

THE POWER OF THE BORROWER: IMF RESPONSIVENESS TO EMERGING MARKET ECONOMIES

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I.	INTRODUCTION	767
II.	A DEFINITION OF ACCOUNTABILITY	773
III.	THE CRITIQUE OF IMF ACCOUNTABILITY.....	774
IV.	CONSUMER ACCOUNTABILITY: HOW MIDDLE- INCOME COUNTRIES HAVE BEEN ABLE TO DEMAND ACCOUNTABILITY FROM THE IMF	779
	A. <i>What IMF Accountability Means</i>	779
	B. <i>The IMF's Funding</i>	780
	C. <i>The Impact of the Change in the IMF's Financing</i>	784
V.	THE IMF'S RECENT ACCOUNTABILITY TO MIDDLE- INCOME COUNTRIES: THE FLEXIBLE CREDIT LINE..	793
	A. <i>From Structural Conditionality to the Flexible Credit Line</i>	793
VI.	LOOKING TO THE FUTURE: THE NEW INCOME MODEL AND ITS EFFECT ON THE POWER OF THE BORROWER	804
VII.	CONCLUSION	808

I. INTRODUCTION

After questions of the International Monetary Fund's (IMF) continued relevance in the mid-2000s, the Global Financial Crisis has allowed the IMF's resurgence.¹ As recently

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1. See *The International Monetary Fund: Back from the Dead*, THE ECONOMIST, Sept. 19, 2009 ("Two years ago the world's main international economic institution [the IMF] was heading for irrelevance, its homilies ignored by rich countries, its advice despised in poorer ones and its lending unnecessary in a world flush with private capital. Today the fund is widely hailed as a flexible and innovative crisis-responder.")

as 2007, the IMF had committed barely more than \$1 billion in loans and credit lines to members.² During the Global Financial Crisis this number has exploded upwards. As of January, 2011, the IMF had committed to more than \$60 billion in loans and credit lines for struggling countries.³ The G-20 also recently committed to tripling the IMF's lending capacity to \$750 billion, enabling the IMF to play a larger role in the world economy.⁴

Not everyone is happy about the resurgence of the IMF. Critics believe the IMF is illegitimate because of the control developed members wield over the Fund.⁵ Developing and emerging market countries, who are the ones most impacted by the IMF's policies, allegedly have little accountability from the IMF, and may be forced to accept onerous conditions imposed by developed countries acting in their own self-interest. To normatively assess the resurgence of the IMF, we must ask whether this critique of the IMF is correct. First, how accountable is the IMF to developing and emerging market member states? Second, should the IMF be more accountable to those states?

For the purposes of this paper, the IMF's accountability to a particular entity will be defined as the extent to which the entity can hold the IMF to a set of standards, judge whether the IMF has fulfilled its responsibilities in light of those standards, and impose sanctions if the entity determines the IMF has not met those responsibilities.⁶ Therefore, if middle-income (or "emerging market") members have enough voting

2. *Id.*

3. Total IMF Credit Outstanding for all Member from 1984 – 2009, INTERNATIONAL MONETARY FUND, <http://www.imf.org/external/np/fin/tad/extcred1.aspx>.

4. *G-20 Reaffirms IMF's Central Role in Combating Crisis*, IMF SURVEY (Apr. 3, 2009), <http://www.imf.org/external/pubs/ft/survey/so/2009/NEW040309A.htm>.

5. See John W. Head, *Seven Deadly Sins: An Assessment of Criticisms Directed at the International Monetary Fund*, 52 U. KAN. L. REV. 521, 540, 558-64 (2004) (discussing the democracy deficit within the IMF); Ngaire Woods, *Making the IMF and the World Bank More Accountable*, 77 INT'L AFF. 83, 84-87 (2001) (documenting the inequality and accountability issues within the IMF) [hereinafter Woods 2001].

6. This definition of accountability is taken from Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99 AM. POL. SCI. REV. 29, 29-30 (2005).

power in the IMF to sanction the IMF if the organization fails to meet their standards, the IMF is accountable to those emerging market members. The IMF can either be accountable to the actors which entrust the IMF with power (the delegation model), or the actors affected by the actions of the IMF (the participation model).⁷

IMF member states have two separate roles: they are both shareholders and, potentially, borrowers. Member states are always shareholders of the IMF, having invested money with the IMF according to their respective quotas. The member states then have formal voting power corresponding to their respective quotas. In this way, member states are like shareholders.

Additionally, the IMF lends money to member states, and then pays for the IMF's activities through the interest on these loans. The IMF will also impose conditions on the loans it grants, arguably to ensure that the loans are repaid. States which borrow from the IMF are then separately shareholders and borrowers.

Prior research critiques the IMF for being too accountable to developed countries, and not sufficiently accountable to developing countries.⁸ The critics' attack on the IMF's accountability is based on the IMF's near complete accountability to the developed countries which supply the IMF's money, and the IMF's lack of participatory accountability to the developing and middle-income countries that borrow from the Fund.⁹ In measuring accountability, these critics focus on the low-income and middle-income countries' lack of voting power within the IMF,¹⁰ and the exacerbation of the voting

7. *Id.* at 31.

8. See, e.g., Head, *supra* note 5, at 558-64; see also Murilo Portugal, *Improving IMF Governance and Increasing the Influence of Developing Countries in IMF Decision-Making* 8-13 (G-24 Technical Group Meeting, 2005), available at <http://www.g24.org/Portugal.pdf>; Woods 2001, *supra* note 5, 84-87 (discussing the IMF's inequality and accountability issues).

9. See, e.g., Daniel Bradlow, *Rapidly Changing Functions and Slowly Evolving Structures: The Troubling Case of the IMF*, 94 AM. SOC'Y INT'L L. PROC. 152, 154-56 (2000); Head, *supra* note 5, at 559-67; Woods 2001, *supra* note 5, at 84-85.

10. See Portugal, *supra* note 8, at 8-9; Ngaire Woods & Domenico Lombardi, *Uneven Patterns of Governance: How Developing Countries Are Represented in the IMF*, 13 INT'L POL. ECON. 480, 485-488, 504 (2006) (listing the voting percentage of each member and noting the outsized influence of the G-7).

discrepancy by the IMF's governance structure.¹¹ The research effectively demonstrates that the IMF is not accountable to emerging market or developing countries in those countries' role as IMF shareholders.

However, the prior research fails to address whether the IMF is accountable to borrowing members in those members' roles as consumers.¹² This paper will argue that changes in the IMF funding structure have recently left the IMF accountable to middle-income countries in their role as consumers. Over the past ten years, many middle-income countries have individually and in small regional groups made clear that they are dissatisfied with the IMF's standards in lending money, particularly the conditions imposed on loans, and have refused to borrow additional money from the IMF. This decision has exposed the IMF's reliance on middle-income borrowing, and forced the IMF to make substantial changes in its conditionality policies to attempt to attract more middle-income borrowers. The thesis is a novel contribution to the literature because no paper on this subject has of yet argued that the IMF is accountable to middle-income countries as borrowers, or documented the relationship between middle-income borrowing and changes in IMF policies.¹³

Part II will address accountability, establishing a definition of accountability and briefly providing reasons for the importance of this definition. Then, Part III will summarize the criticism of the IMF's accountability. Critics allege that the IMF is disproportionately accountable to developed countries, particularly the G-7. Countries' voting power is mostly determined by their GDP when they joined the IMF, creating a situation where the G-7 accounts for almost half of the IMF's Executive

11. Head, *supra* note 5, at 564-67 (noting that the Executive Board has become more unequal in recent years, that the Executive Board cannot hold IMF management accountable, and that selection of the IMF's Managing Director is not a transparent process); Woods 2001, *supra* note 5, at 84-88 (arguing that control over the Executive Board depends upon a member's voting power); Woods & Lombardi, *supra* note 10, at 509-510.

12. Ngaire Woods briefly addresses this question in her new article *Global Governance After the Financial Crisis: A New Multilateralism or the Last Gasp of the Great Powers?*, 1 GLOBAL POLICY 51 (2010). Woods' contention that the IMF is not accountable to consumer states will be addressed *infra* Sections IV-VI.

13. Indeed, the research for this paper uncovered no substantial literature arguing that the IMF is accountable to middle-income countries.

Board.¹⁴ In contrast, the twenty-four member African constituency accounts for 1.42 percent of the total voting power of the Board.¹⁵

Moreover, there are no legal checks that developing and middle-income countries can use to hold the IMF accountable to their interests or to check the power of the IMF. In the wake of the IMF's response to the Asian financial crisis in the late 1990s, the IMF was criticized for extending past its mandate and for causing additional harm to Korea, Thailand, and Indonesia.¹⁶ However, the IMF's mandate is vague, and article XXIV grants the Fund all power to interpret its own Articles of Agreement.¹⁷ If a member believes that the IMF violated its charter in its actions against the member, the IMF itself determines whether its interpretation and implementation was correct, and there is no judicial review.¹⁸

Part IV will explain why the criticism on IMF accountability inaccurately captures IMF accountability to middle-income countries. In focusing on the IMF's accountability to its members as shareholders, past research ignores IMF accountability to its members as borrowers. In fact, when the IMF changed its funding structure in the late 1970s and early 1980s, the IMF's continued existence became dependent on loaning money to countries that were capable of paying the Fund back with interest.

Developed countries do not generally need IMF financing. The poorest countries are incapable of paying the IMF back with sufficient interest to finance the IMF. Therefore, the IMF became dependent on wealthier developing nations. In the 2000s, many middle-income countries began stockpiling

14. Woods & Lombardi, *supra* note 10, at 504.

15. *Id.* at 495.

16. See Steven Radelet & Jeffrey Sachs, *The East Asian Financial Crisis: Diagnosis, Remedies, Prospects*, 1998 BROOKINGS PAPERS ECON. ACTIVITY 1, 67-68 (1998) (arguing that there were problems with the IMF programs in East Asia); see also Joseph E. Stiglitz, *Failure of the Fund: Rethinking the IMF Response*, 23 HARV. INT'L REV. 14, 16-18 (2001) (arguing that the IMF's mandate has changed and should be restricted to crisis management, in addition to undertaking other reforms); KEVIN WATKINS, OXFAM INTERNATIONAL, *THE IMF: SHOT BY BOTH SIDES* (Apr. 2000) (arguing that the IMF's mission has crept into areas in which the IMF does not have sufficient expertise).

17. Articles of Agreement, of the International Monetary Fund art. XXIX §§ (a)-(c), 2 U.N.T.S. 39.

18. *Id.*

reserves in order to avoid ever needing IMF financing. After the IMF's income plummeted and it was forced to lay off staff, the financing threat became credible. The IMF needed to be accountable to the demands of middle-income countries to survive.

Part V will use the example of conditionality and the Flexible Credit Line to document the recent increased accountability of the IMF to middle-income country debtors. The IMF in the 1990s and early 2000s required countries to accept numerous controversial conditions in exchange for IMF financing.¹⁹ During the Global Financial Crisis, the IMF changed its policies on conditionality and created the FCL, a credit line without conditions.²⁰ This section will show why these changes demonstrate increased accountability to middle-income countries and why the changes are linked to middle-income countries' role as consumers. Part V will also examine competing theories for the IMF's changes to conditionality and explain why they are not convincing.

In response to the actions of middle-income countries, the IMF recently changed its income model. Part VI will explore how the change impacts the IMF's accountability to middle-income borrowers. Although the IMF will no longer be as dependent on middle-income countries to sustain its financing, the IMF is still counting on many of those same countries for funding, influence, and prestige under its new financing model.

Finally, the Note will conclude with brief thoughts about the role of middle-income countries in the IMF going forward. Will middle-income countries resume borrowing IMF resources after the changes in conditionality?

