Issues of Social Development: Integrating Human Rights into the Activities of the World Bank

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ISSUES OF SOCIAL DEVELOPMENT:
INTEGRATING HUMAN RIGHTS
INTO THE ACTIVITIES OF THE WORLD BANK (1)

BY

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There have been increasing calls for the World Bank (2) and the International Monetary Fund (IMF) to pay greater attention to the question of human rights. The reports and recommendations of the groups of experts and special rapporteurs appointed by the UN Commission and Sub-Commission on Human Rights to examine issues such as the right to development, structural adjustment policies, extreme poverty and foreign debt, all reveal that the role of international financial institutions is seen as crucial for the promotion of these objectives. In addition, calls are being made for the modification of policies to ensure compliance with human rights commitments (3).

Although human rights is not yet an issue in its own right on the World Bank’s agenda, in the past decade the organisation has made some effort to address the question (4). In order to understand these


(2) The « World Bank group » consists of five closely-associated institutions: the International Bank for Reconstruction and Development (IBRD), created in 1945; the International Finance Corporation (IFC) and the International Development Association (IDA), established in 1960 and in 1965 respectively; as well as the International Center for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA) set up in 1965 (Washington Convention) and in 1985 (Seoul Convention), respectively.


changes in the Bank’s policy-making, it is important to place them in the context of the evolution of both the mandate and activities of the IMF and the World Bank since its establishment.

In fact, recurring themes such as the fight against poverty, popular participation, increased social justice, support for human capital development and other related issues have come to occupy a central place in the official communications and in the activities of the World Bank and, to a more limited extent, in those of the IMF. It could even be said that the increasing engagement of these institutions in favour of greater social justice confirms the existence of a "post-Washington consensus".

In the past, the World Bank and the IMF both pursued an essentially macroeconomic development strategy which was grounded in the belief that their mandates were limited to the promotion of free trade and sustained economic growth. Nevertheless, despite its initial reticence, the World Bank has recently begun to focus its attention on "social questions" and these now form some of the institution’s major priorities. While considerations of the social dimensions of development still play a relatively minor role in the policies of the IMF, that institution has also started to recognise the importance of these issues and to incorporate them into its programming as part of its poverty reduction campaign (5).

Under the umbrella concept of social development, a myriad of new problems, ranging from social exclusion to education, urbanisation, and the protection of human rights are currently being examined. Social development is to be understood in its broadest sense, taking into account its many different facets, including its political dimensions. Human rights are but one of these facets. In order to ascertain their role within the framework of international financial institutions, it is necessary to understand human rights in the broader context of development, and more particularly that of social development.

The gradual evolution of the mandates of international financial institutions in relation to social development will first be outlined (1). Consideration will then be made of the World Bank’s

means of intervention, particularly those that touch upon the question of social development and human rights (II). The third part of the article will examine the normative and institutional instruments that have played, and continue to play, a role in the context of the Bank's increasing commitment to these objectives (III).

I. – INTERNATIONAL FINANCIAL INSTITUTIONS
AND THE EVOLVING INTERPRETATION OF THEIR MANDATE:
FROM THE ABSENCE OF THE SOCIAL DIMENSION
TO A RECOGNITION OF ITS IMPORTANCE

When, in the early 1940, planning for the post-war period began, three different international economic and financial organisations were envisaged, in the hope that they would play a decisive role in a world that would eventually emerge from conflict. The United States was particularly adamant in its belief that the international economy should be at the centre of the new world order. At the time, these future institutions were known as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD, also referred to as the « World Bank »), and the International Trade Organisation (ITO). The ITO was never created, although the few foundations which were laid, gradually evolved with the progressive institutionalization of the GATT and, ultimately, the creation of the World Trade Organization (WTO) in 1994. The IMF and the IBRD, known as the « Bretton Woods » institutions (named after the resort at which the constitutive agreements were negotiated), officially began functioning in 1946.

At the time of their creation, and aside from concerns related to full employment and to fair conditions of work, the social dimension occupied only a small place in the policies of the three envisaged international economic institutions. The Havana Charter, the international agreement that would have enabled the creation of the ITO, was however, reasonably progressive in its linkage of the international trading system to employment and wages (6). Among the objectives of the IBRD defined during the negotiations

at Bretton Woods was the promotion of "long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories" (7). The objectives of the IMF include "to facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy" (8). The IMF was to achieve its objectives by providing financial assistance to its members in order to enable them to correct disequilibriums in their balance of payments, while the IBRD was to promote reconstruction and development. Issues of social policy could, therefore, have readily been perceived as falling within the mandate and activities of the IBRD (9). Nevertheless, the practice followed by the Bretton Woods institutions in the first decades of the post-war period did not permit consideration of these questions. Development was not at that time perceived in distributional terms.

