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THE IMF AND THE EFFECTS OF STRUCTURAL CONDITIONALITIES IN BRAZIL: WHAT IS ABOUT TO HAPPEN?

Ednei Roza*

I. INTRODUCTION

While the phrase "great power requires great responsibility" still remains an outstanding statement, it is indeed an important issue regarding governance policy, debt management, and monetary policy. For example, in the aftermath of the Great Depression and World War II, the International Monetary Fund (IMF) became a very important global financial framework. It took on important responsibilities, which sometimes exceeded expectations.

The IMF plays an important role as an international monetary framework, existing primarily to support its member countries with adequate financial arrangements. Hence, given the monetary situation of its members facing financial problems, the structural conditionality that was established to help will be a paramount mechanism in the years to come as the international community faces financial turbulence.

* L.L.M (SMU, U.S.A.), M.B.A (FGV, Brazil), LL.B (UNIGRANRIO, Brazil), Research Fellow of the Law Institute of the Americas (SMU), Lawyer, Bank Compliance Officer, Senior Bank Manager (ABN AMRO BANK, Brazil). The author may be contacted by e-mail at edneiroza@gmail.com.


2. For example, when the IMF's role had come under criticism, such as on the extensive structural reform agenda of recent Fund-support programs in the Asia countries. For a comprehensive overview of the Fund-Support program, see Policy Dep't & Review Dep't, Int'l Monetary Fund, Structural Conditionality in Fund-Supported Programs (2001), available at http://www.imf.org/external/np/pdr/cond/2001/eng/struct/ [hereinafter IMF Fund-Support Program 2001].

3. For the purpose of this paper, it is important to refer to the Introductory Article of the International Monetary Fund Articles of Agreement as to either a better or thorough understanding of the primary purpose with which the IMF was established.

The Governments on whose behalf the present Agreement is signed agree as follows:
This paper focuses on IMF conditionality and its support program in Brazil, as well as its impact, the legal issues involved, and most importantly, the perspectives regarding the Brazilian economy and macroeconomic policies. Moreover, this paper delves into the concept of the IMF and the remaining challenges in the ongoing recovery of the Brazilian economy. As such, Brazil moves into a position it has never been in before. Brazilian officials are considering whether or not to renew the stand-by arrangement that was approved by the IMF in September 2002. Consequently, the international community, the IMF, and investors are all concerned about the changes this decision could bring about—taking into consideration that major changes remain to be made in Brazil—and the future perspectives regarding the relationship between Brazil and the IMF.

II. OVERVIEW OF THE INTERNATIONAL MONETARY FUND

A. The Establishment of the IMF

The IMF was established in the aftermath of World War II in 1945 primarily to help the international community with monetary problems and to prevent the recurrence of such episodes that took place at that

(i) The International Monetary Fund is established and shall operate in accordance with the provisions of this Agreement as originally adopted and subsequently amended.

(ii) To enable the Fund to conduct its operation and transactions, the Fund shall maintain a General Department and a Special Drawing Rights Department. Membership in the Fund shall give the right to participation in the Special Drawing Rights Department.

(iii) Operations and transactions authorized by this Agreement shall be conducted through the General Department, consisting in accordance with the provisions of this Agreement of the General Resources Account, the Special Disbursement Account, and the Investment Account; except that operations and transactions involving special drawing rights shall be conducted through the Special Drawing Rights Department.


4. At that time, Brazilian officials were considering whether or not to renew the stand-by arrangement that was approved by the IMF in September 2002. This was the first time, after eight years, that Brazil has been free from IMF regarding financial support. Although international economy is undergoing significant changes and the crisis affecting developing countries is becoming a dynamic concept. The Minister of Finance of Brazil has defended the fact that IMF should create a prevention instrument to provide emerging markets a quick provision as necessary as possible. For a whole consideration from Minister of Finance of Brazil, see: Mr. Guido Mantega, Minister of Fin., Braz. on behalf of Braz., Colom., Dom. Rep., Ecuador, Guy., Haiti, Pan., Surin., Trin. & Tobago, Statement at the International Monetary and Financial Committee, Seventeenth Meeting, (Apr. 12, 2008), available at http://www.imf.org/External/spring/2008/imfc/statement/eng/br.pdf. See also Press Release, Executive Bd. of Dir., Int’l Monetary Fund, Executive Board Completes Final Review Under Brazil’s Stand-By Arrangement (March 22, 2005), available at http://www.imf.org/external/np/sec/pr/2005/pr0564.htm [hereinafter IMF March 2005 Press Release].
time. But the IMF governors established a basic, but very important concept to help members deal with economic deficit. The IMF, to the extent that it relied on concepts imposed by Bretton Woods' methodology, therefore had to set basic rules to support its members, which are:

(i) To review and monitor national and global economic and financial developments and advise members on their economic policies;
(ii) To lend them hard currencies to support adjustment and reform policies designed to correct balance of payments problems and promote sustainable growth; and
(iii) To offer a wide range of technical assistance, as well as train for government and central bank officials, in its areas of expertise.

Although the IMF was established to support exchange stability and to create an exchange arrangement that provided temporary financial assistance and promoted economic growth, changes remained to be made.