19. See Morris Goldstein et al., *IMF Structural Conditions*, in *ECONOMIC AND FINANCIAL CRISES IN EMERGING MARKET ECONOMIES* 393, 393-401 (Martin Feldstein ed., 2003) (describing the various conditions imposed on Korea, Thailand, and Indonesia during the East Asian financial crisis); see also Martin Feldstein, *Refocusing the IMF*, 77 *FOREIGN AFFAIRS* 20, 23-26 (1998) (discussing the main objectives for the conditions in Korea, Thailand, Indonesia, and Korea).

20. *IMF Implements Major Lending Improvements*, INTERNATIONAL MONETARY FUND (Mar. 24, 2009), <http://www.imf.org/external/np/pdr/fac/2009/032409.htm>.

II. A DEFINITION OF ACCOUNTABILITY

For analytic clarity, the paper will use the definition of accountability developed by Ruth Grant and Robert Keohane.²¹ Accountability “implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met.”²² There must be a relationship between the power-wielder and the actor seeking to hold the power-wielder accountable, where both agree on “the legitimacy of (1) the operative standards for accountability and (2) the authority of the parties to the relationship ([the power-wielder] to exercise particular powers and the other to hold them to account).”²³ Therefore, accountability mechanisms will always occur *ex post* when the accountability holder examines the actions of the power-wielder and sanctions them.²⁴

Who should be entitled to hold a power-wielder accountable? Grant and Keohane present two distinct answers: (1) the delegation model; and (2) the participation model.²⁵ According to the delegation model, the actors that entrusted the power-wielder with powers should hold the power-wielder accountable.²⁶ The CEO of a corporation is accountable to the Board of Directors since the Board of Directors authorizes the CEO to act. In the participation model, those affected by the actions of the power-wielder should hold the power-wielder accountable.²⁷ Therefore, in the participation model, the corporation should be accountable to consumers and other parties affected by the conduct of the corporation.

21. See Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99 AM. POL. SCI. REV. 29, 29-31 (2005). The Note does not intend to resolve which definition of accountability is most accurate, and instead uses Grant and Keohane’s definition to focus the analysis of the paper and because it helps to illustrate why prior discussions of IMF accountability have been misguided.

22. *Id.* at 29.

23. *Id.*

24. *Id.* at 30.

25. *Id.* at 30-31.

26. *Id.* at 31.

27. *Id.*

Grant and Keohane note in passing the tension between these two models of accountability within the IMF.²⁸ The IMF could potentially be accountable to the countries that founded the IMF and whose money the IMF lends (the delegation model). Alternatively, the IMF could be accountable to the countries that are forced to accept IMF conditions in exchange for borrowing IMF money (the participation model).

III. THE CRITIQUE OF IMF ACCOUNTABILITY

A number of critics have charged that the IMF is overly accountable to the developed world.²⁹ The IMF is formally governed by a three-tier system. The Board of Governors is technically the top tier of government, comprised of ministers or central bank governors from each of the 185 member states.³⁰ The Board of Governors elects the twenty-four member Executive Board based on a quota voting system. Then, underneath the Executive Board, are the IMF management and staff, headed by the Managing Director.³¹

Given the unwieldy nature of the Board of Governors, the Executive Board and management make most important decisions.³² The staff and management control the day to day business of the IMF with supervision from the Executive Board.³³

Ngairé Woods and Domenico Lombardi effectively demonstrate how the IMF's governance structure leaves the IMF unaccountable to its developing and middle-income shareholders.³⁴ First, and most importantly, the voting power at all levels of the IMF is extremely unequal. Member states appoint Executive Directors to the Executive Board, and then vote within the Executive Board, based upon the member

28. *Id.* at 33.

29. For a full account of this critique, see, e.g., John W. Head, *supra* note 5, at 540, 558-64; see also Woods 2001, *supra* note 5, 84-87 (documenting the inequality and accountability issues within the IMF); Portugal, *supra* note 8, at 8-13.

30. INDEPENDENT EVALUATION OFFICE OF THE IMF, GOVERNANCE OF THE IMF: AN EVALUATION 2 (2008).

31. *See id.*

32. *Id.*

33. Head, *supra* note 5, at 529.

34. *See* Woods 2001, *supra* note 5, at 84-87 (documenting inequality and accountability issues within the IMF); Woods & Lombardi, *supra* note 10, at 28.

states' quotas.³⁵ The countries with the five largest quotas appoint their own Executive Directors.³⁶ All other states must organize into a constituency, combining their votes with other states in order to elect an Executive Director.³⁷

Member states are assigned a quota when they enter the IMF.³⁸ The quota is based upon a comparison of the quotas of other member countries with similar economic size and characteristics.³⁹ The quota then determines how much the country initially pays to the IMF, the country's voting power, and the country's access to funding.⁴⁰ The voting power within the IMF is therefore skewed towards the wealthiest countries.

Additionally, the quota of a member state does not necessarily change as the member state's economic size grows or shrinks. Any change in the initial or subsequent quota assigned to a country must be approved by 85 percent voting majority.⁴¹ The United States, with a 17.14 percent voting share, is capable of vetoing any increase in voting shares on its own.⁴² Countries that were wealthy when they entered the IMF thus have disproportionate voting power. For example, Japan and Germany each have over twice as many votes as China, and the Netherlands and Belgium each have nearly twice as many votes as Brazil.⁴³ The G-7 alone accounts for 47.13 percent of the total IMF voting shares, forming close to a majority.⁴⁴ If the G-7 is able to attract the votes of other West-

35. See Woods 2001, *supra* note 5, at 85 (explaining the voting power within the Executive Board); Woods & Lombardi, *supra* note 10, at 482 (explaining the method by which member states select Executive Directors for the Executive Board).

36. INDEPENDENT EVALUATION OFFICE OF THE IMF, *supra* note 30, at 2.

37. *Id.* Three other states (China, Saudi Arabia, and Russia) have sufficient votes to elect an Executive Director on their own and do so. Woods & Lombardi, *supra* note 10, at 482.

38. *Factsheet: IMF Quotas*, INTERNATIONAL MONETARY FUND (Nov. 5, 2010), <https://www.imf.org/external/np/exr/facts/quotas.htm>.

39. *Id.*

40. *Id.*

41. *Id.*

42. See Woods & Lombardi, *supra* note 10, at 489 tbl.3 (listing the voting shares of each constituency). Changes to quota shares are still ongoing during the publication of this Note and will be explored in Section VI. For the changes, see *Factsheet: IMF Quotas*, *supra* note 38.

43. Woods & Lombardi, *supra* note 10, at 485-88 tbl.1.

44. *Id.* at 504.

ern European countries, those countries could combine to form a majority.⁴⁵

The combined Brazilian, Iranian, Indian, Chilean, and Equatorial Guinean constituencies, representing forty-two countries, have 10.76 percent of the total voting share.⁴⁶ All four of the Executive Directors representing these constituencies could be ignored by other Executive Directors with no substantial consequence. Given this disparity, developing and middle-income countries cannot easily hold the IMF accountable through their votes.

Woods and Lombardi and Murilo Portugal also identify the advantage of countries which appoint their own Executive Director over countries which need to form a constituency to elect a Director.⁴⁷ Executive Directors have a dual role, both representing the countries which elected or appointed them, and also ensuring that all actions by the IMF comport with the IMF's Articles of Agreement.⁴⁸

Countries which appoint their own Executive Director can remove their Executive Director at any time, meaning that those Executive Directors are likely to closely represent their particular countries' interests.⁴⁹ In contrast, constituencies elect Executive Directors every two years.⁵⁰ A constituency may press its Executive Director to follow its instructions or to resign, but the constituency possesses no formal mechanism to require a Director to follow its will or to remove a Director before the allotted two years.⁵¹ The Executive Directors of constituencies have less incentive to be accountable to the countries the Directors represent, and are likely to have a

45. See *id.* at 485-88 tbl.1 (listing the voting power of each IMF member state).

46. See *id.* at 485-489 tbls.1 & 3.

47. See *id.* at 491-493 (discussing the difficulty for an individual country within a constituency to hold the constituency's Executive Director accountable to the county); Portugal, *supra* note 8, at 5 (discussing the dual role of directors as representing their country and representing the IMF).

48. Portugal, *supra* note 8, at 5.

49. See INDEPENDENT EVALUATION OFFICE OF THE IMF, *supra* note 30, at 16 (noting that "Appointed Directors can be recalled at will by their capitals"). Countries that elect their own directors are likely have similar control over their Executive Directors, although they are technically not allowed to remove their Directors between elections. *Id.*

50. *Id.*

51. *Id.*

stronger allegiance to the IMF as an institution.⁵² Small developing countries within a constituency dominated by a wealthier state face the additional possibility that the constituency's Executive Director will follow the desires of the wealthier state at the expense of the developing country.⁵³

Finally, the IMF lacks any legal checks that developing or middle-income countries can use to hold the IMF accountable for its decisions. The IMF's mission has changed dramatically since the Fund's founding in 1944, evolving from a role overseeing the system of pegged exchange rates to its present role maintaining global financial security.⁵⁴ Because the last substantial amendment to the IMF Charter was in 1978, Joseph Stiglitz and others have argued that the IMF mission has expanded past the limitations of the IMF Articles of Agreement and should be scaled back.⁵⁵

Robert Hockett counters that the IMF's changing mission is allowed by the broad language in the IMF Articles and by the decision of the IMF founders to vest "in the Fund itself final authority to interpret its own Articles".⁵⁶ Article XXIX gives the Executive Board the authority to determine the interpretation of the Articles of Agreement with no possibility of subsequent judicial review.⁵⁷ As Hockett notes, it is hard to imagine the Executive Board, which initially approved the in-

52. See Woods & Lombardi, *supra* note 10, at 492 (explaining the possible lack of accountability of constituency Executive Directors to individual countries).

53. See *id.* at 501-502 (suggesting that the constituencies dominated by the Netherlands and Switzerland seem to favor the policies of the Netherlands and Switzerland at the expense of other countries within the coalition).

54. See Articles of Agreement, of the International Monetary Fund, *supra* note 17, art. I (laying out the purposes of the IMF). For an excellent account of the IMF's transformation, see 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, 165-177 (2002).

55. See Stiglitz, *supra* note 16, at 16-18 (arguing that the IMF's mandate has changed and should be restricted to crisis management); Watkins, *supra* note 16.

56. See Hockett, *supra* note 54, at 177-90 (providing a full defense of the IMF's authority to engage in its present mission).

57. Articles of Agreement, of the International Monetary Fund, *supra* note 17, art. XXIX §§ (a)-(c).

terpretation or implementation, then *ex post* declaring its own interpretation or implementation illegitimate.⁵⁸

If Hockett successfully defends the legality of the IMF's mission creep, his argument raises additional accountability issues. Developing and emerging market countries are part of, and are directly impacted by, an organization whose mission is likely determined by the wishes of developed nations. Even worse, those countries have no formal mechanism that will allow them to successfully challenge whether the IMF's actions overstepped the limitations of the Articles.

Critics find the IMF's lack of formal accountability particularly problematic because the countries that formally control the IMF's policies through voting do not borrow from the IMF and therefore do not need to worry about the policies being applied to them.⁵⁹ At the time the IMF was founded, European countries were expected to borrow from the IMF, meaning that "'shareholding members were also 'stakeholders' in the work of the institution."⁶⁰ The last time a major developed country borrowed from the IMF was 1978.⁶¹ Daniel Bradlow

58. Hockett, *supra* note 54, at 179-80.

59. See Head, *supra* note 5, at 565 (explaining the "asymmetry in obligations" between poor borrowing member countries and rich non-borrowing countries).

