Natural Disasters and Other Emergencies Beyond Control: Assistance by the IMF

I. Emergencies Beyond Control and the Balance of Payments

It is perhaps useful to explain why the topic of assistance rendered by the International Monetary Fund (IMF) to its member states (members) when they suffer from natural disasters or other emergencies beyond their control is a fitting contribution to a Festschrift for Louis Sohn on the theme of the impact of public international law on private international transactions. A common attitude to international organizations that perform economic functions is that these entities are concerned with abstractions and not people. If we contemplate the IMF, what could be considered more abstract than the balances of payments of the abstractions called members? Yet the balance of payments of a member has profound effects on human beings subject to the member’s jurisdiction, including their freedom to engage in transactions with those who are subject to the jurisdiction of other states, whether members or nonmembers of the IMF.

There is no need to read beyond the purposes of the IMF as stated in Article I of its Articles of Agreement (Articles) to understand that the ultimate objective of the treaty is the well-being of people. Article I is studded with such words and phrases as “prosperity,” “the expansion and balanced growth of international trade,” and “high levels of employment and real income.” For Louis Sohn, the welfare of mankind is the raison d’être of public international law as a whole, including that portion of its terrain occupied by the general and special law of international organizations. This realism and benevolence give great distinction to all his work.

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There has not been much public discussion of the IMF's efforts to assist its members when they are assailed by natural disasters. The most dramatic form of this assistance is the provision of financial resources, although this is not the only form of help. The unstirring words "technical assistance" describe an activity of the IMF that may be even more valuable, but its value cannot be assessed in pecuniary terms.

In the absence of much publicity by the IMF about either form of assistance, there should be no surprise that little is known about this activity of the IMF. In an excellent article on disasters, relief, and public international law that appeared in 1985, no mention was made of the IMF. Yet a key sentence ran: "Attempts to identify and apply legal factors which can contribute to improving both humanitarian actions and the international humanitarian order are therefore now especially timely, if not overdue."1

An immediate problem of attempts to formulate systematic legal principles is the definition of what is meant by natural disasters. The author of the article cited above has avoided precision: "disasters are viewed here as emergency situations in which there is an urgent need for international assistance to relieve human suffering."2 The IMF would probably accept this statement, as far as it goes, as an indication of the kind of emergencies that would qualify for special financial assistance if they have adverse consequences for the balance of payments, but the IMF also has avoided a definition.

All the cases in which the IMF has made available this form of financial assistance have been cases in which the emergency was created solely by natural phenomena. This characteristic of the cases must be considered an essential element in the IMF's special practice. Such emergencies as war or a vast influx of refugees from another country would not be within the reach of the practice. It will be seen, furthermore, that some emergencies, while resembling those caused by natural disasters, are not treated in the same way because governmental policy may have contributed to the emergency. The IMF may make resources available in such cases if the result is a deficit in the balance of payments, but the assistance will be provided under policies of the IMF for which it has prescribed sharply defined criteria.

The IMF's financial assistance in the case of a natural disaster, like all forms of financial assistance, is made available to the government of the member

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1. Macalister-Smith, Disaster Relief: Reflections on the Role of International Law, 45/1 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 25, 25 (1985). Similarly, no mention was made of the World Bank's activities in lending connected with emergencies, on which, see the Bank's ANNUAL REPORT 1989, at 82–85. The IMF's assistance is directed toward the balance of payments problem in the short- or medium-term, while the Bank focuses on long-term problems, such as damage to the infrastructure that may take many years to repair. The full title of the World Bank is, after all, the International Bank for Reconstruction and Development. See also U.N. Disaster Relief Coordinator, When Disaster Strikes, Aug. 1985.

affected by the disaster and cannot take the form of direct humanitarian aid to the victims of the disaster. The IMF has neither the legal authority nor the practical competence to give direct humanitarian aid. Nevertheless, the IMF’s assistance may make it possible for the government to provide its residents with the foreign exchange they need to import essential goods and services or to maintain or restore the capacity to export. Thus the IMF’s practice on natural disasters should be seen as part of the effort to develop international norms of a humanitarian character.

The IMF’s practice cannot be purely humanitarian in its motives, because the IMF’s writ runs only in the field of the balance of payments. The value of the help the IMF can give without overstepping its boundaries is not reduced because of this limitation. Once again it is useful to quote the author whose article has been cited earlier:

The fact that humanitarian actions are not always carried out for purely humanitarian reasons, being partly motivated, for example, by economic or developmental considerations, may have compensations ultimately for the advancement of humanitarian objectives. Assistance is not a static process: indeed, disasters even provide opportunities for reform. A further political aspect is thus introduced, since humanitarian action carries with it an opportunity to reshape the future to some extent.

II. Legal Framework

The IMF’s Articles do not mention the use of the IMF’s resources by its members in situations of natural disaster. Discussion of the legal framework within which the IMF can provide resources must begin with the organization’s purposes as set forth in Article I of the Articles. To paraphrase or abbreviate the purposes can be misleading, for which reason it is advisable to quote the provisions in full:

The purposes of the International Monetary Fund are:

(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.

3. "Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies." Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, art. V, § 1, 60 Stat. 1401, 1407, T.I.A.S. No. 1501, at 6, 2 U.N.T.S. 40, 46 (as amended Apr. 1, 1978) [hereinafter Articles of Agreement].


5. The IMF holds assets in various accounts. In this paper resources mean "general resource" held in the General Resources Account. Articles of Agreement, supra note 3, Introductory Article, ¶ (iii), art. V, § 2(a).
(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.

(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.

