

Chapter 5: Operational Policies and Procedures and an Ombudsman
Prepared for
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Study on IMF Accountability¹
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I. Introduction

This paper is about the administrative practices of a public institution, the International Monetary Fund (IMF). The principles of good governance require that the IMF's administrative practices should promote both efficient and effective IMF operations and the accountability of IMF staff and management³. The administrative practices can only promote accountability if they satisfy two conditions. First, the institution's stakeholders and the staff and management themselves must be able to determine if the staff and management's conduct conforms to the appropriate standards for measuring their performance. These standards can be divided into two categories. The first, which can be termed operational policies, establish the substantive requirements that the staff and management must meet in implementing the institution's policies. Examples of operational policies are the World Bank's environmental assessment requirements⁴ and the International Monetary Fund's (IMF) guidelines on conditionality⁵. The second, which can be called operational procedures, explain how the staff and management of the institution should go about making decisions and conducting its operations. Examples of operational procedures are the steps that World Bank staff must take in conducting environmental assessments⁶ and the IMF's guidance note on the guidelines on conditionality⁷. This second category is comparable to administrative procedures in national legal systems.

The second condition is that the institution must have some mechanism for dealing with cases of staff or management non-compliance with the applicable operational policies and procedures and the consequences thereof. Examples of mechanisms established for this purpose include ombudsmen, administrative tribunals and inspection mechanisms, like the World Bank Inspection Panel.

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³ For a general overview of IMF governance, see, L. van Houtven, *Governance of the IMF: Decision Making, Institutional Oversight, Transparency and Accountability* (IMF Pamphlet Series #53, 2002)

⁴ World Bank, Operational Manual, Volume II, Safeguard Policies, *Operational Policy (OP) 4.01: Environmental Assessment*, 1999, available at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/toc2/9367A2A9D9DAEED38525672C007D0972?OpenDocument>.

⁵ International Monetary Fund, *Guidelines on Conditionality*, 2002, available at <http://www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.pdf>.

⁶ World Bank, Operational Manual, Volume II, Safeguard Policies, *Bank Procedure (BP) 4.01: Environmental Assessment*, 1999, available at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/ea5916efc9250d10852565af0054d273/c4241d657823fd818525672c007d096e?OpenDocument>

⁷ International Monetary Fund, *Operational Guidance on the New Conditionality Guidelines*, available at <http://www.imf.org/External/np/pdr/cond/2003/eng/050803.htm>.

This paper examines how well the IMF's administrative practices conform to this principle of good governance. It is divided into four sections. The first section is a review of the existing operational policies and procedures in the IMF and a comparison with the situation in the multilateral development banks (MDBs). The second section evaluates the feasibility of the IMF establishing a comprehensive set of operational procedures. The third section considers the case for establish a mechanism for holding the IMF staff and management accountable for their compliance with a comprehensive set of operational policies and procedures. The final section contains recommendations, based on the lessons learned in the previous sections of the paper. It recommends that the IMF develop a comprehensive set of formal operational policies and procedures and that it establish an ombudsman to deal with the problems created by staff and management non-compliance with these policies and procedures.

II. The Current Situation in the IMF and Comparison with the MDBs

A. *Current Situation in the IMF*

Operational policies and procedures are part of the “internal law” of an international organization. For current purposes, “internal law” refers to the combination of the constitutive documents of the organization and the rules and regulations that it develops to govern the way in which it implements its mandate.

The IMF's internal law consists of the following:

1. *Articles of Agreement*⁸: This is the international agreement, signed and ratified by all IMF member states, that establishes the powers and mandate of the IMF. The issues addressed in the Articles include the purposes of the IMF; its powers to conduct surveillance, to provide financing to its member states and to issue SDRs; its governance structure; and the rights and obligations of IMF member states.
2. *By-Laws*⁹: The Board of Governors adopts these By-laws pursuant to its authority under the Articles of Agreement. They are intended to complement the Articles. They deal with such matters as the conduct of the meetings of the Executive Board and the Board of Governors, the appointment of Executive Directors, voting, the ability of members not entitled to appoint an Executive Director to be represented at meetings of the Executive Board, budgets, audits and membership issues.
3. *Rules and Regulations*¹⁰: These “provide such operating rules and procedures, regulations, and interpretations as are necessary and desirable to carry out the purposes and powers contained in the Articles, as supplemented by the By-Laws.”¹¹ The IMF has 20 rules and regulations, each of which is identified by letter. They cover such issues as the meetings of the Executive Board, the mechanical aspects of transactions with the

⁸ International Monetary Fund, *Articles of Agreement of the International Monetary Fund*, adopted July 22, 1944, available at <http://www.imf.org/external/pubs/ft/aa/aa.pdf>

⁹ International Monetary Fund, *By-Laws of the International Monetary Fund*, adopted March 16, 1946, available at <http://www.imf.org/external/pubs/ft/bl/blcon.htm>.

¹⁰ International Monetary Fund, *Rules and Regulations of the International Monetary Fund*, adopted Sept. 25, 1946, available at <http://www.imf.org/external/pubs/ft/bl/blcon.htm>

¹¹ International Monetary Fund, *Rules and Regulations of the International Monetary Fund*, Rule A-1, Scope of Rules and Regulations, adopted Sept. 25, 1946, amended April 1, 1978, available at <http://www.imf.org/external/pubs/ft/bl/rr01.htm>.

