POLICY DEVELOPMENT AND IMPLEMENTATION IN THE BRETTON WOODS INSTITUTIONS: A CONSIDERATION OF THE LEGALITY, HUMAN RIGHTS IMPACT AND EFFECTIVENESS OF THEIR PROGRAMMES

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Previous research investigating the legality of the IMF and World Bank Structural Adjustment Programmes has emphasised the need for additional conditionality to be imposed on the recipient nations to enhance their Human Rights performance. This paper, however, evaluates the legality of the conditionality terms imposed in many of the Structural Adjustment Programmes developed and imposed by the IMF and the World Bank on recipient nations from a different perspective; that of the impact and results of the programmes on Human Rights achievements by the recipient nations and also the legality of conditionality clauses within the terms of the charters of the Bretton Woods organisations about which there has been much scholastic debate. This is approached from the basis of the nature of the institutions and their governing Articles of Agreement together with the approach to interpretation of these Articles by the Legal Counsel; taking the works of Ibrahim Shihata (a Senior Vice-President and General Counsel to the World bank) as evidence of the institutional approach. This is contrasted with the works of one of the chief Economists of the World Bank, Prof. Joseph Stiglitz, which develops the economic framework for analysis of the impact. Research shows that many of the Bretton Woods institution purposes have not been achieved in many of the countries involved as recipients, as will be analysed later. Indeed there are many documented cases where the results are the direct opposite of these purposes, as will be further analysed. An external view of this is developed from the SAPRIN studies undertaken in conjunction with the World Bank between 1995 and 2001 which provides a basis for comparison to relevant International Human Rights Treaties as evidence. Specifically, the following are used as benchmarks for this analysis; the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and ILO Convention No 87 treaties. It is concluded, on the basis of the impact of the Structural Adjustment programmes reviewed in the SAPRIN study, that the Structural Adjustment programmes failed both the test of economic efficiency and the test of legality in Human Rights terms. However, there are no courts of competent jurisdiction in which claims can be brought against the Bretton Woods organisations.

Keywords: SAP, HIPC, PRSP, Conditionality.
INTRODUCTION

Ever since the Bretton Woods institutions were created in 1944, as a means to reconstruct the economies damaged during the second World War, questions have been raised about the effectiveness and legality of the processes instituted by the International Monetary Fund (IMF or the Fund) and the International Bank for Reconstruction and Development (World Bank or Bank) in relation to their financial assistance programmes.

Some of the Problems

Indeed, as early as 1956, “informal” means were being developed by the, then newly formed, Club de Paris to address issues of debt management and rescheduling with Argentina.

More recently, these questions have been brought into sharper focus, in the aftermath of de-colonisation and the various mechanisms implemented with the Developing Countries.

The Structural Adjustment Programmes (SAPs) of the World Bank and the IMF during the 1980s and 1990s were seen by many critics as a means to open up industries in developing countries for the benefit of foreign investors and the developed, exporting countries, whilst causing an un-intended increase in poverty in the developing countries at both national and individual levels. An analysis by The Development Group for Alternative Policies (The Development GAP) shows that the Debt to GNP ratio has actually increased in over two thirds of all countries that were the subject of SAPs between 1980 to 1995.

The experience of many countries also showed that alongside the increasing debt levels of the affected countries, social inequity increased, unemployment increased and healthcare and education provision was reduced. A few indicative examples are:-

In Senegal, an IMF stabilisation programme started in 1980 and a SAP started in 1986 resulted in raising school class sizes (55 per class in 1985 to 62 per class in 1993), falling health care standards (maternal mortality increased by 60% from 750 per 100,000 live births in 1988 to 1,200 per 100,000 live births in 1993) and increasing unemployment (in Dakar, 25% in 1991 to 44% in 1996).

IMF SAP programmes in Tanzania (1982, 1986, 1987, 1991 and 1996) resulted in reductions in income for poor (42%) and very poor (63%) farmers over the period of 1983 to 1991, whereas rich farmers increased their income by 279% over the same period. One significant cause of the impoverishment of the already poor was the

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1 Article 1 (i) of the Articles of Association of the IBRD, see http://www.yale.edu/lawweb/avalon/decade/decad047.htm for the original, 1944 version.
2 Club de Paris, www.clubdeparis.org
6 ibid.
reduction in subsidies for fertilizers and weedkillers, leading to price rises of between 183% and 412%, depending on type.\(^7\)

In Tanzania, a maternal mortality rate of 190 per 100,000 in 1973 has increased to 1,100 per 100,000 in 1995.\(^8\) The most recent estimate by the WHO is between 910 and 2200 with a best estimate of 1500 per 100,000 in 2000.\(^9\)

In Hungary, the main purpose of IMF and World Bank assistance was to reduce the budget deficit. However, these resulted in a contraction of the economy by 14% between 1989 and 1996; industrial output fell by 34% over the same period; the deficit increased from between 2.0 and 2.5 percent of GDP in the late 1980s to 10 percent by 1997.\(^10\) In addition, the privatisation process of both commercial businesses and the utilities resulted in widespread foreign ownership and fuelled the increase in unemployment in indigenously owned enterprises.

In Zambia, Seshamani writes in relation to the effect and impact of Structural Adjustment Programmes, “the negative impact has so far significantly outweighed the positive ones”\(^12\), identifying the collapse of agriculture, the impoverishment of small scale farmers, the opening of the floodgates to imports, the collapses of indigenous firms (particularly the textile trade), de-industrialisation, a 9% reduction in GDP. The emphasis is perceived, by many, as being on western neo-classical, technical economic management criteria (the so-called Washington consensus\(^13\)), although the associated issue of conditionality has raised significant questions about the legality of interference in the affairs of the recipient countries, in contravention of Article IV Section 10 of the Articles of Association of the IBRD, which states

> 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.

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\(^7\) ibid
\(^10\) supra 5
\(^12\) Seshamani V., Zambia: Overcoming Barriers, pp 39-50 in Edwards. L (Ed), The global economy. changing politics, family, and society, (PWPA, St. Paul, Minn. 2001)
\(^13\) That is “privatisation, liberalisation and austerity measures as the main tools of increasing GDP and living standards and decreasing poverty”, supra 10 at p.8
and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

and Article III Section 5 (b) which states

The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

A similar prohibition exists in Article V 6 of the IDA Articles of Agreement.

During the 1990s, in an attempt to begin to address such questions and in recognition that their adjustment programmes were having significant unintended consequences, the Bretton Woods institutions began to work with civil society organisations, such as SAPRIN\(^{14}\) with the objective to develop more effective processes for development programmes, debt management and relief, such as the ESAF (Enhanced Structural Adjustment Facility) and the HIPC (Heavily Indebted Poor Country) programmes together with the associated Poverty Reduction Strategy Paper (PRSP) process that is supposed to ensure ownership of the programme by the recipient country.

It is unfortunate, therefore, that there appears to have been little or no impact on the World Bank as a result of the participation in the SAPRIN project that spanned a 6 year period from 1995 through to 2001. Indeed, the World Bank published their own analysis of the data\(^{15}\), which is at some variance to the SAPRIN\(^{16}\) report and then withdrew from the process with little further contact having been made.

Whilst the Bretton Woods institutions and G7 countries are concerned with matters of good governance in the recipient nations\(^{17}\), there are also questions over the governance of the institutions themselves, of a similar nature to those relating to the alleged undue influence of the USA and other G7 countries over the United Nations Security Council and General Assembly processes. As an example, the Secretary of State of the GAO in the USA has effective control over all loans made by the IMF\(^{18}\) by virtue of the 1999 Omnibus Appropriations Bill for Fiscal Year 1999, and all nine World Bank presidents have been American citizens. Another key issue is the voting structure of both the IMF and the World Bank, based as it is on the subscription

\(^{14}\) Structural Adjustment Participatory Review Initiative Network, www.saprin.org which launched a review with the World Bank in 1995, supported at the global level by the Governments of Norway, Sweden, the Netherlands, Belgium and Germany; the European Union; the United Nations Development Programme; the African Development, Charles Stewart Mott, Rockefeller and W.K. Kellogg Foundations; and various other NGOs, foundations and agencies at the country level


“quota” principle, which has the effect of maximising the voting strengths of the major donor countries.

Some Contradictions

Bretton Woods institution purposes include emphasis on development, promotion of private foreign investment, balanced growth of international trade and maintenance of equilibrium in balance of payments, “arrang[ing] and guarantee[ing] loans …. so that the more useful and urgent projects… are dealt with first”, raising standards of living and conditions of labour, arranging loans that “bear less heavily on the balance of payments than those of conventional loans”, and taking account of “the effect of international investment on business conditions in the territories of the members”. Many of these are fundamentally related to the Washington Consensus concepts. In addition, as previously mentioned, IBRD Articles of Agreement Article IV Section 10 and Article III Section 5 (b) contain the prohibition on political interference. However, research shows that many of these purposes have not been achieved in many of the countries involved as recipients, as will be analysed later. Indeed there are many documented cases where the results are the direct opposite of these purposes, as will be further analysed.

