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A State's Dilemma between Foreign Aid and Foreign Trade –  
Lessons from Latin America

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*Great endeavours are never achieved alone - neither are small ones.*

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## **Abstract**

The Covenant on Economic Social and Cultural Rights requires states to seek international assistance and cooperation in case they are not able to fulfil their obligations by themselves.

As the Committee on Economic, Social and Cultural Rights observed already in a 1990 General Comment the full realization of these rights will remain an unfulfilled aspiration as long as there is no active international assistance programme. How is international cooperation taking place today? The study analyses three main elements cooperation: financial assistance through International Financial Institutions like the International Monetary Fund, cooperation agreements like the EU-Central America Association Agreements including the free trade agreement pillar and EU development cooperation.

A challenge for the progressive realization of especially economic, social and cultural rights, that has been taken into account more and more in the last decades, is sovereign debt and trade liberalization. In putting sustainability first, as the Agenda 2030 for Sustainable Development does, the academic discourse also points to the contributing factors, like the level of equality and illustrates the connection between sovereign debt sustainability and development, which is reflected to a large degree in the realization of economic, social and cultural rights. The following study aims to analyse three highly interconnected areas of international cooperation, that are often only dealt with separately, together, by looking into the examples from Latin America.

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## **Introduction**

What does it mean for a country to seek international cooperation as foreseen in the Covenant on Economic, Social and Cultural Rights? Can this have effects on a country's sovereignty and might it even lead to increased inequality instead of progressive realization of human rights? And, is international cooperation always based on human rights?

The Covenant on Economic Social and Cultural Rights requires states to seek international assistance and cooperation in case they are not able to fulfil their obligations by themselves.

As the Committee on Economic, Social and Cultural Rights observed already in a 1990 General Comment the full realization of these rights will remain an unfulfilled aspiration as long as there is no active international assistance programme. How is international cooperation taking place today? In the following, three main elements shall be analysed: financial assistance through International Financial Institutions like the International Monetary Fund, Cooperation Agreements like the EU-Central America Association Agreements including the free trade agreement pillar and development cooperation.

In order to analyse the connection between our economic system and trade and sovereign debt and development aid, and their impact on human rights, it is important to first understand the vast network of human rights provisions that provides the context in which all international actions are embedded.

The World Conference on Human Rights in Vienna 1993 reaffirmed in its declaration that all human rights are universal, indivisible and interdependent and interrelated, and reaffirmed further the commitment on developing effective international cooperation for the higher standards of living, full employment, and conditions of economic and social progress and development. Article 55 Charter of the United Nations establishes inter alia, a clear link between peace, international economic cooperation and human development. It also speaks about the creation of such conditions as a duty for the whole international community and it describes in the following article, that international cooperation has to be effective.

While setting the goals, it however does not say what a higher "standards of living" should look like, or what "economic and social progress" really means and it does not say what has to be done to reach these goals.

A challenge for the progressive realization of especially economic, social and cultural rights,

(ESC-rights) that has been taken into account more and more in the last decades, is sovereign debt and trade liberalization. In putting sustainability first, as the Agenda 2030 for Sustainable Development does, the academic discourse also points to the contributing factors and illustrates the connection between sovereign debt sustainability and development, a link which is reflected to a large degree in the realization of ESC-rights. Fulfilling these obligations would lead to more equality within and among states, which is why the impact on the level of equality will be one strand to follow throughout this paper.

Starting from the provision in the ICESCR that countries are obliged to help each other realize these rights it is already implied that states, in a globalized world, are not able to fulfil or influence the conditions their well-being depends on, exclusively by themselves. Though some are more powerful than others, in safeguarding their interests, nobody is immune to global phenomena like climate change, migration waves due to violent conflicts or bad living conditions elsewhere in the world, or an international financial crisis.

Financial and political dependency reduces the policy space of states and potentially undermines democratic processes and a state's ability to fulfil its human rights obligations. Thus the second strand to follow, in analysing the connection between foreign debt, trade liberalization and development aid and their impact on and human rights, is along their influence on the level of dependency.

The contribution of this work lies in analysing three highly interconnected areas of international cooperation, that are often only dealt with separately, together. Debt, trade liberalization and development cooperation. A state's degree of dependency on foreign funds or institutions depends largely on whether it is able to generate income itself and trade is a major factor to strengthen this ability. While loaning money is obviously producing dependency, also development aid stipulates a degree of dependency and external influence and again it also builds strongly on promoting a country's trade capacity, following the principle "aid for trade".

Starting from looking into the variables in the international arena that play a role in global governance, this work is investigating the question of sovereignty and how it is under pressure in the outlined situations, in order to see what the impact of debt on ESC-rights is and what the relevance of trade liberalization is in this context, by using examples from Latin America, as a region that has experienced all three forms of cooperation. In order to compare the processes of loaning, negotiating a free trade agreement and being a recipient of development aid, the

International Monetary Fund as a last resort for acquiring financial means in a situation of economic instability, a free trade agreement with the EU and EU development cooperation have been studied, as the EU is one of the strongest economies in the world and the biggest donor of development aid and of course bound by all important human rights treaties and the ICESCR.

In this study however only the decision-making and negotiating process of the EU has been investigated, not the one of its trading partners. In terms of methodology this work has been complemented by interviews conducted in Brussels with representatives of the European institutions and the IMF.

Chapter one lays out the network of human rights provisions and General Comments that have recognized the significance of sovereign debt and adjustment measures for the realization of ESC-rights, as well as the international architecture determining the framework for international cooperation.

Chapter two looks into the EU-Central America Free Trade Agreement, the EU has concluded with six Caribbean states, as some of the countries are, or have been clients of the IMF and are also, except for Panama, beneficiaries of EU funds. Chapter three focuses on EU development cooperation and chapter four sets out to assess the findings.

As the aim of this work is not to quantify the impact of economic measures, but rather to compare the three different mechanisms along their degrees of transparency in the process, the negotiation power countries have when entering into loan, trade or aid agreements, which also reflect their degree of dependency and on the other hand study the effects on equality by looking into their contribution towards the sustainability goals of the Agenda 2030 and the question of how strong their human rights link is in terms of explicit provisions.

# 1. The impact of debt on Economic Social and Cultural Rights

## 1.1. The variables in the international arena

The Westphalian system based on state sovereignty and territorial integrity is a basis for the current world order, in which the legal entities, able to enter into international agreements or becoming parties to international treaties and conventions, are sovereign states (or international organizations based on states), but at the same time the system has been superseded to some extent by the reality of globalization.

New powerful actors have emerged in the context of globalization, so called non-state actors that are able to operate across borders, like companies engaging in transnational activities, or NGOs, which hint to a loss of control, or sovereignty, of the individual states, concerning their influence. At the same time global challenges make cooperation between states ever more necessary, as individual goals can often not be achieved alone.

To take this reality into account the idea of “responsible sovereignty” by the UN has been introduced to the discussion, acknowledging that states have to secure, not only their own people’s interest, but to cooperate with other states to protect i.e. global resources and address international threats. A concept originally used in the context of humanitarian intervention by the UN, that also applies in a very broad sense to today’s realities in international cooperation. This increased need to collaborate however comes with a problem for the traditional Westphalian concept of statehood.

Kaul and Blondin even speak of a “sovereignty paradox” and see the root causes of this paradox in states holding on to the conventional idea of sovereignty, which leads them to hesitate in international cooperation even, concerning issues with a dominant degree of interdependence and thus provoking precisely the contrary of what they intended to. “They are weakening their policymaking capacity, especially in relation to transnational threats, [...] and thereby national governments are undermining the very sovereignty they seek to protect”<sup>1</sup>.

A paradox that can be observed every day within the EU. While countries increase their leverage and their influence in the international arena through being a part of a bigger community and thus benefitting from this cooperation, the pursuit of national interest is often

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<sup>1</sup> I. Kaul and D. Blondin, “Global Public Goods and the United Nations”, in J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, Oxford University Press, 2016, p.64



disguised as call for sovereignty. Whether leaving the Union however would lead to more factual sovereignty, or just to new forms of alliances, as standing alone comes with obvious disadvantages, is very arguable.

On the international level areas of interdependence are reflected by the concept of “global public goods” (GPG). According to an updated definition of Kaul et al. “global public goods are goods with benefits and/or costs that potentially extend to all countries, people, and generations.”<sup>2</sup> Global public goods are public as opposed to private; and they are global as opposed to national. Like publicness in general, globalness is in most instances a matter of policy choice. “[...] goods exist not in their original forms but as social constructs, largely determined by policies and other collective human actions.”<sup>3</sup>

This analysis suggests that the public or global nature of some goods is a matter of choice, but at the same time it is typically not in the power of a single state to determine this nature.

Kaul et al.<sup>4</sup> further identify a list (order changed) of such global goods which shows that most of them are directly related to human rights:

1. Basic human dignity for all people, including universal access to basic education and health care
2. Respect for national sovereignty
3. Global peace
4. Institutional infrastructure harmonized across borders to foster such goals as market efficiency, universal human rights, transparent and accountable governance, and harmonization of technical standards.
5. Concerted management of the global natural commons to promote their sustainable use
6. Availability of international arenas for multilateral negotiations between states as well as between state and non-state actors
7. Concerted management of knowledge, including worldwide respect for intellectual property rights

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<sup>2</sup> I. Kaul et al., „How to Improve the Provision of Global Public Goods“, in I. Kaul, P. Conceição, K. Le Goulven, and R. U. Mendoza (eds.), *Providing Global Public Goods: Managing Globalization*, New York, Oxford University Press, 2003, p.23

<sup>3</sup> I. Kaul and R. U. Mendoza, “Advancing the Concept of Global Public Goods”, in I. Kaul, P. Conceição, K. Le Goulven, and R. U. Mendoza (eds.), *Providing Global Public Goods: Managing Globalization*, New York, Oxford University Press, 2003, pp.80-81

<sup>4</sup> I. Kaul et al., „How to Improve the Provision of Global Public Goods“, in I. Kaul, P. Conceição, K. Le Goulven, and R. U. Mendoza (eds.), *Providing Global Public Goods: Managing Globalization*, New York, Oxford University Press, 2003, p.44

8. Global public health, particularly communicable disease control.
9. Communication and transportation systems harmonized across borders
10. Global security.

The goals 1-7 the authors identify, show a very clear link of human rights, economic stability and development, peace, the respect for the individual human being, as well as the sovereignty of the state. In this sense also the “higher standards of living” that shall be strived for by the international community in Art. 55 of the UN Charter, in Art 11 of the ICESCR or Art. 25 UDHR or the “international order” in Art. 28 should be seen as global public goods.

By using the term “good” the authors insinuate the idea of a scarce, demanded and measurable value of those concepts.

Can human rights be quantifiable goods? If so, do they or should they not have a quantifiable value? Should the price for having them, or the price of their absence not also be factored in when a country enters into an international agreement? And if those goods are social constructs, do they not essentially depend on policy choices?

While we can derive an increased need for coherent global action from the emergence of global public goods Kaul and Blondin observe that “policy responses to today’s challenges are mostly occurring nationally and regionally, or through market-based initiatives. They are often undertaken by non-state actors. In this sense we can see both vertical and horizontal de-concentration of governance. [...] Globally coordinated policy responses are missing.”<sup>5</sup>

In fact, there is even another paradox observed in the field of international cooperation or global governance that is even more contentious and highly relevant when it comes to trade liberalization. Rodrik defines the so called “globalization paradox” as the result of the fact that “we cannot simultaneously pursue democracy, national determination, and economic globalization” [...] and concludes that “democracies have the right to protect their social arrangements, and when this right clashes with the requirements of the global economy, it is the latter that should give way”.<sup>6</sup>

Can these paradoxa be resolved?

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<sup>5</sup> I. Kaul and D. Blondin, “Global Public Goods and the United Nations”, in J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, Oxford University Press, 2016, p.64

<sup>6</sup> D. Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy*, New York, W. Norton 2011, p.19

In the first paradox the assumption prevails that sovereignty can be best preserved by acting alone. If we look into another sphere connected to sovereignty, namely territorial integrity, we see that in order to protect themselves states voluntarily accept to be part of international alliances, like NATO. It is understood, that the protection of sovereignty can only be achieved through a certain degree of (inter-)dependency. And as long as all members of such an alliance commit themselves to the same goals the concept seems to work.

When we look at a different kind of global challenge, like climate change, the underlying problem for international cooperation is not a potential loss of sovereignty, but a potential loss of competitive advantage in the global trading system that leads some countries to shy away from entering into international obligations. The sovereignty argument here is clearly used as an excuse, as the factual reality is and will be, that the effects of global warming will not respect any territorial boundaries.

The “globalization paradox” is a harder nut to crack as in that case the notion “national determination” is not as clearly defined, as in the case of territorial integrity, or competitive economic advantage. If we take the example of a WTO negotiation, that would qualify as a typical act of economic globalization, the first question would be what the national interest in participating in the organisation in general and in a specific negotiation would be. The national decision making and coordination procedures to answer these questions are usually lengthy and comprehensive, yet in the end they are a product of often opposing interests on the national level and the real power of a state on the international level.

In the ideal scenario all aspects and interests are taken into account and the best and unbiased solution for the sovereign is chosen, but even in that ideal case that produces the best overall result for a country, the result might not benefit every interest group and might produce “looser” of the decision as a consequence. A problem we will come across several times in the following chapters.

Consequently, the central question here is how to define the national interest by taking into account all stakeholder positions and how to take the appropriate adjustment measures for disadvantaged countries or groups, if negative effects are inevitable.

Whenever a state enters into a legally binding international agreement another question arises. Is there an opportunity to exit from that agreement, or opt out from parts of it? Does the agreement include any kind of review clause, or built-in flexibility to allow for adjustments over time, or do changes require all the states parties consent? In many cases one would argue that it is more favourable not to have any flexibility or temporary limitations, for example

concerning a human rights convention. The risk would be high that states opt out of important clauses or would water down results if an agreement would have to be renegotiated after a certain period of time. However, there are subjects that underlie change by definition, for example in the economic sphere and here flexibility could be an advantage. One of the main concerns and criticisms, for example, of the big free trade agreements the EU was negotiating with the USA and Canada was that liberalization steps would be irreversible and limit future governments' policy space and future generations' democratic choices.

In fact, the way a country preserves its sovereignty in the international arena is not independent of the subject matter and it also depends on the state's ability to influence a collective decision in its favour, or bargaining power and the possibility or eventually reversing a decision.

