

A (SUFFICIENTLY) COMPREHENSIVE DEVELOPMENT FRAMEWORK?

World Bank Development Policy and the Right to Development

Gina Williamson

A (SUFFICIENTLY) COMPREHENSIVE DEVELOPMENT FRAMEWORK?

World Bank Development Policy and the Right to Development

Gina Williamson

***Supervisor:
Dr. Tracey Epps***

*A dissertation submitted in partial fulfilment of the requirements for the
degree of Bachelor of Laws with Honours*

October 2008

*Faculty of Law
University of Otago*

ACKNOWLEDGEMENTS

My thanks go firstly to my supervisor, Tracey Epps, for her guidance in all areas of my research, particularly for her willingness to share her expertise and time in answering questions, discussing ideas and giving such valuable feedback. My thanks also go to the Faculty of Law for the excellent tuition and support that they have provided throughout my law degree.

To my flatmates, for being sounding boards for my ideas and for providing moments of great insanity that relieved my built up stress, thank you.

Finally, thank you to my family, Haley for refraining from drumming practice during those crucial weeks of writing, and my parents, for your constant love and support no matter what the circumstance, for dealing with me in my highs and lows, not only this year but through the many years of my degrees.

I.	INTRODUCTION.....	3
II.	THE WORLD BANK: PURPOSE AND STRUCTURE.....	6
	A. History and Purpose of the world bank.....	6
	B. Authorised Lending Activities	7
	C. The World Bank’s View of Development.....	10
	1. The Evolution of the World Bank’s Development Approach.....	10
	2. The Comprehensive Development Framework.....	13
III.	THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT	16
	A. The Evolution of the Right to Development.....	16
	B. The Content of the Right to Development	19
	1. The Definition of Development	20
	2. The Role of States	23
	3. The Role of the International Community	24
	C. Value Added of the Right to Development.....	26
	1. Reunification of Human Rights.....	27
	2. Unification of Human Rights and Economic Development.....	28
IV.	THE RIGHT TO DEVELOPMENT AT INTERNATIONAL LAW....	30
	A. The International Legal Status of the Right to Development	30
	1. The Right to Development as International Custom.....	31
	2. The Right to Development as <i>Jus Cogens</i>	32
	3. A Statutory Basis for the Right to Development.....	33
	B. The Ability of the UNDRD to Bind the World Bank.....	35
V.	ALIGNMENT OF WORLD BANK POLICY AND THE UNDRD	41
	A. Alignment of Approaches Prior to the CDF	41
	B. Alignment of the CDF with the UNDRD Approach.....	42
	1. Holistic Vision.....	43

2. Country Ownership	46
3. Partnership.....	49
4. Results Orientation	49
VI. IS THE CDF SUFFICIENTLY COMPREHENSIVE?.....	50
A. The World Bank Position on Human Rights in its Operations	51
B. First Interpretation: The Obligation to Respect.....	52
C. Second Interpretation: The Promotion of Selected Human Rights	55
D. Third Interpretation: The Promotion of All Human Rights	57
E. Implications for Bank Policy and Enforcement	63
VII. CONCLUSION	68
BIBLIOGRAPHY	70

I. INTRODUCTION

“The growth of per capita GNP was put forward simply as the best measures of a changing lifestyle. And changes in the lifestyle associated with increases in per capita GNP were commonly thought of as...development.”¹

“...the right to a process of development, in which all human rights and fundamental freedoms can be realised, is proposing a qualitatively different approach, where considerations of equity and justice are primary determinants of development...”²

Development has conventionally been viewed as the enhancement of economic growth. While the conception of the inputs into growth has broadened over time to include capital formation, human capital investment, and liberalisation policies, growth has retained a place of prominence as a primary means of development and focus of development policy.

In 1986, the United Nations Declaration on the Right to Development (UNDRD, the Declaration) formally and fundamentally reconceptualised development. It recognised the interdependence and indivisibility of all human rights, and set the process of realization of these rights as the means and ends of development. It also recognised the individual as the subject and beneficiary of development and placed obligations on the State and the international community to facilitate the realization of development.

Given this new approach to development and the extension of obligations for supporting the realization of development to international actors, the Declaration has motivated calls for review of the policies and practices of international institutions, in order for them to incorporate the principles of the

¹ Edward S Mason and Robert E Asher *The World Bank Since Bretton Woods* (Washington DC, The Brookings Institution, 1973), 483.

² Arjun Sengupta “Study on the current state of progress in the implementation of the right to development” (United Nations Economic and Social Council (UN ECOSOC), July 1999, UN Doc. E/CN.4/1999/WG.18/2) at para 53 (“First Report”).

Declaration into their operations.³ However, analysis of the nature of international obligations under the Declaration and their implications for specific international actors is notably limited.

This dissertation seeks to fill this void in the literature, by considering the nature and implications of the right to development in the context of the World Bank. There are two reasons for the focus of this research on the World Bank. First, the Bank has a strong development mandate and therefore, is an institution in relation to which the right to development has particular significance. Second, in the last decade the Bank has reviewed its operations and adopted a new development framework forming the basis of all its operations, the Comprehensive Development Framework. This provides a consolidated statement of current policy conducive to evaluation.

This research will consider the degree to which the World Bank's Comprehensive Development Framework (CDF) is aligned with the general principles of development contained in UNDRD, and seeks to determine whether this framework is indeed comprehensive enough to satisfy the Bank's obligations under the Declaration.

The remainder of the paper will be structured as follows. The second section will provide a brief history of the World Bank, its purposes and mandate. It will also consider the evolution of the Bank's development thought, prior to introducing the CDF. Section III introduces and provides a descriptive analysis of the UNDRD, including a discussion of its approach to development and the obligations it places on international institutions. Section IV will briefly examine the international legal status of the right to development, prior to establishing the manner in which the World Bank, as an international

³ The High Commissioner on Human Rights has called for dialogue with the international financial institutions for such a purpose. See UN ECOSOC "Report of the Intergovernmental Group of Experts on the Right to Development on its second session" (UN ECOSOC, November 1997, UN Doc E/CN.4/1998/29) at para 40. The Independent Expert on the Right to Development has also recognised the need for intensive review of the processes of international institutions with a view to meeting their obligations under the UNDRD. See Arjun Sengupta "Third Report of the independent expert on the right to development" (UN ECOSOC, January 2001, UN Doc E/CN.4/2001/WG.18/2) at para 35 ("Third Report").

institution and non party to the Declaration, may be bound by it. Section V will consider the general alignment of the CDF with the principles of the UNDRD, while section VI examines whether the CDF is sufficient to fulfil the Bank's obligations under the Declaration. This section will also present the Bank's general position on the treatment of human rights within its mandate as a reference point in the subsequent analysis in considering the scope of human rights obligations under the UNDRD. Section VII concludes.

II. THE WORLD BANK: PURPOSE AND STRUCTURE

A. HISTORY AND PURPOSE OF THE WORLD BANK

The World Bank, in its original form as the International Bank of Reconstruction and Development (IBRD), was a product of the Bretton Woods Conference in July 1944.⁴ The Articles of Agreement of the IBRD became effective on 31 December 1945 upon signing by 28 countries and the Bank's first loan disbursements were to France in 1947 for post-war reconstruction.

The Bank's purposes are set out in Article 1 of its Articles of Agreement (Articles).⁵ Its primary purpose is "to assist in the reconstruction and development of territories of its members" by facilitating investment for productive purposes in order to assist in "raising productivity, the standard of living and conditions of labor in those territories."⁶ The facilitation of investment is to be achieved through the promotion of private foreign investment, or when private capital is unavailable, the provision of finance by the Bank out of its own capital or other funds raised.⁷

Despite the apparent equal weighting on the objectives of reconstruction and development, initial primacy was placed on the Bank's role in the reconstruction of Western Europe in the aftermath of World War II. The development objective appeared as an afterthought, providing a secondary role

⁴ The Bretton Woods Conference was officially the United Nations Monetary and Financial Conference, held at Bretton Woods, but is commonly referred to as the Bretton Woods Conference, and the institutions formed (the IBRD and the International Monetary Fund), the Bretton Woods Institutions.

⁵ The Articles of Agreement are the constitution of the IBRD. World Bank *International Bank of Reconstruction and Development Articles of Agreement* (IBRD Articles of Agreement) available from <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/BODEXT/0,,contentMDK:20049557~isCURL:Y~menuPK:64020045~pagePK:64020054~piPK:64020408~theSitePK:278036,00.html>> accessed 21/04/2008.

⁶ Articles 1(i) and 1(iii) IBRD Articles of Agreement. 'Productive purposes' include "the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries."

⁷ Article 1(ii) IBRD Articles of Agreement.

for the Bank, which would receive greater emphasis over time as the reconstruction of Europe was completed.⁸ However, when the United States adopted the task of financing the reconstruction of Europe in the Marshall Plan of 1948, it was natural for the IBRD to change its focus to development, albeit earlier than anticipated.

The IBRD has since maintained the promotion of development as its primary focus and has expanded its role in the international financial system. The IBRD is now accompanied by three other intergovernmental financial institutions to form the World Bank Group.⁹ However, this research will focus on the IBRD, henceforth referred to interchangeably as the Bank, or the World Bank.

B. AUTHORISED LENDING ACTIVITIES

All Bank operations, including its primary function of development financing, must be undertaken in accordance with its purposes.¹⁰ Further, Article III.4 sets out the conditions under which the Bank may grant loans, including

⁸ The initial draft of the Bank's Articles contained no direct mention of development. However, the list of the Bank's purposes did include "[raising] the productivity and hence the standard of living of the peoples of member countries." See Christopher L Gilbert and David Vines "The World Bank: an overview of some major issues," in Christopher L Gilbert and David Vines (eds.) *The World Bank: Structure and Policies* (Cambridge University Press, 2000) 14. The conclusion that the development objective was an afterthought is drawn from a statement made by Harry Dexter White (the initial drafter of the plan for a world bank). When asked about the role of the Bank when reconstruction of Western Europe was complete, White stated, in reference to the development objective, "Let's have it there for after." Davesh Kapur, John P. Lewis, and Richard Webb *The World Bank: Its First Half Century* (The Brookings Institution, Washington D.C., 1997) 57.

⁹ These other institutions are: the International Development Association (IDA), which provides concessional lending to the lowest income developing countries; the International Financial Corporation (IFC), which lends to private sector institutions who have an accompanying government guarantee; and the Multi-lateral Investment Guarantee Agency (MIGA), which provides guarantees to private investors to protect them against expropriation and repatriation risks in developing countries.

¹⁰ Article 1 IBRD Articles of Agreement.

satisfaction that the borrowing country is unable to otherwise obtain a loan under reasonable conditions;¹¹ and consideration of the prospects that the borrower will be able to meet their obligations under the loan agreement.¹² Perhaps the most significant condition requires loans provided by the Bank to, “except in special circumstances, be for the purpose of specific projects of reconstruction or development.”¹³

The original focus of Bank operations was project lending, a project being defined as “exact in respect of fulfilment, conditions or terms,” but is “not limited to the construction of physical facilities.”¹⁴ However, the ‘special circumstances’ exception in Article III.4 has authorised the extension of Bank lending to incorporate programme lending, that is, lending for general policy support, rather than specific projects. ‘Special circumstances’ have been defined as being “of such a nature as to make a departure from the normal practice of lending for specific projects clearly desirable and appropriate in the light of the achievement of the stated purpose of the Bank.”¹⁵ These circumstances may relate to a particular country or a general economic

¹¹ Article III.4(ii) IBRD Articles of Agreement.

¹² Article III.4(v) IBRD Articles of Agreement.

¹³ Article III.4(vii) IBRD Articles of Agreement.

¹⁴ Ibrahim F.I. Shihata “Authorized Purposes of Loans Made or Guaranteed by the Bank”, (Memorandum of the General Counsel, SecM-88-517, May 10, 1988) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 159 (“Authorized Purposes of Loans”).

¹⁵ A Broches “Memorandum regarding Article III, Section 4(vii) of the Articles of Agreement of the Bank and Article V, Section 1(b), of the Articles of Agreement of the Association” (March 12, 1970) in Ibrahim F.I. Shihata “Project and Non-Project Financing Under the IBRD Articles” (Memorandum of the General Counsel, SecM-84-1053, December 21, 1984) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 182. It is important to note that the Articles are not subject to interpretation in a court of law, rather the task of interpretation is reserved for the Board of Executive Directors of the Bank. Article IX, IBRD Articles of Agreement. Formal interpretations of the Articles by the Board are rare. The interpretations discussed in this paper are those of the World Bank General Counsel, which are generally adopted or concurred with by the Board.

situation affecting many member countries. Further, the same situation may warrant Bank financing on more than one occasion.¹⁶

This interpretation of Article III.4 has justified both the Bank's Structural Adjustment Lending in the 1980s, which allowed financing of general imports in addressing balance of payments problems, and, more recently, Development Policy Lending, which allows financing in support of general development programmes.

All Bank lending must be for productive purposes. This purpose is interpreted broadly to include both investment to improve a country's productive base, and also the productivity of these factors of production.¹⁷ Lending for productive purposes therefore includes spending on building and maintaining infrastructure, the gaining of technical assistance, and the provision of social services such as health and education.¹⁸

The Articles also restrict the factors that the Bank and its agents may consider in making lending decisions. Article III.5(b) states that only matters of economy and efficiency, and not non economic factors, may be considered. Further, Article IV.10 prohibits the interference of the Bank in the political affairs of its members and requires that the Bank not be influenced in its decision making by the political character of the borrowing state. Again, this article emphasises that "only economic considerations shall be relevant to [Bank] decisions."

The rationale for this prohibition of political activity is based upon two core characteristics of the Bank and its operations. First, the Bank is an institution

¹⁶ Broches, *supra* note 15, 182; Ibrahim F.I. Shihata "Project and Non-Project Financing Under the IBRD Articles" (Memorandum of the General Counsel, SecM-84-1053, December 21, 1984) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 179 ("Project and Non Project Financing").

¹⁷ Ibrahim F.I. Shihata "Materiality" Criteria Required for Bank Lending for Debt and Debt Service Reduction Purposes" (A note prepared by staff in cooperation with the General Counsel, June 20, 1989, R89-0136) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 192 ("Materiality").

¹⁸ Shihata, "Authorized Purposes of Loans", *supra* note 14, 160.

of universal membership and therefore must be inclusive of all members regardless of their political character. Second, the Bank must retain credibility in private financial markets on which it relies to source funds. Allowing political considerations to influence lending decisions places the image and reputation of the Bank in these respects at risk.¹⁹

Despite this prohibition, the World Bank General Counsel²⁰ has recognised two situations in which political considerations may be relevant lending decisions. Political factors may be considered either when the political climate of a borrowing country is likely to adversely impact the ability of the Bank to implement and monitor its operations, or when political factors have clear economic effects.²¹

C. THE WORLD BANK'S VIEW OF DEVELOPMENT

1. The Evolution of the World Bank's Development Approach

The Bank's Articles contain no definition of development beyond loosely associating investment in capital for productive purposes with outcomes of raising living standards and the conditions of labour in member states. This broad terminology allows for a changing conception of development over time,

¹⁹ Ibrahim F.I. Shihata "Prohibition of Political Activities in the Bank's Work" (Legal opinion of the General Counsel, SecM95-707, July 12 1995) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 226-227 ("Prohibition of Political Activities").

²⁰ The World Bank General Counsel is the Vice President in charge of the legal department of the Bank. The role of the General Counsel most relevant to this paper is that of furnishing the Bank's Executive Directors with legal opinions and memoranda on issues of interpretation of the Bank's Articles of Agreement. These opinions do not amount to authoritative interpretations of the Articles, as this is a function reserved for the Board of Executive Directors. However, such interpretations are frequently endorsed or concurred with by the Board, and are adopted into subsequent Bank practice. See Ibrahim F.I. Shihata "Interpretation as Practiced at the World Bank" in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) lviii-lix ("Interpretation"). See also Article IX IBRD Articles of Agreement for the interpretive function of the Board.

²¹ Shihata, "Prohibition of Political Activities", *supra* note 19, 235.

particularly through interpretations of “capital” and “productive purposes,” and what constitutes an improvement in living standards.

The Bank has progressively widened its view of development in response to both changing academic conceptions of development and the changing needs and conditions in the developing world. Prior to evaluating the Bank’s current comprehensive development approach, it is important to place this in context, by considering the evolution in the Bank’s development thinking.