In considering the “Washington Consensus” approach to these purposes and “financial discipline”, it is apposite to compare the fiscal rectitude demanded of the developing countries which seek assistance and the rejection of these same principles in the G7 countries, whenever

19 It is important, according to Shihata to distinguish between purposes and objectives, see Shihata, I., The Dynamic Evolution of International Organizations: The Case of the World Bank, Journal of the History of International Law 2: 217-249, 2000
20 IBRD Articles of Agreement, Article I (i), IDA Articles of Agreement, Article I
21 IBRD Articles of Agreement, Article I (ii)
22 IBRD Articles of Agreement, Article I (iii), IMF Articles of Agreement, Article I (ii)
23 IBRD Articles of Agreement, Article I (iv)
24 IBRD Articles of Agreement, Article I (iii), IDA Articles of Agreement, Article I
25 IDA Articles of Agreement, Article I
26 IBRD Articles of Agreement, Article I (v)
27 Camdessus, M. addressing the European-American Business Council in New York, 15 Sept 1998, in Crisis in Emerging Market Economies: The Road to Recovery, (IMF, Washington D.C., 1998), pp 1 – 12, also available at http://www.imf.org/external/np/speeches/1998/091598.htm, (28 Sept 2004). In 1998, Camdessus was claiming the benefits of such fiscal rectitude and illustrating how it was helping Europe reduce budget deficits through the convergence criteria for EMU. Contrast this with the situation in 2004 where three EU countries have deficits that exceed the permitted levels and with unemployment either stagnant or rising.
the domestic economic or political conditions become difficult\textsuperscript{28}. Conditionality typically requires that major debt repayments be made which often result in developing countries having to charge user fees for health care and education, which have adverse effects both in terms of gender distribution and access by the poor\textsuperscript{29}, whereas most G7 countries provide free healthcare and education, particularly for the poorer sections of society\textsuperscript{30}.

As a result, the developing countries have developed a strong feeling that the Bretton Woods institutions have one rule for the recipient nations and another for the contributing nations.

**Objectives**

This paper will analyse the problems illustrated above, from three directions:-

By consideration of a legal analysis of the Bretton Woods institutions Articles of Agreement, drawing on the works of Dr Ibrahim Shihata, a past Legal Counsel and Senior Vice President of the World Bank to clarify the approach taken by the World Bank to justify its own actions.

By analysis of the effectiveness of the various programmes instituted by the Bretton Woods institutions, to establish to what extent the “effectiveness”\textsuperscript{31} criteria can be considered to have been met and the implications for legality of the processes involved.

By considering the extent to which Human Rights are affected by the programmes, including the question of whether the World Bank and IMF are bound by or even affected by international Human Rights agreements.

A synthesis constructed from the three approaches will be presented as the conclusion.

\textsuperscript{28} Consider the growing deficit levels for France and Germany, in contravention of the EU Stability and Growth Pact, and the rapidly growing deficit in the USA in 2003 compared to the budget surplus in 1998, see *French Farce: An inflexible pact meets unimaginative economic policy*, The Times, 28 Aug 2003 and Bremner, C., *French call for growth defies EU deficit pact*, The Times, 28 Aug 2003. See also the current (Sept 2004) predictions that Germany will continue to breach the EU Stability Pact for the fourth year in succession amid predictions that the EU will continue to do nothing to enforce the rules.


\textsuperscript{30} e.g. Medicaid in the USA in a country which requires the majority of the population to insure for their health care

\textsuperscript{31} IBRD Articles of Agreement, Article III Section 5(b)
THE BRETTON WOODS INSTITUTIONS

This chapter will briefly present the two key Bretton Woods institutions (the World Bank and the IMF), their legal character and operational processes, together with a brief history of their economic activities. A more rigorous analysis will be carried out in the succeeding chapters.

A Brief History

The International Monetary Fund (IMF or the Fund) and the International Bank for Reconstruction and Development (World Bank or the Bank) were created towards the end of the second World War at an international conference in the village of Bretton Woods in New Hampshire that concluded on 22 July 1944. The Bretton Woods conference was called to complete the discussions that had been started in Atlantic City to consider the future financial structure of the world economies and to provide the means to promote recovery from the ravages of the war.

The purpose of the IMF was stated, in the conference summary as being that

The nations should consult and agree on international monetary changes which affect each other. They should outlaw practices which are agreed to be harmful to world prosperity, and they should assist each other to overcome short-term exchange difficulties.

and that the World Bank was founded on the assumption that

It is in the interest of all nations that post-war reconstruction should be rapid. Likewise, the development of the resources of particular regions is in the general economic interest. Programs of reconstruction and development will speed economic progress everywhere, will aid political stability and foster peace.

US Secretary of the Treasury Henry Morgenthau said in his closing address, as President of the conference,

“This is the alternative to the desperate tactics of the past-competitive currency depreciation, excessive tariff barriers, uneconomic barter deals, multiple currency practices, and unnecessary exchange restrictions-by which governments vainly sought to maintain employment and uphold living standards. In the final analysis, these tactics only succeeded in contributing to world-wide depression and even war. The International Monetary Fund agreed upon at Bretton Woods will help remedy this situation.”

33 Ibid, p 31
These were visionary, internationalist statements that included the objectives of what is now the WTO, but is clearly at odds with the US foreign policy objectives outlined a few months later by Secretary of State Edward R. Stettinius, Jr, on December 18, 1944 as being:-

Foreign relations to be conducted so as to give the fullest diplomatic support to the United States armed forces.

Effective steps to prevent Germany and Japan, after the United Nation's victory, from again waging an aggressive war.

Establishment at the earliest possible moment of a United Nations security organization to maintain peace, by force if necessary, for generations to come.

Agreement on measures to expand world trade so that the United States can maintain full employment and enter with other nations into an era of expanding production and rising standards of living.

Encouragement of all conditions of international life favourable to the development by men and women everywhere of institutions of a free and democratic way of life in accordance with their own customs and desires.

which indicates that US national interests, particularly in the field of foreign trade, are paramount. This dichotomy between the internationalist, founding rhetoric and, particularly, the developed nations’ national interests, continues to be observed in all areas of the Fund, Bank and WTO operations, as will be demonstrated.

It can be seen that a key focus of US foreign policy, at that time, was to expand world trade with emphasis on exports from the USA and, implicitly, encouraging the export of the western (USA) way of life, albeit with a passing reference to each nation’s “own customs and desires”. Principle 4 is a clear statement of the intention to provide protection of domestic employment, a principle which still guides USA foreign policies, as re-stated by President George W Bush, in his acceptance speech at the 2004 Republican Convention to “ensure a level playing field for US exports” with no reference to any concept of a level playing field for Developing Nations’ exports to the Developed World. Bush’s implication is that the Developing Nations should remove all tariffs for US exports (a level playing field), whilst the US market should be protected with import tariffs; clearly an asymmetric approach to international relations and WTO intentions that will continue to be the basis for problematic relationships with the Developing World.

Whilst it is very easy to criticise such the position taken by the Secretary of the Treasury, Prof Hans J Morgenthau’s writings suggest that because national interests are the only rational criterion for developing foreign policy, quoting Thucydides “identity of interests is the surest of bonds whether between states or individuals”, and Lord Salisbury “the only bond of union that

endures among nations is the absence of all clashing interests”\textsuperscript{37}, there is the need for the creation of perceived common interests (the level playing field for international trade). It is, therefore, probable that the Secretary of the Treasury was able to justify in his own mind the visionary rhetoric of his closing speech at Bretton Woods, in sharp contrast to his highly coercive style of managing the debates during the conference, during which he took great care to ensure that US nationals managed, directed and controlled the outcome of all the negotiations\textsuperscript{38} to achieve USA objectives which ultimately supported Stettinius’ stated position.

**Additional World Bank Organisations**

Following the launch of these two organisations in 1944, three additional finance organisations were created over the years under the aegis of the World Bank in response to changing needs. These were the International Finance Corporation in 1956 (IFC), the International Development Agency in 1960 (IDA) and the Multilateral Investment Guarantee Agency in 1985 (MIGA) which, together with the Bank, form the World Bank Group. A further, non-lending organisation was also created in 1966, the International Centre for the Settlement for Investment Disputes (ICSID) for the purpose of conflict resolution in the field of international finance.

**IFC**

The IFC was created with the Purpose

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\text{.. to further economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas, thus supplementing the activities of the International Bank for Reconstruction and Development.} \textsuperscript{39}
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Unlike the Bank, the IFC was designed specifically to work directly with non-government investors and private sector business.

**IDA**

The IDA was created with the objective of helping the poorest countries of the world which were unable to afford the costs of the loans from the Bank. Lead by the USA, a group of the Bank’s members proposed the creation of an agency that would be able to offer loans to poor countries on better terms than the Bank was capable of offering. The interest rates are reduced compared to the IBRD terms, are for periods of 20, 35 or 40 years and carry a 10 year capital repayment grace period. Only poor countries with a per-capita income of less than $865 at Fiscal Year 2002 levels can draw on the IDA loans\textsuperscript{40}.

\textsuperscript{37} Ibid
\textsuperscript{39} IFC, Article I
\textsuperscript{40} IDA publicity materials
MIGA

The Multilateral Investment Guarantee Agency was created to provide a means of improving the flow of commercial investment into developing countries, “to promote foreign direct investment into developing countries, in order to support economic growth, reduce poverty and improve people’s lives”\(^\text{41}\) by being “a global insurer to private investors and adviser to countries on foreign investment”\(^\text{42}\).

Formation and key constraints

Each of the institutions is governed by its own Articles of Agreement or Convention which are variously deposited with the US Government (IMF\(^\text{43}\) and IBRD\(^\text{44}\)), the UN under Article 102 of the UN Charter (MIGA\(^\text{45}\), IDA\(^\text{46}\) and ICSID\(^\text{47}\)) and at the IBRD (IFC\(^\text{48}\)). The respective Articles or Convention provide very clear guidelines as to the objectives, operation and conduct of each organisation. Amongst these, of particular importance to the current discussions, are the sections relating to political influences by and on the organisations.

PROHIBITION OF AND FREEDOM FROM POLITICAL INTERFERENCE

The World Bank Group financing organisations are restricted to objective, technical assessments of the risks associated with their lending by virtue of key clauses in their articles of agreement which prohibit interference in the internal affairs of the members of the relevant organisation or from taking into consideration internal political considerations in their operations (IMF\(^\text{49}\), IBRD\(^\text{50}\), IFC\(^\text{51}\), IDA\(^\text{52}\) and MIGA\(^\text{53}\)) and which also ban external political interference in the operation of several of the organisations themselves from the Members of the organisations (the individual signatory states).