It must also be noted that soon after their establishment, the IMF and the World Bank became beacons for the "free world" within the bipolar international politics of the Cold War, and this ideological divide was to persist for the next forty years. The history of these institutions is indelibly marked by Cold War ideology, as free trade and the market economy came to be used by the countries of the West as symbols of national identity. The Bretton Woods institutions reflected this identity (10), and as a result, they operated in isolation from the majority of the Eastern bloc coun-

(7) Article I (iii), Articles of Agreement of the International Bank for Reconstruction and Development (IBRD).
(8) Article 1 (ii), Articles of Agreement of the International Monetary Fund (IMF).
(9) It should be remembered that the Charter of the United Nations, which was negotiated in the same period, declares in its Article I (5) that the purposes of the organisation are: "To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion."
tries (11) until the fall of the Berlin wall in 1989. Communist countries were not to become members of these organisations. The notable exception to this rule was the People's Republic of China, which was welcomed into the fold of the Bretton Woods club with great ceremony in the early 1980s.

The predominant place accorded to the promotion of the market economy and to free trade in the policies of the two organisations left little space for consideration of social issues at that time. Development was conceived of in purely macro-economic terms and it was believed that funding large-scale infrastructure projects would guarantee economic growth at a rate sufficient to ensure development even in the least-developed countries. In addition, funding from these two institutions was in some respects oriented so as to keep the beneficiaries within the Western political bloc. This meant that little attention was given to the way money was allocated within the countries.

Leaving aside the ideological divisions of the Cold War, it must be noted that the founders of the World Bank were careful to include a clause within the Bank’s Articles of Agreement stating that only economic considerations were to be relevant to its decision-making (12). Political issues were, therefore, explicitly excluded from the ambit of the IBRD’s considerations. While the Articles of Agreement of the IMF do not contain any similar provision, the practice of the organisation has nevertheless been to exclude any questions not of an economic or financial nature from its decision-making processes (13).

Under the cover of the prohibition on interference in «the political affairs of any Member», commercial relations were continued by

(11) While the USSR did participate at the Bretton Woods Conference, it did not ratify the agreements that were subsequently adopted. Poland left the IMF in 1950 and Czechoslovakia was excluded from the organisation in 1954. Of the former Eastern Bloc, the only country which has enjoyed uninterrupted membership of the IMF and the World Bank since their foundation in 1945 is the former Yugoslavia, followed by Romania which became a member in 1972.

(12) Article IV. Section 10 of IBRD’s Articles of Agreement states under the heading «Political Activity Prohibited» that: «The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article 1.»

(13) See for example J. Gold, Interpretation: the IMF and International Law, Centre for Commercial Law Studies (Queen Mary and Westfield College, University of London) & SMU (School of Law, Dallas, Texas), Kluwer Law International (in «International banking and finance law» vol. 4), London [etc.], 1996, 641 pp., at pp. 434 et seq.
the IMF and the IBRD with several States noted for their poor human rights records. Particularly glaring were the institutions’ dealings with Portugal and South Africa in the 1960s, relations that clearly demonstrated the hazards of insisting upon the principle of non-intervention in the political affairs of recipient States. Throughout the 1960s, the IMF and the IBRD repeatedly refused to bow to pressure from the United Nations (14), which had called for the cessation of all assistance to these countries until they agreed to comply with their obligations under international law (for the former, because of its colonial practices, and for the latter because of its apartheid policy) (15). In 1967, however, the IBRD interrupted its relationships with both countries invoking economic justifications (16).

This insistence by the IMF and the IBRD upon non-interference in the political affairs of recipient States was, however, not entirely free from contradictions. In fact, the history of the Bretton Woods institutions demonstrates that many of their clients, such as Mobutu’s Zaïre, were concerned neither with the protection of human rights nor with integration into the global market economy or even with economic efficiency. In contrast, when other States, such as Iran, argued that their good economic conduct meant that they should qualify for assistance, the major lenders did not hesitate to cite the internal political situations in these countries as the reason for refusing financial aid.

Recently, however, the World Bank has gone as far as to state explicitly that a country’s human rights situation may create conditions that are not conducive to economic investment and that in such cases, it is entitled to demand that the State in question take remedial measures. The example of Myanmar (formerly Burma) is instructive in this context, even if it could be considered as an « exceptional » case given the gravity and volume of the human

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(14) See Resolution 2105(XX) of 20 December 1965 and Resolution 2184(XXI) of 12 December 1966.


rights violations being committed (17). After having conducted an «economic and social assessment» of the country in 1999, the Bank’s report on Myanmar emphasised the linkages that exist between poverty, human rights violations and poor economic performance (18). The recommendations of the World Bank’s assessment stressed the need to address the connection between «bad economic development», poverty and threats to social cohesion. These comments would be taken up by the United Nations’ Secretary-General in his report to the General Assembly in 1999 (19).

