IMF staff recommending public investments in climate change be part of the immediate post-crisis recovery.[214] Others within the IMF have agreed that the focus should be even earlier, incorporating, where feasible, climate change issues into the immediate fiscal outlays.[215] With countries engaging in major fiscal stimulus programs, it would seem to make sense to focus those resources on long-term sustainability and future areas of growth. Although COVID-19 necessitates an immediate response, the IMF should not neglect the similarly significant global danger posed by climate change.

Former Chairman of the Appellate Body of the World Trade Organization James Bacchus notes, "[o]ur future economically cannot be separated from our future environmentally."[216] In many ways, the COVID-19 crisis is a quintessential example of a pandemic and public health issue that is rapidly becoming an economic one with likely a significantly larger impact than the Great Recession.[217]

---

[211] Kristalina Georgieva, *Beyond the Crisis, Finance and Development*, IMF Blog, June 2020 at https://www.imf.org/external/pubs/ft/fandd/2020/06/pdf/turning-crisis-into-opportunity-kristalina-georgieva.pdf.

[212] *Id*.

[213] *Id*.

[214] *See*, *e.g*., Vitor Gaspar, W. Raphael Lam, and Mehdi Raissi, *Fiscal Policies for the Recovery from COVID-19* (May 6, 2020),https://blogs.imf.org/2020/05/06/fiscal-policies-for-the-recovery-from-covid-19/#more-29223 (May 6, 2020); Vitor Gaspar and Gita Gopinath, *Fiscal Policies for a Transformed World*, IMF Blog (July 10, 2020), https://blogs.imf.org/2020/07/10/fiscal-policies-for-a-transformed-world/ (After the Great Lockdown, "Authorities should actively support climate-friendly investments that promote greener, job-rich and innovation-driven growth").

[215] Gianviti, *supra* note 21, 1371.

[216] James Bacchus, THE WILLING WORLD: SHAPING AND SHARING A SUSTAINABLE GLOBAL PROSPERITY, Cambridge University Press, 44 (2018).

[217] Some studies have indeed suggested that increased deforestation could itself lead to a rise in diseases like COVID-19, in part due to the increased interaction (and transmission) between animals and people, which is thought to have been the origin of current virus. See, e.g., World Economic Forum, Stanford University, Forest loss could make diseases like COVID-19 more likely, according

Climate change could be similar or worse.[218] The IMF must plan for any such economic risk on a macroeconomic level.

The turn toward climate change work is not without its critics. Financial journalist John Dizard suggests that the involvement of the IMF, and of central banks, in climate change work could be detrimental.[219] In his view, monetary economists lack substantive knowledge on "the physics of climate change or the industrial and policy details of how to respond to the challenge," and they would be uninformed regarding the necessary trade-offs and could "add to the noise."[220] He has also noted that the IMF's focus is on the short and medium-term, and it is ill-equipped to deal with a long-term issue such as climate change.[221] However, Dizard's approach oversimplifies climate-related issues and would only permit scientists, who presumably have the expertise, to speak on the issue. While there are uncertainties in how to address climate change, these issues do not absolve central banks and regulators, nor the IMF, from the responsibility of developing tools to address the risks presented by climate change, such as price instability and supply-side shocks.[222]

Due to its fiscal and monetary roles, the IMF can have an impact beyond that of central banks. To the extent many central banks have been making great strides in this area, the IMF would seemingly be able to rely on similar justifications. At minimum, this could include looking at two of the three areas identified by former Goldman Sachs partner Gavyn Davies that central banks need to address: climate-change risks to financial stability, insurance and banking primarily, and the impact

---

to study, Apr. 15, 2020, https://www.weforum.org/agenda/2020/04/forest-loss-diseases-covid19-coronavirus-deforestation-health.

[218] IMF, *Social Spending for Inclusive Growth in the Middle East and Central Asia ix* (2020), https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2020/09/25/Social-Spending-for-Inclusive-Growth-in-the-Middle-East-and-Central-Asia-49669 (follow "Free Download" hyperlink).

[219] John Dizard, *Central banks have no expertise in climate change*, FINANCIAL TIMES, Oct. 25, 2019.

[220] *Id.*

[221] *Id.* (He also notes that, for central banks in particular, they are deeply unpopular – particularly in Europe – and that they have enough challenges with their core work of balancing "price stability, employment-generating self-sustaining growth and financial system stability." He argues that focusing on climate might be a good "career move," since it is measured longer-term, such that even if they fail in their primary efforts, they can point to working on climate change).

[222] Dr. Ulrich Volz, *Central bankers who ignore climate change are not doing their job*, FINANCIAL TIMES, Oct. 30, 2019.

of climate change on growth and inflation.[223] Additionally, to the extent the IMF is often called upon to consult with and advise central banks around the world, particularly in lesser developed countries, it would appear to have valuable input on the third identified area: the direct role of central banks in mitigating climate change through managing their balance sheets, including increasing the holdings of green bonds.[224] Part of the key message of the IMF is that everyone must play a part, defer to outside expertise, and focus on areas where each institution can add value.

Another critique of the IMF's focus on the effects of climate change is based on elitism. Critics claim that concern for the environment reflects post-modern values, Western preferences, or a mostly well-to-do staff that has the post-scarcity luxury to be concerned with environmental issues, rather than the views of the IMF's membership writ large.[225] However, such a critique has not been borne out by the voting of member countries and their interests. Indeed, many of the poorer countries are and will be the most impacted by climate change, and, thus, have the greatest incentives to address it.[226] Moreover, concern for the damage of climate change is not limited to the elite. Indeed, it may be more elitist to assume this premise while climate change is increasingly impacting more people's lives every day.[227] There is a need for discussion about the social atmosphere of values surrounding climate change, but it is facile to assume environmental concern is an elitist project out of step with the fundamental goals of monetary and financial stability and economic growth.[228]

---

[223] Gavyn Davies, *Central Banks Begin to Grapple with Climate Change*, FINANCIAL TIMES, https://www.ft.com/content/eafee5dc-2e52-11ea-bc77-65e4aa615551.
[224] *Id.*
[225] *See, e.g.*, Elizabeth Currid-Halkett, THE SUM OF SMALL THINGS: A THEORY OF THE ASPIRATIONAL CLASS 135-136 (2017), citing to Ronald Inglehart, *Globalization and postmodern values*, WASH. Q. 23, 215-228 (2000).
[226] The World Bank, *Poverty and Climate Change: Reducing the Vulnerability of the Poor through Adaptation 1*, http://www.oecd.org/env/cc/2502872.pdf.
[227] *See, e.g.*, the Health of the Planet Survey (2016) and similar studies.
[228] Indeed, there may be ways to "square the circle" of being both pro-capitalist and pro-environment, a key component to the growing "conspicuous production" industries around the world. See, e.g., Elizabeth Currid-Halkett, THE SUM OF SMALL THINGS: A THEORY OF THE ASPIRATIONAL CLASS 141-143 (2017) (describing the "fundamental uniqueness" of the conspicuous production movement as that it is not anti-capitalist but rather fully embraces and reinterprets it, bringing in core values of environmental stewardship, fair labor practices, etc. – though of course preconditioned on a market for those goods.) The IMF's efforts and analysis on green technology

These concerns help frame and limit the IMF's work on climate change. The IMF seeks a broad consensus across membership, as reflected, for example, in the IMFC's communique in October 2019. The communique involved several issues, including climate change, and was adopted in spite of U.S. concerns.[229] The IMF seeks to carefully ensure that it is not imposing Western environmentalism in its actions; rather, the IMF recognizes the needs and concerns of those most impacted.[230] This is why, for example, the IMF focuses much of its climate change research on how to assist low-income countries, rather than impose costs that developed countries did not have to bear.[231] In addition, the IMF limits itself to what it knows well, and it can provide real value on fiscal policy, while also advancing the discussion in the monetary and financial areas. Ultimately, the policies that countries put in place now in response to the COVID-19 crisis will "shape the climate for decades."[232] It is incumbent upon the IMF to express its views and assist its membership on environmental policies as it pertains to economic growth.

C. Inclusive Growth and Social Spending

As social inequalities are exacerbated by increased globalization and the COVID-19 pandemic, social spending has become even more essential in preventing social unrest. Social spending can include cash benefits, tax breaks with social purposes, and other spending to benefit those in need, including the elderly,

---

and industry are indeed in a rather juvenile stage and for perhaps good reason as areas of production and individual industry more naturally fall into the ambit of the World Bank and other organizations. Thus far the IMF has simply encouraged such developments without providing significant guidance.

[229] Communiqué of the Fortieth Meeting of the International Monetary and Finance Committee (IMFC), Oct. 2019 ("Sustained joint action is essential to address other challenges that transcend borders. We support efforts toward achieving the 2030 Sustainable Development Goals (SDGs). We will continue to support domestic and multilateral efforts to address, build resilience to, and deal with the macroeconomic consequences of pandemics, cyber risks, climate change and natural disasters, energy scarcity, conflicts, migration, and refugee and other humanitarian crises. We will continue to collaborate to leverage financial technology while addressing related challenges.") The IMFC is the ministerial committee advising the IMF Board of Governors and providing guidance to the staff, essentially setting out the work program for the coming period. *See* IMF Governance Structure, https://www.imf.org/external/about/govstruct.htm.

