



# International Economic Governance and Human Rights Accountability

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exercise pervasive policy influence in recipient countries,<sup>3</sup> particularly the poorest.<sup>4</sup> Moreover, the World Bank and IMF indicate to bilateral and other multilateral donors, as well as to private investors, the existence of a suitable investment climate, thereby influencing greatly the availability of other external resource flows. As such, not only do these international financial institutions hold pivotal positions when it comes to developing countries securing sources of finance, through their use of policy-based lending they enforce fiscal and monetary discipline in recipient member states.<sup>5</sup>

Over time the functions of both institutions have undergone significant change, and while formally they may maintain discrete mandates and distinct areas of expertise and focus, today the division of labour between them is blurred, with their work having become 'inherently linked'.<sup>6</sup> While the World Bank is a development institution it is primarily a financial institution, for example, also making decisions about the investment of the limited (domestic) public resources available.<sup>7</sup> The IMF, for its part, has changed from a global monetary organisation and sovereign lender of last resort, preoccupied with maintaining macroeconomic stability, into a development-oriented financial institution.<sup>8</sup> Both institutions exercise financial and political influence and leverage via loan conditions, which are directed at economic liberalisation. A government's policy space in a poor country that relies on their financial assistance is – as a result of this influence – dramatically restricted, with IFI policy decisions having implications for the exercise of basic socio-economic rights by the people in the given country.

Although the policy-making functions of the IFIs occur in areas as varied as monetary supply, removal of trade restrictions, privatisation of state enterprises, safety nets, health, education, agriculture, water, extractive industries,

decisions (i.e. people in the recipient states), or to the people of the industrialised countries for the policies enforced – via the expenditure of their tax money – through the positions advanced by their representatives within the IFIs. Second, any failures in achieving the overarching objective of poverty reduction, including for the poorest in developing countries, incur no IFI accountability. This is despite the fact that the IFIs are being criticised for enthusiastically pursuing neo-liberal economic reforms that can have grave repercussions on, for example, rights to an adequate standard of living, to food, water, health, education and social security – reforms often condemned for serving, in particular, the interests of the dominant industrialised member states of the institutions.<sup>10</sup> While the Boards of Directors of the IFIs may serve as fora for venting grievances by the borrowing countries, they do not function as effective accountability mechanisms, beginning with the fact that the ‘concentration of structural power [lies] in the hands of the developed creditor countries’,<sup>11</sup> which is manifest in the system of weighted voting rights.<sup>12</sup>

This chapter addresses the issue of international economic governance and the lack of human rights accountability, approaching the subject in three parts. The first outlines the reasons, and the extent to which, human rights have been given attention by the Bank and Fund respectively, and why human rights are relevant to their policy-based operations. The second sets out to underscore the influence that the IFIs have over developing countries through their adherence to a fixed inter-institutional policy – generally referred to as the Washington Consensus – and the human rights implications of this dominance by external actors. The section highlights the convergence of international economic governance around this particular market-oriented economic model that while often shown to be detrimental to poor countries (and to the exercise of certain human rights within those countries), has given rise to no system of holding to account those international actors responsible for the imposition of policies that often have damaging effects, including the exacerbation of poverty. The third presents legal bases and possible avenues for advancing the human rights accountability of the World Bank and IMF for the negative repercussions of their policy advice on the exercise of socio-economic rights and on poverty reduction, in developing countries. While mechanisms for advancing human rights accountability in this area may take various forms, they are all underpinned by the

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Rights and the International Monetary Fund’, in P. Alston (ed), *Non-State Actors and Human Rights* (Oxford: Oxford University Press, 2005) 135.

<sup>10</sup> See, for example, n 8 above: ‘Without structural change, the IMF will always adopt policies that are heavily biased towards the interests of its key supplier member states’, and n 4 above, 211: ‘It is simply not realistic to expect the dominant industrialised members – whose interests have been so well served by the IFIs’ energetic promotion of the neo-liberal paradigm – to abandon conditionality in the wider sense’.

