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## World Bank Study

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# WORLD BANK STUDY

*Jennifer N. Weidner\**

## I. INTRODUCTION

The World Bank (hereinafter, “Bank”) is not without its critics. Commenced as an intergovernmental financial institution with the purpose of aiding development in economically needy nations, the Bank has evolved over the past five decades to become an influential force over both economic and social policies of the nations that receive Bank aid.<sup>1</sup> However, critics are divided on the issue of exactly how involved the Bank should be in the economic and social policies of its borrower nations. Some critics advocate increased interaction between the Bank and various non-governmental organizations in order to bolster the education of the Bank regarding various economic and social injustices that occur within the boundaries of borrower nations. Some others propose that the Bank limit its role as policy watchdog. These critics of economic and social intervention predict that the Bank will fail to maintain credibility as a financial institution when it exerts influence over its borrower nations’ economic and social policies, or, to be more specific, when it allows judgments about borrower nation policies to influence Bank lending practices.

The Bank is not an organization that acts autonomously from its members. It operates as a form of a democracy, and its member nations are represented (though not equally) in the Board of Executive Directors. Member nations vote on projects and issues. Their votes, however, do not weigh in equally. Each member nation may vote in accordance with its membership investment in the Bank, which means that the member nations with the largest investments in the Bank will carry the loudest voices. At first blush, it may seem that the system of member influence, supported by the voting structure, is equitable. We may think that a nation that pays the most for a right of influence will invariably be the nation that values the right most. We may be tempted to conclude that the nation who fails to pay consideration for such a right has performed an analysis of the cost of the right with the benefits the right confers, and has determined not to purchase it. The right of influence, therefore, has been fairly auctioned off. What should give us pause is that all nations and their currencies are not finan-

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\* Juris Doctor candidate Dec. 2001. The author wishes to thank Professor Athena Mutua for her guidance and support.

<sup>1</sup> The Bank exerts policy influence by conditioning funding to a developing nation upon the nation’s implementation of Bank-specified policy changes. *See infra* note 10.

cially competitive. A struggling member nation will not be able to purchase a right of influence when its dollar is weak and it has few of them. We must not conclude that the struggling member nation is disinterested in obtaining a right of greater influence than it has. Nor can we conclude that the struggling member nation concurs with the international policy goals of the more influential members. What may be a vociferous "nay" vote from a member with little capital to contribute to the Bank may sound like a murmur of protest when dwarfed by the resonance of influential member votes to affirm.

A Bank motto for the year 2000 is "Our dream is a world free of poverty."<sup>2</sup> This tenet is consistent with the Bank's original purpose at the time it was founded.<sup>3</sup> As this note will discuss, however, the Bank has since expanded its scope of attention to include the reform of various egregious environmental and social policies.<sup>4</sup> Care must be taken as the Bank expands its role to influence implementation of changes in the policies of its borrower nations. The risk is that the economic and social policies endorsed by the Bank's largest shareholders will, by nature of the Bank's voting structure, largely influence the position taken by the Bank on borrower nation reform. Borrower nations may be compelled to accept the conditions imposed by the Bank so that they may receive much-needed financial assistance, when in fact the conditions encouraged by the Bank (channeled from the majority shareholders) are ill-fitted to serve for the borrower nations' economic and social cultures. If they are not universal, economic and social ideals cannot broadly be beneficially imposed upon all nations.

The United States is the largest Bank shareholder, with 14.96% of the total votes in the Bank.<sup>5</sup> Japan is the second largest shareholder with 10.73%, Germany is the third largest with 7.03%, and France is fourth with 4.26%.<sup>6</sup> Seven other nations hold between 2 and 4 percent of the voting rights for a total of 19.31% between them, and 149 nations hold the remaining 43.71%.<sup>7</sup> A great majority of the latter group of nations holds less than one-third of one percent of the Bank's voting rights.<sup>8</sup> This note explores the influence that can be (and often is) exerted by the United States as the Bank's primary shareholder. Its purpose is not to criticize the reforms en-

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<sup>2</sup> See, for example, THE WORLD BANK, 1999 ANN. REP. (1999), back cover.

<sup>3</sup> See *infra* note 26 and accompanying text.

<sup>4</sup> *Id.*

<sup>5</sup> THE WORLD BANK, 1999 ANN. REP. 317 (1999), *Statement of Voting power, and Subscriptions and Contributions as of June 30, 1999*.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

couraged by the United States in the United States' exercise of influence. The note is to articulate the problems created when any primary shareholder is in a position to pressure developing nations to implement the primary shareholder's domestic ideals, through an inter-governmental vehicle that is purportedly disinterested in enforcing such ideals.

We as citizens of the United States boast of the checks and balances inherent in our democratic system. One of the most crucial branches in our government is the judicial, whose purpose is to serve as a check against the power of the majority vote. It is this particular check that protects the minority against injustice stemming from majority rule. This note will explore whether there are adequate checks to influence that may be exerted by the Bank's primary shareholder, that is, whether an adequate actor exists on behalf of the minority members of the Bank to check the influence of the majority. The note shall conclude that currently there is no adequate force to counteract the power of the majority under the current Bank allocation of voting rights. Finally, the note will consider changes to the voting structure with an eye toward greater representational equity.

A comprehension of the Bank's intended purpose and its operating structure is first necessary in order to critically analyze the Bank's primary shareholder's influence and the Bank's representation of members. Therefore, this note will provide an overview of the Bank's structure and mission before addressing substantive concerns of member influence over the Bank's policies and practices which in turn affect the policies of borrower nations.

## II. STRUCTURAL OVERVIEW

The Bank is comprised of five agencies. The International Bank for Reconstruction and Development ("IBRD"), established in 1945, provides loans to middle income nations and poorer nations whose credit is deemed adequate. The loans, which represent approximately 75% of the Bank's annual lending,<sup>9</sup> are funded primarily by the IBRD's sale of AAA-rated bonds to institutional and private investors in international markets.<sup>10</sup> The IBRD has earned a positive net income every year for the last 51 years,

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<sup>9</sup> IBRD loans are made to borrower nations whose average annual per capita income exceeds \$895 U.S. dollars, sometimes in conjunction with IDA interest-free loans. <<http://www.worldbank.org/html/extdr/about/wheremoney.htm>>. When a borrower's average annual per capita income approaches \$5,500, the borrower starts to "graduate" from IBRD lending. (visited Nov. 1999) <<http://www.worldbank.org/html/extdr/about/eligibility.htm>>.

<sup>10</sup> *World Bank Group Institutions* (visited Nov. 1999) <<http://www.worldbank.org/html/extdr/about/wbgis.htm>>.

though it is not designed as a profit-maximizing organization.<sup>11</sup> The International Development Association (“IDA”), established in 1960, provides interest-free loans (termed “credits”) to nations who qualify based on per capita income.<sup>12</sup> The loans are made only to the governments of the borrower nations.<sup>13</sup> The borrower nations pay a fee of less than 1% to cover administrative costs. These loans, which represent the remaining 25% of Bank lending, are funded primarily by the contributions donated from both industrial and developing member nations<sup>14</sup>. The International Finance Corporation (“IFC”), established in 1956, provides technical assistance and advice to governments and businesses, and supports developing nations’ business ventures with loans and equity financing. This financial support is provided by the IFC in conjunction with private venture capital investors.<sup>15</sup> The Multilateral Investment Guarantee Agency (“MIGA”), established in 1988, both assists in developing nations’ promotion of business investment opportunities and provides guarantees to foreign nations who invest in a developing nation’s business venture against loss, if the loss is caused by “non-commercial risks”.<sup>16</sup> The MIGA is funded by member capital.<sup>17</sup> The International Centre for Settlement of Investment Disputes (“ICSID”), established in 1966, operates to arbitrate investment disputes that arise between the investor nations and the “investee” nations.<sup>18</sup> Of the 66 cases registered with the ICSID, 11 were registered in the Bank’s 1999 fiscal year, which indicates a recent rise in international investment disputes.<sup>19</sup>

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<sup>11</sup> THE WORLD BANK, 1999 ANN. REP. xii (1999).

<sup>12</sup> To meet borrowing eligibility requirements, a potential borrower nation’s per capita income must not exceed \$1,506 U.S. dollars per year. However, the reality is that nations who receive IDA loans have average annual per capita incomes of less than \$895. Those with per capita incomes that exceed that amount generally receive a mix of IBRD and IDA interest-free loans. *See Eligibility for Borrowing*, *supra* note 9.

<sup>13</sup> THE WORLD BANK, 1999 ANN. REP. xiii (1999).

<sup>14</sup> *See World Bank Group Institutions* (visited Nov. 1999) <<http://www.worldbank.org/html/extdr/about/wbgis.htm>>.

<sup>15</sup> *See id.*

<sup>16</sup> *Id.*

<sup>17</sup> THE WORLD BANK, 1999 ANN. REP. xiii (1999).

<sup>18</sup> *See World Bank Group Institutions*, *supra* note 14.

<sup>19</sup> THE WORLD BANK, *supra* note 17, at xiii.