Early conceptions of development were focused on economic growth. In the view of the developed world the primary problem in developing countries was low income, the solution for which was economic growth.²² Development policy was focused on encouraging private enterprise, building capital stock, and industrialisation and modernisation policies. According to the ‘trickle down’ theory of economic growth, the benefits of this enhanced growth would flow through to all sectors of the economy and improve the living standards of all.

The World Bank shared this narrow conception of development and focused its lending efforts on project lending to aid developing countries in financing the foreign exchange costs of capital and infrastructure projects.²³ In the view of the early Bank:

“An adequate supply of power, communications and transportation facilities is a precondition for the most productive application of private saving in new enterprises. It is also the first step in the gradual industrialisation and diversification of the underdeveloped countries.”²⁴

Peripheral to development strategies throughout this era was the recognition of the importance of education and health, inequality, and government stability in

²² Kapur et al, *supra* note 8, 115.

²³ Mason and Asher note that almost all Bank financing in this early period was in the form of project lending, three quarters of which was for public utilities projects. Mason and Asher, *supra* note 1, 462.

²⁴ IBRD Sixth Annual Report (1950-51) 14, in Mason and Asher, *supra* note 1, 460.

development. These ideas became prominent in development practice in the late 1960s as developing governments extended their focus to include social projects in areas of health and education. World Bank operations likewise expanded to include financing specific projects in these areas. This signalled a significant shift in Bank policy as it indicated an expansion of development thinking beyond a narrow growth focus.²⁵ Ultimately, however, this conception of development remained rooted in notions of development as economic growth, but with an extended conception of the inputs into growth.

An actual change in development thinking became obvious in the 1970s. Practitioners and academics alike questioned whether the poor were actually sharing in the benefits of growth. Development policy was refocused on poverty reduction from a grassroots level. The Bank adopted a basic needs approach to development as it increased its financing of social projects in order to encourage governments to satisfy the basic housing, health and education needs of their population.²⁶ Former Bank President, Robert McNamara, recognised that “an adequate rate of growth of GNP is a necessary but not sufficient condition of successful development.”²⁷ Growth became a means to, rather than the ends of, development.

This “bottom up” approach was relatively short lived. The global economic shocks and crises of the 1980s caused a refocusing of development efforts towards macroeconomic adjustment. The World Bank viewed public policies of developing governments as the primary impediment to growth. The poverty alleviation agenda was downgraded while a new form of the “trickle down” theory dominated development thinking. Economic growth was again the focus of development, and policies of liberalisation, privatisation and deregulation (the so-called “Washington Consensus”) were seen as the means to enhanced growth. The Bank encouraged structural reforms through structural adjustment loans accompanied by strict conditionality, thus providing finance for balance of payments support for adjustment, but requiring Bank imposed policy

²⁵ Gordon and Sylvester, *supra* note 44, 33.

²⁶ Gilbert and Vines, *supra* note 8, 96; Kapur et al, *supra* note 8, 265.

²⁷ Mason and Asher, *supra* note 23, 475.

reforms in return.²⁸ Lending policy remained heavily influenced by structural adjustment and the Washington Consensus into the 1990s.

2. The Comprehensive Development Framework

From 1995, under the leadership of President James D. Wolfensohn, the Bank again sought to re-evaluate its development approach, in response to strong criticisms of its policies of the previous decade. The Bank refocused its development objective on poverty reduction. However, in Wolfensohn's view, "poverty is about more than inadequate income or even low human development...[it] is about lack of fundamental freedom of action, choice and opportunity."²⁹ While reminiscent of prior thinking, this statement indicates a broadening of the Bank's conception of development as the elimination of income poverty; rather, poverty is viewed as the deprivation of capabilities, and development as the expansion of those capabilities.³⁰

This new conception of development was embodied in the Comprehensive Development Framework (CDF), which proposed a fundamental realignment of all Bank policy and practice. The CDF recognised the importance of both macroeconomic advancement to allow for sustained future development, and social, structural and human development to ensure that development is not just top down, but improves the quality of life at the societal and individual levels also.³¹

²⁸ See generally Paul Mosley, Jane Harrigan and John Toye *Aid and Power: The World Bank and Policy Based Lending (Volume 1)* (Routledge, London, 1991) ch. 2.

²⁹ James D. Wolfensohn, "Building and Equitable World" Address to the Board of Governors, 26 September 2000 (The World Bank Group, Prague, 2000).

³⁰ This conception of poverty and development in relation to capabilities of the individual is presented by Sen. See Amartya Sen *Development as Freedom* (Anchor Books, New York, 1999) 75. See also the discussion of Sen's view of development at Section III.B.1 of this paper.

³¹ Wolfensohn discusses these as being two sides of the same coin, and that the key to development is that the two sides must be considered together; James D. Wolfensohn "A

The CDF is founded on four guiding principles. First, the CDF requires a long term, holistic vision, it “emphasises the interdependence of all elements of development – social, structural, human, governance, environmental, economic and financial.”³² A comprehensive development strategy ought to have components under each of these heads.³³ Further, development efforts must be focused on the fundamental long term causes and issues in relation to poverty and development, not merely short term alleviation of symptoms.³⁴ Second, it emphasises country ownership in the sense that the borrowing government, through a consultative and participatory process, must determine the relevant development goals, in addition to the timing and sequencing of programmes. The Bank may provide assistance where the government lacks capacity but development efforts are most successful and sustainable when strategies are developed internally, and not externally imposed.³⁵ Third, development is best achieved through country led partnership, such that development is a cooperative effort, led by the developing country but involving all development actors acting in their specialist area.³⁶ Finally, strategies should focus on achieving clearly defined results, rather than focusing on inputs, to ensure practical success in reducing poverty. These results ought to be

Proposal for a Comprehensive Development Framework: A Discussion Draft” (World Bank, 21 January 1999) 5.

³² World Bank, CDF website <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/CDF/0,,contentMDK:20072662~menuPK:60746~pagePK:139301~piPK:261885~theSitePK:140576,00.html>> accessed 11/08/2008.

³³ Wolfensohn, *supra* note 31, 24.

³⁴ *Ibid*, 5.

³⁵ Joseph Stiglitz “Towards a New Paradigm for Development: Strategies, Policies, and Processes” Prebisch Lecture, 19 October 1998 (UNCTAD, Geneva, 1998) 20-21.

³⁶ The CDF advocates a matrix approach to defining and coordinating a development strategy, with all development components (grouped as structural, human, physical and specific) listed horizontally and all development partners (civil society and the private sector, through to government and international actors) listed vertically, allowing roles and tasks to be allocated to the most appropriate specific actor. For further details on this see also Wolfensohn, *supra* note 31, 24-29.

expressed in terms of “realistic, monitorable, time-bound and preferably quantitative targets, and progress indicators.”³⁷

The CDF “is not a blueprint to be applied to all countries in a uniform manner,”³⁸ rather the Framework presents a process by which a development programme can be formulated in a manner conducive to its ultimate realization, by focusing on the needs of particular countries and the full ownership and involvement of all stakeholders.

Integral to the implementation of the CDF are the Poverty Reduction Strategy Papers (PRSP) and Country Assistance Strategies (CAS). The PRSP is the foundation of the Bank-Borrower relationship. The paper is prepared by the developing country government and describes the country’s long term development strategy.³⁹ The CAS is prepared by the Bank in response to a PRSP and request for support. It involves a comprehensive diagnosis of a borrowing country’s development status and establishes a programme of Bank funding and support for development. Both documents are based upon consultations between the Bank and the developing country, and with other relevant stakeholders, including civil society and other development actors.⁴⁰

Following a trial of the CDF approach in a limited number of developing countries from 1999, the CDF was introduced as the basis of all Bank operations from 2001.

³⁷ World Bank, CDF Website < <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/CDF/0,,contentMDK:20072934~menuPK:140863~pagePK:139301~piPK:261885~theSitePK:140576,00.html>> accessed 30/09/2008.

³⁸World Bank, CDF website, *supra* note 32, accessed 5/09/2008.

³⁹ World Bank, Poverty Reduction Strategies, <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0,,menuPK:384207~pagePK:149018~piPK:149093~theSitePK:384201,00.html>> accessed 21/09/2008.

⁴⁰ World Bank, Country Assistance Strategies < <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120746~menuPK:51551~pagePK:41367~piPK:51533~theSitePK:40941,00.html>> accessed 21/09/2008.

III. THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT

A. THE EVOLUTION OF THE RIGHT TO DEVELOPMENT

A right to development has been recognised in principle since the International Labour Organization's Philadelphia Declaration of 1944 acknowledged the right of all human beings to pursue their material well-being in conditions of freedom, dignity, economic security and equal opportunity. These principles were further advanced in the drafting of the Universal Declaration of Human Rights (UDHR), when then Chairperson of the United Nations Commission on Human Rights, Eleanor Roosevelt observed that "one of the most important rights is the opportunity for development."⁴¹ The proposed second article of the UDHR also recognised that "the object of society is to afford each of its members equal opportunity for the full development of his spirit, mind and body."⁴² While this article is not in the final version, the flavour of a right to development seems to have influenced the provisions of the UDHR.⁴³

In 1972, Senegalese Justice Keba M'Baye, was first to articulate a *human right* to development in international legal discourse.⁴⁴ This was further elaborated

⁴¹ See M Glen Johnson "The Contribution of Eleanor and Franklin Roosevelt to the Development of the International Protection for Human Rights", (1987) 9 *Human Rights Quarterly* 19, quoted in R Malhorta "Right to Development: Where Are We Today?" in A Sengupta, A Negi and M Basu *Reflections on the Right to Development* (Sage Publications, 2005), 150.

⁴² Philip Alston "The right to development at the international level" in *The Right to Development at the International Level, Workshop, The Hague, 16-18 October, 1979* (Sijthoff & Noordhoff, 1980), 100.

⁴³ The draft article was advanced by French representative, Professor Rene Cassin. In the final version of the Universal Declaration on Human Rights, Article 22 recognises the right to social security and the realisation, through national and international means, of economic, social and cultural rights indispensable for his dignity and the free development of his personality. Article 28 states that everyone is entitled to a social and international order in which the all rights and freedoms as set out the declaration can be fully realised. Universal Declaration of Human Rights UNGA Resolution 217A(III), UN Doc. A/810 (10 December 1948). See Alston, *ibid*, 100.

⁴⁴ K M'Baye "Le Droit au developpement comme un droit de l'Homme" (1972) 5 *Revue Des Droits De L'Homme* 503, 505, cited in R E Gordon and J H Sylvester "Deconstructing

by Salcedo such that “the right to development...must unavoidably be founded on the recognition of the right of every man to a free and worthy life in his community. Every human being has the right to live, which implies the right to aspire to an increasingly better existence.”⁴⁵

Momentum for the formal international recognition of a right to development developed within the movement of developing countries for a New International Economic Order (NIEO) in the 1960s. This movement sought the equitable treatment of developing countries in international economic relations, their special treatment in trade and finance and the transfer of resources from developed countries.⁴⁶ This was motivated by the desire for reparation for the effects of colonization. These claims were recast in the form of a right to development which became a claim by developing countries upon the resources of the developed.

Since these initial claims of a right to development, the United Nations (UN) has undertaken research into the nature and content of this right. In 1979 the United Nations Economic and Social Council (ECOSOC) reported that there existed a significant foundation for the right to development in a collection of UN conventions, declarations and resolutions including the documents forming the International Bill of Rights, the UN Charter, and the documents foundational to the NIEO.⁴⁷ In March 1979, the UNCHR adopted resolution

Development” (2004) 22 *Wisconsin International Law Journal* 1, 62. M’Baye is widely cited as being the first to refer to the right to development as a human right. However, Bedjaoui had earlier expressed the associated obligation of “the most well off states...to contribute to the development of the most disadvantaged countries in a spirit of human solidarity...” See M Bedjaoui “The Right to Development” in M Bedjaoui, *International Law: Achievements and Prospects* (UNESCO, 1991) 1178.

⁴⁵ Carrillo Salcedo “El Derecho al desarrollo como un derecho humano” (1972) 25 *Revista Espanola De Derecho Internacional* 119, in Gordon and Sylvester, *supra* note 44, 62.

⁴⁶ The principles of the NIEO were expressed in two UN resolutions: Declaration on the Establishment of a New International Economic Order, UNGA Res. 3201 (S-VI) (1 May 1974); Programme of Action on the Establishment of a New International Economic Order, UNGA Res. 3202 (S-VI) (1 May 1974).

⁴⁷ A full list of the relevant resolutions and declarations supporting the existence of a right to development is provided in UN ECOSOC “Report of the Working Group of Governmental

4(XXXV), recognizing the right to development as a human right and requested action to be taken in furtherance of drafting a declaration on the right to development.

The right to development was formally recognised on 4 December 1986 in the United Nations Declaration on the Right to Development (UNDRD, the Declaration).⁴⁸ This Declaration, an ordinary resolution of the General Assembly, was assented to by 146 states, with one dissenting vote from the United States and eight abstentions.⁴⁹ The Declaration shifted the concern and provision of assistance for development from mere charity, to an obligation at both the national and international level. The core object of the right is the “development of the individual, in the sense of an effort to promote his ‘multidimensional fulfilment’” including “the full realization of all human rights.”⁵⁰

The right to development was reaffirmed by consensus in the 1993 Vienna Declaration and Programme of Action (Vienna Declaration), which stated:

“The right to development, as established in the Declaration on the Right to Development, is a universal and inalienable right and integral part of fundamental human rights.”⁵¹

This consensus support for the UNDRD definitively indicated that “the existence of the right to development is a *fait accompli*. Whatever reservations

Experts on the Right to Development” (UN ECOSOC, February 1982, UN Doc E/CN.4/1489) at para 11.

⁴⁸ United Nations Declaration on the Right to Development UNGA Resolution 41/128, UN Doc. A/Res/41/128 (4 December 1986).

⁴⁹ The eight abstentions were: Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden and the United Kingdom.

⁵⁰ See UN ECOSOC (February 1982) *supra* note 47. For a full examination of events and investigations leading to and following from the adoption of the UNDRD see generally Malhorta, *supra* note 41.

⁵¹ Vienna Declaration and Programme of Action UNGA, World Conference on Human Rights, UN Doc A/CONF.157/23 (25 June 1993). The Vienna Declaration was an ordinary resolution of the United Nations General Assembly adopted by consensus at the conclusion of the World Conference on Human Rights, Vienna, 14-25 June 1993.

different groups may have as to its legitimacy, viability or usefulness, such doubts are now better left behind and replaced by efforts to ensure that the formal process of elaborating the content of the right is a productive and constructive exercise.”⁵²

B. THE CONTENT OF THE RIGHT TO DEVELOPMENT

Article 1 of the UNDRD states:

“The Right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

Thus there are three principles foundational to the right to development, as indicated by the Independent Expert on the Right to Development, Arjun Sengupta (henceforth, the Independent Expert).⁵³ First, there exists an inalienable right to development. Second, it defines a particular process of development as the realization of human rights, and third, all individuals and peoples are entitled to this process of development.⁵⁴ The UNDRD identifies a particular definition of development and places the obligations for realising this development upon states and the international community. Both this

⁵² Philip Alston “Development and the Rule of Law: Prevention Versus Cure as a Human Rights Strategy” in *Development, Human Rights and the Rule of Law* 31 (International Commission of Jurists eds., 1981) 106 quoted in Isabella Bunn *The Right to Development: Implications for International Economic Law* (1999-2000) 15 *American University International Law Review* 1425, 1436.

⁵³ The Independent Expert was appointed by the Commission on Human Rights in its resolution 1998/72. The role of the Independent Expert was to present studies on any issues identified by the Open-Ended Working Group on the Right to Development. The Expert has furnished the Group with 8 reports since 1998. See Sengupta, “Third Report”, *supra* note 2, at para 2.

⁵⁴ *Ibid.*, at para 37.

definition of development and these specific obligations will be examined in this section.

1. The Definition of Development

The second preambular paragraph of the UNDRD states:

“...Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and the fair distribution of benefits resulting therefrom.”⁵⁵

This definition is built upon in Article 1.1 (quoted above) which expressly incorporates the fulfilment of all human rights into the development process. The improved well-being of the population and all individuals must include the realization of all of their human rights. The primary sources of these rights are the UDHR, and the two accompanying covenants on civil and political rights, and economic, social and cultural rights, as referred to in the preamble of the UNDRD.⁵⁶

The definition of development presented in the Declaration clearly extends beyond the narrow view of development as economic growth, and “essentially integrates the human development approach into the human rights based approach to development.”⁵⁷

⁵⁵ This definition is restated in similar terms in Article 2.3 in describing the aim of the national development strategies to be formulated by states.