<sup>11</sup> R.H. Wade, ‘Tighter IMF Accountability? Some Dangers’, in B. Carin and A. Woods (eds), *Accountability of the International Monetary Fund* (Burlington–Hampshire: Ashgate, 2005) 108.

<sup>12</sup> Wealthy countries are also criticised for the control they exercise over the World Bank and IMF by maintaining ‘a tight grip on the management, mindset, and mandate of each organization’. N. Woods, ‘The Globalizers in Search of a Future: Four Reasons why the IMF and World Bank Must Change, and Four Ways they Can’, *Centre for Global Development Brief* (April 2006) 1.





that it allows open investigation of, and debate about, the strength of various alternative solutions.

Yet the IMF, for example, has taken the public position that trade-offs derived from the allocation of resources require only that the concerns of the 'losers' are addressed as best as can be,<sup>26</sup> while it has been criticised by its own Independent Evaluation Office for having done 'little to address poverty reduction and income distributional issues despite institutional rhetoric to the contrary', and for blocking the use of available aid through 'overly conservative macroeconomic programmes'.<sup>27</sup> The discredited 'structural adjustment' was formally replaced by the end of the 1990s with 'poverty reduction strategies', which were to set out a new way of working grounded in the poverty reduction strategy process, with programmes based on country-owned measures geared to poverty reduction and growth. However, factors including weakening consensus in the Board and a staff professional culture strongly focused on macroeconomic stability meant 'the Fund gravitated back to business as usual'.<sup>28</sup> The World Bank's auditing arm, the Independent Evaluation Group, reported in 2006 that the Bank has focused too narrowly on economic growth, leaving unemployment and poverty rates to stagnate or worsen.<sup>29</sup> Today, controversial IFI-imposed ceilings on government expenditure that are inconsistent with fundamental human rights continue,<sup>30</sup> as do cost recovery mechanisms, such as user fees for access to education and for medicines and medical services. The former UN Special Rapporteur on the Right to Education highlighted in a 2006 global report that for 'development banks education figures as an expenditure item to be decreased to diminish fiscal deficit. This conflicts with the requirement in international human rights law to prioritize the right to education in budgetary allocations so as to ensure (at least) free and compulsory education for all children.'<sup>31</sup> A 2002 World Bank survey showed that there were school fees in 97 percent of the 79 countries surveyed. These were

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<sup>26</sup> *High-Level Task Force on the Implemen*

imposed even where the borrower's laws mandated primary education to be free.<sup>32</sup> The incomplete data were attributed to the fact that the fees may be formally unconstitutional.<sup>33</sup> The UN Special Rapporteur on the Right to Health has voiced his concern that, in many countries, user fees tend to exclude the poor and other marginalised groups from essential services and that this may be inconsistent with the right to health,<sup>34</sup> while further highlighting the fact that 'nationally'-owned poverty reduction documents must be endorsed by the IMF and the World Bank if they are to attract international programme support from donors and the United Nations. The Special Rapporteur recommended that when the IFIs assess and make recommendations on country-owned strategies, including Joint Staff Advisory Notes, they take into consideration the developing states' national and international human rights obligations.<sup>35</sup>

The responsibility incumbent upon the IFIs is not solely to ensure that the policies they advance do not compel a developing state to breach its human rights obligations but is due to the fact that international actors may possess their own (external) human rights duties. Any measures impacting negatively on, for example, the right to education or the right to health may not only be incompatible with the achievement of the MDGs related to education and health to which the IFIs subscribe, but are also reflective of non-compliance by states parties to the UN International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>36</sup> and to the UN Convention on the Rights of the Child (CRC).<sup>37</sup> Breaches could include, for example, failure to have adjusted spending caps and to have supported financially the removal of user fees through the mobilisation of resources to ensure access to basic rights and the accompanying administrative infrastructure to deliver those rights. This would constitute *prima facie* a violation of states parties' obligations of international cooperation (whether acting as members of the IFIs or bilaterally) under those human rights treaties.<sup>38</sup> Additionally, those states engaging

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World Bank and its sister institution, the International Finance Corporation (IFC), which is expanding private education.' (xxiv).