5. See Guitián, supra note 1, at 4. The Bretton Woods Agreement entered into force in 1945 and the IMF came into existence precisely (ready to operation) in October 1946. Besides the establishment of the IMF, the International Bank for Reconstruction and Development (IBRD), which is the World Bank, was also created pro financial support. At that time, twenty nine countries had signed the Article of Agreement. Structurally, the IMF issued the Articles of Agreements which were created to govern the IMF and provide core values and principles as a financial framework for primarily emerging and developing countries. Article I of Articles of Agreements sets forth the purposes of the IMF which are:

1) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
2) 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.
3) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
4) 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.
5) 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.
6) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

IMF Articles of Agreement, supra note 3, art. I. The IMF “shall be guided in all its policies and decisions by the purposes set forth in this Article. Id. Moreover, according to Michel Camdessus, in countries that adhered to these instructions, “[t]rade expanded briskly, national incomes rose, and employment grew, bringing the world a half century of unparalleled prosperity.” See The Role of the IMF, supra note 1; see also IMF Articles of Agreements, available at http://www.imf.org/external/pubs/ft/aa/aa.pdf.


7. Id.

8. See Guitián, supra note 1.
For example, international financial stability was far from reaching a solid and secure position; therefore, the IMF itself had to recognize that it was not sufficient to combat the vulnerability taking place at that time.\(^9\) Later in 1961 under the Bretton Woods Conference, the members created the General Arrangements to Borrow (GAB) and added into the structure of the IMF the ability to assist the financial transactions of countries in need.\(^10\) Furthermore, the Basel Agreement, which came into existence as part of this whole financial mechanism, was created to support the international community by primarily providing mutual credits during the financial crisis.\(^11\) But considering that the world economy has gone up and down due to various reasons, the IMF and the World Bank have continued to be the most important financial frameworks to foster the growth in developing countries.\(^12\)

According to Camdessus, in order to have a more feasible financial architecture able to restore the international financial system, the member countries should not only consider the IMF as "simply a source of financing or mechanism for crisis management", but also as the financial counselor as for "an in-depth analysis of the economy and policy advice."\(^13\) Although the word "discretion"\(^14\) has been the center of discussion regarding the implied conditionality upon emerging markets, the international financial atmosphere has developed internal efforts in an attempt to consolidate and minimize its risk.\(^15\) For example, the 1944 efforts of Brazilian authorities and other countries to make more feasible measures on behalf of the economic development did not echo in the debates at the Bretton Woods Conference.\(^16\) But the agreements of the constitution of the FMI did not make any distinction whatsoever between developed countries and countries in development.\(^17\)

In 2004, a press release by the Development Committee of the IMF and the World Bank asserted that developing countries had successfully

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10. Id.
11. Id.
13. See The Role of the IMF, supra note 1.
14. For the use of the word "discretion" discussing the IMF's existence and applicability of its conditionality, see Guítian, supra note 1, at 8-10.
15. Id.
17. Id.
transitioned into an incredible growth. The Joint Committee also stated that the world economy was growing stronger and was supported by especially healthy growth in developing countries. It also concluded that significant reforms undertaken by many countries in recent years had considerable impact on their satisfactory growth.

Among these results, which have been measured by the success of developing countries' growth, is the enhancement of the private sector. Higher taxes revenues and job offers have contributed to these favorable numbers that can be useful, inclusively, to reduce the amount of global poverty according to the IMF and the World Bank. Despite the fact that there are many criticisms of the policy and conditionalities applied by the IMF and World Bank, mainly based on the argument that developing third world countries had an increased dependency on richer nations, the global market has grown considerably.

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19. IMF and World Bank Development Committee Release, supra note 18


22. Id.

23. In an article titled Structural Adjustment—A Major Cause of Poverty by Anup Shah, the author quoted a statement that captures the essence of the several issues raised by the international community regarding their criticisms, which I point out here:

   Debt is an efficient tool. It ensures access to other peoples’ raw materials and infrastructure on the cheapest possible terms. Dozens of countries must compete for shrinking export markets and can export only a limited range of products because of Northern protectionism and their lack of cash to invest in diversification. Market saturation ensues, reducing exporters’ income to a bare minimum while the North enjoys huge savings. The IMF cannot seem to understand that investing in . . . [a] healthy, well-fed, literate population . . . is the most intelligent economic choice a country can make.

Anup Shah, Structural Adjustment—A Major Cause of Poverty, Global Issues, July 16, 2003, http://www.globalissues.org/TradeRelated/SAP.asp?p=1 (quoting Susan George, A Fate Worse Than Debt 143, 187, 235 (New York: Grove Weidenfeld, 1990)). Nevertheless, considering that this statement under circumstances that some developing and third world countries have faced and perhaps, if the structural policies on those countries have been erroneously caused their increased debt, I leave this discussion on as to whether those countries, which considered themselves unfairly prejudiced by the entity’s imposed conditionalities and their governance policies, have or have not been willing to follow the structure set to help their financial problems. Thus, such a discussion can be taken apart from the purpose of this paper, which is mainly based on the argument that developing countries and the "third" world countries have increasingly depended on the richer nations.
B. THE INTERNATIONAL MONETARY CRISIS: IN BRIEF