Two features of this provision deserve particular attention. First, the last sentence directs that all policies and decisions of the IMF, which include those that regulate the use of its resources, must observe the purposes of the IMF. Second, one purpose is to assist members to establish a multilateral system of payments in respect of current international transactions between members and to eliminate foreign exchange restrictions that interfere with the expansion of world trade. This purpose means that the IMF should require members to avoid restrictions on payments and transfers for current international transactions as defined expansively by the Articles. Therefore, if the IMF makes resources available to shorten the duration and lessen the degree of disequilibrium in a member's balance of payments brought about by a natural disaster, the IMF should aim to ensure that the member will not impose exchange restrictions because of the disaster.

A member uses the IMF's resources by purchasing the currencies of other members in return for an equivalent amount of the member's own currency. To permit a member to obtain resources, the IMF must be satisfied that the member "has a need to make the purchase because of its balance of payments or its reserve position or developments in its reserves." This formulation is a broad one because it establishes three separate criteria for use of the IMF's resources and a member is required to satisfy only one of them.

The criteria are that a member is in difficulty because of an unfavorable balance of payments, or because of the unfavorable level of the reserves with which the member can finance deficits in its balance of payments, or because the member

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6. Id. art. XXX(d). The IMF can authorize such restrictions, but for temporary periods only.
7. Id. art. VIII, § 2(a).
8. Id. art. V, § 3(c).

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faces the prospect of adverse developments in its reserves (for example, by having to discharge liabilities that are becoming due). All three criteria are related to the balance of payments, even though the last two do not require a deficit in the balance of payments according to accepted definitions of that concept.

A member requesting resources because of a natural disaster can justify its request under any one of these three criteria, although it is most likely to rely on the first of them. Here, it should be understood that it is not sufficient to show that the disaster has had an unfavorable effect on the balance of payments. The member must show that the disaster has produced or enlarged a deficit in the balance of payments.

The Articles direct the IMF to establish policies on the use of its resources to meet the needs of members:

The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.

The phrase "shall adopt policies" has a particular pertinence—and poses a particular problem—with respect to natural disasters as a justification for use of the IMF's resources. It would not be unreasonable to think that this provision empowers the IMF to adopt a policy allowing an unchallengeable use of the IMF's resources, especially in view of the reference to special policies for special balance of payments problems. This reading of the provision might seem reasonable because the member's misfortune and adverse balance of payments position were beyond its control.

Nevertheless, this understanding of the provision would be wrong. The policies the IMF is required to adopt must (i) be designed to assist members to solve their balance of payments problems, (ii) in a manner consistent with the Articles, (iii) with adequate safeguards to ensure that the use of resources will be terminated after a temporary period so that the resources will revolve and be available for other members that may need to use them. In framing each policy, the IMF must decide what mixture of financing by the IMF and adjustment or maintenance of a member's policies would be appropriate for eliminating within a temporary period the balance of payments problem to which the IMF's policy is addressed. If, in the opinion of the IMF, a request for use of the IMF's resources under a policy is not consistent with the purposes of the IMF, the provisions of the Articles, or the terms of the relevant policy, the IMF must challenge the request.

9. Note the comprehensive mention of helping members solve their balance of payments problems in art. V, § 3(a), which, therefore, must include all three criteria for use of the IMF's resources. *Id.* art. V, § 3; see also *id.* art. I(v).

10. *Id.* art. V, § 3(a).
The Articles are even more explicit, because only requests for purchases in the so-called reserve tranche are declared to be unchallengeable. The language of challenge is the style of the Articles, but more often unchallengeable uses are referred to as unconditional uses. The reason is that in practice the most common form of challenge, if challenge is necessary, is expected to be the inadequacy of a member's policies to solve its balance of payments problem without resort to such undesirable practices as restrictions. The member's policies that the IMF supports are said to be the conditions on which the IMF is willing to make its resources available without challenge. The distinction has emerged, therefore, between conditional and unconditional policies of the IMF and between conditional and unconditional uses by members of the IMF's resources. Conditionality can be described in other words as the body of principles developed by the IMF to satisfy itself that the member's policies are such that a requested use of the IMF's resources will be consistent with the purposes and provisions of the Articles and the policies adopted under them.

An explanation is necessary of the word "policies" in the direction to the IMF to adopt "policies on the use of its general resources." The policies are practices followed by the IMF in permitting members to have access to its resources. Often, these practices are defined in decisions of the IMF's Executive Board that are drafted with legal precision and contain a substantial amount of detail. However, a policy need not take this form and may be set forth in less specific language, such as guidelines that permit much flexibility in the IMF's application of the policy.

Whatever the form in which a policy is expressed, conditionality is an essential element. Much of the content of conditionality is not specified by the Articles, and the stringency of the terms with respect to a member's policies that constitute conditionality varies from policy to policy. That is to say, the IMF may be more or less demanding in the demonstration it requires of the adequacy of a member's policies, but there must be some demonstration.

It will be seen that the policy of the IMF called the Compensatory Financing Facility (CFF) has had a special relationship to the policy on natural disasters. The provisions on use of the IMF's resources in the original Articles were less specific. As summarized above, they were included in the Articles by the First

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11. *Id.* art. V., § 3(c). The reserve tranche is the amount by which the member's quota exceeds the IMF's holdings of the member's currency in the General Resources Account after the exclusion of certain holdings. *Id.* art. XXX(c). The reserve tranche is deemed to constitute a member's reserve asset in the IMF because it represents, subject to this artificial calculation, the net amount of the member's own reserve assets that it has put at the disposal of the IMF at the date of the calculation. The member may make purchases equivalent to its reserve tranche without paying charges and without an obligation of repurchase (i.e., without the obligation to restore the reserve tranche).