<sup>32</sup> R. Kattan and N. Burnett, *User Fees in Primary Education* (World Bank, 2004) 9-10. Available at [www.worldbank.org/education/pdf/EFAcase\\_userfees](http://www.worldbank.org/education/pdf/EFAcase_userfees). Subsequently, a number of developing countries have introduced free primary education with World Bank funding.

<sup>33</sup> *ibid.*, 9. This report remarks that the World Bank is abolishing user fees, while Tomasevski emphasises that the World Bank's endorsement of free primary education had been included in its education sector policy paper in 1980 but not in its 1999 education strategy, highlighting in 2006 the fact that there 'has been no in-house review of the impact of the World Bank's support for illegal charging of school fees as yet'. n 31 above, 2.

<sup>34</sup> P. Hunt, *Report of the Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental*



internationally that have promoted the cost recovery mechanisms leading to basic human rights being compromised, do so in violation of their negative external state obligation to 'respect' the right to education or the right to health in developing countries.<sup>39</sup> We return in the third section below to look more carefully at the issue of the accountability of the IFIs and of their powerful member states.

The international policy framework that informs economic management may be growing increasingly sensitive to the social consequences of liberalisation, privatisation and deregulation – perhaps representing a shift from a 'Washington Consensus' to a 'post-Washington Consensus'<sup>40</sup> (or perhaps a return to a pre-Washington consensus).<sup>41</sup> Yet it remains an economically driven process that

and vastly unequal power. In the World Bank's own words: 'Developing countries face massive challenges in influencing the global rules and processes that determine outcomes, which matter greatly to the well-being of their citizens'.<sup>45</sup> While the goal of bilateral and multilateral development agencies is now being expressed in terms of poverty reduction<sup>46</sup> and 'pro-poor' growth,<sup>47</sup> serious concerns that economic efficiency is prioritised over social equity remain.<sup>48</sup> The World Bank's own auditing arm, the Independent Evaluation Group, recently confirmed that the Bank's projects had not adequately reduce poverty levels in borrowing nations over the past five years,<sup>49</sup> with the Fund's Independent Evaluation Office similarly concluding that 1999-2005 'was a time of improving macroeconomic performance in a number of Sub-Saharan African countries, with



growth and poverty reduction.<sup>58</sup> There is work being done within the Bank on empirically verifying the causal link between civil and political rights ('improved governance') and higher incomes ('socio-economic and developmental rights').<sup>59</sup> In 2006 the Bank established a Justice and Human Rights Trust Fund to further the mainstreaming of human rights through a variety of projects and via research and training.<sup>60</sup> By relying on a narrow and somewhat anachronistic description of itself as exclusively a financing institution, the IMF, for its part, assumes it is shielded from having to confront these constructive (instrumental) links between human rights and development, thereby justifying far less engagement with human rights generally.<sup>61</sup>

This focus on human rights is deemed important to the Bank – and is justified by the Bank – in that it recognises that social and political as well as environmental factors may *affect economic growth*.<sup>62</sup> These factors that may impact on the Bank's 'investments and other activities' have thus moved from constituting 'political considerations', whereby they would fall foul of the prohibition on political activities under the Bank's Articles of Agreement, to being recognised as constituting 'economic considerations', thereby being deemed of legitimate concern to the Bank.<sup>63</sup> Interestingly, while the formal legal constraints are more restrictive in the case of the Bank's Articles of Agreement than those of the IMF, the Bank has been far more willing to interpret the prohibition in a manner that recognises the interdependence between the protection of human rights and sustainable economic and human development.

While the Bank and its officers are precluded (in theory) from intervening in the 'political affairs' of its member countries or from being influenced by their 'political character', and are required to take only 'economic considerations' into account,<sup>64</sup> the IMF's Articles of Agreement require it to 'respect the domestic

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<sup>58</sup> n 41 above, 28.