⁵⁶ Universal Declaration of Human Rights, *supra* note 43; International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171; UN Doc. A/6316 (entered into force 23 March 1976); International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3, UN Doc A/6316 (entered into force 3 January 1976); all available at <<http://www2.ohchr.org/english/law/>> accessed 25/09/2008. These instruments are explicitly referred to in the third and fourth paragraphs of the preamble to the UNDRD.

⁵⁷ Arjun Sengupta “Fourth report of the independent expert on the right to development” (UN ECOSOC, December 2001, UN Doc E/CN.4/2002/WG18/2) at para 8 (“Fourth Report”).

The human development approach defines development as “the [creation of] an enabling environment for people to enjoy long, healthy and creative lives.”⁵⁸ It is concerned with the empowerment of individuals and the improvement of standards of living, health, and social participation. The individual is the subject, rather than the object, of development.⁵⁹ This approach is clearly evident in Article 2.1 of the UNDRD, which recognises the individual as the central subject, active participant in and beneficiary of the development process. This approach is also apparent in the intentions of the Declaration’s drafters, as it was recognised that the right “should be seen as the prerogative of all peoples and individuals to be able to satisfy their needs in accordance with their aspirations.”⁶⁰

The human rights based approach to development “converts [the goals of development] into rights of individuals and identifies the responsibilities of all the duty holders, in accordance with human rights principles.”⁶¹ This approach therefore places additional constraints on the development process. Development must be undertaken in accordance with principles of transparency, accountability, equity and non-discrimination. These principles are expressed throughout the UNDRD. The preamble recognises that development progresses on the basis of the active, free and meaningful

⁵⁸ Mahbub ul Haq, *The Human Development Concept*, United Nations Development Programme website <<http://hdr.undp.org/en/humandev/>> accessed 26/08/2008.

⁵⁹ See United Nations Development Programme, *Making Global Trade Work for People* (London & Sterling, VA: Earthscan, 2003), Chapter 1 (Human Development and Trade) 23. The UNDP contrasts the human development approach with other people oriented development approaches and views the human development approach as the broader approach to the development of the person. It considers that “[t]he human resource approach emphasises human capital and treats human beings as inputs into the production process, not as its beneficiaries. The basic needs approach focuses on people’s minimum requirements, not their choices. The human welfare approach looks at people as recipients, not as active participants in the processes that shape their lives.”

⁶⁰ UN ECOSOC (February 1982) *supra* note 47, at para 9.

⁶¹ Arjun Sengupta “Implementing the right to development” Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, available from <<http://www.hsph.harvard.edu/fxbcenter/Implementing%20the%20RTD.pdf>> accessed 24/04/2008.

participation of all individuals, which, under Article 8.2, States are obligated to encourage. Non-discrimination is affirmed in Article 6.1 in the obligation of States to promote human rights without distinction as to race, sex, language or religion, and in the recognition of the role of women in development in Article 8.1. Equity is reflected in the recognition of the need for fair distribution of the benefits from development in the preamble and the equality of opportunity of in access to resources in Article 8.1. The principle of transparency, while not explicitly mentioned in the UNDRD, is implicit in allowing for *meaningful* participation in the development process in Article 1.1.

Development as Freedom

The characterisation of *Development as freedom*, advocated by economist Amartya Sen, provides an effective summary of the approach to development apparent in the UNDRD. Sen states that “the expansion of freedom is both (1) the primary ends and (2) the principal means of development.”⁶² The ends of development are the expansion of capabilities, that is, the substantive freedom of the individual to achieve the lifestyle they desire.⁶³ This is what Sen refers to as the ‘constitutive’ role of freedom. Thus development is not focused on the actual outcome or ‘functioning’ chosen by the individual as the ends of development, but rather it seeks the expansion of the opportunities available to the individual. This is similar to the human development approach, as it seeks the improvement of the well being of the individual in terms of factors such as health, education, and employment in order to remove constraints from their capability set.

Freedom, as the means to development (the ‘instrumentalist’ role), concerns the way different kinds of rights, opportunities and entitlements contribute to the expansion of human freedom in general, thus promoting development.”⁶⁴ This necessitates and describes the rights approach to development in requiring the recognition of the aforementioned principles of equity, transparency,

⁶² Sen, *supra* note 30, 36.

⁶³ *Ibid*, 75.

⁶⁴ *Ibid*, 37.

accountability, participation and non-discrimination in the development process.

Thus, development is clearly defined as a process seeking the expansion of an individual's capabilities and opportunities to realize the type of life the wish to aspire to, that is undertaken in satisfaction of the principles of a rights based approach to development.

2. The Role of States

Article 3.1 of the Declaration recognises that “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.”

However, the individual, as the central subject of development, should be “the active participant and beneficiary of the right to development,” as recognised in Article 2.1 of the Declaration.⁶⁵ Therefore, while the state has the role of creating a favourable environment for development, it is not responsible for the actual development outcomes, these must be realized by the individual through the exercise of their freedoms and capabilities.

States also have both the right and the duty to formulate development policies that aim at the constant improvement of the well being of their population and achieve a fair distribution of the benefits flowing from this development, while encouraging the participation of their citizens in this process, and seeking to eradicate social injustices.⁶⁶ States must also act to eliminate massive and flagrant violations of human rights, and to promote and maintain international peace and security.⁶⁷

⁶⁵ Article 2.2 UNDRD further recognises that all human beings have a responsibility for development, both individually and collectively.

⁶⁶ Articles 2.3, 8.2 and 8.1 respectively UNDRD.

⁶⁷ Articles 5 and 7 respectively UNDRD.

3. The Role of the International Community

The UNDRD places four main obligations on the international community.⁶⁸ The most general obligation is to ensure development and eliminate obstacles to development, while acting in such a manner so as to promote an international economic order based on sovereign equality, interdependence, mutual interest and cooperation.⁶⁹ Complementary to this, cooperation is required to “formulate international development policies with a view to facilitating the full realization of the right to development,”⁷⁰ and to promote, encourage and strengthen universal respect for and observance of human rights on a non-discriminatory basis.⁷¹

The final international obligation, in Article 4.2, states:

“Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.”

This is perhaps the most important obligation on the international community. Given that the right to development seeks the realization of all human rights, it is doubtful that developing states will have the required resources to comprehensively realize all rights without international assistance.

⁶⁸ Mention of the ‘international community’ is a reference to the community of states acting in cooperation. The obligations upon the international community were heavily detailed in earlier drafts of the Declaration. These included such obligations as the democratization of international relations, the installation of a world food security system; general and complete disarmament and the channelling of any created surplus resources into development; the promotion of education and scientific progress; and monitoring activities of transnational corporations. UN ECOSOC “Report of the Working Group of Governmental Experts on the Right to Development” (UN ECOSOC, December 1982, UN Doc E/CN.4/1983/11) 11-12.

⁶⁹ Article 3.3 UNDRD.

⁷⁰ Article 4.1 UNDRD.

⁷¹ Article 6.1 UNDRD.

International cooperation is imperative.⁷² This obligation is the corollary of Article 2.3 of the Declaration, corresponding to the right of states to formulate national development policies.⁷³

International assistance must complement the efforts of the developing country. This requires deference to the state, in keeping with its status as the primary agent in facilitating development. Therefore the ultimate objective of international assistance is the fulfilment of those development objectives and obligations placed on states. However, while the obligation of the international community is to the State, in their provision of assistance they must consider the individual as the subject of development, and therefore their assistance is directed towards the individual.⁷⁴

Development assistance must be appropriate. Therefore, the specific needs and particular institutional and cultural situation of each individual claimant state must be carefully considered by the assisting body. Further, international cooperation must be effective in realizing the right to development. However, there is no perfect correspondence between policy action at the international (or state) level and development outcomes. The actual outcome will be subject to intervening factors and is ultimately dependent on the realization of rights by the individual. Therefore, “effectiveness” requires actions to be taken so as to maximise the likelihood of achieving the desired outcome and realize the right to development.⁷⁵

⁷² United Nations General Assembly “Right to Development: Note by the Secretary-General” (United Nations, August 2000, UN Doc A/55/306) at para 27-28.

⁷³ Arjun Sengupta “Report of the Independent Expert on the Right to Development” (UN ECOSOC, September 2000, UN Doc E/CN.4/2000/WG.18/CRP.1) at para 14 (“Second Report”).

⁷⁴ These conclusions are supported by Article 9.1 UNDRD, which states “All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.”

⁷⁵ From a discussion of the findings of the Independent Expert on the Right to Development in R Malhorta, *supra* note 41, 142. In this respect the Independent Expert has described the claim on the international community as a “meta-right”. “A meta-right to something x can be defined as the right to have policies p(x) that genuinely pursue the objective of making the right to x realizable. Even if the right to x remains unfulfilled or immediately unrecognizable, the

Effectiveness also implies that assistance must seek the advancement of the right to development in its entirety. Therefore, not only must assistance be effective in its outcomes, but it must also be effective in its process. Assistance should seek particular development outcomes and expand the capabilities of the individual but in doing so should not cause the violation of any other human rights.

The means and facilities that the international community is obligated to provide are not limited to monetary transfers or financing. Discussion around earlier drafts of the Article referred not only to the transfer of resources, but also to mutually accepted programs of cooperation, and more favourable treatment for developing countries in international economic relations.⁷⁶ Therefore, ‘means and facilities’ may be read broadly to also include sharing technology and intellectual property, democratization of international relations, and policy advice.

Further, in all development planning and assistance, while the obligation of the international community is to the state, they must retain in their consciousness the ultimate subject of development and their assistance, namely, the individual.

C. VALUE ADDED OF THE RIGHT TO DEVELOPMENT

The foundation of the right to development is set in a significant body of UN conventions and resolutions. Therefore, the right is ultimately a collection of all the rights of the individual. It would seem, then, that the obligations associated with the Declaration have already been sufficiently elaborated.⁷⁷ It

metaright to x, p(x) can be a fully valid right if all the obligations associated with p(x) can be clearly specified.” Sengupta, “Fourth Report”, *supra* note 57, at para 16.

⁷⁶ UN ECOSOC “Report of the Working Group of Governmental Experts on the Right to Development” (UN ECOSOC, January 1985, E/CN.4/1985/11) at para 33.

⁷⁷ UN ECOSOC “The International Dimensions of the Right to Development as a Human Right in Relation with Other Human Rights Based on International Cooperation” (UN ECOSOC, January 1979, UN Doc E/CN.4/1334) at para 65. See UN ECOSOC (February 1982) *supra* note 47, for the full list of these foundational documents.

is questioned whether it is necessary to add the right to development to these existing documents.⁷⁸ There is little need for a right to development, unless some added value can be gained from it.

A value added in the UNDRD may be implied from the actions of the ECOSOC in their continuing toward a declaration despite establishing a pre-existing documentary foundation to the right. It was suggested during the 1979 ECOSOC consultations that this value added stems from the need for a reiteration of the duties of states and the international community due to inadequate performance under existing human rights instruments.⁷⁹ However, the value added of the right need not be dependent upon the failure to abide by current human rights obligations. Rather the right to development is “a means by which...to emphasize, in the context of development activities, the interdependence and indivisibility of economic, social and cultural rights on the one hand and civil and political rights on the other hand.”⁸⁰ Therefore, the UNDRD contributes two features that add value to the international human rights framework; the reunification of all human rights, and the unification of human rights with development.

1. Reunification of Human Rights

All human rights were intended to form an integrated whole. Following the adoption of the UDHR, the UN General Assembly resolved that “the enjoyment of civic and political freedoms, and of economic, social and cultural rights are interconnected and interdependent.”⁸¹ While a single convention on universal human rights was intended to follow the UDHR, debate surrounding the relative status of civil and political rights, and economic, social and cultural

⁷⁸ UN ECOSOC (January 1979) *supra* note 77, at para 55.

⁷⁹ *Ibid*, at para 66.

⁸⁰ Alston, *supra* note 42, 107.

⁸¹ Draft International Covenant on Human Rights and Measures of Implementation: Future Work of the Commission on Human Rights, UNGA Resolution 421(v), Section E (4 December 1950).

rights led to their codification in two separate conventions.⁸² The UNDRD explicitly declares the indivisibility and interdependence of all human rights, civil and political, economic, social and cultural. Therefore, the right to development has brought the human rights movement full circle to fulfil its founding objective.

Indivisibility implies that one right cannot be enjoyed at the expense of another right. Interdependence recognises that the enjoyment of one right may depend upon the level of enjoyment of another right.⁸³ By affirming these principles, the UNDRD seeks the realization of rights not individually, but collectively. The Independent Expert considers the progressive realization of the right to development in terms of a ‘vector’ of all rights and freedoms. The realization of the right to development necessitates a strict improvement in the value of this vector. This requires an improvement in the realization of one right, while all other elements remain constant such that no other right is violated and rights based principles are respected in the process. Ultimately “a violation of any right would be tantamount to a failure to realize the right to development.”⁸⁴

2. Unification of Human Rights and Economic Development

The UNDRD implicitly recognises the importance of economic growth and thus unifies economic development with human rights. The realization of the right to development, in seeking the constant improvement of the well-being of the individual, will be subject to resource constraints. Therefore, the Independent Expert has recognised that “as a part of a country’s overall development programme, the right to development is very much a matter of

⁸² Preparation of Two Draft International Covenants on Human Rights, UNGA Resolution 543(vi), para 1 (5 February 1952).

⁸³ Sengupta, “Fourth Report”, *supra* note 57, at para 25. These principles are also recognised in paragraph 11 of the Preamble to the UNDRD, which states that “the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.”

⁸⁴ *Ibid* at para 8; Sengupta, “First Report”, *supra* note 2, at para 68.

modernization and technological as well as institutional transformation which relaxes...[this] constraint over time, by making the most efficient use of existing resources, and by promoting the growth of resources.”⁸⁵ The Declaration therefore implies that economic growth is a “necessary element of the development process,” and thus is included in the vector of rights and opportunities described above.⁸⁶

This relationship however, does not imply that economic growth is a prerequisite for the realization of human rights. The United Nations Development Programme (UNDP) recognised that, although “economic growth expands the material base for fulfilling human needs, the extent to which needs are met depends on resource allocations and on the creation of opportunities for all parts of the population.”⁸⁷ Therefore, while economic growth relaxes the resource constraint and allows an expansion of the capability set, pursuant to the Declaration this growth must be achieved in accordance with rights based principles, and states must not derogate from other rights in its achievement.⁸⁸ Less than optimal growth rates ought to be accepted over allowing the violation of any human right.

Overall, the UNDRD focuses development on the realization of all of the rights of the individual. While the primary responsibility for this development rests with the state, the international community is obligated to ensure this development occurs and to provide effective and appropriate assistance to states to complement their development efforts. However, in order for these international obligations to be binding, the legal status of the UNDRD must be considered.

⁸⁵ Arjun Sengupta “Third Report”, *supra* note 3, at para 31.

⁸⁶ Statement by Mr Dadzie in United Nations “Global Consultation on the Realization of the Right to Development as a Human Right: Report by the Secretary General” (United Nations, September 1990, UN Doc E/CN.4/1990/9/Rev.1) 15; see also Siddiqur Rahman Osmani “An Essay on the Human Rights Approach to Development” in A Sengupta, A Negi and M Basu (eds.) *Reflections on the Right to Development* (Sage Publications, New Delhi, 2005), 118-121.

⁸⁷ UNDP, *supra* note 59, 26.

⁸⁸ Sengupta, “Third Report”, *supra* note 3, at para 15.

IV. THE RIGHT TO DEVELOPMENT AT INTERNATIONAL LAW

A. THE INTERNATIONAL LEGAL STATUS OF THE RIGHT TO DEVELOPMENT

The legal status of the right to development has been a constant source of debate. It has been claimed that the right to development does not impose legal obligations but is rather a moral imperative.⁸⁹ A detailed analysis of the status of the right at international law is beyond the scope of this research. However, this section will provide a summary position of the legal force of the UNDRD in order to then establish the legal applicability of the right to the World Bank as an international institution.