Amendment, which took effect on July 28, 1969, and were retained by the Second Amendment, which became effective on April 1, 1978.¹⁴ In the drafting of the First Amendment, it became apparent that a difference of opinion existed on whether the CFF as it stood then was a conditional or an unconditional policy. The doubt was not resolved, but the issue was avoided by a compromise according to which the CFF was mentioned in the Articles, although for another purpose. This mention implied, however, that the CFF was consistent with the Articles however it might be classified.

The denial of further unconditional policies can be understood by recalling the major objective of the First Amendment: creation of the SDR (special drawing right) as a new monetary reserve asset that the IMF could allocate to all members, at the same rate in relation to their IMF quotas, as a supplement to members' other reserve assets if a global need should develop for supplementary reserves.¹⁵ A global inadequacy of reserves could have an undesirable effect on the volume of international trade and payments and produce other harmful consequences. It was agreed that to prevent an inadequacy it would no longer be necessary to augment members' reserves by unconditional rights to use the IMF's resources.¹⁶ If there should be a global need for more reserves, SDRs could be allocated to members and could be used by them without having to satisfy terms applied by the IMF with respect to their policies, or, in other words, without conditionality.¹⁷

III. Developments Beyond Member's Control

The law is familiar with concepts of force majeure or unforeseeable supervening circumstances or events. A somewhat similar idea runs through certain policies of the IMF under which members receive positive benefits rather than release from obligations. The idea is that circumstances or events beyond a member's control can have detrimental effects on its balance of payments, and then the IMF should provide resources that help to mitigate the harm and prevent the possible danger. Indeed, at one time it was suggested that the IMF should adopt an omnibus policy for all such cases. The IMF has preferred, however, to deal separately with various problems affecting the balance of payments in which

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¹⁴. *Id.* art. XIX(j) (First Amendment), art. XXX(e) (Second Amendment). The IMF is currently operating under the Second Amendment.


¹⁶. In this way, the anomaly was avoided that although a majority of 85 percent of the voting power of all members is required for decisions to allocate SDRs, a majority of the votes cast suffices for decisions on policies of the IMF with respect to the use of its resources.


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the common element has been that the problem was not within the member's control. The classic policy of this kind has been the CFF. It will be seen, however, that recently the IMF has combined a number of these policies into a single decision, although the policy on natural disasters is not among them.

The CFF was established on February 27, 1963, after many years of international efforts within the IMF and elsewhere to assist countries that relied largely on the production and export of one or more primary commodities and suffered declines in export earnings because of fluctuations in the international prices of these commodities. The decision, however, did not purport to confine the benefits of it to these countries because of the IMF's principle of the uniform treatment of all members. In principle, therefore, compensatory financing was made available to all members that could show a decline in the proceeds of their exports of whatever kind. Notwithstanding obedience to this doctrine of uniformity, experience has confirmed the expectation that developing countries, and particularly the producers of primary commodities among them, would be the beneficiaries of the policy. The decision was intended to help developing countries solve their financial problems and pursue their economic development without relying on exchange and trade restrictions. Even if a member did not impose restrictions, reduced export proceeds might lead to a decline in its imports. Compensatory resources under the CFF, therefore, could help to prevent a spiralling downturn in international trade and in national prosperity.

The fundamental justification for the CFF has been that the international prices of commodities are unstable because these prices are heavily dependent on the policies of the industrialized countries that import the commodities. The policies of importing countries are beyond the control of the exporting countries. The CFF, however, is not confined to members that can show a decline in export prices. A member can have access to the policy if the decline in export proceeds is the result of a natural disaster, such as a drought or an infestation of pests.

The original decision on the CFF declared that members could be confident that their requests under the CFF would be met if the IMF was satisfied that:

(a) the shortfall is of a short-term character and is largely attributable to circumstances beyond the control of the member; and
(b) the member will cooperate with the Fund in an effort to find, where required, appropriate solutions for its balance of payments difficulties.18

This formulation was intended to give members the assurance that access to the policy would not be difficult. Conditions would not be imposed in advance of a purchase, and changes in policies would not be recommended by the IMF in subsequent cooperation if the member's policies affecting its balance of payments were adequate. The IMF did not fear that the use of resources under the

policy would be prolonged beyond a temporary period. The shortfall in export proceeds was calculated as a deviation from the medium-term trend in proceeds, which gave reasonable promise that the shortfall would not be protracted. The recovery in the volume of export proceeds would enable the member to terminate its use of resources under the CFF within a period considered appropriate by the IMF. With this assurance, the case was made for minimal—or, as some held, non-existent—conditionality.

Another aspect of the decision designed to give the assurance of access to it was that the shortfall could be largely, and therefore not wholly, attributable to circumstances beyond a member’s control. It was possible, therefore, that the member’s policies might have contributed to the shortfall, although not to a major extent. If, for example, the shortfall was largely the result of an exchange rate for the member’s currency that deterred exports, or the member’s other policies were substantial disincentives for its export trade, the member would not have the benefit of the CFF. The member would have to consider whether to approach the IMF under other policies and satisfy conditions involving changes in the member’s policies that produced its balance of payments problem.

The IMF’s policy on natural disasters is less forthcoming in one respect than the CFF. The financial impact for which resources may be made available under the policy on natural disasters must be wholly the result of a natural disaster. If the member’s policies have contributed to some extent to the magnitude of the financial effect, the member may qualify for assistance under the CFF.

If the effect on the balance of payments is wholly the result of a natural disaster, a member may have the choice of requesting assistance under either the CFF or the policy on natural disasters. It does not follow, however, that a member will always have this option in the case of a natural disaster. For example, a natural disaster may have a detrimental effect on the balance of payments but because of a need to pay for imports (other than cereals) and not because of a decline in export proceeds. One reason for dealing separately with natural disasters and not combining this policy with the CFF has been that many natural disasters fit the model of this example. A member may be able to obtain assistance under the policy on natural disasters and further assistance under the CFF or another policy. Whatever may be the combination of the IMF’s policies under which a member obtains resources following a natural disaster, the member will not be able to get double compensation in respect of the same balance of payments impact.