- IMF, accounting and reporting in the IMF, relations with non-member states, staff regulations and the operation of the SDR account. The rule dealing with staff is designated Rule-N. It covers such issues as appointment of staff, the fact that staff owe their loyalty “entirely” to the IMF, individual staff involvement in political affairs, publications by staff, the affirmation that staff make upon their appointment, staff grievances, and staff travel.
4. *Decisions of the Board*¹²: These are formal decisions of the Executive Board that establish clear policies for the IMF. They deal with such issues as the content of conditionality, Article IV consultations and the role of the IMF in governance.
 5. *General Administrative Orders*¹³: These are orders issued by management. They usually deal with personnel issues as opposed to operational issues.
 6. *Codes of Conduct*¹⁴: The IMF has a code of conduct for its staff and management and a separate code for Executive Directors, Alternate Executive Directors and their Advisors. Both codes deal with ethical issues related to the problem of corruption.
 7. *Guidance Documents*: These are policy papers and guidance notes that set out the IMF’s policies on specific issues. Most of these documents are operational policy documents that are intended to provide guidance on the substance of IMF policy in regard to specific activities of the IMF or to specific issues relevant to IMF operations. An example of such a document is the IMF Guidelines on Conditionality¹⁵. Recently, the IMF issued a guidance note to help staff implement the conditionality guidelines¹⁶. This is a rare example of a formal and publicly available IMF operational procedure. Most IMF operational procedures are informal and not publicly available. It is important to note it is unclear if these guidance documents establish binding standards and procedures for IMF staff or are merely precatory in intent. .

The internal law addresses four administrative issues with differing degrees of detail. The most detailed relates to the personnel policies of the IMF, including the rights and responsibilities of IMF employees. One indication of the importance that the IMF attaches to this issue is the number of mechanisms that it has established to “enforce” these personnel policies. This infrastructure, in addition, to less formal grievance procedures¹⁷, consists of the following elements:

1. *Ombudsman*¹⁸: The office of the Ombudsman deals with staff grievances. It seeks to investigate and then help resolve problems that arise between staff and management.
2. *Staff Association Committee*¹⁹: This is a committee of the Staff Association and one of its functions is to advise staff on their rights and responsibilities and to assist in the resolution of cases of staff grievance with IMF management.

¹² International Monetary Fund, *Selected Decisions and Selected Documents of the IMF Twenty-Seventh Issue*, December 31, 2002, available at <http://www.imf.org/external/pubs/ft/sd/index.asp>

¹³ International Monetary Fund, Report of the External Panel, *Review of the International Monetary Fund’s Dispute Resolution System*, Nov. 27, 2001, available at <http://www.imf.org/external/hrd/dr/112701.pdf>.

¹⁴ International Monetary Fund, *Code of Conduct for Staff*, July 31, 1998, available at <http://www.imf.org/external/hrd/code.htm>; International Monetary Fund, *Code of Conduct for Members of the Executive Board of the International Monetary Fund*, July 14, 2000, available at <http://www.imf.org/external/hrd/edscode.htm>.

¹⁵ *Guidelines on Conditionality*, *supra*, note 4.

¹⁶ *Operational Guidance on the New Conditionality Guidelines*, *supra* note 6.

¹⁷ *Review of the International Monetary Fund’s Dispute Resolution System*, *supra* note 12.

¹⁸ International Monetary Fund, *Ombudsperson’s Terms of Reference*, June 30, 1999, available at <http://www.imf.org/external/hrd/ombuds.htm>

¹⁹ *Review of the International Monetary Fund’s Dispute Resolution System*, *supra* note 12.

3. *Administrative Tribunal*²⁰: This is an independent tribunal on which legal experts who are not employees of the IMF serve on a part-time basis. The tribunal's function is to hear formal complaints and grievances of employees of the IMF relating to their treatment by their managers and the IMF as an institution. The Tribunal has the power to overrule management and to provide complainants with compensation for the harm they have suffered and to order their re-instatement.
4. *Ethics Officer*²¹: The IMF has appointed an Ethics Officer to advise all IMF officials on issues arising from the applicable code of conduct.

These mechanisms support the internal law in three ways. First, they help educate staff about what their rights are and the standards with which they can expect their managers to conform. Second, they allow employment problems to be resolved in a way which is effective, impartial and based on the merits of the case. Third, their case records help the IMF learn lessons about the nature of the employment relationship in the institution and how to improve it.

It is important to note that the IMF has established an infrastructure for implementing its personnel law that meets almost all the requirements for accountability mentioned at the beginning of this paper. It has clear policies and procedures, with the possible exception of a rule making process, and a mechanism for monitoring and enforcing compliance with these policies and procedures. Interestingly, this is the only part of the IMF internal law for which this observation is accurate.

The second administrative issue is the rules and practices applicable to the governance of the IMF. These rules and practices deal with such issues as the election of Executive Directors, the conduct of Board of Governors' and Executive Board meetings, and the accounting practices of the organization.

The third issue addressed by the internal law is operational policies. The content of these policies is less detailed than the content of the law in regard to personnel matters. The mechanisms for "enforcing" this law are also less well developed. Examples of IMF operational policies are the new conditionality guidelines²², and the policy documents on surveillance²³, governance²⁴ and poverty reduction strategy papers (PRSPs)²⁵. Until recently the only IMF mechanism for monitoring compliance with these operational policies was the Policy Development and Review Department (PDR) of the IMF. It is interesting to note that PDR, whose staff are regular IMF employees, is responsible for both the development and the review of IMF policies and their

²⁰ International Monetary Fund, *Administrative Tribunal (IMFAT)*, available at <http://www.imf.org/external/imfat/index.htm>

²¹ International Monetary Fund, *Ethics Officer - Terms of Reference*, Feb. 28, 2000, available at <http://www.imf.org/external/hrd/eo.htm>

²² *Guidelines on Conditionality*, *supra* note 3.

²³ International Monetary Fund, Public Information Notice (PIN) No. 03/50, April 10, 2003, Enhancing the Effectiveness of Surveillance: Operational Responses, the Agenda Ahead, and Next Steps, available at <http://www.imf.org/external/np/sec/pn/2003/pn0350.htm>; International Monetary Fund, *Surveillance: A Factsheet*, April 2003, available at <http://www.imf.org/external/np/exr/facts/surv.htm>.

²⁴ International Monetary Fund, *The Role of the IMF in Governance Issues: Guidance Note*, available at <http://www.imf.org/external/np/sec/nb/1997/nb9715.htm#12>, International Monetary Fund, *Good Governance: The IMF's Role*, 1997, available at <http://www.imf.org/external/pubs/ft/exrp/govern/govern.pdf>.