The UNDRD is a resolution of the UN General Assembly, as is the Vienna Declaration. As UN resolutions these documents do not have the legally binding force of treaty, as do the two international conventions on human rights. Therefore, they have no legal force in and of themselves.⁹⁰ The Independent Expert recognises that these declarations do, however, “have the force of consensus and moral legitimacy which is almost equally binding on all.”⁹¹

⁸⁹ UN ECOSOC (February 1982) *supra* note 47, at para 26. The Independent Expert has also claimed that there is agreement to the effect that while “the commitments to [the] provisions [of the UNDRD] may not be legally binding...they have the force of consensus and moral legitimacy which is almost equally binding on all.” See Sengupta, “First Report”, *supra* note 2, at para 6.

⁹⁰ In 1998, the Commission on Human Rights was requested by the General Assembly by resolution 53/155 (9 December, 1998) to invite the Open-ended Working Group on the Right to Development and the Independent Expert on the Right to Development to consider the question of elaborating a convention on the right to development. There does not however appear to have been any movement on this. See Sengupta, “First Report”, *supra* note 2, at para 2.

⁹¹ *Ibid*, at para 6.

1. The Right to Development as International Custom

A non binding declaration may acquire the status of international customary law through evidence of the general acceptance of the rules it contains through consistent state practice, and the subjective belief that the rule is being followed as a matter of legal obligation (the *opinio juris*).⁹²

In the opinion of the UN Secretariat, a declaration “may be considered to impart...a strong expectation that members of the international community will abide by it. Consequently, insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon states.”⁹³ Therefore, the unanimous support attributed to the UNDRD through the consensus adoption of the Vienna Declaration may be sufficient evidence of the *opinio juris* of a customary right to development.⁹⁴

However, *opinio juris* requires a sense of legal obligation, not merely an obligation based on morality or comity. A sense of a legal obligation from states to fulfil the UNDRD is not apparent. This is particularly so in relation to the obligation on the international community to provide development assistance. While provision of development assistance has become common

⁹² Custom is recognised as a primary source of international law under Article 38(1)(b) of the Statute of the International Court of Justice. The constituent elements of a rule of customary international law are set out by the International Court of Justice in *North Sea Continental Shelf Cases (FRG/Den.; FRG/Neth.)* (1969) ICJ Rep. 3.

⁹³ See Theodor C. van Boven “Survey of the Positive International Law of Human Rights” in Karel Vasak and Philip Alston *The International Dimensions of Human Rights* (UNESCO, 1982), 106.

⁹⁴ In the practice of the ICJ, *opinio juris* has been deduced from the attitudes of states toward relevant resolutions of the UN General Assembly, mere acceptance of these resolutions was sufficient evidence to establish a customary rule, even in the presence of inconsistent state practice. See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States) (Merits)* [1986] ICJ Rep 14, discussed in T Meron *Human Rights and Humanitarian Norms as Customary Law* (Oxford University Press, 1989) 107, 113. Only 10 of the current 192 UN member states were members at the time of the World Conference on Human Rights and were not party to the Vienna Declaration.

practice for states individually and collectively, this seems to be motivated by a sense of moral, rather than legal, obligation.⁹⁵

In terms of state practice, it has also been noted that there are now several donor countries that prefer to support developing countries that adopt a human rights approach to development in accordance with the general obligations under the Declaration.⁹⁶ However, in providing assistance there has been no direct reference to the right to development. This development approach also appears to have been followed in the development policy of agencies such as the United Nations Development Programme (and as will be seen, the World Bank). While this indicates expanding state practice, it seems to be, at this stage, insufficient to transform the content of the UNDRD into binding customary law.

While the prevailing view, as claimed by one academic, is that the right to development is “on the threshold of acceptance as a principle of positive [customary] international law,” it has not yet achieved this status.⁹⁷

2. The Right to Development as *Jus Cogens*

A peremptory norm of international law, or *jus cogens*, is defined as “a norm accepted and recognized by the international community of states as a whole as

⁹⁵ Michael Akehurst, *A Modern Introduction to International Law* in Bunn, *supra* note 52, 1425. Oscar Schachter has argued that “the scale and duration of the response [of rich nations in granting assistance to the lesser developed] have been substantial enough to demonstrate the practical acceptance of a responsibility based on the entitlement of those in need.” Oscar Schachter “The Evolving International Law of Development” (1976) 15 *Columbia Journal of Transnational Law* 1, in Bunn, *supra* note 52, 1425.

⁹⁶ Arjun Sengupta, Asbjorn Eide, Stephen P. Marks and Bard A. Andreassen “The Right to Development and Human Rights in Development” (2004) *Research Note 07/2004* The Norwegian Centre for Human Rights, 23.

⁹⁷ Bunn, *supra* note 52, 1436.

a norm from which no derogation is permitted.”⁹⁸ Bedjaoui claims that the right to development “is a fundamental right...in short it is the core right from which all the others stem,” it is “by its nature, so incontrovertible that it should be regarded as belonging to the *jus cogens*.”⁹⁹ Zacklin draws the peremptory nature of the right to development from its basis in the UN Charter, and principles of sovereignty, equality and non intervention.¹⁰⁰

However, given the emphasis in the definition in the Vienna Convention that a rule of *jus cogens* is a norm that is accepted and recognised by the international community, it would seem premature to attribute the right to development *jus cogens* status when the right is not yet firmly established in international customary law.¹⁰¹

3. A Statutory Basis for the Right to Development

While the right to development might not be directly legally binding on states, it is attributed legal force over UN members by virtue of their obligations under the UN Charter. The Charter is a treaty and is legally binding upon UN members. Article 56 of the Charter mandates joint and separate action by

⁹⁸ Article 53, Vienna Convention on the Law of Treaties (1969). The definition of *jus cogens* in Article 53 goes on to recognise that a rule of *jus cogens* “can be modified only by a subsequent norm of general international law having the same character”.

⁹⁹ Bedjaoui, *supra* note 44, 1182.

¹⁰⁰ R Zacklin “The Right to Development at the International Level: Some Reflections on its Sources, Content and Formulation” in *The Right to Development at the International Level, Workshop, The Hague, 16-18 October, 1979* (Sijthoff & Noordhoff, 1980), 117.

¹⁰¹ It has also been stated that “Settled practices of states as regards *jus cogens* are elusive to grasp, mainly because most, if not all, rule of *jus cogens* are prohibitive in substance; they are rules of abstention.” See B Simma and P Alston “The Sources of human rights law: custom, *jus cogens* and general principles” (1992) 12 *Australian Yearbook of International Law* in Sigrun I Skogly *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish Publishing, London, 2001) 91. Examples of such principles include the prohibition against genocide, slavery, piracy and the use of force. Given the positive and negative nature of its obligations, the UNDRD is further unlikely to be regarded as a rule of *jus cogens*.

member states in co-operation with the organisation to achieve the purposes set forth in Article 55 of the Charter. Article 55 states:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

...

- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

These provisions place a binding obligation on UN members to promote universal respect for and observance of human rights through individual and collective action both within and outside of the UN, particularly through its specialised agencies.¹⁰² The human rights to be promoted are not confined to hard law sources such as the two human rights covenants, but include other resolutions and declarations of the UN regarding human rights. These soft law rights, however, must not detract from the rights and obligations as expressed in more authoritative sources.¹⁰³ Sohn, in advocating this interpretation of the Charter obligations, has recognised that “the derivation from the binding authority of the Charter thus gives obligatory force to [those] instruments

¹⁰² See Skogly, *supra* note 101, 119-120. Further, under Article 1 of the UN Charter, one of the main purposes of the UN is the “achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms and their determination to promote social progress and better standards of life in larger freedom.” It has been claimed that the human rights provisions of the Charter are too general to impose actual human rights obligations on UN member states (Kelsen *Principles of International Law* in Skogly, 116). However the International Court of Justice has confirmed that these provisions do impose binding human rights obligations on UN member states (*The legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 260 (1970)* (1971) ICJ Report 58, at para 129, in Skogly, 117).

¹⁰³ Soft law is being used in this context to refer generally to a body of multilateral agreements that are not concluded as treaties, but remain in the form of resolutions, principles, standards or declarations for example.

amplifying and interpreting its provisions.”¹⁰⁴ The desired effect of lending the authority of the Charter to other instruments is to add depth and scope to the Charter’s general obligations.

The right to development, in recognising the indivisibility and interdependence of all human rights and their role in the development process, clearly adds depth and scope to the obligations on UN member states under Articles 55 and 56. Further, recognition of the right to development as an inalienable human right warrants the promotion of the UNDRD in accordance with the Charter.¹⁰⁵

Therefore, while the right to development may be only morally binding on the general international community, the declaration is legally binding upon UN member states by virtue of their obligations under the UN Charter.

B. THE ABILITY OF THE UNDRD TO BIND THE WORLD BANK

International institutions are not parties to the UNDRD and therefore are not directly bound by it in the manner states are.¹⁰⁶ However, the intention that

¹⁰⁴ Meron, *supra* note 94, 82. This interpretation of the Charter provisions has been advocated primarily by Professor L. Sohn, see L. Sohn “The Human Rights Law of the Charter” (1977) 12 *Texas International Law Journal* 140, 136-137. Meron supports this method of interpretation, stating it is “perfectly legitimate” (see Meron, 84). Meron goes on to find support for this view in a decision of the ICJ in relation to the prohibition of arbitrary deprivation of personal liberty and found the obligatory force of this right to be founded in the principles of the Charter of the UN as well as the Universal Declaration of Human Rights (*United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, 1980 ICJ Rep. 3, see Meron, 83).

¹⁰⁵ Articles 55 and 56 of the UN Charter have also been advanced as forming the basis of the right to development separate from the UNDRD, through the focus on paragraph (a) requiring cooperative action in the promotion of “higher standards of living, full employment, and conditions of economic and social progress and development,” see UN ECOSOC (January 1979) *supra* note 77, at para 55.

¹⁰⁶ The terms ‘institution’ and ‘organisation’ will be used interchangeably in this paper in reference to an intergovernmental body with international legal personality, established by way of a multilateral treaty which forms the constitution of the organisation. This definition clearly

international institutions be bound by the UNDRD was explicit in an early draft of the UNDRD, which stated “The United Nations, the specialized agencies, States and international non-governmental organizations should co-operate in promoting and implementing the right to development as a human right and should consider this Declaration as an important basis for action.”¹⁰⁷ Although this provision was not retained in the final draft or final version of the Declaration, this ought not to be an indication of reverse intent.

The Independent Expert has advanced the argument that “because the declaration has been adopted by the United Nations, it should apply to all countries and all agencies and institutions of the international community.”¹⁰⁸ Further, the importance of requiring international institutions to be bound by the terms of the UNDRD rests in the “growing interdependence of states [which] leads to a situation in which human beings, individually and collectively, should be able to claim ‘as of right’ liberties, immunities and benefits from international organizations as societies which affect their lives.”¹⁰⁹

The World Bank, as the preeminent intergovernmental development institution, is significantly involved in shaping policies in developing countries. In this respect the Bank ought to be bound by the Declaration. However, there is a considerable difference in claiming that an institution is morally bound by a declaration and whether it is indeed legally bound to protect and promote the right to development. Skogly assumes that “part of the reasoning of bringing [the World Bank] into a formalised relationship with the UN must have been to grant them, both legally and practically, rights and

excludes from consideration Non Governmental Organisations. See Jose E Alvarez *International Organizations as Law-makers* (Oxford University Press, Oxford, 2005) 6.

¹⁰⁷ Draft Article 13, UN ECOSOC “Report of the Working Group of Governmental Experts on the Right to Development” (UN ECOSOC, November 1983, UN Doc. E/CN.4/1984/13) 6.

¹⁰⁸ Sengupta, “First Report”, *supra* note 2, at para 6.

¹⁰⁹ S R Chowdry “Significance of the Right to Development: An Introductory View” in Subrata Roy Chowdry, Erik M Denters and Paul J I M de Waart (eds.) *The Right to Development in International Law* (Martinus Nijhoff, 1992), 16.

obligations in relationship to the UN.”¹¹⁰ What must be established is the method by which the World Bank may be bound by the provisions of the UNDRD.¹¹¹

The World Bank as an international institution with full juridical personality is a subject of international law and bound by international custom.¹¹² However, as the right to development has not been established as international custom, the Bank is not directly bound by this means.

The Bank is also not directly bound by the Declaration by virtue of its Relationship Agreement with the UN.¹¹³ This agreement, generally governing interactions between the Bank and the UN, establishes the World Bank as a specialized agency of the UN but requires the Bank to remain functionally independent.¹¹⁴ Bank lending decisions are to be made through the “independent exercise of the Bank’s own judgment in accordance with the Bank’s Articles of Agreement.”¹¹⁵ While the Agreement allows for consultations and the flow of formal recommendations between the two

¹¹⁰ Skogly, *supra* note 101, 100.

¹¹¹ This issue would remain even if Article 13 of the draft had been retained. This provision does not contain any legal imperative separate from the legal standing of the declaration as a whole.

¹¹² The World Bank is not granted full international legal personality by its Articles of Agreement, although these do attribute elements of such personality as the capacity to contract, acquire and dispose of property and to institute legal proceedings (See Article VII.2 IBRD Articles of Agreement). Skogly does, however, establish the de facto international legal personality of the Bank. See Skogly, *supra* note 101, 66-68.

¹¹³ “The Agreement between the United Nations and the International Bank for Reconstruction and Development” (November 15 1947) (Relationship Agreement). This Agreement is authorized under Article 57 of the UN Charter. It lays the foundation for significant cooperation between the Bank and the UN, but sets guidelines for consultations and between the two institutions in an attempt to avoid conflicts, Ibrahim F.I. Shihata, “The Relationship Between the United Nations and the World Bank” (A Memorandum from the General Counsel, circulated to the Executive Directors as SecM92-1493, November 23, 1992), in Ibrahim F.I. Shihata *World Bank Legal Papers* (Maritnus Nijhoff, The Hague, 2000) 799 (“Relationship between the UN and the WB”).

¹¹⁴ Article I.1 Relationship Agreement.

¹¹⁵ Article IV.2 Relationship Agreement.

organizations, it contains no general requirement that the Bank act upon resolutions of the UN, with the exception of binding decisions of the Security Council.¹¹⁶

However, all of the current 185 World Bank members are also UN member states. While 22 Bank members were not UN members when the UNDRD was adopted, only 7 of the current Bank membership were not parties to the Vienna Declaration. This indicates that significant support for the UNDRD exists within the World Bank membership, in fact 97 per cent of the current Bank voting share is held by state parties to the Vienna Declaration.¹¹⁷ Further, given that the legally binding nature of the UNDRD derives from the obligations of all UN member states under Articles 55 and 56 of the UN Charter, and all of the Bank's current membership is party to the UN Charter, the World Bank may be bound indirectly by the obligations of its members.

Because the Bank is attributed with full juridical personality, it may be contended that the Bank has a legal personality separate from that of its members, in the same way as a company is separate from its shareholders, and therefore compositional arguments may not provide adequate support for the conclusion that the Bank is bound by the Declaration. However, this separation was not intended by the Bank's founders, the Bank was intended to be the agent of its members.¹¹⁸

Further, the Bank is bound by Article V.8 of its Articles of Agreement which states that the Bank shall give consideration to the view and recommendations of an international organization of general or specialized character that is participated in primarily by Bank members.¹¹⁹ As recognised by a Special

¹¹⁶ Article VI.1 Relationship Agreement. See also Shihata, "Relationship between the UN and the WB", *supra* note 113, 803.

¹¹⁷ Author's calculations from IBRD voting share data reprinted in Barham Ghazi *The IMF, the World Bank Group and the Question of Human Rights* (Transnational Publishers, New York, 2004) 374 (Annex I).

¹¹⁸ Kapur et al, *supra* note 8, 2.

¹¹⁹ In this regard it is noteworthy that the ICJ has recognised that the rights and duties of organizations such as the specialized agencies of the UN "must depend upon (their) purposes and functions as specified or implied in (their) constituent documents and developed in

Rapporteur for the UN, “it would be rather difficult to accept that international organisations, the vast majority of whose members are state members of the UN, could disregard the rules of the [UN] Charter.”¹²⁰ As previously stated, all World Bank members are UN members, and only 7 UN members are not also World Bank member states. Therefore, the World Bank must consider its members’ international obligations in accordance with the UN Charter. This includes the obligation to act cooperatively toward the realization of all inalienable human rights, including the right to development.

Also, Article 103 of the UN Charter explicitly states that the obligations of UN members under the Charter are to prevail over any obligations under any other treaty, “whether earlier or later and whether between States, between States and international organizations, or between international organisations.”¹²¹ This includes the World Bank Articles of Agreement.¹²² Therefore the Charter obligations of its members ought to be primary considerations in the decision making of the World Bank.¹²³

practice.” *Reparations for Injuries Suffered in the Service of the United Nations case*, I.C.J. Rep 1949, 130, see UN ECOSOC (January 1979) *supra* note 77, at para 97.

