Article

The IMF and the "Transparency Turn"

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I. INTRODUCTION: THE "TRANSPARENCY TURN" IN GLOBAL GOVERNANCE

Transparency has become a central legitimizing emblem for international organizations. Over the last couple of decades, its prominence has increased, and the way in which it can be understood has broadened. Transparency refers to all kinds of rules, policies, and even rationalities. Given the concept's ambiguous character, transparency has proven to be useful in many different discourses.

The phenomenon is pervasive—in international law, the "transparency turn" has been mentioned.[1] Transparency as a concept and as a mindset has also been incrementally entrenched into the vocabulary of international law.[2] Simultaneously, it has been elevated into the index of governance and policy values beyond a purely legal setting. It

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1. *See* Aarti Gupta, *Transparency Under Scrutiny: Information Disclosure in Global Environmental Governance*, 8 GLOBAL ENVTL. POL. 1, 6 (2008).

2. *See* ANNE PETERS, *Towards Transparency as a Global Norm*, *in* TRANSPARENCY IN INTERNATIONAL LAW 534–607 (Andrea Bianchi & Anne Peters eds., 2013).

even holds a trait of overarching culture.[3] Historically, however, international law has eluded the call for transparency. When it came to negotiating treaties or diplomacy as an international practice, secrecy, opacity, and confidentiality were considered more important values.[4] 'Transparency in international law' has even been depicted as *contradictio in adiecto*.[5]

Nonetheless, international law has partly been re-described or re-conceptualized as *global governance*. This does not indicate the traditional treaty-based international law has lost any of its significance;[6] rather, it has been complemented by transnational regulatory regimes (international organizations, NGOs, public-private hybrid regimes), which transcend the borders of nation-states and in many ways act as global administrative agencies.[7]

The structural similarity with states and their administration does not extend to identical constitutive and procedural principles, and the same rules applying to state administrative agencies which underpin and legitimize state governments are not legally valid or are not regularly transferrable to international organizations.[8] This has led to an intensifying anxiety over the accountability of international regimes, especially due to a sense of underdeveloped political and judicial controls.

Accordingly, normative endeavors to formulate and resolve

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3. *See* PETERS, *supra* note 2, at 534 ("Transparency is here understood as a culture, condition, scheme or structure in which relevant information (for example on law and politics) is available."); COSETTE CREAMER & BETH A. SIMMONS, *Transparency at Home: How Well Do Governments Share Human Rights Information with Citizens?*, *in* TRANSPARENCY IN INTERNATIONAL LAW, *supra* note 2, at 239, 240 (defining transparency as "the dissemination of regular and useful information"); *see also* BYUNG-CHUL HAN, THE TRANSPARENCY SOCIETY (2015); Ronald B. Mitchell, *Sources of Transparency: Information Systems in International Regimes*, 42 INT'L STUD. Q. 109, 109–30 (1998).

4. *See* Ulrich K. Preuß, *The Twilight of Transparency*, 12 INT'L J. CONST. L. 820 (2013) (reviewing ANDREA BIANCHI & ANNE PETERS, TRANSPARENCY IN INTERNATIONAL LAW (2013)).

5. *See id.*

6. *See* JOSÉ E. ALVAREZ, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS 273–337 (2006).

7. *See, e.g.*, LORENZO CASINI, *Beyond the State: The Emergence of Global Administration*, *in* GLOBAL ADMINISTRATIVE LAW: THE CASEBOOK 13–37 (Sabino Cassese, Bruno Carotti, Lorenzo Casini, Eleonora Cavalieri & Euan MacDonald eds., 3d ed. 2012).

8. *See* Alasdair Roberts, *A Partial Revolution: The Diplomatic Ethos and Transparency in Intergovernmental Organizations*, 64 PUB. ADMIN. REV. 410, 411 (2004).

the problem of free-flowing institutional power has emerged. The most articulable approach is probably *global administrative law* (GAL). GAL's goal is both to describe and harness transnational power with the principles and vocabulary of administrative law. This means endorsing formal and at least seemingly value-neutral procedural mechanisms—most notably participation, transparency, reason-giving and review——in making different global governance regimes more accountable in the "global administrative space."[9] From that vantage point, global administrative law is administrative only in terms of procedural rules.

In GAL and in other normative governance vocabularies, transparency is celebrated as one of the key tenets. The idea is that transparency makes power visible and, as such, controllable. Transparency is needed in the sense that influencing governance is impossible without reliable information and that changing something without understanding it is difficult. When transparency relates to existing information and subsequently provides access to it, this access allows, for better or worse, the public to see the world as the institution sees it.[10] At the same time, from an international organization's viewpoint, it is a mechanism for making policies of member countries more "legible" and easier for outsiders to understand.[11]

In the International Monetary Fund (the IMF), the transparency turn is particularly manifest. As I will demonstrate, transparency as a policy value has made

9. *See* Benedict Kingsbury, Nico Krisch & Richard B. Steward, *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 15, 25–27 (2005) (referring global administrative space as a sphere in which global regulators use their administrative powers in a way which transcends the classical dichotomy of intrastate administration and interstate global governance); Jan Klabbers, *Law, Ethics and Global Governance: Accountability in Perspective*, 11 N.Z. J. PUB. & INT'L L. 309, 310–21 (2014), for a discussion on another approach, such as the virtue ethics. *See also* ALEXANDRU GRIGORESCU, DEMOCRATIC INTERGOVERNMENTAL ORGANIZATIONS? NORMATIVE PRESSURES AND DECISION-MAKING RULES 133–76 (2015) (discussing "normative pressures" of international organizations to adopt democratic norms on transparency in particular).

10. *See* MEGAN DONALDSON & BENEDICT KINGSBURY, *Power and the Public: The Nature and Effects of Formal Transparency Policies in Global Governance Institutions*, *in* TRANSPARENCY IN INTERNATIONAL LAW, *supra* note 2, at 502, 520. See André Broome & Leonard Seabrooke, *Seeing Like an International Organisation*, 17 NEW POL. ECON. 1 (2012), for a conversation on the particular vision of international institutions.

11. *See* Broome & Seabrooke, *supra* note 10, at 10–11.

significant inroads in the IMF. It has emphasized transparency as a common solution to many of the global economic and financial problems it had to face during the Asian financial crisis in the late 1990s.[12] Recently, transparency has been described as the "New Norm" within the IMF.[13] It is expected to increase the IMF's effectiveness, legitimacy, quality of surveillance and programs, and contribution to the public debate.[14] Alternatively, it is fair to assume that the aspiration to increase the "legibility" of the member states' economies is another driving force of this development.[15]

This Article aims to find out how the concept of transparency is understood in the IMF and what can be extrapolated from that understanding: what kinds of rules and policies does the IMF place under the banner of transparency; who are the obligors and obligees of transparency requirements; to what exactly does transparency refer? This Article hypothesizes that (a) within a single institution, the IMF in this case, many varieties of transparency exist, making it a radically indeterminate concept; (b) as the discourse of transparency spills over to all fields of policy, forming standards and soft law, the normative core of the concept disperses; and (c) transparency policies make power appear in a certain way whereas other forms may stay undetected. This Article uses the IMF as a case study of the wider phenomenon of the "transparency turn" in global governance and the expansion of transparency discourse.

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12. *See* Alexandru Grigorescu, *International Organizations and Government Transparency: Linking the Domestic and International Realms*, 47 INT'L STUD. Q. 643 (2003); David Gartner, *Uncovering Bretton Woods: Conditional Transparency, the World Bank, and the International Monetary Fund*, 45 GEO. WASH. INT'L L. REV. 121, 134 (2013) (stating that the Center of Concern established a high-level study group on IMF accountability in 1997 to achieve "greater transparency"); s*ee also* Manuela Moschella, *Seeing Like the IMF on Capital Account Liberalisation*, 17 NEW POL. ECON. 59 (2012).

13. IMF, REVIEW OF THE FUND'S TRANSPARENCY POLICY, ANNUAL REPORT 2013 (2014) [hereinafter 2013 REVIEW].

14. IMF, REVIEW OF THE FUND'S TRANSPARENCY POLICY, ANNUAL REPORT 2009 (2009) [hereinafter 2009 REVIEW].

15. *See* JACQUELINE BEST, THE LIMITS OF TRANSPARENCY: AMBIGUITY AND HISTORY OF INTERNATIONAL FINANCE 2–3 (2005) ("On the one hand, [the call for transparency in the IMF] . . . assumes that once the markets have the information they need, they will be self-equilibrating, thus ignoring some of the more perverse and pervasive pathologies of market behavior. On the other hand, the politics of transparency seeks to impose its own particular version of institutional clarity, enforcing a singular conception of good economic practice around the world. In both instances, it seeks to eliminate ambiguity, a goal that is both unattainable and self-defeating.").

The Article is organized as follows. First, it presents some remarks on transparency as a metaphor and its implications. Second, it briefly introduces the IMF and its role as a regulator of the global economy. Third, it explores the transparency discourse and practices of the IMF, attempting to answer questions such as what activity counts as transparency and why. For instance, in what terms does the IMF require transparency from its member states (transparency demand)? And in which ways is the IMF itself transparent (transparency supply)? Although these two perspectives are intertwined and overlapping, this Article separates them for analytical purposes. Finally, the aforementioned hypotheses are revisited and analyzed, suggesting that the IMF's dual role as a trusted advisor and a world economy watchdog reflects both its transparency conception and interpretation. It makes the regulation of the IMF's governance visibility possible.

II. THEORETICAL AND METHODOLOGICAL REMARKS

The transparency turn is a fairly recent phenomenon—transparency's panacea-like character has not always been self-evident. Its rapid symbolization and transition into a normative requirement has happened partially at the expense of conceptual clarification and critique.[16] I argue that when transparency, or whatever the governance buzzword, suddenly starts explaining most virtues or vices of power, one should stay alert: every ideal is a simplification of reality, which emphasizes certain features to the detriment of others. In particular, it is important to note that in the context of governance, nothing is actually physically transparent. Instead, transparency functions as a metaphor for certain practices.

Transparency, even interpreted in technical terms, refers to a relationship between the viewer and the object being viewed. As a visual concept, transparency alludes to a pure medium. It allows a spectator to see what lies beyond the transparent material. Therefore, transparency is an ocular-centric idea, resting upon the significance of eyesight as the "master sense"

16. *See* Mark Fenster, *Seeing the State: Transparency as a Metaphor*, 62 ADMIN. L. REV. 617 (2010); *see also* Lars Thøger Christensen & Joep Cornelissen, *Organizational Transparency as Myth and Metaphor*, 18 EUR. J. SOC. THEORY 132 (2015) (calling transparency a myth that is manifested in the level of metaphors).

and its inherent capability of exposing the "truth."[17] It seems that seeing and discerning form the cognitive structure of transparency.[18]

Nevertheless, transparency does not tell what and to whom is actually visible. In administrative law, the viewer needs to be a human being at least as an agent of an institution, but the object can be a document or a procedure. In this sense, transparency is not always a symmetric condition of reciprocal gazes but entails a clear subject-object constellation. The created asymmetry includes an underlying assumption of the transformational effect of a gaze. If the object consists of conscious activity, the gaze does not only expose, but also changes its object, provided that the object is aware of the gaze, or at least its possibility. Under the temporary gaze of the viewer, the object alters its activities as if it were constantly being viewed.[19]

As a governance model, transparency and its metaphoric intimations must be translated into the language of norms, codes, and practices.[20] The implication is that from the ideal of transparency follows transparency as a normative concept—that there *should be* transparency.[21] Although normative concepts, transparency among them, aspire to make the world a better place, they also carry caveats and shortcomings which undermine their overall legitimizing effect.[22] Without a clear

17. *See* RICHARD K. SHERWIN, VISUALIZING LAW IN THE AGE OF THE DIGITAL BAROQUE: ARABESQUES AND ENTANGLEMENTS 43 (2012) ("[Common sense belief] seeks no extrinsic warrant; it needs no reasons in its behalf. This is why we say, 'Seeing is believing,' or 'The thing speaks for itself.'").

