

## Tilburg University

### Introduction

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## Introduction

In his 1992 Final Report on the *Realization of Economic, Social and Cultural Rights*, UN Special Rapporteur Danilo Türk is quite critical of the World Bank's and IMF's structural adjustment programs: "Despite the more recent visions of adjustment by IMF and World Bank, these programmes still appear far too often to be inspired by economic theory rather than practical experience of the human, political, social and economic impact adjustment has had upon the more than 70 countries which have applied what is often referred to as a 'bitter medicine'." He recommends, *inter alia*, to integrate "human rights yardsticks into any equation measuring the levels of achievement of adjustment programmes".<sup>2</sup> In a report presented in 1999, also written within the framework of the UN Sub-Commission on Human Rights, J. Oloka-Onyango and Deepika Udagama state that "although these institutions [IMF and World Bank] have come some way from outright rejection (characteristic of their position in the 1960s and the 1970s) of the applicability of human rights standards to their operations, they still adopt a rather ambivalent approach to the notion of human rights. Thus, they selectively apply certain aspects and leave out others".<sup>3</sup> And, as the authors add: The IMF "is even more adamant that its operations have nothing to do with human rights, and its methods of work amply demonstrate this".<sup>4</sup> Dealing with the World Bank as well as the IMF, the authors also point at some more positive developments – such as, in the case of the World Bank, its present emphasis on "social safety nets, enhancing the ability of countries to provide basic education and health care, and the notion of 'good governance'",<sup>5</sup> and in the case of the IMF, the discussion on "the distributional aspects of its policies with a view to the protection of the well-being of vulnerable groups"<sup>6</sup> – but basically they remain very critical about both organizations. As they note in another report, published in June 2000: "What is clear is that the institutional mechanisms of globalization have yet to seriously address the issue of human rights in a fundamental and democratic fashion – both

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<sup>1</sup> UN Document E/CN.4/Sub.2/1992/16, p. 14.

<sup>2</sup> *Ibid.*, p. 18.

<sup>3</sup> See their report on *Human rights as the primary objective of international trade, investment and finance policy and practice*, UN Document E/CN.4/Sub.2/1999/11, p. 13.

<sup>4</sup> *Ibid.*, p. 15.

<sup>5</sup> *Ibid.*, p. 14.

<sup>6</sup> *Ibid.*, p. 15.

with respect to their operations within countries, and also in relation to the internal make-up and functioning of their own institutions.”<sup>7</sup>

It raises the question of to what extent the World Bank and the IMF are effectively integrating human rights concerns in their policy papers and guidelines for activities. Thereby it is interesting to analyze the similarities and differences between the approaches by the two International Financial Institutions (IFI's). In addition: What reasons do they have for not going further than they do, and what supervisory mechanisms are being used for monitoring the actual outcome of the policies set out? How about, for instance, the World Bank's *Inspection Panel*, established in 1993?<sup>8</sup> To what extent can it really influence decision making on the continuation of existing projects or on the commencement of similar new ones?<sup>9</sup>

Under the leadership of James Wolfensohn, President of the World Bank since 1995, the Bank “reinvented” the issue of poverty alleviation.<sup>10</sup> And according to Michel Camdessus, until February 2000 Managing Director of the IMF, “the international community has recently decided to launch a renewed effort simultaneously to address poverty and the debt overhang. We have put in place the revised HIPC [debt initiative for the Heavily Indebted Poor Countries], which will provide large-scale debt relief to countries whose pro-growth policies include an explicit and targeted anti-poverty strategy, reached by a process involving widespread participation of civil society. The new approach is based on the closest possible collaboration between the IMF and the World Bank, with the World Bank taking the lead in lending for anti-poverty purposes”.<sup>11</sup> In 1999, Jo Ritzen, former Minister of Education in the Netherlands and former Vice-President,

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<sup>7</sup> UN Document E/CN.4/Sub.2/2000/13, p. 9.

<sup>8</sup> See, for instance: “World Bank: Conclusions of the Second Review of the World Bank Inspection Panel”, with an introductory note by Sabine Schlemmer-Schulte, (January 2000) *International Legal Materials* 243.