¹²⁰ *Special Rapporteur on the draft Convention on the Law of Treaties between States and International Organisations or between International Organizations* (1975) Vol 2 YILC, UN Doc A/CN.4/285 in Skogly, *supra* note 101, 101.

¹²¹ International Law Commission, SR, 1702nd meeting, 7 May 1982, (1982) 1 YILC 20, at para 12, in Skogly, *supra* note 101, 102.

¹²² This has been recognised by the World Bank General Counsel, see Ibrahim F.I. Shihata “Effect of Security Council Decisions on Bank Operations – The Case of Yugoslavia” (Note by the General Counsel, June 2, 1992) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 808 (“Effect of Security Council Decisions”).

¹²³ This conclusion is supported by Principle 8 of the Tilburg Guiding Principles on World Bank, IMF and Human Rights which states: “As members of the UN, the member States of the two IFI’s [sic] have legally committed themselves to uphold the purposes and principles of the UN Charter, including the promotion of respect for human rights. According to Article 103 of the UN Charter, the obligations of States under the Charter, including obligations in the field of human rights, take primacy over other international obligations.” Principle 7 of the Tilburg Principles also provides support for the general conclusion that the World Bank is bound by the international obligations of its member states. See Willem van Genugten (ed.) “Tilburg

The World Bank General Counsel has also recognised that “the Bank cannot reasonably place its members in a situation where they would be violating their obligations under the UN Charter if they agree to a proposed action by the Bank.”¹²⁴ Though this statement was made in reference to the explicit requirement of the Bank to honour the binding decisions of the UN Security Council, the same reasoning must be held to apply in relation to general Charter obligations, or Article 103 of the Charter becomes redundant.

Therefore, while there is no direct obligation on the Bank to comply with the UNDRD, the Bank is bound by the Declaration by virtue of the obligations of its members under the UN Charter. This shifts the obligations on the Bank from the moral to the legal realm and demands conformity of Bank policy and operations with the UNDRD.¹²⁵

Guiding Principles” in Willem van Genugten, Paul Hunt and Susan Mathews (eds.) *World Bank, IMF and Human Rights* (Wolf Legal Publishers, Nijmegen, 2003) 247-255.

¹²⁴ Shihata, “Effect of Security Council Decisions”, *supra* note 122, 809.

¹²⁵ This conclusion is unaffected by the requirement in the Bank’s Articles for agents of the Bank to act solely for the purposes of the Bank and not to serve external interests (Article V.5(c) IBRD Articles of Agreement). This is a personal obligation on agents and directors of the Bank, but does not remove the obligations to consider collectively the obligations of member states as just described.

V. *ALIGNMENT OF WORLD BANK POLICY AND THE UNDRD*

The World Bank General Counsel has asserted that “The right to development as defined in the [UNDRD] is one human right which the Bank has been promoting throughout its history and which, in fact, is at the heart of all the institution’s efforts.”¹²⁶ However, the claim that the World Bank has been honouring the right to development *as defined in the UNDRD* may not be accurate.

This section seeks to analyse both the general alignment of the Bank’s development approach with that of the Declaration, and the consistency of Bank lending policy with the international obligations to facilitate state realization of development under the Declaration..

A. *ALIGNMENT OF APPROACHES PRIOR TO THE CDF*

It seems clear, in hindsight, that the Bank’s policy and practice in the 1980s and 90s was fundamentally inconsistent with the development approach of the UNDRD. Structural Adjustment Lending focused on growth consistent with the Washington Consensus, with little concern for the distribution of benefits of this growth. This strategy, like those that had preceded it, “saw development as a *technical* problem requiring technical solutions – better planning algorithms, better trade and pricing policies, better macroeconomic frameworks. [It] did not reach down into society, nor did [it] believe such a participatory approach was necessary” (emphasis in original).¹²⁷ Thus, Bank policy was inconsistent with the Declaration’s primary concern for the individual as the subject and beneficiary of development. To the contrary, structural adjustment “came to be associated with deteriorations in freedom

¹²⁶ Ibrahim F. Shihata “The World Bank and Human Rights” in F Tschofen (ed.) *The World Bank in a Changing World: Selected Essays (Volume I)* (Martinus Nijhoff, Dordrecht, 1991), 110 (“The World Bank and Human Rights”).

¹²⁷ Stiglitz, *supra* note 35, 7.

and, at times, human rights abuses.”¹²⁸ Also, these policies delegated a significant share of a country’s decision making capacity to the Bank. This is inconsistent with the right of domestic governments to formulate their own development policies. While the fundamental goal of the UNDRD is the expansion of capabilities, “structural adjustment was in most respects a failure, for as the 1980s drew to a close, developing countries were poorer, more debt-ridden, and even less able to provide services such as education and health care.”¹²⁹

B. ALIGNMENT OF THE CDF WITH THE UNDRD APPROACH

Criticisms of earlier Bank policies and practice motivated the fundamental reformation of the Bank’s development approach in the CDF. Although the right to development was not formally referenced in relation to this framework, the CDF does represent a broad alignment of Bank policy with the development approach presented in the Declaration, through its principles of a holistic vision, country ownership, partnership and achievement of tangible results.

¹²⁸ Gordon and Sylvester, *supra* note 44, 42.

¹²⁹ *Ibid*, 42. Although the UNDRD is not retrospective, it may be generally observed that Bank development policies prior to the 1980s were also not consistent with the development approach of the Declaration. The single tracked pursuance of economic growth in the early years of the Bank and the reliance on the trickledown theory was also inconsistent with the individual focus of the UNDRD, particularly as the trickledown theory was largely ineffective as the benefits of growth were not being distributed to the impoverished (Sandra Blanco, “The 1960s and 1970s: The World Bank Attacks Poverty; Developing Countries Attach the IMF” E Book on International Finance and Development (1999) 9 *Transnational Law and Contemporary Problems* 110, 111). In the 1970s, despite the focus in this period on meeting basic needs, and the increase in Bank funds being directed to social projects, the individual was still viewed predominantly as an input into growth, and not as an ends of development. It has been concluded that Bank policy in this period produced disappointing results also due to the limited toolkit being employed by the Bank in every locality and the effect of vested interests of Bank shareholders and the institutional concerns of the Bank seeking the maximisation of lending volumes on the appropriateness and effectiveness of Bank lending. See Gilbert and Vines, *supra* note 8, 15; Blanco, 112).

1. Holistic Vision

The CDF's holistic vision acknowledges that development is more than economic growth, encompassing both macroeconomic advancement, and human development. This is consistent with the recognition that growth, while necessary for sustained development, is only a part of the rights vector underlying the right to development.¹³⁰

Wolfensohn affirms the interdependence of growth and human development as a core element of the CDF.¹³¹ However, critics suggest that the CDF is “merely another Washington Consensus camouflaged in clever rhetoric.”¹³² The CDF merely continues the Bank's historical focus on economic growth, but simply with an expanded set of policy instruments. The UNDP states that “[t]his new approach goes beyond liberalization and privatization to emphasize the need to create the institutional underpinnings of market economies. Reforms now include labour market flexibility, social safety nets, financial sector regulation and prudential supervision, and governance, corruption, legal and administrative measures.” They refer to this as the “augmented Washington Consensus”.¹³³ The Independent Expert also recognises that the Bank's macroeconomic policies show “little substantive innovation”.¹³⁴ This suggests that the interdependence of growth with human development is permitting

¹³⁰ The issue as to whether this holistic vision of the CDF is in fact comprehensive enough in accordance with the UNDRD will be addressed in the next section.

¹³¹ Wolfensohn, *supra* note 31, 5. Wolfensohn describes these elements as “two sides of the same coin.”

¹³² Richard Cameron Blake “New Development: The World Bank's Draft Comprehensive Development Framework and the Micro-Paradigm of Law and Development” (2000) 3 Yale Human Rights and Development Law Journal 158, 174. Ajit Singh “Special and Differential Treatment: The Multilateral Trading System and Economic Development in the Twenty-First Century” in Kevin P Gallagher (ed.) *Putting Development First: The Importance of Policy Space in the WTO and International Financial Institutions* (Zed Books, London, 2005) 258.

¹³³ UNDP, *supra* note 59, 35.

¹³⁴ Arjun Sengupta “Fifth Report of the Independent Expert on the Right to Development” (UN ECOSOC, September 2002, UN Doc E/CN.4/2002/WG.18/6) at para 45 (“Fifth Report”).

Bank use of human development policies to mitigate negative effects of macroeconomic adjustment.¹³⁵

The UNDRD includes growth in the rights vector used to measure the realization of the right to development. Growth policies in the CDF are not *prima facie* inconsistent with this development approach. However, growth must be achieved in a rights based manner. This emphasises the need for improved participatory processes in the CDF.¹³⁶

Growth policies must seek to expand individual capabilities, and not negatively impact on other elements of the rights vector, including the right to an equitable distribution of the benefits of growth. Rather than requiring that every individual policy satisfy this condition, the CDF advances this through a programme of policies judged by their cumulative effect, such that the effect of one policy may be mitigated by another. The issue is whether this approach is consistent with the right to development; that is, whether an improvement in the rights vector must be achieved by each individual policy action, or the programme of actions.

The UNDRD does not explicitly indicate whether the individual policy or programmatic approach is to be taken to the evaluation of a development strategy's effects.¹³⁷ However, the overall scheme of the UNDRD tends to support a programmatic approach to the evaluation of development efforts. The definition of development as "the constant improvement of the well being of the whole population and all individuals" recognises the importance of both macroeconomic policies that benefit the population, and human development

¹³⁵ A second limb to this claim implies that the CDF is being imposed on developing countries as it was conceived of predominantly by the Bank President, James D. Wolfensohn, without consultation with the wider development community, see Blake, *supra* note 132, 174. However, this claim lacks force given that the CDF has, since its inception, been widely accepted by the international community. Arjun Sengupta "Development Cooperation and the Right to Development" (2003) *Working Paper No. 12* Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, available at <<http://www.hsph.harvard.edu/xfbcenter/>> accessed 24/04/2008, 9.

¹³⁶ See the following subsection discussing country ownership.

¹³⁷ Articles 4.1 and 3.1 UNDRD.

policies that benefit each individual.¹³⁸ The Declaration is also concerned with the elimination of obstacles to development, acknowledges the need for economic and social reforms, and generally requires that all necessary measures be taken in realizing the right to development.¹³⁹

Macroeconomic or structural conditions in an economy that are obstacles to development must be addressed through development policy. While reform may be necessary, the Declaration requires that the implementation of any development measures be achieved concurrently with the fulfilment of human rights.¹⁴⁰ However, there is often a tension between the short term harm associated with macroeconomic policies and their long term expected benefits. A strict approach to the realization of the right to development, such that no individual policy action should cause a deterioration of the rights vector, may discourage necessary reforms, and cause a conflict between the obligations to respect rights and to eliminate obstacles to development.

A broader interpretation of the realization of the right to development that allows for the collective evaluation of a programme of policies will allow structural reform to be undertaken while allowing social and human policies to mitigate its negative consequences. This facilitates the long term and short term realization of the right to development such that the development programme should not cause deterioration in the enjoyment of any peripheral rights at any stage in the programme. This must be the correct reading of the Declaration as it avoids conflict between the obligations it contains. Therefore, the CDF, in recognising and taking advantage of the interdependence of differing levels of policy action, is consistent with the UNDRD.¹⁴¹

¹³⁸ Article 2.3 UNDRD.

¹³⁹ Paragraph 11 Preamble and Article 8 UNDRD.

¹⁴⁰ Paragraph 11 of the Preamble to the UNDRD recognises that no derogation from any right justified in the promotion of another.

¹⁴¹ This is a main point of distinction between the consistency of the CDF development approach and those of structural adjustment and the Washington Consensus. These latter two policies did not recognise the interdependence of macroeconomic and social policies and so did not take steps to mitigate the negative effects of adjustment.

A further concern expressed by Blake in relation to the holistic vision of the CDF is that it may overstretch a developing country's resources and undermine the potential effect of development policies.¹⁴² Blake interprets the CDF as requiring the simultaneous attainment of diverse development goals. This is not intended by the UNDRD, nor the CDF.

The CDF's programmatic approach to development requires the formulation of a long term development plan that includes structural, human, physical and sector specific strategies. However, this long term vision is then translated into a strategy of phased short- and medium-term policies and goals. Wolfensohn stated in his CDF proposal that "over time, all the requirements within a holistic framework must be addressed if there is to be stable, equitable, and sustainable development," however, "we need the flexibility to adjust to the varied conditions of each country. There will be a need for setting priorities, for phasing of action based on financial and human capacity and based on necessary sequencing to get to our objectives."¹⁴³

The Independent Expert recognises in relation to the UNDRD that not all elements of development must be realised at once, rather certain objectives may be prioritised, subject to the condition that the policy action taken must not adversely affect other rights not targeted by the policy.¹⁴⁴ Therefore, provided this constraint is satisfied, the holistic vision of the CDF is broadly consistent with the development approach of the UNDRD.

2. Country Ownership

The CDF's focus on country ownership is consistent with the UNDRD in recognising the right of States to formulate their own development strategies.¹⁴⁵ It is also consistent with the Declaration attributing the primary

¹⁴² See Blake, *supra* note 132, 177.

¹⁴³ Wolfensohn, *supra* note 31, 8.

¹⁴⁴ Arjun Sengupta "On the Theory and Practice of the Right to Development" (2002) 24 *Human Rights Quarterly* 837, 867.

¹⁴⁵ Article 2.3 UNDRD.

responsibility for establishing conditions favourable to development to the State.¹⁴⁶

Blake has criticised the level of ownership under the CDF as being inadequate. He states that ownership requires development policies to be sourced from the poor themselves, rather than the central government.¹⁴⁷ In a strict sense this interpretation is inconsistent with the UNDRD, as the Declaration clearly acknowledges state ownership. However, in a weaker sense, Blake's interpretation of ownership emphasises the importance of individual participation in policy formulation. This view of ownership is consistent with the UNDRD. While the Declaration focuses on state ownership in the first instance, it also requires development to be based upon the active, free and meaningful participation of individuals in this process. Further, the State is obligated to encourage the participation of its citizens in "all spheres" of development.¹⁴⁸ This must include participation in the formulation of development policy.

The CDF recognises the need for community participation and encourages states to undertake broad consultations with civil society and the private sector in formulating development strategies. However, Blake has concluded from an independent evaluation of the implementation of the CDF in its pilot countries that these levels of participation are too shallow, largely ignoring the views of civil society, particularly the heavily impoverished.¹⁴⁹ It has also been observed that civil society exclusion is particularly apparent in dialogue on macroeconomic policy issues,¹⁵⁰ and, where consultation occurs, the

¹⁴⁶ Article 3.1 UNDRD.

¹⁴⁷ Blake, *supra* note 132, 171. Blake also acknowledges that development is doomed to fail if this inclusion is not achieved (Blake, 160). Further to this, in launching the CDF, then Bank President, Wolfensohn acknowledged that in some countries development goals would continue to be more centrally set. Blake interpreted this statement to indicate that the CDF is targeted at government ownership rather than citizen ownership of a development strategy, (Blake, 174); see also Wolfensohn, *supra* note 31, 9-10.

¹⁴⁸ See Articles 2.3 and 8.2 UNDRD.

¹⁴⁹ Blake, *supra* note 132, 160, 185.

¹⁵⁰ Christian Aid policy briefing "Ignoring the Experts: Poor People's Exclusion from Poverty Reduction Strategies" October 2001, in Sengupta, "Fifth Report", *supra* note 134, at para 37.

government appears to be seeking endorsement of a pre-formulated strategy, rather than genuine input into the formulation process.¹⁵¹ Similar conclusions have been reached by the World Bank in their periodic reviews of implementation of the CDF. They recognised that full participatory processes have been developed in only 10 percent of borrowing countries.¹⁵²

It is clear that civil society remains on the margins of Bank strategy. This issue will require ongoing attention in order to fully align the CDF with the general UNDRD framework. It has been suggested that to strengthen participatory processes the Bank ought to go further than merely encouraging participation, and require consultations with civil society in both human development and macroeconomic policy formulation via the use of conditionality.¹⁵³ Although this may interfere with the domestic politics of the borrowing country, it may be justified on grounds of it being a limited interference for the purposes of implementation of a Bank lending programme.¹⁵⁴

¹⁵¹ In reference to a World Vision case study report, in Sengupta, “Fifth Report”, *supra* note 134, at para 36.