60. Woods 2001, *supra* note 5, at 86.

61. MARTIN A. WEISS, CONG. RESEARCH SERV., RS22976, THE GLOBAL FINANCIAL CRISIS: THE ROLE OF THE INTERNATIONAL MONETARY FUND (IMF) 2 (2008). Since the publication of Weiss's article both Iceland and Greece have borrowed from the IMF. Press Release No. 10/187, IMF, Executive Board Approves €30 Billion Stand-By Arrangement for Greece (May 9, 2010), available at <http://www.imf.org/external/np/sec/pr/2010/pr10187.htm>; Press Release No. 08/296, IMF, IMF Executive Board Approves \$2.1 Billion Stand-By Arrangement for Iceland (Nov. 19, 2008), available at <http://www.imf.org/external/np/sec/pr/2008/pr08296.htm>. However, while Greece and Iceland are arguably developed countries, neither is a substantial power within the IMF. Indeed, Iceland has 0.05 percent and Greece has 0.38 percent of total IMF votes, piling in comparison to the United States' 17.09 percent of votes or France's 4.94 percent of votes. *IMF Members' Quota and Voting Power, and IMF Board of Governors*, IMF, <http://www.imf.org/external/np/sec/memdir/members.htm> (last updated Feb. 10, 2011). Also, the loan to Greece is arguably a gift to developed countries, since Greece suffered from no monetary issues that are supposed to be the precondition for an IMF loan. Swaminathan S. Anklesaria Aiyar, Greek Loan Would Violate IMF Charter, FORBES.COM (Apr. 23, 2010, 3:11 PM EDT), available at <http://www.forbes.com/2010/04/23/greece-imf-loan-opinions-contributors-swaminathan-aiyar.html>.

writes, “[t]o date, however, it (the IMF) has not established any mechanism through which the citizens of its consuming countries can hold the IMF or its management accountable for their actions as decision makers in this process. There is . . . no obvious reason why the IMF, when it ‘descends’ into the national policy-making process, should be less accountable to those people affected by its decisions than other actors in this process.”⁶²

IV. CONSUMER ACCOUNTABILITY: HOW MIDDLE-INCOME COUNTRIES HAVE BEEN ABLE TO DEMAND ACCOUNTABILITY FROM THE IMF

A. *What IMF Accountability Means*

The critiques of IMF accountability to middle-income countries from Section III are inaccurate. Grant and Keohane’s definition of accountability is useful because it makes this inaccuracy clear.⁶³ When the critics in Section III allege that the IMF suffers from ‘a democracy deficit’,⁶⁴ or that the IMF fails to represent the members with the most intensive relationship with the IMF,⁶⁵ the critics are asserting that the IMF should shift to more of the participatory model of accountability.⁶⁶ Indeed, under the delegation model of accountability, the IMF seems appropriately accountable.⁶⁷ As in a corporation, the IMF shareholders have votes corresponding with the money they provide to the IMF; the more power the actor delegated to the IMF, the more power the actor has to hold the IMF accountable.

This Note will not attempt to determine the appropriate balance of accountability (between the delegation and participation models) within the IMF. Instead, the remainder of the paper will seek to develop one point: IMF critics have undervalued IMF accountability to middle-income countries. When attacking the IMF’s lack of accountability to the member states

62. Daniel Bradlow, *Rapidly Changing Functions and Slowly Evolving Structures: The Troubling Case of the IMF*, 94 AM. SOC’Y INT’L L. 152, 156 (2000).

63. See *supra* note 21 and accompanying text.

64. Head, *supra* note 5, at 558-59.

65. Wood 2001, *supra* note 5, at 84-85.

66. See Grant and Keohane, *supra* note 6, at 31 (discussing the participation model).

67. *Id.* at 32 (describing the delegation model).

which borrow from the IMF, the critics from Section II focused on the IMF's accountability to those countries as shareholders. Voting power, the form of governance, and the inability to prevent mission creep are all typically shareholder accountability issues. In essence, the critics are alleging that borrowing states should have a larger role as shareholders: they should have more shares, those shares should count for more, and they should have more options to prevent the IMF from drifting beyond the mandate that they signed up for when they bought in.

All of this may be true.⁶⁸ Regardless, critics fail to account for IMF accountability to borrowing states as consumers. If the IMF is reliant on state borrowing, and if states can refuse to borrow if they dislike IMF policies, then the IMF should be accountable to those states. The rest of the paper aims to prove how the IMF has become reliant upon and therefore accountable to middle-income consumer states.⁶⁹

B. *The IMF's Funding*

The IMF was not always accountable to middle-income countries. IMF accountability to middle-income consumers is dependent on the middle-income consumer countries' ability to sanction the IMF through refusing to borrow until changes have been made, and the IMF's knowledge that this sanction can be imposed.

68. Nevertheless, the IMF's proponents might counter that the IMF is analogous to a cooperative bank, and that its borrowers should not have a say in its governance.

69. The phrase "middle-income countries" refers to those countries not in the traditional developed world (such as the United States, Japan, and much of Europe), and which do not qualify for the IMF's Poverty Reduction and Growth Fund. Cf. Public Information Notice No. 09/94, *IMF Reforms Financial Facilities for Low-Income Countries*, IMF (July 29, 2009), <http://www.imf.org/external/np/sec/pn/2009/pn0994.htm> (discussing the Poverty Reduction and Growth Fund). In particular, the paper examines IMF accountability to the bigger middle-income countries such as China, Russia, India, Brazil, and the Asian Tigers. IMF accountability to low-income countries is likely different because borrowing under the Poverty Reduction and Growth Fund entails different conditions and interest rates. *Id.* Arguably, IMF accountability to low-income states should be different, since those states receive zero-interest loans from the IMF. *Factsheet: IMF Support for Low-Income Countries*, IMF (Sept. 3, 2010), <http://www.imf.org/external/np/exr/facts/poor.htm>.

The main sanction that middle-income countries can impose on the IMF is financial. To explain this potential financial sanction, the Note must examine the evolution of IMF funding. Changes in IMF funding during the 1970s and 1980s are what have eventually led to the present IMF reliance on the middle-income countries, and the accountability that has accompanied this reliance. This subsection will explain those changes.

Within the IMF, the General Resource Account is responsible for all operations and transactions of the IMF.⁷⁰ The primary source of funding for the GRA is the capital subscriptions paid by members in the form of quotas.⁷¹ Using the money generated by the quotas, the IMF is able to extend financing to members in need of liquidity.⁷² The IMF does not actually lend, although the effect is the same.⁷³

70. IMF, PAMPHLET SERIES NO. 37, THE INTERNATIONAL MONETARY FUND: ITS EVOLUTION, ORGANIZATION, AND ACTIVITIES 28 (David D. Driscoll ed., 4th ed. 1984) [hereinafter *EVOLUTION, ORGANIZATION, AND ACTIVITIES*]. The IMF actually contains three separate financial units: the General Department, the Special Drawing Right (SDR) Department, and the Administered Accounts. JAMES M. BOUGHTON, SILENT REVOLUTION: THE INTERNATIONAL MONETARY FUND 1979-1989 850 (2001). Only the General Department is relevant to this article – the SDR Department “handles all transactions and operations involving SDRs, and the Administered Accounts contains the Supplementary Financing Facility Subsidy Account to “pay subsidies to eligible beneficiaries” and the Trust Fund for low-income members). *Id.* Within the General Department, there are three separate financial accounts: the General Resource Account, the Special Disbursement Account, and the Investment Account. TREASURER’S DEP’T, IMF, PAMPHLET SERIES NO. 45, FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF 19 (6th ed. 2001). [hereinafter *FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF*]

71. *FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF*, *supra* note 70, at 19. Members pay one quarter of their quota in the IMF’s reserve currency and the rest in their own currency. *Id.* The IMF then determines if each member’s currency is usable, meaning that it is strong enough to finance IMF credit to other members. *Id.* If necessary, the IMF can also supplement its quota resources by borrowing from either official entities or from private sources. *EVOLUTION, ORGANIZATION, AND ACTIVITIES*, *supra* note 70, at 28-29. The quotas also determine a country’s voting power, as discussed in Part II, *supra*.

72. *FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF*, *supra* note 70, at 20.

73. *Id.* at 20-21. The IMF “provides balance of payments assistance to members by selling currencies of other members or SDRs to them in exchange for their own currency.” *EVOLUTION, ORGANIZATION, AND ACTIVITIES*, *supra* note 70, at 31-32. Within a set period the “borrowing” member then

The IMF provides remuneration to members whose currency it sells, and charges countries who buy the currency. From its founding, the IMF intended to cover its expenses through charges for purchasing Fund assets.⁷⁴ In 1948 the IMF for the first time clarified the rules governing charges for borrowing members, creating a complex system where borrowers were charged a fixed percentage based upon the percentage of their quota they borrowed and the duration for which they had exceeded that percentage of the quota.⁷⁵

During the 1970s, the IMF again began to frequently incur net losses on its operation.⁷⁶ The IMF at this time period had three main operational expenses.⁷⁷ First, as always, the Fund had its own administrative expenses. Administrative expenses are what pay for the upkeep of the fund, including personnel expenses, travel expenses, and building costs.⁷⁸ Second, a number of countries needed financing from the IMF during the "oil crisis" of December 1973, and the IMF borrowed money from a number of oil producing countries in order to provide the necessary currency sales.⁷⁹ A substantial expense for the IMF was repaying these loans.⁸⁰ Finally, the IMF owed remuneration to creditor countries.⁸¹ The First and Second Amendments greatly increased the remuneration due

repurchases its currency from the Fund with reserve assets. FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF, *supra* note 70, at 21.

74. J. KEITH HORSEFIELD, [1: Chronicle] THE INTERNATIONAL MONETARY FUND 1945-1965: TWENTY YEARS OF INTERNATIONAL MONETARY COOPERATION 104 (1969).

75. Cf. MARGARET G. DE VRIES & J. KEITH HORSEFIELD WITH JOSEPH GOLD ET AL., [2: Analysis] THE INTERNATIONAL MONETARY FUND 1945-1965: TWENTY YEARS OF INTERNATIONAL MONETARY COOPERATION 432 tbl.16 (1969) (illustrating the changes in charges after 1951).

76. BOUGHTON, *supra* note 70, at 899.

77. [1: Narrative and Analysis] MARGARET GARRITSEN DE VRIES, THE INTERNATIONAL MONETARY FUND 1972-1978: COOPERATION ON TRIAL 562 (1986) [hereinafter COOPERATION ON TRIAL].

78. *Id.* at 72.

79. MARGARET GARRITSEN DE VRIES, THE IMF IN A CHANGING WORLD 1945-1985, at 139-41 (1986).

80. See COOPERATION ON TRIAL, *supra* note 77, at 601 (describing the IMF borrowing to finance its facilities and market interest the IMF paid on those loans).

81. See BOUGHTON, *supra* note 70, at 900 (explaining that the IMF's accelerating lending practices strained its available funds).

to creditor countries.⁸² The Executive Board then gradually increased the remuneration rate to 100% of the SDR rate.⁸³

Despite several raises to the rate of charge,⁸⁴ by 1980 the margin of interest on the IMF loans was clearly too low to cover its other expenses, so that the more lending the IMF did the more tension it placed on its net income.⁸⁵ The staff projected a deficit for the next year.⁸⁶ The IMF was faced with a choice, it could either reverse its recent changes in the remuneration rate or it could set the rate of charge more flexibly and higher to pay for its operational costs.⁸⁷

The Executive Board decided to fundamentally change the rate of charge, passing Rule I-6(4).⁸⁸ Beginning in 1981, “the major determinant of the rate of charge was the Fund’s net income relative to target levels agreed upon by the Executive Board.”⁸⁹ In essence, at the beginning of each the year, the IMF is to examine its total projected operational expenses and to set a target for the amount of money that it needs to collect.⁹⁰ If there is a shortfall in income after six months the IMF can review and change the rate of charge.⁹¹ The rate of charge under this system is greatly dependent on the amount of credit outstanding, with less credit outstanding usually resulting in a higher rate of charge.⁹²

Through 2010, the charges levied by the IMF have continued to constitute the main source of the IMF’s income.⁹³ For the operation of the IMF to be revenue neutral, it has needed

82. *Id.* at 902-903.