What must be seen as a clear thread running through everything is the the question of dependency, or more precisely sovereignty versus dependency. As there is no complete independence neither in political, nor in economic terms, the next question is who or what a state is dependent on, who decides about increasing or decreasing this dependency and under which conditions you enter into this dependency and if it is a temporary phenomenon. A second variable to follow is the impact of government actions on equality.

## 1.2. The international framework and global governance

Before we start looking into the effects of debt or trade agreements and foreign aid on human rights, we have to take a step back and look into the structures, namely the current world order, that set the stage for the actors in question.

According to a recent publication by Ocampo three trends are clearly visible in global governance:

“First, governance has become vertically and horizontally de-concentrated, associated with the growing role of regional or national organizations and, particularly, of non-state actors. Second, these processes are still incomplete substitutes rather than complements to the central provision of GPGs. Lastly, governments can be counted among the more reluctant actors in international cooperation, particularly when they have to commit to global norms and standards, as they perceive that this may reduce the amount of resources they have to contribute to international

endeavour.”<sup>7</sup>

Ocampo<sup>8</sup> outlines a categorization of economic and social international cooperation differentiating three basic objectives:

- Managing interdependence among nations
- Promoting common social norms and standards, and a minimum level of social services for all world citizens
- Reducing international inequalities, in particular, different levels of economic development among countries

He argues that the three forms of cooperation are conceptually distinct in terms of their demands for international cooperation and the relations with national sovereignty. The first is the only one that responds to economists’ criteria of the need for collective action to avoid the under- or over-provision of public goods or services, or that generate strong externalities (positive and negative, respectively) through their consumption or production.

So, cooperation in this domain relates to issues of (economic) efficiency, whereas those that relate to the collective action to manage interdependence requires better, sharing national autonomy—“responsible sovereignty” in the terms of Kaul (2013).<sup>9</sup>

For this work also Ocampo’s third form of cooperation is of utmost relevance, not last because it is also related to the demand for equality, but in this case of equality among nations. It includes both the transfer of financial resources (at the national level essentially through the fiscal system) and also the definition of preferences in regulations for the benefit of disadvantaged regions. At the international level, it encompasses a transfer of resources, special credit channels for developing countries, or rules that create preferences for them. So the traditional concept of sovereignty prevails in this form of cooperation. He further argues that to the extent that lower levels of development and economic interdependence generated by globalization, reduce the space for the effective exercise of sovereignty, international cooperation should aim at enhancing such sovereignty. Thus this area of cooperation is related to mitigate the asymmetries of the international economic system.

He distinguished three asymmetries in this context:

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<sup>7</sup> J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, Oxford University Press, 2016, p.ix

<sup>8</sup> J. A. Ocampo, “Global Economic and Social Governance and the United Nations System”, in J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, Oxford University Press, 2016, p.4

<sup>9</sup> J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, Oxford University Press, 2016, p.vi

- technological progress is highly concentrated in a few developed countries and its diffusion is imperfect (and made costlier by intellectual property rights)
  - the global monetary system rests on currencies from developed countries and the significant degree of financial market segmentation limits the policy space of developing countries to adopt counter-cyclical macroeconomic policies
  - and the asymmetries in the mobility of factors of production, such as labour and capital.
- He argues that if these asymmetries are not taken into account they will tend to reproduce or deepen international inequalities.<sup>10</sup>

Especially in the third form of cooperation we see not only a strong need for international cooperation, but also a high degree of solidarity looking into the analogy Ocampo uses to explain the case of equality with the transfer of financial resources from the national level to poorer regions within a country. The EU could also serve as a good example in this context. What is however different between national and international cooperation in this case is not only the degree of solidarity, but also the degree of consensus on the objective of the measures and the degree of coherence of existing structures that exist within a state, but not necessarily between for example an industrialized and a developing country. Especially the view on, what kind of cooperation and to what end, can differ significantly depending on where you are coming from.

The transfer of funds alone does not automatically decrease inequality and raise growth - sometimes it might even lead to the contrary.

### 1.3. International human rights standards and obligations concerning Economic, Social and Cultural Rights relevant to debt, trade and international aid

There are a number of treaties, guidelines and General Comments of the Human Rights Committees that set out the frame for international cooperation on the basis of human rights. In the following we will see how the wording has evolved over the last decades from the ICESCR calling for international assistance and co-operation and Art. 28 of the UDHR envisaging social and international order that allows for everyone to realize their human rights, to a call for “transparency in the financial, monetary and trading systems” and “an open, equitable, rule-

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<sup>10</sup> J. A. Ocampo, “Global Economic and Social Governance and the United Nations System”, in J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, Oxford University Press, 2016, p.5-7

based, predictable and non-discriminatory multilateral trading and financial system” recognising the “adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries” in the Millennium Declaration.

The International **Covenant on Economic, Social and Cultural Rights** (ICESCR) itself that has been ratified by 164 states, (signed, but not ratified by the USA, Cuba, Myanmar and 3 island states) recognises the following rights:

The right to work (Article 6);

The right to just and favourable conditions of work (Article 7);

The right to form and join trade unions and the right to strike (Article 8);

The right to social security including social insurance (Article 9);

The right to protection and assistance for the family and the prohibition of child labour (Article 10);

The right to an adequate standard of living for oneself and one's family, including adequate food, clothing and housing and to the continuous improvement of living conditions (Article 11);

The right to the highest attainable standard of physical and mental health (Article 12);

The right to education, the freedom of parents to choose schools other than those established by public authorities (Articles 13 and 14); and

The right to take part in cultural life and to benefit from scientific progress (Article 15).

In Article 2(1) it sets out that:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

And further Articles 22 and 23 <sup>11</sup> speak about the possibility to seek technical assistance by the ECOSOC.

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<sup>11</sup> Article 22 “The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.”

While the Covenant sets out the goals to be reached, it is not specific on what for example an adequate standard of living would be in different countries, or what international assistance and cooperation should look like. The General Comments however try to remedy these shortcomings to some extent and in doing so recurrently refer to a big obstacle in the realization of ESC-rights especially in developing countries: debt.

**Relevant General Comments on the ICESCR** (in bold highlighted by the author):

In its General Comment 2 on Article 22 - International Technical Assistance Measures (1990)

the Committee on Economic, Social and Cultural Rights claims that:

“A matter which has been of particular concern to the Committee in the examination of the reports of States parties is the **adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights** in many countries. The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as “**adjustment with a human face**” or as promoting “the human dimension of development” requires that the goal of **protecting the rights of the poor and vulnerable should become a basic objective** of economic adjustment. Similarly, **international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights** through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives.”<sup>12</sup>

In its General Comment 3 on Art 2(1) - The nature of state parties’ obligation (1990) the committee notes

“that the phrase “to the maximum of its available resources” was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance.”

The Committee further

“wishes to emphasize that [...] international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. [...] It emphasizes that, **in the absence of an active programme of international assistance and cooperation** on the part of all those States that are in a position to undertake one, **the full realization of economic, social and cultural rights will remain an unfulfilled aspiration** in many countries.”<sup>13</sup>

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<sup>12</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 2: International technical assistance measures (Art. 22 of the Covenant)*, 2 February 1990, E/1990/23, available at: <http://www.refworld.org/docid/47a7079f0.html> (accessed 29 June 2017)

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.html> (accessed 29 June 2017)



In the General Comment 11 on Art. 14 – Plans of Action for Primary Education (1999)

“A State party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available. [...] **Where a State party is clearly lacking in the financial resources and/or expertise required to "work out and adopt" a detailed plan, the international community has a clear obligation to assist.**”<sup>14</sup>

In the General Comment 13 on Art. 13 – Right to Education (1999)

“In relation to the **negotiation and ratification of international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to education.** Similarly, States parties have an **obligation to ensure that their actions as members of international organisations, including international financial institutions, take due account of the right to education.**”<sup>15</sup>

General Comment 14, Right to the highest attainable standard of health (2000), para 45<sup>16</sup>; General Comment 15, Right to Water (2002), para 38<sup>17</sup>, General Comment 17, Right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (2005), have similar paragraphs which generally emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide “international assistance and cooperation, especially economic and technical”<sup>18</sup> which enable developing countries to fulfil their core and other obligations.

In General Comment 18 on Art. 6 – Right to Work (2005)

“**States parties that are members of international financial institutions, in particular the International Monetary Fund, the World Bank and regional development banks, should pay greater attention to the protection of the right to work** in influencing the lending policies, credit agreements, structural adjustment programmes and international measures of these institutions. The strategies, programmes and policies adopted by States parties under

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<sup>14</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, 10 May 1999, E/1992/23, available at: <http://www.refworld.org/docid/4538838c0.html> [accessed 29 June 2017]

<sup>15</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html> (accessed 29 June 2017)

<sup>16</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html> (accessed 29 June 2017)

<sup>17</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html> (accessed 29 June 2017)

<sup>18</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant)*, 12 January 2006, E/C.12/GC/17, available at: <http://www.refworld.org/docid/441543594.html> (accessed 29 June 2017)

structural adjustment programmes should not interfere with their core obligations in relation to the right to work [...]"<sup>19</sup>

From the elaborations of the Committee we can see that the problem of debt as of the 1990 is a recurrent topic, and that the member states are specifically called to be more cautious when it comes to lending policies of the international financial institutions. The Committee also points out the absence of an active programme of international assistance and cooperation, which of course makes policy coherence a bigger challenge and leaves the question of cooperation in the discretion of individual states.

The Convention on the Rights of the Child in Article 4 and the Convention on the Rights of Persons with Disabilities in Article 4(2) and Article 32 recognize the importance of international cooperation and its promotion, including international development programmes. And in its General Comment 1 on the Aims of education (2001) and General Comment 4 on adolescent health and development in the context of CRC (2003) the CCRC calls for states parties to seek international cooperation with the United Nations, international NGOs and bilateral aid agencies and other non-State actors.

#### **UN Charter 1945** (signed by 193 states)

Article 1(3) sets out "The purposes of the United Nations are: [...] To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights [...]" and Article 56 "All Members pledge themselves to take joint and separate action in co-operation with the Organization [...]".

#### **Universal Declaration of Human Rights** (UDHR, 1948)

Art. 25 „Everyone has the **right to a standard of living adequate** for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.“

Article 28 "Everyone is entitled to a **social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.**"

This provision of Art. 28 is as crucial as hard to grasp. International order includes trade, investment, taxes, finance, environment, and development cooperation. As the current UN

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<sup>19</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work* (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, available at: <http://www.refworld.org/docid/4415453b4.html> (accessed 29 June 2017)

*Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*, J.P. Bohoslavsky puts it, “human rights law requires a certain degree of redistribution of resources and support based on available capacities within and among nations.”<sup>20</sup>

So we do not only need cooperation and coherence, but also solidarity.

The **World Conference on Human Rights in Vienna 1993** reaffirmed in its declaration that „all human rights are universal, indivisible and interdependent and interrelated“, and reaffirmed further the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55:

“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:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation;

Article 55 establishes inter alia, a clear link between peace, international economic cooperation and human development. It also speaks about the creation of such conditions as a duty for the whole international community and it describes in the following article, that international cooperation has to be effective. While setting the goals, it however does not say what higher “standards of living” should look like, or what “economic and social progress” really means and it does not say what has to be done to reach these goals.

In 1993 the **Vienna Declaration and Programme of Action** <sup>21</sup>

called for “effective development policies at the national level, as well as **equitable economic relations and a favourable economic environment** at the international level.” And called “upon the international community to **make all efforts to help alleviate the external debt burden of developing countries**, and [...] to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights.”

**Millennium Declaration**<sup>22</sup>

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<sup>20</sup> J.P. Bohoslavsky, „Economic Inequality, Debt Crisis and Human Rights, *The Yale Journal of International Law Online*, Vol.41:2016, (pp.177-197), p.181

<sup>21</sup> adopted by consensus at the World Conference on Human Rights, 25 June 1993

<sup>22</sup> UN, Millennium Declaration, 2000

As mentioned before this declaration is particularly explicit on the responsibility to create “**an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system** in order to secure peace and development.

Under “Values and Principles, 6.” it says:

“We consider certain fundamental values to be essential to international relations in the twenty-first century. These include: [...] Shared responsibility. **Responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared** among the nations of the world and should be exercised multilaterally. As the most universal and most representative organization in the world, the United Nations must play the central role.”

In Section III concerning “Development and poverty eradication” it also calls for individual and international good governance and more transparency in the financial, monetary and trading systems summarizing where the challenges are and putting all the relevant elements together into one picture and gives precise recommendations:

“13. Success in meeting these objectives depends, inter alia, on good governance within each country. It also depends on **good governance at the international level** and on **transparency in the financial, monetary and trading systems. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system.**”

“15. [...] We call on the industrialized countries:

To adopt, preferably by the time of that Conference, a **policy of duty- and quota-free access for essentially all exports from the least developed countries;**

To implement the **enhanced programme of debt relief** for the heavily indebted poor countries without further delay and to agree to **cancel all official bilateral debts** of those countries in return for their making demonstrable commitments to poverty reduction; and

“16. We are also determined to **deal comprehensively and effectively with the debt problems** of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable **in the long term.**”

### 2030 Agenda for Sustainable Development<sup>23</sup>

The fact that the problem of debt and development is one that will also burden many future generations becomes very clear in the 2030 Agenda that calls states to

“17.4 Assist developing countries in attaining **long-term debt sustainability through coordinated policies aimed** at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress.

And the Agenda is very explicit on the importance of the multilateral trading system when it calls the states to:

“17.5 Adopt and **implement investment promotion regimes** for least developed countries and **concerning trade**

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<sup>23</sup> United Nations, 2030 Agenda for Sustainable Development, 2015

17.10 Promote a **universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization**, including through the conclusion of negotiations under its Doha Development Agenda

17.11 Significantly **increase the exports of developing countries**, in particular with a view to doubling the least developed countries' share of global exports by 2020

17.12 Realize timely **implementation of duty-free and quota-free market access** on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access".

### 1.3.1. Why do human rights matter so much in the context of debt and development and what is the importance of inequality in this context?