Though these five agencies are separate from one another, one individual serves as President for all five institutions.<sup>20</sup> The President traditionally is a citizen of the Bank's largest shareholder member, which, from the Bank's inception, is and has been the United States. The position is elected by member nations in accordance with their purchased voting rights for a renewable term of five years.<sup>21</sup>

The Bank is owned by its member nations, each purchasing shares of the Bank as a requisite for membership. As discussed in the introduction, member nations have voting power correlative to their percentage of Bank ownership. Each member appoints a Governor and an Alternate Governor to represent the nation at the Bank's Annual Meeting.<sup>22</sup> The Annual Meetings cover issues such as, *inter alia*, decisions pertaining to admission or suspension of members, distributions of net income, capital stock authorizations, and review and endorsement of financial statements and budgets.<sup>23</sup> The Annual Meetings are not intended to handle all of the Governors' responsibilities; rather, the Governors delegate many of their duties to the Board of Executive Directors ("Board"). The Bank's web site explains the role of the Board as follows:

Every member government of the World Bank Group is represented at the Bank's headquarters in Washington, D.C. by an Executive Director. The five largest shareholders – France, Germany, Japan, the United Kingdom and the United States – each appoint an Executive Director, while the other member countries are represented by 19 Executive Directors who are elected by groups of countries (or constituencies). Some countries – China, Russia, and Saudi Arabia – have formed single-country constituencies, while others have joined together in multi-country constituencies. The 24 Executive Directors normally meet twice a week to oversee the Bank's business, including approving loans and guarantees, new policies, the administrative

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<sup>20</sup> See *About the World Bank Group* (visited Nov. 1999) <<http://www.worldbank.org/html/extdr/about/>>. Currently, James D. Wolfensohn serves as Bank president. THE WORLD BANK, *supra* note 17, at 3.

<sup>21</sup> See *The World Bank Group* (visited Nov. 1999) <http://www.worldbank.org/html/extdr/about/whoruns.htm>.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

budget, country assistance strategies, and borrowing and financial decisions.<sup>24</sup>

Board representation, therefore, is not allocated equally among member nations, but is allocated in accordance with the amount of money member nations have invested in the Bank.

### III. THE EVOLUTION OF BANK OBJECTIVES

The Bank was established in 1944 as a product of the United Nations Monetary and Financial Conference in a response to the financial devastation in Europe resulting from World War II.<sup>25</sup> Accordingly, the Bank's Articles of Agreement articulates one of its primary purposes as the assistance in

the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.<sup>26</sup>

However, since other measures were implemented to attend to Europe's financial troubles, the Bank shifted its focus from the economic needs of Europe to the economic needs of developing nations.<sup>27</sup> The IBRD and IDA take the position that their mandate restricts them to activities pertaining solely to economic issues arising from the promotion of member nations' development. Indeed, the agencies' Articles of Agreement limit the factors the agencies can take into consideration when reviewing the activities of members and potential members; they "explicitly require the Bank to base its decisions only on economic consultations and to not take political factors into account in its decisions."<sup>28</sup> Though the Articles of the

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<sup>24</sup> *See id.*

<sup>25</sup> *See* Halim Moris, *The World Bank and Human Rights: Indispensable Partnership or Mismatched Alliance?*, 4 ILSA J. INT'L & COMP. L. 173, 178 (1997).

<sup>26</sup> *Id.* (excerpting from Articles of Agreement of the International Bank for Reconstruction and Development, opened for signature, Dec. 27, 1945, 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134, as amended Dec. 16, 1965, 16 U.S.T. 1942, T.I.A.S. No. 5929).

<sup>27</sup> *See id.*

<sup>28</sup> Daniel D. Bradlow, *The World Bank, The IMF, and Human Rights*, 6 TRANS-NAT'L L. & CONTEMP. PROBS. 47, 52 n.24 (1996).

IBRD and IDA refer to the concepts of “economic considerations” and “political affairs”, neither term is defined, leaving “both institutions to interpret for themselves. . .to determine what issues and activities fall within their permissible scope of operations.”<sup>29</sup> Likewise, the Bank’s interpretation of the term “development” was, until the 1960’s, that of economic growth. This notion was to evolve in response to “the failure of economic growth to adequately address the problems of the poor”; thus, the Bank “began broadening its understanding of which activities were included within the scope of its mandate by focusing more directly on poverty alleviation and basic human needs.”<sup>30</sup> From the 1960’s until now, the Bank has added “policy-based lending, environmental concerns . . . , gender issues . . . , governance, economic transformation and private sector development to its repertoire of appropriate operations.”<sup>31</sup>

An example of policy-based lending is the Bank’s funding of financial sector adjustment loans which originally were intended to effect reform in the borrower nation’s financial sector. The purpose of the policy-based loans has been extended over time to include, *inter alia*:

Reform of the civil service; reform of the management of public sector enterprises; legal and judicial reform; family planning; improving the quality of education and the equity of access to primary education; reform of universities. . . ; land titling and registration reform; programs to ensure that vulnerable groups such as women, children, indigenous people, and other minorities get access to health, education, and other Bank funded programs.<sup>32</sup>

Lending objectives for the Bank’s 1999 fiscal year further illustrate the Bank’s role as social governor. These objectives include, *inter alia*:

. . .[to f]ocus AIDS prevention especially on poor, high-risk groups, [e]radicate malaria, [p]romote health systems reform to address needs of poor, [p]ursue solutions for child labor, [e]liminate malnutrition,. . .Improve access to credit, especially for poor women,. . .[r]eintegrate ex-soldier into home communities, provide assistance to veterans. . .<sup>33</sup>

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<sup>29</sup> *Id.* at 55.

<sup>30</sup> *Id.* at 56.

<sup>31</sup> *See id.*

<sup>32</sup> *Id.* at 57-58.

<sup>33</sup> THE WORLD BANK, 1999 ANN. REP. 9 (1999).



The Bank's involvement in activities not clearly and directly related to economic development can be explained by the close connection between what may be considered an economic factor and what may be considered a political factor. Even issues that seem clearly to be issues of social policy can be analyzed by its economic impact.<sup>34</sup>

A criticism of the Bank's attempt to justify lending decisions by distinguishing actions motivated by economic issues from actions motivated by political factors is that economic policies may be just as unique to different cultures as are human rights.<sup>35</sup> The Bank may just as easily disregard the sovereignty of its member nations when it bases its decisions on what it believes to be beneficial for a member nation's economy as it might if it were to base them on issues concerning political factors. Differences in economic structures utilized by member nations may lead to disparate results when the Bank applies a universal notion of economics to them in the Bank's decision making process.<sup>36</sup>

#### IV. LENDING IN EXCHANGE FOR PROMISES

The Bank's lending during the first three decades of operation was primarily in the form of funds that were to be applied to a specific project in the borrower nation.<sup>37</sup> However, in an effort to avoid the failure of projects in borrower nations, due to the borrower's poor macroeconomic policy, the Bank developed a "second type of loan".<sup>38</sup> This new loan structure did not specifically allocate the funds to a particular project but could be applied as the borrower nation deemed appropriate, in exchange for the borrower na-

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<sup>34</sup> Professor Daniel Bradlow refers to the following example to prove this point: "The ambiguity in the Bank's interpretation of its mandate can be seen in its decision that female genital mutilation is an economic issue. The Bank has justified this decision by pointing to the economic costs associated with female genital mutilation." Bradlow, *supra* note 28, at 61. Professor Bradlow points to the Bank's contrasting interpretation of "economic issue" as it has been applied to freedom of the press: "[T]he Bank has not been willing to treat freedom of the press as an economic issue, despite the obvious economic costs associated with the lack of a free press." *Id.*

<sup>35</sup> Issues of universality of human rights law and policy are discussed *infra* p. 26.

<sup>36</sup> Moreover, the blurry distinction between economic and political factors as noted by Professor Bradlow may indicate that economic ideals and social ideals may be closely enough connected so as to justify the conclusion that they aren't separate sector considerations at all, but are, instead, too intertwined to separate.

<sup>37</sup> Kim Reisman, Note, *The World Bank and the IMF: At the Forefront of World Transformation*, 60 *FORDHAM L. REV.* 349, 353 (Ann. Survey Issue 1992).

<sup>38</sup> *Id.*

tion's promise to reform its economic policy.<sup>39</sup> There are two types of policy-based loans. *Structural adjustment loans* attach "policy-based conditions aimed at forcing the borrowing countries to conform to certain Bank policies and practices in their internal and/or external affairs".<sup>40</sup> *Sector adjustment loans* "support economic reform within a particular sector, such as trade liberalization, financial deregulation, or agricultural price reform".<sup>41</sup> For the first time ever, the Bank's 1999 fiscal year saw adjustment lending exceed its investment lending; the Bank attributes this departure from historical lending ratios to its support of a "wide range of reforms found vital in the aftermath of crisis."<sup>42</sup> It would appear from the 1999 lending ratios that the primary lending perspective of the Bank has evolved from an investment perspective to that of influencing national policies of borrower nations through adjustment lending.

Both criticisms and praise of the Bank's attempts at influencing various types of reforms through adjustment lending are well-documented. For example, in a 1997 article analyzing the Bank's involvement in human rights issues, Halim Moris illustrates that opponents of the Bank's intervention in the human rights policies of borrower nations believe that since only developing nations are in a position to seek and receive financial assistance from the Bank, the result is necessarily that only developing nations are subject to the Bank's imposition of human rights policies.<sup>43</sup> According to the opponents of Bank intervention, the intervention violates the international principle of sovereign equality.<sup>44</sup> Further, the opponents argue that the Bank's intervention in issues, such as human rights, violates the Bank's Articles of Agreement and the United Nation's prohibition of international coercion, and that the practice is detrimental, in that, withholding assistance to nations who have documented human rights violations only serves to perpetuate those human rights violations.<sup>45</sup> Additional arguments against Bank intervention are that the Bank risks losing its credibility as a financial institution when it focuses on human rights policy issues and that the Bank

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<sup>39</sup> *See id.*

<sup>40</sup> Moris, *supra* note 25, at 181.