18. *See* GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY 274 (2003).

19. This mechanism is famously theorized by Michel Foucault as the panoptic modality of power. *See* MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 195–230 (Alan Sheridan trans., 2d ed. 1995). *See also* DONALDSON & KINGSBURY, *supra* note 10, at 529.

20. *See* Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Indicators as a Technology of Global Governance*, 46 LAW & SOC'Y REV. 71, 75 (2012) ("Calling an indicator a measure of 'transparency' or 'human development' asserts a claim that there is such a phenomenon and that the numerical representation measures it.").

21. *See* ANDREA BIANCHI, *On Power and Illusion: The Concept of Transparency in International Law*, *in* TRANSPARENCY IN INTERNATIONAL LAW, *supra* note 2, at 1, 2.

22. Normative or "thick" concepts are concepts which contain descriptive power but also a pro-attitude towards them. For instance, calling someone brave implies that being brave is desirable. Thus, they provide reasons for action. According to one definition:

propositional attitude towards the said concept, such as "I believe transparency is good," "one should be transparent," or "transparency should become a common norm," its covert normativity may easily remain undetected. As Lars Thøger Christensen and Joep Cornelissen contend, "In the context of *transparency*, visual metaphors around an all-seeing and thus all-knowing vantage point are being emphasized, so that all there is to see and know about an organization is offered up to an individual."[23]

Regardless of the caveats, transparency has become more desirable in global governance in various ways: in different objects and behaviors (transparency of what); in different relations (who owes transparency to whom?); in different regulatory regimes (environmental law, health law, trade law, security law); and in different actors (states, IOs, civil society organizations).[24] When transparency is understood as document disclosure, many international organizations have become more transparent and started to allow a wider access to their information.[25]

In governance, transparency is related to the ideas of data, information, knowledge, and truth.[26] Thus, transparency is used as a conceptual avenue through which information is depicted and disseminated to portray reality. It is not always clear whether information is disclosed or created for certain purposes—whether it is objective or somehow opportunistic, biased, or skewed. Therefore, production of that information is

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> A normative epistemology determines how you ought to conduct your cognitive life; a descriptive one only describes how people in fact do so. However, the distinction is not clear-cut in practice: according to the principle of charity the only way of interpreting what people do in fact think, is by assuming that by and large they think what they ought to think. The philosophy of social sciences is fraught with problems of distinguishing between fact and value.

Normative, OXFORD DICTIONARY OF PHILOSOPHY (2d ed. 2008).

23. Christensen & Cornelissen, *supra* note 16, at 145 (emphasis added).

24. For a comprehensive overview of transparency practices in different global governance institutions and regimes, see TRANSPARENCY IN INTERNATIONAL LAW, *supra* note 2. See HAN, *supra* note 3, for a discussion on transparency practices as a wider cultural phenomenon.

25. *See* DONALDSON & KINGSBURY, *supra* note 10, at 510–15; PETERS, *supra* note 2.

26. *See, e.g.*, Peter M. Haas, *When Does Power Listen to Truth? A Constructivist Approach to the Policy Process*, 11 J. EUR. PUB. POL'Y 569 (2004).

far from self-evident.[27] It is critical to notice that transparency practices do not necessarily check power, but can relocate and even produce it.[28] Apart from its assumed revelatory function, it also embodies a truth-constructing function by regulating what is allowed to be seen. How can anyone be sure to rely on the disclosed information? What are the propositions that transparency delivers? Transparency entails certain epistemological assumptions.

I claim that transparency is a contradictory concept which carries the possibility of non-disclosure in itself. My initial hypothesis is that transparency is not the *exposer* but the *regulator* of governance visibility. Subsequently, I approach transparency discourse critically, focusing on the language used and its implications. This point of departure is based on the assumption that language is a great tool of power beyond defining dos and do nots. It makes the world appear in a certain way. To that end, some of the IMF's policies need to be described. However, the emphasis of this Article is not on description. Describing all of the IMF's practices and policies would be an endless and fruitless task. Even to a lesser extent does this Article seek to give any normative recommendations.

The construction of cognitive authority within international organizations plays a central role.[29] It entails continuous political struggles over the assumptions and ideas that guide the practice of global governance. Moreover, those ideational clashes do not lead to any particular wins or losses if the individual organizations are historicized by scholars rather than dissected at a particular moment in time.[30] That is why, in my view, higher resolution snapshots of the ideational landscape, in this case the

27. *See* Davis et al., *supra* note 20, at 87–88.

28. KINGSBURY & DONALDSON, *supra* note 10, at 520.

29. Cognitive authority is a concept of social epistemology. It refers to the credibility or reliability of someone or something's contentions on a particular topic. For instance, a medical doctor possesses more cognitive authority in regard to health matters than a layman, even though in practice, their level of knowledge would be equal. The term originates from PATRICK WILSON, SECOND-HAND KNOWLEDGE: AN INQUIRY INTO COGNITIVE AUTHORITY (1983). In the context of international organizations, see Broome & Seabrooke, *supra* note 10, at 8 ("The construction of cognitive authority affords IOs a source of indirect political power through administrative standardisation, templates for policy reforms, and mapping national variations in policy settings that is distinct from – but can also enhance – formal levers of material influence and norm enforcement mechanisms."). In the context of the IMF, see Moschella, *supra* note 12.

30. Broome & Seabrooke, *supra* note 10, at 10.

mechanisms of the over-inclusiveness of transparency in the IMF, are significant, telling, and worthy of critical study. In other words, vertical analysis should be complimented with a horizontal one.

The point of departure is that language and its use largely forms our reality and how we perceive it. The relationship between everyday language and specialist languages is important, and therefore, it is vital to realize that legal language communicates with other discourses and modalities of power. For example, the term "transparency" may carry a special meaning, or signifier, in legal language, but the choice of this name is hardly legal. Instead, certain connotations raised by "transparency" in our everyday language form a conceptual pre-requisite for the ideal to be understandable.

The mentioned feature entails a further methodological question: when transparency is the topic, are we concentrating on the signifier or the signified? Are we examining all the practices which somehow allude to the disclosure of information (the signified) or only those activities which are specifically labelled to embody transparency (the signifier)? Should the focus be on the phenomena themselves, the use of the words alluding to them, or the interconnections between the two?

As any other normative concept, transparency's scope may be hard to discern—what all falls within the category of transparency? Depending on the context, it may be over-inclusive (including some unintended elements) or under-inclusive (excluding some intended ones). Adopting the IMF's own description, transparency is an "overarching principle."[31] Following that logic, it does not explicitly exclude any particular policies; in the IMF, the scope of the concept is wide and widening still, as this Article will demonstrate. Therefore, a broad conception is justified as the starting point for the study.

The approach of this study is informed by constructivist thinking.[32] By concentrating on the meaning of language as a

31. 2013 REVIEW, *supra* note 13, at 38.

32. Constructivism (similar to social constructionism) is an overall term for various epistemological approaches (in sociology, philosophy, political science, international relations, education, law, etc.). These approaches are united by the idea that our intellectual artifacts (concepts, principles, ideals, myths, etc.) are the results of cumulated and potentially institutionalized social processes, and not a matter of pure reason. For a seminal work on social constructionism, see PETER L. BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE (1966). For important classics on constructivism in international relations, see FRIEDRICH V.

tool of governance, it—nothing exotic or novel as such—departs from the default approach to international organizations and their study, namely that of functionalism.

In the field of international relations, functionalism is a line of thought which emphasizes the benefits of joint endeavors to tackle transnational problems, such as the stability of the world economy.[33] Arguably, it is the main mindset which backs up the proliferation of international organizations after the Second World War,[34] and can be considered the forerunner for theories of globalization.

In this text, functionalism is regarded as an institutional explanatory factor (why is this worth studying? why does this phenomenon exist?) whereas the constructivist approach renders tools for critical analysis (what is the IMF actually advocating when it is advocating transparency?). In my view, due to their different points of departure, these two perspectives do not really conflict with each other. What is more, the interconnections of global governance and states call for a multifaceted approach.[35]

III. THE IMF AND ITS BUSINESS

A. ORGANIZATION AND BUSINESS STRATEGY

The IMF is one of the so-called Bretton Woods organizations founded in the aftermath of the Second World War, along with the World Bank.[36] The IMF was established to respond to the

KRATOCHWIL, RULES, NORMS AND DECISIONS: ON THE CONDITIONS OF PRACTICAL AND LEGAL REASONING IN INTERNATIONAL RELATIONS AND DOMESTIC AFFAIRS (1989); NICHOLAS ONUF WORLD OF OUR MAKING: RULES AND RULE IN SOCIAL THEORY AND INTERNATIONAL RELATIONS (1989); ALEXANDER WENDT, SOCIAL THEORY OF INTERNATIONAL POLITICS (1999). More generally, see MAJA ZEHFUSS, CONSTRUCTIVISM IN INTERNATIONAL RELATIONS: THE POLITICS OF REALITY (2002).

33. A classic work on functionalism in international relations is David Mitrany, *The Functional Approach to World Organization*, 24 INT'L AFF. 350 (1948).

34. *See, e.g.*, DAVID MITRANY: THE PROGRESS OF INTERNATIONAL GOVERNMENT (1933).

35. Broome & Seabrooke, *supra* note 10, at 5 (arguing that in the study of international organizations, there are recent attempts to bridge rationalist and constructivist thinking to account for how organizations try to socialize the policy makers of their member countries to adopt their policies and governance norms, and suggesting the approach be persuasion).