This latter point is of particular relevance in view of two specific pieces of US legislation, which provide for significant political direction over senior US citizens within the Bank.


\(^{42}\) Ibid

\(^{43}\) IMF Article XX section 2 b

\(^{44}\) IBRD Article XI section 2 a

\(^{45}\) MIGA Convention Article 64

\(^{46}\) IDA Article XI section 5

\(^{47}\) ICSID Article 74

\(^{48}\) IFC Article IX

\(^{49}\) IMF Article IV Section 3 (b)

\(^{50}\) IBRD Article IV section 10 and Article III Section 5(b)

\(^{51}\) IFC Article III section 9

\(^{52}\) IDA Article V section 5

\(^{53}\) MIGA Article 34
The original Bretton Woods Agreement Act, July 31 1945\textsuperscript{54} mandated the creation of the “National Advisory Council on International Monetary and Financial Problems” which was required to coordinate the policies of the USA executives on international organisations such as the IMF, IRBD and IDA.

A more recent event, the Omnibus Appropriations Bill (S2334) for fiscal year 1999, authorised $800M for the IDA, subject to the proviso

“That none of the funds may be obligated or made available until the Secretary of the Treasury certifies that the Comptroller General has been provided full and regular access to: (1) the financial and related records of IDA for the purposes of conducting audits of current loans and financial assistance provided by the institution; and (2) management personnel manuals, procedures, and policy guidelines”\textsuperscript{55}.

Section 514 (a) of the same Bill also instructs the US Executive Directors of a wide range of international organisations, including the IMF, IBRD, IDA, IFC and many other organisations to vote against any funding proposals that would support the production of commodities in surplus on the world markets if

the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity\textsuperscript{56}

and

The Secretary of the Treasury shall instruct the United States executive directors of international financial institutions listed in subsection (a) of this section to use the voice and vote of the United States to support the purchase of American produced agricultural commodities with funds appropriated or made available pursuant to this Act\textsuperscript{57}.

This is clearly in contravention of Article V section 6 of the IDA Articles of Association, which states

The Association 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 this Agreement.

by virtue of the fact that the USA Executive Directors will not be weighing the economic considerations of the proposed project impartially, even though the clause does not explicitly refer to directions from donor governments. A cynic might argue that only economic considerations were being considered; those of the USA.

\textsuperscript{54} Bretton Woods Agreement Act, July 31 1945, Section 3, Section 4 (b) (6) and Section 4 (c), http://www.yale.edu/lawweb/avalon/decade/decad047.htm, (27 Aug 2004)
\textsuperscript{55} Title IV of Appropriations Bill S2334, see http://www.congress.gov/cgi-bin/query/C?c105:./temp/~c105VZzYH7, (28 Aug 2004)
\textsuperscript{56} ibid, Section 514 (a)
\textsuperscript{57} ibid, Section 514 (b)
The issue of IBRD interference in the political affairs of members is raised by the introduction of the Structural Adjustment Programmes and successor programmes, which required significant operational and political changes to be made within the recipient nations in order to receive assistance from the Bretton Woods institutions; the next chapter will consider this issue.

**Legal Status and Immunities**

The articles of Association of the IMF, the IBRD and the IDA carry the weight of international treaty under the Vienna Convention. By virtue of their individual Articles of Association, the IMF\(^{58}\), IBRD\(^{59}\) and IDA\(^{60}\) are constituted with full juridical personality.

In addition, by virtue of Article IX section 3, the IMF is immune from any judicial process (unless the IMF waives the immunity), whereas both the IBRD and the IDA can be subject to court action in a court of competent jurisdiction\(^{61}\). It should, however, be noted that there is now a developing trend towards treating International Organisations under the same distinctions as between *jure gestionis* (private law) and *jure imperii* (exercise of state sovereignty), irrespective of the wording of the treaty claims for immunity\(^{62}\). The limited immunity claimed by the World Bank Group in the various Articles is suggested to have been designed to reinforce the confidence of creditors and bond holders by offering some possibility of legal redress\(^{63}\). There does not, however, seem to be any feasibility of raising actions against the organisations themselves or their senior staff in relation to adverse consequences of the organisations official actions (actions in negligence) although there is a theoretical possibility that illegal or wrongful acts may generate some form of accountability\(^{64}\).

In the event of disputes over the interpretation of the Articles of the organisations, the rules of the organisations provide for internal review by the executive directors with appeal to the Board of Governors (IMF\(^{65}\), IBRD\(^{66}\), IDA\(^{67}\)), with no recourse to outside organisations such as the ICJ. The Bretton Woods institutions are, thus, essentially outside the Domestic and International Legal systems, with their own judgements being binding on domestic and international courts\(^{68}\); as such, each organisation is its own “Judge, Jury and Party to the dispute”\(^{69}\). Indeed, Malinveni suggests that disputes within such economic organisations are unsuited to strict legal adjudication due to the fact that a judge is considered to be unsuited to

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58 IMF Article IX section 2
59 IBRD Article VII section 2
60 IDA Article VIII section 2
61 IBRD Article VII section 3 and IDA Article VIII section 3
63 Sands and Klein 2001, p492, at 15-048
64 *ibid*, p513 at 15-086/087
65 IMF Article XVIII sections (a) and (b)
66 IBRD Article IX sections (a) and (b)
67 IDA Article X, sections (a) and (b)
69 *Ibid* p574
settle economic disputes where the law is often unclear and imprecise and judicial decisions could be politically embarrassing to the organisation and parties involved.

**Funding and Application of Funds**

The Bretton Woods organisations are partially funded by means of subscriptions from the member countries; however, the majority of the working funds that are available for disbursement by the IBRD are raised by means of commercial loans guaranteed by the subscribed funds.

The IBRD loans must be related to specific projects, although the interpretation of what constitutes a project is subject to very wide interpretation and even the exception of ‘general purpose lending’ has become used more widely since the 1980s, particularly in the field of structural adjustment programmes.

In addition, IBRD loans can only be made to countries and organisations which are credit worthy, with the requirement that the IBRD will act “prudently in the interests of both the particular member in whose territories the project is located and of the members as a whole”.

The IDA was created in order to assist member countries who could not meet the above requirement of credit worthiness. The IDA does not have any capital base, unlike the IBRD, but obtains its funds by voluntary additional donations from the members. It is this final fact that opens the IDA to effective control by the donor nations. The IDA is also required to operate on a project basis, although the interpretation of this constraint has been similarly broad.

**Modus Operandi**

During the sixty years of the existence of the main Bretton Woods organisations, there have been significant changes in the economies of the members of the organisations and a large growth in the number of member nations of the IMF and IBRD. The focus has changed from post war reconstruction of Europe to developing international trade and assisting the developing nations. During this period, the IMF and IBRD have begun to take an active interest in the economic performance and governance of the recipient states and applied the principle of conditionality as a requirement for the provision of loans, in apparent contravention of the prohibition on interference in the politics of the states without any changes being made to the governing Articles of Agreement of the organisations concerned.

This has been achieved by the IBRD and IDA by means of interpretations of the Articles rather than by amendment of the Articles themselves, which was deliberately made a very difficult process in the original Articles and made more so in the February 16, 1989 amendment to Article IX of the IBRD.

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70 *Ibid* p570  
71 IBRD Article III section 4 (vii)  
73 IBRD Article III section 4 (v)  
74 *Supra* 55  
75 IDA Article V Section 1 (b) of the Articles  
76 *Supra* 72, p 11  
77 IBRD Article I (i)
In developing the interpretation of the Articles, with specific reference to the IBRD and the IDA, the opinion of the General Counsel to the organisation is requested, in order to ensure that the activities of the organisation are legal. However, as Ibrahim Shihata, a Vice President and the General Counsel until 1998 to the IBRD observes,

It is not enough for the General Counsel’s advice to be legally correct; it is also expected to be such as to enable the Executive Directors to perform their responsibilities in a manner which they determine best suits the needs of the Bank’s business.

It has not always been easy to find an interpretation that meets both criteria, in order to meet the needs of policy, expediency and legality but the General Counsel have found that it is necessary to meet the second criterion, in order that the advice is seen to be of relevance to the Executive Directors, rather than a judicial irrelevance likely to be ignored in their search for “solutions on which they can agree”.

This is also supported by J Stiglitz, who quotes an IMF economist as saying

if only I understood the pressure coming from the IMF board of executive directors--the body, appointed by finance ministers from the advanced industrial countries, that approves all the IMF's loans.

in response to questions as to why they were following a path that Stiglitz predicted would lead to disaster and was ultimately proven correct. Clearly the problem of understanding and acquiescing to the wishes of the senior executive is common to the Bretton Woods organisations.

The phrase “they can agree” is key to this discussion; the Executive Directors have, historically, rarely voted on any of their decisions, preferring rather to derive a consensus position. Consensus, according to Cassese, whilst originally a particularly Western tradition that ensures that all have a part to play in the decision making processes, was highly developed during the 1970s in the field of international organisations, even though it can result in irreconcilable differences being temporarily hidden in equivocal terms.

A further aspect that exacerbates the problem, when viewed from the perspective of the developing states, is the way that the voting structures of the Bretton Woods organisations was

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79 Ibid, p 17
80 Ibid
carefully designed to ensure ultimate control of the organisations by the developed world, by virtue of the weighted voting system based on the size of contributions to the IMF and IBRD. It should be noted that when MIGA was created in September 1985, some attempt was made to address this issue by ensuring that the voting structure was designed so that Developing and Developed countries should have equal voting strength. However, recognising the likelihood that the developing world would not achieve the levels of subscriptions to meet the 50/50 balance, a temporary three year transition period was instituted during which period additional votes were to be allocated if the minority group failed to achieve 40% of the voting weight.