Today, the IMF and the World Bank have become virtually universal with each institution counting slightly more than 180 members. The organisations play a particularly important role for the large number of developing countries and the so-called countries with «economies in transition», that not only rely upon funding from the international financial institutions in order to finance their development, but also require this display of international confidence as a factor that will influence the behaviour of other investors. Intervention by the Bretton Woods institutions may however entail heavy consequences for recipient States, as the latter may not have much leverage should they not follow the priorities and objectives as put forward by the organisations. Governments may, for many reasons, face difficulties, leaving them with the option of either refusing to follow the rules and consequently risk a suspension of the institutions’ relations with them – as it was the


(18) Myanmar: an Economic and Social Assessment, World Bank (Poverty Reduction and Economic Management Unit, East Asia and Pacific region), August 18, 1999. See, in particular, the section entitled «Civil Society» (paragraphs 3.39 to 3.42, pp. 36-37) which begins with the following declaration:

«A description of the background of poverty and human development in Myanmar would be incomplete without a discussion of the human rights problems and civil conflicts that have plagued the country for many years and impeded its development. (...) More generally, civil society has not been able to fulfil its potential in Myanmar over the past four decades, up to today.»

The authors highlight the particular practices that aroused the indignation of the international community and led to the above-mentioned ILO Commission of Inquiry:

«Two major human rights issues, which are well known to the international community, are the failure of the regime to accept the results of a multi-party election held in 1992, and forced labor practices. Progress in both respects will be key to progress in human development in Myanmar. (...)»

case with Zimbabwe in 1999 with respect to the IMF — or of implementing the measures prescribed by the international financial institutions, although they may then face potential opposition from their populations for having taken the wrong decision. The latter problem raises another paradox: the IMF and the World Bank, in their steadfast refusal to interfere in internal political affairs may, nevertheless, by virtue of their decisions, find themselves cornered on one side of the political and social debate in the recipient country.

The belief advanced in 1944 that a clear separation could be made between the political and the economic today appears naive, to say the least. In relation to the World Bank, those who initially had doubts about its ability to maintain this distinction have been proven correct. While it is true that issues of governance were not yet considered as such, it can be seen that even as early as the 1960s, the Bank undertook projects that went beyond the purely economic, to touch upon issues of health, education and even poverty reduction (20). The first example of this kind of programming was a project focusing on education set up with the Philippines in 1961. It was at this time that the Bank first began to read its mandate from a social perspective and to redefine its activities accordingly. The establishment of the International Development Association (IDA) in 1960 provided confirmation of the increasingly social orientation of the World Bank's activities. The IDA was specifically mandated to provide favourable terms of credit for social development projects in the least developed countries.

As to the IMF, the first reference to the social policies of the organisation's Member States was inserted during the second revision of the Fund's Articles of Agreement in 1976 (21), following debate over the adoption of provisions in Article IV relating to

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(21) These modifications to the Articles of Agreement of the IMF were approved by the Board of governors in its resolution no. 31-4 of 30 April 1976 and came into effect on 1 April 1978.
supervision of exchange arrangements (22). The meaning and the practical effect of this reference have not, however, been clarified by the IMF since its adoption.

During the 1980s, the World Bank began to broach questions of judicial reform, the promotion of the rule of law, popular participation and the issue of good governance. Officially, however, the Bank’s focus remained economic efficiency and effective financial management. Nevertheless, in the pursuit of its economic and financial objectives, the World Bank did not oppose the movement towards an enlargement of its operations to incorporate issues of social and sustainable development. As a result, the Bank developed a broader vision of development and its activities consequently became more multi-dimensional. This trend was reinforced by the far-reaching changes occurring in Eastern Europe that culminated in the eventual disintegration of the USSR. The weaknesses of the political and economic policies of the Eastern bloc were made public. Subsequent attempts to remedy these weaknesses put the emphasis on institutional matters.

The reforms undertaken by the World Bank at the end of the 1990s have further opened the institution to consideration of social issues. The Bank’s recent policy documents such as the « Comprehensive Development Framework » (23), place economic and financial concerns on the same footing as social justice, culture and respect for the rule of law, thereby advocating a more holistic approach to development than that which has been previously taken by the Bank. Many different factors have influenced the

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(22) Article IV, Section 3 of the Articles of Agreement as amended reads:

(a) The Fund shall oversee the international monetary system in order to ensure its effective operation, and shall oversee the compliance of each member with its obligations under Section 1 of this Article. (b) In order to fulfill its functions under (a) above, the Fund shall exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies. Each member shall provide the Fund with the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member’s exchange rate policies. The principles adopted by the Fund shall be consistent with cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, as well as with other exchange arrangements of a member’s choice consistent with the purposes of the Fund and Section 1 of this Article. These principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members.