The CFF has been modified many times since its inception, in the amounts of resources available under it and in other features, usually to improve the
benefits for members. Not all modifications have been of this character. An element of substantial conditionality has been infused into the CFF, in conformity with a growing objection by some members that the conditionality of the CFF was nonexistent or was too mild, although this modification has been associated with an increase in the resources that can be obtained under the CFF. The increased amount becomes available in installments according to a scale of ascending conditionality.

A feature of the CFF throughout its history has been the speed of the IMF’s response to a request for assistance under the policy. The normal procedure under the CFF dispenses with a staff mission to the member country. Necessary information is despatched by telex. The staff’s study, the Managing Director’s recommendation, and the Executive Board’s decision take about a month in all from the time of the member’s submission of data, and the member can draw resources within a few days after the decision. There should be little or no interference with international transactions because of the reduction in export proceeds for which the CFF provides compensation.

IV. Other Developments Beyond Member’s Control

The IMF has adopted other policies for which the justification has been a balance of payments difficulty beyond a member’s control and an objective of which has been the avoidance of restrictions by the member. For example, on May 13, 1981, the IMF decided to provide resources to members that encountered balance of payments difficulties produced by an excess in the cost of importing cereals. The decision was integrated into the CFF by providing that a member experiencing balance of payments difficulties could expect that its request for a purchase under the decision would be met if the IMF was satisfied that

(a) any shortfall in exports and any excess costs of cereal imports that result in a net shortfall in the member’s exports are of a short-term character and are largely attributable to circumstances beyond the control of the member; and

(b) the member will cooperate with the Fund in an effort to find, where required, appropriate solutions for its balance of payments difficulties.

20. For example, on Aug. 2, 1979, the calculation of shortfalls was modified so that it could take account not only of the proceeds of merchandise exports, but also, if a member wished, receipts from tourists’ and workers’ remittances. National income from these last two sources has been subject to substantial fluctuations because of circumstances largely beyond the recipient country’s control. Tourism is important for a number of developing countries in the Mediterranean and Caribbean regions; and workers’ remittances are important for various developing countries from which workers go for employment in industrialized and oil-exporting countries.

21. 14 SELECTED DECISIONS, supra note 18, at 115–16 (1989). The IMF’s tendency to stiffen conditionality is associated with the development of policies under which members are able to use the IMF’s resources up to the equivalent of a substantial multiple of quota, the necessity for borrowing by the IMF to supplement the resources subscribed by members (in amounts equal to their quotas), and a growing volume of failures by some members to terminate outstanding use of the IMF’s resources by the assigned dates.

22. 9 SELECTED DECISIONS, supra note 18, at 59–60 (1981); 13 id. at 90 (1987).
One effect of this decision was that a member could obtain assistance under it even if the member’s export proceeds rose, provided that the cost of cereal imports rose even more. This decision, like the CFF, has been modified from time to time. By early December 1989, the IMF had provided resources in excess of SDR 17.5 billion for the compensatory financing of fluctuations in export proceeds and in the cost of cereal exports.  

The next development in policy occurred on August 23, 1988. On that date, a decision took effect that amended the CFF and the decision on cereal imports and combined them with a new policy that is intended to provide resources if so-called external contingencies were to occur. The combined decision is entitled the Compensatory and Contingency Financing Facility (CCFF).  

The nub of the CCFF is formulated in committee prose:

Such external contingency financing will only be provided in association with a Fund arrangement, generally on the basis of a review by the Executive Board, to a member facing unanticipated deviations from the baseline projections of key external variables that cover a substantial proportion of the exogenous components of the member’s current account and that relate to the specified external contingencies during the period of the projections (hereinafter called the “baseline period”), if:

(a) the deviations from the baseline projections are outside of the control of the member;

(b) the member’s performance under the associated Fund arrangement is satisfactory; and

(c) the member is prepared to adapt its adjustment policies as may be necessary to ensure the viability of the program supported by the associated arrangement through a mix of adjustment and financing appropriate to the circumstances of the member.

The CCFF is clearly a link in the chain of policies that respond to balance of payments difficulties created by circumstances or events beyond a member’s control. Much of the decision gives evidence that the new policy on external contingency financing (ECFF) in the CCFF was adopted with some trepidation. The contingency must be both “unanticipated”—a solecism probably intended to convey the idea that the contingency was unforeseen although not unforeseeable—and “outside of the control of the member.” Furthermore, the ECFF prescribes a high degree of conditionality in accordance with the current tendency of the IMF to emphasize the necessity for adjustment by a member as a concomitant of financing by the IMF. Thus, the ECFF has been inspired by the same motive that produced the original version of the CFF but not the same attitude to conditionality. The self-correcting mechanism of the CFF is not a feature of the ECFF.

23. Total resources provided have been equivalent to SDR 17,642 million, of which:
   Export shortfalls  SDR 16,900 million
   Cereal imports    SDR 742 million
   (Data as of Dec. 6, 1989)


25. Id. at 118–19.
The 1989 Annual Report of the IMF mentions two examples of contingencies under the ECFF: deviations in export prices for crude oil and petroleum products and increases in variable interest rates on external debt. The implication of these examples is that the prices of key commodity exports and the prices of main imports together with interest rates may be among the leading variables to which the ECFF will apply. The list of contingencies will probably be narrowed to those critical external components of the current account of the balance of payments that are highly volatile and readily verifiable.

What is meant by control is a question that can arise under policies that make it necessary to determine whether circumstances or events that produced a balance of payments difficulty were beyond a member’s control. The one policy under which the issue should not arise is the policy on natural disasters, although it will always be necessary to determine and calculate the effect of the consequences that were beyond control.