<sup>41</sup> Reisman, *supra* note 37, at 353 n. 37.

<sup>42</sup> THE WORLD BANK, 1999 ANN. REP. iii (1999). "Crisis" refers to the recent financial crisis primarily experienced by Southeast Asia. "East Asia and Latin America together accounted for \$10.2 billion" of the \$15.3 billion outstanding adjustment lending. *Id.*

<sup>43</sup> *See* Moris, *supra* note 25, at 185-86.

<sup>44</sup> *See id.*

<sup>45</sup> *See id.* at 182-192.

lacks the expertise to effectively gauge and monitor human rights abuses.<sup>46</sup> Moreover, as Halim Moris points out, opponents believe that the Bank is inconsistent in its application of its adjustment lending philosophy because the Bank “has a ‘history’ of funding projects that involve human rights abuses”.<sup>47</sup> For example, “despite the atrocious human rights’ abuses in China . . . the World Bank and the United States have nevertheless positioned China as the highest aid recipient country, due to the potential economic benefits to be had once the large Chinese market is infiltrated”.<sup>48</sup> Moreover, the opponents to Bank intervention argue that the Bank intrudes upon borrower nations’ rights to economic development when it withholds aid.<sup>49</sup>

Advocates of the Bank’s intervention in human rights issues argue that the Bank’s Articles empower it to consider human rights issues in its lending policies, and that because the Bank is a specialized agency of the United Nations, the Bank is “obligated to cooperate with the United Nations in the area of human rights”.<sup>50</sup> Further, advocates who conclude that the Bank is legally required to consider human rights issues when conducting Bank business point to the principle of *erga omnes* in support of their conclusion.<sup>51</sup> The principle of *erga omnes* provides that “a state which violates peremptory human rights norms is accountable to all other states, and thus cannot claim that its human rights policies are within its exclusive domestic jurisdiction.”<sup>52</sup> Proponents of Bank intervention argue that the Bank’s ability to condition funds on human rights reforms is not economic coercion *per se*, but is rather an act of “pressure”, and that the “International Court of Justice explicitly affirmed that the suspension of economic aid is not an illegal act that breaches international law”.<sup>53</sup> Finally, advocates debunk the notion that conditional assistance violates a nation’s right to development by countering that the right to development is a right that rests within human beings, rather than states, and that states have enjoyed development while individual residents of the state have not (breaking the perceived correlation between development of the state and development of persons).<sup>54</sup>

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<sup>46</sup> *See id.*

<sup>47</sup> *Id.* at 190.

<sup>48</sup> *Id.* at 189.

<sup>49</sup> *See id.* at 186-87.

<sup>50</sup> *Id.* at 193.

<sup>51</sup> *See id.* at 195.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *See id.*

V. THE UNITED STATES' INFLUENCE OVER WORLD BANK POLICY  
AND REFORM

Recall that the primary problem with a large shareholder's exertion of influence over Bank policy is that the Bank, in turn, exerts influence over policy reform in its borrower nations. The influence, channeled from a major Bank shareholder, flows through the Bank and is exported to the nation that seeks financial assistance from the Bank. As not all policies regarding social order, human rights, environment, and the like are universal, the result can be a policy unfit for the borrower nation who is compelled to accept the order of policy change. The borrower nation that disagrees with the conditions, yet accepts the conditional funding, is unlikely to have its problems with the conditions heard among the din of large shareholder voices.

Ian Bowles and Cyril Kormos describe in their 1995 article the role of the United States Congress in pressuring the Bank to take a more active role in establishing reform of borrower nations' policies, specifically with regard to environmental concerns stemming from Bank-funded developmental projects.<sup>55</sup> They trace influence exerted by the United States Government as the United States became aware of the three most effective methods of exerting influence over the Bank and other organizations: domestic policy guidance for the United States Government officials representing the nation in international organizations, imposition of voting restrictions on Bank matters for United States officials serving as Executive Directors for the Bank<sup>56</sup>, and the use of conditional funding.<sup>57</sup> With respect to conditioning funding for the Bank on the Bank's implementation of various policies and procedures, Bowles and Kormos explain that "Congress is free to determine the amount of funding it provides for any given program, to set conditions for disbursements or even to earmark part of its contribution."<sup>58</sup> Therefore, under United States legal standards, the United States is free to exercise influence over international organizations by exerting finan-

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<sup>55</sup> See Ian A. Bowles and Cyril F. Kormos, *Environmental Reform at the World Bank: The Role of the U.S. Congress*, 35 VA. J. INT'L L. 777 (1995).

<sup>56</sup> An example of voting restrictions is the 1989 Pelosi Amendment, contained in the International Development and Finance Act enacted by the United States Congress, effective 12/19/91. The Pelosi amendment prohibited "U.S. executive directors of [multilateral development banks] from voting in favor of any proposed action unless an [environmental impact assessment] has been conducted at least 120 days before the loan comes before the board of directors for a vote." *Id.* at 795.

<sup>57</sup> See *id.* at 781.

<sup>58</sup> *Id.* at 782.

cial pressure, since the United States determines funding for international organizations at free will.

Bowles and Kormos indicate, however, that the legal validity of conditional appropriations is less certain in the international context.<sup>59</sup> They acknowledge that the Bank's "Articles of Agreement . . . do not permit political considerations to play a role in loan approval; instead, decision making is based solely on economic factors. In fact, the World Bank is not legally permitted to accept any funds appropriated conditionally by a particular country."<sup>60</sup> In spite of this legal restriction, Bowles and Kormos state that the Bank "continues to be sensitive to the concerns of the legislature of its biggest donor."<sup>61</sup> The apparent departure from the Bank's legal standards when the Bank is forced to consider financial pressure by a member nation that is in a position to exert such pressure may be explained by nuances in interpretation of the Articles of Agreement as described earlier in this article. For example, although Article 4, Section 10 of the Bank's Articles of Agreement state that the Bank should not be influenced by the political character of its members,<sup>62</sup> Bowles and Kormos theorize that

section 10 does not state that the Bank shall not be influenced by the political 'activities' of its members, a phrase which could reasonably be intended to refer to legislative pressure or lobbying. Instead, section 10 speaks of political "character." Though the word "character" is ambiguous, it strongly suggests that what the Articles of Agreement are primarily concerned with are ideological considerations.<sup>63</sup>

Bowles and Kormos conclude that the Congressional initiatives to influence Bank policies are imposed on the United States officials who serve as executive directors to the bank, rather than on the Bank itself; therefore, the

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<sup>59</sup> *See id.*

<sup>60</sup> *Id.* at 808.

<sup>61</sup> *Id.*

<sup>62</sup> *See* Articles of Agreement, Dec. 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134, art. IV, § 10, cl. 2, amended by 16 U.S.T. 1942, T.I.A.S. No. 5929 (Dec. 16, 1965).

<sup>63</sup> Bowles and Kormos, *supra* note 55, at 810. This logic is an interpretive manipulation. Inserting our own definition of undefined terms in the Articles of Agreement would allow us to draw whatever conclusion we desire from the Articles' intent and purpose. Yet the inference drawn by Bowles and Kormos demonstrates the flexibility in determining what the Articles' restrictions on accepting member influence really mean.

“legislation does not constitute interference into the internal political affairs of a member country.”<sup>64</sup>

Opponents of United States’ Congressional influence over Bank policies have argued that the effects of the influence undermine the Bank’s multilateral character.<sup>65</sup> Bowles and Kormos concede that when one member nation exerts influence by internal legislation, its action is unilateral with respect to other countries, and that if all member countries exerted similar influence, “the result could paralyze the World Bank.”<sup>66</sup> However, Bowles and Kormos intimate that there are other member countries that support the United States’ purposes in exerting influence, though they may not announce their support publicly.<sup>67</sup> Moreover, Bowles and Kormos postulate,

it is unclear that legislation constitutes unilateral action. . . . Simply because Congress passes legislation giving the U.S. executive director instructions, or establishing conditions for U.S. contributions, it does not follow that Congress works directly with the World Bank . . . . Congressional legislation does not necessarily affect the multilateral character of the Bank; even though the World bank has made efforts to respond to congressional criticisms, it is certainly at liberty to ignore the legislation completely.<sup>68</sup>

Any offeree of conditional funding, in any context, is technically free to reject the conditions attached to the funding. It necessarily follows that the funding would be denied if the conditions are not agreed to by the potential recipient. It is not clear, however, that past Bank decisions, to be “sensitive” to the concerns of its biggest donor, were made free of external pressures. Rather, it may only be assumed that the Bank has been “sensitive,” as such, because the Bank has weighed costs and benefits of its acquiescence and determined that such “sensitivity” was in the best interests of the Bank.