Bennouna further observes, in the context of the US decision to reduce its contributions to the UN, that this use of the weighted voting system to maintain control illustrates the desire of the major contributing nations to “use this as a means of blocking the strengthening of international agencies which are outside their direct control”.

ANALYSIS OF BRETTON WOODS ORGANISATIONS’ ACTIONS

In this chapter, we will consider the actions of the IBRD and IMF in the development, justification, implementation, management and impact of Structural Adjustment Programmes and successor programmes, such as the Enhanced Structural Adjustment Facility (ESAF) and Poverty Reduction and Growth Facilities (PRGF) and Poverty Reduction Strategy Papers (PRSP).

The reason for the consideration of these processes is that IMF and IBRD assistance has generally been conditional on changes being made in the operation and management of the economy of the recipient nations and can thus be argued as being in contravention of the prohibition on political interference in the members of the organisations. It is particularly important when the results of such conditionality programmes are analysed in contrast to the objectives of the IDA and IBRD, with particular reference to the emphasis on development and raising standards of living and conditions of labour, and the requirement to take “due consideration of economy and efficiency”.

Key issues in the debate over conditionality have been the too rapid introduction of open market forces, the too rapid reduction in size of civil services, and the highly adverse impact on the poor of many countries in direct opposition to the objective of “raising the standards and conditions of labour”.

The Bretton Woods organisations have broadly justified their actions on the basis of the Washington Consensus approach to free market economics and a highly technical, financially constrained view of development economies with little regard for the wider social impact until

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84 Ibid, p 627
85 MIGA Article 39
86 Supra 83, page 628
87 IBRD Article I (i) and IDA Article I
88 IBRD Article I (iii) and IDA Article I
89 IBRD Article III Section 5 (b)
90 This emphasis can be justified by reference to the Article III section 5 (b) of the IBRD Articles which states “without regard to political or other non-economic influences or consideration”. See also Sands, P.
comparatively recently, as illustrated by J D Wolfensohn in 1998 where he explicitly refers to including social issues in the evaluation of need\(^91\) and also in his speech before the Board of Governors where he stated that “the fate of the World’s poor would no longer take a back seat to market stability”\(^92\). However, in operational terms little seems to have changed, other than to define new types of programmes which are required to involve civil society and to generate “buy-in” by the recipients of the aid programmes and loans, such as the Poverty Reduction Strategy Papers (PRSP). There are a large number of World Bank reports that analyse the issues of participation by the poor\(^93\) but there is still little sign of any fundamental change to the Washington Consensus.

This will be illustrated by reference to the SAPRIN reviews in relation to sub-Saharan Africa, Asia and Eastern Europe which indicate that in spite of the broadening rhetoric, very little has been done to actually implement changes that credibly take account of non-Washington Consensus economics\(^94\) and truly incorporate and implement the social and societal needs.

The structure of this chapter will therefore consider the following issues:- the consensus and the interpretation approach to extending the application of the Articles, the technical approach to project evaluation, the ban on political considerations, the legality of conditionality, relevance of Human Rights to the organisations and current emphasis on “good governance”. Much of it will be drawn from the works of Ibrahim Shihata.

**Consensus and Interpretation**

The basic documents governing the operation of the World Bank Group are essentially unchanged, even after the passage of over 60 years. During this time conditions have changed far beyond the imagination of the creators of the organisation. However, particularly since the 1980s, the Executive Directors under the guidance of Presidents A W Clausen, Barber B. Conable and W. J. Wolfensohn, have been able to innovatively adjust the activities of the World Bank Group.

As provided by the Articles\(^95\), the Board of Executive Directors has the sole responsibility for interpreting the Articles when a question arises. Formal interpretations were regularly issued until 1964, after which only one formal interpretation was issued as a Board decision in 1986. Since then the Board has discussed what Shihata calls “clarifications” in the light of legal opinions from the General Counsel\(^96\). However, it is clear that these legal opinions are heavily

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\(^93\) such as Brock, K., “It’s not only wealth that matters - it’s peace of mind too”: A Review of Participatory Work on Poverty and Illbeing. Prepared for the Global Synthesis Workshop, Consultations with the Poor, (World Bank, 1999), [http://www.worldbank.org/poverty/voices/reports/global/ngorev.pdf](http://www.worldbank.org/poverty/voices/reports/global/ngorev.pdf), (15/08/03)

\(^94\) see *Letter from SAPRIN Global Steering Committee to President Wolfensohn*, 16 April 2004, [http://www.saprin.org/SAPRIN_Wolfensohn_16April04.PDF](http://www.saprin.org/SAPRIN_Wolfensohn_16April04.PDF), (28 Sept 2004).

\(^95\) Article IX for the IBRD Articles, for example

\(^96\) Shihata, 1991 at p2
coloured by pragmatic issues in order to ensure that the advice is acceptable and operationally useful to the Executive Directors.\footnote{Shihata 2000 at \textit{p}17}

At all times, the General Counsel have taken a “purposive” or “teleological” approach\footnote{Shihata, 1991 at \textit{p}3} to the interpretation of the Articles, rather than a textual or subjective approach\footnote{See also Cassese, A., \textit{International Law}, (Oxford, OUP, 2001), at \textit{p}133 for a wider discussion of the differing legal interpretation traditions.}\footnote{Supra \textit{98}}. Shihata justifies this on the basis that such an approach is both suitable as a “matter of law and as a matter of policy”\footnote{\textit{Cassese, A., International Law}, (Oxford, OUP, 2001), at \textit{p}134} when interpreting the purposes of multinational organisations, in particular when such interpretations do not directly conflict with a “textual” analysis, this is also consistent with the Vienna Convention, Article 32, which states that the \textit{Travaux préparatoires} may only be used to confirm a textual analysis\footnote{\textit{Supra \textit{98}}} \textit{101}. Shihata contrasts changing the Bank’s “functions”\footnote{the way it operates and the technical mechanisms utilised for disbursing funds to recipients}, for which teleological interpretation is appropriate, with changes to the Bank’s “Purposes” for which only a change to the Articles would be legally appropriate.

The result of this process seems to be that there has been little or any internal challenge (legal or otherwise) to the developments agreed by the Executive Directors in the approach of the Bretton Woods Organisations to the developing nations over the last few decades. There have been no challenges to the concepts of conditionality, good governance initiatives, etc.; indeed, Shihata goes to considerable lengths to justify these approaches as being legal, in the face of the ban on political interference in the recipient nations in the relevant Articles, as will be seen.

\textbf{Washington Consensus Economics applied to the Developing World Projects}


\begin{quote}

...The success of the Washington consensus as an intellectual doctrine rests on its simplicity: its policy recommendations could be administered by economists using little more than simple accounting frameworks. A few economic indicators— inflation, money supply growth, interest rates, budget and trade deficits— could serve as the basis for a set of policy recommendations. Indeed, in some cases economists would fly into a country, look at and attempt to verify these data, and make macroeconomic recommendations for policy reforms all in the space of a couple of weeks.

\end{quote}

And
But the policies advanced by the Washington consensus are not complete, and they are sometimes misguided. Making markets work requires more than just low inflation; it requires sound financial regulation, competition policy, and policies to facilitate the transfer of technology and to encourage transparency, to cite some fundamental issues neglected by the Washington consensus.\(^{105}\)

In other words, the Washington Consensus is a simplified, mechanistic form of economics or accounting rules that can just about cope with measuring GDP but cannot form the basis for successful long term development of policies for the developing nations\(^{106}\). Indeed, Stiglitz stated that if the USA had followed Washington Consensus style advice, its economy would not have grown as well as it did during the 1980s and 1990s\(^{107}\). Stiglitz offered a view that seeks to include increases in living standards, health and education as well as equitable development.

It is now clear that countries that pursue appropriate policies have a better chance of economic success than those that do not. And there is mounting evidence that economic assistance, when combined with good policies, promotes economic growth, especially among the poorest countries.\(^{108}\)

This reformist approach clearly did not meet the demands of his masters at the World Bank; he resigned from the World Bank in Feb 2000, under pressure from the US Treasury on the World Bank to silence his criticisms\(^{109}\).

The Washington Consensus approach is directly derived from the professional management rationality theories that underpin most of American and Western business practices. However, Chrisanthi Avgerou strongly challenges the necessary applicability of this style of professional management in all circumstances, places, types of organisations and cultures\(^{110}\). He shows, through analysis of the work of Mutahaba, that the “coercive and normative”\(^{111}\) imposition of western-style institutions, by the organisations like the IMF and the World Bank, in Africa has resulted in highly ineffective organisations, due particularly to the clash between cultures and cultural norms.

\(^{105}\) ibid, p 1
\(^{111}\) Ibid, p40
Geoff Walsham would concur and further demonstrates that western style management concepts and approaches are not necessarily suitable in all circumstances and that the introduction of western concepts and technology (a favourite directive of Bretton Woods organisations and other western donor agencies) may actually be counter-productive\textsuperscript{112}.

Shihata, however, continually defends and justifies the Washington Consensus approaches that were followed\textsuperscript{113}, as having been viewed to be correct at the time of the decisions. The core of the argument is that the IBRD is required to take into consideration only economic matters\textsuperscript{114}; that economic success and low risk to both donor and recipient is conditional on certain management style changes and behaviours in the recipient nations and, therefore, that imposing changes in managerial and behavioural patterns in the recipient nations can be argued to be an economic issue due to the impact on the predicted economic success. The Washington Consensus is then used to extend the argument to the necessity of a free market, democracy and severely restricted government bureaucracy and involvement in the markets.