According to a current OXFAM study, the richest 1% of people in the world owned 48% of global wealth in 2014. The study goes on saying that if this trend continues, the richest top 1% will have more wealth than the remaining 99% of people in just two years, with the wealth share of the top 1% exceeding 50% by 2016. 80 individuals now have the same wealth as the bottom half of the world's population. Their wealth doubled in nominal terms, between 2009 and 2014, while the wealth of the bottom 50% is lower in 2014 than it was in 2009.<sup>24</sup>

The UN Conference on Trade and Development (UNCTAD) Secretary General's Report of 2016 on external debt sustainability and development sets out the evolution of core debt indicators of developing countries and economies in transition between 2000-2015, summarizing that the total external debt stocks reached around \$6.8 trillion in 2015, compared to \$2.1 trillion in 2000, while exports grew from \$1.5 trillion in 2000 to \$6.9 trillion in 2015. Export growth slowed down after the financial crisis and total debt to GDP went up to 25.5 per cent by 2015 and debt service to exports increased to 11.5 per cent. The report further points out that the "rapid integration into the global financial system has come at a cost. In addition to heightened exposure to market risks and a high systemic risk of contagion, it has also resulted in structural changes to the composition of developing country debt obligations."<sup>25</sup>

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<sup>24</sup> OXFAM, "Wealth: Having it all and wanting more", *OXFAM Briefing Issues*, Oxford, OXFAM international, 2015, p. 2-3, [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/ib-wealth-having-all-wanting-more-190115-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/ib-wealth-having-all-wanting-more-190115-en.pdf) (last accessed June 2017)

<sup>25</sup> UNCTAD, A/71/276, August 2016, pp.2-3

These figures illustrate in an impressive way how inequality among individuals and between states is growing and that this fact is connected to the question of debt and debt in turn has a direct effect on the realization of human rights.

In a current publication on economic inequality, debt crisis and human rights the UN “Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights” (IE), calls inequality “both a cause and a symptom of massive violations of economic social and cultural rights”<sup>26</sup>

As we have seen from all the human rights conventions and general comments in the beginning states have a duty to prevent inequality in so far as it amounts to an obstacle to the realization of human rights, in particular economic social and cultural rights. Violations can occur by failing to meet the minimum core obligations or failing to provide the resources for progressive realization. This can also lead to discrimination and foster inequality.

In his conclusions Bohoslavsky also notes that “inequality may substantially contribute to [...] the emergence and course of financial crises”<sup>27</sup>, with policy measures taken to fight the crisis “enhancing inequalities and having strong distributional consequences on the employment rate or cuts in social spending, according to most studies”.<sup>28</sup>

How pressing the problem of indebtedness in case of financial crisis is and where action need to be taken on the international level is also reflected in the results of international conferences held by the UN to address these issues.

### 1.3.2. International Conferences related to debt and human rights

The International Conference on Financing for Development concludes in the so called Doha Declaration of 2008, that follows up on a previous such conference culminating in the Monterrey Consensus<sup>29</sup>, in light of the global financial crisis that „international financial

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<sup>26</sup> J.P. Bohoslavsky, „Economic Inequality, Debt Crisis and Human Rights”, *The Yale Journal of International Law Online*, (Vol.41, Number 2), 2016, p.182

<sup>27</sup> Ibid., p.194

<sup>28</sup> Ibid., p.194

<sup>29</sup> The Monterrey Consensus 2002 is the result of the International Conference on Financing for Development. New development aid commitments from the US and the EU and others were made. Countries also reached agreements on other issues, including debt relief, fighting corruption, and policy coherence.

institutions, including the Bretton Woods institutions, need to be further reformed [...] in a manner that elicits and facilitates international cooperation and that is consistent with their respective mandates.”<sup>30</sup> and it calls for more transparency in the international financial architecture and more participation of developing countries and countries with economies in transition in international decision-making.<sup>31</sup>

In the chapter on external debt the report analyses in more detail why debt service (among other factors) is still unsustainable in a number of developing countries and identifies the following short-comings. The existing international debt resolution mechanisms are creditor-driven and suggests that international debt resolution mechanisms to guarantee equivalent treatment of all creditors to ensure legal predictability. Another deficiency of the system is identified in the increasing vulture fund litigation. It also highlights the importance of taking into account debtors’ national policies and strategies linked to attaining the internationally agreed development goals, like the Millennium Development Goals. Again, one of the remedies proposed to enhance debt sustainability is enhanced market access to goods and services of export interest to debtor countries.<sup>32</sup>

#### 1.4. The work of the independent of the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and the link to trade policy

The clear recognition of the connection and importance of human rights and foreign debt and other financial obligations is best represented through the creation of the function of an independent UN independent expert (IE) under the auspices of the UN High Commissioner of Human rights since 1997. The Independent Expert is part of the system of special procedures of the UN Human Rights Council and is able to undertake country visits.

The mandate of the IE underwent several changes and now includes, among other tasks, the following fields of operation:

„The effects of foreign debt and the policies adopted” affecting “the full enjoyment of all human

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<sup>30</sup> United Nations, “International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, Doha, Qatar, 29 November - 2 December 2008”, 2009, p. 27  
[http://www.un.org/esa/ffd/doha/documents/Doha\\_Declaration\\_FFD.pdf](http://www.un.org/esa/ffd/doha/documents/Doha_Declaration_FFD.pdf) (last accessed June 21017)

<sup>31</sup> Ibid., p.27

<sup>32</sup> Ibid., p.24

rights, in particular, economic, social and cultural rights in developing countries; The impact of foreign debt and other related international financial obligations on the capacity of States to design and implement policies and programmes, including national budgets that respond to vital requirements for the promotion of the realization of social rights; Measures taken by Governments, the private sector and international financial institutions to alleviate such effects in developing countries, especially the poorest and heavily indebted countries."<sup>33</sup>

In 2008, by resolution 7/4, the Human Rights Council redefined and renamed the IE in “Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights”.

The IE reports annually to the Human Rights Council and to the General Assembly, and so far developed guiding principles on foreign debt and human rights and a commentary to the guiding principles.

In a report the former IE Cephas Lumina submitted in 2010 to the General Assembly the IE clearly outlines not only the links between debt and human rights, but also between debt and trade as well as the impact of trade liberalization on human rights. Not only does an unsustainable debt burden lead to resources being used for debt service rather than public service expenditure and thus impeding the realization of especially ESC-rights; the fact that a country holds an unsustainable debt, also reduces its ability to attract foreign investment which weakens its chances of getting out of the debt.<sup>34</sup>

Concerning trade, the link is at least as relevant, as it is to a large extent the revenues from exports that allow a country to pay back its debt. Trade plays such a vital role because countries in a debt/financial crisis try to “export their way out of the crisis”, as an economist once put it. The report states that in many cases trade liberalization had adverse effects on the level of poverty and unemployment and has run counter to the goals of raising the standards of living

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<sup>33</sup> UN General Assembly, A/HRC/RES/25/16, “Mandate of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights”, April 2014, p.3

<sup>34</sup> UN General Assembly, A/65/260, „Effects of August 2010 foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights”, August 2010, p. 8



and promoting sustainable development as set out by the WTO itself and many human rights treaties, as we have seen in the beginning.<sup>35</sup>

The fact that exports play such an important role makes it necessary to look into the question how, on whose decision and under which conditions trade liberalizing measures, that are typically implemented in order to boost exports, are taken. As all the questions around finding the right policy-mix for a country in this context have far-reaching and long term effects on its development and on its realization of economic, social and cultural rights, they should be subjected to democratic control and taken in a transparent way.

What is generally referred to as neoliberal economic policy, is based on the assumption that the root cause of economic crisis is mismanagement by governments through too much intervention in the markets. Consequently, especially in the past, liberalization, deregulation and reduction of the role of the state in the economy were the prescribed recipes to remedy the situation. Good governance is certainly a crucial factor it is not the only one. Even assuming that the described chain of causality is accurate, the question remains if the same economic policies should be applicable to all countries despite their level of development and their level of integration into world trade, or if different development levels and different societies do not require a very individual approach.

Although there is a general consensus of adapt measures for developing countries according to the “special and differential treatment” principle, these aspects have not always been taken into account sufficiently. Commodity dependent countries, for example, are very vulnerable when it comes to debt burden, especially those who depend only on one or a few commodities. If the world market prices for those decline that can have destabilizing effects for their whole economy and it automatically leads to an increase of their real value of debt.

As we already saw in previously, there is a broad network of provisions increasingly explicit on the question of debt and their negative impact on developing countries and for that reason also other international initiatives have been taken. In this context the Monterrey Consensus of International Conference on Financing for Development in 2002 in para 56 recognized the primary responsibility of every state “for its own economic and social development and stresses the role of “national policies and development strategies” and calls on multilateral financial

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<sup>35</sup> Ibid., p.11

institutions to take into account the special needs of developing countries including the “social costs of adjustment programmes, which should be redesigned to minimize the negative impact on the vulnerable segments of society” and it states that the practice of “taking policy decisions away from sovereign governments and placing them in the hands of unelected donor officials”<sup>36</sup> is highly problematic.

These conclusions are a telling illustration of the democracy deficit that could be observed in the past in the decision making processes, by having “unelected donors” taking over government functions which in turn lead to a human rights deficit by not adequately fulfilling the duty to protect and prevent discrimination.

How far reaching the conditionality of policy measures in return for money can be is again stated by the independent expert. According to the IE’s report, common conditions of the IMF and World bank have in the past included privatization of utilities (such as water and electricity), introduction of fees for basic social services (such as primary education and primary health care), cuts in public expenditure, redundancies in civil service and trade liberalization through the removal of subsidies and import tariffs.<sup>37</sup> The question that arises given these facts, is how governments and IMF are coming to an agreement on such policies, which we will see later.

In general, the IMF distinguishes two different types of policy conditions to its loans according to Molina and Pereira: quantitative conditions and structural conditions. Quantitative conditions impose a set of macroeconomic targets on governments, determining matters such as the level of fiscal deficit a government is allowed to enter into, or the level of domestic credit permitted. Structural conditions require the implementation of institutional and legislative policy reforms. They can include elements such as trade reform, price liberalization and privatization.<sup>38</sup>

Structural conditions thus can have far-reaching and long lasting consequences for a country and should be subjected to transparent processes and democratic scrutiny and take into account the specificities of a particular country and its vulnerable groups. Again the Monterrey

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<sup>36</sup> United Nations, “Monterrey Consensus of International Conference on Financing for Development”, 2003, pp.5-6, <http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf> (last accessed June 21017)

<sup>37</sup> UN General Assembly, A/65/260, „Effects of foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, August 2010, p. 5

<sup>38</sup> N. Molina and J. Pereira, “Critical Conditions- The IMF maintains its grip on low-income governments”, EURODAD April 2008, pp. 4 and 5, available at: [http://www.slettgjelda.no/assets/docs/Rapporter/Critical\\_conditions.pdf](http://www.slettgjelda.no/assets/docs/Rapporter/Critical_conditions.pdf)

Consensus in its chapter on foreign debt stresses the “need for multilateral financial institutions, [...], to work on the basis of sound, nationally owned paths of reform that take into account the needs of the poor and efforts to reduce poverty [...] aiming at economic growth and sustainable development. The advice should take into account social costs of adjustment programmes, which should be designed to minimize negative impact on the vulnerable segments of society.”<sup>39</sup>

Although the IMF and World Bank have claimed to having revised their approach in the past years the IMF Independent Evaluation Office in 2007 found that the Fund had increased the number of structural conditions, as well as their “intrusiveness in the policymaking process of recipient countries”<sup>40</sup>.

The IE’s report of 2010 also refers to a EURODAD study concluding that the “vast majority” of Poverty Reduction and Growth Facilities approved between 2005 and 2008, had liberalization of privatization conditions.<sup>41</sup>

Trade liberalization in certain circumstances is further heavily criticised in the IE’s report especially in low-income countries for not producing the expected positive results in increased growth rates and restricting the policy space available to use trade policies to foster economic development.<sup>42</sup>

According to UNCTAD “rapid and extensive trade liberalization undertaken by least developed countries during the 1990s failed to benefit the poor and, in fact led to increased unemployment, increased wages inequality and poverty”.<sup>43</sup>

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<sup>39</sup> United Nations, “International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, Doha, Qatar, 29 November - 2 December 2008”, 2009, p.19  
[http://www.un.org/esa/ffd/doha/documents/Doha\\_Declaration\\_FFD.pdf](http://www.un.org/esa/ffd/doha/documents/Doha_Declaration_FFD.pdf) (last accessed June 21017)

<sup>40</sup> IMF Independent Evaluation Office, “An IEO evaluation of structural conditionality in IMF-supported programmes”, 27 November 2007, available at <http://www.imo-imf.org/eval>

<sup>41</sup> N. Molina and J. Pereira, “Critical Conditions- The IMF maintains its grip on low-income governments”, EURODAD April 2008, pp. 4 and 5, available at [http://www.slettgjelda.no/assets/docs/Rapporter/Critical\\_conditions.pdf](http://www.slettgjelda.no/assets/docs/Rapporter/Critical_conditions.pdf)

<sup>42</sup> United Nations, A/65/260, „Effects of foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, August 2010, pp. 13-14.

<sup>43</sup> United Nations Conference on Trade and Development (UNCTAD), *Least Developed Countries Report 2002: Escaping the Poverty Trap* (Geneva, UNCTAD, 2002); UNCTAD, *Economic Development in Africa — From Adjustment to Poverty Reduction: What’s New?* (Geneva, UNCTAD, 2002) cited in UN General Assembly, A/65/260, *Effects of foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*, August 2010, p. 10

A major reason for not delivering the projected promises seems to lie in states' incapability to compensate vulnerable groups for the negative impacts of liberalization and redistribute gains in a human rights compatible way.

It is obvious that poorer and highly indebted countries face bigger challenges in integrating into world trade, especially when their export capacity depends on one or two commodities. This is due to their limited access to private capital markets, their vulnerability to external shocks/deterioration of terms of trade and debt overhang<sup>44</sup>.

As Kampel explains the access of highly indebted countries to international capital markets is very limited, as their ability to repay is put into question by potential lenders. So investments in the public or private sector are inhibited, with the effect that debt significantly affects growth and thus the countries development. In context of the Latin American debt crisis in the 80s, the UN Economic Commission for Latin America and the Caribbean even spoke about a "lost decade for development" because debt had such a strong negative impact on the countries' development. If governments in such a situation would turn to domestic markets for funds, the public sector would end up absorbing and crowding out private investment. If therefore a government tried to remedy its problems through higher taxes, another form of debt overhang arises. Investments are discouraged because of the fear of potential investors that their profits would be heavily taxed.<sup>45</sup>

### 1.5. The role of the IMF

As the IMF is a central pillar among the international institutions (IFIs) it is necessary to take a closer look at its functions and procedures. The IMF's core responsibility is to secure "the stability of the international monetary system—the system of exchange rates and international payments that enables countries to transact with each other". According to a statement on their own website, the IMF tasks are to "advise member countries on economic and financial policies that promote stability, reduce vulnerability to crises, and encourage sustained growth and high living standards." The fund also "monitors global economic trends and developments that affect

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<sup>44</sup> A debt overhang is defined as "the presence of an existing inherited debt sufficiently large that creditors do not expect with confidence to be fully repaid" (Krugman, 1988, pp. 1-2). To solve the debt crisis it requires the elimination of the debt overhang and this is achieved by the application of structural adjustment policies (Diwan & Rodrik, 1992, pp. 6-16). They are intended to apply a sequence of economic policies to "export their way out of the crisis" through liberalization, deregulation and reduction of the role of the state in the economy.