83. *Id.* at 904.

84. See COOPERATION ON TRIAL, *supra* note 77, at 560-66 (describing the increases in the rate of charge from 1974 to 1978).

85. BOUGHTON, *supra* note 70, at 900.

86. *Id.*

87. *Id.*

88. TREASURER’S DEP’T., IMF, FINANCING THE FUND’S OPERATION – REVIEW OF ISSUES app. III at 39 (2001) [hereinafter FINANCING THE FUND’S OPERATION – REVIEW OF ISSUES].

89. BOUGHTON, *supra* note 70, at 906.

90. *Id.* at 906-07.

91. *Id.* at 907.

92. FINANCING THE FUND’S OPERATION – REVIEW OF ISSUES, *supra* note 88, app. III, at 40.

93. See 2010 IMF ANN. REP app. VI, at 4. The IMF had a one-time gain in income from the sale of gold that dominated IMF income in 2010, but that was meant to go to create an endowment to make eventual changes in IMF financing. See *Questions and Answers: IMF Gold Sales*, IMF, (Oct. 1, 2010),

the charges to exceed the combined remuneration and administrative expenses.⁹⁴

C. *The Impact of the Change in the IMF's Financing*

This section will aim to prove why the changes to IMF funding during the 1970s and 1980s detailed in Part B created IMF accountability to many middle-income consumer states during the mid-2000s.

The changes in IMF funding did not immediately create IMF accountability to middle-income consumers. In fact, in the 1970s when the changes were being discussed, and in the early 1980s when the changes occurred, the possibility that the IMF would grow dependent on middle-income country borrowing was likely not considered. The distinction between borrowing and creditor countries was not yet apparent. From 1976 to 1978, due to issues arising from the 1973 oil embargo, the United Kingdom, Italy, and Spain all borrowed from the IMF.⁹⁵ Developed countries may well have believed that they would need to borrow from the Fund in the future. It was only during the 1980s that the clear distinction between creditor and borrower nations solidified.⁹⁶ Also, major middle-income borrowers such as the People's Republic of China and Russia did not join the IMF until later.⁹⁷

Nor did the increased accountability develop quickly. For example, during the East Asian crisis, both Indonesia and Malaysia were interested in using capital controls.⁹⁸ Malaysia rejected IMF financing in order to have independence and was criticized for its use of capital controls by the IMF, and Indonesia was forced to reject capital controls to stay in the IMF pro-

<http://www.imf.org/external/np/exr/faq/goldfaqs.htm>. The upcoming changes in IMF financing will be addressed in Section VI, *supra*.

94. See 2010 IMF ANN. REP app. VI, at 4.

95. WEISS, *supra* note 61, at 2.

96. BOUGHTON, *supra* note 70, at 904.

97. See *id.* at 967 & n.8 (discussing the entry of China and Russia into the IMF).

98. See Shalendra D. Sharma, *The Malaysian Capital Control Regime of 1998: Implementation, Effectiveness, and Lessons*, 27 ASIAN PERSP. 77, 78 (2003) (describing the Malaysian decision to use capital controls); Mark Landler, *I.M.F. Warns Indonesia Against Capital Controls*, N.Y. TIMES, June 6, 2000, at C4 (explaining that Indonesia considered using capital controls).

gram.⁹⁹ Both countries wanted capital controls and wanted the IMF to allow capital controls, and were unsuccessful in impacting the IMF's position. If the IMF relied on borrowing from member states since the 1980s, why were middle-income countries unable to exert their influence for two decades?

The answer is fundamentally simple. For the reasons detailed below, the middle-income countries could not initially effectively sanction the IMF for failing to meet the standards of middle-income countries for how the IMF was run or for the conditions on IMF lending. Additionally, the IMF did not believe that middle-income countries could sanction the IMF.¹⁰⁰

Why? First, despite the fact that the charges constituted the vast majority of the income to pay for the IMF's operational expenses,¹⁰¹ the IMF initially likely considered developed countries as also paying for the Fund. As mentioned above, a main reason for the IMF's choice to increase the rate of charge rather than decreasing remuneration was the IMF's concern that decreasing remuneration would leave creditor members less inclined to finance the GRA and to hold reserve tranche balances.¹⁰² The IMF treats the non-remunerated portion of a member's reserve tranche as an imputed cost paid by that member.¹⁰³ Through the 1980s and 1990s the IMF calculated this imputed cost to be as great as the charges provided by borrower countries.¹⁰⁴ This means that in the 1980s

99. See Jonathan Kirshner, *Explaining Choices About Money: Disentangling Power, Ideas, and Conflict*, in *MONETARY ORDERS: AMBIGUOUS ECONOMICS, UBIQUITOUS POLITICS* 275 (Jonathan Kirshner ed., 2003) (noting IMF criticism of Malaysian Capital Controls); Russ P. Buckley & Sarala M. Fitzgerald, *An Assessment of Malaysia's Response to the IMF During the Asian Economic Crisis*, 2004 SING. J. LEGAL STUD. 96, 98 (noting that Malaysia rejected IMF assistance because of disagreement with IMF policies); Landler, *supra* note 98 (describing Indonesia's abandonment of capital controls in response to IMF pressure).

100. For the IMF to be accountable to middle-income countries, it needed to be aware of the possibility that middle-income countries could impose sanctions. Otherwise it would not feel any obligation to attempt to meet the standards.

101. Comm. to Study Sustainable Long-Term Fin. of the IMF, Final Rep. 3 (Jan. 31, 2007).

102. *Id.* at 900.

103. See FINANCING THE FUND'S OPERATION – REVIEW OF ISSUES, *supra* note 88, at 20-21 (computing the percentage of costs paid by creditor and borrower countries over the years).

104. *Id.* at 21.

and 1990s the IMF staff likely viewed creditor countries as paying more than borrower countries for the operation of the Fund.¹⁰⁵

Second, during the 1980s, 1990s, and even the mid-2000s, the IMF was on strong financial footing. A highly profitable business with many customers is not likely to change its product based on the demands of a few particular customers. The sanction of those customers taking their business elsewhere is far weaker than if the business needs those customers to survive.

The IMF conducted substantial lending from the 1980s through the early 2000s.¹⁰⁶ Because of the lending, the IMF's total credit outstanding in the GRA remained relatively high. In the early to mid-1980s the world recession led to a steady increase in borrowing by middle-income countries.¹⁰⁷ Lending mostly dipped and repurchasing increased during the late 1980s before the transition to capitalism in Central and Eastern Europe reversed this trend.¹⁰⁸ Through the mid-1990s, crises in emerging market economies caused those countries to turn to the IMF for financing, and the IMF's outstanding credit continued to rise until a slight dip in 1997.¹⁰⁹ Then, with the East Asian Financial Crisis in 1997, IMF credit outstanding shot up to record levels.¹¹⁰ This peak was quickly sur-

105. *Id.*

106. Michael D. Bordo & Harold James, *The International Monetary Fund: Its Present Role in Historical Perspective* 55 (Nat'l Bureau of Econ. Research, Working Paper No. 7724, 2000).

107. See 1987 IMF ANN. REP. app. II, tbls.II.5, II.6 (listing the amount of purchases and repurchases by year and the number of Stand-By Arrangements that became effective by year); *IMF Lending*, IMF (Oct. 5, 2010), <http://www.imf.org/external/np/exr/facts/howlend.htm> (noting that the debt crisis in the 1980s caused an increase in IMF lending).

108. See 1992 IMF ANN. REP. 62 (listing the decrease and subsequent increase in total disbursements and the inverse in repurchasing); *IMF Lending*, *supra* note 107 (describing the impact of the transition in Central and Eastern Europe on IMF lending).

109. See 1997 IMF ANN. REP. 129 (listing the purchases and repurchases of GRA resources from 1989 to 1997); 1994 IMF ANN. REP. 130, 134 (1994) (listing the major purchases of IMF Funds during 1993/94 and the purchases versus repurchases in the GRA); *IMF Lending*, *supra* note 107 (attributing the increase in outstanding credit to crises in emerging market economies).

110. See 2000 IMF ANN. REP. 120 (listing the purchases and repurchases of GRA resources from the IMF's founding through 2000).

passed in 2003 with the Latin American crises, driven by the largest Stand-By Arrangement in IMF history for Brazil.¹¹¹

The heavy lending allowed the IMF to remain consistently profitable through 2003.¹¹² With the GRA consistently profitable, the IMF likely did not believe that its income was vulnerable to decisions by middle-income consumer countries to reject IMF financing. For middle-income countries to seriously impact the IMF's funding, a number would need to concurrently repurchase their debt and to stop seeking finances. They had not done so. If middle-income countries showed no inclination to sanction the IMF, why acquiesce to the standards of the middle-income countries?

Moreover, before the mid-2000s there was no indication that middle-income countries could credibly reject IMF financing unless the IMF changed its financing demands to meet the standards desired by middle-income countries. As long as middle-income countries have no choice but to borrow, they have no ability to sanction the IMF at all. Indeed, major middle-income countries were consistently forced to seek IMF financing from 1980 through 2003. For example, India borrowed from the IMF in 1982 and again from 1991 to 1993.¹¹³ China borrowed from the Fund in 1986.¹¹⁴ Brazil borrowed in 1984, 1988, 1992, from 1998 to 1999, and from 2001 to 2003.¹¹⁵ Russia borrowed from 1992 to 1999.¹¹⁶ Korea borrowed from 1984 to 1986 and from 1997 to 1999.¹¹⁷

111. See 2003 IMF ANN. REP. 67, app. II at 106 (2003) (describing the Brazil Stand-By Arrangement and listing the purchases and repurchases of GRA resources from the IMF's founding through 2003).

112. *Id.* app. IX at 152; 2001 IMF ANN. REP. 178; FINANCING THE FUND'S OPERATION – REVIEW OF ISSUES, *supra* note 88, at 53-54.

113. See 1982 IMF ANN. REP. 74, 83 (describing India's use of the Extended Fund Facility in 1982); *India: Transactions with the Fund from May 01, 1984 to October 31, 2009*, IMF, http://www.imf.org/external/np/fin/tad/extrans1.aspx?memberKey1=430&endDate=2009-12-06&finposition_flag=YES.

114. *China: Transactions with the Fund from May 01, 1984 to October 31, 2009*, IMF, http://www.imf.org/external/np/fin/tad/extrans1.aspx?memberKey1=180&endDate=2009-12-06&finposition_flag=YES.

115. *Brazil: Transactions with the Fund from May 01, 1984 to October 31, 2009*, IMF, http://www.imf.org/external/np/fin/tad/extrans1.aspx?memberKey1=90&endDate=2009-12-06&finposition_flag=YES.

116. *Id.*

117. *Kora: Transactions with the Fund from May 01, 1984 to October 31, 2009*, IMF, http://www.imf.org/external/np/fin/tad/extrans1.aspx?memberKey1=550&endDate=2009-12-06&finposition_flag=YES.

What then changed? Why were emerging market countries suddenly able to repurchase old loans, avoid new loans, and credibly threaten the income stream of the IMF? There was no meeting between the entire middle-income bloc where they collectively realized how to gain accountability from the IMF. Instead, a number of changes occurred from 1990 through 2004 that placed strains on IMF funding. Then, once a sufficient number of middle-income countries, individually or in regional groups, took steps to avoid IMF financing, the IMF was forced to listen to those countries' critiques.