36. Adopted in 1944, both entered into force in 1945.

needs of the wounded world economy by helping countries relinquish protectionist economic policies, which were thought to hamper economic growth.[37] The main functions, policies, rights, and duties of member states are laid down in the Articles of Agreement (Articles) of the IMF.[38]

Originally, the IMF had twenty-nine member states. Now, it has 188, a quasi-universal coverage of the world economy.[39] From its inception, the leading principle was to prevent the 1930s recession from recurring. The masterminds behind the principle were John Maynard Keynes and Harry Dexter White, who were in charge of composing the British and American blueprints of the IMF's policy.[40] The intellectual influence was considerably, if not totally, Anglo-American.[41] Still, the problem to which the IMF was considered the solution was recognized worldwide.[42]

The IMF's main function was to promote global economic growth by enabling Keynesian counter-cyclical economies. It did this by providing policy tools—loans, financing, and technical assistance—to its member countries.[43] Initially, the IMF's purpose was to manage member countries' fixed exchange rate policies and to provide short-term capital aid to balance payments.[44] After 1971, when the floating exchange rates were introduced, the IMF's role widened to cover surveillance and management of the economic policies of member countries.[45]

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37. Article 1 of Articles of Agreement describes the purpose of the IMF. Articles of Agreement of the IMF, Art. 1, 60 Stat. 1401, 2 U.N.T.S. 39 (adopted July 22, 1944) (amended 2011), https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf [hereinafter IMF Articles].

38. *See generally id.*

39. *About the IMF*, IMF, http://www.imf.org/external/about.htm (last visited Apr. 7, 2016) (providing general information about IMF).

40. MASANAO ITOH, *Pre-History of the IMF: Debates in the UK and Anglo-American Negotiation*, *in* HISTORY OF THE IMF: ORGANIZATION, POLICY, AND MARKET 3 (Kazuhiko Asai et al. eds., 2015). For a detailed comparison of the so-called White and Keynes plans, see *id.* at 7.

41. JOSEPH P. JOYCE, THE IMF AND GLOBAL FINANCIAL CRISES: PHOENIX RISING? (2012) (referring to Great Britain and the United States as "hegemonic nations" in the early and mid-twentieth century).

42. *See Cooperation and Reconstruction (1944–71)*, IMF, http://www.imf.org/external/about/histcoop.htm (last visited Feb. 29, 2016).

43. *See How the IMF Promotes Global Economic Stability*, IMF, http://www.imf.org/external/np/exr/facts/globstab.htm (last visited Feb. 29, 2016).

44. *Id.*

45. Member states' obligations and the sanctions for failing to adhere to those obligations are provided in the IMF Articles. Depending on the specific situation, the IMF may limit a member's use of the IMF's general resources

Especially from the late 1980s to the global economic crisis in 2008, its recommendations were labelled the "Washington Consensus," a set of neoliberal principles and policies.[46]

The IMF has always exercised economic policy of the ideological kind: the IMF's conception of ideal political economy may be overlooked when the vocabulary carries a strong technocratic ethos of "technical assistance," which does not seem to refer to any particular theoretical or ideological view.[47] Nevertheless, as Luis Miguel Hinojosa Martinez argues, "Any economic decision is a political decision, and there is no neutral or aseptic economic or monetary policy."[48]

(Art. V, § 5), or suspend the use of special drawing rights (Art. XXIII, § 2). In extreme cases, members may undergo compulsory withdrawal (Art. XXVI, § 2). The idea of recommendations, codes of conduct, and other non-legally binding policy instruments is to harmonize the processes of the member countries' policies in a flexible way. If the members, however, fail to implement these standards, no immediate legal sanctions follow. For the meaning and development of soft law in the IMF, see Biagio Bossone, IMF, *IMF Surveillance: A Case Study on IMF Governance*, INDEP. EVALUATION OFF. BACKGROUND PAPER, BP/08/10 (2008).

46. On the alleged neoliberal character of the Washington Consensus, see JOHN WILLIAMS, *Lowest Common Denominator or Neoliberal Manifesto? The Polemics of the Washington Consensus*, *in* CHALLENGING THE ORTHODOXIES 13 (Richard M. Auty & John Toye eds., 1996). *See also* ITOH, *supra* note 40, at 3 ("Many argue that the Washington consensus arose in the 1970s with the exit of Keynesianism, spread during the 1980s, peaked in the 1990s, and either came to an end in the 2000s or survived until the global financial crisis of 2008 and 2009. One also could say that questions are being asked again about how to restore confidence in international institutions themselves or in the policies they propose.").

47. ALVAREZ, *supra* note 6, at 41–42 (summing up the criticisms toward different schools of thought from realism to liberalism which fail to acknowledge the meaning of ideology). He refers to Susan Marks, according to whom Anne-Marie Slaughter's liberal theory is not the value-neutral theory it claims to be. She contends that by privileging the role of the market, the individual, and democracy, "liberal theory promotes a certain ideological understanding of the role, functions, and priorities of international organizations from the UN to the IMF." *See also* Susan Marks, *The End of History? Reflections on Some International Legal Theses*, 3 EUR. J. INT'L L. 449, 470–72 (1997). One can ask whether societal theory can ever be value-neutral. Analogously, Davis says "Indicators often have embedded within them, or are placeholders for, a much further-reaching theory—which some might call an ideology—of what good society is, or how governance should ideally be conducted to achieve the best possible approximation of a good society or a good policy." Davis, *supra* note 20, at 77.

48. LUIS MIGUEL HINOJOSA MARTINEZ, *Transparency in International Financial Institutions*, *in* TRANSPARENCY IN INTERNATIONAL LAW 77, 78 (Andrea Bianchi & Anne Peters eds., 2013). *See also* ANNELISE RILES, COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS (2011).

The IMF's current self-understanding is well articulated on its webpage, which states, "The IMF tracks global economic trends and performance, alerts its member countries when it sees problems on the horizon, provides a forum for policy dialogue, and passes on know-how to governments on how to tackle economic difficulties."[49] Also, it "provides policy advice and financing to members in economic difficulties and also works with developing nations to help them achieve macroeconomic stability and reduce poverty."[50] Interestingly, it aspires "to provide the global public good of financial stability."[51]

The IMF's mission is to balance undesired economic polarities and to provide tools for economic stability and efficiency, but its role has increasingly become that of crisis manager, which was not part of its original identity.[52] Judging from previous crises, in the globalized world, they seem pervasive and infectious.

The effectiveness of the IMF's crisis management has varied, which has also affected its reputation. The IMF has been criticized for indirectly contributing to crises by recommending unsuccessful and even harsh policies, such as first promoting "premature removal of controls on capital flows" and then imposing too strict of conditions for countries that needed to borrow money.[53] Specifically, the IMF's response to the Asian financial crisis in the late 1990s caused much critique.[54]

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49. *What We Do*, IMF, http://www.imf.org/external/about/whatwedo.htm (last visited Mar. 5, 2016).

50. *Id.*

51. *Id.* In the first version of the IMF Articles, "financial stability" was not mentioned, but "exchange stability" and "orderly exchange arrangements" were included. In the revised Article IV (1973), the objective was "financial and economic stability." JOYCE, *supra* note 41, at 9.

52. *Id.* at 1.

53. *Id.* at 1.

54. The Asian crisis took place in many East Asian countries in 1997–98, threatening to spread all over the world. IMF had a significant role in the crisis by imposing a set of economic reforms to aid recipient countries, including requirements to cut public spending. Unfortunately, the suggested measures worsened the situation. The IMF was criticized for too rapidly and aggressively liberalizing financial markets. *See* Bossone, *supra* note 45. Manuela Moschella argues that the IMF's current proposals, in the aftermath of the global financial crises, fail to fully appreciate the complexity of the global financial network, having their roots in past failed experiences. Manuela Moschella, *IMF Surveillance in Crisis: The Past, Present and Future of the Reform Process*, 26 GLOBAL SOC'Y 43, 43 (2012). *See also* André Broome, *The Importance of Being Earnest: The IMF as a Reputational Intermediary*, 13 NEW POL. ECON. 125 (2008).

The 2008 crisis has brought the IMF "back in business."[55] Its role has been prominent in the fight against economic instability; it has established numerous ways to tackle the crisis (e.g., increased lending, fighting poverty, reforming its governance, and "creating a crisis firewall").[56] However, the task has not been easy, nor has the IMF's performance been unequivocally successful; the crisis seem to be long-lived and multifaceted.[57] The 2008 financial crisis profoundly altered circumstances, not least by showing that "financial instability can be a systemic condition."[58] Further, the Eurozone crisis and the concomitant austerity measures have proven to cause collateral damages.[59] Tellingly, sometimes stability is imposed rather than restored.

B. GOVERNANCE STRUCTURE

The IMF's governance structure and practices are set out in the Articles and in its rules, regulations, and by-laws.[60] According to Article XII, the IMF has two main bodies of governance, the Board of Governors and the Executive Board. It also has a Managing Director and staff. Moreover, the IMF maintains a General Department and Special Drawing Rights Department. The Special Drawing Rights is an international

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55. JOYCE, *supra* note 41, at 1.

56. *IMF's Response to the Global Economic Crisis*, IMF, http://www.imf.org/external/np/exr/facts/changing.htm (last visited Mar. 1, 2016).

57. *See* IMF RESEARCH, MONETARY AND CAPITAL MARKETS, AND STRATEGY, POLICY, AND REVIEW DEPARTMENTS, INITIAL LESSONS OF THE CRISIS (2009).

58. JOYCE, *supra* note 41, at 3.

59. *See, e.g.*, Nikolaos Antonakakis & Alan Collins, *The Impact of Fiscal Austerity on Suicide: On the Empirics of Modern Greek Tragedy*, 112 SOC. SCI. & MED. 39 (2014). Recently, the IMF's demands for cutting public spending in West Africa are considered to have exacerbated the Ebola epidemic. Public health care systems in the countries in question have become too weak to tackle the problems efficiently, due to those short-term economic objectives and concomitant conditions. *See* Alexander Kentikelenis et al., *The International Monetary Fund and the Ebola Outbreak*, 3 LANCET GLOBAL HEALTH e69, e69–e70 (2015). *See also* IMF, *Will it Hurt? Macroeconomic Effects of Fiscal Consolidation*, *in* WORLD ECONOMIC OUTLOOK: RECOVERY, RISK, AND REBALANCING (2010).

60. *Cf.* IMF Articles, *supra* note 37, Art. 12. For a detailed description, see ALEXANDER MOUNTFORD, THE FORMAL GOVERNANCE STRUCTURE OF THE INTERNATIONAL MONETARY FUND (2008); *see also* IMF, STUDIES OF IMF GOVERNANCE: A COMPENDIUM (Ruben Lamdany & Leonardo Martinez-Diaz eds., 2009).

reserve asset which can supplement the official reserves of member countries.[61]

The Board of Governors consists of a governor and alternate governor from every member country. The Board of Governors is advised by two committees: the International Monetary and Financial Committee and the Development Committee. The Executive Board consists of twenty-four members. Larger economies, such as the United States and China, have a representative of their own, whereas others have representatives for multiple countries. The Board of Governors usually meet twice a year to discuss the general policy matters of the IMF. It has delegated much of its powers to the Executive Board, the organ which takes care of the IMF's practices.[62]

Each member country has a quota which determines both its financial commitment to the IMF and its voting power. The governance structure has favored large economies, especially the United States, which has veto power over the IMF's decisions.[63] Generally, wealth allows leverage, so big economies have more influence over the IMF's policies than smaller economies. Though already intuitive, to translate into Orwellian language, some countries are more equal than others, which may lead to biased situations.[64]

From the 1980s onwards, as developing countries increasingly borrowed more money from the IMF, they have demanded and gained a stronger voice. Consequently, in November 2010, the IMF agreed to a number of reforms (the Quota and Governance Reforms). The main focus was to give more influence to emerging economies (the so-called BRICs: Brazil, Russia, India, and China) and reform the rules of voting power.[65] After a long wait, this governance overhaul was ratified by the U.S. government in December 2015.[66]

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61. IMF Articles, *supra* note 37, Art. 15–16.