²⁵ International Monetary Fund, *Poverty Reduction Strategy Papers (PRSP)*, last updated June 16, 2003, available at <http://www.imf.org/external/np/prsp/prsp.asp>

implementation. There is an obvious conflict of interest between the policy development and policy review aspects of PDR's work which has tended to undermine public confidence in the objectivity of PDR reviews of IMF operational policies. Recently, the IMF, in part to address this problem, established an Independent Evaluation Office²⁶, which is independent of IMF management and reports directly to the Executive Board, to evaluate selected aspects of IMF operations. Consequently, to some extent it functions as a monitor of staff and management compliance with the applicable operational policies.

The fourth and least developed area of the IMF's internal law is its formal operational procedures. Two preliminary points must be made about this area of the internal law. First, IMF "operational procedures" can be understood as referring to the way in which the staff and management execute their responsibilities in IMF surveillance, financing, analytical, and technical assistance activities. Second, the focus of this paper is on the establishment of **formal** operational procedures, which means that they have entered into force after a drafting and approval process that results in a Board level decision, and that they are publicly available.

With one exception, the IMF does not have formal operational procedures. This exception is the operational guidance note that the IMF has adopted to assist staff in implementing the conditionality guidelines²⁷. The IMF does have informal procedures in the form of memoranda and notes from management to the staff that provide guidance on how they should conduct IMF operations. These existing procedures are informal in the sense that they have not been presented for Board approval and are not contained in a publicly available document. One example of such an informal operational procedure, identified through references in published materials, is an operational guidance note on surveillance²⁸.

The lack of formal operational policies means, for example, that there are no publicly available documents that external stakeholders can consult to learn how the IMF decides with whom it should consult during surveillance operations or in designing its financing arrangements or its technical assistance programs or in its general analytical and policy work, how it organizes these consultations, or what factors the staff should consider in making specific types of decisions. In addition, there are no mechanisms that stakeholders can use to hold the IMF accountable for the way in which it implements the existing informal operational policies or the one formal policy. Thus, the internal law in regard to operational procedures fails to conform to either of the two standards for good administrative practices identified at the beginning of this paper.

The IMF's failure to develop comprehensive formal operational procedures can be explained. When the IMF was responsible for managing a system of relatively fixed exchange rates, it could limit its interactions in its member states to the financial and monetary authorities. This meant that there was a limited range of officials involved in these interactions. In addition, the IMF

²⁶ International Monetary Fund, *Independent Evaluation Office (IEO) of the IMF*, available at <http://www.imf.org/external/np/ieo/index.htm>.

²⁷ *Operational Guidance on the New Conditionality Guidelines*, *supra* note 6. The IMF has undertaken a participatory process regarding its relations with civil society and it is possible that this process will result in a second formal operational procedure.

²⁸ Footnote 28 in *Enhancing the Effectiveness of Surveillance: Operational Responses, the Agenda Ahead and Next Steps*, prepared by the Policy Development and Review Department in consultation with Other Departments (March 13, 2003) refers to an *Operational Guidance Note for Staff Following the 2002 Biennial Surveillance Review, September 2002*. However, this note is not publicly available.

staff would be sent on mission with detailed and carefully crafted instructions and would be required to refer matters back to headquarters before agreeing to any deviations from what was proposed in these instructions²⁹. The result was that both from the IMF and the member state perspective there was limited need for formal operational procedures. Everyone involved in the discussions between the IMF and the member state knew and understood the *de facto* operational procedures.

However, following the collapse of the par value system and the expansion in the scope of IMF operations that occurred in the course of the 1980s and 1990s the nature of IMF interactions with its member states has changed³⁰. There are at least three changes that are relevant for current purposes:

1. *The political context with which the IMF must operate has changed.* Non-state actors – corporations, NGOs, civic organizations – have begun to play a greater role in international affairs generally and in the work of the IMF in particular. This can be seen, for example, in the consultation requirements in the PRSP process, the efforts the IMF makes to meet with civil society in its missions to its member states, and in its growing informal interactions with civil society over particular policy papers of the IMF. This evolving relationship has increased the pressure on the IMF to disclose more information and was an important factor in the establishment of the Independent Evaluation Office. NGOs and civic organizations, however, continue to criticize the IMF for the lack of transparency in its operating procedures. They argue that they do not fully understand how the IMF makes operational decisions and that it appears that its decision making process is subject to undue influence from the IMF's most powerful member states.
2. *The nature of the IMF's relations with its member states has changed.* Originally the IMF was perceived as and operated like a credit union in which all participants were both contributors to the fund and users of its services. Thus, all member states understood that IMF policy and operational decisions could become directly applicable to them. However, this is no longer the case. Today, the rich countries contribute most of the IMF's funds but never use its financial or technical services while the developing countries contribute a relatively small portion of its resources but use all its services. In addition, the rich countries, both because of the weighted voting structure in the IMF and the structure of its Executive Board, are able to control the institution and make operational policy for it, even though these policies will never be applicable to them or their citizens. The developing countries, who are dependent on the services of the IMF, on the other hand find it much more difficult to participate in policy and decision making of the IMF. The result of these changes is that a power imbalance has developed in the IMF³¹. In this situation, the lack of formal comprehensive operational policies and procedures becomes a problem that affects the perceived fairness of IMF operations and decision making.
3. *The scope of IMF operations has expanded dramatically.* The IMF, in addition to its involvement in monetary, fiscal and exchange rate policy, is now also involved in

²⁹ R.H.R. Harper, *Inside the IMF: An Ethnography of Documents, Technology and Organizational Action* (1998) at 175-230 for a description of an IMF mission.

³⁰ See James M. Boughton, *Silent Revolution: The International Monetary Fund 1979-1989* (2001) for a history of the International Monetary Fund during much of this period.