(23) This document was elaborated by the President of the World Bank, James Wolfensohn and subsequently approved by the Bank’s administrators in 1999. Further information on the issue of the comprehensive development framework is available on the World Bank web site: http://www.worldbank.org/edf/
debates within the World Bank. In particular, the relatively poor results of the Bank's development assistance programmes to date, have demonstrated the inability of current practices to meet the challenges of poverty, illiteracy or malnutrition (24). The financial crisis of 1997 highlighted the serious and negative impact of volatile capital movements in societies lacking regulatory or institutional safeguards. The disastrous social consequences created by capital movements in South Korea, Thailand and Indonesia provided a graphic illustration of the problem. Attention thus eventually focused on the rules, institutions and mechanisms in place in those countries and their inability to respond to the vagaries of international capital markets.

The movement towards a broader reading of the World Bank's mandate has not occurred without a struggle. The political influence of the individual members of the World Bank was determined according to their economic situation at the end of the Second World War, and this unequal balance of power remains a sore point within the institution. The process of political decision-making is based on the principle that votes are to be weighed in accordance with the financial contribution made by each member to the capital of the organisation. In addition, the G7 countries increasingly rely upon the Bretton Woods institutions to implement both their political and their economic objectives. Several recipient States have opposed this decision-making by hegemony and have, for example, raised objections to the scrutiny given to their political systems under the guise of concerns with good governance. These accusations of the World Bank interference in the political affairs of member States are illustrative of one of the many paradoxes emerging from the Bank's practice. The developed countries had promoted the Bank's formula on the exclusive economic nature of the institution's mandate at a time when they were trying to encourage the USSR to become a member, a formula which is now used against the developed countries for challenging decisions perceived as being politically motivated (25).

The legal departments of the Bretton Woods institutions have, at certain times, attempted to allay the fears of recipient States by

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(25) Supra, note 12.
highlighting the fact that the institutions’ Articles of Agreement do not permit interference in the political affairs of members, such action having been explicitly excluded from their mandates in 1944 (26). The difficulty remains, however, in clearly tracing the borders between economic, political and social issues. This has not prevented the World Bank from asserting itself increasingly in the latter area. Thus, for example, the fight against corruption, which became one of the major preoccupations of the Bank at the end of the 1990s, was until very recently, considered a political issue that did not fall within the organisation’s mandate (27). The IMF has recently begun to follow the World Bank’s lead in this area, if somewhat more timidly, by identifying poverty and corruption as two elements that need to be eradicated in order to achieve the goal of financial stability.

The World Bank, while remaining silent on social issues during the first decades of its existence, has thus developed, at the end of the 20th century, into one of the principle actors in this field, giving almost comparable attention to these issues as that which it accords to questions of an economic or financial nature. This transformation has been carried out through the use of the many different modes of intervention that the Bank has at its disposal, as well as through the changes that it has had to make to its behaviour in order to rectify the negative social impacts of some of its previous policies. An example of a corrective policy was the Bank’s development of «social security safety nets» that now accompany all structural adjustment programmes. The issue which emerges is whether these modifications in the Bank’s operations are enough, or whether they should be carried out in conjunction with other changes that have been initiated within the institution, or even in the framework of the larger reforms envisaged within the United Nations system as a whole.

(26) I.F.I. SHIHATA, «La Banque mondiale et les droits de l’homme», Revue belge de droit international, 1999, pp. 86-96. According to the author, who has been the general counsel of the Bank for fifteen years, even if the promotion of economic, social and cultural rights does fall within the mandate of the World Bank, the question of the promotion of civil and political rights cannot come within its competence unless it can be shown that serious and widespread human rights violations are having an adverse impact on the objective of economic efficiency.

(27) The increasingly frequent calls by the President of the World Bank for respect for freedom of the press and for freedom of information – traditionally conceived within the institution as a political matter – could lead one to the conclusion that these issues will sooner or later also be regarded as coming within the World Bank’s mandate.
II. – Putting social development and human rights into practice: the World Bank and its modes of intervention

Once it is accepted that the social dimension now forms an important part of the World Bank’s activities, the question then arises as to whether the policies that have been developed in pursuit of this objective are well conceived and whether they are, in fact, legitimate. The instruments that have been used to enlarge the definition of development are very important as they provide an insight into what the institution can do, what it has done in the past and what it could do in the future. The term ‘operations’ is used here to refer to situations in which the World Bank develops projects and programmes or negotiates loan, credit or grant agreements (hereinafter referred to as loans) in order to achieve objectives that have been determined and agreed upon in advance within the context of each financial operation.

It is useful to note here that the Bank’s intervention can take many different forms. In fact, the World Bank was only originally supposed to perform the function of a «lender of last resort» as it was thought that private funds would be used in the first instance in order to finance reconstruction and development. It is for this reason that the Bank was only supposed to lend money to those countries that cannot attract private capital. In practice, however, the World Bank has been and still is, the «lender of first resort». This is due to the fact that only about ten countries in the world currently benefit from significant inflows of private funds.