[230] IMF, *The Economics of Climate, Finance & Development 27* (Dec. 2019), https://www.imf.org/external/pubs/ft/fandd/2019/12/pdf/fd1219.pdf.

[231] Lawrence MacDonald and Jing Cao, *The Sudden Rise of Carbon Taxes 2010–2030 6*, Center for Global Development, Oct. 20, 2014, https://www.cgdev.org/publication/ft/sudden-rise-carbon-taxes-2010-2030.

[232] IMF, *Special Series Note: Fiscal Policies to Respond to COVID-19: "Greening the Recovery,"* Apr. 20, 2020, https://www.imf.org/~/media/Files/Publications/covid19-special-notes/en-special-series-on-covid-19-greening-the-recovery.ashx?la=en.

individuals with disabilities, low-income households, and the unemployed. Because excessive inequality can have significant impacts on both long-term growth and the macroeconomic stability of nations, the IMF has placed a renewed focus on social spending in recent years.

Tharman Shanmugaratnam, former Deputy Prime Minister and Finance Minister of Singapore, as well as former Chairman of the IMFC, refers to two basic conundrums of globalization: 1) growth through global integration is leading to a more multipolar and more decentralized world in terms of decision making, but the world is simultaneously becoming vastly more interconnected; and 2) there is increasing inequality within countries despite decreasing inequality between them.[233]

In response, the World Bank has increasingly engaged in areas related to human rights. In 2018, the Bank adopted an Environmental and Social Framework that includes environmental and social standards that the Bank applies to itself as well as to its borrowers.[234] The policies include standards related to human rights, labor and working conditions, involuntary resettlement, and indigenous and traditional local communities.[235] With the IMF now moving into new areas, including member governance and anti-corruption,[236] some may wonder whether other areas more closely related to human rights may be the next frontier for the Fund. Like the World Bank, the Fund has come under increasing pressure since the Global Financial Crisis of 2008 to recognize the impact of its work on human rights.[237]

---

[233] Tharman Shanmugaratnam, *Building the New International Cooperative Order, in Revitalizing the Spirit of Bretton Woods* at 2-3, https://personal.lse.ac.uk/jink/pdf/Bretton%20Woods-75-Compendium-Dr-Keyu-Jin.pdf

[234] The World Bank, *Environmental and Social Framework, effective* Oct. 1, 2018, http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf.

[235] *Id*.

[236] *See, e.g*., "Review of 1997 Guidance Note on Governance - A Proposed Framework for Enhanced Fund Engagement," IMF Policy Paper (Apr. 2018), available at https://www.imf.org/~/media/Files/Publications/PP/2018/pp030918govpaper.ashx.

[237] *See, e.g*., "IMF has large brain and tiny conscience, says UN poverty expert calling for urgent change" (June 19, 2018), available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23215&LangID=E ("The IMF is the single most influential actor on the international stage, not only in relation to fiscal and monetary policy, but also in terms of social protection. However, despite impressive rhetoric from its Managing Director, Christine Lagarde, its practice has lagged far behind what it has preached.") (quoting special rapporteur Philip Alston); *see also* United Nations Human Rights Council, "Report of the Special Rapporteur on extreme poverty and human rights," A/HRC/38/33

While the Fund has been engaged in social spending matters since the 1990s, the problems of inequality have become more pronounced in the wake of the Global Financial Crisis.[238] In 2017, the IMF published a study on the economic costs of inequality and noted that while "some inequality is inevitable in a market-based economic system, excessive inequality can erode social cohesion, lead to political polarization, and ultimately lower economic growth."[239]

IMF policy advice increasingly recognizes that a trade-off between growth and distributional objectives is not always necessary, and the key role of social spending is achieving inclusive growth.[240] The aim of the Fund's deepening engagement in this area is to make the Fund's work on social spending issues more systematic and effective in both its surveillance, as well as in Fund-supported financing programs.[241] The COVID-19 crisis has heightened the significance of the IMF's work on inequality, as the economic effects of the pandemic disproportionately affect young, less-educated, and minority workers.[242] The crisis also exacerbated existing issues of inequality leading to increasing social unrest.[243] As Managing

---

(May 8, 2018); "Financial institutions complicit in impact of austerity measures on human rights, says UN expert" (Sept. 10, 2019), available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24967&LangID=E. *See also* United Nations General Assembly, "Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights," A/74/178 (July 16, 2019).

[238] *See*, *e.g*., Kristalina Georgieva, *Reduce Inequality to Create Opportunity*, IMF Blog (Jan. 7, 2020), available at https://blogs.imf.org/2020/01/07/reduce-inequality-to-create-opportunity/ ("Over the past decade, inequality has become one of the most complex and vexing challenges in the global economy. Inequality of opportunity. Inequality across generations. Inequality between women and men. And, of course, inequality of income and wealth. They are all present in our societies and—unfortunately— in many countries they are growing. The good news is we have tools to address these issues, provided we have the will to do so").

[239] *Tackling Inequality*, IMF Fiscal Monitor (Oct. 2017), available at https://www.imf.org/en/Publications/FM/Issues/2017/10/05/fiscal-monitor-october-2017.

[240] IMF, *Social Spending for Inclusive Growth in the Middle East and Central Asia, No. 20/12 ix*, https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2020/09/25/Social-Spending-for-Inclusive-Growth-in-the-Middle-East-and-Central-Asia-49669 at 13.

[241] *Supra* note 253, https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/06/10/A-Strategy-for-IMF-Engagement-on-Social-Spending-46975.

[242] *See* Ippei Shibata, *The Distributional Impact of Recessions: the Global Financial Crisis and the Pandemic Recession*, IMF Working Paper WP/20/96, available at https://www.imf.org/en/Publications/WP/Issues/2020/06/19/The-Distributional-Impact-of-Recessions-the-Global-Financial-Crisis-and-the-Pandemic-49492.

[243] IMF Fiscal Monitor, *Policies to Support People During the COVID_19 Pandemic* (Apr. 2020) at 13, available at https://www.imf.org/en/Publications/FM/Issues/2020/04/17/Fiscal-Monitor-April-2020-Policies-to-Support-People-During-the-COVID-19-Pandemic-49278.

Director Kristalina Georgieva told G20 finance ministers, the IMF "will concentrate both lending and policy support to reduce the scarring of the economy caused by bankruptcies and unemployment, to support a speedy recovery."[244] As a result, the IMF has advised member countries to safeguard priority social protection spending while prioritizing health care expenditures.[245] Specifically, this could include reducing gaps in the populations covered by social benefits,[246] ensuring protection for workers in the informal sector,[247] and even considering universal transfers.[248]

The Fund's legal authority to engage in this area comes from both its surveillance mandate and its lending mandate. Social spending policies to promote inclusive growth are critical to achieve the 2030 Sustainable Development Goals ("SDGs"),[249] and to tackle policy challenges from demographic, technological, and structural changes. Excessive inequality can have significant negative implications for both longer-term growth and macroeconomic stability. The limiting principle that has been applied by the IMF in this area, in order to maintain consistency with its mandate, has been "macrocriticality."[250]

---

[244] Remarks by IMF Managing Director Kristalina Georgieva During the G20 Finance Ministers and Central Bank Governors Meeting (Apr. 15, 2020), available at https://www.imf.org/en/News/Articles/2020/04/15/pr20160-remarks-managing-director-kristalina-georgieva-g20-fin-min-cen-bank-gov-meeting.

[245] IMF Fiscal Monitor, *Policies to Support People During the COIVD_19 Pandemic* (Apr. 2020) at 13, available at https://www.imf.org/~/media/Files/Publications/fiscal-monitor/2020/April/English/text.ashx.

[246] Delphine Prady, *Reaching Households in Emerging and Developing Economies: Citizen ID, Socioeconomic Data, and Digital Delivery* (IMF, 2020), available at https://www.imf.org/~/media/Files/Publications/covid19-special-notes/en-special-series-on-covid-19-reaching-households-in-emerging-and-developing-economies.ashx at 3.

[247] Federico Diez et al, *Options to Support the Incomes of Informal Workers During COVID-19* (IMF, May 20, 2020), available at https://www.imf.org/-/media/Files/Publications/covid19-special-notes/en-special-series-on-covid-options-to-support-the-incomes-of-informal-workers-during-covid-19.ashx.

[248] *See* Delphine Prady, *Managing the Impact on Households: Assessing Universal Transfers (UT*) (IMF, 2020), available at https://www.developmentpathways.co.uk/wp-content/uploads/2020/04/en-special-series-on-covid-19-managing-the-impact-on-households-assessing-universal-transfers.pdf. *See also* Baoping Shang et al., "Expenditure Policies in Support of Firms and Households" (IMF, 2020), available at https://www.imf.org/~/media/Files/Publications/covid19-special-notes/en-special-series-on-covid-19-expenditure-policies-in-support-of-firms-and-households.ashx.

[249] UN Department of Economic and Social Affairs, *History*, https://sustainabledevelopment.un.org/?menu=1300.