The first few changes occurred in the 1990s, although the ramifications from those changes were not felt for a few years. During the 1990s, the IMF steadily increased the concessional credit the IMF provides to low income countries under the Poverty Reduction and Growth Facility.¹¹⁸ The PRGF is mainly financed through contributions, and only charges borrowing countries 0.5% interest.¹¹⁹ The 0.5% interest rate charge is not part of the IMF income; instead it is passed directly to the PRGF Trust lenders (countries who lend to the IMF).¹²⁰ Although the PRGF did not constitute a substantial percentage of IMF total credit outstanding the 1990s or in the 2000s, its growth was likely symbolically important in reinforcing the importance of middle-income countries to IMF funding.¹²¹

Second, in the late 1990s the relative contribution to IMF operations from middle-income countries began to outweigh the contributions from developed states. The major developed countries had stopped borrowing from the IMF.¹²² At the same time, the charges from debtor countries far outstripped the contributions by creditor states.¹²³ As the borrower countries' contribution grew, the IMF may have felt more ac-

118. See FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF, *supra* note 70, at 120-21 (describing the IMF's concessional credit financing the amount of credit extended under each concessional credit facility).

119. *Id.* at 126.

120. *Id.* at 126-27.

121. 2009 IMF ANN. REP. app II at 1; 1998 IMF ANN. REP. 116. Note that the ESAF, as noted in the document, is the PRGF, discussed in this paper. The IMF changed the name of the facility in 1999. FINANCIAL ORGANIZATION AND OPERATIONS OF THE IMF, *supra* note 70, at 120.

122. WEISS, *supra* note 61, at 2.

123. FINANCING THE FUND'S OPERATION – REVIEW OF ISSUES, *supra* note 88, at 21.

countable to the countries paying for its existence.¹²⁴ Even if this difference was not sufficient to change IMF accountability on its own, combined with other changes it may have been important.

Finally, beginning with the East Asian crisis, a number of middle-income countries decided that they did not want to or have to borrow from the IMF unless the IMF met the standards imposed by those middle-income countries. In 1997 the East Asian crisis erupted, and the IMF responded by extending financing for liquidity support to Korea, Thailand, and Indonesia.¹²⁵ With the loans the IMF attached a number of conditions that Korea, Thailand, and Indonesia each needed to comply with, including tax and expenditure reform, corporate governance reform, and capital account liberalization.¹²⁶ A number of writers have argued whether the IMF programs in Korea, Thailand, and Indonesia were effective.¹²⁷ Regardless of the overall effectiveness of the IMF's policies, Korea, Thailand, and Indonesia all wanted to escape the IMF program and to avoid ever having to return to the IMF again. Korea, Thailand, and Indonesia all repaid the IMF early, removing IMF power over their economies.¹²⁸ Then, all three countries

124. Some developed countries argue that the borrowers are not in fact paying anything and are actually receiving a subsidy because they are receiving a loan for cheaper than the countries could receive otherwise. *Id.* at 20. Separate from the merits as to whether the developed countries are correct; from the IMF staff's perspective its existence would not be possible without these funds, so it seems likely that the staff would not take this view.

125. Deena Khatkhate, *East Asian Crisis and the IMF: Chasing Shadows*, 33 *ECON. & POL. WKLY.* 963, 966 (1998).

126. See Morris Goldstein et al., *IMF Structural Conditions*, in *ECONOMIC AND FINANCIAL CRISES IN EMERGING MARKET ECONOMIES* 363, 393-401 (2003) (describing the conditions imposed on each country); Martin Feldstein, *Refocusing the IMF*, 77 *FOREIGN AFF.* 20, 22-26 (1998) (discussing the main objectives for the conditions in each of the countries).

127. See, e.g., Anne O. Krueger et al., *IMF Stabilization Programs*, in *ECONOMIC AND FINANCIAL CRISES IN EMERGING MARKET ECONOMIES* 297, 393-401 (2003) (arguing that generally the IMF approach was positive); Feldstein, *supra* note 126, at 27-33 (criticizing the role of the IMF).

128. *Indonesia Repays its IMF Obligations Early*, IMF SURVEY, Oct. 30, 2006, at 313; Press Release No. 01/82, IMF, IMF Managing Director Congratulates Korea on Early Repayment of 1997 Stand-By Credit (Aug. 22, 2001), available at <http://www.imf.org/external/np/sec/nb/2001/nb0182.htm>; Press Release No. 03/131, IMF, Thailand Completes Early Repayment of 1997 Stand-By Arrangement (Jul. 31, 2003), available at <http://www.imf.org/external/np/sec/pr/2003/pr03131.htm>.

joined the ventures described below to prevent future dependency on the IMF.

Since the East Asian crisis, China, Taiwan, India, Korea, Hong Kong, Thailand, Indonesia, Singapore, Malaysia, and the Philippines have all stockpiled reserves.¹²⁹ Although the countries have a number of reasons for doing so, one prominent rationale is to provide self-insurance in the event of a sudden shortage of liquidity and thereby to avoid having to turn to the IMF.¹³⁰ Additionally, in 2000, Japan, China, South Korea, and 10 other South Asian countries created a set of bilateral swap agreements called the Chiang Mai Initiative (CMI) to create short term liquidity and provide medium term balance of payments financing for members in need.¹³¹ Although the agreement is not independent from the IMF, the CMI arose partially out of dissatisfaction with the IMF during the East Asian crisis and a desire to avoid using IMF financing.¹³² When the Asian countries took measures to prevent their potentially needing IMF financing, they effectively removed a substantial percentage of possible IMF funding. The stockpiling of reserves was a signal to the IMF that these countries could and indeed were imposing sanctions on the IMF.

The other notable change caused by the East Asian crisis was the realization that IMF support was not always necessary or even beneficial. Malaysia also suffered a crisis, but refused IMF financing and instead chose to handle the crisis on its own.¹³³ The Malaysian government stated that it did not want to open, liberalize, and privatize the economy.¹³⁴ Malaysia initially tightened fiscal policy and made sharp spending cuts, but then instituted “an increase in public spending to stimulate the economy, capital controls to allow the government more

129. Donghyun Park & Gemma B. Estrada, *Are Developing Asia's Foreign Exchange Reserves Excessive? An Empirical Examination* 5, 13 (ADB Economics Working Paper Series No. 170, 2009).

130. *Id.* at 1.

131. C. Randall Henning, *The Future of the Chiang Mai Initiative: An Asian Monetary Fund?* 1-2 (Peterson Inst. for Int'l Econ., Policy Brief No. PB09-5, 2009).

132. *Id.* at 1, 3.

133. Ross P. Buckley & Sarala M. Fitzgerald, *An Assessment of Malaysia's Response to the IMF During the Asian Economic Crisis*, 14 SING. J. LEGAL STUD. 96, 98 (2004).

134. *Id.*

control over Malaysia's economy and to prevent the outflow of foreign capital that would have ensued, and a restructuring package for the financial sector."¹³⁵ Malaysia recovered at least as well as the countries that accepted IMF assistance.¹³⁶ In fact, Malaysia's response to the crisis was sufficiently successful to gain subsequent IMF approval.¹³⁷ Again, by demonstrating that middle-income countries could credibly reject IMF financing and conditions and still recover, Malaysia's performance illustrated the potential sanction that middle-income consumers could use if they disagreed with IMF terms.

Despite their importance, even the drastic steps by the Asian countries did not immediately lead to IMF accountability to those countries. For IMF accountability to middle-income consumers to work, middle-income country sanctions had to make an immediate impact on IMF finances. As mentioned above, Brazil in 2002 and 2003 borrowed heavily from the IMF, leading to a peak in IMF outstanding credit.¹³⁸ Other middle-income countries, such as Russia, were still possible borrowers. By the mid 2000s, however, the possibility of Russia or Brazil relying on the IMF decreased. Both countries completed early repayment to the IMF in 2005, eliminating two major sources of IMF financing and suggesting they did not want to be subject to IMF conditionality.¹³⁹ Also, like the Asian countries, both Russia and Brazil have since built up their reserves, decreasing the chance that either will seek IMF funding in the future. For Russia the reserves rose from \$71.8 billion on December 12, 2003, to \$432.8 billion on October

135. *Id.* at 101.

136. *See id.* at 105 (showing Malaysian growth better than Thai or Indonesian growth and almost as strong as Korean growth).

137. *Id.* at 102.

138. *See* 2003 IMF ANN. . REP., *supra* note 111, at 67, 106 (2000) (describing the Brazil Stand-By Arrangement and listing the purchases and repayments of GRA resources from the IMF's founding through 2003).

139. *See Russia Pays Off IMF Debt Early*, 34 IMF SURVEY 17, 19 (2005) (discussing Russia's early repayment of its IMF debt, which ended its status as an IMF debtor); *Brazil to Pay Off IMF Debts Early*, BBC NEWS, Dec. 14, 2005, <http://news.bbc.co.uk/2/hi/business/4527438.stm> (discussing Brazil's intended early repayment of its IMF debt and the amount of interest costs that Brazil would no longer pay to the IMF); *IMF Chief to Visit Brazil to Mark Early Debt Settlement*, AGENCE FRANCE PRESSE, Jan. 5, 2006.

30, 2009.¹⁴⁰ For Brazil the reserves increased from \$53.78 billion at the end of 2005 to \$232.9 billion at the end of October 2009.¹⁴¹

Did these changes substantially impact the IMF's funding? Emphatically yes. The IMF's credit outstanding dropped precipitously from 2003 to 2007, from SDR 73 billion in 2003 to SDR 11.2 billion at the end of 2007.¹⁴² In 2006 alone the IMF provided SDR 2.6 billion of financing, and member countries repurchased SDR 32.8 billion. Due to its low credit outstanding the IMF did not generate sufficient income from its rate of charge. The IMF earned SDR 60 million less than its target in 2006. In March, 2006, the Executive Board realized the upcoming IMF budget shortfall, and established an Investment Account with funds equal to the IMF's reserves.¹⁴³ Nonetheless, the IMF lost SDR 111 million in 2007.¹⁴⁴ The IMF could not make up the money by increasing charges because the charges would need to have been increased past the borrowing countries' ability to pay.¹⁴⁵ Instead, the IMF was forced to reduce its workforce by approximately 380 employees and to take other administrative cost-cutting measures.¹⁴⁶

140. *Russia Piling Up Gold and Currency Reserves*, ROSBUSINESSCONSULTING, Nov. 5, 2009, http://top.rbc.ru/english/index.shtml?/news/english/2009/11/05/05160449_bod.shtml; *Russia Has World's Second Highest Gold and Currency Reserves*, THE RUSSIA JOURNAL, Dec. 30, 2003, <http://www.russiajournal.com/node/16979>.

141. *Brazil's Reserves Reach New Record in October: 232.9 Billion US Dollars*, MERCOPRESS, Nov. 5, 2009, <http://en.mercopress.com/2009/11/05/brazils-reserves-reach-new-record-in-october-232.9-billion-us-dollars>.

142. 2007 IMF ANN. REP., app.II at 2 [hereinafter ANNUAL REPORT 2007].

143. Press Release No. 06/90, IMF, IMF Executive Board Reviews Fund's Income Position, Sets Rate of Charge for FY 2007 and Approves Establishment of an Investment Account (May 4, 2006), available at <http://www.imf.org/external/np/sec/pr/2006/pr0690.htm>. For more information about the Investment Account, see generally FIN. DEP'T, IMF, ESTABLISHMENT OF THE INVESTMENT ACCOUNT (2006).

144. 2007 IMF ANN. REP., *supra* note 142, at 66; IMF, 2006 IMF ANN. REP. 98.

145. 2006 IMF ANN. REP., *supra* note 144, at 99.

146. Anthony Faiola, *IMF to Offer Buyouts to About 500 Employees*, WASH. POST, Apr. 30, 2008, at D8.

V. THE IMF'S RECENT ACCOUNTABILITY TO MIDDLE-INCOME COUNTRIES: THE FLEXIBLE CREDIT LINE

By 2007, given the IMF's dire financial situation, it was essentially faced with a choice. Even when the IMF returns to profitability during a major crisis, as it has during the Global Financial Crisis, the profitability will likely continue only for the duration of the crisis if middle-income countries try to avoid IMF financing and repay the loans as quickly as possible.¹⁴⁷ In 2008, the IMF could either listen to the concerns of emerging market countries or fail to cover its basic expenses. That is not to say that middle-income countries were united as a bloc and speaking with one voice. They were not. Instead, a number of individual middle-income countries shared common concerns with the present policies of the IMF and responded similarly by stockpiling reserves and signaling that they would refuse IMF financing. Understandably, given the financial sanction presented by these middle-income consumers, the IMF then responded to many of the common concerns of those middle-income consumers.