The dominant position of the Bank as a lender, enables the institution to play an important role in terms of shaping the policies of the recipient country and it also explains the power that the World Bank possesses in the context of its dialogue with recipient States. The Bank’s power is even greater if one takes into account the fact that it frequently presides over groups of lenders and is therefore able to direct decision-making in the area of public financing. The institution also plays the role of mediator (or facilitator) in the context of financial operations involving a number of different public and private partners and, as a result, it is able to
affect the choices and decision-making of States in areas such as social or environmental protection (28).

Originally, the Bank’s primary means of intervention was meant to be the granting of loans for specific projects, although it should be remembered that the World Bank’s Articles of Agreement make provision, in exceptional cases, for the institution to lend money for non-specific projects and activities. Over the years however, the exception has become a principle of action together with the financing of specific projects. During the first years of its existence, the Bank did not grant loans for specific projects and, as this latter form of lending was the principle means by which it could support social activities, this in some respects explains the Bank’s non-involvement in this area. Thus, the World Bank initially contented itself with the granting of «programming loans» – agreements that provided that funds would be disbursed following the implementation of certain policies – in favour of European countries, as was the case with France in 1947 in the context of financial aid under the Marshall Plan. Loans for the purpose of realising specific objectives were granted later. Then, during the 1980s, the World Bank began to provide loans for the purpose of structural adjustment (ie non-specific projects), an activity that was already being undertaken by the IMF. The oil crises and the ensuing increase in the price of «black gold» on the global market, as well as some of the economic policies being implemented by the recipient States, were used by the Bretton Woods institutions as justification for the promotion of structural adjustment programmes. Loans were therefore to be granted to recipient States to allow them to undertake the reforms necessary in order to obtain the goal of balancing their external trade. The exception to the principle of financing specific projects (as laid out in the Bank’s Articles of Agreement) therefore became the rule and structural adjustment programmes became increasingly numerous within the Bank’s activities. Next, the World Bank became involved in the process of re-financing the debts that had been contracted by public authorities as the result of borrowing from private creditors, a practice which gave rise to a new interpretation of the organisation’s Articles of Agreement in order to abide by the concept of productive investment as provided

(28) On the importance of this role, see Review of Aid Coordination and the Role of the World Bank, Sec. M99-709, 1 November 1999.
for by the constitutive charter. It was asserted that support for private investment in developing countries would act as a catalyst for economic development in the countries concerned.

The Mexican economic crisis of 1994-1995 and that of 1997, whose shockwaves were felt in Asia and then in Russia, as well as in Latin America, inspired a return to the practice of significant transfers of funds outside the context of financing for specific projects. Thus, through the granting of stabilisation loans, the World Bank intervened in order to assist (with a loan of several billion dollars) South Korea, unable to cope with the simultaneous withdrawal of a large amount of private capital from its financial markets. This financial crisis brought to the fore the role of the IMF and the World Bank (to a lesser extent) as the financiers of globalisation. The question remains as to whether the public funds being lent by these institutions should be used, as they have been, to repay the debts incurred by political and economic elites in developing countries to the credit of private investors (the majority of which are European or North American), attracted by the idea of investing in developing markets but very quick to withdraw their funds at the smallest sign of instability. This uncontrolled capital movement has rocked the economic systems of the countries concerned to the extent that these have collapsed, to the great detriment of local populations who have suffered in return large-scale retrenchments, programmes of austerity and other drastic measures.

These problems lie at the heart of considerations on the future role of the IMF and its relationship with the World Bank in what should become a new financial system (29). The move from a «real economy» of production to a «symbolic economy» (30) of finance, forces us to question the role of these financial institutions, which were created in a period of real economy. In particular, their role with regard to the beneficiaries of development activities— that is, the populations of recipient countries rather than the creditors, investors or other speculators on the international stock market— should be considered with a view to ascertaining whether the symbolic economy is beneficial to the populations in recipient countries.

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(30) As per the terms used by Robert W. Cox in his preface to the work of J.C. Graz, supra (note 5), p. xiii.
The room recently made for social policy considerations must be viewed within the context of the evolution of the World Bank's financial activities. Although these considerations originally emerged in an atmosphere dominated by macro-economic considerations, they are now considered in their own right, albeit still within the framework of liberal economic thinking. Reconstruction and development projects undertaken by the Bank after the War targeted infrastructures (such as hydroelectric works) before taking up social projects in the 1960's. These projects primarily involved questions of health and education, although they may have contained elements linked to infrastructure development through the construction of hospitals or schools, for example. They took flight with the theory of essential needs elaborated in alternative development circles and taken up by Robert MacNamara, the then President of the World Bank. The issue of environmental protection also became increasingly prominent, either as part of development projects or in its own right (31). Projects related to judicial reform and the fight against corruption also demonstrate how the interpretation of the Bank's mandate and the scope of projects it undertakes have evolved. The proportion of social projects grew a great deal in this way, particularly in the framework of the activities of the International Development Association (IDA) – the 'secular' branch of the World Bank Group in the area of concessional loans – to the point where it now represents more than half of the projects financed by the Group. They nonetheless occupy a relatively less importance within the activities of the IBRD (32).