62. *Factsheet: How the IMF Makes Decisions*, IMF, http://www.imf.org/external/np/exr/facts/govern.htm (last visited Mar. 1, 2016).

63. America's indirect hegemony—according to critics, the ability to bypass the executive board—is sometimes called the "Treasury effect." Broome, *supra* note 54, at 129.

64. MARTINEZ, *supra* note 48, at 86–87; DANIEL BRADLOW, *Assessing International Financial Reform*, *in* INTERNATIONAL ECONOMIC LAW, GLOBALIZATION AND DEVELOPING COUNTRIES 67, 90 (Julio Faundez & Celine Tan eds., 2010).

65. *Factsheet: How the IMF Makes Decisions*, IMF, http://www.imf.org/external/np/exr/facts/govern.htm (last visited March 1, 2016).

66. Based on this agreement, BRICs will have more power as emergency lenders because of their economic significance. Press Release, Christine

IV. THE IMF'S TRANSPARENCY CONCEPTION

A. TOWARDS TRANSPARENCY IN THE IMF

Originally, transparency did not really belong to the IMF's identity, and the term cannot be found in the Articles. Arguably, most of the members of the Executive Board regarded the IMF as a *sui generis* organization, which did not need specific transparency policies to guarantee its accountability because the accountability stemmed from an interpretation of the IMF as a central bank rather than a public institution and, as such, it would have little need for external evaluation.[67]

The development towards "greater transparency" has happened slowly in the IMF, remarkably more slowly than in the World Bank.[68] This discrepancy goes back to the different funding structures of these institutions. The World Bank's funding is based on a structured and regular replenishment cycle, whereas the IMF's funding stems from current need, imposed by case-by-case situations, like urgent crises.[69]

Consequently, civil society organizations (CSOs), such as the Global Transparency Initiative, have been able to push the World Bank more effectively to disclose its information. For instance, they have followed the way the U.S. Congress is tackling financing matters and is pressuring organizations to become more transparent. Mimicking their example, CSOs are adopting similar strategies. To some extent, they have also been successful in affecting the congressional agenda in these matters.[70] This type of advocacy has resulted in *conditional*

Lagarde, Managing Dir., IMF, Christine Lagarde Welcomes U.S. Congressional Approval of the 2010 Quota and Governance Reforms (Dec. 18, 2015), http://www.imf.org/external/np/sec/pr/2015/pr15573.htm.

67. Gartner, *supra* note 12, at 133. *See also* Carlo Cottarelli, *Efficiency and Legitimacy: Trade-Offs in IMF Governance* 16–19 (IMF Working Paper No. 05/107, 2005), www.imf.org/external/pubs/ft/wp/2005/wp05107.pdf.

68. Gartner, *supra* note 12, at 124 (pointing out that the other Bretton Woods organization, the World Bank, has been faster in developing transparency in its policy, although originally, both of the institutions were considered rather opaque and secretive).

69. *Id.* at 137.

70. The CSOs have also increased their voice via IDA (World Bank's International Development Association), whose donor conditions they have been able to influence. Gartner, *supra* note 12, at 147; CATHERINE WEAVER, HYPOCRISY TRAP: THE WORLD BANK AND THE POVERTY OF REFORM 22 (2008). The U.S. Congress made the provision of $18 billion contingent on IMF information disclosure policy reform in October 1998. Omnibus Appropriation

transparency, a mechanism which the IMF itself has used in its financing relationship to the member states. As the term implies, conditional transparency imposes certain transparency conditions as a prerequisite of funding.[71]

The IMF's take on transparency has also been affected by external pressure. As mentioned, a remarkable turning point was the Asian crisis, which brought transparency—or a lack thereof—into discussion. The IMF's Independent Evaluation Office (IEO) was established in 2001, and the IEO has been a strong proponent of developing the IMF's transparency policy.[72] The IMF contends in its 2013 Review that "Two decades of reforms have improved significantly the Fund's transparency . . . . Progress in transparency helped the Fund get its message across during the crisis."[73]

The development towards "greater transparency" does not come without conceptual challenges, however. "A common solution," "the New Norm," or "transparency revolution"[74] can make transparency a catch-all phrase. In the IMF's view, its approach to transparency is based on the overarching principle that it will strive to disclose documents and information on a timely basis unless strong and specific reasons advise against disclosure—this principle respects the voluntary nature of publication of documents that pertain to member countries.[75] This transparency notion is considerably broad. It also provides significant leeway in the forms of "striving," "strong and specific reasons," and "voluntary nature."[76] This ambiguity is characteristic of transparency policies of global governance

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Act, Pub. L. No. 105-277, 112 Stat. 2861 (1998); Roberts, *supra* note 8, at 414; *see also* Megan Donaldson & Benedict Kingsbury, *The Adoption of Transparency Policies in Global Governance Institutions: Justifications, Effects, and Implications*, 9 ANN. REV. L. & SOC. SCI. 119, 127–43 (2013) (categorizing different drivers to greater transparency in global governance institutions). Besides the conceptual spill-over from democratic states and the growing importance of transnational governance, they also mention short-term criticism of NGOs and influential countries. They may nudge international institutions toward (or sometimes, against) transparency policies.

71. *See* Gartner, *supra* note 12, at 147.

72. Gartner, *supra* note 12, at 135–37. For instance, IEO has addressed some lagging areas, such as timeliness of publication.

73. 2013 REVIEW, *supra* note 13, at 1.

74. An expression used by IMF economist Stanley Fischer. Roberts, *supra* note 8, at 411.

75. The "Transparency Principle" was launched in the 2009 Review. 2009 REVIEW, *supra* note 14, at 16–17.

76. 2013 REVIEW, supra note 13, at 38.

institutions, where policies are, in most cases, framed in less precise language than that in national freedom of information codes and statutes.[77]

Debatably, the IMF now measures governance legitimacy primarily with the indicator of transparency, producing a prolific amount of policy documents and recommendations. The indicator itself, for one, has become self-justificatory, by something which does not need further legitimation to be desirable.[78] It can be argued that some of the meanings attributed to transparency may even contradict each other, such as transparency constructing epistemic authority over financial governance or transparency in revealing mismanagement.[79] Therefore, the label of transparency actually says quite little.

B. EXTERNAL TRANSPARENCY: THE IMF'S TRANSPARENCY DEMAND

To function, the IMF has to largely rely on the data produced and disseminated by its member countries, and therefore, member countries are obliged to furnish the IMF with information. As an intergovernmental organization, the formal obligations of the member countries depend on the Articles. According to the Article VIII, Section 5(a), "The Fund may require members to furnish it with such information as it deems necessary for its activities, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on the following matters." The general obligation is followed by a list of specific areas of information of the member countries' economies, such as holdings, balance payments, production of gold, national income, exports and imports, investment position, and price indexes. Still, the mentioned areas form an exemplification rather than an exhaustive list because the IMF may acquire other information.[80]

It would be fair to assume that the provided information is

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77. Donaldson & Kingsbury, *supra* note 70, at 128.

78. Davis et al., *supra* note 20, at 75. The idea of self-justification refers to the mentioned idea of transparency as a normative concept.

79. RILES, *supra* note 48, at 214 ("Recently legal commentators have pointed out that transparency is in fact a contradiction, perhaps even [an] impossibility. The fantasy of eliminating the 'distance between the state and the public' belies the reality of an inherently complex, contradictory, and incommunicative state."). *Id.*

80. *See* IMF Articles, *supra* note 37, Art. 8, § 5.

accurate and sufficient enough to create a reliable picture of a country's financial situation. In some cases, this may be easier said than done; countries have varying capabilities of producing reliable information.[81] Consequently, the Articles contain a provision regarding the possible detrimental effects of disclosing certain information:

> In requesting information, the IMF shall take into consideration the varying ability of members to furnish the data requested. Members shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Members undertake, however, to furnish the desired information in as detailed and accurate a manner as is practicable and, so far as possible, to avoid mere estimates.[82]

Essentially, the disputable backbone of transparency—the transparency of the macroeconomic data of member countries—is not conceptualized as transparency. At the same time, providing this data is more legally binding than others under the banner of transparency. Transparency was not part of governance vocabulary in the time of the enactment of the Articles, nor have the Articles been amended to encompass this term. This may partly stem from the recent emergence of transparency as a buzzword, or perhaps transparency does not easily fit into legal vocabulary. That has not hindered the IMF from cultivating transparency as a concept, however, in less stringent forms of normativity. Most of the explicit transparency requirements of the IMF are formulated in the language of codes and standards, or in other words, soft law.[83]

A shift towards greater transparency through soft law has

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81. MORTEN JERVEN, POOR NUMBERS: HOW WE ARE MISLED BY AFRICAN DEVELOPMENT STATISTICS AND WHAT TO DO ABOUT IT 55–83 (2013); *see also* TERENCE C. HALLIDAY, MICHAEL LEVI, & PETER REUTER, GLOBAL SURVEILLANCE OF DIRTY MONEY: ASSESSING ASSESSMENTS OF REGIMES TO CONTROL MONEY-LAUNDERING AND TO COMBAT THE FINANCING OF TERRORISM 5 (2014). Although much progress has been made regarding the anti-money laundering, the authors note, "For example, there are both major empirical and conceptual problems in measuring the proceeds of crime, a fundamental outcome for AML/CFT regimes." *Id.* This indicates a wider, systemic problem of gathering reliable data on illicit activities. This problem further affects the endeavors of governing those activities.

82. IMF Articles, *supra* note 37, Art. 8, § 5(b).

83. Bossone, *supra* note 45, at 39.

resulted in a recent megatrend. During the last couple of decades, global legal, and economical harmonization has occurred through soft law codes, standards, and lately, indicators rather than amended or expanded obligations to the international financing institutions' member states.[84] The emergence of soft law seems to be in relation to the problems of globalization and is catalyzed by different crises and endeavors to prevent their recurrence.[85] Therefore, unsurprisingly, the requirement of transparency has been and remains among the IMF's best practice standards.[86]

Interestingly, transparency is one of the key aspects of good governance, and due to its overarching character, it is worth a closer look. In general, good governance can be seen as a set of exportable values, principles, and institutional ideals that aspire to solidify governmental power into certain legitimate and predictable practices.[87] Even though good governance may appear merely as a technocratic term, it entails economic, ethical, and also political implications, which are notably Western.[88] The World Bank first introduced the concept in the late 1980s ('the crisis of governance' in Sub-Saharan Africa) as a solution to the problems of aid inefficacy in recipient countries including, corruption, bribery, and weak institutions.[89]

After its initial introduction, the good governance mindset

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84. CHRIS BRUMMER, *Introduction: Key Theoretical Parameters of the Soft Law Debate: A Basic Overview*, *in* THE CHANGING LANDSCAPE OF GLOBAL FINANCIAL GOVERNANCE AND THE ROLE OF SOFT LAW xvii–xxii (Friedl Weiss & Armin J. Kammel eds., 2015); *see also* KEVIN E. DAVIS, BENEDICT KINGSBURY & SALLY ENGLE MERRY, *Introduction: Global Governance by Indicators, in* GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKINGS 1 (Kevin Davis et al. eds., 2012).