A reasonable argument could be made that increases in interest rates under the ECFF are not wholly beyond a member’s control in the sense, say, of natural disasters. The member has voluntarily contracted the debt and has undertaken to pay a variable rate of interest. The argument that a member has assumed the risk of the contingency of higher interest rates, so that the increases are not wholly beyond the member’s control or are not “unanticipated,” has not been accepted. This interpretation is undoubtedly a product of the troubling problem of international debt, but perhaps this generous attitude is one of the reasons why a limit of 35 percent of quota has been placed on contingency financing related to interest rates under the ECFF.

The CCFF knots together an elaborate network of limits on the amounts of resources that can be outstanding at any time under the policies combined in that decision. Some of the limits are as follows. Financing under the ECFF normally will not be allowed to exceed 70 percent of the amount of the standby arrangement with which contingency financing is associated as additional resources. The limit on outstanding use under the CFF provisions of the CCFF is 40 percent of the member’s quota in the IMF and 17 percent for the excess costs of cereal imports. A member has an option to supplement either the contingency or the compensatory element of the CCFF with a further 25 percent of quota, but the total of outstanding uses under the CCFF must not exceed 122 percent of quota. These amounts are made available under “special policies for special balance of payments problems” and are distinct from and additional to the resources that are available under other policies of the IMF. It is reasonable to assume, in the light of experience, that the amounts and other provisions of the CCFF will be amended over time to make it more effective.

27. 14 SELECTED DECISIONS, supra note 18, at 121 (1989).
28. Articles of Agreement, supra note 3, art. V, § 3(a).
29. Other policies of the IMF have responded to external shocks beyond the control of members.

The Oil Facilities were established after the sudden and huge increases in the import cost of petro-
V. Development of Practice on Natural Disasters

The IMF's practice on natural disasters can be traced back to the use of the IMF's resources by Egypt in 1962 on the occasion of a major failure of the cotton crop. It will be recalled that the CFF was not established until February 27, 1963. The origin of the practice on natural disasters can be said to have been influenced by one of the kinds of emergency to which the CFF now applies, and to this day the IMF's guidelines on the practice, which are discussed below, retain evidences of this paternity.

The novelty of the IMF's assistance to Egypt in 1962 is apparent in two aspects of the transaction. First, although the normal period for terminating use of the IMF's resources is three to five years, for that transaction it was as brief as twelve months, although later the period was extended to three years. Second, on the initiative of Egypt some of its gold was segregated to guarantee that use of the IMF's resources would be terminated at the originally assigned date. Some Executive Directors were discontented because Egypt had no stabilization program, but the desire to assist a member to deal with a major natural disaster prevailed. The thought that the design and observance of a program would be even more difficult if the IMF did not give assistance had some effect. This thought, even though tacit in some cases, has been an influence in the subsequent evolution of the practice. The IMF has not abandoned the practice even though in some cases assistance has not been followed by a stabilization program.

As shown in the table appended to this paper, a severe earthquake in Yugoslavia was the occasion for the second case, but it was the first case in which management and staff began to visualize a general approach to natural disasters that adversely affect the balance of payments. The IMF has provided resources in cases of earthquakes, drought, hurricanes, floods, and cyclones. The member has declared in broad terms the policies it intended to follow, including its intention not to deal with its balance of payments difficulty by introducing or intensifying restrictions on trade or payments for current international transactions, but the provision of resources has not been made dependent on conditions related to performance or been subjected to monitoring of performance by the IMF.

leum and petroleum products in the Seventies. Resources under these decisions were supplementary to resources under other decisions. A member had to represent that it would not impose new or intensify existing restrictions on current international payments inconsistently with the Articles of Agreement or on current international transactions without consulting the IMF even though the IMF had no regulatory jurisdiction over these transactions. In other respects, conditionality was light. See 9 SELECTED DECISIONS, supra note 18, at 69–77 (1981). The Oil Facilities show that the IMF's policies to take care of a difficulty created by events or circumstances beyond a member's control can be of temporary duration but designed to give members a reasonable opportunity to deal with the emergency.

30. Similarly, in the third case under the practice (India), the period of use was to be a maximum of twenty-one months, but was later extended to five years.
32. The formulations of this representation have varied somewhat from case to case.
The amounts of resources provided have varied between 1 percent and 46 percent of the balance of payments effect of the disaster. The IMF's disposition has been to approve requests if the immediate impact has been large in comparison with a member's reserves. The member for which only 1 percent was provided probably had substantial reserves or else a small quota in the IMF.

The amounts were not equivalent to the full impact of the disaster on the balance of payments, partly in order to encourage the member to follow its declared policies, in default of which the member's reserves would be reduced even further. Frequently, the provision of resources by the IMF, even if modest, has had a catalytic influence on others to provide assistance. Furthermore, in some cases the IMF has authorized postponement of the discharge of obligations to terminate the use of resources falling due in respect of earlier transactions under other policies. In some instances, the IMF has made resources available after a natural disaster even though the member was no longer entitled to engage in transactions under other policies because it was not complying with the conditionality of those policies, and sometimes the IMF has waived the effect of noncompliance and permitted transactions under other policies.

A virtue of the policy on natural disasters has been that resources are provided promptly. *Bis dat quis cito dat* (he gives doubly who gives speedily). The resources are not available as quickly as under the CFF, because statistics on the balance of payments effect of a disaster are not in existence, and the IMF must send a staff mission to the country struck by the disaster. Every effort is made not to delay the provision of resources beyond a few months after the disaster. Sometimes, a member has had a standby arrangement in effect when the disaster occurred, and then the IMF has provided further resources. In other cases, the member was negotiating a standby arrangement, and the IMF made some resources available in advance of completing the negotiations. In both categories of cases, the IMF's response was speedier than in other cases, because less time was needed by the IMF for calculating the effect of the disaster on the balance of payments and by the member for declaring the policies it was following or going to follow.