Bowles and Kormos predict that the Bank “will continue to object to congressional intrusions but is unlikely to take radical steps to resist aggressively what has become the status quo.”<sup>69</sup> If it were true that the Bank is unlikely to actively resist the United States’ interference in Bank policies,

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<sup>64</sup> *Id.* at 812.

<sup>65</sup> *See id.*

<sup>66</sup> *Id.*

<sup>67</sup> *See id.*

<sup>68</sup> *Id.* at 813.

<sup>69</sup> *Id.* at 822.

it would not be due merely to the disinclination to disturb a historical pattern of succumbing to such influence. Disturbing the status quo is, in essence, exactly what the Bank was designed to do, via the provision of funding for development projects in borrower nations. It is also exactly what the Bank has taken upon itself to do, by the issuance of loans to borrower nations that are conditioned upon the borrower nations' implementation of policy changes within their governments. It is perhaps ironic that the Bank would object to the same type of economic coercion enforced by its largest donor, when that is exactly the method it uses to influence reform in borrower nations. However, the difference lies in the character of the parties; when the Bank conditions funds on reform in borrower nations, the voting members act multilaterally with respect to deciding appropriate Bank actions. When the United States conditions its donations on specific reform within the Bank, it acts unilaterally with respect to the reform it desires. If we could be certain that the reform ideals imposed by the United States transcended cultural differences, we could assume that although the United States acts unilaterally, it has the support of the majority of the Bank member nations. However, the most we could assume is the weak assumption voiced by Bowles and Kormos that "other donors can respond . . . by pressuring the United States to refrain from such unilateral actions"<sup>70</sup>, and, since we have not heard much opposition, conclude that there are no objections. It is more realistic to conclude that if the Bank does not aggressively fight unwanted influence, it is because the Bank does not believe the fight to be worth the cost, which would be the loss of the largest donor country's favor, and possibly lead to the loss of the largest donor country's funding.

In a more recent article, Ian Bowles and Cyril Kormos herald Congress' participation in international financial institutions as a "sound investment", as institutions such as the Bank "provide a forum in which close international cooperation and a financial multiplier effect allow U.S. policies and interests to resonate effectively."<sup>71</sup> They explain that participation in the Bank "also allow[s] the United States to pursue its foreign policy more discreetly than it could if it were acting alone in the international arena."<sup>72</sup> Bowles and Kormos track the influence imposed by the United States Congress over Bank policies with respect to environmental concerns. One example cited by Bowles and Kormos of the United States' influence over Bank accountability and formal restructuring is Senator Robert Kasten's correspondence to the Bank president "criticizing the serious environ-

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<sup>70</sup> *Id*

<sup>71</sup> Ian A. Bowles & Cyril F. Kormos, *The American Campaign for Environmental Reforms at the World Bank*, 23 FLETCHER F. WORLD AFF. 211, 212 (1999).

<sup>72</sup> *Id.*

mental impacts of the Polonoroeste project in Brazil".<sup>73</sup> Bowles and Koormos conclude that Senator Kasten's letter effectively persuaded the next Bank president to create an independent Environmental Department within the bank as well as "Regional Environmental Divisions. . . within each Vice Presidency" that would result in increased environmental staff.<sup>74</sup> Bowles and Kormos explain the causal connection between Senator Kasten's correspondence and the resulting reform as follows:

Because Senator Kasten served as chairman of the Senate Appropriations Subcommittee, which oversaw U.S. contributions to the World Bank, his action to ask President Conable to respond to environmentalists' concerns raised the stakes in terms of World Bank accountability to Congress.<sup>75</sup>

Further United States influence over Bank policy occurred in 1993, when the influence led toward the creation of the Bank's Inspection Panel. Congress perceived a need for the Bank to increase its accountability to the public and recommended the establishment of a "permanent independent commission for investigating public concerns about Bank-financed projects."<sup>76</sup> Senator Leahy, in correspondence to Bank President Lewis Preston outlining the recommendation, referred to "the waning tolerance for an institution supported with public funds that denies the public access to relevant information . . ."<sup>77</sup> This recommendation coincided with Congressional authorizations for the United States' contribution to IDA replenishment.<sup>78</sup> When Bank Managing Director Ernest Stern verbally informed Congressman Barney Frank that he doubted that the Bank could feasibly create the recommended inspection panel with the time left before the end of the year, Congressman Frank "reportedly replied that in that case, he did not think Congress had time to authorize [the United States' contribution to IDA replenishment]."<sup>79</sup>

While it is true that the examples cited by Bowles and Kormos of Congressional exertion of influence over Bank policy resulted in policy reforms deemed beneficial from a Western perspective, it is also true that these efforts can be fairly termed as "strong-arming". Bowles and Kormos

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<sup>73</sup> *Id.* at 214-15.

<sup>74</sup> *Id.* at 215.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 219 (quoting correspondence from Senator Leahy to Bank President Lewis Preston of June 1993).

<sup>77</sup> *Id.*

<sup>78</sup> *See id.* at 219-20.

<sup>79</sup> *Id.* at 220.



conclude that because Congress' largest successes in inducing the Bank to alter its policies have resulted from conditioning funding on specific policy changes, the United States has learned that "conditioning appropriations on specific structural changes is the most effective form of legislation."<sup>80</sup> Lest one conclude that such tactics carry a danger of abuse and should therefore be condemned, Bowles and Kormos justify conditional funding as the only way to encourage the Bank to implement policy reforms. "[G]iven the resistance to progress and the massive inertia at the Bank, it is questionable whether anything short of dire threats could have induced change."<sup>81</sup> Moreover,

Congress' response to criticism of its expanded role [of involvement in international affairs] has been to argue that the power of the purse is explicit and plenary under the Constitution. Efforts to reform the World Bank, therefore, do not constitute establishing foreign policies, but are rather a simple exercise of oversight over the way [United States] taxpayer money is spent . . . Congress may be entirely justified in taking such a course of action, because the President's power in foreign affairs may not be quite as far reaching, or at least not as exclusive, as previously believed.<sup>82</sup>

Bowles and Kormos accede to the existence of the argument that "actions have made [the Bank] hostage to the directives of one country's legislature in clear violation of the institution's multilateral and apolitical nature", but dismiss that argument as frivolous.<sup>83</sup> They assert in rebuttal that the "U.S. government is at liberty to determine on what terms it makes financing available to the World Bank . . . . In turn, the World Bank has the right to reject conditional funds or ignore policy recommendations that Congress makes."<sup>84</sup> Bowles and Kormos conclude that international institutions are relatively weak "in arguing against the decision-making processes of member countries", yet seem to infer that the Bank's acquiescence thus far has been voluntary.<sup>85</sup>

The question arises whether the Bank is indeed free to reject conditional funding. What would happen, for example, if the United States, the

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 222.

<sup>82</sup> *Id.* at 222-23.

<sup>83</sup> *Id.* at 223.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

biggest shareholder, threatened to withdraw participation because the Bank refused to accept terms upon which the United States conditioned its participation? A primary shareholder clearly has influence over the Bank due to its allocation of voting privileges which are based on share ownership. A primary shareholder can also exert increased influence by threatening to withdraw its interest. The increased influence is exponentially correlative to the degree to which the primary shareholder's interest exceeds the other shareholder interests.

Consider the following analogy. If Country A has eight pennies, and Country B has two, both countries can vote in accordance with the pennies they own. Both countries can both threaten to withdraw their pennies. However, the effects of Country A withdrawing its pennies is far greater than the withdrawal of Country B's pennies, not just because Country A has more pennies, but because Country A's pennies have an added value of greater control than Country B's pennies. A block of shares owned by one party is worth more than the same number of shares owned by disparate parties, and the value discrepancy increases with the amount of control associated with the block of shares. The more shares a member nation has, the more those shares are worth.

Similarly, the question arises whether the United States' 14.95% voting rights really puts the United States in a position to exert an undue amount of influence. Professor David A. Wirth argues that the notion of undue influence by the primary shareholder is unsupported. "It is far from clear that a single State . . . with less than one-fifth of the voting power in the World Bank – could be said to be exercising prohibited unilateral pressure in a multilateral setting. . . Even the five largest donors to the Bank acting in concert could not by themselves assure that a particular loan proposal would be disapproved."<sup>86</sup> The five largest donors together hold a total of 40.52%.<sup>87</sup> Application of simple mathematics would have us agree; 40.52% is not a majority. However, the five largest donors, with their collective 40.52%, *plus* their collective increased share value due to the large blocks of shares they own, may very well be enough to exert influence over the percentage of other voting shares they might need to effect a particular voting result. It is important to remember that member nations also relate to one another outside the realm of the Bank, and that the largest shareholders tend to be globally influential in other contexts. It is not clear that the largest shareholders would be prohibited from acting in concert outside the

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<sup>86</sup> David A. Wirth, *The United States and the World Bank: Constructive Reformer or Fly in the Functional Ointment?*, 15 MICH. J. INT'L L. 687, 701 (1994) (book review).

<sup>87</sup> THE WORLD BANK, 1999 ANN. REP. 317 (1999).

context of the Bank to elicit a response from other Bank member nations within the Bank context. Furthermore, it is not evident that the five largest shareholders, for example, would be precluded by the Bank from increasing their investment in the Bank to collectively obtain a majority position. Acting in concert, Professor Wirth argues, "would arguably qualify as a legally significant pattern of behavior."<sup>88</sup> There is no evidence at this point, however, what Bank response would be, if any, to such collusion on behalf of the largest shareholders, especially if the collusive action were performed with the approval of the largest voting members of the Bank. Based on the increased influence inherent in the major Bank shareholders, it might be anticipated that a threat by the United States as a primary shareholder to withdraw funding could elicit some type of compromise on behalf of the Bank. Consequently, the enhanced value of the largest blocks of shares calls for special review of the largest shareholders' motives, especially in light of threats to withdraw funds unless certain conditions are met.