85. Bossone, *supra* note 45, at 19–21.

86. BRUMMER, *supra* note 84 (explaining that "best practices" is one label for recommendations and codes of conduct, which are not legally binding).

87. *See* Ida Koivisto, *The Varieties of Good Governance: A Suggestion for Discursive Plurality*, 27 INT'L J. SEMIOTICS L. 587–611 (2014); *see also* Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE L.J. 1490–1563 (2006).

88. *See* Eyal Benvenisti & George W. Downs, *The Empire's New Clothes: Political Economy and the Fragmentation of International Law*, 60 STAN. L. REV. 595–632 (2007); *see also* Benedict Kingsbury, Nico Krisch & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 DUKE L.J. 15, 51 (2005).

89. *From Crisis to Sustainable Development—Sub Saharan Africa: A Long-Term Perspective Study*, WORLD BANK (1989), http://documents.worldbank.org/curated/en/1989/11/439705/crisis-sustainable-growth-sub-saharan-africa-long-term-perspective-study.

has significantly spilled over from the World Bank's 1980s outline, both institutionally and substantively. Incrementally, it transformed from a remedy to a proactive manifesto.[90] The IMF adopted it soon after the World Bank. According to IMF:

> Good governance is important for countries at all stages of development . . . . Our approach is to concentrate on those aspects of good governance that are most closely related to our surveillance over macroeconomic policies—namely, the transparency of government accounts, the effectiveness of public resource management, and the stability and transparency of the economic and regulatory environment for private sector activity.[91]

The IMF associates good governance primarily and specifically with transparency, which is not its most obvious meaning. As a part of good governance, the IMF calls for transparency in "government accounts" and "the economic and regulatory environment for private sector activity."[92] Hence, it makes all-encompassing requirements of transparency part of the development agenda, even transcending the public-private distinction. Somewhat paradoxically, given its overly inclusive character, the larger implication is that it reduces development to a certain kind of societal and economic model, arguably that of neoliberalism.[93] Furthermore, in many cases, good governance requirements, with transparency as a key component, are conditional. For instance, without meeting the acceptable standards of transparency, obtaining a loan may be impossible.[94]

As a part of good governance vocabulary, transparency has become undeniably institutionalized. Theoretically, this

90. Koivisto, *supra* note 87, at 587–611.

91. *Good Governance: The IMF's Role*, IMF, at iv, https://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm (last visited Apr. 7, 2016) [hereinafter *Good Governance*]; *see also* ANN M. FLORINI, *Transparency in the Interests of the Poor*, WORLD BANK 2 (1999) (showing that transparency is not aimed at "improving equity and promoting welfare of the poor" and suggesting the World Bank improve "equitable development and poverty alleviation" through greater transparency initiatives).

92. *Good Governance*, *supra* note 91.

93. *See generally* JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (2002) (stating the IMF policies are based on neoliberal assumptions that are fundamentally unsound).

94. Carlos Santiso, *The Paradox of Governance: Objective or Condition of Multilateral Development Finance?* 15–18 (J. Hopkins U. Sch. Advanced Int'l Stud., Working Paper No. 03/03, 2003).

contributed to its capacity to form more comprehensive and detailed normative requirements and standards.[95] In the IMF, the relevance of soft law has grown from the mid-1990s onwards. This evolvement was preceded and motivated by several policy problems. For example, the IMF surveillance had proven inadequate in foretelling currency crises in Europe (1992) and in Mexico (1994–95).[96] It also failed to diagnose their systemic implications.[97] Since the aftermath of the Mexican crisis, the G7, and larger groupings of countries have put pressure on the international community to accept best-practice standards for policy and codes for smart economic conduct.[98] The 1997–98 Asian crisis further accelerated the need for new governance tools for preventing the recurrence of the crisis.[99]

The crises made visible the importance of relevant information. The IMF's success in performing its tasks depends largely on its informational access. Therefore, data, information, and transparency form the very crux of the IMF's codes and standards. In the late 1990s, with a distinct emphasis on transparency, the IMF published two codes on good practice in economic policy: the Code for Fiscal Transparency (1998, updated in 2007) and the Code of Good Practices on Transparency in Monetary and Financial Policy: Declaration of Principles (1999).[100] Further, the IMF launched the Special Data Dissemination Standard (SDDS 1996) and the General Data Dissemination Standard (GDDS 1997), which set common definitions for macroeconomic data and defined minimal frequency and timeliness standards for data dissemination.[101]

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95. Bossone, *supra* note 45, at 17 ("Transparency was a necessary underpinning of the move toward improved standards and good governance.").

96. *Id.* at 12.

97. *See id.* (describing the crises and its impact on the IMF's governance); *see also* IMF, *Governance of the IMF: Decision Making, Institutional Oversight, Transparency, and Accountability*, Pamphlet Ser. 53, at 50–64 (2002) [hereinafter *Governance of the IMF*].

98. Bossone, *supra* note 45, at 5.

99. *Governance of the IMF*, *supra* note 97, at 2 ("The Asian crisis of 1997–98 raised questions regarding the benefits of financial globalization, particularly for emerging market economies, while the perception—right or wrong . . . put the searchlights of official and academic circles and of the media on IMF governance and accountability.").

100. *Id.* at 54; *see also* IMF, *Code of Good Practices on Transparency in Monetary and Financial Policie*s, http://www.imf.org/external/np/mae/mft/ (last updated Aug. 3, 2000) ("The Fund's Executive Board approved the Supporting Document to the Code of Good Practices on Transparency in Monetary and Financial Policies on July 24, 2000.").

101. *Factsheet: IMF Standards for Data Dissemination*, IMF (Sept. 10,

In 2007, the IMF introduced a Guide on Resource Revenue Transparency.[102] This soft law was designed to streamline the quality and quantity of required information, disclosure, and most importantly, its production. Even though implementing these codes is voluntary, there are many reasons for following them, not least of them peer pressure. As a result, some developing countries have expressed concern over these covertly and asymmetrically imposed soft law obligations.[103] To monitor the adherence, the IMF initiated Reports on the Observance of Standards and Codes (ROSCs) by national governments.[104] In summary, the IMF demands transparency from its member countries in different forms and intensities under different sub-categorizations. Apart from general information furnishing obligations, transparency is imposed more explicitly as an ethical or a policy value, especially as different soft law codes, which cover a wide area of a member country's macroeconomic standing. In the context of developing countries, adopting and meeting transparency standards as part of good governance may be a condition of a loan.

Transparency as a normative concept has proven useful for the IMF to guide the economic policies of the member countries to a desirable, uniform direction. To that end, it indeed seems to increase the general legibility of the member countries' economy. Mandatory and binding obligations to transparency, however, do not exist. Instead, transparency as a part of the good conduct standards creates reporting obligations and potentially, an increase in mediated information and information bureaucracy.[105] It may create a form of governance in its own

2015), https://www.imf.org/external/np/exr/facts/data.htm (explaining the important steps taken by the IMF to enhance transparency and openness by "setting voluntary standards for the dissemination of economic and financial data").

102. IMF, GUIDE ON RESOURCE REVENUE TRANSPARENCY vii (2007), https://www.imf.org/external/np/pp/2007/eng/101907g.pdf ("The publication of the Guide underscores the Fund's conviction that transparency is fundamental in establishing and maintaining credibility in the management of resource revenues.").

103. Bossone, *supra* note 45, at 20.

104. *See Code of Good Practices on Fiscal Transparency*, IMF, http://www.imf.org/external/np/fad/trans/code.htm (last visited Apr. 7, 2016); *see also Reports on the Observance of Standards and Codes (ROSCs)*, IMF, http://www.imf.org/external/NP/rosc/rosc.aspx (last updated Feb. 16, 2016).

105. IMF, REVIEW OF THE FUND'S TRANSPARENCY POLICY, ANNUAL REPORT 2005, at 5 (2005) ("The day-to-day implementation of the policy has significant resource costs, reflecting the proliferation of requests for changes falling outside of the policy, as well as the Fund's efforts to reconcile the promotion of

right.[106]

C. INTERNAL TRANSPARENCY: THE IMF'S TRANSPARENCY SUPPLY

For a long time, the IMF has had a tense and asymmetrical relationship with transparency. From its inception, the IMF was characterized by the ethos of confidentiality.[107] Even if it required further transparency from its member countries, the IMF did not extend those requirements to itself. Internal transparency was lagging, thereby creating accusations of hypocrisy.[108] Due to external pressure in particular, the IMF's own internal transparency started to incrementally take form. A crucial change of policy can be traced back to the mid-1990s.[109]

In January 2001, the Executive Board adopted its first formal decision to implement a transparency policy. The IMF released a number of documents and also a Statement of Guiding Principles for the IMF's Publication Policy for member countries.[110] In 2008, the Global Transparency Initiative issued a report outlining the IMF's failures in various fields, including low transparency in the Executive Board's decision making and the lack of an official appeal process.[111] From 2009 onward, the IMF has rendered wider access to its archived documents. In 2012, the IMF's archives were made accessible to the public via

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publication, which might require accommodating the authorities' concerns, with adherence to a strict deletions policy.") [hereinafter 2005 REVIEW].

106. Donaldson & Kingsbury, *supra* note 70, at 129 ("Transparency has in some contexts become not simply an incidental element of a governance program, but a form of governance in its own right.").

107. Roberts, *supra* note 8, at 410–24 (asserting that intergovernmental organizations, including the IMF, continue to accommodate conventions of "diplomatic confidentiality"); *see also* J. H. H. Weiler, *The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement*, 35 J. WORLD TRADE L. 191–207 (2001).

108. Gartner, *supra* note 12, at 135 (2013). *Compare* WEAVER, *supra* note 70 (describing the hypocrisy of the World Bank and the pervasive gaps of the organization's talk, decisions, and actions), *with* MARTINEZ, *supra* note 48 (mentioning the wider phenomenon of international financial institutions and concerns of institutional transparency).

109. 2005 REVIEW, *supra* note 105, at 6.