If a case did not fall into one of the two foregoing categories, the member was expected to state its willingness to arrive at an adjustment program in collaboration with the IMF, or to request a standby arrangement in the near future. The emphasis in all three categories on adjustment of the balance of payments has helped to defend the IMF's practice against the criticism that by providing resources because of natural disasters, the IMF departs from its mission to promote adjustment by means of conditionality. The same reply is made to the objection that the IMF trespasses on the domain of organizations that have been assigned the express task of providing aid or relief.

VI. Guidelines on Assistance

Before July 28, 1969, the IMF's response to natural disasters was wholly pragmatic. After that date, the Articles required the IMF to have policies on the
use of its resources, but nothing resembling a formulated policy expressed in
general terms was adopted until 1982. Even then the formulation took the form
of guidelines, a word intended to denote imprecision permitting flexibility rather
than a sharply defined decision. Legally, the guidelines are a decision expressing
a policy, although for reasons discussed later it is often said that they are not an
independent policy. The guidelines are the outcome of a debate in the Executive
Board in 1982, the spirit of which is apparent in the following passage from the
Chairman’s concluding remarks:

One of the advantages of the method already in use is that the management is allowed
to exercise discretion and judgment on what constitutes a disaster serious enough to
make a country eligible for emergency assistance from the Fund . . . . Judgments will
have to be made on the gravity of the situation, on the impact on the balance of
payments, and on the type of help the Fund can offer the country in question. Such
judgments would not fit easily into a set of rigid guidelines. The present language of
Section III [of the staff’s memorandum] seems appropriate, because it gives the staff
and management general guidance while leaving them the necessary flexibility. In any
event, it is the Board that will decide on each particular case. I am sure that the Board
will be happy to have, not a legal document, but some guidelines to use as yardsticks
in reaching those decisions.33

According to the guidelines of Section III, a new or independent policy is not
needed. Effective assistance can be given by a flexible application of existing
policies (which means other policies). In most cases of natural disaster, assis-
tance will continue to be provided under the CFF or a standby arrangement. The
implication is that these forms of assistance are preferred by the IMF.

If a member cannot meet immediate financial needs arising from a major
disaster, such as a flood, earthquake, or hurricane, without a serious depletion of
its monetary reserves, the IMF will provide resources promptly under a flexible
application of the IMF’s basic policy on the use of its resources. Drought is not
among the examples of natural disasters mentioned by the guidelines, although
it is not precluded by this omission, but caution is implied because drought can
be a recurrent phenomenon and because the CFF would be the more appropriate
means of access to the IMF’s resources if the effect of the disaster was a
reduction in export proceeds.

The IMF’s assistance will be limited to the foreign exchange needed for the
immediate relief of the member’s predicament. The maximum amount will be
equivalent normally to 25 percent of quota, but larger amounts would be pro-
vided in exceptional cases. The amount made available will be taken into account
in dealing with subsequent requests for use of the IMF’s resources. This guideline
is an important limitation, because it means that the policy expressed in the
guidelines is not a “special policy” under which resources can be made additional
to those provided under other policies. In this respect, the policy of the guidelines
does not resemble such policies as the former CFF or the present CCFF.

Understandings on a member’s policies will be necessary to give the assurance that inappropriate policies will not compound the problems caused by a natural disaster, but there is no necessity for the negotiation of an adjustment program of the kind that may be necessary when the guidelines are not involved. The IMF’s approach to a request under the guidelines is pragmatic and takes account of a member’s circumstances, the nature and extent of the natural disaster, and the prospect of timely cessation by the member of its use of resources under the guidelines so that the IMF can maintain the revolving character of its resources.

Although there is no need for the existence or the negotiation of an adequate adjustment program, the IMF will not approve a request under the guidelines unless it is satisfied that the member intends to cooperate with the IMF in an effort to find, where appropriate, solutions for the member’s balance of payments difficulties. The IMF will take account, in a pragmatic way, of the member’s actual cooperation under this statement of intent when the IMF considers certain subsequent requests for compensatory financing under the CCFF.

Finally, the guidelines require a broad description by the member of the policies it intends to follow so as to avoid compounding the balance of payments difficulty caused by a natural disaster. The description must include a statement that the member intends not to introduce new or intensify existing exchange or trade restrictions.34

VII. Policies and “Special Policies”

The IMF has refused to regard its practice on natural disasters as a “special policy” on the use of its resources in the sense in which that expression is used in the Articles. The IMF goes further and does not consider the practice to be an independent policy in any sense. Instead, the IMF’s attitude is that the practice is a pragmatic or flexible application of its basic policy (the so-called credit tranche policy). This analysis can be questioned because guidelines that give guidance on departures from the standards of a policy can more reasonably be considered a special policy for a special balance of payments problem. It is a policy that can be distinguished from all other policies.35

Why then does the IMF insist on its view that the practice is not an independent policy? The reasons have not been stated but can be surmised. The IMF may fear that a practice recognized as a special or distinct policy to deal with natural disasters could subject the IMF to pressure to provide resources unconditionally or even detached from the balance of payments. By purporting to respond to natural disasters within the framework of the main policy requiring conditionality, the IMF may be freeing itself from this pressure and may be emphasizing

34. Id., at 151–54.
35. Articles of Agreement, supra note 3, art. V, § 3(a).
the need for members to pursue adjustment policies even if a balance of payments problem is caused by a natural disaster.