[250] Guidelines on Conditionality, ¶¶ 3, 6, Decision No. 12864-(02/102), in *Selected Decisions and*

Thus, the Fund, in its bilateral surveillance, is required to assess whether a member's domestic policies are directed towards promoting domestic stability, and such domestic policies can include social protection policies.[251] Regarding lending, the Fund may encourage and assist a member to pursue its own objectives related to social protection and inclusive growth as part of its program if these objectives are consistent with the primary goals of helping the member correct its balance of payments problem and achieve external viability.[252] Addressing social protection concerns can also help better implement fiscal adjustment measures under a program.

The IMF's new strategy in social growth focuses on a broad concept of social spending.[253] In addition to social protection spending, which was the focus of the 2017 IEO Report,[254] social spending is defined to include education and health spending.[255] This broad definition reflects the critical importance of such spending for promoting inclusive growth, the wider scope of current engagement by the IMF, and the complementary nature of these three spending components. This definition is consistent with past IMF analysis and prevailing practices of international institutions.

Selected Documents of the IMF, (40th ed., IMF, 2019), available at https://www.imf.org/external/SelectedDecisions/Description.aspx?decision=12864-(02/102).

[251] *See* Articles of Agreement, Article IV, Section 1; *see also Modernizing the Legal Framework for Surveillance—An Integrated Surveillance Decision: Revised Proposed Decisions*, ¶¶ 5-8, 19, IMF Policy Paper (July 17, 2012), available at http://www.imf.org/external/np/pp/eng/2012/071712.pdf; *Jobs and Growth: Analytical and Operational Considerations for the Fund*, Annex 7, p. 69, IMF Policy Paper (Mar. 14, 2013), available at https://www.imf.org/external/np/pp/eng/2013/031413.pdf ("the ISD recognizes that there are circumstances in which surveillance must pay particular attention to the need to promote higher rates of potential growth. Specifically, the decision requires the Fund to examine whether domestic policies are directed toward fostering a high rate of potential growth….").

[252] *Guidelines on Conditionality, supra* note 253, ¶¶ 3, 6, ("In responding to members' requests to use Fund resources and in setting program-related conditions, the Fund will be guided by the principle that the member has primary responsibility for the selection, design, and implementation of its economic and financial policies…. Fund-supported programs should be directed primarily toward the following macroeconomic goals: (a) solving the member's balance of payments problem without recourse to measures destructive of national or international prosperity; and (b) achieving medium-term external viability while fostering sustainable economic growth.").

[253] IMF Policy Paper, A STRATEGY FOR IMF ENGAGEMENT ON SOCIAL SPENDING (June 2019).

[254] IEO, *The IMF and Social Protection*, https://ieo.imf.org/en/our-work/Evaluations/Completed/2017-0724-the-imf-and-social-protection.

[255] *Supra* note 253.

In practice, when it provides financing, the Fund should aim to mitigate the adverse effects of adjustment measures on the vulnerable, and conditionality should support social objectives where critical for the program's success. In the area of surveillance, the Fund can include formulating policy recommendations on social spending, within the broader macroeconomic context, reflecting financing constraints and appropriate sequencing of policy measures. Finally, the Fund's technical assistance can seek to expand fiscal resources available for social spending.[256]

As shown, the Fund's recent deeper engagement in social protection represents an excellent example of interpreting the existing legal framework to help justify and support expanding the Fund's work into new, critical areas for the economic development of its member countries.

D. Gender Equality

As economists give more attention to the macroeconomic impact of wealth inequality, the economic effects of gender inequality have also become apparent. Globally, discrimination against women in the workforce has led to more restrictive options for paid work, fewer opportunities for management roles, and lower salaries than what men receive for similar work.[257] As a result, women comprise 50 percent of the working age population, but only 40 percent of the workforce.[258] The IMF has concluded that the global economy is not reaching its growth potential due to this disproportion.[259] Therefore, addressing the gender gap in the workforce has the potential to unlock needed resources and support economic development, particularly for developing countries. Reducing global poverty would also be beneficial, since women are more likely than men to be poor and illiterate.[260]

---

[256] *Supra* note 253 at 26-34, available at https://www.imf.org/~/media/Files/Publications/PP/2019/PPEA2019016.ashx.
[257] IMF, *Jobs and Growth-Analytical and Operational Considerations for the Fund (2013),* Annex 1, available at https://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Jobs-and-Growth-Analytical-and-Operational-Considerations-for-the-Fund-PP4750; Kalpana Kochhar, Sonali Jain-Chandra, and Monique Newiak, *Women, Work, and Economic Growth: Leveling the Playing Field* World Bank, available at https://wbl.worldbank.org.
[258] Labor, force female (% of total labor force) (Derived using data from International Labour Organization, ILOSTAT database), The World Bank Databank, 2019.
[259] IMF, *How to Operationalize Gender Issues in Country Work,* available at https://www.imf.org/~/media/Files/Publications/PP/2018/pp060118howto-note-on-gender.ashx.
[260] *Id.* at 5-8.

In 2015, the Fund began including gender equality in its operational work.[261] Initially, the IMF integrated gender analysis in the economic surveillance of its members to promote increased women's participation in the economy.[262] Since the IMF is an institution concerned primarily with addressing economic issues, it is prohibited from using its authority to directly address gender equality and other human rights. However, when issues of gender equality are macro-critical, they can be addressed by the Fund within its economic mandate. When gender equality issues have a significant impact on members' economic and financial stability, they can be considered macro-critical. In the case of IMF surveillance, Fund policy recognizes that situations exist in which surveillance should focus on the need to promote higher rates of potential growth, particularly when it significantly influences the prospects for domestic stability, and consequently, the balance of payment stability. Gender inequality can be highly relevant for growth in some countries.

The Fund can also promote gender equality using conditionality in Fund-supported economic adjustment programs. It may incorporate objectives related to inclusive growth and unemployment as a part of a financing program if these objectives are consistent with the primary goals of helping the member correct its balance of payment problem and achieve external viability.[263] The degree to which the Fund may set conditions related to gender equality depends on the member's circumstances and the relevant Fund facility under which resources are provided.[264] Some facilities place greater emphasis on economic growth than others. For example, the Extended Fund Facility was designed to help economies characterized by slow growth and an inherently weak balance of payment position, which prevents the pursuit of an active development policy.[265] Growth and poverty reduction are explicit objectives of Fund financing under the Poverty Reduction and Growth Trust ("PRGT"), which was designed to provide loans on concessional

[261] *Id.* at 3.
[262] *Id.* at 8.
[263] IMF, *2011 Review of Conditionality 18*, https://www.imf.org/external/np/pp/eng/2012/061912a.pdf.
[264] IMF, *How to Operationalize Gender Issues in Country Work,* 17 (June 2018), https://www.imf.org/~/media/Files/Publications/PP/2018/pp060118howto-note-on-gender.ashx.
[265] *See IMF Extended Fund Facility (EFF) Factsheet*, available at https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/20/56/Extended-Fund-Facility.

terms to low-income developing members to promote stable and sustainable positions to create strong and durable poverty reduction through growth.[266]

Finally, the Fund can provide technical assistance to its member countries, including assistance with how to conduct gender-based analysis. The Fund has supported research on this issue by conducting studies on the impact of financial inclusion, access to infrastructure, and legal impediments to gender equality.[267] In addition to its operational work, the Fund has contributed greatly to the research in this area by publishing extensive data on gender equality and the economic benefit of closing the gender gap, which includes concrete examples of how these issues can be addressed.[268] The Fund's work on these issues has not diminished during the COVID-19 crisis; indeed, the IMF found that the COVID-19 crisis has had a disproportionate impact on women and may cause a set-back in many gains already achieved.[269] As the IMF Managing Director told the *New York Times*, "[w]e risk walking back on what we have actually moved forward on. We can easily let go if we don't pay attention. Gender equality doesn't fall from the sky. It has to be

---

[266] Poverty Reduction and Growth Trust, ¶ 1(a), Decision No. 8759-(87/176), in *Selected Decisions and Selected Documents of the IMF*, 154 (40th ed., IMF, 2019), available at https://www.imf.org/external/SelectedDecisions/Description.aspx?decision=8759-(87/176)%20ESAF. *See also IMF Support for Low-Income Countries Factsheet*, available at https://www.imf.org/en/About/Factsheets/IMF-Support-for-Low-Income-Countries.

[267] *See, e.g.*, Corrine Delechat et al., *What is Driving Women's Financial Inclusion Across Countries*, IMF Working Paper WP/18/38 (2018), available at https://www.imf.org/-/media/Files/Publications/WP/2018/wp1838.ashx; Stefania Fabrizio, Anna Fruttero, Daniel Gurara, Lisa Kolovich, Vivian Malta, Marina M. Tavares, and Nino Tchelishvili, *Women in the Labor Force: The Role of Fiscal Policies*, IMF Staff Discussion Note SDN/20/03 (2020), available at https://www.imf.org/en/publications/staff-discussion-notes/issues/2020/02/11/women-in-the-labor-force-the-role-of-fiscal-policies-46237; Christian Gonzales, Sonali Jain-Chandra, Kalpana Kochhar, and Monique Newiak, *Fair Play: More Equal Laws Boost Female Labor Force Participation*, IMF Staff Discussion Note SDN/15/02 (2015), available at https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2016/12/31/Fair-Play-More-Equal-Laws-Boost-Female-Labor-Force-Participation-42721.