<sup>45</sup> D. Kampel, „Sovereign debt restructuring and the right to development: challenges from an incomplete framework, *Global Campus open knowledge repository*, Vol.1, Issue 1, 2017, p.9

the health of the international monetary and financial system. In addition it provides technical assistance to help strengthen members' institutional capacity and makes resources available to them to facilitate adjustment in the event of a balance of payments crisis.”<sup>46</sup>

Despite the vague reference to living standards and capacity building the mandate does not include any human rights considerations, nor provisions. However, all 189 IMF member countries are also UN members and most (164) of them have ratified at least the core conventions on human rights and particularly on ESC-rights, as shown above. The same is true for the other Bretton Woods institutions<sup>47</sup> and the WTO (164 members).

In terms of decision making the bank's highest body is the Board of Governors where Countries are represented by their national governors, acting on behalf of their states and also taking advice from G-7, G-20 and G-24 according to their own description. According to Kampel critically observes that “sovereign debt appears to have little influence on the political agendas of high international bodies, such as the G-20”.<sup>48</sup>

Responsible for decisions of loans for countries in need however is the Executive Board, that since last year is constituted by all elected members and usually operating by consensus. The US, having by far the biggest share of votes, has a de facto veto right.

If a country in trouble asks for money, the IMF and the government subsequently enter into negotiations over the terms which are later codified in a memorandum of economic and financial policies. These negotiations however take place behind closed doors. Once an understanding is reached, money is paid in typically three- to six- month tranches and there is a possibility to adjust the targets in the following to some extent, if approved by the Executive Board.

The fact that human rights have been neglected in the whole process had been criticised for a long time by developing countries, as well as NGOs, human rights experts and also the IE.

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<sup>46</sup> IMF, Statement of May 15 2017, <http://www.imf.org/en/About/Factsheets/Sheets/2016/07/27/15/22/How-the-IMF-Promotes-Global-Economic-Stability> , (last accessed June 2017)

<sup>47</sup> Bretton Woods Institutions are the World Bank and the International Monetary Fund (IMF). They were set up at a meeting of 43 countries in Bretton Woods, in July 1944. The original agreement also included plans for an International Trade Organisation (ITO) but these lay dormant until the World Trade Organisation (WTO) was created. The creation of the World Bank and the IMF were based on the ideas of US Treasury Secretary Henry Morgenthau, his chief economic advisor Harry Dexter White, and British economist John Maynard Keynes. They wanted to establish a post-war economic order based on notions of consensual decision-making and cooperation in the realm of trade and economic relations. <http://www.brettonwoodsproject.org/2005/08/art-320747/>

<sup>48</sup> D. Kampel, „Sovereign debt restructuring and the right to development: challenges from an incomplete framework, *Global Campus open knowledge repository*, Vol.1, Issue 1, 2017, p.11

In 2005 the IMF and the World Bank thus introduced a so called Debt Sustainability Framework (DSF) for low-income countries that requires the IMF to conduct sustainability assessments. Sustainability however is a broad term and the IE takes a critical stance on the initiative in its report, arguing that it is too focused on a country's capacity to „service its debts in terms of export earnings“, „fails to take into consideration the political and institutional characteristics that affect debt repayment capacity“ and is directed almost „exclusively on the ability of the debtor countries to repay their debts“ without taking into account“ the countries need to „provide basic services, such as food, safe water, shelter, education and health“. Another criticism is that sustainability assessments have been found to be too optimistic and lead to unrealistic assumptions about investment and exports and the DSF is “creditor-managed and therefore arguably lacks objectivity”<sup>49</sup>.

The IMF's own Independent Evaluation Office says that “investment is consistently overestimated in IMF-supported programs”<sup>50</sup> and the IE thus suggested a redefinition of the concept of debt sustainability in a way that the level of debt should be limited by the governments ability to fulfil its human rights obligations.

In an interview with an IMF director<sup>51</sup> he explained the rational of the IMF and procedures of lending money as follows.

Typically, a country that borrows from the IMF is already in a high risk financial situation and too risky to be financed in the private market and often private lenders and even the World Bank make require a country to have an IMF program in place before they are willing to lend money again. Therefore, the country turns to the IMF. When a country wants to borrow, conditionalities apply focussing on macro-economic indicators, not human rights concerns, as he confirmed, as they are not part of the IMF mandate. Macro-economic stability is the primary goal.

Although there is a certain differentiation concerning the “clients” in terms of different levels of interest rates (three levels of interest rates, with the one for the poorest countries being essentially paid by developed countries), the same macro-economic principles are applied for all, in form of setting goals like budget deficit cuts by x percent. The potential debtor then has to make proposals with which measures it is planning to achieve those goals.

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<sup>49</sup> UN General Assembly, A/65/260, „Effects of August 2010 foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, August 2010”, p.19

<sup>50</sup> IMF Independent Evaluation Office, “Fiscal Adjustment in IMF-Supported Programmes”, Washington, D.C., IMF, 2003, p. 4.

<sup>51</sup> J. Franks IMF director, interviewed by Sylvia Knittel, May 23<sup>rd</sup> 2017, Brussels

IMF loans are usually short term for 1-3 years, focussing on macro-economic stability. World Bank on the other hand is generally following a longer term concept, and is working also in areas such as education, energy, transport, social, health care policies.

In response to those criticisms the IMF representative pointed out some important aspects: First, countries get into trouble, because their policies were not sustainable in the first place. Only as a consequence they have to do cuts in their budgets, or take other unpleasant measures in order to avoid a crisis.

The question of this causality could certainly be challenged, as the causes for underdevelopment can not uniquely be attributed to present governments, but depend on the whole history of a country and in many cases that involves a colonial past. Or, in the case of the recent financial crisis, on the globalized financial system that has certainly not been coined by poor developing countries.

Second, the decision where to make spending cuts is within a country's discretion. The fact that decision makers in a country, are often part of some elite might make them more sensitive towards their interests over those of vulnerable groups.

Another reason for the poor outcome of IMF structural adjustment plans is that many countries do not complete the programs, i.e. because the politicians having to implement harsh reforms fear for their re-election, or simply because some measure cannot be pushed through politically.

In some cases, the conditions of a state also turn out to be worse than expected, i.e. the Greek budget deficit turned out to be twice as high as the government had thought themselves.

The IMF representative conceded that the fund is targeting only macro-economic stability problems, which is not a sufficient solution for all other problems like growth (investment, education, income equality) and the IMF is not infallible in the advice it gives.

Also banks in general sometimes do not adequately check the conditions before lending and often money lent is not well invested by countries.

As in the case of Argentina, that we will see later, banks/hedge funds, even when it was obvious that the country will not be able to repay its debt, were able to buy it with compensation for the elevated risk and in the case of default were able to be treated on equal terms with creditors that loaned during prosperous times.

One possible solution, suggested by the IMF (and others, as we will see) and was repeated in the interview, could be a sovereign bankruptcy mechanism, like it exists for a private person.

Despite legitimate criticism of governments failing on doing necessary reforms and not managing their countries in the most sustainable ways, it remains a fact that governments in a desperate financial situation have virtually no bargaining power, that there is a big transparency and democracy deficit in the negotiation process for the conditions with far reaching consequences for a country and a lack of structural coherence in the way the human rights obligations of countries, both lending and borrowing, are blinded out in the whole process.

Criticism is however persistent, especially when it comes to the IMF's programs' effects on equality. A 2010 economic study gives evidence that "IMF programs tend to harm countries in terms of poverty levels and income distribution. Rich people seem to profit from the participation in IMF programs, poor people seem to lose, falling even deeper into poverty. One of the arguments of the IMF is that, although there might be a negative impact on poverty levels in the short run, the situation tends to improve in the long run. It does not."<sup>52</sup> "Furthermore, it is not easy to tell if good results concerning poverty reduction in the long run are based on IMF programs, as there has been a large time horizon between the program implemented and the result achieved."<sup>53</sup>

How detrimental effects of ill-advised liberalization can turn out for some countries is stated in the report of the IE in a concrete example:

„In coffee-producing countries, [...] the World Bank and IMF have advised and/or required governments to liberalize the coffee Liberalization has included measures such as removing controls on supply and on prices, dismantling state-owned trading agencies and encouraging increased production and exports. In 1998, the eligibility of Côte d'Ivoire for HIPC<sup>54</sup> debt relief was made conditional on the full liberalization. A second national agricultural services support project funded by the World Bank emphasized the requirement to fully liberalize the coffee sector. That policy advice/conditionality did not seem to take into account the implications of

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<sup>52</sup> D. A. Oberdabernig "The Effects of Structural Adjustment Programs on Poverty and Income Distribution", Vienna Institute for International Economic Studies (WIIW) 2010, p. 15

<sup>53</sup> Ibid. p.21

<sup>54</sup> Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative: IMF and World Bank comprehensive approach to debt reduction, designed to ensure that no poor country faces a debt burden it cannot manage, <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative>



the IMF and the World Bank's encouraging increased production and exports in other parts of the world. Between 1998 and 2001, oversupply in the markets caused a price collapse and a crisis in coffee-producing countries.”<sup>55</sup>

In conclusion the IE proposes in para 44 to redefine the concept of debt sustainability in a way taking into account the level of debt a country can carry without undermining its capacity to fulfil human rights obligations. He further points out that “the market-oriented development strategies advocated by the Washington Consensus and being imposed on developing countries by the international financial institutions are not helping [...] achieve sustainable people-centred development and are contrary to the earlier policies that promoted modern development in Western Europe and Japan.”<sup>56</sup> And further the IE analyses that in order to reduce poverty, not only debt relief and development aid are required, but a change in the global trade rules that allow for developing countries to participate and fuel growth and development.

These examples again, shows the close link between debt and trade, i.e. exports and also global trade rules and development and they show how many actors are involved in the game, while a coherent strategy or international agency who could address these issues, is missing.

### 1.6. Lessons from Latin America

According to UNCTAD in Latin American and the Caribbean, GDP growth has slowed since the global financial crisis. In 2015, the region experienced its worst contraction in recent memory as nominal GDP shrunk by 13 per cent, with a corresponding drop in exports. Total debt reached \$1.77 trillion in 2015, up from \$760 billion in 2000. The debt service to exports ratio reached a low of 16 per cent in 2014, from 39 per cent in 2000. Total debt to GDP has been increasing since 2010 to reach 34 per cent in 2015. This clearly shows how immediate and strong especially vulnerable economies were hit by the global financial crisis, that spread from a developed country, the USA.<sup>57</sup>

Another remarkable fact, which has a profound impact on debt sustainability, is the change in external debt composition over the past 15 years (2000-2015), namely the share of external public and publicly guaranteed debt, owed to private creditors. Latin America now has the

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<sup>55</sup>UN General Assembly, A/65/260, „Effects of August 2010 foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, August 2010, p.10

<sup>56</sup> Ibid., pp.18-19

<sup>57</sup> UNCTAD, A/71/276, August 2016, p. 3

second largest share of public and publicly guaranteed debt owed to private creditors of any regional group.

Why is this important and what other implications does debt have for a country's development?

Kampel describes the background of the Latin American debt crisis in the late 70s and 80s with the aggressive lending policies of international banks, that forced many countries into a position of high indebtedness, while the region was ruled in many cases by military rulers and not democratically elected governments. This fact however did not prevent lenders from giving money, as human rights concerns were not part of the picture at the time. When the countries regained democracy in the course of the 80s the effects of these debts delayed their development process enormously and led to the earlier mentioned "lost decade" of development. The effects of over-indebtedness "conditioned and determined the prevailing policies" and "severely restrained policy space"<sup>58</sup> of the new democratic governments.

In this context the current IE even speaks about "financial complicity" arguing that financial aid can prolong regimes engaged in large-scale human rights violations, as Kampel points out. As he further notes the experience from the Latin American debt crisis is repeated today in the case of Greece. He argues that debt must be dealt with in a "definite and timely" way and the financial obligations must be in line with the debtor's ability to service the debt. In absence of an international legal framework to resolve the problem a country like Argentina, is still involved in litigation before US courts with hedge funds and other creditors who have refused to accept Argentina's restructuring offers.<sup>59</sup>

Ellmers argues that this hedge/vulture funds play an increasing whole in the debt crisis resolution mechanisms and make them time consuming and costly as the example of Argentina shows, that already had to pay US\$10 billion to vulture funds following the ruling of a New York court. This vulture fund is so lucrative because no mechanism allowing for bankruptcy for sovereign debtors exists and it leads to unfair outcomes, as responsible investors acknowledging that they have to write off some debt, when a country is not able to pay, loose over-proportionally, while deliberately irresponsible investors "that litigate –and invest

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<sup>58</sup> D. Kampel, „Sovereign debt restructuring and the right to development: challenges from an incomplete framework”, *Global Campus open knowledge repository*, Vol.1, Issue 1, 2017, p.2

<sup>59</sup> Ibid., pp.9-11

additional money to corrupt legal and political systems near strategic financial centres- make profits that amount to more than 1000%”.<sup>60</sup>

For that reason, Argentina and Bolivia initiated a procedure in 2014 in the UN to establish an international debt restructuring mechanism, precisely because it could not prevent vulture funds from suing them in the US. This initiative, although supported by G-77, failed as it lacked the approval of the USA and the EU.

As an interim step however the General Assembly on 10 September 2015 adopted a resolution declaring that sovereign debt restructuring processes should be guided by nine principles, including the right to sovereign debt restructuring, good faith, transparency, equitable treatment, sovereign immunity, legitimacy, sustainability and the principle of majority restructuring.<sup>61</sup>

With a change in government in Argentina however, the driving force behind the original initiative was gone and there is currently no political champion for this idea.