¹⁵² This is in comparison to 50% of borrowing countries having largely developed processes for consultation with the private sector, see World Bank *Enabling Country Capacity to Achieve Results: 2005 CDF Progress Report* (The World Bank, Washington D.C., July 2005) 19, Available at <http://www.dgroups.org/groups/worldbank/cdf-prs/docs/Enabling_Country_Capacity-Vol.I-Overview.pdf> accessed 05/09/2008. The Bank has also reached similar conclusions to those expressed above regarding the poor levels of participation particularly of women and the very poor, and also the general exclusion of civil society from macroeconomic policy dialogues. See World Bank and IMF “Review of the PRSP Approach: Main Findings” March 15, 2002, in Sengupta, “Fifth Report”, *supra* note 134, at para 35.

¹⁵³ Blake suggests that civil participation in the development process could be modelled on the South African experience of participation in relation to the drafting and adoption of their post apartheid constitution. Key features would include release of documents for public comment and consultation, and local meetings. See Blake, *supra* note 132, 185-86.

¹⁵⁴ The General Counsel of the World Bank has recognised this as a situation in which interference in domestic politics may be justified provided this does not become pressure to implement a democratic form of government. Shihata, “Prohibition of Political Activities”, *supra* note 19, 235.

3. Partnership

The CDF's partnership focus is aligned with the cooperative nature of development emphasised in the UNDRD, in that states are not only required to act independently but also cooperatively with other states. However, there is no one forum for international assistance and the principle of cooperation ought to extend to co-operation between organisations also. Assistance would be most effective when different specialist institutions partner together.

4. Results Orientation

The CDF's result orientation links long term development vision with short- and medium-term development outcomes. These results are described as “on the ground” outcomes “in terms of the quality of life and economic productivity of people in developing countries.”¹⁵⁵ This particular focus on results seeks to ensure that individuals, and the communities of which they are a part, are the end beneficiaries of Bank supported development efforts and, therefore, that development assistance is appropriate and effective. However, in line with the UNDRD, targets regarding the improvement of quality of life ought to be interpreted and evaluated in terms of the extension of the rights and freedoms of the individual.

This examination of the founding principles of the CDF indicates that the CDF is broadly consistent with the development approach recognised under the UNDRD.

¹⁵⁵ World Bank, CDF Website, *supra* note 37.

VI. IS THE CDF SUFFICIENTLY COMPREHENSIVE?

The CDF emphasises the interdependence of all elements of development, social, structural, human, governance, environmental, economic and financial. This reflects the Bank's general acknowledgement of its role in promoting economic, social and cultural rights. However, the Bank continues to deny a role in promoting civil and political rights. Therefore, despite the conclusion reached above that the CDF is generally aligned with the development approach presented in the UNDRD, the proper role of the Bank in relation to civil and political rights will be re-examined in light of the Declaration for the purpose of determining whether the CDF is sufficiently comprehensive, that is, whether and to what extent the UNDRD requires the Bank to recognise human rights in its operations.

This requires a consideration of the level of obligation imposed on international institutions under the Declaration. Eide defines three levels of human rights obligations: to respect, to protect and to fulfil, where the obligation to fulfil encompasses duties to facilitate and provide.¹⁵⁶ Ghazi has elaborated these rights in the context of international organisations. The obligation to *respect* human rights is a negative obligation requiring the organization to abstain from any action that violates human rights. To *protect* human rights requires the organization to take measures to prevent other entities from violating human rights. The positive obligation to *fulfil* or *promote* human rights requires the organization to "take all possible measures, within its mandate...that are necessary to ensure for each person opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts."¹⁵⁷ The obligation to promote includes assisting governments in protecting and promoting human rights.¹⁵⁸

¹⁵⁶ See Asbjorn Eide, Catarina Krause and Allan Rosas *Economic, Social and Cultural Rights, a textbook, Second Revised Edition* (Martinus Nijhoff, The Hague, 2001) 37-38.

¹⁵⁷ Ghazi, *supra* note 117, 126.

¹⁵⁸ Eide et al, *supra* note 156, 38.

Three alternative interpretations of the World Bank's human rights responsibilities under the UNDRD may be advanced. The narrowest interpretation places a negative obligation on the Bank to only respect human rights. The second interpretation requires the Bank to promote some rights, while respecting all others, that is, the Bank may promote economic, social and cultural rights, but need only respect civil and political rights. The third possible interpretation requires that the Bank positively promote all human rights through its operations. This section will consider which of these interpretations best describes the international obligations in the UNDRD. It will first present an overview of the Bank's general position on the status of human rights in its mandate. This will provide a point of reference for analysis of the implications of each interpretation for the Bank.

A. THE WORLD BANK POSITION ON HUMAN RIGHTS IN ITS OPERATIONS

The Bank asserts that while consideration of economic, social and cultural rights is within its mandate, it is prohibited by its Articles of Agreement from considering the civil and political rights record of a borrowing country. Justification for this position is based upon the explicit political prohibitions in the Bank's Articles.

Generally the Bank is required only to consider economic factors in its decision making.¹⁵⁹ More specifically it is prohibited from interfering in the political affairs of a member country, or considering the political character of members in making lending decisions.¹⁶⁰ Although the Bank's Articles do not define political affairs, or distinguish economic and political factors, political factors are generally interpreted as including "issues which fit under what has been called 'the art and practice of running a country or governing,' but should

¹⁵⁹ Article III.5(b), Article IV.10 IBRD Articles of Agreement.

¹⁶⁰ Article IV.10 IBRD Articles of Agreement.

exclude...generally, the efficient management of the country's resources.”¹⁶¹ The Bank has maintained that these prohibited political affairs include the recognition of civil and political rights in a member state.¹⁶²

Political considerations will be allowed to influence Bank decisions only if “it is established that they have direct and obvious economic effects relevant to the World Bank.”¹⁶³ Relevant economic effects must include effects on the productive capacity of the borrower, their standards of living, or labour conditions, in line with the Bank's purposes.¹⁶⁴ Cierciari elaborates these economic effects to include anything that affects the ability of the borrower to meet its obligations under its loan agreement.¹⁶⁵ The Bank will be influenced by civil and political rights where “an extensive violation of [these] rights takes [such] pervasive proportions [that it imposes] itself as an issue in the Bank's decisions. This would be the case if the violation had significant economic effects”¹⁶⁶

B. FIRST INTERPRETATION: THE OBLIGATION TO RESPECT

The first interpretation of international obligations under the UNDRD contends that an international institution must respect human rights. It must ensure its operations do not derogate from the current level of enjoyment of human rights in a borrower state, but is not required to protect or promote rights. This does

¹⁶¹ Ibrahim F.I. Shihata, “Issues of “Governance” in Borrowing Members – The Extent of Their Relevance Under the Bank's Articles of Agreement” (Legal memorandum by the General Counsel, SecM91-0131, 5 February 1991) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 260-261 (“Issues of Governance”).

¹⁶² Shihata, “The World Bank and Human Rights”, *supra* note 126, 97-98.

¹⁶³ Shihata, “Issues of Governance”, *supra* note 161, 271.

¹⁶⁴ See Article 1 IBRD Articles of Agreement.

¹⁶⁵ John D. Cierciari “The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement” (2000) 33 *Cornell International Law Journal* 331, 346-47 (in reference to Article III.4(v) of the IBRD Articles of Agreement).

¹⁶⁶ Shihata, “Prohibition of Political Activities”, *supra* note 19, 235.

not, however, prohibit an institution actively promoting human rights if it so desires or if this is required under its mandate.¹⁶⁷

This limited obligation on international institutions is generally advocated by Skogly on three grounds. First, while these institutions are bound by the UN Charter, they cannot be bound to the same level of obligation as states, as they are not themselves parties to the treaty. To extend the positive human rights obligations the Charter imposes on States to non parties would be to stretch the law too far.¹⁶⁸ Second, Skogly states that it is reasonable to argue that the obligation to respect human rights is a part of international customary law and is binding on institutions of international legal personality.¹⁶⁹ Finally, in particular reference to the World Bank, Skogly acknowledges that the promotion of human rights is not mentioned in the Bank's Articles and is a more active role than the institution is capable of.¹⁷⁰

This interpretation is consistent with the Bank's position on human rights in its operations. The Bank is only obligated to respect civil and political rights, though it legitimately promotes economic, social and cultural rights within its mandates, and may further promote civil and political rights where they have significant economic effects.

This interpretation explicitly requires the Bank to ensure its operations do not violate economic, social and cultural or civil and political rights in the borrowing country, whether or not such violations would have economic effects. This is slightly more burdensome than the Bank's claim that civil and political rights fall generally outside of its mandate as it requires some consideration of them. Fulfilment of this obligation would require a

¹⁶⁷ Skogly, *supra* note 101, 152. Skogly also notes that international institutions would *not* be prohibited from taking further action in the promotion of human rights by the principle of non interference, but that such action would have to be in accordance with current interpretations of international human rights law, and the purposes and principles of their constituent documents, see Skogly, 172.

¹⁶⁸ *Ibid*, 151.

¹⁶⁹ *Ibid*, 151.

¹⁷⁰ *Ibid*, 151.

comprehensive evaluation of human rights impacts as a prerequisite for any Bank operation. This impact assessment should seek to “[anticipate] effects of the planned development cooperative intervention on human rights, in particular possible adverse effects, and [facilitate] the introduction of safeguards to either prevent or mitigate any adverse impact.”¹⁷¹ The Bank currently undertakes Social Impact Assessments and also Environmental Reviews in relation to proposed projects. These frameworks could be extended to include a full assessment of human rights effects also.¹⁷²

Skogly’s argument focuses on the human rights obligations of international institutions within the general framework of international human rights law. It does not consider the specific scheme of particular instruments. Therefore, this argument must be considered against the language of the international obligations in the UNDRD.

The Declaration explicitly requires the international community to encourage and strengthen universal respect for all human rights.¹⁷³ However, international obligations under the Declaration extend to the protection of human rights through promoting their universal observance.¹⁷⁴ Further, the Declaration requires international cooperation in the formulation of international development policies and providing assistance to foster comprehensive development in developing countries.¹⁷⁵ In recalling that comprehensive

¹⁷¹ Eide et al, *supra* note 156, 409. The use of Human Rights Impact Assessments has been recommended as early as 1979 by the United Nations. See UN ECOSOC (January 1979) *supra* note 77, at para 314. See also Skogly, *supra* note 101, 151; Victoria E. Mamorstein “World Bank Power to Consider Human Rights Factors in Loan Decisions” (1978-1979) 13 *Journal of International Law and Economics* 113, 134.

¹⁷² See World Bank website, “PovertyNet” <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPSIA/0,,menuPK:490139~pagePK:149018~piPK:149093~theSitePK:490130,00.html>> accessed 30/09/2008. World Bank, Website, “Environmental Assessment” <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTENVASS/0,,contentMDK:20480503~menuPK:1182470~pagePK:148956~piPK:216618~theSitePK:407988,00.html>> accessed 07/10/2008.

¹⁷³ Article 6.1 UNDRD.

¹⁷⁴ *Ibid.*

¹⁷⁵ Articles 4.1 and 4.2 UNDRD.

development is defined in terms of the realisation of human rights,¹⁷⁶ it is evident that the Declaration imposes on international institutions a positive obligation to protect and promote human rights through their development assistance.

The active nature of these obligations is also apparent in the subsequent commentary of the Working Group on the Right to Development, who have called upon “the international financial institutions [to] give the highest priority to an *action-oriented* approach to the right to development.”¹⁷⁷ The Bank’s consideration of human rights “ought not to be limited to “doing no harm” but extend to the adoption of a policy framework that mainstreams human rights concerns.”¹⁷⁸

Therefore, the interpretation of the Bank’s obligations under the UNDRD being merely to respect all human rights is unsatisfactory. Although the obligation to respect human rights is explicit in the UNDRD, the obligations on international institutions extend beyond this to require institutions to actively promote and assist in the fulfilment of human rights.

C. SECOND INTERPRETATION: THE PROMOTION OF SELECTED HUMAN RIGHTS

The Independent Expert has described the right to development as constituting a vector of all human rights. An improvement in the value of this vector (a greater realization of the right to development) requires an increase in the realization of one right, while not diminishing the level of enjoyment of any other right.

¹⁷⁶ See Article 1.1 UNDRD and the discussion at Section III.B.1 of this paper.

¹⁷⁷ UN ECOSOC “Report of the Intergovernmental Group of Experts on the Right to Development on its second session” (UN ECOSOC, November 1997, UN Doc E/CN.4/1998/29) at para 40.

¹⁷⁸ Gernot Brodnig “The World Bank and Human Rights: Mission Impossible?” *Policy Working Paper T-01-05* Carr Center for Human Rights, 12.

A second proposed interpretation of international obligations under the UNDRD requires an international institution to respect all human rights, while obligating it to positively promote some of these rights. The institution will still be advancing the right to development as it is strictly improving the value of the vector of rights. This allows institutions to selectively advance rights in their specialized areas of operation and avoids overstretching the institutional elasticity of these institutions.¹⁷⁹

This interpretation also validates the Bank's current human rights position. The Bank has asserted that through its work it has promoted "a broad array" of economic, social and cultural rights" in accordance with its mandate, a fact that former Bank General Counsel Shihata claims has not been clearly appreciated in human rights discussion.¹⁸⁰ The Bank emphasises its contributions to education, health and nutrition. It has sought to advance the role of women and involve marginalised groups in development, while also seeking to ensure appropriate labour standards and the resettlement and rehabilitation of peoples affected by its projects. Further, all Bank lending operations seek "the liberalization of investment and the free flow of services, goods and information".¹⁸¹ Mr Shihata claims that "these activities have a direct effect on the amelioration of non-political human rights," and further maintains that Bank efforts in the economic, social and cultural realm may well "pave the way for a greater awareness and protection of political rights in the borrowing countries."¹⁸²

The Bank's promotion of these economic, social and cultural rights would satisfy its positive obligation under the Declaration. The remaining obligation to respect civil and political rights would also require the introduction of Human Rights Impact Assessments in all Bank activities to ensure no human rights are violated in the course of its operations.

¹⁷⁹ Institutional elasticity refers to the degree to which the mandate of an institution may be extended to include human rights functions. Professor William Reisman quoted in Shihata, "The World Bank and Human Rights", *supra* note 126, 107-108.

¹⁸⁰ Shihata, "Prohibition on Political Activities", *supra* note 19, 233.

¹⁸¹ *Ibid*, 234.

¹⁸² *Ibid*, 234.

This interpretation seems appealing, but to allow obligations under the Declaration to attach selectively to institutions is unsatisfactory. A selective vector approach to human rights implies the minimum obligation imposed by the Declaration on an international institution would be the advancement of one single right, subject to the principle of “do no harm”. This allows international institutions to select for themselves the human rights they are bound to promote.¹⁸³ The selected rights would likely be those that are already at the core of their activities. It is unlikely that an institution will voluntarily assume greater obligations than it already has. Selectivity would effectively affirm the status quo and rights issues that are currently not addressed will remain so. A selective obligation is an ineffective one in light of a declaration that seeks the progressive realization of all human rights. The true core of this interpretation is an obligation to respect all rights, while encouraging organisations to promote rights that lie within their mandate. However, such an interpretation is inconsistent with the active language of the UNDRD, as concluded above.

This selective approach also undermines the purpose and value added of the Declaration as it counters the indivisibility of all human rights. The vector ought to be viewed as a monitoring instrument that ensures the short term realisation of the right to development. It conceptualises a progressive approach to development that is responsive to the needs and priorities of individual states. It should not be a means for international organisations to restrict their international obligations.

D. THIRD INTERPRETATION: THE PROMOTION OF ALL HUMAN RIGHTS

The final interpretation of the UNDRD’s international obligations is that it obligates international institutions to actively promote all human rights. This interpretation centres on Article 6.2 of the Declaration which states: “All

¹⁸³ Sengupta recognises that once an organisation has voluntarily accepted responsibility for a right, they are bound to implement it. See Sengupta, “First Report”, *supra* note 2, at para 70.

human rights and fundamental freedoms are indivisible and interdependent” and urges that “equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.”¹⁸⁴ Although this Article does not identify the particular subject of its obligations, by virtue of Article 9.1, all elements of the Declaration are interdependent and ought to be read in the context of the whole, and therefore Article 6.2 must inform the general obligations placed on the international community elsewhere in the Declaration.