Shihata selectively quotes J. Stiglitz for justifying strong market driven economics\textsuperscript{115}, when in fact Stiglitz is arguing for balanced market and government development\textsuperscript{116}.

Shihata observes that, with hindsight, some of the policies may not have worked as well as they were intended. In so doing, he attempts to lay the fault with the countries’ implementation rather than with the Bretton Woods organisations and their policies:

> it seems that some countries may have opened up their economies, and in particular, their financial markets, to the forces of globalisation before they were structurally prepared.\textsuperscript{117}

He further observes that

> Liberalizing countries, in many respects, have yet to build an appropriate regulatory and institutional framework for their respective economies.\textsuperscript{118}

\begin{footnotes}
\item[112] Walsham, G., \textit{Making a World of Difference: IT in a Global Context}, (London, Wiley, 2001). This is a collection of cross-cultural studies of the impact and success of the introduction of western Information Technology systems in many countries. One of the most significant cases considered is the introduction of a Management Information System at the direction of a donor agency in China during the 1990s which failed to be used because of the historical and cultural heritage of organisational management in China (pp221 – 224). Two other relevant studies consider the introduction of Patient Record systems in Yorubaland (Nigeria) (pp 214-221) and South Africa (pp194-199 where issues of culture and even climate ultimately caused western style Information Technology to fail to be successful.
\item[113] Shihata 2000, Chapter 2 is a full justification of the approach.
\item[114] “Technical considerations of economy and efficiency, rather than ideological and political preferences, should guide the Bank’s work at all times”, Shihata 1991, p95, quoting from the \textit{World Development Report 1990}, in itself a variation of the wording of IBRD Article III Section 5(b)
\item[115] \textit{ibid} p24
\item[117] Shihata 2000 at p30
\item[118] \textit{ibid} at p31
\end{footnotes}
Given the generally short-term nature of the IMF and World Bank advice and extreme demands on Developing countries during the 1980s and 1990s to do exactly what he is condemning them for having done, this is an interesting commentary on the effectiveness of the decisions made by the Executive Directors, particularly given the strength of the views of the chief economist in more recent times. It is therefore clear that he is indirectly criticising the Structural Adjustment Programmes for having been introduced too rapidly in many countries.

It is interesting to note that many World Bank reports attempt to transfer the causes of failure from the policies themselves onto failures in implementation by the governments of the recipient nations.

The ban on Political Interference

There are two aspects to the ban on political interference; the ban on interference in the political affairs of members of the Bank and there is also a ban on the political interference in the activities of the Bank.

ON MEMBERS

This is clearly the more important prohibition on political activities within the arena of the Bretton Woods Institutions, in that it is the perceived basis of the apparent ban on political interference in the affairs of the member countries of the institutions. On the face of it, the relevant articles are extremely clear and can be easily interpreted to prohibit any recommendations for changes in the governance of a recipient country.

However, Shihata spends some twenty pages of Volume I defending the right of the Bretton Woods Institutions to impose requirements that have the net effect of interfering in the political affairs of the recipient nations. The primary grounds are that, in the interests of ensuring that the objectives of the loan are achieved, there is a necessity to create the conditions for success, even where these are significant reforms of the administration and government employment levels.

He clearly reminds his readers of the important enjoiner in the Report on Adjustment Lending II: Policies for the Recovery of Growth (RAL II) that the “Bank must vigorously avoid interfering in politics”, but then continues with the words “considering the cost of failure was too great for the borrowing countries and the Bank to ignore the potential contribution of a better understanding of the reality of the political economy of adjustment”.

It seems that, despite the strict requirement for the Institutions to refrain from political interference, the decision making processes within the Institutions have been able to find ways to...
circumvent the constraints. Shihata shows some signs of recognising this, but generally appears to fully support the whole process from both legal and economic reasoning.

ON THE INSTITUTIONS

The Articles of both the IBRD and the IDA contain three provisions that were intended to prevent the member nations of the institutions from influencing the operation and decision making processes. Article III, Section 5(b), Article IV, Section 10 and Article V, Section 5(c) for the IBRD and Article V section 1(g), Article V section 6 and Article VI Section 5 (c) of the IDA Articles refer.

Perhaps the most interesting statement, in relation to the Omnibus Appropriations Bill (S2334) for fiscal year 1999, quoted above, are the following words:

c) The President, officers and staff of the Association, in the discharge of their offices, owe their duty entirely to the Association and to no other authority. Each member of the Association shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

The clarity of the statement is manifest, as is the wording of the equivalent article of the IBRD, which is almost identical, and yet we see from the very earliest of days, that the major donor countries were exerting pressures on the institutions through their appointed nationals within the institutions.

Shihata deals particularly clearly and carefully with this aspect of the prohibition on political interference commenting that the three provisions are carefully designed to cover all decisions by the IBRD and IDA.

It is clear from the quoted contributions of the two fathers of the Bretton Woods Institutions, Harry D White and Lord Keynes, that the intentions were indeed, that political considerations and interference should be absolutely prohibited, words such as “scrupulously avoid interference in the political affairs of any member” and “strict impartiality” being used in the original drafts.

However, as Shihata observes, the USA Treasury always attempts to impose its own agenda on all new presidents of the World Bank, in particular in terms of requests for reduction in operating budget and staff headcount.

\[\text{Article VI Section 5 (c) of the IDA Articles}\]
\[\text{see the discussion relating to the Bretton Woods Agreement Act and the requirement to coordinate the policies of the US executives in the various Institutions, supra 54}\]
\[\text{Supra 121, at p65}\]
\[\text{Ibid at p71}\]
\[\text{Shihata 2000 at page 58}\]
Conditionality

Conditionality is the term used when Bretton Woods Organisations’ funding is made conditional on the recipient country following the Washington Consensus prescription. Shihata justifies it as being due to a recognition that “the policy environment is important” based on World Bank experience during the 1980s and that the World Bank therefore insisted on changes in institutional reforms that emphasised efficiency in the public sector (resulting in large reductions in the size of the civil service), financial and macroeconomic management, the so called “political economy of adjustment”.

Whilst it may appear that the impact of conditionality, and the relative power positions of the Bretton Woods Organisations vis-à-vis the recipient nations, is in the nature of a payment as reward for appropriate behaviour (that is in meeting the required “adjustments” that were required for the so-called Structural Adjustment Loans) Shihata is careful to point out that advice was offered in 1988 which carefully outlined a chain of legal reasoning, based on the relevant Articles of the World Bank that was able to invoke the “special circumstances” aspect of article III section 4(vii) that could be used to argue and justify the legality. This reasoning also covers the fact that the majority of the adjustment lending of the World Bank is not “Project related”, as otherwise mandated in the Articles of the World Bank. It is however, interesting to note the wording of the advice, which clearly recognises that the World Bank is very marginal in relation to the legality of its actions in this respect, quoting the following from the advice:

A loan made or guaranteed by the Bank cannot [in a defensible legal sense] be described simply as a payment to induce the recipient government to do what the Bank believes to be in its best interest or as a price for policy reforms.

This wording indicates just how precise the Legal Counsel has to be in providing advice to the Executive Directors who clearly follow the Washington Consensus world view and wish to obtain legal support for their intended actions.

Human Rights

The World Bank Group believes that it does not interfere in the political affairs of its members and therefore justifies its approach to lending to all potential recipients, irrespective of their human rights record, in spite of pressures from some of the most powerful donor nations, including USA domestic legislation to instruct the US Executive Director, and UN resolutions and advice to prevent such loans. It is clear that the World Bank Group have expended

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129 Shihata 1995 at p59
130 Report on Adjustment Lending II, cited by Shihata 1995 at p59
132 Supra 78
134 Shihata 1991 at p98
considerable intellectual effort in justifying their position vis-à-vis such pressures from the USA and the UN\textsuperscript{135}.

The original purpose of the IBRD is defined in Article I as being related to economic growth and development with phrases such as “assist in the reconstruction and development”, “the encouragement of the development of productive facilities and resources in less developed countries” and “providing finance for productive purposes”.

The purpose of the IDA is slightly broader and less prescribed in economic terms, with the inclusion of the phrase “to promote economic development, increase productivity and thus raise standards of living in the less-developed areas of the world” in Article I.

However, whilst there is still relatively little direct mandate in the relevant Articles for the World Bank Group for the inclusion of a positive approach to Human Rights issues in the development sense of promoting “the Right to Development”\textsuperscript{136}, “Freedom from Poverty”\textsuperscript{137}, “the Right to Education”\textsuperscript{138}, “The Right to Health”\textsuperscript{139}, “Women’s Rights”\textsuperscript{140} and “The Environment”, the World Bank does consider that it has worked hard to include these areas in its activities\textsuperscript{141}.

The real problem, however, is that whilst Shihata can and does illustrate the positive aspects in the Bank’s work, there are very significant failings in their approach to the Rights, in particular a failure to anticipate the highly adverse consequences of many of their decisions and mandates for change which will be considered in the next chapter. It is of note that this aspect of the adverse consequences of the Bretton Woods Institutions is repeatedly challenged by many governments and the International Labour Organisation’s view is that

The measures ……… have imposed a disproportionate burden on the poorer sections of the population, have caused severe disturbance, and have been at variance with ILO standards hardship and social\textsuperscript{142}.