[268] *See, e.g.*, Jonathan D. Ostry, Jorge Alvarez, Raphael Espinoza, & Chris Papageorgiou, *Economic Gains from Gender Inclusion: New Mechanisms, New Evidence*, IMF Staff Discussion Note SDN/18/06 (2018), available at https://www.imf.org/~/media/Files/Publications/SDN/2018/SDN1806.ashx; Purva Khera, *Closing Gender Gaps in India: Does Increasing Womens' Access to Finance Help?*, IMF Working Paper WP/18/212 (2018), available at https://www.imf.org/~/media/Files/Publications/WP/2018/wp18212.ashx. The Fund's Legal Department has been contributing to this area by conducting research on the impact of legal impediments to gender equality and the benefits of incentivizing the participation of women in the economy through legal and regulatory reforms.

[269] IMF, *The COVID-19 Gender Gap* (July 21, 2020), https://blogs.imf.org/2020/07/21/the-covid-19-gender-gap/.

written into policies, and it has to be fought for."[270] In the context of the global pandemic, the IMF has suggested measures that will limit the effects of COVID-19 on women, such as improving access to healthcare and family planning, which also tie into longer-term policies to tackle gender equality.[271]

As with the Fund's work on social protection, its work in the area of gender equality is yet another example of how the Fund's original mandate can be interpreted to permit the Fund to address emerging issues that affect the IMF and its members.[272]

E. Anti-Money Laundering / Combatting the Financing of Terrorism and Anti-Corruption

The IMF has long been involved in issues of anti-money laundering and combatting the financing of terrorism ("AML/CFT"), relying heavily on its overall financial sector expertise. In this respect, the IMF's work is not novel, though it is increasingly important. "New" areas in this field have included a sharpened focus on governance, anti-corruption and correspondent banking relationships ("CBR") (how the concentration of financial flows through a small number of these relationships—and subsequent closing of those relationships—can pose risks in certain countries).

The IMF was initially focused on making AML/CFT assessments and training/capacity development, but its work in this area has increasingly revolved around surveillance and Fund-supported programs.[273] One of the main avenues of this work has been including AML/CFT issues in the Financial Sector Assessment Programs ("FSAPs"), which, as noted above, were strengthened and made more multilateral during the Global Financial Crisis of 2008.

---

[270] Francesca Donner, *View from the IMF—In a crisis like no other, gender still counts*, N.Y. TIMES (Aug. 23, 2020), available at https://t.co/eyBb0N7esn?amp=1 ("And now in the crisis, we are strongly advocating that as money is being directed, it has to go into the hands of men and women. And we stress women because they tend to be better stewards. And we stress that there are clear requirements of how the money should be used. We have introduced gender-based budgeting. It is not just about women. It is about their families, their communities, their countries. When women do well, countries do well").

[271] Kristalina Georgieva, Stefania Fabrizio, Cheng Hoon Lim, and Marina M. Tavares, *The COVID-19 Gender Gap*, IMF Blog (July 21, 2020), https://blogs.imf.org/2020/07/21/the-covid-19-gender-gap/.

[272] Article I(ii).

[273] IMF, *IMF Executive Board Reviews the Fund's Strategy for Anti-Money Laundering and Combatting the Financing of Terrorism (AML/CFT*), Press Release No. 14/167, Apr. 11, 2014.

A recent IMF report provides a good summary of how the IMF's initially "relatively modest effort" on AML/CFT expanded over time, going hand-in-hand with the increased recognition of the impact of AML/CFT on the financial sector.[274] The process involved an assessment—both initially and ongoing[275]—that AML/CFT issues "can have important implications for macroeconomic and financial stability" and, therefore, are appropriately incorporated into the Fund's work.[276] This work involves the expertise of lawyers and financial sector experts well versed in AML/CFT assessment, training, and capacity development work. The IMF's legal department supplies lawyers who have experience analyzing and interpreting the various international legal regimes to assist member countries in meeting those standards.

As noted above, staff recommendations, including those regarding AML/CFT, do not translate to member obligations. As such, alternatives have called for reliance on international treaties that do set out obligations in addition to a soft law approach, including working groups such as the Financial Action Task Force and the Financial Stability Forum,[277] which often call out failures to meet the relevant criteria in the form of name and shame. Additional factors, including having AML/CFT issues more formally as part of IMF surveillance and as part of the conditionality of Fund programs, often come up in discussions.[278]

Since 2009, most of the IMF's technical assistance work in the area of AML/CFT has not been funded by the IMF, but rather through a Topical Trust Fund (now named a Thematic Trust Fund).[279] Therefore, while it falls within the mandate, this type of arrangement means that the burden to finance this work is focused on those members who participate in the Trust Fund. Although the IMF tries to ensure that Trust Fund-financed work is consistent with the IMF's strategic

---

[274] IMF Policy Paper, Review of the Fund's Strategy on Anti-Money Laundering and Combatting the Financing of Terrorism, Feb. 2019, https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/02/04/pp101718-2018-review-of-the-funds-aml-strategy.
[275] IMF, *IMF Executive Board Reviews the Fund's Strategy for Anti-Money Laundering and Combatting the Financing of Terrorism (AML/CFT)*, Press Release No. 19/25, Feb. 4, 2019.
[276] *Id.*
[277] François Gianviti, *Evolving Role and Challenges for the International Monetary Fund*, 35 INT'L L 1371, 1382-83 (2001).
[278] *Id.*
[279] IMF Policy Paper, *Review of the Fund's Strategy on Anti-Money Laundering and Combatting the Financing of Terrorism*, Feb. 2019, *supra* note 274, at 32 (noting "Since 2009, approximately 90 percent of AML/CFT CD activities has been externally financed following the launch of a multi-donor trust fund, the first in a series of Topical Trust Funds").

direction, there is pressure to satisfy the creditors to the Trust Fund, and not simply the membership at large, since it is those creditors who are paying for it. In this respect, these activities are distinct from its overall general work that is focused on the membership at large.

The AML/CFT work of the IMF is highly supported by its membership. The United States, in particular, has stressed its support to not only continue the IMF efforts but also to strengthen them.[280] On CBRs, the IMF has been analyzing trends and tracking especially the impacts of global banks withdrawing from CBRs.[281] The IMF has noted that it "has an important role to play in monitoring risks and advising its membership on policies to help tackle the adverse impacts from the withdrawal of CBRs."[282]

Recently, the Fund's work has extended beyond AML/CFT into areas of governance vulnerabilities more broadly to cover areas that can have real macroeconomic impacts, such as corruption.[283] These areas are especially important during the COVID-19 crisis, since "[i]n this time of crisis, it is more important than ever to ensure that resources are used to protect lives and livelihoods."[284] All of this is to emphasize that efforts are ongoing, and are increasingly viewed as a core part of—not a corollary to—the Fund's work.

F. Fintech

"Fintech," the marriage of finance and technology,[285] is another key area where the IMF has sought to have an impact. Fintech is a broad category for which a

---

[280] *See, e.g.*, FY 2020 National Defense Authorization Act, Section 1629, "The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to support the increased use of the administrative budget of the Fund for technical assistance that strengthens the capacity of Fund members to prevent money laundering and the financing of terrorism."
[281] IMF, *Recent Trends in Correspondent Banking Relationships—Further Considerations*, Mar. 16, 2017, https://www.imf.org/~/media/Files/Publications/PP/031617.ashx.
[282] *Id.*
[283] IMF, *The IMF and Good Governance (Fact Sheet)*, Mar. 27, 2019, https://www.imf.org/en/About/Factsheets/The-IMF-and-Good-Governance.
[284] IMF, How *the IMF is Promoting Transparent and Accountable Use of COVID-19 Financial Assistance (Fact Sheet)*, June 30, 2020.
[285] A more thorough definition provided by IMF staff describes fintech as "[t]he technology-enabled innovation in financial services that could result in new business models, applications, processes, or products with an associated material effect on the provision of financial services." *See* Ratna Sahay,

definition risks over-inclusion, but in general fintech seeks to integrate technology and innovation to automate financial services. In this arena, the IMF has sought to limit its focus to areas in which it has expertise, and which most clearly fit into its mandate.[286] But, here, it starkly contrasts with climate change and AML/CFT, and instead focuses more on the international monetary and financial system:[287] the monetary side, rather than the fiscal side of the equation. At its core, the purposes of the IMF demonstrate the "monetary character of the Fund: it was established to promote the stability of exchange rates, the financing of payment deficits, and the liberalization of payments for current international transactions."[288] In addition, Article VIII, prohibits restrictions on current international payments ("transactions"), multiple currency practices, and discriminatory currency arrangements, and these obligations have been in place since the beginning of the IMF.[289] Therefore, the focus on new technology, as trendy as it may be, renews an old and classic work of the IMF. This includes research and publications on what constitutes a currency, how currency markets and exchange restrictions work, risks to currencies, and limitations that can be placed on current international transactions.[290] Many of the new developments in fintech are exactly designed for the creation of money, currencies, or currency-like instructions for payment for current international transactions.[291]

Ulric Eriksson von Allmen, Amina Lahreche et al., *The Promise of Fintech: Financial Inclusion in the Post COVID-19 Era, IMF Monetary and Capital Markets Department Paper*, July 1, 2020, at ix, https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2020/06/29/The-Promise-of-Fintech-Financial-Inclusion-in-the-Post-COVID-19-Era-48623.