This interpretation is more satisfactory than the overly passive selective approach to the advancement of human rights. It places a clear obligation upon an international institution to ensure it advances all rights in its operations and therefore ensures that all rights are addressed in international development policy. However, this still allows for the progressive realization of rights, and therefore encompasses the vector approach in the short term. What this obligation does require is that no subset of human rights is neglected, all human rights must be recognised as being within the policy space of all institutions, and be advanced at the appropriate time.

This obligation may appear overly burdensome for institutions with highly specialised mandates. If an institution’s mandate cannot be made consistent with the obligations under the UNDRD through interpretation or amendment, this demanding obligation will require the institution to actively promote each human right to the greatest extent its mandate will allow, while emphasising its cooperation with other multilateral actors to ensure the full realization of the right to development.

The core of the obligation therefore requires all human rights to be considered within the active policy space of an institution. Practically this means no subset of human rights can be excluded as operational objective, unless it is impossible to reconcile the mandate of the institution with the promotion of the right. In this event the obligation will require active efforts by the institution to cooperate with other institutions to ensure these remaining rights are being

¹⁸⁴ Article 6.2 UNDRD.

protected and promoted. In this vein, utilising the partnership concept presented in the CDF, specialised institutions may be obligated to enter into a development relationship with the World Bank and other development actors. While a specialised institution may take specific responsibility for the promotion of a human right within its mandate, it is ensuring other rights are being assigned and addressed contemporaneously by other institutions. The constitution of the World Health Organisation is an example of how this may be implemented. While this institution's mandate is "the attainment of all peoples of the highest possible level of health" defined as "complete physical, mental and social well being," its functions include the establishment and maintenance of effective collaboration with other organizations as deemed appropriate.¹⁸⁵

The World Bank has asserted that the indivisibility and interdependence of human rights does not imply that the Bank should "ignore its specialized mandate and the limitations of its Articles," in particular the prohibition of political considerations in its decision making.¹⁸⁶ The Bank would contend, therefore, that the international obligations defined here are too burdensome in relation to its mandate and that the Bank's obligation to promote all human rights would be fulfilled through its cooperation with other development actors, the importance of which is already recognised in the CDF.

However, the Bank's strict interpretation of its Articles and its role in relation to human rights has been criticised as being "outmoded and untenable."¹⁸⁷ It has been advanced that the Bank's mandate to assist in the development of the territories of its members is broad enough to permit the consideration of all human rights, including civil and political rights, in its decision making. The UNDRD has strengthened this position by integrating human rights considerations into the Bank's mandate and necessitating a wider interpretation of the Bank's Articles.

¹⁸⁵ Preamble, Article 1, Article 2(b) Constitution of the World Health Organisation, available at <http://www.who.int/governance/eb/who_constitution_en.pdf> accessed 30/09/2008.

¹⁸⁶ Shihata, "Prohibition of Political Activities", *supra* note 19, 234-235.

¹⁸⁷ Mamorstein, *supra* note 171, 135.

There are two main grounds for the contention that all human rights fall within the Bank's mandate. First, human rights are not matters within the prohibited political affairs of member states. The definition of political affairs is tied to the concept of sovereign autonomy. The prohibition refers to the "political affairs of any member" which implies it applies only to internal political factors. Therefore the prohibited political affairs must be those domestic political affairs "which are not subjects of concern for the international community as a whole."¹⁸⁸ Because fundamental human rights are recognised as obligations *erga omnes* and are as such beyond the sovereign autonomy of the state, they cannot be considered political affairs of a member state.¹⁸⁹

The World Bank has responded to these claims stating that "the international character of political human rights [does not] mean that they are not political in nature and therefore constitute 'political considerations.'"¹⁹⁰ However, this does not negate the reasoning above as the prohibition may be interpreted as applying to only internal and not international affairs, despite both being political in nature.¹⁹¹

¹⁸⁸ Ciorciari, *supra* note 165, 357; Mamorstein, *supra* note 187, 126.

¹⁸⁹ Ciorciari, *supra* note 165, 357; Halim Moris "The World Bank and Human Rights: Indispensable Partnership or Mismatched Alliance" (1997-1998) 4 ILSA Journal of International and Comparative Law 173, 195. In support of this proposition Ciorciari refers to the decisions of the Permanent Court of International Justice in *Nationality Decrees Issued in Tunis and Morocco* (1923) PCIJ (ser. B) No.4 (International legal obligations override sovereign jurisdiction), and the International Court of Justice in *Barcelona Traction, Light and Power Co., Ltd. (Belg. V Spain)* (1970) ICJ 3, 33 ("the principles and rules concerning the basic rights of the human person" are obligations *erga omnes* such that all states have a legal interest in their protection). These fundamental *erga omnes* rights will include those expressed in the UDHR, ICCPR and ICESCR, all of which are recognised as the basis of the rights to be promoted under the UNDRD.

¹⁹⁰ Shihata, "Prohibition of Political Activities", *supra* note 19, 235.

¹⁹¹ In response to this claim by the Bank, Bahram Ghazi has stated that "to consider human rights as politics is to deny their nature." See Ghazi, *supra* note 117, 92. However, Erik Denters has commented that it may be dangerous to consider human rights entirely separate from politics, see Erik Denters "Human rights, prohibition of political activities and the lending-policies of the Worldbank and International Monetary Fund" in Chowdry et al, *supra* note 109, 387.

Second, human rights may constitute economic considerations. Mamorstein argues that “human rights abuses might incite domestic upheaval which could jeopardize the government’s political stability and, in turn, affect its economic stability and creditworthiness.”¹⁹² Cierciari more broadly recognises that the degree of enjoyment of human rights affects economic growth, financial success of development programs and a state’s ability to service its debt.¹⁹³ Brodnig asserts that such effects have become so widely accepted that human rights would “only in exceptional cases” not affect economic performance. This indicates that human rights considerations ought to always constitute economic considerations, rather than having to be proven on a case by case basis as has been the Bank’s approach.¹⁹⁴

The UNDRD strengthens this proposition as it fundamentally integrates human rights into development and generally shifts human rights considerations from the political to the economic realm. The rights based development approach in the Declaration recognises that the means and ends of economic growth are constrained. Economic growth and development must not violate any human rights or freedoms in its achievement, while the ends of growth are the expansion of the capabilities of the individual which is defined in terms of their rights.

However, Professor Reisman contends that there is a limit to the institutional elasticity of international organisations, that is, “the extent to which institutions created and still used for other purposes may be stretched in order to get them to perform human rights functions, especially when those functions are accomplished at the expense of their manifest functions.”¹⁹⁵ The UNDRD also brings human rights within the mandate of the Bank at a more fundamental level: it integrates human rights into the purposes of the Bank.¹⁹⁶ A primary

¹⁹² Mamorstein, *supra* note 188, 127.

¹⁹³ Cierciari, *supra* note 165, 347.

¹⁹⁴ Brodnig, *supra* note 178, 17-18.

¹⁹⁵ Professor William Reisman quoted in Shihata, “The World Bank and Human Rights”, *supra* note 126, 107.

¹⁹⁶ Brodnig recognises this as a separate claim from stating that human rights are economic factors that may be considered by the Bank. In relation to the ‘economic considerations’

purpose of the Bank is to assist in the development of the territories of its members, specifically by encouraging investment “for the development of the productive resources...thereby raising productivity, the standard of living and conditions of labour”.¹⁹⁷ Brodnig has stated “[t]o make a strong case for the integration of human rights concerns within the purposes and objectives of the Bank, one needs to demonstrate that development represents a bundle of interlocking concepts of very broad environmental, socioeconomic, legal and institutional implications, including the protection of human rights.”¹⁹⁸ This is achieved in the UNDRD. The Declaration provides a comprehensive definition of development that is explicitly linked to the realization of human rights.¹⁹⁹

Further, the World Bank General Counsel has recognised that the Bank’s Articles ought to be interpreted in a purposive and teleological manner in order to respond to the needs of the institution and its members, even if this requires the assumption of new functions.²⁰⁰ While the explicit recognition of human rights will be a new practice for the Bank, it is a part of the Bank’s mandate by virtue of the UNDRD, and is required in order for the Bank to respond to the comprehensive development needs of its members.

Given that the Declaration has incorporated human rights into the ‘manifest functions’ of the Bank, the presumption must now be that all human rights considerations are relevant to Bank lending decisions, unless they are proven in a particular case to be unjustified interference with the domestic political affairs of a member or are in some way being applied in a partisan manner.²⁰¹

proposition he states “the Bank may not consider the protection of human rights – for its own sake or in the context of an expanded development paradigm – as part of its mandate. Rather, it may consider human rights issues only “in order to assess the net effect of individual development projects and programs on human welfare.”” See Brodnig, *supra* note 178, 14.

¹⁹⁷ Article 1(i) and 1(iii) IBRD Articles of Agreement.

¹⁹⁸ Brodnig, *supra* note 178, 9.

¹⁹⁹ Articles 1.1 and 2.3 UNDRD.

²⁰⁰ Shihata, “Interpretation”, *supra* note 20, lvii, lix; Shihata, “Issues of Governance”, *supra* note 161, 247.

²⁰¹ Ghazi recognised an advisory opinion of the ICJ (*Certain Expenses of the United Nations (Art. 17, para. 2 of the Charter)*), Advisory Opinion of 20 July 1962 (1962) ICJ Reports 167) as

This interpretation confirms that the Bank is obligated under the UNDRD to respect and promote all human rights, both civil and political and economic, social and cultural. Although the Declaration permits the short term prioritisation of particular rights, meaning that the Bank need not promote all rights in all situations, the Bank may not generally exclude from its policy space any subset of human rights. The Bank must be prepared to offer its advice and funds in support of and otherwise act to advance the realization or protection of any and all human rights. This ought to be explicitly recognised as within the CDF.

E. IMPLICATIONS FOR BANK POLICY AND ENFORCEMENT

While the Bank is “neither a world government which could impose legal norms on countries, nor a world policeman which would enforce international or domestic legal obligations for or against any of its member countries,”²⁰² the UNDRD obligates it to promote human rights, which includes assisting and requiring its members to meet their international human rights obligations through Bank development operations. While the Bank’s General Counsel has recognised such a role for the Bank to the extent that it is consistent with its mandate, the UNDRD has affirmed that this mandate extends to all human rights.²⁰³

This allows the Bank to include human rights policies and targets in its development operations, include human rights conditionality in its lending

standing for the notion that when an international organization takes action for one of the organization’s stated purposes, the presumption is that this action is not ultra vires. See Ghazi, *supra* note 117, 117. Ghazi also references P Klein *La responsabilite des organisations internationales*, Collection de droit international, Bruxelles, Bruylant – Editions de l’Universite de Bruxelles, 673 in support of this proposition.

²⁰² Mr. Tung, Vice President and General Counsel, *Human Rights and Sustainable Development: What Role for the Bank?*, May 2, 2002, quoted in Ghazi, *supra* note 117, 96.

²⁰³ Ibrahim F.I. Shihata “Financing by the Bank of Demining Activities” (Memorandum from the General Counsel, 5 November 1996) in Ibrahim F.I. Shihata *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000) 214.

activities, and to withhold or withdraw funds if these conditions are not satisfied.²⁰⁴ More controversially, the Bank may also withhold financial support from potential borrowers on the basis of human rights abuses. The question may be asked as to how these actions can be regarded as consistent with or required by the UNDRD.

Refusing or withdrawing financial support from particular developing countries seems inconsistent with the Declaration given the positive obligation on the Bank to facilitate and ensure development.²⁰⁵ However, the Bank's obligation under Article 4.2 of the Declaration is to provide appropriate means and facilities that will be effective in fostering comprehensive development in a developing country. The Bank must be confident that the assistance it provides will maximise the likelihood of realizing development outcomes.²⁰⁶ This obligation must also be interpreted to warrant the withholding of means and facilities where there is little or no reasonable belief that the funds will result in the desired development outcomes. In such cases Bank financing may increase the indebtedness of the borrowing country without any corresponding development benefit that would, in the long term, ensure the ability of the State to repay this debt.²⁰⁷ Therefore financial assistance would be ineffective and inappropriate.

²⁰⁴ The Bank is required under its Articles to "make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted," and must "pay due regard to the prospects that the borrower...will be in a position to meet its obligations under the loan." (Articles III.5(b) and III.4(v) respectively IBRD Articles).

²⁰⁵ Moris recognises the argument that "any withholding of aid that is justified on grounds of human rights is a violation of the recipient countries' right to develop." Moris, *supra* note 189, 187.

²⁰⁶ See section III.B.3 of this paper for a discussion of this obligation.

²⁰⁷ Nicole Wendt has also acknowledged that by continuing to lend whenever needed, and even in the face of breaches of conditionality, the Bank is encouraging poor planning and risky investment by borrowing countries. The Bank is creating a situation of 'Moral Hazard.' See Nicole Wendt "50th anniversary of the World Bank and the IMF prompts criticisms" E Book of International Finance and Development (1999) 9 *Transnational Law and Contemporary Problems* 149, 159.

Similar reasoning under the Declaration justifies and requires the Bank to strictly enforce the conditions attached to its lending agreements to ensure the supported programmes will enhance the rights and capabilities of all individuals within the borrowing state.²⁰⁸

This result will seem unsatisfactory to some. With particular regard to the consideration of civil and political rights in lending decisions, the Bank has recognised that “a negative decision regarding [an] investment loan, which is based only on the authoritarian and suppressive character of the government involve, may simply add another injury to the country’s population who would be the victims not only of the actions of their own government but also of inaction of the Bank.”²⁰⁹

However, while the Bank is justified in and even obligated to withhold funds in these situations, it is also required under the Declaration to take steps to overcome obstacles to development.²¹⁰ When funding is refused, the Bank cannot simply remain inactive in the countries to which it has refused finance. Article 4.2 of the Declaration does not confine the potential Bank assistance to loan funds, it also encompasses advisory support. Therefore, in lieu of funds withheld on human rights grounds, the Bank must provide active assistance to these developing countries in the formulation of development strategies, and

²⁰⁸ There is nothing in the Declaration to exclude the use of conditionality. Although an early draft of the declaration required that provision of assistance from the international community ought to be “without any political, military or economic condition,” (Draft Article 11(d), UN ECOSOC (December 1982) *supra* note 68, 7). This was removed from later drafts and does not appear in the final declaration. Further, the Declaration implies a role for conditionality as conditions attached to loan agreements will play an important role in addressing the potential principal-agent problem in Bank-State relations, ensuring that proper structures are in place to ensure development is effective and focused on the individual. For a discussion principal-agent theory of conditionality see World Bank “The Theory and Practice of Conditionality: A Literature Review” (World Bank, July 2005) 13.

²⁰⁹ Shihata, “The World Bank and Human Rights”, *supra* note 126, 107-108. See also Roberto Danino “The Legal Aspects of the World Bank’s Work on Human Rights: Some Preliminary Thoughts” in Philip Alston and Mary Robinson (Eds.) *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, Oxford, 2005) 524.

²¹⁰ Article 3.3 UNDRD.

by encouraging necessary reform. When concrete steps have been taken by the state to overcome certain obstacles to development, the Bank may then offer funding to advance other areas of development.²¹¹

Former Bank General Counsel, Danino, has recognised that the Bank must ensure it does not inflict a ‘double punishment’ on a member country by refusing any form of assistance because of rights violations. Rather he acknowledges that the Bank will be required to work with countries that respect human rights, and those that do not.²¹²

The practical implication of this approach may be illustrated through a consideration of the case of a hypothetical request for Bank assistance from Myanmar. Since 1988, the Myanmar military government (the State Peace and Development Council) has continued to engage in practices of forced labour, forced relocation, and denial of freedoms of movement, expression and association. More recently, rights abuses have included the violent suppression of peaceful anti-government protests, and conditioning the receipt of disaster relief aid upon citizens voting in favour of the government’s proposed national constitution.²¹³

In accordance with the Bank’s current position, development assistance to Myanmar would only be refused if these abuses had objectively established economic effects. Funding would be extended to Myanmar unless the government’s actions were held to constitute massive and flagrant violations of human rights. However, the UNDRD widens the focus of Bank decision making from the purely economic effects of rights violations, to require consideration of the violations themselves. The nature of the violations of civil, political and economic rights under this regime would likely render any Bank

²¹¹ This general idea is supported by Gilbert and Vines, *supra* note 8, 293.