Structural adjustment loans appeared throughout the 1980's with the questioning of the economic policies of recipient countries. Many of these countries were forced to submit themselves to the conditions imposed on them by the structural adjustment programmes and the related conditions regarding fiscal policy, free trade or public affairs management. The social consequences of these programmes (including layoffs, reductions in public spending, and overall increased vulnerability for certain segments of the population) were criticised by UN institutions, such as the UNDP and UNICEF. They were equally criticised by civil society, which had

(31) With regard to the former, consider the example of the impact studies to assess the potential environmental damage caused by a project and, with regard to the latter, the projects dedicated to the preservation of biological diversity, for example.

begun to organise itself both at the national and international levels (33). The complaints made to the Committee on Freedom of Association of the ILO bore witness to this situation, placing responsibility squarely with the financial institutions for the situation caused by the austere measures adopted in order to implement the programmes. While the Committee did not explicitly implicate the responsibility of States or of the international financial institutions in its recommendations, it nonetheless reminded the countries of their obligations to comply with the Conventions concluded under the auspices of the ILO, confirming the complementary nature of economic and social considerations.

The 1990's saw a reshaping of structural adjustment programmes, due both to the failure of previous initiatives and to the needs of the newly arrived Eastern bloc countries. Social safety nets were created which, along with other corrective measures, were to mitigate damage without compromising the liberal economic rationale. Remedial actions were conceived for those who may suffer damages due to the implementation of a programme or policy supported by the World Bank.

Despite the imagery it evokes, the notion of social safety nets is no less enigmatic. It covers all actions taken in the social arena to diminish the consequences of economic redress measures or to promote better social protection (34). The most disadvantaged segments of the population are particularly targeted, notably by encouraging their participation in the elaboration of the projects. Certain measures are taken to guarantee basic services in health and education. Rejuvenation policies in the labour-intensive workforce sectors are also encouraged. Social funds supported through loans from the Bank have been established to this end, to help States protect the most vulnerable segments of their population during the adjustment period.

A number of structural adjustments aim to reform public policies in the area of pensions or social security systems, which are them-


selves a form of social safety net. Projects which lead to the closure of factories and large-scale layoffs may include the allocation of funds for financial compensation or to facilitate professional reintegration. These actions may be accompanied by complex institutional arrangements to ensure that the funds set aside are used appropriately and for their intended purpose, and that they reach their intended beneficiaries. Indeed, in some countries, those potentially affected by restructuring programmes may themselves question the proper functioning of the country's institutions. Fiduciary funds may be established to manage the amounts set aside for social programmes in order to circumvent recourse to official channels which have been discredited in the eyes of the public. Reform projects in the mining sectors in Russia or the Ukraine contain such social mechanisms, for example. Although these innovative mechanisms are responsive to the complaints of the population concerned, their durability may be undermined by the fact that they remain outside the existing national structures and institutions.

It should be noted that the lifespan of social security nets and their implementation mechanisms can, at times, be short as they are a function of the timeframe of the structural adjustment period to which they are attached. Notions such as accompanying measures, palliatives and remedies are used to characterise these social measures. Nonetheless, the longer term must be considered. In this light, the institutions established in borrowing countries, such as the entrenchment of fundamental rights, laws and social dialogue involving workers' and employers' associations are among the most appropriate means of gauging the durability of social development and deserve closer attention from the financial institutions.

Debt reduction strategies have recently included a social dimension. Those adopted in the 1980's were essentially financial in nature, aiming at rescheduling private loans, negotiating new loans or repurchasing. By contrast, those implemented in the 1990's had a new look, and were more concerned with public debts and incorporating a social dimension into the debt reduction programme. Thus for example, in 1998 the World Bank and IMF established a programme to alleviate the servicing of multilateral debts to Heavily Indebted Poor Countries (HIPC) on condition that a por-
tion of the unused amount be used for social development activities (35).

An important paradigm in the area of social development, however, is undoubtedly the Comprehensive Development Framework (36) mentioned earlier. The Framework suggests that all development-related objectives be considered as a whole, placing economic, social, rule of law, and cultural considerations on equal footing. It is interesting to note that the Framework requires the Bank and its partners (the UN, specialized institutions, foundations, NGOs, private sector, etc) to take concerted action, yet without any clear definition as to the allocation of their respective tasks. Presumably, some of these actors would be reluctant to see their actions or the means for their implementation decided by others, and in particular by the World Bank. In terms of relative advantages, the allocation of responsibilities between institutions and actors concerned should by no means be decided in terms of sectors (37).