An instance of United States' withdrawal of Bank support occurred in 1993, when the United States conditioned \$30 million earmarked for the Global Environment Facility (a three-year program established by the Bank in conjunction with the United Nations Environment Program and the United Nations Development Program to protect the environment) on the Bank's "implementation of procedures allowing public access to GEF project information."<sup>89</sup> Since the Bank failed to meet the deadline set for the specific reforms, the funds were diverted to another program, the AID.<sup>90</sup> Congress, however, may not be as prompt to remove funding altogether; in response to a strong call by environmentalists to completely eliminate multilateral development bank funding, the House of Representatives issued a report that stated that "cutting off assistance would only lead to further economic decline and increased poverty further aggravating environmental damage."<sup>91</sup> However, if the United States' commitment to improving environmental conditions through borrower nations' development projects were so strong as to outweigh the option of cutting funding for the projects, threats to withdraw funding would carry no real bite.

If all Bank member nations espoused the same set of economic and social ideals, the danger posed by one nation's enhanced influence over Bank activity and policy would be lessened. However, differences in moral judgments and accepted human rights lead to a problem inherent with the presence of a dominant member nation. Simply put, the United States is in

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<sup>88</sup> Wirth, *supra* note 86 at 701.

<sup>89</sup> Bowles and Kormos, *supra* note 55, at 801.

<sup>90</sup> *See id.*

<sup>91</sup> *Id.* (quoting H.R. REP. No. 125, at 39, 103d Cong., 1st Sess. (1993)).

the position to impose notions it believes to be morally and fundamentally correct upon nations that do not subscribe to the same views, but who may be compelled to accept conditional funding because of economic need. This is especially true of member nations who have considerably less voting power than the United States. If the member nation with whom the United States disagreed in terms of human rights had significant voting power in light of the United States' voting influence, it could more effectively counteract the votes of the United States in proposing certain conditions in connection with funding.

If a borrower nation were offered funding that was conditioned on conforming its domestic policies to those of the dominant member nations, the borrower nation could react in one of three ways. The borrower could accept the imposition of policy changes, in which case the dominant nation would be self-congratulatory, with the impression that the "correct" outcome was achieved and their notion of human rights would prevail. It should be noted, however, that nations that do not share the dominant nation's policy perspective could view the borrower nation's acceptance of the conditions as a sell-out to a set of morally incorrect ideals. Alternatively, the borrower nation could accept the terms of the funding and either pay sheer lip service to the conditions without actually making substantive changes, or ignore implementation of the conditions altogether. In so doing, the borrower nation risks the revocation of funding, though in reality this may not be a likely event.<sup>92</sup>

Policy ideals are not absolutely universal; if they were, all nations would subscribe to substantially similar positions, which would largely eliminate international policy conflict regarding policy ideals. In the context of human rights, for example, some scholars argue that if we are to believe that human rights law is legitimate, then there must exist valid notions of justice that transcend cultural divides.<sup>93</sup> If this is true, then it is less of a problem when a dominant nation seeks to impose its notions of human rights – assuming, that is, that the dominant nation's notions are universally "correct". Others argue the flip side; if notions of justice are relative to

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<sup>92</sup> For example, consider China, the Bank's largest recipient of funds. See THE WORLD BANK, 1999 ANN. REP. 272 (1999), *Summary Statement of Loans*. In spite of long term United States opposition to what the United States concludes are human rights abuses persisted by China, China continues to receive Bank benefits. This may be partly explained, however, by the fact that China is the 6th largest Bank shareholder. See *id.* at 275 (Statement of Subscriptions to Capital Stock and Voting Power).

<sup>93</sup> See Guyora Binder, *Comment: Cultural Relativism and Cultural Imperialism in Human Rights Law*, 5 BUFF. HUM. RTS. L. REV. 211 (1999).

different cultures and are not universal, then human rights law has no legitimacy.<sup>94</sup> Professor Guyora Binder suggests that for human rights law to be valid in light of cultural relativism, our evaluation of human rights law must evolve from the historical perspective of European nation-states to recognize the representative notions of geographically and culturally diverse nations and states.<sup>95</sup> Professor Binder suggests that analyzing contemporary human rights issues using “traditional” notions of human rights law imposes a restricted set of imperialistic ideals; the problem is not the imposition of imperialism, but the fact that the imperialism imposed has not evolved beyond the ideals embraced by its Western founders.<sup>96</sup> Professor Binder concludes that “[u]nless human rights norms become part of the global process of governance by which the neocolonial state is constituted they can have little impact for good or ill”.<sup>97</sup> If we accept Professor Binder’s conclusion and translate it to issues surrounding Bank influence, we must recognize the importance of ensuring that all member states are able to contribute meaningful input regarding the Bank’s activities.<sup>98</sup> The ability to contribute meaningfully may not be achieved solely through share allocation voting.

#### VI. POTENTIAL CHECKS TO BANK INFLUENCE OVER BORROWER NATIONS

There are several institutions inside and outside the Bank structure that could potentially serve as checks to the Bank’s ability to exert influence over the economic and social policies of borrower nations. The institutions could, if effective, serve to check the primary shareholder from effectively imposing its own policy ideals onto borrower nations. These include the Bank’s own Inspection Panel, non-governmental organizations, and to some degree, the Bank’s new Comprehensive Development Framework.<sup>99</sup> Each institution has strengths that give it potential to help ward

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<sup>94</sup> *See id.*

<sup>95</sup> *See id.*

<sup>96</sup> *See id.*

<sup>97</sup> *Id.* at 221.

<sup>98</sup> Note, however, that all members have veto power if the Bank funds an activity they disagree with – that is, if the activity is located within its region.

<sup>99</sup> Although the International Court of Justice exists, and an International Criminal Court has been proposed, these institutions are not good candidates to serve as checks against undue influence exerted by intergovernmental organizations over nations that choose, freely or out of financial need, to become members or debtors of the intergovernmental organizations. The role of the International Court of Justice (“ICJ”) is to settle legal disputes submitted to it by states. Groups of people or individuals do not have standing before the ICJ and must therefore convince their

against unwanted policy imposition and weaknesses that impede its ability to do so.

A. *The World Bank Inspection Panel*

The Bank's Board reviews and approves loan applications from potential borrower nations based on information provided by Bank staff.<sup>100</sup> In preparing recommendations to the Board, Bank staff can exercise a great deal of discretion:

[S]taff members determine which loan requests develop into negotiable loan proposals. In addition, by deciding who to consult and how much weight to attach to the information available to them, the staff influences both the issues and the range of opinions that are incorporated into the loan appraisal reports presented to the Directors. In essence, the Bank's staff influences the form and substance of the information that Board members ultimately receive about each loan proposal. The staff can also influence the Executive Directors' decisions on loan proposals through the timing of their loan presentations to the Board.<sup>101</sup>

Historically, the Board had no established channels through which it could supplement staff-provided information with facts and information from par-

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states to bring an action if one is warranted. For information on the function, composition, jurisdiction and procedure of the ICJ, see the ICJ web site at <<http://www.icj-cij.org>> (visited site Apr. 13, 2000). For a discussion of limitations of access to the ICJ, see Thomas Hutchins, *Using the International Court of Justice to Check Human Rights Abuses in World Bank Projects*, 23 COLUM. HUM. RTS. L. REV. 487 (1992). Though the statute proposing the International Criminal Court ("ICC") has been adopted, at least 60 nations have to ratify the statute before it is considered effective and the ICC can be established. As of February 16, 2000, 7 states had ratified the statute. Moreover, the ICC would have jurisdiction over criminal allegations against individual parties, rather than states, for the crimes such as genocide, crimes against humanity, and perhaps war crimes and aggression, to establish an international rule of law. In all probability, the ICC will deem Bank member disputes stemming from Bank exertion of influence outside its intended jurisdiction. For information on the proposed ICC, visit the web site for the International Centre for Human Rights and Democratic Development at <<http://www.ichrdd.ca/111/english/commdoc/publications/romeStat.html>> (visited site Apr. 7, 2000).

<sup>100</sup> Daniel D. Bradlow, *International Organizations and Private Complaints: The Case of the World Bank Inspection Panel*, 34 VA. J. INT'L L. 553, 561 (1994).

<sup>101</sup> *Id.*

ties that would be affected by the transaction.<sup>102</sup> Consequently, the Board “was reduced to acting as little more than a rubber stamp of staff decisions.”<sup>103</sup> With no adequate check in place to counteract the enormous level of control wielded by the staff, Bank staff was operating with inadequate accountability to the Board. Individuals adversely affected by the loan transaction were unable to bring action against the Bank, unless they could convince their government to bring an action as a member or borrower nation.<sup>104</sup> As a result, the Bank was operating without meaningful accountability to parties who were directly affected by the loan transaction.