²¹² Danino, *supra* note 209, 524.

²¹³ See generally, Amnesty International “Myanmar: Leaving Home” (8 September 2005) available at <<http://www.amnesty.org/en/library/info/ASA16/023/2005/en>> accessed 07/10/2008; Amnesty International “Myanmar Briefing: Human Rights Concerns a Month After Cyclone Nargis” (5 June 2008) available at <<http://www.amnesty.org/en/library/info/ASA16/013/2008/en>> accessed 07/10/2008.

development funding ineffective in addressing the needs of individuals and communities within Myanmar. Therefore, the Bank would not be obligated to provide financial assistance to Myanmar under Article 4.2 of the Declaration.

However, clearly these rights violations constitute an obstacle to development and the obligation of the Bank to take action to overcome these obstacles would remain. Therefore the Bank would be required to offer policy and reform advice where requested by the government. This arrangement could continue until such time as the government showed a genuine intention, and made efforts to reform policy and actions in relation to rights previously being breached. For example, renewed efforts to establish a national constitution to be adopted through a fair and free referendum and efforts to regulate and discipline the military would indicate some intention to reform. If this were followed by genuine efforts to address the civil and economic situation, including transparency in relation to the distribution of aid, then the Bank may be justified in providing finance to support further development programmes.

Therefore, although the Bank has claimed in the past that its funds are not to be used as a reward or incentive for reform, within the scheme of the UNDRD this may be warranted.

VII. CONCLUSION

The introduction of the CDF by the World Bank in 1999 marked a significant change in the Bank's development approach. The Bank moved from a growth focused conception of development to a holistic approach, focusing on country ownership, the achievement of results and partnership with development actors in addressing both the human and structural elements of development.

The present analysis indicates a broad consistency between the principles of the CDF and the rights based human development approach encapsulated in the UNDRD. However, there is a need for the Bank to extend its efforts within this framework to further ensure the full participation of individuals from all levels of society (or their representatives) in full and meaningful consultations with the State in the formulation of development strategies.

Despite this broad consistency, the CDF is not sufficiently comprehensive to fulfil the obligations imposed on the Bank by the Declaration. An analysis of three alternative interpretations of the nature of the international obligations under the Declaration indicates that an international institution, as an agent of the international community, is required to actively promote the full set of human rights. While this obligation may be limited by the specificity of the mandate of a highly specialised institution, the World Bank is not such an institution. The Bank's development mandate under its Articles of Agreement is broad enough, when read in conjunction with the UNDRD, to require the Bank to promote through its operations, not only the economic, social and cultural rights that it has claimed to have satisfactorily promoted throughout its history, but also civil and political rights.

By implication of this conclusion and in context of the full obligations of international institutions under the Declaration, the Bank is faced with a tension between withholding its assistance where it is unlikely to successfully enhance the capabilities of individuals, and acting to overcome obstacles to development and ensure development is realized. In balancing these obligations, the Bank may withhold finance from countries that would not make effective use of Bank funds due to their human rights situation, but must

provide other forms of assistance in advancing reforms and formulating development policies, until such time as finance would be believed to be appropriate and effective.

The World Bank has significant potential to influence development policies within its member countries. However, the Bank must recognise, and its policies fully reflect, the change in the conception of development expressed in UNDRD. Development is a process in which all human rights are to be realized. While the CDF has significantly expanded the Bank's development focus, in order to be truly comprehensive, in full accordance with the Bank's obligations under the Declaration, the CDF must be extended to permit the Bank to consider and promote economic, social and cultural rights, and civil and political rights.

ORGANISATION DOCUMENTS

Constitution of the World Health Organisation, available at <http://www.who.int/governance/eb/who_constitution_en.pdf> accessed 30/09/2008.

International Bank of Reconstruction and Development Articles of Agreement available from <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOU TUS/ORGANIZATION/BODEXT/0,,contentMDK:20049557~isCURL:Y~menuPK:64020045~pagePK:64020054~piPK:64020408~theSitePK:278036,00.html>> accessed 21/04/2008.

RESOLUTIONS, DECLARATIONS AND CONVENTIONS

Draft International Covenant on Human Rights and Measures of Implementation: Future Work of the Commission on Human Rights, UNGA Resolution 421(v), Section E (4 December 1950).

Declaration on the Establishment of a New International Economic Order, UNGA Resolution 3201 (S-VI) (1 May 1974).

International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171; UN Doc. A/6316 (entered into force 23 March 1976).

International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3, UN Doc A/6316 (entered into force 3 January 1976).

Preparation of Two Draft International Covenants on Human Rights, UNGA Resolution 543(vi) (5 February 1952).

Programme of Action on the Establishment of a New International Economic Order, UNGA Resolution 3202 (S-VI) (1 May 1974).

Universal Declaration of Human Rights, UNGA Resolution 217A(III), UN Doc. A/810 (10 December 1948).

United Nations Declaration on the Right to Development, UNGA Res 41/128, UN Doc. A/Res/41/128 (4 December 1986).

Vienna Declaration and Programme of Action, UNGA, World Conference on Human Rights, UN Doc. A/CONF.157/23 (25 June 1993).

SECONDARY MATERIALS - BOOKS

Alston, Philip and Mary Robinson (Eds.) *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, Oxford, 2005).

Alvarez, Jose E *International Organizations as Law-makers* (Oxford University Press, Oxford, 2005).

Andreassen, Bard A and Stephen Marks (Eds.) *Development as a Human Right: Legal, Political and Economic Dimensions* (Harvard School of Public Health, Massachusetts, 2006).

Bedjaoui, M *International Law: Achievements and Prospects* (UNESCO, 1991).

Chowdry, Subrata Roy, Erik M Denters and Paul J I M de Waart (Eds.) *The Right to Development in International Law* (Martinus Nijhoff, 1992).

Eide, Asbjorn, Catarina Krause and Allan Rosas *Economic, Social and Cultural Rights, a textbook, Second Revised Edition* (Martinus Nijhoff, The Hague, 2001).

Gallagher, Kevin P (Ed.) *Putting Development First: The Importance of Policy Space in the WTO and International Financial Institutions* (Zed Books, London, 2005).

Ghazi, Barham *The IMF, the World Bank Group and the Question of Human Rights* (Transnational Publishers, New York, 2004).

Gilbert, Christopher L. and David Vines (eds.) *The World Bank: Structure and Policies* (Cambridge University Press, 2000).

Hague Academy of International Law *The Right to Development at the International Level, Workshop, The Hague, 16-18 October, 1979* (Sijthoff & Noordhoff, 1980).

Kapur, Davesh, John P. Lewis, and Richard Webb *The World Bank: Its First Half Century* (The Brookings Institution, Washington D.C., 1997).

Mason, Edward S. and Robert E Asher *The World Bank Since Bretton Woods* (Washington DC, The Brookings Institution, 1973).

Meron, T *Human Rights and Humanitarian Norms as Customary Law* (Oxford University Press, 1989).

Mosley, Paul, Jane Harrigan and John Toye *Aid and Power: The World Bank and Policy Based Lending (Volume 1)* (Routledge, London, 1991).

Sen, Amartya *Development as Freedom* (Anchor Books, New York, 1999).

Sengupta, A, A Negi and M Basu *Reflections on the Right to Development* (Sage Publications, 2005).

Shihata, Ibrahim F.I. *World Bank Legal Papers* (Martinus Nijhoff, The Hague, 2000).

Skogly, Sigrun I *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish Publishing, London, 2001).

Tschofen, F (Ed.) *The World Bank in a Changing World: Selected Essays (Volume I)* (Martinus Nijhoff, Dordrecht, 1991).

van Genugten, Willem, Paul Hunt and Susan Mathews (Eds.) *World Bank, IMF and Human Rights* (Wolf Legal Publishers, Nijmegen, 2003).

Vasak, Karel, and Philip Alston *The International Dimensions of Human Rights* (UNESCO, 1982).

SECONDARY MATERIALS - REPORTS

Sengupta, Arjun “Study on the current state of progress in the implementation of the right to development” (United Nations Economic and Social Council (UN ECOSOC), July 1999, UN Doc. E/CN.4/1999/WG.18/2).

Sengupta, Arjun “Report of the Independent Expert on the Right to Development” (UN ECOSOC, September 2000, UN Doc E/CN.4/2000/WG.18/CRP.1).

Sengupta, Arjun “Third Report of the independent expert on the right to development” (UN ECOSOC, January 2001, UN Doc E/CN.4/2001/WG.18/2).

Sengupta, Arjun “Fourth report of the independent expert on the right to development” (UN ECOSOC, December 2001, UN Doc E/CN.4/2002/WG18/2).

Sengupta, Arjun “Fifth Report of the Independent Expert on the Right to Development” (UN ESOC, September 2002, UN Doc E/CN.4/2002/WG.18/6).

Sengupta, Arjun “Preliminary study of the independent expert on the right to development on the impact of international economic and financial issues on the enjoyment of human rights” (UN ECOSOC, December 2002, UN Doc E/CN.4/2003/WG.18/2).

Sengupta Arjun “Review of progress and obstacles in the promotion, implementation, operationalization, and enjoyment of the right to development” (UN ECOSOC, February 2004, UN Doc E/CN.4/2004.18/2).

United Nations Development Programme, *Making Global Trade Work for People* (London & Sterling, VA: Earthscan, 2003).

UN Economic and Social Council “The International Dimensions of the Right to Development as a Human Right in Relation with Other Human Rights Based on International Cooperation” (UN ECOSOC, January 1979, UN Doc E/CN.4/1334).

UN Economic and Social Council “Report of the Working Group of Governmental Experts on the Right to Development” (UN ECOSOC, February 1982, UN Doc E/CN.4/1489).

UN Economic and Social Council “Report of the Working Group of Governmental Experts on the Right to Development” (UN ECOSOC, December 1982, UN Doc E/CN.4/1983/11).

UN Economic and Social Council “Report of the Working Group of Governmental Experts on the Right to Development” (UN ECOSOC, November 1983, UN Doc. E/CN.4/1984/13).

UN Economic and Social Council “Report of the Working Group of Governmental Experts on the Right to Development” (UN ECOSOC, January 1985, E/CN.4/1985/11).

UN Economic and Social Council “Report of the Intergovernmental Group of Experts on the Right to Development on its second session” (UN ECOSOC, November 1997, UN Doc E/CN.4/1998/29).

United Nations “The Realization of the Right to Development, Global Consultation on the Realization of the Right to Development as a Human Right: Report by the Secretary General” (United Nations, 1991, UN Doc E/CN.4/1990/9/Rev.1; HR/PUB/91/2).

United Nations General Assembly “Right to Development: Note by the Secretary-General” (United Nations, August 2000, UN Doc A/55/306).

World Bank *Enabling Country Capacity to Achieve Results: 2005 CDF Progress Report* (The World Bank, Washington D.C., July 2005) available at <http://www.dgroups.org/groups/worldbank/cdf-prs/docs/Enabling_Country_Capacity-Vol.I-Overview.pdf> accessed 05/09/2008.

World Bank *Development and Human Rights: The Role of the World Bank* (World Bank, Washington D.C., 1998).

SECONDARY MATERIALS - ARTICLES

Blake, Richard Cameron “New Development: The World Bank’s Draft Comprehensive Development Framework and the Micro-Paradigm of Law and Development” (2000) 3 *Yale Human Rights and Development Law Journal* 158.

Blanco, Sandra “The 1960s and 1970s: The World Bank Attacks Poverty; Developing Countries Attach the IMF” E Book on International Finance and Development (1999) 9 *Transnational Law and Contemporary Problems* 110.

Bradlow, Daniel D. and Claudio Grossman “Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF” (1995) 17 *Human Rights Quarterly* 411.

Bunn, Isabella *The Right to Development: Implications for International Economic Law* (1999-2000) 15 *American University International Law Review* 1425.

Ciorciari, John D. “The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement” (2000) 33 *Cornell International Law Journal* 331.

Gordon, R E and J H Sylvester “Deconstructing Development” (2004) 22 *Wisconsin International Law Journal* 1.

Mamorstein, Victoria E. “World Bank Power to Consider Human Rights Factors in Loan Decisions” (1978-1979) 13 *Journal of International Law and Economics* 113.

Moris, Halim “The World Bank and Human Rights: Indispensable Partnership or Mismatched Alliance” (1997-1998) 4 *ILSA Journal of International and Comparative Law* 173.

Sengupta, Arjun “Realizing the Right to Development” (2000) 31 *Development and Change* 553.

Sengupta, Arjun “On the Theory and Practice of the Right to Development” (2002) 24 *Human Rights Quarterly* 837.

Sohn, L. “The Human Rights Law of the Charter” (1977) 12 *Texas International Law Journal* 140.

Uriz, Genoveva Hernandez “To Lend or Not to Lend: Oil, Human Rights, and the World Bank’s Internal Contradictions” (2001) 14 *Harvard Human Rights Journal* 197.

Wendt, Nicole “50th anniversary of the World Bank and the IMF prompts criticisms” E Book of International Finance and Development (1999) 9 *Transnational Law and Contemporary Problems* 149.

SECONDARY MATERIALS - PAPERS

Brodnig, Gernot “The World Bank and Human Rights: Mission Impossible?” (2005) *Policy Working Paper T-01-05* Carr Center for Human Rights.

Gunduz, Canan “Human Rights and Development: The World Bank’s Need for a Consistent Approach” (2004) *Working Paper No. 04-49* London School of Economics and Political Science Development Studies Institute.

Marks, Stephen P “The Human Rights Framework for Development: Seven Approaches” (2003) *Working Paper No. 18* Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, available at <http://www.hsph.harvard.edu/fxbcenter/working_papers.htm> accessed 24/04/2008.

Sengupta, Arjun “The Right to Development as a Human Right” (2000) *Working Paper No. 7* Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, available at <http://www.hsph.harvard.edu/fxbcenter/working_papers.htm> accessed 24/04/2008.

Sengupta, Arjun “Development Cooperation and the Right to Development” (2003) *Working Paper No. 12* Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, available at <http://www.hsph.harvard.edu/fxbcenter/working_papers.htm> accessed 24/04/2008.

Sengupta, Arjun “Implementing the right to development” Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, available from <[http://www.hsph.harvard.edu/fxbcenter/Implementing %20the%20RTD.pdf](http://www.hsph.harvard.edu/fxbcenter/Implementing%20the%20RTD.pdf)> accessed 24/04/2008.

Sengupta, Arjun, Asbjorn Eide, Stephen P. Marks and Bard A. Andreassen “The Right to Development and Human Rights in Development” (2004) *Research Note 07/2004* The Norwegian Centre for Human Rights.

Wolfensohn, James D. “*A Proposal for a Comprehensive Development Framework: A Discussion Draft*” (World Bank, 21 January 1999) 5.

World Bank “The Theory and Practice of Conditionality: A Literature Review” (World Bank, Washington D.C., July 2005).

World Bank “Legal Aspects of Conditionality in Policy Based Lending” (World Bank, Washington D.C., June 2005).

SECONDARY MATERIALS - SPEECHES

Stiglitz, Joseph *Towards a New Paradigm for Development: Strategies, Policies, and Processes*” Prebisch Lecture, 19 October 1998 (UNCTAD, Geneva, 1998).

Wolfensohn, James D. “Building and Equitable World” Address to the Board of Governors, 26 September 2000 (The World Bank Group, Prague, 2000).

SECONDARY MATERIALS - WEBSITES

Amnesty International website <<http://www.amnesty.org/en/library/>> accessed 07/10/2008.

United Nations Development Programme website <<http://hdr.undp.org/en/humandev/>> accessed 26/08/2008.

World Bank website, “Country Assistance Strategies” <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120746~menuPK:51551~pagePK:41367~piPK:51533~theSitePK:40941,00.html>> accessed 21/09/2008.

World Bank website, “Comprehensive Development Framework” <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/CDF/0,,pagePK:60447~theSitePK:140576,00.html>> accessed 30/09/2008.

World Bank website, “Environmental Assessment” <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTENVASS/0,,contentMDK:20480503~menuPK:1182470~pagePK:148956~piPK:216618~theSitePK:407988,00.html>> accessed 07/10/2008.

World Bank website, “PovertyNet” <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPSIA/0,,menuPK:490139~pagePK:149018~piPK:149093~theSitePK:490130,00.html>> accessed 30/09/2008.

World Bank website, “Poverty Reduction Strategies” <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0,,menuPK:384207~pagePK:149018~piPK:149093~theSitePK:384201,00.html>> accessed 21/09/2008.