[286] *See, e.g.*, The International Monetary Fund and the World Bank Group, *Policy Paper, Fintech: The Experience So Far*, https://www.imf.org/~/media/Files/Publications/PP/2019/PPEA2019024.ashx (Mar. 19, 2019) at 7.

[287] *See* Article I(i), (iv); Article IV(3); and Article VIII.

[288] *See* Article I. *See also* Francois Gianviti, *Evolving Role and Challenges for the International Monetary Fund*, 35 INT'L L 1371 (2001).

[289] *See* Article VIII Sections 2(a) and (3).

[290] *See* Wouter Bossu, Masaru Itatani, Catalina Margulis, Arthur D. P. Rossi, Hans Weenink, and Akihiro Yoshinaga, *Legal Aspects of Central Bank Digital Currency: Central Bank and Monetary Law Considerations,* Working Paper, International Monetary Fund, Nov. 20, 2020 https://www.imf.org/en/Publications/WP/Issues/2020/11/20/Legal-Aspects-of-Central-Bank-Digital-Currency-Central-Bank-and-Monetary-Law-Considerations-49827.

[291] *Id.* at 6-7.

The IMF has taken a multi-faceted approach to incorporate its fintech work from a monetary, fiscal, and structural perspective.[292] It has the breadth and ability to look at issues from a global and regional perspective,[293] since, as many commentators have noted, "[a] hallmark of emerging technologies is that they are country-agnostic."[294] As such, monitoring and regulating fintech is "giving rise to regulatory challenges that are not new, but which are becoming increasingly complex to surmount."[295] To respond to these challenges, international cooperation is required,[296] and the IMF can serve as a unique hub for such cooperation.

For example, the IMF has promoted the Bali Fintech Agenda ("BFA"), approved in 2018 by the IMF and the World Bank Group, which is a set of twelve elements that "offers a framework for the consideration of high-level issues by individual member countries, including in their own domestic policy discussions."[297] Importantly, "[i]t does not represent the work program of the IMF or the World Bank, nor does it aim to provide specific guidance or policy advice."[298] However, the BFA sets out a framework that serves as a reference point and guide for membership, and the IMF and the World Bank have continued to assess both country and regional experiences with fintech.[299]

Other areas of work include simply increasing the understanding of key actors in the system, especially as there are rapid developments in this area, by providing a forum and occasionally participating in debates. The IMF has undertaken several initiatives, including the establishment of a High-Level Advisory Group on Fintech to work with the IMF's own Interdepartmental Working Group on Finance and Technology, which is studying "the economic and regulatory implications of

---

[292] *See, generally*, The International Monetary Fund and the World Bank Group, Policy Paper, *Fintech: The Experience So Far*, *supra* note 286.
[293] *See, e.g., id.*; Amadou N. R. Sy, *Fintech in Sub-Saharan Africa: A Potential Game Changer*, IMFBlog, https://blogs.imf.org/2019/02/14/fintech-in-sub-saharan-africa-a-potential-game-changer/ (Feb. 14, 2019).
[294] Peiying Chua et al. (Linklaters), Legal Implications of Fintech, in FINTECH: THE NEW DNA OF FINANCIAL SERVICES 453-473, 468 (Pranay Gupta, T. Mandy Tham, eds., 2019)
[295] *Id.*
[296] *Id.* at 469 (noting "International cooperation in this area admits a realization that fintech is a cross-border phenomenon and that no single financial center can 'go it alone' in this space").
[297] IMF, *The Bali Fintech Agenda – Chapeau Paper,* Oct. 3, 2018, at 1, https://www.imf.org/external/np/exr/seminars/index.htm.
[298] *Id*. at 14.
[299] *See* IMF Policy Paper, *Fintech: The Experience So Far* (June 27, 2019), https://www.imf.org/~/media/Files/Publications/PP/2019/PPEA2019024.ashx.

developments in the area of finance and technology."[300] In addition, IMF staff are analyzing a wide range of issues through research and publications, including a series of "FinTech Notes,"[301] working papers, policies to guide the rest of the IMF's work in surveillance and lending, and other work products. Part of the value added via this collaboration is looking at these issues through the lens of institutional arrangements for fintech supervision and regulation.

To address new issues raised by fintech, the IMF is exploring possible connections between central banks, cryptocurrencies, and stablecoins.[302] For example, the IMF is investigating how central banks should treat cryptocurrencies, whether they should consider issuing their own central bank digital currencies ("CBDCs") and what that means from central banking and monetary law perspectives,[303] and what reserve requirements there might be for stablecoins. This included analyzing existing legal frameworks to highlight that most central bank laws do not currently authorize the issuance of CBDC to the general public, it is not evident that "currency" status can be attributed to CBDCs, and while central bank law issues can more readily be revised, monetary law issues pose much bigger challenges.[304] It also included looking at the macro-financial implications of cross-border use of digital money.[305] The IMF is also looking into how distributive ledger technology, underlying Bitcoin and other cyber assets, could be useful to the financial sector and/or to central banks and others, including in terms of payments

---

[300] IMF, *IMF Managing Director Welcomes Establishment of High-level Advisory Group on FinTech*, Mar. 15, 2017, https://www.imf.org/en/News/Articles/2017/03/15/pr1784-imf-managing-director-welcomes-establishment-of-high-level-advisory-group-on-fintech.

[301] *See, e.g.*, Charles Taylor, Christopher Wilson, Eija Holttinen, Eija and Anastasiia Morozova, *Institutional Arrangements for Fintech Regulation and Supervision, FinTech Notes, International Monetary Fund*, Jan. 10, 2020, https://www.imf.org/~/media/Files/Publications/FTN063/2019/English/FTNEA2019002.ashx; Cristina Cuervo, Anastasiia Morozova, and Nobuyasu Sugimoto, Regulation of Crypto Assets, FinTech Notes, International Monetary Fund, Jan. 10, 2020, https://www.imf.org/~/media/Files/Publications/FTN063/2019/English/FTNEA2019003.ashx.

[302] *See, e.g.*, Tobias Adrian, Tommaso Manicini Griffoli, *The Rise of Digital Money, FinTech Notes*, IMF, July 15, 2019 https://www.imf.org/en/Publications/fintech-notes/Issues/2019/07/12/The-Rise-of-Digital-Money-47097.

[303] *See* Wouter Bossu, Masaru Itatani, Catalina Margulis, Arthur D. P. Rossi, Hans Weenink, and Akihiro Yoshinaga, *supra* note 290.

[304] *Id.*

[305] *See, e.g.*, *Digital Money Across Borders: Macro-Financial Implications* (IMF Policy Paper, Oct. 19, 2020), available at https://www.imf.org/en/Publications/Policy-Papers/Issues/2020/10/17/Digital-Money-Across-Borders-Macro-Financial-Implications-49823.

and settlements.[306] Other areas of broad interest with potential impact on global finance and the world economy include the impacts of big data, artificial intelligence (AI), financial integrity, and cybersecurity issues. On cybersecurity issues, for example, the former First Deputy Managing Director has noted that a global response needs to be developed and the Fund can "play an important role."[307]

The IMF's role in fintech is clearly within its legal mandate, particularly its focus on currencies. One of the IMF's core roles is to provide expertise to central banks.[308] As Martin Wolf notes, "in this new digital world, central banks also need to ask themselves whether and how to create their own digital money."[309] Interestingly, some authors have made analogies between Libra—at least as initially envisaged—and the IMF's own "currency," the SDR, insomuch as they are both based off baskets of underlying currency, (though Libra has since backed away from using a currency basket and was subsequently renamed Diem).[310] It would be

---

[306] *See, e.g.*, Ghiath Shabsigh, Tanai Khiaonarong, and Harry Leinonen, *Distributed Ledger Technology Experiments in Payments and Settlements*, *FinTech Notes*, IMF, June 24, 2020 https://www.imf.org/en/Publications/fintech-notes/Issues/2020/06/25/Distributed-Ledger-Technology-Experiments-in-Payments-and-Settlements-49251.

[307] David Lipton, *Cybersecurity Threats Call for a Global Response*, IMF Blog, Jan. 13, 2020, https://blogs.imf.org/2020/01/13/cybersecurity-threats-call-for-a-global-response/ (Explaining that "With a much broader representation than most of the standard-setting institutions, the IMF has the ability to raise the concerns of emerging-market and developing countries to a global level. Because any place is a good place to start an attack, it is in the ultimate interest of advanced economies to work with other countries to share information, coordinate actions, and build capacity. At the IMF, we work with countries that need to build this capacity, developing the skills and expertise needed to recognize and effectively counter cybersecurity threats. Our international partners are doing the same, and we work regularly with an array of stakeholders in the public and private sector").

[308] IMF, *About the IMF- Our Work* (Last visited Feb. 16, 2021), https://www.imf.org/external/about/ourwork.htm (Last visited Feb. 16, 2021).

[309] Martin Wolf, *The Threat and Promise of Digital Money*, FINANCIAL TIMES, Oct. 22, 2019.