A 1984 development project in India, for which the Bank loaned funds, elicited international opposition.<sup>105</sup> In response to the opposition, the Bank appointed an independent commission to report upon the Bank’s involvement in the project.<sup>106</sup> The commission concluded that the Bank had egregiously violated its policies and procedures with regard to the loan process. It “found the quality of the technical and environmental studies completed for this project to be so inadequate that it could not make recommendations on how to correct problems with the project.”<sup>107</sup> The conclusion that the Bank’s failure to comply with its stated procedures led to violations of property rights, among other things, along with a report that found that Bank-supported projects were not performing well, resulted in the Bank’s creation of the Inspection Panel in September 1993 by formal resolution (hereinafter, “Resolution”).<sup>108</sup> The World Bank Inspection Panel’s self-defined motive is “to provide an independent forum to private citizens who believe that their rights or interests have been or could be directly harmed by a project financed by the Bank.”<sup>109</sup> The Panel, which is comprised of three members appointed by the Board, functions independently of the Bank staff and reports directly to the Board.<sup>110</sup> In his 1994 review of the Resolution creating the Panel, Professor Bradlow explains the legal significance of the Panel’s creation: “[i]t is the first forum in which private actors can hold an international organization directly accountable for the consequences of its failure to follow its own rules and proce-

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<sup>102</sup> *See id.* at 561,

<sup>103</sup> *Id.*

<sup>104</sup> *See id.* at 562.

<sup>105</sup> *See id.* at 563.

<sup>106</sup> *See id.*

<sup>107</sup> *Id.* at 563-64

<sup>108</sup> *See id.*

<sup>109</sup> *World Bank Group Inspection Panel Web Site* (visited Mar. 7, 2000) <<http://www.worldbank.org/html/ins-panel/index.html>>.

<sup>110</sup> Bradlow, *supra* note 100, at 553.

dures.”<sup>111</sup> Professor Bradlow heralds the creation of the Panel as “the first formal acknowledgment that international organizations have a legally significant non-contractual relationship with private parties that is independent of either the organization’s or the private actor’s relationship with a member state.”<sup>112</sup>

In spite of his optimistic characterization of the Panel, Professor Bradlow outlines possible concerns with the ability of the Panel to serve its stated purpose. For example, the Panel can only review a complaint that has to do solely with Bank activity. If a private party’s complaint involves the conduct of his or her government as well as the actions of the Bank, the Panel lacks jurisdiction to review the complaint.<sup>113</sup> The complainant’s only recourse is to take up the issue with the borrower government or another international group, if it can.<sup>114</sup>

Professor Bradlow indicates that the 1993 Resolution creating the Panel fails to address an additional number of important communication issues. He states that the “Resolution fails to explicitly establish the complainant’s right to receive and respond to communications between the Panel and other interested parties, particularly Bank staff.”<sup>115</sup> Therefore, once the complainant has issued a complaint, the complainant is not necessarily privy to statements made in response by the Bank to the Panel, and vice versa. The complainant’s confidence in the impartiality of the process is impaired by a lack of assurance that the process is free of biased communication to which the complainant does not have the chance to rebut. Professor Bradlow indicates that due process concerns mandate that both the Bank and the complainant “should be given an opportunity to respond to each other’s arguments.”<sup>116</sup> He further argues by not establishing communication rights, the Bank fails to “make every effort to understand the arguments and concerns of those opposed to its actions,” in opposition to the Bank’s goal of promoting “transparent and accountable governance to its member countries.”<sup>117</sup> Without the guarantee of open communication, the Panel’s complaint process lacks the transparency and accountability which it attempts to ensure on behalf of the Bank. In addition, Professor Bradlow

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<sup>111</sup> *Id.* at 554.

<sup>112</sup> *Id.*

<sup>113</sup> *See id.* at 577-78.

<sup>114</sup> *See id.* at 578.

<sup>115</sup> *Id.* at 584-85.

<sup>116</sup> *Id.* at 585. Due process is, of course, a fundamental Western ideal and may not correspond equally to other cultures. However, as the Bank is constructed as a quasi-democracy, it seems appropriate that the notion of due process be considered.

<sup>117</sup> *Id.*



states, there are “too many opportunities for ex parte communications between the Panel and the Bank’s staff, the borrower, and the Executive Director representing the borrower state”, which can lead to impaired confidence in the fairness of the complaint review process as a whole.<sup>118</sup>

The Board has the discretion to accept or reject the Panel’s recommendation regarding whether an investigation of the complaint is warranted. Another potential problem stems from the Resolution’s mandate that the Board’s decision to accept or reject the Panel’s recommendation must be made public in a published report.<sup>119</sup> The published report must also include the complaint and the Panel’s recommendation, but leaves open the possibility that the Bank “could decide to publish edited summaries of the Panel’s proceedings,” rather than the full, unedited text of the documents.<sup>120</sup> Professor Bradlow suggests that if the public suspects that the published report is an edited format, questions would arise regarding what possibly pertinent information was edited out of the public report.<sup>121</sup> Such questions would diminish the credibility of the published report and impede the goal of transparency and accountability.

Current criticisms of the Panel’s adequacy as a check to the Bank’s activities in projects that may adversely affect groups or individuals are voiced, among others, by the activist group “50 Years is Enough” (hereinafter, “50 Years”). One of 50 Years’ arguments is that the Panel is an inefficient guard against project arrangements between the Bank and the borrower nation that result in harm caused to residents of project nations.<sup>122</sup> 50 Years argues that Bank “[m]anagement has continually tried to circumvent the Panel process by developing secret ‘action plans’ with the Borrower country whenever a claim is filed. By the time the Panel is ready to seek authority from the Board to investigate a claim, management and Borrower can oppose the investigation on the grounds that the action plan is sufficient.”<sup>123</sup> 50 Years appears to assume that management opposition is influential on the Board’s decision to grant or deny authority for the investigation. This assumption may be somewhat cynical; the 1999 Clarifications to the Resolution states that management “will not communicate with the

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<sup>118</sup> *Id.* at 591.

<sup>119</sup> *See id.* at 593.

<sup>120</sup> *Id.*

<sup>121</sup> *See id.*

<sup>122</sup> *See 50 Years is Enough, The World Bank’s Inspection Panel: Background and an Update*, ECONOMIC JUSTICE NEWS, Vol. 2, No. 3 (Sept. 1999), which may be found at the 50 Years is Enough web site address of <<http://www.50years.org/ejn/v2n3/panel.html>> (visited Mar. 7, 2000).

<sup>123</sup> *Id.*

Board on matters associated with the request for inspection, except as provided for in the Resolution. It will thus direct its response to the request . . . to the Panel. Management will report to the Board any recommendations it may have, after the Panel completes its inspection and submits its findings . . .”<sup>124</sup>

However, the concern expressed by 50 Years regarding action plans is valid, if they are indeed entered into in lieu of Panel investigations. Action plans are addressed by the Resolution, which defines them as agreements between the borrower and the Bank that “seek to improve project implementation.”<sup>125</sup> Action plans, states the 1999 Clarifications to the Resolution, are

[o]utside the purview of the Resolution, its 1996 clarifications, and these clarifications. In the event of agreement by the Bank and borrower on an action plan for the project, Management will communicate to the Panel the nature and outcomes of consultations with affected parties on the action plan. Such an action plan, if warranted, will normally be considered by the Board in conjunction with the Management’s report [which addresses Bank failure and possible Bank remedial efforts, in response to a complaint].<sup>126</sup>

The 1999 Clarification to the Resolution indicates that an action plan is largely immune from Panel review. The “Panel may submit to the Executive Directors for their consideration a report on their view of the adequacy of consultations with affected parties in the preparation of the action plans. *The Board should not ask the Panel for its view on other aspects of the action plans* nor would it ask the Panel to monitor implementation of the action plans.”<sup>127</sup> Therefore, the Panel has only the authority to opine whether the action plan adequately consulted affected parties. The 1996 Clarification to the Resolution states that “no procurement action is subject

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<sup>124</sup> THE WORLD BANK, *Conclusions of the Board’s Second Review of the Inspection Panel* (visited Mar. 7, 2000) <<http://www.worldbank.org/html/extdr/ipwg/secondreview.htm>> Approved Recommendation No. 2 (Apr. 1999).

<sup>125</sup> THE WORLD BANK, *Conclusions of the Board’s Second Review of the Inspection Panel* (visited Mar. 7, 2000) <<http://www.worldbank.org/html/extdr/ipwg/secondreview.htm>> Approved Recommendation No. 15 (Apr. 1999).

<sup>126</sup> *Id.*

<sup>127</sup> THE WORLD BANK, *Conclusions of the Board’s Second Review of the Inspection Panel* (visited Mar. 7, 2000) <<http://www.worldbank.org/html/extdr/ipwg/secondreview.htm>> Approved Recommendation No. 16 (Apr. 1999) (emphasis added).

to inspection by the Panel, whether taken by the Bank or by a borrower.”<sup>128</sup> If the Panel believed the action plan to be inadequate in substance, it would be powerless to object. The clarifications do not indicate that in the consultations with the affected parties, the affected parties must agree to the action plan as a remedial action in lieu of a Panel investigation. The 1996 Clarification refers to a “separate mechanism [that] is available for addressing procurement-related complaints”, but does not identify the mechanism.<sup>129</sup>

The 1996 and 1999 Clarifications to the Resolution do endeavor to clear up some deficiencies in the Resolution.<sup>130</sup> One interesting 1999 clarification is regarding the Board’s authorization of an investigation recommended by the Panel. The resolution reads: “If the Panel so recommends, the Board will authorize an investigation without making a judgment on the merits of the claimants’ request, and without discussion except with respect to the following *technical eligibility criteria* . . .”.<sup>131</sup> On its face, this would appear to reduce the Board’s discretion in rejecting a Panel recommendation of an investigation to issues purely relating to the standing and eligibility of the complaint and the complainant. It remains to be seen whether this

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<sup>128</sup> THE WORLD BANK, *Review of the Resolution Establishing the Inspection Panel, Clarification of Certain Aspects of the Resolution* (Oct. 1996) (visited Mar. 7, 2000) <<http://www.worldbank.org/html/ins-panel/IPNclarification.html>>.