<sup>9</sup> See, for instance, Edith Brown Weiss, Andres Rigo Sureda and Laurence Boisson de Chazournes (eds), *The World Bank, International Financial Institutions, and the Development of International Law*, Washington D.C: The American Society of International Law, 1999, esp. Part 2.

<sup>10</sup> This includes the initiation of the Heavily Indebted Poor Countries' Initiative (HIPC) in 1996, and the introduction of the Comprehensive Development Framework (CDF) in 1999. In addition, jointly with the IMF, the framework for Poverty Reduction Strategy Papers (PRSPs) was introduced in December 1999.

<sup>11</sup> Michel Camdessus, “An Agenda for the IMF at the Start of the 21<sup>st</sup> Century”, Speech, New York, 1 February, 2000 (<http://www.imf.org/.../speeches>).



Development Policy of the World Bank, stated that the Bank is half way in translating its revised policy aims into practice.<sup>12</sup> Is he right, or is Grahame Russell, a Washington based human rights lawyer and development expert, right when stating that “while maintaining or increasing the numbers of people living in poverty in many countries, IMF and World Bank-led policies and programmes have promoted and strengthened a corporate-dominated economic model that, in many cases, has concentrated more wealth in the hands of minority sectors”?<sup>13</sup>

The World Bank and IMF approach to poverty is generally considered to be very relevant for the realization of human rights such as the right to food and adequate health care. At the same time it raises many questions. Is it enough when the World Bank states that its poverty programs are a contribution to the realization of human rights *per se*? And how about a confrontation between theory (World Bank and IMF statements in the field of poverty alleviation) and the daily reality (in the past and anno 2003)? Who exactly profits from poverty programs – how about the macro level consequences of these programs *versus* the consequences on the micro level of families, etc.? – and to what extent are the economic, social and cultural *rights* of individuals as well as populations as a whole fulfilled by these programs? In addition: Who are the major dominant states within the World Bank and IMF decision-making bodies, and what does it mean that some of them (like the USA) are “not highly in favor” of the concept of economic, social and cultural rights?

One of the conclusions of the 1994 United Nations seminar on “Extreme Poverty and the Denial of Human Rights” (New York, 12-14 October, 1994) – at which key note speeches were given by, amongst others, two of participants in this book project: Paul Hunt and the author of this Introduction – was that families and groups living in situations of extreme poverty make constant and important efforts in fighting to improve their living conditions; at the same time, however, such efforts “tend to go unnoticed by the dominant society, which seems unable to build upon them or upon the fragile solidarity that can exist among persons, families and groups living in situations of extreme poverty”.<sup>14</sup> Similar conclusions have been drawn at, for instance, the 1995 Copenhagen World Summit for Social Development. After having said that poverty has various manifestations, including

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<sup>12</sup> Roeland Muskens, “Wereldbank herontdekt de armen” [World Bank reinvents the poor], (December 1999) *Internationale Samenwerking* 34, December 1999.

<sup>13</sup> Grahame Russell, “Broadening the Definition of Human Rights”, (December 1999) *Third World Network Features* 3.

<sup>14</sup> UN Document E/CN.4/1995/101, p. 19.

lack of income and productive resources sufficient to ensure sustainable livelihoods, hunger and malnutrition, ill health, limited or lack of access to education and other basic services, increased morbidity and mortality from illness, homelessness and inadequate housing, unsafe environments, and social discrimination and exclusion, the Final Document of the Summit states that poverty is “characterized by a lack of participation in decision-making” by those who are the object of the policies concerned.<sup>15</sup> The Document then adds that “the aim of social integration is to create ‘a society for all’, where every individual, each with rights and responsibilities, has an active role to play”,<sup>16</sup> while recommending, amongst (many) other things, the need to strengthen “popular political participation, and promoting the transparency and accountability of political groupings at the local and national levels”.<sup>17</sup>

Against this background, it is interesting to discuss direct consequences of World Bank and IMF activities in the field of, for instance, involuntary resettlements / forced evictions of indigenous peoples having to move due to the construction of dams, etc. In the words of Benedict Kingsbury, “the policies on indigenous peoples and on involuntary resettlements have been among the most controversial of the entire corpus [*i.e.*, the World Bank]”.<sup>18</sup> How about the participation by indigenous peoples in decision-making, and the concepts underlying this notion, such as “no development without participation by the communities concerned” and “not about them without them”.<sup>19</sup> How about practicing, for instance, World Bank Operational Directive 4.20, which states that a “strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous peoples themselves”?<sup>20</sup> Partly in relation to this, both the World Bank and the IMF strongly address the issue of good governance.