To prove that the IMF has actually become accountable to those middle-income countries as a result of changes in IMF funding, it is necessary to show both that the IMF recently aligned its policies with middle-income demands, and also that the organization ignored those same middle-income policy demands until IMF funding struggles. The following section demonstrates such a scenario, using the example of IMF conditionality.

A. *From Structural Conditionality to the Flexible Credit Line*

The IMF's changed position on conditionality represents the best example of the IMF's recently increased accountability to middle-income consumers. The IMF previously followed a policy actively desired by developed countries and disliked by middle-income countries, and then changed its conditionality policy to fit the viewpoint of middle-income countries despite the continued desirability of the initial conditionality policy for developed countries. Moreover, the IMF did so at the ex-

147. See 2009 IMF ANN. REP., *supra* note 121, at 64 (noting the IMF's return to profitability in 2009).

act time when IMF vulnerability to middle-income funding was exposed.

Since 1954, the IMF has required certain borrowing countries to fulfill conditions in exchange for IMF money.¹⁴⁸ The conditions are policies that the IMF and the borrower agree upon.¹⁴⁹ The stated twin purposes of conditionality are to help “member countries solve balance of payments problems without resorting to measures that may put national or international prosperity in jeopardy” and to “safeguard IMF resources by ensuring that the country’s economy will be healthy enough to repay the loan.”¹⁵⁰

Until the 1980s, the IMF imposed conditions focused on improving the borrowing state’s macroeconomic stability.¹⁵¹ Even in the 1970s actual and potential borrowing countries criticized the IMF’s use of conditions.¹⁵² However, middle-income country displeasure with conditionality in the 1970s was minor compared to later complaints.

In the early 1980s the IMF began to lend more commonly to developing and middle-income countries.¹⁵³ At this time developed countries, especially the United States and developed countries in Europe, communicated that they viewed IMF conditionality as insufficient.¹⁵⁴ The IMF then started to impose “structural conditions” that member states needed to undertake in order to receive financial resources from the IMF.¹⁵⁵

The structural conditions included “financial-sector policies; liberalization of trade, capital markets, and of the ex-

148. BOUGHTON, *supra* note 70, at 557.

149. Ariel Buira, *An Analysis of IMF Conditionality* 3 (G-24 Discussion Paper Series, No. 22, 2003).

150. IMF, Factsheet: IMF Conditionality, <http://www.imf.org/external/np/exr/facts/conditio.htm> (last visited Jan. 29, 2011).

151. BOUGHTON, *supra* note 70, at 557. These could be either “prior actions” or “quantitative performance criteria.” IMF, Factsheet: IMF Conditionality, *supra* note 150. Prior actions are “measures that a country agrees to take before the IMF’s Executive Board approves financing or completes a review.” *Id.* Quantitative performance criteria “are specific conditions that have to be met for the agreed amount of credit to be disbursed.” *Id.*

152. BOUGHTON, *supra* note 70, at 559.

153. *Id.* at 566.

154. *Id.* at 565-66.

155. INDEP. EVALUATION OFFICE, IMF, STRUCTURAL CONDITIONALITY IN IMF-SUPPORTED PROGRAMS 2 (2007).

change rate system; privatization and public enterprise policies; tax and expenditure policies; labor market policies; pricing and marketing policies; transparency and disclosure policies; poverty-reduction and social safety-net policies; pension policies; corporate governance policies (including anti-corruption measures); and environmental policies.”¹⁵⁶ Like macroeconomic conditions, structural conditions can be required as prior actions or quantitative performance criteria, where if the borrowing member state does not follow the policy the state cannot access IMF resources.¹⁵⁷ Additionally, the IMF and the borrowing member state can agree on structural benchmarks, which oblige the borrowing member state to take certain actions by set dates in order to make progress on structural policy reform.¹⁵⁸ The IMF will then examine the structural benchmarks during the borrowing state’s program review to determine whether the IMF will continue providing funding for the borrower.¹⁵⁹

The structural conditions imposed have generally mirrored the policy changes desired by the most developed countries.¹⁶⁰ Structural conditions arose in the 1980s with the Reagan and Thatcher administrations. The structural conditions put forward by the IMF reflected the Reagan and Thatcher push for economic liberalization, requiring, for example, the “dismantling of monopolies and the elimination of government-directed lending and procurement programmes.”¹⁶¹ Consumer countries, conversely, fiercely attacked structural conditionality from the beginning.¹⁶²

156. MORRIS GOLDSTEIN, INST. FOR INT’L ECON., IMF STRUCTURAL CONDITIONALITY: HOW MUCH IS TOO MUCH? 4 (2000) available at <http://www.iie.com/publications/wp/01-4.pdf>.

157. *Id.* at 33. The IMF can waive or change performance the conditions, so the failure to complete the quantitative performance criteria may not lead to the loss of drawing rights. BOUGHTON, *supra* note 70, at 606-07.

158. *Id.*

159. *Id.* Unlike prior actions and quantitative performance criteria, failure to follow structural benchmarks will not automatically lead to suspension of a member state’s access to IMF resources. *Id.*

160. Buira, *supra* note 153, at 16.

161. BOUGHTON, *supra* note 70, at 588 (discussing the connection between reforms pushed by the Reagan Administration and IMF structural conditionality); see also Buira, *supra* note 149, at 16 (connecting the IMF structural conditions to the Thatcher and Reagan administrations).

162. BOUGHTON, *supra* note 70, at 588.

If the IMF was accountable to middle-income consumer country standards at that time, the IMF would have cut back on structural conditionality. Instead, the IMF increased structural conditionality and conditionality during the 1980s and especially the 1990s. In 1982, fewer than five percent of upper-tranche arrangements contained more than ten performance criteria.¹⁶³ By 1990 almost 70 percent of the upper-tranche arrangements contained more than 10 performance criteria.¹⁶⁴ Arrangements with more performance criteria generally contained structural conditions along with macroeconomic conditions.¹⁶⁵ Similarly, prior actions were rarely required before the 1980s.¹⁶⁶ During the 1980s, the IMF frequently began to require prior actions before money was disbursed.¹⁶⁷

In the 1990s, the IMF's use of conditions, and particularly of structural conditions, continued to accelerate. The number of performance criteria per IMF program rose from 10 per program in 1993 to 13 per program in 1996.¹⁶⁸ The number of structural conditions required by the IMF increased correspondingly. In 1990 the IMF required an average of six structural conditions per program.¹⁶⁹ By 1996 the IMF required an average of 13 structural conditions per program.¹⁷⁰ IMF actions show no accountability to the IMF's middle-income consumers.

The IMF's use of conditions peaked in 1997 with the East Asian financial crisis. In return for IMF funding, Korea agreed to 94 structural conditions, Thailand agreed to 73 structural conditions, and Indonesia agreed to an astonishing 140 structural conditions.¹⁷¹ The number and scope of the conditions placed upon Korea, Thailand, and Indonesia intensified criticism of IMF conditionality.¹⁷² Some of the IMF conditions placed on Korea and the other Asian countries in exchange

163. *Id.* at 603 fig.13.5.

164. *Id.*

165. *Id.* at 604.

166. *Id.*

167. *Id.*

168. Goldstein, *supra* note 19, at 390 tbl.5.2.

169. Buira, *supra* note 149, at 17.

170. *Id.*

171. *Id.* at 16.

172. *See, e.g.*, Feldstein, *supra* note 19, at 13, Stiglitz, *supra* note 16, at 18.

for funding appeared unrelated to the crisis, and instead seemed to be policies that major stakeholders of the IMF such as the United States and Japan wanted the Asian countries to adopt.¹⁷³

Unsurprisingly, therefore, middle-income countries continued to be displeased by the IMF's use of conditionality. Several of the Asian member states criticized the IMF for not allowing Korea, Thailand, and Indonesia to have more control of the program.¹⁷⁴ Malaysia's refusal of IMF assistance during the Asian financial crisis was based in large part on Malaysia's desire to avoid conditions. When rejecting IMF assistance, the Malaysian Prime Minister stated, "if we have to consent to IMF assistance . . . the conditions imposed by the IMF will require us to open up our economy to foreigners. There will not be any *Bumiputra* quota as the New Economic Policy (NEP) is an injustice, and unacceptable to their liberal democracy."¹⁷⁵ Then, in the wake of the Asian crisis, Asian distrust of and displeasure with the IMF was a key factor in the Asian countries' stockpiling of reserves.¹⁷⁶ In particular, all three Asian countries – Korea, Thailand, and Indonesia – that agreed to the IMF conditions in exchange for IMF resources decided to stockpile reserves and avoid the possibility of returning to the IMF.¹⁷⁷

The IMF eventually responded to the widespread criticism of the IMF's use of conditionality.¹⁷⁸ In September 2000, the Managing Director of the IMF issued an Interim Guidance Note (ING) recommending that IMF structural conditions at least be macro-relevant.¹⁷⁹ Then, two years later, on September 25, 2002, the Executive Board of the IMF revised the IMF's Guidelines on Conditionality (GC), officially limiting the use of conditionality to the IMF's core areas of responsibility, and reaffirming the importance of borrowing state sovereignty

173. See Feldstein, *supra* note 19, at 32 (describing specific conditions which fell in this category).

174. Cyrus Rustomjee, *Improving Southern Voice on the IMF Board: Quo Vadis Shareholders?*, in ACCOUNTABILITY OF THE INTERNATIONAL MONETARY FUND 7, 18 (Barry Carin & Angela Wood eds., 2005).

175. Buckley & Fitzgerald, *supra* note 133, at 98.

176. Park & Estrada, *supra* note 129, at 1.

177. *Id.* at 5.

178. CONDITIONALITY IN IMF-SUPPORTED PROGRAMS, *supra* note 155, at 2.

179. *Id.*

over any conditions.¹⁸⁰ The IMF appeared accountable to its developing country critics.

The appearance was, however, mostly a facade. Neither the ING nor the GC led to a decrease in the IMF's use of structural conditions.¹⁸¹ The number of structural conditions per program peaked in 1997, spurred by the incredible number of structural conditions agreed to by the Asian countries.¹⁸² Nonetheless, after slight decreases in 1998 and 1999, the average number of structural conditions per IMF program rose in the early 2000s.¹⁸³ Although the IMF's Independent Evaluation Office (IEO) found that the structural conditions were at least more consistently within the IMF's area of core competence, the IEO noted that the IMF continued to (1) include structural conditions that were not critical to the program objective; and (2) fail to explain the need for specific structural conditions.¹⁸⁴

Only in May 2008, when the IMF desperately needed funding from middle-income member states, did the IMF Executive Board begin to take steps to rein in conditionality. The Executive Board first created an implementation plan based on recommendations from the IEO concerning the IMF's use of conditionality.¹⁸⁵ Then, on May 24, 2009, the Executive Board approved substantial changes to IMF lending and conditionality.¹⁸⁶

The changes to conditionality by the IMF directly responded to middle-income countries' criticisms. First, the IMF committed to stop using structural performance criteria, and instead to assess agreed upon structural changes in the context

180. IMF, *Guidelines on Conditionality*, at 1-2 (Sep. 25, 2002), available at <http://www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.htm>.

181. CONDITIONALITY IN IMF-SUPPORTED PROGRAMS, *supra* note 155, at 15-16.

182. *See id.* at 16 (showing the average number of structural conditions per program in both the GRA and the PRGF).

183. *Id.*

184. *Id.* at 15-16.