<sup>129</sup> *Id.*

<sup>130</sup> For example, Professor Bradlow points out that the Resolution fails to “stipulate what information a complainant should include in a successful request for an inspection.” Bradlow, *supra* note 100, at 585. The World Bank Inspection Panel’s web site currently has a link to “The Inspection Process”, which gives a suggested format for a Request for Inspection. See <<http://www.worldbank.org/html/ins-panel/index.html>> (visited Mar. 7, 2000). Another deficiency in the Resolution, raised by Professor Bradlow, is that while the Resolution allows any “‘affected party’ except a single individual to bring a complaint” to the Panel, the “Resolution does not define ‘affected party.’” Bradlow, *supra* note 100, at 583. The 1996 Clarifications to the Resolution provide a definition for “affected party”; it is “a community of persons such as an organization, association, society or other grouping of individuals . . . [that] includes any two or more persons who share some common interests or concerns.” The “Review of the Resolutions Establishing the Inspection Panel, Clarification of Certain Aspects of the Resolution” may be found on the World Bank Inspection Panel’s web site at <<http://www.worldbank.org/html/ins-panel/IPNclarification.html>>. (visited site Mar. 7, 2000). The clarification of “affected persons”, however, may not specifically address Professor Bradlow’s question of whether a juridical person has standing to bring a complaint.

<sup>131</sup> THE WORLD BANK, *Conclusions of the Board’s Second Review of the Inspection Panel* (visited Mar. 7, 2000) <<http://www.worldbank.org/html/extdr/ipwg/secondreview.htm>>. Approved Recommendation No. 9 (Apr. 1999).

clarification will affect the Board's discretion in practice, specifically when an action plan has been submitted by the Bank and borrower nation to the Board for its consideration.

The Clarifications to the Resolution are an encouraging sign that the Board perceives the Resolution as a flexible-enough instrument to answer to challenges with which it is presented. The Panel may still be seen in its infancy; it has been in existence for one-tenth of the time that the Bank has been in operation. We may anticipate that the role of the Panel will continue to evolve over time and with experience. At the very least, the Panel's effort to provide accountability of the Bank to individuals of project-borrower nations for Bank decisions regarding project funding should serve to some degree as a check to influence exerted over the Bank by larger Bank shareholders. The Bank may be less likely to succumb to shareholder pressure on issues the Bank largely disagrees with if there is an adequate accountability mechanism to the project-borrower nation residents. The efficiency of the accountability mechanism, however, may be dampened by the alternative use of action plans between the Bank and a complainant's government.

#### *B. Non-governmental Organizations*

Non-governmental organizations ("NGOs") are not-for-profit entities "whose members are citizens or associations of citizens of one or more countries and whose activities are determined by the collective will of its members in response to the needs of the members of one or more communities with which the NGO cooperates."<sup>132</sup> Operationally, NGOs can serve as guardians over issues they hold significant, and can provide makers and enforcers of law and policy with information that might not otherwise be readily available to them, in the hopes that the information will influence the makers and enforcers in support of the NGOs' causes. NGOs are "emerging as agents of change, in part because they have conceptualized problems and solutions without regard to national boundaries. . . they have made substantial contributions already . . . to the drafting of international agreements, norm creation, and implementation of agreements."<sup>133</sup>

NGOs have no formalized legal status with regard to inter-governmental organizations ("IGOs") or governments, and therefore the IGOs and governments are free to adopt a position they deem appropriate regarding

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<sup>132</sup> Wendy Schoener, *Non-Governmental Organizations and Global Activism: Legal and Informal Approaches*, 4 *IND. J. GLOBAL LEGAL STUD.* 537, 538 (1997) (quoting from the *Report of the Secretary-General*, U.N. Doc. E/AC.70/1994/5 (1994)).

<sup>133</sup> *Id.* at 539.

their relationship to NGOs. In spite of an absence of a legal obligation to work with NGO's, large inter-governmental organizations such as the Bank and the United Nations have accepted the establishment of working relationships with various NGOs. Scholar Wendy Schoener has studied the relationship between the United Nations and various NGOs, and finds that NGOs are "widely recognized by U.N. committees and programs as vital to U.N. work."<sup>134</sup> Schoener attributes the United Nations' perception of NGOs' value to the "NGOs' freely offered assistance, which has made them virtually indispensable to the U.N. In particular, their 'expertise, diplomatic skills, good relationships and contacts, and a clear vision about objectives' have proven useful" to the United Nations.<sup>135</sup>

In the last decade, the Bank has increased its use of NGO assistance in its development projects. 28% of its projects in the period 1987 to 1996 involved the participation of NGOs in some fashion; that percentage has increased to 52% in the Bank's 1999 fiscal year.<sup>136</sup> The Bank states that

Involvement is sought at all phases of the Bank's work – planning and design of projects, implementation, and impact evaluation – because participation improves the quality, effectiveness, and sustainability of development activities. NGOs and other civil society groups play an increasingly critical role in ensuring that Bank-supported projects are participatory in nature, through both their own involvement and their ability to reach out to other stakeholders – especially poor and excluded communities.<sup>137</sup>

In an effort to maximize the assistance offered by NGOs, the Bank has developed a team to monitor interaction between the Bank and NGOs. Specifically, the purpose of the team is to identify "examples of best practice, [strengthen] Bank-NGO collaboration, coordinat[e] approaches to collaboration in policy dialogue and operations, and improv[e] knowledge of NGOs and civil society by sharing and disseminating experience."<sup>138</sup> The team works in cooperation with the Bank's NGO Working Group, which, as part of the NGO-World Bank Committee meets twice a year with Bank management with the goal of strengthening Bank-NGO cooperation.<sup>139</sup> According to the Bank, the Bank provides funding for NGOs in developing

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<sup>134</sup> *Id.* at 550.

<sup>135</sup> *Id.* at 550 (quoting Van Boven, *supra* note 64, at 224).

<sup>136</sup> THE WORLD BANK, 1999 ANN. REP. 139 (1999), Table 3-5.

<sup>137</sup> *See id.*

<sup>138</sup> *Id.* at 140.

<sup>139</sup> *See id.*

nations through the Bank's Small Grants Program.<sup>140</sup> Though this is most certainly one way for the Bank to demonstrate its support of NGO existence, the funding connection between the Bank and the Bank-funded NGO impedes NGO independence from the Bank. NGO independence from the governments and IGOs to which they report is important to the NGOs' ability to freely opine about the information they provide.

It is important to keep in mind that, in spite of the Bank's encouragement of NGO participation, not all NGOs can be heard by governments and intergovernmental organizations such as the Bank and the United Nations. There are simply too many NGOs and too little time and too few resources at the IGOs' meetings to attend to each and every NGO platform. As a result, an IGO may select a certain number of NGO participants to work with the IGO. Selected NGOs are given consultative status by the IGO. Even with consultative status, there is no guarantee that the NGO platform will be seriously considered by the IGO; for example, conferences may see the NGOs booked for presentation late at night, after most targeted delegates have left for the day.<sup>141</sup>

In understanding the relationship between IGOs, such as the Bank, and NGOs, it is crucial to realize that some of the very nations whose citizens experience the most egregious human rights violations do not have adequate socio-political systems to encourage or even permit the existence of NGOs in the first place. For example, the People's Republic of China "has deemed independent human rights reporting to constitute counterrevolutionary propagandizing and disclosure of important state secrets," which is a violation of Chinese law.<sup>142</sup> Another example is Singapore, which criminalizes the existence of independent human rights advocacy groups.<sup>143</sup> Moreover, even if NGOs that support social rights were permitted in every nation, cultural differences may stand in the way of the type of reform NGOs are designed to encourage. Henry Steiner explains this concept:

Western-derived norms stressing individual rights stem from a historical experience and from social formations that are alien to the Third World. . . For the First World, the

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<sup>140</sup> *See id.* at 141.

<sup>141</sup> For example, at the United Nations Commission on Human Rights, "with so many governments and NGOs wanting to speak . . . NGOs are frequently allotted the least popular time, late at night, when there are few government delegates to hear or respond to them." Michael H. Posner & Candy Whittome, *The Status of Human Rights NGOs*, 25 COLUM. HUM. RTS. L. REV. 269, 286 (1994).

<sup>142</sup> *Id.* at 277.

<sup>143</sup> *Id.*

assumption may well be valid that rights of speech, association and participation will bring about a vibrant and more democratic process. . . Those same protections would not have the same effects in many Third World countries where fundamental violations of rights can coexist with apparent freedoms of speech.<sup>144</sup>

Therefore, although individual rights are the basis for many Western societies, First World nations may not accept notions of the rights of the individual; the notions may be too foreign to their culture to allow for beneficial application.