Extensive chaos brought about by an international monetary crisis likely would have devastating economic consequences similar to the Great Depression of the 1930s, which left behind financial agony among the international community. But other major monetary crises should also be mentioned.24

In 1974, for example, the Group of Ten industrialized countries (G10) took two important actions to protect the international financial system. The G10 wanted to create a mechanism capable of maintaining controlled economic stability.25 The Development Communiqué, created by the IMF and the World Bank Group, provided member countries with enough information on economic stabilization and a regulatory scheme capable of supervising the development practices of the international community. It intended that distribution of such information would help members avoid similar financial crises, particularly in the banking system.26

Indeed, considering the new era of major crisis, when the Mexican Finance Minister made clear that Mexico could default on its repayment obligation, the international community and the IMF underwent strenuous negotiations to prevent what was considered “smoke;” unfortunately, the “fire” of the crisis lasted more than a decade.27 But the story of debt crisis did not begin with the Mexican crisis of the 1980s.28 For instance, Boughton wisely lists the origins of the crises chronologically as follows:29

1. “the severance of the dollar-gold linkage in 1971”

24. Professor Joseph Norton points out some of the main causes for the international crisis. He states that the crisis happened because it “was generated by fundamental economic, political, and financial market errors and weaknesses, and also by exaggerated and disproportionate market reaction to these vulnerabilities.” For a complete approach by Professor Norton, see Joseph J. Norton, A “NEW INTERNATIONAL FINANCIAL ARCHITECTURE?”—REFLECTIONS ON THE POSSIBLE LAW-BASED DIMENSION, 33 INT’L L. 891 (1999). Furthermore, for an overview of the Brazilian Crisis of 1990s, see Jorge M. Guira, Preventing and Containing International Financial Crisis: The Case of Brazil 7 L. & BUS. REV. AM. 481 (2001).


28. Id.

29. Id. at 269.
2. "the shift to floating exchange rates in 1973"
3. "the first oil-shock" between 1973 and early 1974
4. "the ensuing slowdown in the mid-1970s"
5. "the inflationary binge of the late 1970s that [caused] the second oil shock of 1979-80
6. the "monetary contraction in the US (the 'Volcker Shock')".

In addition, potential external and internal barriers to these developments are seen by developing communities as the most difficult issues to deal with in accomplishing their goals of economic development.30 For example, Cipher and Dietz identified existing distribution of income and wealth, the infrastructure development such as roads, electricity, water, communications, and organized banking and financial institutions as major internal barriers for growth within a developing country.31

Moreover, Cipher and Dietz also point out some external barriers that have made a huge impact on the development of those countries, such as major corporations retaining control over the country's resources, international labor and the method of dealing with international trade and its system, and most importantly, the role of the IMF and the World Bank as functioning structures upon their members.32 Hence, the "say" imposed by the international community and richer countries is to play with interest rates on trade (considered as tariffs or non-tariff barriers).33

The authors of an IMF work paper titled Stabilization and Reform in Latin America: A Macroeconomic Perspective on the Experience Since the Early 1990s (2005) sparked controversy by stating that a "cyclical weakness in the industrial countries" and the consequent improvements of "the external environment in the early 1990s" contributed satisfactorily to the excellent performance of the Latin America countries.34 A good example is the Brazilian Oil Crisis of 1980s. Unlike Mexico, Brazil was already involved in international transactions as an oil importer at the beginning of the 1980s when the oil shock occurred.35 The crisis affected major countries, particularly Mexico, as Mexican authorities undertook large loans with investors to promote oil production in hopes of increasing economic and social developments.36 Controversially, the 1980s oil-shock triggered the economic development in Brazil.37

30. For a thorough comprehensive approach on the economic development in emerging markets, see JAMES M. CYPFER & JAMES L. DIETZ, THE PROCESS OF ECONOMIC DEVELOPMENT (2d ed. 2004).
31. Id. at 20-21.
32. Id.
33. Id.
35. See Boughton, supra note 27.
36. See Cypher & Dietz, supra note 30, at 479.
37. In the 1980s, Brazil was a major producer of oil and derivatives. Brazil had its own rich sources of crude oil, which were favored in the middle of the turbulence that occurred in the international sphere due to the oil shock. But it should be men-
C. The Brazilian Currency Crisis in the 1990s

By 1994, Brazil had suffered one of its major crises. In the wake of the Asian and Russian crises of the 1990s, Brazil had to change its fixed exchange rate regime to a major (flexible) regime, notwithstanding the huge impact it would have on the economy either internally or internationally, and Brazil would have to undertake its commitments with investors as well as with the IMF’s structural conditionality. Under the then President Fernando Henrique Cardoso administration, Brazil successfully stabilized its economy by bringing Brazilian currency to equality with the U.S. dollar for a temporary period. With the stabilization of the economy, as well as the currency deflation, Brazil began attracting foreign investors and its economy started to grow. But by the middle of 2002, Brazil almost fell into another major financial crisis when left wing political forces raised speculation and fears about the economic policies advanced during the previous presidential elections.