\textsuperscript{135} Shihata 1991, pp98-109 is a strong justification of their approach to resist pressures to consider a poor human rights record in their lending decisions

\textsuperscript{136} See Declaration on the Right to Development, UN GA RES No 41/128, 1986, Article 1(1), “the right to development is an inalienable right by virtue of which every human person and all peoples are entitled to participate…..” and also Article 2(3) “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population”

\textsuperscript{137} ICESCR Article 11, with phrases such as “the right of every to an adequate standard of living for himself and his family” and “the continuous improvement of living conditions”

\textsuperscript{138} ICESCR Article 13

\textsuperscript{139} UDHR Article 25 and ICESCR Article 12

\textsuperscript{140} Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) entered into force 3 September 1981

\textsuperscript{141} Shihata 1991, pp109 – 134 is a strong promotion of the work done by the World Bank in support of these objectives

\textsuperscript{142} Samson, K 1992 at p 666
Good Governance

The World Bank approach to the question of “Governance” follows closely the same line of argument as is used in the arguments for conditionality. Key issues include “Civil Service Reform”, “Legal Reform”, “Accountability for Public Funds” and “Budget Discipline”.

The justifying argument presented by Shihata can be summarised broadly as being that it is generally accepted that a successful economy requires effective policies and appropriate institutions to implement them, legal systems that are properly administered and enforced, public procurement and administrative processes that enforce transparency and accountability. With such a prerequisite, where countries ask for assistance to improve their policies and institutions, then it should not be argued that the Bank has interfered in the internal politics of a country; it is, rather, suggested that the Bank has purely offered advice to borrower countries that will enable them to use the loan effectively.

In discussing the question of budget discipline, Shihata suggests that the Bank can introduce the concept of improving budgetary disciplines in order to “minimize waste and enhance growth” since this is not a political objective but one that is directly related to a question of economic objectives that are part of the Bank’s mandate.

These highly simplistic arguments clearly ignore the reality of the coercive pressures applied on developing countries in need of assistance, as will be seen in the next chapter. The Bank’s argument is that in all the cases where countries accept the conditions “voluntarily” in order to gain the needed funding, this cannot be considered interference in the politics of the recipient country.

This is a justification of legality based on the principle of “can a legal argument be constructed, however tenuous?” to suit the Masters’ requirements, i.e. that of the Executive Directors. It does not make it particularly convincing in light of the coercive environment, a factor that in domestic law can nullify a contract.

Effectiveness and Efficiency

Shihata introduces the subject with the phrase that “the Bank’s credibility and strength has traditionally depended on its status as a quintessential technocracy exclusively concerned with economic efficiency”. This, of course, is exactly what the Washington Consensus based approach requires. Efficiency is also a fundamental requirement of the lawful operation of the World Bank Group, by virtue of the Articles of association.

The Washington Consensus mandates the development of sets of techniques and methodologies that enable the organisation to pass on and use its expertise to many new technical experts, based on rules of good practise to develop new systems of activity. One of the problems with the scientific or technocratic approach to methodology creation, training and implementation is that there is generally little connection of the theoretical best practice and what

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143 Shihata 1991, pp79-96
144 Ibid p88
145 Ibid p91
146 Shihata 1991 at p54
147 Avgerou 2002 at p 33
actually happens on the ground\textsuperscript{148}, where there is a general application of \textit{bricolage} or tinkering until things actually work, quite irrespective of academic or technocratic theory. Also, although all methodologies require a post implementation review in order to learn any lessons from a project and, thus, to improve the methodology or its future execution, this rarely happens, or where it does, it is often only done to legitimise post facto what had been decided by means outside the methodology\textsuperscript{149}.

The Bank uses the Operations Evaluation Department (OED) to monitor the effectiveness of its operations and make recommendations for change and development, in particular through the annual ARDE document series\textsuperscript{150}. Shihata is able to selectively provide examples of the successes of the Bank, based on OED reports.

However, in the absence of any definition of what the Bank considers “efficiency” to be, it is not clear how it can be measured or proven to have occurred. It, therefore, seems to leave the World Bank Group wide open to accusations of illegality but without any available courts with jurisdiction in which to bring any action, other than the internal pseudo-court of the organisation itself.

The next chapter will analyse aspects of the efficiency question from an “outcomes” perspective within the context of International Treaty law.

\section*{LEGAL AND OPERATIONAL ANALYSIS OF IBRD AND IMF ACTIONS}

This chapter will analyse the impact of the Bretton Woods actions from the perspective of the Developing nations, based on the work of various NGOs and authors. It will contrast the results of conditionality with the objectives of the institutions, as declared in their respective Articles of Association, together with relevant World Bank documents, situated within the context of relevant Human Rights related International Treaties.

The objective is to determine the legality of the World Bank Group actions in the context of International Law and their own governing Articles.

\subsection*{Treaty Law as Background}

The background for this analysis is the issues of provision and access to health, employment and education, taken in conjunction with the Universal Declaration of Human Rights and related Human Rights treaties.

Time series for these areas are documented for the period covering the application of conditionality by the Bretton Woods institutions in the SAPRIN Country reports. Many of the time-series for the sub-Saharan countries show a dramatic worsening of the statistics coincident with the onset of adjustment programmes. In many cases, the countries had made major improvements to their maternal mortality rates and access to education following de-colonisation and prior to the imposition of Structural Adjustment programmes.

\footnotesize
\textsuperscript{149} Avgerou 2002 p33
\textsuperscript{150} Annual Review of Development Effectiveness
HUMAN RIGHTS IMPACT

The Universal Declaration of Human Rights can be taken as the foundation for measuring the impact of Structural Adjustment programmes, covering many of the key areas that are documented as being adversely affected. Article 23 (Right to Work and right to Trade Union Membership), Article 25 (Right to Health, Maternal and Children’s Rights) and Article 26 (Right to free Education) are relevant to this analysis. These rights are then amplified and further codified by the ICESCR, CEDAW, CRC and ILO Convention No 87 treaties.

It is, however, important to remember that the Human Rights treaties are generally considered to be aspirational in nature. As such, many international lawyers do not consider them to be directly enforceable. However, they do provide a benchmark against which progress towards human rights can be measured.

RIGHTS UNDER CONSIDERATION

ICESCR

Article 11 is the right to “an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

Article 12 is the right to “the highest attainable standard of physical and mental health”, specifically including reduction of infant mortality. The explanatory notes to Article 12 elaborate several important issues, including the entitlement right to a system of health protection. Yamin and Maine argue that Governments’ liabilities in respect of Maternal Mortality are to ensure the creation and maintenance of suitable infrastructures and services to meet the obligations.

Article 13 of the ICESCR defines the right to education. Article 13 section 2 sub-sections (a), (b) and (c) detail the resultant state obligations towards the progressive free provision of primary, secondary (including technical and vocational) and higher education.

The explanatory notes to Article 13 indicate that there are three levels of obligation, “the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.”

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154 Convention concerning Freedom of Association and Protection of the Right to Organise, 1948

155 E/C.12/2000/4, The right to the highest attainable standard of health, 11/08/2000., CESC General comment 14. (General Comments),


157 E/C.12/1999/10, The right to education (Art.13) : 08/12/99. CESC General comment 13. (General Comments) Section46
CEDAW

CEDAW defines wide ranging rights of women in relation to discrimination on the basis of gender.

Article 10 defines women’s right to equality in provision of education. Article 12 defines rights to health, including free healthcare during maternity. Article 14 defines rights to rural women.

CRC

Article 24 of the CRC defines, in comprehensive terms, the rights of children in the provision of healthcare, both in terms of a “right to enjoy” on the part of the child and in terms of a state obligation to provide, with a specific requirement for

States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries

This is clearly intended to apply to the developed countries in their dealings with developing countries.

Article 28 defines the rights of children to education at primary, secondary and higher levels with the explicit statement of state obligations to provide primary and secondary education free to all.

Flaws at the Heart of the Washington Consensus Economics

Whilst the Bretton Woods Institutions trumpet the success of the Washington Consensus or neoclassical economics theory in the Asian Tiger economies, such as Singapore and Malaysia, there are few other examples of success. In a striking analysis, Joseph Stiglitz (Senior Vice President and Chief Economist of the World Bank) illustrates the fundamental flaws in this theory by contrasting the astounding failure of the Russian economy over the period 1989 to 1998 with the rapid growth of the Chinese economy during the same period; this analysis is particularly valuable because of his role within the World Bank Group.

The Russian experience was a halving of GDP and a doubling of inequality whilst that of China was of a doubling of GDP. Russia followed the Washington Consensus approach of free markets and privatisation, whilst China created its own approach of “non-State-owned collective enterprise”. Stiglitz argues that the fundamental reasons for this and many other failures of the technocratic, neoclassic economic model are due to a mixture of a failure to understand the foundations of the market economy and to a lack of understanding of how reform can be... 

158 CRC Article 24 (4)
160 based on the World Development GINI coefficient data points for 1989 and 1999
introduced, nurtured and managed. Key to the first issue is his contention that academic, textbook theories are highly simplified as an aid to the learning process of students and contain no reference to issues of corporate governance; in addition, Stiglitz asserts that Washington Consensus emphasis on privatisation is a confusion of ends and means, with the true understanding of privatisation as being a mark of success in the improvement in living standards; the market economy is purely one indicator of the achievement of sustainable and equitable development, rather than the means of achieving it as the World Bank sees it. “Privatisation is a means to an end, not an end in itself. That is, the purpose of privatisation is to encourage the economically rational use of resources”.

A result of this confusion of ends and means is that in many countries under Structural Adjustment programmes, the privatisation of State holdings becomes totemic but is implemented without the many other reforms to the regulatory processes and legal systems that are fundamental to effective and equitable operation of the free market and which take many years to develop and embed in a state. It is extremely easy to privatisate, it is far harder to create the reformed culture and legal systems that are the true objective; consider the creation of the oligarchs in Russia and the Mikhail Kordokhovsky and Yukos affair as an illustration of the effects of very rapid privatisation with little and very slow reform of any regulatory or legal systems. As Stiglitz observes, the real objectives are success and political sustainability not speed.