185. IMF, PUBLIC INFORMATION NOTICE NO. 08/52, IMF EXECUTIVE BOARD DISCUSSES IMPLEMENTATION PLAN FOLLOWING IEO EVALUATION OF STRUCTURAL CONDITIONALITY IN IMF-SUPPORTED PROGRAMS (MAY 14, 2008), available at <http://www.imf.org/external/np/sec/pn/2008/pn0852.htm>.

186. Press Release No. 09/85, IMF, IMF Overhauls Lending Framework (Mar. 24, 2009), available at <https://www.imf.org/external/np/sec/pr/2009/pr0985.htm>.

of program reviews.¹⁸⁷ Therefore, if a country fails to complete a structural reform by the agreed date, the country no longer needs a formal IMF waiver.¹⁸⁸ Second, the IMF agreed that it will rely more on “pre-set qualification criteria” rather than conditionality to determine access to IMF resources.¹⁸⁹ Third, related to the previous point, the IMF created a new lending program, the Flexible Credit Line (FLC), “for countries with very strong fundamentals, policies, and track records of policy implementation.”¹⁹⁰ The FLC grants qualifying countries “large and upfront access to Fund resources with no ongoing (ex post) conditions.”¹⁹¹ Qualifying countries can also borrow potentially unlimited amounts and repay over a longer period.¹⁹²

The IMF changes in conditionality, particularly the FLC, should be seen as part of an attempt by the IMF to encourage the stronger middle-income countries to use the IMF’s resources during the global financial crisis. The IMF was struggling to find suitable borrowers during the crisis when it approved the FLC and the other changes.¹⁹³ In October 2008, the IMF had created a new lending program.¹⁹⁴ In March, when the IMF began to offer the FLC, no countries had used the October lending program.¹⁹⁵ The FLC was specifically aimed at middle-income countries such as Mexico, Peru, Chile, Brazil, Singapore, South Korea, and perhaps Poland, as a way of enticing those countries to resume borrowing from the IMF.¹⁹⁶

In fact, these changes at least partially accomplished the IMF’s goals. By April 1, 2009, Mexico asked to be approved to borrow approximately \$47 billion under the FLC.¹⁹⁷ When

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. Bob Davis, *IMF Tweaks Loan Program in Bid to Attract Borrowers*, WALL ST. J., Mar. 20, 2009, at A8.

194. *Id.*

195. *Id.*

196. *Id.*

197. Bob Davis, *IMF Finally Snags a Borrower in Latin America*, WALL ST. J., Apr. 1, 2009, available at <http://blogs.wsj.com/economics/2009/04/01/imf-finally-snags-a-borrower-in-latin-america/tab/article/>.

Mexico came forward, John Lipsky, First Deputy Managing Director of the IMF, was described by the Wall Street Journal as “beaming,” thrilled that the IMF “finally snagged a customer.”¹⁹⁸ Then, on April 14, 2009, Poland sought approval for a precautionary credit line of \$20.5 billion under the FLC.¹⁹⁹ Finally, on April, 21, 2009, Colombia joined Mexico and Poland, seeking \$10.4 billion in credit under the FLC.²⁰⁰ The IMF granted Mexico’s, Poland’s, and Colombia’s requests in rapid order: Mexico’s request on April 17,²⁰¹ Poland’s request on May 6,²⁰² and Colombia’s request on May 11.²⁰³ The applications of Mexico, Poland, and Colombia, and the subsequent IMF acceptance of all three’s applications, reaffirm that the IMF’s changes were responsive to the criticisms of middle-income countries, as none of the three applied for IMF funding before the creation of the FLC.

Still, the crisis also demonstrates that IMF accountability to middle-income countries only extends to those middle-income countries that can credibly sanction the IMF by refusing to borrow. Eastern European countries such as Ukraine, Hungary, and Latvia were all forced to turn to the IMF during the Global Financial Crisis in 2008, and all were only given the standard Stand-By Arrangement.²⁰⁴ The IMF’s response suggests that until these countries can credibly sanction the IMF

198. *Id.*

199. *Poland Seeks \$20.5 Billion Credit Line From IMF*, IMF SURVEY, (Apr. 14, 2009), <http://www.imf.org/external/pubs/ft/survey/so/2009/car041409a.htm>.

200. *Colombia Seeks \$10.4 Billion Credit Line From IMF*, IMF SURVEY, (Apr. 21, 2009), <http://www.imf.org/external/pubs/ft/survey/so/2009/car042009a.htm>.

201. Press Release No. 09/130, IMF, IMF Executive Board Approves US\$47 Billion Arrangement for Mexico Under the Flexible Credit Line (Apr. 17, 2009), *available at* <http://www.imf.org/external/np/sec/pr/2009/pr09130.htm>.

202. Press Release No. 09/153, IMF, IMF Executive Board Approves US\$20.58 Billion Arrangement for Poland under the Flexible Credit Line (May 6, 2009), *available at* <http://www.imf.org/external/np/sec/pr/2009/pr09153.htm>.

203. Press Release No. 09/161, IMF, IMF Executive Board Approves US \$10.4 Billion Arrangement for Colombia under the Flexible Credit Line (May 11, 2009), *available at* <http://www.imf.org/external/np/sec/pr/2009/pr09161.htm>.

204. IMF, IMF Financial Activities: Update Dec. 31, 2009, <http://www.imf.org/external/np/tre/activity/2009/123109.htm>.

by refusing IMF money, the IMF does not need to meet the lending standards desired by these countries.

Even for the middle-income countries that can sanction the IMF, was the IMF actually changing its policies on conditionality for different reasons, in a way that happened to satisfy some of the concerns of the middle-income countries? As explained above, if that is true, the changes in conditionality may not show IMF accountability to middle-income consumer countries. Instead, the IMF could arguably be responding to developed states' and IMF staffs' changed opinions about conditionality.

For example, perhaps a different story explains the change in the IMF's behavior following the East Asian crisis. As mentioned above, the IMF's use of conditionality in the East Asian crisis generated substantial criticism of the IMF.²⁰⁵ Maybe in responding to that criticism, the IMF Executive Board members and the developed states which control the Executive Board realized that the IMF's conditionality policies might be flawed, leading to the Managing Director ING in 2000,²⁰⁶ the Executive Board CG in 2002,²⁰⁷ and the IEO investigation into IMF structural conditionality initiated in 2005.²⁰⁸ Next, in 2007, the IEO published its report, criticizing the IMF's continued use of structural conditionality, noting borrowing states' low compliance with structural conditions, and presenting recommendations for the IMF's future use of structural conditionality.²⁰⁹ After reading the IEO report, the Executive Board became aware of the persisting problems with conditionality, and followed the general recom-

205. See e.g., Feldstein, *supra* note 19, at 13, Stiglitz, *supra* note 16, at 5.

206. CONDITIONALITY IN IMF-SUPPORTED PROGRAMS, *supra* note 155, at 2.

207. IMF, *Guidelines on Conditionality*, at 1-2 (Sep. 25, 2002), available at <http://www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.htm>.

208. INDEPENDENT EVALUATION OFFICE, IMF, EVALUATION OF STRUCTURAL CONDITIONALITY IN IMF-SUPPORTED PROGRAMS: ISSUES PAPER FOR AN EVALUATION BY THE IEO (2005), available at <http://www.imf.org/External/NP/ieo/2005/sc/051805.pdf> (laying out the investigation to be completed by the IEO).

209. CONDITIONALITY IN IMF-SUPPORTED PROGRAMS, *supra* note 155, at 8, 16-17, 20.

mendations of the IEO in revamping IMF conditionality in 2009.²¹⁰

Although the two accounts on conditionality are not exclusive, the reasons below suggest that the IMF's decision was driven by middle-income country concerns rather than developed country or IMF changed views on conditionality. The IEO report noted that the reduction of conditionality was not a major concern for the Executive Board or IMF management through 2004.²¹¹ Moreover, the IEO described how IMF directors from donor countries – mostly limited to developed countries with the largest quotas – in general desired more rather than less structural conditionality.²¹² This suggests at least that developed country perspectives on conditionality were not changed by the response to IMF involvement in the East Asian Crisis.

Additionally, the eventual actions of the IMF appear more targeted towards stimulating middle-income lending than in reaction to the IEO report. The IEO report encouraged the IMF to reduce prior actions and performance criteria demanding structural reforms, and did not mention creating a condition-free loan for countries with strong fundamentals.²¹³ In eliminating structural performance criteria entirely and creating the FLC the IMF went beyond the IEO recommendation, an action even more bizarre considering the Executive Board's 2004 position on structural conditionality. The IMF itself answers this inconsistency on its website on a page entitled "Questions and Answers: Reforms of Lending and Conditionality Frameworks."²¹⁴ In response to the question "Why have you decided to eliminate structural performance criteria in IMF financing?", the IMF states, "The elimination of structural performance criteria and the reliance on review-based condi-

210. See *id.* (listing the recommendations of the IEO); Press Release No. 09/85, IMF, IMF Overhauls Lending Framework (Mar. 24, 2009), available at <https://www.imf.org/external/np/sec/pr/2009/pr0985.htm>.

211. CONDITIONALITY IN IMF-SUPPORTED PROGRAMS, *supra* note 155, at 17.

212. *Id.*

213. *Id.* at 20

214. IMF, Questions and Answers: Reforms of Lending and Conditionality Frameworks, <http://www.imf.org/external/np/exr/fdq/facfaqs.htm> (last visited Jan. 30, 2010).

tionality for structural reforms aims to reduce the stigma of Fund lending.”²¹⁵

An additional counterargument to the IMF changes in conditionality representing IMF accountability to middle-income consumer countries is that the middle-income consumers suffer from a collective action problem. Yes, most IMF consumers disliked intensive conditionality. Therefore, consumer accountability was at least temporarily effective. Nonetheless, going forward, because the middle-income consumers are acting individually, or at most in small groups, the IMF will not be particularly accountable to any one middle-income country. According to this argument, then, unless a substantial number of middle-income countries each individually thinks the issue is sufficiently important to reject IMF financing, the accountability will not work.

The response is that in a huge organization with many members and borrowers, this is of course true. An individual middle-income country can still sanction the IMF by rejecting IMF funding until the IMF changes its policies, but if no other middle-income consumer countries agree that the policy change is important then the sanction is not likely to be very effective. However, this is no different than for developed country IMF shareholders. If France, with its own Executive Director, and 4.85 percent of the total IMF voting power,²¹⁶ dislikes an IMF policy, but no other developed countries agree, then the IMF will not likely change the policy. The IMF is not particularly accountable to any individual state, with the possible exception of the United States.²¹⁷

What this paper argues is that scholars have undervalued IMF accountability to middle-income consumer countries as a group. Even though middle-income countries possess relatively few votes compared to developed countries, if enough middle-income countries want the IMF held to a particular standard, they can effectively sanction the IMF by refusing to borrow until the IMF adopts that standard.

215. *Id.*

216. IMF, IMF Members' Quotas and Voting Power, and IMF Board of Governors, <http://www.imf.org/external/np/sec/memdir/members.htm> (last visited Feb. 15, 2011).

217. Because the United States has 16.74 percent of the total vote. *Id.*

To maintain its prestigious global position, the IMF needs financing. As the IMF is presently constituted, middle-income countries' use of IMF resources is the IMF's main method of generating income. Even in the midst of a global recession, some of the middle-income countries did not turn to the IMF until the IMF made substantial modifications to its conditionality policies. Therefore, the IMF Executive Board took drastic steps in changing the IMF's use of conditionality, changes meant to appeal directly to those middle-income countries. Using their funding power, middle-income countries were able to hold the IMF accountable in a controversial issue where developed countries seemed to prefer the opposite outcome. The IMF's changed position on conditionality appears then to prove the truth of the IMF's accountability to middle-income country consumers. Section VI, however, exposes a potential major flaw in IMF accountability to these middle-income countries.