110. MARTINEZ, *supra* note 48, at 80.

111. GLOBAL TRANSPARENCY INITIATIVE, RIGHT TO INFORMATION AT THE IMF: HOW TO IMPROVE THE FUND'S TRANSPARENCY POLICY (2008), http://www.ifitransparency.org/uploads/7f12423bd48c10f788a1abf37ccfae2b/IMF_Transparency___Policy_Briefing___Final.pdf; *see also* Gartner, *supra* note 12, at 135.

the Internet.[112] The decision regarding the IMF's transparency policy—the Transparency Decision—was first established in 2005. Since then, the policy has been revised twice.[113]

Today, internal transparency seems to have become a key factor in legitimizing the IMF's activities. The IMF articulates the need for transparency in the following way:

> Transparency in economic policy and the availability of reliable data on economic and financial developments are critical for sound decision-making and for the smooth functioning of an economy. The IMF has policies in place to ensure that meaningful and accurate information—both about its own role in the global economy and the economies of its member countries—is provided in real time to its global audiences.[114]

The IMF's efforts to improve public understanding of its operations and engage more broadly with the public has been pursued along four broad lines: (i) transparency of surveillance and IMF-supported programs; (ii) transparency of its financial and operational information; (iii) transparency of external and internal evaluations; and (iv) transparency of external communications."[115]

The IMF's internal transparency conception is overarching. It touches many policy areas and documents that it is difficult to grasp the borders of discourse (if, indeed, there are any). To disaggregate this, all four categories found within "transparency" are worthy of critical analysis, but such an analysis is beyond the scope of this Article. Instead, this Article will concentrate on certain revealing components in the IMF's internal transparency policy and their implications.

According to the IMF 2013 Review, the IMF has four

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112. 2013 REVIEW, *supra* note 13, at 7 ("Reforms to the Transparency Policy have also been accompanied by a gradual opening up of the Fund's Archives . . . which were made available to the public via the internet for the first time in 2012.").

113. *See* STRATEGY, POLICY, AND REVIEW DEPARTMENT, IMF, REVIEW OF THE FUND'S TRANSPARENCY POLICY (2005); *see also* STRATEGY, POLICY, AND REVIEW DEPARTMENT, IMF, REVIEW OF THE FUND'S TRANSPARENCY POLICY (2013); STRATEGY, POLICY, AND REVIEW DEPARTMENT, IMF, REVIEW OF THE FUND'S TRANSPARENCY POLICY (2010).

114. *Factsheet: Transparency at the IMF*, IMF, https://www.imf.org/external/np/exr/facts/trans.htm (last updated Mar. 24, 2016).

115. *Id.*

regimes of publication, each of which regulate transparency to a different extent.[116] They are: 1) voluntary but presumed publication; 2) voluntary publication; 3) presumed publication; and 4) case-by-case publication.[117] The extent of transparency depends on the type of the document, whether country document, fund policy document, or multi-country document.[118] Noticeably, those four regimes articulate the core problem of the publishing policy: they create a spectrum of discretion.

The Transparency Decision also restricts publication of IMF Policy Documents, stating that this depends on Executive Board authorization.[119] In particular, the Transparency Decision does not allow publication in cases in which publication may undercut "the Fund's decision-making process," without specifying what that means.[120] Board Papers regarding the IMF's income, financing, or budget are often published, except when those documents are believed to contain "market sensitive information."[121] Reports dealing with other administrative or internal matters are usually not published, nor are they covered

116. 2013 REVIEW, *supra* note 13, at 9, n.7.

117. *Id.* The terminology used is described as follows:

> 'Voluntary' means that the publication of country documents is subject to the concerned member's consent. 'Presumed' means that the Fund encourages each member to consent to the publication of such documents by the Fund. The exception relates to statements on Fund decisions on waivers of applicability or for nonobservance of performance criteria and waivers for nonobservance of assessment criteria. These statements are not covered under the 'voluntary but presumed' publication regime because they are factual and do not, therefore, require the member's consent . . . . The publication of Country Documents is subject to the consent of the member concerned. The publication of Fund Policy Documents requires the approval of the Executive Board. The publication of Multi-Country Documents requires the consent of the members concerned or the approval of the Executive Board . . . . The publication of documents jointly authored by the Fund and the World Bank requires the authorization of the World Bank.

Id. at 39; *see also* Martin S. Edwards et al., *Who Reveals? Transparency and the IMF's Article IV Consultations* (Seton Hall U. Working Paper Ser., Jan. 21, 2012).

118. *See id.* at 39–54.

119. *See id.* at 39, ¶ 2.

120. *See id.* at 49, ¶ 14.

121. *See id.* at 9, n.9.

by the Transparency Decision.[122] Thus, transparency—understood as the extent to which the general public has access to and understands IMF decisions' publications—is a corollary of these categorizations and their interpretation.[123] Here, I will concentrate on the first category, which illustrates the IMF's tense relationship with transparency by both endorsing and restricting it.

An interesting token of the IMF's shift is portrayed by the so-called Article IV consultations, the principal method of the IMF's surveillance function.[124] Article IV consultations are annual meetings between the IMF staff and individual member country authorities.[125] They focus on monitoring and providing advice regarding macroeconomic conditions within the member country in question.[126] The aim of the consultations are to make sure that the member countries are implementing economic and financial policies "toward the objective of fostering orderly economic growth with reasonable price stability."[127]

The reports of the Article IV consultations were originally regarded as private documents.[128] The initial concern over increasing transparency was founded on a perceived threat of market overreaction.[129] According to this concern, "revealing too much information to markets, specifically about exchange rate policy, would destabilize them."[130] In other words, the documents were considered market-sensitive. However, the IMF started to publish summaries (Public Information Notices, PINs) of these reports in 1997 with the consent of member countries.[131]

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122. *Id.*; *see also* IMF, UPDATED GUIDANCE NOTE ON THE FUND'S TRANSPARENCY POLICY 21, n.30 (2014), http://www.imf.org/external/np/pp/eng/2014/040714.pdf [hereinafter UPDATED GUIDANCE NOTE]; MARTINEZ, *supra* note 48, at 83.

123. The transparency of the IMF, similar in nature to that of government transparency, is "at the heart of how citizens hold their public officials accountable." *Government Transparency*, BALLOTPEDIA, https://ballotpedia.org/Government_transparency (last visited Apr. 7, 2016).

124. *See* Edwards et al., *supra* note 117.

125. *Id.* at 3.

126. *Id.*

127. IMF Articles, *supra* note 37, at Art. 4, § 1.

128. Edwards et al., *supra* note 117, at 8.

129. *Id.*

130. This concern has not completely dissipated. *Id.*; *see also* HAROLD JAMES, INTERNATIONAL MONETARY COOPERATION SINCE BRETTON WOODS 274 (1996).

131. Edwards et al., *supra* note 117, at 8. In the 2013 Review, the term "PIN" was replaced by the term "press release," which refers to all external communication products. *See* 2013 REVIEW, *supra* note 13, at 6, tbl. 1.

Presently, many member countries allow the release of these summaries, with some even allowing publication of the full report.[132] This implies that the IMF's take on transparency has changed; it allows the member countries more say on the scope of transparency.[133] It seems that the concern over market sensitivity has diminished, but not vanished.

From 2004 onwards, publication has been "voluntary but presumed," meaning that specific consent for publication has been replaced with non-objection.[134] The default assumption regarding publication has therefore changed the customary status of the norm over time.[135] Even if publishing is still technically voluntary, the use of the opt-out or attempts to edit findings may be almost as telling as the published documents themselves; non-disclosure may create speculations on economic problems in the country.[136] Intriguingly, one study suggests a correlation between allowing the reports' release and the form of government a country has; less democratic countries are more likely to block the publication of Article IV consultations.[137] Only 70–80% of countries release the whole report for discussion by the Executive Board.[138] According to the 2013 Review, the aggregate amount of the documents published is around 90%.[139]

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132. Edwards et al., *supra* note 117, at 4–8. However, the authors caution, "countries seek to suppress publication of these reports in about 20% of the cases."

133. In the 2013 Review, a new publication regime (in addition to country documents and policy papers) was introduced:

> In response to recent surveillance reforms, the review also proposes a new publication regime for multi-country documents. Staff sees the introduction of a publication regime for a new category of multi-country documents as the best way to ensure that the Fund publishes candid multilateral surveillance, while respecting members' needs. Similarly, the modification rules for country documents will need to be adapted to take into account the implications of the Integrated Surveillance Decision (ISD).

2013 REVIEW, *supra* note 13, at 1. For details, see IMF, 2013 REVIEW OF THE FUND'S TRANSPARENCY POLICY—SUPPLEMENTARY INFORMATION AND REVISED PROPOSED DECISIONS 50–54 (2013), https://www.imf.org/external/np/pp/eng/2013/051413b.pdf.

134. *See* Edwards et al., *supra* note 117, at 9.

135. *Id.* at 10.

136. *Id.*

137. *Id.* at 11.

138. *Id.* at 2.

139. 2013 REVIEW, s*upra* note 13, at 1.

The shift in the publicity of the Article IV consultation reports is revealing. Namely, it makes the negotiability and the assets of transparency visible. Yet, the Article IV consultation documents represent only part of the IMF's transparency strategy. Even though the "Transparency Principle" is the current point of departure in the IMF's internal transparency policy, not all documents are published.[140] As in domestic freedom of information acts, many exceptions can exist.[141] Particularly, the question of exceptions becomes relevant for confidential negotiations between the IMF staff and member countries: the distinction between external and internal transparency becomes artificial. It seems that the IMF employs both public and private features of its functionality, which are reflected in its transparency practices.[142] The dual values of transparency and confidentiality do not always lead to the same conclusion.[143] This duality is mediated by language—by careful expressions in the published documents.[144]

Vague, ambiguous language used in the documents has caused worry.[145] In the IMF's policy, these questions fall into the category of "candor."[146] That is to say, although there would be a relevant publication, its quality might not meet the standard of candor, integrity, and clarity. Lack of candor refers to a situation where the wording of the report is somehow too indeterminate to deliver a clear message.[147] Relatedly, there are lamentations about "excessively liberal modification rules," covering

140. *E.g.*, *Transparency at the IMF*, *supra* note 114.

141. *See* 5 U.S.C. § 552(b) (2015) (describing exemptions from the Freedom of Information Act).

142. Tellingly, some of the IMF's documents (such as non-Board documents) are interpreted as intellectual property of the IMF, and publication of those documents depends on discretion. *See Updated Guidance Note*, *supra* note 122, at 61–62.

143. *See generally id.* at 16–17 (discussing the handling and management of confidential information).

144. *See* BEST, *supra* note 15, at 5. ("Attending to such *intersubjective ambiguities* leads us to perceive the ways in which economic questions and answers—even 'fundamentals'—are mediated through language and social context.") (emphasis in original).

145. *Id.* at 1–10 (reviewing historical and contemporary efforts to manage financial ambiguity).

146. *See* 2013 REVIEW, *supra* note 13, at 16–17.

147. *See id.* at 19, ¶ 19; 24, ¶ 30; 29, ¶ 38; 42, ¶ 7(c).

modifications and deletions[148] of particular information.[149] Subsequently, the crucial message of the report may be lost in modification: "Original Fund documents may be drafted in a way to avoid openly expressing what might be controversial views, to avoid difficult discussions about modifications and increase the authorities' willingness to publish."[150] If the published document contains "evident ambiguity," it can be subject to corrections.[151]

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148. The following outlines such rules:

> Deletions should be limited to information not already in the public domain that constitutes either . . . [i] Highly market-sensitive material, mainly on the outlook for exchange rates, interest rates, the financial sector, and assessments of sovereign liquidity and solvency. Material is considered highly market-sensitive when *all* of the following criteria apply: [1] The material is not already in the public domain; [2] The material is market-relevant within the near term; [3] The material is sufficiently specific to create a clear risk of triggering a disruptive market reaction if disclosed. Or, [ii] Premature disclosure of policy intentions. This type of deletion would be expected to be used only in *rare cases*, when all of the following criteria apply: [1] The material is not already in the public domain; [2] The information consists of operational details of a policy the authorities intend to implement. Premature disclosure of the operational details would, in itself, seriously undermine the ability of the authorities to implement it.