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<sup>15</sup> *Copenhagen Programme of Action*, adopted by the World Summit for Social Development (Copenhagen, 6-12 March, 1995), Chapter II, Paragraph 19.

<sup>16</sup> *Ibid.*, Chapter IV, Paragraph 66.

<sup>17</sup> *Ibid.*, Chapter IV, Paragraph 71 (h).

<sup>18</sup> Benedict Kingsbury, “Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples”, in Guy Goodwin-Gill and Stefan Talmon (eds), *The Reality of International Law, Essays in Honour of Ian Brownlie*, Oxford: Clarendon Press, 1999, p. 325. See also: Centre on Housing Rights and Evictions, *Forced Evictions and Human Rights*, Geneva, 1999.

<sup>19</sup> See on the issue of participation by the poor and by indigenous peoples especially, several contributions to Willem van Genugten and Camilo Perez-Bustillo (eds), *Transcending the Poverty of Rights; Latin America, Human Rights and the Eradication of Poverty*, London: ZED-Books, 2001.

<sup>20</sup> Quoted by Kingsbury, in Gill & Talmon (eds): 1999, *op. cit.*, p. 325.



The World Bank approach includes, *inter alia*, the rule of law, while emphasizing that “in the context of human rights, good government is not a luxury, but a vital necessity”.<sup>21</sup> The 1997 IMF *Guidelines Regarding Governance Issues* also include the rule of law, but mainly seem to stick to the economic and financial aspects of good governance (transparency, accountability, etc.).<sup>22</sup> The question then is whether one should include *expressis verbis* in the notion of “good governance” elements such as “democratic decision-making” and “respect for (...) human rights”, as was done in, for instance, the Resolution on Human Rights, Democracy and Development, adopted by the EC Council of Ministers in November 1991. And what would be the *practical* advantage of including such references? Further to this: How about the advantages and disadvantages of linking “good governance” requirements to the willingness of the World Bank and IMF to make loans? In terms of this book: What is the practical value of treaty obligations stemming from for instance the International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child, when governments negotiate with (one of) the IFI’s about structural adjustment programs?

Another core topic relates to the division of labor between states, intergovernmental organizations such as World Bank and IMF, private corporations and non-governmental organizations. In his previously mentioned Final Report, Danilo Türk speaks about “misconceptions of the State”, meaning that realization of economic, social and cultural rights seems to presuppose the presence of a “strong” state as the motor behind it.<sup>23</sup> Michel Camdessus speaks about the reflected image of this issue, when he observes that the debate on the role of the private sector in financial markets has developed into a highly technical discussion that too often has focused on the role of the private sector in situations of crisis, forgetting more or less about the role the private sector can play in solving problems and creating welfare.<sup>24</sup>

Camdessus and others emphasize the positive impact of globalization and creating free markets on the realization of human rights. This correlation, however, is questioned by, amongst others, the UN Committee on Economic, Social and

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<sup>21</sup> Alfredo Sfeir-Younis, “World Bank and Human Rights: Its Role, Challenges and Opportunities”, statement on behalf of the World Bank, Third Committee UN General Assembly, 16 November, 1998, p. 8.

<sup>22</sup> Cf. Erik Denters, “New Challenges to IMF Jurisdiction”, (1998) 29 *Netherlands Yearbook of International Law* 36.

<sup>23</sup> UN Document, E/CN.4/Sub.2/1992/16, p. 23.

<sup>24</sup> *Ibid.*, p. 4.