[310] *See, e.g.*, Colby Smith and Izabelle Kaminsky, *What Exactly is Facebook's Libra Reserve?*, FINANCIAL TIMES, June 19, 2019, https://ftalphaville.ft.com/2019/06/18/1560848757000/What-exactly-is-Facebook-s-Libra-Reserve-/ (noting, correctly, that while both are based on a basket of currencies, they otherwise are very different in design and purpose. For example, the SDR is a "supplementary" reserve asset backed by a claim to the currencies held by IMF member countries rather than a physical reserve of fully funded currencies, the SDR can only be used by member countries and was never intended as a true medium of exchange. Libra, on the contrary, aspires to be this and more). It should be noted that a comparison could also be made to Bancor, which was a new currency John Maynard Keynes' proposed at Bretton Woods, but which was ultimately rejected. Libra subsequently backed away from a currency basket in favor of being backed one-to-one by US dollars. *See* Hanna Murphy, Facebook's Libra currency to launch next year in limited format, Financial Times, Nov. 27, 2020, https://www.ft.com/content/cfe4ca11-139a-4d4e-8a65-b3be3a0166be.

odd—and almost an avoidance of the Fund's mandate—for the IMF not to contribute some of its intellectual capital to address currency questions. Indeed, it is doing so on an ongoing basis. Similarly, as regards to proposed new forms of payment systems, these would appear to fall into the larger IMF mandate to the extent such payment systems seek to become widespread and macro-critical.[311]

Other areas that could potentially be relevant relate to a core member obligation to not impose exchange restrictions and multiple currency practices under Article VIII. Certain regulations or adaptations to fintech could potentially violate these member obligations. In other areas, the Fund's role is less a question of direct expertise and more a matter of raising the concerns of emerging markets and developing countries.[312] Still, another area to consider is the overall risk to the financial system. As Economist and Public Policy Professor Kenneth Rogoff notes, "the next virus to hit the global economy could well be digital."[313]

As part of its mandate over the international monetary system, the IMF can also be both a forum and a provider of ideas to help in possible future regulatory structures. The ideal situation in the face of a "new financial phenomenon" may be the construction of a new regulatory regime to address it. But while "new regimes [are] being created to cope with the challenges posed to regulators by virtual currency, the reaction of regulators and legislators to new developments is almost invariably to seek to accommodate them within existing regulatory frameworks."[314] Although the IMF has to work in the real world—and thus, help interpret and recommend how to incorporate these into existing frameworks—the IMF could add real value as perhaps the best venue to argue for how any new frameworks can or should be designed. As noted by Christine Lagarde, fintech poses many regulatory challenges, including addressing how cryptocurrencies, in facilitating the making of anonymous cross-border transfers, could increase the risk of money laundering

---

[311] *See, e.g.*, *Digital Money Across Borders: Macro-Financial Implications* (IMF Policy Paper, Oct. 19, 2020), available at https://www.imf.org/en/Publications/Policy-Papers/Issues/2020/10/17/Digital-Money-Across-Borders-Macro-Financial-Implications-49823, *supra* note 305.

[312] *See generally* International Monetary Fund and World Bank Group, *FinTech: The Experience So Far*, IMF Policy Paper No. 19/024, (June 27, 2019) https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/06/27/Fintech-The-Experience-So-Far-47056.

[313] Kenneth Rogoff, *Central Banks Need to Start Thinking Fast, Project Syndicate*, Aug. 5, 2020.

[314] Simon Gleeson, THE LEGAL CONCEPT OF MONEY 195 (2018).

and terrorism financing, and how, over a medium-term horizon, new types of financial services providers impact financial stability.[315]

In other areas, the Fund's surveillance and technical assistance functions come into play. Cybersecurity risks could impact the overall international monetary system in several ways, so coordination among enforcement and monitoring agencies is important.[316] Countries, including IMF members, have an impetus to explore what can be done to address cybersecurity risks and issues from a financial and economic perspective, as well as what institutional mechanisms might be best suited to do so.[317] Staff at the IMF have been working on papers and input along these lines.[318] Similarly, big data and AI raise debates about how cybersecurity will impact the overall financial system as well as the macroeconomic situation in many countries and what regulators should consider in addressing these developments.[319] To the extent these start to take on significant macro impacts for individual members or groups of members, the IMF's role may adjust accordingly with a potentially increased focus on the positive fiscal impacts and potential risks.

The impact and importance of fintech have not lessened during the COVID-19 crisis. Indeed, many actors in the fintech space see COVID-19 as either an opportunity or a validation of the importance of a wide range of fintech developments.[320] During this crisis, the IMF staff have considered a range of issues

---

[315] Christine Lagarde, *Fintech—A Brave New World for the Financial Sector?*, IMF Blog, Mar. 21, 2017.

[316] World Economic Forum, *Systems of Cyber Resilience: Secure and Trusted Fintech*, 7, (2020) http://www3.weforum.org/docs/WEF_Systems_Cyber_Resilience_2020.pdf.

[317] *See, e.g.*, Frank Adelmann, Jennifer A. Elliott, Ibrahim Ergen, Tamas Gaidosch, Nigel Jenkinson, Tanai Khiaonarong, Anastasiia Morozova, Nadine Schwarz, Christopher Wilson, *Cyber Risk and Financial Stability: It's a Small World After All, Staff Discussion Notes*, IMF, Dec. 7, 2020 https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2020/12/04/Cyber-Risk-and-Financial-Stability-Its-a-Small-World-After-All-48622.

[318] *See, e.g.*, Christopher Wilson, Tamas Gaidosch, Frank Adelmann, and Anastasiia Morozava, *Cybersecurity Risk Supervision, International Monetary Fund* (2019); Basel Committee on Banking Supervision, *Cyber-resilience: Range of Practices, Bank for International Settlements* (Dec. 2018); Martin Boer and Jaime Vazquez, *Cyber Security & Financial Stability: How cyber-attacks could materially impact the global financial system*, Institute of International Finance (Sept. 2017).

[319] Finance and Development, The Digital Furute, Vol. 58 No. 1, Mar. 2021. https://www.imf.org/external/pubs/ft/fandd/2021/03/pdf/fd0321.pdf.https://www.imf.org/external/pubs/ft/fandd/2021/03/pdf/fd0321.pdf.

[320] *See, e.g.*, Ratna Sahay, Ulric Eriksson von Allmen, Amina Lahreche, Purva Khera, Sumiko Ogawa, Majid Bazarbash, and Kimberly Beaton, *The Promise of Fintech: Financial Inclusion in the Post COVID-19 Era, Departmental Paper No. 20/09*, IMF (July 1, 2020), https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2020/06/29/The-Promise-of-Fintech-Financial-Inclusion-in-the-Post-COVID-19-Era-48623.

along these lines, including the role of fintech and mobile money, as well as its potential for more inclusion in the post-crisis era.[321]

In some ways, this is truly an area of exploration, development, and learning for the IMF. While many institutions are playing perpetual catch-up to the latest technologies, the IMF can play an important role relating to developments that necessitate central bank involvement.[322] The IMF recognizes that must make efforts to be engaged and supportive of its membership. One of the very prominent issues is a lack of coordination and a forum to discuss how all of this impacts the international monetary system. To the extent the IMF regularly acts as a forum for discussions on the international monetary system and the global financial system generally, it would be natural to incorporate discussions of fintech.

IV. Is Addressing These New Realities in Line with the IMF's Mandate?

This paper has noted how new realities fit within the IMF's mandate and work program. This section takes a step back to consider the Fund's mandate more holistically and address concerns regarding "mission creep,"[323] a systematic

---

[321] Ratna Sahay, Ulric Eriksson von Allmen, Amina Lahreche et al., *The Promise of Fintech: Financial Inclusion in the Post COVID-19 Era*, IMF Monetary and Capital Markets Department Paper, July 1, 2020, https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2020/06/29/The-Promise-of-Fintech-Financial-Inclusion-in-the-Post-COVID-19-Era-48623.

[322] *See, e.g.*, central banks are likely to play a key role in digital currencies – whether their own or created by someone else – or otherwise, in the eyes of some, risk falling behind. *See, e.g.*, Kenneth Rogoff, *Central Banks Need to Start Thinking Fast,* PROJECT SYNDICATE, Aug. 5, 2020.

[323] A mandate-based approach is not the only lens one could use. Another approach could be from the Franck tradition, to ask whether it is "fair" for the IMF to address these issues; i.e., procedurally (a correct process and an expected outcome), but also substantively (i.e., is this the right outcome in the distributive sense)? *See generally* Thomas Franck, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS, 7-8 (Oxford University Press, New York 1995/2000). This warrants further discussion beyond the scope of this paper, but process-wise, in the view of these authors the correct steps were taken. The evolution of the IMF to address these issues followed an internal path of debate and discourse, with input from the membership. Whether this is an expected outcome may in some ways link closely to the mandate discussing herein, Whether the process/structure of the Fund itself and how it represents members based on economic weight is "fair" is a much larger topic, on which there has been much debate. And whether that is "fair" to some underlying population(s) is itself a heavily debated topic. But taking into account the issues raised that often impact the least well-off – such as climate change and gender issues and indeed inequality itself – seems to at least suggest a more holistic view than "traditional" macroeconomics alone.

shifting of organizational activities away from original mandates.[324] The new issues broadly discussed in this paper do not meet the requirements for amendments to the Articles because they do not create new obligations on IMF members. Of course, such amendments could be envisaged; for example, an express requirement that members use carbon taxation would be an obligation not currently envisaged in the Articles. To impose such an obligation would require an amendment to the Articles. On the other hand, there are already existing member obligations in the areas of fintech and alternative currencies upon which the Fund can build.