<sup>59</sup> D. Kauffman, 'Human Rights, Governance and Development,' *Special Report, Human Rights and Development*, D. Freestone and J. K. Ingram (guest eds), 8 *Development Outreach* (Washington: The World Bank Institute, October 2006) 15.

<sup>60</sup> But note that over the years the Bank has established multiple trust funds financed by member states such as the like-minded donors (Nordics, Netherlands, Canada). These funds are financed over and above the regular subscriptions by the member states

social and political policies of members, and in applying these principles [general obligations of members pursuant to Article IV(1)] the Fund shall pay due regard to the circumstances of members'.<sup>65</sup> While this Article has been interpreted as requiring the IMF to refrain from interfering in domestic political affairs for the purposes of rejecting the human rights implications of its work,<sup>66</sup> an alternative reading is that 'any IMF member has the right to choose policies that differ from the fairly uniform IMF prescription usually summed up as the Washington Consensus'.<sup>67</sup> Moreover, on a strict reading of the terms of the IMF's Articles, it could be argued that a greater onus is placed on the IMF than the Bank to ensure that none of the policies it imposes on borrowing countries impact negatively on those policies geared towards improving social well-being (i.e. human rights), nor serve to undermine the ability of borrowing states to fulfil their domestic and international human rights obligations.

Findings indicate, however, that politics in fact play a far more considerable role than the mandates of the IFIs would suggest. The approved approach of late favouring 'national ownership' of the Bank and Fund poverty reduction programmes is undermined by weaknesses in participatory processes; extensive dependence on IFIs in the elaboration of policies; lack of 'policy space' and analysis of policy alternatives; and the IFI's seeking to promote their 'own cause'.<sup>68</sup> Significantly, IFI policy choices are not *de jure* inconsistent with human rights standards, since compliance with obligations undertaken in the realm of socio-economic rights does not require adherence to any particular economic system. International human rights law is neutral in that it is not predicated exclusively on the desirability of one economic (or political) model or another. However, it does contain both principles and standards that seek to ensure that the methods for achieving economic growth are just and that its benefits are fairly distributed.<sup>69</sup> This implies, as a start, the construction of basic services and other minimum entitlements for universal access and gain, and imposes constraints on the endorsement of extreme economic and social models. It also requires that any person or group who is the victim of a violation of a right 'have access to effective judicial or other appropriate remedies at both national and international levels'. As the UN Committee on Economic, Social and Cultural Rights (CESCR) has made clear, victims are 'entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition ...'.<sup>70</sup>

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TIAS No. 4607, 439 UNTS 249, Art.V, Section 6; Articles of Agreement of the International Finance

While the political prohibitions in the mandates of the IFIs, importantly, are meant to limit undue influence being exercised by these external actors and to ensure impartiality from ideology, as Clapham has pointedly remarked: 'to turn this attempt to constrain the potential for ideological partiality by the Bank into an assertion that it is illegitimate for the IMF or the Bank to consider the human rights implications of its own actions is to turn the prohibition inside out. The prohibition was, in a sense, designed to protect a human right, the right to self-determination: the right to choose one's economic and political system. Such a prohibition can hardly serve to create a general impunity from human rights accountability for the international organization.'<sup>71</sup> Embracing a neo-liberal approach to economic and social policy rather than more redistributive models – the former representing the agenda that the IFIs are traditionally known to favour – and then selectively imposing the preference on borrowing countries, is nothing if not reflective of a political ideology. Indeed, part of the reason for including the political prohibition when the Bretton Woods institutions were founded was to ensure that these new organisations not be used to promote the influence of the capitalist countries over the Communist bloc, or vice versa.<sup>72</sup> Insofar as impartiality was an objective of the drafters, not only has the political prohibition failed to ensure external policy prescriptions that are free from particular economic dogma but they have served as a legal premise for the exclusion of human rights considerations despite their relevance.