Furthermore, by not regarding its practice as a special policy, the IMF avoids having to treat as precedents those special policies under which resources have been provided without prejudice to the amounts available under other policies. There is no requirement of the Articles that a special policy must provide additional resources in this way, but the tendency has been to deem this effect to be a characteristic of special policies. For this reason, a decision to establish such a policy requires a majority as high as 85 percent of the voting power of all members.\textsuperscript{36} The IMF's practice on natural disasters, which was established without the need for a high majority, both economizes the use of the IMF's resources and stresses the need for conditionality.

Another reason for the IMF's attitude to its practice might be concern that recognizing it as a special policy might encourage such frequent and overwhelming requests that the IMF's resources would become inadequate for meeting normal needs. The number of natural disasters is enormous and beyond the capacity of the IMF to deal with them even if it is assumed that a large proportion of them have serious consequences for the balance of payments and international transactions.

Natural disasters have been called the greatest destroyer of lives, goods and property after war. On an average, 20 major disasters of various types occur in the world each year. In the dozen years from 1970 to 1982 alone, according to United Nations estimates, over 1 million persons were killed and property worth $46 billion was destroyed in cyclones, hurricanes and tornadoes, earthquakes, floods and other disasters. In that period, windstorms took 354,000 lives and caused $12.7 billion in material damage; earthquakes killed 442,000 persons and did $18.6 billion in damage; floods killed 64,000 and destroyed $9 billion in property.\textsuperscript{37}

Finally, some members are susceptible to the recurrence of a particular kind of natural disaster. Such cases could raise difficult questions of the extent to which members should protect themselves by insurance and the reaction the IMF should have to a member's repeated uses of the IMF's resources.

\textbf{VIII. Natural Disasters and Conditionality}

Ambiguity or restraint in pressing for the definitive solution of a legal problem can be a creative strategy of international administration. The IMF's policy on natural disasters and the necessity for conditionality in the use of its resources is an example of this strategy. There has been a cacophony of explanations of the relationship between the policy and conditionality. Consider, for example, a unique episode under the policy. In 1985, Mexico had become unable to avail itself of further resources under its arrangement with the IMF, because further trans-

\textsuperscript{36} Id. art. XXX(c)(iii).
\textsuperscript{37} When Disaster Strikes, supra note 1, at 2.
actions were dependent on Mexico’s observance of certain aspects of its adjustment program, but Mexico was not observing those terms. On September 19 and 20, 1985, Mexico suffered major earthquakes, and on the 20th the Managing Director wrote to the President of Mexico drawing his attention to the possibility of assistance by the IMF under its practice on natural disasters. On October 4, 1985, the IMF issued a press release stating that the Executive Board had met in informal session on that day and would look favorably on a request under the practice. The upshot was the largest transaction of the kind ever entered into by the IMF. It is clear that Mexico was not observing the kind of conditionality the IMF insisted on for the use of its resources under its standard policy. What then was the conditionality that satisfied the requirement of the Articles?

One explanation has been that the conditionality of the practice has been modelled on the conditionality of the original CFF and therefore must be in accordance with the Articles. It has been seen, however, that the CFF was expressly preserved by the First Amendment of the Articles without deciding whether or not it was a conditional policy, but the practice on natural disasters was not given similar treatment by the First Amendment (or by the Second Amendment).

Another explanation is that there is post hoc conditionality. Members express their willingness to cooperate with the IMF and to request later uses of the IMF’s resources under policies clearly requiring conditionality. The somewhat modest amounts in relation to quota made available under the practice can encourage requests under other policies. The CCFF has provided some support for the unusual concept of post hoc conditionality by establishing that the IMF will take account of actual cooperation in reacting to requests under the compensatory financing terms of the CCFF.

Not much can be made of the suggestion that there is an element of conditionality in the member’s representation that it intends not to introduce or intensify restrictions on payments and transfers for current international transactions, because members are subject to that obligation by the Articles whether or not they request the use of the IMF’s resources. The argument is stronger if based on the representation to avoid restrictions on trade, because those measures are not subject to the regulatory jurisdiction of the IMF, and there is no obligation under the Articles to refrain from imposing them.

An argument could be made that conditionality is involved because a member must describe in broad outline the policies it intends to follow. If the Managing Director is not satisfied that the policies will meet the test of not compounding

39. In cases before the First Amendment took effect the Managing Director made it clear that the practice was not in accordance with established policies on conditionality. The modern version of this statement is that the practice is in accordance with a flexible application of existing policies.
40. Articles of Agreement, supra note 3, art. VIII, § 2(a). Members are subject to this obligation even when they are availing themselves of the transitional arrangements of art. XIV if they contemplate the introduction of restrictions or an intensification of them deemed to be an introduction.
the balance of payments problems caused by the natural disaster, he will refrain from recommending compliance with the member’s request. The Managing Director’s discretion is an important element in its administration of the policy as was evident in the case of Mexico.

Finally, it is possible that although the First Amendment did not explicitly preserve the policy on natural disasters, it did so tacitly. The report of the Executive Board to the Board of Governors on the proposed First Amendment contains this paragraph:

The changes in Article V, Section 3, will be without prejudice also to the Fund’s compensatory financing facility and the adjustment of that policy if this should be considered desirable. In addition, as already indicated, these changes are not intended to make the rules and practices relating to the use of the Fund’s resources more restrictive than they are at present.4

This paragraph was an important assurance to developing countries, which were more interested in the use of the IMF’s resources than in allocations of SDRs. That asset was to be allocated to members at the same rate in relation to quotas. The quotas of developing member countries were smaller than those of other members. Developing countries feared that the modifications in the provisions on use of the IMF’s resources, particularly in Article V, Section 3, could be disadvantageous to this class of members. The report was intended to give the assurance that disadvantage to them was not the purpose and would not be the effect of the changes in these provisions.