### 1.7. Elements of possible solutions

As has been shown in this chapter there is a longstanding discussion on the impact of debt on human rights and its connection to inequality. It has been shown how this discussion intensified over the years and attempts for improvements have been reflected in the increasingly detailed calls by human rights provisions and international declarations and conferences, to remedy the short-comings of the multilateral trading and financial system and make them genuinely sustainable and non-discriminatory.

In reaction to those calls several ideas for solutions have been presented, some of which shall be mentioned in the following.

#### **The Limburg Principles on the implementation of the ICESCR<sup>62</sup>**

Were developed by experts in 1986 to clarify the nature and scope of states' obligations under the Covenant. They are underlining that “international co-operation and assistance must be

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<sup>60</sup> B. Ellmers, „The evolving nature of developing country debt and solutions for change“, *A Eurodad discussion paper*, Eurodad, July 2016, p.28

<sup>61</sup> United Nations, A/RES/69/319, Basic Principles on Sovereign Debt Restructuring Processes, 29 September 2015

<sup>62</sup> ESCR-net, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, <https://www.escr-net.org/resources/limburg-principles-implementation-international-covenant-economic-social-and-cultural> (last accessed June 2017)

directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized” (para 30) as called for in UDHR Art. 28 and calls for states to cooperate to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination (para 31).

### **The Tilburg Guiding Principles on World Bank, IMF and Human Rights<sup>63</sup>**

Are yet another set of principles developed by experts in 200 specifically focus on human rights obligations for international financial institutions linking legal obligations to the economic and political realities the organizations and discuss the possible redress of adverse human rights impacts of the activities of the financial institutions. They call for the World Bank and the IMF to integrate human rights considerations into all aspects of their operations, for human rights impact assessments and monitoring of impact of measures on human rights (para 38-40).

### **Guiding principles on the foreign debt and human rights by the IE**

As a consequence of the analyses of his 2010 report the IE submitted developed a set of principles that were endorsed by the Human Rights Council in June 2012 in A/HRC/20/23 designed to assist states and all relevant actors to conduct their activities. They include the request for the primacy of human rights including the “duty to refrain from formulating, adopting, funding, and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights”<sup>64</sup>.

The principles also include the proposal for lenders to conduct a Human Rights Impact Assessment as a prerequisite for providing a loan, that should be undertaken by an independent body and participation on affected communities and the proposition for an independent international debt workout mechanism in case of repayment problems.

Also governments of debtor states should make sure that funds are only used for the projects for which they were originally contracted and they should not accumulate excessive debt and their budgetary allocations should reflect the priority of human rights related expenditure.

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<sup>63</sup> W. van Genugten, “Tilburg Guiding Principles on World Bank, IMF and Human Rights”, in *World Bank, IMF and Human Rights*, Willem van Genugten, Paul Hunt and Susan Mathews (eds.), p. 247-255, Nijmegen: Wolf Legal Publishers, 2003

<sup>64</sup> UN General Assembly, A/HRC/20/23, „Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephass Lumina – Guiding principles on the foreign debt and human rights”, April 2011, p.12

Another important issue touched upon in the principles is the question of sale of debt on the secondary market, as mentioned before. The IE suggests that loans shall not be sold without the debtor's prior informed consent and in case debts are sold, all provisions concerning interest rates and change of circumstances should continue to apply as in the original loan agreement.<sup>65</sup>

These are very valid points in the discussion, however with some flaws as the research programme on that topic, done by the European Inter-University Centre for Human Rights and Democratisation (EIUC), summarized.

First the unbinding nature of the principles. This flaw is applicable for all the mentioned principles.

Secondly, the problem of competing international legal obligations that could cause conflicting obligations for governments, as "the international legal frameworks on trade, finance and taxation still largely serve to protect private interests as opposed to human rights"<sup>66</sup>. Last it is important to take note of the fact that the Principles were not endorsed by the Human Rights Council by consensus. The vote reflected that western member states are reluctant to examine foreign debt from a human rights perspective, while acknowledging that excessive debt burdens pose an obstacle to development. Non-western countries however, perceive the debt problem as a significant impediment to the realization of human rights and, therefore, a human rights problem.<sup>67</sup>

According to Kampel<sup>68</sup> in his 2017 publication, it is yet to soon to assess the impact of these principles on the international lending and debt restructuring processes medium and long term.

### **OECD Principles and Guidelines to Promote Sustainable Lending in the Provision of Official Export Credit to Low Income countries<sup>69</sup>**

This recent set of principles is recognising that the provisions of export credits to the public sector could play a role concerning unsustainable external debt by low-income countries, and that this risk should be taken into account before providing such support. Thus the principles

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<sup>65</sup> Ibid., pp.12-20

<sup>66</sup> Global Campus of Human Rights Research Programme 2014-2015, "The Impact of Economic Crisis and Foreign Debt on Human Rights", available at: [https://eiuc.org/tl\\_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2014-15/9.pdf](https://eiuc.org/tl_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2014-15/9.pdf) (last accessed June 2017)

<sup>67</sup> Ibid.

<sup>68</sup> D. Kampel, "Sovereign debt restructuring and the right to development: challenges from an incomplete framework", *Global Campus open knowledge repository*, Vol.1, Issue 1, 2017, p.6

<sup>69</sup> OECD, TAD/ECG(2016)14 "Principles and Guidelines to Promote Sustainable Lending in the Provision of Official Export Credit to Low Income countries, Revision", November 2016

require the donors to take into account the above mentioned results of the most recent IMF/World Bank country-specific debt sustainability analyses (DSAs) conducted within the joint Debt Sustainability Framework, further they call on the donors to take into account the prevailing limits on public sector non-concessional borrowing and they call for more transparency in the process.

### **A multilateral legal framework for debt restructuring processes:**

A recurring proposal on how to improve the situation of countries with repayment problems that has been made by the previous IE, the IMF, NGOs like EURODAD, some countries and many experts is the one of the creation of an international debt restructuring mechanism. In 2015, the IE made a respective submission for a process of intergovernmental negotiations, a multilateral legal framework for sovereign debt restructuring processes. Such a mechanism would allow for an orderly insolvency procedure on a state level as it exist already in many countries for individuals.

The proposal includes six human rights benchmarks that states should consider when discussing a multilateral legal framework for debt restructuring, taking into account the above discussed Guiding Principles on Foreign Debt and Human Rights, as well as the UNCTAD Principles on Responsible Sovereign Lending and Borrowing, and various other proposals.

The benchmarks are<sup>70</sup>:

- The legal framework should explicitly state that debt restructuring must be compatible with human rights obligations and standards.
- Risk assessments and debt sustainability analysis for debt restructuring need to include a human rights impact assessments.
- The multilateral framework should also address negative human rights impacts caused by hold outs.
- Debt restructuring policies should ensure that minimum essential levels of the enjoyment of economic, social and cultural rights can be implemented and retrogressive measures affecting the enjoyment of these rights are avoided.
- It should reflect human rights principles of impartiality, transparency, participation and accountability.
- International and regional human rights protection mechanisms, national human rights institutions and civil society organisations should be able to play a role in the decision

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<sup>70</sup> J.P., Bohoslavsky, “Towards a multilateral legal framework for debt restructuring: Six human rights benchmarks States should consider”, OHCHR, 26 January 2015, pp. 5-7

making process.

These principles point out some obvious flaws of the system: a lack of transparency and participation by countries in need and the lack of proper human rights impact assessments from the beginning, as it has been also claimed by NGOs like EURODAD. Another point is that there are many players in the game internationally and regionally and their integration into a coherent strategy is necessary to achieve sustainable results. The debt problem needs a global response and an international independent resolution mechanism. Concerning the the question of monitoring and impact assessment an ex-post evaluation of measures would be advisable.

Concerning the set of principles that have been developed over time we can see recurring calls for more transparency, human rights impact assessments, that debtor's situation and interests have to be taken into account and adverse effects of measures have to be counter-balanced. However, the effect of unbinding principles that try to remedy a systemic problem can only be of limited success.

An underlying problem about finding sustainable solutions for countries in distress is also that economic theories are based on certain assumptions and developed for prototypical situations, but there seems to be no open discussion between the concerned parties to the problem on what economic school to follow or what tailor-made approach would be appropriate for a specific country. As human rights impact assessments are not yet a standard, the focus of the proposed structural adjustments are focused on short-term results with the primary aim to get the loaned money back and there is also no ex-post evaluation on human rights performed.

Another problem pointed out by NGOs and experts is that in the case of private litigation, like it happened with Argentina and the vulture funds, human rights law is subdued to private loan agreements. To ensure the primacy of human rights law the previous IE suggested a redefinition of the concept of debt sustainability in a way that the level of debt should be limited by the governments ability to fulfil its human rights obligations.

Creditors should also be held responsible for high-risk decisions they take and it seems very questionable why it is legal that vulture funds can treat the debt of countries in the same way as that of private business. At least it should be questioned how morally sound it is to make business out of a financial crisis of a country that is not operating under the premise of maximizing profits as businesses and banks do.

There is also a huge asymmetry in bargaining power when a country turns to the IMF as a last resort as it is basically forced to accept all conditions and has virtually no bargaining power.

Another question that should be raised is the one of accountability. Who takes the responsibility, also financially, if programs do not produce the predicted effects? Especially if institutions with a quasi-monopoly position exert a an over proportional amount of power? In this context credit rating agencies also play a significant role in the provision of information, including on sovereign risks.

Thus the Monterrey Consensus called for the information provided to “be based on broadly accepted, clearly defined, objective and transparent parameters” as the weaknesses of the system became obvious during the financial crisis and the Conference “raised concerns about accounting standards and the way credit rating agencies currently operate “.<sup>71</sup>

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<sup>71</sup> United Nations, “International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, Doha, Qatar, 29 November - 2 December 2008”, 2009, p. 28  
[http://www.un.org/esa/ffd/doha/documents/Doha\\_Declaration\\_FFD.pdf](http://www.un.org/esa/ffd/doha/documents/Doha_Declaration_FFD.pdf) (last accessed June 21017)



## **2. EU-Trade Policy and the Central American Association Agreement**

The international framework for trade is set out by the 1995 established World Trade Organization that created the organisational roof for the three pillars of international trade rules it is based on- the General Agreement on Tariffs and Trade (GATT), the General Agreement on Services (GATS) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS). In addition, the organization has the power, under the Dispute Settlement Understanding to enforce its agreements and settle trade disputes between states.

Based on the idea of non-discrimination and reciprocity enshrined in the most favoured nation principle aims to set the global rules for trade and ensure its smooth and predictable flows. Free trade agreements or a customs union like the EU are however exempted from this provision (Art. XXIV GATT).

The organisation was initially supposed to form part of the Bretton Woods institutions and conceived to become the International Trade Organization under the umbrella of the United Nations. A project that failed due to the lack of support in the US Congress in 1950.

When looking at the provisions of Art. 28 UDHR calling for an open, rule-based and non-discriminatory multilateral trading system it still refers to the idea of an ITO that would have been connected to human rights commitments of the UN. In reality however the later founded WTO does not include any explicit human rights provisions in its mandate. A fact that has since been criticised by human rights defenders on the one side and on the other side has always been used as an argument for not promoting this topic in the negotiating rounds. Only the preamble of the founding charter, the Marrakesh Agreement, contains the reference to “raising standards of living, ensuring full employment and a large and steadily growing volume of real income [...] while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.”<sup>72</sup> In Art. 3 (5) cooperation of the WTO with IMF and International Bank for Reconstruction and Development is foreseen in order to seek greater coherence in global economic policy-making.

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<sup>72</sup> WTO, Marrakesh Agreement Establishing the World Trade Organization, 1994

While this reference shows already how important the cooperation of IFIs and WTO are to get closer to the goal of Art. 28 UDHR and the SDGs, the problem is that the institutions in question are not directly bound by these provisions. In the following it will be further demonstrated how close the links between trade policy, promotion of human rights and development cooperation really are. The recently adopted New European Consensus on Development that shall serve the EU and its member states to respond to the goals of the UN 2030 Agenda for sustainable development, sets out the approach of the EU on how to cooperate with developing countries over the next 15 years and does so by calling on its “trade policy to ensure that developing countries, reap the benefits of inclusive growth and sustainable development from enhanced participation in regional integration and in the multilateral trading system.”<sup>73</sup>

A request that has been made, both by the international community among others in the SDGs, but also by NGOs. At the same time WTO negotiations over the Doha Development Agenda have been widely criticized by NGOs for years as any kind of trade liberalization is seen as harmful to developing countries by some. Is trade liberalization really so detrimental?

In light of the controversy around the free trade agreements the EU, negotiated with the USA (TTIP) and Canada (CETA) the EU Commissioner for Trade, C. Malmström launched a revised version of one of the EU’s key strategy papers in the field. The new agenda "Trade for All" of October 2015 clearly highlights the interlink between trade and development and human rights. The new approach involves "using trade agreements and trade preference programs as levers to promote, values like sustainable development human rights, fair and ethical trade and the fight against corruption."<sup>74</sup> And the strategy also explains that trade is not seen as an end in itself, but as a means to contribute to the goals and values of the EU (and not only the EU). Of course trade is also the tool and the leverage the EU uses to promote its own vision of rules and standards in the world, based on the human rights treaties it has entered into. As the EU’s real power does not stem from military strength, but from its economic power, that is exactly the political capital it can use in its external policy. The EU being a customs union with the internal market being a free trade area, has benefited its members hugely over the last decades. So, what is the problem with free trade agreements? In the following the negotiating process of the EU will serve as an example on how comprehensive such a process is and how many stakeholders

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<sup>73</sup> Council of the European Union, (949/17) “The new European consensus on Development “our world, our dignity, our future”, 19 May 2017, p. 24

<sup>74</sup> Trade for all, European Commission, 14 October 2015, COM (2015) 497, p.5

it involves and also how different from the previously described system of taking out loans with the IMF it is.

### The negotiating process

The process of negotiation of free trade agreements in the EU is complex and lengthy. While negotiations did not show a lot of resonance with the public, this has changed significantly over the last years, starting with the debate around ACTA (Anti-Counterfeiting Trade Agreement) and culminated around TTIP and CETA. One of the biggest criticisms was a supposed lack of transparency and bias towards business interest over peoples' interest and democratic legitimacy. How does the process really work?