But these foundational documents are not seen as static. Open breaches of the IMF's Articles of Agreement in certain areas – Raffer, for example, refers to forcing member countries to liberalise capital accounts (a decision implicated in the Asian financial crisis of 1997) – resulted in talk of retroactive amendment of the Articles of Agreement to allow for what the IMF had already been doing anyway.<sup>73</sup> The World Bank Group's International Bank for Reconstruction and Development (IBRD), for its part, moved from financing projects such as dams

enabled the Bank to define its current mandate as poverty alleviation notwithstanding that the Articles make no explicit reference to poverty'.<sup>76</sup>

Thus the important observation, firmly placed in the public domain by the Bank recently, i.e. that 'political considerations can have economic effects' and that '[i]t is therefore consistent with the [Bank's] Articles [of Agreement] that the decision-making processes of the Bank incorporate human rights and any other relevant input which may have an impact on its economic decisions', is significant and consistent with the approach to treaty interpretation the IFIs seem so far to have taken. Yet, as mentioned, this important determination by the former General Counsel (that human rights fall within the Bank's competence) tables only one part of the equation.

While the IFIs were not meant to intervene in members' economies, they do.<sup>77</sup> And while an obligation not to 'interfere' politically in the domestic affairs of their recipient countries is not only understandable, but in fact welcome in an era that is characterised by a dramatic diminution in domestic autonomy limiting the ability particularly of poorer and less influential states independently to decide their own economic and social policies, 'interference' (read: influence) by international economic actors is in fact ubiquitous. As such, the concern regarding the World Bank (and the IMF) in relation to human rights pertains not only to the relevance of human rights to their economic decisions but to the impact of their economic decisions on human rights. Put differently, human rights considerations are important not solely because of their instrumental value in increasing the likelihood of better economic outcomes but because, properly considered, they should shape the processes and outcomes of economic decisions in order to render them consistent with international human rights standards. Of course, these rights have been codified and endorsed by a majority of states since the terms of reference of the Bretton Woods institutions were first approved in the 1940s.

This line of thinking likewise holds that there is a difference between the Bank taking on human rights in an effort to *facilitate* the human rights responsibilities of its members through the provision of support in giving effect to their human rights obligations (as described above),<sup>78</sup> and accountability for the impact on human rights of the World Bank (or indeed the IMF) itself for its

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<sup>76</sup> Dañino, n 17 above, [6]. On the Bank's interpretative approach see, further, I.F.I. Shihata, 'Interpretation as Practiced at the World Bank', in *The World Bank Legal Papers* (Boston: Martinus Nijhoff, 2000) xlv-xlv.

<sup>77</sup> The British economist John Maynard Keynes was a central figure in the creation of the Bretton Woods institutions, advocating for the creation by the big countries of 'a giant fund from which countries in demonstrable financial adversity could draw – up to a sizeable minimum level – without strings. Up to that minimum level they would not have to justify their policies. ... What materialised was a pale shadow of Keynes' intentions'. P. Townsend, 'Human Rights, Transnational Corporations and the World Bank', in P. Townsend and D. Gordon (eds), *World Poverty: New Policies to Defeat an Old Enemy* (Bristol: The Policy Press, 2002) 357. Raffer reminds us that the IMF was established to provide *unconditional* emergency resources, and not to finance any programmes. n 3 above, 74.