Robert Hockett, an expert on organizational and financial law and economics, takes perhaps the widest view of the IMF's mandate, noting that Article XXIX vests in the IMF the exclusive power to interpret its own Articles of Agreement. This ability for an institution to interpret its own foundational document is "most unusual in the United Nations and international (not to mention domestic) legal systems."[325] In his view, this "extraordinary authority" means the only place the IMF can be brought to account is the "tribunal of world opinion, or, perhaps more importantly, membership opinion."[326] Thus, the IMF does not have any "strict constructionist" constraints on interpreting its own charter, save those its members chose to impose politically.[327] And this political constraint on actions is reflected in the day-to-day work of the Executive Board, the members of which are appointed *ex ante* by member countries who themselves have sufficient power to raise any objections *ex post*.[328] Per Hockett, "[a]ll of this amounts to a nearly irrebuttable presumption in favor of formal legality."[329] Some areas such as surveillance provide such a broad mandate that it is generally in member countries' interest to comply.[330] Hockett highlights that "a heavy burden must be borne by anyone wishing to argue *against* the formal legality of these practices."[331]

---

[324] IFI Advisory Commission 1998; Stiglitz 2002; Einhorn 2001; Bretton Woods Project 2003.

[325] Robert Hockett, *From Macro to Micro to Mission-Creep: Defending the IMF's Emerging Concern with the Infrastructural Prerequisites to Global Financial Stability*, 41 COLUM. J. TRANSNAT'L L. 153, 178-179 (2002) (citing to Joseph Gold, Interpretation: The IMF and International Law (1996)).

[326] *Id*. at 179.

[327] *Id*.

[328] *Id*. at 180.

[329] *Id*.

[330] *See* Article I, and Article IV, Sections 1, 3(a) and 3(b).

[331] *Id*. at 182.

Another key aspect is that, in the case of surveillance, members are free to ignore the advice provided by the IMF.[332] In addition, Hockett cites a "developing international norm" of transparency that favors the role of the IMF in surveillance and in dispersing information on a wide range of issues, such that "surveillance and consultation over micro-variables seem to be as legally sound as those over macro-variables" and that, in any event, the membership has not complained.[333]

Hockett argues that providing conditionality in the context of an IMF program is, in a sense, even more voluntary.[334] An IMF member is under no obligation to accept a program; it can "simply refrain from borrowing."[335] From a strictly legal point of view, Hockett is correct.[336] However, while every IMF program is at the express request of the member country, Hockett may underappreciate the pressure a country can be under, because it risks default or worse consequences. In addition, as noted above, even having agreed to a Fund program, the member is under no legal obligation to meet the program conditionality: the only practical consequence of not meeting conditionality (outside of those conditions linked to basic member obligations) is losing the right to the IMF resources.[337] It is likely a "general principle of law" that IMF conditionality amounts to no more than a lender's conditions on the loan (though the outer limit of those conditions is, of course, up for debate), and, in the IMF's case, this clearly includes microeconomic conditions.[338]

Here, however, other core legal principles of the IMF come into play, including the principle of uniformity of treatment of members. Thus, it is crucial that the membership, broadly speaking, appears to view the issues raised in this paper as macro-critical.

---

[332] *Id.*

[333] Robert Hockett, *From Macro to Micro to Mission-Creep: Defending the IMF's Emerging Concern with the Infrastructural Prerequisites to Global Financial Stability*, 41 COLUM. J. TRANSNAT'L L. 153, 184 (2002).

[334] *Id.* at 185.

[335] *Id.*

[336] For example, there is no legal obligation for the IMF to provide financing nor for a member country to accept it.

[337] Robert Hockett, *From Macro to Micro to Mission-Creep: Defending the IMF's Emerging Concern with the Infrastructural Prerequisites to Global Financial Stability*, 41 COLUM. J. TRANSNAT'L L. 153, 185 (2002).

[338] *Id.* at 185-86.

Addressing new realities has largely been viewed positively, however, this approach is not without critique.[339] While the IMF is cognizant of "mission creep" its risks remain significant.[340] Mission creep has at least two aspects: 1) whether new areas of work are out of line with the mandate of the organization, as addressed here; and 2) whether mission creep displaces or undermines the "core" work of the organization, even if the IMF could legally defend such work.

A. *Mission Creep and the IMF's Mandate*

The possibility of mission creep has often been considered with respect to the Fund's mandate. The limits challenged by mission creep have been resolved, generally, in favor of the IMF's ongoing work, but only so long as the IMF continued to ensure it was within the wide latitude given by the Articles of Agreement.

In the context of the Asian Financial Crisis, for example, the concern was the Fund was being overly prescriptive about what happens within countries (e.g., their own policies and processes).[341] This stemmed from the heavily debated "structural" conditions of programs, which, in the context of IMF financing, focused on very domestic issues, such as bankruptcy, corporate governance, and political governance, or corruption. This domestic focus was responsible for increasing the IMF's concern for AML/CFT issues, "both within and between national jurisdictions" and "in the name of growing Fund interest in a 'new international financial architecture.'"[342] Hockett argues that, aside from any criticisms of what the IMF chose to focus on in the Asian Financial Crisis, "notwithstanding the apparent broadening of its agenda, [the IMF] has been true to its mission as

---

[339] *See*, *i.e*., James Politi, *Lagarde's IMF legacy holds clues to her new role as ECB president*, FINANCIAL TIMES, Sept. 2, 2019 at 4 (noting, "Part of Ms. Lagarde's IMF legacy comes in the form of its image, which she improved by expanding its work to include the effects of climate change, gender, inequality and corruption on countries' finances. She argued they were macroeconomically relevant and supports believe she was prescient…" and "[M]any at the IMF applauded the shift, but resistance lingers; some say, with limited resources, the IMF should not be duplicating activities that could be done by others, and mostly burnished Ms. Lagarde's profile").

[340] Stephen Fidler, *IMF Agrees Need to End Mission-Creep,* FINANCIAL TIMES, July 19, 2000.

[341] For example, effectively micro-managing their economies by focusing on domestic regulatory regimes and arrangements.

[342] Robert Hockett, *From Macro to Micro to Mission-Creep: Defending the IMF's Emerging Concern with the Infrastructural Prerequisites to Global Financial Stability*, 41 COLUM. J. TRANSNAT'L L. 153, 157 (2002).

formulated in 1944, and especially as reformulated in 1978."[343] He argues that the IMF looking at actions within nations—relations between banks, firms, markets, and governments—"is an entirely foreseeable consequence of floating exchange rates and the globalization of foreign exchange markets since the 1970s." Hockett claims that "perhaps more crucially… these developments *were* foreseen by the founders of the Fund—at least as abstract possibilities—and were legally provided for in the Fund's Articles of Agreement, particularly as amended."[344] He also notes this involvement in domestic issues has brought the IMF closer to the work of the World Bank, though they maintain their "complementary and distinct roles."[345]

A large body of literature, however, criticizes the IMF's actions in the Asian Financial Crisis, in particular, that the IMF was unduly involved in essentially domestic issues.[346] In our view, that is not necessarily a critique, however, of operating within a mandate but rather whether the policies were too expansive or not sufficiently clarified. Digging too deeply into micromanaging, if that was the case, is indeed an issue of scope and scale, but not on whether the overall areas being addressed were part of the IMF's mandate.

The mandate question comes up more when there are new areas being addressed. International law scholar Eva Reisenhuber argues that even in its relatively early stages, the Fund's "new policies"—such as economic growth and good governance—are not found in the Articles of Agreement and, thus, the Fund has to rely on "political support" including for policies that some of this membership may not agree with.[347] That disagreement, however, is masked in part by the IMF's policy of consensus. She argued, in 2001, that these "new policies" risk the technocratic character and the integrity of the organization and could lead to "declining co-operation of members and the concept of community."[348] No doubt these arguments continue today: for example, the official views of some members may not accord with the IMF's positions. Indeed, Reisenhuber argued that if economic growth and good governance were outside the mandate of the IMF, then "environmental issues and social concerns" are even further from the IMF's

---

[343] *Id.*
[344] *Id.*
[345] *Id.*
[346] *See* STEPHEN HAGGARD'S THE POLITICAL ECONOMY OF THE ASIAN FINANCIAL CRISIS. INSTITUTE FOR INTERNATIONAL ECONOMICS. (2000).
[347] Eva Riesenhuber, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 72 (2001).
[348] *Id.*

mandate.[349] She warned against the IMF and the World Bank becoming "do-it-all" organizations, including vis-à-vis each other,[350] which would conflict with the principle of specialization in international law.

B. Practical Concerns

Another concern with mission creep takes a practical perspective; conflicts between mandates risk undermining overall performance, as reflected in a study on what happens to government agencies faced with competing mandates.[351] Christopher Carrigan notes that agencies required to work on more programs "are less apt to achieve their goals," because conflicts may undermine performance and personnel may be unsure about how their work connects to agency goals and priorities.[352] Such assertions beg the question of whether these topics are, in fact, competing or not, and whether these issues are so much part of the core economic and financial issues facing members that the Fund would be failing its mandate if it did not address them.