The EU typically distinguishes between three types of agreements of economic integration<sup>75</sup>: Customs Unions like the EU itself, Association Agreements, Stabilisation Agreements, (Deep and Comprehensive) Free Trade Agreements and Economic Partnership Agreements, that remove or reduce customs tariffs in bilateral trade and Partnership and Cooperation Agreements, that provide a general framework for bilateral economic relations leaving customs tariffs unchanged. Free trade agreements (FTAs) are usually embedded in a political framework.

This duality between political and economic agreements is also reflected in the EU-Central America Association Agreement that includes a separate section on political dialogue including human rights and a separate trade agreement under Title IV<sup>76</sup>. However, also the trade pillar includes sustainability provisions. Art. 293 stipulates the how the sustainability commitments are reviewed, monitored and assessed through a joint Board on Trade and Sustainable Development and a Civil Society Dialogue Forum. According to a study conducted for the European Parliament “the EU has included human rights clauses in its international trade and cooperation agreements since the early 1990s”<sup>77</sup>.

As FTAs can only include what both partners agree to and partners are treated as equals in the negotiations respecting each others sovereign rights, these mechanisms are based on consultations leading to joint agreements, not to sanctions. Enforcement thus has its limits.

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<sup>75</sup>European Commission, DG Trade, *Agreements*, 2017 <http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>, (accessed June 2017)

<sup>76</sup>European Commission, DG Trade, *EU-Central America association agreement*, 2012 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>, (accessed June 2017)

<sup>77</sup> L. Bartels, “The European Parliament’s Role in Relation to Human Rights in Trade and Investment”, European Parliament, Directorate B, 2014, p.1

While the political part of the agreements is negotiated by the European External Action Service (EEAS) and the Member States with the participation of the Commission, the trade part, the FTA, falls under the exclusive competence of the EU and is thus lead by, DG Trade, in close cooperation with the Trade Policy Committee (TPC) of the Council, and upon regular consultations with the European Parliament and taking into account the positions of other interested stakeholders.

What we can see from this, is a certain the fragmentation of competences, that makes policy coherence a lot more difficult. There are not only several DGs of the Commission involved, but also the EEAS, different member states' ministries and the European Parliament.

#### A sketch of the steps in the negotiations

Starting with a so called scoping exercise to map the economic potential of a future agreement, an impact assessment and a public consultation, the commission has to seek support for its projects from the other EU institutions. Formally, by the adoption of a negotiating mandate by the Council to the European Commission and de facto by gathering support from the European Parliament, who has to be informed regularly has a de facto veto right in the end of the process. After the mandate is adopted, and now also made public, the EU and its partner(s) start to negotiate in rounds until they can reach a preliminary agreement by way of a political conclusion. Throughout all this time the European Commission is reporting back to the EU member whose representatives in the Trade Policy Committee (TPC) of the Council are feeding in their national positions, which first have been coordinated within the member states, based on broad consultations with stakeholders (depending on the national requirements). Finally, after the conclusions, the agreement is initialled, the Council approves its signature and the EP has to give its consent. Depending on the nature of the provisions national parliaments have to ratify the treaty before it can enter into force entirely (member states ratification depending on the nature of the provisions), and not only be provisionally applied. In the case of so called mixed agreements, touching both, matters falling under EU competence as well as matters falling under member state competence, all national and the European parliament have to agree and before all member states as the council operates based on consensus. This complex process involving all European institutions and as well as broad coordination process on the national level, makes it in fact hard to call it an undemocratic process, as NGOs and critics have often put forward.

After each negotiation round the Commission also publishes reports about the results and engages in stakeholder dialogues with civil society, especially since the controversy over TTIP

and CETA. The recent years have actually shown an unprecedented degree of transparency up to a degree that, negotiators say, can have adverse effects on the negotiating position of the EU and decrease its bargaining power.

A crucial part of the preparation is the so called sustainability impact assessment (SIA). For the EU-Central America AA a comprehensive study has been conducted and published in 2009. It comprises the potential effects on economic, social and environmental sustainability on both parties to the agreement and is a public document. For the establishment of the report civil society inputs on both side of the Atlantic have been taken into account.

Another important element of international agreements is the so called human rights clauses, that shall give an incentive to trading partners to comply with human rights standards.

One of the big questions in this context consequently is enforcement. Using trade agreements to sanction human rights violations is however still problematic and not necessarily effective, because they target the wrong people. Tariff lines receiving preferential treatment either represent only a fraction of total trade with the third country, or do not cover the production processes, where the human violations are taking place.

### **Central American Association Agreement (AA)**

As explained by European Commission, the Association Agreement was concluded in June 2012 between the EU and the six Central American countries Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, based on the three pillars of political dialogue, cooperation and trade. While the trade pillar has been provisionally implemented since December 2013, introducing gradual free trade, the other pillars will be activated as soon as the ratification process by all parties is completed. Meanwhile, they are dealt with in the framework of the 1993 Political Dialogue and Cooperation agreement.<sup>78</sup>

As described before EU-FTAs typically include sustainability provisions, as well as a dedicated chapter addressing the interrelation between trade and social and environmental policies. The same is true in the case of Central America. This chapter reflects commitments regarding core labour standards and multilateral agreements addressing environmental issues. It recognises the right and the responsibility of the Parties to adopt social and environmental regulations in the

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<sup>78</sup> European Commission, *Regional cooperation with Central America*, 2017  
[http://ec.europa.eu/europeaid/regions/regional-cooperation-central-america\\_en](http://ec.europa.eu/europeaid/regions/regional-cooperation-central-america_en) , (accessed June 2017)

pursuit of legitimate policy objectives, and puts emphasis effective enforcement of domestic labour and environmental laws.

Concerning the role of civil society, a joint consultative committee is foreseen and consultation of civil society stakeholders at domestic level goes hand in hand with a “Bi-regional Civil Society Dialogue Forum” to facilitate exchanges regarding sustainable development aspects of the trade relations. In case of disagreement over the implementation of these provisions, recourse to an impartial panel of experts is possible under transparent conditions.

According to the 2009 Impact Assessment the AA was expected to produce positive economic results for both the EU and all Central American countries, with more beneficial effects to be expected in the long-run. In a very comprehensive FTA, per year Central America as a whole could gain €2.6 billion of which €920 million (3.5 percent of national income) would be attributed to Costa Rica. The EU was expected to gain €2.3 billion per year. The study predicts the trade part of the AA to have an overall poverty-reducing effect for all Central American countries except for Panama, the richest of the six countries. For the region as a whole, the aggregated estimated effect is 0.6 percent reduction in poverty levels. For a more developed country like Costa Rica the effect is much smaller in the short run, but the largest in the long run. The study however also points to adjustment costs in some regions or sectors in the short run, with a stronger effect on vulnerable social groups and on female employment. Due to the different wages levels and levels of economic growth and production, some migration towards Costa Rica (and Panama) from the other countries in search of better working conditions, is expected.<sup>79</sup>

According to the Ecorys study the AA can stimulate the improvement of labour standards as EU firms make higher demands on Central American exporters, if „firms in the Central American region do not lower wages and standards in a competition for scarce FDI and thereby start a ‘race to the bottom’ in labour regulations. Policy initiatives in this field have a large influence over which effect may come to dominate.“<sup>80</sup>

From this SIA it becomes already clear that despite the obvious positive effects trade liberalization can have, its effects are not equally distributed over all sectors and groups of

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<sup>79</sup> ECORYS, “Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America“, 2009, pp. 13-16

<sup>80</sup> Ibid. p. 14

people, thus it is very important to anticipate possible negative impacts and counter balance them adequately.

Concerning the the effects of structural adjustment programs on poverty and income distribution a study focussing on IMF programs concludes that trade liberalization is likely to have two contrary effects on poverty. Sectors which were protected before will contract and lead to lower incomes in these areas. However, trade liberalization might finally result in higher wages or lower unemployment.<sup>81</sup>

What is however critical is that according to Gunter, Cohen and Lofgren (2005) most of the studies show that trade liberalization has had a positive impact on poverty reduction, but led to a higher inequality. They also mention that the effects depend on the type of agreement if trade liberalization benefits developing countries or not.<sup>82</sup>

An IMF report referring to trade liberalization in general, not only to the AA and to all of Latin America summarizes the problems of dealing with possible adverse effects of trade liberalization as follows:

“[...] there is a role for social safety nets to smooth the adjustment process. Measures to directly support losers from trade liberalization through financial aid and retraining, such as the Trade Adjustment Assistance in the U.S. and the European Globalization Adjustment Fund in the EU have not been developed in LAC (Latin American Countries) yet. While it can be difficult to identify the winners and losers from trade liberalization ex-ante, there is a role for complementary policies to help smooth the adjustment process for adversely-affected industries or workers ex-post.”<sup>83</sup>

The challenge in the context of trade agreements is clear. Benefits will not automatically be distributed equally and governments have to prepare for and follow-up on possible adverse effects on certain sectors of the economy and vulnerable groups in the society. States have to anticipate the impact on human and especially ESC-rights in order to comply with their duties to respect, protect and fulfil their human rights obligations.

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<sup>81</sup> D. A. Oberdabernig, “The Effects of Structural Adjustment Programs on Poverty and Income Distribution”, Vienna Institute for International Economic Studies (WIIW) 2010, p. 5

<sup>82</sup> Gunter, Cohen and Lofgren (2005), cited in D. A. Oberdabernig, “*The Effects of Structural Adjustment Programs on Poverty and Income Distribution*”, Vienna Institute for International Economic Studies (WiiW) 2010, p. 5

<sup>83</sup> IMF Country Report No. 17/66, “Cluster Report- Trade Integration in Latin America and the Caribbean”, IMF, March 2017, p. 31

The requirement to “interpret and apply relevant international agreements and standards in a manner consistent with their human rights obligations”, including “those pertaining to international trade, investment, finance, taxation, environmental protection, development cooperation, and security”<sup>84</sup> is also stipulated in Principle 17 of the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. Another set of unbinding human rights principles trying to remedy the shortcomings and lack of specificity of international rules.

The commentary to these guidelines explains that The Committee on Economic, Social and Cultural Rights has urged for human rights principles to be fully integrated into trade negotiations. That means that any agreement reached by a state has to be consistent with the state’s pre- existing international human rights obligations, in order to ensure the primacy of human rights. The author also gives two examples of the “Inter-American Court of Human Rights that has noted that the enforcement of bilateral investment or commercial treaties should always be compatible with the American Convention on Human Rights” and the “European Court of Human Rights has affirmed the principle that states cannot contract out of their human rights obligations.”<sup>85</sup>

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<sup>84</sup> ETO Consortium, “Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights“, Heidelberg 2013, p. 8

<sup>85</sup> O. De Schutter et al., “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights“, Human Rights Quarterly (Vol. 34), The Johns Hopkins University Press, 2012, p. 1122-1123



### **3. EU - Development Cooperation**

According to the definition of the OECD which in representing the most developed countries in the world and keeping track of the official development assistance (ODA) needs to contain the following three elements. They have to be undertaken by the official sector, with promotion of economic development and welfare as the main objective and at concessional financial terms (if a loan, having a grant element of at least 25 per cent).<sup>86</sup>

Why is this relevant? Development aid transfers huge amounts of money from the developed world to lower income and poor countries, but is it sustainable in the way that it leads to more independence of the receiving countries, or the contrary?

According to UNCTAD in 2015, total ODA rose to \$131.6 billion, representing an increase of 6.9 per cent in real terms from 2014 with a significant proportion of the increase being attributed to aid for the 1.5 million refugees. When excluding aid to refugees, ODA still increased by 1.7 per cent in real terms from 2014 to 2015. In the least developed countries, ODA still accounted for over two thirds of total external finance provided by OECD countries in 2013. Implementing the 2030 Agenda is estimated to require financing of \$1.6 trillion to \$7 trillion per year. To meet only the first of the Sustainable Development Goals, “End poverty in all its forms everywhere”, by 2030. However, if ODA stay at current levels, GDP in Africa, for example would have to grow at double digit rates of over 15 per cent per year. According to OECD, the members giving the highest amounts (in absolute terms) in 2015 were the EU with \$87.64 billion, followed by the US with \$31.08 billion.<sup>87</sup>

In the following we will thus take a closer look into how the biggest donor is conceptualizing its development cooperation. In order to put the big numbers stated above into perspective another figure estimated by the current secretary general of the OECD, Angel Gurría, is that developing countries loose three times more money because of tax evasion than receiving in foreign aid. Which in the case of Africa amounts to a loss of 30-60\$ billion per year.<sup>88</sup>

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<sup>86</sup> OECD, Development Finance Data, 2017, <http://www.oecd.org/dac/financing-sustainable-development/development-finance-data/> , (accessed June 2017)

<sup>87</sup> UNCTAD, A/71/276 2, “External debt sustainability and development”, August 2016, p.8

<sup>88</sup> M. Bearak, “How global tax evasion keeps poor countries poor”, *The Washington Post*, 8 April 2016, available from [https://www.washingtonpost.com/news/worldviews/wp/2016/04/08/how-global-tax-evasion-keeps-poor-countries-poor/?utm\\_term=.6363ce419ef9](https://www.washingtonpost.com/news/worldviews/wp/2016/04/08/how-global-tax-evasion-keeps-poor-countries-poor/?utm_term=.6363ce419ef9) (accessed June 2017)

The EU development policy is based on the EU treaties setting out its objectives in Article 21 of the Treaty of the European Union (TEU) show a clear link of development cooperation and human rights as:

“The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.”

2d (TEU) specifically relates to “fostering the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty”.

### 3.1. European Consensus on Development

In June 2016 the High Representative of the EU put forward a framework for action for development cooperation for the European Union (EU) and its Member States, aiming to contribute to the goals of the 2030 Agenda. It states that the EU and its member states “will implement a rights-based approach to development cooperation, encompassing all human rights. They will promote inclusion and participation, non-discrimination, equality and equity, transparency and accountability. This approach includes addressing the multiple discriminations based on ethnicity, gender, age, disability, religion or beliefs, sexual orientation and gender identity, migration status or other factors”.<sup>89</sup> Concerning trade the new consensus further reiterates the EU’s commitment to allocate at least 20% of its official development assistance to social inclusion and human development. Concerning its working method, the document explains that the EU will work with the private sector, including employers’ and workers’ organisations, to promote responsible, sustainable and effective approaches, including through social dialogue. It also sets out the EU’s determination to promoting fair, transparent and ethical trade. This includes ensuring the sustainable management and use of natural resources and supporting responsible business practices and management of supply chains, respecting tenure rights, integrating human and labour rights, environmental standards. There is even a reference to human rights abuses that shall be prevented and to the UN Guiding Principles on Business and Human Rights promoted by specifically respecting labour standards

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<sup>89</sup> Council of the European Union, (949/17) “The new European consensus on Development “our world, our dignity, our future”, 19 May 2017, p.5

that ensure decent employment conditions and decent wages for workers, in particular those defined by the International Labour Organisation, both in the formal and informal sector.<sup>90</sup>

In a staff working document produced by the DG in charge of development cooperation, the commission developed a sort of guideline for EU staff and donor countries on how to implement development cooperation policies using a rights based approach by developing “a toolbox for working towards a rights-based approach to development cooperation, with the aim of integrating human rights principles into EU operational activities for development, covering arrangements both at Headquarter and in the field for the synchronisation of human rights and development cooperation activities”<sup>91</sup>. This paper however does not refer to free trade agreements, but exclusively to development policy.