<sup>78</sup> A. Palacio, 'The Way Forward: Human Rights and the World Bank',

economic policy prescriptions in borrowing countries. These would be one and the same if the IFIs, *in fact*, played a *supporting* role but, despite a greater focus on national ownership, externally imposed policies were the norm and – in no small measure – remain so. That the Bank ‘may take any type of human right into account provided there is economic impact or relevance’<sup>79</sup> tells us little about the nature of Bank responsibilities to take human rights into account *because* its economic decisions may impact on them. Recognising ‘the role of human rights as legal principles which may inform a broad range of activities, and which may enrich the quality and rationale of development interventions, and provide a normative baseline against which to assess development policies and programmes’, as the new General Counsel has recently suggested,<sup>80</sup> comes closer to locating human rights standards properly within the work of the Bank (and to a certain degree the Fund given its role in development). Yet, even this support for human rights in the work of the Bank does not go nearly far enough towards recognising the role of the Bank/IFIs themselves in contributing to policy-based human rights violations in recipient countries, including with regards to failures in applying policies that are likely to contribute meaningfully to reducing poverty. Nor does it indicate how human rights accountability and redress for the victims of ill-advised economic policies might be addressed within, in particular, the Bank’s emerging willingness to engage with these standards, and given the joint work of the IFIs on development, and on the MDGs and poverty alleviation more generally.



9/2007

rights accountability of international economic actors for their own negative impact on the exercise of basic socio-economic rights by people in recipient member states.

## **NEGATIVE INTER-INSTITUTIONAL POLICY COHERENCE**

unified approach among international economic organisations to economic growth strategies that limits scope for diversity in both international and national policies, models which may serve to lift the world's poorest out of poverty in a manner more consistent with universal human rights standards and objectives.<sup>88</sup> As a recent World Bank World Development Report notes:

[M]ost policy advice given to poor countries over the last several decades – including by the World Bank – has emphasized the advantages of participating in the global economy. But global markets are far from equitable, and the rules governing their functioning have a disproportionately negative effect on developing countries. These rules are the outcome of complex negotiating processes in which developing countries have less voice.<sup>89</sup>



the wolf watching the sheep. Are we to be surprised that the policies these institutions have long advanced, such as the opening of developing country markets (while protecting their own)<sup>97</sup> and the privatisation of public services, may not serve those developing countries well, while benefiting the developed countries, including through the enrichment of their private sectors?<sup>98</sup> Writing on international trade, the UNDP affirms in its 2005 *Human Development Report* that within the existing rules-based multilateral system 'costs and benefits have been unevenly distributed across and within countries, perpetuating a pattern of globalization that builds prosperity for some amid mass poverty and deepening inequality for others'.<sup>99</sup> The report concludes that the rules arranged to benefit developed countries do so at the cost of impoverishing the people in low-income countries and are based on a foundation of 'hypocrisy and double standards'.<sup>100</sup>

In a manner most pronounced since the fall of the Soviet Union, the World Bank and IMF have 'collaborated' to advance a particular economic agenda centred on the neo-liberal interests of integrating and deregulating markets globally. This model has not served all equally and those states most profoundly affected by the collateral ills of economic globalisation have been, and continue to be, those least able to influence its direction, shape and implementation. The extent and persistence of poverty in developing countries cannot thereby be considered distinct from the influence exercised by the World Bank and IMF as part of the global triumvirate – along with the WTO – of international economic governance. Disaggregated into its component parts, poverty reflects a range of violated human rights and the violation of many human rights is, in turn, a cause of poverty. In considering the impact of IFI policies on human rights in recipient countries, attention is required to both the repercussions on the exercise of specific rights, as well as to the success or failure in reducing income poverty among the poorest.

## **LEGAL BASES AND AVENUES FOR HUMAN RIGHTS ACCOUNTABILITY**

Dubiously, wealth is the single most important criterion for conferring political

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<sup>97</sup> Developed countries protect their markets at a loss to developing countries of US\$700 billion annually in export revenues. T. W. Pogge, "Assisting" the Global Poor', in D. K. Chatterjee (ed), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge: Cambridge University Press, 2004) 275. Protection comes in the form of tariffs, quotas, anti-dumping duties and subsidies to domestic producers. See, further, UNDP, *Human Development Report 2005: International Cooperation at a Crossroads* (Oxford: Oxford University Press, 2005) Ch. 4, 126-132.