Updated Guidance Note, *supra* note 122, at 20–21 (emphasis in original).

149. *See* Donaldson & Kingsbury, *supra* note 70, at 137. According to Donaldson and Kingsbury, deletions and modifications are not rare. The 2005 Review provided that 15% of published staff reports contained deletions while 50% of the published reports contained corrections. 2005 REVIEW, *supra* note 105, at ¶¶ 23–25. For about 60% of the reports, the deletions did entail "some diminution of candor," with only 5% of cases having a key message "significantly altered." *Id.* Soon after the IMF tightened its policy, "The 2009 review, covering 2006–2008, noted that the percentage of published reports with deletions had declined from 14% (in 2003–2005) to 10%." Donaldson & Kingsbury, *supra* note 70, at 137. However, according to the 2013 Review, the percentage of deletions has increased again: in 2012, 17% of published staff reports were subject to deletions. 2013 REVIEW, *supra* note 13, at 18.

150. 2013 REVIEW, *supra* note 13, at 15, 17. *See also* INDEPENDENT EVALUATION OFFICE, IMF, THE ROLE OF THE IMF AS TRUSTED ADVISOR (2013), http://www.oecd.org/derec/imf/RITA%20IMF_2013Main_Report.pdf [hereinafter IMF TRUSTED ADVISOR].

151. 2009 REVIEW, *supra* note 14, at 22. According to the 2009 Review, "Corrections are a tool for ensuring the reports are accurate. In many cases, however, the corrections do not unambiguously conform to the policy. Most of such 'gray zone' corrections are made before the Board meeting, and most are for reports of advanced or emerging market countries." *Id.* at 24. The 2013 Review states that corrections to country documents are limited to the

However, candor is not a binary variable, and ambiguity can be less than "evident." In the 2009 Review, the borderline cases—ambiguous, but not "evident"—were described to fall into the category of the "gray zone."[152] In 2008, this was the case in 26% of deletions.[153] The term alludes to modifications in the staff reports that, in hindsight, do not completely adhere to the rules of the policy.[154]

To accentuate its gradual nature, the term "gray zone" is further divided into "dark gray" and "light gray" categories.[155] In the light gray cases, the modification rule was stretched less than in the dark gray cases.[156] Liberal reading of the scope of "market sensitivity" constitutes most of the gray zone cases.[157] This is logical in the sense that market sensitivity is the only acceptable conceptual tool that justifies modifications.[158] Nonetheless, according to the IMF's policy, this stretching of the concept of market sensitivity is not permitted even in the case of politically-sensitive material.[159] This goes back to an underlying assumption that political and market sensitivities are separable.[160]

The described formalizing criteria has been a mixed success.[161] Even if "these criteria were appreciated by mission chiefs as a shield against potentially unreasonable requests from member country authorities, they were stretched or exceeded on occasion."[162] Nevertheless, although the pressure of publication has tempted member countries to dispel sensitive issues, it gave the IMF the opposite incentive to create and maintain accuracy,

correction of (i) data and typographical errors; (ii) factual mistakes; (iii) mischaracterization of the authorities' views; and (iv) evident ambiguity. 2013 REVIEW, *supra* note 13, at 44.

152. *See* 2013 REVIEW, *supra* note 13, at 19.

153. 2009 REVIEW, *supra* note 14, at 21–22, ¶ 41.

154. *Id.*

155. 2009 REVIEW, *supra* note 14, at 22, n.13.

156. *Id.*

157. *Id.* at 12.

158. 2009 REVIEW, *supra* note 14, at 22, n.13.

159. *See* Donaldson & Kingsbury, *supra* note 70, at 137. When it comes to the UFR (use of funds reports) reports, "information relating to any performance criterion of structural benchmark" was not to be deleted unless it was "of such character that would have enabled it to be communicated to the Fund in a side letter." *See* IMF, *Annual Report of the Executive Board for the Financial Year Ended April 20, 2006* 151, app. III.

160. Donaldson & Kingsbury, *supra* note 70, at 137.

161. *Id.*

162. *Id.* at 137–39.

and to uphold the IMF's credibility at the market.[163] The established scale of "gray zones" has made this balancing possible.

Although the concern over candor is understandable, it is important to notice that documents are constructs to begin with. They carry the possibility of emphasizing certain aspects of reality while diluting others. Moreover, they are vulnerable to exaggerations, biases, and half-truths; as such, they do not necessarily create an impartial view of the consultations.[164] The whole idea of documents being objective is problematic; they are always interpretations of reality that textually mimic and reconstruct past occurrences.[165] In actual fact, disclosing information may mean production of it.[166] What is more, even the numerical data—often deemed as more objective, valid, and reliable than written—can be subject to distortions, manipulation, and even lack of reliable sources.[167] Statistical data of a country's economic standing can vary considerably according to the chosen parameter, not including intentional manipulations.[168]

The ambiguity associated with delivering messages seems to extend to the IMF at its very core. In the 2013 Review, some of the CSOs criticized the IMF for using incomprehensible jargon, urging it to "use language that is more accessible to the general public."[169] This criticism describes the transparency phenomenon on a larger scale: even though publishing seems to form the crux of the IMF's transparency policy, simply "publishing" has other implications. Namely, that the main

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163. *Id.* at 137. In addition, the distribution of "gray zone" cases is interesting. The 2009 Review Background Paper states that the average amount of "gray zone" corrections were significantly higher for countries with quota shares over 1% and those with a dedicated executive director. IMF, REVIEW OF THE FUND'S TRANSPARENCY POLICY—BACKGROUND PAPER ¶ 56 (2009).

164. *See generally* JERVEN, *supra* note 81 (showing how statistical analysis of African economies are prone to manipulation depending on the political economy and academic trends).

165. *Id.*

166. RICHARD H.R. HARPER, INSIDE THE IMF: AN ETHNOGRAPHY OF DOCUMENTS, TECHNOLOGY AND ORGANIZATIONAL ACTION (1998) (using the IMF as a case study to demonstrate how to use information technology to produce documents, thereby improving the manageability and accessibility of them).

167. JERVEN, *supra* note 81, at 91–96, 101, tbl. 4.1.

168. *See id. at* 35–36, 52, 91–96, tbl. 4.1.

169. 2013 REVIEW, *supra* note 13, at 15.

message should not be obfuscated by deliberately vague or technocratic language.[170] Transparency carries the connotation of communicability. Unsurprisingly, one key area of the IMF's transparency policy is effective communication.[171]

V. THE IMF TRANSPARENCY PRACTICES REGULATING VISIBILITY

At the beginning of this Article, I presented hypotheses of the IMF's transparency conception.[172] I argued three main points. First, I argued that within a single institution, e.g., the IMF, many varieties of transparency exist, making transparency a radically indeterminate concept. Second, I argued that as discourse spills over to all fields of policy, forming standards and soft law, the normative core of the concept of transparency disperses. Finally, I argued that transparency policies make power appear in a certain way whereas other forms may stay undetected. This Article will now revisit those hypotheses in light of the previous sections.

The hypothesis that many varieties of transparency exist within the IMF, making the concept indeterminate, appears to be valid. Publishing documents forms the foundation of the IMF's transparency conception,[173] though it is not the only meaning of transparency. The concept of transparency does not form a coherent set of thought, but instead consists of a manifold, dynamic, and expanding discourse. This notion holds true beyond sheer perspectivism; the IMF's transparency policy has been broadening for two decades, with every transparency policy review and subsequent transparency decisions bringing new elements to the discourse, specifying some key trends, and refining old ones.[174]

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170. As mentioned, the CSOs saw the need for the IMF to "strip away jargon" and make its publications more accessible to the public by using simple, uncomplicated language and translating documents into languages beyond the five official United Nations languages. *Id.*

171. *See* IMF, THE IMF'S COMMUNICATION STRATEGY 4 (2007) (expressing that in response to intense public scrutiny, the IMF increased its transparency and created a communication strategy to explain its policies and obtain feedback to improve them).

172. *See supra* Part IV.

173. *See* MARTINEZ, *supra* note 48, at 79–80 (detailing the IMF's progression from a policy of confidentiality to one of increased quantity and variety of publications).

174. For instance, the 2005 Review introduced the "voluntary but presumed" doctrine for publication of most country reports. *See* 2005 REVIEW, *supra* note

By excavating the IMF's concept of transparency, it seems that transparency is not only about quantity of the published documents, but also about their quality. This feature is not always easy to discern. As detailed in Part IV of this Article, many varieties of transparency exist: externally, for example, fiscal transparency, monetary transparency, and an overarching ideological transparency; and internally, transparency as the publication of documents and transparency as candid and effective communication. Even review can be seen as a meaning of transparency. Nevertheless, these varieties do not form a fixed taxonomy.[175]

Apart from this multidimensionality, transparency has a meta-level aspect, too—the transparency of transparency. Take the example of candor: even if a document has been published, made transparent, that is, it does not necessarily mean that the document meets the requirements of transparency in a more abstract sense. The 2009 Review argued "the experience with implementing the Transparency Policy is mixed. While a large majority of country reports are published, lags are too long and many reports are subject to extensive modifications."[176] When seen like that, transparency also becomes an interpretative principle that guides the reading of the more technical components of transparency. The concept of "evident ambiguity"—oxymoronic as such—is a revealing token of that mindset. Publishing is only the medium of some greater values, which seem to be, first, access to information and second, the quality of that information. Moreover, even the quality of information needs to meet certain standards; that is, to deliver a simple message which is not obfuscated by language.[177]

105, at 4. The 2009 Review introduced the "Transparency Principle." *See* 2009 REVIEW, *supra* note 14. The 2013 Review introduced the publication regime for multi-country documents. *See* 2013 REVIEW, *supra* note 13, at 1.

175. *See, e.g.*, MARTINEZ, *supra* note 48, at 80 (categorizing the IMF's transparency into three sometimes overlapping groups: documentary transparency, decision-making transparency, and operational transparency).

176. 2009 REVIEW, *supra* note 14, at 3. Interestingly, the 2005 Review states that some lags may be strategic: "Another factor contributing to lags in a few instances appears to be strategic timing. Anecdotal evidence points to cases where publication may have been delayed to coincide with a bank holiday or to prevent release during an election campaign." 2005 REVIEW, *supra* note 105, at 14. That is purported to violate the spirit of transparency. *Id.*

177. Transparency as maximal publishing and transparency as communicability sometimes seem to be opposite goals. As it says in the 2013 Review, "Some Board meetings generate multiple summary outputs, raising the risk that key policy messages get diffused." 2013 REVIEW, *supra* note 13, at 1.