³¹ See Daniel D. Bradlow, *Stuffing New Wine Into Old Bottles: The Troubling Case of the IMF*, 3 J. OF INT'L BANKING REG. 9 (2001).

advising countries and in supporting their efforts to promote better governance, and to adopt policies that are geared towards poverty reduction as well as towards macro-economic stability. The result is that a member state's Central Bank and Ministry of Finance do not have all the necessary information about the issues of interest to the IMF. Thus, the IMF needs to interact with a much broader array of governmental and non-governmental sources if it is to obtain the necessary information, and effectively design and implement its operations. All these sources can influence the success of its proposed activities. For these additional actors, the lack of clear and predictable IMF operating procedures becomes a problem because they do not know the most effective ways to engage with the IMF and cannot understand its operational needs.

The combined effect of these three changes is that the need for formal and comprehensive IMF operational procedures has become more urgent. The lack of such procedures is undermining the efficacy of the IMF and even threatening its legitimacy.

B. *Situation in The World Bank*³²

The World Bank, unlike the IMF, has formal operational policies and procedures to guide its staff in the conduct of their responsibilities. Both of these are contained in the Bank's Operational Manual³³ which is available at the Bank's website. It addresses such issues as the types of products the Bank offers, the procedures Bank staff should follow in developing their country assistance strategies and other analytical work, the procedures they should follow and the factors they should consider in their project and loan preparatory work, the environmental and social safeguard policies of the Bank, the procedures applicable to loan disbursements and repayments and the staff's responsibilities in monitoring Bank-funded projects.

The Bank's operational policies and procedures consist of a number of different documents. They are³⁴:

1. *Operational Policies (OPs)*: These are short, focused statements that are drawn from the Bank's Articles of Agreement, the general conditions, and policies approved by the Board. They establish the parameters within which Bank operations must be conducted and describe the circumstances under which exceptions to these policies are admissible and who can authorize such exceptions. In the terminology of this paper, the OPs are the Bank's operational policies.
2. *Bank Procedures (BPs)*: These are statements explaining how Bank staff should implement the policies set out in the OPs. They spell out the procedures and documentation that the staff is required to obtain. One of their purposes is ensure Bankwide consistency and quality in the implementation of the OPs. In the terminology of this paper, the BPs are the Bank's operational procedures.

³² The "World Bank" refers to the members of the World Bank Group. The members of this group are the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes.

³³ The Operations Manual can be viewed at www.worldbank.org/institutional/manuals/opmanual.nsf. This manual is only applicable to the IBRD and IDA. However, many of its policies and procedures have been incorporated into the operational policies and procedures of IFC and MIGA. [See websites: www.ifc.org; www.miga.org

³⁴ These descriptions are drawn from the definitions of these documents contained in the Operations Manual, *id.*

3. *Good Practices (GPs)*: They contain advice and guidance for staff on implementing the OPs. The GPs contain information on such matters as the history of the issue being addressed in the OP, the sectoral context within which the OP is being implemented, the analytical framework that has informed the substance of the OP, and they provide some best practice examples.
4. *Operational Directives (ODs)*: The ODs contain a mixture of policies, procedures and guidelines. They are gradually being replaced by OPs, BPs and GPs..
5. *Operational Memoranda (Op. Memos)*: These are interim instructions designed to elaborate on issues raised in OPs/BPs or ODs. Once the instructions in Op. Memos are incorporated into revisions of the pertinent OPs/BPs, the Op. Memos are retired.

OPs, BPs and ODs, which are contained in the Operational Manual, are mandatory and staff are expected to comply with their terms in all their operational activity. GPs and Op. Memos are not mandatory and may not be in the Operational Manual.

The Bank has established a number of independent mechanisms for monitoring and ensuring staff compliance with these operational policies and procedures³⁵. They are:

1. *Operations Evaluation Department(OED)*³⁶: The OED is responsible for evaluating completed Bank projects and for offering the management insights into the strengths and weaknesses in Bank operations. Its activities may lead it to recommend changes in Bank operating policies and procedures.
2. *Inspection Panel(Panel)*³⁷: The Panel, whose jurisdiction is limited to IBRD and IDA operations, is authorized to receive requests from any groups of two or more persons who claim that they have been or are threatened with harm by the Bank's failure to act in compliance with its operational policies and procedures. The Panel is authorized to investigate these complaints and make recommendations to the Bank's Executive Board on how to correct the problems caused by Bank non-compliance with these policies and procedures.
3. *The Compliance Advisor Ombudsman (CAO)*³⁸: The CAO's jurisdiction is limited to the social and environmental aspects of IFC and MIGA operations. It is authorized to deal with complaints received from persons who claim they have been or are threatened with harm caused by IFC or MIGA funded operations, to monitor compliance with IFC and MIGA social and environmental standards and operational procedures and to give the management of these institutions advice on the social and environmental aspect of its operations.

The Bank's personnel policies and procedures have a similar structure to the IMF. It has a staff manual that informs staff about their rights and responsibilities. In addition, the Bank, like the IMF, has an Administrative Tribunal, an Ombudsman, and an Ethics Officer. Their powers and procedures are similar to those of the corresponding bodies in the IMF.

³⁵ In the case of the IBRD and IDA these independent mechanisms are in addition to the Operations Policy and Country Services Vice Presidency, which is responsible for strengthening management systems for monitoring compliance. See World Bank, *Quality Assurance Group*, available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/QAG/0,,pagePK:109619~theSitePK:109609,00.html>.

³⁶ World Bank, *Operations Evaluation Department*, available at <http://www.worldbank.org/oed/>.

³⁷ World Bank, *The Inspection Panel*, available at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf>.

³⁸ *Compliance Advisor Ombudsman*, available at <http://www.cao-ombudsman.org/ev.php>

C. *Situation in Regional Development Banks*³⁹

The African, Asian and Inter-American Development Banks and the European Bank for Reconstruction and Development follow similar approaches to the World Bank. This means that they each have operational policies and procedures to guide their staff in the conduct of their operations. All four have an evaluation department that helps monitor the implementation of these operational policies and procedures. In addition, the Asian, and Inter-American Development Banks and the European Bank for Reconstruction and Development have inspection mechanisms to monitor compliance with these policies and procedures and to deal with the harm that they cause⁴⁰. Finally, each of the regional development banks has personnel policies and mechanisms for dealing with grievances that may arise under them.