Therefore, Brazilian authorities resorted to defensive measures to maintain and stabilize the economy to keep the international flow of financial capital coming in. More interestingly though, the IMF set its arrangements before the 2002 presidential election; and the three major candidates accepted responsibility to maintain the fiscal and monetary framework as already established by the IMF.

Since the currency devaluation occurred in 1999, Brazil, under the Lula administration in 2002, had to make suitable arrangements to stabilize its economy. According to the governor of the Central Bank of Brazil, Henrique Meirelles, the economic policy adopted by the Brazilian government was a result of a process by which the country could steadily reduce the public debt to approximately forty percent compared to sixty

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38. The First Deputy Managing Director of the IMF, Anne Krueger, stated in a speech titled *How Stable is the Global Economy*, that Brazil’s “underlying macroeconomic policies were judged to be sound” and that, although “uncertainty led to concerns about the sustainability of Brazil’s large public debt,” another major concern was “whether [the] new government would maintain sound macro policies.” Anne O. Krueger, Address at the Stanford Institute for Economic Policy Research: How Stable is the Global Economy? (Feb. 11, 2005), available at http://www.imf.org/external/np/speeches/2005/021105.htm [hereinafter Krueger Address 2005].

39. The Real Plan, which was the name given by the government for the new economic policy in 1994, was the main strategy made by the Brazilian authorities in an attempt to cement the economy by stabilizing the new currency with the U.S. dollar. At that time the Brazilian real was tied to the dollar (one to one), and the inflation rate came down from around 600 percent annual rate to less than 29 percent in the last quarter of 2002. See Henrique DeCampos Meirelles, Viewpoint, *Past Lessons Learnt, Hope for the Future*, BANKER, FIN. TIMES BUS. LIMITED, Jan. 1, 2004, 2004 WLNR 4818170; see also WALKER, supra note 25, at 30.

40. See Krueger Address 2005, supra note 38.

41. According to Krueger, Brazil jointly with the IMF’s program made an outstanding transformation in the Brazilian economy. Id.
percent in 2001.42 Brazil was indeed experiencing a solid process of public accounts adjustment.43 But in 2002 an inflationary surge had huge impact on the economy, and the level of inflation rose by a factor of five.44 Nevertheless, the Lula administration undertook a strategy of fiscal responsibility along with macroeconomic stability—which was a requirement of the IMF’s structural conditionality—to overcome the crisis and a new threat that inflation was making a comeback.45

Brazil has paved the way for positive growth.46 According to a new survey made by the OECD, Brazil has done pretty well recovering from its financial instability of 2002.47 The GDP is expected to rise by 5 percent in 2004, which according to economists is the fastest expansion in ten years.48 Furthermore, strengthening of institutions and the fiscal responsibility legislation promoted by the Lula administration led Brazil’s economy toward constructive and solid growth.49 Yet, Brazil must maintain the consolidation of macroeconomic stabilization as an essential element for moving forward with improved confidence and equitable growth.50

Finally, as to a successful recovery from its crises, Brazil responded by applying a tighter fiscal policy, a tighter monetary policy, as well as external financial support.51 According to Arminio Fraga, who is a former Governor of Central Bank of Brazil, the “implementation of inflation targeting in Brazil is off to a promising start.”52 Furthermore, the adoption by the IMF of a consultation mechanism on inflation targets—which occurred in the last revision of the program—stresses the soundness of our current monetary policy.53

III. IMF CONDITIONALITY AND SOME LEGAL ISSUES

A. Scope of Conditionality

As Manuel Guitián said in 1995, “of particular importance within this evolution has been the existence of a general consensus that the IMF’s financial assistance should be conditional on the adoption and implement-
tion of adjustment policies."\(^5\)\(^4\)

Conditionality involves the exercise of financial support to help member countries to overcome their balance of payments during the process of reform.\(^5\)\(^5\) Structural conditionality defines whether the recipient country has used the IMF's resources in accordance with the arrangements previously set by the agreement, along with the purposes and provisions of the Article of Agreement.\(^5\)\(^6\) Furthermore, extensive efforts have been made to achieve a more stable international financial system. The IMF imposed different conditionalities based primarily on the types of balance of payments problems.\(^5\)\(^7\)

Manuel Guitián explains that "[t]he concept of conditionality" of the IMF "is defined as one of the important dimensions of the cooperative nature of the [IMF] as an institution."\(^5\)\(^8\) The IMF's main responsibility, therefore, is to assist its members in overcoming their debt management by providing them with some sort of financial assistance.\(^5\)\(^9\) Nevertheless, the conditionality is so much more important than the meaning itself. For example, legal reforms involving the IMF support program, such as a stand-by facility, imposes a large burden on the recipient country, which is required to implement reforms.\(^6\)\(^0\)

The important concern of the IMF is to certify that member countries have developed the IMF's contribution, such as technical assistance on monetary exchange, as well as fiscal and legal issues.\(^6\)\(^1\) For instance, Brazil's constitution has undergone several constitutional changes since it


\(^{55}\) See id. at 813.