However, due to the lack of regulation as a first step, the result in many countries has been the rapid creation of privileged groups of friends of the politicians, who then form vested interest groups against any further reform.

The Washington Consensus can be compared to a “shock therapy”, similar in many respects to the Business Process Re-engineering ideas of Hammer and Champy where the success rate of BPR is in the region of perhaps 30%. Business experience suggests that a slower, more steadily paced, incremental approach has a far greater probability of success. It is therefore highly probably that the same can be argued at the state level where there are the added

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161 interestingly, this is also a general criticism of the process of the creation of academic theories by Nygaard and Ciborra in Ciborra (2002) in the context of Information Systems and Business theories. The principles behind this problem stem from the classic scientific paradigm of Observation, Analysis and Synthesis, where the Analysis phase includes the concept of the creation of models from simplified abstractions of the richness and complexity of reality.


164 ibid, p19

165 Stiglitz’s phrase is to “grab the low hanging fruit”

166 ibid p20


168 Bocij et al, Business Information Systems, 2nd Ed, (Prentice Hall, 2003), p543
complications of social customs and structures which are extremely fragile and difficult to repair after breakage\textsuperscript{169} with the implication that timescales will be far longer than in business.

**Perspective from Developing Countries – the SAPRIN Study**

The Structural Adjustment Participatory Review International Network (SAPRIN) originated from the Development Group for Alternative Policies (The Development GAP). It was initiated in 1995 in conjunction with the World Bank under the leadership of the new President James Wolfensohn. The objectives were to review the impact of Structural Adjustment programmes in a broad based review that included civil society, the World Bank and governments. It covered ten countries and involved many thousands of local organisations and was supported by a very wide base of NGOs, several European governments, the UN Development Programme and various foundations\textsuperscript{170}.

SAPRIN and the World Bank initially worked closely together to develop a broad methodology for the research that combined participatory techniques, qualitative and quantitative research, and a gender sensitive, political-economy approach\textsuperscript{171}. Each country developed a full report of their review, which was then incorporated into the final SAPRIN report. Unfortunately, the World Bank decided that it needed to produce its own re-analysis and report\textsuperscript{172} based on a Washington Consensus perspective, rather than to support the SAPRIN report.

As we start this analysis, we should remember that one of the key reasons for the introduction of the Structural Adjustment programmes was to take account of the growing inability of developing countries (or what are now often called Highly Indebted Poor Countries – HIPC) to make the repayments on the loans already contracted to fund development. One of the causes for the growing inability to make the repayments was a result of the oil price rises in the 1970s, that affected net oil consumers, and the oil price falls in the early 1980s, that affected net producers, and the start of the world-wide fall in commodity prices. As a result, the International Finance Institutions initiated the Structural Adjustment programmes in order to ensure that the affected countries could meet their external obligations. This involved the introduction of austerity measures, large reductions in the levels of state employment and the transfer of

\textsuperscript{169} Supra 162, pp 22-26. Practical, current illustrations of the difficulty of reconstruction of the social order are Afghanistan and Iraq in the aftermath of the two wars against terrorism and also Yugoslavia and Kosovo in the aftermath Tito’s death in 1980 with the fracturing of the social structures during the 1980s leading to the wars of dissolution and the problems of reconstruction in Bosnia Herzegovina, Croatia and Kosovo; indicative timescales are in terms of decades, not months or years.


resources to exporting industries (to generate the funding to make the payments)\textsuperscript{173}. The World Bank categorises the required reforms as first generation when referring to trade and financial liberalisation and privatisation of state enterprise sand second generation in reference to legislative and judiciary reform, good governance and professional civil service and financial sector reform\textsuperscript{174}. We see here direct confirmation of Stiglitz’s point about “grabbing the low hanging fruit” in the policy understandings of the World Bank staff; a reversal of ends and means. If there was a true understanding of the comments by Shihata and Stiglitz, then the sequencing of activities would be reversed, in order to generate the appropriate regulatory and cultural environment prior to the imposition of the fiscal changes.

We will now consider three specific examples of countries studied by the SAPRIN: Hungary (ex Communist), Mexico (a developing country) and Uganda (East African country) as being indicative of the different types of countries affected by Structural Adjustment. This will be followed by an assessment of the overall conclusions of SAPRIN.

**Hungary**

The objectives of the Hungarian group were to examine:-

- the reform of public sector involvement in social provisions;
- economic liberalisation and deregulation and its economic and social impact;
- privatisation and its economic and social impact; and
- reform of the public utility sector and its impact on the economy, environment, consumers, and fiscal position of the central and local governments.

The broad issues were as follows:-

There was a fall of 20\% in the GDP during the transition from the communist era into the modern free market economy.\textsuperscript{175}

Employment fell by 27\% between 1989 and 1995 before stabilising at 52\% of the those of working age and the polarisation of the Hungarian society increased markedly\textsuperscript{176}.

As a result of the liberalisation of the markets, imports rose rapidly to the detriment of domestic manufacturing; the comment is made that

> It is true that, when the import liberalisation program was elaborated, regional disintegration and its impact on the domestic economy could not be taken into


\textsuperscript{174} *supra* 172 p3

\textsuperscript{175} *supra* 173, p47

\textsuperscript{176} *ibid* p48
consideration yet, but even at that time opinions existed that the speed of import liberalisation was precipitous. Modifications could have been made in the course of events.\textsuperscript{177}

We see here comments from within Hungarian society that echo Stiglitz’s comments on the imposition of an un-necessarily high rate of change and on the problems caused by the quick benefits of the “low hanging fruit”\textsuperscript{178}. It directly contradicts Shihata’s comment that the countries should have done it more slowly, by intimating that it was the World Bank advice which drove the timescales.

A key objective during the privatisation of state holdings was the generation of revenue for the purposes of debt reduction\textsuperscript{179}, the early rounds of privatisation were deemed by the SAPRI reviewers to have been comparatively successful; however, privatisation of agriculture was more problematic due to the lack of funding for the farmers, leading to a 30% reduction in output over a three year period\textsuperscript{180}.

A key consequence of the liberalisation without regulation has been that foreign capital exceeds 50% in almost all industrial sectors; transnational companies have a share greater than 65% in the export industries, the highest in the world, compared to the European norm of 10-20\%\textsuperscript{181}. The energy markets were particularly affected by foreign ownership. This was, no doubt, considered a success by the World Bank, but was considered to be highly detrimental to civil society.

Education suffered greatly from the imposition of Washington Consensus concepts of cost efficiency without consideration of the social background or traditions, with a significant reduction in funding from 1.3\% to 1.0\% of GDP compared to the 1.6\% average for the OECD countries\textsuperscript{182}.

**Mexico**

Mexico entered into Structural Adjustment programmes in 1982. However, since then the levels of inequality have grown\textsuperscript{183}, the deficit has grown, the economy became more dependant on a single customer (the USA), women are taking jobs as a “third working shift, (housewife, partner-mother and worker)”\textsuperscript{184}.

\textsuperscript{177} ibid p20
\textsuperscript{178} supra 162 at p19
\textsuperscript{179} supra 173 p23
\textsuperscript{180} ibid p27
\textsuperscript{181} ibid p29
\textsuperscript{182} ibid p39
\textsuperscript{183} the 1998 Mexican GINI index was 53.1, the 13\textsuperscript{th} worst in the world, compared to the USA with a GINI index of 40.8 and at 41\textsuperscript{st} place and Hungary with a GINI index of 24.4 at 111\textsuperscript{th} place, data derivd from the CIA World Fact Book 2003, displayed at http://www.nationmaster.com/red/graph-T/eco_dis_of_fam_inc_gin_ind&int=-1, (29 Oct 2004)
There was a 50% reduction in the state employment over a period of 18 years (500,000 people) without any programmes to create new employment\(^{185}\). This was partly caused by a reduction in the number of state owned businesses from 1155 to 100 over the period 1982 to 2001; in the simplistic World Bank terms of privatisation results, this is a no doubt a striking success. However, in social, developmental and sustainability terms it is not.

Trade liberalisation, as in Hungary, resulted in competition from transnational companies, to the detriment of the local industry, from the micro to large enterprises, who were unable to compete, leading to de-industrialisation and growth of un-employment. “The administration, in effect, dismantled the productive structure that suffered from inefficiency without creating a replacement”\(^{186}\).

65% of the raw materials needed for exports are now imported, the majority of industrial growth is in the transnational area, thus depriving the local economy of any benefit of growth to the economy.

Although productivity has improved in the manufacturing sector by 30%, wages have fallen, in purchasing power terms by 20% over the period 1994 – 2000\(^{187}\). Neoclassical economics will claim that this is exactly what is required, it has been achieved by agreements that remove or reduce workers’ rights in relation to their employment by the multinational corporations, to the extent that the International Labour Organisation “yellow carded” Mexico\(^{188}\) for not meeting the ILO Convention No. 87 with regard to basic union rights. It is, of course, worthy of note that the major source of the transnational organisations involved in Mexico is the USA, which has never ratified this convention\(^{189}\), yet is the source of the Washington Consensus that has caused so much damage within Hungary and Mexico.

**Uganda**

The Uganda SAPRI team introduce their report with the words

> The goal of Structural Adjustment Programmes (SAPS) as regards fiscal operations was to reduce government expenditure as a major instrument for the control of inflation\(^{190}\).

and

> It is essential that the government allocate its limited resources to those activities that provide the maximum social and economic rates of return.

They also comment on the perception of the SAPs as being

\(^{185}\)ibid p6

\(^{186}\)ibid p7

\(^{187}\)ibid p14

\(^{188}\)ibid p12


On the part of Government and the World Bank/IMF, the premise was that public expenditure reforms would lead to the restoration of price stability and improvement in the cost effectiveness of the provision of social services\textsuperscript{191}.