Cultural Rights: “The Committee recognizes the wealth-generating potential of trade liberalization, but it is also aware that liberalization in trade, investment and finance does not necessarily create and lead to a favourable environment for the realization of economic, social and cultural rights.”<sup>25</sup> Saying so, the Committee addressed the famous WTO meeting in Seattle of November-December 1999, but this cap also fits the World Bank and the IMF. One can say that the problem of global poverty, and related issues such as the ones indicated before, is inherently multidimensional, and that it can only be eradicated or substantially reduced by coalitions of effort, consisting of states, intergovernmental bodies, (transnational) corporations, trade unions, and (other) non-governmental organizations. All have their specific responsibilities, capabilities and approaches, none of the actors having a monopoly on potential strategies and solutions. Questions to be discussed include what the “best” (at least: a good) division of labor between the actors might be, and, more specifically, what the role for the World Bank and the IMF should be in that respect. One core issue then is the role civil society can play in shaping World Bank and IMF policies. In the 1999 *Human Development Report*, on “globalization with a human face” as the introduction says, it is stated that “the key economic structures – the IMF, World Bank, G-7, G-10, G-22, OECD, WTO – are dominated by the large and rich countries, leaving poor countries and poor people with little influence and little voice, either for lack of membership or for lack of capacity for effective representation and participation. There is little transparency in decisions, and there is no structured forum for civil society institutions to express their views”.<sup>26</sup> Should this change, and if the answer is in the affirmative, in what way?

It brings me, finally, to the core approach of this book: Discussing the legal status of the World Bank and the IMF, in relation to human rights obligations, and to issues in the political and economic field closely related to that. Human rights have been “re-invented” by the United Nations at the end of the Second World War and have led to the adoption of many human rights instruments. It raises the question to what extent international organizations like the World Bank and the IMF, belonging to the same UN family, are automatically bound to live up to these human rights obligations.<sup>27</sup> For some authors it is clear, among them the Legal Director of the New York based Center for Economic and Social Rights: “As specialized agencies of the United Nations, the World Bank and the IMF are

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<sup>25</sup> UN Document E/C.12/1999/9, p. 2.

<sup>26</sup> UNDP, *Human Development Report 1999*, New York/Oxford: Oxford University Press, 1999, p. 8.

<sup>27</sup> See for an early discussion of this issue: E/CN.4./Sub.2/412 (Vol. IV), 3 August 1978.



obligated to promote the UN's human rights mission, and as international organizations they are at least responsible for not violating customary international human rights law."<sup>28</sup> The present Secretary-General to the United Nations, Kofi Annan, basically adopts the same approach when stating that "the promotion of human rights must not be treated as something separate from the Organization's other activities. Rather, it is the common thread running through all of them (...)"<sup>29</sup> The aforementioned report by J. Oloka-Onyango and Deepika Udagama, however, mentions the World Bank thesis, sometimes brought forward, that "there is a need to honour the charter of each organization and to respect the specialization of different international organizations as reflected in the statutory requirements of their respective charters"<sup>30</sup> and the consequence thereof: "Honoring the charter" of the World Bank is thus placed above any international obligations which the Bank may have by virtue of membership in the United Nations family. Such an approach could imply that any action permitted by the Bank's charter may appropriately be pursued regardless of the adverse human rights or other consequences that may result or the fact that it may offend the Charter of the United Nations or the Universal Declaration of Human Rights."<sup>31</sup>

There are again many questions to be answered: The World Bank and the IMF cannot be formal parties to human rights conventions, but are they bound by customary international law? What is the position of the Executive Directors of the World Bank, do they have a duty to the states they "represent"? How about the "horizontal force" of human rights obligations? How about, in general, the position of non-state actors in international law? And what are the human rights obligations for states as they participate in institutions like the World Bank and the IMF?<sup>32</sup> All these questions, and many others closely related to that, are discussed in the present volume.

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<sup>28</sup> Chris Jochnick, "Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights", (1999) 21 *Human Rights Quarterly* 71.

<sup>29</sup> *Report of the Secretary-General on the Work of the Organization*, United Nations, New York, 1998, p. 23.

<sup>30</sup> UN Document E/CN.4/Sub.2/1999/11, p. 14.

<sup>31</sup> *Ibid.*

<sup>32</sup> See on the latest issue, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted by a group of experts, meeting in Maastricht in January 1997, esp. guideline 19. See Theo C. van Boven, Cees Flinterman and Ingrid Westendorp (eds), *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, Utrecht: SIM Special, 1998.



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Willem van Genugten  
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