VI. LOOKING TO THE FUTURE: THE NEW INCOME MODEL AND ITS EFFECT ON THE POWER OF THE BORROWER

As described in Section III, developed countries possess formal control over the governance of the IMF. Developed countries could then decrease the effectiveness of middle-income consumer countries' financial sanctions by changing the funding of the IMF, thereby potentially changing IMF accountability to middle-income countries.

The IMF Board of Governors voted in 2008 to change the IMF's income model.²¹⁸ Not all of the changes have been implemented by the IMF.²¹⁹ Nonetheless, the IMF has detailed the modifications to IMF funding and has taken initial steps. Under the IMF's new income model, the IMF will continue to generate income to pay for its administrative expenses through interest received from IMF lending and from the In-

218. 2009 IMF ANN. REP., *supra* note 121, at 63.

219. See IMF, Frequently Asked Questions: The IMF's New Income and Expenditure Framework, *available at* <http://www.imf.org/external/np/exr/faq/incfaqs.htm#q4> (last visited Feb. 15, 2011) (describing the proposed changes and the steps that need to occur before changes take place).

vestment Account.²²⁰ The IMF will supplement this income by broadening the IMF's investment mandate, by selling 403.3 metric tons of the IMF's gold reserves to create an endowment, and by recovering the IMF's administrative costs for the administration of the trust fund for concessional lending.²²¹ Finally, the IMF will continue to operate with the smaller budget it achieved after laying off 380 staff and undertaking other budget cutting measures.²²²

How do the steps taken by the Board of Governors impact IMF accountability to middle-income countries? At first glance the new income plan appears focused on decreasing or eliminating IMF accountability to the middle-income countries by lessening the power that middle-income countries have over IMF funding. Even better, the developed shareholders can maintain their control of the IMF without replacing middle-income funding. Instead, the IMF can fund its activities through income generated from the Investment Account and the endowment.

On closer inspection, however, the new income model fails to eliminate IMF dependence on the middle-income countries. First, in the new income model, the IMF will still be at least partially dependent on the interest from IMF lending.²²³ The percentage of IMF expenses that each source of income will provide remains to be seen. Unless the IMF's endowment and Investment Account can completely cover IMF expenses, the IMF will want to encourage middle-income borrowers.

Even if the IMF can replace the middle-income country interest payments, the power and prestige of the IMF remains partially dependent on middle-income country borrowing. Already, the power and function of the IMF is threatened by the Chiang Mai Initiative, which in Asia could supplant the IMF's role as lender of last resort.²²⁴ If the IMF had failed to convince middle-income countries to accept IMF resources during

220. Maureen Burke, *IMF Income Model Has Five Key Elements*, IMF SURVEY (Apr. 8, 2008), <http://imf.org/external/pubs/ft/survey/so/2008/NUM040808A.htm>.

221. *Id.*

222. 2009 IMF ANN. REP., *supra* note 121, at 64.

223. Burke, *supra* note 220.

224. See Park & Estrada, *supra* note 129, at 5, 13 (noting the role of the Chiang Mai initiative).

the Global Financial Crisis, the IMF's role in the crisis would have been greatly diminished.²²⁵ Instead, the IMF regained relevance by "lending freely, quickly and with few strings attached."²²⁶ If the IMF ignores the demands of potential middle-income borrowers, the IMF risks a situation where middle-income borrowers continue to build up huge reserves to the point where they no longer need to access IMF funds.²²⁷ This would both increase global economic instability²²⁸ – directly contra the mission of the IMF – and eliminate one key IMF activity.²²⁹

Third, the new income model leaves the IMF dependent on middle-income country resources in other ways. Most recently, in April, 2009, the G-20 decided to triple IMF lending resources, from \$250 billion to \$750 billion.²³⁰ The BRIC countries – Brazil, Russia, India, and China – alone combined to provide \$80 billion of the total \$500 billion increase.²³¹ This suggests that the reliance on middle-income countries is still present, even if the form has changed. The BRIC countries in particular, and the other middle-income countries who could credibly reject IMF financing, are now major players on the global stage. The IMF has been forced to reckon with this changed reality for its funding.

In fact, in exchange for providing credit for the IMF, the BRIC countries were able to demand substantial changes in IMF quotas.²³² Middle-income countries will make substantial gains, with especially large voting share gains by China, India, Brazil, Korea, Mexico, Colombia, and Singapore.²³³

225. *IMF Tweaks Loan Program in Bid to Attract Borrowers*, *supra* note 193.

226. *Back from the Dead: the International Monetary Fund*, *supra* note 1.

227. *See id.*

228. *Id.*

229. *See* IMF, What We Do, <http://www.imf.org/external/about/whatwedo.htm> (last visited Jan. 30, 2011) (discussing both the goals of the IMF and its key activities).

230. IMF, Questions and Answers: IMF Resources and the G-20 Summit, <https://www.imf.org/external/np/exr/faq/sdrfaqs.htm> (last visited Jan. 30, 2011).

231. *The IMF Assessed: A Good War*, *ECONOMIST*, Sept. 17, 2009, at 83.

232. Woods (2010), *supra* note 12, at 56.

233. Press Release No. 10/418, IMF, Illustration of Proposed Quota and Voting Shares – By Member (Nov. 5, 2010), *available at* <http://www.imf.org/external/np/sec/pr/2010/pr10418.htm>.

Finally, the timing of the IMF changes belies the idea that the new income model decreases informal IMF accountability to potential middle-income borrowers. If the developed countries successfully used their formal voting power to change the IMF funding model and to eliminate IMF accountability to middle-income countries, then the IMF's accountability to middle-income countries should have ended once the income model was changed in 2008. Instead, the IMF acted in 2009 to eliminate a major source of middle-income criticism and to create a loan designed to appeal to middle-income countries.²³⁴ For the reasons described in Part IV, the IMF desperately wanted the middle-income countries to borrow, and was willing to change its policies to achieve that goal. The IMF's actions post-2008 strongly suggest that the change in its income model were not meant to, and did not, impact its increasing accountability to middle-income countries.

Rather, the IMF may have changed its income model due its legitimate concerns about maintaining stable funding. Although the FLC represents a substantial response to middle-income country criticisms, a number of middle-income countries still refused IMF assistance after the loan was introduced. South Korea made clear as the FLC was introduced that it was not interested.²³⁵ Brazil's President stated that "Brazil needs no money from the IMF."²³⁶ The governor of Indonesia's central bank stated that "political considerations are likely to preclude an approach to the IMF under the new scheme."²³⁷ Even if the IMF continues to modify its policies to become more attractive to member states, it is not clear that many of the middle-income countries will turn to the IMF for resources. The stigma attached to IMF resources is substantial, and many middle-income countries may no longer trust the

234. See Bob Davis, *IMF Tweaks Loan Program in Bid to Attract Borrowers*, WALL ST. J., Mar. 20, 2009, at A8 (noting the FCL's appeal to middle-income countries); Press Release No. 09/85, IMF, *IMF Overhauls Lending Framework* (Mar. 24, 2009), available at <https://www.imf.org/external/np/sec/pr/2009/pr0985.htm> (describing the changes in the IMF's use of structural conditionality).

235. *Battling Stigma: The IMF is in Search of a Role, and a Happier Reputation*, ECONOMIST, Mar. 26, 2009, available at http://www.economist.com/business-finance/displaystory.cfm?story_id=E1_TPPSGNTV.

236. *Mission: Possible; the IMF*, ECONOMIST, Apr. 11, 2009, at 67.

237. *Id.*

IMF no matter what steps the IMF takes. Therefore, to guarantee its financial security, the IMF likely felt that it needed to create a steady source of funding, and to not count on heavy borrowing by middle-income countries.

VII. CONCLUSION

As the IMF is presently financed, even after the new income model, the IMF is dependent on funding from middle-income countries. When middle-income countries can take steps to avoid IMF resources, the middle-income countries can threaten the IMF's funding, power, and prestige. The IMF is then forced to react to the criticisms of those countries, as the IMF did in changing its policies on conditionality and in creating the FCL. Even if developed countries decided to change the funding model and to entirely fund the IMF themselves, eliminating any need for middle-income countries' money, middle-income countries' refusal of IMF resources would still damage the relevance of the IMF as an institution. A major reason for the renewed relevance of the IMF is its role as crisis insurer, a role the IMF can only play if potential borrowers are willing to turn to the IMF.²³⁸

A final question to consider, which this article will not be able to fully answer, is what actions middle-income countries will take going forward. Although the IMF will grant substantially more shares to middle-income countries, developed countries will still control the formal governance of the IMF.²³⁹ Giving still more shares to middle-income countries means taking shares away from developed countries, and no developed countries are likely eager to give away more of their precious votes. Is the present accountability sufficient for middle-income countries?

The present evidence suggests the answer is ambiguous. During the Global Financial Crisis only three middle-income countries used the Flexible Credit Line. However, both Mexico and Poland have since moved to extend the credit line for an additional year despite not using any of the money, sug-

238. See *id.* (describing the IMF's renaissance as a crisis insurer, and the limitations that emerging market country distrust could have on that role).

239. Press Release No. 10/418, IMF, *supra* note 233.

gesting that the countries are pleased with the product.²⁴⁰ Perhaps the increase in quotas and the positive experiences of Mexico and Poland will satisfy other middle-income countries, especially as the stigma of IMF lending stemming from the Asian Financial Crisis fades over time?

Another possibility for middle-income countries is suggested by Simon Johnson, the former IMF chief economist.²⁴¹ Johnson recommends that middle-income countries use their surplus reserves to create their own lender of last resort fund.²⁴² Johnson believes the fund – which he dubs the Emerging Monetary Fund – could use a similar loan to the FCL, but would not have the stigma of the IMF.²⁴³ Johnson even believes that the IMF could still play a role as crisis lender, with the EMF conducting the majority of lending and the IMF specializing in the most difficult cases.²⁴⁴ Nonetheless, the power of the IMF would be greatly reduced.

Additionally, although the questions above were posed as two exclusive options, maybe middle-income countries will pursue the two options simultaneously. Middle-income countries can continue to take steps to avoid using IMF resources, giving a choice to the IMF. The countries could even take steps to create the “EMF” or its equivalent to demonstrate the seriousness of their displeasure with the IMF as an institution. The IMF will then be forced to decide between accepting more substantial and even formal accountability to middle-income countries or again losing relevance.

In the end, the powerful middle-income states may slowly morph into creditor states, reflecting their changed position in the global economic order. The states took their first step in this direction when Brazil, India, China, and Russia lent

240. *IMF Extends FCL Arrangement with Poland*, THE WARSAW VOICE, Dec. 24, 2010, available at <http://www.warsawvoice.pl/WVpage/pages/article.php/15107/news>; *Mexico IMF Flexible Credit Line Request 'Positive' For Peso*, RBC SAYS, MEXICO WEEKLY, Dec. 15, 2010, available at <http://www.mexicotoday.com.mx/en/headlines-footer-links-34/1961-mexico-imf-flexible-credit-line-request-positive-for-peso-rbc-says.html>.

241. Simon Johnson, *An IMF Just for Emerging Markets*, BLOOMBERG BUSINESSWEEK, Oct. 8, 2009, available at http://www.businessweek.com/magazine/content/09_42/b4151072120155.htm.

242. *Id.*

243. *Id.*

244. *Id.*

creditor money to the IMF, and when the IMF awarded these and other middle-income states additional votes in exchange for the money.

If the stronger middle-income states join the developed states in the role as creditors rather than borrowers, this will present an interesting shift for IMF accountability. At this point, the new creditor states' interests might align more with the interests of the old creditor states. A split could easily emerge between middle-income states. The IMF would become highly accountable to the creditor middle-income states. However, for IMF accountability to borrowers to continue, enough middle-income states who are able to credibly reject IMF money must remain borrowers. The middle-income states who remain must take the same steps that many middle-income states have taken today to gain IMF accountability, becoming sufficiently fed up with IMF standards to build reserves and rejecting IMF policies until changes occur in IMF standards.