### 3.2. The Process

Different from EU Trade Policy the field of development cooperation is not an exclusive competence by the EU and has to be handled by the European Commission and the member states and the European External Action Service. Based on the EU’s budgets that has to be agreed upon between all the institutions, amounts for development cooperation are fixed and allocated to the different regions in the world. According to a senior official of the European Commission<sup>92</sup> the typical procedure to go forward with the aid programs is to first set goals that are laid down in 5-year strategy papers, together with the local governments. These include indicative national programs with key priorities. Representatives of the EU delegations abroad as well as commission representatives follow up on the progress of the implementation. Funds flow according to the timetable and sub-goals set in the programs in tranches step by step and can be suspended and even be reclaimed. Activities funded by the EU have to meet human rights standards. By providing these funds in exchange for complying with human rights/EU values development aid has quite a leverage to influence national policies. As national budget support can be of significant importance to a country the EU has the possibility to directly promote goals like education or gender questions. In case that local governments are less open to complying with certain standards the EU has the possibility to directly sponsor human rights activities it deems important which than are usually implemented by local NGOs.

In some cases, especially in poorer countries the support can even reach paying experts to help

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<sup>90</sup> Ibid., p.26

<sup>91</sup> EU Strategic Framework and Action Plan on Human Rights and Democracy (11855/12), June 2012, Annex p.5, [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

<sup>92</sup> Interview with a senior official of the European Commission conducted by Sylvia Knittel, 30<sup>th</sup> May 2017, Brussels

governments build capacity to prepare better for WTO negotiations.

According to the European Commission the EU's regional cooperation with the six Central American countries we looked into in the previous chapter, was shaped by the San Jose Dialogue that started in 1984. Its original purpose was to support the peace processes and efforts of democratisation in the region. Over time the dialogue expanded to economic and social development, migration and human security and 2003 a Political Dialogue and Cooperation Agreement was signed. The next major step in the relations was the conclusion of the Association Agreement in 2012.<sup>93</sup>

To illustrate what that meant for the six countries of the region in terms of funds for the period 2014-2020 the official data of the EU states the following amounts and thematic priorities: an indicative amount of €775 million has been allocated for bilateral cooperation to Guatemala, El Salvador, Honduras and Nicaragua. In addition, €120 million have been earmarked for sub-regional programmes in Central America in three key areas, namely regional economic integration, security and the rule of law, climate change and disaster management.

This represents an increase by over 30% compared to the period of 2007-2013. Also the areas of cooperation have evolved: whereas the focus of cooperation in the past was mainly on social cohesion and economic growth, the current program responds to emerging human security needs of the population, with trade facilitation, judicial cooperation and management of disasters and their effects.<sup>94</sup>

### Investment and Trade

Concerning its policies on investment the EU is also very clear. The new consensus seeks to promote sustainable public and private investment by boosting investment “by combining funding for sustainable development, technical assistance to develop sustainable projects and attract investors, fight corruption and engage with the private sector.”<sup>95</sup>

One area of increased investment should be the low-emission, climate-resilient green economy. As we have seen in the previous chapters investments, especially foreign direct investments are very important for countries in debt, like trade they can generate growth and boost the economy.

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<sup>93</sup> European Commission, Regional cooperation with Central America, available at [https://ec.europa.eu/europeaid/regions/regional-cooperation-central-america\\_en](https://ec.europa.eu/europeaid/regions/regional-cooperation-central-america_en) (last accessed June 2017)

<sup>94</sup> *ibid.*

<sup>95</sup> Council of the European Union, (949/17) “The new European consensus on Development “our world, our dignity, our future”, 19 May 2017, p.24

As investments in financially unstable countries can be risky the EU developed the so called European External Investment Plan which will include “guarantees to lower the risk profile in developing countries and thus leverage additional finance, particularly from the private sector”<sup>96</sup>.

In this context the document interestingly not only mentions the higher goal of contributing to the attainment of the Sustainable Development Goals but also the goal of tackling “the root causes of irregular migration”.<sup>97</sup>

There are however justified worries of NGOs, that this system might lead to higher debts for developing countries as guarantees are used to support loans as a leverage to increase the means of finance for developing countries. According to a EUODAD study, 80 percent of debt on average, owed by developing countries to northern countries is a result of export credits.<sup>98</sup>

Again, we have seen the importance of EU Trade Policy for the promotion of EU values and human rights also when it comes to development aid. In terms of process the difference to the loaning as described in chapter one and to concluding a free trade agreement diverts significantly from each other. Compared to a trade agreement, which is negotiated among equal partners (not necessarily equal in political capital or level of development, but in their freedom to choose whether and under what conditions they want to enter into a negotiation at all) here the bargaining power is clearly on the side of the donor country. It is them who provide the funds and set the rules and standards. Also, as we have seen the EU can suspend programs and even ask money back, if not used in the agreed way. While being in the driving seat when it comes to asking for implementation of labour standards and human rights is an advantage, it still means that the recipient country is under great influence of the donor, of his values, concepts, economic system and ways of handling issues, leaving little space for the recipient to lead the process in their own way.

Compared to the process of loaning, the starting point is usually different. Countries are not in the same desperate situation of having to avoid an immediate crisis, when deciding to accept development aid projects which are usually designed for longer term implementation.

How effective programs are, is usually only measured by the donor country according to their goals set out in advance and the whole process is a donor driven one. Depending on how aid is provided it can also lead to a situation, where only specific companies, consultants, or NGOs,

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<sup>96</sup> Ibid. p.24

<sup>97</sup> Ibid., p.24

<sup>98</sup> O. S. Brynildsen, “Exporting goods or exporting debts?”, EUODAD 2011, p.10

both local or from the donor country, or local elites benefit from measures and not the country as a whole and depending on how successful the principle of help to self-help is implemented, a country can become quite dependent on foreign aid. As, the purpose of this work is not to evaluate the effectiveness and meaningfulness of development, but look into the processes and how they impact on dependency and effects on economic, social and cultural rights, which cannot be considered fully realized, as long as poverty exists.

#### **4. Comparing the three elements of international cooperation**

After having looked into three main elements of international cooperation that, although different in nature, are however highly interconnected, this chapter aims to filter out similarities and differences according to the processes of their creation and how the measures taken impact on the degree of dependency from foreign actors and their contribution to the realization of ESC-rights and the 2013 Agenda goals.

In the discussion on international lending this work focussed on the process of IMF lending policies as the IMF is the last resort for countries in a situation of a looming crisis to get funds and in turn the loans represent the first step to get out of an economically unstable situation. Also, the IMF as being an international institution, owned by member states, not a private business like hedge funds or banks, has a different more immediate link and obligation to respect human rights. As we have seen the fund is however not directly bound to contribute to the realization of human rights by its mandate and the way the pending process is organized clearly lacks transparency and democratic scrutiny. Also, the fact that IMF programs operate on a short term basis and not having long term sustainability at the centre of their considerations, but timely repayment of debts, reveals significant short-comings in its actual contribution to human rights goals. The fact that the fund is in a de facto in a monopoly position, when asked to bail out states, as they cannot get money anywhere else anymore, puts it in an enormously powerful position and leaves potential debtors in a take it, or leave it position. Another important observation is that trade, in this context exports, are often at the centre of IMF programs, which is why these topics should not be viewed in isolation.

The degree of transparency and democratic legitimacy in negotiating a free trade/association agreement, cannot be compared with the process of lending from the IMF, at least when it comes to procedures in the EU. Democratic scrutiny and civil-society participation are much stronger in the negotiation phase, then in the procedures undertaken by governments to loan money. However, despite sustainability impact assessments by the European Commission and individual analyses member states undertake, there is no comprehensive public ex-post evaluation of the effects of trade agreements on ESC-/human rights in the short, or medium term. The initial human rights binding is strong, enforcement of human rights standards, as the political relationship between sovereign countries entering into a trade agreement is symmetric, is not very strong. How effects of an agreement turn out in the end depends on several factors, that are not all under the control of a single state, but as we have seen states

have to anticipate potential adverse effects on vulnerable groups and counter-balance them through respective adjustment measures, to ensure real sustainability.

EU development cooperation has a strong focus on contributing to the 2030 Agenda and complying with each member state's human rights obligations, however the relation between donor and recipient is an asymmetric one. Compared to the degree of transparency and proactive communication concerning free trade agreements, the degree of transparency specific measures on negotiations with the countries is not as high, as in trade policy. (Though this was also not the case until some years ago), the processes starting with the allocation of funds within the EU budget to the so called-multiannual indicative programs is fairly transparent.

The following table aims at summarizing main findings to show where the weak points in the system lie.

	<b>Loans from IMF</b>	<b>EU Trade agreements</b>	<b>EU Development aid</b>
<b>Variables</b>			
Bargaining power of partner country	almost none	relatively high	low
Measures are long/short term	short term (1-3 years)	long term	medium term
Human rights link	indirect	direct through sustainability chapter	direct
Transparency in the process	low	Relatively high (compared to the other 2)	medium
Impact on equality/contribution to Agenda 2030 goals	low	depending on how the potential negative effects are counter-balanced	depending on how well the measures are implemented
Degree of dependency created	high	dependency is formally equally high on both sides	formally low de facto it can be significant

If we follow the theory of global public goods, as set out in chapter one, and perceive the realization of the ICESCR and the 2030 Agenda as such goods and follow Ocampo's categorization of economic and social international cooperation seeking to manage interdependencies among nations, promoting common social norms and standards and reducing international inequalities, international cooperation should aim at enhancing the traditional form of sovereignty. As he also argued that existing asymmetries between countries in the area of the international economic system, will reproduce or even deepen, if these issues are not addressed. We have seen that the lending system by IFIs, trade policy and development



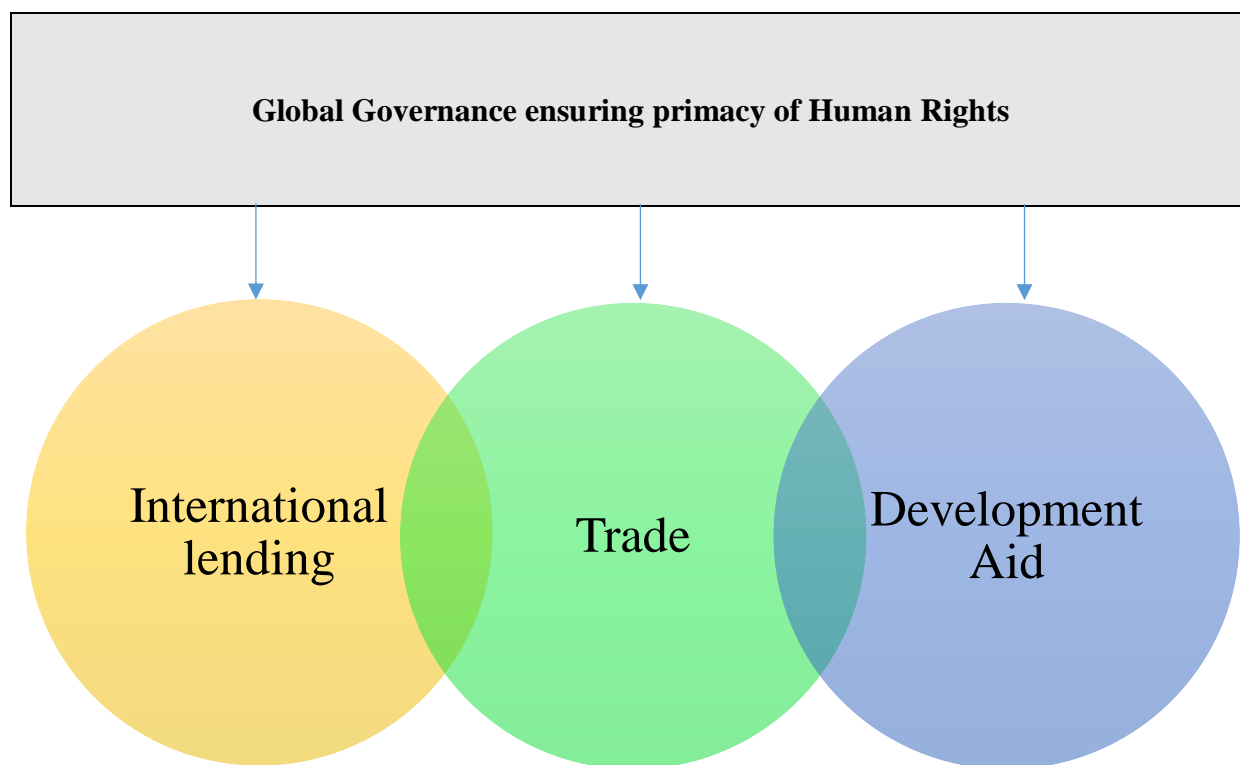
cooperation, being forms of international cooperation, as envisaged in the ICESCR, are overlapping when it comes to trade. Not being able to trade freely can have serious negative consequences on a country's development, which can be observed, for example in Cuba, being forced to liberalize markets on the other hand can have adverse effects too, so the question is not if we should trade freely, but how to organize the international economic system in order to make it beneficial for all; and that can only be done when this goal is understood as a global public good and having strong sovereign states that through international treaties commit themselves to realizing this goal in a coherent manner throughout all their actions and institutions.

Despite the close link between trade and the financial system these two spheres are very distinct. While international trade is a highly regulated area, regulations on capital floating around the globe have been reduced continuously over the last decades and led to a development, like hedge funds buying debts of countries knowing about their precarious financial situation, suing once they are not able to repay and despite the fact that austerity measures taken to make this money available will violate ESC-rights, simple credit contracts in the end supersede international human rights obligations. Again, only if states can regain sovereignty in this area, and find global solutions to remedy the flaws of this system, the realization of ESC-rights will be possible for all countries. What we have seen in the course of the 2008 financial crisis also showed that what is the result of incautious deregulation not only leads to an immoral socialization of debt, but is even against the neo-classical capitalist logic itself, as that would foresee banks to go bankrupt and not be bailed out by governments, as their influence is usually viewed as having distorting effects in the system and is thus sought to be reduced.