While they were dispossessed of this function in the 1980's, States are now asked to re-assume their responsibilities for negotiating the course of their policies for a period of 20 years and to select their partners to see these through. The duration of a Bank project or programme (an average of six years) gives way to a longer term (ten to fifteen years) within which all of these activities must be planned and evaluated as a whole, be they economic, social, cultural, legal or financial. None should be pursued to the detriment of the others.

III. – Normative and Institutional Aspects: A Host of Social Preoccupations

The activities of the World Bank – projects, structural adjustment programmes, debt reduction or re-negotiation programmes – are notable for their operational character. The Bank's social


(36) See supra (note 23).

THE ACTIVITIES OF THE WORLD BANK

initiatives, which take shape mostly through the negotiation of loan agreements with recipient countries, give this same impression. Despite the predominance of these operational aspects, certain institutional and normative instruments nevertheless have an important role to play in the area of social development and human rights.

It is important to consider first the operational policies and procedures (hereinafter, operational policies) designed to guide World Bank staff with regard to the preparation, assessment and implementation of the projects it finances. These documents may involve social issues, such as the conduct of environmental impact studies, compensation of people displaced as a result of a project, the protection of indigenous peoples or the fight against poverty. The operational policies are internal documents and are, by and large, mandatory for World Bank staff in their relationships with borrowing countries (38). These operational policies have external effects too, in that they shape both the Bank’s behaviour and that of its partners in their relations with each other when they engage in a contractual relationship. Civil society has increasingly used these policies as criteria for evaluating Bank projects in an effort to foster accountability of international institutions, and this has contributed to the establishment of such policies as tools for good practice. This is all the more important considering that the World Bank increasingly acts as a facilitator, bringing together public and private financiers. Its operational policies may influence the behaviour of other creditors in this way.

The controversial Indian Narmada and the Nepalese Arun Valley hydroelectric projects – the latter of which was not financed after the Bank decided to pull out of the operation before a loan agreement had been negotiated – demonstrate the difficulties the Bank has encountered in adjusting to dealing with non-traditional Bank partners such as NGO’s and local populations. Since the end of the 1980’s concepts such as public participation and empowerment have become increasingly prominent with regard to the preparation and implementation of projects financed by the World Bank. This has given affected populations the opportunity to have their voices

heard at the earliest phases of a project, and even to participate in its implementation. Bank programmes involving grants to certain NGO’s have also pushed the institution to establish direct contractual links with non-State actors.

In response to concerns voiced by some who wished to see it engage more with these partners, the Bank established an Inspection Panel (39). This mechanism was set up in 1994 to allow groups affected by projects financed by the Bank to use the Panel to request an investigation, possibly leading the Bank to adopt remedial action. The complainants must first demonstrate that they have suffered or will likely suffer damages as a result of the Bank’s failure to comply with its own operational policies. The Panel may then ask the Administrators of the Bank (also referred to as the Board) for authorization to conduct an enquiry on the Bank’s activity with regard to its operational policies. As a result of this procedure and its subsequent endorsement by the Board, the Bank may ultimately be required to implement a plan of action to remedy the litigious situations. This innovative procedure effectively gives civil society a central role in international decision making and allows it to require that the institution is accountable for its decisions. This procedure also serves as an institutional link between the Bank’s political branch and the beneficiaries of the projects it finances.

The establishment in 1998 of the World Commission on Dams (WCD) by the World Bank and the International Union for the Conservation of Nature (IUCN) is another example of how partners with different international stature can establish institutional links. The WCD should allow for the elaboration of good practices for the possible forthcoming construction of hydropower plants required, for example, to deal with population displacement caused by such construction. This creative form of partnership shows that if need be, social considerations can figure in the decision-making process in operational as well as institutional and normative terms (40).


Other policy documents (such as those dealing with the social dimensions of economic crises (41)) have been drafted to help actors follow good practices in social policy and to give those affected the chance to take stock of their priorities and choices. These norms are a part of a greater body of norms, which includes transparency, accountability, corporate governance, sound financial management and other rules of conduct elaborated together with the IMF, the Bank for International Settlements (BIS) and other institutions. The legal method used is the code of conduct adopted by international organisations and, in some circumstances, by other actors such as corporations, which leads one to believe this is the most adequate means of correcting the inefficiencies of the international system. In this regard, it would be necessary, when elaborating these codes of conduct, to pay more attention to existing social and human rights norms such as those adopted under the aegis of the ILO and negotiated by all parties concerned, including States and trade unions, or those adopted within the United Nations. It would increase legitimacy and the effective implementation of these codes of conduct within the domestic legal orders of the member States.