Even in a highly developed nation that embraces NGO participation, NGOs may temper their opinions in order to appear more palatable to IGOs or the NGOs' government, because the NGO desires IGO and government favor. If an NGO espouses radical points of view, they may be altogether rejected by the individuals and groups upon whom the NGO depends for advocacy. For example, in the past, several environmental NGOs supported cutting appropriations to force environmental change at the Bank and voiced their opinion to a United States Congressional Representative. That representative responded with a mandate to his staff to cease working with certain NGOs.<sup>145</sup> Similarly, NGOs may be tempted to forgo taking a global civil society perspective on human rights for a domestic perspective, for the domestic perspective is more appealing to the NGOs' governments, when the global view may have helped them better meet their goals.<sup>146</sup> As Henry Steiner explains, "Employing domestic standards rather than international law might be politically expedient – more political clout, less risk that an NGO will be viewed as inspired by alien doctrine. On the other hand, international law has strategic advantages in countries whose domestic legal norms are of little assistance."<sup>147</sup>

In spite of cultural barriers, continued and enhanced NGO participation in IGO and government dealings with matters affecting individual rights can serve to benefit both the IGOs and governments as well as the intended human rights beneficiaries. The level of success that will be achieved by NGOs in this regard is dependent partly upon curing what ails

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<sup>144</sup> HENRY STEINER, *DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT* 24 (1991).

<sup>145</sup> See Bowles & Kormos, *supra* note 55, at 836.

<sup>146</sup> The phrase "global civil society" refers to the "effect of nonstate organizations on State and international actions . . . The term springs from the older notion of "civil society". Schoener, *supra* note 132, at 552.

<sup>147</sup> Steiner, *supra* note 144, at 5.

the NGO/IGO-government collaboration, which seems to be steeped in cultural differences. It may be that bridging cultural differences, rather than attempting to homogenize cultural notions of rights, will bolster the effectiveness of NGO involvement with IGOs.<sup>148</sup> It will also depend on the level of IGO and governments' acceptance and respect of NGO participation. The steps the Bank has taken to encourage NGO involvement is encouraging in this regard, and if the Bank's recent actions are a wave of the future, human rights NGOs will accomplish much toward their goal of educating law and policy makers and enforcers.

### C. *The Bank's Comprehensive Development Framework*

In its 1999 Annual Report, the Bank describes its recent implementation of the Comprehensive Development Framework ("CDF") within its practices.<sup>149</sup> Although it appears that the CDF attempts to bolster borrower nation participation in development projects, exactly what the CDF is and how it operates are difficult to describe. Bank President James D. Wolfensohn terms the CDF a "vision", a "formulation", and an "agenda".<sup>150</sup> Moreover, it is hard to pin down a definition of the CDF because it takes different approaches with different borrower nations. For example, the CDF was piloted in the West Bank and Gaza by implementation of workshops and seminars on subjects such as water, municipal finance and legal reform.<sup>151</sup> In Romania, the CDF resulted in a "series of in-country consultations inviting a wide range of stakeholders to help the country articulate its own development strategy."<sup>152</sup> What seems clear from the 1999 Annual Report's descriptions of the CDF is that the CDF is an effort to establish joint communications and activities between the Bank and the member governments to effectuate developmental reform. As the 1999 Annual Report states, the CDF

suggests a holistic approach to development that recognizes the importance of macroeconomic fundamentals but gives equal weight to the institutional, structural, and social underpinnings of a robust market economy. It emphasizes strong partnerships, donors, civil society, the private sector,

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<sup>148</sup> The notion of bridging cultural differences is, of course, too large and complicated a topic to fully explore within the confines of this note and is outside the scope of this note.

<sup>149</sup> THE WORLD BANK, 1999 ANN. REP. 26 (1999).

<sup>150</sup> *Id.* at xiv.

<sup>151</sup> *See id.* at 7.

<sup>152</sup> *Id.* at 6.



and other development actors. Perhaps most important, the country is in the driver's seat, both "owning" and directing the development agenda, with the Bank and the country's other partners each defining their support in their respective business plans . . . the whole framework rests on the premise that the Bank need not lead – or even be involved – as long as the process produces the desired results.<sup>153</sup>

The 1999 Annual report describes key CDF principles as "long-term vision, holistic approach, and ownership including civil society participation."<sup>154</sup> It appears that the "desired results" referred to in the 1999 Annual Report vary from country to country.

The CDF appears to be intended to encourage various reforms in developing nations by way of borrower participation in voluntary reform programs. Whether or not the CDF serves as a check to pressure exerted by the Bank upon borrower nations to accept policy changes depends on what borrower participation really means in practice. It also depends on whether the participation is truly voluntary. It may be that the participation is equally voluntary to a borrower nation's acceptance of specific conditions attached to project funding, which, as this note has discussed, the borrower nation may be financially pressured to accept. If, however, the borrower nation really is in the "driver's seat"<sup>155</sup> in the CDF programs, the CDF may allow the borrower nation some latitude in determining its own developmental reform.

Since the CDF program has just finished its pilot year, it is premature to attempt to gauge the program's success, especially since it may be also premature to grasp a concrete definition of the program thus far. However, both the Bank's assessment of CDF and the pilot nations' opinions of the benefits of the program will be of interest as we attempt to evaluate whether the CDF contributes to borrower and member nation representation and involvement in the Bank's functions.

## VII. CONCLUSION

The root of the capability of the primary Bank shareholder to exert pressure over Bank policy, which in turn allows the primary shareholder to impose policy reform it deems beneficial upon a borrower nation, is the Bank's weighted voting structure. It is a natural result for large shareholders to be able to exploit their influence over Bank policy when the weight of

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<sup>153</sup> *Id.* at 4.

<sup>154</sup> *Id.* at 6.

<sup>155</sup> *Id.* at 4.

their vote is correlative to the amount they have invested in the Bank. There are institutions that have some potential to check the amount and character of influence one shareholder may exert over Bank policy, such as the Bank's Inspection Panel and non-governmental organizations. However, each institution discussed is flawed either by structure or by interpretation and is not able to completely counteract or prohibit the potential for exploitation of the influence carried by large Bank shareholders. If there is a solution to the problem of shareholder influence over the Bank, which should be neutral in its regard of the domestic policies of its borrower nations, it lies in revision of the Bank's voting structure and the treatment of conditional funding by shareholders.

One possible revision of the voting structure would be to eliminate the correlation between the weight of a member's vote and the amount of Bank shares held. Each member would carry one vote, ensuring that each member's vote was equally reflected in Bank voting activities. The benefit is that the Bank voting structure would be less susceptible to purse-power influence. The drawback is that the inability to purchase influence through investment may discourage wealthy shareholders from their current level of investment. The incentive for wealthy countries to aid developing nations through a neutral organization such as the Bank diminish in comparison to donating funds directly to the beneficiary nation, in which case, the donor countries are largely free to attach specific conditions on their funding.

Another conceivable revision is to explicitly prohibit Bank members from utilizing threats to withdraw Bank funding if the Bank fails to meet certain conditions. The Bank is prohibited by its Articles of Agreement from accepting any funds from a particular donor which are contingent upon the donor's conditions being met.<sup>156</sup> However, this prohibition does not answer for the same situation, reverse-engineered by the donor, in which a donor threatened to revoke funding if certain conditions are not met. This specific prohibition would help to diminish the ability of members to leverage their influential position with the Bank. However, as in the elimination of the weighted voting structure, the problem with this suggestion lies in the fact that Bank membership is voluntary. A wealthy nation may decide not to invest on the same scale if they are precluded from exercising the influence they anticipated they would receive in return for their investment. In addition, there is a possibility that the Bank, either due to financial dependence on, or political deference to the primary shareholder, would continue to attempt to work out compromises in the face of such a prohibition, just as the Bank has done in the face of the prohibition of accepting conditional funding.

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<sup>156</sup> Bowles & Kormos, *supra* note 55, at 808.

A more realistic suggestion may be the implementation of a special review process when an influential member nation pressures policy change over the Bank. A key component of a special review process would be an enhancement of minority member nation voting power. This could take the form of a special vote on action to be taken when a shareholder clearly wishes to effect Bank policy change and attempts to do so on the basis of its investment in the Bank. In such a special vote, each nation should carry only one vote, which is a deviation from the normal weighted voting structure. Again, a potential drawback to this suggestion is that if the influential shareholder's conditions are voted down, there is decreased incentive for that nation to fund the Bank.

Bowles and Kormos have indicated that "confining or prescriptive legislation regarding the World Bank may irritate. . . the World Bank and other donors . . . other donors can respond, however, by pressuring the United States to refrain from such unilateral actions."<sup>157</sup> Inferable from this statement is that an absence at large of pressure from other donors to refrain from conditional funding may mean that the other donors either do not find the influence exerted by the United States on the Bank to be intolerable, or do not believe the policies pushed by the United States are based in error. However, if an influential shareholder is really interested in reform that is accepted as beneficial on a global basis, the vote against a specific condition could serve as a signal that the proposed reform is not universally-accepted. If it is not, the proponent of the reform should consider the effects of the reform in cultural contexts outside its own.

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<sup>157</sup> *Id.* at 822.