\(^{56}\) See IMF Fund-Support-Program 2001, supra note 2, at 5. By simply saying that developing countries have become more competitive as far as their ability to restore the monetary policy and for doing business abroad, for instance, international assistance offered by the IMF and World Bank has undoubtedly become a paramount source to provide its members accessibility in order to help the development and have solid growth. The IMF has been criticized for the conditionality applied to its members. Brazil, for example, has undergone a favorable situation by which its authorities are considering whether or not to use the draft set by the IMF to continue the ongoing recovery process. According to Guitián, in order to fulfill its responsibilities, the IMF should temporally "develop procedures and reach understandings with its members to use the resource of the institution." See Manuel Guitián, Fiscal Adjustment, Debt Management, and Conditionality, in Fiscal Policy, Economic Adjustment, and Financial Markets 112, 126 (Mario Montí ed., 1989) [hereinafter Guitián, Fiscal Adjustment]. For example, Brazil since its plea for financial support, has undergone—and this has changed slightly for a few years—important, however, difficult changes. For a deeper approach on the conditionality of the IMF, see Guitián, Conditionality, supra note 54.

\(^{57}\) See François Gianviti, Evolving Role and Challenges for the International Monetary Fund, 35 Int'l L. 1371, 1395 (2001).

\(^{58}\) See Guitián, Fiscal Adjustment, supra note 56. Mr. Guitián is Associate Director of the Monetary and Exchange Affairs Department of the IMF. For an extensive discussion of the perspectives, the rationale for conditionality and its analytical framework, see Guitián, Conditionality, supra note 54.

\(^{59}\) See Guitián, Fiscal Adjustment, supra note 56, at 126.

\(^{60}\) See Norton, International Financial Institutions, supra note 26, at 1458.

\(^{61}\) See Guitián, Conditionality, supra note 54, at 813.
was enacted in 1988 in order to fulfill IMF requirements for economic and political policies.\(^{62}\)

Additionally, under the IMF programs, conditionality is per se related to "the achievement of a set of policy objectives and the continuous access to IMF resources."\(^{63}\) The policy objectives, however, vary from country to country.\(^{64}\) Thus, the conditionality at its core helps countries to develop financial discipline and provides the IMF with a safeguard to verify a country's performance with the money invested.\(^{65}\)

The principal conflict, however, between members and the IMF is the autonomy desired by the nations and the limits imposed by the IMF as to the extent of interdependence caused primarily by the membership policy of the IMF, which goes far beyond into the international sphere.\(^{66}\) For example, in an attempt to control its financial instability, Brazil, under the IMF-support program set in 2000, had to undertake commitments with international investors' interest necessitating political changes in the country in order to fulfill these requirements that were against the country's interest.

Accordingly, IMF conditionality provides an efficient way to improve monetary policies toward the country's desire to achieve a robust growth.\(^{67}\) According to Manuel Guitián, "conditionality practices help[ ] make operational the link between macroeconomic and microeconomic management by stressing its importance for balance of payments adjustment."\(^{68}\) But Guitián also states that the effectiveness of IMF conditionality will depend "on the member country's ability to underpin market forces when it points to needed adjustments."\(^{69}\)

IV. EFFECTS OF IMF STRUCTURAL CONDITIONALITY ON THE BRAZILIAN FINANCIAL SYSTEM

Brazil joined the IMF on January 14, 1946 and since then has been supported by its financial arrangement.\(^{70}\) Interestingly, Brazil is recover-

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62. The level of those changes made in the constitution is not considered as exclusively requested by the IMF. But the "insights" given by the IMF to the Government regarding economic policy decision-making has made Brazil adjust its financial policies to fulfill the conditionality requirements. Thus, Brazil made significant changes to its monetary system, banking regulations, and the role of the Central Bank to qualify for assistance, as required by the Articles of Agreement.


64. Id.

65. Id. at 315.

66. See Manuel Guitián, *Fiscal Adjustment*, supra note 56, at 112, 127 (stating that the understandings between the member and the IMF are the line of demarcation caused when the member is "in use" of the resource provided by the IMF).


68. See Guitián, *Conditionality*, supra note 54, at 821.

69. Id. at 822.

ing from financial problems with regards to its monetary stabilization and its social credibility, which has been affected by the Brazilians since the new president (Lula) and his staff took the office in 2003. Henceforth, Brazilian authorities are considering whether or not to draw under the stand-by arrangement as previously addressed.71 The Lula administration has been responsible for important changes. For instance, financial and political changes have made Brazil a more competitive developing country in dealing with the world globalization.

Professor Siglitz once stated that "this capital market liberalization raged as the prime battleground between those who were pushing for and against globalization."72 Taking this statement into account, Brazil was therefore under this ongoing performance to reduce its obligations before the IMF by SDR 2.9 billion (which represents about US$4.44 billion in 2004).73 Nevertheless, a final review was conducted by March 31, 2005, in which Brazilian officials stated that it would not renew.74

Under the IMF's Articles of Agreement, the drafters were concerned about two important issues that (1) the IMF could provide assurance to its members that the committed resources would be available to them upon compliance with agreed policies,75 and (2) the IMF should have confidence that the member country will be able to repay the money invested.76 Therefore, though conditionality is not expressly stated in the Articles of Agreement, its structural framework is, however, expressed by a strong role in monitoring and enforcing compliance upon its members.