Does the fact that the World Bank elaborates its own instruments without relying on existing international instruments, suggest that its behaviour is somewhat isolationist? One cannot suggest that the Bank does not consult concerned NGO’s – in fact, the opposite is true. Rather what should be questioned is the Bank’s tendency to produce its own norms without taking advantage of the existing norms and policies elaborated in other institutions. The Bank’s policy according to which economic factors are to be considered exclusive of political and other considerations reinforce this tendency. The pressure put on the Bank to promote and internalize the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in its activities provides a good example of such a situation. While the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in employment and occupation are considered by the Bank as falling within the purview of its mandate, freedom of association and the effective recognition of the

right to collective bargaining still raise problems for the Bank, because of their alleged political connotations.

More generally, this raises the problem of the extent to which the institution has the obligation to ensure respect for international obligations binding upon member countries. Being a UN specialized agency, some consider that the organisation itself is bound by certain principles and obligations deriving from the Charter of the United Nations. Notwithstanding this, another matter deals with the respect for the rule of law in the international arena which international organisations, like States, should be held accountable for promoting (42).

In this context it is interesting to note that the G7 became aware of the social problems caused by the latest financial crises and asked the World Bank to elaborate guidelines with a view to warning of and preventing their ill-effects which, as noted above, the Bank did. Nevertheless, there is no formal requirement to consult with the workers and their representative bodies. If they are consulted, it is only informally, if at all. And yet is this not the best way to gauge differences of opinion and preferences, and thus to ensure long-term stability of prescribed remedial action?

The Bank's increasing openness to social considerations should go a long way to correcting this behaviour, which is essentially a question of institutional culture. The preparation for the Copenhagen + 5 Summit in June 2000 gave the Bank a chance to reconsider its policies. The social stigma attached to financial crises and poor development shows there is room for reflection by all partners. The conduct of operations should adopt a holistic approach to the strategies and policies to be put in place, which need not exclude taking into account the competencies of each actor in the light of their mandate and practice.

**Conclusion**

With regard to the integration of social development and human rights issues into the World Bank's activities, the question remains as to whether the instruments being used are appropriate to fight the scourge of poverty and to satisfy the needs of the population.

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(42) See P. KLEIN, supra, note 33, pp. 112-113.
The means of intervention have diversified and are no longer merely economic in nature. Social issues have become increasingly prominent to the point where today they are a primary consideration alongside the Bank’s traditional activities. Nonetheless, the *sine qua non* condition for development is that it be truly participatory, and that the institutions in place in a country support it in the long term and not simply for the duration of a project. Joseph Stiglitz, the Bank’s former chief economist (43), was adamant on this point, as were many others. But this stance was a challenge to the ‘Washington consensus’, which eventually contributed to his departure from the Bank.

Moreover, it is questionable whether a financial institution such as the World Bank, whose loans are monitored closely by many decision makers, is capable of pursuing social objectives such as the fight against poverty, which are diffuse in nature and do not lend themselves well to quantifiable results.

The institutions are equally important on the national and international levels. This raises questions as to the decision-making procedures in place at the global level, such as whether they meet the need to include all voices. Joseph Stiglitz stressed that it would have been good had those directly affected by the financial crisis of 1997 – not those who accumulated large debts, but those who suffered from a socio-economic point of view – as well as those directly affected by the subsequent redress measures, been able to express their points of view to the financial institutions, and had the treatment administered been decided by not only the representatives of finance ministries and creditors (44).

We might conclude by noting that the Bretton Woods institutions remain scarred by the era in which they were conceived and developed. Their actions are carried out with a liberal economic rationale and are therefore subject to the criteria associated with it. Moreover, the issues of social development and human rights exceed the sphere of competence of each of the UN institutions. Globalization and increasing interdependencies require a re-reading of the whole international system to allow for more integrated action. On

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(44) According to Joseph Stiglitz such measures were desirable in particular within the IMF. (*La Tribune*, 1 February 2000).
the heals of the Comprehensive Development Framework and of the United Nations Development Assistance Framework proposed by UN Secretary General Kofi Annan (45) in 1997, perhaps the international system should be reconsidered in terms of a federation, where conflicts of interest and duplication among its constitutive elements are prevented (46).

(45) On this subject, see the Secretary-General's comments in his report prepared for the Millenium Summit, entitled «We, the Peoples...: the Role of the United Nations in the 21st Century», UN, 3 April 2000, 80 pp., in particular at Chapter III («Freedom from want»), frame 6, p. 40. Available at http://www.un.org/millennium/sg/report/full.htm.

(46) One might wonder whether the system should be built around a group of objectives and norms defined by all, and what form of institutional architecture it should take.