III. Designing a Formal and Comprehensive Set of Operational Policies and Procedures for the IMF

The previous section makes clear that the IMF is an unusual international financial institution (IFI) because it does not have a set of formal and comprehensive operational policies and procedures. There are two possible explanations for this difference. The first is that the IMF's lack of such procedures is attributable to the significant operational differences that follow from the macroeconomic focus of the IMF's responsibilities and the MDBs' emphasis on project lending. However, this is not an adequate justification for the IMF's lack of a formal set of operational procedures. The scope of the IMF's interactions in those member state's that use its services tends to be no less diverse or complex than the interactions of the MDBs in these societies. In addition, the impact of an IMF operation on a particular state tends to be stronger than the impact of most MDB operations on the same state. Consequently, it has the same need for transparent and predictable procedures to guide the conduct of staff and management as the MDBs.

The second possible explanation is that the costs to the IMF of having formal operational procedures are too high. In order to adequately assess this explanation, it is necessary to determine both the costs and benefits that such procedures would create for the IMF.

A. *The Benefits*

There are five significant benefits that would accrue to the IMF from having a set of formal operational procedures. They are:

1. *Effective Guidance for Staff*: Formal operational procedures would provide staff and management with a clearer understanding of what is expected from them during IMF

³⁹ For information on the operational policies and procedures of these banks, see <http://www.iadb.org/exr/english/POLICIES/policies.htm> for the Inter-American Development Bank; see <http://www.adb.org/Development/policies.asp> and <http://www.adb.org/Documents/Manuals/Operations/default.asp?p=policies> for the Asian Development Bank; see http://www.afdb.org/projects/policies_and_procedures.htm?n1=3&n2=1&n3=0 for the African Development Bank; see <http://www.ebrd.org/about/index.htm> for the European Bank for Reconstruction and Development.

⁴⁰ Asian Development Bank, *Inspection Function*, available at <http://www.adb.org/Inspection/default.asp>; European Bank for Reconstruction and Development, *Independent Recourse Mechanism*, available at <http://www.ebrd.org/about/policies/irm/irm.pdf> The Inter-American Development Bank does not mention its Investigation Review Mechanism on its website.

- operations. This should facilitate staff accountability and provide a basis for improving staff performance. It should educate those with whom they interact on the limits of staff's decision-making authority. This, in turn, could help promote member state "ownership" of IMF-funded programs. Finally, these procedures may positively affect staff willingness to be innovative by giving them clear guidance on where there is scope for innovation.
2. *Predictability in the Conduct of IMF Operations*: Formal operational procedures would provide greater predictability to IMF operations than informal procedures which can relatively easily be changed. This will enhance both stakeholder confidence in dealing with the IMF and IMF staff confidence in their interactions with outside stakeholders.
 3. *Transparency in IMF Decision-making and Action*: Formal procedures would make it easier for outsiders to understand how the IMF does its work and the factors that it considers in making its decisions. This should help clarify the scope of IMF responsibilities and differentiate them from the responsibilities of member governments in their dealings with the IMF. Increased transparency may also reduce suspicion that the IMF management is unaccountable and has too much discretion. It may also clarify the ways in which the IMF is susceptible to pressure from powerful member states.
 4. *Accountability*: Formal operational procedures will promote accountability in two ways. First, they will give outside stakeholders—member states and non-state actors—a principled basis on which to hold IMF staff and management accountable. This should help depoliticize the issue of IMF operational accountability for specific operations and decisions. Second, formal procedures will help the Board members to hold IMF staff and management accountable.
 5. *Lessons Learned*: Formal operational procedures will also make it easier for the IMF to learn about the actual impact of its operational practices and the strengths and weaknesses of its operational policies and procedures and to improve them over time.

B. *The Costs*

The IMF would incur the following costs from having formal operational procedures:

1. *Increased Bureaucratization*: Formal operational procedures can result in IMF staff developing a cautious approach to their work in which they seek to do everything "by the book". There is also a danger that the rules result in an increase in reporting and paperwork requirements that reduce staff productivity.
2. *Loss of Flexibility*: It is impossible for the drafters of the procedures to anticipate all the situations in which they need to be applied. Thus, the procedures can result in a certain loss of operational flexibility because they cannot be easily adapted to specific conditions in which they actually must function. This in turn may cause the IMF, once again, to be seen as imposing a "one size fits all" approach on its member states.
3. *Disincentives for Innovation*: Formal procedures can increase the risk that staff and management will be sanctioned for being innovative in ways that do not strictly comply with strict interpretations of the procedures. Since the issues with which the IMF deals do not have clear answers and their resolution requires creativity, any disincentive to innovation is a potentially significant cost for the IMF. The cost however is mitigated by the fact that it is not in the IMF's interest for the staff and management to have too much scope for uncontrolled innovation and the procedures can establish the limits on their scope for permissible ingenuity.

C. Balancing Costs and Benefits

There are four reasons why the benefits of having formal operational policies and procedures outweigh the costs for the IMF. First, such procedures help outside stakeholders particularly those in developing countries, engage more effectively with the IMF. This is particularly relevant useful given that the IMF advocates increased participation in the PRSP process, increased country ownership of IMF supported programs and transparency, participation and accountability as key elements in good governance for its member states. Second, transparent and predictable operational procedures will increase public understanding of the IMF's operations, including of the costs associated with more transparent operating procedures. In fact, it is the stakeholders in those member states that are most directly affected by the operations of the IMF who currently have the least ability to learn about and understand the operating policies and procedures of the IMF and who would benefit most from having formal operational policies and procedures. Third, the procedures will promote IMF accountability. Fourth, the policies and procedures will improve internal IMF governance at a time when IMF operations are growing more complex. All these benefits would be earned in areas where the IMF is particularly weak: public confidence and trust in the IMF and the efficacy of its operations is declining and there is a growing mismatch between the IMF's rhetoric on good governance and its own governance practices.