If there is ambiguity in the IMF’s refusal to clarify the issue of conditionality under the policy on natural disasters, the ultimate reason is undoubtedly the humanitarian motive that has inspired the policy, notwithstanding the limitations placed on it. To this motive, one can add the anxiety that a member, as in the case of Mexico, may be unable to have the benefit of other policies at a time when it is suffering from the consequences of a natural disaster. The member could suffer as the result of such a predicament, but so too could the reputation of the IMF.

IX. Some Concluding Observations

The IMF’s practice on natural disasters and the CCFF necessarily have similar objectives because both must conform to the purposes of the IMF, among which one that is especially pertinent to this paper is the avoidance of restrictions. Yet, the techniques of the IMF in conducting these activities are as different as they could be. On natural disasters, the IMF preferred for many years to operate by touch as it were and now with broad guidelines. The section of the CCFF on external contingencies, however, is formulated with such complexity and detail, and at such length, that members, unable to understand all the intricacies of this policy, have been deterred from resorting to it.

41. Establishment of a Facility, supra note 17, at 70.
It is not difficult to see why there is this difference between the two policies. The IMF rejects the straightjacket of a precise decision on natural disasters in order to be able to react to them flexibly because of the humanitarian concern they inspire. The external contingencies to which the IMF has decided to respond might conceivably be the result of a natural disaster, but contingencies of this kind were not the motivating force of the decision.

It may not be obvious why the policy on natural disasters goes back many years while the policy on external contingencies is so recent and therefore scarcely tested so far. The explanation is that in the past the IMF followed a case by case procedure in dealing with external contingencies, so that it cannot be alleged that the IMF ignored supervening circumstances or events beyond a member’s control that had detrimental effects on the member’s adjustment program. Now, the attempt is made to systematize the policy, although without necessarily abandoning the practice, when feasible, of building provision for external contingencies into individual arrangements on a case by case basis. The attempt at a systematic policy is in conformity with the principle that it is a purpose of the IMF not only to provide resources but also to give the confidence that they are available. The difference between provision for contingencies under a systematic policy and in an individual arrangement is that a further assessment of the member’s policies would be necessary in the first but not in the second case before additional resources could be drawn.

Another distinction can be made between the two policies. The practice on natural disasters is designed to avoid retrogressive policies that a member might be unable to avoid in the absence of assistance. The IMF’s assistance is a holding action that gives a member time to formulate an effective adjustment program in collaboration with the IMF and with its further financial support. The holding action is compatible with the concept that the IMF provides not only resources and the assurance that they are available, as mentioned already, but also time to enable a member to adjust its balance of payments.

The decision on external contingencies requires that a member has already instituted a satisfactory program, and therefore progress rather than the avoidance of retrogression is the main objective, although the desire to maintain progress can be seen also as a desire to avoid retrogression. Deviations from the program caused by externalities would be of concern to the IMF because the resources it has already provided are at risk and because in any event it wants the program to succeed.

Notwithstanding the differences between the two policies, they resemble each other because both take cognizance of circumstances or events beyond a member’s control. Furthermore, the fundamental objective of both is to help a member achieve a sustainable balance of payments position. Even though the disequilibrating circumstances or events are beyond a member’s control, sooner or later the member will have to adjust its balance of payments. The objective of both policies is to make the process inflict as little pain as possible.
### Natural Disasters: IMF Practice

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Disaster</th>
<th>Disaster</th>
<th>Amount Drawn(^2)</th>
<th>Percentage of Quota</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>1962</td>
<td>Crop failure</td>
<td>24.0</td>
<td>25</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>1963</td>
<td>Earthquake</td>
<td>30.0</td>
<td>25</td>
</tr>
<tr>
<td>India</td>
<td>1966</td>
<td>Drought</td>
<td>187.5</td>
<td>25</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>1973</td>
<td>Earthquake</td>
<td>12.0</td>
<td>44</td>
</tr>
<tr>
<td>Chad</td>
<td>1974</td>
<td>Drought</td>
<td>2.8</td>
<td>22</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>1979</td>
<td>Hurricane</td>
<td>23.25</td>
<td>42</td>
</tr>
<tr>
<td>Dominica</td>
<td>1979</td>
<td>Hurricane</td>
<td>0.95</td>
<td>50</td>
</tr>
<tr>
<td>St. Lucia</td>
<td>1980</td>
<td>Hurricane</td>
<td>1.8</td>
<td>50</td>
</tr>
<tr>
<td>St. Vincent &amp; the Grenadines</td>
<td>1980</td>
<td>Hurricane</td>
<td>0.425</td>
<td>25</td>
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<tr>
<td>Yemen, P.D.R.</td>
<td>1982</td>
<td>Floods</td>
<td>15.375</td>
<td>25</td>
</tr>
<tr>
<td>Yemen Arab Republic</td>
<td>1982</td>
<td>Earthquake</td>
<td>9.75</td>
<td>50</td>
</tr>
<tr>
<td>Mexico</td>
<td>1985</td>
<td>Earthquake</td>
<td>291.4</td>
<td>25</td>
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<tr>
<td>Madagascar</td>
<td>1986</td>
<td>Cyclone</td>
<td>16.6</td>
<td>25</td>
</tr>
<tr>
<td>Solomon Is.</td>
<td>1986</td>
<td>Cyclone</td>
<td>1.25</td>
<td>25</td>
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<tr>
<td>Ecuador</td>
<td>1987</td>
<td>Earthquake</td>
<td>37.7</td>
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<tr>
<td>Bangladesh</td>
<td>1988</td>
<td>Floods</td>
<td>71.9</td>
<td>25</td>
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<tr>
<td>Jamaica</td>
<td>1988</td>
<td>Hurricane</td>
<td>36.4</td>
<td>25</td>
</tr>
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\(^2\) In U.S. dollars for first three cases; in SDRs for rest.