One way to help is, as the Managing Director noted in the climate context, to set some limits.[353] The IMF is not hiring climate scientists, nor is it hiring epidemiologists in the COVID-19 context. Likewise, the IMF generally limits its work on social spending and gender to contexts where they are considered macro-critical. But there is a balance when incorporating new areas or work without substantively becoming experts that calls for legitimate choices to be made. For example, is a gender expert necessary to the Fund as an advisory on surveillance and/or programs? Is it a good idea? These are the types of questions that the IMF will increasingly face. And while other IFIs will also undoubtedly face this challenge, such questions are often easier to answer when organizations have much broader mandates, such as the United Nations, or are significantly larger, like the World Bank.

---

[349] Eva Riesenhuber, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 337 (2001).
[350] Eva Riesenhuber, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 72 (2001).
[351] *See* Christopher Carrigan, *Unpacking the Effects of Competing Mandates on Agency Performance*, 78 PUB. ADMIN. REV. 5, 669-83 (The American Society for Public Administration 2018).
[352] *Id.*
[353] The Managing Director's Statement on the Role of the Fund in Addressing Climate Change, SM/15/271, Revision 2, Nov. 25, 2015, at 10 (available to the public at IMF.org).

Additionally, the impact of institutional culture, which is always present, can be overblown. The IMF was traditionally known as essentially conservative in sticking to pure macroeconomics of financial, fiscal, and monetary policies, but that conservatism is obviously changing, and will continue to do so. Some will always decry the addition of new issues, and there is always the additional question of how internal staff view their roles, including whether they are comfortable adding these areas to their overall work portfolio.

Reisenhuber also argues, essentially from a fiduciary perspective: "[t]he pursuit of good governance and other political issues such as environmental, social safety and labour rights also collides with the Fund's structure as an institution financed by central bank money. By their national jurisdictions central banks cannot justify the use of their resources for others but monetary and financial stabilization matters."[354] This is, to some extent, reflected in Dizard's views, as discussed above, that central banks have no business being involved in issues of climate change.[355] Reisenhuber is against even the financial sector involvement of the Fund, noting that market confidence "is not its purpose" and she calls for the IMF to "come back to its roots in order for its crisis management role to be legally justified."[356]

C. *Mission Creep by Design?*

While these arguments raise good points for consideration, in our view, they miss the overall reality of the IMF as an institution designed to change. The IMF has an evident self-interest in being involved in multiple areas, but only at the direction of its membership, and largely for the benefit of those members. As Gianviti notes, the role of the IMF is in some ways subject to constant mission creep, and the members will inevitably seek to "steer the course of the Fund's activities in new directions."[357] He further notes the Fund is like "a single character with many playwrights, being asked to play the jack-of-all-trades, and to be

---

[354] Eva Riesenhuber, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 351, (2001).
[355] John Dizard, *Central banks have no expertise in climate change*, FINANCIAL TIMES, Oct. 25, 2019.
[356] Eva Riesenhuber, THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT 351, (2001).
[357] Francois Gianviti, *Evolving Role and Challenges for the International Monetary Fund,* 35 INT'L L 1371, 1372 (2001).

available for any objective that needs to be achieved through the exercise of its powers."[358]

Allowing some "mission creep" does not mean there are no limitations, and indeed should not foreclose the discussion on whether there should be more or fewer limitations. But it does acknowledge the reality that the international financial system continues to evolve, and that the IMF is not only an evolving character, but also a stage for debate and expression of views of its members. Part of the usefulness of the IMF lies in its ability—provided its membership is willing—to adjust to these realities and roles, always keeping a mindful eye on its mandate so that the IMF does not enter the world of adjusting the fundamental obligations of membership without amending its Articles.

CONCLUSION

Numerous studies link frontier issues with the IMF's endeavors, putting the COVID-19 response, gender equality, corruption, inclusive growth, climate change, and even fintech at intersections with each other.[359] Some are clearly within the IMF's mandate and are merely expansions of existing policies—for example the Fund's response to the Global Financial Crisis and the economic impact of the COVID-19 pandemic. Others are perhaps further afield. However, all of these

---

[358] *Id.* at 1373.

[359] There are countless studies and calls to action regarding these cross-impacts. A few examples include United Nations Development Programme, Ensuring gender equity in climate change financing (Global Gender and Climate Alliance 2011), World Health Organization, Social Dimensions of Climate Change (2011); Simon Zadek, *Financing sustainable development: Is fintech the solution, problem, or irrelevant?*, Brookings Future Development blog (Feb. 11, 2019), https://www.brookings.edu/blog/future-development/2019/02/11/financing-sustainable-development-is-fintech-the-solution-problem-or-irrelevant/. Recent works by the IMF Managing Director and staff, as cited throughout this paper, highlight, for example: the intersection of gender and the COVID-19 crisis, Kristalina Georgieva, Stefania Fabrizio, Cheng Hoon Lim, and Marina M. Tavares, The COVID-19 Gender Gap, IMF Blog, July 21, 2020; the intersections of fintech, COVID-19, and financial inclusion (Ratna Sahay, Ulric Eriksson von Allmen, Amina Lahreche et al., The Promise of Fintech : Financial Inclusion in the Post COVID-19 Era, IMF Monetary and Capital Markets Department Paper, July 1, 2020, https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2020/06/29/The-Promise-of-Fintech-Financial-Inclusion-in-the-Post-COVID-19-Era-48623); the importance of governance, anti-corruption, and AML/CFT in the context of the COVID-19 response, International Monetary Fund, How the IMF is Promoting Transparent and Accountable Use of COVID-19 Financial Assistance (Fact Sheet), June 30, 2020; and much more.

areas, the IMF can find commonalities across issues and make recommendations related to core fiscal, financial, and monetary areas.

Some scholars argue that the IMF has not done enough to address deep structural issues in a post-Bretton Woods system. As Ed Conway notes, calls for a "new Bretton Woods" come up regularly.[360] But as noted by former IMF Chief Economist Blanchard, it is unrealistic to have a "big vision" for the international monetary system, as the system is too complicated in an ever-evolving world.[361] Instead, the IMF has "a sense of direction and proceeds step-by-step."[362]

Overall, the IMF remains a collaborative institution, driven by technical expertise and knowledge within an inherently political sphere of international economics and finance. To remain relevant, the IMF must adapt, as it has in the past, to face the new realities that the world may present. Of course, the Fund operates as an institution of member countries and thus the clear and growing challenges to multilateralism can undermine the core missions of the IMF and other international financial institutions. There are real threats to the Fund's mission, in particular, that the IMF will not receive sufficient financing to manage both the traditional issues and the new realities.[363] But incorporating areas that are of importance macro-economically and macro-financially—and also what many consider important to their personal wellbeing—help strengthen the Fund's legitimacy.

The new realities cited in this paper are visible to all and are discussed by society in the broadest ways possible. Ignoring these issues would not only undermine the Fund's relevance in the global financial system, but it would also

---

[360] Ed Conway, THE SUMMIT: BRETTON WOODS, 1944, J.M. KEYNES AND THE RESHAPING OF THE GLOBAL ECONOMY, 406 (2014).
[361] Interview with Olivier Blanchard, as set out in Ed Conway, THE SUMMIT: BRETTON WOODS, 1944, J.M. KEYNES AND THE RESHAPING OF THE GLOBAL ECONOMY, 405, 453 (Pegasus Books, 2014).
[362] *Id.*
[363] *See, i.e.*, Edwin M. Truman, *Survival of the International Monetary Fund and Global Economic Cooperation*, Policy Brief 19-5, Apr. 2019 (noting that "The IMF currently has $1.4 trillion in total financial resources (table 1), but that total is scheduled to begin to shrink in 2020. Moreover, over the past 25 years, the United States has led the way for a gradual redistribution of IMF quota shares toward faster-growing emerging-market and developing countries. Any significant redistribution of quota shares requires an increase in total quotas. Because of its share of votes in the IMF, the United States must agree to any change in quotas. The Trump administration has signaled that it favors no such change, however. If there is an impasse and this issue remains unresolved, the United States and other IMF members will lose an opportunity to strengthen the IMF at a time of global financial uncertainty.") Truman also notes other options as ways to potentially help the Fund going forward should the quota review not be feasible.

jeopardize the support of member countries and the public. Although, members may seek to limit the Fund's engagement,[364] the IMF has the legal scope to face new realities without straying too far outside of the boundaries set by its mandate. As this paper shows, the Fund not only adds real value to the realities that the world is currently facing, but its expertise has the potential to help the world overcome future challenges.

[364] For example, the United States seeks to assert its veto power over certain decisions of the IMF. *See*, *generally*, Curtis A. Bradley and Jack L. Goldsmith, *Presidential Control Over International Law*, 131 HARV. L.REV. 1201 (2018); Harold Hongju Koh, THE TRUMP ADMINISTRATION AND INTERNATIONAL LAW (2018); Jack Goldsmith, Book Review, *The Trump Administration and International Law*, 113 American Journal of International Law 408-415 (2018).