December 2004 Press Release). During the seven years Brazil has been under the Stand-By Agreement, it has drawn a total of SDR 17.2 billion, about U.S. $26.36 billion. Id. But Brazil has not used the source since September 2003, and “[t]he authorities are treating the arrangement as precautionary as part of a strategy to exit from IMF financial support.” Id.

71. See id.; see also IMF March 2005 Press Release, supra note 4; Ana Paula Ribeiro, Palocci sinaliza que país não deve renovar acordo com FMI [Palocci Signals that Country Should Not Renew Agreement with the IMF], FOLHA ONLINE, Oct. 2, 2005, http://www.folha.uo.com.br/folha/dinheiro/ult91u93309.shtml. Antonio Palocci, Finance Minister of Brazil, stating at a Feb. 10, 2005 interview that he does not see any necessity whatsoever for Brazil to renew the agreement with the IMF (Stand-By Agreement), but also stating this is not a complete certainty. Id.


76. Id.
A. Banking Regulation Framework

The effects of this relationship between Brazil and the IMF in underlying obligations have lightly changed the banking regulation in Brazil. The framework of financial institutions such as banks are established in Brazil exclusively as public or private legal entities (e.g., corporations) and can operate their businesses solely with specific authorization (e.g., charters) issued by regulatory entities. Nevertheless, there are two different formalities. For instance, if the financial institution is a national legal entity, the charter is issued by the Central Bank. Conversely, if it is a foreign legal entity, the executive branch, pursuant to Law No. 4595, must decree the charter as such. The National Monetary Council, along with the Central Bank of Brazil and the Brazilian Security Commission (known in Portuguese as CVM) are fundamental parts comprising the National Monetary System.

The Brazilian National Financial System was established in 1964 by enactment of Law No. 4595. Although under the military regime, which prevailed on from 1964 to 1985, Law No. 4595 set forth a new beginning of a better financial system framework. Many changes were yet to come, but the Republic Federative of Brazil established new policies to stabilize the Banking System and other Financial Entities. Thus, the National Monetary Council has inter alia duties to formulate policy arrangements in order to fulfill the purposes regarding the social and economic development of Brazil.

B. Current Legal Issues

1. Constitutional Grounds

Although there is a discussion about the principles and rules of the international law in the sense of constitution grounds, for example, the 1988's Constitution of Brazil treats external operation in the nature of finance for the best interest of the Nation. Consequently, the IMF and the established stand-by arrangements are intrinsically affected by some constitutional legal issues.

78. See id. at 20.
79. Id.
80. Lei No. 4595, de 31 de dezembro de 1964, D.O. de 31.1.1995 art 18 [hereinafter Law No. 4595].
81. For an extensive work related to the development of banking system in Brazil and other issues, see Geraldo José Guimarães da Silva & Antônio Márcio da Cunha Guimarães, Direito Bancário e Temas Afins (2003).
82. See Law No. 4595, art. 18.
83. Id. art. 2. Social and economic development are the main and sine qua non function of a nation, and have been heavily discussed under debates involving the IMF's exigencies upon major reforms needed in order to fulfill the conditionalities imposed. See also IMF Fund-Support Program 2001, supra note 2.
84. See Constituição Federal do Brasil [C.F.] (5 de outubro de 1988) (Braz.).
85. It is pertinent to mention that the stand-by arrangements established by the IMF are conceded to support short-term funds (up to twelve or eighteen months) for members facing financial problems, as the most common way provided by the
The first operation taken by the Brazilian authorities under the arrangements provided by Bretton Woods was for a loan to finance an electrical project. In 1949, such an operation was financed in the amount of U.S. $75 million and was also undertaken jointly by the World Bank. In short, although Brazil and the IMF had already begun their relationship, only in 1954 did Brazil have free access to draw under the IMF through the Eximbank, which was a guarantor of financial export of the United States.

Additionally, the IMF recommended that Brazil, besides controlling and changing its exchange ratio, had to also unify the regime of dealing with it. But due to some continuing fiscal problems and tax issues, such recommendations were not easy to implement. Even though there were some irregular transactions with regards to the operational system, in 1957 Brazil became one of the important customers of both the IMF and World Bank.

Interestingly, article 192 of the Brazilian Constitution sets forth the national financial system framework. It provides an important regulatory framework to promote the balanced development of the country and to serve the collective interests. But although article 192 plays an important role in the structured Brazilian financial system, it was amended by constitutional amendment no. 40 in 2003. The new caput of article 192 now states that in order to give effect to its provision, it depends on a supplementary law to support its effectiveness. Therefore, Law 4595 was enacted in 1994 to embrace such a constitutional condition. This new provision became the new and most current financial regulatory provision.

IMF. Unfortunately, since 1982, Latin America has been under the “sphere” of crisis for external debt, being that it has been forced to adopt political arrangements that have a huge decrease regarding the economic and social growth. See IMF Factsheet – April 2008, IMF Lending, http://www.imf.org/external/np/exr/facts/howlend.htm.