Given these significant gains, the question of whether or not the IMF should adopt a set of formal operational rules and procedures seems to boil down to two questions:

1. Can the IMF draft operational policies and procedures that maximize the benefits while minimizing the costs associated with such policies and procedures?
2. What should the scope of the policies and procedures be?

Each of these questions is answered below.

C.1: Drafting Operational Policies and Procedures

The primary drafting challenge is to strike the appropriate balance between the rigidity needed to provide stakeholders with the desired predictability and transparency in IMF operations and the flexibility needed for management and staff to adapt the policies and procedures to the variety of situations in which they must operate. There is no theoretical reason that this cannot be done. In fact, it is the type of drafting challenge that government draftspeople confront all the time.

In the IMF's case the goal is to draft operational policies that are sufficiently detailed that they provide all stakeholders with enough predictability and information to understand the policies of the IMF and their operational goals when they implement the policies. Thus, the operational procedures must identify the categories of information staff need to gather in order to perform their operational responsibilities; the factors they should consider, the people they should consult and the steps they should follow in making operational decisions. In addition, the procedures should clearly explain how staff can seek exceptions to the policies and procedures. There are two good models that the IMF could use in this drafting exercise. The first is the IMF's own New Conditionality Guidelines and its Operational Guidance on the New Conditionality Guidelines⁴¹.

⁴¹ *Guidelines on Conditionality*, *supra* note 4, *Operational Guidance on the New Conditionality Guidelines*, [supra](#) note 6.

The second is the Bank's three related operational documents --OPs, BPs and GPs. These examples clearly demonstrate that it is possible for the IMF to develop operational policies and procedures that combine predictability and transparency in IMF operations with operational flexibility.

C.2: The Scope of the Operational Rules and Procedures

There are two aspects to this issue. First, the operational policies and procedures should address how the IMF conducts its operations and makes decisions relating to all aspects of its work. This means that they should cover all aspects of IMF surveillance, the design, negotiation and implementation of IMF financial programs, IMF technical assistance, policy and analytical work and its relations with other organizations.

Second, the IMF needs to establish a transparent and predictable rule-making procedure that will govern how the IMF develops all its operational policies and procedures. The extensive consultations that preceded the adoption of the current guidelines on conditionality and of the work plan of the Independent Evaluation Office are important precedents in this regard. However, in both cases this impressive process was "revealed" to all interested parties, thereby leaving interested parties uncertain as to whether these were harbingers of new operating procedures or exceptions to the normal procedures granted at the IMF management's discretion. The IMF could enhance confidence in its own governance by establishing a predictable rule-making procedure that it will always follow when developing new operational policies and procedures.

IV. The Need for an Ombudsman in the IMF

In order for operational policies and procedures to be effective they need to be supported by a mechanism capable of monitoring and promoting compliance with them. One indication of the importance of such mechanisms is that the MDBs either have or are considering establishing an inspection mechanism that is empowered to investigate charges of non-compliance with their operational policies and procedures⁴².

There are a number of benefits that such mechanisms offer to IFIs. First, the mechanisms can help raise the profile of the operational policies and procedures within the institution. In this regard the experience of the World Bank's Inspection Panel, is instructive. The risk that Bank projects may become the object of Panel investigations has increased staff sensitivity to the Bank's operational policies and procedures and their interest in acting in complying with them. In fact, it has led to a phenomenon known as "Panel-proofing" a project, which means making sure that the project is sufficiently in compliance with the policies and procedures that it will survive any challenge in the Inspection Panel.

⁴² See World Bank, *The Inspection Panel*, available at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf>; International Finance Corporation (IFC) / Multilateral Investment Guarantee Agency (MIGA), *Office of Compliance Advisor/Ombudsman*, available at <http://www.cao-ombudsman.org/ev.php>; Asian Development Bank, *Inspection Function*, available at <http://www.adb.org/Inspection/default.asp>; European Bank for Reconstruction and Development, *Independent Recourse Mechanism*, available at <http://www.ebrd.org/about/policies/irm/irm.pdf>; Inter-American Development Bank, *Independent Investigation Mechanism*, available at <http://www.iadb.org/cont/poli/mecanism.pdf>; The African Development Bank is expected to establish such a mechanism.

Second, the mechanism can become a vehicle for solving problems that have arisen in IFI operations. Such problem-solving capability offers obvious advantages in terms of the quality of the operations of the institution and in term of public relations. The IFC and MIGA's Compliance Advisor Ombudsman (CAO) offers the best example of an effective problem-solving mechanism.

Third, the mechanism offers the institution an opportunity for learning lessons about the actual impact of its operations. Since these mechanisms are triggered by complaints from those who have been most directly affected by the operation, they have a unique perspective on the operations of the institution. Consequently, its findings and the expertise it develops over time can offer the institution some important insights into the strengths and weaknesses of its operations and into what feasible improvements can be made to both the policies with which its operations must comply and the procedures that it should follow in designing and implementing these operations.

Fourth, the mechanism is helpful in differentiating the responsibilities of the international financial institution from those of other actors in its operations. This is a particularly useful benefit for an institution like the IMF which has to be careful to avoid unduly interfering with the sovereignty of its member states. The mechanism, whose mandate is limited to monitoring issues arising under the institution's operational policies and procedures, can focus just on the operations of the institution without having to investigate the activities and decisions of its member states. The evolution in the functioning of the World Bank's Inspection Panel shows both the sensitivity and importance of this issue and the ability of such mechanisms to enhance institutional accountability without unduly interfering with the sovereignty of its member states⁴³.

The above suggests that the efficacy of the IMF's operational policies and procedures would be enhanced if it established a mechanism that was empowered to monitor their implementation. There are a number of forms such a mechanism could take. For example, the IMF could follow the examples of the IBRD and IDA, and the regional development banks and establish an inspection mechanism⁴⁴. Alternatively, it could follow the example of the IFC and MIGA and establish a compliance advisor and ombudsman arrangement. A third possibility is to follow the example of many national governments and the European Union and appoint an ombudsman⁴⁵.