It can be questioned why countries are treated in the same way as private corporations when it comes to selling of debts, as they do not operate on the same level playing field, have different aims and tasks to fulfil and do not even have the same possibility of an international debt restructuring system to this date.

The chart bellow shall illustrate that international cooperation has to be based coherently on human rights principles to ensure that human rights implementation does not depend on unbinding guidelines or the willingness of actors to comply with them. In order to establish such a system, it would take much stronger global governance efforts and institutions to move things into the right direction. If the whole system of international cooperation could thus be fully based on human rights standards this would also be a step towards overcoming the

globalization paradox, as national and international interest would be rooted in the same foundation.



## **Conclusion**

Global challenges need a global response and this response requires global governance rooted in the same principles. This basis can only be the human rights as agreed upon in the respective international conventions. As we have seen in this study, the ICESCR would represent such a basis for states when cooperating in helping each other to fulfil the objective of progressive realization of ESC-rights, but these principles are not coherently applied in the different areas of cooperation analysed. A set of principles has been developed by experts and academics to remedy the shortcoming of this fact, but being non-binding, they cannot substitute the construction error in the system. Human rights have to be factored into all actions of states and international organisations and institutions from the beginning.

If the realization of human rights was thus more perceived as a global public good, that has an actual value and a benefit for the international community, not only the individual, and if the failure to fully implement human rights in turn produces negative externalities, which means there is a price to pay, the motivation for the international community to strive for this goal would be much higher. In absence of comprehensive studies of the impact of adjustment, liberalization, or other policy measures in international cooperation activities on ESC-rights, one parameter to measure the effects is the degree of equality or inequality they produce. As the Independent UN Expert on the effects of foreign debt analysed inequality is both a cause and a symptom of massive violations of economic social and cultural rights and may substantially contribute even to the emergence and course of a financial crises .

We have also seen effects on a country's sovereignty, when borrowing money from the IMF and governments have to decide on whether or not to accept structural adjustment measure or liberalization measures. Here the study could show that the results of such agreements depend on several factors, such as the bargaining power of a country, that is almost zero when it comes to borrowing, as a country is already in a situation where it can only choose between financial crisis or accepting the conditions of the fund, being the last resort to acquire a loan, when private creditors are not willing to take the risk. When it comes to development aid, a country is usually also bound to accept conditionalities, but is typically not in a state of emergency, which introduces another parameter, the one of duration.

While IMF loans have short term duration, development aid programmes of the EU focus on sustainability and follow a long term approach. EU trade agreements are also oriented towards

a long term partnership and are negotiated between sovereign states, who both have real bargaining power and do not negotiated under the pressure of a looming financial crisis. Another important factor is the original link of any endeavour to human rights. In the case of the International Monetary Fund we have seen that these do not form part of the organization's mandate, despite the fact that all shareholders of the fund are at least parties to some of the most important human rights conventions, an inconsistency with detrimental effects on the realization of ESC-rights. In the case of EU trade and association agreements as well as EU development cooperation the human rights link is comparably strong, as in both cases human and sustainability rights provisions form part of the agreements, with enforcement mechanisms being stronger in the latter case. Additionally, transparency in the process of negotiating EU free trade agreements proved to be significantly higher, than in the process of borrowing and in terms public relations even higher than concerning development aid, responding to the demands of stakeholders and civil society.

It could be also demonstrated how trade is at the centre of international cooperation and how strong the link is between trade and other forms of cooperation. Not being able to trade freely can have serious negative consequences on a country's development, which can be observed, for example in Cuba, being however forced to liberalize markets on the other hand can have serious adverse effects as we have seen in the case of Latin America. Thus, the question is not if we should trade freely, but how to organize the international economic system in a way to make it accessible and beneficial for all. Studies have shown that the effects of trade liberalization depend very much on the accompanying measures to counter-balance adverse effects on vulnerable groups and on the degree of development of a country, when entering into the world market.

To make strong rules, states have to be strong and willing to cooperate, but as one author pointed out, governments are among the more reluctant actors in international cooperation, particularly when they have to commit to global norms and standards, as they fear this may reduce the amount of their resources. Change is possible, but it will mainly depend on the political will of governments to work together and in the case of progressive and full realization of ESC-rights that would mean to create a program of an active international assistance programme clearly based on human rights.

One concrete solution to remedy the flaws of the international financial system would be to create an international debt restructuring mechanism, that allows for an organised procedure for bankruptcy in a way that ESC-rights would not be impaired.

Another important question is the one of accountability and transparency. If adjustment programmes require countries to take measures that can lead to adverse effects on human rights, ex-post studies of independent experts should evaluate the real impact of such measures in order to draw conclusions for the future as well as consequences from them.

Creditors should also be held responsible for high-risk decisions they take and it seems very arguable why it is still legal that vulture funds can treat the debt of countries in the same way as that of private business. At least it should be questioned how morally sound it is to make business out of a financial crisis of a country that is not operating under the premise of maximizing profits as businesses and banks do.

There is also a huge asymmetry in bargaining power when a country turns to the IMF as a last resort as it is basically forced to accept all conditions and has virtually no bargaining power. Finally, the question has to be raised why simple credit contracts, in the case of sovereign debts bought by hedge funds, in the end can overrule international public law.

As long as states are not willing to consequently implement the primacy of human rights in all their actions in international cooperation, their implementation might remain an unfulfilled aspiration, but as academic theory suggests, “globalness” as outlined in the beginning, is in most instances a matter of policy choice, so change is possible and it is for all of us to strive to make it happen.

## Bibliography

Bartels, L., “The European Parliament’s Role in Relation to Human Rights in Trade and Investment”, European Parliament, Directorate B, 2014

Bohoslavsky, J.P. „Economic Inequality, Debt Crisis and Human Rights”, *The Yale Journal of International Law Online*, (Vol.41, Number 2), 2016, pp.177-197

Bohoslavsky, J.P., “Towards a multilateral legal framework for debt restructuring: Six human rights benchmarks States should consider”, OHCHR, 26 January 2015

Brynildsen, O. S. , “Exporting goods or exporting debts?”, EURODAD, 2011

D. Kampel, “Sovereign debt restructuring and the right to development: challenges from an incomplete framework”, *Global Campus open knowledge repository*, Vol.1, Issue 1, 2017, p.6

De Schutter et al., O. , “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights“, *Human Rights Quarterly* (Vol. 34), The Johns Hopkins University Press, 2012, pp.1084-1145

ECORYS, “Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America“, 2009

Ellmers, B., “The evolving nature of developing country debt and solutions for change“, *A Eurodad discussion paper*, Eurodad, July 2016

ETO Consortium, “Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights“, Heidelberg 2013

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

Gunter, Cohen and Lofgren (2005), cited in D. A. Oberdabernig, “*The Effects of Structural Adjustment Programs on Poverty and Income Distribution*”, Vienna Institute for International Economic Studies (WiiW) 2010, available at:

[http://www.slettgjelda.no/assets/docs/Rapporter/Critical\\_conditions.pdf](http://www.slettgjelda.no/assets/docs/Rapporter/Critical_conditions.pdf)

IMF Independent Evaluation Office, “An IEO evaluation of structural conditionality in IMF-supported programmes”, 27 November 2007, available at <http://www.ieso-imf.org/eval>

Kaul I., and R. U. Mendoza, “Advancing the Concept of Global Public Goods”, in I. Kaul, P. Conceição, K. Le Goulven, and R. U. Mendoza (eds.), *Providing Global Public Goods: Managing Globalization*, New York, Oxford University Press, 2003, pp.78-111

Kaul, I. and Blondin, D., “Global Public Goods and the United Nations”, in J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, New York, Oxford University Press, 2016, pp. 32-65

Kaul, I. et al., “How to Improve the Provision of Global Public Goods“, in I. Kaul, P. Conceição, K. Le Goulven, and R. U. Mendoza (eds.), *Providing Global Public Goods: Managing Globalization*, New York, Oxford University Press, 2003, pp.21-58

Molina, N. and Pereira, J., “Critical Conditions- The IMF maintains its grip on low-income governments”, EURODAD April 2008, available at:  
[http://www.slettgjelda.no/assets/docs/Rapporter/Critical\\_conditions.pdf](http://www.slettgjelda.no/assets/docs/Rapporter/Critical_conditions.pdf)

Oberdabernig, D. A. “The Effects of Structural Adjustment Programs on Poverty and Income Distribution”, Vienna Institute for International Economic Studies (WIIW) 2010

Ocampo, J. A. (ed.), “Global Governance and Development, Initiative for Policy Dialogue”, Oxford University Press, 2016

Ocampo, J. A. “Global Economic and Social Governance and the United Nations System”, in J. A. Ocampo (ed.), *Global Governance and Development, Initiative for Policy Dialogue*, Oxford University Press, 2016, pp.3-31

Rodrik, D., *The Globalization Paradox: Democracy and the Future of the World Economy*, New York, W. Norton 2011

#### Documents of international organizations and the EU

Council of the European Union, (9459/17) “The new European consensus on Development “our world, our dignity, our future”, 19 May 2017

EU Strategic Framework and Action Plan on Human Rights and Democracy (11855/12), June 2012, Annex, available at:  
[https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

European Commission, “Trade for all”, COM (2015) 497, 14 October 2015

IMF Country Report No. 17/66, “Cluster Report- Trade Integration in Latin America and the Caribbean”, IMF, March 2017

Organisation for Economic Cooperation and Development (OECD), TAD/ECG(2016)14 “Principles and Guidelines to Promote Sustainable Lending in the Provision of Official Export Credit to Low Income countries, Revision”, November 2016

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 2: International technical assistance measures (Art. 22 of the Covenant)*, 2 February 1990, E/1990/23, available at: <http://www.refworld.org/docid/47a7079f0.html> (accessed 29 June 2017)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.html> (accessed 29 June 2017)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, 10 May 1999, E/1992/23, available at: <http://www.refworld.org/docid/4538838c0.html> (accessed 29 June 2017)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html> (accessed 29 June 2017)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html> (accessed 29 June 2017)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html> (accessed 29 June 2017)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant)*, 12 January 2006, E/C.12/GC/17, available at: <http://www.refworld.org/docid/441543594.html> (accessed 29 June 2017)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, available at: <http://www.refworld.org/docid/4415453b4.html> (accessed 29 June 2017)



United Nations Conference on Trade and Development (UNCTAD), A/71/276, “External debt sustainability and development”, August 2016

United Nations Conference on Trade and Development (UNCTAD), *Least Developed Countries Report 2002: Escaping the Poverty Trap* (Geneva, UNCTAD, 2002); UNCTAD, *Economic Development in Africa — From Adjustment to Poverty Reduction: What’s New?* (Geneva, UNCTAD, 2002) cited in UN General Assembly, A/65/260, *Effects of foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*, August 2010

United Nations, “International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, Doha, Qatar, 29 November - 2 December 2008”, 2009

United Nations, General Assembly, 2030 Agenda for Sustainable Development, 15 September 2015

United Nations, General Assembly, A/HRC/20/23, „Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina – Guiding principles on the foreign debt and human rights”, April 2011

United Nations, General Assembly, A/RES/69/319, Basic Principles on Sovereign Debt Restructuring Processes, 29 September 2015

United Nations, International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, Doha, Qatar, 29 November - 2 December 2008, 2009, [http://www.un.org/esa/ffd/doha/documents/Doha\\_Declaration\\_FFD.pdf](http://www.un.org/esa/ffd/doha/documents/Doha_Declaration_FFD.pdf) (last accessed June 21017)

World Trade Organisation (WTO), Marrakesh Agreement Establishing the World Trade Organization, 1994

#### Interviews:

J. Franks IMF director, interviewed by Sylvia Knittel, 23 May 2017, Brussels

Interview with a senior official of the European Commission conducted by Sylvia Knittel, 26 May 2017, Brussels

B. Ellmers, EURODAD, interviewed by Sylvia Knittel, 30 May 2017, Brussels

## Websites:

European Commission, DG Trade, *Agreements*, 2017  
<http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>, (accessed June 2017)

European Commission, DG Trade, *EU-Central America association agreement*, 2012  
<http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>, (accessed June 2017)

European Commission, Regional cooperation with Central America, available at:  
[https://ec.europa.eu/europeaid/regions/regional-cooperation-central-america\\_en](https://ec.europa.eu/europeaid/regions/regional-cooperation-central-america_en) (last accessed June 2017)

ESCR-net, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, <https://www.escr-net.org/resources/limburg-principles-implementation-international-covenant-economic-social-and-cultural> (last accessed June 2017)

OXFAM, “Wealth: Having it all and wanting more”, *OXFAM Briefing Issues*, Oxford, OXFAM international, 2015, p. 2-3,  
[https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/ib-wealth-having-all-wanting-more-190115-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/ib-wealth-having-all-wanting-more-190115-en.pdf) (last accessed June 2017)

IMF, Statement of May 15 2017,  
<http://www.imf.org/en/About/Factsheets/Sheets/2016/07/27/15/22/How-the-IMF-Promotes-Global-Economic-Stability> , (last accessed June 2017)

OECD, Development Finance Data, 2017, <http://www.oecd.org/dac/financing-sustainable-development/development-finance-data/> , (accessed June 2017)

M. Bearak, “How global tax evasion keeps poor countries poor”, *The Washington Post*, 8 April 2016, available from [https://www.washingtonpost.com/news/worldviews/wp/2016/04/08/how-global-tax-evasion-keeps-poor-countries-poor/?utm\\_term=.6363ce419ef9](https://www.washingtonpost.com/news/worldviews/wp/2016/04/08/how-global-tax-evasion-keeps-poor-countries-poor/?utm_term=.6363ce419ef9) (accessed June 2017)

Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative: IMF and World Bank comprehensive approach to debt reduction, designed to ensure that no poor country faces a debt burden it cannot manage,  
<http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative>

Global Campus of Human Rights Research Programme 2014-2015, “The Impact of Economic Crisis and Foreign Debt on Human Rights”, available at:  
[https://eiuc.org/tl\\_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2014-15/9.pdf](https://eiuc.org/tl_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2014-15/9.pdf) (last accessed June 2017)