86. See e.g., ALMEIDA, supra note 16.  
87. Id., Chapter IV.  
88. Id. Furthermore, Brazil, under conditionality imposed by the IMF, had to control the interest rate and floating capital in order to access the source.  
89. Id.  
90. See ALMEIDA, supra note 16 (providing the full story about the first entry of Brazil before the Bretton Woods Institute).  
92. Id.  
93. C.F. amend. 40. Amendment 40 also changed section V of article 163 and the thrust of article 52 from the 1988 Constitution.  
94. C.F. art. 192.  
95. Law 4595; C.F. amend. 43.  
96. C.F. amend. 43. The Brazilian Constitution is set forth by 250 articles and to date has 45 amendments. From article 170 to 192, the Constitution addresses the economic and financial order. In order to come up with legal reforms capable to sustain the nation’s development, the Congress—jointly with few political arrangements—observed the needs of a more reliable financial scheme that would lend Brazil sound financial growth and, thus, pave the way to fulfill conditionality imposed for international financial support.
2. Bankruptcy Legislation

In an attempt to create a more stable market, one of the major legal reforms in Brazil was the reform of bankruptcy legislation in 2004. The Brazilian authorities recognized that in order to prevail in a stable market and keep on going into a solid growth—as a way to attract new investors and undertake IMF conditionalities—Brazil should change its bankruptcy legislation. The bankruptcy legislation involves—in a sense of organization—sharing of losses among different stakeholders. Indeed, the new bankruptcy legislation gives a more feasible method to the settlement of guaranteed loans and makes the restructuring of firms in financial distress more cooperative and conducive to recovery.

Moreover, the Executive Board of the IMF requested that the Brazilian Government take advantage of its favorable economic context to fix structural weaknesses while the IMF does its periodic performance-checking on its member countries’ balances. In fact, the IMF is referring to the actual economic context of Brazil as a great opportunity to reduce its high level of poverty as well as social inequality.

Such “adequate recommendations” affected indirectly the decision-making power by which the nation has undertaken with the IMF under the commitment. For example, there are two-part processes that a nation must undertake in order to draw from a “stand-by arrangement.” The first part is called the letter of intent. The borrowing nation must first accept the visit of an IMF delegation that works jointly reviewing its own assessment of the conditions for such monetary assistance.

C. The Central Bank of Brazil

1. Macroeconomic Policy

Unlike the United States, the Central Bank of Brazil is not an independent institution. The Central Bank of Brazil is, however, structured as

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97. See generally OECD Survey of Brazil 2005, supra note 46, at 62 (delving into the bankruptcy regulation that was heavily discussed for many years, not only by the IMF's executives, but also by the international community regarding the liability and accountability for international investors urging such a legal reform.)

98. See e.g., Charles J. Tabb and Ralph Brubaker, Bankruptcy Law: Principles, Policies, and Practice (2003); also, for a complete review about the changes on the Bankruptcy Legislation of Brazil, see OECD Survey of Brazil 2005, supra note 46, ch. 2.


101. Id.

102. Id.

103. See Cypher & Dietz, supra note 30, at 499.

104. Id.

a federal entity, which is a body of the National Financial System. The Central Bank of Brazil is chaired by one Governor, appointed by the National Monetary Council, and four Directors. Notwithstanding its regulatory duties and regardless of clear differences between functional and administrative organization, the Central Bank of Brazil carries on the business and the scale of its operations sharing a common characteristic of financial services. Although Brazil has considerably improved its economy—based primarily on a macroeconomic policy where the Central Bank plays an important role—and strengthened structural reforms; some changes still remain as major challenges.

Structurally, the Central Bank of Brazil, under National Monetary Council supervision, has strict powers to regulate the banking and financial system. Such responsibility allows it to make necessary changes regarding economic arrangements that perhaps the government may see as crucial for development of the nation. The Central Bank of Brazil, however, as a result of enormous efforts made by the Brazilian authorities in the light of the sound macroeconomic and the inflation-targeting framework adopted, plays inter alia an important role as the counterpart accountable for attaining decision set forth with the IMF.

The sound macroeconomic reforms taking place in Brazil have moved its economy towards a steady state. According to the IMF executive board, Brazil has adopted "strong macroeconomic policies and the pursuit of ambitious structural reforms have restored macroeconomic stabil-
ity and fostered favorable conditions for growth.” In the light of this stability, the Central Bank, however, with stronger capital flows, has been allowed to rebuild international reserves, which also are deemed a consequence of a monetary policy by keeping inflation low and controlled within the target previously set forth.

2. Inflation Targeting

Brazil was the first inflation-targeting country with an IMF program. By adopting inflation targeting, Brazil had to rely on the IMF’s traditional monetary conditionality as regards the applicability of the Net Domestic Asset (NDA) versus the Net International Reserves (NIR), which was the progressive way for the adoption under the inflation targeting framework. Inflation-targeting programs work intrinsically with the macroeconomic policy adopted by a country. Therefore, Brazilian authorities had a wide range of economic reforms to deal with to foster its economy as well as to adjust the requirements made by the IMF. The basic meaning of adopting an inflation-targeting strategy is “for conducting monetary policy with the overriding and explicit objective of achieving and maintaining price stability, represented by an easily understandable, numerical target value for inflation.” Thus, as previously noted, the Central Bank of Brazil became an important piece of the puzzle to choose the combination of monetary policy instrument to achieve the objectives and requirement of the IMF.