Based on the experience of all these examples, it is possible to deduce certain general principles that should be observed by any IFI interested in establishing a mechanism to monitor the implementation of its operational policies and procedures. Any mechanism that fails to incorporate these principles is likely to be viewed as deficient by at least one of the IFI's stakeholders – member states; the Executive Directors, management

⁴³ See Ibrahim F.I. Shihata, *The World Bank Inspection Panel: In Practice* (2d ed. 2000); Daniel D. Bradlow, *Lessons From the NGO Campaign Against the Second Review of the World Bank Inspection Panel: A Participant's Perspective*, 7 ILSA J. INT'L & COMP. L. 247 (2001).

⁴⁴ See, *supra*, note 40. The United Nations also has an inspection mechanism, although this is not triggered by outside complaints. See, United Nations, *Joint Inspection Unit (JIU)*, available at <http://www.unsystem.org/jiu/>.

⁴⁵ European Ombudsman, available at <http://www.euro-ombudsman.eu.int/home/en/default.htm>.

and staff of the IFI; and non-state actors directly affected by the operations of the IFI and their representatives.

These principles are:

1. *Role of Non-State Actors*: It is absolutely essential that the mechanism be triggered directly by non-state actors who claim that they have been harmed or threatened with harm by the failure of the IMF to comply with its operational rules and procedures.
2. *Clarity of Purpose*: The mechanism can be designed to serve one or more of three different functions. These functions are:
 - a. **Compliance Review**: This involves determining if the IFI staff and management are satisfying the requirements of all the applicable operating policies and procedures in a particular IFI operation. The World Bank's Inspection is a good example of an inspection mechanism whose primary focus is compliance review.
 - b. **Problem Solving**: This involves resolving problems that arise in the course of an IFI operation and that have been identified by affected people as causing them or threatening them with harm. The IFC and MIGA's CAO is a good example of a problem solving mechanism.
 - c. **Lessons Learned**: This refers to the ability of the mechanism to contribute to the lessons that the IFI can learn about the efficacy of its operational rules and procedures. Given its unique perspective, the mechanism is in a position to identify trends within the implementation of operational policies and procedures that are unlikely to be obvious to other IFI actors. This function is not well developed in most of the mechanisms in the MDBs. The European Union's ombudsman is an example of a mechanism that performs a "lessons learned" role.

These three purposes are not necessarily mutually exclusive and it is possible for one inspection mechanism to perform more than one of these functions. In the case of the IMF, the two most relevant functions will be the compliance review and lessons learned function. It is more difficult for the mechanism to perform a problem solving function because of the complexities and multi-faceted nature of IMF operations. However, this does not mean that it should not be given the ability to solve problems when it can appropriately do so.
3. *Limited Jurisdiction*: The mechanism's jurisdiction must be limited to any case arising out of an allegation of non-compliance by the IFI staff and management with the IFI's operational policies and procedures. This helps ensure that the mechanism does not encroach onto the sovereignty of the institution's member states.
4. *User Friendliness*: Since the mechanism is intended to be available to those who have been adversely affected by the operations of the IFI, its procedures for receiving and handling complaints should be as easy for the affected people to understand and utilize as possible. One way to make the mechanism user

friendly is to limit the number of requirements that a complaint must satisfy before the mechanism begins to address the substance of the matters raised in the complaint. The Ombudsman part of the CAO is a good example of a user friendly mechanism. An example of a mechanism that is not particularly user friendly is the World Bank Inspection Panel⁴⁶. One consequence of its formal procedures is that the management of the World Bank has been able to use the Panel procedures to challenge the eligibility of complainants and the suitability of complaints for investigation. This has forced affected people to rely on relatively sophisticated advisors in preparing their complaints. In some cases, it has also contributed to an unnecessary politicization of the complaint.

5. *Independence*: The mechanism should be independent of the management of the IFI and should report directly to its Executive Board. In addition, the terms and conditions of employment of the mechanism's personnel should be designed to promote and protect its independence. Finally, the budget of the mechanism should support its independence.
6. *Powers of Investigation*: The mechanism must have access to all the persons, documents, records, and locations that it deems necessary to conduct a complete investigation.
7. *Impartiality and Competence*: This means that the mechanism's recommendations, findings, and conclusions must be supported by facts and, well reasoned arguments. In addition, the mechanism's investigations should be sufficiently comprehensive to demonstrate that it has gathered all the relevant information and has used this information in its reports.
8. *Efficiency and Cost Effectiveness*: This means the mechanism should be able to deal with complaints relatively quickly and at a cost that does not impose an undue burden on the IFI.
9. *Effective Management of Issues Presented*: This means that the mechanism must be able to demonstrate to all stakeholders that its findings and recommendations are taken seriously by the IFI and that the IFI will either implement the mechanism's recommendations or explain its failure to do so. One important consequence of this principle is that the mechanism should be given the power to monitor the implementation of the results of an inspection process.
10. *Transparency*: This means that the mechanism must publish the results of its investigations and must publish an annual report.

Application of the Principles to the IMF

Given the complexity of the IMF's operations, it needs a mechanism that is flexible, efficient, effective and easy to use. It also needs a mechanism that can both monitor staff and management compliance with its operational policies and procedures and can provide the IMF with a lessons learned capability. The mechanism should also, where appropriate, be able to help those directly

⁴⁶ See, *supra*, note 41.

affected by the IMF's decisions and operations either resolve their problems with the staff and management, or explain to them why a resolution is not possible.

The model that is most suited to the IMF's needs is an ombudsman. Historically an ombudsman was created for the purpose of receiving complaints from people who believed that they had been harmed by the failure of an institution to comply with its own policies and procedures⁴⁷. It was also expected to report to higher authorities on how well the institution was performing its responsibilities and complying with its policies and procedures. An ombudsman was designed to be flexible and relatively informal in its approach to the issues brought to it. This means that it can perform its function with minimal procedural requirements. The ombudsman is also well suited to help educate the institution and the authorities to which it reports on the problems that are arising in its operations and on identifying ways in which it can improve its operations.