In response to this, the impact on schooling was to raise the teacher : pupil ratio to 1:100 and the doctor : patient ratio to 1 to 24,000, as a result of the reduction in public employment during the 1990s\textsuperscript{192}. The fall in health spending, at constant 1986 levels was US$93.8 million in 1972 to US$21.8 million in 1999, adjusting also for the rise in the population (of approximately 23\%), the spend per capita fell from US$9.2 in 1972 to US$1.6 in 1999\textsuperscript{193}. Where charges are made for medical services in the NGO facilities, the costs of a visit equate to 15 weeks saving by the poor\textsuperscript{194}.

This picture of significantly reduced expenditure in the health and education fields is consistent across the whole of East Africa\textsuperscript{195}.

**THE SAPRIN REPORT – THE POLICY ROOTS OF ECONOMIC CRISIS AND POVERTY**

The full report draws together the individual Country Reports and draws wide-ranging conclusions in many fields. This summary will touch on the impact of structural adjustment on the areas of education and healthcare.

The report is careful to recognise those areas where the World Bank has recognised that the impact of the programmes during the 1980s impacted disproportionately on the poor and made changes to the second generation programmes with the “Social Dimensions of Adjustment” which are designed to reduce the adverse impacts on the poor. In addition, through the Highly Indebted Poor Country (HIPC) and Poverty Reduction Strategy Paper (PRSP) procedures, the World Bank has attempted to ensure that health care and education are now protected\textsuperscript{196}.

However, the Developing Countries’ perspective remains that the World Bank considers that poverty is to be solved by “eliminating the constraints to wealth generation by the private sector”\textsuperscript{197}, that “reductions in public services were considered inevitable, acceptable and even necessary consequences of adjustment”\textsuperscript{198}; in essence an espousal of an unfettered market. The report also observed that the adverse impacts of the adjustment programmes impacted the poor,

\textsuperscript{191} ibid p9
\textsuperscript{192} ibid p11
\textsuperscript{193} ibid p14
\textsuperscript{194} ibid p18
\textsuperscript{197} ibid p147
\textsuperscript{198} ibid p149
at precisely the point in the economic cycle when they most needed assistance.\textsuperscript{199} In several of the SAPRI countries, fees were instituted for health and education services.

The key findings of the SAPRI study are summarised below, the intent being to elucidate the effectiveness of the Structural Adjustment programmes in relation to the objectives.

**TRADE LIBERALISATION IMPACT ON MANUFACTURING**

The policies imposed by the World Bank for rapid trade liberalisation have generally resulted in a major increase in imports that exceeded any growth in exports and has weakened the domestic manufacturing base. This has resulted from the lack of suitable policies to support and develop the improvement of industrial efficiency. The conclusion is that the measures are “technically inefficient and socially costly”\textsuperscript{200}.

**FINANCIAL SECTOR LIBERALISATION**

Financial assets have become more concentrated in many countries, to the detriment of the small and medium sized enterprises (SMEs). The imposed liberalisation has not developed a long-term view, rather the pursuit of quick profits has developed through investment in non-productive activities. The State has been weakened through the inability to control oligopolies and special interest groups because of the lack of suitable institutional reforms before liberalisation. Overall, the economic efficiency of the banking sector has not been improved.\textsuperscript{201}

**Impact on Employment\textsuperscript{202}**

Employment levels have been reduced because of a lack of policies for creating new jobs. The creation of export lead production has not been successful because of the involvement of external multinational corporations, who tend to keep wages low and to repatriate profits to their home country.

Real wages have deteriorated, with a general increase in inequality and employers have greater control over terms and conditions of employment. In direct contradiction of all the Human Rights provisions, the impact on women has been particularly disadvantaged by Structural Adjustment, often loosing the very protections offered by CEDAW, such as protection of employment during pregnancy.

Due to the reduction in earnings of the primary wage earners, there has been a rise in employment of children and senior citizens, in contravention of the Children’s Convention. Structural Adjustment has not delivered the promised improvements in productivity and competitiveness.

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\textsuperscript{199} *ibid* 150


\textsuperscript{201} *ibid* pp 6, 7

\textsuperscript{202} *ibid* pp 8, 9
ECONOMIC AND SOCIAL IMPACT OF PRIVATISATION PROGRAMMES

Privatisation of Utilities has dramatically increased the costs of power, increased the burden on women and created a worsening of the social condition of the low income segments of society. The removal of state subsidies, whilst improving the fiscal efficiency of the Utilities, has reduced the ability of the poor to afford the necessities of survival. At the same time, this has had an adverse impact on the environment by the direct substitution of firewood for electricity, contributing to deforestation.

There is no evidence that privatisation has improved the rate of growth of GDP. This supports Stiglitz’s assertion that privatisation is not a means towards economic development.

The dramatic increase of foreign ownership has actively blocked the development of efficient domestic sectors. Unemployment has increased, as has inequality. Governments have been unable to develop the culture and processes that provide the required levels of oversight to ensure the development of a strong property owning middleclass. As a result wealth has become ever more concentrated.

IMPACT ON AGRICULTURE

The imposed reforms have not benefited farmers and food security has declined, particularly for the rural poor, due to the removal of subsidies for fertilizers and other agricultural inputs. Inequality and environmental damage has increased. Concentration on export cash crops has reduced the ability of the poor to feed themselves.

IMPACT ON EDUCATION AND HEALTH

The Structural Adjustment reforms have targeted the servicing of foreign debt at the expense of health and education, except where debt relief and foreign aid are provided to support these sectors. The result has generally been a reduction in spending on these crucial areas of social provision. Access by the poor to education and health care has been reduced, exacerbated by the introduction of access charges. The quality of education has been significantly reduced.

The inequalities between rural and urban populations have increased in both the education and health care sectors; quality of life has been adversely affected.

IMPACT ON POVERTY AND INEQUALITY

The above analysis at both the individual country level and in summary by the SAPRIN processes provides a conclusive demonstration of the fact that the Structural Adjustment programmes imposed by the Bretton Woods Institutions have failed to meet the standards provided by international Human Rights Treaties and has also failed to meet the World Bank Group requirements for economic efficiency.
In the majority of countries studied, poverty and inequality have increased, women have been adversely affected, health provision has been reduced, access to education has been reduced, levels of employment have reduced and economic growth has not been stimulated as promised or intended.

SUMMARY AND CONCLUSIONS

This paper has demonstrated conclusively that the actions of the Bretton Woods Institutions have not measured up to their Articles of Association in terms of the economic efficiency. The fact that poverty and inequality generally increase as a direct result of the application of the terms of the Structural Adjustment programmes is clear proof of this lack of economic efficiency; the programme policy recommendations should have been designed to take account of the capability of the recipients to implement the policies in order to adjust for and counteract the types of failings that Shihata and others in the World Bank claim as excuses for the failure of their policies.

The failure of Structural Adjustment to deliver economic growth, development of domestic industrial and financial sectors is yet another illustration of the failures of policy development and delivery by the Bretton Woods Institutions to achieve “economic efficiency”. It should be noted that much of a typical Annual Review of Development Effectiveness document is purely a technocratic analysis of the types of tools and policies being offered and used by the World Bank. There is very little analysis of the social impact or any other macro-economic impact of their policies, nor of the ability of recipient governments to implement the programmes in the intended fashion.

It has not been feasible to develop a full argument in relation to the issue of political interference; however, it has been shown that the position of the World bank is marginal and has been clearly recognised as such since the RAL II report of 1990 in relation to the breadth of its interpretation of the limits on political interference in the member countries.

In a simplistic yet clear sense it can, therefore, be said that the World Bank is acting against its Articles of Agreement and is, therefore, acting illegally; yet there is no court of competent jurisdiction. This is due to the impact of Article IX of the IBRD Articles of Agreement on the matter of the interpretation of the provisions of the Articles of the IBRD (and by virtue of equivalent articles, the other Bretton Woods Institutions are similarly protected) whereby the dispute between a member and the institution is referred to the Executive Directors and in the case of a refusal to accept the decision of the Executive Directors, the matter is referred to the Board of Governors. At this point, the voting strength of the Donor Nations will ensure that the Washington Consensus technocratic approach is upheld.

This paper has also demonstrated that the impact of the Structural Adjustment programmes contravene many of the key aims of International Human Rights Treaties in the fields of women’s rights, employment rights, access to education and healthcare, improvements to working and living standards to name but a few. Once again, because these are almost universally second or third generation rights, these are not generally considered to be legally binding by the developed world and the Bretton Woods Institutions are exempt from prosecution. In addition, by virtue of the non-state nature of the Bretton Woods Institutions, there is no possibility of any individual taking a claim against the Institutions to International Courts. The judgement in the case of H.d.P v. The Netherlands is indicative, even though the nature of the case is that of employee to employer rather than a party suffering injury by the imposition and implementation of flawed economic policies:
3.2. The Human Rights Committee observes in this connection that it can only receive and consider communications in respect of claims that come under the jurisdiction of a State party to the Covenant. The author's grievances, however, concern the recruitment policies of an international organization, which cannot, in any way, be construed as coming within the jurisdiction of the Netherlands or of any other State party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto. Accordingly, the author has no claim under the Optional Protocol. 206.

Therefore, whilst this paper can demonstrate the illegality of the actions of the Bretton Woods Institutions on many fronts, this can only provide moral support to the poor and disadvantaged of the world; it does not offer a solution to the problems caused by the over simplistic and technocratic approach of the Washington Consensus view of development economics, which, whatever the rhetoric of the leaders to the contrary, continues to fundamentally reject the concept of incorporation at any deep level of the real issues of Development within the realities of the implementation of their economic theories, safe in the certainty that they are immune to challenge.

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