In sum, Brazil fulfilled all the preconditions set forth by the Fund-support program for adopting an inflation-targeting regime. Consequently, it has been experiencing a solid growth since then. Preconditions are seen as the way the government, followed by the IMF’s financial and technical support, has forecasted the objectives regarded as targeted primary surplus. But remaining work needs to be done to avoid big swings in stability, which can impede Brazil’s progress towards a steady economic state.

112. See IMF Executive Board, supra note 100. This Public Information Notice reporting the results of a review, states that “[u]nder Article IV of the IMF’s Articles of Agreement, the IMF holds bilateral discussions with members, usually every year. A staff team visits the country, collects economic and financial information, and discusses with officials the country’s economic developments and policies.” Id.
113. Id.
114. See Blejer, supra note 63, at 87.
115. Id.
116. Id.
117. Id. at 90.
118. For example, Brazil has undertaken, following the technical forecast of the IMF primary surplus as 3.1 percent of GDP in 1999, 3.2 percent of GPD in 2000, and 3.3 percent of GPD and has fought greatly to accomplish those numbers in order to fulfill the requirements set forth by the IMF’s financial mechanism support. Id. at 92.
119. Id.
120. Id.
D. POSITIVE AND NEGATIVE PERSPECTIVES

In analyzing positive and negative perspectives regarding the current Brazilian economy before the IMF's interest, some important considerations must be met.\(^{121}\) The level of investment, the development of the private sector, and the increased social confidence that generated more interest with foreign investors and the international community are the foremost, but not all of the essential reasons that have sustained the robust growth of the Brazilian economy.\(^{122}\)

On the other hand, in the global context, as U.S. deficits and other major international turbulences may continue to interrupt such a growth, Brazil, along with other developing countries should not “relax their guard”.\(^{123}\) As Krueger explains, they should”\(^{124}\)[s]trengthen their economic performance over the longer term. Further, Andrew Dean, Deputy Director of the OECD Economics Department, at a Getulio Vargas Foundation seminar in Rio de Janeiro points out three main challenges that Brazilian authorities should address in order to pave the way for positive growth in the year to come.\(^{125}\) First, Brazil should improve the quality of on-going fiscal consolidation.\(^{126}\) Second, Brazil should improve the investment climate.\(^{127}\) Lastly, Brazil should strengthen its social policies.\(^{128}\)

In addition, Brazil must work on important issues to prevent the occurrence of another crisis. In the middle of several negotiations, for example, an issue arose whether the conditionality should or should not change as regulatory performance for the use of the source provided by the IMF. Fiscal policy and ratio targeting still remain, inter alia, the most critical changes that a member country should deal with to fulfill conditionalities imposed by the IMF.

V. WHAT IS ABOUT TO HAPPEN?

Taking into account strong and sound performance gained in these years under the new presidential administration (Lula) as well as important reforms in compliance with the IMF supervision throughout the de-
cades, Brazil is going to say a political good bye\textsuperscript{129} to the IMF’s support program. And consequently, although major changes remain, the main argument for such an announcement from the Brazilian government is the under-concentration of its trade surplus—approximately U.S. $35 billion, recovered over the past twelve years.\textsuperscript{130} Furthermore, the increasing international cash reserve of U.S. $61.9 billion, the stabilized inflation rate, as well as the primary surplus that totals 4.25 percent of the GPD, are also strong arguments for such a decision.\textsuperscript{131}

The announcement of renouncing the IMF’s support, however, does not represent the end of the strictness of the fiscal policy adopted by the government. The finance minister Antonio Palocci states that “in the political world we never say good-bye for the other parties; what we can say however is that Brazil has reached a solid economic position as never before and therefore can stand on its own feet”.\textsuperscript{132}

VI. CONCLUSION

Although major changes still remain to pave Brazil’s economy and legal frameworks for solid growth in the years to come, “great powers” with or without the IMF’s support-program are aimed at supervising and regulating either the financial system or international globalization. To the extent that all these goals have yet to be achieved by the Brazilian government, great responsibilities, therefore, undertaken by the Brazilian authorities have found great domestic and international support and can never be separated from the important role of the International Monetary Fund conditionality as a paramount financial framework. Furthermore, as the new horizons glimmer, governance policy, debt managing, and monetary policy continue to be crucial for sound performance and a steady economic state.

\begin{itemize}
\item \textsuperscript{129} Luciana Otoni & Karla Correia, Brasil Da Adeus Ao FMI Depois De Sete Anos [Brazil says goodbye to the IMF after Seven years], JB ONLINE, Mar. 29, 2005, http:/ /jbonline.terra.com.br/jb/papel/economia/2005/03/28/joreco20050328001.html.
\item \textsuperscript{130} \textit{Id.}
\item \textsuperscript{131} \textit{Id.}
\item \textsuperscript{132} \textit{Id.} The Brazilian government paid off U.S. $7.75 billion to the IMF in 2005, U.S. $9.20 billion in 2006, and U.S. $9.09 billion in 2007, when it finally settled the whole amount. \textit{See IMF Credit Outstanding, supra} note 73.
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