<sup>98</sup> Transnational corporations account for over 70% of world trade, form 51 of the world's 100 largest economies, and of the 200 largest TNCs none maintains headquarters outside of North America, Europe, Japan or South Korea. M. B. Steger, *Globalization: A Very Short Introduction* (Oxford: Oxford University Press, 2003) 48-49.

power in international economic decision-making. As Reddy points out, ‘countries have been perceived as having a “larger stake” in world trade when they have accounted for a larger share or volume of world trade – typically, richer countries – not countries that had a larger stake in the sense of having, for example, larger numbers of persons who would potentially be affected’.<sup>101</sup> Within the IFIs, voting is weighted based on the percentage of shares a member country holds. Each member country is assigned a quota, based broadly on its relative size in the world economy. A member’s quota determines its maximum financial commitment to the IFI and its voting power. The largest shares are held by the US, at 16.4 percent of the vote in the World Bank (IBRD) (17.08 percent in the IMF), followed by Japan, Germany, the United Kingdom and France.<sup>102</sup> Together, these five members control approximately 40 percent of the voting power on the Board of Directors and each has one Executive Director on the Board to represent it. By

organisations) are not bound by human rights treaties and that customary international law, to which they are bound, does not as yet include socio-economic rights.<sup>106</sup> In response to the latter point, it is increasingly difficult to sustain the argument that there does not exist a general principle of international law to respect and observe human rights in the main, which today would undoubtedly include basic socio-economic rights.<sup>107</sup> An appreciation that there are fundamental rules regarding respect of the human person and thus the protection of human rights, has, since the adoption of the UN Charter and the subsequent elaboration of human rights, entered into the body of customary international law, imposing negative obligations on all participants in the international legal system capable of impacting on their exercise.

In response to the former point (that IFIs as legal persons are not bound by human rights treaties), we are witnessing the first steps towards establishing the direct accountability of international organisations brought about by having them ratify human rights treaties. As De Schutter has rightly remarked, though, it would be a faulty approach to have as a condition of joining a human rights treaty that the organisation has competence in the area of human rights, as is the case for example with regard to the European Community and the recently adopted UN Convention on Persons with Disabilities;<sup>108</sup> human rights treaties can and should establish respect for human rights regardless of the area in which a given organisation is mandated to work – the obligation in that case being negative and thus requiring that the international organisation respect the given rights in any areas over which it exercises competence.<sup>109</sup> In principle, the World Bank and IMF could be eligible for ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights<sup>110</sup> on the basis of both approaches. On the first, as organisations with implied competences in the area of human rights: the World Bank is by its own admission involved in human rights through its development and poverty reduction mandate, as is the IMF given its involvement in poverty reduction and the PRSP and MDG processes. On the second approach, the IFIs would accede to the Covenants establishing, at a minimum, negative obligations to respect their

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<sup>106</sup> Gianviti, n 9 above, 118 *et seq.* See generally, S. I. Skogly, *The Human Rights Obligations of the World Bank and International Monetary Fund* (London: Cavendish Publishing, 2001).

<sup>107</sup> On a contemporary legal doctrine of basic un JETEMC /Artifact #ifa. 257.6603 S atofMone1 Tft 12-tul Cothus requi63603 Tm(5Tw



Based on the assessments of both the World Bank and the IMF referred to in the first section, it is clear that there are concerns as to the scale and speed with which poverty itself is being reduced and that increases in growth have not translated into a reduction in poverty in the poorest countries. It is also apparent that the IFIs – despite certain discernible evolutions in approach – largely embrace a particular neo-liberal economic model with alternative approaches having little influence and ideological preferences being retained at all costs.<sup>116</sup> In the second section we saw the degree to which IFIs retain power in borrowing countries, yet the quality of the policy advice and the repercussions of conditions attached to World Bank and IMF funds on the exercise of human rights, including those related to poverty reduction, give rise to no meaningful form of accountability. Indeed, the IFIs are not only immune from responsibility for what might be deemed negligence with regard to their advice but damage tends to increase the importance of the IFIs by requiring a new loan to repair it, creating perverse incentives.<sup>117</sup> Raffer explains that the complete absence of a system of financial accountability via liability and tort laws, which is essential to the proper