My second hypothesis was that as discourse spills over to all fields of policy, forming standards and soft law, the normative core of the concept of transparency disperses, partly overlapping with my prior hypothesis. Since transparency is a radically indeterminate concept in organizations like the IMF, the situation is less clear. The general obligations of member countries are established in the IMF Articles.[178] As described, information furnishing obligations have not been conceptualized as transparency. Thus, it is debatable whether or not the concept of a normative core of transparency exists.

As discussed, the transparency discourse started its success story in the late 1980s,[179] but the endeavor to gain greater transparency seems to be ongoing.[180] Conceptually, this makes transparency an intensity variable; it implies that transparency already exists but its level is not satisfactory. Nonetheless, it is fair to suggest that transparency encompasses different spheres of normativity. The legally normative force of policy papers, standards, and soft law is hardly an equivocal matter in an intergovernmental organization. Regardless, the tendency seems to go towards normatively stronger requirements of transparency, at least symbolically. As a symptom of this, the scope of the mere "voluntary," in the "voluntary but presumed" doctrine, has been narrowed down.[181] However, it still allows states to boost their international goodwill by showing that they have nothing to hide.

Instead of coercion, transparency seems to be operating using its certifying attraction, functioning as a standard or indicator. As Dieter Kerwer explains, "Global standards, such as the ban on in-flight smoking, can be defined as voluntary best-practice rules. In contrast to formal law, standards seek to convince rather than to coerce."[182] Thus, transparency's

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178. *See* IMF Articles, *supra* note 37.

179. *See* Donaldson & Kingsbury, *supra* note 70, at 126.

180. *See id.* at 143–44 (detailing the drivers for increased transparency as well as its trajectory).

181. *See* 2009 REVIEW, *supra* note 14, at 16–17 (discussing the IMF's rejection of moving from "voluntary but presumed" to "mandatory" publication, yet its adoption of "less radical" steps for improving timely publication of documents).

182. Dieter Kerwer, *Rules That Many Use: Standards and Global Regulation*, 18 GOVERNANCE 611, 611 (2005) (emphasis omitted); *see generally* Simon Brinsmead, Rulemaking in ICAO, the ILO and the IMF: The Rise of Standards (July 25, 2007) (unpublished note) (explaining the IMF's turn to standards and non-mandatory codes of practice), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1002758.

normative appeal may be at least partly based on the endeavor to create a new transnational knowledge/power equilibrium, in which certain information is evenhandedly distributed among the states. This equal dissemination of information may, however, be a fiction as "transparency measures may expose an institution or [its] members to criticism or censure."[183] Subsequently, fear of these consequences "may lead an institution or its interlocutors to deliberately not collect some information, to avoid recording some information, or to convey information informally or couch it in different terms."[184] To make it even more ambiguous, this all is very context dependent.[185] Thus, the information teased out by transparency practices may not be reliable.

The normativity of transparency can also have economic ramifications. First, as a part of good governance agenda, normativity may come with an iron-fist of conditionality. That is to say, transparency's weak normative force can become more coercive when it is tied to the conditions of getting a loan.[186] Secondly, following soft law norms constitutes a form of external communication. For instance, ROSCs are read as a message to foreign investors and used for making private sector investment decisions.[187] Especially for weaker economies, the pressure of conformism is considerable.[188] There have also been allegations that publication of Article IV consultation reports and ROSCs may turn the IMF into a rating agency.[189] In that sense, transparency's normative pull is not solely a matter of voluntary identification.

Finally, as for the third hypothesis, does transparency make power appear in a certain way vis–à–vis other forms in which it might remain undetected? In short, yes. The IMF's main emphasis has been on published materials, as has been detailed. Transparency, both as a technique and an interpretative principle, concentrates on ex post facto information—information on the outcomes. Alternatively, procedural transparency is not really developed. Neither the Executive

183. Donaldson & Kingsbury, *supra* note 70, at 135.
184. *Id.*
185. *Id.*
186. *See* Brinsmead, *supra* note 182, at 16.
187. Roberts, *supra* note 8, at 418.
188. *Id.*
189. *Governance of the IMF*, *supra* note 97, at 61.

Board meetings, nor the Article IV negotiations are public.[190] Some CSOs have criticized the IMF for not making its administrative processes transparent.[191] This could be done, for example, by broadcasting executive board meetings.

At the macro-level, it can be argued that the ethos of confidentiality has gradually shifted to the ethos of public law. Transparency measures, like other procedural norms, allow global governance institutions to articulate their role and their relationships to individuals and organizations in a novel manner.[192] It seems that this has happened in the IMF. However, its double role as an advisor and a watchdog has not evaporated or come without problems.[193] In spite of the shift, both of these traits remain present and retractable in the IMF's policy, although their importance ratio has changed over time.[194] This duality also enables the regulation of the scope of transparency. A preferred role can be emphasized in a particular situation, for example. In the advisory role, the benefits of confidentiality are highlighted, whereas in the watchdog role, the benefits of extensive disclosure of information are highlighted.

The distinction is relevant because it assumes disparate power constellations. In the watchdog role, power is seen through the lens of public law rationality, which entails questions of inspectability, review, and control.[195] The advisory role, on the other hand, underpinned by private law rationality, acknowledges the relevance of strategy. In the latter, the uneven

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190. *See, e.g.*, *The 2015 Annual and Spring Meetings*, IMF (Sept. 10, 2015), http://www.imf.org/external/np/exr/facts/ams.htm) (denoting who may attend IMF Board Meetings).

191. *See* 2013 REVIEW, *supra* note 13, at 15.

192. Donaldson & Kingsbury, *supra* note 70, at 142.

193. This is well-recognized within the IMF. *See* IMF TRUSTED ADVISOR, *supra* note 150, at 12–14. Interestingly, some authorities perceive that "Regarding conditionality . . . 'any candor can be used against you' (i.e., the 'Trojan horse' of candid discussions). This perception was confirmed by IMF mission chiefs, about 60 percent of whom believed that authorities were reluctant to raise topics for this reason." *Id.*

194. *See* Roberts, *supra* note 8, at 419 (stating that though "there have been advances in disclosure practices, the ethos of confidentiality continues to be respected and remains a significant barrier to greater transparency").

195. Donaldson & Kingsbury notice this particular phenomenon. *See* Donaldson & Kingsbury, *supra* note 70, at 130. They state that transparency policies in global governance institutions may be connected to the idea that they are public law institutions. *Id.* This, by analogy, creates a mindset according to which they are subject to transparency obligations similar to those of nation states. *Id.*

distribution of information enables potentially lucrative market activity when competitors do not share the same amount and quality of information.

These functions are somewhat enmeshed. As Martinez says, "both functions have to be exercised at the same time [and] dialectical problems will arise that cannot be easily solved in the abstract, and the IMF should enjoy a certain margin of appreciation."[196] Oscillation between these two roles may even mean active management of the image of the IMF and its member countries therein. The line between confidential and other information is not a self-evident, objective fact.[197] Instead, it is always a conscious interpretative act, which is based on some pre-understanding of the meaning of those epithets. What constitutes a situation which requires confidentiality? When is wider dissemination of information more important? These questions escape evident answers. Additionally, there is a possibility of opportunist, even manipulative conceptual attributions.[198] This is not easy to notice. Namely, the myth of transparency becomes naturalized; it suggests purified information, devoid of bias, selection, framing, ambiguity, inconsistency, and other signs of organizational interference.[199]

To dig deeper, transparency techniques may also hide power by keeping certain information out of dissemination and production. Proactive disclosure of information allows powerful organizations to influence transparency regimes and practices to their own advantage, thus shaping what can be seen and what cannot.[200] This goes well together with Donaldson's and Kingsbury's hypothesis on the general effects of transparency measures. According to them, "Transparency measures, and in particular the certainty or possibility that information will be disclosed to the public, may affect choices about what information to produce and how it is presented."[201]

This can happen in the IMF, but also occurs more generally.

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196. MARTINEZ, *supra* note 48, at 93.

197. *See* IMF TRUSTED ADVISOR, *supra* note 150, at 43 (expressing that it is indispensable for the IMF to have "nuanced" interpretation of confidentiality, since there are many "layers" to it).

198. As Fredric Jameson contends, "Interpretation is not an isolated act, but takes place within a Homeric battlefield, on which a host of interpretative options are either openly or implicitly in conflict." FREDRIC JAMESON, THE POLITICAL UNCONSCIOUS 13 (1985).

199. *See* Christensen & Cornelissen, *supra* note 16, at 140–41.

200. *Id.* at 142.

201. Donaldson & Kingsbury, *supra* note 70, at 135.

For example, we do not have access to so-called deep secrets, information whose existence we are not even aware of.[202] The unpublished Article IV reports form a shallow secret.[203] We know that we do not know that information. Nevertheless, that is not all; there are also many things we do not know that we do not know. The paradox is that if those unknown-unknowns could be identified, by this very identification they would become shallow secrets, and we could, in theory, demand their publication.

Moreover, publication may not be just declaratory; it may also be constitutive and create self-fulfilling prophecies. It may be hard to "distinguish situations in which an institution's epistemic authority is diminished by its own transparency from situations in which an institution already faces criticism and performance problems and adopts transparency measures to manage these."[204] In other words, transparency may have conflicting consequences regarding the legitimacy of an institution. Thus, a transparency technique can be the creator, not the exposer of truth, transcending the constructivist conception of truth in a more modest sense. As Bianchi explains, "What secrecy does overtly, transparency may do surreptitiously."[205]

VI. CONCLUSION

All the presented hypotheses merit some credence. Nevertheless, it is not easy to create a reliable big picture of a large bureaucracy such as the IMF—visibility and transparency are not default paradigms. Indeed, no representation by an organization is neutral, as there is always an implied perspective, for example, as to what counts as "good information."[206] For purposes of this Article, this has led to an

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202. *See generally* David Pozen, *Deep Secrecy*, 62 STAN. L. REV. 257, 257 (2010) (outlining the continuum between "deep secrets" and "shallow secrets"). Deep secrets have been referred to as unknown-unknowns. *See* David Graham, *Rumsfeld's Knowns and Unknowns: The Intellectual History of a Quip*, THE ATLANTIC (Mar. 27, 2014), http://www.theatlantic.com/politics/archive/2014/03/rumsfelds-knowns-and-unknowns-the-intellectual-history-of-a-quip/359719/.

203. Utilizing Pozen's formulation that "shallow secrets" are those that result when the public knows they are being denied particular pieces of information. *See* Pozen, *supra* note 202, at 257.

204. Donaldson & Kingsbury, *supra* note 70, at 141.

205. BIANCHI, *supra* note 21, at 19.

206. *See* Christensen & Cornelissen, *supra* note 16, at 140.

inevitably perspectivist approach. To say the least, transparency is a multifaceted, pervasive, and expanding discourse which legitimizes many practices in the IMF's policy. By now, it shows no signs of conceptual exhaustion. Rather, it seems that the IMF's widening and refining transparency notion is a token of a larger culture change. Partly due to the information age, assumedly, withholding information has become a modern institutional vice. That may also mean broadening the sphere of the public knowledge. In other words, the IMF is one of the institutionalizers of the global administrative space.[207]

207. *See* Kingsbury et al., *supra* note 88, at 38–39.