The following are the essential characteristics that should be exhibited by an IMF ombudsman charged with monitoring its operational policies and procedures:

1. The ombudsman must be appointed by and report directly to the IMF's Executive Board. He/she should have the status of a senior official of the IMF.
2. The ombudsman must be given all the indicia of independence. This means he/she should not have to report to IMF management or to receive any authorization from management regarding its budget or personnel decisions, He/she must be appointed to a single non-renewable term of office from which he/she can only be removed by the Executive Board for cause. The ombudsman should also have full control over all staff appointments in the ombudsman's office, and assured budgetary support.
3. The ombudsman must be able to receive any complaint relating to the IMF's operations from any person who believes they have been or are threatened with harm caused by the failure of IMF staff or management to comply with the IMF's operational policies and procedures.
4. The ombudsman must have the exclusive power to review the complaint and to decide whether to investigate the complaint or to reject it.
5. If the ombudsman decides to accept the complaint for investigation, he/she must have complete powers of investigation, which includes access to all the IMF staff and records that he/she deems relevant to the investigation.
6. The ombudsman must be required to make a report, which is publicly available, to the Executive Board for each case for which he/she conducts a full investigation.
7. The ombudsman must publish an annual report in which he/she must report on all the complaints he/she received and on how they were handled. In addition, the ombudsman, in the annual report, must comment on the lessons he/she believes can be learned about the IMF's operational policies and procedures from the cases he/she has received and, if appropriate, make suggestions on how to improve these rules and procedures.
8. The ombudsman must have the authority to monitor the implementation of the outcome of any investigations he/she conducts.

Example of Operation of IMF Ombudsman

⁴⁷ For information on ombudsmen generally, see Ibrahim al-Wahab, *The Swedish Institution of Ombudsman* (1979); World Bank, PREM Notes, No. 19, April 1999, *Using an Ombudsman to Oversee Public Officials*, available at <http://www1.worldbank.org/prem/PREMNotes/premnote19.pdf>.

The following example may help clarify the benefits that an ombudsman could provide to the IMF: Assume that the IMF has proposed that a country seeking its financial support cut its budget deficit as a condition for this support. Under the current situation, groups opposing the government's proposed cuts to government expenditures or proposed increased taxes could not easily establish whether the government alone shares responsibility for this action or if the IMF staff share some of the responsibility because, for example, they failed to consult all relevant parties or failed to take certain pertinent information into account in establishing the challenged condition. This is because these groups could not easily determine if the IMF staff have complied with IMF operational policies and procedures in establishing this condition (which would set out with whom the staff should consult and the variables that the IMF should consider in making its conditions) and would have no formal channels through which to address their concerns about the IMF staff. The result may be that the groups will either politicize their concerns so as to get the attention of the IMF Board of Director or that they will work to undermine the government's policy, thereby, also undermining the potential success of the IMF's operation.

If there were formal IMF operational policies and procedures and an IMF ombudsman, the affected groups could determine whether or not the IMF staff had complied with the applicable policies and procedures and could bring their concerns to the ombudsman. This person could then review the record to determine if the IMF complied with its operational policies and procedures. If he/she determined that there was compliance, he/she could provide the complainant and the IMF Board and management with a reasoned explanation for his/her finding. Alternatively, if the ombudsman found there was non-compliance, he/she would provide the IMF Board, the management and the complainants with a reasoned explanation for this finding. This would allow the Board, based on a well reasoned record and finding and the management's response to this record, to decide, based on the merits of the case, how they wish to address the situation. In either case, the findings of the ombudsman would assure the complainants that their concerns had been addressed on their merits at a high level in the IMF. While this may not bring them their desired outcome, it should satisfy them that their concerns have been taken seriously and that they have been treated fairly by the IMF.

This example highlights a number of important points. First, the ombudsman's mandate is limited to reviewing the IMF staff and management's compliance with the IMF's formal operating policies and procedures. He/she cannot comment on the actions of the government concerned. Second, the ombudsman's authority rests only on his/her persuasive powers, as he/she has no independent powers of enforcement. Thus, the efficacy of the ombudsman depends on maintaining the confidence of all relevant stakeholders—both those inside and outside the IMF. It is for this reason that the independence of the ombudsman from all stakeholders is of such critical importance. Third, the ombudsman's findings and decisions will help provide all interested persons with empirical data on the actual implementation of its operational policies and procedures. These lessons can help contribute to both their improvement over time and to better understanding among all interested parties about the challenges the IMF faces in its operations. Fourth, there is no part of the current IMF structure that can readily play the role of the ombudsman, even though there are two existing units that play a role in policy review and evaluation. The Policy Development and Review Department, both because it reports to management and because of its role in developing policies is not a credible independent monitor of the implementation of the policies it develops and helps review. The Independent Evaluation Office, under its current mandate has the requisite independence but is limited to reviewing

completed operations. Consequently, without an expansion of its mandate, it cannot deal with cases arising from ongoing operations, which would be the normal source of cases for an IMF ombudsman.

V. Conclusion

The complexity and range of IMF operations has grown to the point where it is no longer feasible for it to limit its interactions in its member states to officials in the Central Bank and the Ministry of Finance in those countries. It now regularly consults with a broad range of government officials, legislatures and actors in civil society in those member states that utilize its services. This means that the number and range of actors with which the IMF is engaged as grown beyond the point where its operating practices can be kept informal and known only to a relatively small number of experts. Consequently, it needs to develop a set of operational policies and procedures to guide its interactions with all these actors and to guide its decision making. The lack of a comprehensive set of such policies and procedures renders IMF operations unduly opaque and undermines stakeholder confidence in its fairness and impartiality.

While the creation of such operational policies and procedures do impose some costs on the IMF, they can be minimized through the policy and procedures design and drafting process. In addition, these costs are more than compensated for by the benefits that they will bring to the institution.

It is not sufficient for the IMF to merely promulgate such policies and procedures. It must support the implementation of these operational policies and procedures by establishing an independent ombudsman with the authority to investigate complaints from directly affected people and groups about staff and management non-compliance with the policies and procedures.

Both of these steps are required if the IMF is to demonstrate that it practices what it preaches about good governance.