judicial review of executive decisions of the state organ responsible for directing the vote of the Executive Directors on the Board (such as the UK Department for International Development (DFID) or Treasury), based on their compliance with national human rights legislation.<sup>121</sup> This legal avenue for establishing the accountability of powerful donor states in the exercise of their executive decisions with impact abroad echoes lessons highlighted by the *Pergau Dam* case of 1995. Here the UK High Court quashed a grant of £200 million which had been authorised under the Overseas Development and Co-operation Act (1980) on the grounds that it did not serve ‘developmental promotion purposes’ as required by the Act.<sup>122</sup> Reflecting increasing sensitivity to extraterritorial obligations is DFID’s *Guidance Note on the Human Rights Act* (1998) – the Act incorporates domestically the European Convention on Human Rights<sup>123</sup> – which was issued in order to advance compliance with the UK’s human rights obligations in the area of development. The Guidance note warns officials that:

As a public authority, DFID is legally bound by the Human Rights Act. This means that if an act (or failure to act) by DFID, through its Ministers or staff, is incompatible with a Convention right, DFID acts unlawfully and a “human rights claim” can be brought against the Secretary of State. It is therefore important that you are aware of the Human Rights Act and can spot potential problems before they arise. ... Decisions related to our external programmes, as well as our internal arrangements, must be carefully considered from a human rights perspective.<sup>124</sup>

Executive Directors acting on behalf of the UK in the Bank and Fund are bound to comply with their national and international human rights obligations in the policies they pursue that impact on the exercise of those rights in developing countries, the approval vote cast by their representative constituting a state act and

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<sup>121</sup> n 5 above, 21.

<sup>122</sup> *Regina v Secretary of State for Foreign and Commonwealth Affairs, Ex parte World Development Movement Ltd* (QBD) [1995] 1 *Weekly Law Reports* 386. It has been further reported that: ‘The disquiet originally felt about the project which had been secret for years was that arms were being traded for aid’. O. Davies QC, *Can Human Rights Make Aid Agencies more Accountable*, Overseas Development Institute (1 January 2005). The International Development Act (2002) replaces and repeals the 1980 Act, ‘reflecting in law for the first time the centrality of poverty elimination in DFID’s work and ensuring future governments will not be able to use development assistance for other purposes’. Available at [www.dfid.gov.uk](http://www.dfid.gov.uk).

<sup>123</sup> European Convention on Human Rights (1950), entered into force 3 September 1953, European Treaty Series 005.

<sup>124</sup> *The Human Rights Act: Building a Culture of Respect for Human Rights in DFID, Guidance Note* (August 2005) 2. While the extraterritorial reach of human rights treaties with jurisdictional clauses, i.e. addressing civil and political rights, is an area of ongoing legal consideration, as Wilde summarises in his study on the subject: ‘... bodies representing three leading international judicial or quasi-judicial institutions monitoring the application of international legal instruments on civil and political rights – the Human Rights Committee, the Inter-American Commission, and the European Court and Commission of Human Rights – all conclude that as a matter of *principle* this area of international human rights law should apply extraterritorially’. R. Wilde, ‘Legal “Black Hole”? Extraterritorial State Action and International Treaty Law on Civil and Political Rights’ (2005) 26 *Michigan Journal of International Law* 797.

Margot E. Salomon





relationship between developing countries and governance of the international economic order.

The international human rights legal regime requires that rights be protected and secured through an accompanying system of accountability. As a complement to the primary legal framework expressing the duties of states and other actors in this field, remedies in human rights law provide this secondary theory of what duties exist when a primary duty is violated.<sup>136</sup> Given the contemporary links between the IFIs and the exercise of socio-economic rights in poor countries, there now exists the responsibility to spell out that implication in detail through the advent of appropriate and effective means of accountability in this area of international governance, so that the basic human rights of all may be progressively realised.

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<sup>136</sup> D. Shelton, *Remedies in International Human Rights Law*